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WORKERS' COMPENSATION

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Under common law, when an employee was injured on the job, there was a good chance the injuries would go uncompensated due to the doctrines of assumption of risk, contributory negligence, and the fellow servant rule (Larson, 1992). Those injured workers who could overcome the preceding defenses usually faced a series of other problems before they received any compensation for their injuries. First, the injured workers, faced with little or no income, were under enormous financial pressure to settle their claims. The injured worker, therefore, usually received much less than the true value of his or her claim to support themselves and their families. Second, even if the injured employee was able to withstand the financial pressure and could afford to litigate the claim, the employer was often able to use the court system to his or her advantage and delay paying the employee any compensation. Finally, if the injured worker was lucky enough to recover his or her damages, the award was usually reduced by hefty attorney fees (Prosser & Keeton, 1984).

In an effort to protect injured workers and alleviate the injustice of the common law system, states began to enact workers' compensation legislation, modeled after the German and English systems. The first state to enact workers' compensation legislation was Maryland when it passed a cooperative accident fund for miners in 1902 (Larson, 1984). Subsequently, Congress passed legislation covering certain federal employees in 1908. By 1911, twenty-five states had enacted some form of law protecting employees; every state in the country having some form of workers' compensation law by 1949 (Larson, 1984). The **workers' compensation legislation**, which is different in every state, provides benefits, including lost wages, usually one-half to two-thirds of the employee's weekly wages, and medical care to an employee who is injured or killed in the course of employment, regardless of fault. The right of an employee to workers' compensation benefits is based on one simple test: Was the injury work-related? In exchange for this protection, the injured worker agrees to forego any tort claim he or she might have against the employer (Larson, 1992). The workers' compensation system, therefore, acts like a "bargain" between the employer and employee. The employer, in exchange for immunity from lawsuits, provides employees with swift, though limited, compensation for work-related injuries. In return, injured workers are guaranteed compensation for their injuries (Ashbrook, 2008).

Workers' compensation is, therefore, a form of strict liability. It makes no difference whether the injury was caused by the employee's negligence or pure accident; *all the employee has to show is that he or she was injured in the course of employment* (Larson, 1992). As a result, the injured worker receives quick financial assistance with minimal interruption in his or her life.

FUNDAMENTAL CONCEPTS

The basic policy behind the workers' compensation system is that the cost of the product should bear the blood of the worker (Prosser & Keeton, 1984). In other words, the employer is required by the state to compensate the employee through private insurance, state-funded insurance, or self-insurance for any damages suffered by the employee. The employer should treat the cost of workers' compensation insurance as part of the cost of production. These extra costs are then added to the cost of production and passed on to the consumer.

Eligibility Requirement

Although every state has its own workers' compensation laws, there are two basic eligibility requirements that an injured party must satisfy before he or she can recover workers' compensation benefits. The first requirement is that the person must show that he or she was an employee of the organization. An **employee** is defined as any person in the service of another under any contract of hire. In reviewing the relationship between an individual and a recreation or sport organization to determine if he or she was in fact an employee, the courts use an "economic

reality test" (*Coleman v. Western Michigan University*, 1983). Under the **economic reality test**, the court examines the following factors to determine whether there existed an expressed or implied contract for hire.

1. Does the employer have the right to control or dictate the activities of the proposed employee?
2. Does the employer have the right to discipline or fire the proposed employee?
3. The payment of "wages" and, particularly, the extent to which the proposed employee is dependent upon the payment of wages or other benefits for his daily living expenses; and
4. Whether the task performed by the proposed employee was "an integral part" of the proposed employer's business (*Coleman v. Western Michigan University*, 1983 at 225).

