

Working Together & Protecting Injured Workers

By Angela Hardway, Esq.

Workers' compensation was developed as a system meant to be streamlined for the injured worker and the employer. An employee is hurt, receives treatment and goes back to work. The employer pays into a fund that covers the expenses and prevents lawsuits. The reality: nothing is that simple when it's a government agency. Then, everyone has an opinion; how the claim should be handled, honesty of workers, honesty of employers and who should be responsible for the costs. More often than not, injured workers are made to feel they have done something wrong and employers fear financial catastrophe. Political motivation guised as reform has created a system already wrought with obstacles that extend the length of time an injured employee is out of work, leaving employers to mitigate the impact an injury has on their business. For example, in 2013, employers were awarded over a hundred million dollars in rate reimbursements and in 2016, the Eighth District Court of Appeals found the portion of House Bill 487 affecting scheduled loss payments unconstitutional.

Although frustrating, an opportunity is created for attorneys and physicians to work together for the injured worker both questioning, "How do advocates maneuver the system so that the injured workers and employers receive the benefit of the program they fund?" Fundamentally, it requires different professions to work together for the benefit of the injured worker and indirectly, the employer. The result is claimant attorneys working with treating doctors to benefit our mutual client/patient to procure the treatment the injured worker needs to heal and return to work.

A key component to a worker's claim success is "causal relationship." This legal standard intertwines the medical diagnosis to the mechanism of injury. When the injury is clear-cut, then it seems rather easy to relate allow the workers' compensation injury. Complications arise when the emergency room provides vague diagnoses, yet the diagnoses do not improve, an injured worker doesn't report the injury thinking

the pain would resolve, delays in initial treatment and failure to report to the employer. More complicated are occupational diseases and cumulative trauma injuries. These types of injuries develop over extended periods of time, even decades. A physician has to support the resulting diagnosis as related to an injured worker's job duties, work environment, or activity that benefited the employer. Important are "the magic words" that sufficiently explain the physician of record's medical opinion. The physician of record must explain how the

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alleged injury, resulted injury or the occupational disease/cumulative trauma is causally related to said injury/disease/trauma. For claims, causal relationship is by direct injury, substantial aggravation of a pre-existing condition, or flow through (development of an secondary injury because of an allowed diagnosis). Treatment requests must meet the Miller Criteria analysis.

The average medical record traditionally lacks explanation of the injury and rarely provides proper causal relationship. Insufficient records, incomplete first report of injury and/or unexplained treatment requests result in denials. Attorneys assist physicians in rectifying these denials. Claimant attorneys send requests to the physician asking for explanation regarding the relationship of the diagnosis to the injury. When the diagnosis/treatment plan is sufficiently related to the injury there are less delays and the physicians are paid faster for their services.

The BWC does not make this easy. State medical reviews and independent medical exams question and disagree with the treating physician's opinions. It creates a

barrage of paperwork the physician must complete and places the physician in a defensive position. A claimant's attorney can simplify and assist the physician by advising the physician on proper medical evidence to support claim/treatment approval. Alternatively, the attorney sifts through the legal standard of medical issues to benefit the injured worker and secondarily, the physician.

The lack of sufficient explanation from a physician is always problematic to a claim. It is not enough for the BWC that the physician states there is a work injury or that treatment is necessary. Physicians must sufficiently explain their medical opinion and meet the proper legal standard. Physicians who don't see claims and treatment denied. When this happens, injured workers suffer and physicians become frustrated. Through cooperation by physician and claimant's attorney claims and treatment approval are more commonplace than denials, making cooperation an advantage for all parties involved.

Angela Hardway attended The University of Akron School of Law as an evening student while working for Bevan & Associates, LPA. Inc. After graduating and passing the Ohio bar exam in 2004, Angela became an associate attorney with Bevan & Associates. Her primary practice area is claimant focused workers' compensation law. Angela also represents clients in victim's rights, family law and estate planning. Angela is a Super Lawyers Rising Star circa 2011, 2012 and 2013, and a member of OSBA, Akron Bar Association and OAJ. For more information, please contact her at (330) 650-0088 or visit www.bevanlaw.com.

