WCAT Decision Number: WCAT-2011-01742
WCAT Decision Date: July 12, 2011
Panel: Herb Morton, Vice Chair

Introduction

[1] The worker is a social studies teacher. On June 29, 2010, at the end of the school year, he suffered a right foot injury while participating in a staff soccer game during the lunch hour.

[2] The worker has appealed the January 19, 2011 Review Division decision (*Review Decision #R0120492*) to the Workers' Compensation Appeal Tribunal (WCAT). The review officer confirmed the July 23, 2010 decision by an entitlement officer of the Workers' Compensation Board, operating as WorkSafeBC (Board), which denied the worker's claim for compensation.

[3] By notice of appeal dated February 18, 2011, the worker requested that his appeal be considered on the basis of written submissions. The worker's union representative provided a submission dated April 29, 2011. The worker's employer provided a submission dated May 11, 2011. Although invited to do so, the worker did not provide a rebuttal submission. On June 13, 2011, the WCAT appeal coordinator advised that submissions were considered complete.

[4] The background facts are not in dispute. The worker's appeal concerns questions of law and policy, and does not involve any significant issue of credibility. I find that the worker's appeal can be properly considered on the basis of the written evidence and submissions.

Issue(s)

[5] Did the worker's right foot injury on June 29, 2010 arise out of and in the course of his employment?

Jurisdiction

[6] The Review Division decision has been appealed to WCAT under section 239(1) of the *Workers Compensation Act* (Act).[1]

[1] WCAT may consider all questions of fact, law and discretion arising in an appeal, but is not bound by legal precedent (sections 250(1) and 254 of the Act). WCAT must make its decision based on the merits and justice of the case, but in so doing must apply a published policy of the board of directors of the Board that is applicable (sections 250(2) and 251 of the Act).

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Background and Evidence

[7] The worker is a social studies teacher. In his application for compensation, he advised that on June 29, 2010, while playing an organized staff soccer game during lunch (for team building), he rolled his right foot and fractured his right metatarsal while receiving a ball.

[8] By memorandum dated July 21, 2010, an entitlement officer noted that the following information was provided by the employer:

> I spoke to [name], employer. She said that the worker was injured on the last day of school. The teachers had some time to kill and basically just said let's go have some fun and arranged a game in the gym. This was not a fundraiser, they were not directed and it was strictly voluntary and something the teachers did on their own.

[9] By decision dated July 23, 2010, the entitlement officer denied the worker's claim. The entitlement officer reasoned, with reference to the policy at item #20.20 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II):

> Section 20.20 does not provide a formula of determining how the factors are to be weighed and I accept there are some positive factors. For example, it occurred on the employer's premises and you were paid for your lunch break. However, the activity is not part of your job, you were not directed to participate, and it was truly voluntary on your part. Physical fitness is not a job requirement as would be the case of a physical education teacher. As the evidence does not support that your injury was sustained out of your employment, Section 5(1) of the Act has not been met.

[10] The worker requested a review by the Review Division. By decision dated January 19, 2011, the review officer confirmed the July 23, 2010 decision. The review officer reasoned, in part:

> I note first that although the worker's injury occurred on the employer's premises during his lunch break, the soccer game was not part of the worker's job activities, it was not supervised by the employer, and he did not participate in it on the employer's instructions. Rather, his participation was purely voluntary. I also note that since the worker was not employed as a physical education teacher, physical fitness was not a requirement of his job.

> The WR [worker's representative] submitted that the worker participated in the soccer game with the employer's knowledge. However, I do not consider that fact, even if it is true, brings the injury within the scope of section 5(1).
>
> The WR also submitted that the employer was aware of the value of teachers participating in activities like lunch hour soccer games because they enhanced relationships between colleagues and also teacher-student relationships, since students watched the game. She submitted that such games formed part of regular year-end activities and were good public relations for the employer.
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> Policy item #20.20 states that where a worker is injured while engaged in a recreational, exercise or sport activity, on behalf of the employer, involving the public or a section of the public, which was clearly designed to foster good community relations, that would be a factor favouring coverage. However, I find that the worker not only did not participate in the soccer game on behalf of the employer, but that the game was not clearly designed to foster good community relations. It was simply a voluntary game between co-workers which students could watch.

Submissions

[11] The worker submits that with respect to policy at RSCM II item #14.00, the soccer game in which he was injured:

- occurred on the employer's premises;
- used equipment supplied by the employer;
- occurred during a period in which the worker was being paid; and
- was for the mutual benefit of the worker, his colleagues, their students and the employer.

[12] With respect to policy at RSCM II items #20.00 and #20.20, the worker submits that his injury occurred:

- within working hours;
- with the employer's knowledge;
- with the use of the employer's equipment; and
- with the intention to foster good year-end relations between colleagues, students and school administration.

