

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Vernon Johnson, :
Petitioner :
 :
v. : No. 2086 C.D. 2007
 : Submitted: April 11, 2008
Workers' Compensation Appeal Board :
(Federal Bond Collection Service and :
State Workers' Insurance Fund), :
Respondents :

BEFORE: HONORABLE DORIS A. SMITH-RIBNER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE SMITH-RIBNER

FILED: July 25, 2008

Vernon Johnson (Claimant) petitions for review of the order of the Workers' Compensation Appeal Board (Board) that reversed the decision of the Workers' Compensation Judge (WCJ) granting Claimant's claim petition. His position is that he sustained injuries in the course of his employment when his coworker assaulted him just off of the premises of Federal Bond Collection Service (Employer) after a supervisor led Claimant and the coworker out of Employer's premises following their altercation at work.

Claimant worked as a bill collector and Spanish interpreter from 3 or 4 p.m. to 11 p.m. and was paid hourly wages and commissions on collected debts. Approximately eighty employees worked on the same floor receiving incoming phone calls and entering account information into computers. A part of Claimant's job duties involved assisting other employees in closing deals. On November 12, 2004, Claimant filed a claim petition alleging that on September 24, 2004 his

coworker assaulted him just off Employer's premises following their altercation at work and that he sustained injuries to his cervical, thoracic and lumbar spine, right wrist and skull in the form of physical traumatic injury and concussion syndrome.

Claimant testified regarding the events leading up to his injuries. In June 2004 Claimant's coworker, Antoine Brown, asked for Claimant's help in dealing with a Spanish-speaking debtor, whose account showed that a \$1800 check was posted. A Spanish-speaking supervisor eventually saved the account by convincing the debtor not to cancel the check. Another coworker claimed the account as hers, and Claimant informed the employee that Brown had stated that it was his account. Brown denied making that statement and accused Claimant of lying. The supervisor tried to settle the dispute by having them agree that "it did not matter who said what." WCJ's Finding of Fact No. 5. Brown thereafter acted in a threatening and intimidating manner toward Claimant, who tried to ignore Brown to avoid a conflict. In July 2004 Brown put his fingers in Claimant's face and insulted him using profanities. He reported the incident to the supervisor, Andrew Tazioly, who replied that he was going to fire both employees.

On September 24, 2004, Brown stood in front of a clipboard and using profanities prevented Claimant from writing down a payment on the clipboard. Claimant reported the matter to Tazioly, and he sent both employees home by first escorting Brown out of the building and then escorting Claimant out ten minutes later. While walking through Employer's parking lot to cross the street to reach his car, Claimant saw Brown waiting for him. Claimant later woke up in the nearby alley with his lip busted, swollen neck and bleeding right little finger, a hickey on the back of his head and his shirt splattered with blood. He remembered only going back to the office and seeing Tazioly, who asked if he was able to drive.

Claimant drove home and stayed up vomiting blood and the next day was treated at a hospital emergency room for a concussion. He experienced extreme pain, could not move his neck and had a foreign body in the knuckle of the right little finger.

Claimant presented the deposition testimony of Jerry Murphy, M.D., who specialized in family medicine, physical medicine, trauma and emergency medicine and rehabilitation. When Dr. Murphy first saw Claimant on October 29, 2004, Claimant complained of persistent headaches, pain in the right ear, right wrist, lower back and neck, swelling in the little finger, decreased hearing and anxiety. Claimant's record revealed that he suffered a contusion and bleeding in the brain. Dr. Murphy gave Claimant anti-seizure and anti-anxiety medication and referred him to a neurologist, a psychologist for post-traumatic stress and a surgeon for the right wrist or finger injury. Dr. Murphy's ultimate diagnosis of Claimant's condition from the September 24, 2004 injuries was persistent but improved post-traumatic headaches, status post subdural hematoma, resolving right frontal contusion of the brain, resolving cervical and lumbosacral sprain and strain, resolving post-traumatic stress disorder, persistent right wrist sprain and little finger sprain with internal derangement and a retained foreign body. Dr. Murphy opined that Claimant remained disabled and could not return to work.

