

Statute of Limitations Defense Upheld in Occupational Psychiatric Claim

In the matter of *Robert Bender v. Township of North Bergen* (decided August 25, 2017), Robert Bender was employed as a police officer by the Township of North Bergen. He filed an occupational exposure claim petition alleging the development of work-related psychiatric, orthopedic and internal injuries. Bender appealed an order entered by a Workers' Compensation Judge (WCJ) in favor of the Township of North Bergen. There were three issues on appeal. First, the Appellate Division determined that the WCJ properly dismissed the claim petition addressing Bender's psychiatric injury based upon the statute of limitations. Second, the Appellate Division determined that the WCJ properly evaluated the evidence. Third, the Appellate Division remanded the matter back to the WCJ for the purpose of addressing compensability of the orthopedic injury.

The Township filed an answer to the claim petition asserting the statute of limitations as a defense, and a separate motion to dismiss for failure to comply with the statute of limitations addressing Bender's orthopedic injuries. A trial was conducted including testimony of Bender and a sergeant on behalf of the Township. Bender testified regarding his exposure during his years as a police officer including various gruesome assignments and trauma, and he testified that in 2002 he began experiencing negative psychiatric issues as a result of his exposure and consulted with a police department physician. Thereafter, Bender received treatment from a psychiatrist on a continuous and frequent basis. Despite suffering from what Bender perceived to be an occupational related psychological condition, he did not report or file a claim until five years later. With respect to his orthopedic injuries, he provided limited testimony addressing medical treatment received and limitations after his retirement in 2004.

The WCJ ultimately held that Bender failed to file a claim petition within the two year statute of limitations. The WCJ took notice that Bender was aware as early as 2002 of the relationship between his psychological symptoms and his employment. With respect to a claim petition addressing accidental workplace injury, N.J.S.A. 34:15-51 requires that an employee file a claim petition within two years of the date of the accident. With respect to a claim petition addressing occupational disease, N.J.S.A. 34:15-34 requires that an employee file a claim petition within two years of the date the employee discovers the nature of the disability and its relationship to the employment. Knowledge of the nature of the disability connotes knowledge of the most notable characteristics of the disease, sufficient to bring home substantial realization of its extent and seriousness. In addition, the employee must have knowledge that the condition rises to the level of permanent disability. The Appellate Division rejected Bender's argument that the WCJ failed to properly evaluate the evidence. The Appellate Division determined that the WCJ's fact findings required credibility determinations and were entirely consistent with the trial record. Finally, the Appellate Division was not able to determine whether, or upon what basis, the WCJ decided the compensability of the orthopedic injury. This issue was remanded back to the WCJ for resolution.

Comment: With respect to claim petitions addressing occupational disease, an employer must conduct thorough discovery including fact and medical record investigation in order to determine the viability of a defense based upon statute of limitations. Thereafter, the employer can assert this defense by way of filing of answer and/or separate motion to dismiss. However, pretrial discovery efforts may not be sufficient. In many instances, testimony must be elicited upon the court record from the employee and fact witnesses on behalf of the employer in order for a WCJ to make a determination addressing this issue. The employee's testimony must address when the employee discovered his or her disability and its relationship to the employment. If appropriate, employers can move for a motion to dismiss upon the court record following testimony. Thereafter, the WCJ can rule upon the motion to dismiss.

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For more information, please contact Stephen P. Yuhas, Partner, Workers' Compensation, at syuh@wglaw.com or 973.242.2704.