IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

DAVID BELCHER, *Petitioner*,

v.

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent,*

CANYON RANCH ADVENTURES, LLC, *Respondent Employer*,

SPECIAL FUND DIVISION/NO INSURANCE SECTION,
Real Party in Interest.

No. 1 CA-IC 17-0020
FILED 12-21-2017

Special Action - Industrial Commission

ICA Claim No. 20140-850063
Carrier Claim No. None
C. Andrew Campbell, Administrative Law Judge

AFFIRMED

COUNSEL

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By Bruce E. Rosenberg
Counsel for Petitioner Employee

Industrial Commission of Arizona, Phoenix
By Jason M. Porter
Counsel for Respondent

Hendrickson & Palmer, P.C., Phoenix
By Adam P. Palmer
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By Christopher S. Norton, Kevin E. Karges
Counsel for Real Party in Interest

MEMORANDUM DECISION

Chief Judge Samuel A. Thumma delivered the decision of the Court, in which Presiding Judge Kenton D. Jones and Judge Jon W. Thompson joined.

T H U M M A, Chief Judge:

¶1 This is a special action review of an Industrial Commission of Arizona (ICA) award and decision upon review for a noncompensable claim. The dispositive issue is whether the administrative law judge (ALJ) erred by finding the bunkhouse rule did not apply. Because claimant David Belcher has shown no reversible error, the award is affirmed.

FACTS AND PROCEDURAL HISTORY

¶2 Belcher worked as a shooting range safety officer for respondent employer Canyon Ranch Adventures, doing business as Grand Canyon Frontier (GCF). In January 2014, Belcher and GCF co-employee Greg Bochak were working at a shooting range called the Frontier. The shooting range was in a remote area approximately a two-hour drive from Las Vegas, Nevada, where Belcher had a residence. The nearest town to the shooting range is Meadview, Arizona, located 10 to 15 miles from the Frontier.

¶3 GCF employees were allowed to stay overnight in rooms at a facility called Sky Station or the Place (the Place), located "five to seven" or perhaps as many as 10 miles from the shooting range. The Place was leased to an entity called Y-Travel, which refurbished it in late 2012 and early 2013. GCF did not own or operate the Place and there was no written lease between GCF and the owner of the Place or Y-Travel for the use of the rooms. GCF employees were not required to stay at the Place and were not charged anything when they elected to do so, but brought their own temporary furnishings and food when they stayed there.

¶4 On January 12, 2014, Belcher and Bochak worked at the Frontier during the day, had dinner, played pool and drank beer together that night at an establishment in Meadview and then returned to their rooms at the Place by 10:30 p.m. Within a short time, Belcher heard gunshots outside his room. He went to investigate and saw the door to Bochak's room open and Bochak with a gun to his chin. Belcher believed that Bochak was attempting to kill himself and intervened. In the course of that intervention, Bochak suffered a bullet wound to the head and other serious, non-fatal injuries, including the loss of his left eye.

¶5 Belcher filed a workers' compensation claim, which was denied for benefits. Belcher then timely requested an evidentiary hearing before the ICA, where the ALJ received transcripts from discovery depositions of out-of-state residents Anthony Dobbs and Theodore Quasala and live testimony from Jeffrey A. Whiteaker on behalf of GCF and Belcher. The parties filed post-hearing memoranda and the ALJ entered an award finding Belcher's injury noncompensable, rejecting Belcher's claim that he was entitled to benefits under the bunkhouse rule. When Belcher timely requested administrative review, the ALJ affirmed the award as supplemented. This court has jurisdiction over Belcher's timely request for review pursuant to Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(2) and 23-951(A) (2017),[1] and Arizona Rules of Procedure for Special Actions 10.

ANALYSIS

¶6 In reviewing findings and awards of the ICA, this court defers to the ALJ's factual findings, but reviews questions of law de novo. *Young v. Indus. Comm'n*, 204 Ariz. 267, 270 ¶ 14 (App. 2003). This court considers the evidence in a light most favorable to upholding the award. *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105 ¶ 16 (App. 2002).

¶7 Belcher first argues the ALJ abused his discretion in receiving deposition transcripts from two out-of-state witnesses. Under the applicable rules, however, a deposition of an out-of-state witness may be admitted into evidence in the discretion of the ALJ. Ariz. Admin. Code R20-5-143.G. In this case, both out-of-state witnesses were deposed in Phoenix, where counsel for Belcher was present and all parties had a full and fair opportunity to question them. Neither were within the subpoena power of the ICA, and both had relevant knowledge. Given the substantial discretion

[1] Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

afforded the ALJ in addressing such deposition testimony, and the record presented, Belcher has failed to show the ALJ abused his discretion by receiving these depositions in evidence.

