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Georgia Supreme Court Examines Ingress/Egress in Conjunction with Scheduled Break Defense

***Casey B. Foreman* Workers' Compensation**

The Georgia Supreme Court recently addressed the application of the “scheduled break” and “ingress/egress” doctrines in the case of *Frett v. State Farm*, No. S19G0447, 2020 Ga. LEXIS 458 (June 16, 2020). Prior caselaw on the “scheduled break” defense established an accident does not arise out of employment when it occurs on a regularly scheduled break and the employee has “freedom of action.” Whereas prior caselaw on the “ingress/egress” doctrine established an accident does arise out of employment when the employee is injured during a reasonable period of ingress or egress from his or her place of employment. The *Frett* case addressed the question of compensability when an accident occurs while an employee is within a period of ingress or egress during a scheduled break.

In *Frett*, the Employee was allotted 45 minutes for her lunch break each day. She was not required to work during her break and she was free to leave the premises if she wished. On the day of her accident, the Employee clocked out and retrieved her lunch in the employee breakroom. She intended to eat her lunch outside. When she left the breakroom, she slipped on water and fell. The Employer denied benefits under the “scheduled break” defense. Although initially awarded benefits by the Administrative Law Judge, the State Board of Workers’ Compensation Appellate Division reversed and denied benefits. This denial was upheld by the Superior Court and the Georgia Court of Appeals. The Court of Appeals determined that the extension of workers’ compensation to cover employees who are leaving for or returning from regularly scheduled breaks was improper unless sanctioned by the Georgia Supreme Court.

The Georgia Supreme Court accepted the Court of Appeals’ invitation and reversed their decision. The Supreme Court examined whether the accident at issue arose “in the course of” and “out of” her employment. In finding the accident arose “in the course,” the Supreme Court applied the “personal comfort” doctrine. They concluded the act of preparing lunch was “reasonably necessary to sustain her comfort at work, was incidental to her employment and is not beyond the scope of compensability under the Act.” In turning to the arising “out of” requirement,

the Supreme Court explained there “must be some *causal connection* under which the employee worked and the injury which he received.” They found this was met when she slipped and fell due to conditions within the Employer’s control and premises. The Supreme Court expressly overruled the case of *Ocean Acci. & Guarantee Corp. v. Farr*, 180 Ga. 266 (1935) which established the “scheduled break” defense. They found the *Farr* case erred when it “said nothing at all about causation when it analyzed the ‘arising out of’ prong.”

In light of the Supreme Court’s decision in *Frett*, the employer’s ability to assert a “scheduled break” defense is extremely limited. The employee must not only be on a “scheduled break” with “freedom of action,” but must also be *outside* a reasonable period of ingress or egress. Essentially, the defense may only apply *after* an employee physically leaves the employer’s parking lot or any area connected to the employer’s premises. The *Frett* decision unfairly holds employers responsible for accidents that occur on an employee’s unpaid and unrestricted personal time. For this reason, employers should consider implementing a stricter policy on scheduled breaks. Employers may consider requiring employees to leave their premises for lunch breaks. For shorter breaks where that is not a feasible option, employers may consider designating specific areas employees are limited to on breaks and closely monitoring those areas.



Casey B. Foreman was born and raised in Jesup, Georgia. She earned a Bachelor of Arts degree, summa cum laude, with a Major in Psychology and a Minor in Criminal Justice from Mercer University in 2007 and earned her Juris Doctorate in 2010 from the University of Georgia School of Law. Casey is a member of the State Bar of Georgia and the Dougherty County Circuit Bar Association. Casey joined the firm as an associate in January 2011 and was named partner in January 2017. Casey’s areas of practice focus primarily on workers’ compensation defense and insurance defense. She currently resides in Albany, Georgia with her husband Christopher Foreman, Esq.