IN THE COURT OF APPEALS OF IOWA

No. 0-633 / 10-0017
Filed October 6, 2010

GAZETTE COMMUNICATIONS, INC., and UNITED WISCONSIN INSURANCE COMPANY,
Petitioners-Appellees/Cross-Appellants,

vs.

ROBERT POWELL,
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Polk County, Richard G. Blane II, Judge.

The workers' compensation commissioner ruled that Robert Powell's back injury, which occurred at an employee activity committee bowling event, arose out of and in the course of his employment. The district court reversed and Powell appeals and the employer and its insurer cross-appeal. **AFFIRMED.**

Gerald J. Kucera of the Tom Riley Law Firm, P.L.C., Cedar Rapids, for appellant.

William H. Grell of Huber, Book, Cortese, Happe & Lanz, P.L.C., West Des Moines, for appellees.

Considered by Sackett, C.J., and Potterfield and Tabor, JJ.

POTTERFIELD, J.

Robert Powell sought workers' compensation benefits for injuries on June 11 and June 20, 2005, both of which he asserted were work-related. Powell worked for Gazette Communications at that time. The June 11, 2005 injury occurred while he was at a bowling event arranged by an employee activity committee.

A deputy workers' compensation commissioner ruled the June 11 injury did not arise out of or in the course of employment because there was no substantial direct benefit from the bowling event to Gazette beyond camaraderie and morale building. The deputy commissioner also ruled Powell had failed to prove that he sustained a new injury or an aggravation of a pre-existing condition on June 20, 2005, and denied benefits.

On intra-agency appeal, the commissioner found the bowling event was not held on Gazette premises, "the attendance and participation at the bowling event was not mandatory, and the sole benefit to Gazette was employee morale and camaraderie amongst the employees and their supervisory staff." The commissioner concluded the employer "derived a substantial direct benefit from the participation of the claimant" and thus the June 11 injury arose out of and in the course of his employment and was compensable. Of the July 20, 2005 injury, the commissioner ruled "the most that can be found is that the claimant suffered an aggravation injury from his return to heavy work on June 20, 2005, which then compelled his doctors to re-impose his restrictions from heavy work." The commissioner ruled Powell sustained a fifty percent loss of earning capacity

as a result of the work injuries and awarded benefits. The commissioner denied Powell's request for reimbursement for a 2006 independent medical evaluation (IME) because there had been no previous disability evaluation by a doctor chosen by the employer. The commissioner found a later, December 2007 IME reimbursable, however, and ordered the defendants to pay for it.

Gazette and its insurer requested rehearing on numerous grounds. The commissioner denied the motion without addressing several issues.

Gazette and its insurer then sought judicial review in the district court. The district court concluded the workers' compensation commissioner misapplied the business-related benefits test adopted by our supreme court in *Briar Cliff College v. Campolo*, 360 N.W.2d 91, 94 (Iowa 1984). Consequently, the district court reversed the finding that Powell's June 11, 2005 bowling injury arose out of and in the course of his employment. The court then concluded that remand was necessary for the commissioner to make findings as to whether the June 20, 2005 injury was an independently compensable injury. *See Yeager v. Firestone Tire & Rubber Co.*, 253 Iowa 369, 374-75, 112 N.W.2d 299, 302 (1961) (noting that if a claimant's pre-existing condition was aggravated by a subsequent work-related injury, the claimant is entitled to compensation for the aggravation portion of the injury).[1] The court also concluded that remand was necessary to recalculate healing period benefits, and determine the rate of benefits and medical bills attributable solely to the June 20, 2005 injury. The court ordered

[1] Gazette contends that because the commissioner already concluded that the June 20, 2005 injury "was only a temporary aggravation of the initial June 11, 2005 work injury," any remand must be limited to determining the duration of any temporary aggravation. We believe the district court's instructions on remand are sufficient.

the commissioner to credit the employer and its insurer for short-term disability benefits paid in the amount of $3312.07, which Powell concedes. The court also reversed the commissioner's 2007 IME award because Powell had never requested reimbursement for the 2007 IME or introduced evidence with respect thereto.

