

A Pro Tip from Workers' Compensation

By May 4, 2017

When it comes to law, the devil is often in the details. A recent case here in Georgia shows just how important it is to pay attention to the details. The case involves a Workers' Compensation dispute wherein the plaintiff had injured his finger on the job and filed a claim with the State Board of Workers' Compensation seeking additional treatment. However, there were questions about the plaintiff having missed the deadline for the statute of limitations and so a motion to dismiss was filed by the employer/insurer, who is the defendant in the still-ongoing case.

The motion to dismiss was denied by the Administrative Law Judge, who stated that the claim was, "not barred by the statute of limitations under OCGA 34-9-82 (a)," and an Interlocutory Order was issued before the hearing. The denial could mean that the claim was filed in a timely manner or that the motion to dismiss was filed prematurely. Here's the important detail, though; the Order was issued without a certificate of immediate review. So, when the defendant appealed the denied motion, first to the Appellate Division of the Board and then to the Supreme Court, they *shouldn't have been able to do it*.

Somehow, the appeals managed to slip through the cracks until they reached the Georgia Court of Appeals. Because the Interlocutory Order was a pre-hearing Order and thus not a final order or judgment, it didn't qualify for appeal until after a hearing and a final judgment was given. A pre-hearing Order is only ever open to appeal if it has a certificate of immediate review. What this means is that the entire case got kicked right back down to the Administrative Law Judge who had it to begin with.

The employer/insured ended up wasting a lot of time and effort appealing a decision that wasn't even up for appeal. The goal was to avoid the hearing at all, but now the defendant will have gone through all of this needless trouble and will *still* have to prepare for and attend the hearing. The initial motion to dismiss wasn't a bad plan, but a denial without a certificate of immediate review meant that a new tactic should have been taken.

There are many intricacies to law, but one of the most important aspects of being a successful lawyer is flexibility and adaptability. Just because you try one method, whether it works or not, doesn't mean it's the only method. Changing tactics and direction, and being *prepared* to do so, can make the difference between a favorable verdict and big mistakes.