UNDERSTANDING
GEORGIA WORKERS' COMPENSATION
A CLAIMANT'S GUIDE

Second Edition

CHRISTOPHER J. HUDSON

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About the Author

Christopher Hudson is an attorney with his principal office in Augusta, Georgia, who licensed in Georgia and South Carolina, and handles a variety of plaintiff personal injury matters. Chris has owned and managed his own law practice, Christopher J. Hudson, LLC, since July 2005. Chris concentrates his law practice on representing injured persons in the areas of automobile accidents, trucking accidents, motorcycle accidents, wrongful death, personal injury, and workers' compensation. Chris began his legal career in 2003, with Fulcher, Hagler, Reed, Hanks, & Harper, LLP, a medium-sized law firm in Augusta, Georgia, where he practiced civil litigation and workers' compensation defense.

In addition to his law practice, Chris is also the Chief Municipal Court Judge for the Cities of Blythe, Wrens, Waynesboro, and Stapleton, Georgia. Chris also served as an Associate Magistrate Judge For the Columbia County Magistrate Court from 2012-2017.

Chris was born in Augusta, Georgia in 1975, and has been a resident of Columbia County, Georgia, nearly all his life. Chris graduated high school from Lakeside-Evans High in 1994. Following high school, Chris attended Augusta State University for two years, and then finished his undergraduate studies at the University of Georgia, where he graduated in 2000 with honors and obtained B.A. in Political Science.

Following college, Chris attended Mercer University, Walter F. George School of Law in Macon, Georgia. During law school, Chris served as Managing Editor of the *Mercer Law Review*, and published a law review article entitled, "PGA Tour, Inc. v. Casey Martin, Reasonable Modifications under the ADA FORE the disabled." 53 Mercer L. Rev. 1717 (2002).

Chris graduated law school in 2003 and achieved the academic record of *cum laude*, finishing among the top 10% of his graduating class. Additionally, Chris received the following academic honors and recognitions: induction into the Brainerd Currie Honor Society; Faculty Award for Outstanding Achievement in Legal Writing; a certificate from the College's Nationally acclaimed Advanced Legal Writing, Research, and Drafting program; and CALI Awards for the highest grades in Advanced Legal Writing and Law Practice Management.

Chris is currently a Member of the State Bar of Georgia and South Carolina, the Augusta Bar Association, the Young Lawyers of Augusta, and the Council of Municipal Court Judges.

In his spare time, Chris enjoys spending time with his family and is an avid outdoorsman.

Chapter 1: Overview of Workers Compensation

§1.1 What is Workers' Compensation?

Georgia law protects employers from lawsuits against them for pain and suffering. Instead, when someone is injured on the job, he may file a workers' compensation claim against the employer. This is often referred to as the "exclusive remedy." This works in both the employer and employee's favor. When Georgia created its system of workers' compensation in 1920, it became unnecessary to show that the employer was in some manner negligent for an employee to collect benefits. Anyone who is covered by workers' compensation may collect benefits regardless of who was at fault at the accident (subject to certain defenses which will be explained below).

However, there are tradeoffs for allowing employees to collect benefits under workers' compensation regardless of fault. First and perhaps most importantly, an injured worker may not collect damages for "pain and suffering."[1] Instead, the employee is limited to certain benefits such as medical benefits, payments for being out of work, and payments for permanent disability. Also, an employee is not entitled to a jury trial to determine whether he or she qualifies for benefits and the amount thereof. Instead, these issues are decided by an administrative law judge (an "ALJ").

Potential Pitfall: Keep in mind however, that even though you may be limited in your ability to sue your employer for damages because you have workers' compensation benefits, you may still have a third-party claim. For example, if you are hurt on the job while driving a company vehicle, you may be entitled to both benefits under

[1] Doss v. Food Lion, 267 Ga. 312, 313 (1996).

workers' compensation and have a claim for personal injuries against the person who caused the accident.

§ 1.2 Am I Covered by Workers' Compensation?

Generally, an employer who has three or more employees regularly in service within the State of Georgia is subject to the workers' compensation act and must provide workers' compensation benefits to eligible employees.[2] The three employees must be employed at the time of the injury.[3] For purposes of calculating the number of employees, owners and corporate officers are counted.[4] Also, minors and undocumented aliens are counted as employees for purposes of determining whether an employer is subject to the Act.[5] The law covers "casual employees" such as employees who perform services on a temporary basis, as well as illegal aliens.[6]

An employer who is subject to the Workers' Compensation Act must cover you if you sustain an injury which "arises out of" and "in the course" of employment." Determining whether an injury arises out of employment can be highly technical, but generally, this means that there exists a causal connection between the employment and the injury.[7] For example, if one sustains a heart attack on the job, this would not arise out of employment unless the employee can prove that the job for some reason caused him to have a heart attack. On the other hand, if a meat cutter cuts his hand on a saw while on the job, this clearly would be an

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[2] O.C.G.A. § 34-9-2(a).
[3] Hale v. Kendrick, 95 Ga. App. 348 (1957).
[4] Hitchcock v. Jack Wiggins, Inc., 249 Ga. App. 845 (2001).
[5] O.C.G.A. Sec. 34-9-1(1) & Continental Pet Tech., Inc. v. Palacias, 269 Ga. App. 561 (2004).
[6] Maloney v. Kirby, 48 Ga. App. 252 (1934); Cont'l PET Technologies, Inc. v. Palacias, 269 Ga. App. 561 (2004).
[7] O.C.G.A. § 34-9-1(4).

