

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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HUSEIN CEJVANOVIC,

Claimant,

vs.

IOWA STATE PENITENTIARY,

Employer,

STATE OF IOWA,

Defendants,

**FILED**

FEB 06 2019

WORKERS' COMPENSATION

File No. 5061192

ARBITRATION

DECISION

: Headnotes: 1402.30, 1403.30, 1602

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Claimant Husein Cejvanovic filed a petition in arbitration on September 6, 2016, alleging he sustained injuries to his right hip when a coworker hit him with a hammer at the Iowa State Penitentiary ("ISP") on December 9, 2015. Defendants ISP and the State of Iowa ("State"), filed an answer on October 6, 2016. A hearing was scheduled for January 16, 2019.

On November 20, 2018, the ISP and State filed a motion for summary judgment and motion for in camera inspection. The ISP and State averred they were entitled to judgment as a matter of law because the alleged injury did not arise out of or in the course of employment because the incident involved horseplay and was the result of the willful act of a third party directed against the employee for reasons personal to the employee under Iowa Code section 85.16(3). Cejvanovic did not file a resistance to the motion. On December 14, 2018, Deputy Workers' Compensation Commissioner James Elliott denied the motion for summary judgment and motion for in camera inspection. The matter was assigned to Deputy Workers' Compensation Commissioner Heather Palmer for the January 14, 2019 hearing. The day before the hearing the ISP and State renewed their motion for in camera inspection, requesting I consider Exhibits D, E, and F, that had not been produced to Cejvanovic.

An arbitration hearing was held on January 16, 2019, at the ISP, and through video conference using Zoom. Cejvanovic was self-represented and testified. Assistant Attorney General Jonathan Bergman represented the ISP and the State. Shane Blanchard testified on behalf of the ISP and the State. Karmela Lofthus provided Bosnian interpretation services during the hearing at the ISP. The deputy workers' compensation commissioner participated in the hearing using Zoom. Cheryl Newman Liles was appointed as the certified shorthand reporter and is the official custodian of the notes.

At the start of the hearing Lofthus translated the entire motion for in camera inspection to Cejvanovic. Cejvanovic did not resist the motion and Exhibits D through F were admitted into the record. Joint Exhibits ("JE") 1 through 3 and Exhibits A through C were also admitted. The record was held open through January 17, 2019, for the receipt of Exhibits D through F. Exhibits D through F were received and admitted under seal and the record was closed.

Before the hearing the parties prepared a hearing report, listing stipulations and issues to be decided. The ISP and State asserted the affirmative defense of willful act of a third party under Iowa Code section 85.16, and alleged Cejvanovic is barred from recovering because he was engaged in horseplay at the time of the injury. The ISP and State waived all other affirmative defenses.

### STIPULATIONS

1. An employer-employee relationship existed between the ISP and Cejvanovic at the time of the alleged injury.
2. If the injury is found to be the cause of permanent disability, the disability is an industrial disability.

### ISSUES

1. Whether Cejvanovic sustained an injury on December 9, 2015, arising out of and in the course of his employment with the ISP.
2. Is Cejvanovic's claim barred by the horseplay doctrine?
3. Is Cejvanovic's claim barred by the willful act of a third party under Iowa Code section 85.16?
4. Is the alleged injury a cause of temporary disability during a period of recovery?
5. Is the alleged injury a cause of permanent disability?
6. What is the extent of disability?
7. What is the commencement date for permanency?
8. What is the rate?
9. Is Cejvanovic entitled to alternate medical care?

### FINDINGS OF FACT

Cejvanovic was born in Bosnia and moved to the United States in May 1996. (Cejvanovic Testimony) After moving to the United States Cejvanovic worked in meat processing for IBP and Swift and for Titan Tire manufacturing tires. (Cejvanovic Testimony) Cejvanovic has been incarcerated since November 2001, following a kidnapping conviction. (Cejvanovic Testimony)

Cejvanovic is an inmate at the ISP. Cejvanovic is single and he has an adult son. (Cejvanovic Testimony) At the time of the injury Cejvanovic was not providing any support for his son. (Cejvanovic Testimony) Cejvanovic worked for Iowa Prison Industries ("IPI") in the furniture shop. At the time of the hearing Cejvanovic was fifty-eight. (JE 1, p. 1; Cejvanovic Testimony)

