

# The Workers' Compensation Claim

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*"The world is a dangerous place, not because of those who do evil,  
but because of those who look on and do nothing."*

*-- Albert Einstein*

The term "workers' compensation" often carries with it a sense of confusion and frustration for many Employers. In fact, Employers avoid workers' compensation like the plague.

Given the limited time, the purpose of this paper is to familiarize yourself with the confusing world of workers' compensation and provide you with a set of tools that will assist you in processing these claims as a lawyer, legal assistant, or paralegal.

### A Brief Look to the Past

Prior to 1920, a Georgia employee who injured himself on the job was forced to file a civil suit against his Employer under a negligence theory. As with other suits, the Employer often invoked the traditional defenses of contributory negligence, fellow servant doctrine, and assumption of risk doctrines to defeat the Employee's claim for lost wages and medical expenses.

Given the climate of the industrial revolution and the effective denial of benefits to workers, a 'humanitarian movement' started to shift the balance of the power. The first Georgia workers' compensation statutes were passed in 1920 which established Employers to be liable ***without regard to the Employee's fault or negligence.*** These statutes expedited the resolution of the cases and, in theory, allowed the Employees the necessary resources to return to work. In turn, Employers enjoyed the

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fact that Employees were restricted to an “exclusive remedy” under the workers’ compensation law. These workers’ compensation remedies were statutory in nature and did not contain a ‘pain and suffering’ component to recovery. This “quid pro quo” arrangement is common in many jurisdictions around the nation.

### **A Look at Today’s Landscape**

The Workers’ Compensation Act is found at O.C.G.A. § 34-9- et al. As it is an administrative system, the cases are heard all around the State before numerous administrative law judges who have been appointed by the Chairperson of the State Board of Workers’ Compensation. The Board has adopted the discovery provision of the Civil Practice Act and the hearings abide by the rules of evidence. However, the overall system is Board Form and Board Rule driven. By its very nature, it is deceptively complex and, not unlike other specialty areas of law, not completely intuitive. Nevertheless, the “quid pro quo” arrangement remains intact and the ‘exclusive remedy’ is preserved.

### **Who is Required to Have Workers’ Compensation?**

Employers are required to provide prompt medical and disability benefits to Employees for injuries sustained on the job, resulting in partial or total incapacity or death. Every employer, individual, firm, association, or corporation, regularly employing three (3) or more persons, part-time or full-time, shall provide workers’ compensation insurance coverage.

Employers subject to the workers' compensation law must insure payment of benefits to injured workers by securing a casualty policy of insurance or by qualifying as a self-insurer.

Corporate officers and limited liability company members are considered employees of the company. Any officer or member of a limited liability company (maximum of 5) may exempt themselves from coverage by filing a Form WC-10 with their insurance company. The exemptions shall not decrease the number of employees for purposes of determining the Employer's obligations under the Workers' Compensation Act.

Generally, an "Employee" or "worker" includes every person, including minors, working full-time or part-time under a contract of hire, written or implied. This very broad definition is often interpreted by the common law principals of Agency. It is a long-standing principal that any doubt is to be resolved in favor of the existence of the employer/employee relationship. See, Travelers Ins. Co. v. Moates, 102 Ga. App. 778 (1960). However, the Act specifically does not recognize independent contractors as employees.

In the event that the Employer elects not to secure proper workers' compensation insurance, the Employer shall be held responsible for compensable injuries in the same manner as an employer having coverage. In addition, the Board may assess attorneys' fees, civil penalties and a 10% increase in compensation to the Employee.

## **Essential Elements of the Workers' Compensation Claim**

Fundamentally, an employment relationship must exist where upon the Employer must have and exercise control and dominion of the employee. O.C.G.A. § 34-9-1. This analysis is very fact sensitive and there is no bright line test. The State Board will consider factors such as the (1) intention of the parties; (2) contract for employment; (3) method and manner of payment; (4) handling of taxes; (5) control of schedule; (6) use of specialized equipment; and (7) worker attire. Workers' compensation does not extend to "independent contractors".

