"Workers' Compensation in the Telecommuting Era"

QUESTIONS PRESENTED

Identify the various scenarios where the courts grant or deny compensation for work-from-home accidents or occupational diseases under the North Carolina Worker's Compensation Act.

SHORT ANSWER

In North Carolina, the court's ultimate inquiry to determine if an employee's injury is compensable or not under the Worker's Compensation Act is whether it is an accident "arising out of" and "in the course of" the employment. The phrase "in the course of" refer to the time, place, and circumstances under which an accident occurred. So, in the context of work-from-home accidents or occupational diseases, the home environment became the work environment. However, the employee must be about his or her master's business. Thus, the injuries or occupational diseases developed while working from home are compensable in the same way as it is compensable if at the employer's workplace. The court applies the same standard to determine if the injury or occupational disease is compensable or not under the Act. The bottom line is that the employee's actions should have benefitted the employer to be compensable under the Act, regardless wherever the employment was, but must contribute to the risk of injury. To be entitled worker's compensation for occupational disease, the employee must show that the diseases were peculiar to his or her employment and not an ordinary disease to which the public is equally exposed, and nexus between the disease and the employment. The courts may further consider what percentage of employee's disability was due to his or her occupational disease.

No on-point authority specifically related to work-from-home injuries is found in North Carolina. However, the courts in Florida, Oregon, Texas, and Tennessee have decided if work-from-home related accidents are compensable and applied the same standard whether it is an accident "arising out of" and "in the course of" the employment.

RESEARCH FINDINGS

Introduction

"Under the [North Carolina] Workers' Compensation Act, an injury is compensable only if it is the result of an 'accident arising out of and in the course of the employment[.]'" Chavis v. TLC Home Health Care, 172 N.C. App. 366, 370, 616 S.E.2d 403, 408 (2005) (quoting N.C. Gen. Stat. § 97-2(6)). "The words 'arising out of' refer to the origin or cause of the accident. The employee must be about his master's business". Ross v. Young Supply Co., 71 N.C. App. 532, 536-37, 322 S.E.2d 648, 652 (1984) (omitted citation). "The words 'in the course of' refer to the time, place and circumstances under which the injury by accident, or disablement resulting from an occupational disease, occurred." Morrison v.

Burlington Indus., 304 N.C. 1, 12, 282 S.E.2d 458, 466 (1981) (omitted citation). Thus, "[a]n injury does not arise by accident 'if an employee is injured while carrying on his usual tasks in the usual way[.]'" Bursell v. N.C. Indus. Comm'n I.C. No. 177846, 172 N.C. App. 73, 78, 616 S.E.2d 342, 346 (2005) (quoting Gunter v. Dayco Corp., 317 N.C. 670, 673, 346 S.E.2d 395 (1986)). "For an accident to arise out of the employment there must be some causal connection between the injury and the employment." Watkins v. Trogdon Masonry, Inc., 203 N.C. App. 289, 294-95, 692 S.E.2d 112, 116 (2010) (quoting Cole v. Guilford Cty. & Hartford Acci. & Indem. Co., 259 N.C. 724, 726, 131 S.E.2d 308, 311 (1963)). But if an injury cannot be traced to be work-related or if it comes from a risk common to others or an equally exposed risk apart from employment, it is not arising out of the employment. Id.

"'Whether an injury arose out of and in the course of employment is a mixed question of law and fact, and the Industrial Commission's findings in this regard are conclusive on appeal if supported by competent evidence.'" Chavis; 172 N.C. App. at 370 (quoting Culpepper v. Fairfield Sapphire Valley, 93 N.C. App. 242, 247, 377 S.E.2d 777, 780 (1989)). Therefore, "[t]he employee must establish [both] 'arising out of' and 'in the course of' requirements to be entitled to compensation." Id. (citing Roberts v. Burlington Indus., Inc., 321 N.C. 350, 354, 364 S.E.2d 417, 420 (1988)). "Under the Act, 'employee' is defined in part as 'every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written . . . .'" Taft v. Brinley's Grading Servs., 225 N.C. App. 502, 506, 738 S.E.2d 741, 744 (2013) (quoting N.C. Gen. Stat. § 97-2(2) (2011)).

