

Ohio Bureau of Workers' Compensation

MHS23

MEDICAL & HEALTH SYMPOSIUM

May 4-6, 2023



Identifying Legal Concepts in Occupational Medicine

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Session 5503

Learning Objectives:

1. Identify the legal definition, meaning, and practical implications of various legal concepts in the Ohio workers' compensation system, including "injury," "claim allowance," "causality," "alternative dispute resolution," "temporary total compensation," "maximum medical improvement," and "supportive care" as those terms are set forth in the Ohio Revised Code and Ohio Administrative Code and clarified by subsequent case law.
2. Gain detailed knowledge of the administrative hearing process in relation to disputes that proceed to the Ohio Industrial Commission.
3. Be provided a sample of anonymized real-life case examples involving disputes that have proceeded to and been adjudicated by the Ohio Industrial Commission.

Injury

Ohio Revised Code § 4123.01(C)

- “(C) ‘Injury’ includes any injury, whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee's employment...”
- The work related-injury may be sudden or gradual.

Injury

Sudden

- Physical Injury: Any traumatic damage or attack on the physical structure of the body, which results in a wound, tear, or abnormal condition.

Gradual

- Cumulative Injury: An injury developing gradually over time as a result of the performance of an injured worker's job-related duties.
- Repetitive Motion Injury: A family of muscular conditions resulting from repeated movements performed in the course of normal work activities, usually the result of unnatural or awkward motions such as twisting the arm or wrist, overexertion, incorrect posture, or muscle fatigue.

Ohio Workers' Compensation Claim Allowance

Workers' Compensation Claim = Body Part or Parts

Ohio Revised Code § 4123.84(A), (C)

- (A)(1) Written or facsimile notice of the specific part or parts of the body claimed to have been injured [must be] made to the industrial commission or the bureau of workers' compensation [within one year after the injury] . . .
- (C) . . . compensation or benefits for loss or impairment of bodily functions developing in a part or parts of the body not specified [in the initial notice may be awarded] if . . . the loss or impairment of bodily functions was due to and a result of or a residual of the injury to one of the parts of the body set forth in the [initial] written notice . . .

Body Parts = ICD-10 Diagnoses [Ohio Administrative Code § 4123-6-25(C)(2)]

- Body Parts = ICD-10 specific diagnoses, including site and location

Causality (Causal Relationship)

Diagnosed conditions must be causally related to the work-related injury to be allowed in the claim.

- Causality (causal relationship) is a medical determination that the condition(s) the injured worker is requesting, to a reasonable degree of medical probability (more likely than not):
 - Resulted from the mechanism of injury, or
 - Resulted from, or from treatment for, a previously allowed condition in the claim.

Causality (Causal Relationship)

Direct Causation

- The requested condition is directly and proximately caused by the work-related injury.
- Proximate cause: That which, in a natural and continuous sequence, unbroken by any intervening cause, produced the injury, and without which the injury would not have occurred.

Causation by Flow-Through

- Flow-Through Injury: A subsequent loss or impairment of bodily functions developing in a part or parts of the body not originally alleged, but due to the original injury.

Causality (Causal Relationship)

Causation by Aggravation (dates of injury before August 25, 2006)

- Aggravation: A medical finding that a condition that pre-existed an injury or occupational disease is worsened by the injury or occupational disease and has an adverse impact, no matter how slight.

Causation by Substantial Aggravation (dates of injury on or after August 25, 2006) [Ohio Revised Code § 4123.01(C)(5)]

- Substantial Aggravation: A medical finding that a condition that pre-existed an injury or occupational disease is worsened considerably in amount, value, or extent solely because of the injury or occupational disease.
- Substantial aggravation must be documented by objective diagnostic findings, objective clinical findings, or objective test results.

IC Hearings

- The Industrial Commission (IC) is the adjudicating body
- Last year the Industrial Commission heard over 110,000 hearings
- Hearing levels/appeals
 - District Hearing Officer (DHO)
 - Staff Hearing Officer (SHO)
 - Deputy/full Commission



IC Hearings

- Three parties to every workers' compensation claim
 - Injured worker
 - Employer
 - BWC
- Managed Care Organizations (MCOs) and providers are not parties to a workers' compensation claim



