

Statute of Limitations - A Winning Defense Once Again

In *Craig Mara v. United Parcel Service*, an unpublished decision by the Appellate Division, the employer once again prevailed on the technical defense of the Statute of Limitations. Ordinarily, it is difficult for the employer to win on a technical defense when the underlying claim may otherwise have merit. However, when the facts are clear and the employee has filed his claim well beyond the two year statute, the Courts have shown a willingness to dismiss the claim nevertheless.

In *Mara*, the employee, who began working for UPS as a package driver in 1983, testified that he knew as early as 2006 that his knee pain was related to his job. In fact, his personal chiropractor advised him of this fact in 2003. The employee underwent left knee medial meniscus surgery approximately 10 years before filing his claim. He continued to wear a brace on that knee and admitted feeling pain in the left knee when driving or moving around at work. He also began to have problems with his right knee and admitted telling his chiropractor that the job duties were causing problems with both of his knees. He underwent bilateral knee replacement surgery in 2010. At that time, he transferred to a clerical position because he could no longer function as a package care driver. He then filed his claim in 2011.

The Workers' Compensation Judge dismissed the claim for violation of the Statute of Limitations (N.J.S.A. 34: 15-34). The Judge felt that since at least 2006 the employee was aware that his knee problems were work-related. Pursuant to the Statute, the employee would then have two years to file a claim for compensation or until 2008. The Judge rejected the employee's argument that the two year statute was extended since the employer provided private health care insurance for the treatment for his knees. The Judge noted that providing such benefits was completely separate from providing workers' compensation benefits and did not toll the statute.

The Appellate Division affirmed the Judge's Decision dismissing the claim. The evidence clearly revealed that more than two years prior to the 2011 petition the employee was aware that the condition of both knees was work-related.

Comment: In occupational claims, the employer must vigorously investigate the facts and medical evidence prior to the filing of the claim. If it can be determined that the employee drew a causal link between the alleged occupational disability and his job duties, there may be a valid Statute of Limitations Defense if the employee sat on that information for more than two years before filing the claim.

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