

## **McRae v. Arby's Restaurant Group, Inc.**

The Georgia Court of Appeals recently ruled a workers' compensation employee may not be required to authorize their treating physician to have an ex parte conference or conversation with the employer's attorney at the risk of being denied benefits.

In February 2006, Laura McRae suffered third-degree burns to her esophagus at work after mistakenly drinking lye that had been left in the break room in a cup similar to the one she had been using. Her employer did not controvert McRae's workers' compensation claim and began paying income benefits in March 2006. Ms. McRae authorized and consented to the release of her medical information to the employer, as required by Georgia statute.

In September 2009, Ms. McRae's treating gastroenterologist concluded that, despite "exhaustive therapy," she had reached maximum medical improvement and had a 65 percent permanent body impairment. After receiving the report, Arby's attorneys tried to schedule an ex parte consultation with the physician, but the physician declined, absent express permission from Ms. McRae. Ms. McRae refused and Arby's attorneys asked the ALJ to remove her case from the hearing calendar or issue an order authorizing the treating physician to talk to them outside her presence or her attorney. The ALJ ordered Ms. McRae to authorize her physician to speak with counsel for her employer. Ms. McRae did not authorize her treating physician to communicate with Arby's representatives without her presence, and the ALJ sanctioned her by removing her claim from the calendar until she did so. The Appellate Division of the State Board affirmed the ALJ's Order on appeal.

The Court of Appeals held that while a litigant waives the right to medical privacy to the extent they place their medical condition at issue pursuant to O.C.G.A. § 34-9-207, that waiver is limited to information related to the injury and any related medical history. The Court found the Workers' Compensation Act ("the Act") does not require a physician to converse ex parte with opposing counsel to share mental impressions or knowledge. Furthermore, an injured employee is not required under the Act to authorize her physician to conduct ex parte communications with opposing counsel in exchange for continued benefits.

The Court recognized that under the Act a claimant waives their right to privacy regarding related "communications ... that the employee *has had* with any physician," and directs an authorized treating physician to disclose to the employer "all information and records" related to the employee's treatment for the injury at issue, as well as any related medical history. The Court also noted the Act requires a claimant to give the employer a release, directed to a particular provider, for "medical records and information" related to the claim. However, the Court then concluded nothing in the Act indicated the Georgia Legislature intended "information" to not mean anything but tangible documentation.

This ruling means that while the Act requires an employee to authorize a treating physician to release relevant "medical records and information," it does not require an employee to authorize a treating physician to communicate ex parte with the employer's lawyers or agents to continue receiving indemnity or medical benefits.



This decision (unless reversed by the Georgia Supreme Court) places access to treating physicians in the same status as in civil litigation. It means employer's counsel without such authorization will be required to invite opposing counsel to attend the conference, or depose those physicians to ascertain the medical and factual basis for their opinions. That will increase the cost of litigation in the system without putting benefits in the hands of injured employees if there is a dispute about causation or the effect of an injury on a pre-existing medical condition.

For more Information Contact:

Rayford H. Taylor

Of Counsel

**Casey Gilson P.C.**

Six Concourse Parkway, Suite 2200

Atlanta, Georgia 30328

770-512-0300 -Ext. 529

770-512-0070 -Fax

[rtaylor@caseygilson.com](mailto:rtaylor@caseygilson.com)

[www.caseygilson.com](http://www.caseygilson.com)



CASEY GILSON P.C.  
© 2012. All rights reserved.