

Are Injuries from Assault at Work Camp Covered by Workers' Comp?



SITUATION

When bad weather causes a work delay, workers are forced to stay at a camp set up by their employer. While waiting to return to work, the workers go drinking at a bar in a nearby town. When they return to the camp, one worker sits on a sofa in the camp's living room talking to a co-worker, who suddenly starts punching and kicking him. He suffers facial injuries and a broken ankle requiring hospitalization. The injured worker says the attack was unprovoked and the co-worker claims to have no memory of what happened. The employer investigates but can't find any witnesses who can explain what led to the assault. The injured worker's claim for workers' comp benefits is denied, so he appeals.

QUESTION

Are the worker's injuries compensable'

- A. No, because the assault happened after work hours.
- B. No, because the assault was personal and didn't arise out of a work-related dispute.
- C. Yes, because the incident happened on the employer's premises.
- D. Yes, because there was an indirect relationship between the worker's employment and the assault.

ANSWER

D. The injury was compensable because the worker was reasonably using the employer's camp when he was assaulted.

EXPLANATION

This hypothetical is based on an Alberta Worker's Compensation Appeals Commission decision, which held that the worker's injuries were covered by workers' comp. Because of the nature of his employment, the injured worker had to be in the employer-provided camp so he could resume work when the weather disruption ended. He was making reasonable use of these premises prior to the assault. And as the worker couldn't control this environment or determine who stayed there, the Commission found the hazard arose as a result of the employer-provided residential facility. The Commission explained that this constituted a 'positional risk"the worker's employment required him to be in a location that exposed him to a hazard, that is, the co-worker. So there was an indirect relationship between the injured worker's employment duties and the assault.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because the test for workers' comp coverage isn't whether an injury occurs during work hours but rather whether the injury arises out of or occurs in the course of employment and is due to a work hazard. For example, a worker who's injured while stuck in an elevator while leaving for a break or who slips on spilled machine fluids while exiting the workplace after clocking out for the day would likely still have a compensable injury despite the injury occurring while on a break or after work hours. That's because the injury was the result of a hazard at a location where the worker had to be for employment purposes. Here, the worker had to remain at the employer's camp during the weather delay, exposing him to the hazard of the co-worker's unprovoked attack. So the fact the worker wasn't performing work-related duties and was on a break at the time of the injury isn't a bar to compensation for his injury.

Insider Says: For more information about compensable injuries, visit the Workers' Compensation Compliance Centre.

B is wrong because the cause or motivation for the attack isn't relevant as to whether the injuries resulting from that attack are covered by workers' comp. As noted above, the key question is whether the injuries arose out of or occurred in the course of the worker's employment. So if a worker punches a co-worker on the job, his injuries are likely to be covered by worker's comp whether the co-worker attacked because, say, he thought the worker had stolen his tools or because the worker had disparaged his favorite hockey team. (In addition, employers have a duty to protect workers from violence on the job, both at the hands of outsiders such as clients or criminals and by colleagues.) In this case, it doesn't appear that the co-worker's reasons for attacking the worker were job-related. Still, the worker's injuries from the assault are covered by workers' comp because they occurred in the employer's camp, where the worker was compelled to stay due to his employment obligations and where he was exposed to the hazard of the co-worker's unprovoked attack.

C is wrong because simply having an injury occur on employer premises isn't sufficient for it to be deemed compensable. The injury must be caused by a workplace hazard and must arise out of the course of employment. An unreasonable use of the employer's premises or personal conduct while at the workplace that takes the worker out of the course of employment may render an injury not compensable. For example, if the injury was the result of horseplay instigated by the injured worker or other conduct in violation of the employer's rules, the fact it was suffered on the employer's premises wouldn't be enough to make the injury compensable. In this case, the injury occurred at the employer's camp,

where workers were compelled to stay during weather delays when it wasn't feasible or practical for them to return home. There's no evidence that the injured worker in any way instigated the altercation. So his injury's compensable because he was making reasonable use of his employer's premises while waiting for the work delay to end—not simply because it occurred on employer-controlled premises.

SHOW YOUR LAWYER

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