WCAT Decision Number: WCAT-2013-02628
WCAT Decision Date: September 23, 2013
Panel: Randy Lane, Vice Chair

Introduction

[1] On April 19, 2012 the worker, a school teacher suffered a left knee injury during a lunch time teachers versus students soccer game conducted in a gymnasium on the premises of the school at which he taught.

[2] An entitlement officer with the Workers' Compensation Board, operating as WorkSafeBC (Board), denied the worker's claim on the basis that his left knee injury, which occurred while he was walking back onto the gymnasium floor did not arise out of his employment.

[3] By decision of December 17, 2012 a review officer with the Review Division of the Board confirmed the entitlement officer's decision. In *Review Decision #R0147919* the review officer focused on whether the worker's participation in the soccer game formed part of his employment.

[4] The worker has appealed the Review Division's decision to the Workers' Compensation Appeal Tribunal (WCAT). With the assistance of a union representative, the worker filed a December 21, 2012 notice of appeal which asked that the appeal proceed by written submissions. The worker's employer was notified of the appeal, but it did not indicate it wished to participate.

[5] The worker filed a May 15, 2013 submission which was accompanied by numerous documents including survey forms completed by students and an April 17, 2013 letter from Dr. Pereira, the worker's family physician. The worker filed a May 17, 2013 addendum to his submission which was accompanied by a 1999 report by Dr. Thomas Fleming, entitled "British Columbia Teachers' Work in Historical Prospective, 1872-1987" and a copy of Dr. Fleming's curriculum vitae.

[6] By letter of May 22, 2013 submissions were declared complete. By letter of July 30, 2013 the worker provided WCAT with a copy of Dr. Pereira's invoice in the amount of $260.10.

Issue(s)

[7] Did the worker's April 19, 2012 injury arise out of and in the course of his employment?

Jurisdiction

[8] 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 in an appeal regarding the compensation of a worker WCAT must resolve the issue in a manner that favours the worker where evidence supporting different findings is evenly weighted.

[9] 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.

Background and Evidence

[10] The claim was initiated by Dr. Pereira's report which documented treatment on April 23, 2012 for an April 19, 2012 left knee injury. The report diagnosed a left knee injury.

[11] On April 27, 2012 a teleclaim application for compensation was completed. It recorded that the worker was injured at 11:45 a.m. on April 19, 2012. The worker advised a Board representative that he was playing intramural soccer as part of a staff versus students game. Playing in the game was not part of his regular job. He was not "necessarily expected to participate as a condition of employment."[1]

[12] As he was walking out onto the gymnasium floor to play his second shift, he felt a pop in his knee. He was walking quickly, but there were no other contributing factors he could think of.

[13] In its April 30, 2012 report of injury the employer confirmed the occurrence of the worker's injury. It stated the worker's injury occurred while performing volunteer activities. It noted that participation in the intramural staff versus students soccer game was voluntary. It stated the worker was not performing his regular work activities at the time of the incident. It objected to acceptance of the claim on the basis that participation in the soccer game was voluntary. The worker was not required to participate as part of his job duties.

[14] In her May 16, 2012 telephone memorandum, an entitlement officer recorded that the worker stated he worked in the "Computer Lab." While he did referee lacrosse, on the date of injury he was participating in an intramural lunchtime soccer game between

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

students and teachers. Participation in the game was "strictly voluntary", but the teachers were "encouraged to participate with the students to foster good relations."

[15] The worker indicated that his physician thought he had torn his meniscus. The entitlement officer stated that just walking, quickly or not, did not normally cause a torn meniscus. She stated that, based on the lack of an incident which would be causative of such a traumatic injury as a torn meniscus, the claim would have to be denied. She issued a May 24, 2012 letter to that effect.

[16] The worker requested a review of the May 24, 2012 decision by the Review Division. The review officer analyzed the review with regard to policy items #C3-14.00 and #C3-21.00 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II).