Presuming the employment relationship exists, the law provides that an "injury by accident arising out of and in the course of employment" shall be considered a workers' compensation injury. O.C.G.A. § 34-9-1(4). Hence, the Employee must show that she suffered an (i) injury by accident; that (ii) arose out of employment; AND was (iii) in the course of employment. To be successful, the Employee must meet all three prongs.

The term "injury by accident" is very broad. Essentially, the Employee must have suffered an initial physical injury that was not intentionally inflicted.

The term "arising out of employment" has been interpreted to refer to the causal relationship between the work and the resulting injury. Moreover, the term "in the course of employment" refers to time, place, and circumstances under which the accident took place. These terms are not interchangeable. Lee v. Middleton Loggin Co., 198 Ga. App. 585 (1991).

Given our global economy, litigation has arisen as to the parameters where employment ends and the Employee's personal life begins. The doctrine of

“continuous employment” has been an evolving area of the workers’ compensation landscape. Most recently, the Georgia Supreme Court has ruled on this issue in Ray Bell Construction v. King, 281 Ga. 853; 642 S.E.2d 841 (2007).

A frequent question is whether a psychological injury is covered under the system. The quick answer is yes, provided that it stems from an acceptable physical injury and the treating physicians relate the need for psychological treatment to the physical injury. Abernathy v. City of Albany, 269 Ga. 88 (1998).

### **What Benefits May the Employee Receive?**

Employees are potentially entitled to the Five Pillars of Workers’ Compensation: (i) Temporary Total Disability; (ii) Temporary Partial Disability; (iii) Permanent Partial Disability; (iv) Medical care / treatment; and (v) Rehabilitation care and counseling.

Assuming the claim is compensable, the Employee may receive two-thirds of his average weekly wage, but not more than \$500.00 for an accident which occurred on or after July 1, 2007.

Employees are entitled to weekly income benefits if they are unable to work for more than 7 days. The first check should be mailed within 21 days after the first day of missed work. If the Employee misses more than 21 consecutive days, then he will be paid for the first week.

In terms of medical treatment, the Employer or workers' compensation insurance carrier will pay for the authorized medical treatment if the treatment was for an on-the-job injury. These expenses generally include hospital bills, physical

therapy, prescriptions, and necessary travel expenses if the injury or illness was caused by an accident on the job. These medical benefits last until the injury has resolved or in some cases for the Employee's life.

If the Employee is able to return to work at the regular pay, then the income benefits should be suspended. However, if the Employee returns to work at a lesser rate of pay, then he may be entitled to receive a reduced benefit based upon his earnings. This benefit will not exceed \$300.00 if his accident occurred on or after July 1, 2005.

These income benefits may last up to 400 weeks, or 350 weeks if the Employee has been reduced to Temporary Partial Disability benefits. O.C.G.A. §§ 34-9-261 and 262. If the injury is severe and the Employee may never return to work, she may be entitled to lifetime income benefits.

In certain circumstances, the authorized treating physician may determine that the Employee is entitled to an "impairment rating" in proportion to the diminishment of the normal use of their body. These ratings are based upon Guides to the Evaluation of Permanent Impairment, 5<sup>th</sup> Edition, published by the *American Medical Association*. In these cases, the legislature has devised a compensation system that works in conjunction with the physician's rating. O.C.G.A. § 34-9-263.

In the worst case scenario where an Employee dies as a result of the work injury, the Employer would be responsible for certain burial and funeral expenses. Also, the Employee's dependents may be entitled to benefits.

## **What are the Employer's Rights and Duties?**

Along with the shield against tort claims that arise out of and the course of employment, Employers have the unique right of controlling who the injured Employee treats with after the accident. The Employer is required to post a list of physicians who the Employer has confidence will treat its Employee's fairly. This list of often referred to as the "Panel of Physicians."

