

SARTAIN LAW OFFICES

Helping You Navigate the Storm

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Job searches

After you've sustained a work-related injury, you may also find yourself out of a job. Unfortunately, it is not uncommon for an employer to terminate an injured employee. If this happens to you, what do you do?

HELP
WANTED

First, why were you fired?

If you are terminated for a reason *directly related* to your injury—i.e. you cannot do the job anymore—you *are not required* to search for another job. If you are terminated for a reason *not related* to your injury, you *are required* to do a job search. Although this seems like a simple issue, determining why you were fired can be quite complicated.

For example, suppose you are injured on the job and are consistently late to work after that. Your employer terminates you; but did they fire you because of your injury or because you were repeatedly late? This will be a decision for the judge.

However, because no one can know how a judge will rule, a prudent employee should assume that he will be expected to do a job search regardless of why he thinks he was fired.

The “Maloney Burden”

In 1995, the Supreme Court of Georgia decided *Maloney v. Gordon County Farms*. In this case, an injured worker was fired from her job for a reason not related to her shoulder injury. When she tried to find a new job, she was unsuccessful because her injury prevented her from being hired by another employer.

Because her injury was the reason she was not hired, she was entitled to weekly income benefits. For you, as the injured employee, this is exactly what you must prove—that you cannot get a new job *because* of your injury.

Why do I have to do this?

When a worker is injured, the employer is responsible for the physical injury *and* for the monetary injury to the worker's earning capacity.

If the employee remains with the company, it is easier to determine if there is a loss of earning capacity.

However, if the employee is fired and cannot find new work, the employee has to prove that the reason he cannot find new work is because his *injury* prevents him from being hired. He must show that it's the injury and not a bad job market that caused his reduction in earnings.

A “Diligent” Job Search

Maloney requires an employee do a “diligent” job search. What does this mean? It means that so long as you are looking for work, you should treat your job search as if it were your job. You must keep detailed records:

- When and where did you apply?
 - Was it on the internet or in person?
 - Who did you talk to?
 - Did you submit an application?
 - Did you get an interview?
- If you did submit an application, try to make a copy of it before you turn it in. If you have an interview—who was it with? Summarize what was said during the interview. Do a follow up to find out if you got the job. If you didn't, ask why.

You must be proactive! You must continue to search!

You must do a job search on a continuous basis! You cannot search for a week, do nothing for 5 months, and then search for another week.

Not doing a diligent job search can cost you money. If the judge finds that you have not performed a diligent job search, then you may lose your entitlement to ongoing income benefits.