Cejvanovic reported on December 9, 2015, he was injured while working for IPI in the sanding area. (Cejvanovic Testimony) Cejvanovic testified on December 9, 2015, another inmate, R.T., asked him for his debit card at lunch so he could use it to pay individuals who were supplying R.T. with drugs in the ISP. (Cejvanovic Testimony) Cejvanovic stated he refused to give R.T. his debit card. (Cejvanovic Testimony) Cejvanovic testified R.T. threw toilet paper at him and pressed toilet paper in his ears. (Cejvanovic Testimony) Cejvanovic relayed he told R.T. he did not want to play a game, R.T. threw water on his work shoes, and then R.T. yanked his plastic stool by one of the legs. (Cejvanovic Testimony)

Cejvanovic testified he returned to his work area and placed two candy pieces on R.T.'s work table. (Cejvanovic Testimony) Cejvanovic reported R.T. told him, "I lost my job, I'll kill you mother f...er," and when Cejvanovic got up R.T. struck him with a hammer on the right leg and he fell to the floor. (Cejvanovic Testimony) Cejvanovic reported R.T. put his foot on Cejvanovic's chest and Cejvanovic grabbed R.T.'s arm. (Cejvanovic Testimony) Cejvanovic testified another man said, "stop [R.T.], no, no," and asked Cejvanovic if he wanted help, and Cejvanovic got up off the floor and returned to his work area. (Cejvanovic Testimony) Cejvanovic testified the man told him he was going to call Jeff Bailey. (Cejvanovic Testimony) Cejvanovic spoke with Bailey and told Bailey to watch the video. (Cejvanovic Testimony)

Exhibit F is a video recording of the incident on December 9, 2015. Cejvanovic walked into the furniture shop at the ISP and grabbed a white stepstool for his work station. Shortly thereafter, R.T., another inmate, moved to the work station next to Cejvanovic's work station. The video shows Cejvanovic and R.T. talking and throwing something back and forth. Cejvanovic walked over to R.T.'s work station, and went back to his work station and Cejvanovic handled an air hose. Cejvanovic dropped the air hose and returned to R.T.'s work station, and R.T. hit him with a hammer, causing Cejvanovic to fall to the floor. R.T. held Cejvanovic briefly on the floor, grabbing Cejvanovic's shirt, before releasing him. Cejvanovic did not punch or hit R.T. Cejvanovic struggled to get up, and held his right hip. Eventually, Cejvanovic raised

himself to the step stool in his work station. Cejvanovic fractured his right femur as a result of the incident. (JE 2, p. 1; 3, p. 1)

During the hearing, Cejvanovic denied he was arguing with R.T. when he was injured and reported R.T. was angry because he would not give him his debit card. (Cejvanovic Testimony) Cejvanovic reported he had known and worked with R.T. for five or six years and they had lived in the same building at the ISP. (Cejvanovic Testimony) Cejvanovic denied having arguments with R.T. before the incident (Cejvanovic Testimony)

Cejvanovic testified R.T. had asked him for his debit card in the past, and R.T. agreed to pay him when he was paid by the ISP. (Cejvanovic Testimony) Cejvanovic reported R.T. used his debit card to pay for drugs. (Cejvanovic Testimony) Cejvanovic denied R.T. had threatened to harm him before he was hurt on December 9, 2015. (Cejvanovic Testimony) During cross-examination, Cejvanovic agreed R.T. was angry with him when he hit him with the hammer because he had refused to give R.T. his debit card on December 9, 2015. (Cejvanovic Testimony)

Blanchard is a Senior State Industrial Technician who has worked at the ISP for six years. (Blanchard Testimony) Blanchard testified on December 9, 2015, Bailey told him Cejvanovic had reported his leg gave out and he fell to the floor, causing him to be injured. (Blanchard Testimony)

Following the incident, Cejvanovic received treatment from Cynthia Fedler, R.N., and Stephen Sparks, M.D. (JE 1, p. 1) Dr. Sparks prescribed acetaminophen-Codeine #3, placed Cejvanovic on complete bed rest with bathroom privileges only, and ordered an x-ray to be taken the next morning. (JE 1, pp. 2-3) Dr. Sparks reviewed the x-ray, and noted a preliminary impression of a fracture of the right femoral neck with mild displacement, and referred Cejvanovic to the University of Iowa Hospitals and Clinics ("UIHC") for treatment. (JE 1, p. 4) Christopher Martin, M.D., and Michael Willey, M.D. with the UIHC performed a right closed reduction and fixation with a TSP plate on Cejvanovic. (JE 3, p. 7)

