



WORKERS' COMPENSATION BOARD OF BC

BOARD OF DIRECTORS
Douglas J. Enns, Chair

Terry Brown
Roslyn Kunin
Peter Morse

Stephen Hunt
Calvin Lee
Arlene Ward

2004/05/18-01

THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA

RESOLUTION OF THE BOARD OF DIRECTORS

RE: Recreational, Exercise Or Sport Activities

WHEREAS:

Pursuant to section 82 of the *Workers Compensation Act*, RSBC 1996, Chapter 492 and amendments thereto ("*Act*"), the Board of Directors must set and revise as necessary the policies of the Board of Directors, including policies respecting compensation, assessment, rehabilitation, and occupational health and safety;

AND WHEREAS:

Section 5(1) of the *Act* provides that the Workers' Compensation Board ("WCB") must pay compensation out of the accident fund where personal injury or death arising out of and in the course of employment is caused to a worker;

AND WHEREAS:

Policy item #14.00 in the *Rehabilitation Services & Claims Manual* ("*RS&CM*"), "*Arising out of and in the Course of Employment*", is the principal policy in the *RS&CM* that provides guidance in deciding whether or not an injury arose out of and in the course of employment;

AND WHEREAS:

RS&CM policy item #20.20 provides further guidance in interpreting the phrase "out of and in the course of the employment" in the context of recreational, exercise or sports activities;

AND WHEREAS:

RS&CM policy item #20.20 does not clearly indicate the basis upon which coverage should be provided respecting recreational, exercise or sports activities;

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AND WHEREAS:

The Policy and Research Division has consulted with stakeholders on this issue.

THE BOARD OF DIRECTORS RESOLVES THAT:

1. Amendments to policy item #20.20 of the *RS&CM*, Volume II, attached as Appendix A, are approved and apply to all injuries on or after June 1, 2004.
2. Consequential amendments to policy items #14.00 and #20.50 of the *RS&CM*, Volume II, attached as Appendix A, are approved and apply to all injuries on or after June 1, 2004.
3. Decision No. 343 of the *Workers' Compensation Reporter*, Volume 5 is retired effective June 1, 2004.
4. This resolution is effective June 1, 2004.

DATED at Richmond, British Columbia, May 18, 2004.

By the Workers' Compensation Board

**DOUGLAS J. ENNS, CHAIR
BOARD OF DIRECTOR**

APPENDIX A

#20.20 Recreational, Exercise or Sports Activities

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, for instance, a physical education teacher in a school. 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. It is not possible to define exclusively what these circumstances are. The following factors are, however, considered. 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 physical education teacher involved in team sports with the pupils would normally be covered, whereas participation in a sport with fellow teachers, particularly outside of working hours, would not likely warrant coverage. A ski instructor enjoying injured while engaging in personal skiing activities unrelated to the instruction of pupils or, of his or her own volition, takes part in a ski race or competition would not be covered. If, however, coverage may be provided if the competition or race-skiing activity involved the instructor's pupils and was deemed part of the teaching activities, then coverage would likely apply.**

2. Nature of Direction- Instructions from the Employer

Was participation directed, requested or voluntary?

(a) Directed

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 ~~more positive the form of~~ **clearer the** direction, the more likely **this will favour coverage** it is that coverage will apply. Adjudicators, however, have to measure whether or not what may have been termed a direction was in reality no more than a request.

~~(b) Requested~~

~~Did the employer request, suggest, or simply sanction participation? In such situations this is less likely to favour coverage, though the overall adjudication will still depend upon the combined relevancy of other related factors.~~

~~(c) Voluntary~~

Was participation purely voluntary on the part of the worker? **In some instances the employer may simply sanction participation without directing or requesting participation.** ~~Where this is the case, it is generally not sufficient to extend coverage to the worker's activities. This applies equally to recreation, exercise or sports activities.~~ **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.**

4. Outside Working Hours

~~(a) Recreational or Exercise Activities~~

~~In the case of recreational or exercise activities, coverage outside of working hours is not extended. 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.~~

~~This limitation applies to paid lunch breaks even if the worker could be considered on call at that time. As a limitation, it also involves situations where, in keeping with the physical fitness demands of a job, the employer requires the performance of exercise activities at home. An employer cannot extend the~~ **Coverage under the Act cannot be extended by an employer of the Act by**

simply **by** labelling an off duty **recreational, exercise or sport activity requirement** as mandatory.

~~(b) Sports Activities~~

~~Sports activities outside of normal working hours are similarly not covered. The Board has, in the past, developed exceptions in the case of claims involving police officers. Where appropriate, these can be applied to other like situations. The guidelines are:~~

- ~~(i) The employer has directed participation in the activity.~~
- ~~(ii) The sports activity involved the public, or a section of the public with which the worker deals, and was clearly designed to foster good community relations.~~
- ~~(iii) Full salary or wages was paid while participating.~~
- ~~(iv) If a team sport, the team was financially supported by the employer.~~
- ~~(v) The team was composed entirely of fellow employees.~~
- ~~(vi) There was no involvement with a commercial team or recreational league.~~

5. 4. Paid Salary-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., ~~but is not an absolute guarantee. If full salary is not being paid, coverage is unlikely, or at least questionable, depending upon other related circumstances.~~ **The fact that salary or other consideration was not paid does not favour coverage.**

6. 5. Activity Supervised

Was the activity supervised by a representative of the employer having supervisory authority? This ~~strongly~~ favours coverage. The fact that the activity was not supervised does not favour coverage. ~~In situations involving recreational or exercise activities off the employer's premises, coverage does not apply if it is not supervised.~~

7. 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).** ~~While~~ **If physical fitness is a requirement of**

~~the job, this is always evaluated in conjunction with other factors, if it applies, it is a favourable factor toward extending favouring coverage. The requirement for physical fitness in a job does not, however, in itself guarantee coverage for such activities. A distinction must be drawn between things a worker must do to become and continue to be qualified to perform a particular job, and the things a worker must do as part of the job. Generally speaking, only the latter activities are covered. In the case of recreational or exercise activities, if physical fitness is not a job requirement, then coverage is not extended.~~

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 Legislature **Act** intended.

