An Overview: General Statutory Guidelines When Considering Compensability and Handling a Workers' Compensation Claim

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All workers' compensation claims are different. Some may have similar fact patterns and stem from the same type job setting, but ultimately each claim will stand on its own merits given the individual employee's work history, job at the time of injury, education, geographic location, actual injury and recovery. With these variables in mind, once a claim is made, there are several statutes that the employer/carrier should consider. The following is a brief overview of these statutes with some relevant case citations.

1. Who the Act Covers

The Mississippi Workers' Compensation Act (the Act) applies to all employers who have 5 or more employees. MCA §71-3-5. The elements necessary to establish a contract of hire have been defined by case law, and MCA §71-3-5 specifically exempts certain employees from coverage. MCA §71-3-3(d) defines an employee as any person "in the service of an employer under any contract of hire of apprenticeship, written or oral, expressed or implied." Excluded are all independent contractors. Specific provisions for subcontractors can be found in MCA §71-3-7(d), including requirements that either the general contractor or the subcontractor secure coverage for employees.

In addition, the Act does not allow an employee to waive his/her rights under the Act. Such an agreement is void pursuant to MCA §71-3-41. Further, the Act is the exclusive remedy available to employees who are injured while working in the course and scope of their employment for a covered employer. MCA §71-3-9. Covered employers are immune from civil actions for damages as a result of a work-related injury. If an employer fails to secure coverage as required by the Act, the employee may elect to claim compensation under the Act or to maintain an action at law. MCA §71-3-9.

As with other areas of the law, one can find exceptions to any general rule. In this case, an exception exists to the exclusive remedy rule if the injured employee can show the injury was caused by an intentional act of the employer, i.e. an intentional tort. The Mississippi Supreme Court has held that there must be proven an intentional intent to injure in this situation and not merely an ignoring of a risk by the employer. *Franklin Corp. v. Tedford,* 18 So. 3d 215 (Miss. 2009).

2. When is Compensation Due

In general, one should look to MCA §71-3-7 and §71-3-3 for guidance as to when compensation is due for an alleged work injury. MCA §71-3-7 states that compensation "shall be payable for disability or death of an employee from injury or occupational disease arising out of and in the course of employment, without regard to fault as to the cause of the injury or occupational disease." A work related injury is defined in §71-3-3(b) as an "accidental injury or accidental death arising out of and in the course of employment without regard to fault which results from an untoward event...if contributed to or aggravated or accelerated by the employment in a significant manner." An untoward event includes not only an unexpected event but also unexpected results from normal events. *Id.* The definition of injury specifically includes injury to artificial members; injuries caused to an employee by the willful act of a third party if directed against the employee because of his employment and while the employee is working on the job; and injuries or death due to radiation exposure. *Id.* The Act provides that an injury is not to be presumed to arise out of and in the course of employment except in the case of an employee found dead in the course of employment. *Id.*

Given that these two definitions guide the compensability of many, if not all, claims under the Act, various phrases within these statutory definitions have been explained through case law since the inception of the Act. For example:

-- an injury is accidental if it occurs without design and from the viewpoint of the injured employee, i.e. it is unexpected, *L.B. Priester & Son v. McGee*, 234 Miss. 471, 106 So. 2d 394 (1958);
-- an accidental injury includes those that develop gradually such as carpal tunnel syndrome; these type injuries are often referred to as repetitive trauma injuries, *Shivers v. Biloxi-Gulfport Daily Herald,* 236 Miss 303, 110 So. 2d 359 (1959);
-- "arising out of" simply means there is a reasonable connection between the employment and the injury; the test is whether the employment rationally contributes to the injury and this test is met with a minimal connection between the employment and the injury being shown, *Fought v. Stuart C. Irby Co.,* 523 So. 2d 314 (Miss. 1988);
-- an aggravation of a pre-existing medical condition or handicap is included within the definition and is treated the same with regard to compensability, *I.B.S. Mfg. Co. v. Dependents of Cook,* 241 Miss. 256, 130 So. 2d 557 (1961); and
-- "in the course of employment" requires that the accident happen within the time period of employment at a place where the employee may reasonably be expected to be while performing his employment duties and that the employee be engaged in doing something in furtherance of the employer's business at the time of injury. *Jefferson v. T.L. James & Co.,* 420 F.2d 322 (5th Cir. 1969).

The injured employee must also establish that, in addition to their having sustained an injury at work that the injury has resulted in a disability. MCA §71-3-3(i) defines disability as the "incapacity because of injury to earn wages which the employee was receiving at the time of injury in the same or other employment , which incapacity and the extent thereof must be supported by medical findings." Case law clearly requires that the claimant demonstrate through medical evidence the causal relationship between the injured employee's employment and the injury. Further, the medical evidence must be based upon a reasonable degree of medical probability, not mere possibility. *Airtran, Inc. v. Byrd,* 953 So. 2d 296 (Miss. Ct. App. 2007).

