2020 Year in Review: Case Law Update

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Frett v. State Farm Employee Workers' Compensation, 309 Ga. 44 (June 16, 2020)

ISSUE

- Whether the ingress/egress applies to a regularly scheduled lunch break
- Whether the regularly scheduled lunch break defense is still good law

Facts

- The claimant sustained an injury as a result of a slip and fall during a scheduled lunch break. There was no dispute as to whether the break was scheduled and whether the claimant had the right to do as she pleased during the break.
- On the date of accident, she heated her lunch in the break room microwave and slipped as she was leaving the break room. It was established as a finding of fact at the hearing that the claimant had the intent to leave the premises to eat her lunch, as was her general practice.
- The claim was controverted based on the well-established regularly scheduled break defense.
- The claimant requested a hearing contesting the denial of her claim.

Administrative Law Judge

- The ALJ found the claimant was on a regularly scheduled lunch break but was intending to eat outside of the office suite.
- Pursuant to well-established case law at the time, the ALJ noted that an accident occurring while and employee is on a regularly scheduled break is not compensable. However, the ALJ also noted the ingress/egress rule was equally clear.
- Where an accident occurs while an employee is still on the employer's premises in the act of egressing those premises, it is compensable.
- The ALJ found the ingress/egress rule still applies despite the fact claimant was on a regularly scheduled break.

Appellate Division

- The Appellate Division overruled the ALJ and found the claimant was not compensable pursuant to the regularly scheduled lunch break defense. They noted, the fact that the claimant was in the process of egressing the employer's premises did not change the applicability of the regularly scheduled lunch break defense.
- They found the claimant was not engaged in any task incidental to her employment or following any work-related instructions during the scheduled break. As such, while the accident did arise in the course of her employment, it did not arise out of her employment but, instead, arose out of a purely personal matter.

Court of Appeals

- The Superior Court upheld the denial of the claim, and this was appealed to the Court of Appeals.
- The Court of Appeals also upheld the denial, holding the ingress/egress rule is inapplicable during a regularly scheduled lunch break.

Supreme Court

The Supreme Court overruled the Court of Appeals and not only held the lunch break defense is not applicable during a period of reasonable ingress/egress, but also overruled the well-established case law giving rise to the regularly scheduled break defense.

Hartford Cas. Ins. Co. v. Hawkins, A19A1878, A19A1879 Ga. Ct. App. (Feb. 18, 2020)

ISSUE

Whether the claimant has a right to a change of physicians where further medical treatment has been controverted

Facts

- The claimant sustained an on-the-job injury and was authorized to treat with Dr. Eli Finkelstein at Resurgens Orthopedics.
- She was also referred to Dr. Angelo DiFelice for her shoulder issues.
- An independent medical evaluation with Dr. Paul Mefford was performed at employer/insurer's request on May 25, 2017. Dr. Mefford concluded she was capable of full duty work and no further medical treatment was necessary.
- Dr. Finkelstein opined on June 28, 2017, that he had no further medical treatment to offer.

Facts

- Dr. DiFelice opined the claimant reached maximum medical improvement and she would need no further work restrictions as a result of the injury and no additional medical treatment to her left upper extremity was required.
- The employer/insurer controverted further benefits on Aug. 25, 2017, on the ground that no further medical care was required.
- The claimant requested a change of physicians to Dr. Xavier Duralde.
- The claimant underwent her own IME with Robert Karsch, who opined she needed additional treatment for her left shoulder.

ALJ and Appellate Division

- The ALJ found the injuries had resolved as of Aug. 1, 2017, when the treating physicians had found her capable of returning to regular duty work with no further medical treatment needed.
- The request for a change of physician and additional medical treatment was denied.
- The Appellate Division affirmed in its entirety.

Superior Court

On appeal, the Superior Court reversed the State Board's decision. They found that because the claimant had not exercised her right to a change of physician prior to the claim being controverted, she was statutorily entitled to the change of physician and the State Board's denial of this request constituted legal error.

Court of Appeals

- On appeal, the Court of Appeals held the Superior Court had failed to apply the any evidence standard of review. Based on the medical opinions of Dr. Finkelstein and Dr. DiFelice, there was evidence in the record to support the Board's finding the work-related injuries had resolved.
- Considering the any evidence standard, the factual determination supported by medical evidence that the claimant's injury had resolved and she needed no further medical treatment was conclusive as a matter of law.