injury that arises out of his employment as a meat cutter. Some injuries are not so easily determined. For example, the court has granted benefits to a school janitor who injured her knee while reaching down to pick up a pill that she dropped on the floor.[8] However, the court denied benefits to a nurse who injured her knee in a twisting incident after standing up and turning in a patient's room.[9]

An employee's injury must also occur in the course of his employment. "In the course of employment" generally means that the injury occurred within the time period of the employment, at a place where the employee may be in the performance of his duties, and while the employee is fulfilling those duties.[10] For example, an employee who is injured while going to or coming from work is not covered under workers' compensation (subject to some exceptions).[11] An employee who makes a deviation and detour from his employment would also not be covered.[12] For example, if a pizza delivery man decides after delivering his pizza to run across town to the mall to purchase a new pair of shoes, his employer is probably not going to be required to pay benefits if the pizza delivery man has a car accident on the way to the mall. The courts, however, have granted benefits to individuals who were injured while on the way into their workplace from their vehicle and on the way to their vehicle after their shift under the "egress/ingress" rule.[13]

Potential Pitfall: Injuries occurring during "rest breaks" or "lunch breaks" have been the subject of much litigation over the years.

[8] See Harris v. Peach County Bd. Of Comm'rs., 296 Ga. App. 255 (2009).
[9] See St. Joseph Hosp. v. Ward, 300 Ga. App. 845 (2009).
[10] See Thornton v. Hartford Acc. & Indem. Co., 198 Ga. 786 (1945).
[11] See Wilcox v. Shepherd Lumber Corp., 80 Ga. App. 71 (1949).
[12] See Travelers Ins. Co. v. Curry, 76 Ga. App. 312 (1947).
[13] See De Howitt v. Hartford Fire Ins. Co., 99 Ga. App. 147 (1959).

Whether an injury occurring while on break is compensable involves a highly fact specific analysis and is usually decided on a case by case basis. Factors include whether or not the break was scheduled and whether or not the employee was free to do what he or she pleased during the break. If you have sustained such an injury, you should consult a knowledgeable workers' compensation lawyer to gather all of the facts surrounding this type of injury.

§1.3 Can My Employer Deny My Claim due to a "Pre-existing Condition"?

Employers and insurance companies often attempt to deny workers' compensation claims on the allegation that the employee's condition is pre-existing. However, under Georgia law, it is not necessary for you to be in perfect health or free from disease at the time you receive an injury. The employer must take you as he found you when you were hired and assumes the risk that you may suffer an accident that will aggravate a pre-existing condition.[14] A common example of this is a situation in which someone has a pre-existing back condition, such as arthritis. If a lifting incident aggravates his back condition, the employer is responsible for the aggravation and must pay benefits.

Potential Pitfall: The employer is responsible for the aggravation of a pre-existing condition "only for so long as the aggravation of the pre-existing condition continues to be the cause of the disability."[15] If a pre-existing condition is identified in your case, the insurance company will work hard to find a doctor to state that

[14] See O.C.G.A. § 34-9-1(4); Griggs v. Lumbermens Mut. Cas. Co., 61 Ga. App. 481 (1939).
[15] O.C.G.A. § 34-9-1(4).

your condition has returned to "baseline" and attempt to suspend your benefits. It is important to have an experienced workers' compensation attorney who can be your advocate and prevent a wrongful suspension of benefits based on the insurance adjuster's opinion that you no longer suffer from the work accident.

Chapter 2: What Benefits are Available Under Workers' Compensation?

§2.1 Overview of Benefits

Workers' compensation law in Georgia specifies what benefits (both services and monetary) that are available to an injured worker. Unfortunately, you are not entitled to "pain and suffering" in a workers' compensation case. Also, an administrative law judge determines your eligibility for benefits and the amount thereof, as opposed to a jury. In a typical workers' compensation claim, you are entitled to three main benefits: medical benefits; wage loss benefits, which are called temporary total disability benefits (TTD) or temporary partial disability benefits (TPD); and permanent partial disability benefits (PPD). While settlement of workers' compensation claims is completely voluntary, many people choose to settle their claims after reaching maximum medical improvement.

§2.2 Medical Benefits

One of the primary goals of the Workers' Compensation Act (the Act) is to provide you the medical care needed to get you better and back to work. In this regard, if you are injured on the job, the employer must provide you with any necessary and reasonable medical treatment and

medications.[16] However, the treatment must be related to the on the job injury and prescribed by a physician who is "authorized." Generally, your authorized treating physician must be selected from a "panel of physicians" that the employer is required to maintain on their premises in an accessible location. This panel of physicians must meet certain criteria to be valid, including 1) it must have at least six physicians; 2) it cannot contain more than two "industrial clinics"; 3) it must have at least one orthopedic doctor; and 4) the panel of physicians must be posted in a prominent location on the employer's place of business.[17] An employee is entitled to select a physician on this panel and is also entitled to one "change of physicians" without authorization from the State Board of Workers' Compensation.[18] In addition, in certain circumstances, an injured employee may be entitled to an independent medical examination from a physician of his choosing.[19]