[13] The worker cites *WCAT-2009-03139*, in which a WCAT panel accepted that a teacher's injury on June 20, 2008, while participating in a year-end social event for teachers, was compensable. In that case, the WCAT panel accepted (at paragraph 32), that the event likely had a positive impact on some student spectators, which was akin to fostering

good community relations. The WCAT panel further found at paragraph 34 that the event was a team-building exercise which was designed to promote school spirit and collegiality among the teaching staff, and that the positive impact of the event likely benefitted the employer.

[14] The employer submits that the worker was not a physical education teacher. His teaching assignment was social studies, and this kind of activity was not a requirement of his assignment. The soccer game was not arranged by the employer, and the worker was not following instructions of his supervisor. There was no benefit to the employer in the worker's participation in the soccer game. The employer states that it does not arrange these kinds of activities to promote collegiality among the teaching staff, or amongst any of its other employee groups. In any event, the event occurred at the end of the school year, and there were significant changes to staffing prior to the next school year, which further substantiates that there was no benefit to the employer. The game occurred during the worker's lunch break, which according to the collective agreement was "duty free." This means that any participation in an activity during the lunch break was strictly voluntary.

Prior WCAT Decisions

[15] The reasoning in prior decisions may provide useful guidance. Consistency in decision-making is generally desirable, but WCAT is not bound by legal precedent.

[16] The worker has cited *WCAT-2009-03139*. In that case, the WCAT panel found that the evidence was at least evenly balanced. Accordingly, the worker's appeal was allowed in accordance with section 250(4) of the Act[2]. In that case, the event took place during working hours (from 12:30 p.m. until 3:00 p.m.). It was organized by a co-worker and the staff social committee. The school principal provided a letter stating that the school had a long tradition of offering year-end staff activities, that this was the third year the particular event was offered, and that the event was part of a team building activity to promote school spirit and collegiality among staff members. In that case, the WCAT panel reasoned at paragraph 33:

> In addition, I am satisfied on the available evidence that the event, although organized and run by teaching staff, was supervised by a representative of the employer having supervisory authority. The worker's September 28, 2008 letter mentions that his vice principals watched the activities take place. Moreover, the indication in the worker's letter that his principal was aware of the event and repeatedly, over several years, gave her approval to the social committee to conduct the event during school hours is buttressed by the principal's October 3, 2008 letter, where she

[2] Section 250(4) of the Act provides that if WCAT is hearing an appeal respecting the compensation of a worker and the evidence supporting different findings on an issue is evenly weighted in that case, WCAT must resolve that issue in a manner that favours the worker. Section 99(3) provides similar direction regarding decision-making by the Board.

> commented that the school had "a long tradition of offering year-end staff activities." The employer's supervision of the event weighs in favour of coverage.

[17] *WCAT-2009-00491* is summarized as noteworthy on the WCAT website.[3] The worker, a science teacher, injured her shoulder in a volleyball game in 2007. The game occurred during an awards night for students which included an exhibition volleyball game between students and teachers. The WCAT panel found that the evidence did not indicate the worker's participation in the game was in response to instructions from the employer. It did not appear the injury was caused by an activity of the employer or a fellow employee, nor did it occur while the worker was performing duties that were part of the regular job duties. Considering all of the factors in the policy, the panel concluded that the injury sustained in the volleyball game did not arise out of and in the course of the employment. The WCAT panel reasoned, in part:

> … In the present case, I have considered the factors in policy #14.00 which are used as guidelines for determining whether an injury arose out of and in the course of employment as well as the factors listed in policy #20.20. With regard to the factors in policy #14.00, the injury occurred on the premises of the employer and while doing something for the benefit of the employer. It also occurred while using equipment or materials supplied by the employer, assuming the volleyball and net were provided by the school. These factors favour coverage.
>
> With respect to the other factors, the evidence does not indicate the worker's participation in the game was in response to instructions from the employer. It also does not appear the injury was caused by an activity of the employer or a fellow employee nor did it occur while the worker was performing duties that were part of the regular job duties. Although, the worker's representative submits that a teacher's duties extend well beyond direct instructional responsibilities, I consider that this question should be answered in the negative, given that the worker's regular duties did not involve coaching, teaching or supervising sports or physical education. Similarly, to the extent that the factor concerning exposure to risk of production may be said to apply to a teacher, I do not consider the worker was exposed to risks during the volleyball similar to those she would normally be exposed to, since her responsibilities as a teacher did not included coaching, teaching or supervising sports activities. Finally, there

[3] As set out the WCAT *Manual of Rules of Practice and Procedure* item #19.3, noteworthy decisions may provide significant commentary or interpretive guidance regarding workers' compensation law or policy, comment on important issues related to WCAT procedure, or serve as general examples of the application of provisions of the Act, policies or adjudicative principles. Noteworthy decisions are not binding on WCAT. Although they may be cited and followed by WCAT panels, they are not necessarily intended to be leading decisions.

is no indication the volleyball game was supervised by the employer. These factors argue against compensation coverage.

