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The Statute of Limitation Defense Can be a Winning Defense in Occupational Claims

When an employer is faced with an occupational claim filed by an employee, the statute of limitations defense should always be considered. N.J.S.A. 34:15-34 requires that an occupational claim be filed within two years from the date the employee knew of the condition and its relationship to the job.

In order to be successful in winning a statute of limitations defense, the employer must thoroughly investigate the facts and medical evidence prior to the filing of the claim by the employee. As part of the investigation, the employer will often require that an employee answer a set of occupational interrogatories. From the interrogatories, an employer will obtain information including the nature of the injury, when the employee became aware that the injury was related to his or her employment and the medical treatment received for the alleged injury. However, an employer's investigation does not stop here. An employer most likely will need to request signed medical authorizations in order to obtain records from an employee's primary care physician and other treating doctors listed in the answers to interrogatories. Moreover, testimony by the employee may be needed to obtain additional facts. Once an employer has obtained the necessary discovery, he or she can make a determination as to whether the employee's occupational claim was timely filed.

The success of the defense has increased over the years ever since the case of *Huntoon vs. Borough of Clementon*. The employee was informed in 1998 that his carpal tunnel syndrome (CTS) was "probably" work related. In July 2004, the employee was told by a hand specialist that it "was" work related. The employee's occupational CTS claim filed on April 30, 2007, was dismissed by the Court and Appellate Division for violation of the statute of limitations as the employee knew about the condition and its relationship to the employment in July 2004.

Following *Huntoon*, employers had a series of wins with other cases. In *Graff vs. Mitchell Park Flooring and S&A Wood Floors, Inc.*, the employee was a laborer refinishing wood floors from 1982-2002. The employee was required to handle heavy equipment. In 1999, the employee began to receive chiropractic care and admits that the chiropractors advised that he had disc problems and back problems and that the chiropractors thought these issues were due to the nature of his employment. The claim was dismissed for violation of the statute since the claim was filed in 2004.

In a more recent case, *Craig Mara v. United Parcel Service*, the employee began working for UPS in 1983 as a package driver. The employee testified that he knew as early as 2006 that his knee pain was related to his job. The employee's personal chiropractor advised him of this in 2003. The employee underwent left knee surgery approximately 10 years before filing the claim petition. Then, the employee began to have right knee problems and admitted telling his chiropractor that the job duties were causing problems with both knees. The employee underwent bilateral knee surgery in 2010. The claim was filed in 2011. The Judge dismissed the claim for violation of the statute as the employee was aware that his knee problems were related to work in 2006.

These cases are prime examples of how the statute of limitations defense can be a winning defense in occupational claims. With focused effort in fully investigating the facts and medical evidence of a claim, employers can avoid paying out thousands of dollars in medical treatment and settlement awards.

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