

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE  
MIDDLE DIVISION

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CLAIMS COMMISSION  
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DWAYNE RICKETTS, )  
 ) Claim No. 30130665673  
 Claimant, )  
 )  
 v. ) Workers' Compensation  
 )  
 STATE OF TENNESSEE )  
 ) Regular Docket  
 Defendant. )

**JUDGMENT FOR DEFENDANT AND  
DISMISSAL OF WORKERS' COMPENSATION CLAIM**

This workers' compensation claim was tried on March 25, 2015, before Robert N. Hibbett, Commissioner and Trial Judge of the facts and law, in the Claims Commission Courtroom in the One Cannon Way Building at Clover Bottom Center. The Claimant, Dwayne Ricketts, was self-represented. Assistant Attorney General and Senior Counsel Heather Ross and Assistant Attorney General Sarah Robbins represented the State of Tennessee. The Trial Transcript was filed with the Clerk of the Claims Commission on April 21, 2015.

Claimant, Dwayne Ricketts, seeks workers' compensation benefits for injuries to his ankle, foot and Achilles from a fall that occurred while he was playing basketball in the gymnasium of the Middle Tennessee Mental Health

Center in Donelson, Tennessee. The Claims Commission has jurisdiction of this matter under Tenn. Code Ann. § 9-8-307(a)(1)(K), relative to workers' compensation claims by state employees. The Tribunal decided to hear proof only on the issue of whether the Claimant was injured in the course and scope of his employment. It seemed prudent to adjudicate this issue first because the State had denied his claim on this issue. Pursuant to Tenn. Code Ann. § 9-8-403(i), the Commission makes the following findings of fact and conclusions of law.

### **FINDINGS OF FACT**

#### **TESTIMONY OF DWAYNE RICKETTS**

The Claimant, Dwayne Ricketts, was a psychiatric technician (psych tech) at Middle Tennessee Mental Health Institute (MTMHI) when he was injured playing basketball on June 10, 2013. Being a psych tech is a very serious and dangerous job. He dealt with some of the most dangerous patients in Middle Tennessee and had to be prepared for them. His job required him to bathe and restrain people with mental illnesses. MTMHI provided a recreation area and recommended technicians to be in good shape to deal with the various difficulties of the job.

MTMHI encouraged him to work out on his breaks and at lunchtime. He had a key and access to the workout room and gymnasium 24 hours a day, 7 days a week. MTMHI is open at all times, and there was no policy in place restricting the specific times during the work day one could work out. During his work, he would recreate with the patients by throwing a football or taking them to the gym. There would be patients in the gym while he was working out.

On the morning he was injured, he had completed his shift at MTMHI and signed out. After he signed out, he went to the gymnasium to play basketball with Quan Fisher, another psych tech. There were no patients playing with him. His duties did not require him to be at the gym at the time of his injury. He had never asked anyone for permission to play basketball after his shift had ended, but he had played there numerous times. He had been playing for approximately twenty minutes when his foot gave away injuring his Achilles tendon. He is not alleging there is any problem with the gym; his foot gave way while he was playing.

Exhibit Three was proffered by the Claimant to show the State encourages employees to work out and become physically fit. The Tribunal notes the document clearly states the workout room hours were Monday through Friday

from 11:00 a.m. to 1:00 p.m. It also indicates everyone's unit key gives access to the room, and it is available when patients are not present. The Tribunal believes and accredits the testimony of the Claimant.

#### TESTIMONY OF QUAN FISHER

Quan Fisher is a psych tech at MTMHI and has worked there over five years. On the day of Mr. Ricketts' injury, Mr. Fisher was playing basketball with the Claimant and other employees in the gym at MTMHI. They had played basketball together in the mornings at MTMHI on numerous occasions. He did not know of any existing policy disallowing employees to go to the gym or play basketball in the gym. Employees have keys to the gymnasium. Patients reside at MTHMI and have access to the gym and the recreation room. In the past, Mr. Fisher has taken patients to the gym.