Potential Pitfall: The goal of many employers and their insurance companies is to get the employee back to work as quickly as possible without regard to the employee's ongoing complaints. In this regard, often employers will send employees to physicians or occupational clinics listed on the panel that are "employer and insurance friendly," which provide subpar care and send the employee back to work regardless of their ongoing complaints. It is very important to seek the advice of a skilled workers' compensation lawyer to determine whether the employer's panel of physicians is valid. If the

[16] See O.C.G.A. § 34-9-200. Please note that for injuries occurring after July 1, 2013, the Law now imposes a 400-week cap on medical benefits, unless the case has been designated "catastrophic."
[17] See O.C.G.A. § 34-9-201
[18] Id.
[19] See Waycross Coca-Cola Bottling Co. v. Hiott, 141 Ga. App. 600 (1977).

panel is not valid, then the employee is free to select a doctor of his or her choosing from the panel of physicians.

§ 2.3 Mileage Reimbursement

Many insurance companies will not tell you this, but if you are injured on the job and receiving medical care, you are also entitled to payment for mileage to and from your medical providers and pharmacy. This attorney recommends keeping a mileage form that states the date of your trip, the location of your trip (from your home), and the total mileage. As of the date of this publication, the mileage rate is $0.40 per mile.[20] Also, under Georgia law, the employer/insurer must pay your mileage within fifteen days of a properly submitted request or face a penalty.[21]

§2.4 Wage Loss Benefits

If you have sustained compensable injury and your authorized treating physician has taken you out of work, you may be entitled to loss wage benefits, which are referred to as temporary total disability (TTD). TTD does not necessarily mean that you are 100% physically unable to work. Rather, you must be prepared to show that you are either unable to return to your regular employment or unable to obtain employment in another occupation under the work restrictions you have been assigned by the authorized treating physician. Under the Georgia Workers' Compensation Act, you are limited to 400 weeks of TTD benefits, unless your case is designated "catastrophic."[22]

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[20] Board Rule 203(d).
[21] O.C.G.A. § 34-9-203(c) (1); Board Rule 203.
[22] O.C.G.A. § 34-9-261.

§2.5 Calculation of Wage Loss Benefit ("Compensation Rate")

The amount you receive if you qualify for weekly TTD checks is two thirds of your average weekly wage. The maximum amount you are allowed to receive in TTD for an injury after July 1, 2016, is $575.00 per week.[23] Georgia law requires the employer to calculate your average weekly wage using the thirteen weeks prior to the injury.[24] For example, if you have a gross income of $7,900.00 for the thirteen weeks prior to the injury, your average weekly wage is $607.69. Two-thirds of $607.69 is $405.13. Therefore, under this scenario, your weekly compensation rate is $405.13.

The law sets forth two additional methods to calculate average weekly wage if you have not worked substantially the whole of 13 weeks prior to the accident. The next method would be to take the average weekly wage of a similar employee.[25] If there is not a similar employee, then the law requires the employer to use a the full time wage, taking your hourly rate multiplied by the number of hours that constitutes a full-time week, which will typically be forty hours.[26]

Potential Pitfall: It is very important that you consult with an attorney to confirm that your compensation rate is correct. The value of your workers' compensation claim and the amount you may be entitled to in a settlement is determined significantly by your compensation rate. In this regard, the amount of your average weekly wage may also include bonuses, food and lodging allowances, automobile allowances, tips, and other stipends.

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[23] Id.
[24] See O.C.G.A. § 34-9-260.
[25] O.C.G.A. § 34-9-260(2).
[26] O.C.G.A. § 34-9-260(3).

§2.6 Temporary Partial Wage Loss (TPD)

Some injuries only cause a partial wage loss. If you are injured on the job but are able to return to work partially, then you would not be entitled to total wage loss benefits. Rather, you may be entitled to partial wage loss benefits, which are referred to as temporary partial disability benefits (TPD). For example, assume you work as a salesman and sustain an on the job injury that limits your ability to stand an entire 8 hour shift. Instead, your doctor says that you can only stand 4 hours per day. If you are only able to work 20 hours per week instead of your normal 40 hours per week, you may be entitled to temporary partial disability payments. Where an injured worker is entitled to temporary partial disability benefits, the amount of benefit is two thirds of the difference between the employee's average weekly wage before the accident and the average weekly wage after the injury.[27] The maximum amount you are allowed to receive for an injury after July 1, 2013, is $350.00 per week.[28] Finally, there exists a 350 week cap on temporary partial disability benefits, as opposed to the 400 week cap on temporary total disability benefits.[29]

§2.7 Permanent Partial Disability (PPD)

If you have sustained a degree of permanent disability due to your work injury, you may be entitled to permanent partial disability payments (PPD). PPD payments become due only if you have exhausted your 400 week temporary total disability benefits or 350 week temporary partial disability benefits or otherwise returned to work.[30] Under the Workers' Compensation Act, within 30 days after you are no longer

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[27] O.C.G.A. § 34-9-262.
[28] O.C.G.A. § 34-9-262.
[29] Id.
[30] O.C.G.A. § 34-9-263.

