

FACTORS FOR CONSIDERATION IN GEORGIA WORKERS' COMPENSATION SETTLEMENTS

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Georgia workers' compensation law is unique in a few areas which impact settlement evaluations. On one hand, the maximum compensation rate is relatively low compared to other states (\$525 as of July 1, 2013 date of accidents) but as long as an employee remains on light-duty with no work available, he or she could get income benefits for up to 350 weeks. MMI has no significance in Georgia. Here are some basics when evaluating the five areas where benefits can be awarded:

1. Income Benefits

- If an employee is at full duty status, no income benefits are owed. If the employee is released to full duty after being on income benefits, then the employee is given a ten day notice when income benefits need to be paid before suspension can happen.
- If the employee is released to light-duty and the employer has work available, then work can be offered through a WC-240, light-duty offer of employment, with ten days notice. The employee must attempt the job for one full day (considered eight hours) and if he or she does, then the employee has a 15 working day grace period, at which point he or she can stop working claiming they cannot do the job. Income benefits then need to be recommenced automatically, although the claim can then be litigated by the employer, arguing that the employee did not make a good faith effort to return to work.
- If the employee is at light-duty and is not working, then the employee is entitled to temporary total disability benefits. Once an employee is released to light-duty, the employer can file a WC-104 which would reduce the employee from temporary total disability benefits to the maximum temporary partial disability rate (\$350.00 for any accident dates since July 1, 2013).
- If the employee is at light-duty and not working and a WC-104 is in place, then the employee is capped at 350 weeks of income benefits unless the claim is catastrophic.
- If the employee is not released to light-duty, then the cap on income benefits is 400 weeks at the TTD rate unless the claim is catastrophic.
- If the employer agrees that the claim is catastrophic or it is designated catastrophic by the State Board of Workers' Compensation, then there is no cap on income benefits and temporary total disability benefits can be received for the remainder of the claimant's life.
- There are ways to declassify a claim as catastrophic, but they are difficult.

- When an employee reaches maximum medical improvement, it has no impact on income benefits. Georgia only considers this a medical term and it will not impact the value of the claim except for the argument that the employee has improved to a point where they are stable. There may be some benefit when discussing medical treatment to argue an employee is at maximum medical improvement, but as a legal matter medical treatment also continues if the doctor indicates it is needed.
- Vocational rehabilitation services are voluntary if a claim is not catastrophic. In most situations, a claimant will not agree to vocational services and you cannot compel someone to participate in vocational rehabilitation unless the claim is catastrophic.
- If an employee is released to light-duty but the employer does not have work available, it is likely that benefits will continue until at least the 350 week cap. Although you can request a hearing to argue that the employee should return to work elsewhere, Georgia law generally does not support that position. More significantly, judges generally do not suspend benefits if an employee remains on light-duty and the employer does not have work available.

2. **Permanent Partial Disability Benefits (PPD)**

- Impairment rating is calculated based on a schedule depending on the body part injured. The schedule is found in O.C.G.A. § 34-9-263.
- The permanent partial disability benefits are not due until the employee is no longer receiving income benefits (temporary total or temporary partial benefits). This would occur when the employee returns to work (assuming no TPD is owed) or when the employee reaches the 350 week or 400 week cap.
- PPD is not due in a catastrophic injury as the employee is continuing to receive income benefits for life.
- The PPD rating is in addition to any income benefits that would be owed. In fact, an employee can receive a PPD rating even if he or she returns to work immediately following the accident. Certainly, a rating in such a situation would likely be small (5% or less). However, there are situations where an employee has surgery and returns to work and may have a higher impairment rating (potentially 20%).
- The rating is calculated based on the AMA Guides to Permanent Impairment, Fifth Edition.

3. **Medical Treatment**

- For any date of accident before July 1, 2013, the employee is entitled to a lifetime of medical treatment if the medical treatment is related to the work injury.
- For accident dates starting on July 1, 2013, if the claim is not catastrophic, then the employee is capped at 400 weeks of medical treatment. There is no retroactive application of the cap; it only applies to dates of accident starting on July 1, 2013.
- If a claim is catastrophic for any date of accident, there remains no cap on medical treatment if it is related to the work injury.

4. **Attorney Fees**

- If there are no disputed legal issues, the employee's attorney must establish that he or she did something to get benefits for the employee in order to be awarded any attorney fees.
- Generally, the attorney fee is 25% of the weekly benefits the claimant is getting and is not in addition to the income benefits the claimant is receiving.
- If the Judge/Board makes a finding that the employer was unreasonable in defending an issue, then the Judge/Board can order assessed attorney fees in one of two ways, depending on the request from the claimant's attorney. Either the attorney will request an assessed fee which is an add-on fee of 25% of income benefits (with no deduction from the employee's income benefits) or the claimant's attorney will ask for fees based on "quantum merit" showing the amount of time/hours he or she spent on the issue. The second way of calculating attorney fees generally arises in two situations: 1) when it is a medical issue and 25% cannot be awarded for income benefits or 2) a small amount is awarded for income benefits for a fixed period of time and the claimant's attorney contends that 25% of those income benefits would be insufficient to compensate for the time spent.
- When evaluating a claim for settlement, unless it would appear that the judge is absolutely going to award benefits, we generally do not recommend factoring in an assessed fee.

5. Penalties

- If penalties are awarded, it is 15% of benefits due if there was no previous award from the Board or 20% if there was a previous award that was not "followed" by the employer.
- Penalties are generally awarded when there is late payment of benefits or the employer has a reason not to pay benefits but did not file the forms with the State Board.
- Penalties are generally awarded for back benefits, but they also can be awarded for ongoing benefits, as well.
- In a situation where the Court/Board finds that the employer was without any reasonable grounds in defending a claim, the employee could be awarded TTD benefits (past and future), assessed attorney fees (25% additional) and penalties (15% additional). Therefore, it is conceivable that weekly benefits could amount to 140% of the TTD rate. This is unusual, but it does happen.