THE APPELLATE DIVISION CONTINUES TO UPHOLD THE WORRKERS' COMPENSATION NOTICE PROVISION CODIFIED IN N.J.S.A. 34:15-17

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We are all familiar with the two-year statute of limitations applicable to Workers' Compensation cases. Upon receiving a new file, an attorney looks at the date of the occurrence and compares it to the date of filing with the Division of Workers' Compensation. Occasionally, the attorney needs to look further as N.J.S.A. 34:2-21 et seq. extends the two-year statute of limitations adding that a claim petition must be filed within two years of the failure of the employee to receive payments in accordance with an agreement between the employer and the employee, or within two years of the last payment of compensation. However, there is an additional question to be asked. When did the petitioner notice the employer of the accident? The notice portion of the statute is often not considered.

N.J.S.A 34:15-17 sets forth the notice requirements. The statute first says the employer shall have notice within 14 days of the occurrence. It further states that compensation may be allowed if notice is given within 90 days unless the employer can show he was prejudiced by the failure to receive notice. The statute then states "**no compensation shall be allowed**" unless notice is given within 90 days after the occurrence of the injury. [Emphasis added.]

The number of cases discussing the notice issue is limited and some of them date from the 1930s and address portions of the Workers' Compensation statute which are no longer operable. However, the law as to the notice issue remains in effect. It remains the employee's burdened to show that timely notice was given to the employer. *See* Goldstein v. Continental Baking Co., *28 NJ Super. 55 (1953)* The case law requires an injured employee to give notice to someone at the workplace whether or not that person is the employee charged with receiving Workers' Compensation notice. The case of Panchek v. Simmons Co., *15 NJ 13 (1954)*, involved an employee who felt a sharp pain in his back while lifting. The employee complained of illness to his foreman, the assistant superintendent and the company nurse on March 19, 1951. He sought medical treatment in October 1951. His condition was diagnosed as a herniated disc. He was deemed to have given notice as at the time of his injury as he complained of illness to the foreman, assistant superintendent and nurse. Although the employee did not understand the details of his injury, his notice to the employer was deemed to be sufficient.

Likewise, in the case of Hercules Powder Co. v. Nieratko, *113 N.J.L. 195 (1934)*, an employee suffered a hernia at work. Later he filed the petition alleging that a falling barrel had struck him not only causing the hernia, but also causing a brain injury. The court opined that the employer knew of the occurrence of the injury and that no particularization or specification of a nature and extent of the injury was necessary. The case of Gen. Cable Corp. v. Levins, *124 N.J.L. 223 (1939)* involved an employee who

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struck his head on a beam and reported the incident to a plant doctor who removed a foreign body from his eye. The doctor did not inquire as to the blow to the head. The doctor's knowledge relative to the incident was sufficient to bind the employer regarding a head injury.

The case law indicates that notice to a foreman, an assistant superintendent, a company nurse or a plant doctor will be deemed to be notice to the employer. Further, the employee does not need to know the diagnosis or details of his medical condition. The employee merely needs to notice the employer of the incident that caused injury.

The Appellate Division recently addressed the issue of employee notice in the case of Ader v. Lebanon Twp. 2013 WL 869392, cert.den. On November 18, 2008 Mr. Ader squatted and jumped off a flatbed truck landing on both feet. He immediately felt some pain in his back. Approximately 2 weeks after the incident he felt pain in his hips. He saw his primary care physician in December of 2008. He had a second visit with his primary care doctor in January 2009. Mr. Ader testified that on the second visit he told his physician "the only thing that had enough force to cause an injury" was the incident with the truck. He was subsequently diagnosed with bilateral avascular necrosis and underwent bilateral hip replacement surgery. The Judge of Compensation dismissed the case as the petitioner did not notify the Township until approximately one year after the accident. The Appellate Division concurred opining that a "reasonable person facing appellant's circumstances would have been aware that he sustained a work-related compensable injury on November 18, 2008."

Although there are not many cases addressing the issue of notice to the employer, the Appellate Division continues to enforce the notice statute as written. It continues to be a benefit to our defense clients to discuss the notice issue with respondents as well as review the statute of limitations issues.

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