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PRIMER ON EMPLOYEE WELLNESS PROGRAMS

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PRIMER ON EMPLOYEE WELLNESS PROGRAMS

I. **Minn. Stat. § 176.021, Subd. 9,** provides as follows:

Employer responsibility for wellness programs. Injuries incurred while participating in voluntary recreational programs sponsored by the employer, including health promotion programs, athletic events, parties, and picnics, do not arise out of and in the course of the employment even though the employer pays some or all of the cost of the program. This exclusion does not apply in the event that the injured employee was ordered or assigned by the employer to participate in the program.

II. Case Law

A. *Hansen v. Space Wyatt Ready Mix et al.*,44 W.C.D. 276 (Minn. W.C.C.A. 1990) WL 176919

The Employee sustained an injury attempting to break up a fight between two customers of the Employer at the Employer's customer appreciation Beer and Brat Party. He filed a Claim Petition seeking workers' compensation wage loss and medical benefits resulting from the injury. The Employer and Insurer argued that the Employee's injury did not arise out of and in the course of his employment because it fell within the above exclusion.

The Compensation Judge ruled that the party was not a "recreational program" within the meaning of the Statute, but was instead a business promotion program. Accordingly, the exception did not apply and the Employee's injury was compensable. This decision was affirmed by the W.C.C.A.

B. *Roering v. Jenny-O-Foods et al.*, 49 W.C.D. 472 (Minn. W.C.C.A. 1993) WL 491291

The Employer set up a program wherein all Employees were provided with the opportunity to obtain a Tetanus shot free of charge. The parties stipulated that the Employee was not encouraged, nor required by the Employer to have the tetanus shot. Employee admitted that the program was voluntary and was not required to have a shot. The Employee decided to have the shot because was free of charge. She obtained a shot because of cuts and abrasions that she claims to have sustained on the job, and wanted to avoid any serious infections.

After receiving the Tetanus shot, the Employee developed a reaction. She filed a claim for workers compensation benefits seeking recovery of wage loss and medical benefits. The Employer and Insurer denied the claim arguing that the reaction did not arise out of and in the course of the Employee's employment, and that coverage for the injury was excluded pursuant to Minn. Stat. § 176.021, Subdivision 9. The Compensation Judge found that the Tetanus shot program was not the sort of health promotion program

contemplated by the statute, as those programs were normally recreational or social in nature. He found the claim to be compensable. The Employer and Insurer appealed.

On appeal to the W.C.C.A. drew a distinction between health promotion programs, which were designed to facilitate the overall physical, emotional or psychological well-being of the Employee, as opposed to programs which were designed to protect Employees against specific health risks associated with the job. The Court found a lack of evidence to support the Employee's claim that the shot was intended to protect her against job-related infections and, therefore ruled that the Tetanus shot program was the type of health promotion program contemplated by the statute.

The Compensation Judge was reversed and the Employee's claim denied.

C. *McConville v. City of St. Paul*, 528 N.W.2d 230, (Minn. 1995)

The Employee participated in a "walk in the park" program, wherein the Employer provided transportation to transport participating Employees from the job site to a park where they could walk during their lunch hour. While returning from the park, the Employer's vehicle was involved in a traffic accident, which resulted in the Employee sustaining a back injury. The Employee filed a claim for workers compensation benefits. A Compensation Judge ruled that the Employee's injury was compensable. However, the W.C.C.A. reversed the Compensation Judge, holding that the Employee's injuries occurred while she was voluntarily participating in the Employer's wellness program. Her claim was therefore barred by the Statute.

On appeal, the Minnesota Supreme Court, in a split decision, reversed the W.C.C.A. and held that because the injury occurred while the Employee was being transported by Employer-provided transportation, that the injury was compensable under Minn. Stat. § 176.011, Subd. 16.

D. *Griep v. Hardwood Industries et al.*, 53 W.C.D. 358 (Minn. W.C.C.A. 1995) WL 654149

The Employee sustained injury while assisting a fellow coworker in the purchase and repair of an automobile, which was to be entered in a demolition derby. The Employer paid some of the costs associated with entering the vehicle in the Derby. The car bore the Employer's logo, along with those of other businesses. Some of the repair work was done on the Employer's premises. The Employee sustained an injury while attempting to close the Employer's shop door after having worked on the car. He filed a claim for workers compensation benefits.

The Compensation Judge determined that preparation of the car for the demolition derby constituted a voluntary Employer-sponsored recreational activity within the meaning of Minn. Stat. § 176.021, Subd. 9 and, was therefore excluded from coverage under the Workers' Compensation Act. On appeal, the Employee argued that there was business value to the Employer having the car bearing their logo entered in the race, so that

injuries sustained while working on the car should be compensable.

The W.C.C.A. held that any business value to the Employer was merely incidental to what was predominantly a voluntary, recreational activity and therefore upheld the denial of the claim.

E. *Doyle v. Kraft Foods, Inc. et al.*; (Minn. W.C.C.A. 1998) WL 11019, February 19, 1998

The Employee was a retail sales representative for the Employer. His duties were to call upon grocery stores and check on products and product displays. He was notified that he would be required to attend a three-day regional sales conference to be held at Izaty's Resort on Mille Lacs Lake. The purpose of the conference included honoring employees, discussing company business plans, and setting sales quotas.

The Employee arrived at the conference at noon. He attended meetings until 5 PM. One of the Employer's managers issued a challenge for a volleyball game, pitting management employees against sales representatives. The Employee agreed that the game was "pick up" in nature. Teams were not organized in any way. While participating in the volleyball game, the Employee injured his ankle.

As a result of his injury, the Employee missed several months from work and underwent surgery on the ankle. He filed a claim for workers' compensation benefits. The Employer and Insurer denied liability, contending that the injury did not arise out of and in the course of employment pursuant to Minn. Stat. § 176.021, Subd. 9.

A Compensation Judge determined that, at the time of his injury, the Employee was a traveling employee who was covered from the time he left his home, until the time he returned, against all injuries arising out of activities which were a natural incident of his work and which were contemplated or reasonably foreseeable by the Employer under the circumstances. The Compensation Judge rejected the claim of exemption under the Statute. The Employer and Insurer appealed.

It was undisputed that the Employee was required to attend the conference, and that participation in the volleyball game was purely voluntary. The W.C.C.A. ruled that the Employee, at the time of his injury, was a traveling employee and as such, was covered under the Worker's Compensation Act. They further ruled that the pick-up volleyball game did not rise to the level of a voluntary recreational program sponsored by the Employer, so that Minn. Stat. § 176.021, Subd. 9 did not apply. The decision of the Compensation Judge awarding benefits was affirmed.

F. *Ellingson v. Brady Corporation et al.*; 66 W.C.D. 27, (Minn. W.C.C.A. 2005) WL 1655072

The Employee sustained an Achilles tendon rupture while playing basketball at an Employer-sponsored Fun Day at an off-premises community center. Prior to the event

company employees were advised that they were encouraged to attend the fun day, but were not required to do so. However if they did not attend, then the employees had to either remain at work, take a vacation day, or take a day off without pay.

