WORKERS' COMPENSATION LAW

Section Newsletter

Summer 2021

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Chairman's Corner

By Ben Vinson, Chairman and Chief Appellate Judge, SBWC

Greetings from the State Board of Workers' Compensation. I am honored to serve as your Chairman, and I am grateful to Governor Brian Kemp for the opportunity to lead the Board along with Judges Frank McKay and Neera Bahl. We are looking forward to presenting our Annual Educational Conference virtually in August and then seeing many of you at the ICLE Workers' Compensation Law Institute on Jekyll Island in October. I am excited and hopeful for a prosperous year ahead.

The COVID-19 pandemic began almost a year and a half ago. Fortunately, as the world began to lock down, the Board was able to adapt and remain operational throughout the challenging times. Our web-based ICMS claims management system allowed for continuous filings, and we quickly adopted Zoom video conferencing in place of live, in person proceedings to conduct evidentiary hearings, appellate oral arguments, and mediations. Despite the negative economic impact of the pandemic, Georgia workers' compensation claims were down only 3% in 2020 as compared to 2019. This is remarkable and suggests that the system should remain healthy and stable into next year.

The Board conducted a reduced number of legal proceedings overall during 2020, with hearings down, mediations slightly down, and motions up, but we were able to remain open for business and we currently have no backlog of cases. In positive news, it seems that 2021 is off to a roaring start. As compared to the pre-pandemic first quarter of 2020, the Board has seen an increase in legal proceedings overall in 2021, with hearings up 50%, mediations up 29%, motions up 8%, and PMT conference calls up 52%.

In March of 2020, all in person proceedings were suspended in light of state emergency orders and concerns for the safety of all involved. By April of 2020, the Board transitioned quickly to offer virtual hearings using the Zoom video conferencing platform. The Appellate Division began hearing oral arguments for appellate cases on April 16, 2020, via Zoom video conferencing. We have continued to hear oral arguments virtually on Zoom or in person on a weekly or semi-weekly basis since that time. The first virtual evidentiary hearing was held on May 19, 2020, while in person hearings resumed on a limited basis on July 6, 2020, with strict COVID-19 protocols in place. Parties now have the option to conduct an evidentiary hearing virtually, in person, or a hybrid of those two methods. Cases may also be submitted for a decision based upon the stipulations of the parties, the record, and briefs. Currently about 40% of hearings going forward are using Zoom video conferencing. We have received positive feedback from stakeholders on the use of Zoom, particularly the ability to have witnesses testify at a live hearing from remote locations whether it be their home, office, out-of-state, and even out of the country.

That said, the Board fully recognizes the importance of in person proceedings and we take note of the fact that Governor Kemp and the Georgia Supreme Court have lifted the Public Health State of Emergency and the Judicial State of Emergency effective July 1, 2021. With that in mind and a sense of returning to normal, the Board posted new guidelines for in person hearings on June 24, 2021. The new guidelines maintain many of our prior safety protocols but allow for increased availability and flexibility of in person hearings for vaccinated and unvaccinated parties with specific screening measures. Virtual hearings via Zoom remain an option by consent of the parties and under the discretion of our administrative law judges to provide fair and timely hearings. In a similar vein, the Appellate Division is transitioning to a preference for in person oral arguments for our July calendars with limited use of video conferencing akin to our pre-pandemic structure.

The past year has been challenging to say the least, but the wonderful and resourceful employees of the Board deserve credit for many new and different techniques developed during the pandemic to keep us open and maintain service levels for our numerous stakeholders. A great example of this was the incredibly successful Zoom CLE seminar hosted by the Board and chaired by Judges Reeves and Tifverman where over 600 attorneys attended to learn about our new virtual processes at the Board. Another example involved our publication for comment and eventual adoption on July 1, 2021, of new rules pursuant to our Rule 59 procedure. Our use of Zoom

video conferencing to conduct hearings, mediations, and appeals was critical in a time of need and we intend to utilize the technology into the future in a balanced and appropriate manner. Feel free to contact me anytime directly with questions or comments about the Board or any other matter. For the latest updates and information, please visit our website at https://sbwc.georgia.gov.

