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Gallagher Sharp Shop Talk: Workers' Compensation

QUESTION: What is the claimant's burden when proposing a link between a non-scheduled traditional disease and an exposure at work?

Unfortunately, it seems that a trend has developed among physicians to attempt to link traditional disease to employment exposures. Many employers, particularly in heavy industry, are faced with claims involving a traditional disease that is alleged to have originated at work, often to seek specialized treatment or benefits. Recently, the Ohio Court of Appeals, First Appellate District considered a case involving a firefighter who was diagnosed with amyotrophic lateral sclerosis ("ALS") and a doctor's opinion that his disease was related to exposure to heavy metals in his work as a firefighter. In that opinion, the Court discussed the relative burdens and how the Industrial Commission deals with these issues.

Rusin v Buehrer, 2017-Ohio-8411, concerned a firefighter of 25 years who contracted ALS in 2005. The claimant had fought hundreds of fires during his career and had been exposed to smoke containing toxic materials and heavy metals. The claimant subsequently sought and received a disability retirement based upon a finding that his condition was "duty-related." In 2009, a physician tested the claimant's blood levels and found amounts of heavy metals which were higher than normal. He prescribed "chelation" treatments (a negatively-charged protein is injected into the patient to extract metals). In 2012 the claimant filed a workers' compensation claim for ALS supported by a statement from the physician. The Industrial Commission denied the claim, prompting an appeal to the Hamilton County Court of Common Pleas, where during a bench trial the claimant's physician testified that firefighters are more susceptible to neurological disease due to the build-up of metals, and opined that the ALS was caused by work-related exposures. (He also acknowledged that the opinions are not shared by the "vast majority" of the medical community, and acknowledged no studies or published articles substantiating his diagnosis.) A board-certified neurologist testified on behalf of the employer, concluding that that the other doctor was not a neurologist and his theory is "not in the mainstream." While acknowledging that in rare cases exposures to extremely high levels of metals had been linked to ALS, there was no evidence to conclude that heavy metals had anything to do with ALS. The trial court entered a verdict in favor of the employer, prompting an appeal to the First District Court of Appeals.

The First District affirmed, finding that the Plaintiff had not met his burden to demonstrate his ALS was related to his employment. The Court took issue with one aspect of the trial court's decision, a finding that the claimant had not met his burden with regard to "general" causation. It is incumbent upon a claimant to establish both "general" and "specific" causation, and it found that the trial court did make an error in concluding that the claimant had failed to demonstrate the "general" causation requirement, citing testimony that high levels of heavy metals can contribute to ALS in rare instances. However, the claimant failed to demonstrate "specific" causation, that is: failed to demonstrate that his exposure to heavy metals fighting fires did in fact cause claimant's ALS. The Court also found that the trial court did not abuse its discretion in failing

to “liberally construe” the workers’ compensation statutes in favor of employees, and for refusing to consider the decision of the pension board that his ALS was “duty-related.”

The discussion of “general” versus “specific” causation is instructive in *Rusin*, as this is the best way to attack a non-traditional diagnosis. Rather than debate the issue of whether it is possible for a condition to be caused by work-related exposure, it is better to concentrate on the issue of specific causation, and whether a claimant can demonstrate his disease was linked to his exposure.

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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