WOEMA WINDOW NEWSLETTER

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Community Forum

Welcome to the WOEMA WINDOW. This e-newsletter is sent to members by email on a monthly basis. The e-newsletter provides links to this page. Below are the items that appeared in the January 2019 issue.

Latest News

Upcoming Events

No events

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SUBSEQUENT INJURY BENEFITS TRUST FUND (SIBTF) FOR PHYSICIANS

By Steven Feinberg, MD

As an occupational health physician, you may already be performing qualified medical examinations (QMEs) or agreed medical examinations (AMEs) but there is another arena for performing medical legal examinations and California workers' compensation.

These Subsequent Injury Benefits Trust Fund (SIBTF) evaluations are requested by applicant attorneys after the workers' compensation case has settled. These SIBTF evaluations can serve to assist your injured worker patient in receiving additional compensation, and for you, are also another potential source of practice revenue.

The SIBTF was created to provide financial help to persons who have significant pre-existing disability who then suffer a significant work injury.

SIBTF cases provide additional benefits under specified circumstances when an employee with a prior (labor disabling) disability suffers a subsequent workplace injury

There is an "overall threshold" and an "industrial threshold" that must be met to qualify for SIBTF benefits under L.C. Section 4751.

To reach SIF liability, an overall threshold must be met of **pre-existing disability plus Subsequent Industrial Disability (the last injury is the "subsequent" injury) must equal 70% PD or greater** and one of the two other industrial thresholds must be met:

1. The industrial (subsequent injury) disability must be a 35% disability "without regard to adjustment for occupation and age" or
2. The previous disability or impairment **affected** a hand, an arm, a foot, a leg, or an eye, and the permanent disability resulting from the subsequent (industrial) injury **affects** the opposite and corresponding member, and such latter permanent disability, when considered alone and without regard to, or adjustment for, the occupation or age of the employee is equal to 5% or more of total."

There are no requirements as to the origin of the pre-existing (labor disabling) disability. The pre-existing disabilities can arise from whatever source, including congenital, developmental, disease, prior injury, war injury, non-industrial injuries or prior industrial disabilities. So long as the combination of all disabilities exceeds 70%, there is SIBTF liability, provided one of the two other industrial "thresholds" (as noted above) has been met.

Ratable labor disabling disability has to exist (not just the medical condition) prior to industrial disability from the subsequent injury.

Remember though that the injured worker may have had a condition that was not perceived as labor disabling but the physician must consider whether the preexisting condition, whether known (i.e., diabetes, hypertension, heart disease, etc.) or unknown (congenital spinal stenosis etc.) was actually disabling but not realized as such.

BUT, there needs to be medical evidence (proof) that there was a prior actual pre-existing "affect" (i.e., labor disabling disability – not just a present condition) and you will need medical proof that the disabling effect has continued ("Cured" conditions do not count).

For example, the injured worker with preexisting diabetes, heart disease or spinal stenosis may have had a job congenial to that condition but may have had an unrecognized disability.

The existence of a non-disabling pathological condition (i.e., degenerative disease) is not sufficient to justify entitlement to SIF benefits – unless it was labor disabling. Progression of the pre-existing disability doesn't count – it must have been labor disabling prior to the subsequent industrial injury (even if only partially so). A retroactive prophylactic work restriction will not support SIF liability. Self-imposed restrictions (which are related to labor disabling condition) are not the same thing as a retroactive

prophylactic work restriction nor are they always “prophylactic” – in other words, if self-imposed restrictions are legitimate from a medical standpoint, they may signify prior labor disablement.

History & Physical Examination

With an SIBTF case, the **history predating the industrial injury** is of critical importance. The medical records coupled with the patient’s recollected medical history are obviously of considerable importance and need to be considered carefully.

Consider a past medical history of obesity, sleep apnea, tobacco and substance usage, past medication usage, psychiatric history and comorbidity, asthma, dementia, diabetes, heart disease, hypertension, spine disorders, hepatitis, etc. Consider diagnostic tests and prior imaging studies.