Assuming the claimant has demonstrated what appears to be a compensable injury under the Act, the employer/carrier should remember to review any statutory defenses provided under the Act to determine if applicable in any given situation. Under MCA §71-3-7(d), no compensation benefits are payable if the intoxication of the employee was the proximate cause of the injury. This defense requires proof not only that the employee was intoxicated, but also that the employee's intoxication was the proximate cause of the injury so as to bar compensability of a claim. *Id.* In addition, under MCA §71-3-7(d), the employee is not entitled to benefits if the alleged injury was the result of the employee's willful intent to injure or kill himself or another.

The injured employee has the burden to notify his employer of his injury in a timely manner to allow investigation of the alleged injury. Pursuant to MCA §71-3-35(1), the injured employee should report the injury within 30 days of the injury or his claim will be barred. However, the Mississippi Supreme Court has held that this is not an absolute bar to the recovery of benefits. The employer must show prejudice as a result of the delay in reporting, and, as a practical aspect, most Administrative Judges are hesitant to find prejudice if a defense can be presented by the employer/carrier. *Adolphe Lafont USA, Inc. v. Ayers*, 958 So. 2d 833 (Miss. Ct. App. 2007).

From a defense perspective, the employer/carrier must also keep in mind that while they are investigating the claim, they too have certain reporting guidelines that must be met, including:

-- the employer/carrier must report any fatal injury to the Commission within ten (10) days of the employee's death. MCA §71-3-67(1);
-- if the injury causes loss time in excess of the statutory waiting period, the employer/carrier must report the injury to the Commission within ten (10) days after the prescribed waiting period has been satisfied. MCA §71-3-67(1);
-- within ten (10) days after the employer/carrier knows, or reasonably should know, that an injury will result in permanent disability or serious head or facial disfigurement, but will not cause a loss of time in excess of the waiting period, a report must be filed with the Commission. MCA §71-3-67(1); and
-- injuries for which only medical benefits are due are not required to be reported to the Commission; however, records of such injuries are required to be kept and should be available to the Commission upon request. MCA §71-3-67(2).

As a practical aspect, when investigating these claims, the employer/carrier must not only speak to the injured employee but also speak to co-workers, review potential evidence, including video if available, any documents that may be applicable, time cards and also medical records surrounding the event. After a complete investigation, if the facts, circumstances and medical evidence do not support a compensable work related injury, the employer/carrier should controvert the alleged injury by filing an MWCC Form B-52 with the Mississippi Workers' Compensation Commission. Specifically MCA §71-3-37(4) states that "If the employer controverts the right to compensation he shall file with the commission, on or before the fourteenth (14th) day after he has knowledge of the alleged injury or death, a notice… stating that the right to compensation is controverted."

The employer/carrier should keep in mind that under current case law, the Administrative Judge, pursuant to the beneficent purpose behind the Act, is instructed to construe doubtful cases in favor of the injured employee. *South Cent. Bell v. Aden,* 474 So. 2d 584 (Miss. 1985). This does not mean that all cases must be accepted as compensable;

however, the employer/carrier does have an obligation to investigate the claims and review the evidence. The burden to prove an injury occurred and the causal connection to the employment by a "fair preponderance of the evidence" lies with the injured employee. *Hedge v. Leggett &Platt, Inc.*, 641 So. 2d 9 (Miss. 1994).

3. What Benefits are Available

Once a claim is found compensable under the Act, the injured employee is entitled to medical and disability benefits. In general, one should look to MCA §71-3-15 and General Rule 9 of the Mississippi Workers' Compensation Commission when reviewing the compensability of medical care and obligations to provide medical benefits under the Act. In addition to these guidelines, the carrier should also become well versed in the medical provider fee schedule and cost containment and utilization review system. In sum, pursuant to MCA §71-3-15(1):

-- an employer has to "furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, artificial members, and other apparatus for such period of time as the nature of the injury or the process of recovery may require;"
-- the employee can select his own medical provider or accept the services of a physician offered by the employer, if the employee accepts the physician, the statute requires that his acceptance be in writing (it is advisable to document the employee's choice in writing regardless);
-- the choice of physician may refer the claimant to one physician per specialty or sub-specialty; and
-- if the claimant wishes to select another physician, the selection must be approved by the employer or carrier, if denied, the employee should petition the Commission before seeking the care.

The employer/carrier is obligated to furnish this medical care, and the employee is under an obligation to reasonably follow through with the recommended medical care. Should the employee unreasonably refuse, the employer may petition the Commission to suspend the payment of compensation during such time as the employee continues to refuse to submit to the medical care. MCA §71-3-15(1). The employer/carrier has a right under the statute to have the employee evaluated by a physician of the employer/carrier's choice to evaluate disability or medical treatment being provided. MCA §71-3-15(1).

