IN THE COURT OF APPEALS OF THE
STATE OF OREGON

In the Matter of the Compensation of
William R. Beaudry, II, DCD, Claimant.

Sarah BEAUDRY,
on behalf of
William R. Beaudry, II, Deceased,
Petitioner,

v.

SAIF CORPORATION;
and West Coast Construction, Inc.,
Respondents.

Workers' Compensation Board
1401240; A159575

Argued and submitted January 9, 2017.

Edward J. Harri argued the cause for petitioner. With him on the briefs were Michael R. Stebbins and Stebbins and Coffey.

Beth Cupani argued the cause and filed the brief for respondents.

Before Tookey, Presiding Judge, and DeHoog, Judge, and Sercombe, Senior Judge.*

TOOKEY, P. J.

Affirmed.

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* Tookey, P. J., *vice* Flynn, J. pro tempore.

TOOKEY, P. J.

Claimant, the surviving spouse of William Beaudry, seeks review of an order of the Workers' Compensation Board holding that she is not entitled to compensation for Beaudry's death in a motor vehicle accident. We review the pertinent factual findings for substantial evidence and the legal conclusions for errors of law. ORS 656.298(7); ORS 183.482(7), (8). Because we conclude that Beaudry was a traveling employee on a "distinct departure from his employment on a personal errand" at the time of the accident, *Sosnoski v. SAIF*, 184 Or App 88, 90, 55 P3d 533, *rev den*, 335 Or 114 (2002) (determination of occurrence of "distinct departure"), we affirm the board's order.

The facts are undisputed. Beaudry, who lived in Coos Bay, Oregon, was working for employer in Newport, Oregon, for two weeks, installing pilings on the waterfront. Employer permitted Beaudry to stay in a hotel in Newport and reimbursed him for his expenses. Employer permitted employees to use company vehicles for personal travel and also paid for gasoline for personal trips not exceeding 100 miles.

After his shift had ended on November 18, 2013, Beaudry agreed to accompany a coworker, Smith, to Philomath, Oregon, so that Smith could shop for a Christmas gift for his wife. Smith drove employer's vehicle and Beaudry rode along. Philomath is approximately 46 miles from Newport. Beaudry had plans that evening to go to dinner with his supervisor when he returned to Newport. He was killed on the return trip in a head-on collision on Highway 20, approximately 20 miles from Newport. Employer concedes that neither Beaudry nor Smith broke any employment rules or policies while using the vehicle.

Claimant sought workers' compensation benefits related to Beaudry's death, but employer denied the claim. Employer conceded that Beaudry was a traveling employee who ordinarily would be considered to be continuously within the course of employment, even while on a personal errand, as long as the errand is reasonably related to the claimant's travel status. *See SAIF v. Scardi*, 218 Or App 403, 408-11, 180 P3d 56, *rev den*, 345 Or 175 (2008) (explaining rule). But in denying the claim, employer contended that Beaudry's

death occurred during a "distinct departure on a personal errand" that was not reasonably related to Beaudry's traveling-employee status, requiring the conclusion that the event did not arise out of and in the course of employment.

The board agreed with employer, concluding that Beaudry's trip to Philomath with Smith was "a departure from his employment on a distinctly personal errand." The board distinguished this case from others in which we have held that injuries sustained by traveling employees occurred during the course of employment. *See Dehiya v. Spencer*, 221 Or App 539, 191 P2d 730 (2008) (injury sustained in motor vehicle accident while returning to RV park); *Sosnoski* (injury sustained in motor vehicle accident while returning rented vehicle from impound lot); *Savin Corp. v. McBride*, 134 Or App 321, 894 P2d 1261 (1995) (injury sustained in motor vehicle accident en route to home town from a business trip after stopping at bank for personal business); *Proctor v. SAIF*, 123 Or App 326, 860 P2d 828 (1993) (injury sustained while playing basketball on evening of a conference). Focusing on the combination of the facts that the trip was purely personal and not necessitated by Beaudry's traveling status, and that it required travel over a significant distance, the board concluded that the trip was a "distinct departure" on a personal errand.

On judicial review, claimant contends that Beaudry was in the course of his employment at the time of the accident, because employers reasonably expect traveling employees to engage in recreational and leisure activities, and the Philomath shopping trip was such an activity. Claimant cites *Slaughter v. SAIF*, 60 Or App 610, 615, 654 P2d 1123 (1982), in which we held that injuries sustained by a long-haul truck driver who was assaulted at a tavern during a forced layover were compensable because the time spent at the tavern during the forced layover was reasonably related to the claimant's travel status.

