

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

SIoux FALLS SCHOOL DISTRICT NO. 49-5,

HF No. 229, 2003/04

Employer,
and

DECISION

**ASSOCIATED SCHOOL BOARDS OF SOUTH
DAKOTA WORKER'S COMPENSATION FUND,**

Provider,
vs.

DAVID DUMMERMUTH,

Employee.

This is a worker's compensation proceeding brought before the South Dakota Department of Labor pursuant to SDCL 62-7-12 and Chapter 47:03:01 of the Administrative Rules of South Dakota. Thomas H. Harmon represented Employer and Provider. Scott N. Heidepriem and Tamara A. Wilka represented Employee, David Dummermuth.

The parties agreed to bifurcate this matter and address the sole issue of whether Dummermuth was acting within the scope of his employment at the time of the injury and thus whether the injury is work-related. The parties also agreed that the determination of this issue could be based upon three depositions and the parties' briefs. More specifically, the record consisted of the Deposition of David Dummermuth, Deposition of Brent DeBoer, Deposition of Craig Clayberg, Employer/Provider's Brief in Support of Petition for Determination of Compensability (and attached Affidavit of Craig Clayberg), Employee's Brief in Support of Determination Injury is Work-Related, Employer/Provider's Reply Brief to Employee's Brief and Employee's Reply Brief in Support of Determination Injury is Work-Related.

FACTS

Dummermuth has been employed as a teacher in the Sioux Falls School District for more than twenty-eight years. Dummermuth has also held various coaching positions throughout his employment with Employer. Dummermuth currently teaches physical education and health at Patrick Henry Middle School and is an assistant football coach at Roosevelt High School.

The position of assistant football coach is considered an extra work-extra pay assignment. Employer's Job Description for assistant high school coach states that "[e]xtra duty/extra pay positions are for a fiscal year (July 1-June 30). Duties of the position may be performed any time during that time period depending upon the position/season." According to the Job Description, the essential functions and duties are as follows:

1. Assists in the direction and coordination of interscholastic athletics in their school.
2. Operates within the policies of the Greater Dakota Conferences and the SDHSAA.
3. Maintains a staff relationship with other coaches.
4. Assists with fund-raising activities as needed.
5. Performs other duties as assigned.

(emphasis added). An assistant coach “reports to” and “receives guidance from” the Head Coach.

Brent DeBoer has been the Head Football Coach at Roosevelt for the past fourteen years. Coach DeBoer has a staff of eight assistant coaches and Dummermuth has been an assistant for thirteen years. During the 2003 football season, Dummermuth served as defensive line coach. Coach DeBoer considers Dummermuth an excellent tactical coach and testified that Dummermuth does a great job with the kids and sets a positive example.

As Head Football Coach, Coach DeBoer assigns specific duties and responsibilities to his assistant coaches. During his tenure as an assistant coach, Dummermuth received a three page list from Coach DeBoer that delineated his duties and responsibilities during “Pre-season, In Season, Pre Practice, Post Practice, Game Day and Post Season.” Post season duties and responsibilities included “check in equipment, player evaluation, post season stats, off season conditioning and weight room.” All of the duties and responsibilities set forth by Coach DeBoer have remained the same over the years.

Coach Craig Clayberg is also an assistant football coach at Roosevelt and is the manager of the weight room. The weight room is open five days a week during the school year and periodically during school vacations. The student athletes in the weight room are supervised by Coach Clayberg and any other assistant coach present in the weight room.

As part of his post season responsibilities, Dummermuth was expected to be in the weight room whenever possible. In fact, all assistant coaches are in the weight room during the post season on a regular basis because it is a part of their job duties. Dummermuth testified, “[w]e’re expected to be [in the weight room] and communicate with the kids, interact with them and set an example for them, motivating by example.” There is no written schedule requiring Dummermuth to be in the weight room during certain times. Dummermuth is expected to be present in the weight room as his schedule permits. Even Coach DeBoer tries to be in the weight room every day. Coach DeBoer testified, “[m]y expectation is that [the assistant coaches] appear in the weight room.” Dummermuth stated, “[a]nytime the weight room is open for kids, which it was over vacation, Coach DeBoer would like us to be out there if we can be out there.”