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REAL WORLD EXAMPLES

CAUSATION



ALLOWED VS. ALLEGED

This claim has been previously allowed for: SPRAIN OF NECK; FRACTURE C6 VERTEBRA; L5-S1 DISC PROTRUSION AND AGGRAVATION OF DEGENERATIVE DISC DISEASE; AGGRAVATION OF PRE-EXISTING STENOSIS L3-4 ON THE RIGHT; RIGHT FORAMINAL STENOSIS L2-3; AGGRAVATION OF PRE-EXISTING BILATERAL FACET ARTHROPATHY L3-4, L4-5; RIGHT KNEE SPRAIN; RIGHT KNEE CONTUSION; RIGHT SHOULDER STRAIN/SPRAIN; RIGHT BICEPS TENDON TEAR; RIGHT SHOULDER ROTATOR CUFF TEAR WITH IMPINGEMENT; SPRAIN/STRAIN LEFT SHOULDER; LEFT SUPRASPINATUS TENDON TEAR; LEFT SUPERIOR GLENOID LABRUM LESION; LEFT BICEPS ANCHOR DISRUPTION; FAILED BACK SYNDROME L2-3, L3-4, L4-5; FAILED BACK SYNDROME L5-S1; LEFT KNEE CONTUSION; LEFT KNEE SPRAIN/STRAIN; LUMBAR FORAMINAL STENOSIS L3-L4.

C-9 Req For Ms Reimbursement Or Rec For Add Condition filed by Injured Worker on 01/11/2023.

- Issue: 1) Additional Allowance - LUMBAR SPONDYLOSIS L4-5
- 2) Additional Allowance - SPINAL STENOSIS

IW'S SUPPORTING EVIDENCE

Assessment

Assessment/Diagnosis: The patient's current complaints are in my opinion a direct continuation of his established work related injury. He has now undergone 2 simple decompressions but unfortunately is persisting with chronic intractable low back and left LE radicular complaints including pain and motor deficits. It appears based on the established clinical facts that the patient requires an AA at the L4-5 level to include lumbar spondylosis and stenosis by a flow thru mechanism secondary to his known allowed conditions and prior BWC authorized surgical interventions. This opinion is based upon all reasonable medical probability and certainty.

DHO ORDER

This finding is based upon the opinion provided by [REDACTED] M.D., in a review dated 01/18/2023. [REDACTED] notes that the Injured Worker's lumbar MRI dated 10/12/2004, which was performed shortly after the initial injury, showed evidence of pre-existing degenerative changes at L4-5. The Injured Worker also underwent surgery for degenerative lumbar conditions on 02/15/1995, prior to the date of injury in the claim. [REDACTED] opines that the requested spondylosis is degenerative in nature, which rules out direct or flow-through causation for this condition. [REDACTED] further opines that there is insufficient objective documentation to support an aggravation diagnosis. [REDACTED] also finds that the requested spinal stenosis condition is degenerative in nature, due the natural history of progressive degenerative changes.

Medical Treatment (The *Miller* Criteria)

State, ex rel. Miller v. Indus. Comm., 71 Ohio St. 3d 229, 643 NE 2d 113 (1994)

- The Ohio Supreme Court adopted a three-part test (“the *Miller* criteria”) for determining authorization of reimbursement for medical services in Ohio workers’ compensation claims.
- To authorize reimbursement of medical services, the requested treatment must meet all three criteria:
 - Are the medical services reasonably related to the allowed conditions?
 - Are the services reasonably necessary for the treatment of the allowed conditions?
 - Is the cost of these services medically reasonable?

Alternative Dispute Resolution (ADR)

Ohio Administrative Code § 4123-6-16(A)

- (A) [T]his rule shall provide procedures for an alternative dispute resolution (ADR) process for medical disputes between an employer, an injured worker, or a provider and an MCO arising from the MCO's decision regarding a medical treatment reimbursement request (on form C-9 or equivalent). An injured worker or employer must exhaust the ADR procedures of this rule prior to filing an appeal under section 4123.511 of the Revised Code on an MCO's decision regarding a medical treatment reimbursement request.

Alternative Dispute Resolution (ADR)

Ohio Administrative Code § 4123-6-16(C),(E),(F)

- (C) Upon receipt of a written medical dispute, the MCO shall initiate the ADR process. The MCO's ADR process shall consist of one independent level of professional review
- (E) the MCO shall complete the ADR process and submit its recommended ADR decision to the bureau electronically within twenty-one days of the MCO's receipt of the written medical dispute
- (F) Within two business days after receipt of a recommended ADR decision from the MCO, the bureau shall publish a final order. This order shall be mailed to all parties and may be appealed to the industrial commission pursuant to section 4123.511 of the Revised Code

ALLOWANCE AND C9 REQUEST

CLAIM ALLOWANCE:

