

COURT CHANGES DEFINITION OF COMPENSABLE ACCIDENT IN MARYLAND

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On June 6, 2003, Maryland's highest court, the Court of Appeals, handed down its decision in *Harris v. Howard County Board of Education*. The decision dramatically changed the longstanding definition of what constitutes a compensable work-related injury, and will undoubtedly lead to more claims being covered under workers' compensation. Previously, Maryland law had held that an injury that occurred while performing regular job activities, e.g., lifting a box and feeling a pain, was not compensable, unless some "unusual activity" was involved, e.g., the employee slipped on something, was lifting an unusually excessive weight, etc. The Court in *Harris* held that an "unusual activity" is not required for an employee to have a compensable "accidental injury" in Maryland.

WHAT THE COURT SAID

The claimant, Vernell Harris, was a food service worker at a school. Her job involved such activities as preparing lunches, operating a cash register, cleaning the kitchen area, and laundering the linens. On the day of her injury, she opened a box of laundry detergent and found the box full of cockroaches. With the help of a co-worker, she slid the heavy box out of the building and removed the bag of soap. The two placed the bag of soap in a different box. While scooping soap from the new box, Ms. Harris felt a crack in her back. It was undisputed that scooping soap from the box was part of her regular job duties.

The Commission found that the claimant sustained an "accidental injury," apparently focusing on the "unusual activity" that preceded the actual scooping of the soap, i.e., the cockroaches, dragging the box, etc. The employer appealed and a jury reversed the finding of the Commission and found that the claim was not compensable. The claimant then appealed to the Court of Special Appeals, which affirmed the jury's denial of the claim, finding that there was sufficient evidence that the injury resulted from normal job duties. The Court of Appeals reversed the Court of Special Appeals, striking down the "unusual activity" aspect in the definition of "accidental injury."

The Court of Appeals held that the Workers' Compensation Act does not define "accidental injury" to require an "unusual activity." It went on to state that the "unusual activity" requirement stemmed from a decision it previously issued, *Slacum v. Jolley*, decided in 1927, and which had been adopted as the law ever since. The Court said that the *Slacum* decision was not based on any provision of the Act or any prior case law. In other words, the Court in *Harris* concluded that it had been misinterpreting the law ever since 1927!

As support for its decision to change the law, the Court cited the fact that Maryland was one of only a few states that required an "unusual" or "accidental" cause for an injury. The Court said that the majority of states merely require an unusual or unexpected result. The Court concluded by reciting a number of Maryland cases which it felt suggested that the "accidental injury" requirement had been inconsistently applied by Maryland courts over the years, and by focusing on the "liberal purpose" behind the Act to provide coverage for injured workers. It is important to remember that the Court did not repeal the "accidental injury" requirement. An "accidental injury" is still required under the law. Rather, the Court held that an "accidental injury" can occur while a claimant is performing "regular" job duties.

The Court did not indicate whether this decision would apply to cases that arose prior to the date of its decision. The Commission seems to be taking the position that the "new" definition applies to cases that have not previously been decided by the Commission, regardless of the date of the injury. This issue will likely be litigated on appeal during the next year or so. There is no indication to date that the Commission is permitting claims that it previously denied to be reopened and reheard.

Obviously, it is too early to know the full extent of this decision. We expect bills to be introduced in the Maryland General Assembly in the upcoming session, which will start in January of 2004, to reverse or to limit the scope of the Court's decision in the *Harris* case. The extent of legislative changes, however, will be unknown for several months. There is also likely to be further case law interpreting the *Harris* decision.

Again, this is something that will take several months, if not longer, to develop. In the interim, it is still important that every claim be fully investigated and that all possible defenses be raised.

WHAT IS AN "ACCIDENTAL INJURY" NOW?

Even under *Harris*, a claimant must still prove: (1) that there was an "accident" which (2) "arises out of employment" (a specific date, time, and activity), (3) that the accident occurred "in the course of employment," and (4) that it caused the injury alleged.

We believe that if a claimant is simply bending over, reaching, or simply walking along and feels a pain, without being engaged in an employment-specific activity (such as lifting a box, etc.), then this type of injury would not be covered under the *Harris* case, and not be compensable, since the activity is really idiopathic in nature and is an ordinary risk of life. We also believe that the claimant must relate the injury to a specific incident in order for the claim to be compensable. For example, simply feeling a pain at the end of the workday or experiencing a gradual onset of pain during the workday, would not, in our opinion, constitute a compensable "accidental injury."

USE OF OTHER DEFENSES TO CLAIMS

With the "accidental injury" defense weakened, "causal relationship" will become a more important defense. An independent medical opinion to address "causal relationship" will likely be more important now. Cases that involve claimants with prior injuries or problems to the area of the body injured at work should be looked at carefully to see if a "causal relationship" defense can be maintained. The claim should be investigated to determine, for example, whether the claimant had been having continuing problems with that area of the body prior to the work-related incident, whether there are arthritic or degenerative problems that were only temporarily, but not permanently, aggravated by the work incident, and etc.

The *Harris* case does not apply to or change the existing law with respect to "occupational diseases." All defenses to these claims (condition not caused by work, no disablement, last injurious exposure, etc.) remain in place.

Although the Commission had been reluctant in the past to enforce the "notice" requirement of the Act, this defense is likely to be better received now, especially for "regular job" injuries. The Act requires a claimant to give notice of an "accidental injury" within ten days of the occurrence. The failure to give notice can be excused if the employer and insurer were not prejudiced by the failure of the claimant to give timely notice. The inability of the employer and insurer to perform a timely investigation can be used to show prejudice if the occurrence was never reported by the claimant.

POST-HARRIS INVESTIGATION TECHNIQUES

We recommend that you continue to obtain written accident reports and recorded statements from the claimant in all questionable claims. In recorded statements, the claimant should be asked "what were you doing when you first felt the pain," and should be questioned as to whether or not there was a specific date, time, place and activity that caused the injury. Explore the mechanics of the injury. Find out if the claimant was lifting or holding anything at the time. Ask for a description of the claimant's movement at the instant in time that the pain was first felt. You should also ask specific questions on notice, when the injury was reported, and to whom. Finally, remember that a claimant's credibility is always at issue. A claimant whose description of an injury changes and varies over time is always questionable, even if one or more versions of the injury could be interpreted as being compensable. If you have any questions concerning the impact of the *Harris* case on workers' compensation claims, contact Stan Haynes of the Semmes Workers' Compensation Group at (410) 576-4723, or at shaynes@mail.semmes.com.