

ONA WINS



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Member's Testimony Key to Providing Accurate Visual for WSIAT Panel

Hospital

An ONA member was able to demonstrate how she made an honest mistake on her incident report form regarding the location of her injury in a successful case the Workplace Safety and Insurance Appeals Tribunal (WSIAT) said it has never previously encountered.

The Injury

On May 22, 2009, the member, an ICU RN who was 15 weeks pregnant, was punched in the left chest/shoulder area by a patient while taking his blood pressure. She reported the injury immediately to her supervisor and was given an employee incident form to complete. The member, who was in pain and not thinking clearly, documented that she was punched on the right side instead of the left. After completing her shift, the member went home hoping the pain would go away with some rest. When she was no better the next day, her husband convinced her to go to the emergency department. After having an x-ray, the member was rushed by ambulance to a larger hospital two hours away where she underwent emergency surgery for eventration of the left diaphragm with gastric dilation. She was intubated and sedated at the hospital for two weeks and released a week later. Twelve hours after discharge, she was readmitted to her local hospital as she was vomiting continuously. The member remained off work trying to build up her strength and prepare for the birth of her baby. When she returned to work in December 2010, she was placed on the attendance awareness program for being absent and not notifying the employer of her inability to work. She was able to provide evidence that her husband had been in direct contact with her supervisor throughout her hospital stay, while her ONA rep questioned why a Form 7 was never completed as it was clearly a workplace injury. The member was given a Form 6 and told by her employer to fill it out with the exact wording she used on her incident report, even though the member knew she had documented being punched on the wrong side.

The Denial

WSIB denied the claim, stating that although there was clearly an identifiable work incident, it was not compatible with the diagnosis. It also stated that the member's pre-existing medical conditions were a significant contributing factor, not the punch.

The Appeal

ONA appealed the decision with no success. In his decision, the Appeals Officer said it was his view the member's "anatomic changes caused by advancing pregnancy and the physical demands of gestation related vomiting" were the more significant developments of the diaphragm condition than the "minor, contralateral trauma associated with the patient assault." ONA proceeded to the WSIAT in 2015.

The Decision

During the WSIAT hearing last November, the member acknowledged she erroneously identified the area of injury on the incident report. She fully explained her body position at the time of the punch, which was consistent with a left-sided injury. She also testified that she had two pregnancies prior to her injury and while she did suffer from pregnancy-related nausea, she had no issues with her diaphragm nor with her subsequent fourth pregnancy. A letter from her previous doctor and medical from her doctor at the time of injury verified these claims. In its decision, the panel concluded the punching incident was a significant contributing factor in the member's diaphragm condition in the days and weeks that followed. The panel allowed initial entitlement and directed the WSIB to determine the extent and duration of all benefits stemming from the initial entitlement decision. The file has been returned to operations for the determination and extent of the leave of absence and health-care benefits. This was a complicated file that even the WSIAT Panel admitted they had never previously encountered. The member's testimony was key in providing the panel with a visual of where she was standing in relationship to the patient when she was punched, confirming the location of the injury.

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