United States Department of Labor
Employees' Compensation Appeals Board

ROBERT HOSKINSON, Appellant	)	
and	)	**Docket No. 05-1515**
	)	**Issued: January 9, 2006**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, Elkton, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 11, 2005 appellant filed a timely appeal from a merit decision of an Office of Workers' Compensation Programs' hearing representative dated June 13, 2005, finding that he did not sustain an injury on May 17, 2003 while in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an injury on May 17, 2003 while in the performance of duty.

FACTUAL HISTORY

On June 24, 2003 appellant, then a 28-year-old correctional officer, filed a traumatic injury claim alleging that on Saturday, May 17, 2003 at 4:30 p.m., he hurt his left ring finger while playing basketball during a work picnic that was held in observance of correctional workers week. His regular work schedule was Monday through Friday, 8:00 a.m. until 4:00 p.m.

Appellant submitted medical records indicating that he received medical treatment and physical therapy for his left ring finger. In an August 14, 2003 letter, an employing establishment safety specialist stated that he was injured while on duty.

On February 11, 2004 appellant filed a claim alleging that he sustained a recurrence of disability on that date. By letter dated February 19, 2004, the Office advised him that his claim was originally received as a simple, unchallenged case, which resulted in minimal treatment/medical costs or no time loss from work. The Office further advised that formal adjudication of appellant's claim had not been formally considered but, in light of filing a recurrence of disability claim, it would be conducted. The Office informed him that the evidence submitted was insufficient to establish his claim. The Office also informed appellant of the factual and medical evidence needed to establish his claim. In a letter of the same date, the Office requested that the employing establishment submit additional information regarding the activity he was participating in at the time of his injury as it appeared to have occurred outside his normal work hours and was considered to be recreational.

In a February 23, 2004 letter, the employing establishment stated that appellant's injury occurred while playing basketball during a correctional workers' week picnic which was held on May 17, 2003 at its training center and was open to all staff members. The employing establishment noted that his participation was voluntary and explained that the observance was held nationwide to provide officers with an opportunity to be recognized for their efforts and to build relationships with fellow officers. The employing establishment noted that it provided all the necessary basketball equipment.

In a February 24, 2004 letter, appellant stated that his left hand injury was a result of getting hit while playing basketball with a basketball supplied by the employing establishment and on the employing establishment's work grounds. He noted the medical treatment he received for his hand and stated that he had no similar prior injuries. Appellant submitted medical records regarding treatment of his left ring finger problems and medical bills.

By decision dated March 19, 2004, the Office denied appellant's claim on the grounds that he did not sustain an injury while in the performance of his federal employment. On April 15, 2004 he requested an oral hearing before an Office hearing representative. Appellant submitted medical records regarding his left ring finger.

At the January 25, 2005 hearing, appellant testified that on May 17, 2003 he was at a picnic held in honor of correctional officer's week. He was asked in an employing establishment email to attend the event and donate gifts for an auction, money or time in preparation of the event. Appellant stated that he was "highly advised" to attend the picnic by the employing establishment's warden, "AWs," captain and lieutenants. He added that the planning of the picnic was done on company time and was financed in part by the employing establishment. Regarding payment of the picnic, appellant testified that "I pay nothing, just what I feel like I would like to donate." He related that the picnic would still take place because the administration paid for it and it was held at the employing establishment. Although attendance at the picnic was voluntary, appellant believed his absence from the picnic would be a "career stopper," he might not be looked upon as a team player.

Appellant submitted correspondence from the employing establishment regarding the planning of activities for correctional officers' week, May 2 through 8, 2004, which included fundraising activities and requests for participation in sporting events.

By decision dated June 13, 2005, an Office hearing representative affirmed the March 19, 2004 decision. The hearing representative found the evidence of record insufficient to establish that appellant sustained an injury on May 17, 2003 while in the performance of duty. The hearing representative found that, although the incident occurred on the employing establishment's premises, it was held outside of appellant's normal work hours. The hearing representative also found that, while the fundraising activities may have taken place during work hours, such activity did not bring the picnic within the scope of appellant's employment. The hearing representative noted that there was no evidence that the picnic was financed by the employing establishment, that appellant's participation was either expressly or impliedly required or that the employing establishment received a direct benefit beyond the improvement of health and morale of its employees.

LEGAL PRECEDENT

Section 8102(a) of the Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of his duty.[1] This phrase is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws; namely, arising out of and in the course of employment.[2] Whereas arising out of the employment addresses the causal connection between the employment and the injury, arising in the course of employment, pertains to work connection as to time, place and activity.[3]

In determining whether an injury arises in the performance of duty, Larson's treatise on workers' compensation law states:

"Recreational or social activities are within the course of employment when --

> (1) They occur on the premises during a lunch or recreation period as a regular incident of the employment; or
>
> (2) The employer, by expressly or impliedly requiring participation or by making the activity part of the services of an employee, brings the activity within the orbit of the employment; or

[1] 5 U.S.C. § 8102(a).

