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VOLUNTARY RECREATIONAL ACTIVITY EXCLUSION DID NOT APPLY TO EMPLOYEE OF PARK DISTRICT'S FITNESS FACILITY WHEN HE LEFT HIS DUTIES TO JOIN CUSTOMERS IN A RECREATIONAL ACTIVITY

Sean T. Murphy, a fitness facility employee of the Elmhurst Park District injured his right leg while playing in a wallyball game which was confined to a standard racquetball court. While he was participating during his regular work shift, he sustained an injury to his right leg. The Park District denied the claim on the basis that the claim was excluded by the provisions of Section 11 as it constituted a voluntary recreational activity.

Section 11 reads, in part, as follows:

Accidental injuries incurred while participating in voluntary recreational programs including but not limited to athletic events, parties and picnics do not arise out of and in the course of the employment even though the employer pays some or all of the cost thereof. This exclusion shall

not apply in the event that the injured employee was ordered or assigned by his employer to participate in the program.

The claimant testified as follows:

1. He was scheduled to work from noon until 8:30 p.m. and at 7:30 p.m. Denise McElroy, a co-worker requested him to participate in a wallyball game and strongly encouraged him to do so.
2. The game was a part of the Park District league and the participants were paying customers.
3. He was told by McElroy that the game could not proceed without him because of the absence of other players. Claimant, therefore, reluctantly agreed to participate because the customers could not proceed without him.
4. He was not aware of any

policy prohibiting park district employees from participating in league play while on duty.

5. He had played wallyball during working hours on prior occasions and that while no one told him that it was mandatory for him to participate, he was not reprimanded for his past participation.
6. He had been instructed that his job required him to promote different classes and programs.

Murphy's supervisor, Pamela Stoike, testified that:

1. A fitness department employee had no duties with respect to the racquet sports department and that Murphy had never been directed to participate in any wallyball league.
2. McElroy had no supervisory duties over claimant who had no responsibilities regarding the promotion of that sport and she was actually not on duty at the time.
3. While the employer encourages his employees to participate in sports leagues on their own time, it had a policy of prohibiting

employees playing while they were on duty.

In reviewing the proceedings on arbitration, the appellate court made reference to the arbitrator's decision, as follows:

*The arbitrator found that section 11 of the Act did not apply because claimant was not participating in a 'recreational' activity, but rather was performing duties incidental to his employment. The arbitrator explained that claimant was injured during an activity that 'was part of the respondent's business, and therefore part of the [claimant's] overall job duties.' The arbitrator stated that without claimant's participation, the wallyball game could not have been played and respondent's customers would not have been accommodated. Moreover, the arbitrator noted that claimant felt 'compelled' to participate based on his written job description, which provided that claimant's responsibilities included '[p]romot[ing] *** programs to patrons, members, guests and staff,' '[d]evelop[ing] and maintain[ing] positive customer service,' and '[b]e[ing] available for flexible work schedules.' The arbitrator added that the fact*

that an employee's work duties involve an activity that is 'recreational' to the employer's customers does not make the activity 'recreational' to the employee involved in it. The arbitrator concluded that since claimant's participation in the wallyball game 'clearly benefitted the respondent's business of operating a health facility and the [claimant] reasonably believed the activity was part of his work duties,' claimant was not engaged in a 'voluntary recreational' activity.

The appellate court affirmed the Commission, stating that section 11 does not pertain to cases where the employee's duties are at their essence recreational. Generally, recreational refers to diversion or play, and there are circumstances where participating in a game as claimant did would fall within the exclusion set forth in section 11. However, the facts did not fit this scenario - claimant did not participate for his own diversion but rather to accommodate his employer's customers. Also, his belief that his participation was part of his job was reasonable in light of his job description. The policy prohibiting playing league sports while on duty was insufficient to preclude recovery, since the record suggested that the policy was not enforced. Claimant was never reprimanded for having played in the game.

EDITOR'S NOTE: Of note is the emphasis on "recreational". Whether claimant's participation was voluntary was not crucial

to the outcome of the case, but rather the nature of his work was such that section 11 was inapplicable. In light of this finding, it is questionable whether the claim would have been denied even if the employer had enforced its policy. The employer's business was recreational and the activity was recreational to the employer's customers but this did not make the employee's activities "voluntary recreational" as defined under section 11.

The reluctance of the claimant when first being requested to participate seems sufficient to have the court conclude that the claimant's participation was not voluntary. He felt that this wallyball game was part of his work duties. The employer's policy prohibiting employees from playing while on duty was not controlling, because, according to the decision, the policy was not enforced.

Elmhurst Park District v. Illinois Workers' Compensation Commission, et al
No. 1-08-2289WC, decided October 6, 2009

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