



TELEWORKING INJURIES IN WORKERS' COMPENSATION

Speaker:

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INTRODUCTION

Recent Increase in Teleworkers

- Environmental Movement – 1980's
- Electronic Communication
- Convenience

BENEFITS TO TELEWORKING

- Productivity
- Savings to employer
- Environment
- Job satisfaction

DRAWBACKS TO TELEWORKING

- Out-of-sight, out-of-mind
- Decreased productivity
- Favoritism concerns
- Security concerns

WORKERS' COMPENSATION CLAIMS INVOLVING TELEWORKERS

Interesting Legal Issues

- Arising out of employment.
- Deviation from employment.
- Mixture between work and personal.

WORKERS' COMPENSATION CLAIMS INVOLVING TELEWORKERS (CONTINUED)

Historical background

- Few reported cases.
- Involve employees doing work at home but not formal teleworking.

BURDEN OF EMPLOYEE IN ESTABLISHING COMPENSABILITY

- Injury by Accident
- Arising in the course of employment
- Arising out of employment

ARISING IN THE COURSE OF EMPLOYMENT

- Location appropriate
- During work hours

ARISING OUT OF EMPLOYMENT

- Causal connection
- Incidental to the employment

RISKS

1. Employment Risks
2. Personal Risks
3. Neutral Risks
4. Mixed Risks

EMPLOYMENT RISKS

Directly associated with employment environment.

- Subjects worker to a peculiar danger
- Risk incidentals to employment
- Generally compensable

PERSONAL RISKS

- Personal to individual.
- Furthers no purpose of the employer.
- Personal dispute/attack.
- Generally not compensable.

NEUTRAL RISKS

- Not personal to the employee.
- Not directly associated with employment.
- Suggestion of compensability.

MIXED RISKS

- Both personal and employment-related .
- Dependent upon whether employment was a contributing factor.
- Compensability is fact – dependent.

COMPLICATIONS RAISED BY TELEWORKING INJURIES

Injury must be causally related to the work accident.

- Complicated by some teleworking injuries.
- Death claim presumption.
- Conditions arguably caused by work environment, such as asbestosis, carbon monoxide poisoning, etc.

INJURIES SUSTAINED GOING TO AND COMING FROM WORK LOCATION

- Generally, not compensable.
- Complicated by teleworking injuries.
- Travel between home and company office may be compensable.
- Clear-cut telecommuting policy or agreement.

GEORGIA LAW

- Very few reported cases.
- Expect increase due to numbers of teleworkers.
- Unique opportunity to impact the direction of teleworking claims.

ADMINISTRATIVE TRENDS FROM ALJ DECISIONS

Scenario #1

Employee owned and operated a pizza restaurant. He performed a multitude of duties, such as management training, cooking, waiting tables, maintenance of equipment, etc. While he was not covered under his workers' compensation policy (opted out of coverage), he sustained two separate head injuries while working. After opting for workers' compensation coverage, he sustained a third head injury.

TELEWORKING INJURIES IN WORKERS' COMPENSATION

ADMINISTRATIVE TRENDS FROM ALJ DECISIONS (CONTINUED)

This injury occurred while working on the company computer in his home office. He went to his garage to retrieve a tool he needed to work on a leak at the restaurant and stepped on a rake. The rake popped him in the head, causing him to hit the wall. His injuries were significant and much worse than the others by his account.

OUTCOME

- Found not compensable.
- Natural deterioration of the other injuries.
- Location in home had not bearing on the decision.

ADMINISTRATIVE TRENDS FROM ALJ DECISIONS (CONTINUED)

Scenario # 2

The Employee's job duties training in software use, developing training materials, teleconferencing, and packing of computer and other equipment for conferences. She started out in the company office, but was assigned to work from home after the filing of an EEOC claim. She alleged that she injured her neck lifting a printer at home.

ADMINISTRATIVE TRENDS FROM ALJ DECISIONS (CONTINUED)

On the day following the injury, her pain progressed to the point that she had to go to the hospital via ambulance and was ultimately diagnosed with a cervical disc protrusion. Her contention was that she was packing her printer as part of an agreement to relocate her office to another state at the time of the injury. However, emails from her supervisor

ADMINISTRATIVE TRENDS FROM ALJ DECISIONS (CONTINUED)

Instructing her with regard to her duties contained no such instructions.

OTHER FACTORS

- She did not report the accident on the day it occurred.
- No corroboration in the history contained in the medical records.
- Not a typical or usual work duty.
- No witnesses.
- Not scheduled to move the same day.

OUTCOME

Claim was found not compensable

- Not scheduled to move for weeks and would have needed the printer.
- Not a usual job duty.

ADMINISTRATIVE TRENDS FROM ALJ DECISION

Scenario #3

The Employee was a 24-hour on-call field nurse, who fell in her driveway at home injuring her ankle. At the time of the fall, she was carrying patient reports to be completed the following morning. In addition to carrying the medical reports, she was also carrying a newspaper, cell phone, and a pizza for dinner.