Employer may maintain a *traditional panel of physicians* that shall consist of at least six (6) non-associated physicians. Employers are allowed to have more than six physicians on this panel as well. The minimum panel shall include an orthopedic physician, and no more than two physicians shall be from industrial clinics. This panel shall include a minority physician, where feasible.

Employers may maintain a list of physicians that shall be known as the *conformed panel of physicians*, which shall include a minimum of 10 physicians or professional associations. The physicians and groups listed on the panel shall be counted as a separate choice from the others listed only if they are not associated with other physicians or groups on the panel. This panel includes the same physicians required in the traditional panel, plus a chiropractor and a general surgeon.

Finally, Employers may contract with a Workers' Compensation *Managed Care Organization* (WCMCO) certified by the Board. A "WCMCO" provides for the delivery and management of treatment to injured employees with a complex network of physicians. The WCMCO sets its own rules and regulations for treating the Employees.

As a matter of course, Employers must post the panel in prominent places around the work area or in the case of a WCMCO, provide a toll-free number to every Employee where she can facilitate treatment. Moreover, Employers must fully explain the purpose of the panel to all Employees and must assist Employees in obtaining medical care when an injury occurs.

An Employee may select any physician on the panel and may make one change to another physician on the panel without approval of the Employer. Further changes require approval of the Board or by agreement of the parties.

### **Jurisdiction and Adjudication**

As we mentioned earlier, virtually all physical injuries that occur on the job may be subjected to the Workers' Compensation laws. In fact, the injured employee's only remedy against the employer will likely be worker's compensation benefits. If the accident and injuries are caused by a third party, the exclusive remedy of the workers' compensation Act does not preclude action against the third party. However, it does provide an avenue for the employer's subrogation to the third party suit.

The Georgia State Board of Workers' Compensation was created by the Georgia Assembly under O.C.G.A. § 34-9-40 to be:

“within the executive branch . . . composed of three members who shall be appointed by the Governor for a term of four years. Each member shall hold office until his or her successor shall have been appointed and qualified. An individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he or she shall succeed.

This Workers' Compensation Act also vested that the State Board certain administrative powers:

“The board shall have full authority, power, and the duty to promulgate policies, rules, and regulations for the administration of this chapter. The board may promulgate policies, rules, and regulations concerning the electronic submission to and transmission from the board of documents and filings.” Id.

Furthermore, the enabling act created the means for adjudicating matters before the State Board. The Act mandates that a “trial division and an appellate division, which shall exercise judicial functions in implementing” the Act. See, O.C.G.A. § 34-9-47.

The trial division consists of *administrative law judges* (ALJ) appointed by the board. These ALJ’s are serving as hearing officers and exercise judicial functions in implementing the Workers’ Compensation Act. These ALJ’s possess the power to subpoena witnesses; administer oaths; and may take testimony in workers’ compensation cases. These administrative hearings before the trial division ALJ will always be a bench trial. There is no jury. Also, the parties may issue “discovery” to other opposite and non-parties so that they can prosecute or defend their interests.

The board does not have the power to order imprisonment as a means of enforcing a subpoena. O.C.G.A. § 34-9-60. The ALJ’s function hearing is to make an award, subject to review and appeal. This Award must be in writing and the ALJ must articulate his or her findings of fact and conclusions of law. If there is a dissatisfied party, it may appeal the Award.

The appellate division is composed of the three members of the State Board. The chairperson serves as chief ALJ of the appellate division. An ALJ may be appointed by the board to serve as a member of the board to review cases on appeal. However, the ALJ who served as the hearing officer in a case may not serve as a

member of the board to review the same case on appeal. Generally, the appellate division may vacate or adopt the trial division's award.

The parties may also appeal the award further to the Superior Court, the Georgia Court of Appeals, and Georgia Supreme Court.

