

## **New ruling from GA Supreme Court tightens the safety device rules in Workers' Compensation claims**

By Gregory T. Presmanes February 28, 2017

The Georgia Supreme Court unanimously rejected the criminal or quasi criminal standard in willful misconduct cases, but reaffirmed its prior definition of that term. In the case of **Chandler Telecom v. Burdette**, a cell phone tower worker was instructed not to come down from the tower using a controlled descent, but to climb down the tower. The claimant nonetheless used controlled descent, but was severely injured, when he fell to the ground. Therefore, the issue was whether the claimant's having violated his supervisor's instructions not to come down from the cell tower by using a controlled descent, was guilty of such willful misconduct that his workers compensation claim should be barred. The claimant testified he had used controlled descent on many other occasions, and had done so safely.

The Georgia Supreme Court remanded the case for further findings of fact and conclusions of law, because there was no evidence as to whether the claimant either knew he was likely to be injured, or acted with willful disregard of the probability that he would be injured. The Administrative Law Judge had failed to make a specific finding of fact as to whether or not the claimant used controlled descent to come down from the tower, knowing that it was likely that he would be seriously injured, or that he did so with reckless disregard for the probability of severe injury.

The Georgia Supreme Court specifically rejected the criminal or quasi criminal standard for proving willful misconduct, which has been used for many years. However, the Georgia Supreme Court kept the same definition of willful misconduct that had existed when the criminal or quasi criminal standard had been in place. They held that the prior language of "criminal or quasi criminal" was misleading and unnecessary, the standard is still the same as it was back then, which is that willful misconduct is not a bar to a workers' compensation claim unless the claimant either knew that he was likely to be injured, or that he acted with a willful disregard of the probability of injury. The Georgia Supreme Court simply wanted to make sure that the law was clear that the willful misconduct does not have to rise to the level of criminal or quasi criminal misconduct, in order to bar a workers compensation claim.