Reasons and Findings

[18] Policy at RSCM II item #20.20 concerns recreational, exercise or sports activities.[4] The policy states that participation in recreational, exercise or sports activities or physical exercises is not normally considered to be part of a worker's employment under the Act. There are, however, exceptional cases when such activities may be covered, such as where the main job for which a worker is hired is to organize and participate in recreational activities. There may also be cases where, although the organization or participation in such activities is not the main function of the job, the circumstances are such that a particular activity can be said to be part of a worker's employment.

[19] In assessing these cases, the general factors listed under policy item #14.00 are considered. Policy item #14.00 is the principal policy that provides guidance in deciding whether or not an injury arose out of and in the course of employment. Item #20.20 lists certain factors to be considered in determining whether an injury is compensable, in a case relating to recreational, exercise or sports activities. All relevant factors must be considered and no single factor is determinative. Relevant factors not listed in policy may also be considered.

[20] I have considered the factors listed under RSCM II item #14.00 as follows:

(a) whether the injury occurred on the premises of the employer

[21] The injury occurred in the school gymnasium, on the premises of the employer. This factor favours coverage.

(b) whether it occurred in the process of doing something for the benefit of the employer

[22] The employer's report of injury advised that it had employed the worker since 1997, and that he had started his current job in 2001. Accordingly, the worker had a long time record of employment for this school district. In this context, the fact that some turnover of staff occurred between school years is less significant. Notwithstanding the employer's position that the soccer game involved no benefit to the employer, I accept that some benefit would accrue to the employer in respect of the promotion of collegiality amongst teachers. I agree with the reasoning in *WCAT-2009-00491* and *WCAT-2009-03139* in relation to this factor. Accordingly, this factor favours coverage.

[4] The board of directors has recently approved changes to the policies on compensation for personal injury in Chapter 3 of the RSCM II. However, these new policies only apply to claims for injuries, mental stress or accidents that occur on or after July 1, 2010. Since the worker's injury occurred before July 1, 2010, the previous Chapter 3 policies apply.

(c) whether it occurred in the course of action taken in response to instructions from the employer

[23] The worker did not participate in the soccer game in response to instructions from the employer. This factor does not favour coverage.

(d) whether it occurred in the course of using equipment or materials supplied by the employer

[24] The soccer game was conducted using a soccer ball belonging to the school. Accordingly, it may be considered that the worker's injury occurred in the course of using equipment supplied by the employer.

(e) whether it occurred in the course of receiving payment or other consideration from the employer

[25] The meaning of this factor is illustrated by *Decision No. 2*, "Re an Injured Person," 1 W.C.R. 7.[5] In that decision, the Board considered the case of a trucker who had received his paycheque earlier in the day. He was returning to the employer's yard to return his truck, after completing his last delivery, and stopped on the side of the road. While crossing the road for the purpose of cashing his paycheque at a bank, he was struck by a passing vehicle and injured. The Board reasoned (at pages 8 to 9):

> The Claims Department denied the claim because the act of the claimant could not be considered "work caused or work related". With respect, however, the activity is not required to be work-related if it is in some other way related to the employment. The requirement is that the injury must be one arising out of and in the course of the employment. **Now the essence of employment is working for pay, and both the work and the pay are part of the employment relationship. Hence an employee who is injured in the course of drawing his pay is as much entitled to compensation as one injured in the course of production.** It has long been accepted, for example, that an employee who is injured in the course of drawing his wages in cash at the pay office of an industrial plant is entitled to compensation. Should it make any difference then if the employee is paid through the medium of a cheque and is injured in the course of converting that cheque into a form that is usable to him, either by cashing it or by depositing it in his own bank account? We think it

[5] In order to reduce the number of sources of policies, the Board of Directors approved a strategy for consolidating *Decisions No. 1 - 423* into the various policy manuals and "retiring" the Decisions over time. *Decision No. 2* was retired from policy effective February 24, 2004.

> should not make a difference if the cashing of the cheque occurs in circumstances which, in some other respect, have a significant employment connection.
>
> [emphasis added]

[26] At the time of his injury, the worker was not engaged in activities such as cashing his paycheque or otherwise taking steps to procure his remuneration from the employer. This factor does not favour coverage.

(f) whether the risk to which the employee was exposed was the same as the risk to which the employee is exposed in the normal course of production

[27] The risk to which the worker was exposed in playing soccer was different from those to which he was exposed in teaching social studies. This factor does not favour coverage.

(g) whether the injury occurred during a time period for which the employee was being paid

[28] The worker's injury occurred during a paid lunch hour. This factor might be seen as favouring coverage, but this is subject to the express guidance provided under factor 3 of item #20.20.

