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Three post-surgical auto accidents failed to break causal connection chain

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In *Vogel v. Illinois Workers' Compensation Commission*, 2005 WL 42748, (Ill.App. 2nd Dist. 2005), the Illinois Appellate Court, in a decision issued by Justice Callum, addressed the issue of medical causal relationship in light of three automobile accidents subsequent to surgery.

In *Vogel*, claimant sustained an injury on July 10, 1998, while delivering a whirlpool tub weighing 275-300 pounds to a customer's home. Claimant had tripped over some debris and felt pain in his neck, right arm, and hand. Claimant was examined by a neurosurgeon on July 29, 1998. It was determined that claimant had herniated discs at C4-C5 and C5-C6, with a bulging disc at C6-C7. Surgery was recommended. Claimant underwent surgery on March 12, 1999, involving a two-level anterior cervical discectomy and fusion. As of April 26, 1999, X-rays revealed that the bone graft was beginning to fuse but was not yet solid. As of June 4, 1999, the X-rays again revealed that the fusion was not completely solid.

On June 9, 1999, claimant was involved in an automobile accident, when another car hit claimant's vehicle from behind. Claimant had been traveling to his first session of physical therapy at the time of accident. When claimant saw his treating physician on June 14, 1999, he complained to his doctor that the symptoms were "almost like a throwback to" what claimant had been experiencing prior to the surgery. As of July 24, 1999, the graft was noted to be in a good position and the alignment was satisfactory. Claimant continued to remain symptomatic as to

his subjective complaints of pain. Following a myelogram and post-myelogram CT study on October 5, 1999, the treating neurosurgeon determined that claimant would develop pseudoarthrosis, or a failed fusion. A CT scan on November 5, 1999, did reveal a failed fusion at C5-C6. The treating physician stated that the automobile accident played a major role in the worsening clinical condition. The doctor pointed out that, had claimant not been involved in the auto accident, he probably would not have developed pseudoarthrosis.

On April 7, 2000, and June 18, 2000, claimant was involved in two more auto accidents. X-rays taken following the April 7, 2000, auto accident revealed an incomplete fusion at C5-C6. X-rays taken after the last automobile accident revealed an incomplete fusion at C5-C6. The records from the emergency room following the last automobile accident indicated "The pseudoarthrosis is ... a result of the first accident of 6/8/99." The medical expert hired by the employer opined that the graft at C5-C6 failed to fuse for inherent biological reasons and that the auto accident did not contribute to the claimant's pseudoarthrosis. Rather than the auto accident preventing the fusion from occurring, the medical expert opined that one cause contributing to the claimant's pseudoarthrosis was his failure to comply with the treating doctor's directive to wear a rigid brace while driving. He also opined that claimant's work was inappropriate given the work restriction and may have also been a factor contributing to the claimant's condition.

The Industrial Commission had affirmed a finding of the arbitrator that claimant was entitled to TTD benefits for the period July 28, 1998 until June 9, 1999 (45 weeks), or up until the date of the first auto accident. The Industrial Commission relied upon the opinion of the treating physician that the auto accidents aggravated claimant's medical condition and resulted in the need for additional medical treatment and lost time. It was, therefore, determined that the claimant's current condition of ill-being was not causally related to the accident of July 10, 1998.

The decision of the Industrial Commission was reversed by the circuit court. The case was remanded to the Industrial Commission. On remand, the Industrial Commission awarded claimant TTD benefits from July 28, 1998 through March 13, 2000, or 85 weeks, and also found claimant was entitled to the second surgery that had been recommended by the treating physician.

The question addressed by the appellate court was whether claimant had met his burden of proof and established by a preponderance of the evidence that he had suffered a disabling injury arising out of and in the course of his employment. The appellate court pointed out that a work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being.

The appellate court acknowledged that whether a causal connection exists is a question of fact for the Commission, and the finding may be overturned by a reviewing court

only if the Commission decision is against the manifest weight of the evidence. For the Industrial Commission's decision to be against the manifest weight of the evidence, the record must disclose that an opposite conclusion clearly was the proper result.

The appellate court explained that it was the circuit court, on review of the Industrial Commission decision, that appropriately applied the causation principle applicable to this case. The general rule set forth by the appellate court was that every natural consequence that flows from an injury that arose out of and in the course of the claimant's employment is compensable unless caused by independent intervening accident that breaks the chain of causation between a work-related injury and an ensuing disability. The question was whether or not the auto accidents in this case constituted independent intervening accidents, which would

be determined to break the causal chain. The appellate court explained that other incidents, whether work-related or not, that may have aggravated the claimant's condition are irrelevant. The appellate court set forth that it is well recognized that when a claimant's condition is weakened by a work-related accident, a subsequent accident that aggravates the condition does not break the causal chain. Applying the general rules above to the facts of the instant case, the appellate court determined that claimant's first auto accident clearly aggravated the condition resulting from the work-related injury. The court explained that even if the accident was responsible for the failed fusion, such a condition could not have developed but for the surgery, which was agreed by both parties to be necessary as a result of claimant's work injury. No evidence was presented by the employer that the auto accidents

changed the nature of the injury, other than to aggravate it. The court stated: "The inescapable conclusion is that claimant's work-related injury was a causative factor in his resulting condition." Of significance, the appellate court found that the Industrial Commission never expressly found that the auto accidents broke the causal chain, but instead found that they "further aggravated claimant's medical condition." The court explained that the fact that the other non-work related accidents may have aggravated claimant's condition is irrelevant.

The author notes that, of particular importance to the appellate court was the fact that claimant was still recovering from the surgery at the time of the first auto accident. He had not yet been released to return to full-duty work. The fusion was not yet healed at the time of the first auto accident.

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