

Compensability and Causation

Jeffrey S. Moffett

Markow Walker, P.A.

1161 Robinson Avenue

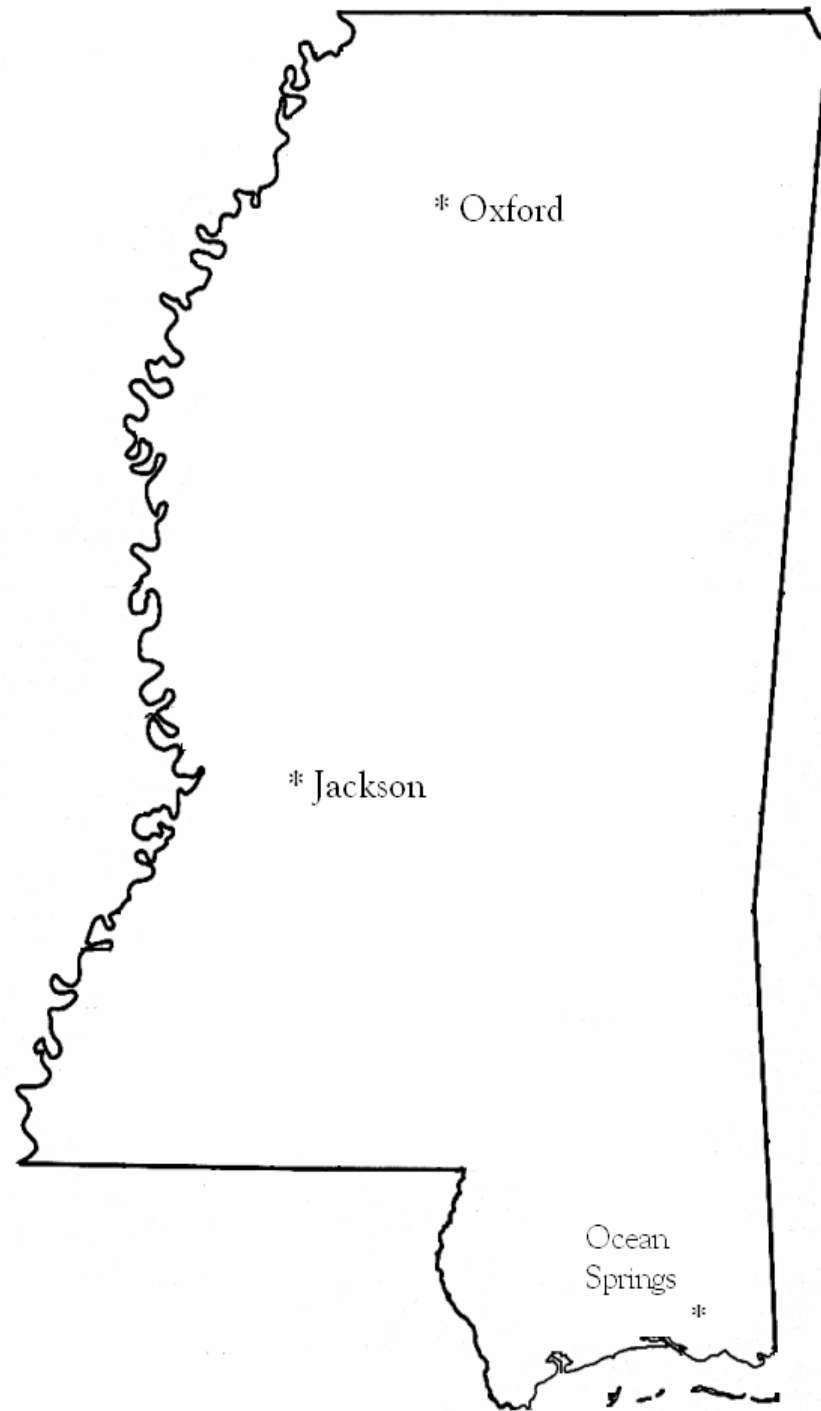
Ocean Springs, Mississippi 39564

Tel. (228) 872-1923

Fax (228) 872-1973

jmoffett@markowwalker.com

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Compensability and Causation: Outline

- Determining Compensability of a Claim
 - Arising Out of the Employment
 - Course and Scope
- Causation
 - Burden of Proof and Importance of Medical Evidence
 - “Mental / Mental” Claims
 - Stroke cases

Compensability

- There is a distinction between:
 - “Arising out of employment” and
 - “In the course and scope of employment”

Compensability

- Distinction:
 - “Arising out of employment” goes to causal connection with work
 - “In the course and scope of employment” goes to time and place of occurrence

Compensability

- Did injury “arise out” of the employment?
 - There must be at minimum a causal connection between the injury and work environment.
 - “Rational contribution”? No need to be sole cause
 - Referred to as the “work connection test”

2/6/2008 *(Sharpe)*

Compensability

Arising out of Employment

- Forces of Nature
 - Injury resulting from dangers of the elements
 - Did work duties expose employee to dangers?
 - “Positional Test”: Did work require him to be there?

