



Fighting, Horseplay and Workplace Assaults

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Workers who sustain a personal injury as a result of participating in a fight, horseplay or larking at work are generally not entitled to WSIB benefits.

However, an injured worker who is an innocent victim has entitlement if the worker:

- **does not participate in the horseplay or larking, and**
- **does not retaliate**

The *Workplace Safety and Insurance Act* or the *Workers' Compensation Act* (the Act) does not provide coverage for workers who are injured while participating in a fight that results solely over a personal matter. However, if the fight results solely over work, the claim may be accepted if the injured worker:

- **was not the aggressor and did not provoke the fight, or**
- **was an innocent bystander**

As with fighting, those who initiate the horseplay take themselves out of the course of their employment. Over the years, I have processed our fair share of cases involving fighting, horseplay and assault in which a member was injured.

In one instance a JW was verbally bothering an apprentice for a considerable period of time. The apprentice on several occasions told the JW that his comments were unwelcome and to cease. Eventually, the JW was given one final warning by the apprentice that he would suffer dire consequences if the comments persisted. The language was salty. Twenty minutes later the JW continued his verbal taunts. The apprentice physically attacked the JW and injured him. The JW wanted to file a claim with WSIB for his injuries. The JW was advised he did not have a WSIB claim because there was provocation on his part and he was not an innocent bystander.

In a recent case, a JW hit an apprentice on the head with his hard hat. There is some dispute about how hard the JW swung his arm around with his hard hat when he hit the apprentice on top of his head. It was established that there was no provocation or horseplay on the part of the apprentice. In fact, the apprentice was very upset because he was totally innocent, and sought emergency care at the hospital on the day of his injury for suspected concussion and closed head injury headaches. The WSIB allowed the apprentice's claim on the basis the apprentice was performing his job and minding his own business, when without provocation, the JW assaulted him.

As these cases illustrate, a worker who is the innocent victim of workplace violence is entitled to benefits, just like a cashier who is killed or shot during a robbery.

In another case a worker was beaten up by two assailants in a company parking lot. The two unknown assailants jumped a worker as he was about to enter the employer's premises before the start of the day shift. The attack was motivated when a husband suspected his wife of having an extra marital affair with a male co-worker. The husband and his son, who did not work for the employer, waited in ambush in the employer's parking lot one morning and when they identified the worker, they savagely beat him. The worker was granted WSIB benefits as the worker did not know the assailants.

In precedent setting case, Local353 just won a Tribunal decision involving a physically aggressive confrontation in a workplace. The dispute started when a JW was confronted by his supervisor who was angry because he felt the JW was not properly tagging parts. The supervisor approached the JW and was yelling and waiving his arms in the air. The supervisor then brought his arm down suddenly on to the JW's shoulder, and the JW believed he was going to be struck. In defence, the supervisor and employer argued the supervisor was merely "gesticulating" and waiving his arms around the air.

Within 4 weeks, the JW developed a Post Traumatic Stress Disorder in response to the workplace confrontation. There was a genuine fear that the JW might retaliate and take some drastic action to settle the score. The JW was sent home and diagnosed with a mental health problem secondary to the confrontation with the supervisor. The WSIB ruled that although the assault was distasteful and highly inappropriate, it was not "objectively traumatic" and they denied the claim.

The Tribunal supported the union's appeal and in fact expanded the grounds of what is objectively traumatic to now include "**physically aggressive behaviour**". This decision expands the grounds of what circumstances are considered to be work related violence. The Tribunal Panel in Decision # 341/02ruled:

In summary, the Panel finds based upon a consideration of the totality of evidence that the supervisor's act of raising his arm and brining it down on the worker's shoulder had the potential for physical violence or threat of physical violence. The employer's response was to investigate the incident as an act of physical violence. Both management and the union were involved in this investigation. It appears to have been accepted by all who were involved in the event and its investigation that the act of the supervisor was an act of physical violence or one that carried the potential for physical violence.

The Panel concludes that the events of the night of July 13, 2000 were sudden, unexpected and traumatic, that they arose out of and in the course of the worker's employment, that they caused the worker to suffer an acute mental stress reaction.



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