

**Accidental History: Expansion of the Meaning of
“Accident” as Contemplated by the Act**
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Introduction

At the heart of almost every compensable workers’ compensation claim lies an injury by accident. To the practitioner not familiar with the intricacies of workers’ compensation, the concept of injury by accident may seem fairly straightforward – an injury brought about by some chance happening while the claimant is working. A closer look at workers’ compensation jurisprudence belies this assumption, however. Consistent with the guiding principle of interpretation of the South Carolina Workers’ Compensation Act (Act) - that the Act is to be interpreted so as to provide the largest possible coverage of injured employees - the Courts have gradually broadened the range of situations deemed compensable to include situations that might not commonly be considered work-related accidents. This article will discuss some of the doctrines and lines of cases spawned by this process and demonstrate how the definition of injury by accident has evolved to include much more than simply injuries brought about by chance happening.

Injury by Accident

The idea an injury by accident required some unexpected precipitating event was dismissed early in the history of the Act. In the first opinion to discuss the newly-enacted definition of an accident, Layton v. Hammond-Brown- Jennings, 190 S.C. 425 (1939), the Court examined two divergent lines of authority from other jurisdictions. One line of cases required an unusual and unlooked for *mishap* to find compensability and the other required an unexpected *injury*. The Court adopted the second line of reasoning. The impact of Layton was to establish that, even if the injured employee was performing an activity that was normal and customary in his or her line of employment, and thus not accidental, an accidental result stemming from that activity qualified as an injury by accident. The decision placed the focus on the effect of the injury rather than the manner in which it occurred.

In time, the manner in which an injury occurred became largely irrelevant. In Hiers v. Brunson Construction Co., 221 S.C. 212 (1952), the Court determined its earlier opinions focused on the unexpected result of the injury and did not require any external force or trauma to be considered an injury by accident. Taking this finding a step further, in Colvin v. E.I. DuPont de Nemours, 227 S.C. 465 (1955), the Court determined a prior accidental event need not even be present in order for an injury to be found accidental. The cumulative impact of these decisions establishes an accidental injury exists whenever an employee’s work duties produce an unexpected result that gives rise to injury. This injury need only be unexpected by the injured worker, as stated in Green v. City of Bennettsville, 197 S.C. 313 (1941), even if the injury might have been anticipated by “every common man.”

The Layton decision’s profound consequence was emphasized by the Court’s decision in Pee v. AVM, 352 S.C. 167 (2002). Building upon its prior holdings that no accidental mishap is required to find an injury by accident, the court found a woman who developed carpal tunnel syndrome over several years of simply performing her job was entitled to benefits. The Pee decision allowed the Court to later extended coverage to

hearing loss sustained by a firefighter exposed to sirens over the course of his career and back pain experienced by a hospital worker after years employed lifting trash bags and moving patients. To those unfamiliar with workers' compensation, it may appear these kinds of injuries are the natural and expected consequence of longstanding exposure to a particular line of work but these principles have also been applied to repetitive motion injuries sustained after just weeks on the job.

Arising out of Employment

The Act requires an injury by accident to arise out of and in the course of employment. A number of early opinions interpreting the phrase "arise out of," established the cause of the injury must follow naturally from the kind of employment. In other words, an employee who is injured doing something his work required him to do is protected under the Act. One of the first cases to introduce a wrinkle to this straightforward concept is Mack v. Post Exchange, 207 S.C. 258, (1945). In Mack, a janitor caught his pants on fire lighting a cigarette shortly before he was to begin work, causing severe burns to his legs. Borrowing from the authority of another jurisdiction, the Court ruled activities necessary to the life, comfort, and convenience of the employee, even though personal in nature, arise out of employment. Thus, the personal comfort doctrine was introduced into South Carolina law.

Subsequent decisions expanded the personal comfort doctrine to specifically include smoke breaks and other acts taken purely for personal reasons. The doctrine was tested several times - once when a claimant was injured hauling ice from the employer's cafeteria to her car for use at a family picnic and once when a paramedic was shot looking at a co-workers gun during a smoke break. In each case, the lower court's finding of an injury arising out of the employment was reversed by the Supreme Court. One of the more contemporary interpretations of the personal comfort doctrine is the explanation provided in Osteen v. Greenville County School District, 333 S.C. 43 (1998), restricting the doctrine to apply only to imperative acts like eating, drinking, smoking, seeking relief from discomfort, preparing to begin or quit work, and resting or sleeping. Nonetheless, the personal comfort doctrine introduced compensability to numerous activities not directly related to the actual performance of job duties.

