

Workers' Compensation: Arising Out of What?

by Alison Schroder

The Law, Generally

For a work related injury to be compensable, one of the elements an employee must establish is that the injury arose out of the employment. There must be a connection between the injury and something peculiar to the employment. The injury must be caused by a hazard other than one an employee would have been equally exposed to in a different type of employment.

Strange, but True

The Cheerleader: *Lause v. United Parcel Service, Inc.*, 2008 WL 2704805, File No. 5022829 (Iowa Work Comp. Comm'n, July 7, 2008), *appeal pending*.

The employee was a part-time unloader for UPS. Several co-workers observed the employee punching boxes and trailer doors shortly before the employee reported to his supervisors he had broken his hand while pulling a box from a stack. The employee offered various versions of how he injured his hand. He stated he was simply trying to get everyone "hyped to work" and that is why he was punching the boxes. He told co-workers he was upset about something that happened at home. Supervisors stated the employee was upset he was required to stay at work.

Ultimately, the deputy commissioner found the employee was not credible. The defense argued the employee's injury was a result of his willful intent to injure himself. Surprisingly, the claim was deemed compensable. The deputy commissioner reasoned that to disqualify a claimant for a simple explosion of temper would reintroduce the concept of contributory negligence and employee fault when those concepts have no place in the workers' compensation setting.

The Hit Man: *Cedar Rapids Community Schools v. Cady*, 278 N.W.2d 298 (Iowa 1979).

In this case, the fighting issue was whether an injury sustained by an employee from an on-the-job assault arises out of employment. At the time, this was an issue of first impression for the Iowa Supreme Court.

The employee, Mr. Cady, was a janitor for Cedar Rapids Schools. He was assaulted while at work by a deranged co-worker who was experiencing an insane delusion. The co-worker believed that Mr. Cady was a "hit man" who was after him to avenge his misconduct in real and imagined past sexual affairs. The co-worker believed this because he thought Mr. Cady "looked bug-eyed" at him and on the day of the assault, Mr. Cady nearly collided with the co-worker's vehicle in the school parking lot and after parking

his car, Mr. Cady said, "I almost got you that time." The co-worker then took a pistol from his car and shot Mr. Cady, fatally wounding him.

This injury was found compensable. The Court reasoned this injury was a natural incident of the work because it was his employment that exposed him to this deranged co-worker.

The Pizza Delivery Guy: *Estate of Michael Harris v. Papa John's Pizza*, 679 N.W.2d 673 (Iowa 2004).

This case did not come before the Iowa Supreme Court through the Commissioner's office. Rather, the survivors of this employee brought an action against his employer for retaliation and negligent supervision after the employee died from a blow to the chest which was thrown by his supervisor after the supervisor learned the employee had told management the supervisor had sex with a subordinate.

The employee worked as a pizza maker and deliveryman. While he was at another Papa John's store ordering a pizza, he told the store's assistant manager about the liaison between his manager and a subordinate. When his supervisor learned of this, he was angry and called the employee down to his office, even though he was not scheduled to work. The manager told the employee he would only trust him again if he would "take a chest shot." The employee agreed. When the manager punched him in the chest, he suffered a cardiac arrhythmia, collapsed and died at the age of 19.

The Court held this action was barred due to the exclusivity doctrine. The Court reasoned this injury arose out of the course of employment because it occurred at the place of employment; the employee was summoned by his manager to discuss a work-related issue; and the manager was working at the time of the incident.

Alternative Dispute Resolution

by Mark W. Thomas

By all accounts, the number of jury trials in Iowa has dropped dramatically in the last ten years. By 2050 a civil jury trial may be something staged at Living History Farms. As a trial lawyer, I lament the diminishing use of jury trials; as in American, I believe strongly that the right to a jury is an integral part of who we are as a country.

There are many reasons for this subsidence, but foremost among them is the popularity of alternate dispute resolution. That term essentially describes mediation and arbitration.

Those two types of dispute resolution are well known to all present here today. The purpose of this discussion is to reflect on the proper time to use each of these tools, and to provide some framework for choosing the proper tool for each situation.

Mediation

Advantages

1. Saves costs of depositions, trial, and attorney fees.
2. Settlement by agreement only.
3. Finality reached within one day.
4. Allows plaintiffs a chance to be heard.
5. Can offer resolution to hopeless cases in a most efficient, but yet controlled, manner.

Disadvantages

1. There is no defense verdict in a mediation, if you show, it is assumed that you will contribute.
2. Indeed, if you plan to show up to say we're not paying, its best to let everyone know in advance (and stay home).
3. If you have already made your best offer, you are going up from there, so if mediation is anticipated, save your money for mediation.
4. The mediator is not to determine the merits of any case, he/she is interested only in pushing the plaintiff down and the defendant up. (That isn't to say that a mediator doesn't have points worth considering).

Other Issues

1. Use care in selecting a mediator, it really is about more than transporting messages back and forth. To the extent possible, try to match the parties (particularly the plaintiff) with a mediator who will connect with them.
2. A successful mediation can occur at any point in a case – but only if each party believes they have enough information to make an informed judgment about the merits and value of the claim. If you aren't there yet, wait!
3. Have a plan, beforehand, and stick to it.
4. I believe that you need to include the mediator, with respect to “bottom dollar” information, as one who doesn't need to know.

Binding Arbitration

Advantages

1. When combined with a “high-low” agreement can avoid potentially excess verdicts with certainty.
2. Saves time and expense.
3. Immediate resolutions.
4. If yours is a bad case, bad client, bad fact, etc., this liability is less hazardous in arbitration, as those “warts” are usually not as devastating on an arbitrator.
5. In cases against the company, the fact that the defendant is an insurance company does not cause the same concern as it may with a jury.

Disadvantages

1. No appeal.
2. Not likely to be a home-run for either side; arbitrators tend to “cut the cake” by instinct, as opposed to going entirely one way or the other.
3. You have traded 8 jurors for one lawyer, and if he/she isn't on your side, you're, legally speaking, “toast.”
4. Issues of character and credibility are often muted, or lost entirely, in an arbitration. The speed and consideration of the process pushes this evidence into the background. The character issues, or lack thereof, matter much less in arbitration. So it's advantageous if the “wart” is yours; it's a lost opportunity if it belongs to your opponent.

Other Issues

1. Do not forget the good old fashioned Offer to Confess, and the time honored tradition of holding to your guns on the good cases. Most defense lawyers would

like to mediate the hard cases (the ones with insurmountable liability problems or excess issues) and try the cases where liability defenses exist. The plaintiffs, of course, have the exact opposite goal. I have had limited success with arbitration. If you are looking at a possible excess case, and mediation is not an option, I'd consider it. My experience is that arbitrators don't discount like jurors do in these situations where the plaintiff is a poor witness with a good case.

2. Check out your potential arbitrators with us, with your co-workers and with anyone else you can think of. These people have a track record, and you may have a case that they've favorably considered in the past (or perhaps, not so favorably considered).

Conclusion

Don't forget that Iowa remains one of the most conservative - by verdict awards - states in the United States. Jurors don't, as a rule, "cut the cake". They decide a winner. If you have the better facts, and the better witnesses- that winner is very likely to be you.