



to the point of pushing whereupon the claimant's fiancé stepped in to separate claimant and his brother. But afterwards the argument appeared to have ended and claimant and Billy even watched television together. Claimant testified he thought the argument was over with and settled by the time he left for work.

Claimant and Billy worked together at a school cafeteria. Claimant was the cafeteria manager and Billy's supervisor. Unlike their customary practice, claimant and Billy did not ride to work together that morning. In fact, Billy did not even go to work until after claimant called him. Billy was apparently still upset when he arrived at work because he began rattling and banging trays, pots, and pans. Claimant, as Billy's supervisor, twice came out of his office and went over to Billy in an effort to settle Billy down. Both times an argument ensued. The second time the argument escalated from cussing, to pushing, and finally ended with Billy punching claimant with his fist and claimant falling backwards, striking his head on the floor.

#### CONCLUSIONS OF LAW

In proceedings under the Workers Compensation Act, it is claimant's burden to establish his right to an award of compensation by proving, by a preponderance of the credible evidence, the various conditions upon which claimant's right depends.<sup>3</sup>

The legislative intent of K.S.A. 44-501, *et seq.*, is that the Workers Compensation Act shall be liberally construed to bring employers and employees within the provisions of the Act. The Act also provides that its provisions shall be applied impartially to both employers and employees in cases arising under the Act.<sup>4</sup>

In order for a claimant to collect workers compensation benefits he must suffer an accidental injury that arose out of and in the course of his employment. The phrase "out of" employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when it is apparent to the rational mind, upon consideration of all circumstances, that there is a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment.<sup>5</sup>

The Kansas Court of Appeals has determined that when injury results from an assault by a coworker, whether that injury "arose out of the employment" depends upon

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<sup>3</sup> K.S.A. 1996 Supp. 44-501 and K.S.A. 1997 Supp. 44-508(g).

<sup>4</sup> K.S.A. 1996 Supp. 44-501(g).

<sup>5</sup> Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973).

the nature of the incident and the motives and actions of the aggressor. Altercations that result solely from personal animosities between employees are not compensable unless foreseeable.<sup>6</sup> There is no evidence that the altercation in this case was foreseeable as there was no history of fighting or arguing between claimant and his brother on the job.

Thus, the consequences of an assault and battery sustained in the course of employment are compensable if the injury arose out of the nature, conditions, obligations and incidents of the employment.<sup>7</sup> There must be a causal connection between the work, or the conditions under which the work is required to be performed, and the resulting injury.<sup>8</sup>

When the animosity or dispute that culminates in an assault is imported into the employment from claimant's domestic or private life, and is not exacerbated by the employment, the assault does not arise out of the employment under any test.<sup>9</sup>

It is generally accepted that if the assault grew out of an argument over the performance of the work, the injury is compensable.<sup>10</sup> But even private quarrels become compensable where the assault occurred because of the proximity engendered by the employment.<sup>11</sup>

In this case, Billy's behavior at work was disruptive of the other employees, as well as being inappropriate and insubordinate. Claimant, as the cafeteria manager, was obligated to take action. This required him to leave his office and confront Billy. Thus, the ensuing argument grew out of the performance of the work and it was his job responsibilities that placed claimant in proximity with his assailant at that time and place. Billy's refusal to comply first with the request that he stop the offending behavior and second with the order that he clock out and leave the premises, were the proximate cause of the confrontation that led to claimant's injury. Under these facts, rejecting this claim because claimant and his brother quarreled before coming to work would ignore the claimant's supervisory role and relationship to his assailant and the principle of liberal construction.<sup>12</sup>

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<sup>6</sup> Harris v. Bethany Medical Center, 21 Kan. App. 2d 804, 909 P.2d 657 (1995).

<sup>7</sup> Springston v. IML Freight, Inc., 10 Kan. App. 2d 501, 704 P.2d 394 (1985).

<sup>8</sup> Brannum v. Spring Lakes Country Club, Inc., 203 Kan. 658, 455 P.2d 546 (1969).

<sup>9</sup> 1 Larson's Workers' Compensation Law, § 11.21(a).

<sup>10</sup> 1 Larson's Workers' Compensation Law, § 11.12(b).

<sup>11</sup> 1 Larson's Workers' Compensation Law, § 11.22.

<sup>12</sup> K.S.A. 1996 Supp. 44-501(g).

In this case the Appeals Board finds that the personal dispute between claimant and his brother over cigarettes was exacerbated by the employment. Claimant would not have needed to involve himself in Billy's behavior at work had claimant not been Billy's supervisor. Thus, even though initially the reason for the argument and Billy's behavior was not about work, the employment exacerbated the dispute and resulted in the injury. It was a combination of the claimant's authority coupled with the personal animosity that had been imported from their home to their job. Billy was angry about the incident which started at home and although the fight was in part a continuation of that personal argument, claimant's injury resulted from a disagreement concerning work, not because of the disagreement about cigarettes.

Because the risk of this assault and battery was a risk directly associated with claimant's job as a manager, the ALJ's Order of preliminary hearing benefits should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated July 28, 1998, should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 1998.

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BOARD MEMBER

c: Kelly W. Johnston, Wichita, KS  
Clifford K. Stubbs, Lenexa, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director