Latex Allergy: Court Looks At Timing Of Occupational Exposure versus Filing Of Worker's Comp Claim.

A nurse was exposed to latex products on the job starting in 1981 when she began working as a surgical nurse.

By 1992 she began having intermittent rashes, hives and wheezing. In 1992 a particular episode required her to leave a med/surg floor and go to the emergency room for a shot of epinephrine. She was not just wheezing but had actual difficulty breathing.

She left the hospital in 1993 and went to work in a doctor's office. In 1994, during her employment in the doctor's office, she was diagnosed with a latex allergy. She left the doctor's office to find another situation involving less latex exposure and went to work part-time for a nursing agency. Then she went to work on-call in a pediatrician's office.

Finally she stopped work altogether, due to her hypersensitivity to latex, and she filed for worker's compensation.

Latex Allergy Matured With Anaphylactic Reaction in 1992

In an opinion not designated for publication, the Court of Appeals of Nebraska ruled in favor of the nurse's two most recent employers. They were not responsible for payment of worker's compensation.

According to the court, for worker's compensation purposes the nurse's latex allergy, as an occupational disease, occurred when she had the anaphylactic reaction requiring epinephrine in 1992. The cumulated effect of latex exposure reached its culmination at that time.

The latex allergy as an occupational disease did not progress further beyond that point, even though it took nine more years for the nurse finally to give up her efforts to accommodate her disability and keep working as a nurse. Her disability was not her most recent or next most recent employer's responsibility. **Ludwick v. TriWest Healthcare Alliance, 2003 WL 282588 (Neb. App., February 11, 2003).**

When an occupational disease results from the continual absorption of small quantities of some deleterious substance from the environment of the employment over a considerable period of time, the afflicted employee can be held to be injured only when the accumulated effects of the substance manifest themselves.

In occupational disease cases the date of injury is the date on which the effects of the occupational disease manifest themselves in disability, which occurs when the employee's diagnosed condition progresses to the point where his or her employment or type of employment ceases.

An employee is entitled to partial compensation when an occupational disease forces him or her to cease one type of employment, even though the employee is able to perform other types of employment, if the employee has actually ceased employment or one type of employment.

COURT OF APPEALS OF NEBRASKA
NOT DESIGNATED FOR PUBLICATION
February 11, 2003

On The Job Injury: Nurse Can Sue In Some Cases.

An employee of the emergency-room physician who saw his own patients at the hospital while he was on emergency-room duty spilled ice on the floor and the nurse manager fell.

Worker's Comp As Exclusive Legal Remedy

In most cases a worker injured on the job does not have the right to sue the worker's employer or a co-worker who is also an employee of the employee's employer.

The exclusive legal remedy in most cases in worker's comp. Unless the injured worker has intentionally inflicted his or her own injuries, the injured worker gets compensation without having to prove the employer was negligent and even if the injured worker was negligent.

A lawsuit against another party who is not a co-employee requires proof of negligence, but, unlike a worker's comp claim, compensation for pain and suffering can be awarded. **Robinson v. Fontenot, __ So. 2d __, 2003 WL 327463 (La., February 7, 2003).**

The jury ruled the nurse's second injury at home was not an aggravation of her first injury on the job and assessed damages only to the point when she returned to work.

If the second injury was an aggravation of the first the damages would have been a lot more.

However, the judge was in error to substitute his judgment for the jury's.

SUPREME COURT OF LOUISIANA
February 7, 2003

More legal Information for nurses is available at Legal Eagle Eye Newsletter for the Nursing Profession Home Page.