**FRETT V. STATE FARM: EXPANDING COVERAGE FOR LUNCHBREAK INJURIES**

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DEFINITIONS-

**Arising out of employment** - "The words ‘arising out of’ mean that there must be some causal connection between the conditions under which the employee worked and the injury which he received." *Thornton*, 198 Ga. at 792-793, 32 S.E.2d 816.

**Arising in the course of employment**–An injury arises "in the course of" employment when it "occurs within the period of the employment, at a place where the employee may be in performance of her duties and while she is fulfilling or doing something incidental to those duties." *Hennly v. Richardson,* 264 Ga. 355, 356 (1), 444 S.E.2d 317 (1994). Injuries occurring "in the course of" employment certainly include injuries sustained when an employee is engaged in the performance of her assigned work, but they also include injuries sustained when the employee is engaged in activities "incidental" to her assigned work. Such incidental activities include, among other things, ingress and egress to the place of work while on the employer's premises. *Frett v. State Farm Emp. Workers' Comp*., 309 Ga. 44, 844 S.E.2d 749 (Ga. 2020)

**The Ingress and Egress Rule –** An employee is allowed a reasonable time for egress from the immediate place of work during which she remains in the course of her employment. *West Point Pepperell v. McEntire*, 150 Ga. App. 728 (1), 258 S.E.2d 530 (1979). The ingress and egress rule was expressly created to cover injuries that are acts preparatory to entering or leaving the employment but not strictly in furtherance of it. *General Acc. Fire & Life Assur. Corp. v. Worley*, 72 S.E.2d 560, 86 Ga. App. 794 (Ga. App., 1952).

**Premises**– This includes the entire area devoted to the employer with which the employee is associated. The Ingress/egress exception will apply if the area where the claimant is injured is an area (1) limited (or very nearly so) to the respondent business, even if the business's right to the area is merely a leasehold interest or some other non-exclusive access; or (2) owned, maintained, or controlled by the business, even though the area is heavily traversed by the public without connection to the business. *Bonner-Hill v. Southland Waste Sys. of Ga., Inc*., 330 Ga. App. 151, 767 S.E.2d 803 (Ga. App. 2014)

**Personal comfort doctrine** - "Acts of ministration by a servant to himself, such as quenching his thirst [or] relieving his hunger, are incidents to his employment and acts of service therein within the [296 Ga. App. 231] workmen's compensation acts, though they are only indirectly conducive to the purpose of the employment*." Harris v. Peach County Bd. of Com'Rs*, 674 S.E.2d 36, 296 Ga. App. 225 (Ga. App. 2009)

BRIEF HISTORICAL BACKGROUND OF THE “ARISING OUT OF” EMPLOYMENT REQUIREMENT AND SCHEDULED BREAKS

The heart of every worker’s compensation act, and the source of most litigation in the compensation field, is the coverage formula. Although Workers Compensation is a statutory regime, forty-three states, and the Longshore and Harbor Workers’ Compensation Act have adopted the entire British Compensation Act (1897) formula: injury “arising out of and in the course of employment.”[[1]](#footnote-2) In 1920, Georgia also adopted the British Compensation Act formula in its entirety, as roughly 40 states had already done. As the Georgia Court of Appeals noted in 1923, “volumes have been written in the opinions upon this clause [arising out of employment]” dating all the way back to the Workers’ Compensation Act of England.[[2]](#footnote-3)

O.C.G.A. § 34-9-1 states that the definition of a work injury is an accident *arising out of* **and** *in the course of* employment. These are two distinct prongs that must be satisfied individually.[[3]](#footnote-4) The *in the course of* prong relates to the *time, place and circumstances* under which the injury takes place. The *arising out of* prong deals with causation —whether there is a 'causal connection' between the employment and the injury.[[4]](#footnote-5) One could say that “arising out of” simply means that there is a causal “nexus” between the injury and the circumstances of the employee’s work.[[5]](#footnote-6)

In 1935, the *Ocean Acct. & Gaur. Corp. v. Farr* case established what would come to be known as the “scheduled break” defense. In these cases, the “arising out of” prong focused solely on the question of whether the employee had “freedom of action” or remained under the employer’s “control”.[[6]](#footnote-7) Pursuant to *Farr* (1935), if the Employer had released time to the employee to follow his individual pursuits, then it was reasoned that there was no accident *arising out of* employment. The contours of the “scheduled break” defense were almost entirely developed by the Court of Appeals. These cases often be distinguished based on seemingly arbitrary factual distinctions. For example, an employee returning to the employer’s premises during a scheduled lunch break would be covered under the Act, but an employee who chooses to remain on the premises would have no such coverage.[[7]](#footnote-8) Additionally, whether an employee had the subjective intent to depart the premises would arguably determine the coverage question (because of the ingress and egress rule).