ADMINISTRATIVE TRENDS FROM ALJ DECISION (CONTINUED)

Benefits were denied by the ALJ, but when it was appealed to the Appellate Division, it was ultimately decided by the Court of Appeals.

OUTCOME

- Benefits granted
- Reasonably incident to her employment
- 24-hour call nurse

Amedysis Home Health, Inc. v. Howard, 269 GA App. (2004)

OTHER JURISDICTIONS

AE Clevite, Inc. v. Labor Commission, 996 P. 2d, 1072 (Utah Court of Appeals. 2000).

- Slip on ice while salting driveway to make it safe for mail carrier to deliver work-related material from home office – compensable.
- Loaded car for sales trip and was waiting for a package he needed for the trip.
- Activities were incidental to employment.

OTHER JURISDICTIONS (CONTINUED)

Wait v. Travelers Ind. Co. of Ill (Tenn), 240 SW 220 (2007)

- Assault by a neighbor making a quick social visit found not compensable.
- Injuries during personal breaks in an office setting are typically compensable.
 - (a) Heavily connected to the work place – compensable.

OTHER JURISDICTIONS CONTINUED

(b) Not related to workplace – not compensable.

(c) Neutral – fact dependent

- Neutral: no evidence that her employment put her at risk for the attack and not motivated by anything work-related.

OTHER JURISDICTIONS CONTINUED

Tovish v. Gerber Elecs 630A 2d 136 (Conn 1993)

- Heart attack resulting in death after shoveling snow to clear driveway so he could leave to visit customers – found compensable.
- Sales representative with a home office.
- Reason for shoveling snow was to leave his house and do his job.

OTHER JURISDICTIONS CONTINUED

- Did not matter that he regularly shoveled snow.
- Already dressed for work and began his day.

OTHER JURISDICTIONS CONTINUED

Augustine v. Kenosha Visiting Nurse
WC1498228 (Wisconsin Labor & Industrial Rev
Commission, 2000).

- Nurse who was injured while working on paperwork at home – found compensable.
- Requested time off, but was denied.
- Agreement with employer to see a few clients and complete paper work at home.
- Who Benefitted?

OTHER JURISDICTIONS CONTINUED

Schwindt v. Red Roof Delivery, Inc.

No. 4-009-534, 1992 WL 310079 (Colo. Industrial Claim Appeals Office, September 19, 1992).

- Restaurant manager was working on schedules while at home and fell asleep while working.
- She woke up at 4:30 a.m. and fell down the stairs leaving her work area.
- Claim found compensable.

OTHER JURISDICTIONS CONTINUED

- Irrelevant that she was not required to work at home.

OTHER JURISDICTIONS CONTINUED

Werner v. WCAB, 28 A 2d. 245 (PA Commonwealth, 2011)

- International sales manager.
- Divided his work between his home office in New Jersey and his employer's facility in Pennsylvania.
- Working in his home office engaging in personal and work-related communications.
- He was seen by his wife that morning.
- When she returned home, he was non-responsive.
- Died several days later from a brain hemorrhage
- Claim denied.

OTHER JURISDICTIONS CONTINUED

Santa Rosa Junior College v. Workers' Compensation Appeals Board, 708 p. 2d 673 (Cal. 1985)

- Professor regularly graded papers at home in the evening.
- Involved in motor vehicle accident when carrying student papers home.
- Claim denied.
- No actual requirement that he work from home.

OTHER JURISDICTIONS CONTINUED

Florida Hosp. v. Garabedian, 765 So. 2nd 987 (Fla. Dist. Ct. App. 2000).

- Home health aide worked both at home and at the hospital.
- Involved in a accident en route from a staff meeting at the hospital.
- Compensable
- Going from worksite to another worksite.
- Work day had not ended.

DISADVANTAGES OF TELEWORKING FROM A WORKERS' COMPENSATION PERSPECTIVE

- Injuries are not often as straightforward and easy to document.
- No eyewitnesses.
- Not always immediately reported.
- Many will go unreported.

WHAT CAN EMPLOYERS DO?

- Set fixed hours for work and for breaks.
- Provide panel of physicians with acknowledgement.
- Clearly define duties.
- Devise a policy in writing for telecommuting.
- Develop a plan and policy for keeping home workplace safe.
- Develop a policy regarding reporting injuries.

WHAT CAN EMPLOYERS DO? (CONTINUED)

- Thorough investigation at the outset.
 - A. Time (normal working hours)
 - B. Location (place designated as a work area)
 - C. Precise description of accident.
 - D. Recorded/Written Statement
- Select appropriate employees for telecommuting.
- Send assignments via fax and email.

CONCLUSION

The telemarketing population will continue to grow.

- Select the right employees.
- Procedures and policies to govern all aspects of working from home.
- Conduct thorough investigation.

ANY QUESTIONS?

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