Occupational disease - Workers' Compensation Act

"Now, all provisions of the Act that had formerly applied only to injuries by accident also apply to compensable occupational diseases—so long as they do not conflict with more specific provisions in the Act specifically pertaining to occupational diseases." Hinson v. Cont'l Tire the Ams., 832 S.E.2d 519, 537 (N.C. Ct. App. 2019) (citing N.C.G.S. § 97-52). Accordingly, "a defendant employer is liable to an employee for onset of an occupational disease if the employee demonstrates that he (1) suffers from a compensable occupational disease, and (2) was last injuriously exposed to the hazards of the disease while employed by the defendant employer." Jarrett v. McCreary Modern, Inc., 167 N.C. App. 234, 238, 605 S.E.2d 197, 200 (2004) (citing N.C. Gen. Stat. § 97-57 (2003)). "N.C. Gen. Stat. § 97-53

(2001) sets forth several diseases which are considered compensable occupational diseases." Robbins v. Wake Cty. Bd. of Educ., 151 N.C. App. 518, 520, 566 S.E.2d 139, 141 (2002). However, N.C. Gen. Stat. § 97-53(13) provides that a disease not specifically listed in the statute may still be compensable where certain criteria are met." Id. To establish a compensable occupational disease, a claimant must establish:

> (1) the disease is characteristic of individuals engaged in the particular trade or occupation in which the claimant is engaged; (2) the disease is not an ordinary disease of life to which the public generally is equally exposed with those engaged in that particular trade or occupation; and (3) there is a causal relationship between the disease and the claimant's employment.

Id. at 521 (quoting Hardin v. Motor Panels, Inc., 136 N.C. App. 351, 354, 524 S.E.2d 368, 371 (2000)).

Upon showing the employment exposed the claimant to a greater risk of contracting the disease than the public in general, the first two elements are satisfied, but to satisfy the third element the claimant must show that the employment significantly contributed to or has a significant causal factor in the disease development. Robbins, 151 N.C. App. at 521. "'[I]n occupational disease cases the causal connection between the disease and the employee's occupation must of necessity be based upon circumstantial evidence.'" Id. at 523 (quoting Lumley v. Dancy Constr. Co., 79 N.C. App. 114, 122, 339 S.E.2d 9, 14 (1986)).

I. Identify the various scenarios where the courts grant or deny compensation for work-from-home accidents or occupational diseases under the North Carolina Worker's Compensation Act.

In North Carolina, "[a]cts of negligence of the employee do not bar compensation for an original injury arising out of and in the course of employment." Starr v. Charlotte Paper Co., 8 N.C. App. 604, 611, 175 S.E.2d 342, 347 (1970) (citing Howell v. Fuel Co., 226 N.C. 730, 40 S.E. 2d 197 (1946)). To be compensable, "[t]he accident must occur during the period and place of employment.'" Martin v. Orange Water & Sewer Auth., 256 N.C. App. 163, 805 S.E.2d 566 (2017) (quoting Ross v. Young Supply Co., 71 N.C. App. 532, 536-37, 322 S.E.2d 648, 652 (1984)). Thus,

> An accident arising in the course of the employment is one which occurs while the employee is doing what a man so employed may reasonably do within a time during which he is employed and *at a place where he may reasonably be during that time to do that thing*; or one which occurs in the course of the employment and as the result of a risk involved in the employment, or incident to it, or to conditions under which it is required to be performed.

Id. (emphasis added) (quoting Hoyle v. Isenhour Brick And Tile Co., 306 N.C. 248, 251-52, 293 S.E.2d

196, 198 (1982)).