Smith v. Camarena,
352 Ga. App. 797; A19A1396 Ga. Ct. App. (Oct. 30, 2019)

ISSUE

Ingress/egress in non employer-controlled parking lot

Facts

- The decedent was shot and killed in a parking lot outside of a grocery store where she was employed.
- The evidence showed the decedent had clocked out and left the store but remained in the parking lot talking to a coworker about matters unrelated to work.
- The parking lot in question was owned by the grocery store's landlord, open to the public and served several businesses in the same shopping center.
- As the decedent was talking to the coworker, two men attempted to rob them at gunpoint and the decedent was shot during an exchange of gunfire between the armed robbers and the assistant manager of the store.

Court of Appeals Decision

- A wrongful death claim was filed by her estate against the grocery store. Summary judgment was granted to the defendants by the trial court under the exclusive remedy provisions of the Workers' Compensation Act based on the finding that the accident had arisen out of and in the course of the decedent's employment.
- The issue of summary judgment turned on whether there was evidence the injury arose out of and in the course of her employment.

In the Course of Employment

- An injury is in the course of employment if it occurs "within the period of employment at a place where the employee reasonably may be in the performance of his duties while he is fulfilling his duties or engaged in something incidental thereto."
- Conversely, "[a]n injury that occurs during a time when the employee is off duty and is free to do as he or she pleases and when the employee is not performing any job duties is not compensable under the [Act]."

Ingress/Egress

- The defendant argued the ingress and egress rule applied, which provides that 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 purposes of this rule, the employer's premises means "real property owned, maintained, or controlled by the employer."
- When an employee is injured in, or going to and from, a parking lot owned or maintained by the employer, the incident is compensable under workers' compensation as the injury arose during the employee's ingress or egress from employment.
- But it "does not extend so far as to allow coverage . . . for an injury which occurred in a public parking lot which was neither owned, controlled, nor maintained by the employer."

Burch v. STF Foods, Inc.,
A19A1376 Ga. Ct. App. (Oct. 29, 2019)

ISSUE

Whether a termination for failure to adhere to light duty restrictions can serve as a defense to indemnity benefits

Facts

- The claimant sustained compensable injuries and was given specific light-duty work restrictions and then returned to work.
- He sustained additional aggravations to his back on June 27, 2013, and Nov. 19, 2013. The claimant was then terminated for insubordination on Dec. 19, 2013, as a result of his continuing to lift things at work despite being instructed on multiple occasions by his supervisor against any heavy exertion.
- The claimant requested a hearing seeking, among other things, TTD benefits from the date of termination forward.

ALJ and Appellate Division

- With regard to the request for TTD benefits following his termination, the ALJ found the "main reason" for the termination was insubordination. However, because the insubordination related to work restrictions that had arisen from his on-the-job injury, the ALJ found the claimant had stopped working and become disabled because of his work injuries. The request for TTD benefits was therefore granted by the ALJ.
- On appeal, the Appellate Division overturned this award for TTD benefits finding the ALJ had erred in finding the relationship between the work-related injuries and his stopping work was conclusive as to whether the claimant carried his burden of proving disability. They found the claimant had failed to prove that his loss of earning capacity was attributable to the compensable work injuries. The Superior Court affirmed the appellate divisions award.

Court of Appeals Decision

- The court held the record provided ample evidence to support the Board's determination that the proximate cause of the termination was insubordination. In particular, the claimant was instructed in writing shortly after the first date of accident not to lift anything and ask other employees for assistance. He also had meetings with management on this issue to keep him from reinjuring his back. Despite these instructions, he continued to lift heavy items on multiple occasions, which were well documented.
- Moreover, as a matter of law, the fact that the insubordination was indirectly related to the on-the-job injury was not dispositive of whether the claimant met his burden of proving his disability was a result of his on-the-job injury. As such, the Court of Appeals upheld the state board’s denial of TTD benefits.

Other 2020 Decisions of Note

- *Trejo-Valdez v. Associated Agents et. al., A20A1499 Ga. Ct. App.* (Oct. 29, 2020)
  - Res Judicata
- *Sprowson v. Villalobos*, A19A2279 Ga. Ct. App. (March 31, 2020)
  - Exclusive remedy as it applies to temporary employees
- *Mullinax v. Pilgrim's Pride Corp.*, A19A1899, A19A1900, A19A1901 Ga. Ct. App. (March 9, 2020)
  - Statutory employers
- *Estes v. G&W Carriers*, LLC, A19A2385, A19A2386 Ga. Ct. App. (March 6, 2020)
  - Independent contractors v. employees

THANK YOU!

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