

# **Theories of Causation**

Presented by BWC's Legal Department

# Types of Causation

- Direct
- Aggravation
- Substantial aggravation
- Flow-through

# Direct Causation

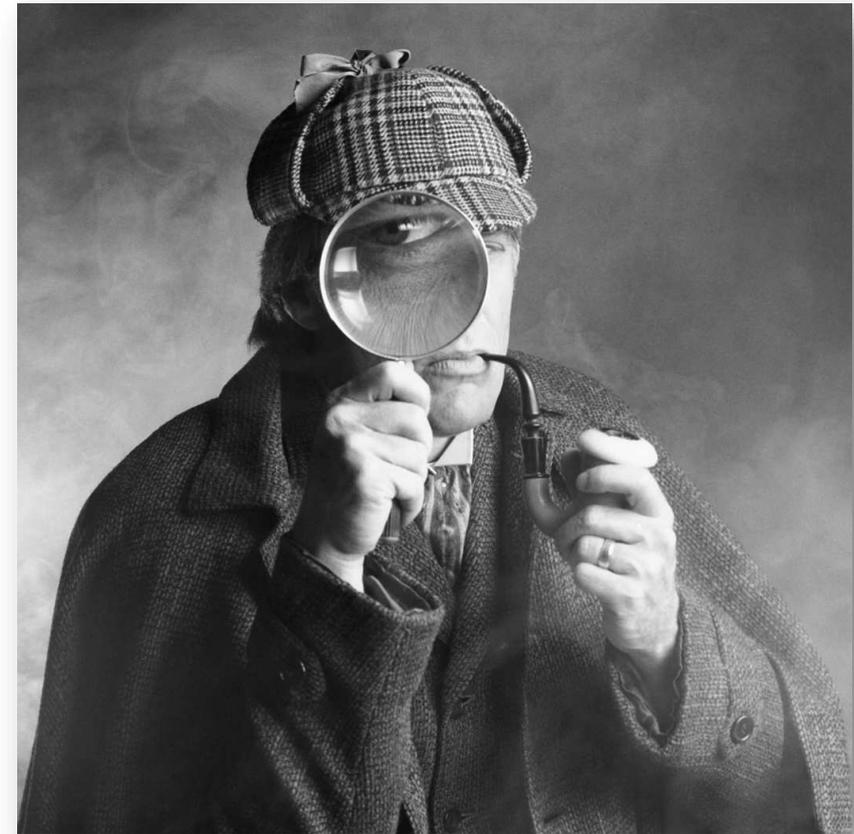
- Burden of proof: Claimant must prove, more likely than not, that work activity was the direct cause of the injury. There must be evidence of a connection between work activities and the described injury.
- There must be a physical harm or a medical condition documented by evidence.
- Pain is not a compensable injury.

# Direct Causation

- Condition that:
  - Was not present prior to the injury.
  - Appeared immediately after the injury, as a result of the injury.
  - Examples:
    - Lifting a box at work and injuring the back.
    - Slipping and falling and breaking an arm.
    - Cutting a hand while using a knife at work.

# Direct Causation

- Evidence
  - Medical records and documents provided by the parties should document the mechanism of injury.
    - This injury occurred over the weekend playing softball.
  - Medical records objectively and subjectively document the diagnosis of a medical condition.



# Direct Causation

## Evidence

- Medical records discuss that the medical condition occurred as the result of working.
- Records that discuss when the injury occurred.

# Direct Causation

- Evidence (cont'd.)
  - Accident reports, police reports, emergency medical services reports, emergency room reports, urgent care records, First Report of An Injury, Occupational Disease or Death, claims service specialist/managed care organization notes
  - Investigations surrounding the event's circumstances
  - Medical reports obtained by the claimant or employer representative, or BWC that discuss causation

# Direct Causation

- “Village” injuries are injuries that developed gradually over a period of time. The claimant in Village did not have a specific incident, but woke up with a sore back following several days of moving boxes.
- The court recognized a “Village” injury under a direct causation theory.

# Direct Causation

- Heart attack can be an acute injury following emotional stress or physical exertion at work.
  - It can be the direct cause or a substantial aggravation of a pre-existing condition.
- A common cold is generally not an injury.
- “Sick building syndrome” is generally not an injury.
- Psychological conditions are almost never allowed by direct causation.

# Direct Causation

- Exposure to other pathogens can be direct cause injuries if the claimant proves there was an exposure at work.
- Examples include a nurse who treated patient with documented MRSA.
- Police officer with a cut on the hand contracted hepatitis C after arresting someone known to have the condition and bleeding.

# Direct Causation

- Special considerations include:
  - Pre-injury medical records of the condition.
  - Subjective complaints are disproportionate to diagnostic test results.
  - Natural degenerative conditions present at injury.
  - Different, inconsistent descriptions and dates of injury.
  - Substantial delay in seeking treatment after injury.
  - Positive Waddell's signs.
  - Prior injury or claim to same area.

# Types of Causation

- Aggravation
- Substantial Aggravation
- Date of injury after Aug. 26, 2006

# Baby Boomers

- 1946-1964

# Dealing with an Aging Workforce

- Increased possibility of pre-existing conditions
- Slightly extended recovery times
- Normal physical changes that come with aging
- Hearing - especially over the phone
- Mild cognitive impairment

# Causation by Aggravation

- Definition of Injury:
  - 4123.01(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.”
  - Based on this language, the Supreme Court of Ohio determined an aggravation of a preexisting condition was compensable for purposes of workers' compensation.

