<u>**Proving Causation In A Texas Workers' Compensation Claim**</u>

By: Matt Lewis

In order to establish that an injury was sustained in the course and scope of employment, an injured worker in Texas must prove that his injury resulted from an activity incident to his employment (like lifting a box), or is in some way related to his status as an employee (like a chemical exposure). This is true whether the claimant is trying to overturn a denial of his entire claim or only a denial of one component of his compensable injury.

Historically, the evidence necessary to establish causation at an administrative proceeding could be as simple as the claimant's testimony that he picked up a box and felt a pop in his low back. Over the last few years, the administrative judges have typically required more proof than just the claimant's testimony. The law may only require testimony when the cause and effect are sure to be known through the experiences of the proverbial reasonable person, but most of the judges have increased their own standards on causation. Without a medical opinion on the cause of an injury, some judges have been ruling against injured workers by simply stating that the testimony was not credible enough to establish that the injury was incident to the employment. This represents a de facto change in the causation standard that is not due to a change in the law, but to a change in reality. This is where local knowledge and relationships between attorneys and judges, and attorneys and medical providers, can make a difference in case outcomes.

There is a long line of court cases indicating that the work event only has to be "a" cause, and not the one and only cause of an injury, for it to be covered under a workers' compensation claim. The same has always held true for establishing disability resulting from the workplace injury. Recently, though, the Supreme Court of Texas re-defined what it means for the work activity to be "a cause" of an injury.

On August 27, 2010, the Supreme Court ruled in *Transcontinental Insurance Company v. Crump*, Supreme Court of Texas No. 09-0005, that "producing cause in workers' compensation cases is defined as a substantial factor in bringing about an injury or death, and without which the injury or death would not have occurred." This decision significantly alters the burden of proof imposed on claimants. While the Supreme Court states that this has been the burden all along, it has not been the burden in reality. It is reasonable to expect that the expectations of any judge at the Division who is ruling on an issue of causation will be to require more evidence than was previously necessary.

From here on, any medical provider addressing the cause of a workplace injury should address the purported cause as a substantial factor in the cause of the injury, explaining in detail how the workplace event resulted in an injury. If there are multiple causes, then the provider should also explain that an injury would not have occurred without the addition of the workplace event to the chain of causes.

Matt Lewis is a licensed Texas attorney, practicing primarily in North Texas, including the Dallas and Fort Worth Metroplex. Mr. Lewis is Board Certified in Workers' Compensation Law by the Texas Board of Legal Specialization. He has also attained an AV Rating from Martindale-Hubbell, the highest ratings in both ability and ethics, and has been included in Texas Monthly's list of Texas SuperLawyer's Rising Stars Edition for 2009 and 2010.

Mr. Lewis writes the Texas Workers' Comp Blog for www.dallasworkcomp.com, and speaks around the state on workers' compensation issues. For more information, you may visit his firm site at www.rogersbookerlewis.com. You can follow Matt on Twitter, Facebook or LinkedIn.