1. S86.312A, peroneal tendon tear, left.
2. S86.311A, peroneal tendon tear, right.
3. S46.011A, partial rotator cuff tear, right.
4. S90.32XA, contusion of left foot.
5. S90.31XA, contusion of right foot.
6. S46.011A, strain of muscle/tendon, the rotator cuff, right shoulder.

| 1. Requested services | 2. Treating diagnosis for this request to include body part/levels. | 3. Date service begins | Date service ends | Date of last exam or treatment |
|---|---|------------------------|-------------------|--------------------------------|
| | | S86.311A, S86.312A | 1/1 | 1/1 |
| 4. Requested services with CPT/HCPCS codes (required) | | Frequency | Duration | |
| 1. | physical therapy | 2x wk for | 6 wks | |
| 2. | For bilateral feet per medical 12/7/22. EKG, RN 12/13/22 | | | |
| 3. | | | | |
| 4. | | | | |

MCO PHYSICIAN FILE REVIEW

CONCLUSION:

No further physical therapy is indicated. There has been a long period of absence of no treatment. ODG does not support any further physical therapy for the feet for this 6-year-old injury. There appears to be no changes noted for multiple years. ODG is not supported. The numbness around the feet is not due to this injury, but to diabetic neuropathy.

Miller criteria are reviewed in that:

1. The requested medical services reasonably related to the industrial injury? Yes.
2. The requested services reasonably necessary and appropriate for the treatment in the industrial injury? No.
3. Are the costs for services medically reasonable? No.

IW'S SUPPORTING EVIDENCE

Physical Examination:

BLE feet, periodic numbness tingling throughout - weak knees, pain lateral side of legs around tendons peroneal region able dorsiflex plantar flex 10 degrees, difficulty with supination and pronation

R shoulder - limited rom in all planes secondary to pain - able to elevate 100 degrees and abduct 70 degrees, external rotation with arm at side is 25 degrees unable to perform posterior reach.

C9 for pt b/l feet peroneal area due to increased pain and reduced mobility 2x/week for 6 weeks somewhere close to Marysville

Continue with HEP

pt sees a podiatrist for orthotics

RTC 5 months.

DHO ORDER

The District Hearing Officer finds the requested physical therapy is related to, reasonable, and necessary for treatment of the allowed conditions in the claim.

The Injured Worker testified his feet are tight and sore where he had the surgery, to the point where he can barely walk. The Injured Worker stated the pain is different from his diabetic neuropathy, and he has had no new injuries.

The District Hearing Officer acknowledges the Injured Worker is currently permanently totally disabled due to this claim.

This finding is based upon the report from ██████████ CNP, dated 12/07/2022; the C-9 dated 12/12/2022; and the Injured Worker's credible testimony at hearing today.

Temporary Total Compensation

Ohio Revised Code § 4123.56(A)

- “(A) . . . in the case of temporary disability, an employee shall receive sixty-six and two-thirds per cent of the employee's average weekly wage so long as such disability is total, not to exceed a maximum amount of weekly compensation which is equal to the statewide average weekly wage”
- “Temporary” means temporary, but “total” does not mean total!

Temporary Total Compensation

State, ex rel. Ramirez v. Indus. Comm., 69 Ohio St. 2d 630, 433 N.E.2d 586 (1982)

- “. . . [T]emporary total disability as used in R. C. 4123.56 [is] a disability which prevents a worker from returning to his former position of employment. . . .”
- “R. C. 4123.56 . . .specifically refers to the capability of an employee ‘to return to his former position of employment.’ ‘Position’ is defined by Webster's Third New International Dictionary as ‘the group of tasks and responsibilities making up the duties of an employee.’”

Temporary Total Compensation

Ohio Revised Code § 4123.56(A)

- “(A) . . . [P]ayment shall not be made for the period when any employee has returned to work, when an employee's treating physician has made a written statement that the employee is capable of returning to the employee's former position of employment, when work within the physical capabilities of the employee is made available by the employer or another employer, or when the employee has reached the maximum medical improvement.”

Maximum Medical Improvement (MMI)

Ohio Administrative Code § 4121-3-32(A)(1)

- “[A](1) ‘Maximum medical improvement’ is a treatment plateau (static or well-stabilized) at which no fundamental functional or physiological change can be expected within reasonable medical probability in spite of continuing medical or rehabilitative procedures. An injured worker may need supportive treatment to maintain this level of function.”
- “Maximum Medical Improvement” does not mean no more treatment!
- What is “supportive treatment” or “supportive care/maintenance care?”