The appellate courts struggled to apply the rule consistently.[[8]](#footnote-9) Arguably, under prior caselaw, an employee was held to have an accident “arising out of” employment while returning from a lunch break, but not while leaving to a lunch break (there was conflicting case law on this point).[[9]](#footnote-10) Under *Rockwell v. Lockheed Martin Corp.*, 248 Ga. App. 73, an employee leaving to lunch was considered to have an accident “arising out of employment” for the purpose of the exclusive remedy. In *Aetna Cas. & Sur Co. v. Honea*, 71 Ga. App. 569 (1944), a workers’ compensation case, the Court of Appeals also reached the opposite conclusion of *Rockwell* under similar facts.[[10]](#footnote-11)

WHAT WERE THE FACTS AND ISSUES IN THE FRETT V STATE FARM CASE?

On the day of her accident, Frett had begun her regularly scheduled lunch break. All of the parties agreed that she was free to do as she pleased on her break and could leave the office for lunch if she wished. Generally, Frett brought her lunch and would walk to the State Farm employee break room on her floor to prepare her food. On the day of the accident, Frett went to the break room to microwave her lunch. She intended to eat her lunch outside on a bench. As she exited the break room, she slipped and fell on water and suffered an injury. It is undisputed that Frett was still inside the break room when she fell.

The issue, broadly defined, is whether the Claimant’s injury is compensable under O.C.G.A. § 34-9-1(4) of the Workers’ Compensation Act, which requires an injury to “arise out of and in the course of employment.”[[11]](#footnote-12) Narrowly defined, the issue is whether an employee who injures herself while leaving the employer’s premises to eat her lunch during her scheduled lunch time should be denied workers’ compensation benefits. In this case, the litigation at the hearing level focused on the interaction between the “ingress and egress rule” and the “scheduled break defense”. The Administrative law Judge’s award found that the accident *arose out of and in the course of employment* because of the “ingress and egress” rule.[[12]](#footnote-13)

However, the Appellate Division held that Mrs. Frett’s accident did not arise out of employment due to the claimant being on a “scheduled break”. Although the *Rockwell* case held that the *ingress and egress* rule should apply to scheduled breaks, the Board’s Appellate Division declined to apply this precedent to workers’ comp cases on the basis that it was a negligence case (See attached Appellate Award for the Frett case). The Appellate Division decision in Frett left the injured worker in a legal no-mans-land. There was simply no available legal remedy for injuries that occurred while the employee was leaving the premises to eat lunch. This would be true even if the employer negligently dropped a piano on the employee’s head. The Court of Appeals would apply the exclusive remedy tort bar, and the Appellate Division would hold that the accident was not covered by the Workers’ Compensation Act (i.e., did not arise out of employment).[[13]](#footnote-14)

On appeal, the Superior Court affirmed the denial of benefits by the Appellate Division. The Court of Appeals opinion in *Frett,* *348 Ga. App. 30,* (later reversed by the Supreme Court) noted that the case law regarding the intersection of the ingress and egress rule with the scheduled break rule created “anomalous and arbitrary results”. The Court held that these contradictory lines of cases (*Honea* and *Rockwell*) should not have been allowed to co-exist. The Court emphasized that workers’ needed clarity about whether they should sue in tort or seek workers’ compensation benefits for lunchtime injuries. Ultimately, the Court "'conclude[d] that the extension of the ingress and egress rule to cover cases in which the employee is injured while leaving and returning to work on a regularly scheduled break was an improper dilution of the Supreme Court's decision in Farr.” But the Court of Appeals’ decision led to its own absurdities. Under Frett, an employee who falls while exiting her employer's premises to go home for the evening would be covered under the Act, but if she was exiting her employer's premises to go home to have lunch, intending to return to work, she would not be covered.

