

## Administrative Law and Zoning

### Psychological Conditions -- The Ballooning Workers' Comp Claim

by Steve Burke

It can start as a simple arm strain or neck strain. The strain becomes chronic. The strain aggravates a pre-existing condition, such as a Type II acromion in the shoulder or degenerative disc disease in the spine. The [employee](#) remains off work, then has surgery. Sometimes the surgery does not resolve the physical issue, and the worker remains off for a year or more. Before long, the worker is asking the employer to pay for anti-depressants or anti-anxiety medicine.

This is exactly how a psychological claim often develops in a [workers' compensation](#) case. What begins as a relatively routine injury develops into an expensive and exasperating one. [Employers](#) who want to save themselves money can take steps to help control those costs before total disability develops.

- Build a causation file when a work injury occurs. The causation file can include a statement from the worker about how the injury occurred, and what medications the worker was taking at the time of an injury. If the worker already was taking anti-depressants or anti-anxiety medicine, that fact should be highlighted and communicated to the workers' compensation carrier or third-party administrator.
- Take statements from co-workers. Of course, the primary purpose of the statement should be to double-check the worker's story about how the injury occurred. However, co-workers also should be asked if the injured employee had talked previously about prior injuries or pre-existing psychological treatment or emotional stressors. Those statements may come in handy later if the claim is litigated.
- Be vigilant about the status of the claim. The time to challenge a psychiatric condition is the minute that the employee claims it. In Ohio, all employers are notified each step of the way regarding the exact conditions that an injured worker is claiming. The worker has to ask for allowance of any kind of psychiatric claim. If so, this is when the employer may want to spend money on a psychiatric evaluation and become much more active in the claim. The evaluation should include prior medical records and a complete prior medical history to determine the worker's pre-injury issues and treatment. It may well be that the work injury is a negligible factor on the worker's psyche. In Kentucky, the claim should undergo immediate utilization review by a qualified psychiatrist or psychologist, so it can be allowed or disallowed.

The old adage is that an ounce of prevention can be worth a pound of cure, and that's certainly the case in psychological claims. Such claims can be woefully expensive. Costs can rise exponentially if the claimant has weekly counseling and daily psychiatric medication – on top of all the treatment for the actual physical injury. Often, a psychological claim is a huge step toward total disability, which can carry a price tag upward of \$1 million or more. Employers who want to control their workers' compensation costs would do well to take the psychological claim seriously as soon as it surfaces.

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