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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

DONNA CRAMER,)	
)	
Plaintiff,)	
)	Case No. 09 L 51521
v.)	
)	
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION and VIACOM OUTDOOR,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

Viacom, like many large employers, strives for responsible corporate citizenship. To that end, it organized and sponsored corporate-wide charitable events to raise money for HIV/AIDS awareness. Donna Cramer was injured during a bowl-a-thon, a charitable event organized by her employer, Viacom Outdoor, to benefit an HIV/AIDS charity. The Commission found that she was injured while participating in a voluntary recreational program, which, under Illinois law, does not arise out of employment. But the claimant was injured while participating in and supporting Viacom's laudable charitable giving program, not while engaged in "recreation," as that term is commonly understood. Therefore, the decision of the Commission must be reversed.

I. BACKGROUND

The material facts are not in dispute. The claimant was a sixty-year-old sales assistant employed by Viacom. On September 30, 2004, Viacom organized "Viacommunity Day," during which it encouraged all employees to participate in a bowling event benefiting an HIV/AIDS awareness charity. Viacom paid for the event, and each participant was required to make a minimum \$15 donation to the charity. The event took place during afternoon working hours and any employee who did not wish to participate in the event had to work their normal day at the

office. Viacom awarded a prize to the market with the highest percentage of participation, tracking employee percent participation and the amount raised for each market. All participants had to sign a release allowing Viacom to use photographs from the event for advertising and publicity purposes.

While bowling at the event, the claimant slipped and fell, injuring her left arm and wrist. The Arbitrator denied benefits, finding that the claimant failed to prove by a preponderance of the evidence that she was injured in an accident that arose out of and in the course of her employment because her injuries were sustained while participating in a voluntary recreational activity, which is excluded from workers' compensation coverage. The Commission affirmed and adopted the Arbitrator's decision.

II. DISCUSSION

The only issue is whether the Commission erred in determining that the claimant's injuries did not arise out of and in the course of her employment. Section 11 of the Act states:

Accidental injuries incurred while participating in voluntary recreational programs, including but not limited to athletic events, parties, and picnics do not arise out of and in the course of the employment even though the employer pays some or all of the cost thereof. This exclusion shall not apply in the event that the injured employee was ordered or assigned by his employer to participate in the program.

820 ILCS 305/11. "Recreation" under section 11 of the Act means "the act of recreating or the state of being recreated: refreshment of the strength and spirits after toil: diversion, play."

Elmhurst Park District v. Illinois Workers' Compensation Comm'n, 395 Ill. App. 3d 404, 409

(1st Dist. 2009) (citing Webster's Third New International Dictionary 1899 (2002)). Focusing on

whether the claimant's act was "voluntary," the Commission found that section 11 applied to the

claimant's accident because while Viacom strongly encouraged its employees to participate in

the event, there was no evidence that Viacom ordered or assigned employees to attend the event. However, the Commission did not address the claimant's argument that "Viacommunity Day" was not a recreational program as contemplated by the statute. Because the salient facts are not in dispute, I review this question de novo. Woods v. Cole, 181 Ill. 2d 512, 516 (1998).

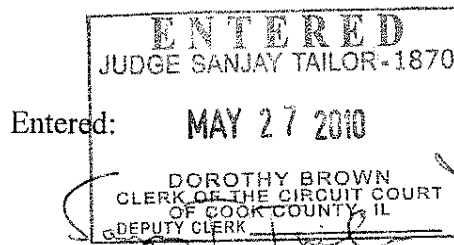
The Commission, in finding section 11 barred benefits, cited Gooden v. Industrial Comm'n, 366 Ill. App. 3d 1064 (2006). In Gooden, the employer encouraged its employees to attend the company's picnic to create a forum where it could recognize the employees' hard work. The benefit to the employer of boosting employee morale is fairly minimal when compared to the far greater benefit derived by Viacom in this case, namely furthering its business interests as a responsible corporate citizen. Viacom, in addition to raising awareness for HIV/AIDS, would also benefit to the extent the publicity and advertising of the event, including the photographs of Viacom employees taken at it, would promote its reputation as a charitable corporate citizen. Further, documents produced by Viacom establish that there was a pre-existing relationship between Viacom and the HIV/AIDS awareness charity, evincing that an even stronger benefit was conferred to Viacom for organizing and sponsoring the event. See, e.g., R. 309, 310, 378. The undisputed purpose of "Viacommunity Day" was to further Viacom's business interests as a socially responsible corporate citizen by raising funds for HIV/AIDS awareness and not simply to allow its employees recreational diversion, making the event incidental to the claimant's employment duties. Insofar as "Viacommunity Day" was not a "recreational" activity as contemplated by section 11 of the Act, the Commission erred in denying benefits. Cf. Elmhurst Park District v. Illinois Workers' Compensation Comm'n, 395 Ill. App. 3d 404, 409 (1st Dist. 2009) (claimant, a fitness supervisor for a park district, who played in wallyball game was not engaged in "recreation" for purposes of section 11 of the Act

because claimant did not participate for his own diversion or to refresh or strengthen his spirits, but rather to accommodate park district's customers); PSFS/Meritor Financial v. Workmen's Compensation Appeal Bd., 603 A.2d 692 (Pa. Cmwlth. 1992) (injury sustained by claimant during volleyball game organized by employee association to raise money for Easter Seal Fund arose out of employment). Cf. also Ace Pest Control, Inc. v. Industrial Comm'n, 32 Ill. 2d 386 (1965) (determining that fatal injury suffered by employee after he stopped to render assistance to stranded motorist arose out of employment, court stated: "Although we do not deem it necessary to find a convincing business purpose of such a corporate policy, we assume that the intended purpose of permitting such 'good samaritan' acts by employees driving trucks characterized as 'moving billboards' was to obtain good will.")

The claimant participated in the company charitable event during working hours and attended because of the pressure she felt as a result of Viacom's strong encouragement to participate.¹ Further, the claimant received her regular salary while attending the fundraising event, which was organized, paid for, and sponsored by Viacom. Accordingly, the claimant's accident arose out of and in the course of her employment with Viacom.

III. CONCLUSION

The decision of the Commission is reversed. This matter is remanded to the Commission for a determination of an appropriate benefit award. The Clerk shall notify all counsel of record of the entry of this decision.



¹ In light of my conclusion that section 11 of the Act does not apply here, I need not address the claimant's alternative argument that the Commission's finding that the claimant's participation was voluntary rather than mandatory is against the manifest weight of the evidence.