In *Coleman v. Western Michigan University* (1983), the Michigan Court of Appeals, citing the *Rensing v. Indiana State University Board of Trustees* (1983) decision, concluded that scholarship athletes are not employees within the meaning of the workers' compensation statute. In particular, the court found that Coleman could only satisfy the third factor of the "economic reality test," that his scholarship did constitute wages. As far as the other factors, the court found that the university's right to control and discipline Coleman required by the first two factors was substantially limited. In considering the fourth factor, the court held "that the primary function of the defendant university was to provide academic education rather than conduct a football program." The term *integral*, the court held, suggests that the task performed by the employee is essential for the employer to conduct his business. The "integral part" of the university is not football, the court said, but education and research.

The second requirement every employee must meet before he or she can collect workers' compensation is that *the injury suffered by the employee must have occurred in the course of his or her employment*.

Workers' Compensation and Small Businesses

As mentioned earlier, workers' compensation is primarily regulated by the individual states, and therefore there is no single cohesive set of rules governing benefits, coverage, or premium computation. There are, however, some things that every business, no matter how big or small, must know.

First, in most states, it does not matter how small your business, if you have employees, you need workers' compensation insurance. As a result, workers' compensation insurance can be a significant expense for many small businesses.

Second, to satisfy the workers' compensation obligations, all an employer has to do is purchase an insurance policy. In most states, these policies can be purchased either through a state insurance fund or by private insurance from an insurance company. There are, however, some states that require employers to purchase coverage exclusively through state-operated funds.

Third, it is important to remember that if a business fails to carry workers' compensation insurance and an employee is injured, the employer can be required to not only pay the employee's medical expenses, death benefits, lost wages, and vocational rehabilitation out of pocket, but also be liable for any penalties levied by the state (Priz, 2005).

In addition, recreation and sport managers also need to be conscious of workers' compensation in the following areas: staff employees, independent contractors, and volunteers. With staff employees, it is clear that the recreation or sport manager should follow the local laws governing workers' compensation insurance. How independent contractors and volunteers are treated, however, will vary from state to state, so it is essential that employers inform their workers' compensation insurance agent if the organization uses independent contractors or volunteers.

Independent Contractors

Whether an individual is hired as an independent contractor or an employee may impact the obligation an employer has under each state's workers' compensation law. For example, some states require all workers to be covered under its workers' compensation programs, regardless of whether or not they are employees or independent contractors. Other states only require employees to be covered. As a result, it is important that employers know their state's laws to determine who must be covered and what is required of them to comply (Priz, 2005).

Volunteers

Although covering “volunteers” under your workers’ compensation plan may seem like a less-attractive option considering the up-front expense for the organization of paying for workers’ compensation insurance, there are a number of important benefits from this option. First, by covering “volunteers” under your workers’ compensation plan, if a volunteer is injured, you can save your organization both time and money by avoiding a negligence lawsuit. Second, by covering “volunteers” under your workers’ compensation plan, you save your organization from any bad publicity that a lawsuit would generate. Finally, you also protect your volunteers from financial hardship by providing them benefits under workers’ compensation (Wong & Wolohan, 1996).

For example, in 1999, a girls’ softball umpire in Montana was stepping away from the plate when a player accidentally hit him. When a workers’ compensation claim was filed on behalf of the umpire, the investigation revealed that local recreation league umpires and referees had no workers’ compensation insurance and possibly no medical coverage at all. Without workers’ compensation, recreational league umpires have to rely on their own personal medical insurance. The cost for the league to cover the referees under workers’ compensation would have been about \$3.08 per referee (Hull, 2000).

Workers’ Compensation and Professional Athletes

Satisfying the requirements for workers’ compensation is usually not difficult for professional athletes. There is no question that professional athletes are employees of their teams and any injury suffered by an athlete is usually well documented and treated. The hard part, however, is to determine in which jurisdiction the athlete may file his or her claim. Historically, because of the state’s liberal statute of limitations and the fact that it only required that an athlete had played at least one game within its jurisdiction to qualify for workers’ compensation, California was often used “as the state of last resort” for the workers’ compensation claims of professional athletes whose home states had more restrictive laws (Binning, 2014). Another reason that California was so attractive to professional athletes is because it was one of nine states to recognize workers’ compensation claims for injuries resulting from “cumulative trauma” which result from repetitive traumatic activities extending over a period of time. Since professional athletes spend years performing the same tasks and perfecting repetitive movements, cumulative trauma injuries are a particular problem (Binning, 2014).