However, the majority and dissenting opinions agreed that the Supreme Court needed to address the question of how the ingress and egress rule and the scheduled break rule should interact. The Supreme Court did decide to hear the issue, and the resulting decision overturned 85 years of caselaw relating to the so-called “scheduled break” defense.

WHAT IS THE “TAKEAWAY” FROM SUPREME COURT’S DECISION IN FRETT V STATE FARM?

Ultimately the Supreme Court decided to overturn *Ocean Acct. & Gaur. Corp. v. Farr*. The Court held that an accident on the employer’s premises during a lunch break occurs in the “course of employment.” The Supreme rejected the “scheduled break” defense was poorly reasoned and contrary to O.C.G.A § 34-9-1. In short, a “scheduled break” is not sufficient to suspend the *course of employment*. An employee is still *in the course of employment*while attending to personal matters which are incidental to employment (i.e., eating lunch, using the restroom, etc.) When an employee slips on a wet floor at work, it logically follows that her injury was causally connected to the conditions under which she worked, and her injury, therefore, 'arose out of' her employment." *Frett v. State Farm Emp. Workers' Comp*., 309 Ga. 44, (Ga. 2020) Moreover, the Court explicitly applies the “personal comfort doctrine” to on-premises lunchbreak injuries for the first time.

WHY DID THE SUPREME COURT OVERRULE FARR AND REJECT THE “SCHEDULED BREAK” DEFENSE?

The court looked at this as an issue of statutory interpretation (O.C.G.A § 34-9-1). In a nutshell, scheduled break defense cases mixed up the two-prong task for “arising out of” and “in the course of” employment. Employer “control” of the employees’ action is a factor that should be more relevant to the “course of employment” question.[[14]](#footnote-15) The Court held that when analyzing the “arising out of” prong of the compensability formula, the focus should be on the issue of **causation**. To quote the supreme Court, "[…] Farr said nothing at all about causation when it analyzed the 'arising out of' prong, focusing instead on the fact that the worker had 'knocked off' from work and was free to do as he pleased."[[15]](#footnote-16) The problem with the “scheduled lunch-break” defense was that it ignored the seminal “arising out of” question: whether there was a causal connection between the *conditions of the work* and *the resulting injury.*

Although the only issue here as “arising out of” employment, The Court decided to go through the entire two-pronged analysis.[[16]](#footnote-17) The Court reiterated that "The Workers’ Compensation Act provides for compensation for injuries that occur 'in the course of' employment and 'arise out of' employment. See O.C.G.A. § 34-9-1 (4)."

1. *In the Course of Employment Analysis in Frett*

In considering the “course of employment” prong, an employee will be in the course of employment while engaged in the performance of her assigned work, but also when the employee is engaged in activities that are incidental to her assigned work. Factors that are relevant to this analysis may include:

* whether the employee was ingressing or egressing the premises
* whether the employee was attending to routine personal needs
* whether the employee was doing something else incidental to employment
* whether the employee remains on the premises

If the employee is doing something “incidental” to employment, they should remain within the course of employment. The *personal comfort doctrine* states that an employee who “engages in an act to minister to his personal comfort (whether it is satisfying his hunger, quenching his thirst, relieving himself, or otherwise), ordinarily does not leave the course of his employment.”[[17]](#footnote-18) Here, the Court reasons, “"This activity [eating lunch], being reasonably necessary to sustain her comfort at work, was incidental to her employment and is not beyond the scope of compensability under the Act." [[18]](#footnote-19)

1. *Arising out of employment Analysis in Frett*

The Supreme Court decided that Frett's accident arose out of employment. Though neither the fact that the claimant was “egressing” or the fact that the employee was on a “scheduled break” were relevant to the court's “arising out of” analysis. The actual “arising out of” analysis is very brief.

It is undisputed that Frett was injured when she slipped and fell on the wet floor of the breakroom on her employer's premises. It logically follows that her injury was causally connected to the conditions under which she worked, and her injury, therefore, 'arose out of' her employment." Frett v. State Farm Emp. Workers' Comp., 844 S.E.2d at 754.