Compensability

Arising out of Employment

- Complications Developed After Initial Injury:
 - Liable for all disabilities from compensable injury
 - Liable for medical procedures, involving unrelated conditions, necessary for treatment of compensable injury
 - Heart condition

Compensability

Arising out of Employment

- Imported Danger Doctrine
 - Defense only applies to injuries by the employee who brought or created the hazard.
 - Compensable if use of "hazard" is reasonably incidental to one's employment.

Compensability

Imported Danger Doctrine

- Examples:
 - Employee shoots himself in car – did not arise out of employment.
 - Employee injured playing with fireworks – did not arise out of employment.

Compensability

Arising out of Employment

- Assault (malicious acts and “horseplay”)
 - Employee cannot be intentional aggressor
 - Different rule applies if injury caused by co-worker acting outside course and scope of their employment.
 - Co-employee considered third party when outside course and scope. Sole connection cannot be knowing each other through work.

Compensability

Arising out of Employment

- Assaults by “Third Party”
 - Defined:
 - Stranger to the employer-employee relationship OR
 - Fellow employee acting outside the scope of employment
 - Is there a “reasonable nexus” between the assault and the employment?
 - Assault must be directed toward the employee “because of” the employment.

Compensability

Arising Out of Employment

- What does “because of employment” mean?
 - Personal Vendetta – known assailant, involves a private dispute.
 - Attack by unknown assailant for unknown reason is considered to arise out of employment

Compensability

Arising Out of Employment

- Assaults by Third Party: "Zone of Risk" test
- RULE: When employment or conditions of employment expose employee to a greater "zone of risk" than the general population, the assault arises out of employment
 - Cab driver killed on duty
 - Convenience store clerk assaulted while working in high crime area
 - Traveling salesman assaulted by motorist he stopped to help
 - Nurse arriving for work on late shift assaulted in parking lot

Total Transport, Inc. v. Shores, 968 So. 2d 400 (September 20, 2007)

- New case discussing assault by third party
- Husband/Wife truckers developed truck problem in Wyoming.
- Wife dropped him off at truck stop while she went to get truck fixed.

Total Transport, Inc. v. Shores, 968 So. 2d 400 (September 20, 2007)

- Husband had 2 hours sleep in 2 days, almost nothing to eat
- Pair had been arguing
- Husband wanted to eat and “get away” from the truck
- He signed “off duty”

Total Transport, Inc. v. Shores, 968 So. 2d 400 (September 20, 2007)

- Wife returned a couple hours later, but could not find him in truckstop
- Did not look for him in the bar
- Called her dispatcher and finally parked truck near truckstop and went to sleep
- Left at 6:00 a.m. when husband not back

Total Transport, Inc. v. Shores, 968 So. 2d 400 (September 20, 2007)

- Husband ate food, played pool and drank in bar until 2 a.m.
- Sought a ride from a third party in order to get back to repair station
- Shot and killed on the way.
- BAC was .137, company had alcohol policy

Total Transport, Inc. v. Shores, 968 So. 2d 400 (September 20, 2007)

- ALJ, Commission and Circuit Court all found compensable
- ALJ reasoned claimant was in “zone of special danger”
- Determined assault was reasonably incident to traveling employment

Total Transport, Inc. v. Shores, 968 So. 2d 400 (September 20, 2007)

- Supreme Court reversed, laid out the standard from 71-3-3:
 - A compensable injury includes “an injury caused by the willful act of a third person directed against an employee because of his employment while so employed and working on the job.”

Total Transport, Inc. v. Shores, 968 So. 2d 400 (September 20, 2007)

- Court distinguished between claimant having to be in a truckstop for meals versus his presence in bar at 2 a.m.
- The “extended escapade...exposed him to risks that cannot reasonably be viewed as being associated with the trucking business or arising out of or in the course of his employment.”

Compensability

- Aggravation of Pre-existing Condition
 - RULE: If one's employment aggravates, accelerates or combines with a pre-existing condition so as to produce a disability for which claim is made, such claim will be compensable.
 - The employment need only be a "substantially contributing cause" of the disability.

