

## Rambeau, Berry

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### [COURSE OF EMPLOYMENT \(RCW 51.08.013; RCW 51.08.180\(1\)\)](#)

#### Recreational activities

Worker who injured his knee while playing on company football team was not injured in the course of employment where the employer paid for only the team's league entry fee, games were played off work hours and off work premises, the company name did not appear on jerseys, and no business was solicited through the team's participation in the league. ...*In re Berry Rambeau*, BIIA Dec., 89 1604 (1990) [dissent] [*Editor's Note*: The Board's decision was appealed to superior court under King County Cause No. 90-2-25386-4.]

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1 was, citing Professor Larson's treatise as authority for her decision. 1A A. Larson, The Law of  
2 Workmen's Compensation, ] 22.00 and ] 22.22. Further review of Larson, § 22.24, in particular, leads  
3 us to a different conclusion.  
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6 The company football team was organized by Michael Edwards, a company vice-president. He  
7 and some friends organized a flag football league which Continental's team joined. Continental paid  
8 the entry fee of \$100.00, but provided no equipment nor money for equipment for team players.  
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10 The games were held on weekends and both games and practices were held off the company  
11 premises. Players occasionally left work early for practice, which was held once per week during the  
12 season. In 1986 the team wore jerseys with the name Continental, but in 1987, the year Mr. Rambeau  
13 was injured, the jerseys did not bear the name of the company.  
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16 These facts are undisputed. There was some testimony that people were pressured into  
17 playing and that those who did not play were treated differently. There was also testimony that  
18 employees were promoted and demoted based on their participation with the team. This testimony  
19 came from Mike Spoor, who was fired by the company, the claimant, and Robert Polus, who admitted  
20 he had personal problems with Mike Edwards.  
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23 Even considering the evidence produced by these employees, as well as Curtis Phillips,  
24 another employee, we do not believe Mr. Rambeau was injured during the course of his employment.  
25 The Proposed Decision and Order correctly quotes the basic test set forth in Larson for determining  
26 whether a recreational activity is within the course of employment. Section 22.00 provides:  
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29 Recreational or social activities are within the course of employment when

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31 (1) They occur on the premises during a lunch or recreation period as a  
32 regular incident of the employment; or

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34 (2) The employer, by expressly or impliedly requiring participation, or by  
35 making the activity part of the services of an employee, brings the activity  
36 within the orbit of the employment; or

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38 (3) The employer derives substantial direct benefit from the activity beyond  
39 the intangible value of improvement in employee health and morale that is  
40 common to all kinds of recreation and social life.

41 These three factors are fleshed out in § 22.24, which sets forth four criteria. These four criteria are (1)  
42 time and place (§ 22.24(b)); (2) degree of employer initiative (§ 22.24(c)); (3) financial support and  
43 equipment furnished (§ 22.24(d); and, (4) employer benefit (§ 22.24(e) and 22.32).  
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45 In this case the football games were played on Sundays, off company premises. Professor  
46 Larson specifically states that:  
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1 . . . if games are played both off the premises and after hours, the burden  
2 of proving work-connection falls heavily on the factors of employer  
3 initiative, financing, and benefit, and a showing on these points which  
4 might have sufficed in a case with some time or place work-connection  
5 may well prove to be inadequate. Chilcote v. Blass, Riddick, Chilcote &  
6 Continental Ins. Co., 620 S.W.2d 953 (Ark.Ct.App.1981).  
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8 Larson, § 22.24(b), at 5-159.

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10 There is some evidence that Mike Edwards, a company vice-president, was the chief organizer  
11 of the team. Mr. Edwards was also an organizer of the league and this was probably a major factor in  
12 Mr. Edwards' enthusiasm in promoting the team. There is no evidence that the owner and president of  
13 Continental had any involvement with the team or that the company officially endorsed the team.  
14 Those cases cited by Professor Larson falling within this requirement involve situations where "a clear  
15 case is made of outright employer sponsorship, so that it can be said that the activity is part of an  
16 employment recreational program ...." Larson, § 22.24(c), at 5-160. We do not find such evidence in  
17 this record.  
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21 Continental Credit paid league dues of \$100.00 for the first year. The players paid for all  
22 equipment, including jerseys, shoes, footballs and flags. "Although facts of this kind are helpful in  
23 building a cumulative case of employer involvement, standing alone they are ordinarily not enough to  
24 meet the burden of proof." Larson, ] 22.24(d), at 5-160. Professor Larson cites cases in other  
25 jurisdictions where tangible employer contributions such as \$1,000.00 for equipment, \$500.00 as a  
26 subsidy, league dues, and equipment have not been enough to satisfy this requirement. Larson, §  
27 22.24(d), at 5-160-5-161.  
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31 The final factor is benefit to the employer. In this case there is very little, if any, evidence  
32 showing any benefit flowing to Continental from the flag football team. There is no evidence that any  
33 business was solicited through the league or that this was a goal of the company. Though the team  
34 jerseys did carry the company name in 1986, the next year the company name was eliminated from  
35 the jersey. Even if the company was able to advertise through its employees' participation in the  
36 league, this is not enough to bring Mr. Rambeau's injury within the course of his employment, even  
37 when combined with evidence of an employer subsidy. Larson, § 22.24(e), at 5-161-5-162.  
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41 Balancing all four factors, Professor Larson suggests that:  
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44 . . . mere encouragement, even with the tangible support of financial  
45 assistance, is not in itself enough to bring industrial-league athletics within  
46 the course of employment. There must ordinarily be a time or place  
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1 association with the employment, or employer initiative and sponsorship of  
2 the activity as part of a recreation program, or some significant employer  
3 benefit, before significant connection is found.  
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5 Larson, § 22.24(f), at 5-165, citing Wilson v. General Motors Corp., 84 N.E.2d 781, 298 NY 468 (NY  
6 Ct.App.1949).  
7