(h) whether the injury was caused by some activity of the employer or of a fellow employee

[29] The worker's injury was not caused by some activity of the employer or of a fellow employee. This factor does not favour coverage.

(i) whether the injury occurred while the worker was performing activities that were part of the regular job duties

[30] The worker's participation in the staff soccer game was not part of his regular job duties as a social studies teacher. This factor does not favour coverage.

(j) whether the injury occurred while the worker was being supervised by the employer

[31] The worker was not being supervised during the soccer game. This factor does not favour coverage.

[32] I have also considered the factors in RSCM II item #20.20 as follows:

1. Activities Part of Job

[33] The worker's participation in the soccer game during the lunch hour at the end of the school year was not part of his job as a social studies teacher. This factor does not favour coverage.

2. Instructions from the Employer

[34] The employer did not direct, request or demand that the worker participate in the soccer game. This was a purely voluntary activity, without instruction (or even encouragement) on the part of the employer. This factor does not favour coverage.

3. During Working Hours

[35] The policy at item #20.20 states, in respect of this factor:

> Did the recreational, exercise or sports activity occur during normal working hours? If so, this is a factor that favours coverage. Where recreational, exercise or sports activities occur outside of normal working hours, **including paid lunch breaks**, this does not favour coverage. However, this factor does not automatically preclude coverage. For example, coverage may be extended where a teacher is injured while coaching or supervising a student soccer game in the schoolyard during his or her lunch break or after school.

[36] The third sentence contains a possible ambiguity in relation to its reference to paid lunch breaks, as to whether these are included or excluded from normal working hours. In the context of the paragraph as a whole, however, and its provision of an example where coverage might be extended during a lunch break or after school, it is apparent that a paid lunch break is treated as being in the same category as an after school activity. In other words, it is not part of a worker's normal working hours. Accordingly, I find that as the worker's injury occurred during a paid lunch break, it did not occur during normal working hours. This factor does not favour coverage.

4. Receipt of Payment or Other Consideration from the Employer

[37] The fact that the worker was on a paid lunch break favours coverage.

5. Activity Supervised

[38] The fact that the soccer game was not supervised does not favour coverage.

6. Fitness a Job Requirement

[39] Fitness was not a job requirement for the worker in his position as a social studies teacher. This factor does not favour coverage.

7. Public Relations for Benefit of Employer

[40] The worker's submission to the Review Division stated that the soccer game enhanced colleague to colleague relations, as well as teacher-student relations, the students being the ones who were able to watch the game. I accept there was some, but very limited, benefit to the employer in this regard.

8. On Employer's Premises

[41] As noted above, the fact the soccer game occurred in the school gymnasium is a factor favouring coverage.

[42] I consider that the circumstances of this case are distinguishable from those addressed in *WCAT-2009-03139*. In that case, the worker's injury occurred during normal working hours, and while he was being supervised. Those elements, which are absent in the present case, appear to have been important factors in the panel's determination that the evidence was at least evenly balanced in favour of the worker's claim.

[43] The circumstances of this case compare more closely to those addressed in *WCAT-2009-00491*. In that case, the worker's injury also occurred on the employer's premises, using equipment supplied by the employer. However, the worker's participation was not in response to instructions from the employer, and the teacher's regular duties as a science teacher did not include coaching, teaching or supervising sports or physical education. The worker was not being supervised at the time of her injury, and the risks to which she was exposed in playing volleyball were different from those to which she would be exposed in her normal teaching duties. In that case, the volleyball game was played between students and teachers at an awards night, outside of normal working hours. I agree with the reasoning in *WCAT-2009-00491*, and consider that this reasoning would similarly apply to the circumstances in this case.

[44] On balance, I find that the evidence is less than evenly balanced in favour of a conclusion that the worker's injury arose out of and in the course of his employment. I accept that there was some degree of connection to the worker's employment, in relation to the promotion of collegiality and student-teacher relations, and the fact the game occurred on the employer's premises using school equipment. I find, however, that these factors are outweighed by the lack of instruction or supervision by the employer, the fact that the game occurred outside of normal working hours (albeit during a paid lunch hour), that the worker was not engaged in supervising students at the time of his injury, and that the risks to which the worker was exposed were different from those to which he would have been exposed in his regular employment.

[45] I agree, as well, with the reasoning and conclusion of the review officer. Accordingly, I deny the worker's appeal.

[46] No expenses were requested, and it does not appear from a review of the file that any expenses were incurred related to this appeal. I therefore make no order regarding expenses of this appeal.

Conclusion

[47] I confirm the January 19, 2011 Review Division decision. I find that the worker's right foot injury on June 29, 2010, while participating in a staff soccer game during the lunch hour at the end of the school year, did not arise out of and in the course of his employment.

Herb Morton
Vice Chair

HM/gw