A Compensation Judge ruled that the Employee's participation in the Fun Day was not voluntary and therefore, was not excluded from coverage under Minn. Stat. § 176.021, Subd. 9. Benefits were awarded. The Employer and Insurer appealed.

The parties agreed that the Fun Day was a recreational program within the meaning of the § 176.021. The sole issue to be addressed by the W.C.C.A., therefore, was whether the Employee's participation was voluntary. They agreed with the Employer and Insurer that, because the Employee had options, his participation was voluntary and his claim was therefore barred under the statute. The mere fact that the Employee was paid a wage by the Employer at the time of the injury was insufficient to circumvent this exemption from coverage.

G. *Yusuf v. Hilton Hotel et al.*; 67 W.C.D. 138 (Minn. W.C.C.A. 2006) WL 3769614

The Employee was employed by the Employer as a hotel housekeeper. Her duties included cleaning rooms, making beds, vacuuming, and cleaning bathrooms. She normally worked an eight hour shift and was assigned 16 rooms to clean during that time.

The Employer sponsored an event entitled "Housekeeping Olympics." Teams of housekeepers from the hotel would compete against each other in such events as making beds, hanging clothes, and vacuuming. Those employees not on a team were spectators. The Employee sustained an injury to her right knee while attending the event. She filed a Claim Petition seeking workers compensation benefits. The claim was denied for a variety of reasons including the allegation that it was barred by operation of Minn. Stat. § 176.021, Subd. 9.

The Employee testified that, based upon a conversation with a manager, she felt that she was required to attend the event. She claimed that no one ever told her that she had the option to punch out and go home without being paid. Multiple managers testified that the Employee could have chosen to punch out and go home. However none of these witnesses had any contact with the Employee prior to the event. The Compensation Judge denied the Employee's claim as being barred by Minn. Stat. § 176.021, Subd. 9.

On appeal, the W.C.C.A. held that in order for the provisions of Minn. Stat. § 176.021, Subd. 9 to apply, it must first be established that the activity in question constituted a voluntary recreational program. It must then be shown that the Employee was neither ordered, nor assigned, to participate in the program. The Court questioned whether performing work activities or watching others perform them, could truly be deemed a "recreational event." They noted that the Employee testified that she had been told by a supervisor that she must attend the event. That supervisor was not called as a witness, and the Employee's testimony on this point was unrebutted. Accordingly, the statutory

exclusion did not apply. The decision of the Compensation Judge was reversed and the matter was remanded for further findings.

H. *Paskett v. Imation Corp. et al.* (Minn. W.C.C.A., January 3, 2013) WC12-549

Every year the Employer would conduct a week-long campaign to raise funds for the United Way. The Employer would organize a series of events taking place throughout the week. Employees would pay to participate in the events, which included a talent show, bake sale, flag football game, ping-pong and various other activities. Most of the events took place during the workday and employees who chose to participate were paid as usual and were not required to take time off, nor were they required to pledge any money to the event. During the course of a flag football game, the Employee sustained an injury to his Achilles tendon. This resulted in surgery and lost time from work.

The Employee filed a Claim Petition seeking workers compensation benefits for the injury and wage loss. The Employer and Insurer denied the claim. A Compensation Judge concluded that the Employee's claims were barred by the provisions of Minn. Stat. § 176.021, Subd. 9. The Employee appealed.

The Employee argued that his claim should not have been barred, because he was not informed that he could take unpaid leave rather than attend the events. He attempted to distinguish his case from *Ellingson, supra*, arguing that because he did not have all of the alternatives available to him, as were available in Ellingson. Therefore, he argued, his participation in the United Way events was not voluntary. The Employee further argued that the primary purpose of the campaign was to raise money for the United Way, thereby creating positive public relations for the company, as opposed to being a "recreational event."

The W.C.C.A. rejected the Employee's arguments, stating that virtually every category of activity included in the statute would arguably benefit Employers in some way. Further, *Ellingson* does not require that each of the alternatives available in that case, be available in every case. The denial of benefits was affirmed.

H. *Shire v. Rosemount, Inc. et al.*, (Minn. W.C.C.A., February 17, 2016) WL 626074

The Employee was regularly employed by the Employer as a weekend packing/shipping attendant. He typically worked Fridays, Saturdays, and Sundays from 9:30 AM to 10:00 PM. During the week he attended college. The Employer annually held an Employee Appreciation Event for employees. The Employer's handbook stated that attendance at this event was "voluntary." The event was scheduled for the last three hours of the Employee's normal shift. Employees who attended would be paid their normal hourly rate and would be required to stay for the full duration of the event.

The Employee had the option of not attending the event and either taking vacation in place of attending the event, or simply taking an unpaid day off. It was not feasible to

allow non-participating employees to perform their normal work duties during the event, as the entire department would be shut down. The Employee testified that he knew he could apply for approval to take vacation in place of attending the event, but he did not do so. His wife was pregnant and he anticipated taking time off when the child was born. He also claimed not to have known that unpaid leave was an option.

The event was held at a bowling alley. Activities included a dinner followed by bowling and laser tag. Employees were not required to physically take part in the bowling or laser tag, but most did. The Employee sustained injury to his right ankle while participating in the laser tag competition.

The Employee asserted a workers compensation claim for wage loss, permanent partial disability and medical expense, claimed to have resulted from the injury. The Employer and Insurer denied the claim, contending in part that the claim was barred by the provisions of Minn. Stat. § 176.021, Subd. 9. Following a hearing, a Compensation Judge concluded that the Employee's participation in the event was not "voluntary" and awarded the benefits claimed. The Self-Insured Employer appealed.

The W.C.C.A. affirmed the decision of the Compensation Judge. There was no dispute that the Employee Appreciation Event was a "recreational event," within the meaning of the statute. The issue was whether the Employee's attendance was voluntary. Noting that the Employee did not have the option of simply remaining at work instead of attending the event, and further noting his testimony that he was unaware of the possibility of taking an unpaid day off, the Court determined that attendance at the event was not voluntary.

The Self-Insured Employer appealed the decision of the W.C.C.A. to the Minnesota Supreme Court. The Court held that a recreation program is not "voluntary" where the employee's choices are either to attend the program or risk forfeiting pay by taking an unpaid day off, or benefits, by using some of a limited amount of vacation time.

The Court also rejected the Employer's argument that the laser tag game was itself a separate program which was totally optional. The Court held that the game was merely one part of the overall Employee Appreciation Day.

Justice Anderson, in a dissenting opinion, argued that there was no evidence that the Employer had in any way coerced the Employee's attendance at the event. The majority responded to this argument by stating that the lack of reasonable alternatives to Employee's attendance at the appreciation day event was a form of "constructive coercion," such that attendance at the event was not truly voluntary.

III. Analysis

A. Is your program a "wellness program"?

B. Is it truly voluntary?

2016 WL 626074
Only the Westlaw citation is currently available.
Supreme Court of Minnesota.

Ali M. SHIRE, Respondent,
v.
ROSEMOUNT, INC., Self–Insured/ Berkley Risk Administrators Company, LLC, Relators,
and
Twin Cities Orthopedics, P.A., Crosstown Surgery Center, and Minnesota Department of Human Services/BRS, Intervenors.

No. A15–0856.
|
Feb. 17, 2016.