Mr. Fisher has played basketball in the gym with other employees without the Claimant. He has participated in Hoop Fest, a basketball contest including patients and employees, on two occasions (*See Exhibit 2*). Being a psych tech is a very dangerous job because of the very dangerous and violent patients. They have codes to call for assistance when they must deal with unruly patients and restrain them.

Mr. Fisher has been seriously injured while employed at MTMHI. Mr. Fisher stated a person has to be in good physical condition to work at MTMHI because if a person is not, then someone could get hurt. The Tribunal believes and accredits the testimony of Quan Fisher.

#### TESTIMONY OF BARBARA NIGHTINGALE

Barbara Nightingale is the program director for adult services at MTMHI. Her major responsibilities include supervising and coordinating treatment services for patients and supervising the adjunctive therapy department. The gym and the exercise room are under her area of responsibility. She approves the use of these facilities. The facilities are primarily for patient use but employees are afforded the privilege of using the exercise room and gym during their break times. However, there is an expectation that employees leave the building after their shifts are over. No employee has ever asked her to use the gym after the work shift has ended.

Hoop Fest is an annual event that is held in May. MTMHI has never allowed employees to come in after their work shift ends or on their day off to practice for Hoop Fest. If she found an employee was in the gym after signing out, she would ask them to leave. Although the gym is always locked,

employees have a key giving them access to it after hours and during breaks. They are allowed to use the gym during work shifts while on break. Employees are encouraged to be in shape and fit. Ms. Nightingale is not 100 percent certain that all employees know they are to leave work when their shifts are over. The expectation to leave after work is not a written policy. However, new employees are informed of this expectation in new employee orientation. The Tribunal accredits and believes the testimony of Barbara Nightingale.

#### TESTIMONY OF PAMELA JOYCE ROSADO

Pamela Rosado is the Director of Adjunctive Therapy at MTMHI. Her department manages the gym and utilizes it to take patients to exercise, hold classes, and have special events. She should be aware of anyone who utilizes the gym. Psych techs and other staff are permitted to use the exercise room or the gym on their break times. Staff is not allowed to use the gym after signing out. The staff member that conducts new employee orientation informs new employees that the services can be utilized at their break times. It is a privilege to use the exercise equipment during break time.

It is not safe to stay at the building after work shifts end. If she were told that an employee who had signed out was in the gym, she would go and ask that

employee to leave. She does not permit employees to use the gym after their shifts have ended. It is not a written policy or in the policy manual for employees to leave after their work shift; it is a practice. The Tribunal accredits and believes the testimony of Ms. Rosado.

#### TESTIMONY OF PAMELA MONJAR

Pamela Monjar is the Assistant Director of Human Resources at MTMHI. It appears at the time of Claimant's injury, she was the employee relations officer. Her duties were to process disciplinaries, assist in interpreting policies, practices and procedures and to fill in for the workers' compensation coordinator. She had no responsibility in determining what injuries were compensable. She never told the Claimant that the State was going to cover his injury.

She aided in filling out the TOSHA form (Accident Report) on the day of the Claimant's injury. Much of her testimony, elicited by the parties, concerned who filled out different parts of the Accident Report (Exhibit 1). Although the Tribunal finds Ms. Monjar's testimony to be creditable, the completion of the Accident Report is not relevant to the issue of whether Claimant was injured in the course and scope of his employment. It is clear Claimant made a timely notification of his injury, however.

## CONCLUSIONS OF LAW

It is settled law that for an injury to be compensable under Workers' Compensation it must arise "primarily out of and in the course and scope of employment." Tenn. Code Ann. § 50-6-102. The State contends that Claimant's injury is not compensable because he was injured after he completed his work shift and while he was engaged in a personal physical activity.

