



SEPTEMBER 2021 E-NEWSLETTER

Supreme Court Opinion Regarding the Definition of an Accident *City of Charlottesville v. Sclafani*

The Supreme Court of Virginia issued a significant decision on August 26, 2021 when it brought the definition of a workers' compensation accident back to the standard that existed for decades in Virginia. The *Sclafani* Court rejected the idea that four hours of work activity can constitute an accident, and relied upon the 1989 case of *Morris v. Morris* in defining the length of time in which an accident can occur.

The Virginia Workers' Compensation Commission and the appellate courts have consistently defined an "accident" as an identifiable incident or sudden precipitating event, which occurs at some reasonably definite time and is bounded by rigid temporal precision. However, in the past few years, the Commission and Court of Appeals have expanded the length of time in which an "accident" can occur under the Act. While the Supreme Court in *Morris v. Morris* in 1989 held that three hours was too long to be considered an accident, recent Court of Appeals opinions such as *Riverside Regional Jail Authority v. Dugger*, 68 Va. App. 32, 802 S.E.2d 184 (2017) and *Department of Motor Vehicles v. Bandy*, Record No. 1878-18-2 (Va. Ct. App. Apr. 30, 2019) expanded the definition of accident to four hours, which conflicted with the standard set by *Morris*.

Recent Commission and Court of Appeals opinions had also focused on the importance of a variety of movements versus repetitive movements in determining whether an accident that occurs over time would be compensable, with repetitive movements not being compensable. Yet, this was inconsistent with the *Morris* Court's rejection of the Court of Appeals' analysis in the case of *Bradley v. Philip Morris, U.S.A.*, in which the Court of Appeals had awarded an accident claim for a claimant who was engaged in a variety of strenuous activities for three hours. The Supreme Court chose not to weigh in on these inconsistencies until it issued an opinion last month in *City of Charlottesville v. Sclafani*.

Sclafani was a police officer involved in SWAT team training for an eight-hour period. He was repeatedly taken to the ground, handcuffed, and picked up off the ground while still handcuffed. While he felt discomfort and was "picked up a little weird" during the last scenario of the day, he did not experience difficulty moving until after the eight-hour training. He did not feel pain until the next day.

After a complex procedural history, the Court of Appeals held in its most recent opinion that the claimant sustained an injury during the four-hour afternoon session, which was considered a compensable accident. In its August 26, 2021 Opinion, the Supreme Court affirmed the finding of a compensable accident but held that the Court of Appeals' reasoning was flawed. The Supreme Court held that there is no bright-line four-hour rule for the timing of an accident under the Act, and that such a rule was already rejected in the 1989 case of *Morris v. Morris*. They held that "a claim asserting that an injury occurred during a time period where multiple potential causative events occur is not sufficiently temporally precise to establish a compensable injury."

However, the Supreme Court held that Sclafani's accident was still compensable because the evidence established that his injury occurred during the last SWAT training scenario of the day, a much shorter period of time than the entire four-hour afternoon session.

Notably, the Supreme Court of Virginia did not mention *Dugger*, *Bandy*, or other Court of Appeals opinions that seem to be in conflict with their decision in *Sclafani*. Because the Supreme Court of Virginia is the highest court in Virginia, it appears this decision (without specifically stating so) may overrule those lower court decisions with very similar facts to *Sclafani*. However, the Supreme Court did mention the *Van Buren v. Augusta County* case in a footnote, which involved a 45-minute accident, and noted that a single causative event may occur over an extended period of time.

What does this mean for future cases?

- Injuries due to strenuous activity lasting up to 45 minutes can be an accident, but activity lasting three hours or more will not be compensable. For activity lasting more than 45 minutes but less than three hours, it is unclear whether these will be compensable accidents.
- There will likely be a significant amount of litigation over what qualifies as “temporally precise” when defining an accident.
- The Court of Appeals and Commission may still make a distinction between longer accident involving a variety of movements (compensable) vs those involving repetitive movements (not compensable), even though this conflicts with Supreme Court precedent.
- During your investigation, ask the claimant about when he/she thinks the accident occurred, the time frame of the accident, what symptoms they experienced at what time, what physical movements were required, whether there was any variation in those physical movements, and whether there were breaks during the activity.
- Talk to the treating physician to see if he or she has an opinion on what caused the injury, when the injury occurred, and whether it resulted from work over the course of several hours or more.