Under the North Carolina Worker's Compensation Act, the ultimate inquiry of the court to find an injury or occupational disease compensable is whether the injury is the result of an accident arising out of and in the course of the claimant's employment. Recall, 'in the course of' refers to the time, place, and circumstances under which an accident occurred. So, in the context of a work-from-home arrangement, an employee's home is a reasonable place to be during the work-time for which the employee is employed. Thus, any injury or occupational disease developed by the employee having a work from home arrangement shall be "arising out of" and "in the course of the employment" if such employee was about his or her master's business and the employment substantially contributed to the risk of injury or occupational disease to the employee. Thus, the crux is the employee must be about his master's business and the employment must contribute to the risk of injury to the employee.

What does the court hold as "about his master's business"?

In North Carolina, "[w]here any reasonable relationship to employment exists, or employment is a contributory cause, the court is justified in upholding the award as 'arising out of employment.'" Hollin v. Johnston Cty. Council on Aging, 181 N.C. App. 77, 84, 639 S.E.2d 88, 93 (2007) (internal quotation marks and citation omitted).

In Ross v. Young Supply Co., 71 N.C. App. 532, 322 S.E.2d 648 (1984), an appeal on the industrial commission's grant of worker's compensation for an injury suffered by a traveling salesman, here, the employee was injured while getting into his wife's car on his way to make sales calls for the employer. Id. The defendant claimed that the employee was not about his master's business, rather he was performing his personal business because he was driving his wife's car to check its running condition. Id. at 537. The appellate court, however, affirmed the award and recognized that "an injury to an employee, while he is performing acts for the benefit of third persons, is not compensable unless the acts benefit the employer to an appreciable extent." Id. at 537. The court clarified that "[t]here can be no doubt that [the employee's] driving of his wife's automobile to make his sales calls would have benefitted his employer just as if [the employee] had driven his own automobile to make these calls." Id.

Likewise, in Osmond v. Carolina Concrete Specialties, 151 N.C. App. 541, 568 S.E.2d 204

(2002), the court held the employee's injury while riding in the back of the pick-up truck compensable because "[the employee's] driving the dump truck to the work site directly benefitted the employer" and there was competent evidence that the employer required the employee to accompany him to drive the dump truck to the job site. Id. at 545. Thus, the court held that the employee was on a special errand that directly benefitted his employer. Id.

Also, in Hicks v. Brown Shoe Co., 64 N.C. App. 144, 306 S.E.2d 543 (1983), the court found that the employee was on the job and about her master's business when the accident occurred. Id. at 147. Here, the employee, a traveling sales representative, was involved in an accident during business hours. Id. The court noted that the accident occurred after her personal errand had ended and when she was in the middle of her territory which had stores she regularly called on. Id. at 147. Thus, the court found that the evidence supports the finding that the employee was on the job and about her master's business when the accident occurred. Id.

Extensive research on North Carolina state and federal cases did not show any on-point authority specific to worker's compensation for an injury, accident, or occupational disease developed by an employee during his or her work from home arrangement. Case law discussing the exceptions to the "going and coming" rule may be helpful to understand the scenarios the courts find the injury compensable or not under the Act.

The "Going and Coming" Rule – The injuries are non-compensable

Per the general rule – the going and coming rule – injuries occurring while a covered worker is traveling to and from his place of employment do not arise out of and are not in the course of employment and thus are not compensable. Munoz v. Caldwell Mem'l Hosp., 171 N.C. App. 386, 389, 614 S.E.2d 448, 451 (2005) (quoting Bass v. Mecklenburg County, 258 N.C. 226, 231-32, 128 S.E.2d 570, 574 (1962)). The rationale is that "the risk of injury while traveling to and from work is one common to the public at large" and "an employee is not engaged in the business of the employer while driving his or her personal vehicle to the place of work or while leaving the place of employment to go home." Id. at 389 (internal citation and quotation marks omitted).

The Exceptions to the "Going and Coming" Rule

The going and coming rule, however, is subject to the following exceptions:

1. "The 'traveling salesman' exception applies where an employee's 'work entails travel away from the employer's premises [and does not involve] . . . a distinct departure [to make] . . . a personal errand.'" Graven v. N.C. Dep't of Pub. Safety-Division of Law Enf't, 235 N.C. App. 37, 44, 762 S.E.2d 230, 235-36 (2014) (quoting Dunn v. Marconi Communs., Inc., 161 N.C. App. 606, 612, 589 S.E.2d 150, 155 (2003)). Under this exception, "'employees with no definite time and place of employment . . . are within the course of their employment when making a journey to perform a service on behalf of their employer.'" Munoz, 171 N.C. App. at 390 (quoting Creel v. Town of Dover, 126 N.C. App. 547, 557, 486 S.E.2d 478, 483 (1997)).

