

## Proving Claimant's Fraud in Workers Compensation

In 1998, New Jersey Statutes were changed to permit both claimants and employers relief in the workers compensation courts. However, it is not easy to prove fraud. By itself, a misrepresentation alone is not enough proof. In the last 15 years, we've seen how the fraud statute is relied upon, litigated and interpreted by the courts.

The statute itself states fraud is a crime of the fourth degree and remedies include reimbursement of benefits and/or payment of monies owed with interest, cost and attorney fees.

In Bellino v. Verizon, the court articulated a three-part showing necessary to demonstrate claimant's fraud: 1) purposefully or knowingly giving or withholding information and with the intent to receive benefits, 2) knowledge that the statement or omission is material to obtaining benefit(s) 3) intent to falsely obtain the benefit to which not otherwise entitled. Here, the claimant did not report her preexisting/overlapping injuries to authorized treating physicians. At trial, she testified it was not her intent to mislead physicians. The court found her testimony credible and that her state of mind did not amount to the intent necessary to prove fraud.

However, in Singh v. Cream-O-Land Dairy, the Appellate Division upheld the judge of compensation's decision to deny the claimant compensation and order the claimant to reimburse the respondent for benefits paid. Here the accident was admitted as compensable. He returned to work for other employers and denied any prior work injury while continuing to collect temporary disability. At trial, the claimant misrepresented the facts regarding his subsequent employment. The claim was dismissed and he was ordered to repay temporary disability, voluntary tender and court costs. The Appellate Division upheld this finding and noted the standard of proof necessary to show for purposes of civil penalties, such as that ordered by the compensation judge, is a preponderance of the evidence, lesser than that required for criminal penalties.

To prove a claimant's fraud you must have solid evidence demonstrating his or her intent to mislead for the purpose of obtaining benefits not otherwise owed. This is no easy task and should not be pursued without solid evidence.

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