Social/recreational exception to compensability in Oregon narrowed by *U.S. Bank v. Pohrman*

By Vincci W. Lam and Brian M. Solodky ■ November 6, 2015

Employers be warned: unpleasant breath and scone-envy are no longer the biggest concerns with workers' coffee breaks. In a recent decision, *U.S. Bank v. Diane Pohrman*, the Oregon Court of Appeals affirmed the Board's finding that a claim was compensable where, during a break from work, the claimant slipped and fell in the public lobby of her office building while walking to get coffee with a non-coworker friend who worked in the adjacent building.[1]

The employer denied the claim, asserting that the injury was not compensable because it occurred while claimant was engaged in a social activity primarily for her own pleasure—coffee with a friend. Despite claimant's clear testimony that the coffee meeting was "social in nature," "primarily for her own personal pleasure" and that the other individual was "purely" a personal friend, the Court of Appeals and Board rejected the application of the social/recreational exception to compensability and ordered the claim compensable.

The Court of Appeals noted the history of the recreational/social activity exception as a "legislative reaction" to the Court's finding in *Beneficiaries of McBroom v. Chamber of Commerce*.[2] There, the Court found that a death claim was compensable when a worker became very inebriated while on a business trip and drowned in his hotel's hot tub. In response to the Court's decision on compensability, the legislature enacted the social/recreational exception.

In *Pohrman*, the Board reasoned that the coffee break was "not the kind of 'social' activity" contemplated by the exception because the 15-minute break was required by the employer as part of the claimant's regular work day. The Court and Board held that the personal nature of the coffee meeting was "incidental" or secondary to the primarily work-related purpose of the break. The Board further reasoned that the coffee meeting was not "primarily" for claimant's personal pleasure because the mandatory nature of the break made the coffee meeting a primarily *work*-related activity. According to the Board, any pleasure claimant derived from the company of her friend was "merely incidental" to the primarily work-related nature of taking a break. The fine line being drawn in this case begs the question: would a claim be compensable where, during a mandatory paid break, a worker elects to juggle knives for fun or walk a tightrope between buildings for a thrill?

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The injury here, although not as divisive and egregious as *McBroom*, seemed

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Social/recreational exception narrowed (continued)

to fit squarely into the social/recreational exception. The only work-related connection between the slip and fall and claimant's work was that the fall occurred during a paid/mandatory break from work. Claimant testified that she regularly socialized with the friend outside of work, that they shared a common social circle and that no work-related topics were discussed at these regular coffee meetings.

The employer requested review by the Oregon Supreme Court related to the proper application of the social/recreational exception and alternatively whether the injury otherwise satisfied the traditional AOE/COE analysis. The Supreme Court declined to review the case on October 9, 2015.

The Court of Appeals' decision in *Pohrman* and the Supreme Court's refusal to review the case calls into question whether there is any scenario where the social/recreational exception could be successfully applied to bar compensability.

Reinisch Wilson Weier PC attorneys are always available to answer your compensability and other questions. ■

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[1] *U.S. Bank v. Pohrman* 272 Or App 31 (2015) and *Diane Pohrman*, 64 Van Natta 752 (2012).

[2] 272 Or App at 36, citing *Beneficiaries of McBroom v. Chamber of Commerce*, 77 Or App 700 (1986).

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