A look at today's argument in South Coast Framing v. WCAB

Today, the California Supreme Court is hearing arguments in *South Coast Framing, Inc. v. Workers' Compensation Appeals Board.*

In this case, the court is asked to consider both the standard and quantum of proof required to satisfy the *proximate causation* element of claims by the survivors of workers whose deaths are alleged to be the consequence of an otherwise non-fatal industrial injury.

This decision is set against a system that provides benefits for workplace injuries and any subsequent injuries or death that result therefrom. While this system defines the requisite nexus between a workplace injury and a compensable consequence in terms of *proximate causation*, it is well-established that the analysis in this context is more relaxed than the one applied in civil and criminal courts. What has not been conclusively resolved is the actual standard by which *proximate causation* should be evaluated.

Whatever that standard may be, it is the survivors of the injured workers who bear the *burden of proving* that a workplace injury was factually and legally the cause of a subsequent death. To do so, they must produce evidence that is "*substantial*," meaning that, "if true, [it] has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. . . . It must be reasonable in nature, credible, and of solid value." *Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd.* Evidence is *not substantial* if, when reviewed in the context of the entire record, it is based on a selection of isolated facts, speculation, conjecture, or surmise. If supported by *substantial evidence,* a workers' compensation administrative law judge's ("WCALJ") findings of fact are conclusive and cannot be overturned on appeal.

It is against this background that the court will consider whether the court of appeal acted correctly by finding the WCALJ's factual determinations to be unsupported by

substantial evidence and, therefore, reversing an award of death benefits to the survivors of Brandon Clark.

Underlying Mrs. Clark's claim for survivor benefits was a workplace accident that caused injuries to her husband's neck, back, and head. As a result of these injuries, Mr. Clark was prescribed Gabapentin, Amitriptyline, and Hydrocodone.

Approximately four months after this incident, Mr. Clark's personal physician prescribed Xanax for "ongoing anxiety" and Ambien for "sleeping difficulties." With regard to the latter, the physician's notes indicate that his patient was not in pain when he suffered from insomnia. Additionally, Mrs. Clark's deposition testimony indicated that her husband suffered insomnia before his injury and periodically used Tylenol PM.

Approximately six months after he began using Xanax and Ambien, Mr. Clark died in his sleep as a result of respiratory arrest. Consequently, Mrs. Clark filed a claim for survivorship benefits with the Workers' Compensation Appeals Board ("WCAB").

The relationship between Mr. Clark's workplace injury and his death was evaluated by Thomas Bruff, M.D., a medical-legal toxicologist. In his report, Dr. Bruff opined that Mr. Clark's death was the result of the interaction between Xanax and Ambien, which were found in elevated concentrations in Mr. Clark's blood. Dr. Bruff further opined that the levels of Gabapentin and Amitriptyline were insufficient to cause a coincident drug interaction and, therefore, did not play a role in his death.

Mrs. Clark's attorney challenged these conclusions in deposition. Under questioning, Dr. Bruff admitted that that Amitriptyline is neuropsychiatrically active and therefore he would be unable to "slam the door and say it had no effect." As such, he testified, "it's possible" that Amitriptyline played a role in Mr. Clark's death.

When asked to quantify the impact Amitriptyline and Hydrocodone (present in Mr. Clark's urine, but not his blood) may have played, Dr. Bruff refused, as doing so would be akin to "pulling numbers out of the sky." When pressed to offer some opinion, he testified that Amitriptyline could have been "a part" and hydrocodone "a couple of crumbs" of the "causation pie." In defining these terms, Dr. Bruff rejected twenty percent causation and placed the figure in the neighborhood of 0.5 and 1.5

percent.

When asked whether Mr. Clark's use of Ambien was related to his industrial injury, Dr. Bruff stated that he saw no basis for drawing such a conclusion. Nevertheless, he noted that insomnia could result from a number of factors, including stress at home and chronic pain.

Based on this evidence, the parties submitted the matter for decision by a WCALJ.

In her written opinion, the WCALJ found that Mr. Clark suffered from chronic pain as a result of his workplace injury; that his chronic pain caused insomnia; that he was prescribed Ambien and Amitriptyline to help him sleep; and that his death was the result of the combined effect of Ambien, Xanax, Amitriptyline, and Gabapentin. As a result, Mrs. Clark and her three minor children were awarded $320,000 in death benefits.

