U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HAMPTON HOLT, JR. and DEPARTMENT OF LABOR, OFFICE OF THE CHIEF FINANCIAL OFFICER, Washington, DC

Docket No. 99-1934; Submitted on the Record;
Issued September 27, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether appellant sustained an injury in the performance of duty on June 20, 1996.

On July 17, 1996 appellant, then a 50-year-old accountant, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that at 3:00 p.m. on June 20, 1996 he slipped and fell while playing basketball at an annual office picnic and ruptured his left patellar tendon. A witness to the incident stated that he saw appellant slip and fall while playing basketball during the employing establishment's annual picnic. Appellant stopped work on June 20, 1996 and returned on July 20, 1996.

By letter dated July 25, 1996, Office of Workers' Compensation Programs requested additional information from appellant including factual and medical evidence in support of his claim. Among other things, appellant was specifically requested to describe in detail the circumstances surrounding his injury.

The Office received medical evidence from appellant and a response to circumstances surrounding the injury. In progress notes dated June 21 through July 17, 1996, Dr. Chester A. Dilallo, a Board-certified orthopedic surgeon, discussed treatment and surgical repair of the ruptured left patellar tendon. In a statement submitted in response to the Office's questions, appellant indicated that the employing establishment did not require or persuade appellant to attend the annual Office of the Chief Financial Officer (OCFO) picnic or to actively participate in any activities nor did the employing establishment require or persuade others to participate in the activities. Appellant indicated that the annual OCFO picnic took place during tour of hours, off premises at Bolling Air Force Base.

The employing establishment submitted a statement which indicated that participation in the OCFO annual picnic was encouraged; however, it was not mandatory. The employing establishment indicated that no specific benefit was derived from this activity except the coming

together of the total OCFO agency offices once a year. The employing establishment also noted that appellant's injury occurred during his tour of duty, off premises. According to the employing establishment, the OCFO office provided leadership, the facility and encouragement to attend in the activities of the picnic, and some equipment was on site.

By decision dated August 27, 1996, the Office denied appellant's claim, stating that appellant did not establish that he sustained an injury while in the performance of duty.

By letter dated August 26, 1997, appellant requested reconsideration of the Office's decision and submitted additional evidence including a statement, an e-mail from organizers of the picnic notifying employee's of the OCFO annual picnic and an excerpt from *The Workers' Compensation Law Reports.* Appellant noted that the OCFO picnic was on a U.S. government facility when the injury occurred and that the employing establishment authorized and sanctioned the activity. Appellant also indicated he was on administrative leave to attend the function and that the employing establishment managers supported and financed the cost of the picnic through contributions based on the employee grade structure. Appellant noted the primary discussion at each picnic concerned work-related activities.

By decision dated November 25, 1997, the Office denied appellant's request for reconsideration.

Appellant requested reconsideration of the Office's decision and submitted additional evidence including a statement from appellant dated November 23, 1998. Appellant indicated that the employing establishment encouraged his presence at the company picnic and that there was a strong degree of employer sponsorship of the activity.

By decision dated February 23, 1999, the Office denied appellant's request for reconsideration after conducting a merit review.

The Board finds that appellant's injury on June 20, 1996 was sustained in the performance of duty.

The general criteria for determining whether an individual is in the performance of duty as it relates to recreational and social activities is set forth in Larson[1] as follows:

> "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 (3) the employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employees health and morale that is common to all kinds of recreation and social life."[2]

[1] Larson, *The Law of Workers' Compensation* § 22.00 (1997).

[2] *Id.,* at § 22.00.

The Board has emphasized that these are distinct criteria noting that Larson characterized these as "three independent links … by which recreation can be tied to the employment and if one is found the absence of the others is not fatal."[3]

The OCFO annual picnic occurred off the employing establishment premises, and therefore appellant's claimed injury, as noted above, occurred off premises.

The Board finds that appellant was in the course of employment. The employing establishment encouraged participation but did not expressly or impliedly require appellant to participate in the picnic.

When the degree of employer involvement descends from compulsion to mere sponsorship or encouragement, the questions become closer and it is necessary to conduct further inquiry.[4] This inquiry focuses on the issues of whether the employing establishment sponsored the event and whether attendance was voluntary and whether the employing establishment financed the event.[5] The record indicates that the employing establishment provided "leadership, the facility and encouragement to attend and participate in the activities of the picnic." Additionally, the employing establishment indicated that some equipment was provided for the participants. The record also indicates that the employing establishment granted administrative leave for the participants of the picnic as the picnic was held during work hours. Separately, each of these factors might not support that appellant was in the course of employment. However, under the circumstances, taking all the these factors together, the employing establishment can be said to have encouraged participation through sufficient financial control to bring the picnic within the course of employment sponsorship.[6] Consequently, as appellant has demonstrated that he was in the course of his employment when injured, the case will be remanded for the Office to conduct appropriate further development of the claim.

[3] *See Stephen H. Greenleigh*, 23 ECAB 53 (1971).

[4] 1A Larson, *The Law of Workers' Compensation* § 22.00 (1993); *see Anna M. Adams*, 51 ECAB __ (Docket No. 98-757, October 28, 1999); *see also Lindsay A.C. Moulton*, 39 ECAB 434 (1988).

[5] *Id.* at § 22.25.

[6] *See Michael A. Vestato*, 47 ECAB 632 (1996) (evidence of direct employer involvement and evidence of a degree of employer control and encouragement supported that the employee's injury arose in the course of employment); *Lester W. Dustin*, 33 ECAB 571 (1982) (the outcome of recreation cases will depend on "the mix" of the particular factual situation).

The decision of the Office of Workers' Compensation Programs dated February 23, 1999 is hereby reversed.

Dated, Washington, DC
September 27, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member