WCAT Decision Number: WCAT-2012-02607
WCAT Decision Date: October 09, 2012
Panel: Randy Lane, Vice Chair

Introduction

[1] The worker, a high school social studies teacher, injured his wrist while engaged in a staff versus student baseball game at lunch time. By decision of July 15, 2011 the Workers' Compensation Board, operating as WorkSafeBC (Board), denied his claim for workers' compensation benefits.

[2] The worker appeals to the Workers' Compensation Appeal Tribunal (WCAT) from *Review Decision #R0132017*, dated December 8, 2011, in which a review officer with the Review Division of the Board confirmed the Board's decision.

[3] The worker's appeal was initiated by a January 6, 2012 notice of appeal which asked that the appeal proceed in writing. With the assistance of a union representative, the worker provided an April 27, 2012 submission. The employer provided May 14, 2012 and May 24, 2012 submissions. The worker provided a June 1, 2012 rebuttal submission.

[4] I find that an oral hearing is not required. The matters raised by this appeal primarily involve law and policy

Issue(s)

[5] Did the worker suffer an injury arising out of and in the course of his employment on June 9, 2011?

Jurisdiction

[6] WCAT has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law, and discretion arising or required to be determined in an appeal before it (section 254 of the *Workers Compensation Act* (Act)). It is not bound by legal precedent (subsection 250(1) of the Act). WCAT must make its decision on the merits and justice of the case, but, in so doing, it must apply a policy of the board of directors of the Board that is applicable in the case (subsection 250(2) of the Act), save for specific circumstances set out in section 251 of the Act. Subsection 250(4) provides that WCAT must resolve the issue in a manner that favours the worker where evidence supporting different findings is evenly weighted.

[7] This is an appeal by way of rehearing. WCAT has jurisdiction to consider new evidence, and to substitute its own decision for the decision under appeal.

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Background and Evidence

[8] This claim was initiated when the employer submitted a June 15, 2011 report of injury regarding the worker's June 9, 2011 injury sustained at 11:43 a.m. that day. The employer confirmed the worker's injury occurred on the employer's premises or an authorized worksite. It also stated the worker's actions at the time of injury were for the purpose of the employer's business, the incident occurred during the worker's normal shift, and the worker was performing regular work duties at the time of the incident.

[9] The employer objected to the acceptance of the claim. It asserted the principal of the worker's school stated the worker was not a physical education teacher. The worker taught social studies. He was playing in a "fun staff [versus] student softball game at lunch."[1] He volunteered to participate.

[10] In her June 30, 2011 memorandum a Board case manager documented information she gathered from the worker during a telephone conversation. The worker confirmed that on June 9, 2011 he was playing ball on the baseball field adjacent to the high school where he taught. The game was a friendly game between teaching staff and grade 12 students, which was organized through the student council approximately one week earlier.

[11] The worker confirmed he was a social studies teacher and this event was "just more or less for fun and to create harmonious school staff/student interaction."

[12] The worker stated he was certain the principal and two vice principals were aware of the game, but he did not see any of the principals in attendance at the game. The worker was playing second base. As a student ran toward second base, the student went off the baseline. The worker was chasing the student while trying to get him out, when he and the student collided and they both fell to the ground.

[13] On July 4, 2011 the worker again contacted the Board. A teleclaim application was completed. The worker was recorded as having confirmed the circumstances of his June 9, 2011 injury. The worker stated the incident occurred on his employer's premises or on an authorized worksite. The worker confirmed he was a social studies teacher and was participating in a "special school event, a ball game between teachers and grade 12 students that occurred during lunch hour." He stated his actions at the time of his injury were for the purposes of his employer's business and that the injury happened during his normal shift. He indicated he was not performing his regular work duties when he was injured.

[1] All quotations in this decision reproduced as written, save for changes noted.

[14] In her July 13, 2011 telephone memorandum an entitlement officer documented information gathered from the worker. The worker indicated the baseball game was not part of his regular work duties. He confirmed he was a social studies teacher. He indicated he was not instructed to participate by his employer. His attendance was "all part of a 'good will' thing between teachers and students." He observed it became "kind of boring for students if it's all work and no fun all the time." With respect to whether he was injured during regular working hours, the worker indicated the answer was "yes": he was injured during his lunch time. The worker indicated he was paid a salary and was not paid "anything extra" to take part in the baseball game. With respect to the existence of employer supervision, he observed there were lots of teachers in attendance, but he did not know if any administrative staff were present. He confirmed the baseball game took place on the employer's premises.

