

WHITT & DEL BUENO

E-NEWSLETTER

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INJURY BY ACCIDENT: LAW STILL UNRESOLVED

We are closely following two cases that are currently pending on appeal before the Court of Appeals. They are *DMV v. Bandy* (COA Record No. 1878-18-2) and *City of Charlottesville v. Sclafani* (COA Record No. 1999-18-3).

Both claims were awarded by the Full Commission. In *Bandy*, the Commission seemed to hold that an entire eight-hour work day could constitute an "accident" for the purposes of the Act. However, we have argued in other cases that such a broad interpretation of "accident" is inconsistent with earlier Supreme Court case law. The attempts to expand an "accident" to an entire work shift were also previously rejected by the General Assembly. We hope that the Supreme Court of Virginia will take up one or both of the appeals to resolve this important issue.

THE TAKE AWAY: If your case involves an injury that may have been caused by repetitive or strenuous movements over the course of hours or days, we recommend denying the claim because the law on this issue is still in flux. As always, feel free to call us to discuss whether to accept or deny a claim.

Recent appellate opinion:

Severe weather was not a risk of claimant's employment

The Court of Appeals recently issued a published opinion in *Conner v. City of Danville*, No. 1486-18-4 (Va. Ct. App. Apr. 23, 2019). Conner was a corporal for the police department who was interviewing a suspect on the porch of a duplex. The suspect was not under arrest. Because of rain, hail, and strong winds, Conner and a fellow officer attempted to move inside the duplex. Conner slipped on the wet grass when "trotting" to get inside. The officers never resumed the suspect interview inside.

The Court of Appeals affirmed the Commission's denial of the claim. They found it significant that Conner was leaving the duplex porch to get out of bad weather, rather than to continue a work-related task. The court determined the injury was caused by an "Act of God," which is not a risk of the employment without any other contributing factor.

The opinion is available at <http://www.courts.state.va.us/search/textopinions.html>.

Upcoming Speaking Engagements

4/26/19: Ralph Whitt, PRIMA Conference in Roanoke

10/10/19: Mike Del Bueno, NBI CLE in Norfolk

10/29/19: Megan Clark, VWC Conference in Richmond



Practice Tip

The Commission has been setting some matters for hearing very quickly after a carrier files a denial of a claim. Therefore, when you know that you will be denying a claim, we recommend sending the file to defense counsel as soon as possible in order to maximize the amount of time to prepare a defense.