

# North Carolina Workers' Compensation Update (4)

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## NC Court of Appeals Provides Further Clarity on Compensability of Injuries Suffered by Traveling Employee

### *McSwain v. Industrial Commercial Sales & Service, LLC*

The North Carolina Court of Appeals recently issued a decision that may help employers and carriers maintain a defense to claims that occur when an employee is traveling for business purposes.

In *McSwain v. Industrial Commercial Sales & Service, LLC*, the North Carolina Court of Appeals denied workers' compensation benefits to an employee who fell while walking to a laundry room located at the hotel in which he was staying while traveling for the employer. The Supreme Court of North Carolina has held that traveling employees (employees whose job requires them to stay overnight away from home) are generally considered to be acting "in the course of" their employment during the trip, except when a distinct departure on a personal errand is shown. However, while a traveling employee on a business trip is generally deemed acting "in the course" of his employment during the entire trip, the employee must still establish that the injury "arose out of" their employment. In determining whether an injury "arose out of" employment depends on the facts, and may differ on a case-by-case basis.

The Court in *McSwain* first clarified that the mere fact that the accident occurred at the hotel Plaintiff was staying at overnight was not a dispositive factor in determining compensability. Instead, the Court held that in order for Plaintiff to establish a causal relationship between his employment and the injury sustained, he must prove that the act he was engaged in at the time of such injury was "necessary" to perform the job functions for the employer.

Based upon the Court's jurisprudence, the Court in *McSwain* held that washing or doing laundry was not a "necessary" personal need that needed to be done for Plaintiff to complete his job functions for the employer. In fact, the Court noted that there was no evidence submitted by Plaintiff showing that doing laundry was necessary to further, directly or indirectly, the business of the employer. There was also no evidence to support a finding that Plaintiff had run out of clothes to necessitate a need to do laundry to provide clean clothes for the remainder of such business trip. Thus, since the act of doing laundry was not necessary to further, directly or indirectly, the business of the employer, Plaintiff's workers' compensation claim was not compensable and therefore denied.

MGC attorney [Derek Wagner](#) successfully defended this claim at the North Carolina Court of Appeals. The decision may help clarify the legal nuances employers and carriers face in defending claims that occur when an employee is traveling for business purposes.

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