Individuals often don’t remember their medical history, and thus obtaining a full set of prior medical records is critical. During interviewing, also talking with a significant other may be helpful to recollect prior injuries or diseases.

In searching for pre-existing opposite and corresponding medical conditions, consider the following:

- **Skin**
  - Psoriasis
  - Skin Cancer – Requiring sunscreen or wearing covering services shirt/long pants
  - Burns causing physical scars, contractures, or need for skin protection
- **Medical**
  - Diabetes
  - Heart disease
  - Hypertension
  - Pulmonary disease
  - Obstructive sleep apnea
  - Obesity
  - Gastrointestinal
- **Neurologic**
  - Diabetic neuropathy
  - Pre-existing nerve entrapment such as carpal tunnel syndrome
  - Cervical and lumbar radiculopathy causing arm or leg symptoms
  - Parkinson’s tremor
  - Reynaud’s syndrome causing sensitivity to heat and cold

- History of multiple sclerosis, stroke, etc.

- **Orthopedic**
  - Prior fractures with or without deformities
  - Prior osteoarthritis or rheumatoid arthritis
  - Prior evidence of repetitive stress injury
  - Prior sports or other injuries
  - Other orthopedic problems such as plantar fasciitis, joint injuries, etc.
  - Childhood injuries
- **Prior use of adaptive equipment** such as canes, braces, etc.
- **Vascular**
  - Prior history of phlebitis, DVT, varicose veins, peripheral edema

The Pre-Existing Disability

The SIBTF physician evaluator can combine the injured worker's history as to the pre-existing disability, the medical facts from the medical records, and the findings from the current physical exam to determine the degree of pre-existing labor disablement even if the DOI was 5–10 years earlier. The physician can and should use his or her best medical judgment to make this determination. The fact the injured worker "worked around" the pre-existing disability does not mean it did not exist. For example, an individual with a diabetic neuropathy precluding wet work, extremes of heat or cold on a pre-existing basis – these are actual (not retroactive prophylactic) limitations.

Identifying Pre-Existing Disabling Conditions

Many people have underlying disabling conditions that they have adapted to or "work around" and do not think about or even recognize their existence. If you don't ask, they won't tell. Ask about pre-existing limitations on activities of daily living. Questions about occupational issues can include pre-existing limitations as well as pre-existing exposures (chemicals, sound, overuse injuries, stress) causing avoidance of those exposures.

Document Pre-Existing Disability

For determining pre-existing disability, a review of the past medical history including pre-existing symptoms is critical. Consider congenital disease; hereditary/familial diseases, prior injuries including childhood accidents (fractures, burns, concussions, etc.); household auto, bicycle and prior industrial accidents; prior civil/third-party case; war injury, past psychiatric problems/disability; learning disability, cancer, and history of substance abuse.

In regards to pre-existing symptoms, consider the following:

- ***General constitutional systems*:** fever, chills, fatigability, night sweats, weight loss/gain
- ***Eyes:*** Change in vision, blurring, acuity, diplopia, photophobia, pain, redness, discharge, loss of vision.

