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Gallagher Sharp Shop Talk: Workers' Compensation

QUESTION: When is expert medical testimony necessary to establish a causal relationship between an injury and a work-related incident?

The need for evidence establishing a causal relationship between an injury and a work-related incident is clearly necessary in Ohio. *See R.C. §4123.01(C)*. However, it is an open question as to whether expert medical testimony is required to establish this causal relationship, or whether matters within the “common knowledge” of a jury can be litigated without expert testimony. Recently, the Ohio Court of Appeals, First Appellate District, considered a case involving a corneal laceration, and whether a claimant’s failure to present expert medical testimony regarding causation at trial was fatal to his claim.

Lemus-Sanchez v. Fayette Drywall, Inc., 2014-Ohio-2083, involved a claimant who was using a jackhammer to break up concrete when a piece of concrete flew up, broke his safety glasses, and hit his left eye. The claimant sought emergency room treatment, where he was diagnosed with a “corneal laceration with iris prolapsed” of the left eye, and surgery was performed. A workers’ compensation claim was filed but was opposed by the employer, who contended that the claimant was not an employee but rather an independent contractor. The claim was denied administratively on this basis, prompting an appeal to the Hamilton County Common Pleas Court. After the claimant testified at trial, his attorney attempted to introduce a certified copy of his medical records, but the BWC and the employer objected, arguing that the records contained inadmissible hearsay. The Court excluded the records when an authenticating witness was not produced, at which time the claimant rested his case. The BWC and employer then moved for a directed verdict, arguing that because the claimant had not produced expert medical testimony regarding a causal relationship, he had not fulfilled his burden to demonstrate proximate cause. The Court granted the directed verdict, prompting an appeal as of right to the First Appellate District.

The First District reversed, concluding that expert medical testimony was not necessary to establish a causal relationship between the corneal laceration and a piece of concrete striking the claimant in the eye. The Court began by finding that the trial court had erred in excluding the medical records, which were certified pursuant to R.C. §2317.422(A), but because the claimant’s attorney had failed to proffer the records, it could not review them to determine whether they contained evidence of causation. However, the Court found that this review was unnecessary because the claimant’s testimony established a “direct or proximate causal relationship” between the injury and the incident. The claimant had essentially suffered “a cut in his left eye,” a condition which is observable and within the common knowledge of the jury. “You don’t need a doctor to tell you that a cut is likely to result if a piece of concrete, displaced by a jackhammer, flies up, breaks one’s glasses and hits the eye. Expert testimony was not necessary.” *Id.* at ¶15. The Court also differentiated this case from other injuries which are “internal and elusive in nature” and are unaccompanied by external evidence, such as neck and back injuries, or whether a particle in the eye could cause the formation of a cataract. *Id.* At ¶¶ 13-14.

The Court in *Lemus-Sanchez* repeatedly referenced the fact that the employer contested the claim administratively based upon employment status. While a simple laceration or bruise would seem to fall within the Court's reasoning, this was much more than that. I expect that the claimant's bar will cite this decision in cases where causal relationship evidence is lacking. 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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