Cejvanovic returned to the ISP on December 14, 2015, and Dr. Sparks prescribed a brace or walker for ambulation and ordered Cejvanovic to be placed in his own cell. (JE 1, pp. 5-7) Dr. Sparks also ordered a stool riser on December 16, 2015. (JE 1, p. 8)

Randy VanWye, an employee of the Iowa Department of Corrections who works at the ISP completed an investigation of the incident. (Exs. A, p. 1; D; E) As an investigator, VanWye is responsible for investigating incidents occurring between inmates at the ISP. (Ex. A, p. 1)

VanWye signed an affidavit on November 19, 2018, reporting during his investigation of the December 9, 2015 incident, he spoke with Bailey, Captain Nick Clark, Correctional Officer Doug Hayes, and he also viewed a video of the incident,

Exhibit F. (Ex. A, p. 1) VanWye reported there were no witnesses to the incident, but the video shows the entire incident. (Ex. A, p. 1)

VanWye obtained a statement from Bailey. (Ex. D, p. 1) Bailey reported he went over to Cejvanovic's work station after he received information his leg was hurt. (Ex. D, p. 1) Bailey asked Cejvanovic what had happened and he documented Cejvanovic reported he had fallen and hurt his right leg. (Ex. D, p. 1) Cejvanovic was transported to the medical clinic. (Ex. D, p. 1)

Bailey obtained video coverage of the incident, Exhibit F. (Ex. D, p. 1) Bailey noted the video showed Cejvanovic and R.T. tossing something back and forth, and that at approximately 12:35 p.m., R.T. took a hammer from his work station and made a side arm swing toward Cejvanovic's waist area, Cejvanovic fell to the ground on his back, and R.T. knelt on top of Cejvanovic with one knee on top of him, grasping his shirt. (Ex. D, p. 1)

VanWye documented Cejvanovic and R.T. were both taken to the ISP hospital. (Ex. D, p. 1) R.T. was not injured. (Ex. D, p. 1) Further medical examination revealed Cejvanovic had a broken right hip, and he was admitted for treatment at the UIHC on December 10, 2015. (Ex. D, p. 1)

VanWye interviewed R.T. on December 11, 2015. (Ex. D, p. 2) R.T. reported Cejvanovic bothered inmates by moving around their tools, throwing pieces of paper at people, and acting like a "school jokester." (Ex. D, p. 2) R.T. relayed that on the date of the incident, he saw Cejvanovic moving things in his work station and was messing with an air hose. (Ex. D, p. 2) R.T. claimed Cejvanovic told him "I'll f...ing kill you," and walked toward him. (Ex. D, p. 2) R.T. reported he knew Cejvanovic carries a putty knife with him and so he grabbed a hammer and swung at Cejvanovic in self-defense. (Ex. D, p. 2)

On December 11, 2015, VanWye interviewed Doug Hayes, a correctional officer who sat with Cejvanovic in his UIHC hospital room. (Ex. D, p. 2) VanWye documented Hayes told him R.T. had been "strong-arming" Cejvanovic and forcing Cejvanovic to buy R.T. vending machine sandwiches and that R.T. had been buying cocaine at the ISP for \$10.00 per bag. (Ex. D, p. 2) Hayes reported Cejvanovic told him the incident started when R.T. threw Cejvanovic a piece of candy and Cejvanovic threw the candy back. (Ex. D, p. 3) Hayes noted Cejvanovic reported the candy went on the floor and he bent down to pick it up at R.T.'s work station, and the two started arguing. (Ex. D, p. 3) Hayes stated Cejvanovic told him when he walked over to talk to R.T., R.T. hit him with a hammer. (Ex. D, p. 3)

Cejvanovic denied speaking with Hayes at the UIHC and reported he spoke with a female officer who has since retired. (Cejvanovic Testimony) Cejvanovic denied telling anyone at the UHIC that R.T. had threatened him before he hit him. (Cejvanovic Testimony) Cejvanovic reported he did not tell any staff at the ISP R.T. was making him

buy sandwiches or that R.T. was buying drugs at the ISP. (Cejvanovic Testimony) Cejvanovic testified he is not a snitch and will not work for the police. (Cejvanovic Testimony) Cejvanovic did not report R.T. threw candy at him on the date of the injury. (Cejvanovic Testimony)

