

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

JENNIFER STONEKING

Plaintiff

v.

CLEVELAND STATE UNIVERSITY

Defendant

Case No. 2006-03290-AD

Daniel R. Borchert

Deputy Clerk

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On April 27, 2004, plaintiff, Jennifer Stoneking, a student attending defendant, Cleveland State University (“CSU”), suffered personal injury when she fell on a concrete walkway located at the Theater Arts Building on defendant’s campus. Specifically, plaintiff fractured her left wrist, lacerated her left eyebrow area, and broke her eyeglasses when she fell upon the concrete walkway, which occurred when she leaned upon a metal gate that had been left unsecured. Leaning upon the unsecured gate caused her to lose her balance and fall onto the walkway resulting in the injuries noted. At the time of her injury, plaintiff was an employee of CSU as well as a student at defendant’s institution.

{¶ 2} 2) Plaintiff asserted her personal injuries were proximately caused by negligence on the part of defendant in maintaining a hazardous condition on the premises of CSU. Consequently, plaintiff filed this complaint seeking to recover \$824.00, her out-of-pocket expense for medical care and medication needed to treat her injuries. Plaintiff also seeks \$920.00 for work loss compensation associated with time spent for treatment and therapy for her injuries. Plaintiff used 67.5 hours of sick-time compensation provided by defendant as reimbursement for her work loss. The filing fee

was paid.

{¶ 3} 3) Defendant admitted liability for plaintiff's injuries and acknowledged plaintiff is entitled to damages in the amount of \$849.00 for unreimbursed medical expenses. However, defendant disputed plaintiff's claim for 67.5 hours of work loss, which she already received compensation for by utilizing earned sick leave. Defendant asserted plaintiff's sick leave policy is governed by the collective bargaining agreement between CSU and plaintiff's union representation. Defendant requested this court authorize CSU to reinstate 67.5 hours of sick leave to plaintiff's account in lieu of a monetary damage award.

CONCLUSIONS OF LAW

{¶ 4} 1) R.C. 2743.10(A) states in pertinent part:

{¶ 5} "Civil actions against the state for two thousand five hundred dollars or less shall be determined administratively by the clerk of the court of claims . . ."

{¶ 6} This court, at the administrative determination level has jurisdiction to award monetary damages. The court does not have jurisdiction to order defendant to reinstate plaintiff's sick leave.

{¶ 7} 2) Additionally, R.C. 2743.02(D) states:

{¶ 8} "Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant. This division does not apply to civil actions in the court of claims against a state university or college under the circumstances described in section 3345.40 of the Revised Code. The collateral benefits provided in division (B)(2) of that section apply under those circumstances."

{¶ 9} In accordance with this provision, R.C. 3345.40(B)(2) applies to the instant claim.

{¶ 10} R.C. 3345.40(B)(2) states in relevant part:

{¶ 11} "If a plaintiff receives or is entitled to receive benefits for injuries or loss allegedly incurred from a policy or policies of insurance or any other source, the benefits

shall be disclosed to the court, and the amount of the benefits shall be deducted from any award against the state university or college recovered by plaintiff.”

{¶ 12} Thus, pursuant to the statutory requirement of R.C. 3345.40(B)(2), compensation for work loss reimbursed through a sick leave policy cannot be awarded. Plaintiff’s claim for work loss is denied.

{¶ 13} 3) Plaintiff was present on defendant’s premises for such purposes which would classify her under law as an invitee. *Scheibel v. Lipton* (1985), 156 Ohio St. 308, 102 N.E. 2d 453. Consequently, defendant was under a duty to exercise ordinary care for the safety of invitees such as plaintiff and to keep the premises in a reasonably safe condition for normal use. *Presley v. City of Norwood* (1973), 36 Ohio St. 2d 29, 303 N.E. 2d 81. The duty to exercise ordinary care for the safety and protection of invitees such as plaintiff includes having the premises in a reasonably safe condition and warning of latent or concealed defects or perils which the possessor has or should have knowledge. *Durst v. VanGundy* (1982), 8 Ohio App. 3d 72, 455 N.E. 2d 1319; *Wells v. University Hospital* (1985), 85-01392-AD. As a result of plaintiff’s status, defendant was also under a duty to exercise ordinary care in providing for plaintiff’s safety and warning her of any condition on the premises known by defendant to be potentially dangerous. *Crabtree v. Shultz* (1977), 57 Ohio App. 2d 33, 384 N.E. 2d 1294. In regard to the facts of this claim negligence on the part of defendant has been shown. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD. The facts of the present claim prove defendant knew about the gate condition and plaintiff was unaware of the condition. Furthermore, the facts show defendant did nothing to warn plaintiff of the condition. Consequently, the court concludes defendant is liable to plaintiff for the unreimbursed damages she sustained based on defendant’s breach of duty to warn plaintiff of a know dangerous condition on the premises. See *Kemper v. Miami University* (2001), 2001-05286-AD.

{¶ 14} 4) Damages in a claim such as this are assessed as the natural and proximate result of defendant's negligent act. *Blank v. Snyder* (1972), 33 Ohio Misc. 67, 291 N.E. 2d 796. The assessment of damages is a matter within the province of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42, 495 N.E. 2d 462. Where the existence of damage is established, the evidence need only tend to show the basis for the computation of damages to a fair degree of probability. *Brewer v. Brothers* (1992), 82 Ohio App. 3d 148, 611 N.E. 2d 492. Only reasonable certainty as to the amount of damages is required, which is that degree of certainty of which the nature of the case admits. *Bemmes v. Pub. Emp. Retirement Sys. Of Ohio* (1995), 102 Ohio App. 3d 782, 658 N.E. 2d 31. The trier of fact finds compensable damages in the present claim are represented by plaintiff's unreimbursed medical expenses as well as pain and suffering. Therefore, plaintiff is entitled to damages of \$1,744.00, the amount claimed, plus the \$25.00 filing fee. *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19, 587 N.E. 2d 990.

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ENTRY OF ADMINISTRATIVE
DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of plaintiff in the amount of \$1,769.00, which includes the filing fee. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Jennifer Stoneking
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Plaintiff, Pro se

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RDK/I

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9/13

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