

### Noteworthy Decision Summary

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**Decision:** WCAT-2009-00491    **Panel:** M. Mousseau    **Decision Date:** February 18, 2009

***Injuries sustained while engaged in recreational, exercise or sports activities – Section 5 of the Workers Compensation Act - Policy Items #14.00 and #20.20 of the Rehabilitation Services and Claims Manual, Volume II***

This decision is noteworthy as it provides an analysis of June 2004 revisions to policy item #20.20 of the *Rehabilitation Services and Claims Manual, Volume II*, which addresses injuries sustained by a worker while he or she is engaged in recreational, exercise or sports activities. It also considers the application of that policy to a teacher involved in an extra-curricular sports activity (volleyball).

The worker, a science teacher, injured her shoulder in a volleyball game in 2007. The game occurred during an awards night for students which included an exhibition volleyball game between students and teachers. The awards night took place after hours and participation in the game was voluntary. In a decision letter dated November 19, 2007, an officer of the Workers' Compensation Board, operating as WorkSafeBC (Board), informed the worker that her claim was not accepted. The worker requested a review of this decision. The review officer confirmed the Board officer's decision. The worker appealed to WCAT.

The WCAT panel denied the appeal, finding that the injury did not arise out of and in the course of the worker's employment. The panel noted that item #20.20 was revised on June 1, 2004 to state that all of the factors in the policy must be considered when deciding whether an injury incurred during extra-employment recreational, sport or exercise activities is compensable. The policy no longer states that coverage is not extended if physical fitness is not a job requirement and references to physical education (PE) teachers have been removed to clarify that coverage may be extended to teachers other than PE teachers who are injured while participating in extracurricular sports or recreational activities. In this case, the evidence did not indicate the worker's participation in the game was in response to instructions from the employer. It also did not appear the injury was caused by an activity of the employer or a fellow employee nor did it occur while the worker was performing duties that were part of the regular job duties. Considering all of the factors in the policy, the panel concluded that the injury sustained in the volleyball game did not arise out of and in the course of the employment.

**WCAT Decision Number :** WCAT-2009-00491  
**WCAT Decision Date:** February 18, 2009  
**Panel:** Marguerite Mousseau, Vice Chair

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## Introduction

- [1] This appeal addresses the worker's entitlement to compensation for a right shoulder injury. In a decision letter dated November 19, 2007, an officer of the Workers' Compensation Board, operating as WorkSafeBC (Board), informed the worker that her claim was not accepted. The Board officer stated she was unable to conclude the worker suffered a personal injury arising out of and in the course of her employment. The worker requested a review of this decision. In *Review Decision #R0088865*, dated June 11, 2008, a review officer confirmed the Board officer's decision. The worker appeals the review officer's decision to the Workers' Compensation Appeal Tribunal (WCAT).
- [2] The worker is represented by a private consultant retained by her professional association. The employer is not participating in the appeal. The worker requested that her appeal proceed by way of read and review because it was recognized that the issue is relatively straightforward and there was little more the worker could say in direct evidence that was not already on the claim file. However, the worker stated she would be happy to attend an oral hearing if it was deemed necessary by the WCAT panel. Item #8.90 of the *Manual of Rules of Practice and Procedure* provides that WCAT will normally conduct an appeal on a read and review basis where the issues are largely medical, legal, or policy based, and there is no significant issue of credibility. I consider that this appeal is consistent with these general considerations and it may be fairly addressed without an oral hearing.

## Issue(s)

- [3] The issue on this appeal is whether the worker sustained a personal injury arising out of and in the course of her employment in a volleyball game on May 31, 2007.

## Jurisdiction

- [4] Section 239(1) of the *Workers Compensation Act* (Act) provides that a decision made by a review officer under section 96.2 may be appealed to WCAT.
- [5] Under section 250 of the Act, WCAT may consider all questions of law and fact arising in an appeal. The WCAT decision must be based on the merits and justice of the case as well as the application of the relevant policies of the board of directors of the Board.

Where the evidence supporting different findings is evenly weighted, the matter must be resolved in the manner that favours the worker.

