

Don't Fret About It —

How the Recent Decision in *Frett v. State Farm Employee Workers' Compensation* Affects Scheduled Breaks and Ingress/Egress Work Accidents

Presented By:



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Georgia Work Accidents

s/c

Compensability in General

- What makes a work accident or injury compensable?
 - *Arise out of and in the course of employment*
- **Arising Out Of** = The causal connection between the employment and the injury
- **In the Course Of** = Occurring within the period of employment at a place where the employee may reasonably be in the performance of his job duties

Scheduled-Break Accidents

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Scheduled Breaks



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Lunch and Rest Breaks

- General Rule – Injuries occurring on scheduled breaks during the employee's free time **DO NOT** *arise out of and in the course of employment.*
 - Whether on or off employer's premises
 - No matter length of lunch or rest break
- *Ocean Acc. & Guar. Corp. v. Farr*, 180 Ga. App. 266 (1945)
- *Gay v. Aetna Cas. & Sur. Co.*, 72 Ga. App. 122 (1945)

Breaks – Burden of Proof

- Claimant bears burden of proving an accident occurred while on the job
- Then burden SHIFTS → → → to the employer
 - MUST introduce evidence:
 1. Scheduled break
 - AND
 2. Injured worker not subject to employer's control at time of accident

Regularly Scheduled Break

- What is a “regularly scheduled break?”



Regularly Scheduled Break

- What is a “regularly scheduled break?”
 - Gray area
- Dictated by workload = **Not regularly scheduled**
 - *Rampley v. Travelers Ins. Co.*, 143 Ga. App. 612 (1977)
- Adjourned for lunch around same time depending upon material = **Regularly scheduled**
 - *ATC HealthCareServ. v. Adams*, 263 Ga. App. 792 (2003)

Employee Freedom of Action



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Employee Freedom of Action

- *Wilkie v. Travelers Ins. Co.* (1971)



- Ten-minute break and work station in the middle of 10-acre property; worker argued does not constitute freedom of action; court denied benefits because claimant was injured on her own time and while not engaged in any way in her employer's business.

- *Teems v. Aetna Cas. & Sur. Co.* (1974)



- Worker injured while on a break to use as her own time and walking from work station to public health official to receive purely voluntary tuberculin shot.

No Freedom of Action

I DON'T HAVE A
"9-5"
I HAVE A
"WHEN I OPEN MY
EYES TO WHEN
I CLOSE MY EYES"

- *Home Indem. Co. v. Swindle* (1978)
 - Conflicting evidence offered that employer previously requested employee to work during break
- *Miles v. Brown Transp. Corp.* (1982)
 - No particular responsibilities on break
 - Often subjected to job duties on break
 - Worker was not “wholly free” on break

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- Lesson – Must be *wholly free* to act in personal pursuits

Exceptions to Scheduled Breaks

- Acts beneficial to the employer
- Not completely released to personal pursuit



"This will be a working lunch. We'll need a Wi-Fi accessible table."

Scheduled Break Wrap-Up

- **Fact intensive**
- What to ask?
 - Did accident occur on regularly scheduled break?
 - Did employee have complete personal freedom during break?
 - Can evidence be presented to prove ***both***?

Ingress and Egress



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Ingress and Egress

- General rule – Employees **MUST** be allowed a *reasonable* time for ingress to and egress from the immediate place of work
- During this *reasonable* time, employees remain “in the course of” their employment as to any injury sustained on employer’s premises

Reasonable Time

- What is “*reasonable*?”
- No specific provision of code defines reasonable
- Must turn to case law

Is 15 Minutes Reasonable?

- *Macy's South v. Clark*, 215 Ga. App. 661 (1994)
- Store clerk
- Assaulted in parking lot 15 minutes after leaving store

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- **Court determined reasonable and compensable**

Is 30 Minutes Reasonable?

- *United States Cas. Co. v. Russell*, 98 Ga. App. 181 (1958)
- Parked vehicle in company parking lot and walking toward building when injured at 7:30 a.m.
- Shift did not start until 8 a.m.

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- **30 minutes – Reasonable/compensable**

Is 2 Hours Reasonable?