In the past few years, however, there have been two developments that have limited the rights of professional athletes under California’s workers’ compensation statutes. For example, in *Matthews v. National Football League Management Council*, Bruce Matthews a former offensive lineman with the Houston Oilers and the Tennessee Titans, who played in the NFL, filed for workers’ compensation in California, claiming an array of disabilities that manifested from injuries sustained during his career. In rejecting “single-game rule,” the Ninth Circuit Court found that although Matthews played thirteen games in California during his nineteen-year NFL career, “it is not clear that California would extend its workers’ compensation regime to cover the cumulative injuries Matthews claims, given his limited contacts with the state” (*Matthews v. National Football League Management Council*, 2012).

In addition to the courts, the California State Legislature also acted to close the loophole in the system that was resulting in an average of 34 new claims each month and had paid nearly \$42 million in claims to professional athletes since 2002 (Thompson and Olson, 2013). As a result, the state passed Assembly Bill AB1309, also known as Chapter 653 of the California Labor Code, limiting the state’s workers’ compensation exposure to professional athletes to those athletes who spent more than 20 percent of their professional time in California or worked for a California-based team for part of their professional or semi-professional career (Thompson and Olson, 2013).

Other than California, the majority of jurisdictions do not explicitly address the issue of workers’ compensation benefits for professional athletes. In the absence of an explicit statutory provision protecting professional athletes, state courts are called to interpret the governing workers’ compensation coverage of professional athletes. In most cases, the courts have held that athletes are considered “employees” within the controlling statutory system (McQueeney, 2014).

Some states, however, have amended their workers’ compensation statutes to specifically exclude professional athletes. For example, in *Rudolph v. Miami Dolphins*, three professional football players, Council Rudolph, William Windauer, and Floyd Wells, sought workers’ compensation benefits for injuries sustained

during their employment with the Miami Dolphins. In upholding the Florida Workers' Compensation Statute which states that "Employment" does not include services performed by or as . . . professional athletes, such as professional boxers, wrestlers, baseball, football, basketball, hockey, polo, tennis, jai alai, and similar players," the Florida Appellate Court held that the professional athlete exclusion was reasonable and not a wholly arbitrary one, since the players are frequently amenable to serious injuries, willfully hold themselves out to such injuries, and are generally well paid for their services.

Unlike the Florida's statutory system that applies a blanket exclusion to all professional athletes, Michigan's regime is organized such that professional athletes are statutorily included, but systematically or functionally excluded (McQueeney, 2014). Specifically, Section 360 of Michigan's Worker's Disability Compensation Act allows a professional athlete to claim benefits only insofar as the athlete earns less than 200% of the Michigan average weekly wage. The effect of this provision is to functionally exclude all professional athletes from the major professional leagues from claiming benefits (McQueeney, 2014).

In addition to Florida and Michigan, other states to exclude professional athletes from receiving workers' compensation under state statutes include Massachusetts, Wyoming, and Montana. Each of the three excludes professional athletes that are engaged in contact sports. Also, like Michigan, Pennsylvania's statute restricts eligibility for workers' compensation to only those professional athletes not making more than twice the state average weekly wage, which excludes all professional athletes from the major professional leagues from claiming benefits (Friede, 2015).

Chronic Traumatic Encephalopathy (CTE) and Long Term Injuries

One of the biggest issues facing professional athletes and workers' compensation coverage is the type of injuries professional athletes incur. For example, while concussions are generally acute traumas, they have recently been linked to degenerative brain diseases like chronic traumatic encephalopathy (CTE), Alzheimer's disease, and other dementia-type diseases. However, because they do not result from easily identifiable "accidents," professional athletes face a number of obstacles in trying to obtain benefits under state workers' compensation laws. For example, depending on the state, the statutes of limitation for long term workers' compensation disability claim will have usually tolled by the time athletes start to develop CTE or other long term cumulative trauma diseases.