- [6] The policies relevant to this appeal are set out in the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II).

### **Background**

- [7] The worker is employed as a high school science teacher. On May 31, 2007 the school where the teacher is employed had an awards night for students involved in athletics. According to a claim log entry dated November 19, 2007, the employer advised a Board officer that the worker was involved in the athletic awards night. The function included an exhibition volleyball game between students and teachers, followed by a dinner. The awards night took place after hours and participation in the game was voluntary. While the worker was backing up to get a shot, she lost her balance and fell backwards, hitting her right shoulder blade against the wall. In a subsequent claim log entry, the officer stated the employer had confirmed the worker was not directed to participate in the activity nor was she paid for the activity.
- [8] According to a conversation with the worker that was reported in a claim log entry dated October 26, 2007, there was no first aid attendant at the school when the worker fell and she treated herself with ice and ibuprofen. She thought it would just be a bruise and did not report anything to her employer. Since she continued to have symptoms, she reported the incident to her employer on June 11, 2007 but she did not seek medical attention at that time because the symptoms were not severe. The symptoms eased over the summer and increased again in September when she returned to work. She stated that there is no specific activity that aggravates her pain but by the end of the day, it is more severe. She first saw her doctor, Dr. James David Jamieson, for these symptoms on September 24, 2007.
- [9] On the same date, the employer submitted a report of injury or occupational disease to the Board. The report was completed by the employer's Director of Human Resources who stated the worker had been injured at a school function and provided the same mechanism of injury. He indicated the worker's actions at the time of injury were for the purposes of her employment but did not explain. He also indicated these actions were part of her regular work but did not explain this either.
- [10] Dr. Jamieson diagnosed a left shoulder strain. He reported that the worker had pain in her right shoulder since she had fallen backwards against a wall. She had a good range of motion but had pain at the extremes. He referred her for an x-ray. A report of an x-ray of the right shoulder girdle taken on October 1, 2007 does not identify any abnormalities. Dr. Jamieson's second, and final, report is dated October 25, 2007. He states the worker's symptoms are unchanged since the last report and he is referring

her to Dr. Alexandra Brooks-Hill, orthopaedic surgeon, for assessment of her shoulder pain.

- [11] In a consultation report dated November 28, 2007, Dr. Brooks-Hill provided the same medical history; that is, she stated the worker had injured herself while backing up to receive a volleyball serve and hit the posterior aspect of her right shoulder against a wall. The worker had said that she had right shoulder pain since then. Dr. Brooks-Hill diagnosed a right rotator cuff impingement syndrome and referred the worker for physiotherapy.
- [12] In the decision letter dated November 19, 2007, the Board officer referred to policy items #14.00 and #20.20. She noted that sports activities were not part of the worker's regular employment nor were they a job requirement. The worker's participation in the activity was voluntary and took place outside of her regular working hours. She was not directed to participate in the activity by her employer nor was she paid for the activity. The officer stated that, based on the policies, she was unable to conclude the worker had sustained an injury arising out of and in the course of employment. The officer also noted there had been a significant delay in reporting the injury to the employer and a very significant delay in seeking medical attention. She stated that, taking all of these factors into account, she had concluded the requirements of section 5(1) had not been met.
- [13] The review officer who conducted the review of this decision also considered the application of policy #20.20. In that regard, the review officer noted the worker's regular duties did not include recreational or sports activities. The volleyball match took place outside of the worker's regular hours and the worker was not paid to attend or participate in the event. The review officer acknowledged the worker's submission that teachers do not have set hours; they are paid as professionals and the workday may occasionally be longer than normal. However, he did not agree that this was applicable to the present circumstances since the volleyball match was a voluntary activity that took place outside of the worker's regular hours. The employer had not asked the worker to stay late and had not demanded extra work. The review officer concluded therefore that the worker was not putting in a longer workday on May 31, 2007. The worker was participating in a voluntary extra-curricular volleyball game that was not a prerequisite for earning her salary or an activity that fell within the scope of her regular duties.
- [14] The review officer also disagreed with the worker's submission that the volleyball match was a professional obligation similar to parent-teacher interviews. Parent-teacher interviews were likely to be mandatory and would come within the scope of the worker's professional obligations. Although the volleyball game may have been organized with the employer's knowledge and implied consent, the policy indicated that a simple sanctioning of the activity by the employer did not favour coverage.

