

2017 VWC Educational Conference
Violence in the Workplace
Wulf, Jones, and Carroll
Supplemental authorities

Injuries resulting from willful and intentional assaults are compensable, so long as the assault is directed against the claimant as an employee or because of his employment. *Farmers Mfg. Co v. Warfel*, 144 Va. 98 (1926).

There must be a showing that the probability of the assault was augmented by the peculiar character of the claimant's employment or the special liability to assault associated with the environment in which he must work. *Roberson v. Whetsell*, 21 Va. App. 268 (1995)

"It is not sufficient to find that the employment not is what brought the parties into close proximity;... there must be a causal connection between the conditions under which the work is required to be performed and the resultant injury." *City of Richmond v. Braxton*, 230 Va. 161, 164 (1985).

- *Clay v. Ben Collier*, VWC File No. VA00000106196 – assault after finishing work related tasks staying in a hotel paid for by employer and in vicinity of the work not "arising out of" and not compensable.
- *Storkhub v. Virginia Electric*, 50 OIC 313 – compensable assault because employer required coworkers to occupy same hotel room and then one assaulted the other "arising out of" a dispute over the occupancy of the motel room.
- Shared room buy coworkers, dispute over watching pornography. Personal not arising out of employment. *Armentrout v. K Plus Services, Inc.*, VWC File No. 219-88-50.

If conditions of employment expose the employee to a special risk of assault, the injury is compensable:

- *R&T Investments, Ltd. V. Johns*, 228 Va. 249 (1984) – employee making bank deposit for work at great risk of robbery and assault
- *Roberson v. Whetsell*, 21 Va. App. 268 (1995) – custodian traveling though high crime area exposed to increased risk of harm from criminal activity.

Injuries are not compensable where the Claimant is the aggressor and is hurt in retaliation to or defense of an assault initiated by the Claimant. *Warfel* at 104.

Rosario v. Transit Management Co. of Hampton Roads, VWC File No. 206-46-25 – evidence conflicting as to who was the aggressor in a Trolley fight. Additionally, fight was due to ongoing personal disagreements between the passenger and the transit operator. Not compensable.

An emotional injury without accompanying physical injury is not compensable under the Act unless the event leading to the emotional harm constitutes a sudden shock or fright. *Teasley v. Montgomery Ward & Co., Inc.*, 14 Va App. 45 (1992).

Imes v. Walmart Associates, Inc., JCN VA00000949526 (2015) – claimant assaulted by a customer. Rule encouraging speaking to customers when within 10 feet. Associate did it and husband got mad because

associate spoke to wife. Met him outside the store and assaulted him. Assault because of employment mandated interactions with husband and wife.

Carr v. City of Norfolk, 15 Va. App. 266 (1992) – Police officer sexually assaulted by fellow officer during shift change. Suffered PTSD. COA held personal and not arising out of employment.

BelaFrikh v. A+ Economy Lodging, Inc., JCN VA00000712664 (2014) – desk clerk had master key to all rooms, responded to a call that room door would not open and was sexually assaulted. Because ploy of using master key was used, directed at her in connection with her duties and is compensable. Compensable PTSD and depression justifying TTD.

Death of airline passenger who was traveling for business result of terrorist attack on 9/11. Although we live in a world subject to terror attaches, those flying are at unique and heightened danger. Exposed to additional risk by virtue of nature of employment which required him to fly. UEF v. Gabriel, Record No. 0893-05-4.