Workers' Compensation

by H. Michael Bagley*

and J. Benson Ward**

The 2017–2018 survey period featured decisions of the appellate courts addressing an interesting variety of workers' compensation issues ranging from the resolution of work-related aggravations to whether an injury is idiopathic or arises out of employment.[1] There were no legislative changes of major significance during the survey period.

I. AGGRAVATION AND CHANGE OF CONDITION

In *Ocmulgee EMC v. McDuffie*,[2] the Georgia Supreme Court reviewed and reversed *McDuffie v. Ocmulgee EMC*,[3] a 2016 Georgia Court of Appeals' decision.[4] The claimant sustained a right-knee injury in 2009 while working for the employer, and the claim was accepted. The employer later discovered the claimant had provided false information on his job application by failing to disclose a prior knee injury and sedentary work restrictions; rather, the claimant affirmed on the job application that he was physically able to perform job duties including standing, walking, and carrying parts. The claimant had injured his right knee in a 2002 accident with another employer, for which he underwent three surgeries and was given permanent sedentary work restrictions. The employer fired the claimant and suspended his temporary total disability (TTD) benefits upon learning of this misrepresentation. In 2011, the authorized treating physician (ATP) performed knee surgery and took

*Partner, Drew, Eckl & Farnham, LLP, Atlanta, Georgia. Emory University (B.A., 1977); University of Georgia (J.D., 1980). Member, State Bar of Georgia.

**Partner, Drew, Eckl & Farnham, LLP, Atlanta, Georgia. University of Georgia (B.A., summa cum laude, 2002; J.D., cum laude, 2005). Member, State Bar of Georgia.

1. For an analysis of Workers' Compensation during the prior survey period, see H. Michael Bagley & J. Benson Ward, *Workers' Compensation*, *Annual Survey of Georgia Law*, 69 MERCER L. REV. 357 (2017).
2. 302 Ga. 640, 806 S.E.2d 546 (2017).
3. 338 Ga. App. 200, 789 S.E.2d 415 (2016).
4. *Ocmulgee EMC*, 302 Ga. at 640, 806 S.E.2d at 547.

the claimant out of work. The employer recommenced TTD benefits, but when the ATP later released the claimant to return to work with sedentary work restrictions and opined that he had returned to his pre-2009-injury baseline, the employer again suspended TTD benefits based on this change of condition for the better and resolution of the work-related aggravation.[5]

The claimant requested a hearing and the administrative law judge (ALJ) denied his request for recommencement of TTD benefits, finding that the employer met its burden of proving a change in condition for the better. The Appellate Division of the State Board of Workers' Compensation (the Appellate Division) affirmed, as did the Dodge County Superior Court.[6] The court of appeals affirmed the finding of a physical change in condition for the better; however, it also held that the employer was required to show suitable employment was available before suspending the claimant's indemnity benefits, notwithstanding the claimant's return to his pre-injury baseline status.[7]

The Georgia Supreme Court granted the employer's petition for certiorari to address the question of whether an employer must show that suitable work is available in order to justify suspending indemnity benefits after already establishing that the work-related aggravation had subsided.[8] The court answered the question in the negative, thus reversing that portion of the court of appeals decision.[9] The supreme court observed that the key question was "whether [the claimant] returned to his pre-2009-injury condition, not whether he returned to full capacity."[10] This is because the employer's liability for workers' compensation only lasts so long as the work-related aggravation lasts.[11] This holding is codified in section 34-9-1(4) of the Official Code of Georgia Annotated (O.C.G.A.),[12] which provides that an "injury" under the Act includes an aggravation of a pre-existing condition "only for so long as the aggravation of the preexisting condition continues to be the cause of the disability; the preexisting condition shall no longer meet this criteria when the aggravation ceases to be the cause of the disability."[13] Because the court of appeals affirmed the finding that the claimant had returned

5. *Id.* at 640–42, 806 S.E.2d at 548.
6. *Id.* at 642, 806 S.E.2d at 548–49.
7. *McDuffie*, 338 Ga. App. at 203, 789 S.E.2d at 419.
8. *Ocmulgee EMC*, 302 Ga. at 640, 806 S.E.2d at 547.
9. *Id.*
10. *Id.* at 643, 806 S.E.2d at 549.
11. *Id.* at 643–44, 806 S.E.2d at 549.
12. O.C.G.A. § 34-9-1(4) (2018).
13. *Ocmulgee EMC*, 302 Ga. at 644, 806 S.E.2d at 550 (quoting O.C.G.A. § 34-9-1(4)).

