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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Office of the Director

Gregory P. Irish
Director



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KEISHA M. SIMMONS,)	
)	
Claimant,)	
)	
v.)	Dir. Dkt. No. 03-23
)	OHA No. 02-378
DOUGLAS DEVELOPMENT CORP.,)	OWC No. 575642
)	(Private Sector)
and)	
)	
ERIC INSURANCE EXCHANGE,)	
)	
Employer/Carrier.)	
)	
)	

Appeal of the Compensation Order of Anand K. Verma
Administrative Law Judge, Department of Employment Services

Benjamin T. Boscolo, Esquire, for the Claimant

Barbara J. Prasse, Esquire, for the Employer/Carrier

DECISION OF THE DIRECTOR

Jurisdiction

Claimant files this appeal from the Compensation Order of Administrative Law Judge Anand K. Verma denying her claim for workers' compensation benefits, pursuant to the provisions of the District of Columbia Workers' Compensation Act of 1979, as amended, D.C. Law 3-77, D.C. Official Code §§ 32-1501-1545 (2001) (Act).

Background

Claimant, Keisha M. Simmons, was employed as a Lease Administrator for

Employer. On December 14, 2001, Claimant participated in Employer's Christmas party at another employer owned building during the evening hours. Employer's clients, as well as employees, were invited to attend the party. While dancing at the party with a partner, Claimant slipped on a wet floor and sustained injuries to her teeth, right arm, left elbow and knees. Claimant drove to Southern Maryland Hospital where she received treatment that same evening. Claimant returned to work on the following Monday, December 18. On January 4, 2002, Claimant was discharged from her employment with Employer.

On February 20, 2003, Administrative Law Judge (ALJ) Anand K. Verma issued a Compensation Order denying Claimant's claim for benefits based upon the conclusion that Claimant's injuries did not arise out of and in the course of her employment. On March 6, 2003, Claimant filed an Application for Review of the February 20, 2003 Compensation Order along with a Memorandum in support thereof. On March 21, 2003, Employer filed a response to Claimant's Application for Review.

Analysis

The issues on appeal, based upon the Application for Review, are (1) whether the ALJ failed to make findings of fact on the issue as to whether Employer impliedly required Claimant to attend the Christmas party; (2) whether the ALJ's finding that Employer did not receive a direct and substantial benefit beyond improved employee goodwill and health is supported by substantial evidence in the record; and (3) whether the ALJ erred in ruling that Claimant's injury did not arise out of and in the course of her employment.

In the District of Columbia, when a claimant presents some initial demonstration of an employment connection to a disability, the claimant is entitled to a presumption under the Act. *See* D.C. Official Code § 32-1521(1). This presumption serves "to effectuate the humanitarian purpose of the statute [and] reflects a 'strong legislative policy favoring awards in arguable cases.'" *Ferreira v. D.C. Department of Employment Services*, 531 A.2d 651, 655 (D.C. 1987). If such evidence is produced, the burden shifts to the employer to produce substantial evidence showing that the claim did not arise out of and in the course of the employment. *Ferreira, supra*, 531 A.2d at 655. Where the employer presents evidence "specific and comprehensive" enough to rebut the potential connection between the work-related injury, the presumption falls from the matter and the evidence is weighted without reference thereto. *Ferreira, supra*, at 655.

In addition to the general rule of applicability of the presumption of compensability discussed above, in cases where an employee is injured at a social or recreational activity, there are special rules that are applied to determine whether the injury arose out of and in the course of the employment. Professor Larson, in his treatise on workers' compensation law, opined that recreational and social activities are in the course of employment when:

- (1) They occur on the premises during a lunch or recreation periods as a regular incident of 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; or
- (3) The employer derives substantial direct benefit from the activity beyond the intangible value of improvement in the employee health and morale that is common to all kinds of recreation and social life.

2 Arthur Larson, *The Law of Workers' Compensation* § 22.01 (1997).

The Director of the Department of Employment Services (Director) must affirm the Compensation Order under review if the findings of fact contained therein are supported by substantial evidence in the record considered as a whole and if the law has been properly applied. *See* D.C. Official Code § 32-1522 (2001); 7 DCMR § 230 (1986). Substantial evidence is such relevant evidence as a reasonable mind might find as adequate to support a conclusion. *George Hyman Construction Company v. D.C. Department of Employment Services*, 498 A.2d 563, 566 (D.C. 1985).

In support of her Application for Review, Claimant asserts that the ALJ's ruling that her injury did not arise out of and in the course of her employment is not supported by substantial evidence and is not in accordance with the law. In support of this contention, Claimant argues the ALJ failed to make findings of fact regarding the disputed issue of whether she was impliedly required to attend the party. Claimant further asserts that while the ALJ concluded that Employer derived no tangible benefit from the social event, that conclusion is unsupported by substantial evidence.

