

From: Don Drinko
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Gallagher Sharp Shop Talk: Workers' Compensation

QUESTION: How much correlation is required between a psychological condition and a physical injury?

This week, we will consider a recent decision from the Second District Court of Appeals involving psychiatric conditions, their relation to physical injury, and whether such conditions that arise years after the physical injury can be said to “arise from” said injury.

Hoelscher v KBO, Inc., 2017-Ohio-5756, involved a claimant who initially injured his ankle at work in 2012. The claim was eventually recognized for a number of physical injuries, and compensation was paid. In 2013, the claimant was terminated, at which time he returned to school and eventually began work as an HVAC technician, but was laid off from that position shortly thereafter in 2014. In mid-2015, the claimant was diagnosed with multiple psychological conditions, including “panic disorder, general anxiety disorder, major depressive disorder, and adjustment disorder with mixed anxiety,” and he subsequently sought to have these conditions recognized in his 2012 claim. The BWC denied the claimant’s motion to amend, finding that there was no causal connection between the 2012 ankle injury and his 2015 psychological conditions. This decision was affirmed by the Industrial Commission, prompting the claimant to file an appeal pursuant to R.C. § 4123.512. The employer filed a motion for summary judgment alleging that there was no causal relationship between his ankle injury and the psychological conditions diagnosed three (3) years later, supported by an expert report from a psychologist who acknowledged that while the claimant had the conditions, they were likely linked to his firing and layoff. The claimant produced his own report from a different psychologist who noted a lack of other “stressors” in the claimant’s life, and relied on the claimant’s report that his psychological conditions began shortly after his injury. The trial court granted summary judgment, prompting an appeal as of right to the Second District Court of Appeals.

The Second District reversed finding genuine issues of material fact existed for trial with regard to the causal relationship between the physical injuries and the psychiatric conditions. It is black letter law that in order to be recognized in Ohio, psychological conditions must be causally related to a physical injury. *Armstrong v. John R. Jurgenson Co.*, 2013-Ohio-2237. The Court noted that both psychologists agreed that the conditions existed, and the issue therefore was the causal relationship between the physical and psychological conditions. The employer’s psychologist said that these conditions would likely have developed within “a few months” of the physical injury, but there was no evidence that the claimant reported symptoms or sought treatment until 2015. The claimant’s psychologist cited “no evidence of any surrounding stressor that...better accounted for his current distress,” but acknowledged her opinion was based almost entirely upon the subjective history given by the claimant. The Court found that these opinions created genuine issues of material fact for trial. “The conflict must arise from irreconcilable affirmative allegations of fact, or from competing inferences which may reasonably be derived from undisputed facts.” *Weber v City Council of Huber Heights*, Second District App. No. 18329 (February 9, 2001). The inferences drawn by the doctors were in conflict, and therefore must be resolved by a jury.

The link between physical and psychological conditions has long been a subject of debate, and it can safely be said that the Court in *Hoelscher* lies on the far outside end of this spectrum leaning toward allowance.

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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