Defendants timely requested WCAB review of this award and, as is required by the Labor Code, the WCALJ provided the WCAB with an advisory recommendation as to how it should proceed. Per this report, the WCALJ was satisfied that Mrs. Clark had produced *substantial evidence* that her husband's workplace injury was a "*contributing cause*" of his death, and, therefore, that the *proximate causation* requirement was satisfied.

Without commenting on the parties' arguments, the WCAB adopted the WCALJ's recommendation and denied review of the WCALJ's award.

Consequently, defendants requested a writ of review from the Court of Appeal. Having granted this request and accepted briefings from the parties, the court issued an opinion applying a "*material factor*" standard for evaluating *proximate causation* and finding that the evidence relied upon by the WCALJ was *not substantial*. As such, it overturned the WCALJ's award and directed that an order issue in favor of defendants.

The California Supreme Court granted Mrs. Clark's petition for review and has now accepted briefings from Mrs. Clark (petitioner), Mr. Clark's employer and its workers' compensation insurer (respondents), the California Applicants' Attorneys

Association ("CAAA"), and the California Workers' Compensation Institute ("CWCI").

While the arguments leveled by petitioner and CAAA vary somewhat in their detail, both agree that *proximate causation* should be evaluated using a "*contributing factor*" analysis and not the "*material factor*" test that the appellate decision seems to have applied. Both also argue that the WCALJ's findings of facts were supported by reasonable inferences from the record and, therefore, should not have been overturned on *substantiality* grounds.

Respondents' primary argument is that, regardless of the standard applicable to the *proximate causation* analysis, the WCALJ's opinion was not supported by *substantial evidence* and, therefore, was properly overturned. While respondents do call into question the validity of petitioner's *contributing factor* test, their arguments are ultimately agnostic regarding the standard of *proximate causation* applied.

In its amicus brief, the CWCI agrees with respondents that the court of appeal acted properly in overturning the WCALJ's findings of fact on *substantial evidence* grounds. Where CWCI departs from respondents is its insistence that, if the court is to rule on the merits of the claim at all, it should consider and clarify the standard to be applied to *proximate causation*. According to the CWCI, the proper articulation of the test recommended by petitioner and CAAA and summed up by the *material factor* language of the court of appeal's decision is whether an industrial injury is a "*contributing cause, without which the injury would not have occurred*." In essence, the CWCI calls for the court to acknowledge a "but for" causation requirement.

Based upon this record, the outcome of this morning's hearing will depend on how deeply the court wishes to wade into the workings of California's workers' compensation system, and perhaps, more importantly, whether it wishes to introduce new complications into a system already struggling to overcome the growing pains associated with the California legislature's recent passage of a comprehensive reform bill, SB863.

A narrow ruling, as appears to be the goal of respondents, would be fact-specific and would resolve only the question of whether the evidence relied upon by the WCALJ was *substantial*.

A broader ruling, on the other hand, would address the standard applicable to *proximate causation* in lieu of—or in addition to—the fact-specific question concerning the quality of proof upon which the WCALJ relied. While the outcome of such a ruling will turn on a variety of unknowables, its implications could be far-reaching, as the statutory provision at issue (Labor Code section 3600) uses the phrase "*proximately caused*" twice.

The first use of the term is found in section 3600(a), which requires that survivorship claims arise out of deaths that were *proximately caused* by an otherwise compensable industrial injury.

The second use of the phrase, however, has far more wide-reaching importance to the operation of the workers' compensation system. As used in section 3600(a)(2), the compensability of *any injury*—fatal or otherwise—must be *proximately caused* by an employment relationship.

While the court's grant of review was specifically limited to the definition of *proximate causation* under section 3600(a), a ruling on the applicable standard will inevitably be referenced by practitioners in their arguments for or against the compensability of non-fatal industrial injuries.

Given the potentially far-reaching implications of establishing a concrete standard for evaluating *proximate causation*, the fairly limited number of cases where the issue arises, and the limited ruling advocated by the respondents, the most likely outcome of this morning's arguments will be a limited determination as to the sufficiency and substantiality of the evidence relied upon by the WCALJ.

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