Chairman Ben Vinson is a member of the State Board of Workers' Compensation.

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Is Refusing the COVID-19 Vaccine 'JUSTIFIED'?

By Lissa Klein, Hall Booth Smith, P.C., LKlein@hallboothsmith.com

The introduction of COVID-19 vaccines to the general population enables individuals and businesses alike to take one step closer to normalcy. To that point, employers, including medical providers, are looking for ways to protect their staff and clientele by requiring proof of vaccination. Medical providers across the country are considering requirements for patients to confirm they are vaccinated before continuing, or even beginning, treatment.

This scenario poses questions that will likely be presented to courts in the weeks and months to come. In the workers' compensation arena, a rising concern is what happens if an authorized treating physician requires patients to be vaccinated and an injured employee/patient refuses to get the vaccine?

One of the first questions to ask is whether the employee's refusal to get the vaccine amounts to a justified "refusal" or "obstruction" of a medical examination as contemplated by O.C.G.A. §34-9-200(c). That Code Section provides that "as long as an injured worker is receiving compensation, he or she shall submit himself or herself to examination by the authorized treating physician at reasonable times. If the employee refuses to submit himself or herself to or in any way obstructs such an examination requested by and provided for by the employer, upon order of the board his or her right to compensation shall be suspended until such refusal or objection ceases and no compensation shall at any time be payable for the period of suspension unless in the opinion of the board the circumstances justified the refusal or obstruction." To reach a decision on this issue, the Court uses the two-step process referenced in O.C.G.A. §34-9-200(c). First, it determines whether or not the employee refused or obstructed an examination requested by the Employer. Second, the Court determines whether the refusal or obstruction is justified. Goswick v. Murray County Board of Education, 281 Ga. App. 442, 447 (2006).

Turning to the first step, one could take the position that if the employee refuses to take the vaccine, which in turn prevents the authorized treating physician from examining the employee, this amounts to "obstruction" of care as contemplated by O.C.G.A. §34-9-200(c) and provides a basis to suspend benefits so long as the employee refuses to get the vaccine. Of course, one could make an alternative argument that even if the employee's refusal to get the vaccine amounts to obstruction of an examination, that refusal is justified and does not call for the suspension of benefits. The justification could arise from a variety of factors, including personal health concerns or religious ideology.

The question of what constitutes a justified "refusal" or "obstruction" for purposes of O.C.G.A. §34-9-200(c) is typically fact specific and as a result, decisions concerning this issue are rendered on a case-by-case basis; however, the question of whether a refusal to undergo the COVID-19 vaccine amounts to a justified obstruction could require a broader position by the Board and appellate courts, particularly when the U.S. Food & Drug Administration issues its full approval of COVID-19 vaccines. Parties could also use the State Board's PMT process to address this issue on a more expedient basis, though it is likely this would only be the first step in litigation.

Even if an employee agrees to get the COVID-19 vaccine in order to undergo authorized treatment, there are other questions to address: what happens if the employee experiences vaccine side effects preventing them from returning to work? Or the employee sustains an additional injury as a result of the vaccine? While these questions will also likely be answered on a case-by-case basis, we will have to wait and see.

Ms. Klein focuses her practice on the defense of employers, insurers, and self-insurers throughout the state of Georgia, including many of Georgia's largest employers. She has extensive experience representing her clients at all administrative and state appellate levels, including obtaining successful results for clients before the Trial and Appellate Divisions of the State Board of Workers' Compensation.

Ms. Klein assists her clients in developing and implementing risk management procedures which reduce exposure before on-the-job accidents have a chance to take place. She also frequently presents educational seminars where she advises on the latest developments in workers' compensation law.