Tazioly testified, among other things, that on September 24, 2004 he heard Claimant and Brown arguing, nose-to-nose, in loud voices. He escorted Brown off of the premises and took Claimant out five or ten minutes later. About twenty minutes later, he saw Claimant coming back to the building and appearing confused and disoriented. Tazioly and Employer's human resources manager, Robert Olson, went out with Claimant to the parking lot and watched him drive home. Tazioly had no idea why Claimant and Brown were fighting and stated that

he did not want a disturbance on the collection floor. Olson testified that Employer did not tolerate arguments or fighting on the floor. When Claimant was brought into Olson's office at 5:15 p.m. after the attack, he looked disheveled, confused and disoriented. Knuckles on one hand were scraped, dirty and bloody. Olson wrote an incident report on September 27 and another one on September 29, stating that Claimant and another male employee had disagreements in the past and had an altercation on September 24 off premises after they punched out and that Claimant was a good employee and had no other problems with his job performance.

Employer presented the deposition testimony of David N. Bosacco, M.D., a board-certified orthopedic surgeon, who examined Claimant on March 31, 2005. Dr. Bosacco diagnosed resolved cervical, thoracic and lumbar strain and sprain and right wrist sprain. He opined that the metallic foreign body in Claimant's little finger was not causing any dysfunction and that he recovered fully from the orthopedic injuries. The doctor could not render an opinion as to Claimant's subdural hematoma, cerebral concussion and brain contusion due to lack of his specialty in those injuries.

The WCJ accepted the testimony of Claimant and Dr. Murphy as credible and rejected Dr. Bosacco's conflicting testimony. The WCJ granted the claim petition, concluding that Claimant established that his injuries arose as a result of his performance of regular job duties and the work-related dispute with Brown. The Board reversed the WCJ's decision after determining that Claimant failed to meet his burden of proving that he sustained injuries in the course of his employment. The Board noted that Claimant was assaulted after work on a public street or alley off of Employer's premises and that Claimant was not engaged in Employer's business or affairs at the time of the assault.

Claimant argues that his injuries arose out of his employment and are compensable under Section 301(c) of the Workers' Compensation Act (Act), Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §411. He maintains that the Act is intended to protect employees and therefore should not be narrowly construed and that his injuries are connected to and concerned with his employment. Claimant asserts that Employer was aware of Brown's prior threatening behavior and was indifferent to Claimant's safety when it made a business decision to order him and Brown to leave the premises; that an employee is entitled to compensation where he or she was injured from another employee's assault due to a personal animosity arising out of a work-related dispute; and that the assault would not have occurred had Claimant not reported Brown's behavior to the supervisor and had Tazioly directed Claimant to leave before Brown.

Employer counters that Claimant did not sustain injuries in the course of his employment because he and Brown were engaged in an altercation on a public street or alley off of Employer's premises after punching out from work and because Claimant was not furthering Employer's business or affairs at the time of injury. Employer's view is that it established the personal animosity defense by demonstrating Brown's intention to injure Claimant for personal reasons and that the WCJ's decision is not supported by competent evidence.¹

¹The Court's review is limited to determining whether constitutional rights were violated, an error of law was committed, a practice or procedure of the Board was not followed or the findings of fact are not supported by substantial evidence in the record. *Clear Channel Broadcasting v. Workers' Compensation Appeal Board (Perry)*, 938 A.2d 1150 (Pa. Cmwlth. 2007). Credibility determinations and evaluation of the weight of the evidence are within the province of the WCJ as a fact-finder, and the WCJ may accept or reject the testimony of any witness, including medical testimony, in whole or in part. *Canavan v. Workers' Compensation Appeal Board (B & D Mining Co.)*, 769 A.2d 1250 (Pa. Cmwlth. 2001). The Court must view **(Footnote continued on next page...)**

Under Section 301(a) of the Act, 77 P.S. §431, "[e]very employer shall be liable for compensation for personal injury to, or for the death of each employe, by *an injury in the course of his employment...*" (Emphasis added.) Section 301(c)(1), 77 P.S. §411(1), provides in relevant part:

The terms "injury" and "personal injury," as used in this act, shall be construed to mean an injury to an employe, regardless of his previous physical condition, *arising in the course of his employment and related thereto....* The term "injury arising in the course of his employment," as used in this article, shall not include an injury caused by an act of a third person intended to injure the employe *because of reasons personal to him, and not directed against him as an employe or because of his employment ...* but shall include all other injuries sustained while the employe is actually engaged in the furtherance of the business or affairs of the employer, whether upon the employer's premises or elsewhere....