Reasons and Findings

[17] In adjudicating this appeal, I have taken into account the analysis found in *WCAT-2012-02607*, a decision I issued on October 9, 2012, some two months previous to the Review Division's decision. Notably, that decision concerns a high school social studies teacher who injured his wrist while engaged in a staff versus students baseball game at lunch time on June 15, 2011. The facts of the two claims are somewhat similar.

[18] The analysis in *WCAT-2012-02607* is also relevant given that it takes into account policy applicable to injuries that occurred on and after July 1, 2010, the transition date for revisions to Chapter 3 of the RSCM II. As noted above, the worker in the appeal before me suffered his knee injury on April 19, 2012; therefore, his claim is subject to policy analyzed in *WCAT-2012-02607*. As a result, in my decision I will incorporate portions of the analysis set out in *WCAT-2012-02607*.

[19] While the worker's injury occurred on his employer's premises, such circumstances do not, by themselves, establish whether his injury arose out of or in the course of his employment. An assessment of whether his injury arose out of and in the course of his employment involves consideration of subsection 5(1) of the Act and associated policies.

[20] Subsection 5(1) 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.

[21] 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.

[22] 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.

[23] 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.

[24] 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 review officer. That policy item is entitled "Extra-employment Activities."

[25] 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*.

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

[27] I note at this juncture the worker's submission to WCAT that policy item #C3-21.00 should not apply. He quotes the opening sentence of policy item #C3-21.00 and contends it should apply only if the analysis under policy item #C3-14.00 demonstrates that the staff versus students soccer game was outside the course of his employment. He argues that, should such a determination be made, policy item #C3-21.00 should then be applied to decide whether the activity was for his own benefit or whether it was sufficiently connected to his employment as to be considered part of that employment. He argues that policy item #C3-21.00 specifically states that policy item #C3-14.00 is the principal policy that provides guidance in determining whether an injury or death arises out of and in the course of employment.

[28] In considering this argument, I note I am aware policy item #C3-21.00 is entitled "Extra-Employment Activities." Thus, one could argue it only applies when one is considering activities that are extra-employment activities; if a decision-maker initially finds the activities are "intra-employment," there is no need to have recourse to policy item #C3-21.00.

[29] I question the weight one may attach to the title of a particular policy item. I consider that the contents of that policy item are more relevant. In that regard, the following comments at the outset of section B of policy item #C3-21.00 establish 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:

> 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]

[30] 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.

[31] I consider that passage in policy item #C3-21.00 provides a starting point for analyzing whether recreation, exercise or sports activities or physical exercises are part of the worker's employment. They are not normally considered to be part of a worker's employment unless an analysis under that policy establishes that the activity in question can be said to be part of a worker's employment. Therefore, I find that policy item #C3-21.00 is applicable to the worker's claim. Application of that policy and policy item #C3-14.00 will establish whether the worker's participation in the soccer game was part of his employment.

[32] 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."

[33] 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.

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

- Part of Job

[35] The worker does not contest the review officer's observation that he is not a physical education teacher. The worker submits that, although playing soccer is not a required part of his job, he made playing in a staff versus students soccer game "a voluntary part of his job." He asserts that teachers have a great deal of autonomy in their jobs. They are able to decide their instructional methods, the resources they use, their professional development, *et cetera*.

[36] The worker asserts the teachers also decide which volunteer activities they perform. He chose to voluntarily participate in the staff versus students lunchtime soccer game. He asserts that his voluntary choice to participate in the game did not make his participation "any less a part of his job."

[37] The worker refers to a set of standards created by the British Columbia Teachers' Council that are enforced by the Teacher Regulation Branch in the Ministry of Education. He notes that the first two standards provide that (i) educators are responsible for fostering emotional, aesthetic, intellectual, physical, social, and vocational development of students, and (ii) educators are accountable for their conduct while on duty, as well as off-duty, where the contact has an effect on the education system. The worker asserts that such statements demonstrate that even while teachers may be voluntarily participating in extracurricular activity, they are "on the job" and are expected to abide by the standards. Otherwise, they could be subject to discipline.

