

## Workers' Compensation Report

*Bradford J. Peterson*

*Heyl, Royster, Voelker & Allen, P.C., Urbana*

### **Employees Innocent, But Injurious Self-Treatment Fails to Break Causal Connection**

---

If an employee engages in self-treatment resulting in infection and disability, is the causal connection broken with regard to the underlying workers' compensation injury? Not according to a recent decision of the Illinois Appellate Court Fourth District, Workers' Compensation Commission Division. *Dunteman v. Ill. Workers' Comp. Comm'n*, 2016 IL App (4th) 150543WC.

In its April 29, 2016 decision, the court reversed the Workers' Compensation Commission decision and found that the petitioner's self-treatment with a resulting infection did not break causal connection for ongoing medical treatment, total temporary disability (TTD), and permanent partial disability (PPD) arising from the underlying workers' compensation accident.

In *Dunteman*, the petitioner, Steven Dunteman, sought medical expense, TTD, and PPD associated with the amputation of his left third toe following an infection that developed after he inserted a sterilized needle into a blister on his left foot. It was stipulated at arbitration that the petitioner suffered a blister on his left foot after he was required to operate a truck with manual transmission while his automatic truck was in for repairs. *Dunteman*, 2016 IL App (4th) 150543WC, ¶ 10. On or about June 21, 2011, the petitioner, a diabetic, noticed that the bottom half of his left foot was sore. *Id.* He continued working 12 hour shifts for the following nine or ten days.

On June 25, 2011, the petitioner noticed a water blister under the callus on the bottom of his left foot between his third and fourth toes. *Id.* ¶ 11. He went to his kitchen and sterilized a needle by boiling it in hot water and inserted the needle into the blister in order to drain it. *Id.* He then cleansed the area with peroxide and a cotton swab. *Id.* Thereafter on July 4, 2011, he noticed that his left foot became red and swollen in the area of the blister. *Id.* ¶ 14. He sought treatment at St. Mary's Hospital and reported a two day history of fever with chills and a four day history of increasing left foot pain, swelling and redness. *Id.* ¶ 14. He also reported that several days previous the top of his foot had begun turning red with swelling and the presence of warmth. It was noted that the petitioner had a history of Type II Diabetes and a 2009 hospitalization for cellulitis of the right lower extremity. *Id.*

The petitioner was referred to Dr. Jason Anderson, a podiatrist, the same day. Dr. Anderson found that in the area of the third metatarsal head, the petitioner presented with a full thickness ulceration that was malodorous, which was two centimeters in diameter with a necrotic fibrotic base. *Id.* ¶ 15. He was diagnosed with severe cellulitis of the left lower extremity and admitted for administration of broad spectrum antibiotics. *Id.* The petitioner then underwent the first of three surgeries on July 5, 2011, with drainage of the abscess on his left foot. *Id.* ¶ 16. As a result, on July 6, 2011, Dr. Henderson performed a secondary irrigation and debridement with delayed closure. His diagnosis at that time was of "deep abscess left foot." *Id.* ¶ 17. He improved and was discharged on July 8, 2011. Thereafter in follow-up, Dr. Anderson saw him August 2, 2011, and found that the left third toe was completely "gangrenous and necrotic." *Id.* ¶ 18. Three days

later on August 5, 2011, the petitioner underwent a third surgery, in which his left third toe was amputated. *Id.* The petitioner was ultimately released to return to work full duty September 5, 2011.

Dr. Anderson noted that the petitioner's employment put him at risk for ulcerations to his feet secondary to his use of the clutch, as well as getting in and out of his truck. *Id.* ¶ 20. He concluded that the most likely cause of the original ulceration was his employment activities. *Id.*

Dr. Jeffrey Coe performed an IME on the petitioner's behalf on February 7, 2012 and concluded that there was a causal relationship between the petitioner's employment with repetitive clutch depression, exiting the truck, and his current condition of ill-being. *Id.* ¶ 21. Although he acknowledged that the claimant's diabetes was a "mild cause" of the infection, he opined that the petitioner would not have developed the infection had he not suffered from the work related blister. *Id.* Dr. Coe acknowledged that the infection arose from the petitioner's penetration of the blister by inserting a needle into the blister. *Id.*

The petitioner was evaluated by Dr. Ernest Chiodo on May 25, 2012, who found no evidence of causal relationship between the petitioner's work activities and resulting infection and amputation. He noted that the infection occurred on the top and not the bottom of the petitioner's foot, but conceded that the claimant's repetitive use of the clutch did cause the formation of the blister on the bottom of the foot. *Id.* ¶ 23. He believed that neither the blister nor the lancing of the blister contributed to the claimant's foot infection. *Id.*

The arbitrator found that the petitioner's current condition of ill-being was causally related to the alleged accident. *Id.* ¶ 29. Although the arbitrator found that the petitioner self treated, it was noted that he self treated in a sterile manner, but developed infection resulting in surgeries and amputation of his third middle toe. *Id.* The respondent had also argued that the petitioner's puncturing of his blister was an injurious practice under section 19(d) of the Act, 820 ILCS 305/19(d). The arbitrator concluded that the petitioner's actions were not an injurious practice under section 19(d). *Id.* ¶ 30.

