



Options to investigate and defense against mental stress claims in Oregon

By Brian M. Solodky ■ February 8, 2016

Workers' compensation claims for alleged mental disorder frequently receive increased scrutiny and attention from the employer – for good reason. It is not uncommon for workers' compensation claims for stress to be precursors to civil actions for discrimination, retaliation, or harassment. Thus, discovery depositions can be extremely valuable early on in the investigatory phase of a claim.

Oregon law requires workers' compensation claimants to submit to a deposition and/or recorded statement upon request of the employer during the 60-day deferral period. Failure to comply bars the claim from being found compensable. ORS 656.802(3) generally excludes, among other things, inherent work stressors and reasonable corrective measures from consideration when determining whether employment conditions are the major cause of an alleged mental disorder.

Securing claimant's testimony under oath at the outset of an alleged work-related mental disorder investigation accomplishes three important objectives: (1) nailing down claimant's version of events to avoid surprises at trial; (2) sending the message to the worker that his/her allegations are being taken very seriously; and (3) potentially providing a factual basis to defend against the claim without the need for costly medical work-up, such as an independent psychiatric evaluation. If an independent psychiatric examination ultimately is utilized, the claimant's deposition transcript will provide the doctor with a solid foundation upon which to offer a cogent medical opinion on causation.

Discovery depositions routinely establish that a claim for mental stress is premised upon stressors commonly experienced in all work environments. Circumstances such as changes in management, increased workload, adjusting to new protocols, interpersonal conflict with co-workers and adverse reactions to disciplinary actions have traditionally been excluded from consideration by the Oregon Courts and Board. Not surprisingly, these factors are also the core of many workers' compensation claims for stress.

A proactive investigation of mental disorder claims with the limitations of ORS 656.802(3) in mind will allow employers and insurers to make informed decisions regarding case strategy during the critical 60-day deferral period, and ensure questionable claims are handled appropriately.

Continued

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Investigating or defending mental health stress claims (continued)

Contact this author or any of the Oregon practice attorneys at Reinisch Wilson Weier PC should you have questions about this or any other type of workers' compensation claim. ■

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