The Scheduled Break Exception vs. Ingress and Egress Rules

By Daniel Richardson, Hall Booth Smith P.C., DRichardson@hallboothsmith.com

Tension Between the Scheduled Break Exception and the Ingress and Egress Rule

Last year the Georgia Supreme Court addressed the collision of two separate lines of precedent that the Georgia Court of Appeals had been trying to hold together with confusing results. The collision involved (1) the Scheduled Break Exception and (2) the Ingress and Egress Rule. In 1935, the Supreme Court first enunciated the idea of a lunch break exception to compensability in *Farr*.[1] A worker was injured while walking down steps to the basement of his work site to eat his lunch during a break. Because the employee's "preparation for lunch and his eating lunch was his individual affair," the injury "arose out of his individual pursuit and not out of his employment".[2]

The Court of Appeals further developed the principle of a Scheduled Break Exception to compensability through subsequent case law.[3] Yet, in a parallel line of cases, the Ingress and Egress Rule developed, carving out several exceptions to the Scheduled Break Exception. The period of employment generally includes a reasonable time for ingress to and egress from the place of work, while on the employer's premises. For example, in 1957 an injury was held to be compensable when an employee was injured while walking to her parked car at the end of the workday.[4] The Court of Appeals reasoned that "going to and from the parking lot in order to reach and leave her immediate working area was a necessary incident to the claimant's employment."[5] Under these circumstances, an injured worker is still covered through workers' compensation. What happens, though, if you are injured while you are ingressing or egressing to or from a regularly scheduled work break?

The Tension Resolved in Frett: Ingress and Egress Rule is Strengthened

In *Frett v. State Farm Employee Workers' Compensation*, 309 Ga. 44 (2020), these two principles conflicted. The employee in *Frett* had a mandatory, unpaid 45-minute lunch break, at which time she was free to do as she wished, including leaving the office. An automated system scheduled staggered lunch breaks for associates to ensure that enough employees were available to handle phone calls, and after logging on for the day, the employee would see her schedule, including the time for her break. Generally, Frett would bring her lunch and walk to the employee breakroom to prepare her food, and during spring and summer, she would eat on a bench outside of the office or in her car in the parking lot. The employer did not own the parking lot. On the day of her accident, the employee went to the breakroom, microwaved her food, began to exit to take her food outside the building, and she slipped and fell on water inside the breakroom. Under *Farr*, this should not be compensable, and that is how the Court of Appeals decided the case before it was taken up by the Supreme Court.

The Supreme Court reasoned that the Act provides for compensation for injuries that occur "in the course of" employment AND "arise out of" employment, two separate prerequisites.[6] The Supreme Court took issue with the Court of Appeals for only addressing whether the injury "arose out of" the claimant's employment, and not whether it was "in the course of" employment.[7] We now consider the basic contours of each of these prerequisites.

IN THE COURSE OF Employment

An injury arises "in the course of" employment when it "occurs within the period of the employment, at a place where the employee may be in the performance of her duties and while she is fulfilling or doing something incidental to those duties."[8] This prerequisite deals with the "time, place, and circumstances under which the injury takes place.[9] An injury obviously occurs "in the course of" employment when the employee is actually engaged in the work, but this also includes other incidental activities, such as eating a meal, using the restroom, and ingress and egress to the place of work while on the employer's premises.[10] Other jurisdictions share this principle and call it the personal comfort doctrine: "The personal comfort doctrine is based on the rationale that an

employee's attendance to his personal comfort does not remove that employee from the scope and course of employment because such attendance to personal comfort is conducive to the facilitation of the employment."[11] For example, if you step aside for a drink of water, you do not remove yourself from workers' compensation coverage.

In *Thornton*, a salesman on a business trip suffered a fatal accident while walking to his hotel from a café where he had eaten dinner.[12] The injury was held to be "in the course of" employment because his lodging in a hotel, or preparing to eat, or going to and returning from a meal were conduct incidental to employment. A traveling employee like this is on the clock in a much more expansive sense than many employees who clock in and out at set times each day. In *Frett*, the employee was not a traveling employee, as the employee in *Thornton*. She was simply at work, though on her way outside to eat her lunch. In considering whether an accident during a break is considered "in the course" of employment, the lack of payment and the freedom do what you will with your time are not dispositive, but in close cases, they are factors which may be considered.[13]