# Causation by Aggravation

- Generally:
  - Applies to dates of injury before Aug. 25, 2006.
  - Condition must pre-exist the injury.
  - Objective evidence is not required.
  - New symptoms alone are sufficient.
  - An increase in symptoms alone is sufficient.
  - Subjective evidence alone is sufficient.

# Causation by Aggravation

- Pre-eminent case on this topic
  - Schell v. Globe Trucking Inc.
  - A showing of substantial aggravation is not required.
  - The aggravation does not need to be of “a great magnitude.”
  - Relatively “slight” or “mere” aggravation is sufficient.

# Causation by Substantial Aggravation

- Only applies to dates of injury on or after:
  - **Aug. 25, 2006**

# Causation by Substantial Aggravation

- We still have the same definition of “injury” in 4123.01(C).
- But, the General Assembly added:

# Causation by Substantial Aggravation

- Ohio Revised Code 4123.01 (C)(4)

## “Injury” does not include:

A condition that pre-existed an injury unless that pre-existing condition is substantially aggravated by the injury. Such a substantial aggravation must be documented by **objective** diagnostic findings, **objective** clinical findings, or **objective** test results. Subjective complaints may be evidence of such a substantial aggravation. However, subjective complaints without objective diagnostic findings, objective clinical findings, or objective test results are insufficient to substantiate a substantial aggravation.

# Causation by Substantial Aggravation

## SOAP notes

- SOAP notes
  - Subjective
  - Objective
  - Assessment
  - Plan
  - SOAPier
  - Implentation
  - Evaluation
  - Reassessment

# Causation by Substantial Aggravation

- **Lisa Smith v. Lucas County** (Ohio Appellate- 6th)
  - Date of injury **after** Aug. 25, 2006
  - No pre-injury objective findings
  - No pre-injury documentation of the condition
  - No pre-injury documentation of symptoms
  - No post-injury evidence of any aggravation
  - Only post-injury diagnostics
  - Only post-injury indication of symptoms

**Conclusion:** No finding of substantial aggravation

# Causation by Substantial Aggravation

- **Pflanz v. Pilkington** LOF (Ohio Appellate-1st)
  - Defines “substantial” aggravation
    - Considerable in amount, value, or the like
    - Firmly established, solidly based

**Conclusion:** Both definitions of substantial aggravation must be satisfied in order to prevail.

# Psychological Conditions

- Objective evidence for substantial aggravation requests are more difficult to support.

# Substantial Aggravation Return to Baseline

- Ohio Revised Code 4123.54 (G)

If a condition that pre-existed an injury is substantially aggravated by the injury, and that substantial aggravation is documented by objective diagnostic findings, objective clinical findings, or objective test results, no compensation or benefits are payable because of the pre-existing condition once that condition has returned to a **level that would have existed without the injury.**

# Substantial Aggravation

## Return to Baseline

- If a condition is degenerative in nature, the examining physician should be able to explain how the condition would be expected to progress to the level where the injured worker is at the time of the examination.
- BWC or employer's motion requesting a finding that the condition has returned to baseline.

# Substantial Aggravation

## Return to Baseline

- **Type of Evidence Needed**
- Objective diagnostic testing
- Clinical objective findings that are measurable such as orthopedic tests, findings of effusion, edema, and/or crepitus. Subjective complaints such as pain levels, range of motion findings which are limited by pain, strength, and/or presence of spasm are not made into objective findings simply because they are documented in the record.

# Substantial Aggravation Return to Baseline

- **Charles R. Bell vs. Honda of America**
- Return to baseline was argued based upon a treatment note documented by the on-site employer's doctor that reported the injured worker believed his injury had returned to baseline.

# Substantial Aggravation Return to Baseline

- **What does a Baseline Finding/Abatement Do?**
- Typically, abatement means that the claim, or in this case the specific condition, is dead.
- In effect, no compensation or benefits are payable.

# Causation by Substantial Aggravation

- Special considerations include:
  - Pre-injury and post-injury diagnostic comparisons.
  - Continuation of the degenerative process.
  - Clinical findings are inconsistent with objective evidence.
  - No pre-injury diagnostic tests are present.

# Types of Causation

- Flow-through

# Causation by Flow-Through

- Case law defines “flow-through” as:
  - An “injury that subsequently develops in a body part not originally alleged under R.C. 4123.84(A)(1) .... Whether a flow through injury is compensable depends on the existence of a direct or proximate causal relationship between the previously allowed injury and the claimant’s flow through injury.” *Holman v. Shiloh Grove Ltd. Partnership*, 2016-Ohio-2809, ¶ 25.

# Causation by Flow-Through

- Translation: A flow-through condition is one that:
  - Is not present at the time of the original injury; and
  - Developed as a result of the allowed condition(s) or authorized treatment under the claim.

# Causation by Flow-Through

- Typical examples include conditions caused by:
  - Surgery.
  - A fall.
  - Overuse/underuse.
  - Altered gait.
  - Medication.

# Causation by Flow-Through

- Special considerations:
  - Degenerative conditions that are primarily caused by the natural aging process are usually not allowable.
    - Unless the condition developed from an already allowed condition or authorized treatment
  - Naturally occurring conditions (e.g., diabetes, high cholesterol, asthma, high blood pressure)

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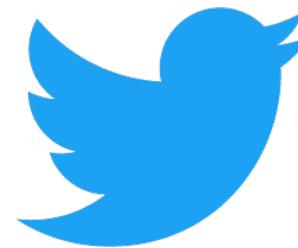
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