2. "The 'contractual duty' exception applies where the employer furnishes the means of transportation *as an incident of the contract of employment*.'" Graven 235 N.C. App. at 44 (original emphasis). "However, this 'contractual duty' exception does not generally apply where the transportation is provided permissively, gratuitously, or as an accommodation[.]" Id. (internal quotation and citations omitted).

3. The 'special errand' exception applies where "the employee is 'engaged in a special duty or errand for his employer." Id. at 44 (internal quotation marks and citation omitted).

4. The 'dual purpose' exception applies "where a trip serves 'both business and personal purposes' and where it involves a 'service to be performed for the employer [that] would have caused the journey to be made by someone even if it had not coincided with the employee's personal journey.'" Id. at 44 (quoting Dunn, 161 N.C. App. at 612-13).

A. What would count as being for the benefit of the employer and thus, compensable?

i. Compensable scenarios under the exception to the coming and going rule

In Osmond v. Carolina Concrete Specialties, 151 N.C. App. 541, 568 S.E.2d 204 (2002), the court held the employee's injury compensable under the special errand exception to the coming and going rule. Id. at 545. Here, the court noted that the Commission correctly found "the greater weight of the evidence by inference demonstrates that [the employer] asked plaintiff to accompany him back to [his] house . . . so plaintiff could drive the dump truck to the job site." Id. at 545. Thus, the court affirmed the Commission's decision that "plaintiff was on a special errand that directly benefitted his employer." Id.

In Powers v. Lady's Funeral Home, 306 N.C. 728, 295 S.E.2d 473 (1982), the employee, who was a mortician and embalmer, was injured when he returned home and his parked car rolled down his driveway striking him. Id. at 729. The court reversed the denial of worker's compensation finding the employee to be on a special errand where the employee was performing duties incident to the performance of late-night, emergency embalming for the employer's business. Id. The court noted that the employee's personal appearance was related to his work and was on duty until he completed preparations for another call. Id. at 731. Thus, the court found that the injury arose out of the employment because the employee's employment conditions required him to be at the scene of the accident and his duties did not end after his journey. Id.

In Chavis v. TLC Home Health Care, 172 N.C. App. 366, 616 S.E.2d 403 (2005), the employee traveled to a patient's home, during the waiting period she left on a personal errand and was injured in a motor vehicle accident on her return to the patient's home. Id. at 367-68. The employer claimed that the employee was on a personal errand at the time of the accident. Id. The court, however, found that the accident occurred in the course of employment because the employee's personal errand was complete and she had resumed her business travel route. Id. at 368. Therefore, the employee's injury was compensable. Id.

In Hollin v. Johnston Cty. Council on Aging, 181 N.C. App. 77, 639 S.E.2d 88 (2007), a health care aide employee was injured while she was traveling from her residence to her first patient's home. Id. at 84. The court found that the employee was acting within the course of her employment at the time of the accident because she was required to use her personal vehicle for transportation as part of her employment and was injured going to work. Id. The court noted that "traveling to patients' homes is an essential component of that service." Id. (quotation marks and citation omitted). Therefore, the court held the employee entitled to worker's compensation. Id. at 85.

Additionally, the court affirmed that the traveling salesman and contractual duty exceptions to the going and coming rule did not apply to the employee's case. Id. at 80. The court explained that since the employee had fixed hours and work location, "her situation is different from a true traveling salesman who might visit a different customer each day." Id. Thus, the traveling salesman exception does not apply. Id. Further, the contractual exception applies "where an employer provides

transportation or allowances to cover the cost of transportation, injuries occurring while going to or returning from work are compensable." Id. at 81. Here, the employee admitted that "she was not reimbursed for travel to the first patient's home in the morning and from the last patient's home to her home in the afternoon." Id. at 81. Thus, the court held that since the employee was injured while traveling to her first patient's home, the contractual duty exception does not apply in this case. Id.

