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Gallagher Sharp Shop Talk: Workers' Compensation

Question: When prosecuting a R.C. 4123.512 appeal in court, is it incumbent upon a claimant to produce evidence of every element of his claim in order to be successful?

In Ohio, administrative appeals to a common pleas court pursuant to R.C. 4123.512 are unique creatures of statute. The statute contemplates a *de novo* review of claims, and not simply an "error proceeding," whereby the court considers the validity of an underlying administrative decision. Recently, the Supreme Court of Ohio was asked to consider whether a claimant who was successful in arguing that a work-related incident occurred in the course of his employment was nonetheless precluded from receiving compensation because his attorney failed to produce medical evidence causally relating his injury to the accident at trial.

The facts of *Bennett v. Admr., Ohio Bureau of Workers' Comp.*, 134 Ohio St. 3d 329, 2012-Ohio-5639 are complicated. The case arose from an automobile accident in which the claimant alleged he was injured while traveling from his home to his employer's main office. A workers' compensation claim was filed alleging injuries to his head, neck, and back, including multiple disk herniations. The employer opposed the claim, claiming that the claimant was traveling from his home to the office at the time of the injury and thus the claim was barred by the "coming and going" rule. The claimant maintained that his main office was his home, and therefore the "coming and going" rule did not apply. The claim was denied administratively, prompting a court appeal in which the trial court granted summary judgment to the employer and BWC. On appeal, the Sixth District Court of Appeals found issues of fact for trial, and remanded the case to the common pleas court for further proceedings. During a bench trial, the claimant produced evidence that he was not commuting at the time of the accident, but failed to produce evidence of a compensable medical condition or expert medical evidence of a causal relationship between the accident and the injury. After the claimant's case in chief, the BWC made a motion for a directed verdict, arguing that as a result of his failure to produce this medical evidence, the claimant had failed to produce evidence of every element of his claim. The trial court took the motion under advisement, at which time the BWC presented evidence on the "coming and going" rule. At the close of the trial, the trial court issued a judgment concluding that the "coming and going" rule did not apply, but granted the directed verdict motion, finding that the claimant's failure to produce medical evidence of a compensable injury or causal relationship doomed his claim. On appeal, the Sixth District affirmed the grant of summary judgment, finding that in order to succeed, a claimant must produce evidence both that a compensable injury occurred in the course of and arising from employment, and a causal relationship between the injury and the incident. In doing so, the court of appeals rejected the claimant's contention that the issue of the injury itself was not contested administratively, and that the court should have remanded the case for further proceedings. A discretionary appeal was then accepted by the Supreme Court.

In a long and detailed opinion from Justice Cupp, the Court affirmed the denial of the claim. The Court discussed the peculiar nature of workers' compensation appeals as *de novo* proceedings, in which the trial court is asked to consider every element of the right to participate, and not just the

elements considered administratively. In such proceedings, it is incumbent upon a claimant to produce admissible evidence of every element of his claim, including the existence of a compensable injury, its causal relationship to a work-related incident, and that the incident occurred in the course of and arising from the claimant's employment. The Court noted that the statute contemplates a new trial, that evidence submitted administratively is not admissible, and there is no basis in the statute for a trial court to "remand" a claim for further proceedings on these essential elements, even if one or more of the elements were accepted or rejected administratively. The Court distinguished the claimant's citation to a line of cases involving the assertion of new medical conditions not asserted administratively, which do not go to the essential elements of a claim. In a strongly-worded dissent, Justice Pfeifer argued that the existence of the injury and causal relationship to the accident were never contested by the employer, and in fact were conceded. Justice Pfeifer argues that the *de novo* nature of workers' compensation appeals is "overstated," and that the BWC had sought to exclude medical evidence at trial by motion *in limine*.

Bennett is a cautionary tale for claimants on the unique nature of R.C. 4123.512 appeals: they must be prepared to produce evidence of every element of their claim, or seek a stipulation from opposing counsel. From the record, it appears that the BWC was also focused almost entirely on the "coming and going rule" argument, but the statute places the burden of demonstrating each element of his case upon the claimant. It is likely that the claimant will be left to seek redress at the only avenue left to him: his attorney's professional liability carrier.

If you would like to submit a question to Shop Talk, or would like to discuss this or any other workers' compensation issues, you can contact me.

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