

Does Worker's Violation of Safety Rule Bar Workers' Comp Claim?



SITUATION

After a factory worker's hired, he receives five days of training on how to safely operate the machinery and do his job. As part of that training, the employer instructs the worker to unplug or shut off a machine before clearing jams. There's also a sign posted near the machine warning workers to turn it off before reaching into it. Despite his training and less than two months after beginning employment, the worker breaks his arm when he puts it into a moving mechanism of the machine to retrieve an object. He says he thought he could judge the timing of the machine's movement and safely remove the item, which had fallen off its usual path. He claims to have acted impulsively and realizes attempting to predict the machine's timing was a lapse in judgment. His workers' comp claim is approved. But the employer appeals, arguing the injury was caused by serious and wilful misconduct, which isn't compensable.

QUESTION

Was the worker's injury properly compensated under workers' comp'

- A. Yes, because the incident occurred at the workplace.
- B. Yes, because the worker's infraction was impulsive but not serious and wilful misconduct.
- C. No, because the injury resulted from the worker's violation of safety procedures.
- D. No, because injuries caused by serious and wilful misconduct are never compensable.

ANSWER

B. The injury is compensable because the worker's actions were impulsive and not

well thought out but didn't rise to the level of serious and wilful misconduct.

EXPLANATION

This hypothetical is based on an Alberta Workers' Compensation Appeals Commission decision, which upheld the awarding of workers' comp benefits to a worker injured when he stuck his arm into machinery to remove an item without first turning off the machine as he was trained to do. The commission acknowledged that injuries caused by serious or wilful misconduct weren't compensable unless they resulted in serious disability. (Here, the worker merely broke his arm.) Serious and wilful misconduct includes deliberate violations of safety rules or the law and intentional acts with a complete disregard for potential consequences. The commission explained that such conduct requires the person to have carefully thought about his actions and not have acted impulsively. It found that the evidence showed the worker's actions weren't carefully thought out—he didn't consider the potential results and was inexperienced, having less than two months on the job. These facts indicated the conduct was impulsive rather than purposeful, according to the commission, and so didn't constitute serious and wilful misconduct. Thus, the worker was entitled to workers' comp.

Insider Says: For examples of more cases on what qualifies as serious or wilful misconduct, see 'Winners & Losers: Is Workers' Misconduct a Bar to Workers' Comp Claims' April 2011, p. 20. And for more information about compensable injuries in general, see the Workers' Compensation Compliance Centre.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because not every injury that happens at the workplace is automatically compensable. If the worker's activity leading to his injury takes him out of the course of employment, the injury isn't compensable. For example, an injury that occurs during personal activity undertaken at the workplace, but unrelated to employment duties, doesn't arise out of or occur in the course of employment and thus wouldn't be covered. In this case, the worker was not only injured at the workplace but also while doing his job. So his injury did arise out of his employment.

C is wrong because although the worker did violate safety procedures, that infraction doesn't automatically bar workers' comp coverage. Workers' comp covers injuries when they result from workers' fault, negligence, carelessness, inexperience or even stupidity. A worker therefore might violate a safety rule out of carelessness or inexperience and still be entitled to compensation. In this case, the worker's injury resulted from his impulsiveness and lack of experience and thus is compensable.

D is wrong because it's inaccurate to say that injuries resulting from serious and wilful misconduct are *never* covered. Even if an injury results from such misconduct, it may still be compensable if the worker's seriously disabled or dies. Here, the worker wasn't seriously disabled—he only suffered a broken arm. But his infraction didn't constitute serious and wilful misconduct anyway. So the injury was compensable because it occurred during and arose out of the course of employment.

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