

Phillips, Christopher

COURSE OF EMPLOYMENT (RCW 51.08.013; RCW 51.08.180(1))

Recreational activities

A worker injured while playing on an employee softball team was not in the course of his employment, particularly where the employer provided no financial support to the team, exerted no control over the players who were not paid for their time and when the game did not occur on company premises during a lunch or recreation break.

...In re Christopher Phillips, BIIA Dec., 90 1386 (1991)

Scroll down for order.

1 Tom Perry, asked the claimant if he wanted to play shortstop on a team composed mostly of
2 employees of the theater. Mr. Phillips was originally scheduled to work the day of the game, but Mr.
3 Perry rearranged his schedule. The game was held during non-work hours on a play field near the
4 theater and Mr. Phillips was not paid for his time. Mr. Phillips said he felt compelled to play because
5 he wanted to be promoted and did not want to upset his manager.
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9 The team was not an organized team nor in a league. From the testimony in the record, the
10 game resembled a "pickup" game. Mr. Phillips participated in one game. There were only four games
11 during the entire season. Employees of the theater had been playing at the park since 1981 and there
12 was some kind of longstanding rivalry between Sea-Tac North and Sea-Tac South theaters.
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15 Our industrial appeals judge concluded that because Mr. Phillips was only 18 at the time of the
16 injury, with limited experience in the labor market and a desire to do a good job and impress his
17 supervisors, his manager's desire that he play on the team "took on the air of" a job requirement, and
18 he was, therefore, acting in the course of his employment when the injury occurred.
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21 The game did not occur on company premises during a lunch or recreation period. The
22 employer did not expressly or impliedly require participation; the employer gave no financial support to
23 the team; employees who played were not paid for their time; the employer did not exert any control
24 over the players; and the employer did not derive any business benefit from the game other than the
25 possible improvement of employee health and morale.
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29 The basic test to determine whether a recreational activity is within the course of employment is
30 found in Professor Larson's treatise on Workers' Compensation. § 22.00 provides:

- 31 Recreational or social activities are within the course of employment when
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33 (1) they occur on the premises during a lunch or recreation period as a
34 regular incident of the employment; or
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36 (2) the employer, by expressly or impliedly requiring participation, or by
37 making the activity part of the services of an employee, brings the activity
38 within the orbit of the employment; or
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40 (3) the employer derives substantial direct benefit from the activity beyond
41 the intangible value of improvement in employee health and morale that is
42 common to all kinds of recreation and social life.
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1 Professor Larson specifically states that:

2 . . . if games are played both off the premises and after hours the burden
3 of proving work connection falls heavily on the factors of employer
4 initiative, financing and benefit, and a showing on these points which might
5 have sufficed in a case with some time or place work connection may well
6 prove to be inadequate.
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8 Chilcote v. Blass, Riddick, Chilcote & Continental Ins. Co., 620 S.W.2d 953 (Ark.Ct.App.1981).
9 Larson, § 22.24(b), at 5-159.

10 There is no evidence that the theater had any involvement with the team or that the theater
11 officially endorsed the team. Our decision in In re Barry Rambeau, Dckt. No. 89 1604 (December 11,
12 1990), is on point. Those cases cited by Professor Larson as falling within this requirement involve
13 situations where "a clear case is made of outright employer sponsorship so that it can be said that the
14 activity is part of an employment recreational program. . . Larson, § 22.24(c), at 5-160. We do not find
15 such evidence in this record."
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17 We also noted in In re Barry Rambeau, supra, "there is very little, if any, evidence showing any
18 benefit flowing to (the theater) from the (softball) team. There is no evidence that any business was
19 solicited through the league or that this was a goal of the company." The very same thing may be said
20 in the instant case.
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22 Further, we quoted "balancing all four factors, Professor Larson suggests that:

23 . . . mere encouragement, even with the tangible support of financial
24 assistance, is not in itself enough to bring industrial league athletics within
25 the course of employment. There must ordinarily be a time or place
26 association with the employment, or employer initiative and sponsorship of
27 the activity as part of the recreation program or some significant employer
28 benefit before significant connection is found.
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30 Larson, § 22.24(f), at 5-165, citing Wilson v. General Motors Corp., 84 N.E.2d 781, 298 N.N.Y.
31 468 (New York Court of Appeals, 1949). In re Barry Rambeau, supra, at 5.
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33 The only issue left in this case is with respect to the implied requirement to participate. The
34 record does not support the allegation that Mr. Phillips' chances for promotion would have been
35 compromised had he declined to play. Participation was strictly voluntary, and the claimant's
36 speculation about how his manager might take his declining to play does not establish a job
37 requirement.
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1 The youth and inexperience of the claimant do not transform an offer to make available a place
2 on the team into a job requirement, nor does the supervisor's desire that Mr. Phillips play on the team
3 rise to that dignity.
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5 After consideration of the Proposed Decision and Order and the Petition for Review filed
6 thereto, and a careful review of the entire record before us, we make the following:
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8 **FINDINGS OF FACT**
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- 10 1. On October 27, 1989 the Department of Labor and Industries received an
11 application for benefits from Christopher J. Phillips, alleging the
12 occurrence of an industrial injury on June 28, 1989 while in the course of
13 his employment with American Multi-Cinema, Inc. On November 20, 1989
14 the Department issued an order rejecting the claim on the grounds that the
15 claimant was not under the industrial insurance laws at the time of the
16 injury and the claimant was not in the course of his employment. On
17 December 19, 1989 a protest and request for reconsideration was filed on
18 behalf of the claimant. On December 27, 1989 the Department issued an
19 order holding its November 20, 1989 order in abeyance. On March 12,
20 1990 the Department issued an order affirming its prior order of November
21 20, 1989. On March 19, 1990 the claimant filed a notice of appeal. On
22 April 17, 1990 the Board granted the appeal, assigning it Docket No. 90
23 1386, and directing that further proceedings be held.
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- 25 2. On June 28, 1989, while participating in a softball game, Christopher J.
26 Phillips broke his arm, requiring medical treatment.
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- 28 3. Christopher Phillips' supervisor was aware of the claimant's experience
29 playing AAA high school baseball and made available to the claimant a
30 position on the softball team when they played against a rival theater.
31 Christopher Phillips' schedule was arranged by his supervisor so that he
32 would be able to attend the game. Mr. Phillips believed that his employer
33 would have been upset and that his chances for promotion would have
34 been diminished if he had declined to participate in the softball game.
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- 36 4. The softball game did not occur during lunch or a regular recreation
37 period; the employer neither expressly nor impliedly required the claimant
38 to participate in the game; and the employer derived no substantial benefit
39 from the activity.

40 **CONCLUSIONS OF LAW**
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- 42 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties
43 and the subject matter of this appeal.
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- 45 2. Christopher Phillips was not acting in the course of his employment when
46 he broke his arm on June 28, 1989 at a softball game in which he
47 participated with the knowledge and consent of his supervisor.
3. The Department order of March 12, 1990, which affirmed a prior
Department order dated November 20, 1989 which rejected the claim on

1 the grounds that the claimant was not under the industrial insurance laws
2 at the time of the injury and that the claimant was not in the course of his
3 employment, is correct and should be affirmed.
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5 It is so ORDERED.

6 Dated this 5th day of August, 1991.
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8 BOARD OF INDUSTRIAL INSURANCE APPEALS
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10
11 /s/
12 S. FREDERICK FELLER Chairperson
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15 /s/
16 PHILLIP T. BORK Member
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