

WEBINAR Noteworthy Case Discussion 9.17.20

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Review of Recent 2020 Important Legal Decisions

Workers' Compensation Law

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With this interactive learning game that covers the fundamentals of claim compensability, claims professionals will gain insight into how to deal with various Virginia workers' compensation claims by providing further education on the law applicable to each claim .



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LEGISLATIVE UPDATE

2020 General Assembly - Special Session

The General Assembly Convened August 18, 2020 for a special legislative session called by the Governor: “adopting a budget based on the revised revenue forecast and consideration of legislation related to the emergency of COVID-19 and criminal and social justice reforms.”

One major issue related to workers compensation is advancing through the legislature: presumption bills related to COVID-19 claims.

LEGISLATIVE UPDATE

2020 General Assembly - Special Session

HB 5028 would amend §65.2-402.1 to add a subsection B that provides a presumption that COVID-19 causing death, or any health condition or impairment resulting in total or partial disability is an occupational disease for: firefighters (as defined by §65.2-102); law enforcement officers (as defined by §9.1-101); first responders (as defined by §65.2-104) ; health care providers (as defined by §8.01-581.1); or correctional officers (as defined under §53.1-1).

[Update 8/31/2020 this bill was amended to provide the presumption for a health care provider “who as part of his employment is directly involved in diagnosing or treating persons known or suspected to have COVID-19.”];

LEGISLATIVE UPDATE

2020 General Assembly - Special Session

SB 5066 The Senate bill is nearly identical to the house bill, except it omitted coverage for correctional officers, while adding coverage for “school board employees.” A second Senate bill, SB5022 was filed, but was immediately incorporated into SB5066.

It is extremely important to note that both the House and Senate bills provide that they would provide a presumption that would go into effect retroactively dating back to January 1, 2020.

LEGISLATIVE UPDATE

2020 General Assembly - Special Session

How the presumption works: The presumption in both bills would work similarly to other disease presumptions, in that the claimant must first prove they are employed in one of the applicable jobs and must prove a diagnosis of COVID-19 causing death or disability. Once those elements are established, the statute creates the presumption of a compensable occupational disease, which may be rebutted by showing that the COVID-19 was caused by some other exposure and not by the employment.

No “documented exposure” required: One major difference between the COVID-19 presumption and the other infectious disease presumption is that the COVID-19 presumption requires no “documented exposure” to COVID-19.

LEGISLATIVE UPDATE

2020 General Assembly - Special Session

Defense – Pre-Employment Physical: Each of the two bills also provides a pre-employment physical provision that is similar to other such provisions. If the employee seeking the benefit of a presumption was asked to perform a pre-employment physical that included appropriate COVID-19 testing, the presumption would not apply to a claimant who had a positive COVID-19 test in that physical. This provision, however, will only apply to persons hired after January 1, 2021.

Current Status of Bills [as of 9/11/2020]:

HB5028 – passed the House 61-Y, 37-N on 9/4/2020 – currently in Senate Commerce and Labor Committee

SB5066 – In Senate Finance and Appropriation Committee since 8/19/2020

FACTS

A former co-worker stabbed claimant in the face, blinding him, while claimant was working alone as an overnight attendant at a rest area. The assailant committed suicide later that same day, and his motives for the assault were never discovered.

Is the claim compensable?

HOLDING

No.

King v. DTH Contract Services, Inc., Record
No.: 1150-18-4 (February 5, 2019);

King v. DTH Contract Services, Inc.
JCN: VA00001225281 (Aug. 8, 2019)

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FACTS

Claimant, a warehouse associate, was slowly pulling plastic off of a box when he felt a “pop” in his shoulder.

Has the claimant described a compensable injury arising out of the employment?

HOLDING

No.

Bowers v. Amazon.com, Record No.:
0777-19-2 (December 17, 2019)

FACTS

Claimant was scheduled to work at 12:00 p.m. Prior to clocking in she alleged that she was doing a warm-up climb when she fell sustaining injury. Claimant was scheduled to perform rope maintenance that day and she indicated that warming up was essential to her job.

Has claimant established a compensable injury “in the course of” her employment?

HOLDING

No.

