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Gallagher Sharp Shop Talk: Workers' Compensation

Question: Can workplace stress resulting in a heart attack be the basis for a workers' compensation claim?

Workplace stress is something that nearly all employees encounter at one time or another. While it is black-letter law in Ohio that psychiatric injuries in and of themselves are not compensable absent a physical injury, the Supreme Court of Ohio has held that a physical injury occasioned "solely by mental or emotional stress, received in the course of and arising out of, an injured employee's employment, is compensable under R.C. 4123.01(C). *Ryan v. Connor*, 28 Ohio St.3d 406 (1986). Recently the Fourth District Court of Appeals, applying *Ryan*, considered the case of an employee who died on the job as a result of an acute heart attack, and the issue of whether the employee had demonstrated that workplace stress caused or contributed to that fatality.

Moore v. E.I. DuPont de Nemours Co., 2015-Ohio-5331, concerned an employee who collapsed and died at work. It was not disputed that the employee had an acute myocardial infarction, or heart attack. The employee's widow filed for workers' compensation death benefits, alleging that the heart attack was brought on by workplace stress. The employee worked in an "oven" in protective gear, including breathing apparatus, and claimed that he was unsure of the protective suits and the company's safety policy. He also claimed that other employees would step on his air hose as a "practical joke." He had repeatedly gotten dizzy at work, and kept notes about his job duties and safety policies. The claimant submitted a report from the claimant's personal physician, who said that workplace stress contributed to the MI. The claim was rejected by the employer, who cited a history of smoking and high blood pressure, increased cholesterol, and a lack of evidence of increased stress. The claim was denied administratively, prompting an appeal to the common pleas court. In court, the employer moved for summary judgment, and the claimant responded with testimony from the physician. However, on cross-examination, the doctor admitted that the only evidence of stress came from the employee's wife, and that it was "speculative" to state that stress played a part in the MI. The employer's motion for summary judgment was granted, prompting an appeal as of right to the Fourth District.

The Fourth District affirmed, concluding that the claimant had failed to demonstrate that workplace stress was the "proximate cause" of the MI. The Court discussed *Ryan*, and the claimant's two-pronged burden: 1) to demonstrate that he suffered "greater emotional strain or tension than that to which all other workers are occasionally subjected;" and 2) that the workplace stress was the medical cause of his injury. *Id.* The Court cited a previous Fourth District decision, *Click v. S. Ohio Correctional Facility*, 152 Ohio App.3d 560, 20013-Ohio-2208, which involved an employee who suffered a fatal heart attack when he learned that his permanent total disability benefits were denied. The Court in *Click* rejected the claim, finding that the claimant had failed to provide medical evidence to substantiate the proximate cause between the stress and the claimant's MI when it produced an affidavit from a psychiatrist and not a medical specialist. In *Moore*, the Court similarly criticized the claimant's reliance on an affidavit and testimony from the claimant's personal physician, who did not specify how the MI resulted from the alleged stress. The doctor did not, and could not, definitively state that the

employee would not have suffered an MI “but for” the alleged unusual workplace stress. Based upon this, the claimant had failed to meet her burden under *Ryan*.

The Court in *Moore* never considered the employer’s other argument: that the claimant had failed to produce evidence of stress greater than those faced by the normal worker on a day-to-day basis. This is an issue that is often litigated, and often involves testimony from relatives regarding reports of concerns about safety or workplace incidents. Because the claimant had failed to demonstrate proximate cause, the fact that this issue was never contested in summary judgment motions was never considered by the Court. If you would like to submit a question to Shop Talk, or would like to discuss this or any other workers’ compensation issues, please feel free to contact me.

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