receiving TTD or TPD benefits, the employer or insurer must request an impairment rating from your authorized treating physician.[31] An impairment rating is simply the percentage of impairment you have to your body due to the work accident. Georgia follows a "schedule" that lists out the body parts and then states the number of weeks you would be entitled to if you sustained a total loss of that body part. For example, if your doctor states that you have 50% impairment to your right leg because you sustained a serious fracture, you are entitled to 50% percent of the maximum weeks for a leg injury. Because the maximum allowable for body loss to the leg is 225 weeks, you would be entitled to 112.5 weeks. The following is the Georgia schedule for permanent partial disability benefits:[32]

Body Loss		**Maximum Weeks**
(1)	Arm	225
(2)	Leg	225
(3)	Hand	160
(4)	Foot	135
(5)	Thumb	60
(6)	Index Finger	40
(7)	Middle Finger	35
(8)	Ring Finger	30
(9)	Little Finger	25
(10)	Great Toe	30
(11)	Any Toe Other than Great Toe	20
(12)	Loss of Hearing, Traumatic one Ear,	75

[31] O.C.G.A. § 36-4-263.
[32] O.C.G.A. § 34-9-263.

	Loss of Hearing Traumatic, both Ears	150
(13)	Loss of Vision of One Eye	150
(14)	Disability to Body as a Whole	300

Potential Pitfall: It is very important that you consult with an attorney to confirm your eligibility and amount of this benefit. The value of your workers' compensation claim and the amount you may be entitled to in a settlement is determined significantly by your impairment rating. A skilled workers' compensation attorney can ensure that your doctor is using the most recent literature necessary to give an accurate impairment rating and if necessary, seek a second opinion on the impairment rating.

§2.8 Lump-Sum Settlement of Workers' Compensation Claims

Settlement of a workers' compensation claim is completely voluntary for both the employee and the employer/insurer.[33] If you do not wish to settle your claim, you may continue to receive benefits (subject to the weekly caps on wage loss benefits). If the employer/insurer wishes to continue to pay benefits and not settle, the employer/insurer is free to continue to pay benefits without paying a lump sum. In most cases, the employer/insurer does want to settle your claim. However, the employer/insurer will only agree to a settlement amount that will save them money in the long term. For example, if the insurance company knows they will have to pay you $200,000.00 in weekly benefits over the next 7 years, the insurance company would never agree to write you a check for $200,000.00. Insurers typically try

[33] O.C.G.A. § 34-9-222(b).

to save money on claims by offering an amount less than the present value of what they calculate as their future exposure to benefits.

The key to maximizing the settlement of a workers' compensation is three-fold. This attorney usually explains how he intends to maximize his clients' settlement as follows. He has a "triple barrel shot gun". The first barrel represents the medical benefits. We are ready to load a slug into this barrel when you reach maximum medical improvement and we have a good idea firm grasp from the doctors of what future treatment will be necessary. The second barrel represents the wage loss benefits. My job is to convince the insurer that it will continue to have to pay benefits into the future and will not be successful in prematurely suspending wage benefits so long as you are still disabled. The third barrel represents your impairment rating. To maximize this category, we must have an objective impairment rating to calculate your future entitlement to permanent partial disability benefits. Sometimes that means finding a second opinion doctor or an independent medical examiner to give an objective view on your disability. After all three barrels are loaded, we are ready to fire and start settlement negotiations.

Chapter 3: Potential Defenses for Employers and Insurers

Under Georgia law, an employer/insurer may have a complete defense against a workers' compensation claim under the following circumstances: (1) willful misconduct; (2) intentionally self-inflicted injury; (3) attempting to injure another; (4) failure to use a safety device; and (5) intoxication.[34] Keep in mind that **the burden is on the**

[34] O.C.G.A. § 34-9-17.

employer/insurer to prove these defenses.[35] The following briefly summarizes these defenses:

§3.1 Employee Misconduct

In certain circumstances, misconduct may give the employer/insurer a defense to paying to paying workers compensation benefits, such being injured while violating a criminal law. This defense usually involves "horseplay" on the job. For example, if you are injured on the job while engaging in a drag race while running an employer errand, the employer is probably going to have a legitimate defense to the claim. However, the misconduct must be the "proximate cause" of the accident.[36] Proximate cause is a legal term, but generally means that the injury directly flowed from the misconduct.

§3.2 Intentionally Self-Inflicted Injuries

This section needs little explanation. Someone who intentionally injures himself probably is not going to receive workers' compensation benefits. For example, if one attempts to or commits suicide on the job, then the employer/insurer is probably not going to be required to pay benefits. Keep in mind, however, the distinction between self-inflicted and negligent accidents. Self-infliction indicates an intention to injure one's self. An accident occurring due to negligence is not intentional. For example, if you are a meat cutter and accidentally cut your arm with a meat saw, this was self-inflicted, but not intentional. You may have been negligent, but the accident would nonetheless be compensable.

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[35] Cornell-Young v. Minter, 168 Ga. App. 325 (1983).
[36] See Home Indem. Co. v. White, 154 Ga. App. 273 (1980).

