

## Importance of Discovery in New Jersey Workers' Compensation Claims

As most employers know, workers' compensation insurance is required in the State of New Jersey. There are approximately 30,000 claims filed each year. Taking the proper steps to defend such claims could be crucial to the outcome. The investigation and search for discovery is one of those essential steps.

Discovery in workers' compensation claims involves the gathering of not only medical records from the alleged injury, but also includes wage information, work history, job description and activities, length of employment, materials contained in personnel files and prior injury treatment records, if relevant to the claim.

The employee has the burden to present evidence (proofs) that he or she was injured, the injury occurred at work and he or she is entitled to the statutory benefits. The employer has the burden to present all arguments that support the position that the employee was not actually injured, that the alleged injury did not happen at the workplace, or that the employee was not acting within the course and scope of his or her employment when the incident took place. The workers' compensation statute places the burden on the employer to present any and all evidence of a pre-existing injury or condition that could significantly affect the outcome of a claim in order to obtain a credit against any additional award to the employee. To defend these issues, it is imperative that all efforts be made to obtain any relevant information pertaining to the employee and the allegations of the claim.

What complicates this process is that many times the only information available regarding pre-existing issues or conditions comes from the employee directly. Faulty memories, inaccurate information or outright disclaiming of a prior condition puts the employer in a difficult position to assert defenses or request a credit for a pre-existing condition. Employers providing timely and accurate information to the workers' compensation insurance carrier when a claim has been

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filed, assist in the defense of a claim. The insurance carrier will provide authorized treatment records in an accepted claim, and will usually provide additional discovery in the form of an ISO search report which identifies prior claims filed by the employee for any prior injury or accident, information regarding any prior workers' compensation claims and surveillance either by video, or through social media obtained regarding the employee. All will be analyzed and reviewed by your defense counsel. By providing the personnel file, wage information and job description, the employer can assist with the search for information. Any information which can be reasonably obtained could assist in reducing potential exposure or could affect the eventual resolution of a claim.

One hurdle that has to be overcome is obtaining prior treatment records regarding an employee. Without specific prior injury information, generic requests for medical authorizations for any prior medical treatment records of the employee are customarily denied by counsel for the employee. The Courts have commented that these types of "fishing expeditions"

are not acceptable when the requests are too generic, lack definitive time frames or fail to provide specificity regarding records sought. This is where lack of accurate information or misleading information from the employee prevents the requests from being more informative, accurate or limited in scope and time frame. There have been recent cases where the Courts have denied requests for signed medical releases claiming they were just "fishing expeditions." Close review of the discovery provided by the carrier and the employer will assist in overcoming this hurdle.

The previous information was not intended to be all inclusive of every avenue of search and investigation, but to give an overview of the problems associated with defending workers' compensation claims. Discovery is only one part of the overall defense strategy for handling and resolving a claim. Zealous investigation will also put an employee on notice that misleading, inaccurate or vague allegations will be defended expeditiously and thoroughly. The employer plays a significant role with the defense of all workers' compensation claims.



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