LAW1199.COM NEWSLETTER™

2015 ★ ISSUE #2

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LEGISLATIVE HISTORY OF THE PRESUMPTIONS FOR SAFETY EMPLOYEES AND THE IMPORTANCE OF BEING AWARE AND BEING PROACTIVE

By SCOTT O'MARA

In the mid-1930s, California legislators recognized that safety employees face a unique risk of harm through their work as peace officers. This recognition has been reflected in past and current legislative changes establishing various presumptions of work-related injury for safety members.

This legislation initially was for hernias, but was extended to include heart trouble in 1939 and tuberculosis in 1957. Many other changes have occurred since then, and in 1975 coverage was correctly expanded to include injuries manifesting within five years of the last day a safety member actually worked. Further expansion occurred in 1976.

In October 1997, as a result of the Dan Stanley case — which was litigated by this office — hernia coverage was expanded to include not just inguinal hernias, but other types of hernias as well, such as protrusions in the bowel region.

In 2003, the Walter Faust case — again litigated by this office — provided direction and clarity as to the cancer presumption, shifting the burden of proof to employers. Prior to this successful litigation, the cancer presumption had minimal value.

In 2010, Labor Code §3212.1 was amended to extend application of the cancer presumption following termination of service up to 120 months, depending upon the length of service.

On 5/13/14, Gov. Brown signed Assembly Bill 1035, which expanded the eligible period for family members of specified deceased safety members to receive death benefits related to certain illnesses from 240 weeks after the date of injury to a possible maximum of 420 weeks after the date of injury.

However, despite these time limits for accessing benefits under the presumptions — 120 months maximum for cancer, and 60 months for other presumptive conditions — there is case law which correctly establishes that the 60/120-month limit depends upon the particular facts of each case.

There is also a recognition that various diseases have different periods of latency in their manifestation. Therefore, in some situations, the 60/120-month statute limiting access to benefits does not have application, dependent upon the documentation of the patient's subjective complaints to the doctor consistent with the development of the disease process.

For instance, if a worker has cancer which finally is diagnosed more than 120 months after his/her last day of work, but the worker previously had reflected pain or bladder/bowel problems to the doctor, or reported subjective complaints consistent with a long-developing disease process, the 60 or 120-month limit does not apply, and the injured worker still can receive Workers' Compensation benefits pursuant to the cancer presumption.

Therefore, it is imperative for workers and their families seeking benefits to recognize the 60 and 120-month windows for reporting injuries, and the 420-week window for accessing death benefits.

Under Workers' Compensation, the medical care for job-related injuries is very extensive and expansive. It covers not only any treatment provided directly for the original injuries, but also any treatment for ancillary conditions which ultimately result from either the original injuries *or* the treatment provided for those injuries, including side-effects from any medications prescribed for same.

In addition to medications, "treatment" can cover a wide variety of options, such as injections, surgery, hospitalization and nursing care (and in some cases acupuncture and chiropractic care), as well as surgical supplies such as crutches, orthotics and prosthetic devices. In extreme cases, medical care can also cover transplants involving organs such as the liver and the heart, and house reconfiguration if a job-related injury requires modifications to enable an injured worker to perform basic activities of daily living.

Furthermore, medical benefits under Workers' Compensation have no cap, unlike many health plans which have a cap of $3-to-$4 million per body system.

One extreme example involves a client I represented many years ago. He initially underwent surgery for a work-related knee injury, but, as a very unfortunate consequence of that surgery, he developed phlebitis, which led to a stroke. As a result of the stroke, he developed a life-long need for home health care — including home modifications. *All these extreme medical needs have been and continue to be covered entirely by Workers' Compensation because they stem from treatment for the client's original injury, which was job-related.* The cost for this care initially was $60,000 per year, and it now has risen to more than double that amount.

Therefore, by establishing that an injury is job-related, a worker can gain access to expansive medical care without a cap.

Recently, I completed a case where the injured safety member was 15 years beyond his last date of employment. Despite that fact, I was able to establish his eligibility for the presumption that his injury condition was work-related. The success of this case had a tremendously positive impact on the worker and his family. The medical and home health care provided went well beyond the parameters or what Blue Cross, Kaiser or other health plans could have provided.

All safety members who are retired or approaching retirement must be candid as to their medical condition. Unfortunately, many members spend many years denying that they have a serious medical condition, or that their condition has any connectivity to their work. These types of denials can potentially have severe economic consequences for themselves and their families.

Therefore, as you examine your health and any medical condition which may be evolving, you need to face the truth of that condition, and be aware of its possible relation to your safety career.

Also, if you have an accepted condition which is job-related, and you take medication for that condition, and that medication causes an ancillary condition, remember that the ancillary problem becomes the responsibility of Workers' Compensation. Therefore, you should go to WebMD to research the side-effects of all the prescribed medications you take for your work injuries. *Do any of the side-effects listed for your medications match symptoms you are experiencing?* If so, and if any of the symptoms first appeared or worsened after commencing the medication(s) in question, those symptoms then become the responsibility of Workers' Compensation.

Also be aware that some medication for heart conditions can cause kidney problems or kidney failure. Therefore, any safety members who have heart conditions should be aware of this potential development, and seek care under Workers' Compensation for any such kidney problems.

In conclusion, to protect yourself and your family, it is very important to be aware of the information discussed above, and to be proactive when it comes to recognizing your health problems and seeking treatment under Workers' Compensation for any conditions which may be work-related.

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NOTICE

Making a false or fraudulent Workers' Compensation claim is a felony subject to up to 5 years in prison or a fine of up to $50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine.

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