The Georgia Supreme Court did not consider this prerequisite to be a close call under the facts in *Frett*. The Court reasoned that "[i]t is clear that Frett was injured during an ordinary lunch break in the middle of her workday in a breakroom provided by her employer for the use of employees during such breaks."[14] In a footnote, the Court listed cases from numerous other jurisdictions showing that eating lunch is incidental to employment for purposes of this prerequisite.[15]

ARISING OUT OF Employment

The "arising out of" prerequisite deals with causation. "An injury arises 'out of' the employment when a reasonable person, after considering the circumstances of the employment, would perceive a causal connection between the conditions under which the employee must work and the resulting injury."[16] The Supreme Court reasoned that the second prerequisite should also be straightforward under the facts of *Frett*. "It is undisputed that Frett was injured when she slipped and fell on the wet floor of the breakroom on her employer's premises. It logically follows that her injury was causally connected[.]"[17]

The Court overruled the longstanding *Farr* precedent, criticizing the earlier decision for conflating the two prerequisites and leaving off the analysis of causation altogether. The Court found the facts of *Farr* and *Frett* to be very similar, and under both sets of circumstances found the accident should be compensable. Regarding *Farr*, the Court reasoned that "he tripped and fell on the steps at his work site, while engaged in an activity incidental to his employment. It cannot be said that this injury was unrelated to his work or that the hazards he encountered were in no way occasioned by his job."[18]

In order to overrule *Farr*, the Court considered the soundness of the precedent's reasoning (and found it lacking), its workability (and found it unworkable), and the age of the precedent and the reliance upon it (and found it certainly old but not foundational).[19]

On the workability factor, the Court aptly captured the fog generated by the lower court's attempts to resolve the Scheduled Break Exception and the Ingress and Egress Rule: "An employee preparing to eat lunch on her employer's premises was in an employer-employee relationship for purposes of general liability, but not under the Act. Yet even under the Act, that employee might have been acting in the course of her employment, but at the same time, that employee was engaged wholly in her personal affairs, and so any injury suffered… would not arise out of employment, unless, of course, that employee was on a business trip… Further, if the employer had not specifically scheduled the lunch break (but allowed the employee to have lunch at any time during the day), then the employee probably would be covered under the Act for lunchtime injuries, but if the employer designated a particular hour for lunch, then she probably would not be covered."[20] Not exactly a bright-line rule.

At any rate, *Farr* is no longer good law. The Ingress and Egress Rule was applied within the context of the two-prong analysis outlined above, and we no longer have the bright-line Scheduled Break Exception that the Court of Appeals tried to set forth below.

Applying Farr's Overruling to Cases Below

The Court of Appeals has more recently been dealing with the ramifications of *Farr*'s overruling. In *Daniel v. Bremen-Bowdon Investment Co*., 2021 WL 2946299, at *1 (Ga. Ct. App., July 14, 2021),

an employee left her workstation for a regularly scheduled lunch break and planned to drive home. She was parked in a lot owned by her employer, but it was necessary for her to walk down a public sidewalk and across the street to access the lot. As she walked to her car, she tripped on the sidewalk and was injured.

Two years ago, the Court of Appeals decided the *Daniel* case one way, applying the Scheduled Break Exception and denying compensability.[21] But considering last year's Supreme Court ruling in Frett, the Court of Appeals has now reversed itself. In a decision last week, the Court of Appeals found that this accident resulted in an injury which both arose out of and was in the course of her employment. The Court applied the Ingress and Egress Rule to reach this decision, even though the Claimant was leaving for lunch and not leaving work altogether. Furthermore, the Ingress and Egress rule applied, even as the Claimant was at a location not on the Employer's premises.

It may be that Employers cannot expect to avoid the compensability of accidents occurring when employees are going on or coming off a break, taking a break on the premises, or even when the accident occurs off the premises, as in *Daniel*. The outcome is, of course, likely to be fact-dependent in each specific case and analyzed according to the two-prong analysis set forth in *Frett*.

