

## Topics to be Covered on West Virginia Workers' Compensation

### **Communication Breakdown and Claim Management**

[www.spilmanlaw.com](http://www.spilmanlaw.com)

West Virginia | North Carolina  
Pennsylvania | Virginia | Florida



[www.spilmanlaw.com](http://www.spilmanlaw.com)

West Virginia | North Carolina  
Pennsylvania | Virginia | Florida

# Claim Decisions and Litigation

- First level – Claim Administrator
  - Claim Adjuster, TPA and Employer
- Second level – Board of Review
- Third Level – Intermediate Court of Appeals
- Fourth Level – West Virginia Supreme Court of Appeals

[www.spilmanlaw.com](http://www.spilmanlaw.com)

West Virginia | North Carolina  
Pennsylvania | Virginia | Florida

# Poll 1: First-File Review

When a new claim arrives, which factor most often drives your initial compensability view?

- A. Mechanism of injury
- B. First medical report
- C. Witness or supervisor statement
- D. Prior medical history

## Poll 2: Denial Risk

Which issue most often makes a denied claim vulnerable on protest or appeal?

- A. Weak factual investigation
- B. Incomplete medical causation analysis
- C. Poorly documented prior condition
- D. Credibility findings of the injured employee and witnesses by the Board

# Case # 1

- Employee delivered medical supplies and oxygen bottles.
- Delivered 5 replacement oxygen bottles to a customer's porch.
- Descending 3 wooden steps, empty-handed, holding the handrail.
- Right knee popped — no slip, trip, fall, or defect in the stairs.
- Was not carrying anything at the moment of injury.

[www.spilmanlaw.com](http://www.spilmanlaw.com)

West Virginia | North Carolina  
Pennsylvania | Virginia | Florida

## Poll 3: Increased Risk

In *Hood v. Lincare Holdings, Inc.*, the claimant's knee popped while descending ordinary, non-defective stairs after a delivery, and the denial was affirmed. What additional fact would most likely have changed this compensability ruling?

- A. He was carrying oxygen bottles down the stairs
- B. The stairs were wet or defective
- C. He used stairs repeatedly as a major job requirement
- D. Any of the above

## Poll 4: Claim Handling

In a neutral-risk stair or walking case like Hood, what should the adjuster document first?

- A. Whether the activity was ordinary or work-specific
- B. Whether there was a defect, hazard, or load-carrying
- C. Whether witnesses observed a slip, trip, or fall
- D. All of the above

## You Be the Judge

Claimant is treatment associate at a home for juveniles. On February 20, 2020, Claimant was walking up stairs and her left knee locked up. She stated her "knee just went out." Claimant went to ER complaining of left knee pain

According to the FROI, Claimant had previously injured her left knee in July 2019.

[www.spilmanlaw.com](http://www.spilmanlaw.com)

West Virginia | North Carolina  
Pennsylvania | Virginia | Florida

# You Be the Judge

- She was doing well and healing from that procedure until she slipped and fell on ice in mid-October 2019. She had pain since that time and had been in PT until January 2020 when she was released to return to work.
- She indicated PT stated she was not ready to go back to “doing stairs like she has at work.” An x-ray of the left knee showed no evidence of osteoarticular abnormality of the left knee. The diagnosis was a sprained left knee.
- The claim was rejected on March 3, 2020 because it did not appear to be a work-related injury based on the medical notes from February 26, 2020.

## You Be the Judge

- Claimant's orthopedist attributed the lateral meniscus tear to the February 26, 2020, incident, and claimant argued she was required to climb steps as part of her job duties.
- Dr. Soulsby stated to a reasonable degree of medical probability that the lateral meniscus tear was caused by osteoarthritis rather than a traumatic injury.
- The Office of Judges determined that no work activity caused petitioner's left knee to give way. Rather, the record showed that the left knee buckled as petitioner climbed stairs. The Office of Judges found that while petitioner's job duties required her to climb stairs, her left knee giving away was not unique to her job given her prior injury from 2019 and her osteoarthritis.