[2] *See Bernard E. Blum*, 1 ECAB 1 (1947).

[3] *See Robert J. Eglinton*, 40 ECAB 195 (1988).

(3) The employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life."[4]

These are three independent links by which recreational or social activities can be tied to employment and, if one is found, the absence of the others is not fatal.[5] Accordingly, when an employee is injured during a recreational or social activity, he or she must meet one of the above-noted criteria in order to establish that the injury arose in the performance of duty.

ANALYSIS

Appellant alleged that the left ring finger injury he sustained at the May 17, 2003 picnic while playing basketball occurred in the performance of duty because the employing establishment sponsored the event, it took place on the employing establishment's premises and he was required to attend the event. The evidence of record, however, fails to satisfy any of the above-noted criteria.

The claimed injury is not covered under the first criterion for recreational and social activities. While the picnic and associated basketball game occurred on the employing establishment's premises, they did not occur during a lunch or recreational period as a regular incident of appellant's employment. These activities took place on a Saturday, which was outside of his normal work hours. The Board finds that appellant failed to establish that the activities occurred on the premises during a lunch or recreational period as a regular incident of his employment.

With respect to the second criterion, whether the employing establishment required appellant to attend the picnic and participate in the basketball game or otherwise made the activities part of appellant's services as an employee, he argued that he was asked to attend the picnic, to donate gifts for an auction or money and time in preparation of the event. He also argued that he was "highly advised" to attend the picnic by the warden, captain and lieutenants. Appellant stated that the employing establishment paid for the picnic which was held on its premises. He acknowledged, however, that his attendance at the picnic was voluntary despite his belief that failure to attend the event would be a "career stopper" to further promotion because he would not have been viewed as a team player. The employing establishment stated that appellant's participation was voluntary. When the degree of employer involvement descends from compulsion to mere sponsorship or encouragement, the question becomes closer and it is necessary to conduct a further inquiry.[6] This inquiry focuses on the issue of whether the employing establishment sponsored the event, whether attendance was voluntary and whether the employing establishment financed the event.

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[4] A. Larson, *The Law of Workers' Compensation* § 22.01 (2000); *see Steven F. Jacobs*, 55 ECAB ___ (Docket No. 03-2251, issued January 14, 2004); *see also* FECA (Federal) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.8 (August 1992).

[5] *Steven F. Jacobs*, *supra* note 4; *Archie L. Ransey*, 40 ECAB 1251 (1989).

[6] Larson, *supra* note 4 at § 22.04(3); *see also Anna M. Adams*, 51 ECAB 149 (1999).

The record in this case, establishes that the employing establishment did not expressly or implicitly require participation of employees or encouraged participation through financial support. Based on appellant's statement and evidence from the employing establishment, the record supports that the picnic was not one which he was compelled to attend. Participation in the picnic was neither a part of his job, nor was it an activity for which he would be evaluated. It was a voluntary activity. With respect to any implied requirement of participation, while appellant may have assumed that his absence from the picnic would be detrimental, he did not submit any evidence to corroborate that employees were required to attend. Although the employing establishment had some involvement in the picnic as evidenced by such activities as sending email messages regarding preparations for the picnic, which included, requests for donations of gifts, money or time and furnishing basketball equipment, this de minimis involvement is not sufficient to bring the activity within the course of employment.[7] Under these circumstances, the Board finds that appellant has failed to demonstrate that the employing establishment expressly or impliedly required him to attend the May 17, 2003 picnic.

Appellant has also failed to demonstrate that the employing establishment derived substantial direct benefit from the May 17, 2003 picnic beyond the intangible value of improvement in employee health and morale. The employing establishment stated that the picnic was held as part of a nationwide observance which recognized the efforts of correctional officers and provided them with an opportunity to build relationships with fellow officers. No evidence of record suggests that the social activity in this case is in any way related to the employing establishment's business.[8] Consequently, the Board finds that the evidence of record does not establish that the employing establishment derived a substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life.[9]

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an injury on May 17, 2003 while in the performance of duty.

[7] The furnishing of financial support, athletic equipment, prizes and the like are relevant to the issue of employer involvement, but standing alone this evidence is ordinarily not enough to establish compensability. *See* Larson, *supra* note 5 at § 22.24(d); *see also Donald C. Huebler*, 28 ECAB 17 (1976) (where employer involvement such as printing of game results in the employing establishment newspaper, display of trophies, photographing of players during work hours and printing of admission tickets was insufficient to establish an activity in the performance of duty).

[8] *Steven F. Jacobs*, *supra* note 4; *Anna M. Adams*, *supra* note 6.

[9] Larson, *supra* note 4 at § 22.30.

ORDER

IT IS HEREBY ORDERED THAT the June 13, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: January 9, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board