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Gallagher Sharp Shop Talk: Workers' Compensation

QUESTION: What is the current position of the BWC with regard to conditions associated with symptoms of chronic pain, and whether they amount to new, allowable medical conditions?

In Ohio, workers' compensation claims are administered based upon the recognition of allowed conditions, not symptoms. Over the last ten years, courts have repeatedly dealt with whether many of these "conditions," such as "chest pain," "radiculopathy," or angina are in fact separate and distinct conditions which should be recognized in a claim, or merely symptoms of the underlying allowed condition. Recently, the Ohio Court of Appeals, Fourth Appellate District, was presented with a claim which was denied for "post-laminectomy syndrome," and the question of whether that condition was a separate condition that should be allowed in a workers' compensation claim.

Willis v. Ohio Dept. of Trans., 2016-Ohio-1593, concerned an employee who injured his low back in 1990. A workers' compensation claim was filed, which was allowed for a number of low back conditions, including herniated discs and sciatica. In 2004, the claimant underwent low back surgery which was approved and paid for by the BWC, but the symptoms remained. In 2012, the claimant's physician submitted a request for a spinal cord stimulator trial, which was denied by the employer as directed at "non-allowed conditions." In response, the claimant filed a motion seeking to have the claim additionally allowed for "post-laminectomy syndrome," which was also contested by the employer. The request went to hearing and was initially approved by a DHO. However, a Staff Hearing Officer vacated this order and denied the request to participate, finding that the condition of "post-laminectomy syndrome" was not a recognized new condition, but instead was a manifestation of post-surgery symptoms. The claimant perfected an appeal to the court of common pleas pursuant to R.C. 4123.512 and the parties filed competing motions for summary judgment. The employer argued that the appeal was deficient on its face, the condition was a description of the claimant's post-surgery pain, submitted an affidavit from a physician to this effect, and cited *Edney v. Life Ambulance Serv. Inc.*, 2012-Ohio-4305 and other case law finding that symptoms were not a new condition. Additionally, the BWC argued that because the request began with a request for treatment, the proper course of appeal was via an action in *mandamus*. In response, the claimant provided his own physician affidavit, argued that the condition was recognized by the International Classification of Diseases, 9th Revision, Clinical Modification ("ICD-9-CM"), and that the BWC issued administrative rules recognizing the condition. The trial court granted summary judgment to the employer, and the claimant appealed the decision to the Fourth District.

The Court of Appeals reversed, finding that the condition of "post-laminectomy syndrome" should be recognized as a separate condition. The Court began by dispensing with the procedural issues, finding that the Notice of Appeal "substantially complied" with the statute. The Court then distinguished *Edney*, which dealt with a diagnosis of "chest pain," finding that it did not deal with the condition in question, and diplomatically suggested it should be narrowly construed. Other cases cited by the trial court dealt with other, more generic symptoms, like

radiculopathy, angina, and back pain, and the Court cited several other cases which recognized “post-laminectomy syndrome.” Most importantly, the Court noted that the condition was recognized in the ICD-9-CM as a separate medical condition with diagnostic criteria, and while all such conditions are not recognized by the BWC, the BWC itself issued administrative policy guidelines in 2002 recognizing certain “chronic pain” syndromes as allowable conditions. (It did not help that the BWC changed its position in the court of appeals with regard to the recognition of “post-laminectomy syndrome.”) The Court did not find that the condition should be allowed, but recognized that the claimant had presented evidence consistent with the diagnostic criteria for “post-laminectomy syndrome,” and referred the issue back to the trial court for determination of specific causation.

Willis stands for the proposition that certain chronic pain conditions such as “post-laminectomy syndrome” will be recognized by the BWC as separate conditions going forward. Employers will still be able to argue that the claimant does not actually have the condition by examining the diagnostic criteria set forth in the ICD-9-CM.

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