

**Case Law Update –
Recent Worker’s Compensation
Decisions from Alabama Courts**

**Prepared for
Healthcare Workers’ Compensation Fund**

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Shadescrest Healthcare Center v. Patricia Holloway, ___ So.3d ___ (Ala. Civ. Appeals 2010) August 6, 2010.

Ms. Holloway was employed at Shadescrest Healthcare Center as a certified nursing assistant. In January 2001, she alleged slipped on a puddle of water and fell, injuring her back. She notified Shadescrest of the accident, but did not seek medical treatment until some 22 months later or in October 2002. She sought treatment from an employer-selected physician and ultimately, had surgery on the lumbar area of her back. She was placed at maximum medical improvement and referred for a functional capacity evaluation. She returned to work with permanent restrictions of light duty as a result of the functional capacity evaluation. In November, 2003, she was able to return to work at Shadescrest in a position which accommodated her restrictions. However, she only worked for two nights when she began experiencing pain and informed her supervisor that she would not be able to return to work.

Ms. Holloway then sued Shadescrest for worker's compensation benefits in which she claims she was permanently and totally disabled. At trial, she testified that because of her pain, her daily activities were limited and her sleep patterns were disturbed. There were two vocational experts called to testify at the trial, one on behalf of Ms. Holloway, who opined that she suffered a 100% loss of earning capacity and the second vocational expert was hired by Shadescrest and they opined that she suffered a 30% loss of earning capacity. After the conclusion of all the evidence, the trial court held that Ms. Holloway was credible and was permanently and totally disabled.

The employer appealed, arguing that Ms. Holloway refused reasonable accommodations and vocational rehabilitation. They also appealed on the grounds that the evidence was insufficient to establish that she was permanently and totally disabled. The Alabama Court of Civil Appeals considered the first argument of Shadescrest in that Holloway refused reasonable accommodation and vocational rehabilitation. The Court held that since Shadescrest failed to assert those arguments at the trial court level, they were precluded from appellate review.

The Court went on to hold that there was substantial evidence that was presented at trial to support the trial court's finding that Holloway was permanently and totally disabled and noted that the trial court gave considerable weight to Holloway's testimony, as well as her vocational expert's testimony. As a result, the

appellate court affirmed the trial court's judgment in that it was supported by substantial evidence and there was no reason to reverse.

White v. HB&G Building Products, Inc. ____ So.3d ____ (Alabama Civil Appeals 2010)

Jeff White was a work release inmate and employed by HB&G Building Products, Inc. In January 2007, he slipped and fell at work dislocating his right knee and was ultimately diagnosed with a patella dislocation. At the time of his diagnosis, he was not labeled as a surgical candidate and ultimately, returned to work at regular duty. However, in July 2007, White was dissatisfied with his treating physician and requested a panel of four. From the panel, he chose Dr. Dexter Walcutt as his new treating physician. Shortly after choosing a new doctor, Mr. White requested a change in jobs and was hired by Cutt's Restaurant. While working at the restaurant, Mr. White testified that his knee would swell and ache every day and he would develop leg cramps from standing.

After Mr. White visited Dr. Walcutt, the case manager for HB&G's worker's compensation carrier requested Dr. Walcutt to render an opinion as to whether Mr. White reinjured his knee, aggravated his knee, or sustained a new injury since leaving his employment with HB&G. Dr. Walcutt said he did not know whether Mr. White's knee problem was an old injury, a new injury, an aggravation or a reoccurrence. The trial court, under the "last injurious exposure rule" ruled that White had aggravated the injury he had sustained while employed at HB&G and that HB&G was no longer responsible for compensation benefits. Mr. White appealed this decision.

Under the last injurious exposure rule, the employer covering the risk at the time of the most recent compensable injury bearing a casual relation to the disability bears a responsibility to make the required workmen's compensation payments. If the second injury is a new injury or an aggravation of a prior injury, then the carrier at the time of the new injury is liable for the medical bills and disability payments. An aggravation only occurs when the "second injury contributed independently to the final disability". *Equipment Sales Corp. v. Quin*, 4 So.3d 1125, 1126-27 (Ala. Civ. App. 2008).