§3.3 Failure to Use a Safety Device

In some instances, the failure to use a safety device may prevent an employee from receiving worker's compensation benefits. For an employer to prevail under this defense, the employer must show that (1) the employer provided a safety device or appliance; (2) the device or appliance was accessible to the employee; (3) the employee was aware of the availability of the device or appliance; (4) the employee was instructed to use the device or appliance; (5) the employee knew of the danger of failing to use the safety device or appliance; (6) the employee willfully refused to use the appliance or device rather than simply neglect or inadvertence; (7) an emergency situation did not warrant the use of the appliance or device.[37]

§3.4 Intoxication

Under Georgia law, an employee may be denied workers' compensation benefits if the employee (a) had ingested alcohol, marijuana, or had improperly ingested a controlled substance; (b) causing intoxication; (c) at the time of the accident; and (d) the accident was proximately caused by the employee's intoxication.[38] If a chemical analysis of an employee's blood, urine, breath, or other bodily substance shows an alcohol content of .08 grams or greater, there is a rebuttable presumption that the accident and injury were caused by intoxication and benefits.[39] If is shown by chemical analysis performed within eight hours of the injury that there was marijuana or the improper consumption of a controlled substance in the employee's system, a rebuttable

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[37] See Liberty Mutual Ins. Co. v. Perry, 53 Ga. App. 527 (1936). See also Herman v. Aeta Cas. & Sur. Co., 71 Ga. App. 464 (1944).
[38] See O.C.G.A. §34-9-17.
[39] See O.C.G.A. §34-9-17(b)(1).

presumption arises that the injury was caused by intoxication.[40] Finally, if an employee refuses to submit to testing (which must be performed in accordance with the manner set forth under O.C.G.A. § 34-9-415), then a rebuttable presumption arises that the injury was caused by intoxication.[41]

§3.5 Misrepresentation of a Prior Condition "Rycroft Defense"

In certain circumstances, an employee may be barred from collecting workers' compensation benefits if he or she misrepresents his or her condition while applying for the job. This defense is called the "Rycroft defense" because it was created by the Georgia Supreme Court in Georgia Electric Company v. Rycroft, 259 Ga. 155 (1989). For an employer to prevail under this defense, the employer must show the following (a) the employee must have knowingly and willfully made a false representation of his or her physical condition; (b) the employer must have relied on the false representation and this reliance must have been a substantial factor causing the employer to hire the employee; and (c) there must be a causal connection between the false representation and the injury.[42] An example of such a misrepresentation would be where an employee applied for a job as a delivery driver that required repetitive lifting of items weighing 50 pounds or more. However, the employee is under a doctor's care for a back condition and has work restrictions of no lifting over 20 pounds. If the employee misrepresents that he is under no work restrictions and then re-injures his back while lifting, the employer will attempt to avoid benefits based on the Rycroft Defense. However, if the employee injuries his foot while on the job, the

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[40] See O.C.G.A. §34-9-17(b)(2).
[41] O.C.G.A. §§ 34-9-17(b), 34-9-414, and 34-9-415.
[42] See Id.

employer probably would not prevail under this defense because there was no causal connection between the misrepresentation and the injury.

Potential Pitfall: Keep in mind that the employer has the burden to prove these defenses. Just because an employer has raised a defense does not mean you should throw up the white flag and abandon your claim. Every case is different and determined on a fact-by-fact basis. It is important to consult with an experienced workers' compensation lawyer to analyze the facts of your case to determine your potential eligibility for benefits.

Chapter 4: Catastrophic Benefits

In some instances, an injury may be so severe that the State Board determines the employee to be catastrophically injured. Examples of injuries that may be classified as catastrophic include spinal cord injuries causing severe paralysis; amputation of an hand, foot, arm, or leg; severe burn injuries; severe brain injuries; total or industrial blindness; or "any other injury of a nature and severity that prevents the employee from being able to perform his or her prior work or any work available in substantial numbers within the national economy."[43] The last example is called a "catch-all provision." Typically, to get a catastrophic award under this provision the employee must have been granted social security disability benefits in large part due to the work injury.

Potential Pitfall: Always consult with your workers' compensation attorney before making an application for social security disability benefits. Whether or not it is wise to make an application for

[43] O.C.G.A. § 34-9-200.1(g)(6).

social security disability benefits must be determined on a case-specific basis. In some circumstances, it can delay or even prevent the parties from settling the workers' compensation claim.

An injury that has been designated as catastrophic gives the employee additional workers' compensation benefits. First, an employer is required to provide rehabilitation benefits.[44] Examples of rehabilitation benefits include supplying a nurse case-manager or "rehabilitation supplier" to deliver and coordinate services under a rehabilitation plan; vocational counseling; alternative job training or education, and additional services as ordered by the Board. Second, under some circumstances the employer can reduce wage benefits from temporary total disability to temporary partial disability if the employee has been released to light duty by the authorized treating physician. However, the employer may not do so if the case has been designated catastrophic.[45] Finally, if the claim is designated catastrophic, the employee is not subject to the 400 week cap on temporary total disability wage benefits.[46]

Chapter 5: Death Benefits

The death of an employee on the job is a devastating event, especially when dependents are involved. One of the purposes workers' compensation law is to provide benefits to the dependents of employees whose death results from a compensable injury. To recover death benefits, the claimant has the burden to prove that the injury was the result of an accident arising out of and in the course of employment.

