

Should I Stay or Should I Go?

Working from Home and Traveling for Work

Presented By:



Ann Joiner



Emily Truitt

swift / currie

Why Are We Talking About This?

- The obvious: COVID-19
- Within last five years those working remotely has risen by 44%
- Prior to COVID-19, 7 million people, or 3.4% of the U.S., were working remotely



Before We Dive In – Let's Back Up

- In Georgia, an employee's injury is compensable if:
 - the injury is said to have arisen out of; and
 - within the course of employment

The accident must have occurred within the period of employment, at a place where the employee reasonably may be in the performance of her work and the accident must bear a causal connection between the conditions under which the work is required to be performed and the resulting injury from the accident.

See *Am. Hardware Mut. Ins. Co. v. Burt*, 103 Ga. App. 811 (1961).



In the Course of Employment

- A claimant is generally within the course of employment when the injury occurs:
 - within a period of employment;
 - at a place where the employee reasonably may be in the performance of the employee's duties; and
 - while the employee is fulfilling the employee's duties or is engaged in something incidental thereto



Arising Out Of

We are looking for a causal connection between the conditions under which the employee worked and the injury she received



Traveling for Work

- In Georgia, there is a specific concept known as the “traveling employment doctrine.”
- Injuries that would normally be a no question controvert may very well be compensable. The notion comes from the assumption a traveling employee is engaged in “continuous employment” while on the road.
- If an employee’s work takes her away from home to perform the duties of her work and she sustains an accidental injury as a result of the hazards encountered, the injury will be deemed to have arisen out of and in the course of employment.
Aetna Cas. & Sur. Co. v. Jones, 82 Ga. App. 622 (1950).
- A traveling employee lacks a fixed location and is presumed to work irregular and longer hours, thereby extending the context of arising out of and in the course of employment.
McDonald v. State Highway Dept., 127 Ga. App. 171 (1972).



Traveling for Work: Examples

• **Compensable**

- Employee fell down a flight of stairs (to his death) at a hotel during a business trip. *McDonald v. State Highway Dept.*, 127 Ga. App. 171 (1972).
- Traveling salesman fell off a stool at a restaurant, which was along the route of his business trip, resulting in his death. *Employer Liab. Assur. Corp. v. Pruitt*, 63 Ga. App. 149 (1940).
- A traveling employee crossed the street from his hotel to a restaurant to eat dinner. On his walk back to the hotel he slipped and fell, ultimately dying. *Thornton v. Hartford Acc. & Indem. Co.*, 198 Ga. 786 (1945).
 - “The very nature of his employment carried him upon the highways and streets.”

Traveling Employees: Limitations

- **Only compensable while in the *continuous employment***

- In *Medical Center v. Hernandez*, 319 Ga. App. 335 (2012), two employees working in Savannah were hired to work on a project in Columbus. They were expected to leave their homes Monday morning, drive four hours to Columbus, stay in Columbus all week and leave for home Friday after work.
- Fact-specific importance: The employees were not paid for their travel. They were paid only for the hours they worked on the job site. The employer did provide lodging at a local motel.
- The employees were involved in a MVA on the drive to work on Monday morning, before they had arrived.
- Held: The employees were not “performing work duties or being paid by their employer,” such that they were “off-duty and no longer continuously employed.”

Traveling Employees: Limitations

- “*This does not mean that he cannot step aside from his employment for personal reasons, or reasons in no way connected with his employment . . . He might rob a bank; he might attend a dance; or he might engage in other activities equally conceivable for his own pleasure and gratification.*”
- Thus, while the “acts of ministration” do not take an employee outside the scope of his employment, the limitations are “so long as he performs these acts in a normal and prudent manner.”
- *McDonald v. State Highway Dept.*, 127 Ga. App. 171 (1972)



Deviations from Employment

- Where an employee breaks the continuity of her employment and is injured before she brings herself back into the line of an employment, the injury does not arise out of and in the course of employment.
- Only once the personal mission has been completed and the employee is back within the duties of employment will the injury be compensable.



SIX HOURS AFTER LEAVING FOR A SHORT DRIVE, GREGORY HAD TO ADMIT HE HAD PROBABLY TAKEN A WRONG TURN.

Deviations from Employment: Examples

- *Ray Bell Const. Co. v. King*, 281 Ga 853 (2007).
 - Claimant lived in an apartment supplied by his employer while working on a construction project, making him a continuous or traveling employee
 - He died in MVA while driving employer's truck
 - Claimant was delivering family furniture to his storage shed when killed
 - Question was whether his deviation from employment had ended and he had resumed his employer's business at the time of his death?
 - Court concluded that claimant was in the general proximity of the construction site when died
 - His continuous employment resumed when he returned to his trip to the employer's job site
 - Three judges dissented: Claimant stepped away from the jobsite on a purely personal mission
 - Did not believe it was a deviation case as claimant's mission was "wholly personal from its inception"

Deviations from Employment: Examples

- *Olde S. Custom Landscaping v. Mathis*, 229 Ga. App. 316 (1997).
 - Employee was a foreman with two coworkers who had completed their job for the day and were on the way back to their employer's office
 - Stopped to aid stranded motorist
 - While moving the stranded car, claimant was caught and dragged by the truck trailer, ending up paralyzed
 - Analyzed under the "good Samaritan deviation rule"
 - Held: Claimant had deviated from his employment duties and temporarily abandoned his employment when injured

Teleworking

- *Amedisys Home Health, Inc. v. Howard*, 269 Ga. App. 656 (2004)
 - Employee was a 24-hour on-call field nurse
 - She was allowed to prepare patient reports from home
 - On night of the accident she was carrying patient reports, a pager, a cellphone, a newspaper and takeout pizza she picked up for her family
 - She was walking up the driveway of her home where she fell
 - Court found it compensable, holding that it was a condition of her employment to prepare the patient reports and she had permission to work on them at home
 - She was reasoned to be a continuous employee as a 24-hour on-call nurse as the evidence showed she had to be available to respond to patient calls, by pager and telephone or by visit to the patient at any time during her shift, whether from her home, office or elsewhere in the field



Despite the prevalence of telecommuting there are no Georgia cases analyzing this issue

Teleworking: Employers Think Ahead

- What can an employer do?
 - **Provide written job description**
 - **Define workspace**
 - Establish guidelines for home office in proximity and space
 - Set fixed work hours
 - Set scheduled breaks where an employee is free to do as they wish
 - Establish what is inappropriate and not permissible
 - Establish who purchases, maintains and repairs equipment
 - Consider inspecting the home workspace or asking for photos

Working from home....



Investigate!

- After an injury has been alleged, investigate:
 - Where was claimant injured?
 - What was claimant in that location for? Coming or going? From where?
 - What hazards were around claimant?
 - Was claimant paid for the time injured?
 - On a scheduled or un-scheduled break?



THANK YOU!



Ann Joiner
ann.joiner@swiftcurrie.com
404.888.6210



Emily Truitt
emily.truitt@swiftcurrie.com
404.888.6220

swift / currie