

THE WETC PSYCHOLOGY NEWSLETTER

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Apportioning Psychiatric Disability With Multiple Orthopedic Injuries

Joe Smith is a framing carpenter who has been employed in this capacity for 27 years. Two years ago he fell at work and suffered a back injury. That injury resulted in two bulging discs and conservative treatment but nothing sufficiently severe to warrant surgery. He is now suing his employer for both the orthopedic injury to his back and a psychiatric injury as a result of the orthopedic injury. He was recently declared permanent and stationary by the AME orthopedist and given a rating for his permanent orthopedic disability.

Now the plot thickens. Twelve years ago, Joe had a similar injury and filed a workers' compensation lawsuit. Once again, he was conservatively treated for disc problems, had pain for a while that ultimately dissipated, and was given a permanent disability award for his orthopedic injury that left him with disability but no pain. He was not psychiatrically injured and filed no such claim.

Now let's go back to the present. Joe was referred to my office a few weeks ago in a great deal of pain that did not seem to be remitting. As a result of that pain, and a substantial amount of worrying about his future, he had developed a clinical depression. Factually, my examination revealed a significant amount of depression, I diagnosed a Depressive Disorder Not Otherwise Specified, and concluded that his condition had reached Maximum Medical Improvement. Based on his psychological signs and symptoms, and the psychological difficulty he would have in occupational functioning solely as a result of his depression, I concluded that he had a current Global Assessment of Functioning (GAF) score of 60 and a Whole Person Impairment (WPI) rating of 15.

Now comes the issue of apportionment. Joe had no pre-existing psychiatric disability before his work injury two years ago. He has had a relatively uneventful life with no unusual stressors that might have contributed to his current level of psychopathology or permanent psychiatric disability. After his injury, nothing occurred that could have adversely affected his psychological condition except the sequelae of his industrial

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injury. So far so good. On first look, it would appear that there was no basis for apportioning his current psychiatric disability, which appeared all due to the recent back injury that resulted in his pain and worrying.

In reading Joe's medical records I found that although he was not orthopedically symptomatic prior to his back injury two years ago, there was some orthopedic disability. Based on the current AME orthopedist, it appears that in all reasonable medical probability the orthopedic pathology that occurred from his injury 12 years ago adversely affected his current permanent orthopedic condition and disability. In fact, the AME orthopedist apportioned 20% of his current total orthopedic disability to the injury occurring in 1999.

Here's the problem: Is his current permanent psychiatric disability apportionable to his 1999 injury? Since the only cause of his current psychiatric injury is his current orthopedic symptom of pain, some of which has been caused by the first injury, “How do I apportion his current permanent psychiatric disability between the two separate orthopedic injuries?”

Using the current AME orthopedist's apportionment figure of 20% does not seem correct since Joe's clinical depression was not caused by his orthopedic disability but by his current signs and symptoms of pain and their sequelae. **In this regard, his prior orthopedic disability is irrelevant since his current clinical depression is being caused by his orthopedic signs and symptoms, not his orthopedic disability.**

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From my perspective, the only relevant question is, “To what extent are his current signs and symptoms of pain the result of his 1999 injury, and to what extent are his current signs and symptoms of pain the result of his more recent injury?” **Clearly, what I don’t know is: To what extent have his current orthopedic signs and symptoms been effected by his prior orthopedic injury.**

As a psychologist or a psychiatrist who needs to understand the causes of the patient’s pain, or other physical symptoms that are causing psychopathology, I am forced to rely on the orthopedists reports, or the court’s decisions concerning those reports, with regard to pain. However, orthopedists typically don’t provide information “apportioning” pain, just disability. Similarly, the court does not apportion pain, just disability.

To put it bluntly, without the relevant information from another medical discipline **I cannot realistically apportion the permanent psychiatric disability because I cannot find an orthopedic opinion attributing Joe’s orthopedic signs and symptoms of pain to the two different injuries.** At that point, I have to simply send the issue of apportionment back to the AME in orthopedics and/or the court.

Final Conclusion

When there are multiple injuries and claims in another medical discipline such as orthopedics, psychologists and psychiatrists cannot adequately apportion psychiatric disability as a result of an injury in those disciplines without considering the following:

(a) Information about what the court has decided about disability in psychology or psychiatry arising from any prior or concurrent claims.

(b) Information about the effect on the applicant’s current signs and symptoms in orthopedics from prior or concurrent injuries in orthopedics.

(c) Information about the effect on the applicant’s current orthopedic signs and symptoms from any subsequent injuries or a natural progression of a disease process in orthopedics.

A Question for the Reader

If you have any ideas about how to deal with this issue that I have missed, I’d love to hear your thoughts. You can email me at Leckart@aol.com or DrLeckartWETC@gmail.com.

This is the twenty-fifth of a series of monthly newsletters aimed at providing information about psychological evaluations and treatment that may be of interest to attorneys and insurance adjusters working in the areas of workers’ compensation and personal injury. If you have not received some or all of our past newsletters, and would like copies, send us an email requesting the newsletter(s) that you would like forwarded to you.