Although this was a very lengthy opinion, the Court completed the “arising out of” analysis in two sentences. However, the reasoning is easy to follow. Under the arising out of prong, an injury arises out of employment if it resulted from an exposure to a risk occasioned by the nature of the employment.[[19]](#footnote-20) The wet floor is the origin of the risk which resulted in Frett’s injury.[[20]](#footnote-21) A wet floor is a danger that is inherent to Frett’s work environment. Therefore, the causal connection between the injury and the work is clearly established.

As a practical point, this analysis should always start by identifying the actual risk or harm that caused the injury. Next, one should ask if the risk is employment related. Under most facts, on-premises lunchtime injuries will arise out of employment. Most injuries are caused by risks “inherent” to the work environment, such as a wet floor, lifting a heavy box, an item falling off a shelf, etc. It will generally be the rule that lunchtime injuries are covered while the claimant remains on his employer’s premises.

The exception may be if a “personal risk” is the cause of an injury during lunchtime. For instance, if the claimant has a truly idiopathic fall. Of course, “personal risk” type cases can still arise out of employment, but it requires a more in-depth analysis and application of one of Georgia’s “risk doctrines”. For example, if the fall is on a stairway or into a machine or against anything except the bare floor, and especially if the fall is from a height, the risk of injury is *increased*, or is a special danger of the employment.[[21]](#footnote-22) This is the same basic “arising out of employment analysis” that would be performed under any other fact pattern.

IS THE SCHEDULED BREAK DEFENSE OFFICIALLY “DEAD”?

Yes, the “scheduled break” defense is no more.

Of course, an employer can still argue that an employee who is injured during a “purely personal mission” has stepped away from his employment, and therefore not eligible to receive workers compensation benefits. However, this is an argument that the employee has left the “course of employment”. For example, in *Skinner*, 188 Ga. 823, the Claimant took an 18-mile detour (permitted by his employer) to Tybee Island for the personal purpose of eating seafood and seeing the ocean. The "pivotal question" in the case was whether the employee was "acting in the course of his employment" at the time of the accident.

The abolished “scheduled break” defense was incorrectly applied to the “arising out of” employment prong of the coverage question. It is incorrect, according to the *Frett* Court, to interpret the “arising out of” law as requiring an employee to be acting in furtherance of job duties.

NEW ISSUES FOLLOWING FRETT VS STATE FARM

The *Frett* case left some open questions about injuries that occur on a scheduled break. The court’s ruling was limited to the factual circumstances of Mrs. Frett’s injury. Please see the footnote below:

Our statements here should not be read to create any bright-line rules. We are not suggesting, for instance, that Frett's injury definitely would not have been compensable if it had occurred in the parking lot outside her employer's premises or if she had been doing something other than preparing lunch. These questions are not before us, and the outcome in each case depends on the particular circumstances involved. Frett v. State Farm Emp. Workers' Comp., 309 Ga. 44, Footnote 7 (Ga. 2020)

In the dicta of the above footnote, the Supreme Court says that it is not creating any “bright line” rules for off-premises lunch breaks.  Since the “scheduled break defense” has been abolished, it is somewhat unclear how off-premises lunch breaks should be treated under Georgia law. Arguably, under the personal “comfort doctrine”, all lunch breaks would be universally considered to be in the course of employment.  The reasoning is as follows: If eating lunch is incidental to employment, then eating lunch off premises is an activity incidental to employment, and therefore in the scope of employment. However, the states are divided about how to handle off-premises lunchbreak injuries. The majority rule is that an employee with a fixed time and place of work who has left the premises for lunch is outside the course of employment.[[22]](#footnote-23) Of course, there are also numerous exceptions to this rule in the states that follow it.[[23]](#footnote-24)

Following the *Frett* decision, there is a lack of valid caselaw regarding off-premises lunch breaks. The existing Georgia caselaw on the off-premises lunch breaks is primarily concerned with the “scheduled” vs “unscheduled” break distinction by *Farr* and its progeny(and overruled by *Frett*). For instance, in *ATC Healthcare Service, Inc. v. Adams*, 263 Ga. App. 792, the claimant worked for a staffing agency that provided nurses to hospitals. The claimant was completing a three-day training seminar. During lunch, the claimant and several classmates drove to a cracker barrel, where the claimant slipped and injured herself.  The Court of Appeals denied the claimant’s award on the basis that she was on a “scheduled break” and free from her employer’s control. The Court reasoned that the claimant’s accident did not *arise out of* employment because she was on a scheduled break.