Synopsis

Background: Employer sought review of decision of Workers' Compensation Court of Appeals awarding claimant benefits for injury sustained during offsite employee recognition event.

Holdings: The Supreme Court, Wright, J., held that:

[1] the event did qualify as "voluntary" for purposes of applying voluntary-recreational-program exception to workers' compensation statute, and

[2] the relevant inquiry when applying the exception was whether the program was voluntary not whether individual recreational activities within the program were voluntary.

Affirmed.

Anderson, J., issued dissenting opinion.

West Headnotes (8)

[1] **Appeal and Error**
⇐Cases Triable in Appellate Court

Questions of statutory interpretation are reviewed de novo.

Cases that cite this headnote

[2] **Statutes**
⇐Intent

The purpose of statutory interpretation is to ascertain the intention of the Legislature.

Cases that cite this headnote

[3] **Statutes**
⇐Plain Language; Plain, Ordinary, or Common Meaning

Courts interpret words employed in a statute according to their plain meaning.

Cases that cite this headnote

[4] **Statutes**
⇐Dictionaries

To determine the plain meaning of a word in a statute, courts often consider dictionary definitions.

Cases that cite this headnote

[5] **Statutes**
⇐Statute as a Whole; Relation of Parts to Whole and to One Another

Courts interpret statutes so as to give effect to each word and phrase. M.S.A. § 645.16.

Cases that cite this headnote

[6] **Statutes**
Plain Language; Plain, Ordinary, Common, or Literal Meaning

When a word or phrase has a plain meaning, courts presume that the plain meaning is consistent with legislative intent and engage in no further statutory construction.

Cases that cite this headnote

[7] **Workers' Compensation**
Recreation of Employees

Employer's offsite employee recognition event at which claimant sustained ankle injury while participating in an event activity did not qualify for voluntary-recreational-program exception to workers' compensation statute, and thus, claimant qualified for benefits; attendance at the event was the only means by which claimant could obtain his wages without expending limited vacation time, and a recreational program was not "voluntary" as contemplated by the statute when the employees' options were limited either to attending the program and getting paid or forfeiting pay or benefits. M.S.A. § 176.021, subd. 9.

Cases that cite this headnote

[8] **Workers' Compensation**
Recreation of Employees

That claimant injured his ankle while voluntarily participating in the individual recreational activity of laser tag while attending employer's offsite employee recognition event did not shield employer from liability under the voluntary-recreational-program exception to workers' compensation statute; the relevant inquiry when applying the exception was whether the program was voluntary, not whether individual recreational activities within the program were voluntary, and in the instant case, the offsite program was not voluntary for workers' compensation purposes. M.S.A. § 176.021, subd. 9.

Cases that cite this headnote

Syllabus by the Court

***1** 1. The voluntary-recreational-program exception to the workers' compensation statute, Minn.Stat. § 176.021, subd. 9 (2014), is not satisfied when the employees' choices are either to attend the program or risk forfeiting pay or benefits.

2. The phrase "voluntary recreational program" in Minn.Stat. § 176.021, subd. 9, plainly refers to a voluntary "program," not voluntary activities within a program.

Workers' Compensation Court of Appeals.

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OPINION

WRIGHT, Justice.

This appeal requires us to interpret an exception to the general rule that an employee injured in the course of employment is entitled to workers' compensation benefits. Specifically, an employer is not liable for injuries incurred by an employee while participating in an employer-sponsored "voluntary recreational program[ ]," Minn.Stat. § 176.021, subd. 9 (2014). The Workers' Compensation Court of Appeals (WCCA) concluded that an employee-recognition event sponsored by relator was

not "voluntary" because attendance at the event was the only option by which respondent could avoid a loss of pay or benefits. We conclude that an employer-sponsored recreational program is not "voluntary" when it takes place during work hours and employees must either attend the event or use limited vacation time in order to get paid. We further conclude that individual activities that take place during a voluntary recreational program do not constitute separate "programs." We, therefore, affirm.

I.

Respondent Ali Shire worked the Friday–through–Sunday weekend shift as a full-time, permanent employee in the shipping department of relator Rosemount, Inc. During the last three hours of a weekend shift in October 2012, Rosemount sponsored its annual employee-recognition event, which was held specifically for the weekend-shift employees of the shipping department. Rosemount's online employee handbook states that "recognition events are voluntary in purpose and all employees have the choice to decide to participate.... If an invitation or sign-up sheet is utilized, it should very clearly state the event is voluntary." The handbook does not provide any information about an employee's pay or the use of vacation or unpaid leave during a recognition event.

The compensation judge found, and it is undisputed on appeal, that the weekend-shift employees had three options with respect to the October 2012 recognition event: attend the recognition event and receive their usual wage for the last three hours of the shift, request to use their accrued paid vacation time, or request to take unpaid leave.[1] Rosemount's policy is to limit the total number of employees in a department who are permitted to take vacation or unpaid leave at the same time to no more than 10 percent.

The employee-recognition event consisted of dinner followed by bowling, then a game of laser tag. Shire injured his right ankle while playing laser tag. As a result of his injury, Shire was temporarily and totally disabled from performing his normal job duties for more than one year. He also sustained a 3.98 percent permanent partial disability of the whole body. Shire filed a petition for workers' compensation benefits. Rosemount denied liability, asserting that Shire's injury is excluded from coverage under Minn.Stat. § 176.021, subd. 9. Subdivision 9 exempts injuries incurred during "voluntary recreational programs" from workers' compensation coverage. *Id.*

*2 Rosemount advanced two arguments before the compensation judge. First, Rosemount argued that the employee-recognition event was a "voluntary recreational program" because Rosemount provided its employees with alternatives to attendance at the event—the options of requesting to use vacation time or requesting to take unpaid leave. Second, even if the employee-recognition event was not "voluntary," Rosemount argued that Shire's injury falls within the voluntary-recreational-program exception because he was injured while participating in a voluntary game at the employee-recognition event.

In response to Rosemount's first argument, Shire countered that the event was not "voluntary" because it occurred during his shift and he was required to attend in order to obtain his wage without sacrificing his limited vacation time. Shire also argued that he could not take vacation or unpaid leave without his supervisor's prior approval. In response to Rosemount's second argument, Shire contended that the statute addresses the voluntary nature of the employee-recognition *program,* not the voluntary nature of the laser-tag game.

The compensation judge held that the relevant question is whether the "program" was voluntary, not whether the activities within the program were voluntary. The employee-recognition event was not a "voluntary" program, the compensation judge concluded, because without the option of remaining at work for the last three hours of his shift, Shire's only alternatives were to sacrifice either his pay or his limited vacation time. The WCCA affirmed. *Shire v. Rosemount, Inc.,* 2015 WL 2327967 (Minn. WCCA Apr. 22, 2015). Rosemount now seeks review by this court.

II.

Generally, an employee whose injury "aris[es] out of and in the course of employment" is entitled to workers' compensation benefits. Minn.Stat. § 176.021, subd. 1 (2014). The Legislature created an exception, however, for injuries incurred while participating in employer-sponsored "voluntary recreational programs." *Id.,* subd. 9. The exception provides:

> Injuries incurred while participating in *voluntary recreational programs* sponsored by the employer, including health promotion programs, athletic events, parties, and picnics, do not arise out of and in the course of the

> employment even though the employer pays some or all of the cost of the program. This exclusion does not apply in the event that the injured employee was ordered or assigned by the employer to participate in the program.