The Mack decision was followed by McCoy v. Easley Cotton Mills, 218 S.C. 353 (1950), which did not directly involve application of the personal comfort doctrine but decided an employee did not have to be engaged in the actual performance of his work at the time of the injury to for that injury to arise out of the employment. The claimant was injured by copper tubing while smoking a cigarette in the mill yard but, even though the claimant was not working at the time, the Court found the claimant as still engaged in his employment. The precepts established in McCoy later allowed the Court to award benefits to a woman whose arm became infected after receiving a tuberculin test sponsored by her employer, to a boy who drowned swimming after finishing his duties as a busboy, and to a hospital orderly who died after a co-worker provided him with a shot of penicillin.

Course of Employment

Not only must an accident arise out of the employment, it must also occur in the course of employment. Current authority explaining the requirement an injury occur in

the course of employment holds the injury must occur during a time the employee is working, at a place the employee can be expected to work, and while the employee is doing something related to work. Soon after the Act was in place, the Court established the course of employment was not confined to injuries occurring during regular working hours but extended to all injuries associated with the employment. The decision in Eargle v. SCE&G, 205 S.C. 423 (1944), expanded the period an injury is considered in course of employment to include a reasonable time before and after the work spent getting to the place of employment. By necessity, it also permitted an injury to occur in proximity to the place the work is performed.

The claimant in Lamb v. Pacolet Manufacturing, 210 S.C. 490 (1947), was injured on the steps connecting a public thoroughfare to the entrance of the workplace. The Court concluded the steps were part of the employer's premises and the claimant's passing over them brought him in the course of his employment, even though no work was actually performed there. The Court eventually extended the protection of the Act to cover injuries that occurred while the claimant was walking from her office building to the employer-maintained parking area and then on to injuries sustained in an automobile accident as the claimant was leaving her place of employment. In both instances, the Court found the act of departing from the place of employment was incidental to the employment itself, further, refusing to draw a distinction between leaving on foot or by car. This coverage generally ends once the claimant reaches a public road.

The coverage of the Act can even be extended to public roads in certain circumstances, however. Drawing from a number of cases providing exceptions to the general rule, in Sola v Sunny Slope Farms, 244 SC 6 (1964), the Court extended coverage to employees injured en route to or from work where the employer provides the means of transportation, the employee is charged with some business duty, the path traveled is inherently dangerous (and the only means of ingress and egress or maintained by the employer), or the employee is contractually obligated to use the path. These exceptions have been used to provide benefits to a woman injured falling down stairs at her home while carrying books she was using to prepare for work, an electrician returning home after emergency repairs to power lines felled during a storm, and to a claimant injured leaving a doctor's office after receiving treatment for a prior compensable injury.

In addition to expanding both the time and place of employment to cover injuries due to causes incidental to employment, the Court also developed the doctrine of insubstantial deviation to provide coverage during trivial departures from an employee's normal work responsibilities. Thus, in Cauley v. Ross Builders Supplies, 238 S.C. 38 (1961), a carpenter charged by his employer with making a leg for a display case who amputated three fingers making a wedge for a fellow employee was awarded benefits because the deviation from his employment was insubstantial. The principles of Cauley were used over time to award benefits to a janitor injured carrying messages between a prisoner and his wife, a teacher injured reaching for a lunchbox for personal use during a work-sponsored trip to buy school supplies, and a mechanic injured after discharging a tear gas canister found in the glove compartment of a car he was working on.

Conclusion

So, if an accident does not require an "accident," how have the Courts protected employers from serving as private health insurers for their employees? For one, the

Courts have consistently held the injury must be accidental in that it cannot be reasonably anticipated by the claimant. This requirement led the Court to deny benefits in Capers v. Flautt, 305 S.C. 254 (1991), when a dishwasher contracted contact dermatitis after leaving his prior job after developing dermatitis washing dishes. Another requirement reducing exposure for employers is that the employment must still be a contributing proximate cause of the injury. Accordingly, a man hit by a truck while removing debris from a road was not awarded benefits just because he was in the process of delivering product samples to clients. These rulings, and others, continue to limit the employer's responsibility to only those injuries associated with employment.

Despite these controls, the gradual increase in compensable situations deemed accidents show the Court has fulfilled its obligation to expand the scope of the Act. These decisions provide coverage to numerous injuries that may not ordinarily be considered the result of some unfortunate mishap sustained during the execution of one's job duties. In fact, the Court has expressly extended coverage to activities admittedly not concerned with the actual performance of work duties so long as some relationship exists between the activity and the employment. Whether by eliminating the requirement of a precipitating event, assigning compensability to acts only injurious when considered in the aggregate, or expanding the places an employee may reasonably be considered to be in the performance of his or duties, benefits have been awarded to employees who might not have suffered from the common perception of an injury by accident.