¶8 Belcher next argues the ALJ erred by failing to apply the bunkhouse rule. To establish a compensable claim, Belcher had the burden of proving he sustained an injury arising out of and in the course of his employment. *See* A.R.S. § 23-1021. "Arising out of" refers to the origin or cause of the injury, while "in the course of" refers to the time, place, and circumstances of the injury in relation to the employment. *See, e.g., Peter Kiewit Sons' Co. v. Indus. Comm'n*, 88 Ariz. 164, 168 (1960); *see also Scheller v. Indus. Comm'n*, 134 Ariz. 418, 420 (App. 1982). Where the bunkhouse rule applies, it satisfies the "in the course of" requirement. *See Hunley v. Indus. Comm'n*, 113 Ariz. 187, 188 (1976).

¶9 The bunkhouse rule has existed in Arizona for more than 60 years. *See Gaona v. Indus. Comm'n*, 128 Ariz. 445, 446 (App. 1981) ("The bunkhouse rule was first applied in Arizona in *Johnson v. Arizona Highway Dep't.*, 78 Ariz. 415, 281 P.2d 123 (1955)."). During that time, it has been applied rarely in published appellate decisions, at times to find a claim is compensable, but more often in discussing why a claim is not. As summarized elsewhere, in a lengthy quote that bears repeating here:

> The "bunkhouse rule" provides that an employee who is required to live on the employer's premises and is injured while reasonably using those premises is within the course of employment even though the injury occurred when the employee was off duty. The bunkhouse rule applies whether the employee is expressly required to live on the premises or does so because circumstances such as limited alternative accommodations or finances leave no reasonable option. It does not apply when the employee simply chooses to live on the employer's premises for convenience or financial expediency. An employee who is not required expressly or by circumstances to live on the premises may nevertheless be deemed to be "required" to live on the premises for purposes of the bunkhouse rule if the employee's presence on the premises 24 hours a day is of substantial benefit to the employer. An

> employee who is required to live on the premises will not be compensated for an injury which occurs on the premises if, at the time of injury, the employee was engaged in activities unrelated to any use or condition of the premises.

ARIZONA WORKERS' COMPENSATION HANDBOOK § 4.2.1 at 4-1 to 4-2 (2013 ed.) (citations omitted). "The bunkhouse rule is an extension of the general rule that where an employee is injured on the employer's premises, he is entitled to compensation for the injuries if they were received during reasonable and anticipative use of the premises." *Hunley*, 113 Ariz. at 188.[2] "The cases which have developed the 'bunkhouse rule' have been predicated upon fact situations involving a reasonable use of the employer's premises, thereby insuring the required relationship between the injury and the employment." *D.E.S. Youth Conservation Corps. v. Indus. Comm'n*, 129 Ariz. 235, 237 (App. 1981).

¶10 As applied, Belcher was not required to stay at the Place and was not on call 24 hours a day. Assuming, without deciding, that circumstances left Belcher no reasonable option to staying at the Place, the ALJ did not err in concluding Belcher had not shown that the Place was GCF's premises for purposes of a worker's compensation claim, for two alternative reasons.

¶11 First, for purposes of the bunkhouse rule, Arizona cases have construed the employer's "premises" as where the employee was required to work or contiguous (or within walking distance) to the workplace. *See Hunley*, 113 Ariz. at 188, 189 (finding compensable injury to employee incurred when walking from an employer-owned and provided apartment, supplied to employee "as part of [employee's] compensation," that was "within walking distance of her work"); *Johnson v. Arizona Highway Dep't.*, 78 Ariz. 415, 416 (1955) (finding employee's death compensable where he worked at inspection station and lived in a house owned and provided by employer within walking distance from the inspection station; "[a]fter he returned to the house and while apparently asleep, fire broke out [in the

[2] The bunkhouse rule is distinct from the "going and coming rule," which provides that, "[i]n general, an injury occurring while going to or coming from work does not arise in the course of employment," *Allen v. Indus. Comm'n*, 158 Ariz. 292, 294-95 (App. 1988), and from overnight travelling employees, making such cases relied upon by Belcher inapposite.

house], destroying the building and severely burning the employee from which he died"); *Allen*, 158 Ariz. at 293, 298 (finding compensable injury to prison employee incurred when walking down trailer home's steps, where employee applied for and obtained "housing on the prison premises" and "moved his own trailer onto the space" on his employer's premises, "located approximately one and one-half blocks from the prison kitchen where he worked").[3] Belcher has not shown how these cases, addressing lodging on an employer's premises at the same location where work was performed, or at most within walking distance, could be read to define an employer's premises as including non-contiguous lodging located "five to seven" or perhaps as many as 10 miles away from the place of employment.

¶12 Second, Belcher has not shown the ALJ erred in finding that "[t]he evidence is not sufficient to conclude [GCF] . . . exercised control of" the Place sufficient for it "to be considered the employer's for the purposes of application of the bunkhouse rule." The ALJ correctly found GCF does not own the Place and is not a party on any lease providing it rights to the Place. Nor has Belcher shown how any possible indirect common ownership of the party leasing the Place and GCF would alter this conclusion.

