



MEMORANDUM

July 10, 2020

To: Management Labor Advisory Committee

From: Julia Hier, Claims Policy Analyst

Subject: Injury vs. Occupational Disease

The purpose of this memorandum is to provide MLAC with additional background related to the definition of an “injury” versus the definition of an “occupational disease” under Oregon’s workers’ compensation law.

Case law – Injury vs. Occupational Disease

Smirnoff v. SAIF, 188 Or App 438 (2003):

“An occupational disease stems from conditions that develop gradually over time. In contrast, an injury is sudden, arises from an identifiable event, or has an onset traceable to a discrete period of time.

...

In determining whether that condition should be characterized as an injury or an occupational disease, the inquiry is whether the *condition* developed gradually or as the result of a discrete event.”

Examples of an injury:

- MRSA infection analyzed as an “injury” rather than “occupational disease” because injurious exposure and onset of the infection occurred suddenly, during a discrete period of time. *Tony L. Fairbanks*, 61 Van Natta 74 (2009).
- Back injury that developed over a few days during a drive occurred during a discrete period of time. *Valtinson*, 56 Or App 184, 188 (1982).
- Injury analysis applied where the worker could not recall exactly when pain became acute, but became acutely symptomatic over a period of a few days. *James K. Crosley*, 57 Van Natta 1226, 1226-27 (2005).

Examples of an occupational disease:

- The worker engaged in work activity for several weeks before any symptoms prompted her to seek treatment. The Board concluded this was more consistent with the gradual onset of her conditions. *Anne Zoucha*, 68 Van Natta 140 (2016)
- Although the worker's symptoms may have arisen during a discrete period of time, the medical evidence showed his degenerative disc/joint disease condition developed gradually. *Paul D. Johnson*, 66 Van Natta 673 (2014).

Injury - ORS 656.005(7)(a) and (b)

(7)(a) A "compensable injury" is an accidental injury, or accidental injury to prosthetic appliances, arising out of and in the course of employment requiring medical services or resulting in disability or death. An injury is accidental if the result is an accident, whether or not due to accidental means, if it is established by medical evidence supported by objective findings, subject to the following limitations:

(A) An injury or disease is not compensable as a consequence of a compensable injury unless the compensable injury is the major contributing cause of the consequential condition.

(B) If an otherwise compensable injury combines at any time with a preexisting condition to cause or prolong disability or a need for treatment, the combined condition is compensable only if, so long as and to the extent that the otherwise compensable injury is the major contributing cause of the disability of the combined condition or the major contributing cause of the need for treatment of the combined condition.

(b) "Compensable injury" does not include:

(A) Injury to any active participant in assaults or combats that are not connected to the job assignment and that amount to a deviation from customary duties;

(B) Injury incurred while engaging in or performing, or as the result of engaging in or performing, any recreational or social activities primarily for the worker's personal pleasure; or

(C) Injury the major contributing cause of which is demonstrated to be by a preponderance of the evidence the injured worker's consumption of alcoholic beverages or cannabis or the unlawful consumption of any controlled substance, unless the employer permitted, encouraged or had actual knowledge of such consumption.

...

Occupational Disease – ORS 656.802(1)(a)

As used in this chapter, "occupational disease" means any disease or infection arising out of and in the course of employment caused by substances or activities to which an employee is not ordinarily subjected or exposed other than during a period of regular actual employment therein, and which requires medical services or results in disability or death, including:

(A) Any disease or infection caused by ingestion of, absorption of, inhalation of or contact with dust, fumes, vapors, gases, radiation or other substances.

(B) Any mental disorder, whether sudden or gradual in onset, which requires medical services or results in physical or mental disability or death.

(C) Any series of traumatic events or occurrences which requires medical services or results in physical disability or death.