[15] The entitlement officer recorded she advised the worker that the employer had stated his participation in the baseball game was strictly voluntary on his part and occurred during a lunch break. She told the worker she would ask the employer the same questions she asked him. She observed that, based on the worker's responses, it was likely his claim would be denied, as she could not conclude his injury arose out of his employment.

[16] In her July 13, 2011 telephone memorandum an entitlement officer documented information gathered from the manager, occupational health and safety, for the relevant school district. The manager stated that playing in the baseball game was not part of the worker's job. The worker was not instructed by the employer to participate in the baseball game. The game was between students and "whatever teachers decide to show up." Attendance was "strictly voluntary." The game occurred during working hours. The worker would have been paid his salary. The employer was not supervising the baseball game. The baseball game occurred on the employer's premises.

[17] The manager stated there were occasions when the employer definitely requested teachers to take part in student functions and/or where a teacher was being supervised. The employer had no difficulty with claims being accepted for injuries sustained during such activities.

[18] The case manager's memorandum documented the following observations:

> However, in this case, while it is certainly a 'grey' area and while [the manager] recognizes the value in fostering good relations with the students, there has to be some control by the employer when a teacher is injured during some recreational activity at the workplace. In this case, it was strictly voluntary, [the worker] was not expected, directed to take part. Nor is there any expectation or pressure on teachers to take part in student/teacher activities. These student/teacher games just happen once in a while, they aren't scheduled events and as noted above, anyone who wants to play, can play.

[19] In an addendum to her memorandum documenting her telephone conversation with the worker, the entitlement officer noted she spoke to the worker after she spoke to the employer's manager. She advised the worker his claim was disallowed. His injury occurred during his lunch break when he was involved in activities that were not part of his job. The game was not supervised by the employer and the worker's participation was not pursuant to any instructions from the employer. She stated his participation was purely voluntarily. She noted the Board would generally allow claims for injuries only when a teacher was directed by the employer and/or supervised.

[20] In her July 15, 2011 decision the entitlement officer summarized the history of the claim. She cited subsection 5(1) of the Act and six factors listed in section B of policy item #C3-21.00 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II) regarding injuries sustained during recreational, exercise or sports activities. She stated the specific reasons for her decision were as follows:

- The soft ball game was not part of your job activities or duties
- The soft ball game was not supervised by your employer
- You were not under any direction or instruction to take part by your employer
- Your participation was strictly voluntary.

[21] Initially, the worker sought to appeal the July 15, 2011 decision to WCAT. By letter of July 29, 2011 a WCAT deputy registrar forwarded the worker's materials to the Review Division. The worker was provided with an opportunity to make a submission, but no submission was received by the Review Division. The employer provided a brief October 12, 2011 letter. By letter of November 1, 2011 a representative of the worker stated the worker had no specific submissions other than the position set out in his initial appeal materials.

[22] In her December 8, 2011 decision the review officer summarized the history of the claim. She cited subsection 5(1) of the Act and policy items #C3-14.00 and #C3-21.00 of the RSCM II. She made general comments regarding policy item #C3-14.00:

> In order to accept the worker's claim, section 5(1) of the *Act* and policy item C3-14.00, *Arising Out of and In the Course of Employment*, of the *Rehabilitation Services & Claims Manual, Volume II* (the "RSCM"), require that a worker's injury must arise out of and in the course of employment. As a result, I must consider whether the worker suffered an injury and whether the injury was sufficiently connected to the worker's employment.
>
> There is no dispute that the worker suffered a personal injury, a left wrist strain, or that the injury occurred when he tripped and fell while participating in the early June 2011 sporting event. Therefore, the only issue remaining is whether the injury was sufficiently connected to his employment as a teacher. Guidance in deciding this issue is provided

> under policy item C3-14.00, which lists various factors the Board may consider in making this determination. The list is not exhaustive and no one factor is to be used as an exclusive test for deciding whether an injury is work-related. This policy also notes that other policies in Chapter 3 may provide further guidance as to whether an injury is connected to work.

[23] She also made general comments about policy item #C3-21.00:

> One such policy is policy item C3-21.00 *Extra-Employment Activities*, *B. Recreational, Exercise or Sports Activities*, of the RSCM, which provides guidance on how some of the factors in policy item C3-14.00 may be applied when considering whether recreational, exercise, or sports activities are part of a worker's employment. The general rule is that the organization of, or participation in, such activities is not normally considered to be part of a worker's employment. There are, however, exceptional cases when such activities may be considered to have an employment connection. For instance, policy item C3-21.00 provides that 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 form part of a worker's employment.

