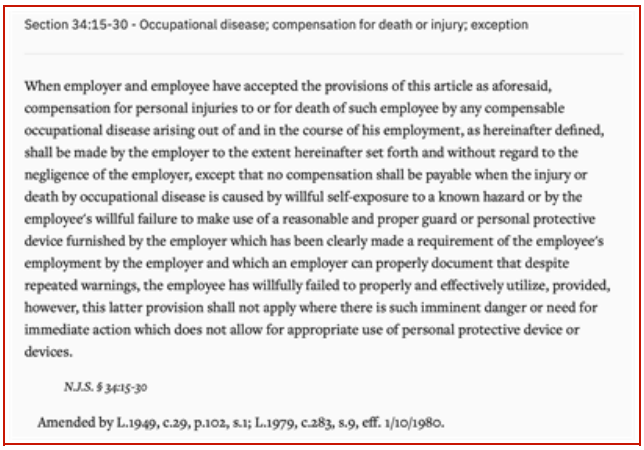

Section 34:15-30 - Occupational disease; compensation for death or injury; exception

When employer and employee have accepted the provisions of this article as aforesaid, compensation for personal injuries to or for death of such employee by any compensable occupational disease arising out of and in the course of his employment, as hereinafter defined, shall be made by the employer to the extent hereinafter set forth and without regard to the negligence of the employer, except that no compensation shall be payable when the injury or death by occupational disease is caused by willful self-exposure to a known hazard or by the employee's willful failure to make use of a reasonable and proper guard or personal protective device furnished by the employer which has been clearly made a requirement of the employee's employment by the employer and which an employer can properly document that despite repeated warnings, the employee has willfully failed to properly and effectively utilize, provided, however, this latter provision shall not apply where there is such imminent danger or need for immediate action which does not allow for appropriate use of personal protective device or devices.

N.J.S. § 34:15-30

Amended by L.1949, c.29, p.102, s.1; L.1979, c.283, s.9, eff. 1/10/1980.

Jon / Saturday, April 8, 2000 / Categories: Workers' Compensation

Ergonomics: Occupational Disease - Understanding the Element of the Law

Workers' Compensation

The statutory formula for compensability for occupational disease is similar to that for accidental injuries, that is, "compensation for personal injuries to or for the death of such employee by any "compensable" occupational disease arising out of and in the course of the employment" NJSA 34-15-30. There are three essential elements of Section 30. There (1) must be an injury or death – (2) due to a "compensable" occupational disease – (3) which must arise out of and in the course of the employment.

OCCUPATIONAL DISEASES BEFORE 1950

In 1911 when the Workers' Compensation Act was first enacted, there was no coverage for occupational diseases. Partly this was because compensation laws were an alternative to the common-law tort actions, and no common-law claim had ever succeeded for occupational diseases. There was thought to be no quid pro quo for the employer to justify including occupational diseases in the Workers' Compensation system. Coverage of diseases also developed slowly because of a fear that employers and their carriers could not meet the financial burdens of occupational diseases.

Many of the filing requirements were designed to protect employers and carriers from future liability, which was unpredictable. We have recently seen a resurgence in the use of these filing requirements to deny compensation for occupational injuries.

In 1924 New Jersey enacted its first occupational disease law, which consisted of a list of diseases with no catchall provision such as "or any other similar disease." Specific diseases were added by amendment until 1949, when the general, occupational disease act was enacted and was effective, Jan. 1, 1950. There were two exceptions initially for asbestosis and silicosis. These exceptions were eliminated in 1951.

Between 1924 and 1949, if a disease was not on the list, it was not compensable unless it could be an accident. The Compensation Court had no power to expand coverage beyond the diseases listed in the Act. You have these curious cases where the employer argues the worker has an occupational disease. In Glick v. Wright Aeronautical, the employer argued that the petitioner's carpal tunnel syndrome was caused by continuous strain on his fingers while polishing over the 11 weeks of his employment. The Compensation Court found the petitioner's injury compensable. Because of credibility problems of the petitioner, who alleged an accident when he was struck on the wrist by a piece of metal, the Court of Common Pleas, in a trial de novo, found the injury was an occupational disease and not compensable.

Ptak v. General Electric Co., 80 A. 2d 337 - NJ: Superior Court, Law Div. 1951, was decided in 1951, but the employment and injury were before 1950. On Nov. 21, 1949, at 3:30 p.m., the petitioner was assigned to a job to make cardboard boxes, which required repeatedly bending. At 9:00 p.m., she could not straighten up and had developed a sacroiliac sprain. The Compensation Court concluded this was an occupational disease, not an accident, and, therefore, not compensable. The County Court, in a Trial de novo, rejected this conclusion which was affirmed by the Appellate Division, which held this was an accident. Ptak v. General Electric Co., 85 A. 2d 214 - (NJ: Appellate Div. 1951). See also, Glick v. Wright Aeronautical Corp., 24 N.J. Misc. 94 (Passaic County Court of Common Pleas 1945).

THE CURRENT OCCUPATIONAL DISEASE STATUTE

The effective date of the occupational disease statute was January 1, 1950. It is a general occupational disease statute – including all diseases, even those resulting from repetitive stress. The Liberal Construction doctrine is

applied to the definition of "disease" so that it is broadly defined as "any departure from the state of health presenting marked symptoms. Giambatista v. Thomas Edison, 32 N.J. Super. 103 (NJ App. Div. 1954). By applying these standards, courts are trying to distinguish between diseases of ordinary life and diseases which are due to employment. So, courts are asking, was there something in the employment that either caused, accelerated, exacerbated, or aggravated the petitioner resulting in injury?

TAKE THE WORKER AS YOU FIND THEM

One other principle in Workers' Compensation to understand occupational diseases is that the employer takes the worker "as is" with all his/her weaknesses or individual susceptibilities and is responsible for the end result if the work activates, aggravates, accelerates or exacerbates some pre-existing problem. Belth v. Anthony Ferrante & Son, Inc., 219 A. 2d 168 - NJ: Supreme Court 1966.

COMPENSABLE OCCUPATIONAL DISEASE DEFINED

The key to NJSA 34:15-30 is that only "compensable" occupational diseases fit into the statutory formula. A compensable occupational disease is defined in NJSA 34:15-31(a) to include all diseases arising in out of and in the course of the employment, which are due in a "material" degree to causes or conditions which are or were characteristic of or peculiar to a particular trade, occupation, process or place of employment".

NJSA 34:15-31(b) states that deterioration of a tissue, organ or part of the body in which the function of such tissue or part of the body is diminished due to the natural aging process is not compensable.

PROOF

First, a repetitive stress disorder arises out of and in the course of the employment must be established. There must be proof of causation to a material degree. The condition must be characteristic of or peculiar to the employment. There must be proof the worker's problem is more than that he or she is getting old. This last requirement is especially a problem with conditions of older workers such as arthritis.

ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT

The "arising out of" element requires that the event is within the nature of the risk. You must establish that a stress disorder is a risk of employment.

PARTICULAR TO THE EMPLOYMENT

This was the language used by the Appellate Division in Ptak and the Court of Common Pleas in Glick. In Glick the Court of Common Pleas quoted the definition of occupational disease from Bollinger v. Wagaraw Building Supply Co., 122 N.J.L. 512. "An occupational disease is one that from common experience is visited upon persons engaged in the usual course of events. It is incidental to the employment itself, e.g., painters become affected with lead colic or poisoning, telephone operators develop ear troubles . . . In such instances, they are injuries or diseases common to workers in those particular trades. . .The term "accident" in NJSA 34:15-7 did not include "conditions as are regularly expected as a result of a person regularly doing his regular work.
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