to his pre-2009-injury status, the employer was no longer required to pay indemnity benefits, and there was no need to remand the case to the ALJ for further fact-finding.[14]

II. IDIOPATHIC INJURY

The court of appeals returned to the fact-specific issue of idiopathic injuries during this survey period. In *Cartersville City Schools v. Johnson*,[15] the claimant, a fifth-grade teacher, was walking through her class from her computer to the front of the room when she fell and injured her knee. The parties disputed whether the accident arose out of the employment or was an idiopathic injury. The ALJ found that the claimant's movements and the configuration of her classroom resulted in her placing acute stress on the knee, causing the injury. The Appellate Division reversed, finding no evidence to support the ALJ's finding that the injury was caused by weaving through a tight classroom. Instead, the injury simply occurred when she was walking—which is not a risk unique to the employment. The Bartow County Superior Court reversed the Appellate Division on the grounds that the evidence did not support a conclusion that the fall was idiopathic, stating that the Appellate Division's legal standard would characterize any workplace injury that could also happen out of work as idiopathic.[16]

The court of appeals agreed with the employer that the proper finder of fact is the State Board of Workers' Compensation (State Board), not the superior court.[17] However, the court held that the Appellate Division did not apply the correct legal framework in analyzing whether an injury arises out of the employment or is idiopathic, noting confusion in the case law concerning this distinction.[18] The court observed that the crux in evaluating the causal connection between the injury and the work-related conditions or activity involves analyzing whether the proximate cause of the injury is the employment, as opposed to a hazard "to which [the employee] would have been equally exposed apart from the employment."[19] The court found it necessary to overrule the holding in *St. Joseph's Hospital v. Ward*,[20] insofar as it stood for the proposition that

14. *Id.*
15. 345 Ga. App. 290, 812 S.E.2d 605 (2018).
16. *Id.* at 292–93, 812 S.E.2d at 609.
17. *Id.* at 295, 812 S.E.2d at 610–11.
18. *Id.* at 296, 812 S.E.2d at 611.
19. *Id.*
20. 300 Ga. App. 845, 686 S.E.2d 443 (2009).

an injury is "not compensable because an employee could have engaged in the [same] activity giving rise to the injury outside of work."[21]

Instead, the court of appeals held that an injury arises out of the employment where the injury is "caused by activity the employee engaged in as part of his or her job, or the injury must result from some 'special danger of the employment.'"[22] An idiopathic injury is one that occurs at work but is unrelated to the work or one that happens when the employee is not engaged in work.[23] In the present case, the court concluded that the claimant was "engaged in the movements and behaviors required of her as a classroom teacher when she was injured," and thus, it arose out of the employment and was compensable; the superior court's ruling was affirmed.[24]

III. COMPENSATION/CONTINUOUS EMPLOYMENT

In *Kendrick v. SRA Track, Inc.*,[25] the Georgia Court of Appeals addressed whether, under O.C.G.A. § 34-9-221(h),[26] medical benefits constitute "compensation." [27] The claimant was injured in a motorcycle accident while traveling before beginning work the following morning. After the accident, the claimant received a prescription card from his employer's insurer. After using the prescription card for almost a year, he filed a workers' compensation claim for temporary disability benefits and the employer controverted the claim. The ALJ denied the claim because the accident occurred on the day before the claimant's job began and the continuous employment doctrine was not implicated. The Appellate Division affirmed, as did the Spalding County Superior Court.[28]

On appeal to the court of appeals, the claimant argued that the employer was time-barred under O.C.G.A. § 34-9-221(h) from controverting the claim, arguing that the prescription card constituted compensation, and therefore, the employer "was required to file a notice to controvert the workers' compensation claim within [sixty] days of the first payment with that card."[29] The court disagreed, emphasizing that

