Off Duty Injury Covered by Workers' Compensation

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Labor Code section 3600(a)(9) provides that an injury is not compensable if it arises out of 'voluntary participation in any off-duty recreational, social or athletic activity not constituting part of the employee's work-related duties'.

An exception to this principle exists 'where the activities are a reasonable expectancy of, or are expressly or impliedly required by the employment.' In *Ezzy v. WCAB,* the Court addressed the reasonable expectancy standard finding two elements of proof. First, whether the employee subjectively believed his or her participation in an activity is expected by the employer and secondly, whether that belief is objectively reasonable.

These elements were demonstrated in the case of *City of Beverly Hills v. WCAB (Tomlin),* where the 2nd District Court of Appeal held that a police officer's physical training injury, occurring while on vacation, was a compensable injury because his training was a 'reasonable expectancy of the employment'. The Court of Appeal noted the officer was injured near the

end of a three-mile run and was a member of the SWAT team and was training for an upcoming physical fitness test which was required to maintain his status on SWAT.

The Court concluded that both elements of the *Ezzy* test were satisfied—the officer believed that his employer expected him to train for the test while on vacation and this belief was objectively reasonable in that the SWAT test was required to maintain status on the SWAT team.

Similarly, in *Wilson v. WCAB (City of Modesto)*, the 5th District held that a police officer injured injured while running on a track was eligible for benefits since he had to pass a physical test four times per year to keep his position on the department's special emergency reaction team, and part of the test required that he be able to in two miles in 27 minutes.

While *Tomlin and Wilson* dealt with an officer faced with a fitness test, another line of cases addresses the *Ezzy* standard for an officer who sustains injury while working out at a gym on the employer's premises to simply maintain fitness.

In *Knudsen v. City of Beverly Hills*, the WCAB reversed the trial judge's opinion finding no industrial injury, and held an officer's off-duty injury while working out at the gym on the employer's premises was industrial. The testimony of the injured police officer showed he subjectively believed that working out at the gym was expected by the

employer. Knudsen believed he needed to work out to maintain fitness in order to protect himself and the public.

The WCAB found Knudsen's subjective belief as reasonable on the basis that the City allowed the officer to sleep at the station, which subjected the officer to being called back to duty, as well as the City providing the gym on City premises with City property. The WCAB found the *Ezzy* Test was satisfied, and the injured worker was provided full benefits.

Also, in *Hinson v. City of Fullerton* a Worker's Compensation Judge determined a police officer's injury while using the gym before the officer's shift was work related. Like the *Knudsen* case, the City of Fullerton has an on-site gym on its premises. Hinson was working out at the gym before a regularly scheduled shift and sustained an injury. The trial court stated lifting weights was not expressly or impliedly required of the officer. The trial court, however, found that having police officers physically able to perform their duties—i.e. chasing down suspects and knocking down doors—is a benefit to the employer.

Similar to *Knudsen*, the trial court noted a further benefit of having an officer available to be called for work before his/her shift. Also key to the determination was the undisputed fact that the employer encouraged fitness. The Judge found the officer's testimony that he was to maintain a level of physical fitness to perform the work duties reasonable. The Judge

determined based upon the circumstances the officer sustained a work related injury.

The general rule is injuries arising from the voluntary participation in recreational or athletic activities are not industrial. The exception to this rule is where the activities are a 'reasonably expectancy of, or are expressly or impliedly required by the employment.'

The determination of whether the specific activity resulting in an injury satisfies the requirements in *Ezzy*-- 1) the injured officer subjectively believed that his/her participation in the activity was expected by the employer; and 2) that subjective belief was objectively reasonable, is evaluated on a case-by-case basis.

The facts of the case will determine whether the officer's off-duty injury arising from the participation in an athletic activity will constitute a work related injury.

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