COMPNEWS

A Publication of the South Carolona Self-Insurers Association, Inc. | Winter 2014

SC seeks to expand benefits for police officers using deadly force

Law enforcement officers who suffer post-traumatic stress or other forms of mental illness because of using deadly force in the line of duty would have an easier time claiming comp benefits under a bill passed in January by the South Carolina House of Representatives.

Under current law, mental injuries suffered in the course of employment unaccompanied by physical injury are not covered unless the claimant establishes the employment conditions causing mental problems were "extraordinary and unusual in comparison to the normal conditions of the particular employment." The recently passed House bill exempts law enforcement personnel from this subsection if the officer's mental illness is due to using deadly force.

The legislation is being pushed by State Rep. Tommy Pope, R-York. In remarks quoted by **The State** newspaper, he exhorted his colleagues to do something useful for law enforcement. "Quit giving them awards and quit waving at them in the (legislature's balcony), and do some small thing to help them," he said.

Although the bill passed the House by a vote of 80-32 it faces an uncertain future in the Senate. Critics fear exempting law enforcement could open the door for other first responders. There is concern also seemingly benign terms in the proposed bill, such as "direct involvement in" or "subjection to" or "deadly force," are open to varying interpretations.

Would fatalities ensuing from police pursuits fall under the definition of deadly force? If several officers respond to an incident that involves use of deadly force, were all of them subjected to deadly force?

The push to expand comp benefits for law enforcement is a direct result of the Bentley case, in which Brandon Bentley, a deputy sheriff with Spartanburg County, claimed he developed post-traumatic stress disorder and severe depression after he shot and killed a suspect who attempted to assault him. Based on his psychological symptoms, his psychiatrist and psychologist determined he was unable to work and Bentley filed for workers' compensation.

The Single Commissioner hearing his case denied comp benefits on grounds the incident that traumatized Bentley was not unusual or extraordinary for a deputy sheriff. Bentley appealed to the commission's appellate panel, which agreed with the original decision. He then filed an appeal with the state Supreme Court.

The Supreme Court upheld the commission's decision, noting the use of deadly force is within the normal scope and duties of a deputy sheriff. But the court took the unusual step of calling on legislators to update South Carolina's standards governing claims for mental-mental injuries.

The court said science has progressed to the point where it is easy for medical professionals to detect fraudulent claims, and hence there is little justification for the historical bias against mental-mental recoveries.

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Sponsors, exhibitors welcome

There is still time for you to be a sponsor or an exhibitor at our Members-Only Forum, scheduled for April 2-4 at Litchfield Beach & Golf Resort. The forum is an excellent opportunity for networking with your peers and potential customers.

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Varying rates of injuries

Rates of serious workplace injury and illness vary significantly between states—even for workers in the same industries—according to a report by Allsup, a nationwide provider of Social Security and Medicare disability claim services.

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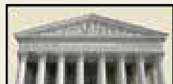

Judicial Notes

To be compensable, an injury must be "causally related to work"

By Mike Chase, Walt Barefoot, and Ashley Forbes

When you think of defending a workers' compensation claim, you likely consider several approaches and even whether to accept the claim. But before all, consider: Is the injury related to work?

The South Carolina Court of Appeals recently encouraged us to remember the basics—that there has to be a causal connection between an employee's injury and the job for an injury to be compensable. In *Nicholson v. South Carolina Department of Social Services*, the court addressed the question of whether an employee's fall, due to her shoe scuffing the carpet as she was walking at work, arose out of her employment. The Court thought not.

Carolyn Nicholson worked in the investigations department at social services. On February 26, 2009, she was walking down the hallway of her office when her shoe scuffed the carpet and she fell. She was carrying about ten files at the time weighing about fifteen pounds. She injured her neck, back, and left shoulder, and sought medical treatment and temporary disability benefits.

At the hearing, the claimant asserted it was friction from the carpet that caused her fall. However, she testified that the floor was level and free from defects. Also, she did not believe the fact that she was carrying files caused her to fall.

The Single Commissioner found the claimant did not prove a causal connection between her fall and her job. The Commissioner believed the fall was idiopathic, one due to a pre-existing condition personal to the claimant. The Full Commission reversed, finding the claimant's employment was a contributing cause of her fall because she was required to work in a carpeted area.

Pursuant to South Carolina Code Section 42-1-160(A), a claimant must prove that he or she sustained an "injury by accident arising out of and in the course of employment." The Court of Appeals did not dispute the claimant sustained injuries in the course of her employment. She was at work at the time of the fall. The sole issue before the Court was whether the claimant's injuries arose out of her employment.

The Court looked at two cases in reaching its decision. The first was Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (1955), in which the Supreme Court held an idiopathic fall did not provide the requisite causal connection for injuries resulting from it to be compensable. The second case was Pierre v. Seaside Farms, Inc., 386 S.C. 534, 689 S.E.2d 615 (2010), in which the court found a claimant's injuries compensable where he slipped on a wet sidewalk outside a housing facility.

The court distinguished the Nicholson case from both of the cases above. First, the court did not believe the claimant's fall was idiopathic or unexplained because there was a non-personal reason for the fall—her shoe scuffing the carpet. Second, the claimant's case was distinguishable from the wet sidewalk case. In that case, there was a sink outside, and water ran down the sidewalk when people used the sink. Thus, the wet sidewalk was found to be a risk associated with the conditions under which the claimant was required to live. In contrast, in the instant case, the carpet was not a risk associated with the employment.