On review, the Illinois Workers' Compensation Commission reversed and found that the infection did not come from the evidence of the work related blister, but rather from the petitioner's lancing of the blister, which constituted an intervening accident breaking causal connection. *Id.* ¶ 33. The Commission concluded that the petitioner's actions led to the infection and the resulting amputation of his left third toe. The Commission stated "the Commission finds that the infection, and not the blister, caused [his] left foot condition and, ultimately, the amputation of his left third toe." *Id.* Regarding application of paragraph 19(d), the Commission found section 19(d) inapplicable, stating that section 19(d) "deals with a claimant negatively affecting his/her recovery. It does not deal with the claimant's actions as the cause of his/her injuries or a claimant's behavior severing the causal connection between a work accident and the claimant's condition of ill-being." *Id.* ¶ 34. An appeal to the circuit court led to an affirmance of the Commission's decision. *Id.* ¶ 36.

The appellate court ultimately found that the Commission's decision in favor of the respondent was against the manifest weight of the evidence. The court noted that every natural consequence flowing from the injury that arises out of one's employment is compensable in the absence of an occurrence of an independent intervening accident sufficient to break causal connection. *Id.* ¶ 42. In order for an independent intervening occurrence to relieve the employer from liability, the occurrence must "completely break" the causal chain. *Id.* ¶ 43. The court also noted that the work related injury need only be "a causative factor in the resulting condition." *Id.* ¶ 43 (citing *Sisbro, Inc. v. Indus. Comm'n.* 207 Ill. 2d 193, 205 (2003)). The court found that under an independent intervening cause analysis compensability for the ultimate injury or disability remains the responsibility of the employer where the employee's condition was caused by an

event that would not have occurred “but for” the original injury. *Dunteman*, 2016 IL App (4th) 150543WC, ¶ 42 (citing *Nat’l Freight Indus. v. Ill. Workers’ Comp. Comm’n*, 2013 IL App (5th) 120043WC, ¶ 26.

Based on the foregoing, the court concluded that the record demonstrated that there was clearly a “but for” relationship between the claimant’s work related blister and subsequent infection. *Dunteman*, 2016 IL App (4th) 150543WC,

¶ 45. The court then concluded that ““but for” the existence of the work-related blister, there would have been no blister to lance. His employment, therefore, remains a cause of his current condition of ill-being.” *Id.* The Illinois causation standard continues to be particularly troublesome in the defense of workers’ compensation claims. Application of the “a cause” standard and use of the “but for” analysis with regard to intervening occurrences significantly restricts the respondent’s ability to defend claims on causation. Under the appellate court’s analysis in *Dunteman*, it would appear that for an intervening occurrence to break causation the occurrence must not simply aggravate the work related condition, but rather cause a new injury that can rebut the “but for” analysis. It is apparent that only in very limited circumstances will evidence be sufficient to break causal connection where there is an intervening occurrence and injury.

Notwithstanding, it is unclear that a different result would have arisen had the civil standard for a superseding-intervening cause been applied. Under the traditional civil standard, an intervening cause will not break causal connection if the intervention itself was reasonably foreseeable. *Kirk v. Michael Reese Hosp. & Med. Ctr.*, 136 Ill. App. 3d 945 (1st Dist. 1985), *rev’d on other grounds*, 117 Ill. 2d 507 (1987). Traditionally, whether an intervening act was foreseeable is a jury question. *Medina v. Air-Mite Devices, Inc.*, 161 Ill. App. 3d 502, 507 (1st Dist. 1987). Is it in fact foreseeable to a reasonable person that someone who develops a blister might sterilize a needle and lance the blister themselves? I suspect the answer would be yes.

### About the Author

**Bradford J. Peterson** is a partner in the Urbana office of *Heyl, Royster, Voelker & Allen, P.C.* Mr. Peterson concentrates his practice in the defense of workers’ compensation, construction litigation, auto liability, premises liability, and insurance coverage issues. In recent years, Mr. Peterson has become a leader in the field on issues of Medicare Set Aside trusts and workers’ compensation claims. He has written and spoken frequently on the issue. He was one of the first attorneys in the State of Illinois to publish an article regarding the application of the Medicare Secondary Payer Act to workers’ compensation claims, “Medicare, Workers’ Compensation and Set Aside Trusts,” *Southern Illinois Law Journal* (2002).

### About the IDC

The Illinois Association Defense Trial Counsel (IDC) is the premier association of attorneys in Illinois who devote a substantial portion their practice to the representation of business, corporate, insurance, professional and other individual defendants in civil litigation. For more information on the IDC, visit us on the web at [www.iadtc.org](http://www.iadtc.org) or contact us at PO Box 588, Rochester, IL 62563-0588, 217-498-2649, 800-232-0169, [idc@iadtc.org](mailto:idc@iadtc.org).