WCAT Decision Number: WCAT-2004-04891
WCAT Decision Date: September 21, 2004
Panel: Georgeann Glover, Vice Chair

Introduction

The worker appeals a decision of a review officer of the Workers' Compensation Review Board (Review Board) concerning her March 11, 2003 shoulder injury claim. In her October 9, 2003 decision, the review officer confirmed a decision of the Workers' Compensation Board (Board) and found that the worker's right shoulder injury was sustained during fundraising activities and therefore was not compensable. It did not arise out of and in the course of the worker's employment as a school teacher. The injury occurred at an evening student staff hockey game in which the worker was participating.

The worker initially requested an oral hearing, but subsequently requested that this appeal proceed by written submission. I am satisfied that this appeal can be determined on the basis of the claim file, the appeal documents, and the submissions of the worker.

The employer, a school district, did not participate in this appeal although advised of its right to do so.

Issue(s)

Did the worker's right shoulder injury arise out of and in the course of her employment?

Jurisdiction

This appeal was filed with the Workers' Compensation Appeal Tribunal (WCAT) under section 239(1) of the *Workers Compensation Act* (Act).

Background and Evidence

In September 1999, the worker was employed as a school teacher. On March 11, 2003 while participating in a student/staff hockey game at a community arena, the worker fell and dislocated her right shoulder. She sought emergency medical treatment on the same day and subsequently saw her attending physician, Dr. W on March 20, 2003.

In his March 20, 2003 report, Dr. W diagnosed a right shoulder dislocation. Dr. W noted that the shoulder had been reduced in the emergency room and no fracture had occurred. She noted that the right shoulder was tender and immobilized by a sling. She observed normal sensation and grip in the right arm. She prescribed physiotherapy to gradually increase the range of motion and strength of the elbow. She indicated that the worker's activity should be restricted from overhead lifting or shoulder abduction.

The worker also sought physiotherapy treatment and a report from the clinic on April 17, 2003 contained a request for an extension of the treatment for four weeks to improve the worker's range of motion and right shoulder flexion.

The employer's report of injury confirmed the worker's injury of a dislocated right shoulder. The employer indicated no objection to the claim and indicated that the worker's actions at the time of her injury were for the purposes of the employer and part of the employee's regular work.

In a claim log entry of April 10, 2003, a Board officer spoke with a representative of the employer who advised that the worker taught academic courses in grades 8 to 12. The worker was participating in a hockey game organized by the graduating students for participation by students and staff. The purpose was to raise funds to cover "grad" events. The participants were not directed to participate by the employer and no payment was made to the participants.

In a claim log entry of April 30, 2003, the Board officer recorded her telephone conversation with the worker. The worker confirmed that she had fallen on the ice during a hockey game at a community sports arena. The game was arranged as a part of fundraising for the grade 12 class to cover the cost of their graduation events. The participants in the game were the students on one team and teachers, school district employees and parents on the other. Attendance at the hockey game was open to the general public and entry fees were directed to the graduation fund.

In a decision letter of April 30, 2003 the Board officer advised the worker that her claim for a right shoulder injury which she sustained on March 11, 2003, did not arise out of and in the course of her employment because the worker's participation in the hockey game was for fundraising purposes. The Board officer applied policy #20.50 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II) in reaching her conclusion.

On May 15, 2003 the employer requested a review of the Board decision, maintaining that the worker's injuries arose out of and in the course of her employment and that the worker was entitled to wage loss and health care benefits.

On May 31, 2003, the worker requested a review of the Board officer's decision on the basis that her participation in the hockey game was because she was a teacher and the activity was a school event. She sought health care and wage loss benefits.

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In support of its request for review, the employer provided a July 17, 2003 submission. The employer summarized the hockey game of March 11, 2003 as organized by the "grads" with the "teachers (primarily)" of the school district. Attendance for the event was open to the general public and the entry fees were directed to the graduation fund. The employer wrote that the event was "sanctioned and authorized by the school district, and participation in the event by teachers was encouraged by the school district." The employer reviewed the duties of its teachers and stressed that a teacher is a professional whose overall work responsibilities go beyond instruction. The employer submitted that while extracurricular activities are voluntary, teachers are encouraged to participate in these activities because they are beneficial to the education and well being of the students. The employer further submitted that the teacher's salary is remuneration for all curricular, extracurricular and/or other related duties and activities which a teacher may perform throughout the year. The employer relied on the 1978 decision of the former commissioners of the Board (*Decision No. 273 (1978), 4 WCR 16*). This decision, which had not been "retired" by the Board, continued to be a part of the published policy of the Board. The employer relied on the following passages:

> What is decisive upon a close examination of this claim, is the nature of the activity in which the teacher has participated. In our view, where a game involves teachers and pupils, whether or not the teacher participates voluntarily, it should be assumed that it was part of the teacher's intention to create or maintain better rapport with pupils and generally to establish a better teacher-pupil atmosphere which would be carried over into classroom activities.
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> The activity in question on this claim was one which involved students and we feel that it is reasonable to consider it to be part of the general duties of the claimant, although she was not directed to play.

