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Does Discharge For Employee Misconduct Impact Workers' Compensation Benefits? – The *Seagraves* Defense

An injured employee returns to modified duty but subsequently engages in misconduct that would normally result in discharge. What impact will discharge have on the employee's workers' compensation claim? Aside from a possible challenge for retaliatory discharge, the North Carolina Court of Appeals held in *Seagraves v. Austin Co. of Greensboro* that termination due to fault on the part of the employee *does not automatically* bar the employee from receiving additional workers' compensation benefits. Instead:

- The employer must prove that the employee was discharged for misconduct or fault, unrelated to the compensable injury, for which a nondisabled employee would ordinarily have been discharged.
- If the employer meets this burden, then the employee's misconduct will be deemed to constitute a "constructive refusal to perform the work provided."
- The employee then has an opportunity to prove that he is not able to work and that his inability to hold other employment is due to his work related disability. If the employee meets this burden, he may be entitled to additional workers' compensation benefits.

What type of employee misconduct is sufficient to support a *Seagraves* defense?

- The misconduct involved in *Seagraves* was indecent exposure in the workplace, which the court described as "intentional, unacceptable conduct." Significant questions remain as to whether unintentional or negligent employee behavior is sufficient.
- Discharges for performance or attendance problems may not be considered "intentional" and could raise issues about whether they were caused by the work related disability or whether the employee was assigned a modified duty job that was suitable to the employee's capacity.
- The employer must prove that the injured employee was not treated differently from other employees. For example, the *Seagraves* defense did not apply when an employer immediately terminated an injured employee because her cash register was short, even though its normal policy was to suspend employees for a week without pay. Inconsistent treatment can also result in retaliation claims.

TIP

Tread cautiously when deciding whether to discharge an injured employee for alleged misconduct. Aside from a possible retaliation claim, the employee may still be entitled to workers' compensation benefits if he can prove that his injury renders him unable to perform other work.



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