Because the “scheduled break” defense is no longer valid, it raises questions about how to evaluate claims for off-premises lunch-breaks injuries. *Frett* stands for the proposition that we should apply the coverage formula consistently across fact patterns. Because of the common practice of grouping compensation questions according to fact categories, lunch-time injuries are sometimes discussed as if they were a unique problem. “Actually, when the employee has a definite place and time of work, and the time of work does not include the lunch hour, the trip away from and back to the premises for the purpose of getting lunch is indistinguishable in principle from the trip at the beginning and end of the workday and should be governed by the same rules and exceptions.”[[24]](#footnote-25) Georgia cases related to “coming and going” rule and its exceptions should apply equally to off-premises lunchbreaks. For example, an employee who is paid during the going and coming trip is deemed to be in the course of employment. *Continental Cas Co. v Thompson*, 130 Ga. App. 270 (employee who was given an extra hour’s pay for travel was found to have compensable injury). An employee who was paid during the time taken out for lunch or coffee may be given the benefit of the same conclusion.

Here are some potential issues to consider if you encounter an off-premises lunchbreak accident:

* Is the worker paid for the time or expense of travel? *Indemnity Ins. Co of N Am. V. Bolen*, 106 Ga. App. 684.
* Is the employee in the employer’s conveyance?
* Was the employee concurrently performing a service for the employer while on their lunch break?
* Did the employer request that the employee have a “fast” lunch so that they could quickly return to their work?
* Is it a business lunch where co-employees are talking about work or sending emails?
* Is the employee travelling to their “home office” to eat lunch? See *West point Pepperell, Inc. v. McEntire*, 150 Ga App. 728. This may become a more common fact pattern with the increase in remote working.

These off-premises cases will likely turn on mixed-questions of law and fact. Given that *Farr* has been overruled, there is an opportunity to argue that more off-premises lunch breaks *arise out of and in the course of employment*.

CONCLUSION

*Frett v State Farm* is an improvement in the case law. It is hard to argue that tort lawsuits are the desired outcome for such clearly work-related injuries. Workers’ comp should be the preferred remedy for workers that are injured on their employers’ premises.

The Georgia Supreme Court could have decided to simply follow the precedent set in the *Rockwell* case. In that case, the Court of Appeals applied the “ingress and egress” rule to scheduled breaks and held that accidents *arise out of and in the course of* employment if an employee is egress or ingressing on a “scheduled break”. However, this “solution” would have required that an employee who stays at his desk to eat lunch during the scheduled break would not have a compensable workers’ comp injury. Although we tend to group compensation patterns according to fact pattern, leaving to and from lunch is no different than leaving to and from work at the begging and end of each day. Getting rid of the “scheduled break” defense has provided much needed consistency to the caselaw.

1. *Larson Workers’ Compensation Law* § 2.07 (LexisNexis). [↑](#footnote-ref-2)
2. *New Amsterdam Cas. Co v Sumrall,* 30 Ga. App. 682 (1923).  [↑](#footnote-ref-3)
3. *Mayor and Aldermen Of the City of Savannah v. Stevens*, 598 S.E.2d 456, 278 Ga. 166 (Ga., 2004). [↑](#footnote-ref-4)
4. *Frett v. State Farm Emp. Workers' Comp*., 309 Ga. 44, 844 S.E.2d 749 (Ga. 2020) (“The test presents two independent and distinct criteria, and an injury is not compensable unless it satisfies both..."). [↑](#footnote-ref-5)
5. The Court of Appeals has tended to use very verbose language to describe this simple concept. *Hulbert v. Domino’s Pizza, Inc*., 521 S.E.2d 43, 239 Ga. App. 370 (Ga. App. 1999)

