

Major Cause, What Does It Mean?

"When I use a word," Humpty Dumpty said, in rather a scornful tone,
"it means just what I choose it to mean---neither more nor less."
Lewis Carroll, Through the Looking Glass

The more things change, the more they stay the same.
Jean-Baptiste Alphonse Karr

Five years after enactment of the 2005 reforms, we still don't know what the legislature meant by the term "major cause." The Oklahoma Supreme Court has not addressed the issue, and the only published case from the Court of Civil Appeals does not address the term's underlying meaning.¹ One approach to analyzing major cause is comparing the new term to the existing concepts that set causation boundaries for the compensability of an injury.

Oklahoma law has always limited workplace injuries to those arising out of and in the course of employment. However, the 2005 amendments to the Oklahoma Workers' Compensation Act ("the Act") changed the definition of "injury" to "compensable injury" and limited recovery of benefits to those employments that are the "major cause" of the injury or illness.² Has the amendment created a new element of proof that substantially changes the evaluation of compensability, or is it the same element in new clothing? It is an element of medical causation, but what does it mean?

According to the Act, "major cause" is the "predominate cause" of the resulting injury or illness. This description is not helpful. A quick check of the thesaurus reveals that major means predominant and predominant is a synonym for major.³ The definition could just as easily have stated "the major cause is the major cause." Trying to craft a workable definition by this traditional means is fruitless, so we must turn to settled workers' compensation law to look for analogous theories.

The Oklahoma Legislature's decision to use the term "major cause" suggests it intended to make a comparison between a worker's work-related trauma or exposure and the worker's other physical conditions or activities that may have contributed to his or her current injury. Many times, this issue arises when the worker has a preexisting condition that is dormant or active, such as degenerative joint disease. Does the injury and the resulting need for medical treatment arise from the preexisting disease or from the workplace trauma?

The Act provides that workers with previous disability or impairment are not precluded from receiving benefits. Aggravation injuries have long been held compensable. With only minor changes the statute allowing compensability has remained in effect since the Act's inception in 1915.⁴

Consequential injuries arise after the initial injury-dealing trauma. They are compensable only if there is a causal nexus between an event that occurs after a work-related injury and a subsequent injury or death without breaking the chain of causation.⁵

Since aggravation injuries and consequential injuries are both linked to the medical causation issue, review of the evaluation method for these two types of injury may lead us to workable criteria for major cause.

Aggravation Injuries

In Oklahoma a worker's disability is compensable when a preexisting, dormant physical condition or predisposition, is aggravated or accelerated by injury.⁶ Benefits are not limited to perfectly healthy workers even when evidence indicates the worker may be disabled by disease in the future even though accidental injury had not occurred.⁷

*Stiles v. Oklahoma Tax Commission*⁸ involved a claim that stress and tension caused the claimant's rheumatoid arthritis to flare up. The Supreme Court reversed a three-judge panel's order denying compensation for aggravation of the preexisting arthritis and held: "It is a general rule in Workers' Compensation Law that an employer takes an employee as he finds him. That is, if an employee has a predisposition to be sensitive to stressful situations, the employer cannot avoid liability when the stresses imposed by the employment situation result in disability on the part of the employee."

A claim for heart disease was found compensable in *Refrigerated Transport, Inc. v. Creek*.⁹ The claimant had a prior history of heart disease, and employer argued that under the Supreme Court's prior ruling in the *Haynes v. Pryor High School*¹⁰ claimant had to prove a change in heart pathology. The Supreme Court held that the claim was compensable as an aggravation injury because the change in heart pathology mandated by *Haynes* "antedate[d] the accident which consists of a traumatic aggravation."¹¹

In his concurring opinion, Justice Opala pointed out the distinction between cases with a new injury (change of pathology) and aggravation injuries. When there is no underlying pathology, there must be proof of some internal failure or harm precipitated by work-trauma or exposure. Where the accident consists "of preexisting and known pathology being accelerated or advanced," it is sufficient that the medical proof "attributes an 'extension' or enlargement of the old, known and described condition to the proved efforts of on-the-job labor."

In *Dempsey v. Ballard Nursing Center*¹² claimant asserted that she was injured while lifting patients. At the time of her injury claimant had a preexisting spondylolisthesis in her back. Denial of her claim by the trial court was based on employer's medical evidence stating that her surgery was due to preexisting spondylolisthesis and not the incidents occurring on the injury date. Judge John F. Reif (now Justice Reif) summarized the extant law of aggravation injuries and then found the following:

"The problem with this opinion [from employer's medical report] is that it essentially says claimant needs surgery for the effects of the spondylolisthesis, and the injury of July 12, 2002, did not cause the spondylolisthesis. The question which the doctor did not address is whether the injury of July 12, 2002, aggravated the spondylolisthesis so that it requires surgery now, as opposed to surgery being the general medical treatment that would have eventually been needed to correct this condition." (Emphasis in original.)

Consequential Injuries

Consequential injuries occur after the initial compensable accident. Therefore the two-pronged test of arising out of and in the course of has been satisfied, and a different standard is applied to determine compensability of the post-accident injury.

A series of three Supreme Court cases delineate the rule for assessing the compensability of these injuries.

