IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA DIVISION OF INDUSTRIAL RELATIONS,
Appellant,
vs.
CARRIAGE CAR CORP.,
Respondent.

No. 40537

FILED

DEC 0 1 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order denying a petition for judicial review in a workers' compensation case. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

Claimant Charles Forbes worked as a sales and finance manager for respondent Carriage Car Corporation. Forbes and a co-worker, Amir Aref, became involved in a heated argument when Aref came into Forbes's office with a work-related issue regarding a client's late payment. By the dispute's end, Forbes had sustained injuries to his right eye and left knee.

Forbes eventually sought medical treatment for his injuries and submitted a workers' compensation claim to appellant Division of Industrial Relations (DIR). His claim was assigned to the Uninsured Employers' Claim Fund and accepted by a third-party administrator. DIR determined that Carriage Car, as Forbes's uninsured employer, was responsible for any benefits paid to or on behalf of Forbes.

Carriage Car administratively appealed the assignment and acceptance of Forbes's claim. During the hearing before the appeals officer, Aref testified that the dispute began when he entered Forbes's office and asked Forbes to do his job. Forbes became angry and began to

curse at him, to which behavior Aref responded in kind. Aref stated that Forbes left his chair and was attempting to circle his desk in an attempt to "come at" him, when Forbes then tripped over one of the chairs, apparently injuring his right eye and left knee in the process. Aref noted that he (Aref) had recently undergone triple bypass surgery, and had been "trying to avoid any contact to [his] chest." However, when specifically questioned whether he thought Forbes was running to get out of the room or coming at him in order to attack, Aref stated that he thought Forbes "was coming at [him] because [he] was close to the door and [Forbes] was coming around the . . . desk and [he] was standing there; so—." Further, Aref stated that "in those days," he was just trying to avoid anything, including getting upset, that would affect his heart because he was in pain. Aref stated that he was afraid because he had "had a heart attack," and Forbes was "real mad and angry, and [Forbes] was coming at [him]."

The appeals officer found Aref's testimony and recollection of events "more credible and persuasive." Further, the appeals officer found that "the credible and persuasive evidence" demonstrated that Forbes's injuries were caused by "his willful intentions to injure" Aref. Although the appeals officer determined that an employer/employee relationship existed and that the claim assignment was proper, she found that Forbes had failed to establish that his injury arose out of and in the course of his employment. Additionally, she concluded that "to the extent that [Forbes] incurred any injuries at work," any compensation was barred under NRS 616C.230(1)(b), which precludes workers' compensation for injuries "[c]aused by the employee's willful intention to injure another."

As a result of the appeals officer's conclusion that Forbes's injuries were not compensable, Carriage Car's responsibility for repaying

Forbes's workers' compensation benefits was extinguished. Consequently, DIR petitioned for judicial review, which was denied. DIR now appeals.

In an appeal from a district court order denying a petition for judicial review, this court examines the administrative decision for clear legal error or arbitrary abuse of discretion.[1] Although this court will not substitute its judgment for that of the appeals officer as to the weight of the evidence or on issues of credibility, this court will reverse an appeal officer's decision that is "'clearly erroneous in light of reliable, probative, and substantial evidence on the whole record.'"[2] The review is limited to the record before the agency.[3]

Compensation for work-related injuries

A workers' compensation claimant must prove by a preponderance of the evidence that his or her injuries "arose out of and in the course of" employment.[4] Initially, DIR argues that under our decision in McColl v. Scherer,[5] Forbes's injuries clearly arose out of and in the course of employment.

In McColl, this court reversed a summary judgment because a material fact existed regarding whether the claimant's injuries, caused by

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[1]Construction Indus. v. Chalue, 119 Nev. 348, 352, 74 P.3d 595, 597 (2003).

[2]Id. (quoting United Exposition Service Co. v. SIIS, 109 Nev. 421, 425, 851 P.2d 423, 425 (1993)).

[3]Ayala v. Caesars Palace, 119 Nev. 232, 235, 71 P.3d 490, 491 (2003).

[4]NRS 616C.150(1).

[5]73 Nev. 226, 315 P.2d 807 (1957).

a third-party while the claimant was carrying out her duties as a cocktail waitress, in fact "arose out of" her employment. The McColl court noted that injuries sustained while working do not "arise out of" the employment when they are the result of animosity or ill will not connected with the employment.[6] Other jurisdictions have similarly distinguished between compensable injuries arising out of work-related co-worker altercations and noncompensable injuries incurred as a result of co-worker altercations born out of "purely personal animosities."[7]

In this matter, there is no evidence suggesting that the at-work argument between Forbes and Aref was the result of a personal grudge or animosity. In fact, both Forbes and Aref testified before the appeals officer that, although personally offensive curse words were used, the argument was purely about the client payment issue and the alleged nonperformance of Forbes's work duties.[8] Accordingly, Forbes's injuries

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[6]Id. at 230, 315 P.2d at 809 (citing Hudson v. Roberts, 270 P.2d 837, 839 (Idaho 1954)); see also LTR Stage Line v. Nev. Ind. Comm'n, 81 Nev. 626, 627 n.1, 408 P.2d 241, 242 n.1 (1965) ("A personal injury caused by an assault and battery may, or may not, be compensable under the act, depending on the circumstances involved.") (citing McColl).

[7]Bell v. Utica Corp., 759 N.Y.S.2d 614, 616 (N.Y. App. Div. 2003) (citing Rosen v. First Manhattan Bank, 641 N.E.2d 1073 (N.Y. 1994)); accord Colvert v. Industrial Commission, 520 P.2d 322 (Ariz. Ct. App. 1974).