In a case where the Trial Court found a claimant's fall was idiopathic, and no hazard of employment contributed to the fall, the Supreme Court stated the following in affirming the judgment:

It has been held in numerous cases in this state that the phrases 'arising out of' and 'in the course of' are not synonymous, but rather, embody distinct concepts which are basic to liability under the statute. *Knox v. Batson*, 217 Tenn. 620, 399 S.W.2d 765 (1966). It was held in that case that the mere presence of an employee at the place of injury because of his employment will not alone result in the injury being considered as arising out of the employment. If the injury or death resulted from an exposure, which is no more, or different from that of any other member of the public similarly situated in place and time, it is not compensable.

*Sudduth v. Williams*, 517 S.W.2d 520, 523 (Tenn. 1974)

Therefore, the mere presence of a Claimant at his place of employment when he was injured does not entitle him to worker's compensation benefits.

Furthermore, the General Assembly has made it abundantly clear that an employer shall not be liable for an injury arising out of a voluntary recreational activity:

(a) No compensation shall be allowed for an injury or death due to:

\* \* \*

(6) The employee's voluntary participation in recreational, social, athletic or exercise activities, including, but not limited to, athletic events, competitions, parties, picnics, or exercise programs, whether or not the employer pays some or all of the costs of the activities unless:

(A) Participation was expressly or impliedly required by the employer;

(B) Participation produced a direct benefit to the employer beyond improvement in employee health and morale;

(C) Participation was during employee's work hours and was part of the employee's work-related duties; or

(D) The injury occurred due to an unsafe condition during voluntary participation using facilities designated by, furnished by or maintained by the employer on or off the employer's premises and the employer had actual knowledge of the unsafe condition and failed to curtail the activity or program or cure the unsafe condition.

Tenn. Code Ann. § 50-6-110

The proof has shown that the Claimant was voluntarily playing basketball after his work shift ended. There was no proof showing that any of the exceptions (A) – (D) of Tenn. Code Ann. § 50-6-110 apply to the facts as testified by the Claimant.

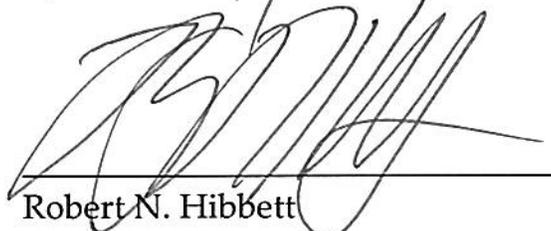
In looking at the facts in a light most favorable to the Claimant, it appears his injury did not occur in the course and scope of his employment. Under the law, the employer cannot be held liable for workers' compensation benefits if the injury is not connected to the employee's employment or workplace. Although it is clear Claimant did fall and was injured on the premises of his workplace, his employer cannot be held liable for a fall caused by his voluntary recreational activity after his work shift had ended.

Therefore, Claimant has failed to prove, by preponderance of the evidence, that his injury arose primarily out of and in the scope of his employment. The Tribunal finds that this is not a compensable injury and the Claimant is not eligible for Workers' Compensation benefits.

**IT IS, THEREFORE, ORDERED, DECREED AND ADJUDGED:**

1. That this claim is not eligible for benefits under the Workers' Compensation Act and Tenn. Code Ann. § 9-8-307(a)(1)(K) and is respectfully dismissed.
2. The court costs, if any, are taxed to the Claimant.
3. Each party is responsible for their own discretionary costs.
4. This is a final judgment.

ENTERED this 1 day of May, 2015

A large, stylized handwritten signature in black ink, appearing to read 'R. Hibbett', is written over a horizontal line.

Robert N. Hibbett  
Claims Commissioner  
Sitting as the Trial Court of Record

**CERTIFICATE OF SERVICE**

This is to certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

HEATHER C. ROSS  
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DWAYNE RICKETTS  
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This 5<sup>th</sup> day of May, 2015.

*Paula Merrifield*

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PAULA MERRIFIELD  
Administrative Clerk  
Tennessee Claims Commission