

[Cite as *Fuchs v. Univ. of Akron*, 2003-Ohio-1932.]

IN THE COURT OF CLAIMS OF OHIO

TERRANCE L. FUCHS	:	
1039 Brown Street	:	
Akron, Ohio 44301	:	Case No. 2002-05867-AD
Plaintiff	:	MEMORANDUM DECISION
v.	:	
UNIVERSITY OF AKRON	:	
Defendant	:	

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For Defendant: Michael D. Sermersheim  
Associate Vice President and  
Deputy General Counsel  
Office of General Counsel  
The University of Akron  
Akron, Ohio 44325-4706

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{¶1} Plaintiff, Terrance L. Fuchs, alleged that on April 16, 2002, he suffered a personal injury while attending a self-defense class held on the premises of defendant, University of Akron. Plaintiff filed a complaint supplying the following statements:

{¶2} "Plaintiff Fuchs attended a self defense class at the University of Akron (Defendant) on April 16, 2002. The class instructor, Steve Bunn, told another student to roll and throw Plaintiff over head as part of curriculum. Under the direct supervision of the instructor, Plaintiff was flipped in an improper manner and sustained injuries to his sternum upon impact. Upon medical examination, at Summa Hospital Emergency Room, Plaintiff's sternum was fractured and suffered great pain. He was unable to work for a period of three weeks, from April 17, 2002 to May 6,

2002."

{¶3} Plaintiff seeks recovery of damages in the amount of \$2,185.00. The damage claim amount represents \$1,935.00 for work loss, plus \$265.00 for medical expenses incurred not covered by insurance. Plaintiff submitted the filing fee with the complaint.

{¶4} Plaintiff did not submit any evidence, other than his own assertions, indicating he suffered an injury while taking a class offered at defendant's university. Plaintiff did not submit any corroborating evidence establishing injury, work loss resulting from an injury, and medical expenses incurred to treat an injury.

{¶5} Defendant filed a document captioned investigation report. This document contains the following responses to plaintiff's complaint:

{¶6} "Defendant neither admits nor denies Plaintiff's claim of injury.

{¶7} Defendant consents to any judgment this Court may render as to liability in this matter.

{¶8} Plaintiff's complaint, at item #14, seeks damages in the amount of \$2,185.

{¶9} Plaintiff sets forth a deductible amount under his insurance policy of \$250 plus \$15 co-pay.

{¶10} Ohio Revised Code § 3345.40(B)(2) provides that:

{¶11} 'If a plaintiff receives or is entitled to receive benefits for injuries or loss allegedly incurred from a policy or policies of insurance or any other source, the benefits shall be disclosed to the court, and the amount of the benefits shall be deducted from any award against the state university or college recovered by plaintiff.'

{¶12} Plaintiff's collateral source insurance precludes his receipt of any sum greater than the deductible amount of his insurance, in addition to the co-pay amount and court costs.

{¶13} Defendant submits that even in the event this Court finds

for the Plaintiff, it is appropriate to award an amount of \$265.00 (the deductible plus the co-pay) in addition to court costs."

{¶14} Defendant did not forward any additional documentation relevant to events occurring on April 16, 2002 involving the parties to this action. The file is devoid of any additional information from defendant.

{¶15} Plaintiff subsequently filed a statement contained on a response form. This statement consists of modified damages claim and includes the following:

{¶16} "ORC § 3345.40(B)(2) does not apply to the portion of Plaintiff's claim that is his lost wages of \$1,650.00. Plaintiff was not paid by his employer under any sick pay or workers' compensation program.

{¶17} Therefore, in addition to the \$265.00 for the deductible plus the co-pay and court costs, Plaintiff is entitled to lost wages for the period of time that his broken sternum rendered him incapable of working or the sum of \$1,650.00 plus \$265.00, for a total of \$1,915.00, plus court costs."

{¶18} Plaintiff has failed to produce sufficient evidence to prove he suffered a broken sternum while taking a class on defendant's premises under the supervision of defendant's personnel. Plaintiff has failed to offer sufficient evidence to show he incurred medical expenses and work loss resulting from an injury that was proximately caused by a negligent act or omission on the part of defendant's staff. Plaintiff has failed to establish liability.

{¶19} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶20} IT IS ORDERED THAT:

{¶21} 1) Plaintiff's claim is DENIED and judgment is rendered in favor of defendant;

{¶22} 2) The court shall absorb the court costs of this case

in excess of the filing fee.

{¶23} On October 2, 2002, this court issued a memorandum decision and order of administrative determination (Jr. Vol. 720, Pg. 158) denying plaintiff's claim and rendering judgment in favor of the defendant. The decision was based on the plaintiff's failure to submit any evidence, other than his own statement, to prove he sustained a broken sternum while taking a class on defendant's premises under the supervision of defendant's personnel.

{¶24} On December 26, 2002, plaintiff submitted a motion for court review. Earlier, plaintiff had submitted documentation from defendant's instructor, his employer and medical records concerning the injury he sustained.

{¶25} On February 26, 2003, a judge of the Court of Claims issued an entry reopening the case (Jr. Vol. 734, Pg. 24). The judge found while there was no error in the clerk's decision, the motion filed by the plaintiff was similar to a motion filed pursuant to Civil Rule 60(B). Consequently, the case was reopened and remanded for further review.

{¶26} After review of the evidence submitted by plaintiff consisting of the statement of defendant's instructor, the affidavit of plaintiff's employer with regard to the work loss sustained, and the medical records of Summa Health System Emergency Department and Akron City Hospital, I find, by a preponderance of the evidence, that plaintiff sustained his injury while taking a class on defendant's premises under the supervision of defendant's personnel.

{¶27} Ohio Revised Code §3345.40(B)(2) provides that:

{¶28} "If a plaintiff receives or is entitled to receive benefits for injuries or loss allegedly incurred from a policy or policies of insurance or any other sources, the benefits shall be disclosed to the court, and the amount of the benefits shall be deduced from any award against the state university or college

recovered by plaintiff."

{¶29} Plaintiff incurred a deductible amount under his insurance policy of \$250 plus a \$15 co-pay. The affidavit from plaintiff's employer states he lost \$1,680 in regular wages and \$135 in overtime wages as the result of the broken sternum he sustained. The affidavit also states plaintiff did not receive collateral recovery from either sick pay or workers' compensation as the result of his injury. Defendant has presented no evidence to dispute plaintiff's contention.

{¶30} Accordingly, plaintiff sustained damages in the amount of \$2,080.00, plus \$25.00 for the filing fee which may be reimbursed pursuant to *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

{¶31} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶32} IT IS ORDERED THAT:

{¶33} 1) Plaintiff's claim is GRANTED and judgment is rendered in favor of the plaintiff;

{¶34} 2) Defendant (University of Akron) pay plaintiff (Terrance L. Fuchs) \$2,105.00 and such interest as is allowed by law;

{¶35} 3) Court costs are assessed against defendant.

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DANIEL R. BORCHERT  
Deputy Clerk