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Gallagher Sharp Shop Talk: Workers' Compensation

Question: What is the difference between medical opinions which are “equivocal,” “ambiguous,” or “repudiated”?

Decisions of the Industrial Commission of Ohio must be based upon “some evidence.” *State ex rel. Elliott v. Indus. Comm.*, 26 Ohio St.3d 76 (1986). When considering requests for treatment, it is common for employers to contend that a doctor’s opinions are “equivocal,” and therefore cannot constitute “some evidence.” The Tenth Appellate was recently presented with a case involving a claimant whose doctor requested surgery on her low back for an allowed disc condition while acknowledging that degenerative disc disease was present, giving rise to the question of whether a doctor is “equivocal” when two separate opinions conflict.

State ex rel. Lakewood Senior Complex LLC v. Indus. Comm., 2015-Ohio-1732, arose from a low back injury. The claimant injured her back and filed a claim, which was eventually allowed for “lumbosacral sprain.” When conservative treatment failed to relieve the symptoms, the claimant sought and was granted an allowance for “L1-2 disc bulge with impingement.” The claimant underwent an MRI, which showed degenerative disc disease at multiple levels, but more severe at L1-2. The claimant was then referred to a surgeon, Dr. Lewis Keppler, who ordered blood work and prepared a C-9 seeking authorization for additional services, including surgery. The employer opposed the request, using a report from Dr. Dennis Glazer, who acknowledged the presence of symptoms but attributed them to degenerative disc disease revealed on the MRI, and opined that the requested surgery was to correct this non-allowed condition. The employer also argued that Dr. Keppler’s opinions were contradictory, and therefore “equivocal” because his notes reflect the presence of degeneration. A DHO backed the employer and denied claimant’s request, relying upon the report from Dr. Glazer. This seems to have provoked Dr. Keppler, who wrote a letter stating, “yes, the patient has multiple level degenerative disc disease,” but affirming that she was asymptomatic before the work-related injury and that the surgery was related because “the L1-2 disc bulge pressing on the nerve root is the cause of her current symptoms.” An SHO reversed the DHO and granted the surgery, prompting a mandamus action to be filed before the Tenth Appellate District.

The Tenth District affirmed the findings of its magistrate that Dr. Keppler’s reports were not “equivocal,” and that the Industrial Commission had sufficient evidence upon which to base its opinions. As noted by the magistrate, “equivocal” medical opinions are not evidence. “*State ex rel. Eberhardt v. Flxble Corp*, 70 Ohio St.3d 649 (1994). Opinions are “equivocal” when a doctor repudiates an earlier opinion, renders contradictory or uncertain opinions, or fails to clarify an ambiguous statement. *Id.* However, an ambiguous statement becomes equivocal only when it is not clarified, at which time it is no longer equivocal. In the broader sense, the magistrate found that repudiated, contradictory, or uncertain statements reveal a doctor that is not certain as to what he (or she) means, and these statements are therefore inherently unreliable, while ambiguities can be clarified and reflect more on the inability of the doctor to communicate his opinion. In the case at bar, Dr. Keppler acknowledged that degenerative disc disease was present, but stated that the claimant was asymptomatic and able to perform the activities of daily living until the work-related injury. He also stated that the symptoms that caused the need for surgery were caused by the allowed disc condition, and this opinion was not contradicted by his opinions regarding the presence of degenerative disc disease. The Court concluded that the Industrial Commission was within its discretion to rely upon Dr. Keppler’s opinions.

Lakewood Senior is a difficult case because of the nature of the allowed conditions. A plain reading of the medical reports filed in the case could lead one to believe that Dr. Keppler’s opinion is that the claimant’s

degenerative disc disease was “substantially aggravated” by the work-related incident, and that this was the basis for the surgery.

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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