Brewer v. Davis-Stuart, Inc., 2023 WL 5978135 (W.Va. SCT 2023)

A large, light green decorative shape that tapers to the right, located in the bottom left corner of the slide.

[www.spilmanlaw.com](http://www.spilmanlaw.com)

West Virginia | North Carolina  
Pennsylvania | Virginia | Florida

# You Be the Judge

## **Protested Order:**

The claimant protested the order that rejected the claim because he was not performing a work related duty at the time of the injury.

[www.spilmanlaw.com](http://www.spilmanlaw.com)

West Virginia | North Carolina  
Pennsylvania | Virginia | Florida

# You Be the Judge

## **Facts Developed in Litigation:**

Claimant worked 34 years in maintenance department of employer and had been working on his knees all morning laying floor tile. Claimant tore his medial meniscus to his right knee when rising from a chair to leave the break room.

[www.spilmanlaw.com](http://www.spilmanlaw.com)

West Virginia | North Carolina  
Pennsylvania | Virginia | Florida

# You Be the Judge

## **Case Law and Statutory Authority:**

W. Va. Code § 23-4-1 provides 3 elements must coexist to find claim compensable: (1) a personal injury; (2) received in the course of employment; and (3) resulting from that employment.

# You Be the Judge

## Case Law and Statutory Authority:

*Shapaka v. State Compensation Commissioner and Wheeling Steel Corp.*, 119 S.E.2d 821 (W. Va. 1961) at syllabus pt. 3 states, “Acts of ministrations by a servant unto himself, such as quenching his thirst, relieving his hunger, protecting himself from excessive cold and numerous others, readily conceivable, performance of which while at work are reasonably necessary to his health and comfort, are incidents of his employment and acts of service therein, within the meaning of the Workmen’s Compensation Act,

[www.spilmanlaw.com](http://www.spilmanlaw.com)

West Virginia | North Carolina  
Pennsylvania | Virginia | Florida

# You Be the Judge

## Case Law and Statutory Authority:

(*Shapaka* continued)

though, in a sense, they are personal to himself and only remotely and indirectly conducive to the object of the employment; and an accidental injury sustained in the performance of such an act is compensable under said statute, as one incurred in the course of the employment and resulting therefrom."

[www.spilmanlaw.com](http://www.spilmanlaw.com)

West Virginia | North Carolina  
Pennsylvania | Virginia | Florida

# You Be the Judge

Claim Administrator – Denied the claim.

Office of Judges – Reversed the Claim Administrator and approved the claim.

Board of Review – Reversed the Office of Judges and denied the claim.

W. Va. Supreme Court – Reversed the Board of Review and approved the claim.

[www.spilmanlaw.com](http://www.spilmanlaw.com)

West Virginia | North Carolina  
Pennsylvania | Virginia | Florida

## Poll 5: Change Scenario

Claimant left work to meet daughter in parking lot for lunch. He dropped his credit card after returning from lunch. When he bent over to pick it up, his left knee went backwards and he felt a pop in his right knee. Fell on his right side and landed on his knee.

Form OIC-WC-1 said he fell on uneven ground

Fact Gathering

- A. Whether the activity was ordinary or work-specific
- B. Whether there was a defect, hazard, or uneven ground
- C. Whether witnesses observed a slip, trip, or fall
- D. All of the above

## You Be the Judge

Act of picking up the credit card was an impulsive action that was a “mere deviation” from Mr. Whipple's employment; not a deliberate and extensive excursion from his employment.

Mr. Whipple was returning to work after his lunch break when he fell while trying to pick up his credit card. The fall occurred on BB&T's property. Therefore, the Board of Review did not err in finding Mr. Whipple was injured in the course of and as a result of his employment.

BB&T v. Whipple, 2018 WL 2406018 (W.Va. SCT 2018)



[www.spilmanlaw.com](http://www.spilmanlaw.com)

West Virginia | North Carolina  
Pennsylvania | Virginia | Florida