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they would be reprimanded if caught.<sup>3</sup> The Superior Court concurred, noting in addition to the hearing officer's findings that organized team wrestling is a serious deviation from filling customer's work orders in a warehouse and wrestling was not co-mingled with the performance of any duties. The Court also concurred with the finding that the time of the event was irrelevant (lunchtime or not). The Board notes that a determining factor in *Seinsoth* was that the activity was not a part of the work activities; it was horseplay.

The Superior Court addressed the issue of whether or not horseplay is within the course and scope of employment in *Lomascolo v. RAF Industries*,<sup>4</sup> another case of wrestling. The *Seinsoth* Court, reviewing *Lomascolo* stated that "although the injury occurred during work hours, and at the location where the claimant was scheduled to perform his duties, the claimant's horseplay could (not) be deemed to have arisen out of or within the course of his employment because the employer's work rules prohibit horseplay and the claimant was aware of these rules."<sup>5</sup> In the instant case, the general contractor, Zeccola Builders made clear to the subcontractors, such as TCE, that paintball activities at the construction jobsites would not be tolerated. In particular, TCE's work rules prohibit horseplay and Claimant was made aware by specific warnings. He assured that he was not participating in paintball activities. Furthermore, paintball activity was not a part of Claimant's work activities and it is a serious deviation from installing electric wires and the like. The activity was kept in secret because Claimant knew he would be reprimanded. Moreover, the Board rejects Claimant's testimony that he was running away for cover. While he was initially ambushed by Kennedy and Way, Claimant did not tell them to stop. Instead, he ran to get his paintball gun so that he could participate in the battle.

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<sup>3</sup> *Id.* at \*4.

<sup>4</sup> *Lomascolo v. RAF Industries*, C. A. No. 93A-11-013, Alford, J. (Del. Super., June 29, 1994).

<sup>5</sup> *Seinsoth*, at \*5, discussing *Lomascolo*. See also *Cave v Perdue Farms*, C.A. No. 94A-11-002, Graves, J. (Del. Super., August 28, 1995), where the court simply stated that the injury resulted from horseplay that was outside the course of employment.

The Board finds that Claimant was a willing participant in horseplay and he cannot recover for his injuries under workers' compensation laws.

**STATEMENT OF THE DETERMINATION**

Accordingly, the Board **denies** Claimant's Petition to Determine Compensation Due.

IT IS SO ORDERED THIS 23<sup>rd</sup> day of January, 2008.

INDUSTRIAL ACCIDENT BOARD

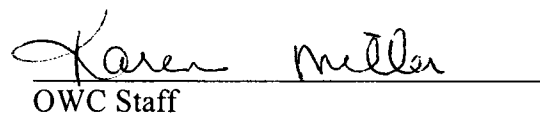
  
LOWELL L. GROUNDLAND

  
ROMAYNE SEWARD

I, Lydia C.F. Anderson, Hearing Officer, hereby certify that the foregoing is a true and correct Decision of the Industrial Accident Board.

  
LYDIA C.F. ANDERSON, ESQUIRE

Mailed Date: 1-24-08

  
OWC Staff