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[44] See O.C.G.A. § 34-9-200.1.
[45] See O.C.G.A. § 34-9-104(a)(2).
[46] See O.C.G.A. § 34-9-261.

However, it is not necessary that the job injury be the sole cause of the employee's death. The injury may have simply triggered or aggravated a condition that contributed to the employee's death. Moreover, if an employee's death is unexplained, a presumption exists that the death was caused by the employment if the employee is found in a place that he might reasonably be expected to be in the performance of job duties.[47]

The Act provides three main benefits upon the occurrence of a compensable death claim: (1) expenses occurring on account of the employee's last sickness; (2) burial expenses not to exceed $7,500.00; and (3) weekly monetary benefits for the employee's dependents, if any. The Act classifies dependents as primary beneficiaries and secondary beneficiaries. While a primary beneficiary is receiving benefits, secondary beneficiaries do not receive benefits. For example, a minor child is a primary beneficiary, and if the child is receiving benefits, a dependent mother of the deceased would not be entitled to recover so long as the child was a primary beneficiary. Assuming that the dependent is was totally dependent upon the employee's earnings for support, the dependent may receive the amount of compensation the employee would have received for so long as the individual is classified as a dependent. Generally, a dependent child is one that is under the age of 18 years old or enrolled full time in high school or under the age of 22 and enrolled in postsecondary higher learning. Benefits paid to a surviving spouse continue for 400 weeks, but may be terminated upon remarriage, cohabitation in a meretricious relationship, or reaching the age of 65. Additionally, the total maximum amount payable to a surviving spouse is $125,000.00.

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[47] See Zamora v. Coffee General Hospital, 162 Ga. App. 82 (1982).

Potential Pitfall: In addition to determining who qualifies as "dependent," the Act makes a distinction between partial and full dependency and these issues can get complicated. If you have lost a loved one due to an on the job injury, this attorney recommends that you seek an experienced workers' compensation attorney to review your circumstances to determine the full extent of compensation available.

Chapter 6: Notice of Injury and Statute of Limitations

§6.1 Notice of Injury Requirement

An injured employee or his/her representative must give the employer notice of the injury "immediately on the occurrence of any accident or as soon thereafter as practicable," but in no event later than "thirty days after the occurrence of an accident or within thirty days after death resulting from an accident."[48] Failure to provide timely, proper, and sufficient notice of injury to your employer can result in the denial of your claim.[49] The Act states that notice is to be given to the employer, his agent, representative, or foreman, or the immediate supervisor.[50] The Act does not require you to give both personal and written notice, although if you do give written notice, you must include (a) your name and address; (b) the time, place, nature and cause of the accident; (c) signed by you or if it is a death case, by one or more of the employee's dependents or a person acting on their behalf.[51] The written notice must be either mailed

[48] O.C.G.A. § 34-9-80.
[49] O.C.A.A. § 34-9-80.
[50] Id.
[51] O.C.G.A. § 34-9-81.

by statutory overnight or certified mail or personally given to the employer or someone authorized to receive notice.[52]

The notice requirement allows the employer to investigate the circumstances of the accident and provide early treatment to try to minimize the severity of the injury. The notice requirement also helps prevent fraudulent workers' compensation claims. Failing to give a notice of an accident within 30 days may bar an employee from receiving benefits. However, there are exceptions to this rule, including 1) where the employee is prevented from giving notice due to physical or mental incapacity; 2) the employee is prevented from giving notice by fraud or deceit; 3) the employer already had knowledge of the injury; or (4) the employee has a reasonable excuse and the employer has not suffered any prejudice by the failure to give notice.[53]

§6.2 Statute of Limitations

Claims for benefits under the Georgia Workers' Compensation Act are subject to the applicable "statute of limitations." Simply put, a statute of limitations means that unless you file a claim for benefits within the time required by law, you are forever barred from bringing a claim for workers' compensation benefits. "Filing a claim" means filing out a Form WC-14 (which can be found on the Georgia State Board of Worker's Compensation's webpage)[54] and delivering it to the State Board of Workers' Compensation. A claim is deemed to be filed on the earlier of (1) the date the claim was actually received by the board; or (2) the official postmark date the claim was mailed, properly addressed,

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[52] Id. See also William L. Bonnell Co. v. McKoon, 184 Ga. App. 516 (1987).
[53] O.C.G.A. § 34-9-80.
[54] See www.sbwc.georgia.gov.

postage prepaid, by certified mail or statutory overnight delivery.[55] Please note that the claim must be filed not on the date the statute runs, but before the date on which the statute runs.[56]

Claims for Initial Benefits—New Claims. To receive benefits under the workers' compensation Act, you must file your claim with the Georgia State Board of Workers' Compensation within one year after the injury. However, if the employer has provided you medical treatment for your injury, you have one year from the last date the employer provided you treatment. For example, you injure your foot on the job and the employer provides you medical benefits for several months after the accident, but fails to provide you income benefits, you may file a claim for your income benefits within one year of the last date the employer provided treatment for your foot. Moreover, if the payment of weekly benefits has been made, the claim may be filed within two years of from the last payment of weekly benefits.

