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WORKERS' COMPENSATION UPDATE

Gardner, Willis, Sweat & Handelman, LLP hopes you find the information in this newsletter helpful. This information is intended to be general in nature and is not a substitute for competent legal advice. Because every issue is unique, we do not recommend that you apply the information in this newsletter without first seeking appropriate legal advice.

We publish various newsletters regarding other areas of law. Please contact us for more information or e-mail us at gwsh@gwsh-law.com if you prefer to receive our newsletters electronically.

Todd Handelman manages the firm's litigation team, which defends many public and private employers. He is well known for his statewide workers' compensation practice, which is successful in part due to his vigorous defense strategies and extensive experience. Todd has successfully defended many employers in significant cases.

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HOUSING IN CATASTROPHIC CASES

SOUTHERN CONCRETE/WATKINS, et al. v. SPIRES
Court of Appeals of Georgia • Decided March 22, 2011

Employee Spires' compensable injury was designated as catastrophic and the parties agreed that the employer, Southern Concrete (Southern), was responsible for providing wheelchair accessible housing for Spires. Both parties proposed a housing plan. The Administrative Law Judge (ALJ) ruled that Southern was required to construct an accessible home on Spires' land and title it in Spires' name. The Appellate Division reversed the decision and found that Southern was not obligated to build on Spires' property or title the home in Spires' name, as a life estate in the property would be suitable. This means that Spires would own the property for the remainder of his life but, after his death, Southern would own the property rather than Spires' family. Following an appeal, the Superior Court reversed the Appellate Division's award and adopted the ALJ's findings.

O.C.G.A. §34-9-200.1(a) requires the Employer to furnish Spires with reasonable and necessary rehabilitation services, as determined by the State Board. Spires' rehabilitation supplier testified that having title in his name was not necessary to return him to the least restrictive lifestyle possible, as required by the statute. Even if a wheelchair accessible house were prescribed by a physician pursuant to O.C.G.A. §34-9-200(a), the Appellate Division held that there was no statutory basis to require an employer to purchase a home for a catastrophically injured worker. The Appellate Division's award was supported by some evidence in the record so it should have been upheld by the Superior Court. The Court of Appeals reversed the Superior Court's decision.

Significance: An employer is only obligated to provide handicapped accessible housing for a Claimant in a catastrophic case. An employer is not required to provide the Claimant title to the home or the land on which it lies. Further, the employer is not required to build a home on property the Claimant already owns. An employer should buy a home for a catastrophically injured employee only when the entire housing issue can be concluded with a stipulation.

***Spires' attorney filed a motion to reconsider this decision as Spires died, making the appeal moot. The decisions beyond the Appellate Division were vacated as of April 14, 2011. This means that this decision is no longer binding authority but the reasoning of the Appellate Division remains the same, showing us how they would handle and decide a similar case.**

ECONOMIC CHANGE IN CONDITION

MASTER CRAFT FLOORING, et al. v. DUNHAM • Court of Appeals of Georgia • Decided March 16, 2011

The employee, Dunham, suffered a compensable neck injury in 2004 while working for Master Craft and subsequently returned to light duty. He suffered another neck injury in 2007 with Master Craft, which was found to be compensable as an aggravation of the pre-existing neck condition from the 2004 injury. Dunham resigned and when he was laid off by the new employer in 2008, he filed a claim to reinstate his temporary total disability (TTD) income benefits with Master Craft due to an economic change in condition for the worse. The Administrative Law Judge (ALJ) granted Dunham TTD benefits from January 2008, when he resigned, through March 2009, when surveillance showed him working without physical limitations.

Noting the standard in *Maloney v. Gordon County Farms*, 265 Ga. 825 (1995), the Appellate Division reversed the ALJ's decision and found that Dunham did not have physical limitations during the period he was awarded TTD benefits by the ALJ. This was the Appellate Division's finding despite the fact that the medical records were contradictory regarding the issue of disability. Significantly, the Appellate Division found the employee had reached pre-aggravation status based upon the favorable surveillance alone. The Appellate Division found that Dunham's testimony, alone, that he looked for work every day was not a good faith effort to obtain employment.

On appeal, the Superior Court adopted the findings of the ALJ but the Court of Appeals reversed that decision, finding that the decision of the Appellate Division must be upheld if there is any evidence in the record to support the decision.

Significance: This case is important because the Appellate Division found that the employee reached pre-injury status based upon surveillance evidence alone, without a physician making such a determination. Therefore, outstanding surveillance may be sufficient to win a case where the physicians are uncooperative. It is still advisable to obtain a favorable medical opinion before proceeding to trial, either from the authorized treating physician or at least from an independent medical evaluation.

INTERVENING ACCIDENT

LOWNDES CO. BOARD OF COMMISSIONERS, et al. v. CONNELL, et al. • Court of Appeals of Georgia • Decided September 8, 2010

In this case, which was handled by our office, the employee, Connell, suffered a compensable injury to his right knee on March 17, 2005. He returned to work the next day. He injured the right knee again on August 31, 2006 but did not miss work or seek any medical treatment. On May 12, 2007, Connell tore the ACL and cartilage in his right knee at home (not on duty) while riding a four-wheeler and this injury ultimately required surgery. There was evidence that the ACL tear was present at the time of the original injury. Connell sought payment under workers' compensation for his medical treatment and income benefits for time missed from work.

An ALJ denied Connell's claim for income benefits and medical treatment related to his torn cartilage but awarded him medical expenses for his torn ACL in the right knee, finding that this injury was causally related to his 2006 compensable injury. On appeal the Appellate Division denied the employee's entire claim finding that the incident at home was a non-work-related independent accident. The Superior Court agreed with the Appellate Division's decision affirming the ALJ's order regarding the income benefits but did not agree with the Appellate Division's decision to reverse the ALJ's order on the torn ACL. Both parties appealed.

Connell offered evidence that his 2007 injury at home was causally connected to the 2006 work-related injury. However, Connell returned to work immediately after the 2006 injury and did not require surgery until after the four-wheeler accident. Further, Connell's torn cartilage could not be considered a super-added injury because it did not arise from the torn ACL. The Court of Appeals held that in order for a super-added injury to be found, there must be a work-related injury that caused an injury to another part of the body. Because the torn ACL was determined not to be a work-related injury, Connell was not entitled to income benefits or medical treatment for the 2007 injury at home.

Significance: A super-added injury can be found only when an injury to another body part results from a compensable injury. The employer has no liability for a condition that arises from a non-work-related event as opposed to a prior work-related incident.

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