8. 7. Public Relations for Benefit of Employer

~~In the case of organized or team sports activities, wWas 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. If this applies, then depending on other related factors, coverage may be extended. If this public relations factor is not applicable, coverage is unlikely to be extended. Coverage will never be extended if the sports activity involves a contest with a commercial team or recreational league.~~

9. 8. On Employer's Premises

Did the activity take place on the employer's premises? This is a positive factor favouring coverage. ~~but it must be evaluated in conjunction with other relevant factors. If the activity took place off the employer's premises, and was a sports activity, the guidelines listed previously in the items dealing with working hours apply. Recreational or exercise activities occurring off the employer's premises are only covered where:~~

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.

- ~~(a) The employer funds or subsidizes the activities.~~
- ~~(b) The funding or subsidization was in the form of fees paid to a commercial exercise facility such as a gymnasium or health and exercise spa.~~
- ~~(c) The activities were part of a formal exercise or training program instituted by the employer.~~
- ~~(d) The actual activity was directly supervised by a representative of the employer having supervisory authority.~~
- ~~(e) The activity occurred during normal shift hours for which salary was being paid. (This includes paid lunch breaks.)~~
- ~~(f) The activity was required, encouraged or at least sanctioned by the employer.~~
- ~~(g) The nature of the job function is such that a high level of physical fitness is desirable.~~

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.

EFFECTIVE DATE: June 1, 2004
APPLICATION: All injuries on or after June 1, 2004

#20.50 Fund Raising, Charitable Or Other Similar Activities

Situations occasionally arise when a person is injured while participating in fund raising, charitable or other similar activities; for example, a charity collection activity off the employer's premises, either during or outside of working hours. ~~Other examples could involve school teachers participating in a bake sale, a car wash, a walkathon, etc. with a view to raising funds for field trips, or other similar peripheral activities not covered by direct school funding.~~

The organization of, or participation in, fundraising or charitable activities is normally not considered to be part of a worker's employment under the Act. There are, however, certain cases when such activities may be covered.

Policy item #14.00, *Arising Out of and In The Course of Employment*, is the principal policy that provides guidance in deciding whether or not an injury arose out of and in the course of employment. The factors listed under policy item #14.00 are therefore considered in determining whether coverage should be provided for an injury sustained during a fundraising or charitable activity.

A weighing of all relevant factors is required. For example, coverage may be extended where a fundraising activity occurs during normal working hours on the employer's premises, at the direction of the employer for a purpose related to the employer's business.

~~Two of the statutory tests set in Section 5(1) of the *Workers Compensation Act* for the adjudication of personal injury claims are the requirements that the injury be arising out of, and in the course of, the employment. Much has been written about these two tests, part of which is that the interpretation of the word "employment" should not be restricted to actual productive activity. The nature of any non-productive activity, however, has to be evaluated in order to determine whether it meets, or extends beyond, the legislative intent of these two tests. The guidelines listed in #14.00 are, while not exhaustive, useful in making such determinations. Fund raising, charitable or other similar activities do not meet the requirements of these two statutory tests. To extend the interpretation of the Act to include such activities would be to expand the horizons of the Act beyond what the Legislature intended.~~

~~Claims received for injuries occurring in the course of fund raising, charitable or similar activities will not, therefore, be deemed acceptable.~~

~~This, however,~~ **The above guidance does not apply to persons who are employees of charitable or other like agencies which are covered under the Act, or to persons from other companies who are seconded for a period of time to work with such agencies and who are considered workers of those agencies under the Act.**

EFFECTIVE DATE:
APPLICATION:

June 1, 2004
All injuries on or after June 1, 2004

#14.00 Arising Out of and in the Course of Employment

Before a worker becomes entitled to compensation for injury under the *Act*, the injury must arise out of and in the course of employment.

Confusion often occurs between the term "work" and the term "employment". Whereas the statutory requirement is that the injury arise out of and in the course of employment, it is often urged that a claim should be disallowed because the injury is not work related or did not occur in the course of productive activity. There are, however, activities within the employment relationship, which would not normally be considered as work or in any way productive. For example, there is the worker's drawing of pay. An injury in the course of such activity is compensable in the same way as an injury in the course of productive work.

Lack of control of a situation by the employer is not a reason for barring a claim otherwise acceptable. Control by an employer is an indicator that a situation is covered under the *Act* at a particular time, but if that control does not exist there may be other factors, which demonstrate an employment connection.

No single criterion can be regarded as conclusive for deciding whether an injury should be classified as one arising out of and in the course of employment. Various indicators can be and are commonly used for guidance. These include:

- 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.**

This list is by no means exhaustive. All of these factors can be considered in making a judgement, but no one of them can be used as an exclusive test.

EFFECTIVE DATE: June 1, 2004 (as to the addition of items i and j)
APPLICATION: All injuries on or after June 1, 2004