Top Ten Questions to Ask a Potential Workers’ Compensation Claimant

Jessica Cleereman

1. Are you an employee?
   - Applicability of the workers’ compensation act depends on the existence of an employer-employee relationship.
   - Independent contractors, joint ventures, partners, limited liability company members, and sole proprietors are not covered.
   - Exclusions also exist for certain farm workers and household laborer.
   - The claimant bears the burden to show an employer-employee relationship exists.

2. Do you have an injury?
   - Workers’ compensation covers personal injuries sustained by an employee arising out of and in the course of employment.
   - Personal injury includes death, but excludes occupational diseases as defined in Iowa Code section 85A.8.
   - Preexisting conditions that are aggravated, accelerated, or “lighted up” by employment activities are personal injuries under Iowa law.
   - The aggravation may be temporary or permanent, and must be material in nature in order to be compensable.
   - When an employee has a compensable work injury, the employer is liable for “all consequences that naturally and proximately flow from the accident.”
   - Sequelae of physical injuries can include death or psychological problems that develop as the result of physical trauma.
Psychological impairment can also be a compensable personal injury, and can develop as sequelae of physical trauma, or as a purely non-traumatic mental injury.

Causation for a purely mental injury is divided into factual/medical causation and legal causation.

- Factual/medical causation is determined by whether the injury is causally connected to the employment.
- Legal causation is determined once medical causation has been established, and is based on whether the mental injury was “caused by excess stress of greater magnitude than day-to-day mental stress experienced by other workers employed in the same or similar jobs regardless of their employer.”

3. Did the injury arise out of and in the course of your employment?

- Each component is separate and distinct and both must exist.
- The arising out of employment component is satisfied by showing a causal relationship between the employment and the injury, and is generally determined by expert testimony.
- While it is accurate to say that an injury must proximately cause disability, it is not accurate to say that employment must proximately cause injury - it is a less onerous standard than the proximate cause standard in tort law.
- The requirement that the injury occur “in the course of employment” refers to the time, place and circumstances of the injury.
- An injury occurs in the course of employment when it is within the period of the employment at a place where an employee reasonably may be performing his or her duties, and while the employee is performing those duties or engaged in doing something incidental to the employer's business.
- An injury on the employer's premises during the employee's hours of employment will almost always be considered compensable.
4. Was the injury due to a willful act or intoxication?

- Iowa Code Section 85.16 covers willful injury and intoxication, which are affirmative defenses that must be proved by the employer.

- No compensation is allowed for an injury caused by an employee’s willful intent to injure the employee’s self or to willfully injure another.

- No compensation is allowed for an injury caused by the employee’s intoxication, which did not arise out of and in the course of employment.

- No compensation is allowed for an injury caused by the willful act of a third party directed against the employee for reasons personal to such employee.

- Intoxication is not defined in the Iowa Code, but the Supreme Court has indicated that a person is intoxicated when any one of the following is proven:
  - The person’s reason or mental ability has been affected;
  - The person’s judgment is impaired;
  - The person’s emotions are visibly excited; or
  - The person has, to any extent, lost control of bodily actions or motions.

5. When did the injury occur?

- Iowa Code Section 85.26 provides the statute of limitations for workers’ compensation claims.

- A claim for benefits must be filed within two years from the occurrence of the injury, or if weekly benefits have been paid, within three years from the date of the last payment of weekly benefits.

- Payment of medical benefits does not extend to the statute of limitations.

- Iowa has adopted the cumulative injury rule for situations in which the employee's injury comes on gradually.
A cumulative injury is deemed to have occurred when the claimant, as a reasonable person, would be plainly aware that (1) he or she suffers from a condition or injury; and (2) the condition or injury was caused by the claimant’s employment.

Iowa has also adopted the discovery rule in cumulative injury situations, and it is applicable to both notice and the statute of limitations.

The two-year statute of limitations does not begin to run until the employee knows that the physical condition is serious enough to have a permanent adverse impact on his or her employment.

In other words, the statute begins to run when the employee discovers, or with diligence should have discovered, the nature, seriousness, and probable compensable character of the injury.

6. Did you notify your employer of the injury?

Iowa Code section 85.23 provides that the employer must have either actual knowledge or notice of the occurrence of an injury within 90 days from the date of the occurrence of the injury.