In Evans v. Conwood LLC, 199 N.C. App. 480, 681 S.E.2d 833 (2009), an appeal on the Industrial Commission's finding that the worker's occupational disease was compensable. Id. Here, the worker developed pain in her left wrist and was diagnosed with carpal tunnel syndrome (CTS). Id. at 482. The appellants alleged no causal connection between her employment and CTS. Id. The Commission heard testimony from both sides regarding the worker's job duties and gave greater weight to the worker's evidence than to appellants' evidence. Id. at 488. The court, however, found that the worker used her hands and wrists for approximately six to seven hours a day while performing her job duties subjecting her at an increased risk of developing CTS –competent evidence supporting the Commission's findings of fact. Id. at 481. Thus, the court held that the worker's CTS was an occupational disease and the worker's last injurious exposure occurred after the employer became self-insured. Id. at 490.

From the foregoing case law, the court finds an injury or occupational disease compensable only if it is due to the employee's work and during the employment. Notably, the employee must have sustained the injury or the occupational disease while working for his or her employer's benefit or business. Regarding compensation for occupational disease, the employee's may develop CTS as in Evan because of prolonged use of hands and wrists while performing their job duties. In the context of work-from-home related occupational disease, a telecommute may develop CTS as in Evan upon working approximately six to seven hours a day on any computers. So, an employee having a work-from-home arrangement may be entitled to worker's compensation if he or she provides competent evidence showing nexus between his or her occupational disease complained of and the employee's job duties.

B. What would not count as being for the benefit of the employer and thus, compensable?

ii. Non-compensable scenarios under the exception to the coming and going rule

In Dunn v. Marconi Communs., Inc., 161 N.C. App. 606, 589 S.E.2d 150 (2003), the court denied workers' compensation, where an employee was injured in an automobile accident while returning from his home to a work site. Id. On appeal, the employee claimed the "dual-purpose" exception to the coming and going rule. Id. The court however found the employee not entitled to any of those exceptions because he was on a personal errand at the time of his accident and the trip did not serve any business purpose. Id.

In Hunt v. Tender Loving Care Home Care Agency, 153 N.C. App. 266, 569 S.E.2d 675 (2002), the employee who was a certified nursing aide got injured while driving her personal vehicle to her home from the patient's house. Id. Here, the court reversed the award finding the employee's accident non-compensable under traveling salesman exception because the employee had fixed hours and fixed place of work and the employer had no contractual duty to reimburse the employee for transportation. Id. at 270-71.

Hunt differs from Hollin, supra, because here the employee was injured while she was driving to her home after work, while the injury to the Hollin employee was injured during her driving from her home to her first patient's home. Since "traveling to patients' homes is an essential component to health care aide employee, Hollin employee's injury was compensable.

In Bartlett v. Duke Univ., 284 N.C. 230, 200 S.E.2d 193 (1973), a traveling employee, died after choking on a piece of meat he was eating at a restaurant. Id. The Court held that the employee failed to establish that this death arose out of his employment because the risk that the employee might choke on a piece of meat while eating at a restaurant was the same risk to which he would have been exposed had he been eating at home or at any other public restaurant. Id. The court clarified that a traveling employee's injury may be compensable if it results from a risk that is "peculiar to traveling." Id.

In Jarvis v. Food Lion, Inc., 134 N.C. App. 363, 517 S.E.2d 388 (1999), the employee sought worker's compensation for carpal tunnel syndrome due to repetitive use of her hands at work. Id. Here, the employee failed to show that her "carpal tunnel syndrome was an occupational disease which was characteristic of and peculiar to her employment within the meaning of N.C. Gen. Stat. § 97-53(13)." Id. at 368 (quotation marks omitted). The court noted that the Commission considered the expert

testimony but gave no weight to it because the expert did not have a complete set of facts to decide regarding causation. Id. Thus, the court affirmed the denial of compensation for the employee's carpal tunnel syndrome. Id.

