

Bannon Case Shows the Independent Physician May Be Seen as More Credible than the Employee's Doctor in Some Instances

In *Bannon v Ridgefield Board of Education* a Judge granted an employer's motion to terminate authorized treatment being provided pursuant to court order.

In this case, the employee suffered two injuries to her left knee, one in 2007 and one in 2008. Authorized care was provided to the employee who then, through counsel, filed a motion for psychiatric medical care in 2010. The Court entered an order for psychiatric treatment which continued into 2013. At this time, the employer obtained an IME with Dr. Harvey Hammer and based on the doctor's opinion that the employee had reached maximum medical improvement (MMI), the employer filed a motion to terminate treatment.

In opposing the motion, the employee testified that she experiences anxiety and depression from chronic pain, scarring and trouble sleeping. Dr. Hammer testified that the employee's doctor was no longer addressing the goals of curative treatment. He also noted that the records contained many references to non-work related issues being addressed by her doctor.

The Judge found that the employee had reached MMI and "continued long term treatment will not change her disorder." While prior case law supports the proposition that more weight is usually given to the employee's authorized treating physician over an independent medical examiner, in this matter the Judge found Dr. Hammer to be more credible and said the employee's doctor was, "more of an advocate for the petitioner."

Comment: Per the statute, the respondent has the right to obtain an independent medical evaluation at any time during the course of an employee's care and treatment. The Court will usually give more weight to the authorized physician's opinion if it differs from the IME. In this matter, the Judge determined that the employee was provided with all the tools to address her condition and additional ongoing treatment would not improve her condition. The treating physician was no longer focused on the goal of "curing" and therefore, treatment was now to be deemed palliative and not reasonable or necessary. In some situations, IMEs are a strong and effective tool to be used when it appears the treatment has become stagnant.