Id. (emphasis added).

[1] [2] [3] [4] At issue here is the meaning of the phrase "voluntary recreational program" in subdivision 9, a question of statutory interpretation, which we review de novo. *Dykhoff v. Xcel Energy,* 840 N.W.2d 821, 825–26 (Minn.2013). The purpose of statutory interpretation is to ascertain the intention of the Legislature. *Ekdahl v. Indep. Sch. Dist. No. 213,* 851 N.W.2d 874, 876 (Minn.2014). We interpret words employed in a statute according to their plain meaning. *Schatz v. Interfaith Care Ctr.,* 811 N.W.2d 643, 649 (Minn.2012). To determine the plain meaning of a word, we often consider dictionary definitions. *See Troyer v. Vertlu Mgmt. Co./Kok & Lundberg Funeral Homes,* 806 N.W.2d 17, 24 (Minn.2011).

***3** [5] [6] We also interpret statutes so as to give effect to each word and phrase. *Allan v. R.D. Offutt Co.,* 869 N.W.2d 31, 33 (Minn.2015) (stating that statutes should be interpreted such that "no word, phrase, or sentence [is] superfluous, void, or insignificant") (quoting *Am. Family Ins. Grp. v. Schroedl,* 616 N.W.2d 273, 277 (Minn.2000)); *accord* Minn.Stat. § 645.16 (2014). When a word or phrase has a plain meaning, we presume that the plain meaning is consistent with legislative intent and engage in no further statutory construction. *State v. Struzyk,* 869 N.W.2d 280, 284–85 (Minn.2015); *see also Allan,* 869 N.W.2d at 33 ("When the language of a statute is plain and unambiguous, it is assumed to manifest legislative intent and must be given effect.") (quoting *Burkstrand v. Burkstrand,* 632 N.W.2d 206, 210 (Minn.2001)).

A.

Rosemount's principal argument is that the employee-recognition event was "voluntary" because employees had the option of either requesting to use vacation time or requesting to take unpaid leave. Shire contends that he was implicitly compelled to attend the event because attendance was the only option by which he could get paid without using his limited vacation time.

1.

[7] Because the workers' compensation statute does not define the word "voluntary," we begin our plain-meaning analysis with dictionary definitions. According to these definitions, an option is "voluntary" when it is "[d]one or undertaken of one's own free will" or "done willingly and without constraint or expectation of reward." *The American Heritage Dictionary of the English Language* 1941–42 (5th ed.2011); *see also Webster's Third New International Dictionary Unabridged* 2564 (3d ed.2002) (defining "voluntary" as "proceeding from the will: produced in or by an act of choice"; "performed, made, or given of one's own free will"; or "acting of oneself: not constrained, impelled, or influenced by another").

Contrary to these definitions, employees were "constrained" by the fact that attendance at the employee-recognition event was the only means by which they could obtain their wages without expending limited vacation time. To hold that a program is "voluntary" under these circumstances would ignore the financial consequences that employees would have faced for failing to attend: either the loss of pay or the depletion of limited vacation time.

Moreover, concluding that a program is "voluntary" under these facts would violate the canon against surplusage, which requires us to give effect to each word and phrase of a statute. *Allan,* 869 N.W.2d at 33. Rosemount argues that a program may be involuntary when vacation and unpaid leave are unavailable during the program. But in that situation the employee has been "ordered or assigned" to attend. *See* Minn.Stat. § 176.021, subd. 9 ("This exclusion does not apply in the event that the injured employee was *ordered or assigned* by the employer to participate in the program." (emphasis added)). If "voluntary" means the opposite of "ordered or assigned," then the word "voluntary" could be eliminated from subdivision 9 without altering the effect of subdivision 9.[2] Interpreting subdivision 9 in a manner that gives the word "voluntary" no meaning would effectively foreclose the possibility that a program would ever be found involuntary.

***4** Rosemount also contends that it communicated to employees, both through the employee handbook and orally at staff meetings, that the event was "voluntary" and that employees should speak with their supervisor if they did not wish to attend. But an analysis based solely on an employer's conclusory statements that programs are "voluntary," even when compensation or vacation

benefits must be forfeited in order to opt out of attendance, fails to account for the economic bargain struck between employer and employee. Indeed, every employer could adopt an employee-handbook provision that deems such programs "voluntary" and thus claim the exception in subdivision 9 to shield the employer from workers' compensation liability. Yet, as happened here, the employer could impose consequences on an employee's failure to attend an event that the handbook describes as "voluntary." An employer's classification of an event as "voluntary" should not prevail when the facts demonstrate that employees had only one "choice," namely, to attend.

Similarly, Rosemount's contention that Shire never requested time off is irrelevant. Even if Shire had been granted time off, he would have incurred financial consequences: either the loss of his pay or the loss of his limited vacation time. Effectively, Shire's decision to attend Rosemount's event, under the conditions Rosemount imposed, was "constrained" by his need to earn money-the very purpose of employment. Under these circumstances, Rosemount's employee-recognition event was not "voluntary."

Finally, Rosemount argues that our interpretation of subdivision 9 effectively eliminates the voluntary-recreational-program exception because some employers are logistically unable to offer their employees the option of staying at work during a recreational program. We are not persuaded that subdivision 9 will never be given effect as a consequence of our disposition in this case. In fact, the WCCA has considered at least two cases in which employers provided the option of staying at work during recreational programs. *See, e.g., Paskett v. Imation Corp.*, 2013 WL 398699, at *2 (Minn. WCCA Jan. 3, 2013); *Ellingson v. Brady Corp.*, 66 Minn. Workers' Comp. Dec. 27, 29 (WCCA), *aff'd without opinion,* 707 N.W.2d 676 (Minn.2006). Thus, it is clear that at least some employers are logistically able to provide this option.[3]

Here, Rosemount could have paid all weekend-shift employees for the last three hours of the shift regardless of their attendance at the recognition event. Conversely, Rosemount could have paid none of the employees for the three hours at issue. In either circumstance, no implicit coercion would exist. Rosemount argues that paying all employees would be unworkable because Rosemount withheld pay for those who did not attend in order to encourage attendance. Rosemount's argument simply reinforces our conclusion that employees were implicitly coerced to attend the event in order to receive their pay and avoid depletion of their vacation benefits. Moreover, attendance by every employee is not essential to the success of a recreational program. If the Legislature intended to encourage employers to host recreational programs for the benefit of employees, as Rosemount speculates, logic and reality dictate that employers should sponsor such programs to provide an *opportunity* for employees, not a mandate.

***5** To summarize, a recreational program is not "voluntary" when the employees' options are limited either to (1) attending the program and getting paid or (2) forfeiting pay or benefits. To conclude otherwise fails to preserve the plain words of the statute and renders the word "voluntary" in Minn.Stat. § 176.021, subd. 9, meaningless.

2.

