

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

QUESTION: How can an employer contest the allowance of a degenerative condition that is alleged to have occurred on a “flow-through” basis?

Many employers become exasperated with requests for additional conditions that are made years or even decades after an injury. This is most often seen when a claimant alleges that common, degenerative condition or health problem is the result of complications from the original injury on a “flow-through” basis. Recently, the Ohio Court of Appeals, Second Appellate District, decided a involving a 1982 knee injury and a 2014 request for an additional allowance of “lumbar spondylosis,” and the question of whether that condition should be recognized as a “flow-through” condition.

Leasure v UVMC, 2017-Ohio-7196, originated with a 1982 knee injury incurred in a fall when the claimant was 30 years old. The claimant filed a workers' compensation claim which was eventually allowed for the following conditions: “right hand sprain, partial tear of the medial meniscus, right leg; right ankle sprain; lumbosacral sprain; loose body, right knee; osteoarthritis, right lower leg; degenerative joint disease, right knee; chronic hypertrophic synovitis, right leg, mechanical loosening of prosthetic joint, right knee; piriformis syndrome; posterior superior iliac spine syndrome.” She had a total of 4 surgeries on her right knee, including a total knee replacement in 1998. The claimant also had non-related health problems including thyroid disease, diabetes, carpal tunnel syndrome, degenerative arthritis, and obesity. In 2014, the claimant sought to have the claim additionally allowed for “lumbar spondylosis,” a degenerative condition of the lower back, as a “flow-through” condition. The request was denied administratively, prompting the claimant to file an appeal to common pleas court pursuant to R.C 4123.512. During the trial, evidence was presented that the claimant did not have the condition until in 1997, and was not symptomatic until 2009. Her doctor argued that the predominantly right-sided complaints were caused by her limp, while the employer's medical evidence contended that the condition was degenerative in nature and unrelated to her work injury. The matter proceeded to a bench trial, which resulted in a decision denying the request. The claimant filed an appeal as of right to the Second District.

The Second District affirmed, rejecting the claimant's contention that an “altered gait” caused her lumbar spondylosis. The court found that while the condition was admittedly present, the testimony of the claimant's doctor failed to explain how the stresses of a limp could have caused the condition, and had merely concluded it was not “purely serendipitous” that the claimant had a right knee injury, years of right-sided pain, and eventually developed low back arthritis on the right side. In response, the employer's doctor testified that there was no evidence that the claimant's lumbar spondylosis was caused by a limp. He noted that the condition developed 27 years after the injury, was consistent with the claimant's age (80% of persons over 40 develop some form of the condition) and that the claimant was significantly obese. He was able to articulate the basis for his conclusions, rather than simply cite subjective complaints. The Court also noted that the claimant's physician had originally proposed that the injury should be allowed by direct causation, which was inconsistent with the medical records.

Leasure is an example of an employer who was proactive in securing medical evidence, rather than accepting the inevitable. The employer's doctor, an orthopedic surgeon, was much more forceful and persuasive in arguing that the claimant's persistent limp and degenerative condition were not related. Having said that, it should be said that many hearing officers and courts would have likely adopted the claimant's physician's opinion that the development of low back pain after the injury was not "merely serendipitous."

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.

Donald G. Drinko, Esq.
Certified Workers' Compensation Specialist
GALLAGHER SHARP, LLP
1501 Euclid Avenue - 6th Floor
Cleveland, OH 44115
Direct Dial: 216.522.1326
ddrinko@gallaghersharp.com
www.gallaghersharp.com