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Gallagher Sharp Shop Talk: Workers' Compensation

Question: Is expert medical testimony necessary for a claimant to establish causation?

Before the Industrial Commission, employers routinely cite a lack of “causal medical evidence,” only to have the claimant’s testimony about the incident and his symptoms win the day. Recently, the Ohio Court of Appeals, Tenth Appellate District, considered the question of whether a claimant’s testimony at trial in a R.C. 4123.512 appeal is sufficient to establish causation without the introduction of expert medical testimony.

Jefferson v. CareWorks of Ohio, 193 Ohio App.3d 615, 2011-Ohio-1940, involved an employee who slipped on a wet floor at work, but caught herself before falling to the floor. The claimant sought medical treatment, and later filed a workers’ compensation claim alleging that she suffered a “cervical sprain/strain and right ankle sprain/strain” as a result of the incident. The claim was allowed administratively based primarily on the medical records and the claimant’s own testimony, prompting the employer to file an appeal to the Franklin County Court of Common Pleas. At trial, the claimant again testified at length about the stumble that caused her injury, stating that she had immediate pain, was “really achy,” and that she felt “radiating pains,” but produced no expert medical testimony to establish causation between the injury and her employment. Her medical records were excluded for evidentiary purposes, and there were no external signs of injury tending to demonstrate that the slipping and stumbling caused her injuries. At the close of the claimant’s case, the trial court granted the employer’s motion for directed verdict, prompting an appeal.

The Tenth District affirmed, finding that a lack of expert medical testimony was fatal to the claimant’s case. There were no external signs of injury to indicate that the incident caused her pain, and therefore the court held that expert medical testimony was necessary to establish causation for such an “internal and elusive” injury. The court also cited evidence that the claimant had been involved in several motor vehicle accidents that had resulted in similar injuries. Expert testimony was also necessary because it would not be common knowledge to the average person that such an event could cause the injuries alleged. With regard to the medical records, they contained hearsay and the claimant was not able to authenticate the documents as business records. Ultimately, the court held that the claimant failed to provide sufficient proof to establish a necessary element of her claim, and her own testimony would not suffice.

This case demonstrates a stark difference between how a claim is considered administratively, where the Rules of Evidence do not apply, and the claimant’s burden in the Court of Common Pleas. Had the claimant produced an expert, this claim almost certainly would have been allowed to go to the jury. 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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