If the employer has actual knowledge of the injury, there is no need to give formal notice.

It is sufficient if the employer's representative has knowledge of the injury - generally this includes foremen, supervisors, and company doctors or nurses.

Any form of notice is sufficient if it advises that a certain employee, by name, received an injury in the course of employment on or about a specified time, at or near a certain place.

7. What is the nature of the injury?

Injuries can be to a scheduled member or the body as a whole.

Scheduled member injuries include injuries to thumbs, fingers, toes, hands, arms, feet, legs, eyes, and disfigurement.

For scheduled member injuries that result in permanent partial disability, the legislature has provided a basic schedule of benefits with a specific number of weeks assigned for loss of certain members.
- Injuries to the body as a whole include injuries to any part of the body not covered by the schedule - generally injuries to the torso, back, neck, shoulders, hips, or mental injuries.

- Employees with a whole body injury may be entitled to benefits for industrial disability.

- Industrial disability essentially measures the employee's loss of future earning capacity in the competitive marketplace, which is measured by several factors, including but not limited to the functional impairment rating, the injured employee's age, education, qualifications, work experience, and ability to engage in employment for which the employee is fitted.

- An employee may be permanently and totally disabled when an injury wholly disables the employee from performing work that the employee's experience, training, intelligence, and physical capabilities would otherwise permit the employee to perform.

- Under the “odd-lot doctrine,” an employee is considered permanently and totally disabled if the only services the worker can perform are “so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist.”

8. Has your claim been accepted or denied by the employer/insurer?

- Under Iowa Code section 86.13(4), if a denial, a delay in payment, or a termination of benefits occurs without reasonable or probable cause or excuse known to the employer or insurance carrier at the time of the denial, delay in payment, or termination of benefits, the commissioner shall award benefits in addition to those otherwise payable, up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse.

- The workers’ compensation commissioner shall award such penalty benefits if both of the following facts are found:
  - The employee has demonstrated a denial, delay in payment, or termination of benefits.
  - The employer has failed to prove a reasonable or probable cause or excuse for the denial, delay in payment, or termination of benefits.
In order to be considered a reasonable or probable cause or excuse, an excuse shall satisfy all of the following criteria:

- The excuse was preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee.

- The results of the reasonable investigation and evaluation were the actual basis upon which the employer or insurance carrier contemporaneously relied to deny, delay payment of, or terminate benefits.

- The employer or insurance carrier contemporaneously conveyed the basis for the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits.

9. Have you received any medical treatment?

- Iowa Code section 85.27 requires that employers furnish injured employees with reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies for compensable injuries.

- The employer is entitled to select the medical care for the employee, and care must be offered promptly and without undue inconvenience to the employee.

- If the employer denies compensability of an injury, it cannot later assert that the employee's medical treatment was unauthorized.

- When an authorized physician refers a claimant to another practitioner, the referral is routinely found to be authorized.

- If an employee refuses medical treatment, the reasonableness of the refusal is examined, and an unreasonable refusal of care can result in the loss of benefits.

- If the employee is not satisfied with the care provided, the employee has the right to request alternate care.

- If a proceeding for alternate care is commenced, the employee has the burden to prove that the medical care offered by the employer is not reasonably suited to treat the injury, is unduly inconvenient, or has not been offered promptly.
10. Have you received any weekly benefit payments?

- Temporary disability benefits
  - Temporary benefits are governed by Iowa Code section 85.33.
  - Temporary total disability (TTD) is paid when an employee is completely unable to work due to the work injury.
  - Temporary partial disability (TPD) is paid when an employee can return to work, but not to the same work the employee was engaged in at the time of the injury.
  - Temporary benefits are payable until the employee has returned to work, or is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, whichever occurs first.

- Healing period
  - Iowa Code section 85.34(1) provides for healing period benefits.
  - Healing period benefits contemplate an injury that will ultimately result in permanent disability - in practice, healing period and TTD benefits are often referred to as the same thing.
  - Healing period benefits are payable beginning on the first day of disability following the injury, and until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated (the employee has reached maximum medical improvement (MMI)), or until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, whichever occurs first.

- Permanent partial disability and permanent total disability
  - Iowa Code section 85.34(2) provides for permanent partial disabilities for either scheduled member or body as a whole injuries, as discussed under section 7 above, as well as permanent total disability benefits.