[24] She observed some of the factors favoured an employment connection and others did not. She noted that the benefit of the activity to the employer and the location of the activity were factors in favour of accepting the worker's claim:

> One of the factors favouring an employment connection is the benefit to the employer that flowed from the sporting activity. The worker described the game as an annual occurrence that took place between staff and students to build rapport. The worker explains that it was part of his job as a teacher to interact and build relationships with students outside of the classroom. I accept that the event was intended to foster good relations with students.
>
> I also regard the location of the sporting activity to be a factor favouring an employment connection. The event took place at the back field of the school on the employer's premises.

[25] She found the worker was not instructed to participate in the baseball game:

> I now turn to the factors that I view as unfavourable to an employment connection in the present case. I find it significant that the worker was not instructed or otherwise directed to participate in the game and he acknowledged that his participation was voluntary. The game was not organized by the employer; rather, it was put together by the student

> council one week prior. The worker explains that the office announcements included mention of the upcoming game and that all announcements are "vetted" by the employer. I regard the evidence as establishing that the game was not an employer-organized, formal school event that required the worker's attendance, but it was approved of by the employer. Policy item C3-21.00 provides that, where an employer simply sanctions participation without directing or requesting participation, coverage is not favoured. I believe that is the case here.
>
> In acknowledging that his participation was voluntary, the worker also submits that he could have been asked to participate in the game had there been a low turnout. I do not view this possibility as leading to the conclusion that his participation in the game was anything but voluntary.

[26] She found the baseball game was not supervised by a representative of the employer having supervisory authority:

> The worker submits that the absence of a supervisor at the game should not lead to a denial of his claim because his duties are rarely supervised. In response, I repeat my earlier explanation that no one factor is used as an exclusive test for deciding whether an injury is work-related and that all of the relevant factors are considered as a whole. In this case, the game was not supervised because it was not organized by the employer and there was no expectation as to attendance. I have already considered the effect of those facts above.

[27] She found the injury did not occur during the worker's regular working hours and that his receipt of a salary was a neutral factor:

> The game occurred over the worker's lunch period, outside of his formal working hours. I am not persuaded by the worker's argument that, because he chose to frequently perform work during his lunch period, that the lunchtime game was a work-related activity. The circumstances surrounding the activity in question must be examined to determine whether there is a sufficient connection to his employment. As the game occurred during a time of day that the worker was not teaching, an employment connection is not favoured. I note that the worker is paid an annual salary and, as a result, the receipt or non-receipt of payment while participating in the game is a neutral factor in this case.

[28] She found that participating in the baseball game was not part of the worker's job:

> The worker did not teach physical education, nor was physical activity a part of his teaching duties. As a result, I do not consider this factor as supporting an employment connection.

[29] She documented the following analysis as part of her conclusion the worker's injury did not arise out of and in the course of his employment:

> Having considered each of the relevant factors listed in policy items C3-14.00 and C3-21.00, I must weigh the various factors for and against coverage to determine whether the worker's injury arose out of and in the course of his employment. Upon weighing the factors, I find that the factors that do not favour coverage outweigh the factors that do. Although the benefit to the employer is a factor favouring an employment connection, I do not regard the benefit as being so exceptional that it outweighs the purely voluntary nature of the worker's participation in the game. The employer merely sanctioned the game; it did not instruct, direct, or request the worker's participation. Moreover, the evidence does not establish an expectation by the employer that the worker participate in the game such that there would have been negative employment-related consequences for the worker had he declined to participate.

Reasons and Findings

Subsection 5(4) of the Act

[30] Neither the entitlement officer nor the review officer referred to subsection 5(4) of the Act. None of the submissions refer to this subsection, save for the June 1, 2012 rebuttal submission which asserts the Act contains a presumption which is applicable to the worker's appeal, "since the contrary has not been shown."

[31] Subsection 5(4) of the Act provides as follows:

> In cases where the injury is caused by accident, where the accident arose out of the employment, unless the contrary is shown, it must be presumed that it occurred in the course of the employment; and where the accident occurred in the course of the employment, unless the contrary is shown, it must be presumed that it arose out of the employment.