- ***Ears, nose, mouth, sinuses:*** Allergy symptoms, congestion, pain, discharge, change in hearing, tinnitus, sense of smell, epistaxis, sore throat, hoarseness, teeth or gum problems, oral ulcers, change in taste.
- ***Chest/lungs:*** Dyspnea, cyanosis, wheezing, cough, sputum, hemoptysis, chest pain related to breathing, exposure to TB, last chest X-ray.
- ***Cardiovascular.*** Chest pain, palpitations, dyspnea, orthopnea, paroxysmal nocturnal dyspnea, edema, claudication.
- ***Digestive:*** Appetite, digestion, food intolerance, dysphagia (trouble swallowing), nausea, vomiting, bowel habits, change in bowels, hemorrhoids, history of ulcer, polyps.
- ***Genitourinary:*** dysuria, frequency, urgency, nocturia, hematuria, hesitancy, incontinence, hernias, flank or suprapubic pain. History of sexually transmitted diseases. Abnormal penile or vaginal discharge. *For men:* change in libido; difficulty obtaining or maintaining erection, abnormal ejaculation, premature or delayed orgasm. Testicular pain or swelling. *For women:* Normal menstrual pattern, change in menses, pain with menstruation, fertility problems pain with intercourse, problems with libido, arousal, orgasm, age at menopause, last Pap smear.
- ***Breast (for women):*** Pain, tenderness, discharge, lumps, last mammogram, performance of self breast exams, previous breast biopsies.
- ***Musculoskeletal.*** Joint pain, stiffness, restriction of motion, redness, warmth, deformity.
- ***Endocrine:*** thyroid enlargement or pain, heat or cold intolerance, changes in facial or body hair, change in weight, increased hat or glove size.
- ***Hematologic:*** Anemia, easy bruising, easy bleeding, history of blood clots.
- ***Lymph nodes:*** Swelling, tenderness, drainage.
- ***Neurologic:*** loss of consciousness, seizures, weakness or paralysis, change in sensation or coordination or gait, falls, tremor, memory loss.
- ***Psychiatric:*** depression, anxiety, mood changes, sleep disturbance, difficulty concentrating, suicidality.
- ***Skin, hair, nails:*** rash, itching, pigment or texture change, change in moles, excessive sweating/dry skin, abnormal nails or hair growth or texture.

Remember that these pre-existing symptoms must be translated by the physician into an actual pre-existing disability and impairment to be ratable.

When examining the individual, consider the following:

- Scars
- Deformities
- Posture, body habitus
- Gait abnormality
- Mental acuity
- Behavioral issues
- Speech impediment
- Hearing loss
- Breathing pattern, SOB, etc.

It is important to describe the pre-existing labor disablement/disability that existed prior to the last/subsequent injury. It may be more difficult to go back in time to provide an impairment rating, but the medical records can be very helpful. While a standard AMA Guides rating should be attempted, the physician may need to turn to an Almaraz Guzman Analysis and provide the most accurate impairment rating within the four corners of the AMA Guides.

FREE CME WEBINAR
WEDNESDAY, FEBRUARY 27, 2019 • 12:00 PM PST

Topic: ***Health Effects of the 9/11 Terror Attacks***

****This webinar will not be recorded, nor will slides be shared after the webinar has aired.****

Speaker: Marc Wilkenfeld, MD

The 9/11 terror attacks and collapse of the World Trade Center (WTC) was the largest manmade environmental disaster in history. Toxins released in the collapse of the WTC caused unhealthy air quality levels for months and the traumatic events resulted in increased rates of depression and PTSD. Patient and physician advocacy resulted in the creation of a federal program to monitor and treat those made ill by the attack. Research continues to link additional medical conditions such as cancer and neurologic disease to the toxins released. Understanding the health effects of the WTC Collapse can help physicians prepare for future disasters.

Learning Objectives – after this webinar, participants will be able to:

- Understand the health impact of 9/11 on responders and survivors
- Describe Medical and Psychiatric Conditions that have been linked to the collapse of the WTC
- Review the legislative process which resulted in passage of the Zadroga Act, which provides care for those ill due to 9/11 exposures
- Explain the lessons learned from 9/11 that can help prepare for future disasters

Dr. Marc Wilkenfeld is Board Certified OccupationalEnvironmental Physician. Dr. Wilkenfeld is Chief of Occupational Environmental Medicine at Winthrop University Medical Hospital in Mineola, NY and Assistant Professor of Clinical Medicine and Environmental Sciences at Columbia University Medical Center. Dr. Wilkenfeld has practiced Occupational Environmental Medicine for over twenty years evaluating, and with treating workers and other individuals with concerns over exposure to potentially toxic substances. He has published two book chapters in the foremost Textbook of Occupational Medicine, and serves as a reviewer for the Journal of Occupational Environmental Medicine. Dr. Wilkenfeld is Past President of The New York Occupational Medicine Association where he continues to serve on the Executive Board. He is currently Co-Chairman of the Environmental Health Section of The American College of Occupational Environmental Medicine.

