

Lessons 748:

Failing to Understand Occupational Conditions and Failing to Keep Working on a Workers' Comp Claim

Rule: Some conditions that were caused by work are payable under workers' comp even when there is no accident.

Rule: Don't give up on good claims based on bad information.

Most people know that workers who get a condition known as carpal tunnel syndrome from a job that requires strenuous, repeated hand movements sometimes can get workers' comp benefits. But why some other conditions are **occupational diseases** and payable under workers' comp is not as well understood. Some occupational conditions are listed in the workers' comp law, like brown lung from breathing in cotton dust, or lung disease from asbestos. Other occupational diseases can be any condition that meets both of these requirements: the employee's work causes the condition, and the employee's job put her at increased risk of getting the condition.

Many injured workers simply give up when they don't know what else to do with a workers' comp claim, especially one that is as hard as an occupational disease. Pursuing a workers' comp claim is not easy. But the surest way to make a good claim into a failure is to not follow through with it.

Leslie

Leslie worked in a retail distribution facility. Much of her day was spent filling orders that went to stores in the Southeast. The merchandise was kept in bins on shelves that stretched above her head and all the way down to the floor. She pulled the bins out and pushed them back in hundreds of times a day. After a year on the job she noticed that the soreness in her right shoulder wasn't going away after she went home. In fact, it was getting worse.

Leslie had never had problems with her arm before. After a few hours at work the pain would get worse, but Leslie just tried to work through it. She went to the nurse at work and got medication regularly, but her pain quickly got to the point where she was having trouble doing her job.

The nurse asked her if she had hurt her arm and Leslie truthfully answered that she hadn't had an accident. She went to the company's doctor who said she probably did have some chronic problems. After months of pain, he finally ordered an MRI, but Leslie was told that the company wouldn't pay for more treatment.

Leslie started missing work because she just couldn't physically do the job. Her sick leave time was soon gone and the company put her on short term disability. She went to a doctor who recommended surgery, but she didn't go back for treatment because she couldn't afford it. The \$300 disability payments were taxable, so she only received \$275 a week and couldn't pay the co-pays for the doctor. Now Leslie is nearing the last of her short term payments. Since it has been over five months since she could work, Leslie fears she is in danger of getting evicted from her apartment.

Leslie's grades on understanding occupational conditions and keeping her claim going: D

Leslie could better manage her case if she knew more about occupational diseases. She believes that her job caused her shoulder problems. That makes perfect sense. Leslie should tell her doctor about the repeated reaching and pulling overhead that she is required to do all day long. The lack of prior problems with her shoulder is important too.

If the doctor believes that the work was a significant factor in causing the condition to develop, and that Leslie's job put her at risk for getting the condition compared to people who don't do her job, then her condition would be considered an occupational disease and she could win her case.

Leslie has not done much to keep her claim going. She hasn't gotten the continuing treatment she needs and she hasn't filed a claim to get compensation from the North Carolina Industrial Commission. But all is not lost. Her doctor has not told her that her condition comes from work but Leslie can ask him now or she can ask another doctor. When a doctor tells Leslie that the condition is work-related, then Leslie will have a maximum of 30 days to tell the employer **in writing**. Leslie should not miss this deadline! Though injured workers have two years to file a claim with the Industrial Commission, Leslie should report the occupational disease in writing right away (using a Form 18 like the one on page 45). Leslie's claim can still be made – even though it has been months she has been out of work.

If Leslie's claim is denied, she should remember that occupational disease claims are usually more difficult to prove than accident claims. Employees often have to prove their claims in court. Leslie is going to need a lawyer. Leslie's lawyer may have to get favorable testimony confirming her job did cause her injury from one or more doctors to finally win her case.

Leslie's Final grade: C

Let's review the ways Leslie can up her grade:

- ✓ Get a better understanding of occupational disease
- ✓ Keep her claim going by hiring a good lawyer
- ✓ Communicate better with her doctor

