

Noteworthy Decision Summary

Decision: WCAT-2012-00238

Panel: Herb Morton

Decision Date: January 26, 2012

Whether injury in the course of employment – Section 5(1) of the Workers Compensation Act – Extra-employment activities – Sporting activities – Policy items C3-14.00 and C3-21.00 of the Rehabilitation Services and Claims Manual, Volume II –Injury when drawing down banked overtime hours

This decision is noteworthy because it is a good example of the application of policy found at item C3-14.00 and item C3-21.00 of the *Rehabilitation Services and Claims Manual, Volume II* in cases involving workers injured while participating in sporting events associated with their employment. In particular, it addresses the issue of whether workers using their banked overtime to participate in a sporting activity are being paid for their participation.

The worker, a police officer, claimed workers' compensation for an injury he suffered playing in the annual North American Police Soccer Tournament. The worker took time off work to play in the tournament using banked overtime. Although the police department that employed the worker supplied the soccer team with uniforms identifying the team with the department, participation in the tournament was voluntary.

The worker argued that under his normal working schedule, he would have been working at the time of his injury had he not used his banked overtime hours to take time off. In effect, the worker was arguing that he was being paid at the time of his injury and that factor should weigh in favour of allowing his claim. In considering whether the worker was injured in the course of his employment, the WCAT panel applied policy items C3-14.00 "Arising Out of and In the Course of the Employment" and C3-21.00 "Extra-Employment Activities". The panel also referred to earlier WCAT decisions that had considered the application of policies that preceded C3-14.00 and C3-21.00. The policies (both current and former) set out several factors for adjudicators to take into account when considering whether an activity arises out of and in the course of a worker's employment. The panel noted that the worker's argument focused on one of the factors from policy item C3-14.00 – "During a Time Period for Which the Worker was Being Paid or Receiving Other Consideration" – and two of the factors from policy item C3-21.00 – "During Working Hours" and "Receipt of Payment or Other Consideration from the Employer". The panel approved of the reasoning in earlier relevant decisions of the Review Division and WCAT and concluded that the fact that the worker had access to a previously earned entitlement, to receive payment for the day in question, was not germane.

While there were factors favouring workers' compensation coverage in this case, such as the requirement that the worker be physically fit for his job and the small public relations benefit to his employer through his participation in the tournament, other factors did not support the provision of workers' compensation. The worker's injury did not occur on the employer's premises. He was not being supervised. The worker was not instructed by the employer to participate in the soccer tournament. The injury was not caused by an activity of the employer or of a fellow employee. WCAT agreed with the review officer's weighing of these factors and the conclusion that the worker's injury did not arise out of and in the course of his employment. WCAT denied the appeal.