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This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2351-15T3

JAMIE BENIMADHO,

Petitioner-Appellant,

v.

SOMERVILLE BOROUGH  
FIRE DEPARTMENT,

Respondent-Respondent.

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Argued March 16, 2017 – Decided April 10, 2017

Before Judges Espinosa and Guadagno.

On appeal from the Division of Workers' Compensation, Department of Labor and Workforce Development, Claim Petition No. 2014-20044.

Kenneth M. Harrell argued the cause for appellant (Harrell, Smith & Williams, LLC, attorneys; Mr. Harrell, on the briefs).

Louis M. Masucci, Jr. argued the cause for respondent (Weiner Law Group, LLP, attorneys; Julia O. Donohue, on the brief).

PER CURIAM

Petitioner Jamie Benimadho, a volunteer firefighter with the Somerville Borough Fire Department (SFD), suffered a traumatic brain injury in an altercation with another firefighter prior to

a training class they were required to attend, and filed an employee claim petition with the Division of Workers' Compensation. The sole issue on appeal is whether he was "engaged in the direct performance of duties assigned or directed by [his] employer" at the time of his injury. See N.J.S.A. 34:15-36. He appeals from a decision by the judge of compensation that dismissed his claim for temporary and medical benefits on the ground that he was not injured in the scope of his employment. We affirm.

On the date of the injury, petitioner arrived at the Somerset County Emergency Services Training Academy (SCESTA) for a scheduled test. Other volunteer firefighters, including Joseph Wise and Darin Watkins, were waiting in the parking lot. Upon arriving, petitioner observed Watkins putting Kenneth Wise (Watkins's cousin), into a headlock from which Kenneth could not break free. Petitioner knew Watkins to frequently wrestle and "roughhouse" with his peers, including Kenneth. Watkins was not punching Kenneth or trying to slam him into something, but petitioner considered this a "violent altercation" rather than mere horseplay. Cody Hresan, an SFD volunteer firefighter, did not consider Watkins' interaction with Kenneth to be bullying but did think it was too aggressive. He told Watkins to "calm down" and "relax."

Petitioner approached Watkins and Kenneth, advised Watkins to "stop it," and pushed Watkins off Kenneth, then grabbed Watkins around the waist. Watkins released Kenneth and placed petitioner in a headlock.

Watkins testified wrestling was not unusual for their relationship. Petitioner was not aggressive toward him and he had no sense that petitioner was angry at him. While Watkins had petitioner in a headlock, he asked petitioner whether he "was done," then petitioner nodded, said, "I'm good," and lightly punched Watkins in the ribs as a "tap-out" to signify submission. Watkins released petitioner. After petitioner stood up, "he was out" and began falling backward. Watkins tried to grab petitioner's waist to hold him up, but petitioner fell and struck his head on the asphalt. SCESTA instructors administered first aid until petitioner was brought to a hospital via Medivac. Petitioner's injuries included a skull fracture, subarachnoid hemorrhage, subdural hemorrhage, and traumatic brain injury.

When asked why he intervened, petitioner explained: "Because like being a firefighter, like, that's what you're supposed to do, protect the citizens." He also stated he was trying to enforce the SCESTA rule against horseplay.

The SCESTA Rules and Regulations include a prohibition against "[a]busive, profane or obscene language or behavior, [and]

horseplay or any disturbance during class." The SFD website identifies "Our Mission" as

To protect the lives and property of the citizens of Somerville, to provide training and supervision to the members of the Somerville Fire Department, and to provide fire education and prevention to the citizens of Somerville.

Petitioner stated he believed the SCESTA rules and the SFD mission statement imposed a duty on him to "stop[] bullying," and therefore he did not believe he needed permission from his employer to intervene.

Petitioner admitted, however, that SFD never told him to break up fights, that he broke up fights before joining the SFD, and that he would break up fights regardless of whether he was a volunteer firefighter. Joseph Stitley, an SFD volunteer firefighter, testified the firefighter training he and petitioner had did not teach them to break up fights. He further testified the fire department does not require him to break up fights he sees on the streets and that volunteer firefighters do not have police training.

Colleen Metallo, Kenneth's mother, testified Kenneth "owes his life [to petitioner] for protecting him." Kenneth also testified petitioner saved his life. Although Metallo testified that it appeared petitioner intended to protect Kenneth rather

than to wrestle with Watkins, she also stated Watkins did not intend to hurt petitioner. Several other witnesses described the interaction between petitioner and Watkins as horseplay.