Compensability

Course and Scope of Employment

- How is course and scope of employment determined?
- Was employee furthering the employer's business at a time and place incidental to the employment?

Compensability

Course and Scope of Employment

- Temporary Deviation
 - Employment relationship temporarily suspended:
 - Employee turns away from employer's business AND
 - Serves a purpose of his own AND
 - Activity is disconnected from the employment
 - But resumes employment relationship if:
 - Employee abandons personal purpose and
 - Employee resumes employment-related business

Compensability

Course and Scope of Employment

- For when life isn't so simple, there is the "mixed purpose"
- When employee selects alternate route to benefit himself or another, question is whether they are furthering employer's business to "appreciable extent"?

Compensability

Course and Scope of Employment

- “Going and Coming” Rule
 - Injuries while traveling to / from a fixed place of employment are generally not compensable
 - Does not apply to “traveling employees”
 - Includes activities “necessary to travel”
 - Travel must be “integral” part of the job

Compensability

Course and Scope of Employment

- Exceptions to “Going and Coming” Rule:
 - Employee parking lot is considered Employer’s premises, whether owned outright or leased
 - Work at home for mutual benefit of employer, not just employee convenience
 - Special Errand/Mission
 - Designated Route or Special Hazard
 - Dangerous condition during route?
 - Employee exposed to greater risk than public?

Compensability

Course and Scope of Employment

- Exceptions to “Going and Coming” Rule:
 - Transportation Provided by Employer
 - Provides transportation to employee
 - Reimburses travel expenses (to and from work)
 - Provides company vehicle
 - Deviation from route home for personal mission is likely not compensable

Compensability

Course and Scope of Employment

- Exceptions to “Going and Coming” Rule:
 - Where place of injury is in such proximity as to be, in effect, part of the employer’s premises

New Case – *Jesco, Inc. v. Cain*, 954 So. 2d 537 (Miss. Ct. App. 2007)

Compensability

Jesco, Inc. v. Cain

- Electrician doing renovations on hospital
- Employer required employees to park in particular non-public lot, required them to cross street for reporting at trailer every morning
- Hit by car while crossing dark street and Employer argued not yet clocked in

Compensability

Jesco, Inc. v. Cain

- Employee has burden of showing exception to “going and coming” rule
- Court found a “special hazard” existed due to the early reporting time and lack of light on street
- Court also found public street qualified as “premises” because of order to park in specific lot and proximity of crossing road

Compensability

Course and Scope of Employment

- Injuries sustained during recreational activity
 - Not compensable unless the activity is encouraged or required by the employer
 - Fact that employer furnishes a recreational facility does not, in and of itself, place the use thereof within the course of employment
 - Substantial business benefit from recreational trip?
 - Penalty for employees who did not attend?

Compensability

Course and Scope of Employment

- What if activity in violation of rules leads to injury?
 - Course of employment if:
 - Activity is in furtherance of employer's business and
 - Is normal function of employees engaged in that type of work
 - Exception:
 - Employer expressly objects to a particular activity and
 - Objection is made at or near the time it is performed

Causation

Overview

- Burden of Proof
 - Claimant must prove causal connection by preponderance of the evidence
- Importance of Medical Evidence
 - Probability over mere possibility
 - Conflicting medical evidence
 - Treating physician over Employer Medical Examination?
 - Complete examination? Review all medical records?
 - Specialty in area related to injury? Experience?
 - Objective findings vs. subjective complaints

Causation

Mental Injuries

- “Mental / Mental” Claims
 - Defined: Mental injury absent physical trauma
 - Burden of Proof is Higher - Clear and Convincing
 - Must be caused by something beyond the ordinary incidents of employment
 - Evaluated on a case-by-case basis
 - Layoff does not qualify as beyond ordinary
 - Defense: Pre-existing psychiatric condition / treatment?

Causation

- Stroke cases
 - Employment related stress or exertion that aggravates, accelerates or contributes to the stroke?
 - *Woolfolk*, 920 So.2d 1024 (Miss. Ct. App. 2005)
 - Nurse suffered aneurysm rupture after call from patient
 - Was call an untoward event that caused, exacerbated or aggravated the aneurysm, causing it to rupture?
 - Medical opinion: stress can cause elevation of blood pressure which causes pressure on wall of blood vessel in brain = rupture of existing aneurysm
 - NOT COMPENSABLE: no substantial evidence that call from patient upset claimant and induced stress