



**TENNESSEE BUREAU OF WORKERS' COMPENSATION**  
**IN THE COURT OF WORKERS' COMPENSATION CLAIMS**  
**AT MEMPHIS**

<b>VALESIA KENNARD,</b>	)	<b>Docket No.: 2019-08-0805</b>
<b>Employee,</b>	)	
<b>v.</b>	)	
<b>MID-SOUTH TRANS. MGMT., INC.,</b>	)	<b>State File Number: 27262-2019</b>
<b>Employer,</b>	)	
<b>And</b>	)	
<b>PMA MANAGEMENT CORP.,</b>	)	<b>Judge Deana C. Seymour</b>
<b>Carrier.</b>	)	

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**ORDER DENYING MOTION FOR SUMMARY JUDGMENT**

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This case came before the Court on February 10, 2021, upon Mid-South Transportation Management's Motion for Summary Judgment. MTM contended the undisputed facts showed Ms. Kennard's assault stemmed from an "inherently private dispute" and was not compensable. To the contrary, Ms. Kennard maintained that the assault was inherently connected to her employment, or in the alternative, involved a personal dispute that was "exacerbated by the employment." For the reasons below, the Court denies MTM's motion.

**History**

On April 15, 2019, Ms. Kennard sustained multiple injuries after Melvin Chaney, a former friend and co-worker, beat her with a baseball bat. The assault occurred as Ms. Kennard walked to her car in MTM's employee parking lot after a work meeting. After an investigation, MTM denied the claim, reasoning that the assault arose out of an "inherently private dispute."

MTM based its decision on Ms. Kennard and Mr. Chaney's troubled past. They met in 2016. The two were friends and co-workers. They enjoyed gambling, and on several occasions, Ms. Kennard accepted money from Mr. Chaney to play. While she occasionally paid Mr. Chaney back, she did not pay back \$400 of this money. When Ms. Kennard cut off communication with Mr. Chaney due to his persistent romantic advances, he wanted his money back.

As to her employment at MTM, Ms. Kennard accepted a bus operator position in July 2018. Afterward, Mr. Chaney also applied for a job with MTM. When Ms. Kennard learned Mr. Chaney had applied, she went to human resources to discuss her concerns about working with him. She felt he was stalking her. However, because he had not threatened her and she did not feel threatened by him, MTM hired Mr. Chaney in October 2018.

In November 2018, Mr. Chaney left Ms. Kennard a voicemail threatening to “bring personal business to work” if she did not pay him back. He also left a note on her car, which was parked outside her home. Ms. Kennard reported these incidents to human resources because she did not want Mr. Chaney’s threats to affect her job. In a statement provided to MTM, Ms. Kennard acknowledged, “[MTM] has nothing to do with this matter[,] and I feel I should not be harassed or threaten [sic] at my work place [sic] about a personal issue.”

A month later, Mr. Chaney followed Ms. Kennard to her car after work and threatened to kill her if she did not pay him back. After Ms. Kennard reported this incident to human resources, MTM terminated Mr. Chaney for violating MTM’s workplace violence prevention policy.

Though Ms. Kennard admits these facts are undisputed, she contended that they do not warrant a finding that MTM is entitled to a judgment as a matter of law.

### **Law and Analysis**

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Tenn. R. Civ. P. 56.04 (2020). As the moving party, MTM must do one of two things to prevail on its motion: (1) submit affirmative evidence that negates an essential element of Ms. Kennard’s claim, or (2) demonstrate that Ms. Kennard’s evidence is insufficient to establish an essential element of her claim. Tenn. Code Ann. § 20-16-101 (2020); *see also Rye v. Women’s Care Ctr. of Memphis, M PLLC*, 477 S.W.3d 235, 264 (Tenn. 2015). If MTM is successful in meeting this burden, Ms. Kennard must then establish that the record contains specific facts upon which the Court could base a decision in her favor. *Id.* at 265.