Likewise, in Hale v. Novo Nordisk Pharm. Indus., 153 N.C. App. 272, 569 S.E.2d 724 (2002), the court denied worker's compensation to an employee diagnosed with CTS. Id. Here, the court considered that the employee's other activities and hobbies including his part-time employment, subsequent work, and vehicle accidents, all involved the use of his hands and arms. Id. at 276. Thus, the court held that sufficient evidence shows that the employee's CTS was caused by something other than his work with the employer. Id.

Jarvis is distinguishable from Evan, supra, because in Jarvis the commission gave no weight to the expert testimony absent complete set of facts to determine causation while in Evan the commission gave greater weight to employee's evidence based on competent evidence regarding causation of CTS. Similarly, Hale is distinguishable from Evan, supra, because in Hale competent evidence showed other possible causes for the employee's CTS.

In Hansel v. Sherman Textiles, 304 N.C. 44, 283 S.E. 2d 101 (1981), a lung disease case, the Commission found that the employee's permanent disability was caused by both byssinosis resulting from exposure to cotton dust during the course of employment and asthma. Id. The employee was awarded full benefits for permanent partial disability under N.C.G.S. § 97-30. Id. The court, however, noted that there was evidence that the employee's symptoms were the result of other infirmities including dust, mold, mildew, cotton dust, nylon dust, and polyester dust, etc. Id. at 54. Thus, the court remanded the case to determine the percentage of the employee's disability which was due to her occupational disease as the case was of partial disability. Id. at 54.

In Wright v. Alltech Wiring & Controls, 826 S.E.2d 218 (N.C. Ct. App. 2019), the employee worked as an estimator, which required him to visit various job sites. Id. at 220. The employee and others were provided with company-owned work trucks to perform their job duties, which the employee also used for his commute. Id. at 221. The employee during his commute died in an accident. Id. The Commission denied death benefits finding the death did not occur in the course and scope of employment as he was driving home. Id. The appellate court affirmed that the traveling salesman and

contractual duty exceptions to the going and coming rule did not apply to the employee's case. Id. at 222.

Here, the appellate court while analyzing the contractual duty exception noted that the company-owned work trucks were provided to the employees as accommodation and was permissive, rather than as a matter of right. Id. at 223-24. Also, the employee handbook showed that "commuting to and from work is not considered work time." Id. The court further observed that "[a] benefit to either or both parties does not give rise to an implied contract." Id. at 224. Therefore, the court concluded that this case does not fall under the contractual duty exception to the coming and going rule. Id. Likewise, while analyzing the traveling salesperson exception the Court pointed to the stop at a store to show that the employee was not participating in work-related activities at the time of the collision. Id. at 225. The court held that absent evidence to show the employee was on his way to a job site or that he was acting in the course of his employment at the time of the accident, the traveling salesperson exception to the coming and going rule does not apply to this case. Id. at 225-26.

Other Jurisdiction Cases – Work from Home related Injuries

As aforesaid, worker's compensation with respect to the increase in work from home scenarios is yet to be discussed by the North Carolina courts due to the recent and rapidly changing epidemic, COVID -19. Thus, the research is extended to other jurisdictions to understand when the courts grant or deny compensation for work-from-home accidents under the Worker's Compensation Act.

Florida

Analogous to North Carolina, under Florida Worker's Compensation Act, "[e]mployers must provide workers' compensation benefits when employees sustain injuries from accidents 'arising out of work performed in the course and the scope of employment.'" Sedgwick CMS v. Valcourt-Williams, 271 So. 3d 1133, 1135 (Fla. Dist. Ct. App. 2019) (quoting § 440.09(1), Fla. Stat. (2016)).