Morres v. Earth Treks Crystal City Climb,
JCN: VA02000032092 (January 15, 2020)

FACTS

Claimant fell when pulling himself up into a cargo van. He testified that he could not state exactly what caused him to fall. He described that he took his left arm and grabbed the left side of the door, used his right arm and grabbed the door that he had opened, and then using his left leg stepped up into the van. He denied that there was any water or wetness on the steps.

Is the claim compensable?

HOLDING

No.

Kranz v. Richmond City Schools,
JCN # VA00001436725 (Nov. 21, 2019)

FACTS

Claimant, a cement truck delivery driver, was involved in a motor vehicle accident. After picking up a cement delivery, the claimant exited the facility and turned onto a highway. He was knocked unconscious in a motor vehicle accident which caused his truck to overturn. He was unable to describe how the accident occurred, and his only memory was waking up in an overturned truck and being advised by a bystander to turn off the engine. He was transferred by ambulance to a helicopter and flown to a hospital. He could not explain the circumstances of the accident.

Is the claim compensable?

HOLDING

No.

Moore v. Commercial Ready Mix Products,
JCN: VA00001594939 (December 31, 2019)

FACTS

Claimant, a nurse, was sitting in a chair charting. She arose from her chair to respond to an emergency after hearing a “bed alarm.” She described that she “just kind of pushed off” to get out of the chair “fast” and felt pain immediately.

Is the claim compensable?

HOLDING

No.

Jones v. Novant Health Prince William Medical Center, JCN: VA00001342208 (September 13, 2019)

FACTS

Claimant was attempting to descend a ladder when he mis-stepped and fell to the ground. He attributed his mis-step to carelessness and no defect with the ladder.

Is this claim compensable?

HOLDING

Yes.

Cordon-Rivas v. Diocese of Arlington,
JCN: VA000001342136 (November 4, 2019)

FACTS

Claimant was involved in a one-vehicle car accident while “on the clock” when he struck a guardrail sustaining injuries to his back, elbows, knees and chest. Claimant described that he was exiting the Interstate when he struck the guardrail at about 10 to 15 mph.

Is the claim compensable?

HOLDING

No.

Sorour v. Avalon Transportation, LLC, Record
No.: 0692-19-4 (November 26, 2019)

FACTS

Claimant, sole owner of a stock corporation, sustained an injury arising out of and in the course of his employment. However, he did not notify the insurer of his intention to be covered by the company's workers' compensation policy.

Is he entitled to benefits under the Act?

HOLDING

No.

Ghaderi v. A Best Auto Glass, Inc., JCN:
VA02000031760 (February 3, 2020)

FACTS

Claimant, a paramedic, responded to a call at an assisted living facility. He testified that he was asked to assist a patient who was found lying on her back between several pieces of furniture. The claimant indicated that the patient was soft spoken and he had to kneel in order to talk to her. When he stood up approximately three to four minutes later, he felt a pop in the back of his right knee.

Is the claim compensable?

HOLDING

Yes.

Avallone v. Prince William County, JCN:
VA00001519440 (January 30, 2020)

FACTS

Claimant injured her shoulder while reaching into the back of a desk drawer to retrieve a piece of paper. She alleged that the back of the drawer was a “long way” and that she had to bend over and reach into the drawer when she felt pain in her left shoulder.

Is the claim compensable?

HOLDING

Yes.

Michaels v. Southwestern VA Energy 5, JCN:
VA00001593738 (January 31, 2020)

2020 Hot Legal Topics

- *Res Judicata*/Claims Preclusion
- Injury by Accident
- Cancer and Heart Presumptions
- Termination for Justified Cause
- Attendant Care/Home Healthcare
- COVID-19

FACTS

Claimant, a hockey player, sustained an injury arising out of and in the course of his employment. Claimant argued that his earnings should be divided by the number of weeks covered by his employment contract and the employer argued that his earnings for the season should be divided by 52 weeks. There was nothing in the record that revealed that the claimant was not allowed to work in any form of employment outside of the hockey season.

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Was the employer correct to divide the claimant's earnings by 52 weeks to calculate pre-injury average weekly wage?

HOLDING

Yes.