[32] In assessing whether that subsection of the Act is applicable, I have taken into account section 1 of the Act which includes the following definition of "accident": "includes a wilful and intentional act, not being the act of the worker, and also includes a fortuitous event occasioned by a physical or natural cause."

[33] Further assistance in defining the word "accident" is found in policy item #C3-14.20 of the RSCM II. That item states that the definition of accident in section 1 of the Act is not "exclusive": "the word has been interpreted in its normal meaning of a traumatic incident."

[34] For the purposes of this appeal, I accept the worker's collision with the student amounted to an accident and that his wrist injury was an injury due to that accident.

[35] However, the more fundamental question is whether the worker's accident and injury either arose out of or in the course of his employment. Only if I were to determine that the circumstances of the worker's injury satisfied either one of those requirements of subsection 5(4), could it be said the presumption was applicable. At that point, I would then examine whether the presumption had been rebutted.

[36] That the worker experienced an injury due to an accident does not establish whether his injury arose out of or in the course of his employment.

[37] In the case before me, I must consider Board policy before I am able to determine whether the worker was in the course of employment at the time of his injury, or whether his injury arose out of his employment. That the worker experienced an injury due to an accident does not engage the presumption. More is required.

[38] As a result, I find this appeal is to be resolved via consideration of subsection 5(1) of the Act and associated policies.

Subsection 5(1) of the Act

[39] This subsection provides as follows:

> Where, in an industry within the scope of this Part, personal injury or death arising out of and in the course of the employment is caused to a worker, compensation as provided by this Part must be paid by the Board out of the accident fund.

[40] Policy item #C3-14.00 of the RSCM II contains general policies regarding adjudication of claims under subsection 5(1). It provides as follows regarding the two components of subsection 5(1):

> **A. Meaning of "Arising Out of the Employment"**
>
> "Arising out of the employment" generally refers to the cause of the injury or death. In considering causation, the focus is on whether the worker's employment was of causative significance in the occurrence of the injury or death.
>
> Both employment and non-employment factors may contribute to the injury or death. The employment factors need not be the sole cause. However, in order for the injury or death to be compensable, the employment has to be of causative significance, which means more than a trivial or insignificant aspect of the injury or death.

B. Meaning of "In the Course of the Employment"

> "In the course of the employment" generally refers to whether the injury or death happened at a time and place and during an activity consistent with, and reasonably incidental to, the obligations and expectations of the employment. Time and place are not strictly limited to the normal hours of work or the employer's premises.

[41] I must consider relevant policy regarding both components of subsection 5(1). While policy item #C3-14.00 discusses medical considerations, I do not consider policy regarding medical considerations is applicable to the case before me. What is more applicable is the policy concerning non-medical factors. Policy item #C3-14.00 contains a non-exhaustive list of nine factors to be considered. That policy item declares as follows as to those factors:

> All of the factors listed may be considered in making a decision, but no one of them may be used as an exclusive test for deciding whether an injury or death arises out of and in the course of the employment. This list is by no means exhaustive, and relevant factors not listed in policy may also be considered.
>
> Other policies in this chapter may provide further guidance as to whether the injury or death arises out of and in the course of the employment in particular situations.

[42] The reference in that second paragraph reproduced immediately above to "[o]ther policies" alludes to the applicability of such policies as item #C3-21.00 cited by the entitlement officer and the review officer. That policy item is entitled "Extra-employment Activities." Thus, its application would appear to be predicated on an initial determination that the activities a worker was involved in at the time of injury were indeed extra-employment activities, rather than employment activities:

> Activities which people undertake outside the course of their employment are for their own benefit, and injuries or death occurring in the course of these activities are generally not compensable. However, some extra-employment activities may be sufficiently connected to the worker's employment as to be considered part of that employment.
>
> In assessing these cases, the general factors listed under Item C3-14.00, *Arising Out of and In the Course of the Employment* are considered. Item C3-14.00 is the principal policy that provides guidance in deciding whether or not an injury or death arises out of and in the course of the employment. All relevant factors must be considered and no single factor is determinative. Relevant factors not listed in policy may also be

> considered. The evidence is then weighed to determine whether the injury or death arose out of and in the course of the employment. The standard of proof applied is based on a balance of probabilities, and consideration is also given to section 99(3) of the *Act*.

[43] I find that policy items #C3-14.00 and #C3-21.00 also assist in determining whether an activity is an employment activity.

