Washington Court of Appeals holds the line in workers' compensation "lighting up" cases

By John M. Zanetti • April 9, 2015

More often than not, Washington employers face an uphill battle in cases where a worker alleges a preexisting medical condition was "lit up" by an industrial injury. To dispute such a claim, employers typically must produce direct evidence showing the condition had at least been symptomatic prior to the injury. However, in *Zavala v. Twin City Foods*,[1] the Washington Court of Appeals recently made clear that agencies and courts are not obligated to simply take a worker's word regarding pre-injury status and are free to consider a wider range of evidence.

For nearly a century,[2] Washington's "lit up" doctrine has caused no small amount of consternation among those involved in workers' compensation matters. Under the doctrine, if an industrial injury (or occupational disease) "lights up" or permanently aggravates a latent, quiescent, or asymptomatic preexisting condition, then any resulting disability will be attributed to the industrial injury and the employer will be liable. While the doctrine is reasonable on paper, verifying whether a preexisting condition was in fact latent, quiescent, or asymptomatic before an industrial injury can be a more difficult enterprise.

In *Zavala v. Twin City Foods*, the judges faced this exact challenge. During hearings, Zavala asserted her arthritic right knee had never given her problems or caused her pain prior to hitting her knee on a tub while working for the employer. Her attorney presented supportive testimony from friends and family, and asked the court to find the employer liable for her preexisting arthritic knee condition, possibly entailing a costly total knee replacement.

Unfortunately for the employer, it did not possess the "smoking gun" evidence to show Zavala had pain or arthritic symptoms before hitting her knee at work. Instead, the employer relied on medical testimony from three orthopedic surgeons. The surgeons testified that given Zavala's significant knee osteoarthritis it was unlikely, if not impossible, for her to have been completely asymptomatic and pain-free before her work injury. For support, they referenced diagnostic studies as showing no objective evidence of acceleration or aggravation of the knee arthritis following the work injury. Two surgeons also questioned Zavala's reliability and noted instances of symptom magnification during examinations.

Well-reasoned medical opinions should still be considered to counter unverified assertions of a preexisting condition being "lit up" by an industrial injury

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Workers' compensation "lit up" cases (continued)

Even so, Zavala argued the employer's inability to produce direct evidence of pre-injury symptoms required the Court of Appeals to find her arthritis was "lit up" by the work injury. The Court disagreed. In the end, the Court found the medical testimony that Zavala's knee was likely symptomatic before the work injury sufficient to overcome Zavala's own testimony and that of her friends and family.

For employers, the *Zavala* decision serves as a refreshing reminder: Even if direct evidence of pre-injury symptoms cannot be found, well-reasoned medical opinions should still be considered to counter unverified assertions of a preexisting condition being "lit up" by an industrial injury.

If you or the employer you work with are currently facing issues related to the "lit up" doctrine, our Washington practice attorneys would be happy to discuss the impact of this case on any particular claims with which you may be dealing. ■

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[1] *Zavala v. Twin City Foods*, 343 P.3d 761 (Wash. Ct. App. 2015).

[2] See, e.g., *Miller v. Dep't of Labor & Indus.*, 94 P.2d 764, 768 (1939).

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