Endnotes

1. *Ocean Acc. & Guar. Corp. v. Farr*, 180 Ga. 266 (1935).
2. *Id*.
3. See *American Hardware Mut. Ins. Co. v. Burt*, 103 Ga. App. 811, 814 (1961); *Wilkie v. Travelers Ins. Co.*, 124 Ga. App. 714, 715-717 (1971); *Edwards v. Liberty Mutual Ins. Co.*, 130 Ga. App. 23, (1973) (declining to extend rule to unscheduled breaks); Miles . Brown Transport Corp., 163 Ga. App. 563 (1982).
4. *Fed. Ins. Co. v. Coram*, 95 Ga. App. 622 (1957).
5. *Id*.
6. *Frett v. State Farm Employee Workers' Compensation*, 309 Ga. 44, 46 (2020).
7. *Id*.
8. *Hennly v. Richardson*, 264 Ga. 355 (1994).
9. *Potts v. UAP-Ga. Ag. Chem., Inc.*, 270 Ga. 14, 15, 506 S.E.2d 456 (1998).
10. *Frett*, 309 Ga. at 46-47.
11. *Galaida v. Autozone, Inc.*, 882 So.2d 1111,1112 (Fla. Dist. Ct. App. 2004).
12. *Thornton v. Hartford Acc. & Indem. Co.*, 198 Ga. 786, 788 (1945).
13. *Frett*, 309 GA. at 49.
14. *Id*.
15. *Frett*, 309 Ga. 44, 49 n.6.
16. *Id*. at 49.
17. *Id*. at 50.
18. *Id*. at 53.
19. *Id*. at 52-62.
20. *Id*. at 59.
21. *Daniel v. Bremen-Bowdon Investment Co.*, 348 Ga. App. 803 (2019).

Daniel Richardson is an Associate in the Atlanta office of Hall Booth Smith, practicing in a variety of workers' compensation matters. He defends employers, self-insurers and insurance companies throughout Georgia and works swiftly to bring workers' compensation claims to quick resolution in the most cost-effective way.

He has extensive experience evaluating and negotiating complex cases through to resolution, and has taken cases to the Supreme Court of Georgia and the Georgia Court of Appeals.

Alternative Medicine Should Have a Place in Workers' Compensation Treatment

By Shannon Rolen, J. Franklin Burns, PC, srolen@jfblaw.com

Chronic pain and inflammation can be crippling physically, mentally and financially. Pain keeps you up at night, keeps you from working and keeps you from doing activities of daily life. It puts a patient in a vicious cycle: you take medication for the pain; the medication causes stomach discomfort so you take medicine for your stomach; you can't sleep so you take medication to aid sleep; you are depressed or anxious so you have to take medicine for this. The worse your pain gets the more depressed you are and the circle never gives you a break or a way out. Cases that could once easily settle cannot settle easily now because the Medicare Set Aside demands the medication costs be included. There is hope though and it doesn't have to be this way.

I remember many years ago my husband threw out his back leaning over the sink while brushing his teeth. He could not move. I had to leave work and go home to get him to some type of medical treatment. He asked — where should I go? My answer — depends on what your goal is today. If you want pain relief, we can go to the Emergency Room but you won't likely make it in to work because of the medication they will give you. If you want pain relief and to still make it to work, we need to go see the chiropractor. He chose the chiropractor. Within 15 minutes, he was able to stand upright again. He wasn't pain free but his pain was reduced enough to make it possible to go to work. An ER visit would have cost us $400 at the very least and hours of waiting. For $35 and 15 minutes of our time, he was improved and back to work the same day.

At a time where there is such a growing concern over the opioid crisis in this country, it stands to reason that the workers' compensation system should be far more open to alternative and unconventional treatment modalities. If the goal of the insurance companies is to get injured workers away from using expensive narcotics in the long term and back to work eventually, other viable treatment options must become more widely accepted instead of frowned upon. These treatment modalities should include options such as chiropractic care, massage and cupping therapy, CBD treatment, and acupuncture. For years, these types of treatments have not been approved by workers' compensation carriers likely under the guise of a lack of medical necessity or evidence that they will provide a cure or grant relief.

