U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES W. HOCKADAY and DEPARTMENT OF THE ARMY, BIG BETHEL WATER TREATMENT PLANT, Hampton, VA

Docket No. 01-152; Submitted on the Record;
Issued March 25, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON, WILLIE T.C. THOMAS

The issue is whether appellant sustained an injury in the performance of duty on August 18, 1999.

On August 26, 1999 appellant, then a 36-year-old water treatment plant operator, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that on August 18, 1999 he tore his left anterior cruciate ligament and left lateral meniscus while playing basketball at a training seminar picnic. At the time of his injury, appellant was on temporary-duty assignment at a weeklong training course at Virginia Tech.

In a decision dated November 22, 1999, the Office of Workers' Compensation Programs denied appellant's claim, stating that appellant did not establish that he sustained an injury while in the performance of duty.

Appellant requested an oral hearing before an Office representative and submitted additional evidence in support of his claim. He stated that his injury occurred during an organized after class social event, which was scheduled for all the people who attended the training program. The social event included dinner and recreational activities such as swimming, softball, basketball and horseshoe throwing. Appellant stated that as he was temporary-duty assignment and this social event was included on the course schedule, he felt he was obligated to attend and participate in the activities. He submitted a copy of the course meal schedule, which shows that on Wednesday, the evening meal was to be in the form of a picnic from 6:00 p.m. to 9:00 p.m. at the Blacksburg Recreation Center. An attached information sheet states:

> "On Wednesday, a shuttle will take you from Donaldson Brown Hotel and Conference Center to the Blacksburg Recreation Center where an outdoor picnic with food and beverage will be provided. Afterwards, you may use all the facilities which include indoor swimming … softball, basketball, pool tables and volleyball at no charge."

At the hearing, appellant further testified that food was available throughout the evening, and that after he and others had eaten their first plate of food, some of the course instructors began organizing the course attendees into separate activity groups and he was invited to play basketball. He added that before he left for the conference, his supervisor advised him to take full advantage of the all of the opportunities offered during the course.

The employing establishment submitted a statement which indicated that appellant's attendance at the training course was sponsored and paid for by the employing establishment, and that the costs of the picnic were covered by the course fee. The employing establishment further indicated that while the picnic was listed in the course itinerary, the picnic was not mandatory, but was an optional social event, such as is commonly included in conference itineraries and was not a formal part of the training course work which was the primary purpose for the sponsored official government temporary-duty assignment.

In a decision dated June 13, 2000, an Office hearing representative affirmed the Office's prior decision.

The Board finds that appellant's injury on August 18, 1999 was sustained in the performance of duty.

Under the Federal Employees' Compensation Act, an employee on travel status or a temporary-duty assignment or special mission for his employer is in the performance of duty, and, therefore, under the protection of the Act 24 hours a day with respect to any injury that results from activities essential or incidental to his special duties.[1] Examples of such activities are eating,[2] returning to a hotel after eating dinner[3] and engaging in reasonable activities within a short distance of the hotel where the employee is staying.[4] However, when a claimant voluntarily deviates from such activities and engages in matters, personal or otherwise, which are not incidental to the duties of his temporary assignment, he ceases to be under the protection of the Act. Any injury occurring during these deviations is not compensable.[5] Examples of such deviations are visits to relatives or friends while in official travel status,[6] visiting nightclubs and

[1] *Ann P. Drennan*, 47 ECAB 750 (1996); *Janet Kidd (James Kidd)*, 47 ECAB 670 (1996); *William K. O'Connor*, 4 ECAB 21 (1950).

[2] *Michael J. Koll, Jr.*, 37 ECAB 340 (1986); *Carmen Sharp*, 5 ECAB 13 (1952).

[3] *Ann P. Drennan; Janet Kidd (James Kidd); William K. O'Connor*, *supra* note 1 .

[4] *Ann P. Drennan; Janet Kidd (James Kidd), supra* note 1*; Theresa B. L. Grissom*, 18 ECAB 193 (1966).

[5] *Karl Kuykendall*, 31 ECAB 163 (1979).

[6] *George W. Stark*, 7 ECAB 275 (1954); *Miss Leo Ingram*, 9 ECAB 796 (1958); *Ethyl L. Evans*, 17 ECAB 346 (1966).

bars,[7] skiing at a location 60 miles from where an employee is undergoing training[8] and taking a boat trip during nonworking hours to view a private construction site.[9]

The fact that a recreational activity occurs at the site of a conference, however, is not by itself sufficient to show that the employee was in the performance of duty when his injury was sustained.[10] 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[11] 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."[12]

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."[13]

In the instant case, while the training course and associated picnic occurred off the employing establishment premises and, therefore, appellant's claimed injury occurred off premises and while the employing establishment encouraged participation but did not expressly or impliedly require appellant to participate in the picnic, the Board nonetheless finds that the circumstances in this case brought the picnic within the orbit of appellant's employment and, therefore, finds that appellant was in the performance of duty when he was injured.

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[7] *Conchita A. Elefano,* 15 ECAB 373 (1964).

[8] *Karl Kuykendall, supra* note *5.*

[9] *Mattie A. Watson,* 31 ECAB 183 (1979).

[10] *See e.g Lindsay A.C. Moulton,* 39 ECAB 434 (1988). In *Lindsay A.C. Moulton* the Board found that a deceased employee attending a conference at a ski resort was not killed while in the performance of duty when he collapsed due to cardiac arrest while skiing. The Board held that the employee's participation in skiing was a personal, recreational activity available to the employee at the worksite, that the skiing was not reasonably incidental to the purpose of appellant's travel and that the recreational activity that the employee engaged in did not meet the criteria of being within the performance of duty.

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

[12] *Id.,* at § 22.00.

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

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.[14] 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.[15] The record indicates that appellant's attendance at the training course was sponsored and paid for by the employing establishment and that the costs of the picnic, including the food and the rental on August 18, 1999 of the entire Blacksburg Recreational Center and all its associated facilities and equipment, were covered by the course fees paid by the employing establishments of the participants. In addition, the picnic was included in the course schedule as a regular meal activity and a special shuttle bus was arranged to carry course attendees to and from the picnic site, which was reserved for their exclusive use. Separately, each of these factors might not support that appellant was in the course of employment. However, under the circumstances, taking all of 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.[16] In addition, these factors further support a finding that the basketball game during which appellant was injured was reasonably incidental to the assigned activities of the training seminar itself and that, therefore, appellant's participation in the basketball game did not constitute the type of voluntary deviation from his regular activities which would remove him from the protection of the Act.[17] 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.

[14] 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, supra* note 10.

[15] *Id.* at § 22.25.

[16] *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).

[17] *Ann P. Drennan*; *Janet Kidd (James Kidd)*; *William K. O'Connor, supra* note 1.

The decisions of the Office of Workers' Compensation Programs dated June 13, 2000 and November 22, 1999 are hereby reversed.

Dated, Washington, DC
March 25, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member