

**I AM WORN OUT, NOW WHAT?
STEVE YOUNG
DESIGNATED LEGAL COUNSEL
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After 20-25 years of railroad service, many switchmen, brakemen, conductors and engineers realize that their backs, shoulders, knees, ankles and/or hips are worn out. Did the repetitive nature of the railroad work cause the injuries? Is the railroad responsible to compensate for the injuries? The answers are not so simple!

1. What is a cumulative or repetitive trauma injury?

- a. Answer: Cumulative or repetitive injuries are simply injuries that take place over time due to performing a task over and over. The repetitive nature of the task causes inflammation of tissue.
- b. For example, typing is a repetitive task that is known to cause carpal tunnel injuries.
- c. For example long term exposure to excessive whole body vibration is known to cause early degeneration of the lumbar discs.

2. How do I know if my back, shoulder, knee or hip problem is a cumulative or repetitive trauma injury?

- a. Answer: This is really up to your doctor. Does the doctor think that the cause of the injury/damage is due to cumulative trauma?
- b. Most doctors have little idea of the work of a trainman or engineer and thus do not relate the injury/damage to repetitive trauma.
- c. Furthermore, many doctors may think the worn out condition is simply caused by the natural aging process.

3. Is the railroad responsible for my cumulative/repetitive trauma injury?

- a. Answer: Pursuant to FELA the railroad is responsible if a **negligent activity** caused your cumulative/repetitive trauma injury and the negligent activity was a cause of the injury.
 - i. For example, getting on and off moving equipment is a negligent activity that is known to cause cumulative trauma/repetitive trauma injuries. Getting on and off moving equipment causes extreme forces on some joints, such as ankles and knees.
 - ii. For example repetitively walking on large main line ballast is known to cause injuries to ankles, knees and hips.
- b. Additionally your doctor must be willing to state that a cause of the injury was a negligent activity, such as getting on and off moving equipment or walking on large ballast.
 - i. This is often difficult as most doctors do not know or understand the work of a railroad worker and thus are more likely to think the damage is simply the result of the aging process.
- c. **REMEMBER JUST BEING WORN OUT DOES NOT MAKE THE RAILROAD RESPONSIBLE:**
 - i. The cause of the wear must be due to a negligent work activity and;
 - ii. The negligent work activity must be a cause of the injury

4. How long do I have to file a claim against the railroad for a cumulative/repetitive trauma injury?

- a. Answer: Under FELA an injured worker has to file his/her claim within 3 years of the injury. Thus, if the injury occurs on May 1, 2005 the case must be on file at the courthouse by May 1, 2008 or the claim is lost.
- b. This is often a big problem as treatment for a cumulative/repetitive injury may go on for more than 3 years without one actually knowing that a cause of the problem was work related. Thus, the law of FELA provides that one may still file a cumulative/repetitive trauma claim even though treatment has gone on for more than 3 years so long as the person did not know the cause was work related.
 - i. Example: One begins to see a doctor on May 1, 2005 for a back problem, but neither he/she nor the doctor are sure of the cause. More than 3 years later the doctor determines the cause is work related, the employee could still file the claim under FELA.
 - ii. However, if the employee began seeing the doctor on May 1, 2005 and the medical records indicate that either the employee or the doctor thought that the back problem was work related, the 3 year statute would begin to run on May 1, 2005 and the claim may be lost.
 - iii. In these situations, it is impossible to determine if the 3 year limitations is running unless one actually gets a copy of the medical records for review. Remember the medical records belong to the patient and can be obtained by the patient for review for a nominal copying charge.

5. If I have a cumulative/repetitive trauma claim, am I required to complete an accident report?

- a. Answer: Yes. The GCOR rules require an immediate report of the condition to one's supervisor and the prescribed form completed.
- b. For example, if one is being treated for a back condition and the treating doctor tells the person the condition is work related, the doctor's diagnosis would trigger a report to the railroad.

6. If I report to the railroad that I have a cumulative/repetitive back injury, will I be bad ordered?

- a. Answer: The railroad cannot and will not bad order an employee with a cumulative trauma injury unless the person is not able to perform the essential functions of the job. In 1993 the Americans With Disability Act was passed which generally prohibits an employer from preventing an employee from working so long as he/she can perform what are referred to as the essential functions of the job.
- b. For example, if the doctor indicated that a trainman could not lift over 50 pounds due to the back condition, the employee could still work in train service, because lifting in excess of 50 pounds is not an essential function of the job. The essential functions of each railroad job are listed in the railroad's job description.

7. Does the railroad pay for the medical treatment of my cumulative/repetitive trauma injury?

- a. Answer: No. Your insurance pays for treatment and care, not the railroad.
- b. Typically the employee is only responsible for the co-pays.

8. DOCTORS:

a. Do I have to see the company doctor for a second opinion?

- i. Answer: NO.
- ii. There is no rule or law that requires the injured worker to see a company doctor for a second opinion.
- iii. In fact, under the 20109(c)(1) it is unlawful for the RR to interfere with the orders of the employee's treating physician or the treatment plan selected by the treating physician. Thus, under this provision it is clearly improper for the RR to demand a second opinion, unless the treating physician has recommended a second opinion.

b. AN INJURED EMPLOYEE HAS THE **ABSOLUTE RIGHT TO SELECT HIS OWN DOCTOR:**

- c. If injured at work, you have the right to request transportation to a hospital and the: "railroad shall **PROMPTLY** arrange to have the injured employee transported to the **NEAREST** hospital where the employee can receive safe and **APPROPRIATE** medical care." 49 U.S.C. 20109(c)(1)
- d. "A railroad carrier may not deny, delay or **INTERFERE** with medical or first aid treatment of an employee who is injured during the course and scope of his employment." 49 U.S.C. 20109(c)(1)
- e. A railroad may not discipline, or threaten to discipline an employee for requesting medical or first aid treatment, or for following order or a treatment plan of a treating physician. 49 U.S.C. 20109(a)(2)

9. Statements to a claim agent for a cumulative/repetitive trauma injury:

- a. The injured employee is not required to give a recorded verbal statement to the claim agent
- b. It is not an insubordinate act to refuse to give a recorded verbal statement to the claim agent
- c. GCOR does not require an injured worker to give a recorded verbal statement to the claim agent

10. What should I do if I think I have a cumulative/repetitive trauma injury?

- a. First get medical treatment for the condition to determine how bad it is and what treatment options are available.
- b. Second, contact designated legal counsel for advice.
 - i. What do the medical records say about when the cause of the condition was first known?
 - ii. Is the injury/damage really caused by cumulative/repetitive trauma?
 - iii. Is there a problem with the three year statute of limitations?

Steve Young
Designated Legal Counsel
1300 Post Oak Blvd. Ste. 1750
Houston, Texas 77056
(713) 333-3070
www.tavorminayoung.com