- [15] The review officer went on to note the worker's submission that teachers are tasked with and responsible for ensuring the safety of students during extra-curricular activities and that participation in such activities engaged a teacher's legal and professional obligations to the students and employer. As a result, the Board should extend coverage to extra-curricular activities. The officer noted that policy #20.20 provides for the extension of coverage to teachers who directly supervise or coach students in extra-curricular activities. But, in the present case, the worker was not directly supervising or coaching students in extra-curricular activities and, unlike the situation where a teacher provided direct supervision or coaching, the review officer could find no compelling evidence the worker had a specific mandated duty to ensure the safety of the students involved in the extra-curricular volleyball game.
- [16] The review officer stated he was unable to determine from the evidence on file whether the activity was supervised by an authorized representative of the employer. He thought that a referee or authorized overseer would qualify as a supervisor but staff involved in the match would not, since any supervisory role would be negated by their participation in the game. He also did not find the worker's job required physical fitness and noted this factor generally applied to certain professionals who may require the ability to react quickly to sudden and strenuous emergencies, such as police officers.
- [17] The review officer went on to identify the factors that he thought favoured compensation coverage under policy #20.20. One of these was that the intention of the match was to foster good relations between the students, teachers and the community in general. He stated that he agreed with the worker's submission that one of the primary purposes of the activity was to provide a benefit to the school and its students. He also noted the volleyball game took place on the employer's premises since it took place in the school gymnasium. Although these two policy factors had been satisfied in favour of coverage, he found that the application of the balance of the factors described in the policy did not favour compensation coverage for the worker's participation in the volleyball game. He stated that he placed particular weight on the fact the volleyball match was voluntary, the worker was not paid to attend, it was not during regular hours and it was not part of the worker's regular job description or duty to participate in sporting activities. He noted the general rule is that recreational or sports activities are not normally considered to be part of the employment and he did not find the worker's circumstances amounted to an exception to that rule.
- [18] The review officer also noted the time lapse between the date of injury and the date the worker first saw her physician. He stated that, in a situation such as this, it was difficult to make findings of causation because speculation and hindsight after the fact did not adequately replace a more timely documentation of symptoms and objective evidence. Taking all of the above into account, the review officer was unable to conclude the worker's right shoulder injury arose out of and in the course of her employment.

## Submissions

- [19] In her submission to WCAT, the worker's representative relied on her submission to the Review Division, as well as the additional submission to WCAT. In the submission to the Review Division, she stated that "it has been a long established practice of WorkSafeBC to accept that extra-curricular activities, on the part of a public school teacher, are considered to be within the scope of their employment." The issue, in this case, was whether the worker suffered an injury caused by her work.
- [20] The representative submitted that although the teacher was not engaged in formal instruction on a particular subject, "it is always within the curriculum that teachers give instruction on a wide range of areas, including such topics as sportsmanship and social interaction." She stated this takes place all the time within the school environment by all teachers in relation to all students with whom they come into contact on the playground, at lunch and recess breaks, in the hallways and during school social and fundraising events. This occurs while formally and informally supervising students and not just during mandated school hours. The representative states that, under provincial legislation and the collective agreement, when a teacher undertakes an extra-curricular activity, their supervisory duties and responsibilities continue. It follows, from that expectation, that a teacher is in the course of her employment when engaged in such activities. The volleyball game in which the worker was injured was an organized school function that took place at school.
- [21] The representative submitted that both the school board and the law expect teachers to ensure the safety of students during extra-curricular activities. If a teacher is negligent in carrying out that discipline, he or she may be subject to discipline. Although these activities are "voluntary," a teacher's participation in such activities engages their legal and professional obligations. The duties of teachers under the *School Act* include assisting to provide programs to promote students' human and social development and one purpose of the exhibition game was to foster good relations among students, teachers and the community.
- [22] The representative noted the worker's injury occurred on the employer's premises, with the knowledge of the employer. The employer had given permission to use the school equipment and the event was organized with the employer's knowledge, implied consent and participation. Although the teacher was not in the physical education (PE) department, she had formal and informal interactions with the students because she was a teacher. There would not be enough teachers in the PE department to fill a volleyball team complement.
- [23] The representative also noted that, as salaried workers, teachers do not have set hours of work. Their professional obligations extend beyond instructional time. There is no prescribed workday and a teacher has many obligations outside of class. This includes participating in events such as parent night, parent-teacher interviews, Christmas