The Alabama Court of Civil Appeals refers to the trial court's ruling and focused on the fact that Mr. White's complaints of knee pain never resolved before he was treated by Dr. Walcutt. Furthermore, there was no evidence submitted by HB&G indicating that Mr. White suffered a new injury or a second injury or had cumulative trauma. The Court of Civil Appeals concluded that there was not

substantial evidence to support the trial court's finding and reversed the trial court's ruling and ordered a new trial.

Williams v. Valleyview Health and Rehabilitation, LLC ____ So.3d ____ (Ala. Civ. App. 2010).

Carolyn Williams was a licensed practical nurse employed by Valleyview Health and Rehabilitation, LLC. In September 2005, Ms. Williams claims to have suffered an asthma attack due to a reaction to certain chemicals used by the employer to strip and wax its floors. Ms. Williams filed a claim for workmen's compensation benefits for her injury, which she claims resulted from an incident in which the employer had notice.

The employer filed a Motion for Summary Judgment contending that the employee could not recover workmen's compensation benefits based on the fact that she could not produce substantial evidence indicating that she had contracted an occupational disease. Ms. Williams, disputing that contention, asserted that she could have contracted the occupational disease for a variety of reasons, but made no mention in her original contention that she suffered an injury as a result of the incident. The trial court granted Valleyview Health and Rehabilitation, LLC's motion and denied Ms. Williams' Motion to Reconsider.

The Alabama Court of Civil Appeals reversed the granting of the summary judgment because it did not include findings of fact and conclusions of law as required by Alabama Code 25-5-88. On remand, the trial court again entered an Order granting summary judgment in favor of the employer and complied with 25-5-88, which included findings of fact and conclusions of law. Ms. Williams again repeated her argument to reconsider, which the Court denied.

The appellate court found that Ms. Williams clearly sought relief based on an accidental injury theory that was contained in her Complaint. It went on to note that Alabama law has "long treated asthmatic episodes and similar adverse reactions to a one time work-related chemical exposure as accidental injuries". Furthermore, the appellate court noted that Ms. Williams' complaint did not allege relief based on an occupational disease theory, which was the sole basis of the employer's Motion for Summary Judgment. Since the employer failed to address the accidental injury allegation in the employee's Complaint, they failed to meet their burden to sustain summary judgment.

Ex Parte City of Prattville, ___ So.3d ___ (Ala. Civ. App. 2010).

James Pilson was a police officer for the City of Prattville. In January 2008, he was involved in an automobile accident during the course of his employment and the city received notice of the accident as required by the Alabama Workmen's Compensation Act. Due to the accident, Mr. Pilson was treated by Dr. James Carpenter, an authorized treating physician, however, he became dissatisfied with Dr. Carpenter and began seeing Dr. Danny Ingram, his family doctor, at his own cost. Dr. Ingram eventually referred Mr. Pilson to Dr. Patrick Ryan, a neurosurgeon.

In February 2008, approximately one month after the accident, Mr. Pilson asked his authorized treating physician, Dr. Carpenter, to refer him to Dr. Ryan. Dr. Carpenter did not make such a referral. Due to Dr. Carpenter's refusal to refer to Dr. Ryan, the employee requested a panel of four physicians from which he selected Dr. Daniel Banach. Mr. Pilson advised Dr. Banach of his treatment with Dr. Ryan and Dr. Banach twice urged the employer to allow him to refer Mr. Pilson to Dr. Ryan. The employer refused.

In May 2009, Mr. Pilson filed a Complaint seeking workmen's compensation benefits and also a Motion to Compel medical treatment. The employer responded by denying the compensability of the claim. The Court subsequently denied his motion to compel medical treatment. In December 2009, after the parties had conducted discovery, the employee renewed his motion to compel medical treatment. The employer moved for a final hearing and also moved for denial to compel the medical treatment. After a hearing, the trial court granted the employee's motion for medical treatment.

The employer filed a mandamus petition stating that the trial court committed error by authorizing Dr. Ryan's treatment of the employee because Dr. Banach, the authorized treating physician, never made a referral to Dr. Ryan, did not have the authority to make such a referral and could not make a referral to a physician by which the employee was already being treated.