For athletes in states in which the statute of limitations does not begin until after the disability is discovered the next obstacle to receiving compensation is the fact that their claims are based on cumulative trauma. Many states do not allow for cumulative trauma claims. Even if the courts allowed cumulative trauma claims, and even with all the current research showing a relationship between concussions and CTE, professional athletes would still need to show that their injury was caused by playing the sport (Friede, 2015).

Workers' Compensation and College Athletes

Early court cases involving college athletes generally ruled that the athletes were employees of the university and covered under the school's workers' compensation insurance (*University of Denver v. Nemeth*, 1953 and *Van Horn v. Industrial Accident Commission*, 1963). However, the courts began to change their position in the late 1950's when the Supreme Court of Colorado ruled that Ray Herbert Dennison, who was fatally injured while playing football for Fort Lewis A & M College, was not an employee of the university. In making its decision, the Supreme Court of Colorado held that "it was significant that the college did not receive a direct benefit from the activities, since the college was not in the football business and received no benefit from this field of recreation (*State Compensation Insurance Fund, et al. v. Industrial Commission of Colorado*, 1957). In the 65 years since the Supreme Court of Colorado's decision, courts in almost every jurisdiction have upheld the reasoning behind the decision and have ruled that students are not employees of their schools because the business of the university is education, not athletics.

State Legislation Regarding College Athletes

In affirming the decision of the California Workers' Compensation Appeals Board, the California Court of Appeals in *Graczyk v. Workers' Compensation Appeals Board* (1986), denied workers' compensation benefits to Ricky Graczyk after he sustained head, neck, and spine injuries while playing football for California

State University, Fullerton. The Court of Appeals ruled that it was the intent of the state legislature to exclude Graczyk, and all scholarship athletes, from receiving workers' compensation benefits for injuries received on the playing field. The court pointed out that the California State Legislature specifically amended the state's workers' compensation statute to define an "employee" to exclude "any person, other than a regular employee, participating in sports or athletics who receives no compensation for such participation other than the use of athletic equipment, uniforms, transportation, travel, meals, lodging, or other expenses incidental thereto."

The California State Legislature amended the statute further in 1981 when it specifically excluded from the definition of employee "[a]ny student participating as an athlete in amateur sporting events sponsored by any public agency, public or private nonprofit college, university or school, who receives no remuneration for such participation other than the use of athletic equipment, uniforms, transportation, travel, meals, lodging, scholarships, grants in aid, and other expenses" (*Graczyk v. Workers' Compensation Appeals Board*, 1986; West's Ann. Cal. Labor Code § 3353 (k)). Hawaii, New York, and other states have followed California's example of expressly excluding scholarship athletes from workers' compensation benefits.

Consequences of Additional Coverage

As illustrated by *Rensing v. Indiana State University Board of Trustees* (1983), the issue of whether or not a scholarship athlete is an employee is a difficult one. For example, in most states, workers' compensation insurance rates are determined by actuarial tables that take into account the number of accidents and claims for that particular group of employees. If athletes were suddenly added into the group of school employees, the number of injuries and claims of the group would rise substantially. This would make it difficult, if not impossible, for colleges and universities to find an insurance company willing to insure them. Even if the school could find an insurance company, the increased exposure would require the insurance company to raise rates. Faced with higher insurance rates and/or the potential liability of self-insuring, many schools would be forced to evaluate whether the benefits of having an athletic program justify the increased cost and exposure.

Other Possible Consequences

Additional Workers' Compensation Claims. If scholarship athletes are considered employees of their school, there could be an increase in the number of workers' compensation claims filed and benefits paid (Wolohan, 1994).

