Does Worker’s Stupidity Bar Compensation for Injury?



SITUATION

A worker loading materials on a trailer jumps down from the trailer instead of using the step ladder provided by the employer. The height he jumps from is about five to eight feet. He lands awkwardly and injures his back. The employer requires workers to use ladders when ascending or descending from trailers. In fact, it held a toolbox talk the morning of the incident that covered using ladders when loading materials. The employer interviews the worker during its investigation of his injury and he concedes that he was ‘stupid’ to jump but says he’d done so several times in the past without injury. The worker receives workers’ comp for his back injury. But the employer argues his failure to use the ladder as instructed is ‘serious and wilful misconduct,’ which bars workers’ comp for his injury.

QUESTION

Should the worker’s injury be covered by workers’ comp’

A. No, because it was caused by serious and wilful misconduct.

B. No, because he intentionally violated a safety rule.

C. Yes, because his misconduct didn’t demonstrate a complete disregard for safety or possible consequences.

D. Yes, because he was injured in the workplace.

ANSWER

C. The worker acted impulsively and didn’t completely disregard safety or potential consequences, so his injury should be covered by workers’ comp.

EXPLANATION

This hypothetical is based on a decision of the Alberta Workers’ Compensation Appeals Commission, which ruled that a worker was entitled to compensation for his back injury despite his failure to follow his employer’s safety rules and his training by jumping off a trailer instead of descending via a ladder. The Commission found that the injury occurred due to a workplace hazard (working at heights) and occurred in the course of and arose out of the worker’s employment. It acknowledged that serious and wilful misconduct can bar workers’ comp coverage for an otherwise compensable injury. But the worker’s failure to follow safety rules didn’t rise to that level because it wasn’t a deliberate and unreasonable breach but rather an impulsive act and a momentary lapse in judgment. And ‘stupidity is not a reason to deny compensation to a worker,’ the Commission ruled.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because the worker’s misconduct wasn’t serious or wilful. Serious and wilful misconduct can prevent a worker from collecting workers’ comp. But such misconduct requires a deliberate violation of safety rules or the law known to the worker and a complete disregard for the consequences of an action. Here, instead, the worker acted impulsively and didn’t carefully consider his actions or the potential for injury. In fact, he indicated he’d done the same previously without injury. Additionally, he jumped from a height between five and eight feet. And it’s possible to jump from that height without injury as he had in the past. However, if he’d jumped from, say, 20 feet or higher, that act would show a deliberate

disregard for consequences because jumping from such a height is fairly certain to result in an injury.

***Insider* Says:** For more examples of conduct that is and isn't serious and wilful misconduct, see, 'Is Workers' Misconduct a Bar to Workers' Comp Claims'', April 2011, p. 20.

B is wrong because although the worker did intentionally violate a safety rule, not every safety violation automatically bars workers' comp. His jumping from the trailer rather than using the ladder was intentional'he wasn't forced to jump but did so voluntarily. But he didn't do so with deliberate, insubordinate forethought and an objective to violate the safety rule and flout the potential for injury. As he conceded, his conduct was stupid and not thought out carefully. So although his conduct was voluntary and thus intentional, it wasn't a deliberate disregard for rules and potential consequences.

D is wrong because not every injury that occurs in the workplace is compensable; the injury must also arise out of a worker's employment. If a worker is injured in the workplace but while on a break or engaging in horseplay, he may not be entitled to workers' comp. This incident did occur not only in the workplace but also in the course of employment because it occurred at a time and place consistent with the obligations and expectations of employment'that is, while the worker was loading materials.

***Insider* Says:** For more information about workers' comp, visit the Workers' Compensation Compliance Centre.

SHOW YOUR LAWYER

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