[44] Section B of policy item #C3-21.00 of the RSCM II establishes that only in exceptional cases are recreational, exercise or sports activities, or physical exercises considered to have an employment connection, such that, injuries sustained during such activities would be found to have arisen out of and in the course of a worker's employment may have:

> The organization of, or 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 considered to have an employment connection**. The obvious one is 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.
>
> [emphasis added]

[45] That the policy uses the word "exceptional" strongly suggests most injuries occurring during such activities do not arise out of and in the course of a worker's employment.

[46] Section B addresses the application of factors in policy item #C3-14.00 and states, "The following provides guidance as to how some of the factors in Item C3-14.00 may be applied when considering specific cases relating to recreational, exercise or sports activities."

[47] Section B initially lists six factors. It also provides that, in addition to the factors in policy item #C3-14.00, there are two other factors that may also be considered in determining whether a recreational, exercise or sports-related injury or death arises out of and in the course of the employment. Thus, there are at least eight factors to be considered.

[48] I have considered the factors in the order in which they are listed in Section B.

- Part of Job

[49] The April 27, 2012 submission contends that the activities were part of the worker's job. It asserts the actual name of the event was "**Teacher** (emphasis added) versus _____ [emphasis in the original]" is "proof that there is an expectation teachers participate." No other members of the general community are named in the title of the event or invited to participate. The worker recollects that this event was organized by the student council, which is sponsored by teachers. All events must be approved by the school administration. The baseball game is an annual event in which teachers, administrative staff, and students participate.

[50] The submission asserts that the student handbook for the relevant high school encourages students to participate in extracurricular activities. The submission quotes an excerpt from the handbook to the effect that, although available choices may vary from year to year, a wide variety of sponsored clubs and activities are offered at the high school. The submission asserts that the clubs and activities are sponsored by teachers, and it is a general expectation teachers will sponsor clubs, events, and activities. The production and publication of the handbook was approved by the administration.

[51] Later in the submission, it is argued that while a supervisor may not direct teachers to participate in school activities, there is an expectation that, whenever possible, teachers take part to foster school spirit and build relationships with students, parents, and the community. The submission asserts, "When teachers take part in the myriad of school events, it is part of their job."

[52] In considering this factor, I find participating in the baseball game was not part of the worker's job. The worker is a social studies teacher. While, generally speaking, teachers may be expected to promote physical and social activities and participate in activities that build rapport between teachers and students, I am not persuaded that participating in a baseball game was part of this particular worker's job as a social studies teacher.

- Instructions from the Employer

[53] Before considering the submissions, I reproduce the following passage from policy item #C3-21.00 regarding this particular factor:

> Was the worker instructed or otherwise directed by the employer to carry out the exercise activity or to participate in the sports, exercise or recreational activity? For example, did the employer direct, request or demand that the worker participate in an activity as part of the employment? The clearer the direction, the more likely this will favour coverage.

> Was participation purely voluntary on the part of the worker? In some instances the employer may simply sanction participation without directing or requesting participation. If so, this is a factor that does not favour coverage.

[54] The April 27, 2012 submission replies as follows in response to the first question in the first paragraph reproduced immediately above: "Perhaps not directed but definitely encouraged." It asserts the worker's school has a Monday morning memorandum from administration which all teachers receive electronically. The game would have been announced through this communication system. As activities such as the baseball game "are the culture of the school to foster positive teacher-student relationships, there would have been an implied instruction to participate in the game." It is further argued, "It stands to reason that if no teachers participated in the 'Teacher versus the Students' games, there would be no game."

[55] In considering the above submissions, I also note the worker's materials which were considered by the Review Division. In his materials the worker stated, "It is true that no administrator asked me to take part in this specific game, but it is plausible that they might have. Had there been a low turnout, I would not have been surprised to be asked by an administrator to play."

[56] In considering this factor, I find the worker was not instructed or otherwise directed by the employer to participate in the baseball game. I am not persuaded that the fact the game may have been announced via an electronic memorandum means the employer impliedly instructed this worker to participate in the game.

[57] I find the facts of the case support a conclusion the employer sanctioned the participation of teachers in the game, but the individual participation of the worker was voluntary. While it is true that if no teachers participated there would have been no game, such a possible outcome does not establish the employer somehow instructed or directed this particular worker to participate in the game.

