**COMMONWEALTH OF MASSACHUSETTS**

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| **DEPARTMENT OF INDUSTRIAL ACCIDENTS** | **BOARD NO.** 018793-08 |
| Thomas A. O'Toole | Employee: |
| Department of Correction | Employer: |
| Commonwealth of Massachusetts | Self-insurer: |

**REVIEWING BOARD DECISION**

(Judges Levine, Horan and Fabricant)

The case was heard by Administrative Judge Hernandez.

**APPEARANCES**

Robert J. Deubel, Esq., for the employee
Patricia G. Noone, Esq., for the self-insurer

**LEVINE , J.** Thomas A. O'Toole, the employee, appeals from the administrative judge's decision denying and dismissing his claim for workers' compensation benefits for injuries received when a patron attacked him in a bar. The employee, a correctional officer at MCI Shirley, was off-duty at the time of the attack. It is undisputed that the assailant attacked the employee because of the assailant's general animosity toward correctional officers. Because we conclude that the employee's injuries were not work-related, we affirm the decision.

On Saturday, June 29, 2008, the employee visited his brother, a bartender at "Scoobie's," a bar in Clinton, Massachusetts. The employee was not on duty at the time; he was not dressed in his uniform, although he wore a T-shirt with the words "training academy" printed on it. During the course of his visit, the employee met the assailant, a patron at the bar. The employee did not know the assailant before this encounter. The employee and the assailant spoke to each other while they had drinks; during the course of this conversation, it became clear that the assailant did not like correctional officers. At some point, the assailant struck the employee on the head with a shot glass. The employee suffered a C-7 spinous process fracture and a laceration to his head, which required eight stitches. (Dec. 3-4; Tr. 16, 17.)

The judge found that the assault was insufficiently connected to the employee's occupation as a correctional officer because it happened on the employee's personal time, off the work premises,

and during non-work related activity. The judge concluded that the assault was not attributable to the nature, conditions or obligations of the employee's employment. (Dec. 8.) See Caswell's Case, 305 Mass. 500, 502 (1940).

There is no evidence that the assault stemmed from a specific incident related to the employee's performance of his job as a correctional officer, cf. Peters's Case, 362 Mass. 888 (1972). The employee's claim that his resulting injuries are work related is based only on the assailant's general animosity for that occupation. That is insufficient, and the claim must fail.

For an injury that occurs off-premises and outside of normal work hours to be compensable, the employee must show that he was engaged in the furtherance of his employer's business or in pursuit of some benefit to his employer at the time of the injury. Larocque's Case, 31 Mass. App. Ct. 657, 660 (1991), citing Chapman's Case, 321 Mass. 705, 710 (1947). There is no evidence in this case to satisfy either of those criteria. The employee was merely having a drink at a bar. By itself, that activity is not in pursuit of some benefit to the employer.

Nor was there any connection between an incident occurring within the employee's employment at MCI Shirley and the assault. It was the mere fact that the employee was a correctional officer that triggered the barroom incident. Bisazza's Case, 452 Mass. 593 (2008), cited by the employee, is inapposite. In that case, inmate taunts that the employee's alleged role in the harassment of another inmate would be publicized were followed by the actual publication of that story in newspapers. These events, and predominately the accompanying newspaper articles, resulted in the employee's post-traumatic stress disorder (PTSD). As a result, the court affirmed the administrative judge's finding that there was a continuous chain of work-related events, and the resulting PTSD was a compensable industrial injury. Id. at 596-598. In the present case, it was simply the employee's occupation that caused the assailant to attack the employee. That is not at all comparable to the circumstances in Bisazza. So too, this case is not like Collier's Case, 331 Mass. 374 (1954), where the employee waitress refused to serve an intoxicated patron who later, off the premises and after work hours, assaulted the employee. See Bisazza, supra, at 600 n.3.

The employee argues that MCI Shirley has a policy of requiring all correctional officers to report to the facility in the event of an emergency, which would place the employee in an "on call" status. Therefore, the employee argues Wormstead v. Town Manager of Saugus, 366 Mass. 659 (1975), dictates that his injuries are compensable. We do not agree. In Wormstead, at the time of the injury, a police officer was on duty, on his paid lunch break, and returning to the station with work files he had picked up at his home. Those facts, and the proposition that, as a police officer,

he was "on call" during his break, supported a finding that his injury was work related. Id. at 664-666. Unlike the police officer in Wormstead, the employee here was not engaged in any activity in furtherance of his employer's business while he was drinking at the bar outside of work hours. He was off duty, and he was not responding to an emergency. The employee's generalized assertion of the "on call" doctrine cannot render his injury compensable. See also id. at 665 n.6.

We have considered the employee's other arguments and find them lacking merit. Accordingly, we affirm the decision.

So ordered.

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Frederick E. Levine
Administrative Law Judge

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Mark D. Horan
Administrative Law Judge

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Bernard W. Fabricant
Administrative Law Judge

Filed: **January 26, 2011**