- *Jackson v. Lumberman's Mut. Cas. Co.* (1924)



- Arrived at work and injury occurred at 4 p.m.
- Shift scheduled to start at 6 p.m.
- Evidence that sometimes employees given extra shifts when arriving early

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- Evidence that sometimes employees given extra shifts when arriving early
- **Two hours – Not reasonable/not compensable**

Reasonable Time – Fact Driven

- *Champion v. Pilgrim's Pride Corp.* (2007)
 - Appeal of summary judgment
- Accident occurred 78 minutes before claimant's Scheduled shift
- Could not clock-in until 30 minutes before start of shift – 48 minutes in play
- Would take 10 minutes to walk to work station
- Question of fact for jury - remanded

Employer Premises

- Accident **must** occur on employer premises
- What constitutes “employer premises?”



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Fixed Premises

- Everything within fenced-in area = employer's premises



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Parking Lots

- Key Phrase – “Owned, directed, or controlled”
 - *Crawford v. Meyer*, 195 Ga. App. 867, 396 S.E.2d 327 (1990)
- Liberally interpreted by courts
 - *Department of Human Resources v. Jankowski*, 147 Ga. App. 441 (1978)
 - Injury occurred in parking lot of department of human resources, which was owned and operated by Georgia Building Authority
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Parking Lots

- Parking lots not directly adjacent to employee's place of work
 - *Longuepee v. Georgia Institute of Tech.* (2004)
 - Facts:
 - Parking lot three blocks from office building
 - Worker injured crossing public street to directly access work site
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Parking Lots

Not owned, maintained or controlled

- *Tate v. Bruno's Inc. (1991)*
 - Denied benefits for employee injured in MVA in adjacent public parking lot approximately 10 minutes after clocking out
- *City of Atlanta v. Spearman (1993)*
 - City employee could not recover for injury in state-owned parking lot

Parking Lots



Not owned, maintained or controlled

- *Collie Concessions (2005)*
 - Cashier at Masters; passes to park in Cherry Lane Lot
 - Did not own, maintain or control Cherry Lane Lot
 - Required to use Gate 7 – 100 yards north of Cherry Lane Lot
 - COA – Mere control in the absence of ownership or lease has not yet been enough to invoke parking lot exception
 - All decided parking lot cases to date have been owned or leased by employer
 - Is it “OR”?
 - Is it “AND”?

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Office Buildings

- General Rule
 - Injury sustained ingressing to or egressing from office building where employer leases or uses a part = arising out of and in the course
 - *De Howitt v. Hartford Fire Ins. Co.* (1959)
- Steps, elevators, hallways and other parts of building that employee must utilize to ingress or egress = employer premises



Office Building/Complexes

- *Hill v. Omni Hotel, 268 Ga. App. 144 (2004)*
- Facts:
 - Employee of Omni Hotel located in center building of CNN/world congress center
 - Four entrances
 - Claimant exited MARTA and took most direct route
 - Tripped and fell entering center 100-200 yards from escalator to Omni Hotel

Office Building/Complexes

- *Hill v. Omni Hotel, 268 Ga. App. 144 (2004)*
- Site of fall – not owned, controlled or maintained by Omni
- Different from typical office building – MARTA, multiple restaurants, open to general public
- Crux – not whether accident occurred inside or outside of complex, but whether site was owned maintained or controlled by employer

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- Not compensable

Frett v. State Farm Employees' Workers' Compensation

- Undisputed facts:
 - Insurance claims associate
 - Mandatory, unpaid, 45-minute lunch break
 - State Farm suite in shared office building
 - Log-in each morning – determine break
 - Log-out each day at time of break
 - Freedom to personally act
 - Not expected to work
 - Generally – brought lunch, prepared food in State Farm break room on same floor, ate lunch on outside bench or in car

Frett v. State Farm Employees' Workers' Compensation

- Date of accident:
 - Logged-out and walked to break room
 - Used microwave for lunch
 - Walked toward break room exit
 - Slipped and fell on water
 - Fall occurs while still inside break room
 - Manager helps Frett to feet
 - Frett completes incident report
 - Walked outside to eat lunch as planned
 - Left work early due to pain