[38] The worker asserts that Dr. Fleming's report contains a historical perspective on how participation in extracurricular activity becomes a part of the job when the teacher becomes involved.

[39] In considering this factor, I find that participating in a soccer game was not part of the worker's job. Dr. Fleming's report does not persuade me otherwise.

[40] By his own statement, the worker works in the computer laboratory. His job does not entail playing or teaching soccer. While teachers may play a role in fostering the physical development of students, I am not persuaded that participating in a soccer game was part of this particular worker's job.

[41] I have considered the argument that teachers who voluntarily participate in extracurricular activity are "on the job." That a teacher engaged in a particular activity may be subject to discipline for conduct that has an effect on the education system does not mean that activity forms part of that teacher's employment for workers' compensation purposes.

[42] I fully accept that had the worker engaged in inappropriate conduct during the soccer game, he might have been subject to discipline. Such circumstances would not make his soccer game activities part of his employment for workers' compensation purposes.

[43] With respect to the notion of discipline, I note there is no suggestion the worker would have been disciplined had he declined to participate in the soccer game. The evidence establishes that he voluntarily participated in the soccer game.

- Instructions from the Employer

[44] 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.

[45] The worker acknowledges in his submission that he was not instructed by the employer to participate.

[46] I find that the worker was not instructed or otherwise directed by the employer to participate in the soccer game. His participation was purely voluntary. While I do not doubt that his participation was sanctioned (and perhaps even encouraged), I find this factor does not favour coverage.

- During Working Hours

[47] Notably, the following passages are listed in connection with 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.
>
> Coverage under the *Act* cannot be extended by an employer simply by labeling an off duty recreational, exercise or sport activity as mandatory.

[48] In considering this factor, I note the review officer stated it was not entirely clear whether the worker's lunch break was paid. He did not consider anything turned on resolving that matter. He observed that, as set out in policy, it is clear, given its purpose, a lunch break is not usually considered part of a worker's normal working hours.

[49] The review officer stated that the worker's situation could be distinguished from the example in policy given that he was not performing any teaching or supervisory functions. The review officer stated the worker's role in the soccer game was that of a participant.

[50] The worker asserts that the lunch period is in the middle of the regular instructional period. Teachers are salaried personnel. The salary covers them during the lunch period. The worker asserts that students playing in the soccer game were under his direct supervision. The fact that he was playing in the game did not erode "his responsibilities pursuant to the *School Act*, the Teacher Regulation Branch, and his employer." He asserts, "This part of the policy acknowledges that."

[51] As part of his argument that, as a salaried employee, he was being paid during the lunch period, the worker cites provisions in the *School Act* and the relevant regulation to the effect that teachers must perform duties set out in the regulation and the duties of a teacher include providing such assistance as the school board or principal considers necessary for the supervision of students on school premises and at school functions, whenever and wherever held.

[52] He also refers to a provision in the provincial collective agreement to the effect that for Employment Insurance reporting purposes the hours worked will be the same for all teachers. The parties have determined that 9.1 hours per day is an acceptable number of hours to report for Employment Insurance purposes. Generally, the instructional day is only about 6.5 hours long for high school teachers. The worker asserts that, to achieve a figure of 9.1 hours, the employer acknowledges there is more to a teacher's workday than the period covered by instruction.

[53] The worker submits that the collective agreement provisions, the *School Act* and the fact he is a salaried employee mean he "was on paid time during the lunch time soccer game."

[54] For the purposes of this appeal, I accept that the worker was participating in a paid lunch break. However, a paid lunch break occurs outside normal working hours. I am not persuaded that the worker's lunch hour is part of his normal working hours.

[55] In considering this matter, I take note of the fact this was a teachers versus students game. Thus, this was not the case of a teacher supervising a "student soccer game" as referred to in policy. Thus, I am not persuaded that the example in policy is applicable to the worker's circumstances.

[56] Aside from whether this was a "student soccer game," I note there is no suggestion that the worker was a one-man team. There were other teachers present.