The dissent would hold that Rosemount's employee-recognition event was "voluntary" for two reasons. First, the dissent argues, the relevant definition of a word "depends on the context in which [it] is used." Yet, the dissent ignores the context in which the word "voluntary" is used in Minn.Stat. § 176.021, subd. 9. Next, the dissent relies on *criminal* cases to support its interpretation of the word "voluntary."

We do not dispute the principle that we consider the context of a statute. The dissent cites *State v. Nelson,* in which we applied the canon against surplusage, 842 N.W.2d 433, 437–39 (Minn.2014). Indeed, we apply the canon against surplusage in this case by considering the meaning of the word "voluntary" in the context of the exception for employees who are "ordered or assigned" to attend a program. In contrast, the dissent fails to apply the principle expressed in *Nelson.*[4]

Nor do we disagree with the dissent's proposed definition of a "voluntary recreational program" as "one that is attended without coercion by the employer and by an employee's act of choice among reasonable alternatives." But the dissent does not explain how forfeiting pay or benefits is a "reasonable alternative" to attending an employer-sponsored program. For employees who rely on their wages to earn a living, forfeiting pay and benefits is not a reasonable option.

Rather than considering the context of the workers' compensation statute, the dissent turns to criminal cases to support its narrow interpretation of the term "voluntary."[5] To justify this approach, the dissent cites inapposite case law. Two of the opinions relied on by the

dissent cited dictionary definitions. *500, LLC v. City of Minneapolis,* 837 N.W.2d 287, 290–91 (Minn.2013) (citing case law *and* dictionary definitions of the phrase "relating to"); *State v. Campbell,* 814 N.W.2d 1, 8 (Minn.2012) (Stras, J., dissenting) (relying on dictionary definitions but observing that our case law had reached the same result). In the other instances cited by the dissent, we applied the technical, legal definition of a word, not the plain meaning. *500, LLC,* 837 N.W.2d at 291 (employing the technical meaning of the word "zoning"); *Odunlade v. City of Minneapolis,* 823 N.W.2d 638, 644 (Minn.2012) (observing in dicta that "assessment," a technical, legal term, had been defined broadly in other tax cases); *see also In re Welfare of J.J.P.,* 831 N.W.2d 260, 266 (Minn.2013) (stating that we interpret technical words according to their specialized meaning). And in not one of these cases did we reach into other areas of substantive law to determine the correct meaning of a word.

***6** Nothing in our case law dictates that we import definitions from vastly different areas of substantive law into a completely unrelated context, and we decline to create such precedent here. Rather, we rely on the text of Minn.Stat. § 176.021, subd. 9, and hold that Rosemount's employee-recognition event was not "voluntary ."

B.

[8] Having decided that the employee-recognition event was not "voluntary," we next consider Rosemount's alternative argument. Rosemount contends that, even if the recognition event was not voluntary, Shire's participation in the *laser-tag game* at the event was voluntary. Subdivision 9 lists "health promotion programs, athletic events, parties, and picnics" as examples of recreational programs. Minn.Stat. § 176.021, subd. 9. Rosemount argues that the inclusion of the term "athletic events" in subdivision 9 demonstrates legislative intent to focus on the voluntariness of a single athletic activity, such as a laser-tag game, rather than the voluntariness of an entire program.

Rosemount's argument invites us to define the word "program" on an activity-by-activity basis.[6] We are not persuaded. Subdivision 9 plainly applies to injuries incurred "while participating in [a] *voluntary ... program* [ ]." Minn.Stat. § 176.021, subd. 9 (emphasis added). We interpret statutes according to the rules of grammar. *Ekdahl,* 851 N.W.2d at 876 (citing Minn.Stat. § 645.08(1) (2014)). In subdivision 9, the word "voluntary" is an adjective that modifies the noun "program." *See The Chicago Manual of Style* 5.78 (16th ed.2010). The plain meaning of "program" in subdivision 9 is a collection of activities. *Random House Webster's Unabridged Dictionary* 1546 (2d ed.2001) (defining "program" as "a plan or schedule of activities, procedures, etc., to be followed"); *see also The American Heritage Dictionary* at 1407 (defining "program" as "[a]n ordered list of events to take place or procedures to be followed; a schedule"). When read as a whole, subdivision 9 requires that the *program* be voluntary, not the individual activities offered *within* the program. The placement of the word "participation" in relation to the word "voluntary" in subdivision 9 makes this clear. The Legislature did not create an exception for "injuries incurred while *voluntarily participating* in a recreational program." Rather, the Legislature created an exception for "[i]njuries incurred while participating in [a] voluntary recreational program [ ]." Minn.Stat. § 176.021, subd. 9. Thus, the voluntariness of an employee's participation in an individual activity does not govern the application of subdivision 9.

Rosemount's reading of subdivision 9 defies this plain meaning. Nothing in the plain language of subdivision 9 dictates an activity-by-activity analysis. "[A]thletic events, parties, and picnics," *id.,* often consist of multiple activities.[7] We decline to adopt an interpretation of the word "program" that is contrary to the word's plain, ordinary meaning. Accordingly, we hold that the phrase "voluntary recreational program" in Minn.Stat. § 176.021, subd.—9, plainly refers to a voluntary "program," not voluntary activities within a program.

III.

***7** To summarize, we hold that a recreational program is not "voluntary" when the employees' choices are either to attend the program or risk forfeiting pay or benefits. We further hold that the relevant inquiry when applying Minn.Stat. § 176.021, subd. 9, is whether the *program* is voluntary, not whether individual recreational activities within the program are voluntary. Accordingly, we affirm.

Affirmed.

Dissenting, ANDERSON, J.

DISSENT

ANDERSON, Justice (dissenting).

*7 The word "voluntary," as used in the voluntary-recreational-program exception, Minn.Stat. § 176.021, subd. 9 (2014), is unambiguous and has one reasonable plain meaning. But that reasonable plain meaning is not followed by the court's decision. Under the court's definition, a program is "voluntary" only if it is attended "willingly and without constraint or expectation of reward." And as applied by the court, the alternatives to program attendance provided by Rosemount-taking paid leave or unpaid leave-are "constraints" on "pay or benefits" such that attendance is involuntary. This is not a reasonable plain meaning for two reasons.

First, under a plain-language analysis, the meaning of a term cannot depend solely on a selected dictionary entry considered in isolation; rather, the relevant meaning also depends on the context in which the term is used. *State v. Nelson,* 842 N.W.2d 433, 437–38 & n. 2 (Minn.2014). Moreover, just because a selected definition "encompass[es] one sense of a word does not establish that the word is *ordinarily* understood in that sense." *Taniguchi v. Kan Pac. Saipan, Ltd.,* —— U.S. ——, ——, 132 S.Ct. 1997, 2003, 182 L.Ed.2d 903 (2012). A definition of "voluntary" that prohibits *any* "constraint" on "pay or benefits" is an unreasonably narrow reading in the context of this statute. The plain and ordinary meaning of "voluntary" is much broader. Many prominent dictionaries define "voluntary" broadly as an "act of choice." Most choices involve some incentive or disincentive, advantage or disadvantage, but that does not mean the choice is *implicitly coerced,* such that it was involuntary. And second, although this is our first occasion to address the plain meaning of "voluntary" under this statute, several analogous and persuasive precedents support a broader plain meaning of "voluntary," rather than the restrictive definition adopted by the court.

