

Fatal Stroke: Not Industrial Injury For Nurse, Compensation For Family Denied.

A forty-seven year-old nurse had worked in intensive care and in the emergency room at the same hospital for ten years. She passed out while responding to a code. She herself went into intensive care and died ten days later.

The cause of death was a pre-existing cerebral aneurysm that apparently burst during the code. The surviving spouse and children filed for worker's compensation. The Supreme Court of Kansas overruled the Worker's Compensation Board and denied their claim.

Cardiovascular events caused by pre-existing medical conditions are compensable only after there has been an unusual event or significant exertion on the job. Mudd v. Neosho Memorial Regional Medical Center, __ P. 3d __, 2002 WL 31958291 (Kan., January 24, 2003).

When a worker has a heart attack or stroke on the job, it is not an industrial injury, and there is no worker's compensation, unless there was an unusual event or sudden exertion on the job that caused it.

Even though it requires significant physical exertion and causes serious emotional stress, responding to a code is not an unusual event or sudden exertion for an experienced intensive care nurse.

SUPREME COURT OF KANSAS
January 24, 2003

Hepatitis C: Occupational Disease For Nurse, Compensation Approved.

Worker's compensation provides benefits for industrial injuries and occupational diseases.

Once a worker establishes that he or she is suffering from an occupational disease, the law presumes the occupational disease arose out of and in the course of the worker's employment and the law presumes the worker is entitled to worker's comp benefits.

This presumption of entitlement to worker's compensation is rebuttable.

That means the employer has the option of trying to establish just how the worker actually contracted the disease, to prove that, in fact, it did not arise out of and in the course of the worker's employment with the employer.

Since the worker has the advantage of a rebuttable presumption and the employer has the burden of proof to rebut the presumption, the worker is entitled to worker's compensation benefits unless the employer can prove the employee did not contract the disease on the job.

COMMONWEALTH COURT
OF PENNSYLVANIA
January 30, 2003

A nurse worked in home health for a visiting nurse service for more than seven years.

Over that time she had six or seven needle sticks on the job, only one of which she actually reported to her employer. She had also been stuck twice at a previous nursing job, five and four years before starting with the visiting nurse service.

According to the Commonwealth Court of Pennsylvania, there were no other exposures to blood in her history, such as a blood transfusion, organ transplant, tattooing or intravenous drug abuse.

The point came where the nurse had to stop working due to nausea, vomiting, severe fatigue and frequent infections caused as side effects of her medications. There was no doubt she had Hepatitis C. She filed for worker's compensation, claiming she had an occupational disease.

Etiology of Hepatitis C Disputed

To dispute her claim her employer presented a sworn expert-witness deposition from a board-certified internist who specializes in liver diseases. He noted that Hepatitis B is the variant which more commonly arises from exposure to blood and blood products. Routes of transmission of Hepatitis C, on the other hand, are not well understood and are virtually impossible to prove in individual cases.

Court Rules Based On Burden Of Proof

Medical etiology and legal cause-and-effect are completely different concepts. For reasons of public policy the law places the burden of proof on the employer in these situations. When a healthcare worker comes down with an illness known to be transmitted in some cases by exposure to bloodborne agents, the employee is presumed to have a compensable occupational disease unless the employer can prove otherwise, which would be virtually impossible here according to the employer's own expert Sun Home Health Visiting Nurses v. Workers' Comp Appeal Board, __ A. 2d __, 2002 WL 31968334 (Pa. Cmwlth., January 30, 2003).