concerts, graduation, musical performances and other award events. Since it is critical that teachers meet parents, teachers often meet their professional obligations to be involved with parents at such evening events. That was the case with the worker when she was injured. She notes the employer indicated the worker was attending a school function when she was injured.

- [24] Finally, it was submitted that the teacher's involvement in the volleyball game was of significant value to her employer and the students. The purpose of the activity was to provide a benefit to the school and its students. The activity formed a significant part of the social development of students, which is one of any teacher's responsibilities that often fall outside of instructional time. The representative submits that, given all of the above, the teacher was in the course of her employment while engaged in the volleyball game and since the injury occurred while she engaged in this activity, the injury also arose out of her employment.
- [25] In her submission to WCAT, the representative identified three recent claims by teachers for injuries occurring in the course of extra-curricular activities in which the injuries had been accepted as compensable. She cited *Review Division Decisions #R0090780, #R0085810 and #R0052969*. The representative submitted that the review officer who reviewed the worker's claim in this case had done nothing more than reference policy which was felt to be applicable and agree with the information in the initial decision. She stated that no effort had been made to respond to any of the representative's submissions. She submitted the facts in this case are compelling and that the Board and the Review Division have a history of accepting claims by teachers who have sustained injuries while engaged in extra-curricular activities.

### **Law and Policy**

- [26] Section 5 of the Act provides that compensation is payable to a worker who suffers a personal injury arising out of and in the course of employment.
- [27] Policy #20.00 of the RSCM II describes the general rule regarding compensation coverage for individuals engaged in extra-employment activities. This policy states:
- Generally speaking, activities which people undertake outside of their employment are for their own benefit and injuries occurring in the course of them are not compensable. There are, however, some activities which because of their relevance to the worker's employment may be accepted as being part of that employment.
- [28] Policy #20.20 specifically addresses injuries sustained by a worker while he or she is engaged in recreational, exercise or sports activities. This policy was revised on June 1, 2004 after the Board conducted a public consultation on the policy. The

discussion paper that was issued at that time<sup>1</sup> states one of the reasons for undertaking the consultation was that external stakeholders had raised a number of issues with this policy. The footnote to this comment indicates that teachers were one of the stakeholder groups that had concerns about the application of this policy. It states the BC Teachers' Federation had submitted to the Board that teachers were "unfairly denied coverage under policy item #20.20 for injuries suffered while participating in students' extracurricular recreational, exercise or sports activities during lunch or outside of school hours."

[29] In identifying some of the problems with policy #20.20 as it existed at the time, the paper notes that adjudicators were treating some of the tests in policy #20.20 as an exclusive test rather than considering all of the factors in the policy when deciding whether an activity was covered under the Act. One of the examples was that coverage had been denied on the sole basis that a recreational, exercise or sports activity took place outside of regular working hours without considering other factors that might serve to bring the activity within the course of employment. The footnote to this comment (footnote #6) states the policy had been misapplied in this manner in relation to teachers. At that time, one of the factors used to decide whether there was coverage was whether physical fitness was a job requirement. The policy stated that, if it was not, coverage was not extended to these types of activities. This factor has been used as "a *sole* determinative factor in denying coverage to teachers who are not phys-ed teachers, who were injured during students' recreational activities" [reproduced as written].

