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Gallagher Sharp Shop Talk: Workers' Compensation

Question: What is the burden of proof for an employee to receive workers' compensation benefits for injuries sustained in a fight with a co-worker?

Altercations between co-workers can sometimes lead to workers' compensation claims. When analyzing these claims, a determination as to whether an injury is compensable in Ohio usually involves the application of a two-part test. Recently, the Ohio Court of Appeals, Twelfth Appellate District, applied this test in a claim involving a fight between co-workers over a cooler of beer.

Lowe v. Cox Paving, Inc. (2010), 190 Ohio App.3d 154, concerned a paving worker who was injured in a fight with a fellow employee at a job site. Earlier in the day, while the claimant and his co-worker were headed to a job in a company truck, the co-worker brought along a cooler filled with beer. Later, after the claimant had used the truck for an errand, the co-worker discovered that beer was missing, and confronted the claimant. An oral argument ensued, which escalated into a physical confrontation. There were conflicting accounts of who instigated the incident, but the fight ended when the co-worker punched the claimant in the face, rendering him unconscious. A workers' compensation claim was filed, which was denied administratively, based upon a lack of evidence as to who started the fight. An appeal was filed into the common pleas court, where the trial court granted summary judgment in favor of the employer, and a timely appeal followed.

The Twelfth District Court of Appeals affirmed, finding that the claimant's inability to demonstrate that the fight was work-related or that he did not start the fight doomed his claim. Applying well-established line of cases (*Luo, Masden*), the Court found that it was incumbent upon the claimant to demonstrate: (1) the origin of the assault was work-related; and (2) that the claimant was not the instigator in the altercation. Here, the Court found that regardless of whether the quarrel was work-related (and it doubted that it was), the claimant's inability to establish that he had not been the instigator of the assault precluded a workers' compensation claim.

It is unlikely that any court would find that fighting over a cooler of beer would be "work related," but if the evidence had clearly established that he was not an instigator, this claim may have at least presented a jury question. If you have any specific questions, or would like to discuss this or any other workers' compensation issue, you can contact me or Adam Sadowski from our Toledo office.

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