### **Practical Tips**

#### **Statutes of Limitations for Filing a Claim**

An injured employee is responsible for giving notice to his or her employer of an injury immediately thereafter or as soon as practical. O.C.G.A. §34-9-80. The notice must be given to the “employer, his agent, representative, or foreman, or the immediate supervisor.” O.C.G.A. §34-9-80. If the employee fails to give notice to the employer of the accident in person within 30 days thereof, the employee then must notify the employer in writing of the same. O.C.G.A. §34-9-80. The written notice of the accident must state the name and address of the employee injured, as well as “the time, place, nature, and cause of the accident and the resulting injury . . . and be and be signed by the employee.” O.C.G.A. §34-9-80.

Theoretically, an employee will be barred from claiming workers' compensation benefits if the notice requirement is not met. Dugger v. North Brothers, Co., 172 Ga. App. 622 (1984). However, the reality is that it is very difficult for an employer to successfully deny benefits based on “lack of notice.” Georgia courts have construed the notice requirements of O.C.G.A. §34-9-80 very liberally in favor of the employee. See, Gossage v. City of Dalton Fire Dept., 257 Ga. 430 (1987); Jones v. Fieldcrest Mills, Inc., 162 Ga. App. 848 (1982). It will be only the most egregious

instances where the State Board of Workers' Compensation finds that there was a sufficient lack of notice to the employer to bar compensation for an injury.

The statute of limitations for a claimant filing a workers' compensation claim is found in O.C.G.A. § 34-9-82. A "Notice of Claim" for workers' compensation benefits must be filed within one year after the injury giving rise to the claim. O.C.G.A. §34-9-82(a). However, if the employer has already paid weekly income benefits for an injury, the claimant has two (2) years from the last payment of income benefits to file a claim. O.C.G.A. §34-9-82(a). If the employer has only provided medical benefits, then the claimant has one (1) year from the last remedial treatment furnished by the employer. O.C.G.A. §34-9-82(a). A notice of claim merely tolls the statute of limitations. A notice of claim does not necessarily initiate litigation unless a "Request for Hearing" is also filed contemporaneously therewith.

As a side note, there is also a "change in condition" statute of limitations found in O.C.G.A. §34-9-104 which governs when a claimant who is no longer receiving indemnity benefits on a compensable claim can file for a resumption of weekly benefits. This is beyond the scope of this article, but a workers' compensation practitioner will want to be familiar with this code section.

In order to file a notice of claim with the Board, the employee will file a WC-14 and furnish a copy to all other interested parties in the claim. Board Rule 61(b)(10). Again, filing a notice of claim is not the same thing as requesting a hearing. If the employee wants his or her day in court, they must request a hearing by again filing a Board Form WC-14. Board Rule 61(b)(10).

A claimant can request a hearing over a number of issues including, but not limited to, entitlement to medical benefits, entitlement to income benefits, the validity of the employer's panel of physicians, or payment of medical expenses. Likewise, the employer may file for a hearing on a number of issues including the suspension of workers' compensation benefits that are currently being paid to a claimant.

Once either a notice of claim or request for hearing is filed, neither the employer nor its insurance company is required to file a responsive pleading. Woodgrain Millwork/ Windsor Wood Windows v. Millender, 250 Ga. App. 204 (2001). However, Board Rule 82(a) provides that, "[a]ny defense as to the time of filing a claim is **waived** unless it is made no later than the first hearing." [Emphasis Added]. Therefore, a statute of limitations defense must be pled by the employer/insurer in a pre-hearing motion or at the first hearing itself, otherwise the same is deemed waived. The safer course for any defendant would be to assert a statute of limitation defense both in a pre-trial motion and at the first hearing. Further, it is mandatory that the employer/insurer raise all affirmative defenses at the first hearing.

When filing a hearing request, it is necessary that a party specify the issues that are to be litigated at the hearing. If this is not done, the Administrative Law Judge may not allow issues that were not listed on the WC-14 Request for Hearing to be litigated. A party is "entitled to notice and an opportunity to be heard" on issues brought before the State Board of Workers' Compensation. Holliday v. Jacky Jones Lincoln Mercury, 251 Ga. App. 493 (2001).

