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Gallagher Sharp Shop Talk: Workers' Compensation

Question: Can a trial court disregard expert medical evidence adduced at trial, even when that evidence is not contradicted?

In Ohio, workers' compensation appeals to a common pleas court pursuant to R.C. §4123.512 are *de novo* proceedings. As such, the weight given to the evidence adduced at trial is within the discretion of the trier-of-fact, and this includes expert medical testimony. Recently, the First Appellate District was presented with a case in which a claimant produced an expert opinion at trial that was rejected by the trier-of-fact despite an absence of alternative expert testimony, and whether the resulting verdict was against the manifest weight of the evidence.

Moore v. Administrator, 2015-Ohio-3969, involved a claimant who originally injured his shoulder on December 3, 2009, for which he sought and received workers' compensation benefits. The claimant returned to work, but while working on February 3, 2010, he felt a "pop" in the same shoulder. He was treated by a physician at the emergency room where he did not report a new injury, but did reference the previous incident. He was subsequently referred to an orthopaedic surgeon, who diagnosed an acute tear of the claimant's right rotator cuff, and performed several surgeries. The claimant filed a new claim, supported by the opinion of the surgeon, but the claim was denied administratively. At the same time, the surgeon submitted bills associated with his treatment under the 2009 claim. The claimant filed an appeal to the common pleas court pursuant to R.C. §4123.512, and the matter proceeded to a bench trial at which the claimant's surgeon was the only physician who provided testimony. He testified that the claimant would not have been able to return to work if the conditions were the result of the September 2009 incident, and his opinion to a reasonable degree of medical certainty that the conditions were caused by the later incident, although he could not explain why bills were submitted under the 2009 claim. The court concluded that there was only one injury that occurred in 2009, and the claimant had been "fully compensated" for that injury, prompting an appeal.

The First Appellate District reversed, concluding that the trial court verdict was against the manifest weight of the evidence, and issued an order finding that the conditions should have been allowed under the 2010 claim. While the Industrial Commission has exclusive jurisdiction to determine the weight and sufficiency of medical evidence administratively, a trial court must review these decisions *de novo*. In reviewing the entire record, a trial court must weigh the evidence, including the credibility of witnesses. In the case at bar, the Court found that the determination made by the trial court was not supported by the record, as there was nothing in the record to rebut the opinions of the surgeon. Citing *Sudnicka v. Administrator*, 2012-Ohio-4266, the Court noted that while expert testimony is not necessarily conclusive, even when not contradicted by the opposing parties' evidence, it is error for a trial court to arbitrarily ignore the opinions of an expert without some objective reasoning supporting the decision. In this case, there was no such reasoning given by the trial court.

I believe *Moore* constitutes the majority opinion with regard to appellate courts and expert medical evidence at trial. An employer who proceeds to trial without an expert does so at its peril, and must do so only with evidence to attack the credibility of the claimant's expert. 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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