The employer also relied on *Decision No. 273* for the principle that a particular decision may be inconsistent with a published policy of the Board because a policy manual could not cover every foreseeable fact situation. The employer submitted that *Decision No. 273* and policy item #20.50 of the RSCM II appeared to be inconsistent with each other and that the reasoning in *Decision No. 273* should apply to determine that the worker's claim be accepted by the Board.

The worker did not provide any submissions in her request for review.

In her October 9, 2003 decision, the review officer determined that although there were two requests for review, there was only one issue and the relief sought was identical. She addressed the two requests as a single request. She concluded that there was no doubt that the worker had sustained an injury on the evening of March 11, 2003 while participating in a hockey game. She also concluded that because of policy item #20.50

of the RSCM II concerning fundraising, the worker's injury was not compensable because it was sustained during a fundraising activity. She also considered policy item #20.20 which is the Board's policy concerning recreational exercise and sporting activities and determined that she would not have allowed the worker's claim if she had applied this policy.

In considering the employer's request to apply *Decision No. 273*, the review officer found that the decision was a precedent and inconsistent with the current policy in the RSCM II and that she was obliged to favour and apply the current policy.

The worker appealed the Review Division decision on the basis that the activity in which she was engaged had been well established as a part of a teacher's work so that her claim should be accepted as arising out of and in the course of her employment.

As a part of the worker's appeal, her representative, Mr. Taylor, provided a June 3, 2004 written submission. As part of the submission, he included an extract from the worker's collective agreement, as well as an excerpt from the *B.C. School Regulation 265/89*.

Mr. Taylor characterized the question in this appeal as being whether the worker was performing her duties as a teacher on March 11, 2003 when she attended the student/teacher hockey game or whether she was fundraising. He submitted that the worker was performing her duties as a teacher on the basis that the activity was sanctioned and authorized by the worker's employment. The worker's role in the activity was to participate in a sporting activity and did not require her to participate in organizing or collecting any funds. He submitted that her participation was consistent with article D9.0 of the collective agreement applicable to her employment.

> D9.0 Extracurricular Activities
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> (a) The parties agree that extracurricular activities are voluntary. No punitive action will be taken against an individual who declines to volunteer for extracurricular activities.
> (b) The Association and the Employer recognize and support extracurricular activities as an important aspect of school programs for students.
> (c) Extracurricular activities are those activities that are beyond the provincially prescribed and locally determined curricula of the school.
> (d) While voluntarily involved in extracurricular activities, Teachers shall be considered to be acting in the employ of the Employer, for purposes of liability of the Employer and coverage by the Employer's insurance.

Mr. Taylor further submitted that the worker's activity benefited her employer within the meaning of policy item #14.00 of the RSCM II and that sporting activities such as this

were an integral part of each student's educational experience. He submitted that while the activity took place after the worker's instructional hours it was common for salaried employees to work outside of normal work hours without any additional pay.

Mr. Taylor relied on the extract from *B.C. School Regulation 265/89* and in particular section 4(1)(b) concerning the duties of teacher:

> (b) providing such assistance as the board or principal consider necessary for the supervision of students on school premises and at school functions, whenever and wherever held.

He submitted that the burden of proof was not on the worker to prove that her injury arose out of and in the course of her employment and that the evidence established that she had a compensable injury that arose out of and in the course of her employment.

In support of his submission, Mr. Taylor also relied on and provided copies of Board *Review Division Decision No. 171* and *WCAT Decision #2003-01781-RB*.

Review Decision No. 171, a June 12, 2003 decision of a Review Division, involved a teacher who sustained a hernia injury while supervising students participating in a school bike club. The injury occurred after regular instructional hours and while the worker was riding a mountain bike. The review officer applied policy item #20.20 of the RSCM II to determine that the worker's injury was compensable. He considered the following factors relevant under policy item #20.20:

- Whether the activity was part of the worker's employment;
- The nature of the direction by the employer to the worker;
- Whether the activities occurred during working hours or outside working hours;
- Whether the worker was paid a salary while participating in the activity;
- Whether the activity was supervised by the employer;
- Whether the activity was intended by the employer to foster public relations; and
- Whether the activity took place on the employer's premises.

