



Workers' Compensation Board

ANDREW M. CUOMO
Governor

CLARISSA M. RODRIGUEZ
Chair

January 30, 2021

Regina McNally, VP
Division of Socio-Medical Economics
Medical Society of the State of New York
865 Merrick Avenue
Westbury, NY 11590

Re: Role of Medical Reports in a COVID-19 Workers' Compensation Claim

Dear Regina:

When a worker contracts COVID-19, it may be unclear to a medical provider (even one authorized to treat workers' compensation claimants) whether it is work related. As discussed in greater detail below, it is possible for cases to be 'established' as compensable without having a medical report from an authorized provider indicating that the COVID-19 was work related.

The Workers' Compensation Board published materials to provide basic information about COVID claims. The information is aggregated at: <http://www.wcb.ny.gov/covid-19/>

Among the documents are: a Q&A document, explaining how the Board evaluates claims; a bulletin by the Board's Medical Director; letters from the Chair; and a video about COVID claims. We strongly encourage you to review the information as needed.

Regarding the role of the medical provider, let's discuss the need for a medical report in the course of a COVID-19 claim in three phases: compensability, ongoing medical treatment, and ongoing lost time awards.

First, on the question of compensability, what medical evidence is needed for a claim to be compensable if the claim is disputed by the insurance carrier? For a claim to move forward, the Board must have some sort of medical report. The minimum for COVID-19 is a positive PCR test, and/or a diagnosis of COVID-19 by a qualified diagnostician. If there is a claim with a positive test result or diagnosis, and the carrier disputes the claim, it is scheduled before a Worker' Compensation Law Judge (WCLJ) for a pre-hearing conference (PHC). There are many claims – particularly (but not exclusively) those involving health care workers, transportation workers, and first responders – where the evidence consists entirely of a positive PCR test and the testimony of the claimant about the work environment and work performed. Many of those cases are compensable, because there is evidence about the type of work, the dates and times of work, the kind of exposure to the public or co-workers in a COVID-19 prevalent environment, and the clear test evidence (or diagnosis) of positivity.

Of course, if the claim is disputed, the Board conducts an adjudicatory process, and as such both the claimant and the employer/carrier have the chance to present and confront the evidence, take witness testimony, and provide supporting or conflicting medical reports. But when all we have

is the positive test and the claimant's testimony, it is still quite possible for cases to be 'established' as compensable without having a medical report from an authorized provider indicating that the COVID-19 was work related. Having said that, while not absolutely required, it is helpful for a claimant to present a report from an authorized provider who opines that the COVID-19 is work related.

Second, in order to obtain ongoing medical care, obviously medical reports need to be submitted that attribute the care to the claimant's COVID-19. This is true both for the direct care (treatment of the virus and its symptoms), as well as any consequential conditions (be they to bodily systems or for mental health care).

Third, if the claimant has experienced or is experiencing lost time from work, in order to generate wage-replacement indemnity payments, there must be ongoing medical reports which not only attribute the lost time to COVID-19, but also indicate a degree of disability.

In sum, it is possible for a claimant to demonstrate that COVID-19 is compensable even when there is difficulty obtaining a medical report of causal relationship. This is subject to all defenses by a carrier, of course. It is still recommended, albeit not always required, for the claimant to produce such a report. Even if a claim is established without a report of causal relationship, any ongoing treatment, and any ongoing lost time, must be substantiated with medical reports from the claimant's treating provider.

Please feel free to share this information with MSSNY members. If you need any further information, please don't hesitate to ask.

Very truly yours,

David F. Wertheim

David F. Wertheim
General Counsel, WCB