## **Discovery Tools in a Litigated Claim**

After a hearing request is filed, there are a number of ways of conducting discovery in order to gather information about the opposing party's case. A Board Form WC-102 can be served on any party to a workers' compensation claim to require the production of documents by that party. A claimant can serve a WC-102 on the employer/ insurer to require them to produce documents such as medical reports, a copy of the employer's posted panel of physicians, wage records of the employee, wage records of a "similarly situated" employee, and a copy of any job descriptions or job analysis that may have been provided to the authorized treating physician. Board Rule 102(F)(1).

Further, an employer/insurer may use the WC-102 to require a claimant to produce wage records as well as medical reports. Board Rule 102(F)(1). Once a WC-102 is served on a party, the party served has 30 days from the date on the certificate of service to produce the documents or face possible assessment of penalties for failure to comply with the request. Board Rule 102(F)(1).

A second type of discovery tool useful to parties is the WC-12 Request for Board records. A Wc-12 can be filed by either party with the Board to get certified copies of Board filings in either the present workers' compensation claim or in prior workers' compensation claims concerning the same claimant. Board Rule 61(b)(9). The WC-12 is useful for defense attorneys trying to figure out whether the claimant has any pre-existing conditions which might be relevant to the current claim. This information is equally useful to claimant's counsel in preparing discovery responses as well as preparing their client for the deposition.

The employer/ insurer in the claim can also use a medical release, Board Form WC-207, in order to gather medical records from the claimant's various medical providers that are "related to the claim or history of treatment of the injury arising from the incident, including information related to the treatment for any medical condition or drug or alcohol abuse and to such employee's medical history with respect to any condition or complaint reasonably related to the condition for which such employee seeks compensation." O.C.G.A. §34-9-207(b).

Further, pursuant to Board Rule 200(f)(2), upon request, a party must provide an opposing party with "all medical records and reports in their possession concerning the treatment for the accident which is the subject of the claim." This information must be provided within 30 days of the request. Board Rule 200(f)(2).

Once a hearing is requested by either party, discovery procedures under the Civil Practice Act also become available to parties. Board Rule (F)(2). These discovery procedures include Interrogatories, Requests for Production of Documents, Requests for Admission and depositions. Pursuant to O.C.G.A. §9-11-33, a party can serve a written interrogatories upon another party to the litigation. The party served must respond with written responses (or assert proper objections) within 30 days of service. O.C.G.A. §9-11-33(a)(2). These responses must be verified. Id. A party is limited to serving 50 interrogatories including subparts on another party. O.C.G.A. §9-11-33(a)(1). More than 50 interrogatories can be served upon another party only if leave to do so is granted by the court upon a showing that the litigation is unusually complex or where there is some other hardship. O.C.G.A. §9-11-33(a)(1).

Documents relevant to the litigation can be procured through a Request for Production of Documents pursuant to O.C.G.A. §9-11-34. Again, the party served must respond by producing the requested documents or asserting a proper objection within 30 days of service. This discovery procedure can be used to obtain medical records from a party that are not subject to Board Rule 200 (f)(2) but may otherwise be reasonably calculated to lead to the discovery of admissible evidence. Further, employment records and other material can be obtained in this manner. Requests for production can also be served on non-parties such as medical providers in order to gather records.

Requests for Admission can also be served on an opposing party to get that party to admit or deny the truth of certain matters in the litigation. O.C.G.A. §9-11-36. Again, a party served with requests for admission has 30 days to respond to the same or assert proper objections. O.C.G.A. §9-11-36(a)(2). When a party fails to respond to requests to admit timely, the allegations set forth therein will all be deemed to be admitted. O.C.G.A. §34-9-36(a)(1). In fact, when requests for admissions have not been responded to by the party on whom they were served, the court can use these as a basis for ruling on the merits of the case. Karat Enters v. Marriot Corp., 196 Ga. App. 769 (1990). A party who inadvertently allows the time for responding to requests for admissions to run may file a motion to withdraw admissions. Meadows v. Dalton, 153 Ga. App. 568 (1980). However, whether to grant such a motion is in the Administrative Law Judge's discretion (subject to an evidentiary hearing), and it is always the safer course to supply responses and objections timely.

