

Commonwealth Of Kentucky
Court of Appeals

NO. 2007-CA-001575-WC

CLARK COUNTY BOARD OF EDUCATION

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-03-65082

AUDEEN JACOBS; HON. SHEILA C. LOWTHER,
CHIEF ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: NICKELL, THOMPSON, AND VANMETER, JUDGES.

THOMPSON, JUDGE: This is a workers' compensation action which raises the issue of whether Audeen Jacobs' injury, which occurred at a Beta Club convention, arose out of and in the course of her employment with the Clark County Board of Education (the school board). The Chief Administrative Law Judge (CALJ) ruled that it did arise out of and in the course of her employment and awarded permanent partial disability

benefits. The Workers' Compensation Board affirmed and this petition for review followed. We affirm.

On the date of her injury, Jacobs was employed by the Clark County Board of Education as a teacher based on a limited contract.¹ Her teaching duties were divided between the Pilot View Elementary School and the George Rogers Clark High School. In addition to her teaching duties, Jacobs volunteered as a sponsor of the George Rogers Clark High School Beta Club, an honor society which requires for its membership that students maintain a minimum grade point average.

On December 6, 2003, while attending the Beta convention in Louisville with George Rogers Clark High School students, Jacobs fell from a set of bleachers and injured her left shoulder. The school board objected to Jacobs' receipt of workers' compensation benefits on the basis that her injury was not work-related.

Although not required by the school, Jacobs testified that early in her teaching career it was stressed to her the importance of involvement in school clubs. She formed the Beta Club at the high school after having been requested to do so by Pat Aldridge, an elementary teacher within the district, sponsor of a Junior Beta Club chapter and a former officer at the national organizational level of the Beta Club. The Beta Club sponsor was required to be affiliated with the school. In the organization of the chapter, she obtained approval from the school, prepared the necessary paperwork and submitted it to the national organization.

After forming the chapter, club members met at the high school for meetings. Jacobs testified that attendance at the convention required a sponsor's

¹ Jacobs retired in June 2003, but was hired on a limited one-hundred day contract for the fall semester.

attendance and it was her responsibility to supervise the students' activities at the convention. The permission of the George Rogers Clark High School principal was required for Jacobs to take the students to the convention. Although Jacobs did not receive monetary compensation from the school board for her sponsorship of the Beta Club, she was permitted to attend the convention on days while school was in session without loss of her teaching salary or leave time.

The Beta Clubs in the school district are self-funded; each club, however, is required to deposit all funds into the general school fund account and all purchases must be approved by the school principal.

In addition to Jacobs' testimony, the CALJ heard testimony from additional lay witnesses. Pat Aldridge testified that the Beta Club must have a sponsor and must receive permission from the school's principal to organize. She confirmed that teachers could attend the Beta Club convention without taking leave and students received excused absences for their attendance. Donald Stump, the Administrative Director for the Board of Education, likewise confirmed Jacobs' testimony.

John Atkins, former principal of George Rogers Clark High School, testified that students benefit from participation in the Beta Club program. He testified that participants are eligible for scholarships, and the field trips and activities are positive experiences for students.

The CALJ found that the Beta Club furthers the school system's responsibility to educate students and prepares them for adult life and, therefore, that the school derived a benefit from Jacobs' attendance at the convention. Relying on

Spurgeon v. Blue Diamond Coal Co., 469 S.W.2d 550 (Ky. 1971), the CALJ found her injury to be work-related. The Workers' Compensation Board agreed.

In a workers' compensation proceeding, the burden is on the claimant to prove the elements of her claim, including that the injury is work-related. *Smart v. Georgetown Cmty. Hosp.*, 170 S.W.3d 370 (Ky. 2005). The terms "work-related" and "arising out of and in the course of employment" are synonymous. *Seventh St. Rd. Tobacco Warehouse v. Stillwell*, 550 S.W.2d 469, 470 (Ky. 1976).

If the injury occurs while the employee is on the employer's premises and performing customary duties, the resolution of work-related employment is often easily accomplished. However, when the injury occurs off the work premises and not while performing the employee's normal and ordinary work duties, the issue is often subject to dispute between the parties. Although each case must be examined in light of its particular facts, when the facts are not in dispute, the question is one of law and subject to *de novo* review. *Jackson v. Cowden Mfg. Co.*, 578 S.W.2d 259 (Ky. App. 1978).

The essential facts in this case are undisputed. Jacobs, the club sponsor, was injured while chaperoning a group of students from her employer's school to a school sanctioned convention. Although as noted by the Workers' Compensation Board the factual situation is novel, we are not left without precedent.

In *Spurgeon*, a mine employee was involved in an accident while traveling home from a meeting of the Kentucky River Mining Institute. Although attending the meeting was encouraged by the employer, it was not compelled. The employer paid for the employees' meals but did not compensate them for their time.

The Court held that the primary issue was whether the employee was injured while performing a service to the employer. *Id.* at 553-554. Citing Larson, *Workmen's Compensation Law*, Sections 27.31(a) and 27.31(c), the Court held that an employee's attendance at training programs, conventions and institutes may be regarded as within the course of employment.

Examination of the text cited from Larson, when considered in light of the facts of the several decisions discussed by Larson, reveals that in certain instances an employee's attendance at training programs and conventions and institutes may be regarded as within the course of employment. For example, Section 27.31(a), after noting that activities of an employee for his own self improvement are primarily his own concern, states: 'In some situations, however, it may be found that, either by the contemplation of the contract or by custom, the educational activity is part of the employment.' In Section 27.31(c) it is said:

'Employment connection may be supplied by varying degrees of employer encouragement or direction. The clearest case for coverage is that of a teacher who is directed to attend a teachers' institute. (*Bower v. Industrial Commission*, 61 Ohio App. 469, 22 N.E.2d 840). But it is also sufficient if attendance, although not compulsory, is 'definitely urged' (*Dearing v. Union Free School Dist. No. 1*, 272 App.Div. 167, 70 N.Y.S.2d 418) or 'expected.' (*Bradley v. Frazier*, 17 A.D.2d 235, 233 N.Y.S.2d 894). Connection with the employment may also be bolstered by the showing of a specific employer benefit, as distinguished from a vague and general benefit, as when the attendance of an automobile mechanic at an examination given by the manufacturer permitted the dealer to advertise 'factory-trained mechanics.' (*Blair v. Shaw*, 171 Kan. 524, 233 P.2d 731).'

Id. Decisive to the inquiry is whether the attendance at the off-premises event was compulsory. Compulsion may be direct or indirect, and may range in degree from a suggestion or encouragement to a direct order. *Id.* at 554.

We are in agreement with the CALJ and the Workers' Compensation Board that Jacobs sufficiently met her burden to prove that her injury was work-related. Jacobs attended the convention as a sponsor of a school-based club, was paid while in attendance, and was required to obtain the principal's permission to attend.

The testimony confirmed that while teacher sponsorship of school clubs and activities is not required at George Rogers Clark High School, it is strongly encouraged. We disagree with the school board which argues that the clubs and other extracurricular activities sanctioned by its schools are of only intangible benefit. The Beta Club is a nationally recognized organization which promotes and rewards academic excellence. The purpose of a school is to educate. Student participation in a club which serves that same purpose is a direct and substantial benefit to a school, its students, and its school board.

The decision of the Workers' Compensation Board affirming the CALJ's Opinion and Award is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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