Legal Issues in Occupational Medicine

Presented to:
MARCOEM

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Three Most Common Types of Occupational Disease Claims:

- Occupational Orthopedic – mostly knee, shoulder, back and neck
- Occupational Psychiatric – mostly stress and anxiety reactions
- Occupational Respiratory – mostly bronchitis, and reactive airways disease
Recent Trends

- Far more occupational orthopedic claims are being filed
- Fewer occupational carpal tunnel cases
- Fewer occupational stress cases
Reason for Trends

- Aging work force
- Hand claims remain grossly undervalued
- Stress claims are very hard to win for claimants
IME? or No IME?

What do you do when you get an occupational psychiatric or orthopedic claim?

Think twice before setting up and IME!
Downside of Early IMEs

- Doctor likely will have no prior medical records to review
- Doctor has no answers to interrogatories to review
- Doctor does not have the family doctor records
- Doctor often has little understanding of the job duties
- All the information the doctor will have comes from the employee
Stress Case Reminder

Never set up an IME in a stress case until all discovery has been completed.
Stress Case:

- Claimant, age 34, alleges that his supervisor is constantly criticizing him at work regarding his work performance. He feels rising stress throughout the day and cannot sleep at night. On weekends he feels better only to have the stress return by Monday afternoon at work. The supervisor never seems to be satisfied with anything he does and seems to single him out for criticism. His family doctor is prescribing Ambien to help him sleep and relax.
Stress Case:

- After receiving claim petition, adjuster sets up early psych IME pre-discovery
- Psychologist or psychiatrist examines, has no information to review from the employer or prior medical records, and prepares a report stating that the claimant’s work stress is job related. Adjuster then starts paying temporary disability benefits and pays for psychological treatment.
Key Mistake Made by Setting up Early IME

- Case law essentially invalidates almost all “stressful supervisor” claims

- The IME physician has no information except what petitioner provides
Months Later Post Discovery

- Interviews with Supervisor and Staff reveal that claimant cannot understand the computer system and makes constant mistakes, causing delays and work stoppages
- Other employees constantly have to teach and re-teach claimant basic computer procedures
- Family doctor records reveal that claimant has been taking Ambien since age 16 because he found high school studies extremely stressful as well as all his jobs since high school
Goyden vs. State
Judiciary sets a high bar for stress cases
Understanding Goyden Rules

- Merited criticism cannot form the basis of workers’ comp stress claims
- Claimant must offer OBJECTIVE evidence of work stress
- Claimant with predisposition to stress must show that others without such a predisposition would react in the same way to work conditions
Discovery Wins Occupational Disease Claims

- The absence of discovery leads generally to losses for employer

Huntoon Facts

- Petitioner, a clerk with the Borough, alleges work-related carpal tunnel syndrome. She began working with the police department in 1994 and filed an occupational claim in 2007. Respondent subpoenaed the prior family doctor file and discovered that in 2001 petitioner saw her family doctor and complained of pain in her right hand. Her doctor diagnosed carpal tunnel syndrome from keyboard use at work.
Huntoon Facts Cont.

- In 2004 the family doctor sent petitioner for an EMG which confirmed carpal tunnel syndrome, which her family doctor insisted was work related.
Hunton Facts

- What is the legal issue here?

- What argument should the Borough make to defeat this occupational disease claim?
Occupational Statute of Limitations

- Employee has two years to file a claim petition from when he or she knew the nature of the medical condition and thought the medical condition was work related.

- Occupational knee replacement claim by school custodian for exposures from 2007-2012

- Petitioner claims pushing, sweeping, bending and lifting caused his knees to deteriorate such that he required bilateral knee replacements

- Board of Education Denies Case

- Board relies on Dr. Francis Meeteer who says petitioner’s knee problems are due to osteoarthritis and age-related changes.
Petitioner relies on Dr. Ralph Cataldo, who says simply that repeated physical exertions can “aggravate” osteoarthritis and lead to total knee replacement.

- Judge of Compensation Rules for Petitioner.