---

21. *Johnson*, 345 Ga. App. at 297, 812 S.E.2d at 612.
22. *Id.* (quoting United States Cas. Co. v. Richardson, 75 Ga. App. 496, 499, 43 S.E.2d 793, 795 (1947)).
23. *Id.* at 298, 812 S.E.2d at 612.
24. *Id.*
25. 341 Ga. App. 818, 801 S.E.2d 911 (2017).
26. O.C.G.A. § 34-9-221(h) (2018).
27. *Kendrick*, 341 Ga. App. at 818, 801 S.E.2d at 912.
28. *Id.* at 819, 801 S.E.2d at 913.
29. *Id.*

the "compensation" addressed in O.C.G.A. § 34-9-221(h) refers to income benefits, not medical benefits, and thus that Code section's time bar did not apply.[30] The court then upheld the ruling that the claim was not compensable as the accident occurred the day before the claimant's job was to begin while he was traveling to a motel near the job site.[31] Because the claimant returned to his home for the weekend and had not yet begun his work week, nor performed any work duties as he traveled to a motel near the job site for work the following day, the court ruled that the continuous-employment doctrine did not apply.[32]

IV. DEATH AND DEPENDENCY BENEFITS

The Georgia Court of Appeals examined the issue of entitlement to dependency benefits in *Sanchez v. Carter*.[33] "[T]he employee suffered a fatal head injury . . . during the course of his employment," and the employer agreed the injury was compensable and paid the claimant's medical expenses.[34] Under O.C.G.A. § 34-9-13,[35] Reynalda Sanchez brought a claim for dependency benefits. Sanchez had lived together with the claimant for approximately thirteen years as of the date of the accident and, while not ceremonially married, the couple was in a continuous relationship and had planned to be married in the future. She was disabled and wholly dependent on the deceased employee for support, and there were no other dependents or children.[36] Following the Georgia Supreme Court decision, *Williams v. Corbet*,[37] the ALJ in *Sanchez* denied benefits, holding that it was bound by *stare decisis*, even though the claimant might seem to be a dependent under the statute.[38] In *Williams*, the court held that dependency benefits were not due where the dependency arose out of a meretricious relationship.[39]

The Appellate Division affirmed, as did the Colquitt County Superior Court.[40] The court of appeals similarly affirmed, agreeing that the supreme court's holding applied.[41] Sanchez was an actual dependent and

30. *Id.* at 820, 801 S.E.2d at 914.
31. *Id.* at 822, 801 S.E.2d at 914.
32. *Id.* at 822, 801 S.E.2d at 915.
33. 343 Ga. App. 187, 806 S.E.2d 638 (2017).
34. *Id.* at 187–88, 806 S.E.2d at 638–39.
35. O.C.G.A. § 34-9-13 (2018).
36. *Sanchez*, 343 Ga. App. at 188, 806 S.E.2d at 639.
37. 260 Ga. 668, 398 S.E.2d 1 (1990).
38. *Sanchez*, 343 Ga. App. at 188, 806 S.E.2d at 639.
39. *Williams*, 260 Ga. at 668, 398 S.E.2d at 2.
40. *Sanchez*, 343 Ga. App. at 188, 806 S.E.2d at 639.
41. *Id.* at 189, 806 S.E.2d at 640.

lived with the claimant, however, she was not married to him, and thus, the fact of her actual dependency was moot because of her living arrangement.[42]

V. JURISDICTION/OCCUPATIONAL DISEASE

In *Davis v. Louisiana-Pacific Corp.*,[43] the deceased employee worked exclusively in Alabama from 1984 until he resigned in 1998 and moved to Georgia. In 2015, he was diagnosed with mesothelioma and filed a workers' compensation claim in Georgia one month before he died. His surviving spouse and minor child then filed claims for death and dependency benefits. The ALJ ruled that the State Board did not have jurisdiction, and the Appellate Division affirmed, as did the Berrien County Superior Court.[44]

On appeal, the surviving spouse first argued that dismissal was improper because the State Board had jurisdiction over all work-related injuries and deaths that occur in Georgia, and the deceased employee was diagnosed with mesothelioma in Georgia, became disabled in Georgia, and died in Georgia.[45] However, as provided in O.C.G.A. § 34-9-242,[46] the employee is not subject to the Georgia Workers' Compensation Act[47] when an accident occurs while the employee is employed outside of Georgia, if the employment contract was entered into outside of Georgia for work exclusively outside of Georgia.[48] In the present matter, although the deceased employee's injury occurred in 2015 when he was diagnosed and became disabled, his accident occurred when he was exposed to asbestos, which was while he was employed in Alabama.[49] The surviving spouse also argued that the dismissal violated public policy, but the court of appeals noted that the General Assembly made the decision "to exclude compensation for an 'accident' that occurs while the employee is employed outside [of Georgia] except as provided in [O.C.G.A.] § 34-9-242," and the court would not expand that provision.[50]