In response, Employer argues that the ALJ properly found that Claimant was not required to attend the office party, either expressly or implicitly, and that this finding is supported by substantial evidence. Employer also advances that the ALJ correctly ruled that Employer derived no tangible benefit from the event, other than the intangible benefit of boosting employee moral and fostering goodwill among clients. It is Employer's position that the ALJ properly found that Claimant's injury did not arise out of and in the course of her employment.

The Director must specifically address whether an employee's injury sustained during a recreational or social activity is compensable under the Act.¹ The Director determines that

¹ In the instant case, and in other similar cases litigated in this jurisdiction, the hearing examiners have applied the Larson test. *See Aldinger v. Corporate Fitness Works*, H&AS No. 95-209, OWC No. 277289 (August 13, 1997); *See Also Worthy v.*

the Larson test represents an appropriate application of the District of Columbia Workers' Compensation Act. Therefore, the Director will adopt the Larson test.

In the instant case, the ALJ found that Claimant presented sufficient evidence to invoke the presumption since she fell and suffered injuries at Employer's party. Compensation Order at 3. The ALJ also found that Employer's evidence was "specific and comprehensive" enough to rebut the presumption that Claimant's injuries arose out of and in the course of her employment. Compensation Order at 5. In considering all three factors of the Larson test, the ALJ concluded that Claimant's injuries did not arise out of and in the course of her employment. Compensation Order at page 5.

Claimant's initial argument is that the ALJ failed to make findings of fact as to whether Employer impliedly required her to attend the Christmas party in accordance with the second factor of the Larson test. After a complete review of the record, the Director determines that the ALJ did make findings of fact regarding that contested issue. In the Compensation Order, the ALJ noted in his findings of fact "I find that the attendance at the party was not mandatory..." Compensation Order at page 2. This language clearly addresses the issue of whether participation at the party was required, whether expressly or impliedly. Along those same lines, in the discussion, the ALJ wrote that "... it is quite clear that there is no evidence in the record showing that employer required employees' participation at the party, either expressly or impliedly." Compensation Order at page 5. This finding also addresses whether Claimant's participation at the party was either expressly or impliedly required. Claimant's assertion that the ALJ failed to make a finding with regard to this issue is without support and is rejected by the Director.

Furthermore, it is concluded that there is substantial evidence in the record to support the ALJ's finding that Employer did not impliedly require Claimant's attendance at the party. At the hearing, Claimant was questioned as to whether she was required to attend the party and she responded that she was not. Claimant testified as follows:

Q. Did anyone tell you that you had to go the party?

A. No.

Q. Were you required to go to the party?

A. No.

Republican National Committee, H&AS No. 95-134, OWC No. 265694 (June 24, 1997). The parties have not cited any cases from this jurisdiction which consider any other legal standard to be applied in situations where the injury occurs at a social gathering or other recreational activity.

Q. Were you free not to go, if you chose not to go?

A. Yes.

Hearing Transcript, page 21. On cross examination, Claimant continued to testify that she was not required to attend the party. Hearing Transcript, pages 41-42. Claimant's own statements reflect that she had no subjective believe that she was under any obligation to take part in the affair. In addition to Claimant's testimony, Employer's witness confirmed that attendance at the party was not required by any of the employees. Hearing Transcript, pages 52-53.

Nonetheless, Claimant argues that because she was encouraged to attend the party and was instructed to invite Employer's guests, she was impliedly required to attend. The Director does not find Claimant's arguments in this regard persuasive. Claimant was employed with Employer in an administrative capacity and she was asked to invite the clients during regular work hours as a part of her normal job duties. The fact that Claimant invited the clients to attend the party does not support her argument that she was impliedly required to attend the party. Moreover, the evidence establishes that the owner of the company encouraged Claimant to attend the party because it would be fun. However, Claimant failed to establish that this encouragement was an implied requirement to attend by her own admission that she was free not to go if she so chose.

The ALJ analyzed the facts of this case and reasonably concluded that Claimant was not impliedly required to attend the Christmas party.^{2/} There is substantial evidence in the record to support the ALJ's finding on this issue.

With respect to the third factor, the Director determines that the ALJ's finding that employer did not derive direct substantial benefits is not supported by substantial evidence in the record. As Claimant points out in her brief, clients with whom Employer regularly dealt were invited to the Christmas party. As such, the party was not merely a social function for the benefit of the employees. The fact that clients were invited lends support to Claimant's argument that the purpose of the party was for more than to improve employee health and morale. Claimant testified that it was her understanding that the purpose of the party was to be a thank you to the clients, as well as an opportunity for the employees to meet the clients. Hearing Transcript, page 19. Claimant testified that seeing the clients face to face made her job much easier. Hearing Transcript, page 19. Claimant testified that such interaction would

² The ALJ also considered that the party did not occur at Claimant's regular place of employment or during normal work hours. Compensation Order at page 5. The ALJ also weighed the fact that Claimant was not compensated for attending the affair. Compensation Order at page 5.

help Employer generate more business and would result in improved business relationships with the clients. Hearing Transcript, page 20.

