Case Law Update

Fred Baker, Esq., Wimberly, Lawson, Wright, Daves, & Jones

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Presented by:
Fred Baker, Esq.

Rosasco v. West Knoxville Painters, LLC

- Tennessee Special Work Comp Panel, Nov. 18, 2021
- Facts: Employee was injured when he was struck by a falling tree after he tried to use a portable restroom near his worksite.

Rosasco v. West Knoxville Painters, LLC

- Issue: Compensable?
- Holding: No. Injuries due to an "act of God" are only compensable if the injury was caused by an increased risk peculiar to the nature of the employment and not a danger common to the general public at the time it occurred. In this case, the general public at the same time and place bore the same risk.

Biggs v. Liberty Mutual Insurance Co.

- Tennessee Court of Appeals, Nov. 22, 2021
- Facts: Employee had open medical benefits under a previous court order in Washington County. He alleged that carrier pressured him to accept a settlement of his medicals. He filed a complaint in Sullivan County against carrier alleging intentional infliction of emotional distress, fraudulent misrepresentation, and violation of covenant of good faith and fair dealing.

Biggs v. Liberty Mutual Insurance Co.

- Issue: Was the Sullivan County suit barred by the exclusive remedy rule?
- Holding: Yes. Inasmuch as the alleged "mishandling of the workers' comp claim" was committed by a representative of the insurance carrier and, by extension, the employer, the court concluded that the workers' compensation law provided the only remedies available to the plaintiff.

McGauvran v. ATOS Syntel, Inc.

- WCAB, Dec. 3, 2021
- Facts: Employee sustained serious injuries when a severe coughing episode precipitated by vaping resulting in his falling from a wall in a designated smoking area.

McGauvran v. ATOS Syntel, Inc.

- Issue: Employee likely to prevail at a hearing on the merits on compensability?
- Holding: Yes. Personal comfort doctrine brings injuries suffered by employees while on authorized breaks, including smoke breaks, within the umbrella of compensable injuries. At the time of this injury, the employee was in the designated smoking area – a.k.a. "the third-floor meeting room" – and the court found sufficient connection between the injuries and the employment.

Summers v. RTR Transportation Services

- WCAB, Dec. 22, 2021
- Facts: Employee was found dead next to her truck just off the roadway. Claim was accepted after investigation. Employee left a surviving spouse as the only dependent eligible for death benefits. Employer offered to pay death benefits periodically. Surviving spouse requested that death benefits and attorney's fee be paid in a lump sum.

Summers v. RTR Transportation Services

- Issue: Should death benefits and attorney's fees be paid in a lump sum?
- Holding: No. Under *Educators Credit Union v. Gentry*, death benefits cannot be commuted for a sole dependent spouse. Since the death benefits could not be commuted to a lump sum, the court also declined to award the attorneys' fees in a lump sum.

Braden v. Mohawk Industries, Inc.

- WCAB, Mar. 1, 2022
- Facts: Truck driver injured his right ankle when he tripped and fell while unloading carpet. After returning to work, the employee reported another incident resulting in a "pop" in his ankle and a significant increase in his symptoms while walking. Trial court found second incident to be "direct and natural consequence" of the original compensable injury, and it found employee to be PTD.

Braden v. Mohawk Industries, Inc.

- Issue: Was the second incident a direct and natural consequence, or an independent intervening event?
- Holding: It was a compensable direct and natural consequence, based on medical testimony that was admittedly "confusing and muddled at times." There was no proof that the employee's actions in the second event were negligent, reckless, or intentional.

Williams v. Methodist LeBonheur Healthcare

- WCAB, Apr. 29, 2022
- Facts: Employee was a healthcare worker who died after contracting COVID-19. Employer and surviving spouse reached an agreement for the payment of death benefits, but the trial court declined to approve it because the calculation of maximum total benefit was incorrect.

Williams v. Methodist LeBonheur Healthcare

- Issue: How in the world are we supposed to calculate death benefits?
- Holding: The potential duration of death benefits is the maximum total benefit – 450 weeks times the *state's* AWW. However, the rate at which dependents actually receive those benefits is based on a specified percentage of the *deceased employee's* AWW.

Bailey v. Amazon

- WCAB, May 3, 2022
- Facts: Employee injured her right arm and shoulder when she was struck by a large cart at work. Claim was initially accepted by employer. However, following two missed medical appointments, the employer denied the claim and refused to authorize additional medical care.

Bailey v. Amazon

- Issue: Did the employee "refuse to comply" with medical treatment such that the claim could be denied?
- Holding: No. She missed the first appointment due to COVID and said she was not aware of the second opinion. There was no evidence that she "refused" authorized medical treatment. Moreover, even if there was non-compliance, the statute only authorizes a *suspension* of benefits – not the outright denial of the claim.

Reed v. Express Employment Professionals

- WCAB, May 24, 2022
- Facts: The employee alleged an injury when he tripped over a piece of wood. Employee emailed an apparently unsigned PBD to an ombudsman on June 5, 2020. Claim was denied by employer on June 17, 2020. On June 24, 2020, a different ombudsman informed the employee that the PBD needed to be signed and sent to the employer. A signed PBD was sent to the employer on June 24, 2020. Employee filed a PBD with the Clerk of the Court of WC Claims on October 26, 2021.

Reed v. Express Employment Professionals

- Issue: Is the claim barred by the 1-year statute of limitations?
- Holding: Yes. Only a PBD properly "filed" with the clerk will satisfy the SOL. Submitting a PBD to an ombudsman does not comply with the filing requirements.

Williams v. People Ready, Inc.

- WCAB, Jun. 2, 2022
- Facts: Employee sustained compensable injury to his knee and neck. Employer accepted the claim and directed the employee to a walk-in clinic. The walk-in clinic made a referral to an orthopedic surgeon and scheduled the employee to see Dr. Lochemes two business days later. About a month later, an ortho panel was given and employer informed the employee that Dr. Lochemes was not authorized.

Williams v. People Ready, Inc.

- Issue: Must the employer authorize the treatment of Dr. Lochemes?
- Holding: Yes. Even though the referral did not come from a panel doctor, the statute provides that where the treating physician has referred the employee to a specialist, the specialist shall become the treating physician.

Cravens v. Cummins Filtration, Inc.

- WCAB, June 23, 2022
- Facts: Employee sustained compensable injuries to her right arm and shoulder. The parties settled the claim for total of $385,000.00 - $293,798.00 to settle PPD plus $91,202.00 to settle future medical benefits pursuant to an MSA. Employee's attorney sought approval of his 20% attorney fee on the global settlement amount. The trial court approved all parts of the settlement, except for the Employee's attorney fee for the portion of the settlement designated to fund the MSA.

Cravens v. Cummins Filtration, Inc.

- Issue: Is the Employee's attorney entitled to include the value of the MSA when seeking 20% attorney fee?
- Holding: Yes. Per *Henderson v. Pee Dee Country*, the statute limits the trial court's discretion not to approve attorney's fees where the fee does not exceed 20% of the award to the injured work.

Fredrick R. Baker, Esq.
Wimberly Lawson Wright Daves & Jones, PLLC
1420 Neal Street, Suite 201
P.O. Box 655
Cookeville, TN 38503-0655
Phone: 931-372-9123
Fax: 931-372-9181
Email: fbaker@wimberlylawson.com