



Client Alert

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Supreme Court of GA Reverses Statute of Limitations Claim

S13G1812 *Reid v. Metropolitan Atlanta Rapid Transit Authority*

The Supreme Court has REVERSED the Court of Appeals' earlier decision that an employee's pursuit of late payment income benefit penalties 10 years later was not barred by the applicable statute of limitations.

In *Reid v. MARTA*, the Court of Appeals addressed the two-year statute of limitations for income benefits under O.C.G.A. § 34-9-104, as well as the meaning of a "change of condition." In contrast to a long history of both statutory and case law, the Court of Appeals found the two-year statute of limitations outlined in O.C.G.A. § 34-9-104 inapplicable to the employee's request for payment of income benefit penalties even though nearly 10 years had passed since he last received temporary total disability benefits.

The employee was injured at work in October of 1999, and received TTD benefits between October of 1999 and June of 2002, after which he returned to work and benefits were suspended. Many years later, in May of 2010, the employee sought payment of late payment penalties due on 12 weeks of those TTD benefits.

The Court of Appeals rationalized the employee was not seeking to recover the statutory late-payment penalties because his physical or economic condition had changed, but rather because the penalties constituted benefits due him as a matter of law under O.C.G.A. § 34-9-221. Of importance to the Court of Appeals, the employee was not seeking modification of a prior calculation of amounts owed or modification of a prior ruling, this represented his "initial" claim for benefits, and there had been no earlier establishment of his condition by State Board award or otherwise.

The potential consequences of the Court of Appeals decision was the State Board may have been required to find in future cases that the two-year statute of limitations does not apply for any case in which an employer/insurer has not paid all benefits "due" an employee. This could foreseeably encompass late payment penalties, missed TTD checks, and correct calculation of the Average Weekly Wage or Temporary Total Disability rate, even if a substantial amount of time has passed since last payment. While in *Reid* the employee was only awarded late payment penalties, it could have been argued the payment of those penalties resurrected the two-year statute of limitations for an additional "change in condition" claim.

The Supreme Court has now weighed in and reversed the Court of Appeals. In reversing, the Supreme Court found the employee's allegation of a change in "status" regarding an entitlement to benefits such as late payment penalties must be brought within the two-year time period under O.C.G.A. § 34-9-104 or it will be barred.

If you should be faced with a request for payment of old penalties or benefits, given the complexities of this case, we recommend you consult a Swift Currie attorney regarding the specific facts of your claim. You may do so by calling 404.874.8800 or by visiting our website, www.swiftcurrie.com.

The foregoing is not intended to be a comprehensive analysis of the full effect of these changes. Nothing in this notice should be construed as legal advice. This document is intended only to notify our clients and other interested parties about important recent developments. Every effort has been made to ascertain the accuracy of the information contained within this notice.