Claims for Additional Benefits—"Change of Condition Claims"

The Workers' Compensation Act has an additional statute of limitations for claims for which income benefits have been previously paid. For claims involving accidents after July 1, 1990, forward, a claim for additional benefits (change of condition) must be filed not more than two years from the date the last payment of temporary total or temporary partial benefits were paid.[57] However, a claim solely for permanent

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[55] O.C.G.A. 34-9-100(e).
[56] Chevrolet Parts Div., General Motors Corp. v. Harrell, 100 Ga. App. 280 (1959).
[57] O.C.G.A. 34-9-104(b).

partial disability benefits must be filed not more than four years from the last payment of temporary total or temporary partial disability benefits.[58] ***Potential Pitfall: These are merely general guidelines. Calculating the statute of limitations for a specific case can be extremely complicated. Several different statutes of limitations apply in workers' compensation cases depending on the situation. Moreover, the law provides some exceptions to a claim for benefits that has not been timely filed. It is very important that you seek advice immediately after your accident from an experienced workers' compensation attorney to make sure the statute of limitations is calculated for your specific circumstance.***

§6.3 Surveillance

The goal of the insurance company in your workers' compensation case is to defend the claim and pay as little out on your claim as possible. Remember, insurance companies are for-profit entities, and will pull out all of the stops to save money, including placing you under surveillance. After you file a claim for benefits, it very common for the insurance company to hire a private investigator to follow you around for a period of time and observe your activities. If you are caught on camera engaging in an activity that is contrary to your work limitations or contrary to the complaints you are making, the employer/insurer will file for hearing and ask a judge to suspend your benefits.

The bottom line: I tell my clients to live your life to the best you can despite your injuries and do not let the fear of surveillance cause you to constantly look behind you or cause excessive worry. Just DO NOT engage in any activity that is contrary to your work restrictions or

[58] Id.

your complaints of pain. Otherwise, you will jeopardize your claim for benefits and a potential settlement.

Chapter 7: Hiring an Attorney For Your Claim

§7.1 Do I Need an Attorney?

Many people after an accident believe that an insurance company, in a benevolent fashion, will pay all workers' compensation benefits in a fair and prompt manner. In this author's opinion, this is far from the truth! Insurance companies are for-profit enterprises whose goal is to make as much profit for their shareholders as possible. The motto of many insurance companies is to:

1) **Deny** the claim altogether; and when that tactic no longer works;

2) **Delay** the claim as long as possible; and then,

3) **Defend** the claim and try to discredit the claimant and pay as little damages as possible.

Here is a typical scenario: **Deny.** You are involved in an on the job accident where you hurt your back lifting an object just before the end of your shift. Because it was the end of the day, you wait until the next day to tell a supervisor. The insurance company at this time might use this delay as a tactic to attempt to deny that you had a job injury—claiming that you "could have sustained that at home." However, you bring forth a co-worker to corroborate your accident. At this time, the insurance company may go into **delay** mode. During this time, the insurance company may ask you to fill out irrelevant documents and request medical records for unrelated conditions. They then undergo a "review process" of the medical records and documents requested. Once

the insurance company has completed their review of your claim, then they move into **defend** mode. Their goal is to use whatever documentation they have gathered in an attempt to discredit your claim and offer you the least amount possible. For example, the insurance company will use an authorization to request medical records against you by looking through voluminous amounts of prior records in hopes they will find some reference to a condition that they can say is contributing to the problem you are complaining of. The most common claim by the insurance company is that you had a "pre-existing condition" so we are only going to pay you XX weeks of benefits.

The bottom line: If you do not have an attorney, many insurance companies will take advantage of you. They know that you do not have the training in the rules of civil procedure, evidence, and the knowledge of workers' compensation law. It is not easy for you force them to do the right thing and pay your benefits. Having a lawyer on your side early places the insurance company on notice that if it does not pay your benefits, you have the ability to enforce your rights in the courtroom. Having an experienced workers' compensation lawyer levels the playing field and is likely to add significant value to your claim.

§7.2 What will an Attorney Cost?

An attorney who undertakes to represent a claimant in a workers' compensation claim is employed under a contingency agreement. This means that the attorney will not collect anything until he or she secures an award of weekly benefits or settlement of the claim. Under Georgia law, an attorney may not charge more than 25% of your weekly benefits or settlement for any accident which occurred on or after

July 1, 1992.[59] In addition, an attorney may not charge a fee of over $100.00 without the approval of the State Board of Workers' Compensation. Keep in mind, however, that attorney fees and attorney costs are separate items. Most attorney fee contracts also provide that any costs that are advanced by the attorney (such as copy costs, medical records requests, expert opinions) will be reimbursed from your settlement.

§7.3 Beware of (Some) TV attorneys!