[57] There is no persuasive suggestion that the worker was a designated supervisor of the soccer game. Indeed, while participating in the actual game, one might question the scope to which the worker would have been able to supervise the conduct of all of the students participating in the game, let alone all of the students who might have been watching the game. One might think that the worker's attention would have been directed to his particular activities being conducted as part of his participation in the game.

[58] I find that the worker's participation in the soccer game occurred outside normal working hours. This factor does not favour coverage.

- Receipt of Payment or Other Consideration from the Employer

[59] 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.

[60] I find the worker is paid a salary and that his lunch hours are paid lunch breaks.

[61] 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

[62] 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.

[63] 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.

[64] 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.

[65] The worker asserts that although the soccer game was not directly supervised by a member of the school administration standing in the gymnasium, the activity was supervised by the employer. The soccer game happened on the employer's premises, with full knowledge and approval of the school administration. The principal and vice principals were on the school site; therefore, it cannot be said the principal was not supervising the activity.

[66] The worker asserts that such supervision by the principal is analogous to what happens during instructional time when the principal is deemed to be supervising teaching activities taking place in the school. The principal does not have to be physically present in every classroom to be supervising the teachers engaged in instruction, planning, organizing materials, placing student work on the walls, *et cetera*. Similarly, the principal did not have to be physically present during the soccer game to be supervising the worker.

[67] The worker asserts that it would be "overly stretching the employer's resources" for the school's three administrators to be supervising all of the lunchtime activities happening at the school. He notes that the school's website lists a number of events. He remarks that much of the preparation and rehearsals for those events occur outside of instructional time. There are also school athletic teams and their practices to consider.

[68] The worker asserts that section 117 of the Act describes the duties of supervisors. He asserts that if a supervisor was required to be physically present at every single location on the premises where work was being performed, section 117 would be rendered virtually meaningless and unenforceable. He argues that 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 supervised. He asserts this should apply to an even greater degree in a situation where the workers are "well-educated professionals such as teachers."

[69] In reviewing this matter, I note that the worker's submissions concerning section 117 of the Act are similar to the submissions regarding that section summarized in the following passage in *WCAT-2012-02607*:

> 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.
>
> [paragraph number omitted]

[70] In *WCAT-2012-02607* I set out a number of comments regarding supervision. After reviewing the matter, I continue to hold the views set out in that decision, and I reproduce them in the following five paragraphs, which I set out as regular text rather than as an indented quotation.

[71] 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.

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

[73] 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.

[74] 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.

[75] 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.

[76] The evidence does not establish the soccer 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 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 soccer game does not amount to the game being supervised by a representative of the employer having supervisory authority.

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

- On Employer's Premises

[78] I find the evidence establishes the soccer 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.

[79] In connection with this factor the worker states that in *WCAT-2011-01389*, the panel cited the following passage from Larson's *Workers' Compensation Law*, Lexus Nexus Mathew Bender Online (Larson), regarding the location of the activity:

> **§ 22.03 On the Premises During Lunch or Recreation Period**
>
> [1]--Effect of Presence on Premises
>
> It has been repeatedly and consistently observed that in borderline course-of-employment situations, such as going and coming, or having lunch, the presence of the activity on the premises is of great importance. Consistency is maintained by applying the same distinction to recreation cases: recreational injuries during the noon hour on the premises have been held compensable in the majority of cases. While, as noted in connection with the other situations mentioned, there is a tinge of the arbitrary about this distinction, there is also a sound basis in both theory and reality for it. When seeking for a link by which to connect an activity with the employment, one has gone a long way as soon as one has placed the activity physically in contact with the employment environment, and even further when one has associated the time of the activity somehow with the employment. This done, the exact nature and purpose of the activity itself does not have to bear the whole load of establishing work connection, and consequently the employment-connection of that nature and purpose does not have to be as conspicuous as it otherwise might.
>
> Conversely, if the recreational activity takes place on some distant vacant lot, several hours after the day's work has ceased, some independently convincing association with the employment must be built up to overcome

> the initial presumption of disassociation with the employment established by the time and place factors.
>
> [footnote deleted]

[80] I was the panel that issued *WCAT-2011-01389*. I noted that passage from Larson's had been cited by the panel that issued *WCAT-2007-03699*.

