

## Appellate Review Issues and Proof of Need for Psychiatric Treatment

In January 2018, the Appellate Division affirmed the decision of the Workers' Compensation Judge (WCJ) in the case of *Batts v. Flaghouse*, in dismissing the employee's request for psychiatric treatment due to an injury that had occurred 17 years earlier.

The facts revealed that the employee sustained a compensable injury to his right ankle on April 2, 1998, when the right ankle was run over by a forklift. The employee initially received an award of 50 percent for the right foot with a 10 percent psychiatric disability for chronic depression and anxiety. That award was on April 25, 2003. The award was reopened twice and the employee received an increase with respect to the right foot to 57 ½ percent and then 60 percent of the foot. Neither of those awards changed the disability with respect to the psychiatric award.

On the day the employee's award was increased to 60 percent, he filed another Application to Review along with a Motion for Medical and Temporary Benefits seeking psychiatric treatment. Following his review of the expert psychiatric witnesses, the WCJ determined that the employee did not prove that there was a need for psychiatric treatment related to the work injury. He accepted the opinion of the employer's expert that the psychiatric depression was unrelated to the accident, but attributable to the employee's obesity and loneliness due to his divorce. He also did not believe that psychiatric and medical treatment would benefit the employee.

**Comment:** The significance of the decision is once again the difficulty in overturning the opinion of a WCJ at the Appellate level. As the Court noted, "we generally give substantial deference to their (WCJ)" determinations, limiting our review to 'whether the findings may have been reasonably have been reached on sufficient credible evidence present in the record, considering the proofs as a whole, with due regard to the opportunity of the one who heard the witnesses to judge their credibility.' As you can see, this is a very high burden of proof.

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