[30] Another way in which the policy was affecting teachers involved in extra-curricular activities was described at page 5 of the discussion paper, which notes:

Compounding this uncertainty is the fact that certain factors conflict. For example, subfactor #9(e) infers that "paid lunch breaks" are considered part of "normal shift hours for which a salary was being paid." This appears to contradict factor #4, which states that coverage outside of working hours is *not* extended with respect to paid lunch breaks, even if the worker could be considered on call at that time.<sup>12</sup>

[reproduced as written]

[31] Footnote #12 specifically refers to the situation of teachers. It states:

See Appeal Division decision #97-1090 at pages 5-7. This conflict could be clarified by adopting the approach taken in *WCR* Decision No. 273 (retired) and *WCR* Decision No. 343. In those Decisions, the former Commissioners made it clear that coverage may be extended respecting injuries that occur during a lunch hour recreational, exercise or sport

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<sup>1</sup> Discussion Paper: *Coverage for Recreational, Exercise or Sports Activities* (2004) available on the Board's website at [www.worksafebc.com](http://www.worksafebc.com).



activity. However, this determination requires a weighing of all other relevant factors. For instance, in Decisions No. 343 and No. 273 coverage was extended regarding a teacher's injury that occurred during a lunch hour extracurricular activity with students, partly on the basis that the activity was of benefit to the employer and students. Coverage was also extended to a corrections officer injured in his employer's gym during his lunch hour, partly on the basis that a high degree of physical fitness was a job requirement.

[reproduced as written]

- [32] Another area where the policy in existence at that time limited coverage for teachers was described as follows at page 7:

A number of examples in the policy have been interpreted as mandatory rules. For example, the preamble in policy item #20.20 states as follows:

"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 *Workers Compensation Act*. There are, however, exceptional cases when such activities may be covered. The obvious one is where the main job for which a worker is hired is to organize and participate in recreational activities, **for instance, a physical education teacher in a school...**" [emphasis added].

As well, factor #1 states, in part: "...Were the activities part of the job? **A physical education teacher involved in team sports with the pupils would normally be covered...**" [emphasis added].

In both of these examples, physical education teachers have been singled out for coverage—arguably giving rise to the inference that teachers who are not physical education teachers are likely to be precluded from coverage when participating in exercise, recreational or sport activities.

[reproduced as written]

- [33] In discussing the proposed retirement of *Decision No. 343*<sup>2</sup>, the discussion paper states:

Decision No. 343 also includes several examples which arguably promote a broader view of coverage:

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<sup>2</sup> 5 WCAT 1979-84, a decision of the former governors that was retired on June 1, 2004.

- One of the examples cited in Decision No. 343 (and retired Decision No. 273) identifies additional factors unique to the teaching profession that favour coverage for injuries occurring during extracurricular activities with students. These include a teacher's intention "to create or maintain better rapport with pupils" and to "establish a better teacher-pupil atmosphere which would be carried over into classroom activities...". These additional factors do not appear in policy item #20.20 – although "benefit to the employer" under factor #14.00 does indirectly incorporate these values.

Consideration should be given to incorporating these broader principles in policy item #20.20 before Decision No. 343 is retired.

[34] On June 1, 2004 a revised policy #20.20 came into effect. It states:

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 covered. 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.

In assessing these cases, the general factors listed under policy item #14.00, *Arising Out Of and In The Course of Employment* are considered. Policy item #14.00 is the principal policy that provides guidance in deciding whether or not an injury arose out of and in the course of employment.

In considering specific cases relating to recreational, exercise or sports activities, the following factors are also among those considered in determining whether an injury is compensable. All relevant factors must be considered and no single factor is determinative. Relevant factors not listed in policy may also be considered.

#### 1. Activities Part of Job

Were the activities part of the job? If so, this is a factor that favours coverage. For example, a ski instructor injured while engaging in personal skiing activities unrelated to the instruction of pupils would not be covered. However, coverage may be provided if the skiing activity involved the instructor's pupils and was deemed part of the teaching activities.

## 2. Instructions from the Employer

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.

## 3. During Working Hours

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.

## 4. Receipt of Payment or Other Consideration from the Employer

Was the worker paid full salary or other consideration while participating in the activity? The payment of salary favours coverage. The fact that salary or other consideration was not paid does not favour coverage.

