

NC Workers' Comp: Health Conscious Employees and the Personal Comfort Doctrine

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As people become more and more health conscious, they are taking advantage of down time at work to sneak in a what exercise they can. But what happens when one of these health conscious employees suffers an injury during their break time exercise routine? The North Carolina Court of Appeals recently issued an opinion on a case in which an employee injured her knee while walking around her office building during her required lunch break.

In *Mintz v. Verizon Wireless*, 735 S.E.2d 217 (filed November 20, 2013), Cynthia Mintz worked as a customer service representative who would spend her required hour-long lunch break walking the first floor halls of her office building. Mintz's employer, Verizon Wireless, did not own the building, but they were the dominant tenant. The remaining tenants of the building provided services exclusively for Verizon and its employees. One day, Mintz had finished her walk and was headed to the elevator to go back to her cubicle when she slipped on a piece of ice and fell on her knee. Mintz's physician diagnosed her with a knee contusion and opined that her accident had materially aggravated the arthritis in her knee.

The main issue on appeal to the Court of Appeals was whether Mintz's accident arose out of and in the course of her employment. The Defendants argued that the incident occurred during an unpaid lunch break and that her employment was not a contributing proximate cause of the accident. The court disagreed.

"Arising out of" and "in the course of" are two separate elements that must be met for an injury to be compensable. The former requires the injury to be incurred because of a condition or risk created by the injured worker's job. In this case, the court found that Mintz's building was not open to the public and therefore, she would not be exposed to the same risk of injury outside of her employment with Verizon. In this way the court noted there was a causal connection between her employment and her injury because the injury was incurred on a condition in her workplace.

The second element, “in the course of,” relates to the time, place and circumstance of the accident. Typically this requires that a compensable injury occur during the hours of employment, at the place of employment, while the employee is in the performance of his or her job. The court found that although Mintz’s injury occurred during an unpaid break, “in the course of” contemplates time for rest and refreshment during the workday. As to place, the court determined that Verizon’s control over the building and the fact that the other tenants provided services only to Verizon, made the entire building a part of Mintz’s employer’s premises. Finally, the court noted that activities undertaken for the personal comfort of the employee can constitute circumstances in the course of employment. The “personal comfort” doctrine holds that when employees engage in activities during the workday that are necessary for their own health and comfort, even though personal to themselves, such acts are regarded as incidental to the employment. Mintz’s regimen of walking during her lunch break was for her own personal comfort and in that way was incidental to the performance of her job. Based on these findings, the court held that Mintz’s injury was compensable.

The concepts of “arising out of” and “in the course of” employment are notoriously ambiguous. Both the Industrial Commission and the courts have been known to take strong factors supporting one element and using them to satisfy the other. While it is hard to paint a truly clear picture of the limits to each, this case shows that the concepts are broader than their plain meaning would belie.

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