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Gallagher Sharp Shop Talk: Workers' Compensation

Question: Is hypertension a "cardiac disease" for purposes of the Handicap Reimbursement Program found in R.C. 4123.343?

In 1955, Ohio created the "Handicap Reimbursement Program" ("HRP") to encourage employers to hire persons with certain pre-existing mental or physical conditions that could hinder future employment. The HRP established a state surplus fund to reimburse employers for injuries caused or aggravated by certain enumerated pre-existing conditions. Recently, the Supreme Court of Ohio was asked to determine whether an employee's pre-existing hypertension would allow an employer to seek reimbursement from the HRP.

In *State ex rel. Fairfield City Schools v. Indus. Comm.* (2011), 129 Ohio St.3d 312, an employee injured his back while at work in 2002. There was no dispute that the injured worker had been diagnosed with hypertension dating back to at least 1995. The employer sought handicap reimbursement, alleging that the worker's pre-existing hypertension is a "cardiac disease" enumerated in R.C. 4123.343, and that the condition delayed the worker's recovery from back surgery. Fairfield submitted an expert report stating that there was a "substantial delay" in recovery, which resulted in the need for a second procedure. The expert further opined that a reasonable handicap assessment attributable to the cardiac disease would be 50 percent. The BWC rejected the recommendation, prompting a *mandamus* action. The Tenth District Court of Appeals denied the requested recovery, and Fairfield appealed to the Supreme Court of Ohio.

The Supreme Court affirmed, finding that hypertension is not a "cardiac disease," as defined in the statute, and therefore must be afforded its plain, everyday meaning. The Court found that just because "cardiac" means relating to the heart and hypertension affects the blood vessels that supply the heart does not mean that hypertension qualifies as a "cardiac disease." Hypertension can also be controlled and is not likely to disrupt workplace productivity or safety. The Court found that hypertension was simply not the impediment to employment that the enumerated conditions found in R.C. 4123.343 would be. The Court did state that it was not holding that hypertension could never be considered a cardiac disease, but under the facts of this case, Fairfield failed to establish that it was.

Handicap reimbursement, while valuable, can be an impossibly random process. In a future Shop Talk, we will discuss the procedure that must be followed in seeking handicap reimbursement. If you have any specific questions, or would like to discuss this or any other workers' compensation issues, you can contact me or Adam Sadowski from our Toledo office.

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