In short, the only reasonable meaning of a "voluntary" recreational program in the context of Minn.Stat. § 176.021, subd. 9, is one that is attended without coercion by the employer and by an employee's act of choice among reasonable alternatives. Here, Rosemount's recreational program was "voluntary" because Rosemount did not coerce Shire into attending and Shire made the choice to attend after being presented with reasonable alternatives. For these reasons, I respectfully dissent.

I.

The Minnesota Workers' Compensation Act, Minn.Stat. §§ 176.001–.862 (2014), does not define the word "voluntary." *See* Minn.Stat. § 176.011. In the absence of statutory definitions, we interpret the words in a statute according to their plain and ordinary meaning. *500, LLC v. City of Minneapolis,* 837 N.W.2d 287, 290–91 (Minn.2013); *see* Minn.Stat. § 645.08(1) (2014) (requiring that statutory words be construed "according to their common and approved usage"). We have considered dictionary definitions as a helpful tool in determining plain and ordinary meaning. *See, e.g., Nelson,* 842 N.W.2d at 437–38 & n. 2; *State v. Carufel,* 783 N.W.2d 539, 542 (Minn.2010); *State v. Heiges,* 806 N.W.2d 1, 15 (Minn.2011). But in drawing the relevant meaning of words from dictionaries, we must consider the context of the statute and the application of those words to the statute. *Nelson,* 842 N.W.2d at 437–38 & n. 2 ("The dissent[ ] ... overlooks the basic principle that the relevant definition of a term depends on the context in which the term is used.") (citing *Carcieri v. Salazar,* 555 U.S. 379, 391, 129 S.Ct. 1058, 172 L.Ed.2d 791 (2009); *Deal v. United States,* 508 U.S. 129, 132, 113 S.Ct. 1993, 124 L.Ed.2d 44 (1993)); *see also* Minn.Stat. § 645.16 (2014) ("When the words of a law *in their application to an existing situation* are clear and free from all ambiguity, the letter of the law shall not be disregarded ...." (emphasis added)).

***8** Many dictionaries define "voluntary" broadly by referring to free will, willingness, intention, and acts of choice, rather than the absence of "constraints." Such a broad definition is usually listed first.[8] *See Webster's Third New International Dictionary Unabridged* 2564 (3d ed.2002) ("**1 a:** proceeding from the will: produced in or by an act of choice ... **b:** performed, made, or given of one's own free will"); *Merriam–Webster's Collegiate Dictionary* 1402 (11th ed.2003) ("**1**: proceeding from the will or from one's own choice or consent"); *Black's Law Dictionary* 1605 (8th ed.2004) ("**1.** Done by design or intention"); *The American Heritage Dictionary of the English Language* 1941–42 (5th ed.2011) ("**1.** Done or undertaken of one's own free will: *a voluntary decision to leave the job.*"); *Oxford Dictionary of English* 1990 (3d ed.2010) ("**1** done, given, or acting of one's own free will"); *New Oxford American Dictionary* 1938 (3d ed.2010) ("done, given, or acting of one's own free will" (listed as the first sense)).

By contrast, the language relied on by the court, which prohibits "constraints" and "influences," originates from lower-listed dictionary entries. *See Webster's Third New International Dictionary Unabridged* 2564 (3d ed.2002) ("**e**: acting of oneself: not constrained, impelled, or

influenced by another: spontaneous, free"); *Merriam–Webster's Collegiate Dictionary* 1402 (11th ed.2003) ("**2:** unconstrained by interference"); *Black's Law Dictionary* 1605 (8th ed.2004) ("**2.** Unconstrained by interference; not impelled by outside influence"); *The American Heritage Dictionary of the English Language* 1941–42 (5th ed.2011) ("**2.** Acting or done willingly and without constraint or expectation of reward"). Indeed, two prominent dictionaries do not include *any* senses of "voluntary" that require the absence of "constraints" or "influences." *See Oxford Dictionary of English* 1990 (3d ed.2010); *New Oxford American Dictionary* 1938 (3d ed.2010).

Even without considering the ordering of definitions, the relevant meaning to draw from a dictionary depends on the context of the statute and the applicability of that meaning to this case. In other words, the goal is not to determine the meaning of "voluntary" generally, in all situations, but rather the plain and ordinary meaning of "voluntary" as applied to this specific statute and to the facts of this case. *Nelson,* 842 N.W.2d at 437–38 & n. 2; *see* Minn.Stat. § 645.16.

In the context of this statute, there will almost always be *some* incentive to attend an employee-sponsored recreational program; indeed, an employer presumably designs such a program because it has a business-related goal that is advanced by employee participation. Employees may desire to attend because a program is fun and provides opportunities to bond with coworkers. Employees may desire to attend because they will receive performance rewards, such as certificates of achievement or other types of recognition for their performance. The employer may encourage employees to attend because there will be beneficial activities, such as training, skill development, and team-building exercises. And, often, as here, the program may take place during normal work hours and involve the payment of regular wages. Conversely, there may be disadvantages to being absent because the employee will miss out on some of the above benefits. And if the program was scheduled during work hours, an absent employee may need to use some type of paid or unpaid leave. But none of the above examples of incentives or disincentives for attending a recreational program, without more, can reasonably amount to *coercion* such that an employee's free will is overborne and the choice to attend is *involuntary.* Such a conclusion does not comport with the plain and reasonable meaning of "voluntary" according to relevant dictionary definitions, and according to the context of this statute and the facts of this case.

II.

***9** In addition to dictionary definitions and the context of the statute, we may consider precedent that has established the meaning of words in analogous contexts. *See 500, LLC,* 837 N.W.2d at 290–91 (determining the meaning of "relating to" and "zoning" by citing definitions adopted in other cases); *Odunlade v. City of Minneapolis,* 823 N.W.2d 638, 644 (Minn.2012) ("We have defined 'assessment' broadly ...." (citing cases)); *see also State v. Campbell,* 814 N.W.2d 1, 8 (Minn.2012) (Stras, J., dissenting) ("[O]ur case law has consistently reached the same conclusion [that the term 'offense' includes misdemeanors.]" (citing cases)). Three areas of analogous criminal cases are helpful in considering the meaning of "voluntary" acts: (1) voluntary intoxication; (2) voluntary confessions; and (3) voluntary guilty pleas. In addition, these cases are helpful in their discussion of "coercion," which is relevant to the court's central holding that Shire was "implicitly coerced" to attend Rosemount's recreational program.

Voluntary Intoxication. In *State v. Fearon,* 283 Minn. 90, 91, 166 N.W.2d 720, 721 (1969), we considered the ordinary meaning of "voluntary" in the context of a now-repealed statute defining the crime of drunkenness: "Every person who becomes intoxicated by voluntarily drinking intoxicating liquors is guilty of the crime of drunkenness...." Minn.Stat. § 340.96 (1968) (repealed 1971). We determined that the "ordinary meaning of the word 'voluntary' is 'produced in or by an act of choice' or of one's own free will," *Fearon,* 283 Minn. at 95, 166 N.W.2d at 723 (quoting *Webster's Third New International Dictionary* 2564 (1961)), and that the meaning of the phrase "voluntarily drinking" in the statute was "drinking by choice," *id.* We did not cite any other dictionary definitions that prohibit "constraints" or "influences." We concluded that the drinking by the defendant, who suffered from the disease of chronic alcoholism, was not voluntary because he was "no more able to make a free choice as to when or how much he would drink than a person would be who is forced to drink under threat of physical violence." *Id.* at 96–97, 166 N.W.2d at 724.