In reaching the conclusion that Employer did not derive any substantial benefits other than employee goodwill and moral, the ALJ relied upon the testimony of Employer's witness, Robin Diess. Ms. Diess testified that she received "no benefit at all from personal contacts with people" at the party. Hearing Transcript, page 65; Compensation Order at 5. Although Ms. Diess testified that she did not receive any benefit from talking with the clients, she only testified as to her own personal experience. Ms. Diess did not state that it was not Employer's expectation that the employees would network with the clients. The fact that Ms. Diess personally received no benefit from networking does not refute Claimant's testimony regarding her understanding of the objectives of the party and her purpose for attending.

Other jurisdictions have considered what amounts to a substantial and direct benefit as contemplated by the third factor of the Larson test. A "substantial direct benefit" to the employer is more than an intangible, undefined benefit. See *Copytronic and General Accident Insurance v. Lemon*, 588 So. 2d 23, 24 (Fla. Dist. Ct. App. 1991). "Advertising, publicity, and financial benefits are examples of those types of benefits that can be shown to be sufficient." *Id.*

In *Allison v. Pepsi-Cola Bottling Company*, 183 Mich. App. 101, 454 N.W. 2d 162 (1990), the Michigan Court of Appeals applied the Larson test in determining whether the decedent in that case was entitled to workers' compensation benefits. In *Allison*, the decedent was killed in a single car accident as he was returning home from a company sponsored party. He had participated in a six week sales promotion encouraging driver-salesmen to increase their number of route customers. The culmination of the program was a company-sponsored party where the employees were rewarded with "fun money" in proportion to their increased sales. Prior to arriving at the party, the employee consumed a six pack of beer at home and then had another 16 beers while at the party. The employee then left the party and went to a hotel room for a party with coworkers. Less than an hour after he left the hotel, he was killed in a single car accident. The court found that the employer derived substantial benefit from the function through increased company sales. The court rejected the argument that the benefit was incurred prior to the party and ended when the party began. The court determined that the activity substantially benefited the employer and the award of benefits was affirmed.

Along those same lines, in *American Family Pizza v. Taylor*, 573 So. 2d 956 (Fla. Dist. Ct. App. 1991), *reh'g denied*, (Feb. 20, 1991), a pizza chain, as a part of a sales promotion, held a contest among its restaurant employees to decorate contest boxes and to exhibit enthusiasm for customer participation. The claimant and his coworkers were awarded tickets to a theme park as part of winning the contest. On the way back from the

theme park, the two stopped at the store manager's home for a Christmas party. After the party, the store manager took the claimant back to the restaurant so that he could retrieve his car. On the way back to the restaurant, the claimant was injured in a car accident. There was evidence that the employer received a direct substantial benefit in accordance with the third factor of the Larson test through testimony from management that the contest was intended to promote sales. It was irrelevant whether or not the Christmas party was a company activity. The court of appeals affirmed the judge's finding that the claimant was in the course of his employment at the time of his injury.

Moreover, in the immediate case, it was Claimant's testimony that the Christmas party was to be a thank you to the clients as well as an opportunity for the employees to meet the clients. It is reasonable to conclude that through the party, Employer could thereby expect to receive tangible benefits in the form of improved business relations with its clients. These are the substantial direct benefits contemplated by the Larson rule. Thus, the ALJ's ruling that Employer did not receive any substantial benefit beyond improved employee goodwill and morale is not supported by the substantial evidence in the record or in accordance with the law.

Inasmuch as Employer received direct substantial benefits, Claimant's injury occurred during the course of employment in accordance with the Larson test. As such, the Director concludes that Claimant's injuries arose out of and in the course of her employment.

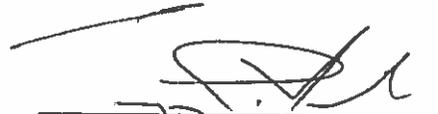
Accordingly, the February 23, 2003 decision denying Claimant's claim for benefits because the injury did not arise out of and in the course of the employment is not supported by substantial evidence and is not in accordance with the law.

Conclusion

The ALJ properly made a factual finding that Claimant was not impliedly required to attend the Christmas party. The ALJ's determination that Employer did not derive any substantial benefit beyond employee goodwill and increased morale is not supported by substantial evidence. The ALJ's ruling that Claimant's injury did not arise out of and in the course of her employment is not supported by substantial evidence and is not in accordance with the law.

Decision

The February 23, 2003 Compensation Order denying Claimant's claim for benefits is REVERSED. The case is REMANDED for findings of fact and conclusions of law regarding the remaining issues.



Gregory P. Irish
Director

JUN 04 2005
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Date