STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY

David Singer	)	Opinion No. 04-05WC
	)	
	)	By: Margaret A. Mangan
v.	)	Hearing Officer
	)	
Village of Woodstock	)	
Police Department	)	For: Laura Kilmer Collins
	)	Commissioner
	)	
	)	State File No. S-12330

APPEARANCES:

Arend R. Tensen, Esq., for the Claimant
J. Christopher Callahan, Esq., for the Defendant

RULING ON MOTION FOR SUMMARY JUDGMENT

This action stems from a police officer's accidental self-inflicted gun shot wound for which he claims worker's compensation benefits. It is undisputed that claimant trained at the police academy where he was taught about the safe handling of firearms. The weapon involved in the accident was claimant's personal revolver, but one he used in his work for the Village. The day before the accident, he used the revolver at a firing range during an exercise that was part of his employment. At the time of the injury, he was in his home cleaning the weapon that still had a round in a chamber, in violation of safe firearm usage. The weapon was on a coffee table, with the barrel facing claimant's leg. It discharged into claimant's thigh.

Workers' Compensation Rule 7 integrates the Vermont Rules of Civil Procedure into the WC process and renders those rules applicable to workers' compensation hearing, including V.R.C.P. 56 (c), an action for summary judgment. Therefore, where there is no dispute of material facts and a party is entitled to judgment as a matter of law, summary judgment is appropriate. See *White v. Quechee Lakes Landowners' Ass'n*, 170 Vt. 25, 28 (1999).

"If a worker receives a personal injury by accident arising out of and in the course of employment…" he or she is entitled to compensation. 21 V.S.A. § 618(a)(1). There seems to be no dispute about whether the injury at issue arose out of employment, as it would not have occurred but for the fact that the conditions of claimant's employment necessitated that he clean his gun. See *Miller v. IBM*, 161 Vt. 213 (1993).

The dispute centers on whether the injury arose in the course of employment and whether the safety appliance defense is applicable. 21 V.S.A. § 649.

In the course of employment

Usually "[a]n accident occurs in the course of employment when it was within the period of time the employee was on duty at a place where the employee was reasonably expected to be while fulfilling the duties of the employment contract." *Miller v. IBM*, 161 Vt. 213, 215 (1993). However, as is claimed here, there are times when one is entitled to compensation for an accident occurring outside of regular duties. See 2 Larson's Workers' Compensation Law 27. "An act outside an employee's regular duties which is undertaken in good faith to advance the employer's interests, whether or not the employee's own assigned work is thereby furthered, is within the course of employment." Id.

A police officer's cleaning of a weapon used in the service for his employer is advancing the employer's interest, even when the cleaning is done in the officer's home, therefore, fulfilling the "in the course of" requirement of the Act.

Safety Appliance

Finally, defendant argues that this claim should be denied because the claimant failed to act safely. If that were the standard, the principles underlying the Act would be eviscerated. However, there are limited exceptions to compensability of injuries that arise out of and in the course of employment. One such exception can be found in 21 V.S.A. § 649, which places the burden on the defendant to prove the "employee's failure to use a safety appliance provided for his use." Defendant argues that it should be given the opportunity at hearing to prove that claimant failed to follow safety rules. Section 649 is a narrowly tailored exception to compensability. By using the term "safety appliance," the legislature required that an employer provide such an appliance and the claimant fail to use it before that section can be invoked. Safety rules alone without an "appliance" do not reach that threshold level. Consequently, § 649 is inapplicable.

Because claimant has proven that he suffered an injury that arose out of an in the course of his employment, his motion for summary judgment is hereby GRANTED.

The parties are expected to work together to determine what benefits are due.

Dated at Montpelier, Vermont this 14th day of January 2005.

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Laura Kilmer Collins
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.