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It's all fun and games – but is it work related?

Hill and Comcare
[2018] AATA 670

Key Points

- Mr Hill attended a weekend 'Games' sporting event facilitated by the Department of Human Services, and injured himself during a game of netball
- He took annual leave to attend the event, which was participant-funded. He was not encouraged to attend the event by his employer
- It was found that the event took place between two discrete periods of work, rather than a temporary absence from work
- The injury did not occur in the course of Mr Hill's employment

Background

Brian Hill was a Customer Service Officer with the Department of Human Services. In October 2015, Mr Hill participated in the 'DHS games', an annual sporting competition organised by the Department to fundraise for charity.

The DHS Games occurred over a weekend in Geelong, some 2 ½ hours from Mr Hill's place of work in Bendigo. Mr Hill last worked on the Wednesday. He did not ordinarily work Thursdays, so drove to Geelong on Thursday. He took annual leave on Friday and competed over the weekend. He arranged his own transport to and from the Games, as well as his accommodation. The Games themselves were not funded by the Department.

On 24 October 2015, at the site of the DHS games in Geelong, Mr Hill competed in a game of netball. During this game he landed awkwardly on his left knee, suffering injury. He underwent treatment including surgery.

A determination was issued on 10 October 2016 which found that compensation was not payable for the injury because the activity during which Mr Hill sustained his injury (the netball game) was not "*associated with his employment*" as required by section 6(1)(c)(i) of the *Safety, Rehabilitation and Compensation Act 1988* (**SRC Act**) and therefore compensation was not payable.

The law

The issue to be decided was whether the injury to Mr Hill's knee arose out of, or in the course of, his employment with the Department. Reference was drawn to the non-exhaustive list of circumstances in which injuries may be said to arisen out of the course of employment, found in section 6 of the Act.

Special mention was made by Member Shanahan of the 2007 amendments to section 6(1)(b) of the SRC Act. Previously, injuries incurred during temporary absences from the workplace during an ordinary recess or while travelling were treated as been in the course of employment. The 2007 amendments restricted, on the basis of lack of employer control, the definition of 'in the course of employment' to

injuries at workplaces and employer sanctioned events only.

For instance, a worker who leaves a site to buy a sandwich from a shop during lunchtime would not be covered by the SRC Act, whereas a worker who stays on site to eat their sandwich in the break room would be.

The Tribunal considered the specific question of whether the Department "*requested"* Mr Hill to attend the games. There was no formal request for employees to attend; rather, the games was organised through an intranet, whereby employees could choose whether or not they would attend. A comparison was made between *Re Saunders and Comcare* [2011] AATA 238, in which an employee was "*encouraged, permitted and induced"* to participate, and *Re Wheele and Comcare* [2010] AATA 200, in which the employer's role was merely to "*facilitate"* participation. In Mr Hill's case, the Tribunal considered the Department's role was merely a facilitative one.

The leading High Court authority, albeit a 26-year-old authority, of *Hatzimanolis v ANI Corp Limited* (1992) 173 CLR 473, was identified by the Tribunal. The following passage was emphasised:

> *For the purposes of workers' compensation law, an injury is more readily seen as occurring in the course of employment when it has been sustained in an interval or interlude occurring within an overall period or episode of work than when it has been sustained in the interval between two discrete periods of work.*

Conclusion

Adopting the principles expounded in *Hatzimanolis,* and with special reference to the 2007 amendments to section 6 of the SRC Act, the Tribunal pointed to the fact that Mr Hill's 'absence from work' (to attend the DHS Games) occurred between two discrete periods of work separated by four and a half days; not merely an interval over a few hours.

Mr Hill was found not to have been 'temporarily absent from work', but rather was attending an event merely facilitated by his employer. There was no request or direction to attend the Games, a participant-funded event which Mr Hill took annual leave to attend.

The Tribunal held that Mr Hill's attendance at the Games was not associated with his employment. As such, the section 6 of the SRC Act was not satisfied and the injury did not arise in the course of Mr Hill's employment as required by section 5A(1)(b).

Lessons Learnt

Where a worker attends an event, is injured, and a question arises as to whether the injury has occurred in the course of the worker's employment, particular regard must be given to whether the event takes place in an interval **during** an ordinary shift of work (the traditional example being a lunch break), as opposed to an interval between two detached shifts of work – in Mr Hill's case, a participant-funded weekend event.

Importantly, this decision is an acknowledgement by the Tribunal of the legislative purpose of the SRC

Act post-2007 amendments, namely, a move away from imposing liability in situations where an employer has very little control over an incident or event.

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