

## Attack By Co-Worker Not Compensable If It Stems From a Personal Dispute

The Superior Court of New Jersey Appellate Division affirmed the Trial Court's decision in the matter of *Joseph v. Monmouth County* this week (Docket No. A-4044-13T3, decided December 14, 2015) stating that injuries occurring due to a personal dispute unrelated to the workplace or job cannot be compensated.

In *Joseph*, the petitioner was working as a night nursing supervisor when he was attacked by his nursing assistant. There was not a history of problems between the two, but the petitioner became involved in his assistant's pyramid scheme that was known as a "susu." Parties invested money in a pot and then took turns sharing the amounts collected. However, the assistant got married and when no money was paid to the participants it was assumed the assistant used the "susu" for her wedding expenses. The petitioner confronted the assistant and was told that he would get his money. However, later that night when the petitioner was on break and sleeping in the break room, the assistant attacked him with a hammer. It was noted sleeping during break was against company policy.

The question was whether the incident arose out of and in the course of employment. The Trial Judge ruled the incident was not work related and dismissed the petition with prejudice. The Judge found no nexus between the injuries of the petitioner and the employment of the petitioner. The mere fact that it occurred at the workplace with a co-worker is not substantial when no part of the activity which led to the injury was remotely connected to the employment.

The petitioner appealed the decision and the Appellate Court reviewed the case and affirmed the dismissal. The Appellate Court confirmed that the fact the injury happened at work does not satisfy the requirement that the accident arose out of and in the course of employment. *N.J.S.A. 34:15-7*. "An accident arises 'in the course of' employment when it occurs (a) within the period of the employment and (b) at a place where the employee may reasonably be, and (c) while he is reasonably fulfilling the duties of the employment, or doing something incidental thereto." *Crotty v. Driver Harris Co.*, 49 N.J. Super. 60, 69 (App. Div.), cert. denied, 27 N.J. 75 (1958).

The court highlighted that the petitioner was sleeping in the break room which was against the employer's rules and regulations when the incident occurred. Because his sleeping was personally motivated it could not be compensable as this was not a minor deviation. However, the Court went further to indicate that even if there was no prohibition against sleeping in the break room, the origins of the incident stemmed from the petitioner's involvement in the "susu" scheme which was totally unrelated to his employment.

The attack in this case arose from personal motivation and was not attributable to a risk of employment or to uncontrollable circumstances. Had petitioner not been a participant in his assistant's "susu," the attack would not have occurred.

**Comment:** This case further confirms that the investigation into the reason behind any workplace fight or assault and injury is necessary. Simply because it happened at work does not make it compensable. The issue of the dispute becomes paramount to determining compensability.

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