Voluntary Confessions. If a defendant moves to suppress an allegedly involuntary confession, the state has the burden to prove the confession was "voluntary." *Doan v. State,* 306 Minn. 89, 91, 234 N.W.2d 824, 826 (1975). We have held that a confession is involuntary only if the defendant's "*will was overborne* and his capacity for self-determination *critically impaired* by *coercive* police conduct." *State v. Thaggard,* 527 N.W.2d 804, 810 (Minn.1995) (emphasis added) (citing *Colorado v. Spring,* 479 U.S. 564, 574, 107 S.Ct. 851, 93 L.Ed.2d 954

(1987)); *see also United States v. Williams,* 760 F.3d 811, 815–16 (8th Cir.2014). In other words, "[c]oercive police activity is a necessary predicate to a finding that a statement is involuntary" and "[t]he question is whether the defendant's will was overborne." *State v. Riley,* 568 N.W.2d 518, 525 (Minn.1997). As these cases indicate, the meaning of "voluntary" in this context does not require the absence of influences or constraints. Rather, a confession is involuntary only if the defendant's will is overborne and his capacity for self-determined decisions is critically impaired by coercive conduct.

***10** *Voluntary Guilty Pleas.* A guilty plea is unconstitutional if it is not voluntary. *See Brady v. United States,* 397 U.S. 742, 749–55, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970). But a guilty plea does not become involuntary merely because the state "encourages," "influence[s]," or "motivate[s]" a plea through the benefit of a lesser penalty in the plea bargain and the constraint of a higher penalty at trial. *Id.* at 749–52. Rather, a guilty plea is involuntary only if it is produced by "coercion overbearing the will of the defendant." *Id.* at 750; *see State v. Ecker,* 524 N.W.2d 712, 719 (Minn.1994) ("Although the government may not produce a plea through actual or threatened physical harm, or by mental coercion 'overbearing the will of the defendant,' a defendant's motivation to avoid a more serious penalty or set of charges will not invalidate a guilty plea."). For example, a plea decision may be "voluntary" even if a motivating influence is particularly strong, *see e.g., Brady,* 397 U.S. at 754–55 (holding that a guilty plea was not involuntary "because [it was] entered to avoid the possibility of a death penalty" as the defendant had a "full opportunity to assess the advantages and disadvantages of a trial as compared with those attending a plea of guilty"), and even if the alternatives to a decision are unattractive, *see, e.g., State v. Raleigh,* 778 N.W.2d 90, 96 (Minn.2010) (concluding that a plea bargain to receive one life sentence instead of multiple, although "illogical," was not involuntary because the facts "show[ed] acceptance and understanding of the plea, not improper pressure or coercion.").

I recognize these examples are drawn from our criminal law and are not directly applicable here; that said, and recognizing the differences between "voluntary" in the context of workers' compensation law and in criminal law, it is noteworthy and instructive that we have applied a broader meaning to "voluntary" in a context in which there is a strict constitutional standard protecting the rights of criminal defendants. No such barrier exists here, and yet the court applies a meaning to "voluntary" that is much narrower. Why we should do this, given the plain language of the statute, dictionary definitions, and the broader meanings of "voluntary" applied elsewhere, the court does not say.

III.

These dictionary definitions and analogous precedents indicate that the plain and ordinary meaning of a "voluntary" recreational program, Minn.Stat. § 176.021, subd. 9, does not require the absence of all influences or constraints; rather, such external influences prevent a voluntary decision only if they amount to *coercion* that critically impairs willfulness and the capacity for self-determination. The most natural and common reading of a "voluntary" recreational program under this statute is one attended without coercion by the employer and by an employee's act of choice among reasonable alternatives.

This plain meaning, focusing on an "act of choice," is persuasively supported by similar workers' compensation cases. In *Ellingson v. Brady Corp.,* 66 Minn. Workers' Comp. Dec. 27 (WCCA 2005), *aff'd without opinion,* 707 N.W.2d 676 (Minn.2006), the WCCA concluded that because "the employee had *options* " besides attending the employer-sponsored recreational program, "his *choice* to attend" was voluntary. *Id.* at 31 (emphasis added). The employee's options included remaining at work with pay, taking a day of paid vacation, or taking a day off without pay. *Id.* This choice was voluntary even though the options were not equally attractive and the employee may have had incentives for picking one option over the others. Even if an employee prefers to receive wages, rather than use paid vacation hours or take unpaid leave, requiring an employee to choose among reasonable options does not amount to coercion. Thus, when the employee in *Ellingson* argued that his attendance was involuntary because the employer encouraged his presence by paying him, the court rejected that argument because the employee had "options" and it was "his choice" to attend. *Id.* at 30–31. Similarly, in *Sager v. City of Roseville,* 52 Minn. Workers' Comp. Dec. 281, 283 (WCCA 1994), *aff'd without opinion,* 529 N.W.2d 701 (Minn.1995), the WCCA held that "employees are *not* excluded from the exemption of Minn.Stat. § 176.021, subd. 9, simply [because] they are being paid a wage by the employer."[9]

***11** In *Paskett v. Imation Corp.,* No. WC12–5494, 2013 WL 398699 (Minn. WCCA Jan. 3, 2013), the WCCA concluded that the employer's recreational program was voluntary because the employee made the choice between the alternatives of staying at work and taking paid leave. *Id.* at *2. The court rejected the employee's argument that

his participation was involuntary because he did not have the option of unpaid leave, which was provided by the employer in *Ellingson*. *Id.* The court explained that "*Ellingson* cannot ... be read to mandate that *all* of these specific alternatives be available in every case." *Id.* Rather, the employee "acknowledged ... that he was not required or *coerced* by the employer to take part in the flag football game and that he could have stayed at work or taken paid leave instead. As such, the record as a whole easily supports ... the voluntary nature of the employee's participation." *Id.* (emphasis added). The unifying principle of *Paskett* and *Ellingson* is that a program is "voluntary" under Minn.Stat. § 176.021, subd. 9, if the employee makes a "choice" to attend among reasonable "options" or "alternatives," and the employee is "not *coerced* by the employer" to attend. This principle falls in line with the reasonable plain meaning of "voluntary" drawn from dictionaries, analogous case law, and the context of the statute here, as discussed above.

Similarly here, Shire made a choice among reasonable alternatives presented by his employer, including (1) attending Rosemount's employee-recognition program and receiving regular wages; (2) taking paid leave by using vacation hours; and (3) taking unpaid leave. And there is no evidence that Rosemount *coerced* Shire to attend or took any action that looked remotely like coercion. Rather, evidence exists that Shire attended the program voluntarily by making his own choice. Rosemount's electronic employee handbook states that "recognition events are voluntary in purpose and all employees have the choice to decide to participate." In addition, Rosemount held several employee meetings, prior to the recreational program, in which the employees were advised of the voluntary nature of the event, presented with the alternatives of paid or unpaid leave, and advised to contact their supervisor if they did not wish to attend. But Shire never told his supervisor that he did not wish to attend the event, nor did he ever request not to attend the event. Indeed, there was no evidence that Shire told *anyone* he did not want to attend or that he felt "coerced" to attend by his employer. When Shire was asked during his deposition, "you had no reason not to attend the event?" Shire responded, "None that I can think of."