As workers' compensation litigation is medically driven, a party can ask that the claimant undergo an IME or independent medical examination pursuant to O.C.G.A. §34-9-202 by a duly qualified physician or surgeon. O.C.G.A. §34-9-202(a) and (e). These independent medical evaluations can be used for a number of reasons including exploring causation issues surrounding an injury, divining what the claimant's current physical capabilities are and whether there are any restrictions on her work ability, as well as whether the claimant, if suffering from a similar condition prior to the work injury, is back to her baseline condition. This can be a powerful tool in either prosecuting or defending a claim.

Finally, there is the deposition of a party pursuant to O.C.G.A. §9-11-30. (A non-party can be deposed by issuance of a subpoena under O.C.G.A. §9-11-45.) In most workers' compensation cases, only the claimant gives a deposition due to time constraints. Workers' compensation claims tend to move very quickly. However, both parties are entitled to this discovery procedure.

The primary purpose of the claimant's deposition for the defense attorney is to gather information that is relevant to the employee's claim for benefits. However, the defense attorney can also use the deposition to try and elicit testimony that will be favorable to the defense. That is why it is crucial for a claimant's attorney to thoroughly prepare her client ahead of the deposition for potential problem areas. Also, the deposition is used to "lock down" the claimant's story prior to the hearing. The deposition testimony can then be useful for impeachment of the claimant at hearing if the claimant's trial testimony is at odds with her testimony at the

deposition. Further, the defense attorney will usually “size up” the claimant to assess her credibility while testifying.

### **Mediation and Settlement of a Claim**

In most litigated cases, there is a risk for the employer/ insurer as well as the claimant in going forward to a hearing. After discovery is conducted, it is pretty clear in most instances that the employer/insurer’s case as well as that of the claimant will have “problems” associated with them. That is to say, neither side will feel that winning a trial will be a “slam dunk.” In such cases, mediation at the State Board is a viable option to help the parties compromise the claim.

A mediation can be requested by a party by filing a WC-14 Request for Mediation or by the consent of both parties by filing a WC-100 Request for Mediation. The ADR Unit of the State Board will set the claim down for a date and time to be mediated. A mediator appointed by the Board will hear opening statements from each of the parties’ attorneys. Then the parties will break out into separate rooms. The parties will negotiate back and forth with the help of the mediator until either a settlement is reached or settlement negotiations break down. The parties are not compelled to reach a settlement of the claim at mediation but are merely expected to make a good faith effort in negotiations.

If a deal is reached, most settlements involve the claimant releasing her claim against the employer/insurer in exchange for a lump sum of money. A settlement of the entire claim cannot be approved by the State Board unless both parties have agreed to the terms of the settlement. O.C.G.A. §34-9-15. In fact, a settlement will not

be considered either valid or binding until it is approved by the State Board or Workers' Compensation. O.C.G.A. §34-9-15. The Board will also make a determination as to whether the settlement is "reasonable" under the evidence at the time prior to approval. Tuck v. Fidelity & Cas. Co. of NY, 131 Ga. App. 807 (1974). This is presumably a requirement to protect the claimant's interests.

### **The Hearing of the Claim**

If the parties are unable to resolve their differences by mediation or otherwise, the claim will then proceed to a hearing. Although a Workers' Compensation hearing is less formal than an action in State or Superior Court, the Administrative Law Judge is bound by the rules of evidence. O.C.G.A. §34-9-102(e)(1); Cook v. Georgia Dept. of Revenue, 100 Ga. App. 172 (1959). The ALJ also has the power "to administer oaths and affirmations, to issue subpoenas, to rule on offers of proof, [and] to regulate the course of the hearing" among other enumerated powers. O.C.G.A. §34-9-102(c). The Administrative Law Judge is permitted to admit into evidence at the hearing "evidence obtained through depositions, interrogatories, or admissions of fact, whether or not the deponent is available to testify in person at the hearing and whether or not the evidence was taken originally for the purpose of discovery or evidence, or both." O.C.G.A. §34-9-102(d)(2).

