

SCHIFF & HULBERT
ATTORNEYS AT LAW
150 N. WACKER DRIVE SUITE 1300
CHICAGO, ILLINOIS 60606

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TELEPHONE (312) 726-2800
Facsimile (312) 726-2100

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**The Employer
Advisory**

Employment Case Analysis You Can Use

AGGRESSOR IN FIGHT NOT ENTITLED TO WORKERS' COMPENSATION

The Supreme Court of Illinois has affirmed a decision reported in our prior advisory, Vol. VII No. 26, August 15, 2003. Sandra Franklin worked for a department store as a cosmetics counter salesperson. Salespeople were paid on a commission basis. Franklin and another salesperson became involved in a physical altercation over the right to sell cosmetics to certain customers. Franklin struck the first blow. In the fight she injured her arm. Franklin sought compensation under the Illinois Workers' Compensation Act (IWCA). The Industrial Commission denied Franklin's claim. The appellate court reversed and remanded for the commission to decide if Franklin was the aggressor. The Supreme Court of Illinois affirmed the decision of the appellate court.

Under the IWCA, an employee may be compensated for injuries arising out of and in the course of employment. Injuries received during fights of a personal nature which occur at work do not arise in the course of employment. Injuries from fights concerning the employer's work arise out of employment. Only the non-aggressor may be compensated for injuries sustained in the course of a work-related fight. An aggressor's injuries are caused by his own rage rather than by his work. This is one area in which a claimant may be denied compensation because his actions negate the necessary causal connection between his injury and his employment.

One combatant in a fight will be found to be the aggressor. An aggressor might not be the party who made the first physical contact. Instead, the degree to which the first physical contact was provoked may determine who the aggressor in a fight was. An employee who escalates a dispute may be the aggressor because he makes it reasonable for his opponent to respond in kind. The commission must identify which party was the aggressor in order to grant or deny compensation. This case was remanded to the commission.

Employees are not entitled to compensation for injuries resulting from personal fights at work. The aggressor in a work-related fight may not receive compensation. Each fight has only one aggressor. Employers should interview witnesses including the combatants as soon as possible to determine who the aggressor was. This should be done before discipline is imposed. If both employees are terminated, the employer increases its exposure under Workers' Compensation.

Franklin v. Industrial Comm'n., Docket No. 96857. May 20, 2004. Central Express, Inc., No 03-2569. May 20, 2004.

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