But despite this clear evidence that Shire attended the program voluntarily, the court nevertheless presumes that Shire must have been "implicitly coerced" to attend. The only basis for the court's conclusion that Shire was "implicitly coerced" is that, among the options available to Shire—attend the program with regular wages, take paid leave by using vacation hours, or take unpaid leave—there was a financial disincentive or "constraint" in favor of attending the program. *See supra* at 7 ("Contrary to these definitions, employees were 'constrained' by the fact that attendance at the employee-recognition event was the only means by which they could obtain their wages without expending limited vacation time.").

***12** The court's decision does not follow the reasonable plain meaning of "voluntary" under Minn.Stat. § 176.021, subd. 9. Restricting the definition of this term to prohibit *any* "constraint" on "pay or benefits," and raising a presumption of "implied coercion" based on incentivized alternatives, without any direct evidence that an employee was actually coerced, contravenes the plain meaning of "voluntary" according to relevant dictionary definitions, the context of the statute, and analogous precedent. I would hold that the reasonable plain meaning of a "voluntary" recreational program under this statute is one that is attended without coercion by the employer and by the employee's act of choice among reasonable alternatives. Because Shire attended Rosemount's program by making a choice among reasonable alternatives, including the options of paid leave by using vacation hours or unpaid leave, and because there was no evidence of coercion by Rosemount, implied or otherwise, Shire's attendance was voluntary and therefore his injury was noncompensable under the voluntary-recreational-program exception, Minn.Stat. § 176.021, subd. 9, to the Minnesota Workers' Compensation Act. For these reasons, I respectfully dissent.

All Citations

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Footnotes

1 In addition to hiring permanent employees, Rosemount hires temporary contract workers to assist in the shipping department. The recognition event was not held for the benefit of temporary employees, and temporary employees were not paid to attend. Many temporary employees did attend, however, as guests of the permanent employees, and Rosemount allowed temporary employees to make up the lost three hours of work as "flex hours" during a different shift.

2 Under Rosemount's interpretation, the statute would read:

> Injuries incurred while participating in ... recreational programs ... do not arise out of and in the course of the employment.... This exclusion does not apply in the event that the injured employee was ordered or assigned by the employer to participate in the program.

See Minn.Stat. § 176.021, subd. 9.

3 The dissent argues that our holding conflicts with *Ellingson* and *Paskett,* as well as *Sager v. City of Roseville,* 52 Minn. Workers' Comp. Dec. 281 (WCCA), *aff'd without opinion,* 529 N.W.2d 701 (Minn.1995). We are not bound by WCCA decisions. Moreover, *Ellingson, Paskett,* and *Sager* are not before us today, and we decline to address whether the WCCA employed the proper analyses in those cases. However, it is noteworthy that, in deciding the present case, the WCCA distinguished *Ellingson* and *Paskett. Shire,* 2015 WL 2327967, at *5. As addressed above, employees had the option of remaining at work in both cases. Unlike the Rosemount employees, the *Ellingson* and *Paskett* employees were not compelled to attend the recreational programs at issue in order to get paid. The WCCA found this distinction critical. *Id.* ("[I]n both *Ellingson* and *Paskett,* one of the options offered was that the employee might simply continue to perform his usual job, without loss of pay or benefits. We agree with the compensation judge that this distinction is a critical one in cases where the program is scheduled during an employee's normal working hours."). Similarly, in *Sager,* there is no indication that employees were required to attend the program at issue in order to receive their wages. *See* 52 Minn. Workers' Comp. Dec. at 281–82.

4 The dissent also contends that a dictionary's first-listed definition of a word expresses the word's most common meaning. Yet, the dissent maintains that we should choose the relevant definition based on the context in which the word is used. The definitions we rely on are well-suited to the context of Minn.Stat. § 176.021, subd. 9, particularly because, in order to avoid surplusage, we must define "voluntary" as distinct from the phrase "ordered or assigned."

5 Significantly, the criminal cases cited by the dissent involving voluntary confessions and voluntary guilty pleas do not employ the rules of statutory interpretation. *See, e.g., State v. Riley,* 568 N.W.2d 518, 525 (Minn.1997) (analyzing the voluntariness of a confession as required by the Due Process Clause of the Fourteenth Amendment to the United States Constitution); *State v. Ecker,* 524 N.W.2d 712, 718–19 (Minn.1994) (discussing case law on voluntary guilty pleas).

6 Rosemount proposed a different theory at oral argument. According to Rosemount, the "program" could be alternatively (1) Rosemount's overall employee wellness program, (2) the employee-recognition event, or (3) the laser-tag game at the event. We need not address this theory because it was raised for the first time at oral argument. *See City of Duluth v. Cerveny,* 218 Minn. 511, 524, 16 N.W.2d 779, 786 (1944) (citing *Cutting v. Weber,* 77 Minn. 53, 54, 79 N.W. 595, 595–96 (1899)).

7 For example, there may be a volleyball game at a company picnic. Similarly, an athletic event may consist of multiple games. Yet, a single football game would constitute a "program" when the game is the sole recreational activity.

8 Depending on the dictionary publisher, the first-listed meaning is the "most commonly sought meaning," the "most established ... literal and central" meaning, or the historical first-known meaning. *See The American Heritage Dictionary of the English Language,* at xxiv (5th ed. 2011) ("Entries containing more than one sense are arranged for the convenience of the reader with the central and often the most commonly sought meaning [appearing] first ."); *New Oxford American Dictionary,* at xv (3d ed. 2010) ("[T]he first definition given is the core sense.... Core meanings represent typical, central uses.... It is the meaning accepted by native speakers as the one that is most established as literal and central."); *Webster's Third New International Dictionary Unabridged* 17a (3d ed. 2002) ("The order of senses is historical: the one known to have been first used in English is entered first.").

9 Although the court cites one definition of "voluntary" that refers to the absence of a "reward," the court does not rely on this part of the definition in its analysis. It is telling that the court does not do so, because requiring the absence of "rewards" would result in an unreasonably narrow meaning of "voluntary," and would conflict with *Ellingson* and *Sager,* in which the WCCA held that an employer's payment of wages does not result in involuntary attendance. Similarly here, Rosemount arguably provided a financial "reward" or incentive to attend its program through the payment of regular wages to the program's attendees. But the court does not rely on this financial "reward" to support its conclusion that Rosemount's program was involuntary and Shire was "implicitly coerced" to attend. Thus, it appears that the court would agree that, consistent with the WCCA's holdings in *Ellingson* and *Sager,* a reasonable "reward" or financial *incentive* to attend, through the payment of regular wages, does not result in involuntary attendance. But the court does not explain how the converse of this rule, a reasonable "constraint" or financial *disincentive* to be absent (by providing the options of using paid vacation hours or taking unpaid leave) results in involuntariness.

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