Our review of a workers' compensation judge's decision is "limited to whether the findings made could have been reached on sufficient credible evidence present in the record . . . with due regard also to the agency's expertise[.]" Hersh v. Cty. of Morris, 217 N.J. 236, 242 (2014) (alteration in original) (quoting Sager v. O.A. Peterson Constr., Co., 182 N.J. 156, 164 (2004)). "[T]he judge of compensation's legal findings are not entitled to any deference and, thus, are reviewed de novo." Id. at 243 (citing Williams v. A & L Packing & Storage, 314 N.J. Super. 460, 464 (App. Div. 1998)).

Under the Workers' Compensation Act (the Act), N.J.S.A. 34:15-1 to -142, an employee is entitled to compensation by his employer for personal injuries sustained "by accident arising out of and in the course of his [or her] employment." N.J.S.A. 34:15-1. Generally, employment commences "when an employee arrives at the employer's place of employment to report for work and . . . terminate[s] when the employee leaves the employer's place of employment." N.J.S.A. 34:15-36. However, the statutory definition for employment also includes the following:

[W]hen the employee is required by the employer to be away from the employer's place of employment, the employee shall be deemed to be in the course of employment when the employee is engaged in the direct performance of duties assigned or directed by the employer . . . .

[Ibid.]

The workers' compensation judge correctly defined the "critical question" as "whether Petitioner's intervention in the so-called bullying incident constitutes the type of activity that he was assigned, or directed to engage in by his fire company." After reviewing the facts, she set forth her conclusions:

[T]his court is not persuaded that Petitioner's decision to intervene was in any way a serious rescue attempt borne from a real or perceived danger to Mr. Wise. Whatever his reasons, there is nothing in the record to support a finding, by a preponderance of the evidence, that his actions were in anyway mandated, compelled or directed by the Somerville Volunteer Fire Department. Moreover, this court is not persuaded by Petitioner's reading of the Fire Department's training or policy. There is simply nothing to support the assertion that firefighter trainees are required, or directed to intervene in any kind of altercation. This is evident by the fact that neither Petitioner nor any other firefighter witness had any such training on how to tackle or intervene in an altercation. To the contrary, there was testimony that the Rules of the Somerset County Emergency Service Training Academy included specific instructions to avoid participating in this kind of activity.

Moreover, Petitioner by his own admission testified that he hates bullying and would intervene to stop it whether or not he was a firefighter. He also testified that he had in fact intervened in another so-called bullying incident prior to becoming a firefighter. In other words, Petitioner likely had some personal interest in wanting to protect Mr. Wise from an overly aggressive and annoying interaction involving Mr. Watkins who was known to behave in this manner. Undoubtedly, when he made the decision to intervene to assist Mr. Wise he did so with the best of intentions. However, for this accident to be compensable, Petitioner would have to establish more than good intentions. And, there is insufficient evidence to show that this incident occurred during the scope of his employment as a volunteer firefighter.

In Jumpp v. City of Ventnor, 351 N.J. Super. 44, 50 (App. Div. 2002), aff'd, 177 N.J. 470 (2003), we observed, "it is clear that by requiring that the employee be engaged in the 'direct performance' of work-related duties, the Legislature intended to 'sharply curtail' compensation for off-premises accidents." We held,

[A]n employee who deviates from the temporal and spacial limits of his or her assigned employment tasks for the sole purpose of engaging in a personal errand or activity is simply not "engaged in the direct performance of duties assigned or directed by the employer." The employee is satisfying a personal need, the completion of which is neither incidental to his or her employment tasks nor beneficial to the employer.

[Id. at 52 (citation omitted).]

"Employees who are where they are supposed to be, doing what they are supposed to be doing, are within the course of employment whether on- or off-premises . . . ." Jumpp v. City of Ventnor, 177 N.J. 470, 483 (2003). Recovery is barred when the employee's "activities were personal in nature and concerned neither 'duties assigned nor directed,' nor 'business authorized,' by the employer." Id. at 482.

There was nothing in either the SCESTA rules or the SFD mission statement that authorized, let alone directed, petitioner to intervene in a physical altercation, even if he perceived the altercation as a bullying incident. The testimony provided adequate support for the finding that petitioner was engaged in a "personal activity" rather than "in the direct performance of duties assigned or directed by the employer." As a result, his petition was properly dismissed.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION