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Gallagher Sharp Shop Talk: Workers' Compensation

QUESTION: What rules are used to determine whether a medical “expert” is sufficiently competent to testify at trial?

It is generally true that in proceedings before the Industrial Commission; virtually any medical doctor will be found to be competent to express opinions on causation for virtually any condition. However, when the forum shifts to the Court of Common Pleas, the Rules of Evidence dictate which experts can testify and the content of those opinions, and it can benefit employers to consider an attack on an expert’s qualifications. Recently, the Fifth Appellate District considered a case involving a request for an additional allowance for “traumatic brain injury,” and whether a medical doctor and an optometrist were capable of providing opinions regarding causation.

Jacobs v Shearer’s Foods LLC, 2018-Ohio-3863, concerned an employee who fell from a height of three (3) feet and struck her head on a concrete floor. A workers’ compensation claim was filed, which was allowed for a number of conditions, including “concussion with brief LOC, contusions scalp, laceration scalp, occipital neuralgia, cervical syndrome, and large left parietal occipital hematoma.” Eventually, the claimant filed a motion seeking an additional allowance for “traumatic brain injury, fusion with defective stereopsis, and convergence insufficiency.” Supporting these conditions were reports from two (2) expert witnesses: an optometrist and a medical doctor who provided massage treatments and medication. Neither of the reports provided a scientific basis for their findings, but simply opined that the requested conditions were related to the incident. The requested conditions were denied administratively, prompting the claimant to file an appeal to Common Pleas Court. The employer then moved for summary judgment, arguing that the “experts” identified by the claimant were not competent to provide opinions on causation pursuant to Evid. R. 702. The trial court granted summary judgment to the employer, prompting an appeal as of right to the Fifth Appellate District.

The Fifth District affirmed, finding that the physician and optometrist were not competent to provide opinions on causation, and therefore the Plaintiff would be unable to prevail at trial. The Court cited Evid. Rule 702, which provides that experts may be permitted to testify as to matters “beyond the knowledge or experience” of lay persons if they are qualified by “specialized knowledge, skill, experience, training or education.” Evid. R. 702. Evid. R. 702(C) also provides that the testimony must be based upon “reliable scientific, technical, or other specialized information.” Trial courts utilize Evid. R. 702 to perform a “gate keeping function” through which they may ensure that expert testimony is sufficiently relevant and reliable. *Valentine v Conrad*, 2006-Ohio-3561. The Court found that the claimant failed to provide any evidence sufficient to demonstrate that either witness was competent to testify about the existence of a “traumatic brain injury” or its connection to the workplace injury. In a concurrence, another justice noted that there were numerous other conditions already allowed in the claim, and had the physician’s report opined that the conditions collectively represented a “traumatic brain injury,” he believed such would have been sufficient to withstand summary judgment.

The holding in *Jacobs* and the application of Evid. R. 702 will be limited, in most cases, to proceedings in a trial court. By rule, the Rules of Evidence are applied less stringently before the Industrial Commission. However, particularly in cases involving complex conditions, thought should be given to contesting the qualifications of physicians or chiropractors to render opinions on conditions clearly outside of the scope of their training.

Please watch for a new Shop Talk format coming soon.

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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