[81] The worker does not explicitly state that he is citing this passage from Larson's for the assertion contained therein as to "great importance" to be attached to the fact that activity has taken place on an employer's premises. However, I have reviewed the matter on that basis.

[82] I consider that while such a passage may be relevant to American case law concerning entitlement to workers' compensation benefits, such a passage, while of some interest, is by no means determinative of the worker's entitlement to workers' compensation benefits in British Columbia. His entitlement in this province is based on consideration of the applicable law and applicable policy.

- 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 worker's submission does not contend fitness was a job requirement.

[85] I find that fitness was not a job requirement.

- 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 worker submits that the intention of teachers participating in the intramurals program is the fostering of better relations with the students at the school. In addition, participation furthers the goal of Healthy Schools BC, a key initiative of the Healthy Families BC strategy, involving the Ministries of Health and Education, Directorate of Agencies for School Health (DASH) BC, health authorities, education partners, and other key stakeholders.

[88] The worker asserts that government has focused on having safe physical environments in which students can engage in regular physical activity and experience a sense of belonging and connectedness to school. He asserts that the intramurals program at the school is associated with such an environment; his participation and that of his colleagues enhances the students' experience. The worker has provided surveys of students as evidence of the benefits received by the employer from teachers participating in the intramurals program.

[89] In examining this factor, I question whether students are 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. That the policy envisions the public as being individuals other than those closely associated with the school is suggested by the reference in policy to "good community relations."

[90] 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 soccer game would foster good relations with the students.

[91] The eight factors listed in policy item #C3-21.00 above overlap considerably with factors listed in policy item #C3-14.00, as the factors in policy item #C3-21.00 provide additional guidance as to how factors in policy item #C3-14.00 may be applied in the context of recreational, exercise or sports activities.

[92] 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.

[93] The following paragraphs document my analysis of the additional factors in policy item #C3-14.00.

- For Employer's Benefit

[94] As established by the following discussion of this factor in policy item #C3-14.00, this factor concerns matters other than whether the activity was part of the worker's job or whether his participation was undertaken in response to instructions from his employer:

> Did the injury or death occur while the worker was doing something for the benefit of the employer's business? If the worker is in the process of doing something for the benefit of the business generally or the employer personally, this factor favours coverage. If the worker is in the process of doing something solely for the worker's own benefit, this factor does not favour coverage.
>
> In the case of independent operators and active principals of corporations, it is necessary to distinguish between the activities the independent operators or active principals carry on in furtherance of the business, and personal activities undertaken independent of the business. Only injuries or death occurring while pursuing the former type of activity may be considered to arise out of and in the course of the employment.

[95] The worker asserts that he was playing a game for the benefit of the employer. He cites passages from the relevant collective agreement, which provides that (i) extracurricular programs and activities include all those that are beyond the provincially prescribed and locally determined curricula of the school; (ii) teachers recognize and support extracurricular activities as a valued part of the school program, and (iii) the school board agrees that all extracurricular activities are provided by teachers on a voluntary basis.

[96] The worker asserts that extracurricular activities in the intramurals program are a valued part of the school program for each student. He refers to the terms of the collective agreement which document teachers' recognition and support of extracurricular activities as a valued part of the school program.

[97] The worker states that he surveyed students in the intramurals program to ascertain how they feel about the program. Twenty students responded. He has provided copies of the surveys and notes the information documented in them.

[98] The worker asserts that Dr. Fleming's report provides a historical perspective on the benefit to the employer of teacher participation in extracurricular activities, including activities held at lunchtime.

[99] In reviewing this factor, I distinguish between activities that involve public relations for the benefit of the employer (the factor cited in policy item #C3-21.00) and activities for the employer's benefit (a factor cited in policy item number #C3-14.00). I consider that the two factors are different.

