



FIVE YEARS TO OBTAIN MORE JUSTICE; NO TIME LIMIT ON MEDICAL CARE

By Scott A. O'Mara

Two factors occurring with job-related injuries are the level of impairment and the need for medical care. The level of impairment is determined by medical opinions and comparing the objective findings (*i.e.*, test results) with the subjective complaints of the patient using a schedule which has been created to produce this measurement. Once the level of impairment has been determined, a worker has five years from the date of injury to have the impairment level re-evaluated.

Labor Code §5410 indicates that the level of impairment, once it has been legally determined, can be re-evaluated and potentially expanded because of the changes. The Labor Code states that the Workers' Compensation Appeals Board maintains jurisdiction within five years from the date of injury to determine if new and further disability has developed.

A so-called "settlement" can be reached as to the level of impairment, and the worker receives medical care. Even with care, some workers may experience a gradual degradation in activities of daily living and employment opportunities – *i.e.*, an increase in the level of disability. In the case of unrepresented injured workers, very rarely will they be advised by their employer of their right pursuant to Labor Code §5410 to reopen their case and increase their level of impairment.

A factor is injured workers' discussions with their treating doctor regarding their deterioration. When deterioration factors are present, the Labor Code allows workers the opportunity to go back and receive a "full cup of justice" as to their real level of impairment. However, to initiate this avenue of justice, a petition to reopen a case for new and further disability needs to be filed within the set time parameter of five years following the date of injury.

Along the same line, if an injured worker has an increase in disability within the five-year time period following the date of injury, there may be additional ancillary medical care which is needed to deal with a work-related injury. An example would be the following:

If a worker with a work-related heart condition develops non-work-related diabetes after the finding of the heart condition, and the doctor opines that the diabetes is impacting the heart condition and needs to be controlled to minimize the heart condition, the responsibility for providing medical care for the diabetes then falls upon the employer.

This expansion of medical care is *not* limited by five years. But if there is an expansion of medical care within five years, this may be one of the factors to examine as to whether the injured worker has an increase in his/her residual impairment.

An ancillary situation would be in the case of an injured worker with a work-related right knee injury who places more reliance upon his/her left knee to the extent that the left knee eventually becomes disabling. In such a case, the worker would then be entitled to medical care for the left knee also because of its relation to the right knee. Furthermore, if this occurs within five years of the original date of injury to the right knee, the worker would then be in a posture to examine the level of impairment related to both knees.

Another situation which occurs is that the worker has residual impairment related to a body part – say his right wrist – and the residual impairment is found to be 60% job-related and 40% non-work-related. Then, when the worker undergoes surgery, the disability increases – not because of the injury itself, but because of the surgery which did not go well – and the Court, based on case law, determines that the increased disability is because of the surgical process, then the level of impairment cannot be apportioned to non-work-related condition.

The Workers' Compensation system was designed to protect workers and their families, and an awareness regarding medical care and its expansiveness is paramount for the full protection of injured workers. Medical care for particular job-related injuries in more extreme cases can include such benefits as renovating a house, installing a ramp in the bathroom or to an entrance into the house, changing a stairway, having someone come to the house to provide medical care to the injured worker, etc. In the most extreme situations, depending upon the injured worker's medical condition and level of disability, 24-hour assistance may be provided for job-related injuries.

If you have a job-related condition, be aware of the time period to reopen your case for new and further disability. The expansion of medical care is not restricted to five years. And if in fact medical conditions evolve which are not work-related, but which impact a work-related injury, that still could be the economic responsibility of the employer.

As you review your case and consider the care you are receiving, this situation is fluid. Again within the five-year parameter, you can reopen your case to receive adequate compensation to reflect the residual impairment. More expansively, as set forth in Labor Code §4600, the medical care provided for work-related injuries is to “cure or relieve the injured worker from the effects of his or her injury” and this care “shall be provided by the employer”.

In preparation for discussing your medical needs with your doctor, it is important to understand the foundation for reopening your case for new and further disability and/or for continuation and expansion of medical care.

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