- During Working Hours

[58] The April 27, 2012 submission argues the baseball game took place during normal working hours. It is argued that teachers often work during their breaks by helping students, marking, meeting with colleagues and parents, and participating in school activities. The submission asserts," Participating in school-sanctioned events during a lunch break is part of their work day."

[59] In considering this factor, I find the evidence is consistent in establishing the injury occurred during the worker's lunch hour. Further, I find that, by definition, a lunch hour is not a working hour. That a worker may choose to work during a lunch hour does not detract from a lunch hour's essential quality of being intended to be an hour not involving work.

[60] As observed by the review officer, the worker's injury occurred outside his formal working hours. I agree with the analysis of the review officer regarding this factor. That the worker may have frequently performed work during his lunch hour did not mean all activities during his lunch hour became work-related activities. I agree with the review officer's comment that, as the game occurred during a time of day when the worker was not teaching, an employment connection is not favoured.

[61] I am aware of the following passage associated with this factor, which establishes that the occurrence of an injury outside normal working hours does not automatically preclude 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.

[62] Notably, that excerpt from policy allows for the possibility of coverage for injuries which occur during a lunch break.

- Receipt of Payment or Other Consideration from the Employer

[63] Consideration of this factor is described as follows in policy item #C3-21.00:

> Was the worker paid a salary or other consideration while participating in the activity? The payment of salary favours coverage. If salary or other consideration was not paid, this does not favour coverage.

[64] The April 27, 2012 submission argues that, "as teachers are salaried employees there is no distinction of hourly rates that would exclude breaks such as recess or lunch."

[65] I find the worker is paid a salary. While not explicitly established in the evidence on file, for the purposes of this appeal, I accept it may be the worker's lunch hours are paid lunch breaks.

[66] I find that payment of a salary favours coverage. Yet, I strongly question the weight that can be attached to consideration of this factor; the mere receipt of salary does not somehow make every activity engaged in by a worker during a period of time covered by a salary an aspect of the worker's employment.

- Supervision

[67] Consideration of this factor is described as follows in policy item #C3-21.00:

> Was the activity supervised by a representative of the employer having supervisory authority? If so, this favours coverage. If the activity was not supervised, this does not favour coverage.

[68] Notably, policy item #C3-14.00 provides the following general discussion with respect to supervision:

> Did the injury or death occur while the worker was being supervised by the employer or a representative of the employer having supervisory authority? If so, this factor favours coverage.

[69] As established above, the discussion of supervision in policy item #C3-21.00 contains the additional proviso that the absence of supervision does not favour coverage.

[70] The April 27, 2012 submission provides the following answer to the question set out above: "Not this particular activity." The submission asserts, "The culture of school workplaces is that teachers who work as autonomous professionals conduct most of their work both in and out of the classroom without direct supervision." The submission acknowledges that an administrator did not attend this particular baseball game, but asserts it is common practice for some administrators not only to attend but also to participate. It observes one only need attend a teacher versus student activity to hear the increase in the cheers of students when administrators participate. It is also argued teachers are autonomous professionals who are seldom directly supervised either in or out of their classrooms.

[71] The June 1, 2012 rebuttal submission asserts, "The activity was supervised by the employer because it happened on the employer's premises, with full knowledge of the school administration, at lunchtime, during the school day."

[72] The submission expands on the notion of supervision. It asserts the activity was supervised in a "variety of ways at different levels." In the relevant school district, students are always supervised by noon hour supervisors who report to the principal. Teachers who also report to the principal were participating in the activity and, as such, were supervising students. The principal and vice principals were on the jobsite; therefore, it cannot be said the principal was not supervising the activity.

[73] The submission argues this form of supervision is "analogous to what happens during instructional time as the principal is deemed to be supervising the teaching which is taking place in the school." The submission declares, "The principal does not have to be physically present in a classroom to be 'supervising' the teacher engaged in instruction, planning, organizing materials, placing student work on the walls, etc." It

reiterates that the principal did not have to be physically present on the softball field to be supervising the baseball game.

[74] The submission argues that section 117 of the Act refers to the duties of supervisors. It argues that if a supervisor is required to be physically present at every single location on a premises where work is being performed, this would render section 117 virtually meaningless and unenforceable. It argues the meaning of supervision must be taken broadly, such that when the employer has full knowledge of an event occurring on its premises during the course of the workday, it is deemed to be a supervised event.