Tax Effect on School. If scholarship athletes were considered employees of their school, there would be some interesting tax questions for both the colleges or universities and the scholarship athletes. For example, does the scholarship athlete now have to pay taxes on the value of the scholarship? Also, will schools now be required to pay FICA and Medicare tax on the student's income? If so, how are the taxes to be paid (Wolohan, 1994)?

Employee Benefits. If scholarship athletes are considered employees of the school, are scholarship athletes eligible for employee benefits? Besides tuition, room, board, and books, are scholarship athletes now going to be eligible for life, medical, and dental insurance? How about the school's employee retirement plan, would scholarship athletes be eligible (Wolohan, 1994)?

Nonscholarship Athletes. Even if scholarship athletes are considered employees of the school, what about athletes who do not receive athletic scholarships? Because these athletes receive no compensation, they have no contractual relationship with the university to compete in athletics. Therefore, the non-scholarship athlete could never be deemed an employee and would never be covered by workers' compensation (Wolohan, 1994).

NCAA Catastrophic Injury Insurance Program

One of the reasons scholarship athletes have sought workers' compensation benefits in the past is to recover out-of-pocket medical expenses. Although most schools will pay the medical expenses of injured athletes, there usually is a limit to their generosity. In fact, it is not uncommon for a school to stop paying an injured athlete's medical and other bills. This is especially true when the injury is permanently disabling, and the injured athlete requires prolonged medical care.

In an effort to alleviate such hardships, and perhaps to prevent future court challenges on the status of scholarship athletes, the NCAA, in August 1991, implemented a Catastrophic Injury Insurance Program. The NCAA's Catastrophic Injury Insurance Plan covers every student who participates in college athletics, student

coaches, student managers, student trainers, and cheerleaders who have been catastrophically injured while participating in a covered intercollegiate athletic activity. The policy has a \$75,000 deductible and provides benefits in excess of any other valid and collectible insurance up to \$20,000,000.

The NCAA's Catastrophic Injury Insurance Program is similar to workers' compensation in that it provides medical, dental, and rehabilitation expenses plus lifetime disability payments to students who are catastrophically injured, regardless of fault. The plan also includes \$25,000 if the individual dies within 12 months of the accident.

The NCAA plan is more attractive than workers' compensation in a number of ways. First, scholarship athletes can collect benefits without litigating the issue of whether or not the athlete is an employee of the college or university. Second, the NCAA's plan provides the athlete with benefits immediately, without time delays, litigation costs, and the uncertainties involved in litigation. Finally, another benefit of the NCAA's plan is that it guarantees that catastrophically injured athletes will receive up to \$120,000 toward the cost of completing their undergraduate degree. (For more information on the NCAA's Catastrophic Injury Insurance Program go to the NCAA Website: <http://www.ncaa.org/about/resources/insurance/student-athlete-insurance-programs>)

SIGNIFICANT CASE

Although maybe not the most recent case, the following case is significant in that it provides the reader with a thorough review of the issues surrounding scholarship athletes who suffer career-ending or life-threatening injuries. In particular, the case analyzes the definitions of "employee" for purposes of the workers' compensation laws.

RENSING V. INDIANA STATE UNIVERSITY BOARD OF TRUSTEES

Supreme Court of Indiana
444 N.E.2d 1170 (1983)

The facts established before the Industrial Board were summarized by the Court of Appeals:

"The undisputed testimony reveals that [Indiana State University Board of Trustees] the Trustees, through their agent Thomas Harp (the University's Head Football Coach), on February 4, 1974 offered Fred W. Rensing a scholarship or 'educational grant' to play football at the University. In essence, the financial aid agreement, which was renewable each year for a total of four years provided that in return for Rensing's active participation in football competition he would receive free tuition, room, board, laboratory fees, a book allowance, tutoring and a limited number of football tickets per game for family and friends. The 'agreement' provided, inter alia, the aid would continue even if Rensing suffered an injury during supervised play which would make it inadvisable, in the opinion of the doctor-director of the student health service, 'to continue to participate,' although in that event the University would require other assistance to the extent of his ability.

