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WORKERS' COMPENSATION PRACTICE CASE UPDATE

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WHETHER OR NOT A MEDICAL EXPERT'S TESTIMONY IS EQUIVOCAL MUST BE BASED UPON A REVIEW OF THE DOCTOR'S ENTIRE TESTIMONY AND NOT ON ISOLATED STATEMENTS

By Harry J. Klucher, Esq.

STATEMENT OF FACTS

In Edmond Bemis v. WCAB (Perkiomen Grille Corp.), the Claimant worked for the Employer as a chef and manager and had a history of smoking for approximately 30 years. On April 11, 2008 when the Claimant was moving kegs of beer, he experienced pain in his chest and cheeks. This subsided after 2 hours, but he did advise his employer about the incident at a meeting later the same day. He worked his regular job for the next 2 days. However, on April 14, 2008, the Claimant felt the same chest pain while he was lifting a heavy pot of chilli at work. Subsequently, he was taken to the hospital where he was admitted for 2 days. He then returned to work without any symptoms until May 27, 2008. On May 28, 2008, the Claimant underwent quintuple bypass surgery. While he was out of work, the Claimant learned that the Employer had replaced him at work. The Claimant filed a Claim Petition alleging that he sustained a work related injury on April 11, 2008 which worsened to a point that he required bypass surgery on May 28, 2008 which rendered him totally disabled. The Claimant offered the deposition of a Board certified cardiologist who testified that the lifting incidents on April 11th and April 14th of 2008 certainly could have precipitated and probably did precipitate the Claimant's myocardial event. The Employer offered contrary medical evidence indicating that the Claimant's heavy lifting on the aforementioned days may have caused a plaque rupture and lead to an acute heart attack, but that the medical records did not document such a rupture. The Workers' Compensation Judge (WCJ) accepted the testimony of the Claimant and his medical expert, but

determined that the testimony provided by the Claimant's expert was equivocal and legally insufficient to establish a causal relationship between the Claimant's lifting incident at work and subsequent heart attack. Thus, he denied the Claimant's Claim Petition. The Claimant filed an appeal with the Workers' Compensation Appeal Board (WCAB).

REVIEW OF APPELLATE DECISIONS

The WCAB affirmed the WCJ's denial of the Claim Petition. The Claimant thereafter filed a Petition to Review to the Commonwealth Court. The Commonwealth Court reversed and found in favor of the Claimant. In doing so, the Court reviewed the law indicating that when a causal connection between the Claimant's work and his injury is not obvious, including heart attack cases, the connection must be established by unequivocal medical evidence. A medical witness' use of words such "probably", "likely" and "somewhat" will not render an opinion equivocal so long as the testimony, read in its entirety, is unequivocal and the witness does not recant the opinion or belief first expressed. In this case, the Court analyzed the Claimant's medical testimony and indicated that while the doctor did state that lifting the kegs certainly "could have precipitated the incident", he went on to testify that the activity "probably did precipitate the incident" and that it was "very likely that the lifting of the 100 pound kegs of beer precipitated the event". Finally, the medical expert clarified his opinion by stating that it "certainly appears that the only precipitating event of both incidents involving the Claimant's myocardial condition was the Claimant's work activity on the days in question". Thus, the Commonwealth Court concluded that in reviewing the Claimant's medical expert's testimony as a whole that it was "unequivocal" and supported a finding that the Claimant's activity of lifting the keg of beer and pot of chilli resulted in the Claimant's heart attack and need for bypass surgery. The Court, therefore, remanded the case back to the WCAB and WCJ for calculation of the Claimant's benefits.

COMMENTS

As indicated by the Court, unequivocal medical testimony is needed to support an award of benefits to the Claimant where the injury is not "obvious". There are very few cases where the injury is obvious. The Commonwealth Court in this case reviewed the expert medical testimony offered by the Claimant and ruled as a matter of law that the testimony read as a whole was unequivocal. The Court would not allow the WCJ and WCAB simply to isolate out a few statements made by the medical expert (which did suggest that the medical expert was equivocal) to deny benefits.

If you would like a copy of Edmond Bemis v. WCAB (Perkiomen Grille Corp.), No. 2687 C.D. 2010, please do not hesitate to contact us.

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