[100] I find that the worker was doing something for the benefit of the employer. I do not doubt that, among other matters, a staff versus students soccer game assists in creating rapport between teachers and students, and, in turn, such rapport likely assists in enhancing the teaching environment.

- Equipment Supplied by the Employer

[101] In considering this factor, the review officer found it might be reasonable to infer that the worker was using a soccer ball supplied by the employer. He did not think that much turned on this factor as the worker was not injured as a result of using equipment.

[102] The worker submits that the staff and students were using the school's gymnasium equipment. I note he does not assert that his injury occurred at a moment when he was actually using the soccer ball. As noted above, his injury occurred while he was quickly walking on to the playing surface.

[103] I find that the worker's injury did not occur while using equipment or materials supplied by the employer. However, even if I were to accept that the injury did occur while he was using such equipment or materials, the outcome of this appeal would not change.

- Receipt of Payment or Other Consideration from the Employer

[104] The review officer's statement that this factor is concerned with the actual activity of drawing pay is based on the following discussion of this factor found in policy item #C3-14.00:

> Did the injury or death occur while the worker was in the process of receiving payment or other consideration from the employer? If so, this factor favours coverage.
>
> This includes cases where the worker is required to report to the employer's premises or office in order to pick up a paycheque, whether or not this is during a regular shift.

[105] In his submission, the worker states he was not in the process of receiving payment or other consideration from the employer.

[106] I find this factor is not satisfied.

- Activity of the Employer, a Fellow Employee or the Worker

[107] The worker acknowledges that his injury was not caused by an activity of the employer or of a fellow employee.

[108] I note that the worker argues that non-coverage of teacher injuries during extracurricular activities can have a "serious impact on the activities that are offered at schools." He refers to various trips listed in a recent school newsletter. He notes that teachers will be participating in those activities, but generally, administrators do not go on these types of trips, with the result that no direct supervision of the worker is provided. He refers to elementary school teachers taking their classes camping or to various recreational facilities. Administrators do not routinely go on such trips unless they have been requested by the teachers planning the trips.

[109] The worker queries, "Would they not be covered while they are having some fun at their job?"

[110] The worker asserts, "If teacher injuries, such as the one that occurred in this claim, during extra-curricular activities are not compensated by the Board, it could have a chilling impact on the type and number of activities that are offered to students outside of instructional time. As a result, we request that the Board policy be interpreted liberally to allow the worker's claim."

[111] 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. My analysis of this case is very similar to my analysis in *WCAT-2012-02607*.

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

[113] 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.

[114] That the worker's injury may have 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.

[115] 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.

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

[117] 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 soccer game was part of the worker's employment, and whether the injury arose out and in the course of employment.

[118] My decision concerns the specific facts of the case before me. While I appreciate policy ought to be interpreted liberally, I am not persuaded that interpretation should be driven by a desire to address factual matters or issues of teacher participation in extracurricular activities beyond those present in the case before me. Should the worker and his union be dissatisfied with how Board policy applies to the situation of teachers engaged in extracurricular activities, it is open to them to approach the Board with a request that policy be revised.

Conclusion

[119] The worker's appeal is denied. I confirm the review officer's decision. I find that the worker's April 19, 2012 injury did not arise out of and in the course of his employment.

[120] I find there should be reimbursement of the expenses associated with obtaining Dr. Pereira's report. Item #16.1.3 of WCAT's *Manual of Rules of Practice and Procedure* provides that WCAT will generally order reimbursement of expenses for attendance of witnesses or obtaining written evidence, regardless of the results in the appeal, where (i) the evidence was useful or helpful to the consideration of the appeal or (ii) it was reasonable for the party to have sought such evidence in connection with the appeal. WCAT will generally limit the amount of reimbursement of expenses to the rates or fee schedule established by the Board for this purpose.

[121] I find that it was reasonable for the worker to have sought this evidence. The evidence would have been relevant had I found that the worker's participation in the soccer game formed part of his employment. I order reimbursement for the amount billed.

Randy Lane
Vice Chair

RL/cv