It is counterintuitive for insurance companies to argue against the use of narcotics while at the same time denying alternative treatments that may be beneficial to an injured worker. The goal is obviously to provide the injured worker with the treatment needed to effect a cure, obtain relief and to restore to suitable employment where possible. There is great hesitation with these alternative treatments because many insurance companies feel that the treatment options are in some part ridiculous or completely unnecessary. Insurance companies don't want to pay for a claimant to "get high" or to undergo a full body massage on their dime. Yet, these treatment options are likely at a greatly reduced cost compared to expensive narcotic medications, the benefits are real and tangible and the side effects are limited to non-existent.

So why is there such hesitation to let an injured worker use alternative medicine? There are many cases of injured workers dealing with chronic pain and conventional treatments that are just not effective. We see no improvement in pain, range of motion or an ability to go back to work. Insurance companies get frustrated, my clients get frustrated and the costs spiral out of control. Why do we suffer through these situations when there are opportunities for pain relief that are available? Why can't we just try to think outside of the box about these things?

CBD Oil

What happens when you eat marijuana? You get a potbelly.

What do you call it when the blunt burns your shirt? A pothole.

Everyone likes to joke about stoners who smoke marijuana all day and have the munchies but there are some legitimate benefits from marijuana that have helped people with anxiety, depression and with cancer treatments. However, Marijuana and CBD Oil are not the same animal. Marijuana is still an illegal

drug in many states and we are not talking about smoking pot and getting stoned. This is not a debate about medical marijuana either. This part of the article's focus is strictly over CBD Oil.

CBD Oil has grown in popularity over the last several years. Many people swear by it — many people think it is the root of all evil. CBD Oil is not just a trend — CBD Oil sales in 2018 reached $534 million and are expected to hit $2 billion by 2022. (WeedEx U.S. Market Tracker). So what is CBD Oil you ask? CBD Oil is not psychoactive like regular marijuana, which makes this quality very appealing to those looking for pain relief and relief from other symptoms without the mind-numbing effects of marijuana and other pharmaceutical drugs. CBD Oil is made by extracting CBD from the cannabis plant and diluting it with a carrier oil, such as coconut or hemp seed. https://www.healthline.com/nutrition/cbd-oil-benefits

How does CBD Oil Work?

The human body has a specialized system that you might have not heard of called the endocannabinoid system (ECS), which plays a role in regulating bodily functions like sleep, appetite, pain and immune system response. (https://pubmed.ncbi.nlm.nih.gov/19675519/). The body produces something called endocannabinoids, which is a fancy word for neurotransmitters that bind to the cannabinoid receptors in your nervous system. Studies documented in The National Center for Biotechnology Information have shown that CBD us may help reduce chronic pain by impacting endocannabinoid receptor activity, which in turn reduces inflammation. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5922297/ https://www.healthline.com/nutrition/cbd-oil-benefits

All of this fancy language is just code for — it helps the body's response to pain but it does way more than just provide relief from pain. It doesn't make you high but it does seem to help you feel better.

Benefits of CBD Oil Use

The most obvious and applicable benefit of CBD Oil use is pain relief and the answer to the question does it work is a resounding yes! According to the 2018-2019 Cannabis Consumer Report, 97% of consumers who use medical cannabis for chronic or intractable pain reported improvement in their situation.

However, pain relief is not the only benefit of CBD Oil use. Other benefits include reduced anxiety and depression. CBD Oil has been used to treat cancer patients and severe neurological disorders like epilepsy. It has been found to have helpful benefits for the heart and diabetes among other illness. It can also help with acne. The things this little oil can do will just blow your mind. https://www.healthline.com/nutrition/cbd-oil-benefits#TOCJITLE I-IDR 8

It should be noted that CBD Oil is not generally given in addition to narcotic medication but as a substitute for narcotics. In fact, 48% of people have used cannabis as a substitute for prescription pain medications, 41% have used cannabis as a substitute for over-the-counter pain medications and 73% of people have used cannabis as a substitute or alternative to other medications. (2018-2019 Cannabis Consumer Report.) I am sure these numbers will continue to grow as news of CBD Oil and its benefits continues to spread.

