

Cherokee Nation Code Annotated

Title 85: Workers' Compensation

Chapter 1: General Provisions

§ 8. Limitations

Cite as: 85 CNCA § 8

A. The employer shall not be required to pay for an injury, death, or disability in the following circumstances:

1. An injury is occasioned by the willful intention of the injured employee to bring about injury to himself or herself or another; or
2. An injury results directly from the willful failure of the injured employee to use a guard or protection against accident furnished for use by the employer; or
3. an injury results directly from unsanitary or injurious practices;
4. the refusal of a claimant to submit to any reasonable surgical treatment or medical aid;
5. the employee is acting outside any restriction dictated by a health care provider;
6. an injury or death caused by a prank, horseplay or similar willful, reckless, or intentional behavior, except for injury or death to innocent victims;
7. stress-related or mental health issues except when accompanied by physical injury or resulting from a case of rape which arises out of and in the course of employment;
8. injury or death deemed an "Act of God" which arises within the course and scope of employment shall be considered compensable only if the employment puts the employee at a greater risk of injury or death by "Act of God" than is the risk to the general population. **"Act of God"** means an act occasioned exclusively by forces of nature without the interference of human agency.
9. injury or death that results from natural causes, i.e., heart attack, stroke, or other natural body function failures which are not work-related.
10. the injury is otherwise excluded by this Title.

B. The employer may reduce or suspend the compensation of a claimant who persists in unsanitary or injurious practices tending to imperil or retard his or her recovery or who refuses to submit to medical or surgical treatment reasonably necessary to promote his or her recovery.

C. Substance-abuse-related injury or death.

1. No compensation of any kind shall be paid for any injury or death substantially related to the intentional use or abuse, by the employee, of alcohol, controlled substances or chemicals, which shall include the use or abuse of prescription drugs where the employee does not have a valid prescription or where the employee was not properly taking prescription drugs as prescribed;

2. The use or abuse of alcohol, controlled substances or chemicals shall be deemed substantially related to an injury or death if:

a. Objective testing of the breath, blood, saliva, hair, or urine or testing by other federally-accepted means, of the employee demonstrates the use or abuse of alcohol, controlled substances or chemicals and any competent evidence establishes that it is more probable than not that the use or abuse of alcohol, controlled substances or chemicals contributed to the occurrence of the accident that caused the injury or death to the employee; or

b. Subjective observations of the employee, by co-workers, supervisors, medical or emergency personnel or other witnesses, the statements, behavior or actions of the employee or other direct or circumstantial evidence establishes by clear and convincing evidence that the employee's use or abuse of alcohol, controlled substances or chemicals contributed to the occurrence of the accident that caused the injury or death to the employee; or

c. Such use or abuse of alcohol, controlled substances or chemicals, by the employee resulted in a criminal conviction by any lawful jurisdiction.

Historical Data

LA 08-04, eff. April 21, 2004. Amended LA 31-05, eff. October 16, 2005; LA 21-06, eff. October 19, 2006; LA 20-10, eff. August 15, 2010.