

PROPER USE OF AN IME IN A LOW BACK INJURY CLAIM

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Let's consider a relatively common fact pattern. You have a 58 year old male claimant with a 10 year history of low back problems. An MRI was done 3 years ago after the claimant fell on the ice at home and the MRI revealed the claimant has degenerative problems in his low back. On the date of injury, the claimant bent over to pick up a 5 pound box of parts and felt a "twinge" in his low back. Two weeks later, the claimant developed radicular pain in the right leg, the same leg in which he had radicular pain 3 years ago. The claimant files a claim alleging a lumbar strain, bulging disc at L5-S1, and substantial aggravation of pre-existing DDD L5-S1.

Should the company certify the claim without first obtaining an IME? Absolutely not!

The employer must first do its due diligence to determine the nature and extent of the claimant's prior low back problems. Initially, the employer should request medical releases in order to obtain the claimant's medical records concerning his prior low back treatment. Once these medical records are obtained, the employer should schedule an IME. Obtaining prior medical records to establish a pre-existing history of treatment and complaints is critical to the employer's defense. If the employer does not have supporting medical evidence to support its defense, it will most likely lose the claim.

The choice of the IME doctor is a critical decision. Some typical considerations when choosing an IME doctor include an analysis of the type of injury involved in the claim, the mechanics of the actual injury, and the likelihood the claim will be appealed to court. In addition, the specific medical conditions at issue may dictate which medical specialist is appropriate for a referral.

The referral letter sent to the IME doctor also is critical. The employer's IME report will be no better than the information given to the IME doctor. The IME doctor should be given all relevant records. DO NOT

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waste your IME doctor's time with irrelevant records. For example, if the claim involves a low back injury, there would be no reason to send your IME doctor records concerning the claimant's carpal tunnel syndrome surgery. In the company's IME referral letter, make sure to explain exactly what happened and provide a complete and accurate history. The employer should not rely upon the claimant to give an accurate history to the IME doctor. You should also make sure you give the IME doctor all injury reports, drug tests, witness statements, actual weights of parts, numbers of parts, and speeds of the processes. If possible, furnish the IME doctor with an actual video of the job process at issue so that he/she has a complete and accurate understanding of the claimant's actual job duties.

It also is important to ask the IME doctor the proper questions. In the above fact

pattern, the most pertinent questions are: do the medical conditions at issue exist? And, were the conditions directly caused or substantially aggravated by the work incident? If treatment is an ongoing issue, you should ask the IME doctor his opinion regarding ongoing treatment. Other relevant areas of inquiry are maximum medical improvement, restrictions, return to pre-injury status, natural deterioration of tissue, and any specific treatment requests which have been made in the claim.

An employer must do its due diligence in order to properly defend a workers' compensation claim and obtain a favorable independent medical evaluation from the doctor it chooses. Significant time and effort should be put into this part of the claim, as it may well determine the ultimate success or failure at hearing or trial.

If you have any questions concerning any of the topics
in this article, please contact Robert King at (419) 244-6788.

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