

The Importance of Investigating Workplace Accidents

Labor & Employment Law Update

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The recent Appellate Court decision in *Oliver v. Illinois Workers' Compensation Commission, et al.*, 2015 IL App. (1st) 143836 WC, serves as a reminder of the dangers employers face when they do not properly investigate alleged work accidents.

Most of us in the comp world know that an injured worker has 45 days to provide an employer notice of a work accident. However, in the *Oliver* case, the employer asserted that the accident had to be reported the day it occurred. As a result, no investigation was performed and benefits were quickly denied.

Not surprisingly, the Appellate Court hit the employer with penalties for unreasonable and vexatious denial of benefits. In support of its decision, it scrutinized the testimony of the employer's only witness at trial: the injured workers' supervisor. The supervisor's testimony included an acknowledgment that there was no factual or medical basis to deny the claim, and the only reason the claim was denied was because it was reported six days after it occurred. The supervisor further testified that he did not know an injured worker was allowed to fill out an accident report after the date the accident allegedly occurred.

The court held that the burden of proving a reasonable basis for denial of benefits falls solely on the employer. In this case, the Appellate court found it clear that the employer denied benefits without any investigation, and only because the injured worker did not report the accident on the day it occurred.

In the employer's defense, there were facts in this case that could arguably support the position that the employer had a reasonable basis for denial of benefits:

- The injured worker only worked for the employer for three days
- The injured worker was laid off on the third day (July 19, 2011), which is the day he alleged the injury
- The supervisor testified that he personally spoke with the injured worker on July 19, 2011, the date of the accident, and he never mentioned an injury
- The supervisor testified that he did not observe the injured worker to be in any pain on July 19, 2011, the date of the accident

However, the Court found that this was not enough evidence for the employer to reasonably deny benefits.

Take away/considerations for employers everywhere:

1. If an employee is reporting an accident, fill out an accident report and document everything.

- Where exactly was the injured employee working when the accident occurred?
- Who was working with or around the injured employee?
- What was the injured worker doing?
- When and what time did the incident occur?

2. As an employer, once you have that information, investigate it.

- Find out if the injured workers' allegations are substantiated by the facts
- Interview witnesses
- Pull work logs if available
- Determine whether there is surveillance footage

3. In this case, had there been testimony that the employer performed some type of investigation in conjunction with its denial, this case would have likely been decided differently.

4. Perform an investigation even if an accident is reported AFTER 45 days have passed. You, as the employer, may not believe notice was properly provided, but that does not mean the Commission will agree.

The notice requirement is very liberally interpreted and is not always a "get out of jail free card."

5. Even if you are disputing that an accident occurred, consider obtaining an independent medical examination in an attempt to deny benefits. As the Appellate court noted, there was no factual OR medical basis to deny benefits.

6. Employers should:

- have accident investigation and reporting protocol well established within the company;
- train supervisors regarding accident investigation and reporting protocols;
- apply those protocols consistently to all employees; and
- thoroughly document the investigation.

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