42. *Id.* at 189–90, 806 S.E.2d at 640.
43. 344 Ga. App. 757, 811 S.E.2d 476 (2018).
44. *Id.* at 757, 811 S.E.2d at 477.
45. *Id.* at 758, 811 S.E.2d at 478.
46. O.C.G.A. § 34-9-242 (2018).
47. *See* O.C.G.A. tit. 34, ch. 9 (2018).
48. *Davis*, 344 Ga. App. at 759, 811 S.E.2d at 478.
49. *Id.* at 759–60, 811 S.E.2d at 478–79.
50. *Id.* at 760, 811 S.E.2d at 479.

VI. APPELLATE PROCEDURE

The case of *Kool Smiles/NCDR, LLC v. Gonzalez*[51] involved a 2005 accident and injury that was designated "catastrophic," where, ten years after the accident, the parties had a hearing before an ALJ regarding requests for a change of authorized treating physician (ATP), additional medical treatment, and assessed attorney's fees. The ALJ denied the employer's request for change of ATP and granted the employee's request for additional treatment and assessed attorney's fees. On appeal, the Appellate Division upheld the ALJ's ruling as to the issues of physician change and additional treatment, but reversed the ALJ's grant of assessed attorney's fees. The claimant appealed to the Gwinnett County Superior Court, which held a hearing and issued an award thirty days later reversing the Appellate Division.[52]

The court of appeals granted discretionary appeal and vacated the judgment of the superior court.[53] The court noted that, pursuant to O.C.G.A. § 34-9-105(b),[54] a superior court must enter an "order disposing of a workers' compensation appeal . . . within [twenty] days of the hearing on the appeal," otherwise the award of the Appellate Division is affirmed by operation of law."[55] Accordingly, the court of appeals held that the superior court lost jurisdiction of the case twenty days after the hearing, and therefore, the superior court's order issued thirty days post-hearing was a nullity, and the decision of the Appellate Division was affirmed by operation of law.[56]

VII. STANDARD OF REVIEW

Once again, during this survey period, the Georgia Court of Appeals addressed the standard of review used by superior courts when addressing an appeal from the State Board of Workers' Compensation. In *Autozone, Inc. v. Mesa*,[57] the claimant received medical treatment provided by the employer for several years from multiple physicians. During that time, she underwent diagnostic testing on her lower back and right sacroiliac joint that was read as "normal," "unremarkable," and showing "no significant abnormality." The claimant's ATP recommended

51. 342 Ga. App. 503, 803 S.E.2d 795 (2017).
52. *Id.* at 503–04, 803 S.E.2d at 796.
53. *Id.* at 504, 803 S.E.2d at 796–98.
54. O.C.G.A. § 34-9-105(b) (2018).
55. *Gonzalez*, 342 Ga. App. at 504, 803 S.E.2d at 796.
56. *Id.* at 504, 803 S.E.2d at 796–97.
57. 342 Ga. App. 748, 804 S.E.2d 734 (2017).

surgery—a sacroiliac joint fusion—which the employer denied on the opinion of an independent medical evaluation (IME) doctor.[58]

The ALJ denied the claimant's request for surgery as not reasonably necessary, basing the finding particularly on the IME doctor's opinion that the claimant had no sacroiliac joint dysfunction. On appeal, the Appellate Division adopted the ALJ's decision on the basis that it was "supported by a preponderance of competent and credible evidence." However, the Columbia County Superior Court set aside the Appellate Division's decision and granted the claimant's request for surgery. The superior court acknowledged that the Appellate Division's findings of fact were conclusive and binding upon it where the findings were supported by any evidence, and also noted that the superior court was not authorized to substitute itself as a fact-finding body. However, the superior court found "no objective medical evidence" in the record that the surgery was not reasonably required, noting that the ATP based the surgical request on a diagnostic injection, whereas the IME doctor performed no tests and stated that the employer was obligated to provide treatment prescribed by the ATP. Accordingly, the superior court set aside the Appellate Division's ruling.[59]

