2010 WORKERS' COMPENSATION

Mysteries of the Claim Form and How it Triggers the Presumption of Compensability

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DWC -1: EMPLOYEE CLAIM FORM

- Lab C **5401 (a)** –within one working day of receiving notice or knowledge of an injury, which results in lost time beyond the work shift at the time of injury or which results in medical treatment beyond first aid, employer required to provide personally or by 1st class mail, a Claim Form. This does not indicate injury is admitted. It is compliance with reporting statutes. By the term "First aid", we mean any one time treatment and any follow up visit for minor things like scratches, cuts, burns, splinters or other, which do not require actual medical care.

- (c) A Claim Form (DWC-1) is "filed" either by personal service upon the Employer or by mailing the Claim Form by first class or certified mail.

- ***What is the Effect of Filing a Claim Form*?** Service of Claim Form upon Employer triggers a number of systems, including the automatic provision of limited medical treatment, the medical discovery system and the intended presumption of compensability if the claim is not timely denied.

LABOR CODE SECTION 5402: PRESUMPTION OF COMPENSABILITY

- Labor Code Section 5402(b): If liability for the claimed injury is not rejected within 90 days after the date the claim form is filed with the employer, under Labor Code Section 5401, the injury is presumed compensable. This means that the burden of proof shifts to the employer to essentially "disprove" that the injury did not occur, but only with evidence acquired outside of the 90 day period. Therefore, only evidence which could not have been secured within reasonable due diligence, prior to the 90th day. (The doctrine of the Williams case.) The employer cannot identify a piece of evidence, not use it, such as a witness and then decide later on, after the running of the 90 days, to now use that evidence with which to deny the claim.

LABOR CODE SECTION 5402: AUTOMATIC MEDICAL TREATMENT [LIMITED]

- Labor Code Section 5402(c): Within one working day after the employee files a Claim Form as discussed above, the employer shall authorize the provision of medical treatment, to cure or relieve, until the date the claim is otherwise denied or becomes compensable under the 90 day rule, but not more than $10,000. The treatment provided shall conform to the Medical Treatment Utilization Schedule set forth by the Administrative Director and shall be in accord with evidence based medicine;

- This limited treatment provision shall create no presumption of injury liability.

- This statute was intended to hasten a timely investigation of the claim and the making of a compensability decision on whether to accept or reject a claim. (If the defendant wants to take 88 days to investigate compensability, they have to provide medical treatment up to the cap of $10,000.)

- There is no automatic entitlement to temporary disability benefits.

PSYCHIATRIC CLAIMS:

- There must first be a diagnosed and proven actual **mental disorder** (DSM-IV-R) otherwise there is no provable psyche claim. The mere existence of "stress" is insufficient.

- SB 899 reforms of 2004 created a higher standard of proof, requiring the applicant to prove by a preponderance of the evidence, that **actual events** were predominant to all causes combined of the psychiatric injury. Preponderance means more than 50% of the causation came from the workplace as opposed to any other potential causes. "An event" is something which is provable as opposed to a mere "perception."

- There is a lowered threshold of proof for workers who are either the actual direct objects of a **violent crime or directly affected by witnessing a violent crime,** in which case the degree of proof is lowered to "substantial" which is defined as 35%-40% of the overall causation element.

- Under the reforms there must be **no less than six months of employment** (non-contiguous is okay), unless the psychiatric injury is otherwise caused by some "**sudden and extraordinary event**" of the work place, which is expected to cause a mental injury. (E.g. explosions, robbery, catastrophic injury). This rule also pertains to the compensable consequences of an admitted physical injury.

- **Post Termination Defense under Labor Section 3208.3(c):** Psychiatric claims are barred if the claim was made after the employee was either noticed with layoff or was laid off or involuntarily terminated. Subject to some exceptions, including the employer had notice of the injury prior to the notice of layoff, medical records existing prior to the notice of lay off contain evidence of actual treatment for the psychiatric injury, the injury was caused by a sudden and extraordinary event, or the date of injury is after the layoff notice or upon a finding of sexual or racial harassment by any Trier of fact, whether contractual, administrative, regulatory or judicial.

- **Lawful, Good Faith, Non-Discriminatory Personnel Actions:** The employer can defend against a psychiatric claim contending that the so-called "actual events" are really "good faith, lawful, non-discriminatory personnel actions. If the employer can prove that these are contributing at least 35% from all causes, then the claim is barred on that basis alone. The defendant has the burden of proof.