[75] In considering this factor, I find section 117 of the Act has little application to this appeal. That section occurs in Part 3 of the Act concerning matters of occupational health and safety. It refers to supervisors ensuring the health and safety of all workers under the direct supervision of the supervisor. That section contains no discussion of how supervisors are to engage in supervision. It provides little assistance in analyzing the terms of policy item #C3-21.00.

[76] I find policy item #C3-21.00 does not describe how a decision-maker is to determine whether an activity was "supervised."

[77] I appreciate many professionals are not subject to close supervision by their superiors. The compensability of injuries experienced by professionals in the course of their job duties does not normally hinge on the immediate physical presence of a supervisor.

[78] In the case of teachers, I do not consider a supervisor would need to be present in a classroom before a decision-maker could conclude that a slip and fall injury experienced by a teacher in that classroom was an injury arising out of and in the course of employment.

[79] Yet, I find that in the case of recreational, exercise or sports activities, there is a persuasive argument to be made that direct physical supervision is envisioned by policy. The introductory comments to section B of policy item #C3-21.00 establish that only exceptional cases have an employment connection. I find that as such activities are not normally considered to be part of a worker's job, it would be appropriate for such activities be supervised before it could be found they were part of a worker's employment. Thus, while the compensability of injuries experienced during normal job duties would not be contingent on direct physical supervision, I find such direct physical supervision is contemplated by policy item #C3-21.00.

[80] The evidence does not establish the baseball game was directly physically supervised by a representative of the employer having supervisory authority. The evidence does not establish such a representative was physically present at the baseball game. While teachers may have supervisory authority over students, I find the policy item envisions the existence of a representative of the employer having supervisory authority over the worker. I find the presence of supervisory staff at other locations on the employer's

premises at the same time as the baseball game does not amount to the baseball game being supervised by a representative of the employer having supervisory authority.

[81] Even if I were to find the presence of principals and/or vice principals at other locations on the employer's premises at the same time as the baseball game amounted to supervision, the result of this appeal would not change.

- On Employer's Premises

[82] I find the evidence establishes the baseball game took place on the employer's premises. Policy item #C3-21.00 establishes that, if the activity took place on the employer's premises, such a circumstance is a factor favouring coverage.

- Fitness a Job Requirement

[83] Consideration of this factor is described as follows in policy item #C3-21.00:

> Was physical fitness a requirement of the job? This factor is concerned with whether fitness is required in order to perform the job (e.g., muscle strength or aerobic capacity). If physical fitness is a requirement of the job, this is a factor favouring coverage.
>
> Fitness training or exercise is more likely to be viewed as a job requirement where a significant degree of aerobic capacity or strength is needed to perform the job properly, but the work itself does not provide sufficient conditioning. This may be the case, for instance, for certain professionals such as police or firefighters, who may require the ability to react quickly to sudden and strenuous emergencies.
>
> It is recognized that any recreation or exercise activity which adds to a worker's general health and enjoyment of life may be said to assist them in their work and, therefore, to benefit their employer. However, to cover these activities under the *Act* for that reason alone would obviously be to expand its horizons far beyond what the *Act* intended.

[84] The April 27, 2012 submission argues that physical activity was a requirement "of this particular job." It argues the baseball game consisted of running, catching, pitching, and hitting a ball. It contends such activities would mean the teachers participating would have to have a sufficient level of physical ability to participate with secondary school-aged students.

[85] I find physical activity was not a requirement of this worker's job. The worker is a social studies teacher, and the evidence does not establish that physical fitness was a requirement of that job. The argument that physical activity was a requirement of engaging in a baseball game sidesteps the essential question of whether participating in

the baseball game is an aspect of the worker's job. As I found above, participating in the baseball game was not part of the worker's job.

- Public Relations for Benefit of Employer

[86] Consideration of this factor is described as follows in policy item #C3-21.00:

> Was there an intention to foster good relations with the public, or a section of the public with which the worker deals? A worker may have been 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. If so, this is a factor favouring coverage.

[87] The April 27, 2012 submission argues the above-noted question should be answered in the affirmative. It asserts "Teacher versus Student" activities are common events, not only at this particular school but in many, if not most, schools. It argues teachers are encouraged to participate to foster school spirit, build rapport between teachers and students, and demonstrate a connection between the school and the community. It argues that events such as the Terry Fox Run or Jump Rope for Heart all rely on teachers' participation to succeed.

[88] In examining this factor, I initially questioned whether students were part of the "public" envisioned by this policy item. One could argue that, with respect to teachers, the "public" consists of individuals who do not work at or attend the school in question. Members of the "public" would be parents of the students and other members of the general community.