With such amazing results reported and confidence in the product boasted by consumers, it should be noted that not all CBD Oils were created equal. I certainly would not recommend CBD Oil available in your local gas stations. I am talking about medical grade CBD Oils issued by licensed physicians who can also monitor the patients use of narcotics through drug screens.

The Costs of CBD Oil

One of the many reasons that narcotics are not always viable for long-term usage is the addictive quality of the medicines, the side effects and of course, the price. CBD Oil has very little side effects and the benefits clearly outweigh any negative implications. The cost is also of benefit to the insurance company — one 30 ml bottle of sublingual oil (flavored olive oil, min/chocolate and strength 50 mg/ml) costs $112.35. A 30 ml bottle will last 30-60 days. 30 if using twice a day, 60 if twice a day. Most patients are generally started at the lowest dose possible and then titrate up depending on multiple factors. Pricing and other information contained in this paper was graciously provided by Dr. Carlos Giron with the Pain Institute of Georgia.

Remember the vicious cycle at the beginning of this paper? You can possibly eliminate the pain medication, the anxiety and depression medication,

the anti-inflammatory medication, and the sleep medication all for a very inexpensive price of $200 or less every 1-2 months. CBD Oil is viable and reasonable alternative and should be at least considered.

Other Options Are Available

No alternative medicine paper would be complete without discussing the other viable options. Basic internet searching revealed the pricing variability on these options.

The chiropractic treatment I mentioned earlier is also a reasonable option. I have used a chiropractor periodically and it definitely helps. My chiropractor charges about $35 to $40 per visit. Some charge $200 per visit or more. The biggest benefit of chiropractic treatment is that I have never had a client undergo chiro treatment without reporting significant improvement. Unlike medications, chiropractor visits are medicine free.

Acupuncture comes from traditional Chinese medicine and involves the insertion of very thin needles through your skin at strategic points throughout your body. It is most commonly used to treat pain but is also being used for overall wellness, including stress management. https://www.mayoclinic.org/tests-procedures/acupuncture/about/pac-20392763. Acupuncture costs are relatively inexpensive at approximately $75 - $300.

Cupping feels like a relatively new phenomenon but it is an ancient form of alternative medicine. Olympic athletes, especially swimmers like Michael Phelps showed signs of cupping at the Rio Olympics — those tell-tale red circles around the arms and shoulders. Cupping therapy is where a therapist puts special cups on your skin for a few minutes to create suction, which leaves the red circles. People get it for many reasons, like helping with pain, inflammation, blood flow, relaxation and as a type of deep-tissue massage. https://www.webmd.com/balance/guide/cupping-therapy The price is approximately $40 - $80 per session.

Deep tissue massage runs approximately $100 per session. Don't think this is just a lovely way to spend your afternoon. It is extremely painful at first because the muscles are inflamed. I have personally undergone deep tissue massage as part of a physical therapy regime and I thought it was going to be so relaxing and comfortable. It wasn't. In fact, it almost brought me to tears at first but after a while, the muscles started to relax more and allowed the healing to begin. If offered as part of a physical therapy regime, please don't disregard the benefits of this practice. I was able to go medicine free because of the therapy.

It is critical that medical providers not be limited in the types of treatment that can be recommended. Please don't discount the positive benefits including the reduced costs of these amazing treatment opportunities. A more holistic approach to medicine can and should be adopted in the workers' compensation system.

Mrs. Rolen has been practicing law since 1998 and has a decade of experience exclusively in the field of workers' compensation. Mrs. Rolen spent the first five years of her practice working for a large insurance company and then a large Atlanta litigation firm defending workers' compensation cases for major insurance companies and employers throughout the State of Georgia. Since 2003, she has exclusively represented injured workers.

Mrs. Rolen focuses her practice mainly in workers' compensation with some personal injury. She has successfully handled matters at all levels of litigation from hearings before the State Board of Workers' Compensation through all levels of appeals.

Psychological Claims: What Counts?

