

Can a Complete IRE Evaluation Be Made When the Physician is Not an Expert in All Alleged Injuries?

When the impairment rating evaluation (IRE) physician is not an expert for a particular work-related condition, must a referral to an expert be given? This was one of the questions facing the Commonwealth Court in the recent case of *IA Construction and Liberty Mutual Insurance, Co., v. WCAB (Rhodes)*, No.2151 C.D. 2013, filed on February 19.

In this case, the employee suffered a traumatic brain injury with organic affective changes and persistent cognitive impairments, including post traumatic headaches, vertigo and myofascial pain with neck and back injuries. The employer eventually obtained an IRE from an expert in physical medicine and pain management. The IRE resulted in a 34 percent impairment rating and the employer filed a modification petition to reduce the employee to partial disability benefits.

The Workers' Compensation Judge (WCJ) denied the petition on a number of points. The WCJ concluded that the IRE doctor was not an expert in brain injuries and since most of the problems at the time of the IRE were related to the brain injury, an expert in that field needed to evaluate that aspect of the work injury. The regulations do allow an IRE doctor the opportunity to refer a portion of an impairment evaluation to an expert for a particular pathology from the work injury that the IRE doctor does not feel comfortable evaluating. However, it is not required that a referral occur since the doctor, once qualified to perform an IRE, can perform the entire evaluation.

In addition, the WCJ found that the IRE doctor did not evaluate all the diagnoses that should have been considered part of the work injury. Instead, the IRE doctor considered only those injuries currently causing disability and not all the injuries determined in the initial litigation. The Workers' Compensation Appeal Board affirmed.

The Commonwealth Court reversed and held that the requirements of a physician to perform the IRE are governed by the Act and the WCJ cannot impose greater qualifications. Thus, the WCJ could not reject the IRE doctor's testimony on the basis he was not an expert in the treatment of brain injuries as this would be imposing an additional qualification not contained in the Act.

Comment: The employer and insurer have no influence over who the Bureau assigns as the IRE physician to a particular case. If you are concerned about whether the assigned IRE physician is qualified to evaluate a particular injury, then it might be beneficial to call the IRE physician and remind him or her about the Bureau regulation that allows an IRE physician to refer part of the evaluation to another physician who also must be qualified to perform IREs. In this case the Court ultimately concluded that the IRE physician was qualified to evaluate all injuries; however, had the original IRE physician referred the case to another physician to evaluate the brain injuries, it likely would have saved a lot of money in unnecessary litigation.

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