Coach DeBoer does not require any assistant coach to lift weights while in the weight room. It is a personal decision made by that assistant coach. But, the coaches, including Dummermuth, Coach DeBoer and Coach Clayberg, frequently lift weights in the weight room to set an example for the student athletes. For example, Dummermuth testified “[m]ost of our coaches lift with the kids.” Dummermuth lifts to “motivate by example.” Coach DeBoer normally tries to lift weights while in the weight room because

“it shows [the students], in my estimation, that I care about what they do and if they see me doing it, maybe it’s a little easier for them to get in to work.” He also stated, “I want the kids to know that this is important to me and weight lifting is important.” Coach Clayberg routinely sees other assistant coaches lifting weights in the weight room. All of the football coaches regularly lift weights while in the weight room to set an example for the student athletes. Coach DeBoer has not informed an assistant coach that he cannot lift weights while in the weight room.

Employer’s schools were on Christmas vacation and not in session on December 30, 2003. On this date, Dummermuth returned from a one-week vacation and went to the Roosevelt weight room to spend time with his players. Dummermuth testified, “[t]he first thing that I wanted to do when I got back was to go out and spend some time at the weight room with the kids. I hadn’t seen them for a week. That’s an important part of my life. It’s part of my job.” Dummermuth did not go to the weight room or lift weights for personal reasons. Dummermuth is a member of the YMCA and works out each morning at the “Y” for his personal weight training.

Dummermuth, Coach DeBoer, Coach Clayberg and at least ten to twelve students were present in the weight room. Coach DeBoer was sitting on a bench watching Dummermuth. Coach Clayberg “was bench pressing at the time.” Dummermuth first approached the lateral pull down machine. After adjusting the weight, Dummermuth pulled down on the machine. Instead of the weights moving up, the whole machine came down on Dummermuth’s head, resulting in serious injuries. The lateral pull down machine was usually secured in place by seventy-five pound dumbbells on either side of the machine. However, after the accident, it was discovered that the dumbbells were removed by some unknown person or persons.

ISSUE

WHETHER DUMMERMUTH WAS ACTING WITHIN THE SCOPE OF HIS EMPLOYMENT AT THE TIME OF THE INJURY AND THUS WHETHER THE INJURY IS WORK-RELATED?

Dummermuth has the burden of proving all facts essential to sustain an award of compensation. King v. Johnson Bros. Constr. Co., 155 N.W.2d 183, 185 (S.D. 1967). Dummermuth must prove the essential facts by a preponderance of the evidence. Caldwell v. John Morrell & Co., 489 N.W.2d 353, 358 (S.D. 1992). To recover under worker’s compensation, Dummermuth must prove that he sustained an injury “arising out of and in the course of the employment.” SDCL 62-1-1(7).¹ The phrase “arising out of and in the course of employment” is to be construed liberally. Norton v. Deuel Sch. Dist., 2004 SD 6, ¶ 10 (citations omitted). The “application of worker’s compensation statutes is not limited solely to the times during which an employee is ‘actually engaged in the work that he is hired to perform.’” Id. (citations omitted). “[B]oth element of the statute, ‘arising out of employment’ and ‘course of employment,’ must be present in all

¹ Dummermuth must also establish by medical evidence that the employment or employment related activities were a major contributing cause of the condition complained of, or, in the case of a preexisting condition or disease, that the employment or employment-related injury is and remains a major contributing cause of the disability, impairment or need for treatment. SDCL 62-1-1(7)(a)-(b). Because the parties agreed to bifurcate this matter, causation is not at issue at this time.

claims for worker's compensation." Id. ¶ 11 (citations omitted). Each element of the statute must be analyzed independently; however, "they are part of the general inquiry of whether the injury or condition complained of is connected to the employment. Therefore, the factors are prone to some interplay and 'deficiencies in the strength of one factor are sometimes allowed to be made up by strength in the other.'" Id. (citing 2 Arthur Larson, *Larson's Workers' Compensation Law*, § 29, 29-1 (1999)).

