FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-0231

KAREN REYNOLDS,

Appellant,

v.

ANIXTER POWER SOLUTIONS and TRAVELERS INSURANCE COMPANY,

Appellees.

CORRECTED PAGE: pg 4
CORRECTION IS UNDERLINED IN RED
MAILED: December 12, 2019
BY: FTA

On appeal from an order of the Judge of Compensation Claims. Thomas W. Sculco, Judge.

Date of Accident: April 18, 2018.

December 10, 2019

WOLF, J.

Karen Reynolds appeals an order denying her claim for worker's compensation benefits for an injury she sustained while bowling with co-workers during regular working hours. The JCC concluded that the bowling event was a "recreational activity" and that Reynolds' injury was not compensable. We determine that the injury sustained while bowling was work related pursuant to section 440.921, Florida Statutes, and reverse.

Reynolds attended the bowling event during her paid work shift and injured her ankle. There is no serious dispute that

bowling, like many other activities, may constitute a recreational activity if done for the purpose of refreshment.[1] But the record here requires a finding that the injury sustained while bowling was compensable under section 440.092(1), because the activity was an expressly required incident of employment and it produced a substantial direct benefit to the employer beyond improvement in employee health and morale. *See Highlands Cty. Sch. Bd. v. Savage*, 609 So. 2d 133 (Fla. 1st DCA 1992).

Section 440.092(1), Florida Statutes, provides:

> Recreational or social activities are not compensable unless such recreational or social activities are an expressly required incident of employment and produce a substantial direct benefit to the employer beyond improvement in employee health and morale that is common to all kinds of recreation and social life.

There is no dispute that the bowling event was during regular work hours, Anixter paid employees who attended the event, and Claimant *was not told* she could have remained at work or taken a vacation day rather than attend the event. No other alternative

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[1] In the absence of a statutory definition of "recreation" we turn to dictionaries. *See, e.g.*, *Dorsey v. Robinson*, 270 So. 3d 462, 465-66 (Fla. 1st DCA 2019). They uniformly agree that recreation involves "refreshment" *after* work. *See Recreation*, THE MERRIAM-WEBSTER DICTIONARY 605 (New ed. 2004) ("a refreshing of strength or spirits after work"); *Recreation*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 977 (10th ed. 1998) ("refreshment of strength and spirits after work; *also*: a means of refreshment or diversion"); *Recreation*, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1511 (3d ed. 1992) ("Refreshment of one's mind or body after work through activity that amuses or stimulates; play"); *Recreation*, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1090 (New College ed. 1982) ("Refreshment of one's mind or body after labor through diverting activity; play."); *Recreation*, WEBSTER'S NEW WORLD DICTIONARY OF THE AMERICAN LANGUAGE 1188 (Second College ed. 1978) ("refreshment in body or mind, as after work, by some form of play, amusement, or relaxation").

was offered by the employer. These facts were expressly accepted by the JCC.

The purpose of the event was to improve morale and, as testified to by Claimant's supervisor, to discuss "*some of our goals for the next year*."

Because the facts are undisputed, the question becomes one of law reviewable de novo. *See Sedgwick CMS v. Valcourt-Williams*, 271 So. 3d 1133, 1135 (Fla. 1st DCA 2019); *cf. McCain v. Fla. Power Corp.*, 593 So. 2d 500, 504 (Fla. 1992).

Certainly, if an employer invites an employee during work hours to discuss goals for their department, an employee is obligated to attend. Here, the employer's invitation was sent by email and could be accepted or declined, but an electronic option to decline is insufficient to establish that participation in this event was voluntary.[2]

The fact that the bowling was conducted during regular work hours and one purpose of the event was to discuss goals for the upcoming year distinguishes this case from *Whitehead v. Orange County Sheriff's Department*, 909 So. 2d 344 (Fla. 1st DCA 2005) (affirming JCC's finding that injury sustained by claimant while playing softball when she was "on-call" was not compensable). In addition, the undisputed facts in this record also satisfy section 440.092(1)'s exception to the exemption for recreational activities. No reasonable person in Claimant's position would have believed that the activity was not a required incident of employment. In addition, the testimony of the employer established that there was a substantial and direct benefit to the employer beyond simply improving employee morale and health.

Words written on the creation of section 440.092(1) and adopted by this court almost thirty years ago still hold true: "There is nothing in the statute as adopted which would indicate a desire to preclude compensation where a person was injured in conducting actual job duties." *Savage*, 609 So. 2d at 135. We,

[2] It is worth noting the actual email invitation was not introduced into evidence.

therefore, REVERSE and REMAND for entry of an order finding the injury to be compensable.

ROBERTS, J., concurs; ROWE, J., dissents with opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

ROWE, J., dissenting,

The JCC correctly determined that the bowling event Karen Reynolds attended with her co-workers was a "recreational activity." I would affirm the order denying compensability for the injury Reynolds sustained while bowling.

Section 440.092(1), Florida Statutes (2017), requires a worker seeking compensability for an injury at a recreational event to show that the activity was "an expressly required incident of employment" and that the activity provided "a substantial direct benefit to the employer beyond improvement in health and morale that is common to all kinds of recreation and social life."

We review a JCC's determination of whether an event is a recreational activity under section 440.092(1), for competent, substantial evidence. *See Whitehead v. Orange Cty. Sheriff's Dep't.*, 909 So. 2d 344, 345 (Fla. 1st DCA 2005). The JCC found that the bowling event Reynolds attended was not a compensable recreational activity under the statute. That finding is supported by competent, substantial evidence.

Reynolds claims that no one told her that the bowling event was not required or that she could have remained at work or taken a vacation day rather than attend. But Reynolds' supervisor testified that the event was not mandatory—it was "basically building morale" and did not include either clients or advertising. Reynolds admitted that she accepted the email invitation through Outlook, and she did not ignore or decline the invitation. The JCC

relied on this testimony and found that Reynolds' injury was not compensable under the exemption provided in section 440.092(1).

Reynolds failed to present competent, substantial evidence to show that the bowling event was required as an incident of her employment or that it provided a substantial direct benefit to APS beyond improving employee health and morale. The JCC's order denying compensability for Reynolds' bowling injury should be affirmed.

Nicholas A. Shannin of Shannin Law Firm, P.A., Orlando, for Appellant.

Eric R. Eide of Grower, Ketcham, Eide, Telan & Meltz, P.A., Orlando, for Appellees.