

Warehouse Blues

- Plaintiff works in a warehouse. One day he is lifting a heavy box when he feels pain in his back.
- Upon examination, he is diagnosed with a back strain and a hernia.
- Defendants accept his back claim.
- Defendants deny Plaintiff's hernia claim.
- Does the *Parsons* presumption apply to the hernia injury?



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- Under the *Parsons* presumption, our courts have held that if a claimant carries his initial burden of proving a causal relationship between the accident and his injuries, there is a presumption that “any future medical condition afflicting that body part is causally related to the original compensable claim and therefore also compensable.” *Parsons v. Pantry, Inc.*, 126 N.C. App. 540, 542, 485 S.E.2d 867, 869 (1997).
- In order to prove that a hernia is compensable, a claimant must show that:
 - (1) there was an injury resulting in a hernia or rupture,
 - (2) the hernia or rupture appeared suddenly,
 - (3) the hernia or rupture immediately followed an accident, and
 - (4) the hernia rupture did not exist prior to the accident.
 - N.C. Gen. Stat. § 97-2(18).

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Is this claim ripe for an emergency medical motion?

- Plaintiff might argue that:
 - Defendants can't deny one injury and not the other when they both clearly arise from the same incident.
 - Plaintiff's hernia was caused by the symptoms in his back, which was accepted.
- How are Plaintiff's claims reasonable or unreasonable?
- What might be a stronger argument?
- Defendants might argue that:
 - Plaintiff is improperly attempting to apply the *Parsons* presumption to a condition that is unrelated to his original compensable injury.
 - Defendants filed a Form 61 denying the hernia so it explicitly rebuts any potential *Parsons* issues.
- Are these reasonable contentions?
- What are some other potential arguments for Defendants?

Medication Emergency?



- Defendants have accepted Plaintiff's right leg claim and are providing ongoing pain management.
- At her most recent appointment, Plaintiff's authorized treating provider writes her a prescription for a refill of her pain medication.
- Plaintiff is now out of medication, but the adjuster assigned to Plaintiff's case hasn't responded to her emails and Plaintiff wants her medication refilled.
- Can Plaintiff credibly file a Medical Motion for an expedited hearing?

Medication Emergency?

- N.C.G.S. 97-25(f)(3) – “An emergency medical motion filed by either party shall be filed with the Office of the Chief Deputy Commissioner. The Chief Deputy or Chief Deputy's designee shall rule on the motion within five days of receipt unless the Chief Deputy or Chief Deputy's designee determines that the motion is not an emergency, in which case the motion shall be referred to the Executive Secretary for an administrative ruling.”
- Can Plaintiff credibly show “the potential for adverse consequences if the recommended relief is not provided emergently,” as is required under Rule 609A(e)(8)?
 - If unsure, what details would you need to know in order to fully answer that question?
- What arguments could Defendants advance that this is not an emergency?
- How do the new Opioid Utilization Rules affect your response to this hypothetical?

Feeling Functional

- Plaintiff has been treating with Dr. Holmes for an accepted left shoulder injury. Dr. Holmes recently opined that Plaintiff had reached MMI and should undergo an FCE in order to determine his proper work restrictions.
- Defendants have scheduled an FCE for Plaintiff on Friday (in Winston-Salem).
- It's Wednesday and Plaintiff says he won't attend the FCE.
- Can Defendants credibly file an Emergency Motion to Compel Plaintiff's Attendance at the FCE?



Feeling Functional

- Is this a “true emergency?”
- Should Defendants wait until Plaintiff actually doesn’t attend the FCE in order to file their Motion?
- In what ways can Plaintiff defend his forthcoming failure to attend the FCE?
- Is it relevant who conducts or evaluates the FCE?
- If Dr. Holmes had not recommended the FCE and had not assigned work restrictions at all, could Defendants still credibly compel Plaintiff’s attendance?
- If Plaintiff had already undergone an FCE the previous year, how does that affect your response?

“Serious and Adverse”



- Plaintiff has sustained a compensable back injury and her authorized treating provider has recommended surgery.
- Defendants subsequently obtain an IME, which states that surgery is unnecessary or too risky.
- Plaintiff files an Emergency Motion for Medical Treatment requesting an Order of the Commission compelling Defendants to authorize the recommended surgery.

“Serious and Adverse”

- If Plaintiff’s counsel can credibly contend that there will be “serious and adverse consequences” should Plaintiff not undergo surgery soon, is that enough for Plaintiff’s Motion to be considered emergent?
- What evidence would you consider to be sufficient to support a finding that the consequences of Plaintiff not promptly undergoing the surgery would be “serious and adverse?”
- Assume that Defendants have obtained surveillance showing Plaintiff acting outside of her assigned work restrictions.
 - Does this mean that the surgery is not an emergency?
 - Assume that Plaintiff’s ATP has seen the surveillance and still recommends surgery. Should Plaintiff’s Motion be granted?
- Assume that Plaintiff does not want surgery, but Defendants have filed a Motion to Compel Surgery. Should Defendants’ Motion be granted?