   ("The injuries, however, need not arise from something peculiar to the employment but the injury is compensable if after the event it is apparent to the rational mind that there is a causal connection between the conditions under which the employment was performed and the resulting injury.") [↑](#footnote-ref-6)
6. *Wilkie v. Travelers Ins. Co.*, 185 S.E.2d 783, 124 Ga.App. 714 (Ga. App. 1971) [↑](#footnote-ref-7)
7. *Travelers Ins. Co. v Smith*, 91 Ga. App. 305 (1954). [↑](#footnote-ref-8)
8. Here is how the Supreme Court describes the inconsistency in the caselaw: “[…] within a few decades of the Farr decision, the law concerning injuries occurring during rest breaks or lunch breaks became confusing at best, if not altogether incoherent. An employee preparing to eat lunch on her employer's premises was in an employer-employee relationship for purposes of general liability, but not under the Act. See Holman, 201 Ga. at 459 (1), 39 S.E.2d 850; Burt, 103 Ga. App. at 814, 120 S.E.2d 797. Yet even under the Act, that employee might have been acting "in the course of" her employment, see Farr, 180 Ga. at 270-271, 178 S.E. 728, but at the same time, that employee was engaged wholly in her personal affairs, and so any injury suffered by the employee would not "arise out of" employment, see id., unless, of course, that employee was on a business trip, in which case the injury probably would arise out of employment, see Thornton, 198 Ga. at 795, 32 S.E.2d 816. […] [↑](#footnote-ref-9)
9. In an oddly arbitrary result, the ingress and egress rule was applied to Claimants that were ingressing on a lunchbreak, but not to claimants that were egressing on a lunchbreak. *Aetna Cas. & Sur Co. v. Honea*, 71 Ga. App. 569, (1944); *Travelers Ins. Co. v Smith*, 91 Ga. App. 305 (1954). [↑](#footnote-ref-10)
10. The Claimant was held not to have an accident arising out of employment, even though she was egressing during a scheduled lunch break. However, this 1944 case predates the ingress and egress rule in Georgia. [↑](#footnote-ref-11)
11. The Appellate Division Award found that Frett’s accident arose “in the course of employment”, but that it did not “arise out of” employment. [↑](#footnote-ref-12)
12. Generally, going and coming to work is not covered under the workers compensation act, but the “ingress and egress” exception holds that there is coverage while an employee is ingressing or egressing from the work premises. [↑](#footnote-ref-13)
13. Georgia’s workers compensation coverage formula is an accident (1) *arising out of* AND (2) *in the course of* employment [↑](#footnote-ref-14)
14. However, employer control is not determinative of the “course of” question. "When analyzing the 'in the course of' prerequisite, courts generally focus on “the nature of the employee's activity at the time of the injury, not whether she was paid for it or was free to do something else." [↑](#footnote-ref-15)
15. Frett v. State Farm Emp. Workers' Comp., 844 S.E.2d 749 (Ga. 2020). [↑](#footnote-ref-16)
16. For a proper analysis of this case, however, each prerequisite to compensation must be examined." Frett v. State Farm Emp. Workers' Comp., 309 Ga. 44, 844 S.E.2d 749 (Ga. 2020) [↑](#footnote-ref-17)
17. Frett v. State Farm Emp. Workers' Comp., 844 S.E.2d at 752 [↑](#footnote-ref-18)
18. Id. [↑](#footnote-ref-19)
19. *Stevens*, 598 S.E.2d 456, 278 Ga. 166. [↑](#footnote-ref-20)
20. “The clearest cases of compensability are those in which the lunch-time injury is traceable to a danger inherent in the employment environment.” Larson's at § 21.02 (2019); See Nicholson v. Industrial Comm’n, 76 Ariz. 105, 259 P.2d 547 (1953); Travelers Ins. Co. v. McAllister, 345 S.W.2d 355 (Tex. Civ. App. 1961). [↑](#footnote-ref-21)
21. *United States Cas. Co. v Richardson,* 75 Ga. App 496. [↑](#footnote-ref-22)
22. 2 Larson's Workers' Compensation Law § 13.01 [↑](#footnote-ref-23)
23. For example, in *Krause v. Swartwood,* a physician’s secretary, was requested by her employer to take her lunch at a nearby restaurant because of his absence, and to have phone calls from the office transferred there. The lunch was to be paid for by the employer. The secretary suffered chemical poisoning from coffee made in the restaurant, and compensation was awarded by the Supreme Court of Minnesota, reversing the Industrial Commission’s denial. [↑](#footnote-ref-24)
24. *Larson Workers’ Compensation Law* § 13.05 (LexisNexis). [↑](#footnote-ref-25)