The Act is remedial in nature and must be liberally construed to effectuate its humanitarian objectives. *See Lehigh County Vo-Tech School v. Workmen's Compensation Appeal Board (Wolfe)*, 539 Pa. 322, 652 A.2d 797 (1995).

The "personal animus" exception under Section 301(c)(1) of the Act "is an affirmative defense, which the party who is defending against a claim brought under the Act has the burden of proving." *Heath v. Workers' Compensation Appeal Board (Pennsylvania Board of Probation and Parole)*, 580 Pa. 174, 181, 860 A.2d 25, 29 (2004). The employer must prove the intention of the assailant to injure the claimant for personal reasons not connected with his employment. *Bachman Co. v. Workmen's Compensation Appeal Board (Spence)*,

(continued...)

the evidence in a light most favorable to the party who prevailed before the WCJ. *Shop Vac Corp. v. Workers' Compensation Appeal Board (Thomas)*, 929 A.2d 1236 (Pa. Cmwlth. 2007).

683 A.2d 1305 (Pa. Cmwlth. 1996). Whether an employee was in the course of employment at the time of the injury, a case-specific inquiry, is a question of law to be determined based on the WCJ's findings. *U.S. Airways v. Workers' Compensation Appeal Board (Dixon)*, 764 A.2d 635 (Pa. Cmwlth. 2000).

In *Repco Prods. Corp. v. Workmen's Compensation Appeal Board*, 379 A.2d 1089 (Pa. Cmwlth. 1977), an employee died of injuries sustained from a blow struck by a coworker. The evidence showed that the root cause of the attack was the preexisting animosity between the decedent and the coworker that had developed directly out of work-related disputes. Finding that the attack arose from reasons related to the decedent's employment, the referee awarded death benefits to the employee's wife. The Court upheld the referee's award, noting that the assailant's motivation is a question of fact for the referee to determine and that if animosity develops from work-related disputes, the motivation for assault is not purely personal, and "the resulting injuries would be compensable." *Id.* at 1091.

The WCJ stated the following in Finding of Fact No. 22:

The assault on Claimant by Antoine Brown was work-related and related back to the first incidence of animosity between them which occurred at work in June 2004. The initial incident in June 2004 occurred as a result of Claimant's performance of his usual job duties and led to Mr. Brown's threatening and intimidating course of conduct at work. Both the intimidation and the assault arose out of Claimant's employment. Claimant's testimony is uncontroverted. Claimant's testimony is also corroborated by Mr. Olson and Mr. Tazioly to the extent of their written memos and their observations of Claimant's physical condition at the time he was escorted from the building on September 24, 2004 and when he returned approximately 15 or 20 minutes later.

The WCJ's findings are supported by the testimony and show that Brown's attack was due to his personal animosity toward Claimant over a work dispute. *Repco*.

The Board relied upon *Camiolo v. Workers' Compensation Appeal Board (American Bank Notes)*, 722 A.2d 1173 (Pa. Cmwlth. 1999), to support its decision that Claimant's injuries were not compensable. In *Camiolo* the claimant clocked out from work during the lunch break and drove his car to a supermarket three miles from the employer's premises to cash a check. Upon exiting his car, he was beaten by his coworker who had a disagreement with the claimant over their work duties. While recognizing that a work-related animosity led to the attack resulting in the injury, the Court distinguished *Repco* on the basis that the injury in *Camiolo* occurred off of the employer's premises during the lunch break.

Unlike in *Camiolo* the assault occurred here just outside of Employer's premises after Claimant was led from the workplace by the supervisor rather than an assault that occurred a few miles from the employer's premises after voluntarily leaving work for a lunch break. This Court has held that the phrase "related thereto" in Section 301(c)(1) only "means that the injury, whether it occurred on or off the premises, must to some degree be causally connected to the course of employment." *Workmen's Compensation Appeal Board v. Borough of Plum*, 340 A.2d 637, 639 (Pa. Cmwlth. 1975). Claimant was working when he was led out of the premises to avoid a disturbance on the collection floor and would not have been attacked outside of Employer's premises but for its action. The undisputed facts demonstrate a sufficient connection between Claimant's injuries and his employment. Because the evidence accepted by the WCJ shows that Claimant's injuries arose in the course of his employment and were related thereto and that he was disabled due to those injuries, the Court must reverse the Board's order.

DORIS A. SMITH-RIBNER, Judge