## 5. Activity Supervised

Was the activity supervised by a representative of the employer having supervisory authority? This favours coverage. The fact that the activity was not supervised does not favour coverage.

## 6. Fitness a Job Requirement

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.

## 7. Public Relations for Benefit of Employer

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.

## 8. On Employer's Premises

Did the activity take place on the employer's premises? This is a factor favouring coverage.

Coverage is normally not extended to recreational, exercise or sports activities occurring off the employer's premises. However, coverage is not automatically precluded respecting such injuries. Rather, a weighing of all relevant factors is required. For example, coverage may be extended where a teacher is injured while supervising students during an off-site sports day during regular school hours organized by the employer.

After a decision-maker has considered the factors listed in policy items #14.00 and #20.20, he or she must weigh the evidence to determine whether the injury arose out of and in the course of

employment. The standard of proof applied is based on a balance of probabilities and consideration is also given to section 99 of the Act.

[reproduced as written]

[35] Policy #14.00 also sets out a non-exhaustive list of factors that are used to assist in determining whether an injury arose out of and in the course of employment. These factors are:

- (a) whether the injury occurred on the premises of the employer;
- (b) whether it occurred in the process of doing something for the benefit of the employer;
- (c) whether it occurred in the course of action taken in response to instructions from the employer;
- (d) whether it occurred in the course of using equipment or materials supplied by the employer;
- (e) whether it occurred in the course of receiving payment or other consideration from the employer;
- (f) whether the risk to which the employee was exposed was the same as the risk to which the employee is exposed in the normal course of production;
- (g) whether the injury occurred during a time period for which the employee was being paid;
- (h) whether the injury was caused by some activity of the employer or of a fellow employee;
- (i) whether the injury occurred while the worker was performing activities that were part of the regular job duties; and
- (j) whether the injury occurred while the worker was being supervised by the employer.

## Reasons and Decision

[36] It appears from the discussion paper that, contrary to the representative's submission, the Board does not have a longstanding practice of accepting injuries incurred by teachers in extra-curricular recreational or sports activities. Rather, it seems that this

has been a controversial area for some time and that there was dissatisfaction with the policies in place before June 1, 2004 because teachers were often denied coverage in circumstances where they felt they should have compensation coverage.

- [37] Policy #20.20, as revised in June 2004, explicitly states that all of the factors in the policy must be considered when deciding whether an injury incurred during extra-employment recreational, sport or exercise activities is compensable. The policy no longer states that coverage is not extended if physical fitness is not a job requirement. This addresses the concern that only PE teachers were covered when injuries were sustained during extra-curricular recreational, sports and exercise activities. Similarly, references to PE teachers have been removed from the introductory paragraph and in the first factor, which addresses whether the activities were part of the job. This also clarifies that coverage may be extended to teachers other than PE teachers who are injured while participating in extracurricular sports or recreational activities.
- [38] The revised policy, however, does not include the suggested change of incorporating additional factors that are unique to teachers and which would favour coverage for injuries occurring during extracurricular activities. These are the principles cited in *Decision No. 343* and described in the policy consultation paper as “a teacher’s intention ‘to create or maintain better rapport with pupils’ and to ‘establish a better teacher-pupil atmosphere which would be carried over into classroom activities.’” The policy does specifically provide an example involving teachers in that it states that coverage may extend to teachers who are “injured while coaching or supervising a student soccer game in the schoolyard during his or her lunch break.” This is considerably narrower than what had been proposed in the policy discussion paper. It indicates that the extension of coverage is favoured when a teacher is fulfilling a specific role in a recreational, exercise or sports activity, not simply on the basis of participation because that, in itself, has benefits.
- [39] I have set out the representative’s submission and the review officer’s reasons in considerable detail because, in my view, the review officer did address the representative’s submission. He considered each of the factors in policy #20.20 and analysed the points made by the representative in relation to each of those points. I found his analysis and reasoning thorough and logical. A teacher involved in a sports activity involving students is not automatically covered as suggested by the representative. Rather, the teacher is more likely to be covered if she or he has a defined responsibility in relation to the sport activity such as coaching or supervising a student game. In addition, all of the other factors in the policy must also be considered in order to determine whether there is coverage.
- [40] I have also reviewed the Review Division decisions that were identified by the representative. *Review Decision #R0052969*, dated November 22, 2005, involved a teacher who injured his knee during a staff/student basketball game at lunch time. In