Because medical evidence is so important to workers' compensation claims, an expedited method for getting medical records into evidence has been set out in O.C.G.A. §34-9-102(e)(2). That code section provides that, "Any medical record or document signed by an examining or treating physician or other duly qualified

medical practitioner shall be admissible in evidence insofar as it purports to represent the history, examination, diagnosis, prognosis or opinion relevant to any medical issue by the person signing the report, as if that person were present at the hearing and testifying as a witness . . .” O.C.G.A. §34-9-102(e)(2).

Board Rule 102(E)(3)(b) also provides that, “All medical evidence regarding the treatment, testing or evaluation of the claimant for the accident which is the subject of the hearing should be exchanged between the parties as soon as practicable, but no later than 10 days prior to the hearing.” Failure of a party to produce these records ten days prior to the hearing can “result in (1) the imposition of civil penalties, (2) award of assessed attorney’s fees, (3) a continuance, (4) award of costs, (5) award of witness fees and expenses, and/ or (6) in limited circumstances, the exclusion of evidence at the hearing.” Board Rule 102(E)(3)(b). Therefore, it is important to turn over medical evidence of the nature described in Board Rule 102(E)(3)(b) to opposing counsel as soon as practical.

After the close of evidence, “the parties may be allowed to make arguments either by filing briefs within the time set by the Administrative Law Judge at the hearing, by oral argument . . . or both.” Board Rule 102(E)(4). As a practical matter, parties to workers’ compensation cases almost always file trial briefs to argue there cases to the ALJ.

Within 30 days after the hearing, the Administrative Law Judge is obligated to file an opinion rendering a decision on the issues tried at the hearing. O.C.G.A. §34-9-102(f). In the Award, the Administrative Law Judge will set down her findings of fact and conclusions of law.

### **Appeals Beyond the Hearing Level**

A party dissatisfied with an Award of the Administrative Law Judge can appeal to the Appellate Division of the State Board of Workers' Compensation. O.C.G.A. §34-9-103(a). The case must be appealed within 20 days of the Administrative Law Judges' Award. O.C.G.A. §34-9-103(a). The Appellate Division is free to rule on questions of law *de novo*. However, "The findings of fact made by the administrative law judge **shall be** accepted by the appellate division where such findings are supported by a preponderance of the competent and credible evidence contained within the records." [Emphasis Added]. The Appellate Division can substitute its own findings of fact if the ALJ's facts are not supported by a preponderance of the competent and credible evidence. Therefore, parties to a workers' compensation appeal will often argue both the facts and the law of the claim presented below. The Appellate Division also has the authority to remand a claim in certain circumstances such as to allow an Administrative Law Judge to correct apparent errors in the award or to take additional evidence on a matter. O.C.G.A. §34-9-103(a).

Once the Appellate Division issues its decision, a party then has 20 days to appeal to the Superior Court of the county where the injury occurred. O.C.G.A. §34-9-105(b). Thereafter, any party dissatisfied with the Superior Court's decision can file an application for discretionary appeal with the Georgia Court of Appeals and after that to the Supreme Court of Georgia. Of course, these appeals have their own time deadlines that one should be wary of meeting.

## Conclusion

The marriage between the administrative, legislative, and judicial natures of the workers' compensation system can be complex and is often confusing. To recap, the workers' compensation system was created by the Georgia assembly. It vested power in the Executive Branch to administer the Workers' Compensation Act and to promulgate "rules" to further the Act. Additionally, it created a quasi-judicial and appellate system to adjudicate matters.

Good luck!

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<sup>i</sup> Georgia workers' compensation legal scheme is "no fault system." Therefore, the employee may have unintentionally caused the accident and still be entitled to benefits.