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When is a Medical Opinion Insufficient?

In Pennsylvania Workers' Compensation litigation, a medical opinion is not competent as evidence unless it is unequivocal and expressed within a reasonable degree of medical certainty. This concept is illustrated in the Commonwealth Court Opinion of *PetSmart, Inc. through Insurance Company of North America and Sedgwick Claims Management Services, Inc., v. WCAB (Sauter)*, No 85 C.D. 2019 reported October 30th, 2019.

In the underlying case, the Workers' Compensation Judge granted a claim petition for a lower back injury based on the testimony of the injured worker's treating physician, Dr. I Stanley Porter. Initially, the doctor testified that the Claimant suffered lower back pain with sciatica on the right side. The doctor had ordered an MRI and then diagnosed the Claimant as suffering from "discogenic low back pain and nerve symptomatology of indeterminate etiology." The doctor at his deposition was asked if these diagnoses were causally related to the Claimant's work injury and the doctor replied, "that was my presumption, yes." The employer appealed the decision to award benefits by the Workers' Compensation Judge on the grounds that the medical opinion testimony was equivocal, and therefore, incompetent evidence to meet the injured worker's burden of proof.

The Commonwealth Court agreed with the employer's argument and reversed the award of benefits. It found the Claimant's medical evidence equivocal and thus incompetent to sustain an award of benefits. First, the Court determined that the diagnosis of "nerve symptomatology of indeterminate etiology" meant that the cause of the condition was "not definite, distinct, or precise; impossible to know about definitely or exactly" (relying on Blacks Law Dictionary). Therefore, the Court determined that Dr. Porter was really testifying that it is impossible to know the cause of the nerve symptomology. In addition, the doctor's "presumption" of it being work-related was equivalent to an opinion that the diagnosis "might" be causally related to the work event. Expression of opinion in terms of "possibilities" like "might be" or "could be" have previously been held insufficient by prior case law.

Comment: These concepts concerning the sufficiency of expert opinion evidence apply to the employer's witnesses as well as injured worker witnesses and vocational and other experts as well as medical experts. Also, the sufficiency of an expert opinion is a separate appealable issue not subject to the limited scope of appellate review of credibility determinations. Critical expressions of expert opinion, in reports or testimony, should be carefully reviewed with these standards of competency in mind.

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