



Why Every Employer Should Consider “Having Your Day in Court”

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The defense of every workers' compensation claim begins in the administrative process, but it does not have to end there. After a claim application or motion for an additional condition is decided by the Industrial Commission, the losing party has the right to appeal to court on the issue of whether the claim or condition should be allowed or disallowed. A court case provides defense opportunities, including an expanded discovery process, that typically are not available during the administrative process. An expanded discovery process often reveals evidence that did not come to light during the administrative process. New evidence may lead to the denial of the claim or condition.

How to Get Your “Day in Court”

Before an employer may exercise its right to litigate a claim or condition in court, the employer must exhaust the administrative hearing process. The process involves two or three hearings. An appeal is initiated when the losing party files a “notice of appeal” with the court of common pleas in the county where the injury occurred within 60 days from the date the appealing party received the final Commission order. Regardless of whether the claimant or the employer is the appealing party, the claimant becomes the plaintiff

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and must file a complaint with the court within 30 days of the filing of the notice of appeal. The claimant bears the burden of proof and is required to establish the right to the claim or condition by a preponderance of the evidence. The outcome of the administrative process is not evidence in the court case, and the jury is not advised who won and who lost that process.

Additional Defense Resources Available in Court

Once an appeal to court is filed, the employer has access to an expanded discovery process, including the right to cross-examine witnesses.

Expanded Discovery

Time constraints and the absence of formal discovery rules in the administrative process limit the amount of medical records and other evidence that an employer may gather to support its defense. In court, the employer may serve interrogatories on the claimant and inquire into topics such as the claimant's prior medical history, the identity of doctors who previously have treated claimant, and claimant's prior work history. The employer may secure medical releases from the claimant and obtain complete records from the doctors who have treated the claimant. Medical records often reveal evidence of pre-existing conditions that caused or contributed to the claimant's complaints. Discovery also may reveal medical records of which the claimant's expert was not aware when he or she first rendered an opinion, and those records may bolster or undercut the expert's opinion.

Expanded discovery also allows the employer's attorney to depose the claimant under oath. A deposition of a claimant may reveal facts, such as prior injuries, that were not revealed by the claimant during the administrative process. While the employer's representative may have an opportunity to cross-examine the claimant during the administrative proceedings, the scope of the questioning is limited by the brief time period allotted for the hearing and by the limited discovery conducted prior to a hearing.

Cross-Examination of Claimant's Expert

During court proceedings, the claimant must produce testimony from a medical expert to prove his or her claim. Because the claimant has the burden of proof, if he or she fails to prove any element of the claim by the greater weight of the evidence, then he or she is not entitled to participate in the workers' compensation system for that claim or condition.

One of the most successful ways to convince a judge or jury that the claimant has not met his or her burden of proof is to discredit the claimant's expert witness. During the administrative proceedings, the claimant's expert witness is rarely present, and the employer's attorney almost never has an opportunity to cross-examine the expert. In court, the claimant's expert must respond to questions regarding the validity and foundation of the expert's opinion. Frequently, the expert concedes that a different history, or factual foundation, could change his or her opinion. For example, medical records obtained through discovery that the expert previously had not reviewed may compel the expert to concede that the new information points to another cause for the claimant's complaints.

Direct-Examination of Employer's Expert

Court proceedings also allow the employer to present testimony from its own expert witness, whereas this opportunity is not usually taken during the administrative process. Some defense experts become excellent teachers in this setting and convincingly explain to the court and jury why the evidence does not support the claimant's claim.

What Happens After a “Day in Court”

If an employer is successful after a trial on appeal, the condition contested in the court will be disallowed. If the entire allowance of the claim was contested, then the entire claim will be disallowed. If an employer is a state-fund employer, the BWC will adjust the employer’s premiums and credit the employer for overpaid premiums associated with the disallowed claim. If the employer is self-insured and has remained a participant in the surplus fund for reimbursement, the employer may submit the court order disallowing the claim along with documentation of payments to the BWC. The employer can request reimbursement for all medical benefits and compensation paid for the disallowed condition(s) and/or recover paid compensation pursuant to Ohio Revised Code Section 4123.511(K). In all events, the self-insured employer will be able to report the medical benefits and compensation paid as a recovery on the SI-40 and receive the benefit of a reduction in assessments.

Do All Appeals Result in a Trial?

Every appeal filed does not necessarily proceed to trial. Many times, an appeal will increase the employer’s leverage in negotiations and may promote a more reasonable settlement. Also, a claimant may simply decide not to proceed and allow the employer to take judgment in its favor.

Conclusion

In sum, court litigation provides a good opportunity for an employer to develop its defense of a claim beyond what was presented during the administrative process. While not every allowance needs to be appealed into court, employers should consider this option for contested but allowed claims. Frequently, the discovery and trial process opens a number of doors that may lead to the disallowance of a claim or a quicker, more reasonable settlement.



Should you have any questions about the appeals process, please contact Mr. Gibney or Ms. Phelps at our Toledo office (419-241-6000). Mr. Gibney is a member of the Firm who practices in the areas of human resources management, employment litigation, labor negotiations and contract application, workers’ compensation, as well as federal and state safety regulation litigation. Ms. Phelps is an associate whose practice includes representing employers in labor matters as well as against claims of employment discrimination and workers’ compensation.



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