The appellate court found that the trial court had sufficient evidence through written records and deposition testimony to conclude that Dr. Banach had the authority to refer the employee to Dr. Ryan. They ruled that because Dr. Banach was an authorized treating physician, the employer could not limit his power to refer the employee for reasonable medical treatment. Lastly, the Court held that the employee did not dispute compensability in its response to Mr. Pilson's renewed

motion to compel medical treatment. To the contrary, the employer stated in its response that the sole issue before the Court was whether the City of Prattville was responsible for treatments that were performed by Dr. Ryan. As a result of not contesting compensability in its response, the employer waived any argument it may have had regarding causation or compensability of the injury.

Johnson v. Lowe's Home Center, ___ So.3d ___ (Ala. Civ. App. 2010)

Dorin Johnson worked for Lowe's Home Center as a part-time employee. Ms. Johnson suffered an injury which arose out of and in the course of her employment in May 2008. In July 2008, she filed a claim against the employer seeking workmen's compensation benefits. Lowe's Home Center responded by denying the employee's claim asserting that the injury did not arise out of the course of her employment and denied that she suffered any disability.

After a compensability hearing, the trial court found the injury not to be compensable. The employee appealed the judgment and the Court of Civil Appeals reversed, citing §25-5-88, which requires that a judgment in a workmen's compensation case to contain findings of fact and conclusions of law. In this particular case, the trial court failed to make such findings and the decision was reversed.

City of Gadsden v. Scott, ___ So.3d ___ (Ala. Civ. App. 2010)

The City of Gadsden had an employee by the name of Lawrence Scott employed as a police officer. Mr. Scott claimed that after a superior police officer demonstrated a restraint technique on him, he injured his right wrist in August 2001. Mr. Scott did not report the injury at that time and just assumed that it would go away. His wrist began hurting again in 2004 and after seeing a doctor, filed his first report of injury with the employer on December 3, 2004. (This is over three years after the alleged incident which caused the injury.)

In the first report of injury, Mr. Scott stated that his injury occurred in August 2001 and the disability began in November 2004. He stated that he first notified the employer on November 24, 2004.

In December 2006, Mr. Scott filed a workmen's compensation Complaint against the City of Gadsden, claiming that working in the office required frequent movements of his hand which aggravated his injury and he could not perform his duties to the injury. A trial was held and the circuit court held that the employee had suffered a compensable injury in the form of cumulative stress injury to his right hand, which resulted in a 75% impairment to the right hand. The City of Gadsden appealed claiming that the employee did not prove causation under the Workmen's Compensation Act and did not provide proper notice of his injury.

The Court of Civil Appeals reversed the trial court and held that although a two year statutory of limitations period for cumulative physical stress injury begins to run the date of the employee's last exposure to the injurious job, the employee did not present sufficient evidence to support his claim that his injuries resulted from cumulative physical stress. The Court went on to hold that the trial court could not have been clearly convinced that the office duties Mr. Scott was performing presented risk of injury to his hand that were greater than the risk of such injury experienced by persons in their everyday lives. Furthermore and finally, the Court of Civil Appeals held that the employee's claim was not timely because he clearly did not notify the employer of his injury within 90 days of the 2001 incident.

Caseco, LLC v. Dingman, ___ So.3d ___ (Ala. Civ. App. 2010)

Mr. Dingman worked at Caseco as an ironworker. He claims that in April 2001, he was injured when approximately 3,000 pounds of iron bars fell on his left leg and ankle. Mr. Dingman was permitted to return to work in July 2001. However, by October 2002, Mr. Dingman complained that his ankle was causing him consistent pain and he was diagnosed with degenerative joint disease in his ankle. Between 2002 and 2008, Mr. Dingman had two ankle fusions and was prescribed narcotics to treat his pain and he was also treated for depression. During this same time period, he worked as a corrections officer and later, as a salesman. A trial was held regarding the compensability of his injury and he was awarded permanent total disability. Caseco appealed the trial court's decision.

On appeal, Caseco asserted that Mr. Dingman aggravated his injury while working for other employers. As a result of the aggravation, Caseco argued that it was not liable for the employee's treatment or disability under the "last injurious exposure rule". The Court of Civil Appeals agreed with the trial court and found that the employee's continued pain was a reoccurrence and did not contribute even slightly to the cause of his disability. Caseco also appealed the trial court's decision when it removed the ankle injury from the permanent partial disability schedule and classified it as an injury to the body as a whole. The Alabama Court of Civil Appeals rejected that argument and found that because there was evidence at trial which showed that Mr. Dingman suffered depression and that depression was due to his injury, then he suffered an injury to the body as a whole. It went on further to rule that it was not necessary that the injury be the sole cause of the depression. Finally, the Court of Civil Appeals affirmed the trial court's finding of permanent total disability citing the preponderance of the evidence.

