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Gallagher Sharp Shop Talk: Workers' Compensation

QUESTION: Can a psychological condition that arises months or even years after a physical injury still be said to be causally related to that injury?

It is well established in Ohio that a psychiatric condition is not compensable on its own, but must arise from a physical injury. "To be compensable, a psychiatric condition must have been started by, and therefore result from, a physical injury or occupational disease a claimant has suffered." *Armstrong v John R. Jurgensen Co.*, 2013-Ohio-2237. Questions often do arise as to how close that relationship must be. Recently, the Second Appellate District considered a case involving an alleged psychiatric condition and its causal relationship to a physical injury, and specifically whether a delay of six (6) years between the physical injury and the first diagnosis of the psychiatric condition made it too remote as a matter of law.

Coleman v KBO, Inc., 2018-Ohio-763, arose from an injury that occurred in September, 2009. The claimant injured her right wrist, prompting a workers' compensation claim and two (2) subsequent surgeries, the last of which occurred in April, 2013. In January, 2015, the claimant filed a C-86 Motion seeking an additional allowance for "major depression, single episode, non-psychotic, moderate," accompanied by a psychiatric report relating the condition to the work-related injury. The employer contested the allowance, arguing that the diagnosis was too remote and should be denied. A DHO denied the psychiatric condition, and an SHO affirmed, prompting an appeal to the Clark County Court of Common Pleas. In Court, the employer filed a Motion for Summary Judgment arguing that the claimant did not report symptoms or treat for depression between 2009 and 2014. The claimant opposed the Motion with an affidavit from her doctor stating that her depression was "directly caused by her workers' compensation injury in 2009." The trial court granted summary judgment, concluding that the five (5) year gap between the physical injury and diagnosis and the claimant's repeated assertions that she was not suffering from depression could lead reasonable minds to only conclude that the psychiatric condition did not "arise from" the physical injury. The claimant appealed to the Second District Court of Appeals.

The Second District reversed, finding that the trial court erred in granting the employer's summary judgment motion. The Court began with a recitation of the history of psychiatric conditions in workers' compensation claims, and correctly noted that psychiatric conditions must arise from physical injuries. However, there is no "hard and fast rule" regarding the amount of time after a physical injury in which a mental injury must be diagnosed. The Court rejected the employer's reliance upon *Armstrong, supra*, stating that there is no requirement that a psychological condition occur "contemporaneously with or within a certain period of time after the physical injury to be compensable." Passage of time is but one factor to be considered in determining whether a causal connection has been established. The Court also distinguished other cases where remote psychological conditions were rejected, noting that these conditions were rejected at trial and not on summary judgment. The doctor's affidavit submitted as part of her case created a genuine issue of material fact as to whether her depression diagnosed in 2015 was causally related to the 2009 incident.

The *Coleman* Court's rejection of a "bright line" rule is consistent with previous decisions concerning psychiatric conditions. Employers would be well-advised not to rest on the fact that a diagnosis is remote in defending these claims, and instead should be prepared to produce evidence of their own to establish a lack of causal relationship.

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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