



Brain Injury and Concussions on the Job –
Rights and Benefits
Presenter: Debora Fajer-Smith
Of Counsel to Joseph Greenwald & Laake PA



Maryland | District of Columbia | Virginia

Email: DFS@jgllaw.com

Office Phone Number: 240-553-1173



Debora Fajer-Smith

- I have been practicing law in Maryland and the District of Columbia for over 37 years.
- I currently sit as a public member of the Senate House Oversight Committee on Worker's Compensation and Insurance Benefits in the Maryland Legislature.
- Consistently voted by her peers as BEST Lawyers since 2019, and named by the Daily Record awarded as Leader in the Law and Top 100 Women in Maryland.
- Inducted to the College of Workers' Compensation American Bar Association

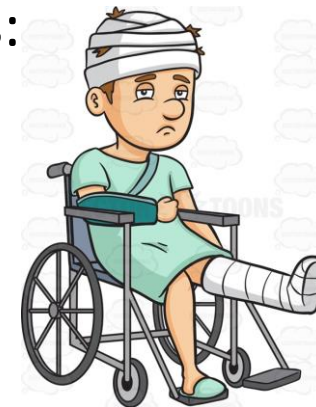
What is the Workers' Compensation System in Maryland?

Every state is different - It is a statutory and regulatory scheme defined by case law

The Workers' Compensation Commission is the administrative body, with ten sitting Commissioners – balancing competing interests between the worker and the employer since 1914. Statute was created to be liberally construed to favor the employee

The main headquarters is in Baltimore City, however regional sites were established to provide injured claimants easier access to the hearings:

1. Beltsville
2. LaPlata
3. Abingdon
4. Frederick
5. Cambridge
6. Cumberland



Basic Definition of an Accidental Injury

One that arises out of and in the scope of employment. A slip, twist, or fall, but recently more defined under the *Harris* case, to broaden the definition, as an unusual strain or exertion of the employee, or unusual condition in the employment.

- In exchange for an employee NOT to sue his or her employer, an injured worker could file for NO Fault benefits with the employer, without certain proofs and without the expense of protracted litigation.



Procedure in Filing a Claim

1. A claim must be filed with the Commission either online or by paper, granting authorization for reviewing medical records.
2. The employer/insurer or self insured has 30 days to file a response, either accepting and documenting the average weekly wage and time lost, or filing contesting issues to the claim.
3. If the claim is accepted, then an Automatic Award will be issued. This will still be subject to other defenses, such as causal relationship of the injuries to the accident and whether the medical treatment requested is necessary. Time off of work for the disability can also be contested, especially if the employer has offered light duty or accommodations. Furthermore, the employer is entitled to have the claimant examined by their doctor, called an IME, an independent medical exam.
4. If the claim is contested, no automatic award will be issued but a hearing will be set in for the parties to be heard.





Cases Involving the Head



- Professional athletes are allowed to file workers compensation
- Construction sites and outdoor accidents on the job
- School related incidents – involving teachers, students, parents
- Assaults on the job – co employee or independent third party
- Automobile and Truck accidents that are both workers compensation and third-party lawsuit
- Repetitive injuries involving head trauma or neck
- Plumbers, electricians, and trades have head injuries
- Head injury with no physical trauma – PTSD , anxiety , depression
- Nurses injured in Emergency rooms and nursing homes



How are the Benefits provided – The head Injury

1. Obtaining the necessary diagnosis and treatment
2. Obtaining the temporary total benefits during the disability
3. Once a person reaches MMI , Maximum Medical Improvement, they are entitled to be rated for any residual problems
4. The physicians need to rate the disability by using the AMA guides and additional factors allowed by the Maryland Commission, to include pain, atrophy, loss of use, loss of function, and weakness

Workers' compensation covers the cost of



Benefits

5. Either the parties reach an agreement to stipulate to the percent of disability or proceed to a hearing for the Commissioner to make that determination.

6. Meanwhile the claimant's attorney has to decide with the claimant what the return to work status will be –

- a. Is the client able to successfully go back to the pre- injury job?
- b. Is the client in need of accommodations and is the employer willing to comply?
- c. Was the claimant's job eliminated during the period of disability?
- d. If the employee is advised by a physician not to return to the former job, Maryland law allows for a rehabilitation evaluation by a counselor to assess what position would be suitable. Is retaining recommended?



How are the Benefits Awarded?



- Commission will evaluate the medical IME reports for each side
- They will evaluate the claimant's testimony, his or her course of treatment, and resulting wage.
- Commission will identify which category the cases fall into
 1. a scheduled member such as leg, arm, foot, hand, or
 2. what is termed "other cases", parts of the body, and not an extremity.
- The Commission in addition to the doctors ratings, the medical records, the clients testimony, will have to consider in the "other cases" ratings, the employees earning capacity after the accident compared to the date of accident. They are at liberty to use their discretion to add what they deem fair.
- The last category is Permanent Total disability and that is when an employee can no longer return to any gainful employment.
- There are also death benefits and dependency benefits.

What category does the Head Fall Under?

The head always falls under “other cases.”



- ❖ “Other cases”, means that the percentage that the doctor gave the client will be multiplied by 500 weeks, and paid at the rate per week that is regulated for that year, up to a state maximum. In addition, any injury awarded over 50 percent, will be deemed a serious injury ,and receive an additional 83 weeks when hitting that threshold.
- ❖ In addition, there is one more factor that can give additional weeks of compensation, and that is what is termed “industrial loss of use”.

Specific Head Injury Case Applications

1. One of my most creative head trauma case – let me share with you
2. The past few years, the most head trauma cases, have been sustained by teachers in my practice.
 - a. There are two types –Accidents or Assaults
 - b. The second is a special needs student combative nature.
3. We also see more employee vs employee assaults and trauma
In these situations, a case will be defended by the employer as the “horseplay exception”.
4. Third party cases co-employee, contractors, automobile accidents
5. Medical professionals and public safety sectors



Experiences and Recommendations with Head injuries and Workers' Compensation



- These cases are not picked up as quickly as they should be
- Early diagnosis and intervention is so important
- Engage the adjuster, nurse case manager , as much as possible
- If no response, other ways of diagnostic should be used and a hearing requested before the Commission
- Often the client comes to us late, because they “don’t know what they don’t know.”
- Support for the injured worker is very important – include psychological counselor when possible. Speak with the family members.
- If necessary, filing issues can get an attorney involved for the employer, and possibly force them to obtain their own IME .
- The head trauma client is different from the rest and require more time and attention. We must give them a unique plan to recovery and position them for the future.