

Workers' Compensation Benefits Available to Those Injured on a Break?

The Commonwealth Court in 1912 Hoover House Restaurant v. WCAB (Soverns) ruled on this question on November 10, 2014 and determined that the injuries suffered from a dog bite, including disfigurements, were compensable as the employee was still in the course of his employment during his smoking break.

The employee worked as a part-time line cook one evening a week. The employer permitted employees two smoking breaks per shift, outside the back of the restaurant and even provided an ashtray tower. The employee was smoking in the assigned area when a co-worker's father, who had a dog with him, approached the area. A conversation ensued at which time the employee was advised the dog had a tendency to snap at people. The employee asked permission to pet the dog, knelt down, was first licked by the dog, but then the dog growled and bit the employee on the face resulting in permanent scarring.

The Workers' Compensation Judge (WCJ) awarded benefits for scarring and payment of medical bills. The WCJ reasoned that the employer's premises included the break area where the employees were allowed to smoke. In addition, since the employees were permitted two smoking breaks, the employee's break was a temporary departure from employment as was the act of petting the dog. The Workers' Compensation Appeals Board affirmed the WCJ's award.

The employer argued on appeal that the employee had taken a dramatic departure from his employment duties when he went to pet a dog with a known tendency to snap at people, a dangerous behavior similar to the facts in a prior Commonwealth Court decision which denied benefits to an employee who jumped a flight of 12 steps on his lunch break and severely injured his lower legs. That Court concluded that the employee had abandoned his employment by engaging in such a dangerous act that was wholly foreign to the affairs of the employer.

The Commonwealth Court agreed with the award of benefits. The Court concluded that the employee was on a smoking break permitted by his employer in the area designated by the employer and thus was merely attending to his personal comforts, which constituted a temporary departure from his employment. The Court noted prior cases which have held that smoking during intervals that do not interfere with work duties have been found to be acceptable deviations from work. The Court also agreed that the employee's act of petting the dog was an inconsequential departure from his work duties that did not take him out of the scope of his employment.

Comment: In order for an employee to be found outside the course of employment, the cases require a dramatic break from work duties such as to constitute an abandonment of employment. The cases are fact specific and the facts need to be investigated and analyzed carefully to determine in any specific case if the employee, injured in some activity not directly related to job duties, has abandoned his or her employment or engaged in a temporary minor departure from work. The former is not compensable while the latter is compensable as a general rule.

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