Claimant also cites *Proctor*, in which the claimant was injured while playing basketball to relieve stress, at a fitness center to which he had traveled 15 miles from the work-related convention site. 123 Or App at 333. We concluded in that case that the claimant's leisure activity was

not a distinct departure; rather, we held that it was reasonably related to the claimant's travelling status, because it was consistent with the employer's encouragement of physical activity to relieve work stress. We reasoned that, although the distance traveled by a traveling employee to obtain recreation may show a distinct departure ("such as where the trip violates work requirements or lawful employer directives, or contradicts the asserted recreation objective") the record did not show that to be the case. *Id.* In *Proctor*, we said that a traveling employee may satisfy a physical need for recreation even if the job does not cause stress and even if the employee chooses an activity that is not related to work. "As the cases show, most traveling employees relax through activities that have little relationship to work." *Id.* at 331. Claimant contends that this case is analogous to *Proctor*, because leisure activities like the shopping trip to Philomath were not inconsistent with the business purpose of the travel status or with employer's directives, and were reasonably anticipated by employer, as evidenced by employer's permission to use work vehicles for personal travel. Thus, claimant contends, there is no reason to exclude the trip from the course of employment.

Employer responds that when a person is a traveling employee, although certain activities of a personal nature are considered to be within the course of employment, the activity still must bear some reasonable relationship to the worker's traveling-employee status. In this case, employer contends, the shopping trip, although not forbidden by employer, was not within the course of employment because it did not bear any relationship to Beaudry's employment and because it was not an activity that arose from the necessity of travel.

We conclude that employer is correct. As we have held, a person in the status of a traveling employee is continuously within the course and scope of employment while traveling, except when it is shown that the person has engaged in a "distinct departure on a personal errand." *Scardi*, 218 Or at 408. The Supreme Court and this court have long cited as authority Professor Larson's formulation of the traveling employee rule:

> "'Employees whose work entails travel away from the employer's premises are * * * within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown. Thus, injuries arising out of the necessity of sleeping in hotels or eating in restaurants away from home are usually held compensable.' 1 Larson, Workmen's Compensation Law 5-172, 25.00 (1972)."

SAIF v. Reel, 303 Or 210, 214-215, 735 P2d 364 (1987); *Simons v. SWF Plywood Co.*, 26 Or App 137, 143, 552 P2d 268 (1976). As Larson notes, if the work entails travel, the employee need not actually be working at the time of the injury. *Id.* Personal activities, such as sleeping and eating, arising from the necessity of travel fall within the course of employment.

We have attempted, through our cases, to describe the types of personal activities that arise from the necessity of travel. In *Slaughter*, we said:

> "We believe that the general rule of continuous coverage in *Simons* is best understood as a statement that injuries are compensable when resulting from activities reasonably related to the claimant's travel status. Not all activities would necessarily be covered. Clearly, some could be so unrelated to the employee's travels as to be excluded from the scope of coverage."

60 Or App at 615. In determining whether the activity at the time of injury is reasonably related to the employee's traveling status, we have considered geographic proximity. *McBride*, 134 Or App at 326 (departure minimal in both time and space); *Proctor*, 123 Or App at 333 (15-mile drive not unreasonable). We have also considered whether the activity was one that the employer reasonably contemplated or anticipated. *Scardi*, 218 Or App at 410 ("If the activity is one that an employer might reasonably approve of or contemplate that a travelling employee will engage in, and the activity is not inconsistent with the travel's purpose or the employer's directives, it is not a distinct departure."); *PP&L v. Jacobson*, 121 Or App 260, 262-63, 854 P2d 999, *rev den*, 317 Or 583 (1993) (citing *Reel* and quoting Professor Larson as above, and stating that the "employer contemplated that claimant would carry out ordinary comfort activities at the

location where he was working and thereby anticipated the risk of an injury that might occur in the context of ordinary comfort activities").

Here, there is no dispute that Beaudry's and Smith's trip to Philomath was a personal errand that did not itself bear any relation to the employment. The only assertion is that the shopping trip was a leisure activity that was reasonably anticipated because employees were permitted to use company vehicles for personal errands. But the fact that an employer permits an activity does not mean that it is compensably related to the employee's traveling status. We conclude that, under the standard set forth in Larson and our case law, to be compensable, the leisure activity must bear some relationship to the necessity of travel. Unlike in *Slaughter*, *Proctor*, and *McBride*, here there is no evidence that Beaudry's accompaniment of Smith on the shopping trip to Philomath bore any relationship to the necessity of being a traveling employee working in Newport. Accordingly, we conclude that the shopping trip to and from Philomath constituted a "distinct departure on a personal errand" and for that reason was outside the course of employment.

We reject claimant's contention that, because Smith and Beaudry were returning from the personal errand at the time of the accident, and that after he had completed the return, Beaudry would have dinner with his supervisor, the distinct departure had ended and Beaudry had regained his covered status as a travelling employee. The fact that Beaudry was on the return portion of his distinct departure did not convert the distinct departure into an activity reasonably related to Beaudry's status as a travelling employee.

We also reject claimant's alternative assertion that the accident arose out of and in the course of employment under the "employer conveyance" rule, which provides an exception to the going and coming rule when the employer provides transportation to and from the job site. *Dehiya*, 221 Or App at 546 (explaining rule). Here, there is no evidence that Beaudry and Smith were traveling to the job site.

Affirmed.