Did Dummermuth's injury arise out of his employment?

The phrase "arising out of" expresses a factor of contribution. Zacher v. Homestake Mining Co., 514 N.W.2d 394, 395 (S.D. 1994). "In order for an injury to 'arise out of' employment, the employee must show that there is a 'causal connection between the injury and the employment.'" Norton, 2004 SD 6, ¶ 8 (citations omitted). "[T]he employment 'need not be the direct or proximate cause of injury,' rather, it is sufficient if 'the accident had its origin in the hazard to which the employment exposed the employee while doing [his] work.'" Id. (citation omitted). "[T]o show that an injury 'arose out of' employment, it is sufficient if the employment 1) contributes to causing the injury; or 2) the activity is one in which the employee might reasonably be expected to engage or 3) the activity brings about the disability upon which compensation is based." Id. (citations omitted).

Dummermuth's job as an assistant coach contributed to causing his injury. Two of Dummermuth's express duties during the post season were conditioning and the weight room. Dummermuth was expected to be in the weight room whenever his schedule permitted. Even though there was no requirement that Dummermuth lift weights while in the weight room, this is an activity in which Dummermuth might reasonably be expected to engage. Dummermuth, all of his fellow assistant coaches and his supervisor, Coach DeBoer lift weights while in the weight room. All of the coaches lift weights to motivate and set an example for the student athletes. Neither Dummermuth nor or any of the other coaches were discouraged from lifting weights while in the weight room. Weight lifting was the activity which brought about his disability and his injury resulted from a hazard to which his employment exposed him. Therefore, Dummermuth's injury arose out of his employment.

Did Dummermuth suffer an injury in the course of his employment?

"The phrase, 'in the course of' employment 'refers to time, place and circumstances under which the accident took place.'" Id. ¶ 9 (citations omitted). "An employee is considered within the course of employment if '[he] is doing something that is either naturally or incidentally related to employment.'" Id. "[A]n activity that was expressly or impliedly authorized by the contract or nature of employment falls within the course of employment." Id. (citation omitted).

Dummermuth's injury arose in the course of his employment. At the time Dummermuth was injured, he was in the weight room as an assistant football coach. Dummermuth was not in the weight room for his own pleasure or personal training. Dummermuth performs his own personal weight training at the YMCA. The injury occurred in the post season on Employer's premises at a time when the weight room

was open for student athletes. Assistant coaches were encouraged to be present any time the weight room was open.

Dummermuth's activities of going to the weight room on Christmas break and lifting weights during that time were not outside of the contract or nature of his employment. Dummermuth, as part of his extra duty contract, was expected to be in the weight room during the off season. The activity of weight lifting is incidentally related to Dummermuth's job as assistant coach. Further, Dummermuth was impliedly authorized to lift weights by the nature of his employment. All of the coaches, including the coach Dummermuth reports to, lift weights in the weight room as part of their job duties. Dummermuth's injury occurred on Employer's premises while he was performing his post season coaching duties. Therefore, Dummermuth established that he suffered an injury in the course of his employment.

CONCLUSION

Dummermuth established by a preponderance of the evidence that he was acting within the scope of his employment at the time of his injury and thus the injury is work-related.

Dummermuth shall submit Findings of Fact and Conclusions of Law, and an Order consistent with this Decision, and if necessary, proposed Findings and Conclusions within ten days from the date of receipt of this Decision. Employer shall have ten days from the date of receipt of Dummermuth's proposed Findings and Conclusions to submit objections or to submit proposed Findings and Conclusions. The parties may stipulate to a waiver of Findings of Fact and Conclusions of Law and if they do so, Dummermuth shall submit such Stipulation along with an Order in accordance with this Decision.

Dated this 23rd day of November, 2004.

SOUTH DAKOTA DEPARTMENT OF LABOR

Elizabeth J. Fullenkamp
Administrative Law Judge