Jonston v. ECHL Personnel Management,
JCN: VA00001462737 (January 27, 2020)

FACTS

Claimant, a judge, fell while leaving the bench. She described that the steps were not very big and one of her feet stuck causing her to stumble and fall. There was no guard rail or exit lightings on the stairs. The judge was not rushing or carrying anything. She was talking to the deputies but denied that this caused her to be distracted.

Is the claim compensable?

HOLDING

No.

**Will v. Supreme Court of Virginia, JCN:
VA00001538300 (March 4, 2020)**

FACTS

Claimant, an order picker in a warehouse, described his accident as follows: “So, how I got hurt was, I reached up with both hands, pushed the box back and pulled my arms back and when I pulled my arms back, my back popped.” Claimant was describing the method that he was placing inventory. On cross-examination, the claimant agreed that at the time he felt the pop, he had nothing in his hands and was standing straight when he pulled his arms back.

Is the claim compensable?

HOLDING

Yes.

Perryman v. Target Corporation, JCN:
VA00001622211 (April 22, 2020)

FACTS

Claimant, a delivery driver, was bitten by a dog after delivering a package on the front porch of a home. Claimant testified to making between 150 to 170 deliveries each day.

Is the claim compensable?

F|R

HOLDING

No.

Shonts v. United Transport Service, Inc.,
JCN: VA00001569025 (March 11, 2020)

FACTS

Claimant, a materials handler, was preparing to measure and cut insulated wire. The claimant walked back to the spool rack, grabbed the end of the wire and turned to walk back toward the cutting machine. As he turned and stepped, he felt his right knee pop, his ankle gave out and he fell to the ground.

Is the claim compensable?

HOLDING

No.

Lawson v. VFP, Inc., JCN: VA00001578082
(April 28, 2020)

FACTS

Claimant, a security guard at a school, was injured while making rounds. The claimant was injured when the wind blew a gate opening resulting in injury.

Is the claim compensable?

HOLDING

No.

Found to be Act of God with employment not augmenting the risk.

Martan v. Virginia Beach Public Schools,
Record No.: 1632-19-4 (March 31, 2020)

FACTS

Claimant, a CNA, testified that she bent over at approximately a 45-degree angle, put her arms around the patient's shoulders, and shifted her toward the middle of the bed. After repositioning the patient, the claimant pulled her right arm from underneath the patient, and began to stand up and turned to leave the room. Before the claimant had fully arisen, she felt immobilizing pain in the right side of her lower back extending down her leg.

Is the claim compensable?

HOLDING

Yes.

Haden v. The Landmark Group, LLC, JCN:
VA00001662151 (April 21, 2020)

FACTS

Claimant, a gutter installer, fell from a ladder while attempting to transition from the ladder to the rooftop. Claimant had a clipboard in his hand. Claimant candidly acknowledged that he did not know why he fell. Claimant speculated numerous, potential reasons for the occurrence for this fall including possible distraction due to the presence of dogs on the property or possible hurrying to complete the job.

Is the claim compensable?

HOLDING

Yes.

The Full Commission reversed the finding of the Deputy Commissioner and held that the claim was compensable.

Josh Powers v. Moss Home Improvement, JCN:
VA02000032852 (June 22, 2020)

FACTS

Claimant, a plumber, testified as follows:

I was working at a house here in [the] Roanoke area and I went in to assess the situation to see what I could do, walked back out to the van to get my tools and some materials. I get in the van through the back door, that's where everything's at. I get my stuff together and I come back to the back.

When I sat down my tray and I still got stuff in my hand, I stepped out of the van. And when I stepped down, I felt like a twinge in my left knee.

Is the claim compensable?

HOLDING

No.

Found claimant did not establish injury
“arising out of the employment.”

Reynolds v. Falletta Enterprises, Inc., JCN:
VA00001642996 (June 10, 2020)

Upcoming Ford Richardson Webinars

9/23 – A Review of the Intersection Between Workers' Compensation and Employment Law

10/5 – A Review of the Latest Statutory and Regulatory Changes Pertaining to COVID-19

10/16 – A Look Across the Country and What We Can Expect in Virginia as to COVID-19 lawsuits

See additional information on our website www.fordrichardsonlaw.com under News.
Invite will be sent closer to date of event.