The review officer considered whether the worker's voluntary participation in the activity disentitled him to compensation. He concluded that although the supervision of extracurricular activities was technically considered voluntary it was part of the employment activities of the teachers. He accepted the position of the employer's representative that participation in the sporting activities would fall within the same category of work that a teacher might give to lesson preparation, marking assignments, staff or parent meetings. He noted that the worker's participation in supervising and participating with the bike club was requested by the employer and that the worker's supervision of extracurricular activities was deemed to be voluntary under the collective agreement. He found that while the worker's injury did not occur during classroom hours, many of the employment activities did not occur during classroom hours. He

noted that because the worker was a salaried employee and paid on an annual basis, he was not paid any additional amounts for employment activities outside of the classroom hours. He also noted that it was not uncommon for salaried employees to work varying hours beyond their normal workday. He found that the worker's participation in the bike club allowed the school to foster good relations with the students and parents, and found the injury arose out of and in the course of the teacher's employment.

WCAT Decision #2003-01781-RB was a July 30, 2003 decision of WCAT. In the appeal, a school teacher sought compensation for an injury he sustained in the course of a soccer game in the school gym during a noon hour. The worker injured his right knee; his employer objected to acceptance of the claim on the basis that the injury did not arise out of and in the course of the worker's employment. The WCAT panel considered the criteria under policy item #14.00 of the RSCM II, as well as policy item #20.20. She determined that while the worker's participation in intramural sports at the school was voluntary, the meaning of voluntary in that context was not determinative of the worker's role in the intramural sports. She determined that while participating in intramural sports the teacher provided supervision of the students, ensured that students complied with codes of conduct, provided a program that promoted student human and social development and evaluated students' human and social development in the participation of lunch time sports. She concluded that this supervision provided a benefit to the employer and to the students and that the participation was not for the benefit of the teacher but for that of the school. The panel also reviewed the terms of the collective agreement between the teacher's association and the school district. These provided that a teacher could not be compelled to perform any supervision duties during the school's regular scheduled intermission, that the teacher assumed supervision duties related to extracurricular activities on a voluntary basis, but that while voluntarily involved in any authorized extracurricular activities the teachers were considered to be acting in the employ of the Board for the purposes of liability of the employer and coverage by the employer's insurance. The panel concluded that when teachers participate in extracurricular activities they do so in the capacity of a teacher and enjoy the protection of the school's insurance. The panel found the worker's injury arose out of and in the course of his employment.

Reasons and Findings

Section 5(1) of the Act provides for the payment of compensation for personal injury which arises out of and in the course of employment. In examining the scope and application of section 5, I must apply the applicable policies of the Board. In determining whether the worker's injury is compensable, I will consider policy items #14.10 and #20.50 of the RSCM II.

Section 5(4) of the Act provides that where an injury is caused by accident and the accident arose out of the employment, unless the contrary is shown, it must be presumed that it occurred in the course of employment and arose out of the employment. Policy item #14.10 of the RSCM II indicates that for an injury resulting from an accident, evidence is only required to show either that the injury arose out of the employment or that it arose in the course of employment. The balance is presumed unless there is evidence to the contrary.

I am satisfied that the worker's injury resulted from an accident within the meaning of section 1 of the Act, namely a fortuitous event occasioned by a physical or natural biophysical cause.

However, policy item #20.50 of the RSCM II which applies to fundraising activities, provides for specific examples of activities which do not meet the requirements of the two statutory tests set out in section 5(1) of the Act, both of which also apply under section 5(4). One of those examples is that of "school teachers participating in a bake sale, a car wash, a walkathon, etc. with a view to raising funds for field trips, or other similar peripheral activities not covered by direct school funding." This policy also states that to extend the interpretation of the Act to include these activities would be to "expand the horizons of the Act beyond what the legislature intended." Under this policy, claims received for injuries occurring in the course of fundraising are deemed to be unacceptable.

I note that policy item #20.50 of the RSCM II has been revised by the Board, but the revised policy applies only to injuries occurring after June 1, 2004. Under section 250(2) of the Act, I must apply the policy of the Board that is applicable in this appeal.

I find that I am unable to distinguish the hockey game which was played for the purpose of raising funds for graduation activities from the examples which the Board has included in its policy.

Conclusion

For these reasons, I deny the worker's appeal and confirm the March 1, 2004 decision of the Review Division.

There are no requests for reimbursement of expenses and no reimbursable expenses within the meaning of section 7 of the *Workers Compensation Act Appeal Regulation, B.C. Regulation 321/02* are apparent to me following my review.

Georgeann Glover
Vice Chair

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