[89] However, for the purposes of this appeal, I find students were a section of the public with which the worker deals. Further, I find there was an intention that the baseball game would foster good relations with the students.

[90] The eight factors listed in policy item #C3-21.00 above overlap considerably with factors listed in policy item #C3-14.00 as they provide additional guidance as to how these factors may be applied in this context. There are some factors in policy item #C3-14.00 that are not the subject of explicit comment in policy item #C3-21.00. That they are not the subject of explicit comment does not mean a decision-maker is precluded from considering those factors in policy item #C3-14.00. Indeed, the introductory comments found in policy item #C3-21.00 provide that the general factors in policy item #C3-14.00 are to be considered.

[91] The following documents my analysis of the additional factors in policy item #C3-14.00

[92] I agree with the review officer's conclusion that the worker's participation in the baseball game was for the employer's benefit. I find the worker's injury occurred while he was

using equipment and materials supplied by the employer. In that regard, I note the argument in the June 1, 2012 rebuttal submission that the equipment, such as the bases, bats, and balls, were provided by the employer. I find the worker was not injured while in the process of receiving payment or other consideration from the employer. This factor is different from an examination of whether an injury occurred during a time for which a worker was being paid. As noted above, I accept that, owing to his receipt of a salary, the worker was being paid while participating in the baseball game. I find the worker's injury was not caused by an activity of the employer or a fellow employee.

[93] Both parties have made submissions with respect to *WCAT-2009-00491* and *WCAT-2009-03139*. The first decision involved a science teacher injured during a volleyball game which occurred during an awards night for students, which included an exhibition volleyball game between students and teachers. The second decision concerned a mathematics teacher injured during a year-end social event which occurred during school hours.

[94] The first worker's claim was denied; the second worker's claim was allowed. Significantly, the panel which decided *WCAT-2009-03139* found the year-end event was supervised by a representative of the employer having supervisory authority. Vice principals watched the activities take place. As well, the panel concluded the event fell within the broad scope of the worker's job as a teacher. The event was a team building exercise that was designed to promote school spirit and collegiality among the teaching staff.

[95] Those decisions concerned injuries sustained in 2007 and in 2008. The panels applied the relevant applicable policies.

[96] In the case before me, I am applying policy which came into force on July 1, 2010. The policy is not significantly different from the policy applied by those two previous panels. More significant is that the case before me involves facts appreciably different from those associated with those earlier WCAT decisions. Whether the claim of the worker whose appeal is before me should be accepted is a matter to be determined with regard to the particular facts of his case.

[97] After having reviewed the matter, I deny the worker's appeal. I find his injury did not arise out of and in the course of his employment.

[98] There are factors which favour coverage, but they are not especially persuasive factors.

[99] That the worker's injury occurred on the employer's premises during a period of time when he was paid a salary does not strongly support a finding there is an employment connection. Many activities may take place on an employer's premises that are not part of a worker's employment, even if a supervisor is present somewhere on the premises and could arguably be seen to be supervising the activity.

[100] That the worker's injury occurred while he was using equipment and materials supplied by the employer also does not significantly assist the worker. Mere usage of equipment does not turn an activity into an employment activity, especially in a case involving recreational, exercise or sports activities.

[101] Receipt of a salary does not go very far in establishing that activities performed while receiving a salary are part of one's employment. While the worker's participation may have benefited the employer and fostered good relations with students, I find such considerations do not significantly advance the worker's appeal in light of the factors which do not favour coverage.

[102] I attach greater weight to the factors that do not favour coverage.

[103] I am not persuaded the worker's case is an exceptional case. The factors that do not favour coverage are significant considerations as to whether there is an employment connection. Namely, the worker was injured outside normal working hours; he was not involved in an activity that was part of his job; he was not instructed or otherwise directed by the employer to carry out the activity; the activity was not supervised by a representative of the employer having supervisory authority; and fitness was not a job requirement. Those factors are more critical to an assessment of whether the baseball game was part of the worker's employment, and whether the injury arose out and in the course of employment.

Conclusion

[104] The worker's appeal is denied. I confirm the review officer's decision. I find the worker's June 9, 2011 injury did not arise out of and in the course of his employment.

[105] There has been no request for reimbursement of appeal expenses. Therefore, I make no order in that regard.

Randy Lane
Vice Chair

RL/cv