[8]When asked when the discussion with Forbes became personal, Aref testified, "Actually, it was not a personal matter because it was about business. And everything started from that." Further, on cross-examination, Forbes admitted that he and Aref worked together in the days following the altercation, closing approximately eight deals within the following two weeks. There is no evidence indicating that either Forbes or Aref ever held a personal grudge against the other.

necessarily arose "in the course of and out of" his employment at Carriage Car.

Compensation prohibited for injuries caused by a willful intent to injure

Even if injuries are work-related, however, NRS 616C.230(1)(b) prohibits the payment of workers' compensation for injuries "[c]aused by the employee's willful intention to injure another." Although the appeals officer determined that Forbes's injuries were caused by his willful intent to injure Aref, and, therefore, any compensation is barred by the statute, DIR argues that the decision is affected by legal error and that there is no evidence that Forbes ever "willfully intended" to injure Aref.

Other jurisdictions have interpreted the "willful intention" language of similar statutes to include only acts of a deliberate or premeditated, and serious, nature.[9] As recognized by the Arkansas Court of Appeals, "'[a] willful intent to injure obviously contemplates behavior of greater gravity and culpability than what may be characterized as aggression.'"[10] Further, it is generally held that willful intent to injure

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[9]Bell, 759 N.Y.S.2d at 616 (determining that a finding of "willful intention" to injure another was not supported by evidence of the claimant's "willful and deliberate" actions during a work-related altercation); Youmans v. Coastal Petroleum Co., 508 S.E.2d 43, 45 (S.C. Ct. App. 1998) (holding that injuries resulting from an altercation brought about by a spontaneous reaction, rather than willful intent to injure, were compensable); Ramirez v. Hudson Foods, Inc., 918 S.W.2d 207 (Ark. Ct. App. 1996) (holding that workers' compensation benefits were available to a claimant who was injured by a co-worker he had struck first).

[10]Ramirez, 918 S.W.2d at 208 (citing 1 A. Larson, Workmen's Compensation Law § 11.15(d)). In distinction, in Mauer v. EICON, 115 Nev. 201, 983 P.2d 411 (1999), this court addressed the "willful intention to injure" language of a related NRS provision. In Mauer, the workers'

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statutes are exceptions to the general no-fault principle germane to workers' compensation law and, therefore, the employer must prove that the employee's work-related injuries are noncompensable under such statutes.[11]

NRS 616C.230(1)(b) excludes compensation for injuries caused by the claimant's "willful intention" to injure someone else. Therefore, the statute's application may not be based merely on the alleged victim's subjective apprehensions of harm; rather, the employer must show that the claimant committed, or contemplated committing, an intentional violent act towards another. Behavior that may be considered aggressive

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. . . *continued*
compensation claim of an employee who had injured his hand by angrily hitting an air conditioning unit was denied under NRS 616C.230(1)(a), which prohibits the payment of workers' compensation for injuries "[c]aused by the employee's willful intention to injure himself." In interpreting that provision, we held that "an intentional violent act that produces a foreseeable and reasonably expected self-injury is not an 'accident' and the resulting injury is not covered under Nevada's workers' compensation law." Mauer, 115 Nev. at 206, 983 P.2d at 413. Even if NRS 616C.230(1)(b) is read in the expansive manner of Mauer to prohibit compensation for "non-accidental" injuries caused by the claimant's intentional violent act by which injury to another is foreseeable and reasonably expected, Forbes's injuries do not fall within those injuries contemplated by the statute. First, there is no evidence suggesting that Forbes's injuries were directly caused by any intentional violent act towards Aref, or that injury to Aref was a "foreseeable and reasonably expected" consequence of Forbes's act of getting up from his chair and "coming at" Aref.

[11]See, e.g., Seamans v. Maaco Auto Painting, 918 P.2d 1192, 1197 (Idaho 1996); Darnell v. Workers Compensation Bureau, 450 N.W.2d 721, 723 (N.D. 1990); Zeigler v. Law Enforcement Division, 157 S.E.2d 598, 599 (S.C. 1967).

does not suffice. The evidence in this case does not demonstrate that Forbes engaged in, or contemplated engaging in, any intentional violent act towards Aref.

Specifically, no evidence indicates that Forbes tripped while approaching Aref with the intent to harm him, or that Forbes left his chair in order to injure Aref or cause him to have heart troubles. Nor does the evidence demonstrate Forbes's intent to engage in conduct likely to injure Aref. Carriage Car merely notes Aref's fear and argues that this court must accept the appeals officer's conclusion that the evidence established Forbes's willful intent to injure Aref. But, despite Aref's subjective fears, the appeals officer made no findings whatsoever supporting a conclusion that Forbes intended to act violently towards Aref.

Therefore, and for the reasons discussed above, the appeals officer's conclusion that Forbes was precluded from receiving workers' compensation because he willfully intended to injure Aref was not based on substantial evidence. Accordingly, we

ORDER the judgment of the district court REVERSED.

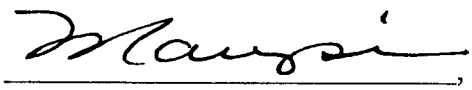
_____, J.
Rose

_____, J.
Douglas

cc: Hon. Nancy M. Saitta, District Judge
David H. Benavidez
Santoro, Driggs, Walch, Kearney, Johnson & Thompson
Clark County Clerk

MAUPIN, J., dissenting:

I would affirm the district court in this instance. In my view, the district court correctly denied the petition for judicial review.



Maupin, J.

Maupin