Once compensability is established, the employee's compensation rate should be computed based upon the employee's pre-injury average weekly wage. MCA §71-3-31 states that AWW must be determined from the total earnings of the claimant in the employment in which he was working at the time of the injury for the 52 weeks immediately preceding the injury divided by 52. MCA §71-3-31 further provides:

-- if the employee lost more than seven days during the preceding 52 weeks, earnings for remainder of 52 weeks shall be divided by number of weeks remaining after time lost has been deducted;
-- if the employee was employed by employer for less than 52 weeks, the total earnings should be divided by the number of weeks, or parts thereof, worked if the resulting AWW is fair to both parties; and
-- wages of a similar employee may be used in some instances.

No compensation benefits (other than medical) are payable for the first 5 days of disability unless the injury results in disability of 14 days or more. MCA §71-3-11. After the injured employee satisfies this waiting period, the employer/carrier may owe compensation benefits pursuant to MCA §71-3-37. The legislature has held that the employee is entitled to periodic, prompt payments; the first being due within 14 days after the employer has notice that it is due. MCA §71-3-37 (1) & (2).

Compensation benefits can be broken down into two main categories (with two subsections):

A. Temporary Benefits

Temporary disability extends from the date the compensable injury becomes disabling until the date of maximum medical improvement. There can be successive periods of temporary disability from one injury. Temporary Total Disability refers to disability which is temporary in nature and results in a total incapacity to earn wages. Benefits are payable at sixty-six and two-thirds percent of the claimant's average weekly wage (not to exceed a weekly maximum), not to exceed 450 weeks of benefits. MCA §71-3-17(b). Temporary Partial Disability refers to disability which is temporary in nature but does not result in a total incapacity to earn wages. MCA §71-3-21. These benefits are typically paid when an injured employee returns to work at lower wages prior to reaching maximum medical improvement. These benefits are payable at sixty-six and two-thirds percent of the difference between the claimant's pre-injury average weekly wage and the claimant's post-injury wages, not to exceed 450 weeks of benefits. *Id.*

B. Permanent Benefits

A review for permanent disability by an Administrative Judge generally takes place once the injured employee is placed at maximum medical improvement by his/her physician as a result of the medical treatment from the work injury. Benefits can be awarded for either permanent partial disability or permanent total disability. Permanent Total Disability refers to disability which is permanent in nature and which results in a total loss of wage earning capacity in the same or other employment. Benefits are payable at sixty-six and two-thirds percent of the claimant's average weekly wage, not to exceed 450 weeks or an amount greater than the multiple of 450 weeks times sixty-six and two-thirds percent of the State average weekly

wage. MCA §71-3-17(a). The employer will receive credit for payment of all benefits previously paid if a claimant is found permanently totally disabled. MCA §71-3-17(a) specifically provides that the "loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two (2) thereof shall constitute permanent total disability."

In contrast, permanent partial disability refers to disability which is permanent in nature but does not result in a total loss of wage earning capacity. MCA §71-3-17(c). The method of computing permanent partial benefits due depends on whether the injury is to a scheduled member or to the body as a whole. The scheduled members and the schedule of benefits for each member is found at MCA §71-3-17(c).

4. What Statute of Limitations Applies

It is possible that a claim may be barred prior to the injured employee controverting the matter at the Commission. There are two possible statute of limitations found in the Act. The two-year SOL is applicable only when no payment of compensation, other than funeral or medical benefits, is made within two years from the date of injury or death and no claim is filed. MCA §71-3-35. The two-year SOL applies to both disability and medical benefits. Once the two-year SOL runs, it cannot be revived by the payment of benefits. *Speed Mechanical, Inc. v. Taylor,* 342 So. 2d 317 (Miss. 1977). If any compensation benefits are paid, the two-year SOL is extinguished and is not applicable. *Taylor v. Salvation Army – Pascagoula Corps,* 744 So. 2d 825 (Miss. Ct. App. 1999).

The one-year SOL is applicable in cases in which compensation benefits have been paid. MCA §71-3-53. The one-year SOL does not begin until the employer/carrier properly files the MWCC B-31, Notice of Final Payment, with the Commission showing that the final payment has been made on the claim. The form and the filing of same must comply fully with Commission rules, or the SOL will not begin to run. Once the SOL begins to run, it is tolled by the payment of additional disability or medical benefits or the filing of a claim for additional benefits. *Turnage v. Lally's Swimming Pool Co.,* 247 Miss. 713, 159 So. 2d 84 (1963).

Conclusion

In sum, handling an injured workers' claim pursuant to the Act requires careful navigation through the statutory requirements of the Act in conjunction with the Courts' interpretations of the Act to ensure the protection of rights for all parties. The above synopsis covers only the main points of the Act. The Act also speaks to hernia claims, third party claims, settlements, apportionment, death claims, and appellate action, among other things. Hopefully, this article will at least give you a starting point to address a workers' compensation claim or to tackle the Act should you need to. ■