The court of appeals disagreed, finding that "substantial competent evidence . . . support[ed] the conclusion[s] of the ALJ" and the Appellate Division that surgery was not reasonably medically necessary.[60] Further, the IME doctor and the ATP relied upon the same results of the diagnostic testing but simply reached separate opinions, and it was properly the province of the ALJ and the Appellate Division to determine which medical opinion was more credible—not the superior court.[61] Thus, the court held that "the superior court exceeded its authority when it substituted itself as the factfinder in lieu of the ALJ and the Board."[62] The superior court must evaluate whether any evidence existed to support the lower court rulings and may not disregard competent evidence in the record.[63] The superior court erred in reversing the decision of the Appellate Division, and its judgment was reversed.[64]

58. *Id.* at 749–50, 804 S.E.2d at 736–37.
59. *Id.* at 751–52, 804 S.E.2d at 737–38.
60. *Id.* at 753, 804 S.E.2d at 739.
61. *Id.* at 753–54, 804 S.E.2d at 738–39.
62. *Id.* at 754, 804 S.E.2d at 739.
63. *Id.* at 753, 804 S.E.2d at 738.
64. *Id.* at 754, 804 S.E.2d at 739.

The claimant in *Amguard Insurance Co. v. Kerkela*[65] filed a workers' compensation claim and, after conducting discovery that included deposing the claimant and obtaining an IME, the employer–insurer accepted the claim one week before the hearing. The employer–insurer commenced TTD benefits, paid the accrued TTD benefits along with the late-payment penalty, authorized medical treatment and paid medical bills, and paid the claimant's attorney add-on attorney's fees of 25% of the accrued TTD benefits. The matter went before an ALJ on a hearing over the claimant's attorney's request for additional, continued assessed attorney's fees of 25% of ongoing TTD benefits. The ALJ denied the request for further attorney's fees, finding that the payment of 25% of the accrued TTD benefits and late-payment penalties was "more than sufficient" under the circumstances and the employer–insurer's defense and investigation were reasonable. The Appellate Division adopted the ALJ's decision.[66]

On appeal, "[t]he superior court determined that the Board . . . misinterpreted evidence when it concluded that [employer–insurer] had acted reasonably . . . . [T]he [superior] court applied a de novo standard of review" because of what it saw as the ALJ and Appellate Division having "misconstrued" and "misinterpreted" evidence.[67] The court of appeals held that this was an incorrect standard of review.[68] The court observed that the issue of whether an employer–insurer reasonably defends a claim is a factual determination that is "subject to the any evidence standard of review."[69] The Rockdale County Superior Court's analysis was deemed to be a disagreement over the factual findings, and as such was governed by the any evidence standard.[70] The court of appeals vacated and remanded for the superior court to apply the correct standard of review, pointing out that it is important and appropriate for the superior court—not the court of appeals—to apply the correct standard and proper deference to the factfinder.[71] Thus, the court remanded instead of reviewing the evidence itself under the correct standard.[72]

65. 345 Ga. App. 460, 812 S.E.2d 784 (2018) (physical precedent only per Court of Appeals Rule 33.2(a)).

66. *Id.* at 461, 812 S.E.2d at 784–85.

67. *Id.* at 461–62, 812 S.E.2d at 785.

68. *Id.* at 462, 812 S.E.2d at 785.

69. *Id.*

70. *Id.*

71. *Id.* at 462, 812 S.E.2d at 785–86.

72. *Id.*

VIII. ATTORNEY'S FEES/STANDARD OF REVIEW

In *Law Offices of Jorge Luis Flores, LLC v. Cruz & Associates*,[73] the claimant had a 2005 injury and signed an attorney's fees contract with Flores. Flores represented the claimant for more than six years, during which time his firm performed legal services relating to the claim, including ensuring the payment of benefits and the provision of medical care. In 2012, the claimant terminated Flores' representation and hired Cruz as her new attorney, and Flores filed a lien with the State Board. Cruz later settled the case and the parties disputed the attorney's fees distribution. Following a hearing, the ALJ ruled that Flores proved his claim of lien in *quantum meruit*; while the fee contract did not show an agreement as to an hourly rate, the attorney was able to establish the fair value of his legal services under a theory of *quantum meruit*. The appellate division affirmed on grounds that the ruling was supported by a preponderance of the evidence.[74]

The Fulton County Superior Court reversed and remanded for further consideration of the attorney's fees contract, which it ruled to be invalid on grounds that it was not drafted in accordance with the Georgia Rules of Professional Conduct[75] and there was no meeting of the minds between the parties as to Flores' hourly rates.[76] The superior court also held that there was a lack of evidence to support awarding the full amount of the lien to Flores.[77]

