



Interlocutory Relief – How to Win (or Lose) a Case at the Outset

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When it comes to resolving disputes, Ohio and Kentucky workers' compensation cases are as different as chalk and cheese. Many issues in Ohio cases are decided by an administrative person who simply reviews records, whereas many Kentucky cases are litigated in a process that can take months. Because of this, the wise plaintiff in Kentucky should always ask for something called "interlocutory relief" – and the wise company defendant should pull out all the stops to contest it.

"Interlocutory relief" means essentially what it says: The worker is seeking relief (in form of certain medical treatment or income benefits) and is asking for such relief until the case can be resolved through settlement or hearing.

But if the worker actually wins such relief, then many key issues in the case essentially HAVE been resolved. Issues such as causation, defenses such as lack of a relation to work, and the reasonableness of treatment are decided at the outset. The final hearing will decide only future benefits, and the employer is in no position to say, for example, the injury was not caused by work or incurred at work.

Motions for interlocutory relief can vary, but certain types are most common:

- When the employer refuses to approve a certain type of treatment or surgery. For example, the employee has an arm strain, but then a year or more later, a doctor decides the employee needs shoulder surgery.
- When the employer denies the claim based on lack of work-relatedness. For example, the employer may say the employee fell outside the work premises, or the employee had been terminated and was injured leaving the work premises.
- When the employer refuses to pay income benefits, and the plaintiff's doctor has not cleared the employee to return to work. Such relief usually will be denied if an independent medical examiner has cleared the employee to return, and then the matter will be left for the final hearing. However, if no such doctor has cleared the employee to return, then the employee may be able to win.

On closer inspection of these issues, it becomes apparent why the employer must aggressively fight a motion for interlocutory relief. If an ALJ approves a shoulder surgery, then the ALJ has essentially ruled that an arm strain has turned into a possibly debilitating (or career-threatening) injury. If the ALJ rules that an injury occurred in the scope-and-course of employment, then there is nothing for the employee to argue at the final hearing except the extent of benefits the worker will receive.

In some ways, a similar fight may be had in Ohio cases. Workers and employers both have to be vigilant in reviewing decisions by case workers. If a claim is allowed for a low-back strain, then the employer must act quickly to contest that decision and ask for a hearing on the matter – otherwise, the employer is stuck with the claim. A worker whose claim is allowed for a low-back strain, but who also injured an arm in the accident, must quickly ask for a review and perhaps a hearing on the arm injury – otherwise, no medical bills may be paid later for the arm.

It's often said that a little work up front can save a ton of work at the end. In the world of workers' compensation, that's certainly true in the case of "interlocutory relief."