The trustees extended this scholarship to Rensing for the 1974-75 academic year in the form of a 'Tender of Financial Assistance.' Rensing accepted the Trustees' first tender and signed it (as did his parents) on April 29, 1974. At the end of Rensing's first academic year the Trustees extended a second 'Tender of Financial Assistance' for the 1975-76 academic year, which tender was substantially the same as the first and provided the same financial assistance to Rensing for his continued participation in the University's football program. Rensing and his father signed this second tender on June 24, 1975. It is not contested the monetary value of this assistance to Rensing for the 1975-76 academic year was \$2,374, and that the 'scholarship' was in effect when Rensing's injuries occurred.

...

Rensing testified he suffered a knee injury during his first year (1974-75) of competition which prevented

him from actively participating in the football program, during which time he continued to receive his scholarship as well as free treatment for his knee injury. The only requirement imposed by the Trustees (through Coach Harp) upon Rensing was attendance at his classes and reporting daily to the football stadium for free whirlpool and ultrasonic treatments for his injured knee.

As noted above, the financial aid agreement provided that in the event of an injury of such severity that it prevented continued athletic participation, "Indiana State University will ask you to assist in the conduct of the athletic program within the limits of your physical capabilities" in order to continue receiving aid. The sole assistance actually asked of Rensing was to entertain prospective football recruits when they visited the University's Terre Haute campus.

During the 1975 football season, Rensing participated on the University's football team. In the spring of 1976 he partook in the team's annual three week spring practice when, on April 24, he was injured while he tackled a teammate during a punting drill.

The specific injury suffered by Rensing was a fractured dislocation of the cervical spine at the level of 4-5 vertebrae. Rensing's initial treatment consisted of traction and eventually a spinal fusion. During this period he developed pneumonia for which he had to have a tracheostomy. Eventually, Rensing was transferred to the Rehabilitation Department of the Barnes Hospital complex in St. Louis. According to Rensing's doctor at Barnes Hospital, one Franz Steinberg, Rensing's paralysis was caused by the April 24, 1976 football injury leaving him 95-100% disabled." *Rensing v. Indiana State University Board of Trustees*, supra, at pp. 80-82 (footnotes omitted).

Rensing's appeal to the Industrial Board was originally heard by a Hearing Member who found that Rensing had "failed to sustain his burden in establishing the necessary relationship of employer and employee within the meaning of the Indiana Workmen's Compensation Act," and rejected his claim. *Id.* at p. 83. The Full Industrial Board adopted the Hearing Member's findings and decision; then this decision was reversed by the Court of Appeals.

In this petition to transfer, the Trustees argue that there was no contract of hire in this case and that a student who accepts an athletic "grant-in-aid" from the University does not become an "employee" of the University within the definition of "employee" under the Workmen's Compensation Act, Ind. Code § 22-3-6-1(b), (Burns Supp., 1982). On the other hand, Rensing maintains that his agreement to play football in return for financial assistance did amount to a contract of employment.

Here, the facts concerning the injury are undisputed. The contested issue is whether the requisite employer-employee relationship existed between Rensing and the Trustees so as to bring him under the coverage of our

Workmen's Compensation Act. Both the Industrial Board and the Court of Appeals correctly noted that the workmen's compensation laws are to be liberally construed. *Prater v. Indiana Briquetting Corp.*, (1969) 253 Ind. 83, 251 N.E. 2d 810. With this proposition as a starting point, the specific facts of this case must be analyzed to determine whether Rensing and the Trustees come within the definitions of "employee" and "employer" found in the statute, and specifically whether there did exist a contract of employment. Ind. Code § 22-3-6-1, supra, defines the terms "employee" and "employer" as follows:

"(a) 'Employer' includes the state and any political subdivision, any municipal corporation within the state, any individual, firm, association or corporation or the receiver or trustee of the same, or the legal representatives of a deceased person, using the services of another for pay."