Dr. Wilkenfeld was a resident of Lower Manhattan when the September 11th attacks occurred. Following the attacks Dr. Wilkenfeld acted as a consultant to a number of government agencies, corporations and community groups on the environmental health impact of the disaster. In this role he reviewed pre- and post-cleaning data and answered questions regarding potential health effects of contamination with WTC dust. Dr. Wilkenfeld has also examined and treated hundreds of cases of WTC related illness in his work as a physician specialist for the NYC Health and Hospital's Corporation WTC Environmental Health Center. In addition to his clinical work Dr. Willkenfeld has been involved in outreach and educational programs at the Center. Dr. Wilkenfeld has received a Proclamation from the New York City Council honoring him for his post 9/11 work on behalf of the residents and workers of New York City.

[REGISTER NOW]

A MESSAGE FROM YOUR WOHC 2019 CHAIR

By Akbar Sharip, MD, MPH, FACOEM

Dear friends and colleagues,

Please save the date for the upcoming WOHC 2019 conference in San Diego on September 11 – 14, 2019 at the Sheraton Hotel & Marina.

Building on previous years' success, our planning committee and WOEMA administration team promise to deliver another outstanding conference with high-quality education providing the necessary tools for your professional achievement. Our pre-conference offerings and plenary sessions provide hands-on training and workshops related to best practices, practice updates, new techniques, and specialty trends in addition to interesting worksite tours and recreational/entertainment opportunities.

This occasion presents a fantastic opportunity to expand and enhance your practice through communication with colleagues from diverse backgrounds. Participation in the planned social activities provides time for networking that is not only fun, but a great way to reconnect with faculty and colleagues.

Come for the conference, and stay for "America's Finest City," San Diego. Make sure to enjoy the pristine beaches, parks, art galleries, world-class restaurants. Everybody loves this conference, and everybody loves San Diego. A perfect combination.

WOEMA is a home, family, community, and haven for Occupational Health practitioners. We invite you to join WOHC 2019 for education and camaraderie with people who understand our specialty. We are excited to see you come home to recharge and succeed!

See you in San Diego!

[Join the Email List to Stay Updated!]

NEW CA PRESCRIPTION REQUIREMENTS EFFECTIVE JANUARY 1

Assembly Bill 1753 (Low, Chapter 479) was signed into law in 2018 and became effective on January 1, 2019. This bill requires controlled substance security prescription forms to include a unique serialized number in a format approved by the Department of Justice (DOJ). This bill did not include any transition period to allow for continued use of old controlled substance security prescription forms on or after January 1, 2019.

[READ THE NOTICE]

DON'T FORGET TO RENEW YOUR WOEMA MEMBERSHIP!

Attention WOEMA members! The opportunity to renew your ACOEM (and WOEMA) membership is coming to a close. Don't miss out (the window closes on January 31st). And for those in the audience who are not yet members, take a look at the benefits!

[RENEW TODAY!]

NEWS FOR THE NEW YEAR

When Medicines Make Patients Sicker

Make sure that your patient really needs the medication – then discuss the risks and benefits.

What You Eat Matters

It seems to be a trite statement, but the controversies rage on about what to eat and not to eat. The starting point is, without question: eat real food

The Common-Sense Approach to Avoiding Winter Infections

Another study confirms what we already know from observation. The linked study shows that crowding increases rates of respiratory infection. The authors propose that non-pharmacologic agents might be helpful. In other words – wash your hands before you touch your face!

New Concussion Testing Technology

A four minute non-invasive test has been licensed for use in diagnosing concussion

WOEMA is a regional component of the American College of Occupational and Environmental Medicine (ACOEM) and is dedicated to high-quality medical care and ethical principles governing the practice of occupational medicine.

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