

In the Matter of the Compensation of
HARRY CRUZ, Claimant

WCB Case No. 13-04319

ORDER ON REVIEW

Lourdes Sanchez PC, Claimant Attorneys
Holmes Weddle & Barcott PC, Defense Attorneys

Reviewing Panel: Members Weddell and Curey.

Claimant requests review of Administrative Law Judge (ALJ) Donnelly's order that upheld the self-insured employer's denial of claimant's injury claim for right femur and left foot conditions. On review, the issue is course and scope of employment.

We adopt and affirm the ALJ's order with the following supplementation to address claimant's argument that riding with his intoxicated coworker, who was driving the vehicle and was acting "upset, assertive, and aggressive," was not a social or recreational activity primarily for his personal pleasure because he felt pressured to ride in the vehicle by other coworkers and he would have handled the situation differently had the intoxicated driver not been in a "position of authority."

However, when analyzing whether an injury is excluded from coverage under ORS 656.005(7)(b)(B),¹ the "activity" the statute refers to "is not the particular action that causes the injury * * *, but the activity within which that action occurs (working or not working)." *Liberty Northwest Ins. Corp. v. Nichols*, 186 Or App 664, 670 n 4 (2003); *Diane Pohrman*, 64 Van Natta 752 (2012); *Julie Altman*, 62 Van Natta 2409 (2010).

Here, we agree with the ALJ's conclusion that the record persuasively establishes that the work-sponsored event ended after the laser tag game was over. After that event, several employees, including claimant, decided to go to another establishment to socialize and consume more alcohol. The employer did not pay for that activity and no members of management were present.

It is claimant's activity of going to the bar with coworkers to drink and talk after the employer-sponsored event had ended that is the focus of the statutory exclusion in this case. And we conclude, for the reasons expressed by the ALJ,

¹ That statute provides that a "compensable injury" does not include: "Injury incurred while engaging in or performing, or as the result of engaging in or performing, any recreational or social activities primarily for the worker's personal pleasure [.]" ORS 656.005(7)(b)(B).

that such an activity was a social/recreational activity that claimant performed primarily for his personal pleasure. The motor vehicle accident that happened while claimant was in the car with the intoxicated coworker occurred because he was engaged in that social/recreational activity. *See Nichols*, 186 Or App at 670 n 4.

Moreover, although claimant believed attending the “event,” which he described as including a breakfast and then laser tag and bowling, was required (Tr. I-11, 13; Tr. II-77), such a statement does not establish that he believed the activity of going to another establishment and continuing to drink/socialize *after* the work-sponsored event ended was also mandatory. In addition, he did not otherwise testify to that effect.

Consequently, we agree with the ALJ’s conclusion that claimant was injured while engaged in an activity primarily for his personal pleasure. Thus, his injury is excluded from compensation. ORS 656.005(7)(b)(B). Accordingly, we affirm.

ORDER

The ALJ’s order dated June 12, 2014 is affirmed.

Entered at Salem, Oregon on December 19, 2014