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Gallagher Sharp Shop Talk: Workers' Compensation

QUESTION: What is the best way to defend a claim involving a diagnosis of Complex Regional Pain Syndrome ("CRPS")?

Over the last several years, more and more Ohio claimants are filing motions seeking to additionally allow their claims for a diagnosis of complex regional pain syndrome ("CRPS"). This condition, formerly (and notoriously) known as reflex sympathetic dystrophy ("RSD"), is a condition of unknown etiology that can develop after a traumatic event, usually to the hands, feet, legs, or arms. It can be accompanied by color or temperature changes in the skin, pain, allodynia (painful response to a non-painful stimulus) or hyperalgesia (exaggerated pain response). It is difficult to diagnose and virtually impossible to treat, and is thought to be progressive in nature. Recently, the Second District Court of Appeals decided a case involving a motion for an additional allowance for CRPS, and whether a trial court's decision to deny the condition based upon a lack of a differential diagnosis constituted "plain error."

Nelson v Colossal Constr. Co., Inc., 2017-Ohio-399, involved a claimant who was injured as a result of a fall from a ladder. A workers' compensation claim was filed, which was allowed for, among other things, an ankle fracture and "tarsal tunnel syndrome." The claimant had several surgeries on his left foot, including the placement of pins, screws and a plate. However, he continued to report severe, unbearable pain. (One of his surgeons told him that everything had been "fixed" and that he should "man up.") He was eventually referred to a pain specialist, Dr. Shahid, who immediately diagnosed him with CRPS on the basis of subjective complaints of pain, swelling, and "color changes" in the foot. Dr. Shahid, who never ordered any diagnostic testing or attempted to rule out other causes, treated the claimant for nineteen (19) months, mostly with medication. Eventually, the claimant was referred to a second surgeon who performed another fusion in the ankle, which provided some relief. In the meantime, the CRPS request was denied in the administrative hearings based upon an IME that found that because CRPS is a "diagnosis of ruling out other diagnoses" and differential diagnoses were never attempted, the condition should be denied. The claimant filed an appeal to the Montgomery County Court of Common Pleas, where after a trial a magistrate held in favor of the employer, prompting an appeal as of right to the Second District Court of Appeals.

The Second District affirmed, finding that there was no "plain error" because the evidence demonstrated that the claimant's physician had failed to follow applicable guidelines. The Court conducted an exhaustive review of CRPS and the "Harden factors," the recommended four-part test used to determine whether CRPS is present. The fourth Harden factor clearly requires that a diagnosing physician "exclude the possibility that other diagnoses could be the source of complaints." The IME physician conducted a thorough examination, and found no redness, swelling, or bruising of the feet, equal hair growth and temperature for both feet, and that diminished range of motion and swelling were substantially equal. He also noted equal shoe wear as being significant. Most importantly, all of the symptoms noted by Dr. Shahid were fully explainable by other processes, including failed ankle fusion, but Dr. Shahid failed to order diagnostic testing. The Court noted that there are a number of conditions (diabetes, alcoholism,

autoimmune conditions and hepatitis) that can mimic the conditions of CRPS. Based upon the failure of the treating physician to perform differential diagnoses, the evidence clearly did not support the diagnosis of CRPS.

When presented with a CRPS claim, quick and effective analysis is key. Confirm that the diagnosing physician is capable of such a diagnosis, and whether the Harden factors have been complied with. This must include an exhaustive attempt at determining whether other conditions could cause one or more symptoms. Medical literature reflects that CRPS is an exceedingly rare condition, and any diagnosis of CRPS should be met with strict scrutiny.

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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