8 Applying Larson's criteria to the facts of this case, we conclude that Mr. Rambeau was not in  
9 the course of his employment when he injured his knee during a football game, played outside work  
10 hours and off work premises.  
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### 12 **FINDINGS OF FACT**

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14 1. On October 12, 1987, the Department of Labor and Industries received a  
15 report of accident alleging an injury to Berry Rambeau on August 23,  
16 1987, during the course of his employment with Continental Credit. On  
17 October 19, 1987, the Department issued an order rejecting the claim for  
18 the sole reason that at the time of the injury the claimant was not in the  
19 course of his employment. On October 28, 1987, a notice of appeal was  
20 filed on behalf of the claimant. On November 10, 1987, the Board issued  
21 an order granting the appeal, assigning it Docket No. 87 3604, and  
22 directing that proceedings be held on the issues raised in the appeal. On  
23 January 26, 1988, the Board issued an order on agreement of parties  
24 remanding the claim to the Department of Labor and Industries for further  
25 investigation and such other action as may be indicated or required by  
26 law.  
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28 On March 6, 1989, the Department issued an order adhering to the  
29 provisions of a prior Department order dated October 19, 1987. On May  
30 18, 1989, the Board received a notice of appeal filed on behalf of the  
31 claimant. On June 14, 1989, the Board issued an order granting the  
32 appeal subject to proof of timeliness and assigning it Docket No. 89 1604.

- 33 2. The March 6, 1989 order was received by the claimant or communicated  
34 to the claimant no sooner than March 20, 1989.
- 35 3. In 1986, Mike Edwards, a vice-president for Continental Credit Services,  
36 Inc., the claimant's employer, organized a flag football league with some  
37 friends. Mr. Edwards organized a team of Continental employees to  
38 participate in the league.
- 39 4. Continental paid a \$100.00 entry fee for the team in 1986. The players  
40 were responsible for the purchase of all equipment, including jerseys,  
41 shoes, footballs and flags.  
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- 43 5. League games were held on Sundays off the company premises. Players  
44 were occasionally allowed to leave work early for the once per week  
45 practices. Team meetings were occasionally held on company premises.  
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- 1 6. In 1986 the name "Continental" appeared on the team jerseys. In 1987  
2 the company name did not appear on the jerseys.  
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4 7. The company president and owner did not take any part in the  
5 organization of the team or any of the team's activities. No business was  
6 solicited through the team's participation in the league.  
7  
8 8. On August 23, 1987, Berry Rambeau injured his right knee while playing  
9 flag football for the Continental employees' team.

10 **CONCLUSIONS OF LAW**

- 11 1. The claimant filed an appeal within 60 days of the communication of the  
12 order, as required by RCW 51.52.050 and .060.  
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14 2. The Board of Industrial Insurance Appeals has jurisdiction over the parties  
15 and the subject matter to this appeal.  
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17 3. On August 23, 1987, Berry Rambeau was not acting within the course of  
18 his employment within the meaning of RCW 51.08.013 while playing flag  
19 football. The knee injury which he sustained while playing flag football  
20 was not an industrial injury.  
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22 4. The Department order dated March 6, 1989 which adhered to the  
23 provisions of a Department order dated October 19, 1987 which rejected  
24 the claim because the injury was not in the course of employment is  
25 correct and is affirmed.

26 It is so ORDERED.

27 Dated this 11<sup>th</sup> day of December, 1990.

28 BOARD OF INDUSTRIAL INSURANCE APPEALS

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31 /s/  
32 SARA T. HARMON Chairperson

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35 /s/  
36 PHILLIP T. BORK Member

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38 **DISSENT**

39 I disagree with the decision of the majority in this appeal. My main concern is the evidence of  
40 employer compulsion to participate on the football team. As pointed out in the Proposed Decision and  
41 Order, employees, including Mr. Rambeau, were pressed into playing on the team.  
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43 There is sufficient evidence in the record to persuade me that failure of Mr. Rambeau and his  
44 coworkers to play on the team would have an effect on their jobs. Employees who testified at the  
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1 request of Mr. Rambeau sincerely believed their advancement in Continental Credit Services  
2 depended on their active and willing participation as team members.  
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4 Mike Spoor testified about general peer pressure from management and supervisors. He told  
5 of constant individual pressure to play. Curtis Phillips stated that he joined the team due to pressure to  
6 play from management. Robert Polus's testimony was consistent with that of other employees, as  
7 was Mr. Rambeau's.  
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10 I believe the Proposed Decision and Order should be adopted as it is supported by the record  
11 and is a correct statement of the law as it applies to the facts of this appeal.  
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13 Dated this 11th day of December, 1990.  
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16 FRANK E. FENNERTY, JR.

Member  
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