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Gallagher Sharp Shop Talk: Workers' Compensation

Question: What is the difference between an occupational disease claim and a “Village-type injury claim? Can a doctor’s testimony alone establish a causal relationship in a “Village-type” injury claim?

It is often difficult to distinguish when a claim involves an occupational disease or a repetitive stress injury. In 1984, responding to a series of cases asking whether repetitive stress injuries were “accidental,” the Supreme Court of Ohio recognized that injuries that “develop over time as the result of the performance of the injured workers’ job-related duties” are compensable injuries, not occupational diseases. *Village v. Gen. Motors Corp.*, 15 Ohio St.3d 129, 472 N.E.2d 1079 (1984). A recent case decided by the Second Appellate District discussed *Village*-type injuries, and the sufficiency of expert evidence needed to support these claims.

Warner v. DMAX Ltd., LLC, 2005-Ohio-4406, involved a series of shoulder injuries that arose over several years. The claimant worked on an assembly line, performing a variety of tasks for 8 to 11 hours per day. Eventually, the claimant filed a workers’ compensation claim seeking allowances for “right rotator-cuff tendinitis, bursitis, right-shoulder impingement syndrome, and supraspinatus partial thickness tear.” The claim was allowed administratively, prompting the employer to appeal to common pleas court pursuant to R.C. 4123.512. The claimant chose to plead the court case as an occupational disease AND a *Village*-type injury, and at the close of the claimant’s case-in-chief, the trial court granted the employer’s motion for a directed verdict on the occupational disease claim only. The trial court permitted the *Village*-type injury claim to go to the jury, who found in favor of the claimant. The employer appealed this decision to the Second Appellate District, citing two major grounds: (1) that the claimant had not provided sufficient expert evidence to establish a *Village*-type injury; and (2) that the trial court improperly failed to instruct the jury that the occupational disease component of the claim had been dismissed.

The Second District affirmed the jury’s decision allowing the claim. The Court discussed “*Village*-type” injuries, and how they are different from occupational disease claims. The Court then considered the employer’s contention that the claimant’s evidence (her own testimony and the testimony of her physician) was unreliable and insufficient to prove her claim. In order to demonstrate that testimony is unreliable, it is necessary to show it was based upon incorrect factual assumptions, which was not established here. A doctor’s testimony is not unreliable solely because it was based upon statements from his patient. The employer’s real issue was that the doctor had not personally observed the work place, and relied solely on the account of activities provided by the claimant. The Court rightly decided that the quality of information upon which the physician relied went to credibility, not admissibility. The employer was free to cross-examine the doctor on the factual basis of his opinions, and did so. A lack of personal observation of the workplace does not render an expert witness incompetent to render opinions, but only affects the weight to be given to those opinions, which is an issue for the jury. Lastly, the Court found that the Court’s failure to advise the jury that a directed verdict had been granted

on the occupational disease claim was not error, as the instructions given to the jury accurately set forth the law applicable to *Village*-type injuries.

The primary basis for the employer's objections in *Warner* appeared to be that its own expert had actually visited its plant and observed work, and was uniquely able to testify about casual relationship. While this is good practice for employers, the weight to be given to such evidence is an issue for the jury. 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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