

Rycroft Defense in Georgia: Court Rules “One Bite at the Apple”

The well-known “Rycroft Defense” recently came under attack at the Georgia Court of Appeals. Previously, in *Georgia Electric Company, et al. v. Rycroft*, the Supreme Court of Georgia adopted a three-factor test to determine whether an employee’s false statement regarding their physical condition post-hire bars the employee’s workers’ compensation claim. Specifically, the Supreme Court held if (1) the employee knowingly and willfully made a false representation as to his physical condition; (2) the employer relied upon the false representation and the reliance was a substantial factor in the hiring; and (3) there is a causal connection between the false representation and the injury, then the workers’ compensation claim is barred. Ultimately, the Court of Appeals in the recent case of *McKay v. Inalfa Roof Systems, Inc. et al.* determined that the Rycroft Defense is still alive but found it was not limitless.

On February 27, 2025, the Georgia Court of Appeals considered in *McKay* whether the Rycroft Defense is still available after the employer gained knowledge of the employee’s pre-existing physical condition prior to a second work injury. Here, the employee began working as an assembly operator in December 2020. Although the employee sustained several injuries to her cervical spine, shoulder, ribs and wrist following a 2012 accident, she specifically denied prior injuries to her neck, back, shoulder or knee on her post hire medical questionnaire (and a physical examination) in 2020. In June 2021, the employee injured her back while at work. Following this accident, the employer learned of the employee’s 2012 accident and injuries. However, after undergoing medical treatment, the employee returned to work in the same position in September 2021. Shortly thereafter, the employee was involved in a second work accident, this time involving injuries to her neck and back.

Following this second accident, she requested hearings for both accidents. The State Board denied both claims under the Rycroft Defense despite the employee mentioning the 2012 injuries to the employer during the time between the first and second accidents. The employee appealed the denial of her second work accident claim arguing the Rycroft Defense was inapplicable to the September 2021 injury because the employer learned of the 2012 accident and pre-existing conditions following her first accident and placed her back in the same position prior to her second accident. The Court of Appeals overturned the State Board’s Award by holding the Rycroft Defense does not apply when the employer obtains knowledge of an employee’s false representation and/or pre-existing condition post-hire, but *before* the work injury, and retains the employee despite this knowledge. In essence, an employer effectively “waives” the Rycroft Defense under such a scenario. Because the Court of Appeals indicated the validity of the Rycroft Defense was also under attack, but that they were without the authority to overturn it, an appeal to the Georgia Supreme Court may be forthcoming.

What are the implications of the *McKay* Decision? In short, the Rycroft Defense is still available. However, if an employer learns of an employee’s false representation at any point post-hire, yet retains the employee, the Rycroft Defense is waived. Of course, other potential strategies exist such as a return to baseline for an aggravation of a pre-existing condition. Certainly, if you have any questions about this case, ways to make Rycroft a stronger defense or other Georgia workers’ compensation issues, please never hesitate to contact your Swift Currie workers’ compensation attorneys at 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.