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**Gallagher Sharp Shop Talk: Workers' Compensation**

**Question:** Can a claimant appeal to common pleas court a determination that a “substantially aggravated” condition had returned to pre-accident level?

Reforms to Ohio’s workers’ compensation statutes (passed in 2006 in legislation commonly referred to as “S.B. 7”) incorporated several changes that were beneficial to employers. Among the most significant of these changes was the introduction of restrictions on claims that a pre-existing condition was aggravated by a work-related incident. After the reforms, a claimant must demonstrate that the aggravation was “substantial,” and compensation for a “substantial” aggravation would abate once the condition returned to pre-accident levels. *R.C. 4123.54(G)*. Recently, the First Appellate District decided a case (declared as one of “first impression”) asking whether a determination that a condition had “abated” was appealable pursuant to *R.C. 4123.512*.

*Clendenin v. Girl Scouts of W. Ohio*, 2015-Ohio-4506, involved a claimant who was injured in the course of and arising from her employment in October, 2008. A workers’ compensation claim was filed, which was allowed for several conditions, including “substantial aggravation of pre-existing dermatomyositis,” an autoimmune disorder. In March, 2013, the BWC filed a C-86 motion requesting the abatement of this last condition (and only this condition), arguing that it had returned to a level that would have existed without the injury. The matter proceeded to a series of administrative hearings, at which the BWC motion was granted. The claimant then filed a Notice of Appeal and Complaint in the Hamilton County Court of Common Pleas claiming that the condition had not returned to pre-injury status. The BWC filed a motion to dismiss the appeal for lack of subject matter jurisdiction, claiming that the abatement order did not terminate the claimant’s “right to participate” because she continued to receive benefits and compensation for the other approved conditions in the same claim. As such, the BWC contended the order involved the extent of her disability, and thus was not appealable. The trial court agreed and dismissed the case, prompting an appeal as of right to the First Appellate District, with the sole basis being whether the trial court had erred in dismissing the case before trial.

The First District reversed the trial court and remanded the case so that the claimant could proceed with her appeal. The Court noted that *R.C. 4123.01(C)* defines “injury,” and specifies that an injury “does not include a condition that pre-existed an injury unless the pre-existing condition is substantially aggravated by the injury.” *R.C. 4123.01(C) (4)* *R.C. 4123.54(G)* also provides that once a “substantially aggravated” condition has returned to baseline, then “no compensation or benefits are payable.” *Id.* The Court in the case at bar concluded that a decision to terminate compensation and benefits for a given condition is one that concerns a “right to participate,” citing Ohio law that a denial of one condition is appealable even when other conditions are allowed, and that Ohio courts have previously defined a “claim” as involving a specific medical condition. The case at bar, while not concerning a “right to participate” because the condition was already allowed, certainly involved the “right to continue to participate.” The Court concluded that the abatement order did not significantly differ from an order denying a condition outright and therefore held that a court appeal was available.

Clearly, the Court in *Clendenin* lost its way in finding that a decision that a condition had returned to baseline was in fact a determination that it was “not causally related to her work-related incident.” This decision also conflicts with a large body of case law finding that changes in a given condition can preclude further treatment, yet are not appealable to court. 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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