*Matter of the Death of Stroer*¹³ involved a worker who became despondent after an unsuccessful surgery to his shoulder. His subsequent suicide was found compensable and affirmed on appeal. The Supreme Court held "[t]he act of suicide is not an intervening cause of death and the chain of causation is not broken in cases where the incontrovertible evidence reflects that, **but for** the injury, there would have been no suicide."

In *Bostick Tank Truck Service v. Nix*¹⁴ the worker suffered a compensable heart attack. Eleven years later while undergoing implantation of a temporary pacemaker, his heart began to fibrillate and he died. The widow's death benefits award was upheld, because "the medical proof shows that, **but for** the prior on-the-job heart attack, fibrillation would not have occurred." Further, the Court found the employer is liable for "all legitimate consequences of a compensable injury."

*Matter of the Death of Gray*¹⁵ involved a worker who herniated a disc in his lumbar spine. Presurgical testing of his twenty-year old pacemaker resulted in a recommendation to modify it before the back surgery. Gray died while undergoing the pacemaker surgery. After the trial court denied the widow's death benefits claim, the Supreme Court reversed and held: "the employee had never suffered any significant problems with his pacemaker; the need to check the pacemaker and remove and replace it appeared only after the disabling back injury and because of the back injury; and the replacement of the pacemaker was a necessary precursor to the operation for the back injury and would not have occurred **but for** the injury."

Conclusion

Major cause requires claimants to prove a medical connection between the trauma and the claimed injury. While the legislature may have intend it to be something new, it is a codification of old, well-established concepts for evaluating medical causation. A workable test for determining whether employment is the major cause of the injury is the one used in pre-2005 reform cases to evaluate aggravation of a preexisting condition. The major cause question is another way of asking "has there been an aggravation of a preexisting condition that necessitates medical treatment now?" Taking this a step further by combining the tests for aggravation injuries and consequential injuries, we could ask "but for the work-trauma, does the claimant need medical treatment now?"

Bio Info

Judge Tom Leonard graduated from OSU and the OU Law School. Since 2004 he has served as one of ten judges at the Oklahoma Workers' Compensation Court. He is author of the website, Oklahoma Workers' Compensation, www.workerscompensationok.com. LexisNexis selected his blog, Judge Tom Talks at www.judgetom.blogspot.com, as one of the Top 25 in 2009 for workers' compensation.

Footnotes

¹ In the case of [Irisndt, Inc. v. Brock](#), 2008 OK CIV APP 5, 176 P.3d 370, Brock had a preexisting injury to his right knee resulting in two surgeries and degenerative arthritis with bone-to-bone contact. When Brock then twisted his bad knee at work, the parties agreed to a final, unappealed order of compensability. Six months later the treating physician recommended a total knee replacement. Employer argued that the Brock's employment was not the major cause of his need for medical treatment (TKR). The trial judge authorized the surgery, and the employer appealed. The COCA affirmed holding that major cause is an element of compensability, but not "of the need for a particular course of treatment for a compensable injury."

² [85 O.S.Supp.2003 §3](#), Definitions, provided:

12. a. "Injury" or "personal injury" means only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally result therefrom and occupational disease arising out of and in the course of employment as herein defined. Only injuries having as their source a risk not purely personal but one that is causally connected with the conditions of employment shall be deemed to arise out of the employment.

[85 O.S.Supp.2005 §3](#) provides, in pertinent part:

13. a. "Compensable injury" means any injury or occupational illness, causing internal or external harm to the body, which arises out of and in the course of employment if such employment was the major cause of the specific injury or illness.

* * *

16. "Major cause" means the predominate cause of the resulting injury or illness.

³ *Thesaurus.com*. Inexplicably the drafters of the legislation used "predominate," the outdated version of "predominant." The modern version will be used throughout the rest of this article.

⁴ 85 O.S. §22(7); "Where an accidental personal injury, arising out of and in the course of employment and within the terms of the Workmen's Compensation Act, aggravates and lights up a pre-existing physical condition, the injured employee is, nevertheless, entitled to compensation therefor." [Patrick & Tillman Drilling Co. v. Gentry](#), 1932 OK 241, 9 P.2d 921.

⁵ [Matter of the Death of Stroer](#), 1983 OK 94, 672 P.2d 1158; [Matter of the Death of Gray](#), 2004 OK 63, 100 P.3d 691; [Bostick Tank Truck Service v. Nix](#), 1988 OK 128, 764 P.2d 1344.

⁶ [Refrigerated Transport Inc. v. Creek](#), 1979 OK 11, 590 P.2d 197.

⁷ [Halliburton Services v. Alexander](#), 1976 OK 16, 547 P.2d 958.

⁸ 1987 OK 85, 752 P.2d 800.

⁹ 1979 OK 11, 590 P.2d 197.

¹⁰ 1977 OK 1, 566 P.2d 852.

¹¹ Id @ paragraph 18.

¹² 2004 OK CIV APP 18, 84 P.3d 1071.

¹³ 1983 OK 94, 672 P.2d 1158.

¹⁴ 1988 OK 128, 764 P.2d 1344.

¹⁵ 2004 OK 63, 100 P.3d 691.