

Supreme Court, Appellate Division

Third Judicial Department

Decided and Entered: January 5, 2012

512258

In the Matter of the Claim of
JAMES A. NICHOLS,
Respondent,

v

HALE CREEK ASACTC et al.,
Appellants.

WORKERS' COMPENSATION BOARD,
Respondent.

AFFIRMED Board's ruling that injury occurring during an employer sponsored activity is covered

MEMORANDUM AND ORDER

Calendar Date: November 21, 2011

Before: Peters, J.P., Rose, McCarthy, Garry and Egan Jr., JJ.

Gregory J. Allen, New York State Insurance Fund, Liverpool
(Susan B. Marris of counsel), for appellants.

Eric T. Schneiderman, Attorney General, New York City
(Iris A. Steel of counsel), for Workers' Compensation Board,
respondent.

McCarthy, J.

Appeal from a decision of the Workers' Compensation Board,
filed July 29, 2010, which ruled that claimant's injury arose out
of and in the course of his employment and awarded workers'
compensation benefits.

Claimant, the superintendent of Hale Creek Correctional
Facility in Fulton County, suffered a ruptured Achilles tendon
while coaching an employee volleyball team preparing to compete
in the "Department of Correction Olympics" and applied for

workers' compensation benefits. The employer and its workers' compensation carrier (hereinafter collectively referred to as the carrier) controverted coverage, asserting, among other things, that the injury did not arise out of and in the course of claimant's employment. Ultimately, the Workers' Compensation Board affirmed an award of benefits and the carrier now appeals.

We affirm. Whether an injury has arisen out of and in the course of employment is a factual determination to be made by the Board and its decision will not be disturbed when supported by substantial evidence (see Matter of Siliverdis v Sea Breeze Servs. Corp., 82 AD3d 1459, 1460 [2011]; Matter of Booth v New York State Dept. of Corrections, 58 AD3d 1027, 1028 [2009]). Pursuant to Workers' Compensation Law § 10 (1), an injury is not compensable when it is sustained during voluntary participation in an off-duty athletic activity that does not constitute part of an employee's work-related duties, which the carrier contends precludes compensability here. However, the record demonstrates that claimant was given specific direction to improve staff morale, and his encouragement of employee participation in the Olympics and his active role in coaching the volleyball team were in furtherance of that edict. Moreover, claimant's supervisor testified that she evaluated staff morale as part of her assessment of superintendents' leadership ability and that there is an expectation that superintendents be involved with as many facility-related events as possible. As such, we decline to disturb the Board's factual determination that claimant's injury arose out of and in the course of his employment (see generally Matter of Torre v Logic Tech., Inc., 64 AD3d 867, 868 [2009]; Matter of Diem v Diem & Buerger Ins. Co., 146 AD2d 840, 842 [1989]).

Peters, J.P., Rose, Garry and Egan Jr., JJ., concur.

-3-

512258

ORDERED that the decision is affirmed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court