The court reiterated the term "arising out of" requires a causal connection between the injury and conditions under which the work was performed. The court found the carpet was not a hazard that caused the claimant's injuries. It reasoned "the causative danger must be peculiar to the work and not common to the neighborhood." The court found the alleged causative danger, the carpet, was common. It was not a hazard, a special condition, or peculiar to the claimant's employment. The claimant even testified that her fall could have happened on any other level, carpeted surface outside her place of business. The sole reason for her fall was her shoe scuffing the carpet.

So before you ponder complex legal approaches, start with the basics: is there a causal connection between the injury and the employment? If not, there may not be a compensable injury.

President's note

TOSCA WALLS
President

Sponsors, exhibitors welcome

We are looking forward to seeing you at our Members-Only Forum, scheduled for April 2-4 at Litchfield Beach & Golf Resort. The conference is open only to members and exhibitors.

Our annual conference is an excellent opportunity for networking with your peers and potential customers, and learning about emerging developments in workers' compensation. A perennial highlight is the concluding day's panel discussion with commissioners. This year all seven of the commissioners have said they plan to be there. Think ahead about what you want to ask them!

Another valuable feature is our annual discussion with a panel of employers regarding what issues they face in their comp programs and what successes they have enjoyed. We would love to hear from you if your company is doing particularly well at managing its safety and workers' compensation programs.

Finally, a word of thanks to our sponsors and exhibitors. Many of them support us year after year, and are a vital component of our association. There is still time and opportunity for you to be a sponsor or an exhibitor this year.

Until next time,

Tosca

Fewer workers test positive for drugs

The number of workers testing positive for cocaine and marijuana at work has dropped sharply since 1988, but the abuse of prescription drugs is a growing worry for employers, according to medical-testing company Quest Diagnostics Inc.

Quest examined results of more than 125 million urine drug tests performed by its labs across the country for government and private employers between 1988 and 2012. The company's testing services identify approximately 20 commonly abused drugs, including marijuana, opiates and cocaine.

The analysis examined the annual positivity rate for employees in positions subject to certain federal safety regulations, such as truck drivers, train operators, airline and nuclear power plant workers, and those working for private companies.

Key findings from the analysis:

- The positivity rate for the combined U.S. workforce declined 74%, from 13.6% in 1988 to 3.5% in 2012.
- The positivity rate for the federally-mandated safety sensitive workforce declined by 38%, from 2.6% in 1992 to 1.6% in 2012.
- The positivity rate for the U.S. general workforce declined by 60%, from 10.3% in 1992 to 4.1% in 2012.

But more workers are testing positive for prescription drugs. Specifically:

- Positivity rates for amphetamines, including amphetamine and methamphetamine, has nearly tripled (196% higher) in the combined U.S. workforce and, in 2012, were at the highest level since 1997. The positivity rate for amphetamine itself, including prescription medications such as Adderall®, has more than doubled in the last 10 years.
- Positivity rates for prescription opiates, which include the drugs hydrocodone, hydromorphone, oxycodone and oxymorphone, have also increased steadily over the last decade – more than doubling for hydrocodone and hydromorphone and up 71% for oxycodone – reflective of national prescribing trends.

The **Wall Street Journal** noted independent studies suggest that 65% to 80% of positive tests for amphetamine and opiate use ultimately are disregarded because the user has a valid prescription. But officials say the growing problem of painkiller addiction means employers need to be more alert to the possibility these drugs are being abused.

Calendar

March 26-28, 2014 — NC Association of Self-Insurers' Annual Conference. Holiday Inn Resort, Wrightsville Beach

April 2-4, 2014 — Members-Only Forum, SC Self-Insurers' Association. Litchfield Beach & Golf Resort

May 28, 2014 — NCCI's State Advisory Forum. Hilton Columbia Center, Columbia.

COMPNEWS

COMP NEWS
is published quarterly by the
SC Self-Insurers Association, Inc.

www.scselfinsurers.com

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Rates of serious workplace injuries vary widely by state

Rates of serious workplace injury and illness vary significantly between states—even for workers in the same industries—according to a report by Allsup, a nationwide provider of provider of Social Security and Medicare disability claim services.

States with the highest rate of workplace injuries that involve days of job transfer or restriction are:

1. Maine – 1.4 injury or illness cases with job transfer or restriction per 100 workers
2. Indiana – 1.1
3. California – 1.0
4. Connecticut, Kansas, Nevada, New Mexico, Oklahoma and Wisconsin – 0.9
5. Alabama, Iowa, Kentucky, Michigan, Missouri, Oregon, Pennsylvania, South Carolina, Tennessee and Washington – 0.8

The following industries have the highest rate of injuries:

- Amusement parks and arcades – 3.2 cases involving job transfer or restriction in 2011 per 100 workers
- Animal slaughtering and processing – 3.1
- Beverage manufacturing – 2.7; Foundries – 2.7
- Nursing care facilities – 2.6
- Beer, wine, and distilled alcoholic beverage merchant wholesalers – 2.4
- Motor vehicle body and trailer manufacturing – 2.3
- Hog and pig farming – 2.2; Motor vehicle manufacturing – 2.2; Community care facilities for the elderly – 2.2; Poultry and egg production – 2.2.

There may well be good reasons for varying rates of injuries among states, notes columnist Gary Belsky of **Time**. Some states may classify injuries more conservatively than others: a sprained toe or respiratory trouble in, say, Indiana may be tagged or treated more cautiously than in, say, Hawaii.

"The second factor, environment, refers to the real and significant differences between, say, driving a tractor in Appalachia and Iowa; big hills are a lot trickier to navigate than great plains. So some of the differences in the Allsup study are undoubtedly meaningful, while others are not," he adds.