On appeal, "Flores argue[d] that the superior court applied the wrong standard of review and erred by failing to analyze the issue of quantum meruit."[78] Addressing the fee contract first, the court of appeals noted that the ALJ analyzed the fee contract and determined it was unenforceable, and then properly applied the remedy of *quantum meruit*.[79] The court noted that, when a client prevents the contingency fee from happening, the attorney is entitled to reasonable attorney's fees, so long as the legal services are not intrinsically illegal or the contract does not violate public policy under a theory of *quantum meruit*.[80] The court of appeals then held the superior court erred in applying the *de novo* standard.[81] When viewing the evidence in the light most favorable

73. 344 Ga. App. 365, 810 S.E.2d 596 (2018).
74. *Id.* at 365–66, 810 S.E.2d at 597–98.
75. GA. RULES OF PROF'L CONDUCT r. 4-101.
76. *Cruz & Assocs.*, 344 Ga. App. at 366, 810 S.E.2d at 598.
77. *Id.*
78. *Id.* at 366, 810 S.E.2d at 598–99.
79. *Id.* at 367–68, 810 S.E.2d at 598–99.
80. *Id.* at 367, 810 S.E.2d at 598.
81. *Id.* at 368, 810 S.E.2d at 599.

to the prevailing party, evidence existed to support the findings of the ALJ and Appellate Division, and the superior court erred in reversing the award of attorney's fees.[82]

IX. CONTROVERT OF THE CLAIM/STANDARD OF REVIEW

The case of *Starwood Hotels & Resorts v. Lopez*[83] addressed whether an employer–insurer's filing of a WC-14 hearing request constitutes a controvert of the claim. In that case, the claimant sustained a right-elbow injury, selected a doctor from the employer's panel of physicians, received medical treatment, eventually returned to full-duty work following the ATP's clearance, and received TTD benefits during the period that she was out of work. The claimant's job duties changed due to a change in hotel management, and the claimant experienced continued pain in her right elbow and stopped working several months after returning to work. During this time, she treated with two doctors she selected on her own. The claimant filed a hearing request seeking recommencement of TTD benefits on grounds that she had sustained a change of condition for the worse, and the employer–insurer filed a WC-14 hearing request seeking a determination as to whether it remained liable for benefits—as opposed to the new hotel management.[84] The ALJ found that the claimant underwent a change in condition for the worse, awarding TTD benefits, and also held that the employer–insurer's "hearing request amounted to a controvert of the claim" such that the claimant was free to select a treating physician, with the employer–insurer "liable for the payment of outstanding and reasonably necessary medical expenses."[85]

The Appellate Division affirmed the finding of a change in condition but disagreed that the hearing request amounted to a controvert of the claim.[86] The Appellate Division noted that the employer did not controvert medical treatment nor deny a request for additional treatment from the original ATP.[87] The Fulton County Superior Court also affirmed the change-of-condition finding, and then applied a *de novo* standard of review to the hearing request controvert issue, and concluded that the employer–insurer's WC-14 hearing request constituted a controvert of the claim.[88]

82. *Id.* at 369, 810 S.E.2d at 600.
83. 346 Ga. App. 137, 813 S.E.2d 792 (2018).
84. *Id.* at 138–39, 813 S.E.2d at 793–94.
85. *Id.* at 139, 813 S.E.2d at 794.
86. *Id.*
87. *Id.*
88. *Id.* at 139–40, 813 S.E.2d at 794.

The court of appeals noted that the superior court improperly substituted its own findings for those of the ALJ and Appellate Division when it should have reviewed whether any evidence supported those findings.[89] Evidence in the record supported the Appellate Division's "finding[s] that the WC-14 hearing request was 'an opportunity [for the employer–insurer] to prove that it was no longer responsible for benefits,'" and this was "not the equivalent of denying benefits in the absence of any evidence that benefits were actually denied."[90] Thus, the superior court committed error in ruling that the claimant could select a physician of her choice and that the employer was liable for medical bills since the date of its WC-14 hearing request.[91] That portion of the superior court decision was reversed; however, the finding that the change of condition was for the worse was affirmed.[92]

89. *Id.* at 140, 813 S.E.2d at 794.
90. *Id.* at 140, 813 S.E.2d at 795.
91. *Id.* at 140, 813 S.E.2d at 794.
92. *Id.* at 141, 813 S.E.2d at 795.