

## **WORKERS' COMPENSATION SHOP TALK**

**QUESTION: Are employers entitled to a broad, unrestricted medical release signed by the claimant in order to pursue medical records relating to non-allowed conditions?**

It is often said that injured workers waive certain elements of confidentiality when they file a workers' compensation claim. For example, an employer has the right to demand that a claimant be examined by a physician of the employer's choosing on any issue asserted by the claimant. In addition, R.C. 4123.65(B) provides that the BWC "shall prepare a form for the release of medical information, records, and reports relative to the issues necessary for the administration of the claim" and that the claimant can be compelled to sign it. A failure to do so can result in the suspension of a claim by the Industrial Commission during the period of refusal. *R.C. 4123.651(C)*. Recently, the Tenth District Court of Appeals issued a decision expounding upon the permissible scope of such a release, within the context of a request to suspend a request for permanent total disability benefits.

*State ex rel. Costco Wholesale Corp. v. Howard*, 2019-Ohio-1460, involved a claimant who was injured in a motor vehicle accident in 2009. A workers' compensation claim was filed, which was allowed for a number of physical and psychological conditions. In October, 2017, the claimant filed an application for permanent total disability (PTD) compensation. The employer subsequently requested that the claimant execute a medical release for all of her medical records for the ten (10) years prior to the injury, without limitation, as well as a list of all medical providers. When the claimant refused, a pre-hearing conference was held at which the Administrator limited the request to the conditions and body parts affected by the workers' compensation injuries. When the claimant failed to comply, the employer filed a motion seeking to suspend the claim pursuant to R. C. 4123.651, citing an inability to determine "whether or not non-allowed conditions or non-allowed pre-existing conditions are the cause of permanent total disability." The primary concern of the employer appeared to be that the claimant had sought and received Social Security Disability compensation in 2012. The Hearing Administrator denied the request to suspend the claim, and this decision was later affirmed by a Staff Hearing Officer, prompting the employer to file a *mandamus* action in the Tenth District Court of Appeals.

The Tenth District affirmed, finding that there is no case, statute, or administrative rule supporting the employer's position that it was entitled to a global, unlimited medical release. While the facts of each case are different, the Industrial Commission did not abuse its discretion when it refused to require a release that was not limited in time or to body parts affected by the work-related injury. It is the claimant's burden to demonstrate that the allowed conditions are the sole basis for his disability, and the Court found that permitting a blanket release for all medical treatment would be overbroad. Many disabled workers are also afflicted with non-

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allowed conditions, which cannot be used as a basis for or to defeat a PTD application, and are irrelevant so long as the allowed conditions are independently disabling. In the case at bar, the claimant had undisclosed medical issues unrelated to her workers' compensation claim which were the basis for her SSDI claim, but the Court cited its prior decision in *State ex rel. Sysco Food Servs. of Cleveland v. Indus.Comm.*, 2009-Ohio-4647, for the proposition that it was reasonable for the Commission to hold that only conditions related to the alleged disability or affecting the same body part could possibly be pertinent to the issue at hand. The Industrial Commission's resolution of this issue was therefore reasonable.

*Costco* is an extreme response to what the court clearly felt was a "fishing expedition" to locate damaging or embarrassing information about the claimant. Employers would do well to study the supporting medical reports and find ways to relate a request for records to a pertinent body part or condition. Certainly the existence of a condition sufficient to disable the claimant seven years before her PTD application would seem to be relevant, but the employer failed to provide a nexus.

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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