"(b) The term 'employee' means every person, including a minor, in the service of another, under any contract of hire or apprenticeship, written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation or profession of the employer."

The Court of Appeals found that there was enough evidence in the instant case to support a finding that a contract of employment did exist here. We disagree.

It is clear that while a determination of the existence of an employee-employer relationship is a complex matter involving many factors, the primary consideration is that there was an intent that a contract of employment, either express or implied, did exist. In other words, there must be a mutual belief that an employer-employee relationship did exist. *Fox v. Contract Beverage Packers, Inc.*, (1980) Ind. App., 398 N.E. 2d 709, *Gibbs v. Miller*, (1972) 152 Ind. App. 326, 283 N.E. 2d 592. It is evident from the documents which formed the agreement in this case that there was no intent to enter into an employee-employer relationship at the time the parties entered into the agreement.

In this case, the National Collegiate Athletic Association's (NCAA) constitution and bylaws were incorporated by reference into the agreements. A fundamental policy of the NCAA, which is stated in its constitution, is that intercollegiate sports are viewed as part of the educational system and are clearly distinguished from the professional sports business. The NCAA has strict rules against "taking pay" for sports or sporting activities. Any student who does accept pay is ineligible for further play at an NCAA member school in the sport for which he takes pay. Furthermore, an institution cannot, in any way, condition financial aid on a student's ability as an athlete. NCAA Constitution, Sec. 3-1-(a)-(1); Sec. 3-1-(g)-(2). The fundamental concerns behind the policies of the NCAA are that intercollegiate athletics must be maintained as a part of the educational program and student-athletes are integral parts of the institution's student body. An athlete receiving financial aid is still first and foremost a student.

All of these NCAA requirements designed to prohibit student-athletes from receiving pay for participation in their sport were incorporated into the financial aid agreements Rensing and his parents signed.

Furthermore, there is evidence that the financial aid which Rensing received was not considered by the parties involved to be pay or income. Rensing was given free tuition, room, board, laboratory fees, and a book allowance. These benefits were not considered to be "pay" by the University or by the NCAA since they did not affect Rensing's or the University's eligibility status under NCAA rules. Rensing did not consider the benefits as income as he did not report them for income tax purposes. The Internal Revenue Service has ruled that scholarship recipients are not taxed on their scholarship proceeds and there is no distinction made between athletic and academic scholarships. Rev. Rul. 77-263, 1977-31 I.R.B. 8.

As far as scholarships are concerned, we find that our Indiana General Assembly clearly has recognized a distinction between the power to award financial aid to students and the power to hire employees since the former power was specifically granted to the Boards of Trustees of state educational institutions with the specific limitation that the award be reasonably related to the educational purposes and objectives of the institution and in the best interests of the institution and the state. Ind. Code § 20-12-1-2(h) (Burns 1975).

Furthermore, we find that Ind. Code § 22-4-6-2 (Burns 1974) is not applicable to scholarship benefits. In that statute, which deals with contributions by employers to unemployment insurance, employers are directed to include "all individuals attending an established school . . . who, in lieu of remuneration for such services, receive either meals, lodging, books, tuition or other education facilities." Here, Rensing was not working at a regular job for the University. The scholarship benefits he received were not given him in lieu of pay for remuneration for his services in playing football any more than academic scholarship benefits were given to other students for their high scores on tests or class assignments. Rather, in both cases, the students received benefits based upon their past demonstrated ability in various areas to enable them to pursue opportunities for higher education as well as to further progress in their own fields of endeavor.

Scholarships are given to students in a wide range of artistic, academic and athletic areas. None of these recipients is covered under Ind. Code § 22-4-6-2, supra, unless the student holds a regular job for the institution in addition to the scholarship. The statute would apply to students who work for the University and perform services not integrally connected with the institution's educational program and for which, if the student were not available, the University would have to hire outsiders, e.g., workers in the laundry, bookstore, etc. Scholarship recipients are considered to be students seeking advanced educational

opportunities and are not considered to be professional athletes, musicians or artists employed by the University for their skills in their respective areas.

