

When a Workers' Comp Claim Gets Complicated:

Employee Layoffs, Subsequent Injuries, Unemployment and Medical Leave

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Employee Layoffs

What happens when a claimant is laid off as part of a planned or unplanned layoff?

A claimant is entitled to temporary total indemnity benefits pursuant to O.C.G.A. § 34-9-261 if they can show by a preponderance of competent and credible evidence that they have experienced a total loss of earning capacity due to a work injury.

Employee Layoffs

Hypothetical

- A boutique hotel had 50 employees prior to the COVID-19 pandemic
- As a result of local health restrictions, the hotel had to temporarily layoff 30 employees, with the potential for the layoff to be permanent
- Of those 30 employees, two had active workers' comp claims
- Employee #1 was released to work full duty without restrictions three weeks prior to the layoff and had, in fact, returned to work
- Employee #2 had light duty work restrictions of no lifting more than five pounds, which the hotel had been accommodating prior to the layoff

Employee Layoffs

A claimant is not entitled to indemnity benefits simply by virtue of being laid off.

See Minter v. Tyson Foods, 271 Ga. App. 185 (2004).

However, when a claimant is laid off, there is a question as to whether the claimant is entitled to indemnity benefits, which requires some determination of whether the layoff was related to the work injury.

See Mastercraft Flooring v. Dunham, 308 Ga. App. 430 (2011).

Employee Layoffs

- If the reason for the termination is a pretext to avoid paying indemnity benefits or otherwise related to the job injury, the employee is not required to establish that they made a suitable job search under *Maloney*.
- The dispositive issue is not whether they sought new employment or had work restrictions at the time of the termination, but whether the necessary causal link between the work injury and the worsened economic condition is established.

See Padgett v. Waffle House, Inc, 269 Ga. 105 (1998).

Employee Layoffs

Where “an employee returns to work following a disabling injury and is then discharged for a cause unrelated to the injury, [they are] entitled to receive benefits for loss of earning capacity if [they are] unable to find other employment because of” the disability.

Gilmer v. Atlanta Hous. Auth., 180 Ga. App. 326 (1984).

A claimant must show a “diligent but unsuccessful” job search to demonstrate they are unable to find other employment because of their work-related disability.

Maloney v. Gordon Cnty. Farms, 265 Ga. 825 (1995).

Employee Layoffs

Summary: When an employee is laid off or terminated for reasons solely unrelated to the on-the-job injury, they must prove the following three elements to fulfill their *Maloney* burden:

1. A loss of earning power as the result of a compensable work-related injury
2. The continuance of physical limitations attributable to that injury
3. A diligent, but unsuccessful effort to secure suitable employment

Subsequent Claims

Generally, we start with the first injury which must be:

"[A]rising out of and in the course of employment."

O.C.G.A. § 34-9-1(4).



Subsequent Claims

Then:

Every natural and direct consequence that flows from the injury likewise arises out of the course of the employees' employment.

Subsequent Claims



- **Examples:**
 - Drug addiction
 - Disease
 - New injury

Subsequent Claims: New Injury versus Aggravation

New Injury	Aggravation
<ul style="list-style-type: none">• Fictional new accident• Actual new accident resulting from initial injury<ul style="list-style-type: none">• From treatment• From going to/coming from health care providers• Superadded injury	<ul style="list-style-type: none">• Change in condition for the worse• Aggravation of a pre-existing condition (initial injury)

Is Disability Due to the Initial Injury or a New Injury

What is the proximate cause of the disability?

- Initial injury?
 - Actual new accident?
 - Fictional new accident?
 - Condition unrelated to employment?
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- Why is it important?
 - Statute of limitations
 - Carriers change



Is Disability Due to the Initial Injury or a New Injury

What is the proximate cause of the disability?

- **Initial injury?**

- All issues or change in condition for the worse claim from initial date of injury

- **Actual new accident?**

- All issues claim as of that date of accident

- **Fictional new accident?**

- If an aggravation of pre-existing condition from initial injury, then all issues as of the date of disability
- The claim could be against either employer/insurer from original date of injury or initial date of injury

- **Condition unrelated to employment?**

- Not an actionable claim

Unemployment Credit

- What happens when a claimant receives unemployment benefits while also receiving TPD or TTD indemnity benefits?
- What if the claimant receives unemployment during a time period that they are subsequently determined to be entitled to indemnity benefits?

“The payment by the employer or the employer’s workers’ compensation insurance carrier to the employee . . . of any benefit when not due . . . or any benefit paid under Chapter 8 of this title . . . during the employee’s disability shall be credited against any payments of weekly benefits due . . . ”

O.C.G.A. § 34-9-243(a).

Unemployment Credit

- In order to claim a credit for unemployment benefits, the employer/insurer must complete and file form WC-243 with the State Board of Workers' Compensation
- Furthermore, the form is a "notice" form that must be filed no later than 10 days prior to any hearing in which credit will be sought
- If form WC-243 is not filed at least 10 days prior to the hearing, the employer/insurer waive their potential entitlement to any credit

** Note that form WC-243 can be used to request credit for the employer-funded portion of short-term and long-term disability payments

Unemployment Credit

COVID-19 twist

- The Federal Coronavirus Aid, Relief, and Economic Security (CARES) Act provided an additional \$600 per week of unemployment benefits beginning with the week ending on April 5, 2020, and ceasing on the week ending July 31, 2020
- The Georgia statute does not explicitly contemplate recovery of this amount
- Therefore, an employer may not receive any additional credit for unemployment benefits paid through the CARES Act, but this is still a novel issue that has not been addressed by the Board

FMLA and Workers' Compensation

Generally: Unpaid, job-protected leave for specified family and medical reasons with continued group health insurance coverage

- FMLA requires notice by both the employee and employer
- Employers may have right to require certification of the need for FMLA
- Employees are protected from interference and retaliation for exercising or attempting to exercise FMLA rights
- Employers may also be subject to certain recordkeeping requirements

FMLA and Workers' Compensation

Who qualifies for FMLA?

- New parents, care givers
- Eligible employees may take up to 12 work weeks of leave in a 12-month period and up to 26 weeks in a 12-month period for military caregiver leave



FMLA and Workers' Compensation

- FMLA and workers' compensation may run concurrently, so an employee can receive WC benefits while leave is counted toward FMLA
- The requested leave must still comply with federal requirements
- **If an employee is taking FMLA leave and receiving workers' compensation benefits, an employer must then protect the employees' job for the 12 weeks they are on leave**

THANK YOU!



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