

WORKERS' COMPENSATION AND THE "BUT FOR" RULE

Fact Pattern:

Sullivan, manager of a furniture store, began firing staples with a staple-gun at a coworker during a lull between customers. The coworker fired staples back at Sullivan, hitting him in the eye. Sullivan reported the injury and filed a claim for workers' compensation.

Question:

Are injuries sustained by an employee engaged in horseplay during the workday compensable injuries under workers' compensation?

Rule

In order to receive workers' compensation benefits a claimant must show that "but for" the claimant's employment and conditions of work, the injury would not have occurred.

Discussion

The question here is whether Sullivan's horseplay bars him from recovery for the resulting injury. An injury arises out of employment if it would not have occurred but for the fact that the conditions and obligations of the employment placed claimant in the position where he or she was injured. Sullivan must show that „but for“ the employment and his position at work, the injury would not have happened. Although the accident here would not have happened but for Sullivan's participation in the horseplay and therefore was not exclusively linked to his employment, it also was not a purely personal risk that would have occurred regardless of his location and activity on that day. He was injured during work hours with a staple gun provided for use on the job, and thus the findings support a causal connection between claimant's work conditions and the injury adequate to conclude that the accident arose out of his employment.

Nonetheless, Sullivan must also show that the injury occurred in the course of the employment. An accident occurs in the course of employment when it was within the period of time the employee was on duty at a place where the employee was reasonably expected to be while fulfilling the duties of the employment contract. While some horseplay among employees during work hours can be expected and is not an automatic bar to compensation, the key inquiry is whether the employee deviated too far from his or her duties. Factor to be considered are the extent and seriousness of the employee's deviation from his duties; whether the deviation was commingled with the performance of his duties; the extent to which such conduct was an accepted art of the employment; and the extent to which the nature of the employment anticipated there would be horseplay.



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Here the shooting of staple guns was not intermingled with the accomplishment of some legitimate work duty, nor was there any evidence presented to conclude that it was an accepted part of the employment. Moreover, the dangerous nature of the activity also supports the conclusion that such activity constituted a substantial deviation from Sullivan's work duties.