Let me first say that not all TV lawyers fit the mold I am about to describe, but BEWARE of anyone on TV waving around checks and using gimmicky slogans. Years ago, when I began practice, I worked approximately one year on the insurance defense side. After making the decision to represent the injured, I opened my own practice. However, most of the cases were going to the TV lawyers, and I spent several months watching my phone and praying for it to ring. One day, my phone did ring, and it was one of the famous TV lawyers, who asked me to go to lunch with him. I readily agreed, hoping he would impart just a sliver of advice to help my struggling law practice. This turned out to be the best lunch I had. After this lunch I learned a lot about the real practice of law and how to *not handle cases.*

After finishing lunch, the TV lawyer looked at me with a long face and stated, Chris, I have too many cases right now, and I am either going to have to fire some clients or refer some cases out to another lawyer. I readily agreed to take some of these cases and share the fees. At that time, I walked to his vehicle and he opened his trunk, and STACKS of files began falling into my arms! At that moment I went

[59] O.C.G.A. § 34-9-108.

from having no cases to many, many cases to work on. I settled the majority of these cases by notifying the insurance company of my involvement and forwarding them a copy of a lawsuit filed on the clients' behalf. All I had to do on many of these cases is simply take the time (and money) to file a lawsuit and miraculously I would receive a call from an adjuster who increased their settlement offer to something reasonable and the case settled.

What I learned from this experience, and what you should know, is that this TV Lawyer was **not willing** to go the extra distance for his clients and file a lawsuit if the insurance company was being unreasonable. He simply did not have the time to go the extra distance for his clients. He was not a trial lawyer; he was simply a settlement lawyer.

TV lawyers often get numerous calls about accidents. Instead of meeting with the potential clients, many TV lawyer send "runners" or "investigators" (non-lawyer employees) out to the injured parties' home or the hospital and sign them up. The TV lawyer then requests the medical records and files a claim with employer's insurance company. However, if the insurance adjuster does not offer the client enough to settle, the TV lawyer fires the client or refers him out. Believe me, the insurance companies know which lawyers are willing to fight for your rights, and which lawyers do not either have the knowledge, skill, or time to go to court on your behalf.

Potential Pitfall: This attorney knows of several attorneys who do heavy advertising in this attorney's geographical area, including billboards, phone book, TV, who are not from this area, do not regularly maintain an office in the area, and do not personally meet with their "clients." They simply have an office and have a staff

member meet with their "client" and never get to actually meet with an attorney. Meeting and discussing your case with a legal secretary, investigator, or "runner" is no substitute for sitting down with an experienced workers' compensation attorney who is accessible and will meet with you to discuss your case.

§7.4 Getting a Second Opinion

Some people make the mistake of hiring the lawyer they see on TV, sign up with the TV lawyer's "investigator," never get to speak with a lawyer, and later find out the firm does not actually go to court. Some people hire an attorney who will not return their calls promptly, or keep them abreast of what is going on with their case. Sometimes it may feel that your case simply is not going anywhere. In these situations, keep in mind that you **can fire your attorney at any time. You do not have to accept and keep a sorry lawyer.** Within reason, you should expect to receive a return call from your lawyer within 24 hours. You should also expect to be able to meet with him or her personally, to discuss your case. Prior to firing your lawyer, however, you may want to seek a second opinion with another lawyer. Under the Georgia Professional Rules of Ethics, lawyers are allowed to meet with prospective clients and give you a confidential second opinion.

Your current attorney may be entitled to reasonable attorney fees for the efforts he or she has placed in your case. It all depends on the contract you signed with your former attorney. Some contingency fee contracts include a provision where if you fire your attorney and retain another attorney, your former attorney has a right to charge for his or her services. Some agreements also state that your former attorney may be entitled to his percentage of the amount of the last offer of settlement in

the case. In any event, these issues can usually be resolved between your new attorney and the former attorney.

The bottom line: If your attorney is sorry, get a second opinion and upgrade. There is no reason that you should be stuck with an incompetent or lazy attorney.

§7.5 Questions to ask Before Hiring an Attorney

When you contact a lawyer, please remember that you are the customer. You are entitled to a quality service. Prior to signing a fee contract with a lawyer or law firm, make sure you meet with an actual lawyer, not an investigator, his assistant, or a "runner." When you meet with the lawyer, ask the following questions, and do not settle for someone who cannot answer them to your satisfaction:

- Is this a free consultation?
- Will you be the actual attorney responsible for my case?
- What is your plan to pursue my claim?
- Do you return your calls promptly?
- Do you have time to start work on my case now?
- Are you willing to take my case to Court if the insurance company does start my benefits?
- How many cases have you taken before the State Board of Workers' Compensation?
- What type of success have you had on cases?
- Will you front any costs associated with pursuing the claim or do I need to come out of pocket for my medical bills and other fees?
- Have you spoken in any seminars or published any books, journals or articles on workers' compensation claims?

Many insurance companies set “reserves” on claims soon after workers’ compensation accidents. This means that the company allocates a certain amount of dollars towards the claim, and once the reserve is set, the insurance company fights hard to settle the claim within the reserve amount. The reserve is based on numerous different factors. An insurance company that is placed on notice early on that you have a competent attorney who is willing to force them to pay all benefits required under the law is most certainly a factor in an insurance company’s evaluation of a the value of the claim. Therefore, choose your attorney wisely.

PLEASE NOTE:

The content provided in this book is not case specific and should not be considered legal advice. This book was written to help illustrate the process and the events that surround a workers' compensation claim. In the event that you are injured on the job, you should consult with an attorney about your case and not rely on the information provided in this book.

Christopher J. Hudson, LLC
Gateway Professional Center
4141 Columbia Road, Suite C
Augusta, Georgia 30907
Telephone: 706-863-6600
Fax: 706-863-6698
chris@chrishudsonlaw.com

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