Supportive Care / Maintenance Care

State ex rel. Brown v. Indus. Comm., 10th Dist. Franklin No. 02AP-108, 2002-Ohio-4313

- “In many cases, *treatment is needed to ease pain or maintain function but may or may not provide fundamental functional or physiological improvement . . .* Thus, when medical treatments can provide no further functional or physiological improvement, the claimant has reached MMI and cannot receive further TTD compensation, regardless of whether further medical care is necessary and payable in the claim. . . .”
- “. . . the standard for authorizing treatment is not the same as the standard for awarding TTD compensation. *Treatment may be authorized as "necessary" regardless of whether it is expected to result in fundamental improvement.* In contrast, TTD may be awarded only where "fundamental functional or physiological change" is expected from the continuing treatment.”

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REAL WORLD EXAMPLES

MMI AND MAINTENANCE CARE



ALLOWED CONDITIONS

Sub agg of pre-ex foraminal stenosis, C6-C7

Major depressive disorder moderate single episode

Spinal stenosis, lumbar region without neurogenic claud, L2-L4

Transverse S3 sacral fracture, displaced

Sprain of ligaments of cervical spine, neck

Sub agg of pre-ex spinal stenosis, C6-C7

Sacroiliitis, not elsewhere classified

Occipital neuralgia

Strain of muscle, fascia and tendon at neck level, neck

Sub agg of pre-ex disc bulge, C6-C7

Fractures of ribs 4-8 anterolateral and 9, 11 posterior, left

Fractures of ribs 3-6 anterolateral and 10-11 posterior, right

Disc protrusion, L2-L5

Traumatic pneumothorax, left

Laceration without foreign body of scalp

Radiculopathy, cervical region, right C6-C7

BWC EXAM REPORT

Question 1: Based on your examination of the injured worker and solely taking into consideration the allowed conditions in the claim, is the injured worker able to return to the position of employment held on the date of injury?

Answer: This individual cannot return to work as a mason. There are significant limitations in the cervical and lumbar spine preventing lifting, pulling, and pushing as well as carrying necessary for the employment held on the date of injury.

Question 2: Based on the definition of maximum medical improvement (MMI) above, have the allowed conditions reached a level of MMI? Please discuss any objective findings that support your opinion that the injured worker has or has not reached a level of MMI.

Answer: The allowed physical conditions in the claim are at a level of MMI. There has been extensive surgical care, injections, and physical therapy. Medial branch blocks were recently denied. Further surgical intervention has not been recommended. While there are significant limitations, notes do not indicate any major change in function recently and therefore there is no expected fundamental, functional, or physiologic improvement expected relative to the allowed conditions in the claim. Therefore, this individual is at MMI.

MMI TERMINATION OF TREATMENT

Question 3: Please discuss how prior, current, and proposed treatment requests impact your opinion on whether the injured worker has reached a level of MMI.

Answer: Please see above discussion. While maintenance care may be necessary, there is not an expectation of further functional or physiologic improvement and no recommendations for care has been placed other than those which were recently denied.

IW'S REBUTTAL REPORT

I am writing this letter to you in reference to my patient [REDACTED] who I have been seeing since July 2022 for his work-related injury that caused him chronic intractable lower back and neck pain. The patient initially did 2 epidural steroid injections for his lower back pain and he had very good benefit with the injections, which improved his lower back pain significantly. Because he does also have a lot of neck pain I have recommended some neck injections to help with his neck pain, which at this time are under the appeal process. I would at this time not consider him MMI because we can still offer him improvement in his neck pain also, as he has had improvement in his lower back pain with injections, and we may be able to reduce some of his pain medication usage if he does get good benefit with these, therefore at this point I believe that he should not be considered MMI.

DHO ORDER

It is the order of the District Hearing Officer that the Administrator's MOTION filed 01/25/2023 is granted.

It is ordered that temporary^{**} total disability compensation shall be paid through 02/23/2023, the date of today's hearing, and terminated thereafter.

The District Hearing Officer finds the Injured Worker has reached maximum medical improvement, in that the allowed physical conditions have reached a treatment plateau at which, within reasonable medical probability, no fundamental, functional, or physiological change can be expected in spite of continuing medical or rehabilitative treatment.

This finding is based upon the report of [REDACTED], M.D., dated 01/06/2023.

Any temporary total disability compensation paid beyond 02/23/2023 is overpaid, and shall be recouped pursuant to the non-fraud provisions of R.C.4123.511(K).

All of the evidence was reviewed and considered in rendering this decision.

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Questions?

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