that case the review officer stated that he found it of “significant relevance” that part of the worker’s duties as a teacher included coaching basketball. I note that this decision involved the application of the policy that was in effect prior to June 1, 2004. Applying the policy in effect at that time, the review officer found the worker’s injury arose out of and in the course of his employment.

- [41] *Review Decision #R0090780*, dated July 25, 2008, was decided under the current policies. That case involved a grade 7 teacher whose teaching duties included teaching physical education (PE). He was injured while playing floor hockey with his students during lunch. He played floor hockey about once a week during lunch with the boys from his class. He considered it an extra PE class although attendance was not mandatory and the worker volunteered his time. In deciding to vary the Board officer’s decision, the review officer said that he found it difficult to distinguish the worker’s circumstances from the example provided in the policy of a teacher who supervises or coaches a student soccer game during lunch or after school.
- [42] *Review Decision #R0090780*, dated July 25, 2008, involved a teacher who injured herself while playing volleyball during a lunch hour fundraiser. In that case, the review officer applied policy #20.50, “Fund Raising, Charitable or other Similar Activities,” and concluded the worker was covered under that policy.
- [43] I find that these decisions involve facts and policies that differ significantly from those in the present case. In the present case, I have considered the factors in policy #14.00 which are used as guidelines for determining whether an injury arose out of and in the course of employment as well as the factors listed in policy #20.20. With regard to the factors in policy #14.00, the injury occurred on the premises of the employer and while doing something for the benefit of the employer. It also occurred while using equipment or materials supplied by the employer, assuming the volleyball and net were provided by the school. These factors favour coverage.
- [44] With respect to the other factors, the evidence does not indicate the worker’s participation in the game was in response to instructions from the employer. It also does not appear the injury was caused by an activity of the employer or a fellow employee nor did it occur while the worker was performing duties that were part of the regular job duties. Although, the worker’s representative submits that a teacher’s duties extend well beyond direct instructional responsibilities, I consider that this question should be answered in the negative, given that the worker’s regular duties did not involve coaching, teaching or supervising sports or physical education. Similarly, to the extent that the factor concerning exposure to risk of production may be said to apply to a teacher, I do not consider the worker was exposed to risks during the volleyball similar to those she would normally be exposed to, since her responsibilities as a teacher did not include coaching, teaching or supervising sports activities. Finally, there is no indication the volleyball game was supervised by the employer. These factors argue against compensation coverage.

- [45] I consider that other factors described in this policy are neutral or not applicable to the circumstances of a teacher. The question of whether the activity took place in the course of receiving payment or during a time period for which the teacher was being paid seems to have limited applicability to a worker who is paid by salary.
- [46] In my view, consideration of the guidelines in this policy tends to support a conclusion that the injury sustained in the volleyball game did not arise out of and in the course or the employment.
- [47] Turning to the factors outlined in policy #20.20 which specifically addresses compensation coverage while engaged in recreational or sports activities, I generally agree with the review officer's analysis of how the factors in this policy apply to the worker's circumstances and I agree that they also tend not to favour compensation coverage.
- [48] Finally, I have considered the application of section 250(4) and I do not find "the evidence supporting different findings is evenly weighted." I consider the weight of the evidence is against a finding that the shoulder injury sustained by the worker in the volleyball game on May 31, 2007 arose out of and in the course of her employment.

## Conclusion

- [49] I deny the worker's appeal and confirm *Review Decision #R0088865*, dated June 11, 2008. I find the worker did not sustain a personal injury arising out of and in the course of her employment in the volleyball game on May 31, 2007.

Marguerite Mousseau  
Vice Chair

MM/gw