Frett v. State Farm Employees' Workers' Compensation

- Procedural posture:
 1. Administrative law judge – Compensable
 - Relied on *Rockwell v. Lockheed Martin Corp.*
 2. Appellate division – Not compensable
 - Regularly scheduled break and activity was purely personal matter
 3. Superior Court of DeKalb County – Affirmed

Frett v. State Farm Employees' Workers' Compensation

- Court of Appeals
 - Majority opinion authored by Judge Brown
 - Admitted conflict in case law

- Issue:


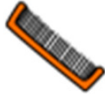


- Employee choosing to leave employer's premises during scheduled break and injured while departing or returning = Compensable



- Employee injured choosing to remain on employer's premises during regularly scheduled break and injured heading to or returning from break = Not Compensable


COA – Scheduled Break Cases

- *Ocean Acc. & Guar. Corp. v. Farr* (1935) 
 - Creates lunch break exception
 - On-site worker injured walking down steps to basement to eat lunch
 - Prepping/eating lunch = Individual pursuit
 - Georgia Supreme Court*
- *Aetna Cas. & Sur. Co. v. Honea* (1944) 
 - Employee injured on employer's premises while leaving on her lunch break to go to a hair salon
 - Not compensable

COA – Scheduled Break Cases

- *Wilkie v. Travelers Ins. Co.* (1971)
 - Employee injured on employer's premises while walking to bathroom on a scheduled break
 - Denied – regularly scheduled, personal pursuit
- *Edwards v. Liberty Mut. Ins. Co.* (1973)
 - Imposed limitation on break exception
 - Does NOT extend compensability to *unscheduled* breaks

COA – Ingress and Egress Cases




- *Travelers Ins. Co. v. Smith* (1954) 
 - Injury occurred on employer's stairs as work returned from regularly scheduled lunch break = Compensable
 - Extended rule to cover scenario where employee departs from employer premises to eat lunch and is injured upon returning to employer premises

COA – Ingress and Egress Cases

- *Chandler v. Gen. Acc. Fire & Life Assur.* (1960)
 - Arrangement for claimant to return home for supper
 - Employer retained control during this period because:
 - supper break designated by work load;
 - made deliveries en route to home; and
 - employer furnished moped for travel
 - Awarded benefits where claimant injured returning from supper break



COA – Ingress and Egress Cases

- *Rockwell v. Lockheed Martin Corp.* (2001) 
 - Employee falls while traveling across a walkway on her way to parking lot on scheduled lunch break
 - Court applies ingress and egress rule to an employee departing for scheduled break
 - Awards benefits
- Creates conflict between *Honea*  and *Rockwell*  rulings

Frett v. State Farm Employees' Workers' Compensation






- Court of Appeals' ruling – not compensable

- Cannot allow conflict between *Honea* (no benefits) and *Rockwell*  (benefits)



- Creates “clearer, bright-line rule”

- Extension of ingress/egress rule to departing and returning from scheduled break is *improper*

Frett v. State Farm Employees' Workers' Compensation

- Court reasoned that *Rockwell*  decision  improperly dilutes Supreme Court's decision in *Farr*
- Court disapproves *Smith*, *Chandler*, and *Rockwell*
  
- Asks Georgia Supreme Court to address issue

Frett v. State Farm Employees' Workers' Compensation

- Court of Appeals' dissent – Judge Miller
 - Former State Board director/judge
 - More appropriate to overrule *Honea*  than *Rockwell* 
 - Requests Supreme Court address issue

***Frett* – Moving Forward**

- Bright-Line Rule
- For how long?
 - *Frett* – Settled
- *Daniel v. Bremen-Bowdon Investment Co.*
 - Decided by Court of Appeals – 2/26/19
 - Relied upon *Frett*
 - Does not extend ingress/egress to regularly scheduled break
 - Potential for appeal to Georgia Supreme Court

Practice Points

- Be thorough in initial investigation
- Analysis is fact-intensive; fact-driven
- Regularly scheduled?
- Personal pursuit?
- Employers premises?
- Reasonable time?
- Owned, maintained or/and controlled?
- Can you prove?

THANK YOU!



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