Ex Parte Imerys USA v. Wilson, ___ So.3d ___ (Ala. Civ. App. 2011)

Mr. Wilson was working for Imerys USA when he injured his back in November 2006. Mr. Wilson decided originally to see his own doctor, but when that did not go well, he decided to select one from a panel of four orthopedics provided by his employer. Mr. Wilson chose Dr. Jones and was treated from January 2007 until April 5, 2007, when he was placed at MMI. Mr. Wilson was referred by Dr. Jones to a pain management specialist, Dr. Downey, who treated him until January 2008. At that time, Dr. Downey then referred him to another pain management specialist, Dr. Ryder. Dr. Ryder requested from the employer permission to refer Mr. Wilson to another orthopedist who was not from the panel of four to see if Mr. Wilson would be a candidate for back surgery. Imerys USA denied the authorization and wanted Dr. Jones to be the sole treating orthopedist. Furthermore, the employer wanted Dr. Jones to make the decision as to whether or not Mr. Wilson was a surgical candidate. Mr. Wilson decided to take matters into his own hands and sued the employer to compel the authorized treatment and the trial court granted the motion. Imerys USA appealed to the Alabama Court of Civil Appeals.

The Alabama Court of Civil Appeals reversed the trial court's granting of Mr. Wilson's request for authorization and held for the proposition that a specific purpose doctor, in this case, the pain management specialist, cannot make referrals for treatment that fall outside the scope of their specific purpose. The Court held, "a referral between doctors of different practices does not transfer to the referred physician the right to control all aspects of the employee's treatment. That is, the referred physician does not become the authorized treating physician for all purposes by virtue of the referral." In other words, Dr. Ryder, as a pain management doctor, only had authority to refer Mr. Wilson to other pain management doctors and nothing outside that specialty.

Ex Parte Tyson Chicken, _____ So.3d _____ (Ala. Sup. Ct. 2011)

Annie Ruth Gidon was employed with Tyson Chicken. Due to an on-the-job injury, Ms. Gidon filed a claim for workmen's compensation benefits against Tyson Chicken in Etowah County Circuit Court. Ms. Gidon lived in Etowah County, but was employed by Tyson at its production facility in Marshall County. Tyson's principal place of business was in Calhoun County. Tyson moved to transfer the action to Marshall County, the place of plaintiff's employment. After the trial court denied Tyson's motion, Tyson petitioned the Alabama Supreme Court for a writ of mandamus. The mandamus was based on the fact that Tyson's principal place of business was in Calhoun County, its production facility was in Marshall County and it did no business in Etowah County. As a result, the Supreme Court concluded that the defendant did not do business in Etowah County in a way to make venue proper under Alabama Code 6-3-7(a), therefore, the Alabama Supreme Court issued the writ of mandamus directing the Etowah County Circuit Court to transfer the workmen's compensation action to Marshall County Circuit Court.

Ex Parte Patton, _____ So.3d _____ (Ala. Sup. Ct. 2011)

Layna Brown was an employee of Patsy Patton, d/b/a Corner Store. Ms. Brown sued Corner Store seeking workmen's compensation benefits due to a fall that occurred at work. Corner Store moved for summary judgment, arguing that because the employee was unable to identify a work-related cause for the fall, there was no evidence to support a conclusion that the injury rose out of and in the course of her employment. The trial court granted summary judgment for Corner Store.

On appeal, the Alabama Court of Civil Appeals reversed, holding that an employee injured by an accident at work need only prove evidence showing that the accident occurred. Corner Store, disagreeing with this ruling, then filed a petition to the Alabama Supreme Court for certiorari review. The Alabama Supreme Court granted cert and concluded the Court of Civil Appeals' ruling was wrong and contravened the clear language of the Workmen's Compensation Act requiring that an accident must "rise out of and in the course of the employee's employment". Thus, the Alabama Supreme Court reversed the judgment of the Court of Civil Appeals and rendered judgment in favor of Corner Store.