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*West Virginia
Workers' Compensation
Law Notes*

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“W. Va. Code § 23-4-1c(b) (2011) (Supp. 2016) prohibits a person confined in a state correctional facility or jail who is participating in a work-release program from receiving workers’ compensation benefits for any injury sustained while engaged in such work during the person’s period of confinement.”

The Supreme Court of Appeals of West Virginia recently addressed this issue in the case of *William F. Crawford v. West Virginia Department of Corrections—Work Release*, No. 16-0043, Filed June 8, 2017.

Mr. Crawford, a former inmate, sought workers’ compensation benefits for an injury he sustained during his period of confinement at the Charleston Work Release Center. In order to be placed at the Charleston Work Release Center, Mr. Crawford was required to sign a “Contract for Placement at a Work Release Center,” which set out certain conditions for participation in a work-release program. After completing a 30-day probationary period, Mr. Crawford was assigned to a road crew working for the WV Division of Highways (“DOH”).

An agreement had been reached between the DOH and the Division of Corrections (“DOC”), which allowed inmates at the Charleston Work Release Center, including Mr. Crawford, to provide work to the DOH. In pertinent part, the agreement provided:

[DOH] and [DOC] agree that the inmates performing services under this agreement will not be employees of the State entitling them to any benefits such employees might have including, but not limited to, insurance, worker [sic] compensation benefits, pensions, sick and annual leave.

While working on a road crew serving DOH, Mr. Crawford’s hand was severely injured when it was caught in a wood chipper. His injuries resulted in hospitalization, with medical bills in excess of \$90,000 that were paid by DOC. Mr. Crawford was paroled soon after his release from the hospital.

Mr. Crawford then initiated a claim for workers’ compensation and the Claims Administrator rejected the application based upon its determination that he did not suffer an injury in the course of and resulting from his employment. The Claims Administration

found that Mr. Crawford was an inmate and not an employee as defined under W. Va. Code § 23-4-1(a) (2008) (Rep. Vol. 2010). The Office of Judges (“OOJ”) affirmed the Claims Administrator’s decision. The OOJ found that Mr. Crawford was still incarcerated and still an inmate though housed at the Charleston Work Release Center. Moreover, the agreement between DOH and DOC made clear that the workers from work release centers were considered inmates and not employees. The OOJ concluded that, pursuant to W. Va. Code § 23-4-1e(b) (2011) (2016 Supp.), Mr. Crawford was ineligible to receive workers’ compensation benefits for an injury he received while in a work-release center performing work for DOH. The Board affirmed the Order of the OOJ.

Mr. Crawford then sought review by the Supreme Court, arguing that W. Va. Code § 23-4-1e(b), which he characterized as excluding workers’ compensation coverage for work “imposed by the administration of the state correctional facility or jail,” is unambiguous and does not exclude workers’ compensation coverage for work-release employment because such employment is voluntary, not imposed by the administration of the state correctional facility or jail.

The DOH disagreed with Mr. Crawford’s characterization of his work for DOH as voluntary. While inmates may voluntarily request to participate in the work-release program, once an inmate is accepted into the program, the requirement of work is imposed on inmates as a condition of their continued participation in the work-release program. If for any reason an inmate fails or refuses to work, the inmate is returned to the correctional facility to resume serving his or her term of incarceration at that facility. The DOH contended that, because Mr. Crawford would be returned to his original facility if he violated his work agreement, the work was imposed and not voluntary.

The Court noted that the relevant portion of W. Va. Code § 23-4-1e provides:

(b) Notwithstanding any provision of this code to the contrary, *no person confined in a state correctional facility or jail who suffers injury or a disease in the course of and resulting from his or her work during the period of confinement which work is imposed by the administration of the state correctional facility or jail* and is not suffered during the person's usual employment with his or her usual employer when not confined *shall receive benefits under the provisions of this chapter for the injury or disease*.[.]

The plain language of the statute identified two types of work: 1) work performed during the period of confinement which work is imposed by the administration of the state correctional facility or jail; and 2) the person's usual employment with his or her usual employer when not confined.

As such, the Court expressly held that W. Va. Code § 23-4-1e(b) (2011) (Supp. 2016) prohibits a person confined in a state correctional facility or jail who is participating in a work-release program (i.e., employment by a state agency) from receiving workers' compensation benefits for any injury sustained while engaged in such work during the person's pe-

riod of confinement. (The Court noted that it was rendering no decision regarding an incarcerated inmate's employer by a private employer.)

Applying the foregoing holding to the facts of this case, the Court found it clear that Mr. Crawford was not entitled to workers' compensation benefits for the injuries he sustained. The decision of the Workers' Compensation board of Review finding him to be ineligible for benefits was affirmed.



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Send questions to: Margaret M. Hock, Esquire, Thomson, Rhodes & Cowie, P.C., 1010 Two Chatham Center, Pittsburgh, PA 15219, mmh@trc-law.com.

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