Is Second Injury to Same Ankle Compensable?



SITUATION

At the end of a shift on Nov. 5, a worker slipped exiting a bus provided by the employer to bring workers to and from a distant worksite. He injured his neck, back, knee and ankle. The worker's job requires him to be transported to a worksite. Normally, the employer makes these arrangements but, for a period of time each year around the holidays, the workers are responsible for their own transportation to a designated pickup location from which the employer will then transport them to the worksite. On Dec. 23, the worker goes to the airport to compare ticket prices for his trip to the designated pickup location when he falls and reinjures the ankle he previously hurt on Nov. 5. At the time, he tells medical personnel that his extreme traction running shoes or some slight dizziness due to a heart condition caused his fall. But later he claims his first injury never fully healed and weakened his ankle, which caused the Dec. 23 injury.

QUESTION

Which ankle injury is covered by workers' comp'

A. Only the Nov. 5 injury.

B. Both injuries, because they both occurred in the course of employment.

C. Both injuries, because there's a presumption that the Dec. 23 injury is related to the Nov. 5 injury to the same ankle.

D. Neither injury, because the worker wasn't actually doing his job when either injury occurred.

ANSWER

A. The Nov. 5 injury is the only one that arose out of the course of employment and so is the only one compensable.

EXPLANATION

This hypothetical is based on an Alberta Workers' Comp Appeals Commission decision in which the Commission ruled that the Dec. 23 injury was unrelated to the compensable Nov. 5 injury. The Nov. 5 injury was compensable because it occurred during the course employment, when the worker was utilizing employer-mandated transportation. Injuries occurring while traveling to work are compensable if such travel is controlled or under the direction of the employer and is expected as part of the work duties. The employer provided the bus transportation he was disembarking from when injured and expected workers to use it to get to and from their worksite. Thus, because the bus travel was under the employer's direction, the injury on Nov. 5 occurred during the course of employment and was compensable. As to the Dec. 23 injury, the worker initially indicated that he fell due to his traction footwear and dizziness. Although he later claimed this fall was related to the Nov. 5 incident, the Commission found no evidence this ankle had been weakened in the prior incident. Therefore, the Commission ruled that although the Nov. 5 injury was compensable, the Dec. 23 injury wasn't.

WHY THE WRONG ANSWERS ARE WRONG

B is wrong because the Dec. 23 injury didn't arise in the course of employment. Routine travel to a worksite isn't considered to be in the course of employment or part of work

duties. Travel becomes part of a worker's employment duties when the employer has some control over that travel, such as if the employer controls the mode of travel. In this case, the Nov. 5 injury occurred when the worker was exiting a bus the employer provided and expected workers to use to get to and from the worksite. But as to the Dec. 23 injury, the worker's employer required him to get to a central pickup point on his own and there the employer took over the transportation to the worksite. The worker was merely arranging his travel plans for getting to that pickup location when he fell and therefore was engaged in routine travel to work. So he wasn't acting in the course of his employment when he was injured Dec. 23.

***Insider Says*:** For more information about compensable injuries, go to the Workers' Compensation Compliance Centre.

C is wrong because there's no presumption that an injury to a particular body part that was previously injured in a compensable incident is related to that prior injury and thus automatically compensable. Subsequent injuries to a previously injured body part must be a consequence of or complication from a primary compensable injury to be covered by workers' comp. That is, the second injury must be a direct result of treatment for the first compensable injury or due to some weakness or complication of that prior injury. Here, although the worker alleges the first injury weakened his ankle and led to the fall on Dec. 23, the other evidence doesn't support this claim. In fact, other factors such as dizziness and the worker's footwear were likely the actual causes of the second ankle injury.

D is wrong because a worker doesn't necessarily have to be actually performing his duties when he's hurt for the injury to be covered by worker's comp. An injury need only arise out of the course of employment'not literally from or during an employment task. For example, workers injured on breaks could have compensable injuries if their break didn't take them out of the course of employment. For example, if workers are

allowed to take a break but must remain on the worksite and on call to return to their duties, they would remain in the course of employment and injuries sustained during that break could be compensable. Here, on Nov. 5, the worker wasn't actually working but was still on employer controlled property and was exiting a bus the employer required he take to get to and from a worksite. So he was still acting in the course of his employment when he was injured Nov. 5, making that injury compensable.

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