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KNOWLEDGE IS POWER FOR TREATMENT

BY: SCOTT A. O'MARA

The Workers' Compensation system in California recognizes two types of injuries --- specific injuries and cumulative trauma injuries. Specific injuries are the result of a specific incident and/or exposure tied to a worker's employment, causing immediate symptomatology. These injuries can take such forms as vehicular accidents, having something fall on you at work, tripping and falling, etc. These events are readily acknowledgeable.

However, even with a specific incident, there can be a delay in the onset of symptomatology, and that delay in the recognition of subjective complaints is often used as a basis for denial of a claim for such injury because the effects are latent. A good example would be exposure to contaminants in the work situation which could cause pulmonary problems or exposure to COVID-19, but with the effects being seen only after a period of manifestation and development.

The second type of injury is a cumulative trauma (CT) injury, which is akin to the repeated bending of a paper clip until it eventually breaks. The breakage is not tied to one particular bend; it only occurs after repetitive bending. The exposures for these injuries can be physical, but they can also be mental. They can result in suicides or deaths from accidents caused by high-speed pursuits. These factors potentially can be contributory to medical conditions.

The challenge with CT injuries again – as with specific injuries – is the fact that the effects may be latent and not occur immediately. The exposures are present, but the manifestation of disease or injury may not be apparent until a later time.

These categories of injury – specific and cumulative trauma – may have certain presumptions tied to them, depending upon the occupation and type of medical condition. But even with that in mind, proper documentation of the injury is very important. If a worker files a claim form with his/her employer and misses' time from work as a result of an exposure or event, the structuring of the injury or condition in the claim form provides a stronger basis for finding it to be work-related.

A significant factor which occurs is the denial of an injury or condition being work-related. Workers who sustain either a specific injury or a cumulative trauma injury are often so embedded in their career that they do not want to acknowledge their symptomatology and face the restrictions or limitations necessary for them to continue to perform their activities.

The analysis which is done is strongly focused on the exposures, the types of injury, and the manifestation and development of those injuries, as well as the discussions the injured worker has had with his or her physician.

The discussions injured workers have with their doctors, their exposures and their subjective complaints are paramount factors in tying together the work-related event or events and workers' eligibility for the care needed to cure or relieve them from the effects of their injuries and enable them to be compensated properly for time missed from work.

If a worker has missed time from work, the question is when. Also, has the worker received any medical care? If a claim form has been filed concurrently with the event, it tightens up connectivity with the injury being job-related, particularly when the worker is seeking medical care and misses time from work.

An examination will be made as to a worker's diminished ability to work and his/her need for medical care. This candor is at times a medical and legal necessity for the worker to obtain the medical care needed and compensation for time missed from work.

An area which many times is minimized by the treating physician – and certainly by the adjusting agency – is the worsening of a pre-existing medical condition which initially has no connectivity to the work situation. If the worker has a pre-existing medical condition, and his/her employment makes this condition more problematic, that can then be an injury affording the worker medical care to cure or relieve the condition.

Articulation of a worker's aggravation is important. There can be a compensable consequence to other portions of the body besides the injured body part as a result of trying to move about and get around while dealing with the job-related injury. An example would be an injury to the right knee which causes a worker to compensate by using his/her left knee more and more, thereby causing the left knee to become symptomatic as well. In such a case, the left knee injury – a compensable consequence of the job-related right knee injury – would also be considered job-related.

Similarly, if care or treatment is sought for either a specific injury or a cumulative trauma injury, and that care and treatment impacts an entirely different area of the body, the injury to the new area of the body can also be considered work-related. For example, if a worker takes medication for a job-related condition, and that medication creates a new medical condition – say gastroesophageal reflux disease (GERD) – the GERD would then be considered work-related.

The discussion and articulation of events of employment which have caused an injury and the subsequent activities which have worsened that injury expand the scope of medical care.

Some diseases are considered to be insidious and progressive, but do not necessarily create such awareness except by their specific nature, such as cancer. The disease occurs by progression, and the diagnosis may not occur until several years after a worker ended his/her employment. This analysis as to injury -- and whether it is insidious and progressive in its development – is a factor which can create access to care for a worker under Workers' Compensation many years after his/her last day of work.

When you become aware of a medical condition, and there is thought that it could be connected to your employment, or to the treatment you have received for a job-related injury -- these factors must be articulated with in-depth analysis so the examining physician will recognize the connection to your work.

The California Workers' Compensation system has created forensic evaluation methodology, whereby the worker is evaluated by so-called Qualified Medical Evaluators who supposedly have expertise in relevant areas. For you to receive a full cup of justice, it is paramount that you have good knowledge and understanding regarding your work activities, the exposures you have at work, and your manifestation or development of symptomatology, as well as the medical care you have received which may be a contributory factor to other problems you have developed prior to seeing these doctors.

The doctors who conduct these evaluations many times will engage in what are called "catch-and-release programs" -- which will involve an evaluation, a review of the records, and doing the billing -- with the ultimate finding of minimal or no involvement by the worker's employment in the development of the condition in question. Such a simplified approach then allows them to go on to the next case, thereby making the employer, third-party administrator or adjuster happy.

By having counsel involved, there will be a balance of your understanding of your work and your work activities, and as to the care which can be self-applied allowing you to function. Your attorney can educate you of this understanding so the discussions you have with the forensic evaluator will be correct and accurate. Also, your attorney will review the type of medical condition you have and the possible exposures you have had, and your symptomatology. This information will create a greater venue for you to receive the treatment which is relevant to cure or relieve your work-related injury or medical problems and enable you to achieve a better and faster recovery.



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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.*