Powell appeals, and Gazette and its insurer cross-appeal.

A district court reviews agency action pursuant to the Iowa Administrative Procedure Act. *Arndt v. City of Le Claire*, 728 N.W.2d 389, 393 (Iowa 2007). When we review a district court decision reviewing agency action, our task is to determine if we would reach the same result as the district court in our application of the Act. *Id*. Because we agree with the district court's detailed and well-reasoned opinion, which identifies and considers all the issues presented, we affirm in all respects. *See* Iowa Ct. R. 21.29(1)(d), (e); *Campolo,* 360 N.W.2d at 94. We limit our discussion to the business-related benefit test noted in *Campolo*.

Recreational or social activities may be held in the course of employment when the employer benefits from the activities. The *Campolo* court concluded the commissioner in that case "applied the correct principles of law" in relying upon Larson's business-related benefit test,[2]

> which states that recreational or social activities are in the course of employment when "[t]he employer derives substantial direct benefit from the activity beyond the intangible value of improvement of employee health and morale that is common to all kinds of recreation and social life."

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[2] *See* 2 Arthur Larson & Lex K. Larson, *Larson's Worker's Compensation Law* § 22.01, at 22-2 (2010) (hereinafter *Larson*).

Campolo, 360 N.W.2d at 94 (quoting 1A A. Larson, *Workmen's Compensation*, § 22.00, at 5-71 (8th ed. 1982)).

Professor Larson states the general rule that recreational or social activities are within the scope of employment when

> (1) They occur on the premises during a lunch or recreation period as a regular incident of the employment; or
> (2) The employer, by expressly or impliedly requiring participation, or by making the activity part of the services of an employee, brings the activity within the orbit of the employment;[3] or
> (3) The employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life.

Larson § 22.01, at 22-2. Professor Larson further discusses "the intangible value of increased worker efficiency and morale," noting it is the majority view that "morale and efficiency benefits are not alone enough to bring recreation within the course of employment." *Larson*, § 22.05[3], at 22-35. This is consistent with the ruling in *Campolo*, 360 N.W.2d at 94 (finding substantial evidence to support the commissioner's finding that the basketball game in which a faculty member had participated contributed to student retention, where the commissioner found "student recruitment and retention are major concerns of the college to insure adequate enrollment and revenues"). The rule then encompasses an injury as arising in the course of employment if the employer derives substantial direct

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[3] Although the commissioner wrote that the employer "encouraged participation amongst employees and their families," the commissioner did not rely upon this second prong noted in *Larson* or make findings relevant thereto. The agency, not the reviewing court, is empowered to hear evidence and make findings of fact. Iowa Code § 17A.19(7) (2005). The district court, acting in an appellate capacity, was not free to make findings of fact related to this second prong, nor are we.

benefit from the activity *beyond the intangible value of improvement of employee health and morale* that is common to all kinds of recreation and social life.

Here the commissioner found the "sole benefit to Gazette was employee morale and camaraderie amongst the employees and their supervisory staff." That factual finding is supported by substantial evidence and thus binding on us. *See Jacobson Transp. Co. v. Harris*, 778 N.W.2d 192, 196 (Iowa 2010) (noting our review of a decision of the workers' compensation commissioner, if one of fact, is whether the commissioner's findings are supported by substantial evidence).

The error lies in the commissioner's conclusion that this stated "sole benefit" is sufficient to bring recreation within the course of employment. *See id.* (noting that where error is one of interpretation of law, we determine whether the commissioner's interpretation is erroneous and substitute our judgment for that of the commissioner). We specifically agree with the district court that "[a]pplying the standard as the commissioner did ignores the exception for activities that merely build morale and camaraderie and would permit for 'complete coverage of all the employer's refreshing social and recreational activities.'" (Quoting *Larson*, § 22.05[3], at 22-35.) The district court did not err in reversing the commissioner on this issue. Remand to the commissioner is required to determine what, if any, benefits are due to claimant based solely on the asserted June 20, 2005 injury.

We affirm the district court in all respects. Costs are assessed one-half each to appellant and appellees.

AFFIRMED.