
In the Matter of the Compensation of
ADAM J. GREENBLATT, Claimant
WCB Case No. 13-05365
ORDER ON REVIEW
Moore Jensen, Claimant Attorneys
Reinisch Wilson Weier, Defense Attorneys

Reviewing Panel: Members Johnson and Lanning.

The self-insured employer requests review of Administrative Law Judge (ALJ) Kekauoha's order that set aside its denial of claimant's right knee injury claim. On review, the issue is course and scope of employment. We reverse.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact."

CONCLUSIONS OF LAW AND OPINION

In October 2013, claimant injured his right knee when he jumped up to touch the backboard of a basketball hoop during an afternoon break with co-workers. The basketball court was located in a courtyard adjacent to the building where claimant worked. The employer owned and maintained the courtyard, and employees, including a supervisor, played basketball in the courtyard during breaks.

The employer denied the compensability of claimant's injury, asserting that it did not arise out of or occur in the course of employment. Claimant requested a hearing.

In setting aside the denial, the ALJ first concluded that claimant's injury was not excluded from coverage under ORS 656.005(7)(b)(B), which excludes from the definition of "compensable injury" an injury incurred while engaging in or performing, or as a result of engaging in or performing, any recreational or social activities primarily for the worker's personal pleasure. The ALJ reasoned, based primarily on claimant's testimony, that he had stopped playing basketball and had started returning to work when he jumped to touch the backboard as an expression of happiness and excitement regarding his work performance, and not as part of basketball activity. The ALJ then determined that claimant's injury arose out of and in the course of employment, relying in large part on *Wilson v. State Farm Insurance*, 326 Or 413 (1998).

On review, the employer contends that claimant's injury is exempt from coverage under the "social/recreational" exclusion of ORS 656.005(7)(b)(B). Alternatively, it asserts that claimant's injury did not arise out of and in the course of employment. For the following reasons, we find the claim is exempt from coverage.

In *Roberts v. SAIF*, 341 Or 48 (2006), the Supreme Court explained that the statutory exclusion in ORS 656.005(7)(b)(B) raises three questions: (1) whether the worker was engaged in or performing a "recreational or social activity"; (2) whether the worker incurred the injury "while engaging in or performing, or as a result of engaging in or performing," that activity; and (3) whether the worker engaged in or performed the activity "primarily for the worker's personal pleasure." If the answer to all those questions is "yes," then the worker cannot recover. *Id.* at 52.

Here, there is no dispute that the basketball activity was a recreational activity and that claimant engaged in that activity primarily for his personal pleasure. The issue, instead, is whether claimant incurred his injury while engaged in or as a result of performing that activity. As previously noted, the ALJ determined he did not. The employer, however, argues that claimant was still engaged in recreational activity primarily for his personal pleasure when he was injured. We agree.

Claimant testified that he had stopped playing basketball and had begun to walk back to work when he jumped to touch the backboard. (Tr. 5). He further testified that this action was motivated by his happiness and excitement about his job performance. (Tr. 6). The ALJ found claimant's testimony credible based on his demeanor. Although we defer to that credibility finding, *see Erck v. Brown Oldsmobile*, 311 Or 519, 526 (1991) (it is good practice to give weight to a fact finder's credibility assessments), we nevertheless conclude that claimant's injury occurred while engaging in or as a result of engaging in recreational activity primarily for his personal pleasure.¹

¹ The employer cites medical records from claimant's attending physician, Dr. Strasser, in which claimant described his injury as occurring while playing basketball itself. The employer urges us to make our own credibility determination and find that claimant's injury occurred while he was playing basketball, not afterwards as he testified. We do not decide this issue given our conclusion that claimant's injury nonetheless occurred during or as a result of recreational activity in which he was engaged primarily for his personal pleasure.

Specifically, claimant was still on the employer's basketball court where he had engaged in a recreational game of basketball primarily for his personal pleasure. Furthermore, he was injured while leaping to touch the backboard. Having reviewed the circumstances of claimant's injury, we are persuaded that this activity was part and parcel of his recreational activity of playing basketball.² Moreover, even if the basketball game had ended just seconds before claimant's leap, he was still within the boundaries of the court and his injury was ultimately the result of engaging in the recreational activity of basketball, which put him in the position where he could jump to touch the backboard before leaving the court to walk back to work.³

Under these circumstances, we conclude that claimant's injury was excluded from compensability under ORS 656.005(7)(b)(B).⁴ Thus, we reverse.

ORDER

The ALJ's order dated March 25, 2014 is reversed. The employer's denial is reinstated and upheld. The ALJ's \$7,500 attorney fee and costs awards are also reversed.

Entered at Salem, Oregon on October 6, 2014

² We look to the reason(s) claimant "engaged in" or undertook the activity, not whether, in the moment of the game itself or its aftermath, he subjectively found the activity to be "pleasurable." See *Pamela S. Langley*, 60 Van Natta 1098, 1102 n 2 (2008).

³ In reaching this conclusion, we note that under ORS 656.005(7)(b)(B), an injury may be excluded not only when it occurs while a worker is "engaging in or performing" recreational or social activities, but also when the injury is the "result" of engaging in or performing such activities. Therefore, while claimant's injury may have occurred just after the basketball game had ceased, we are nevertheless persuaded that it occurred as a "result" of that activity, which brought claimant in close proximity to the backboard.

⁴ In *Zachary B. Severson*, 64 Van Natta 1525, 1528 (2012), we found that an injury incurred by the claimant while playing basketball was not excluded under ORS 656.005(7)(b)(B) where the evidence did not establish that he engaged in the recreational activity primarily for his personal pleasure. By contrast, here, there is no dispute that claimant played basketball primarily for his personal pleasure.