¶13 Belcher provides no authority supporting his argument that an employer need not "own, legally possess or control property where the bunkhouse may be located" (and, as noted above, his reliance on overnight traveler cases is inapposite). Moreover, Belcher cites no Arizona case applying the bunkhouse rule and finding compensability in a similar case,

[3] *Cf. Gaona*, 128 Ariz. at 448 (noting "this is a factually close case," finding injury to employee on employer's premises was not compensable because employee "lived on the employer's premises because it was convenient and financially expedient to do so" and employee "failed to meet his burden to show that alternative housing was so impractical as to make living on the employer's premises, effectively, a requirement of employment"); *D.E.S. Youth Conservation Corps*, 129 Ariz. at 237 (App. 1981) ("There is no question that [the employee] was required to live at [the employer's] camp during his employment," but setting aside award of compensability, finding injury noncompensible as a result of a "purely personal activity" involving "pocket knife which the employer's policy forbade him to have").

and has provided no compelling reason to adopt case law in other states construing the bunkhouse rule in those jurisdictions.[4]

¶14 Belcher concedes GCF "did not own the Place." According to Belcher, however, "[t]he more critical inquiry is not control of the premises, but whether [GCF] reasonably anticipated that [Belcher] would be at [the Place] at the time of his accident, using the room for sleeping prior to working the next morning." That argument, however, ignores the critical importance of the employer's premises that is a key aspect of Arizona's bunkhouse rule. Contrary to Belcher's argument on appeal, nothing suggests that the sole limit in the application of Arizona's bunkhouse rule is foreseeability of an employee's use of property, rather than ownership (or at very least control). Similarly, Belcher has not shown how allowing access to the Place, "whether or not [GCF] owned, possessed or controlled the premises at any given time," would mandate application of the bunkhouse rule here.

¶15 Alternatively, Belcher argues the evidence establishes GCF "did, in fact, control . . . the Place," based on his claim that GCF and Y-Travel (the entity leasing the Place) may have had common ownership. This argument, in large part, is based upon two pages of a May 2013 Release and Indemnification Agreement, stating Bart Mackay (the record owner of GCF) had been a "nominee" owner of GCF as an accommodation to David Jin, who apparently owned Y-Travel. Based on this, Belcher extrapolates that "Jin, through his business entities and general managers, at all times directed and controlled the use of the Place."

¶16 This May 2013 Release and Indemnification Agreement is incomplete and the two pages in the record do not include signature pages.

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[4] The two cases from other jurisdictions cited by Belcher undercut his arguments on other points. *See Northern Corp. v. Saari*, 409 P.2d 845, 846-47 (Alaska 1966) (finding compensable accidental death of employee occurring during short walk from employer-provided recreational facility and employer's camp in remote part of Alaska; "Because of the restricted conditions of employment and the availability of employer-provided recreational facilities, we believe that the risk of injury or death while going to or from the employer's camp and the location of the recreational facilities on the only road available could be said to be a risk associated with one's employment."); *Lujan v. Payroll Express, Inc.*, 837 P.2d 451, 455 (N.M. Ct. App. 1992) (concluding bunkhouse rule applied, because court was "[u]nable to make a meaningful distinction between this case and *Allen*," which, as noted above, is distinguishable from Belcher's claim).

Nor does the record indicate whether the document was executed and effectuated by the time of Belcher's January 2014 injury. Even if the document had been executed and effectuated by January 2014, pursuant to its terms, Mackay would have transferred half his interest in GCF to Canyon Rock LLC, an entity in which Jin (before his death in June 2013) is identified as holding "a beneficial ownership interest." Mackay also would have transferred his other half interest in GCF to Nigel Turner pursuant to "a purchase option," the result of a May 2012 Joint Venture agreement, which is not in the record. In that event, GCF then would have been owned in equal parts by Canyon Rock LLC, in which Jin had an unspecified interest, and Turner. Belcher has not shown how, even if these transfers occurred, the ALJ would have been required to conclude GCF and the Place were owned and controlled by Jin in January 2014, several months after Jin died in June 2013.

¶17 By contrast, if the May 2013 document was not executed and effectuated by the time of Belcher's January 2014 injury, if no transfer occurred, Mackay (not Jin) would own all of GCF. Alternatively, if Mackay transferred a portion of GCF to either Turner or Canyon Rock LLC, those individuals, or Mackay and that entity, would have owned portions of GCF. In that event, Jin, who died in June 2013, would not have owned any of GCF at the time of Belcher's injury. Whether Jin's successors or Turner owned any of GCF at that time is unknown from this record. Belcher has not shown how this uncertain result would have required the ALJ to conclude GCF controlled the Place in January 2014 for purposes of the bunkhouse rule. Finally, on this record, Belcher has not shown that the ALJ erred in rejecting his claim that common management of the shooting range and the Place required the application of the bunkhouse rule.

CONCLUSION

¶18 Because Belcher has shown no reversible error, the award is affirmed.

AMY M. WOOD • Clerk of the Court
FILED: AA