DOUGLAS HAPPY, Employee/Appellant, v. SPIRIT MOUNTAIN RECREATION AREA, SELF-INSURED, Employer, and MN DEP'T OF HUMAN SERVS., Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
JANUARY 12, 2000

No. [REDACTED SSN]

HEADNOTES

ARISING OUT OF & IN THE COURSE OF. Where the employee, a ski instructor, was not teaching but was instead free-skiing on his own unpaid time when he was injured, and where there was conflicting evidence as to whether the employee's presence was required by the employer at the time, the compensation judge did not err in concluding that the employee's injury did not arise out of and in the course of his employment, notwithstanding the fact that the employee was wearing a jacket provided by the employer.

Affirmed.

Determined by Wilson, J., Johnson, J., and Rykken, J.
Compensation Judge: Donald C. Erickson

OPINION

DEBRA A. WILSON, Judge

The employee appeals from the compensation judge's finding that his injury did not arise out of or in the course of his employment. We affirm.

BACKGROUND

The employee was hired by Spirit Mountain Recreation Area [the employer] on December 7, 1997, as a first-year ski instructor. First-year ski instructors were paid $6.00 per hour while teaching and received a reduced rate on a season ski pass. Jackets were issued to the instructors to wear.

According to the Spirit Mountain Employee Handbook, all employees had the opportunity "during their off hours and off days to use and enjoy the facilities . . . ." The handbook stated that "[a]s a snow rider you will better understand the needs and attitudes of our customers, but participation is by no means mandatory." The handbook also stated that "while off-duty and skiing you are considered the same as any other guest."

On days on which they were scheduled to teach, instructors were required to sign in at the Ski School desk upon their arrival and to show up at a designated location at 10:00 a.m., and 1:00, 3:00 and 5:00 p.m., to determine if any skiers desired lessons. On December 27, 1997, the employee signed in and showed up for the 10:00 a.m. "line-up" but was not given any lessons

to teach. While free-skiing at 10:20 a.m., the employee fell and injured his left knee. He was totally disabled from working from December 27, 1997, through February 6, 1998, and incurred medical expenses related to treatment of his knee injury.

On April 20, 1998, the employee filed a claim petition seeking temporary total disability benefits and medical expenses. In its answer, the self-insured employer contended that the injury did not arise out of and in the course of the employee's employment.[1] The matter proceeded to hearing on June 25, 1999. In findings filed on August 27, 1999, the compensation judge found the employee's injury did not arise out of or in the course of his employment.[2] The employee appeals.

STANDARD OF REVIEW

In reviewing cases on appeal, the Workers' Compensation Court of Appeals must determine whether "the findings of fact and order [are] clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 176.421, subd. 1 (1992). Substantial evidence supports the findings if, in the context of the entire record, "they are supported by evidence that a reasonable mind might accept as adequate." Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 59, 37 W.C.D. 235, 239 (Minn. 1984). Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings are to be affirmed. Id. at 60, 37 W.C.D. at 240. Similarly, "[f]actfindings are clearly erroneous only if the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed." Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975). Findings of fact should not be disturbed, even though the reviewing court might disagree with them, "unless they are clearly erroneous in the sense that they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." Id.

DECISION

Minn. Stat. §176.021, subd. 1, provides in part that "[e]very employer . . . is liable to pay compensation in every case of personal injury or death of an employee arising out of and in the course of employment." The words "arising out of" refer to the causal connection between the injury and the employment, whereas "in the course of" refers to the time, place, and circumstances of the incident causing the injury. See, e.g., Gibberd v. Control Data Corp., 424 N.W.2d 776, 780, 40 W.C.D. 1040, 1047 (Minn. 1988).

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[1] The employer also contended that the employee was an independent contractor rather than an employee. The compensation judge found that the employee was an employee, and this finding was not appealed.

[2] The judge also found that the employee was engaged in a voluntary recreational program sponsored by the employer and that Minn. Stat. §176.021, subd. 9, therefore shields the employer from liability for the employee's injury.

In the present case, the employee contends that he was wearing his ski school instructor jacket while free-skiing, "thereby making himself visible to the public," available to answer questions, and available to help customers, "[a]ll of [which] point towards employment." We are not persuaded that the judge's decision was clearly erroneous and unsupported by the record.

The employee contends that his injury arose in the course of his employment because he was "required to be on or about the premises throughout the day . . . ." However, the employee originally testified that he was under no obligation to remain at the ski hill after he left the 10:00 line-up, only later changing his testimony to indicate otherwise. Moreover, Heidi Viaene, ski school director, testified that ski instructors are not required to stay on the premises between line-ups. Thus, the evidence is conflicting as to whether the employee's presence was required at the employer's place of business between the 10 a.m. line-up and the 1:00 p.m. line-up.

The employee was hired as a ski instructor. He was not teaching at the time of his injury and in fact testified that he did not intend to look for other customers after leaving the 10:00 a.m. line-up but was instead simply skiing for his own recreation. He was at no greater risk while free-skiing than any member of the public who was skiing at that time. The fact that he happened to be wearing his ski instructor jacket while free-skiing during unpaid time is inadequate to transform this otherwise nonwork-related injury into a work-related injury within the meaning of the workers' compensation act. We therefore affirm the judge's finding that the employee's injury did not arise out of and in the course of his employment with the employer.[3]

[3] We agree with the employee, however, that Minn. Stat. §176.021, subd. 9, does not apply here, in that free-skiing does not qualify as a "voluntary recreational program sponsored by the employer." Our conclusion, however, does not impact our affirmance of the judge's finding that the employee's injury did not arise out of or in the course of his employment.