VanWye completed a disciplinary notice for R.T. (Exs. D, p. 3; E) An administrative law judge held a hearing on the disciplinary notice, and found R.T. assaulted Cejvanovic in violation of ISP rules. (Ex. E)

Cejvanovic filed a petition under 42 U.S.C. section 1983 against staff at the ISP in the United States District Court for the Southern District of Iowa, contending he was denied proper medical care after he was injured by R.T. (Ex. C) The staff member defendants filed a motion for summary judgment. (Ex. C) The court granted the motion, finding there was no evidence the defendants were deliberately indifferent to Cejvanovic's serious medical needs and that they consistently and appropriately responded to Cejvanovic's medical complaints. (Ex. C)

Cejvanovic testified his right leg is one half inch shorter and he is paralyzed. (Cejvanovic Testimony) Cejvanovic alleges he has received inferior medical treatment and he seeks alternate medical care.

### CONCLUSIONS OF LAW

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, the employee's injuries arose out of and in the course of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment, and not merely incidental to the employment. Koehler Elec. v. Willis, 608 N.W.2d 1, 3 (Iowa 2000). The Iowa Supreme Court has held, an injury occurs "in the course of employment" when:

it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. *An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act*

*which he deems necessary for the benefit or interest of his employer.*

Farmers Elevator Co. v. Manning, 286 N.W.2d 174, 177 (Iowa 1979) (emphasis in original).

Whether a claimant's injury arises out of the claimant's employment is a "mixed question of law and fact." Lakeside Casino v. Blue, 743 N.W.2d 169, 173 (Iowa 2007). The Iowa Supreme Court has held,

[t]he factual aspect of this decision requires the [trier of fact] to determine "the operative events that [gave] rise to the injury." Meyer v. IBP, Inc., 710 N.W.2d 213, 218 (Iowa 2006). Once the facts are determined, a legal question remains: "[W]hether the facts, as determined, support a conclusion that the injury 'arose out of . . . [the] employment,' under our workers' compensation statute."

Id.

The ISP and State aver Cejvanovic is barred from recovering under Iowa Code section 85.16(3). Iowa Code section 85.16(3) precludes the award of compensation for an injury caused "[b]y the willful act of a third party directed against the employee for reasons personal to such employee." The employer bears the burden of proving the claimant is barred from recovering under Iowa Code section 85.16(3). Xenia Rural Water Dist. v. Vegors, 786 N.W.2d 250, 257 (Iowa 2010).

The term "third party" includes coworkers, and, thus, includes R.T. Id. at 258. The affirmative defense is "limited to actions which are taken 'for reasons personal' to the employee and not as a consequence of the working environment." Id. at 259. The court has noted, "[t]he category of injuries barred from compensation by section 85.16(3) is often referred to as 'privately motivated assaults' or 'imported-quarrel cases.'" Id. (quoting 1 Larson's § 8.02, at 8-43).

Exhibit F is a video from December 9, 2015, showing R.T. strike Cejvanovic with a hammer, causing his injuries, while the two men were working for the ISP. The video, Exhibit F, does not support R.T. hit Cejvanovic by accident. The video shows R.T. intentionally hit Cejvanovic and held him down on the floor.

Before the incident Cejvanovic had been at lunch. While at lunch R.T. asked Cejvanovic to give him his debit card, and Cejvanovic refused. Cejvanovic agreed R.T. was angry with him when he hit him with the hammer because he had refused to give R.T. his debit card. (Cejvanovic Testimony) The evidence presented at hearing supports R.T. intentionally hit Cejvanovic with a hammer because he was angry Cejvanovic did not give him his debit card. The injury resulted from reasons personal to Cejvanovic and was not as a consequence of the working environment. The ISP and State have proven their affirmative defense. Cejvanovic is barred from recovering under Iowa Code section 85.16. Given this finding, the remaining issues are moot.

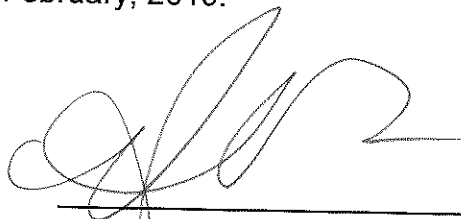
**ORDER**

IT IS THEREFORE ORDERED, THAT:

Claimant shall take nothing in this proceeding.

Defendants shall file subsequent reports of injury as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 6<sup>th</sup> day of February, 2019.



HEATHER L. PALMER  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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HLP/sam

**Right to Appeal:** This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.