MTM claims that Ms. Kennard’s evidence is insufficient to show that her injuries from the assault by Mr. Chaney arose primarily out of her employment. To determine whether injuries from an assault arise primarily out of employment, the Tennessee Supreme Court developed a framework that categorizes assaults into one of three categories: “(1) assaults with an ‘inherent connection’ to employment such as disputes

over performance, pay or termination; (2) assaults stemming from ‘inherently private’ disputes imported into the employment setting from the claimant’s domestic or private life and not exacerbated by the employment; and (3) assaults resulting from a ‘neutral force’ such as random assaults on employees by individuals outside the employment relationship.” *Woods v. Harry B. Woods Plumbing Co.*, 967 S.W.2d 768, 771 (Tenn. 1998). Assaults falling into the first category are compensable. *Wait v. Travelers Indem. Co. of Ill.*, 240 S.W.3d 220, 227 (Tenn. 2007). Assaults falling into the second category are not. *Woods*, at 771. The compensability of assaults falling into the third category “depend[s] on the facts and circumstances of the employment.” *Id.* Both parties concede that this case does not involve an assault resulting from a “neutral force.”

MTM contends Ms. Kennard’s assault falls within the second category. Based on the undisputed facts, multiple incidents occurred between Ms. Kennard and Mr. Chaney in the months leading up to the assault, which involved money that Mr. Chaney felt Ms. Kennard owed him. He left notes on Ms. Kennard’s car as well as voicemails threatening to “bring personal business to work” if she did not pay back the money she owed. Later, he threatened to kill her if she didn’t get him the money. Moreover, Ms. Kennard admitted that the dispute between her and Mr. Chaney was a personal matter that had nothing to do with MTM. Further, Ms. Kennard did not herself terminate Mr. Chaney from MTM, and the nature of her work as a bus operator did not place her at a greater risk of assault.

Ms. Kennard, on the other hand, contends that the assault has an “inherent connection” to her employment, or in the alternative, stemmed from a private dispute that was exacerbated by her employment. According to Ms. Kennard, Mr. Chaney never undertook any act of physical violence against her until MTM terminated him. Moreover, he did not execute his assault at her home or in a social setting but in MTM’s employee parking lot. She argues that these facts suggest that his termination was a significant motivating factor for the assault. Further, after MTM terminated Mr. Chaney for violating its workplace violence prevention policy, it failed to provide on-site security at the entrance of the employee’s parking lot, which allowed Mr. Chaney to gain access to the lot by tailgating another vehicle and lie in wait for her for over two hours. It also took no action to retrieve Mr. Chaney’s uniforms, which allowed him to wear a uniform on the day of the assault without raising suspicion about his presence on the property.

This case does not fit neatly within one of the three categories of assaults. While MTM’s undisputed facts suggest the assault stemmed from a private dispute, those facts do not address whether Ms. Kennard’s employment exacerbated the private dispute, which must be considered in determining whether an assault falls under the second category. Moreover, determining whether the assault has an inherent connection to Ms. Kennard’s employment or stemmed from a private dispute that was exacerbated by the employment, specifically whether Mr. Chaney’s termination exacerbated the personal dispute, would essentially require this Court to weigh the evidence and make credibility

determinations, which it cannot do at this stage. *See Byrd v. Hall*, 847 S.W.2d 208, 216 (Tenn. 1993). Thus, the Court finds MTM is not entitled to judgment as a matter of law and cannot prevail on its motion.

Instead, the parties shall appear for a Scheduling Hearing on **April 19, 2021**, at **9:00 a.m. Central Time**. The parties must call toll free 866-943-0014 to participate in the hearing.

**IT IS ORDERED.**

ENTERED February 19, 2021.



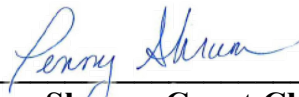
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**Judge Deana C. Seymour**  
**Court of Workers' Compensation Claims**

**CERTIFICATE OF SERVICE**

I certify that a copy of this Order was sent as indicated on February 19, 2021.

Name	Certified Mail	Via USPS	Via Email	Service sent to:
Jonathan May, Employee's Attorney			X	<a href="mailto:jmay@forthepeople.com">jmay@forthepeople.com</a>
William Hampton, Employer's Attorney			X	<a href="mailto:will@holleyelder.com">will@holleyelder.com</a>



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**Penny Shrum, Court Clerk**  
**Court of Workers' Compensation Claims**  
[WC.CourtClerk@tn.gov](mailto:WC.CourtClerk@tn.gov)



### Expedited Hearing Order Right to Appeal:

If you disagree with this Expedited Hearing Order, you may appeal to the Workers' Compensation Appeals Board. To appeal an expedited hearing order, you must:

1. Complete the enclosed form entitled: "Notice of Appeal," and file the form with the Clerk of the Court of Workers' Compensation Claims *within seven business days* of the date the expedited hearing order was filed. When filing the Notice of Appeal, you must serve a copy upon all parties.
2. You must pay, via check, money order, or credit card, a **\$75.00 filing fee** *within ten calendar days* after filing of the Notice of Appeal. Payments can be made in-person at any Bureau office or by U.S. mail, hand-delivery, or other delivery service. In the alternative, you may file an Affidavit of Indigency (form available on the Bureau's website or any Bureau office) seeking a waiver of the fee. You must file the fully-completed Affidavit of Indigency *within ten calendar days* of filing the Notice of Appeal. **Failure to timely pay the filing fee or file the Affidavit of Indigency will result in dismissal of the appeal.**
3. You bear the responsibility of ensuring a complete record on appeal. You may request from the court clerk the audio recording of the hearing for a \$25.00 fee. If a transcript of the proceedings is to be filed, a licensed court reporter must prepare the transcript and file it with the court clerk *within ten business days* of the filing the Notice of Appeal. Alternatively, you may file a statement of the evidence prepared jointly by both parties *within ten business days* of the filing of the Notice of Appeal. The statement of the evidence must convey a complete and accurate account of the hearing. The Workers' Compensation Judge must approve the statement before the record is submitted to the Appeals Board. If the Appeals Board is called upon to review testimony or other proof concerning factual matters, the absence of a transcript or statement of the evidence can be a significant obstacle to meaningful appellate review.
4. If you wish to file a position statement, you must file it with the court clerk *within ten business days* after the deadline to file a transcript or statement of the evidence. The party opposing the appeal may file a response with the court clerk *within ten business days* after you file your position statement. All position statements should include: (1) a statement summarizing the facts of the case from the evidence admitted during the expedited hearing; (2) a statement summarizing the disposition of the case as a result of the expedited hearing; (3) a statement of the issue(s) presented for review; and (4) an argument, citing appropriate statutes, case law, or other authority.

*For self-represented litigants: Help from an Ombudsman is available at 800-332-2667.*



**NOTICE OF APPEAL**

Tennessee Bureau of Workers' Compensation  
[www.tn.gov/workforce/injuries-at-work/](http://www.tn.gov/workforce/injuries-at-work/)  
wc.courtclerk@tn.gov | 1-800-332-2667

Docket No.: \_\_\_\_\_

State File No.: \_\_\_\_\_

Date of Injury: \_\_\_\_\_

\_\_\_\_\_  
**Employee**

v.

\_\_\_\_\_  
**Employer**

Notice is given that \_\_\_\_\_  
*[List name(s) of all appealing party(ies). Use separate sheet if necessary.]*

appeals the following order(s) of the Tennessee Court of Workers' Compensation Claims to the Workers' Compensation Appeals Board (check one or more applicable boxes and include the date file-stamped on the first page of the order(s) being appealed):

Expedited Hearing Order filed on \_\_\_\_\_  Motion Order filed on \_\_\_\_\_

Compensation Order filed on \_\_\_\_\_  Other Order filed on \_\_\_\_\_

issued by Judge \_\_\_\_\_.

**Statement of the Issues on Appeal**

Provide a short and plain statement of the issues on appeal or basis for relief on appeal:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Parties**

**Appellant(s)** (Requesting Party): \_\_\_\_\_  Employer  Employee

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Attorney's Name: \_\_\_\_\_ BPR#: \_\_\_\_\_

Attorney's Email: \_\_\_\_\_ Phone: \_\_\_\_\_

Attorney's Address: \_\_\_\_\_

*\* Attach an additional sheet for each additional Appellant \**

Employee Name: \_\_\_\_\_ Docket No.: \_\_\_\_\_ Date of Inj.: \_\_\_\_\_

**Appellee(s)** (Opposing Party): \_\_\_\_\_  Employer  Employee

Appellee's Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Attorney's Name: \_\_\_\_\_ BPR#: \_\_\_\_\_

Attorney's Email: \_\_\_\_\_ Phone: \_\_\_\_\_

Attorney's Address: \_\_\_\_\_

*\* Attach an additional sheet for each additional Appellee \**

**CERTIFICATE OF SERVICE**

I, \_\_\_\_\_, certify that I have forwarded a true and exact copy of this Notice of Appeal by First Class mail, postage prepaid, or in any manner as described in Tennessee Compilation Rules & Regulations, Chapter 0800-02-21, to all parties and/or their attorneys in this case on this the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
*[Signature of appellant or attorney for appellant]*