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Gallagher Sharp Shop Talk: Workers' Compensation

Question: **Is an employee who suffers from a pre-existing impairment entitled to compensation for an injury which would not have occurred to a normal, healthy person?**

The definition of an “injury” in Ohio generally encompasses two separate but related prongs: “in the course of,” which relates to time, place, and circumstances and “arising out of,” relating to a causal relationship between the injury and employment. *R.C. 4123.01(C); Fisher v. Mayfield*, 49 Ohio St.3d 275 (1990). Recently, the Sixth Appellate District considered a case involving a claimant with advanced degeneration in her knee, and whether an injury which would likely not have occurred to an employee with a healthy knee was compensable under Ohio law.

The facts in *Luettker v. Autoneum N. Amer., Inc.*, 2015-Ohio-3210, were largely not in dispute. The claimant was employed as a driver who injured her left knee on August 26, 2012 while attempting to close a dock plate. Prior to her injury, the claimant was diagnosed with osteoarthritis in her knee in 2006, for which she underwent regular treatment. A 2011 MRI study showed tendinitis, but no structural deficiency and an intact quadriceps tendon. The claimant was initially diagnosed with a “knee sprain” but later sought to have the claim allowed for a partial tear of the quadriceps tendon. The request was contested by the employer, who contended that the injuries were the primary result of pre-existing natural deterioration and weakened condition of her left knee, rather than the result of any activity or risk that was unique or particular to her employment, and that the simple act of “turning on one leg” should not have resulted in such an injury to a healthy person. The claim was allowed administratively, prompting an appeal to the Lucas County Common Pleas Court. The parties eventually agreed to submit the case to the court as an issue of law, agreeing that the injury was the result of a workplace incident which would not have injured a normal, healthy person. The issue presented was whether the “natural deterioration” amendment to R.C. 4123.01(C) and subsequent case law involving “unexplained accidents” abrogated the long-standing maxim that employers bear the burden of an employee's predisposition to injury. The trial court granted summary judgment, prompting an appeal to the Sixth District.

The Sixth District affirmed, basing its decision on the reasons set forth by the lengthy trial court opinion. In that opinion, the trial court discussed the history of the “eggshell claimant” rule, and long-standing proposition in Ohio that an employer takes his employee “as he finds him.” While the Legislature has formulated exceptions to compensability based upon “natural deterioration” and “pre-existing conditions,” as well as excluding idiopathic injuries (eg. injuries or conditions unrelated to the activities of employment) these exceptions did not apply to the case at bar. There was no evidence that the tendon injury pre-existed the incident, and the claimant was not presenting a “substantial aggravation” argument. While the knee was weakened, and perhaps the claimant was more susceptible to injury, there was no dispute that the injury was the result of a specific and traumatic work event. It is well established in Ohio that compensation is “not to be denied because the injury would not have occurred except for the peculiar susceptibility of the individual worker.” *State ex rel. Ohio Bell Tel. Co. v. Krise*, 42 Ohio St.2d 247 (1975). The

General Assembly clearly could have excluded compensation for injuries caused or contributed by pre-existing conditions, but chose not to do so, and in fact established a “handicap reimbursement” program to compensate employees for such injuries. The court also rejected the “special hazard” exception, finding that the stipulated mode of injury was not akin to injuries resulting from a sneeze, standing up, changing clothes, or other idiopathic causes.

The trial court's opinion in *Luettk*e is an excellent primer and worth reading for any employee considering an argument about the issue of pre-existing conditions and idiopathic cause. However, the decision itself can be attributed to two facts which were stipulated by the parties: the injury was a new injury, and it occurred as a result of an act that was clearly outside the everyday activities of normal people. 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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