By Tara Schlairet, Swift, Currie, McGhee & Hiers, LLP, tara.schlairet@swiftcurrie.com

Psychological claims are far less common than the run-of-the-mill claims based purely on a physical work-place injury. Nevertheless, any time we are faced with a psychological claim, either from the perspective of representing an injured worker or an employer/insurer, it undoubtedly leads to us reach for a little bit of guidance.

Under the Georgia Workers' Compensation Act, unless an employee suffers an injury, he is not entitled to a recovery of benefits.[1] Moreover, said injury is only recognized under the Act when it arises out of and in the course of the injured worker's employment and results "naturally and unavoidably" from an accident.[2] If the injured worker asserts a psychological injury therefrom, it would only be compensable under the general rule that the psychological injury arose "naturally and unavoidably" from some discernible physical occurrence.[3] In other words, a psychological injury not accompanied by a discernible physical injury is not compensable under the Act.

Based on the above, there are two requirements that must be met for a psychological claim to be compensable. The first, which is that the psychological injury must be accompanied by a physical injury, is outlined most clearly in a Georgia Supreme Court case from 1998. The underlying claim involved a supervisor of park maintenance who helped recover caskets, which included recovery of 18 corpses, after a flood. At one point during the process, the head of a corpse landed in the employee's lap and at another point, his hands sank into the decayed flesh of a corpse. Subsequently, he was unable to work for six months. The Supreme Court certainly acknowledged an employment related experience, which caused a psychological injury, but noted the employee suffered no physical injury at all. Therefore, the Supreme Court found the injury was purely psychological and thus, not compensable.[4]

The second requirement, which is that the physical injury (accompanying the psychological injury) was a discernible occurrence, is demonstrated by a case in which an employee was involved in a robbery at gunpoint, but did not suffer any physical problem or injury resulting from the incident. She argued her resulting emotional and psychological issues were caused from the act of the assailant touching the side of her head with his gun, not from the fear she experienced from the robbery in general. The Superior Court of Georgia held there was a discernible physical occurrence when the gun hit her head and her nerves went all to pieces. However, the Court of Appeals reversed, holding a mere touching did not qualify as a discernible physical injury.[5]

Furthermore, the psychological injuries (if stemming from a discernible physical occurrence) continue to be compensable even if the physical injury is no longer disabling.[6] In this vein, the physical injury must only contribute to the continuation of the psychological trauma.[7] As an example and in a more recent case, a bus driver had an asthma attack after exposure to fire-extinguisher residue and cleaning products on her bus. Afterwards, she developed adjustment disorder and depression from anxiety about driving the bus and potentially suffering another asthma attack. Despite the fact there was a history of asthma in her family and her pre-accident diagnosis of asthma, the Court of Appeals found her psychological condition originated from the accident and her physical injury contributed to the continuation of her condition. Thus, her psychological injury was compensable.[8]

In conclusion, the case law outlines that even in the scenario of a rather jarring or psychologically significant incident at work, unless the employee suffered a psychological injury arising from a physical occurrence and said occurrence was discernible, it will not be deemed compensable. Therefore, when faced with a claim for psychological injuries, it is important to pay special attention to these two requirements in pursuing or defending such a claim.

Endnotes

1. *Covington v. Berkeley Granite Corp.*, 182 Ga. 235, 184 S.E. 871 (Ga. 1936)
2. O.C.G.A. § 34-9-1(4)
3. *Southwire Co. v. George*, 266 Ga. 739, 470 S.E.2d 865 (1996)
4. *Abernathy v. City of Albany*, 269 Ga. 88, 495 S.E.2d 13 (1998)
5. *W.W. Fowler Oil Co. v. Hamby*, 192 Ga. App. 422, 385 S.E.2d 106 (1989)
6. *Employers Ins. Co. of Ala. v. Wright*, 14 Ga. App. 10, 150 S.E.2d 254 (1966)
7. *Columbus Fire Dept./Columbus Consol. Gov't v. Ledford*, 240 Ga. App. 195, 523 S.E.2d 58 (1999)
8. *DeKalb Cnty Bd. of Educ. v. Singleton*, 294 Ga. App. 96, 668 S.E.2d 767 (2008)

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