
Don't Count Out an "Injury by Accident," Even Where Job Itself is Strenuous

BLOG | MAY 20, 2016

A recent Court of Appeals opinion, *Barnette v. Lower's Home Centers, Inc.*, — S.E.2d — (N.C. Ct. App. April 19, 2016), confirmed that an incident can qualify as an "injury by accident" even when the employee's regular job is awkward or physically strenuous.

To prove an "injury by accident" in North Carolina, an employee must show there was an unlooked for or untoward event which was not expected or designed by the person who suffered the injury; the elements of an accident are the interruption of the routine of work and the introduction thereby of unusual conditions likely to result in unexpected consequences. See *Shay v. Rowan Salisbury Sch.*, 696 S.E.2d 763, 766 (2010).

In *Barnette*, the employee worked as a delivery driver, and his job required him to regularly deliver refrigerators to Bald Head Island residents' homes. Most of the homes on the Island had "reverse" floor plans, which meant the delivery employees routinely moved refrigerators up flights of stairs. On the date in question, the employee had to move a refrigerator up an unusually tight and winding staircase. Another employee admitted this staircase was several inches narrower than most other staircases. While moving the refrigerator, plaintiff injured his arm.

In essence, the Court of Appeals held that while plaintiff's normal job duties were physically strenuous, the unusual circumstance of the atypical and narrow staircase led to his arm injury. This case is yet another example of how fact-specific "injury by accident" cases are. It is important to investigate claims thoroughly so that employers can properly defend whatever allegations/theories arise during the course of litigation.

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