In Sedgwick CMS v. Valcourt-Williams, 271 So. 3d 1133 (Fla. Dist. Ct. App. 2019), the claimant tripped over her dog causing injury while reaching for a coffee cup in her kitchen during working hours in a work-from-home arrangement. Id. at 1134. The Judge of Compensation Claims found the injury compensable finding that "the work-from-home arrangement meant the employer imported the work environment into the claimant's home and the claimant's home into the work

environment." Id. The Court of Appeals, however, clarified that the question is whether the employment, wherever it was, contributed to the risk of injury. Id. Thus, the Court noted that the risk at issue existed "whether the claimant is at home working or whether she is at home *not* working." Id. Therefore, the court concluded that there was no work-related injury and reversed the grant of worker's compensation. Id.

Oregon

In Sandberg v. JC Penney Co., 243 Ore. App. 342, 260 P. 3d 495 (Or. Ct. App. 2011), the claimant was injured while working in her home when she tripped over her dog while going to the garage to retrieve fabric samples for work. Id. at 345. Like North Carolina, the requirement to be compensable here is that the injury arises out of and occurs in the course of employment. Id. Here, the Board found that the claimant's injury was not compensable because it did not arise out of her employment. Id. at 344. The court, however, noted that while working, the claimant's home environment became her work environment. Id. at 352. The court explained that since the employer failed to provide sufficient space for the claimant to perform her tasks and instead required her to work in her home and garage for the benefit of her employer. Id. "Thus, those areas constitute claimant's work environment when she is working, and injuries suffered as a result of the risks of those environments, encountered when claimant is working, arise out of her employment." Id. Therefore, the injury was compensable. Id.

Texas

In Martinez v. State Office of Risk Mgmt., 582 S.W.3d 513 (Tex. App. 2018), the employee, a caseworker, was injured while working from her home as she slipped and fell while trying to retrieve a different pen from the other side of her kitchen. Id. at 515. The Texas Workers' Compensation Commission's found that the employee sustained a compensable injury finding a causal connection between her injuries and employment. Id. The appellate court, however, reserved finding the employee violated the agency policy by working from home without prior approval, thus, her injury is non-compensable. Id. at 525.

Tennessee

In Wait v. Travelers Indem. Co., 240 S.W.3d 220 (Tenn. 2007), a telecommuter who worked

from an office in her home was still in the course of employment when she was attacked during her lunch break at her home. Id. at 227. The court, however, held that the injuries did not 'arise out of' her employment because there was "nothing to indicate that she was targeted because of her association with her employer or that she was charged with safeguarding her employer's property." Id. at 229.

Based on the foregoing case law, an injury is compensable under the Worker's Compensation Act if the employee establishes both "arising out of" and 'in the course of" employment requirement. The burden is on the employee to prove the existence of an accident. Not only in North Carolina but also in other jurisdictions the bottom-line inquiry is whether the employee sustained an injury or occupational disease due to the employment from which the employer benefitted.

CONCLUSION

The ultimate inquiry to determine if an employee's injury is compensable Worker's Compensation Act is to find whether the injury is a result of an accident "arising out of" and "in the course of" the employment. An employee is entitled to worker's compensation only if he or she can show both the "arising out of" and "in the course of" requirements. The court would specifically determine the presence of the causal connection between the injury or occupational disease and the employment, whether it was at the workplace or home. The crux is that the employee must have suffered the injury or occupational disease while performing his master's business and the employment must contribute to the risk of injury or occupational disease to the employee.

At present, North Carolina has no on-point case law addressing worker's compensation for work-from-home related injuries or occupational disease. Nevertheless, aforesaid discussion shows that the courts find employee's injury or occupational disease only if it is the result of an "accident arising out of" and "in the course of" the employment and this standard may not change in the context of employees having work-from-home arrangement. Thus, if the employee having a work from home arrangement can establish that his or her employment was the proximate cause of the injury or occupational disease and the employee acted for the benefit of the employer or was about his master's business, the employee may be entitled to Worker's compensation under the Act. For occupational disease compensation, the courts may consider what percentage of employee's disability was due to his or her occupational disease.

Mathew E. Flatow
Attorney
mathew@seiferflatow.com

Laura L. Carter
Attorney
MGC Insurance Defense
lcarter@mgclaw.com