- She takes judicial notice of the “fact” that physical work can aggravate osteoarthritis

- She finds Dr. Cataldo more persuasive than Dr. Meeteer

- *Total award $109,214 for permanency*
Capehart Appeals Decision of Judge to Appellate Division

- We argued that petitioner’s expert offered no scientific evidence proving that physical work worsens preexisting osteoarthritis

- We also argued that the Judge of Compensation assumed the issue to be proven
Appellate Division Reverses in Favor of Board of Education

- Rules that it is flawed reasoning for a doctor to assume that just because a worker becomes symptomatic after working there must be causation between physical exertion and work
Court Requires Medical Studies

- Worker’s doctor offered no scientific or medical studies connecting petitioner’s work to severe osteoarthritis

Occupational Medicine Requires Detailed Understanding of Past Medical History

Causation Is ALWAYS The Main Issue!
Most Occupational Workers’ Compensation Clinics Overlook the Importance of Past Medical History

Some occupational clinics have no questions on the sheet about past history
A Majority of NJ Workers’ Compensation Claimants Have Had Symptoms of Same Body Part in the Past
Critical Questions to Be Asked

- Do you have a history of chiropractic treatment?
- Have you ever been injured in a car accident?
- Have you ever had an MRI or CT scan?
- Do you have any current hobbies or athletic activities?
- Do you have a second job?
- Have you ever received pain management?
- Who has been your primary care doctor for the last 10 years?
Key Tip for Medical Intake Form

- All the above questions must be asked and listed on reports to client or company along with answers of injured worker
Avoid Common Mistakes by Workers’ Compensation Doctors

- Past medical history is “non-contributory”
- Failure to list what questions were asked
- Failure to list the answers the employee provided

“Past Medical History Was Negative”
Everyone has a past medical history!!
Avoid Common Mistakes by Workers’ Compensation Doctors

- “I find aggravation because petitioner says he has more pain”
- Pain is subjective
- One needs objective evidence of worsening not subjective complaints
Key Issue in Occupational Medicine

What does the term “Aggravation” mean?
Understand the **Peterson v. Hermann** Forwarding Legal Standard

- Many occupational disease cases depend on the meaning of “aggravation”
- Peterson injured his back on October 1, 1982. Months later he got a job with a new trucking company. His back hurt when he would bend down. He went to Mid-Florida Trucking and felt that his back hurt due to long hours. He worked for four more trucking companies, the last being Yellow Freight. The Compensation Judge found Yellow Freight responsible for total and permanent disability; the Appellate Division reversed and found the first employer liable.
Understand the *Peterson v. Hermann* Forwarding Legal Standard

“Clearly, because of his pre-existing conditions, petitioner’s work activities at the subsequent employment caused him to suffer greater pain than he would have experienced had he remained sedentary. However, an employer is not required to compensate an employee for pain. There must be proof of a work related injury or condition resulting in permanent disability.”

“While the work efforts of petitioner in this case may be considered strenuous by some, they were not unusual for petitioner’s line of work. It was what he would have been able to do but for the October 1982 accident.”
Contrast Temporary Increase of Pain from Objective Worsening

- Preexisting conditions often flare up but quickly subside – temporary increase in pain
- But if there are objective changes employer is liable for aggravation
NJSA 34:15-31 Defines Occupational Disease Claims

- The condition must arise out of and in the course of employment
- The occupational disease must be caused by conditions which are characteristic of or peculiar to the particular occupation or place of employment, AND

The contribution of work to the disease must be “in a material degree”
Questions to Ask When Handling an Occupational Disease Claim

◦ Was this medical condition produced by causes which are peculiar to the claimant’s occupation or place of employment?

◦ OR

◦ Was the medical condition produced by causes which are common to all places of employment or to life generally?
What Are You Looking for in Prior Family Doctor Records?

◦ Can you establish a statute of limitations defense?
◦ Is this illness or disease preexisting?
◦ If the condition is found compensable, will the employer be able to assert a credit based on the preexisting condition?
◦ Is the illness or disease causally related or due to other non-work activities?
◦ Are there referrals to other physicians for treatment of this illness or condition?
Targeted Discovery in Respiratory Claims

- History of cigarette smoking and second hand smoke exposure

- History of allergies and skin testing

- History of bronchitis, pneumonia and other lung conditions
Targeted Discovery in Occupational Orthopedic Claims

- History of arthritis and treatment with rheumatologist
- History of sports injuries and injuries in the gym
- Car accident history
- Chiropractic history
- Prior MRIs and EMGs
Targeted Discovery in Psychiatric Claims

- Prior psychological counseling
- Prior use of sedatives and anti-anxiety medications
- Prior employment history
Board Certified Physicians Are Critical to Use When Case is Likely to Be Tried or Involves High Exposure

- In respiratory claims, most board certified pulmonologists do spirometry, lung volumes and diffusion capacity testing. Dr. Safirstein makes the point that spirometry alone is just preliminary: you need more extensive testing to make diagnosis and determine disability.
In Occupational Spine Cases, Use a Fellowship Trained Spine Surgeon

Causation in spine cases is often a gray area: the additional training credentials may provide the edge at trial and on appeal.
Thank you.

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