In addition to finding that the University, the NCAA, the IRS and Rensing, himself, did not consider the scholarship benefits to be income, we also agree with Judge Young's conclusion that Rensing was not "in the service of" the University. As Judge Young stated:

"Furthermore, I do not believe that Rensing was 'in the service of' the Trustees. Rensing's participation in football may well have benefited the university in a very general way. That does not mean that Rensing was in the service of the Trustees. If a student wins a Rhodes scholarship or if the debate team wins a national award that undoubtedly benefits the school, but does not mean that the student and the team are in the service of the school. Rensing performed no duties that would place him in the service of the university." Rensing v. Indiana State University, at 90.

Courts in other jurisdictions have generally found that such individuals as student athletes, student leaders in student government associations and student resident-hall assistants are not "employees" for purposes of workmen's compensation laws unless they are also employed in a university job in addition to receiving scholarship benefits.

All of the above facts show that in this case, Rensing did not receive "pay" for playing football at the University within the meaning of the Workmen's Compensation Act; therefore, an essential element of the employer-employee relationship was missing in addition to the lack of intent. Furthermore, under the applicable rules of the NCAA, Rensing's benefits could not be reduced or withdrawn because of his athletic ability or his contribution to the team's success. Thus, the ordinary employer's right to discharge on the basis of performance was also missing. While there was an agreement between Rensing and the Trustees which established certain obligations for both parties, the agreement was not a contract of employment. Since at least three important factors indicative of an employee-employer relationship are absent in this case, we find it is not necessary to consider other factors which may or may not be present.

We find that the evidence here shows that Rensing enrolled at Indiana State University as a full-time student seeking advanced educational opportunities. He was not considered to be a professional athlete who was being paid for his athletic ability. In fact, the benefits Rensing received were subject to strict regulations by the NCAA which were designed to protect his amateur status. Rensing held no other job with the University and therefore cannot be considered an "employee" of the University within the meaning of the Workmen's Compensation Act.

It is our conclusion of law, under the facts here, including all rules and regulations of the University and the NCAA governing student athletes, that the appellant shall be considered only as a student athlete and not as an employee within the meaning of the Workmen's Compensation Act. Accordingly, we find that there is substantial evidence to support the finding of the Industrial

Board that there was no employee-employer relationship between Rensing and the Trustees, and their finding must be upheld.

For all of the foregoing reasons, transfer is granted; the opinion of the Court of Appeals is vacated and the Industrial Board is in all things affirmed.

CASES ON THE SUPPLEMENTAL WEBSITE

Coleman v. Western Michigan University, 125 Mich. App. 35; 336 N.W.2d 224; (1983). This case examines whether college sports are an integral part of business of a university.

Norfolk Admirals and Federal Insurance Company v. Ty A. Jones, 2005 Va. App. LEXIS 443. This case examines whether fighting, when following his coach's instructions, is part of a professional hockey player's job and therefore covered by workers' compensation.

Rudolph v. Miami Dolphins, 447 So. 2d 284 (Fla. App., 1983). This case examines the impact of the Florida Workers' Compensation Act on professional athletes.

Waldrep v. Texas Employers Insurance Association, 21 S.W.3d 692 (Tex. App. 2000). This case reexamines the issue of college athletes and whether they are employees of the schools.

QUESTIONS YOU SHOULD BE ABLE TO ANSWER

1. Are college athletes covered under workers' compensation?
2. How do you determine if an individual is an employee of an organization?
3. What are some of the benefits of the NCAA's Catastrophic Injury Insurance Program?
4. What are the benefits and disadvantages to workers of state enacted workers' compensation programs?
5. What are the benefits and disadvantages to employers of state enacted workers' compensation programs?

REFERENCES

Cases

Coleman v. Western Michigan Univ., 125 Mich. App. 35, 336 N.W.2d 224 (1983).
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