Medical physicians know little of distinctive conditions — says the Washington Supreme Court

By Charles P. Pearson ■ August 15, 2017

In *Street v. Weyerhaeuser Company*,[1] decided on August 10, 2017, the Washington Supreme Court held that expert medical testimony is not required in occupational disease claims to prove that the conditions of an injured worker's employment are distinctive. A medical expert's testimony need only demonstrate proximate causation.

By way of background: under the Industrial Insurance Act, 'occupational disease' is defined as a disease that "arises naturally and proximately out of employment." In a decades-old opinion, *Dennis v. Department of Labor & Industries*,[2] the Washington Supreme Court severed this phrase — "arises naturally and proximately out of employment" — into two distinct elements.

In one part of its text, the *Dennis* decision recognized that proximate causation requires that a causal connection between the injured worker's physical condition and his employment be established by competent medical testimony. In another part, the *Dennis* decision evaluated whether the worker's injury arose naturally out of his employment by analyzing if the injury was incident to distinctive conditions of that particular employment. But must the 'arise naturally' element also be established by medical testimony? The *Dennis* decision did not expressly say.

In the *Street* matter, the claimant, an Assistant Winder Operator at a paper mill, filed a 2011 workers' compensation claim for low back problems that he would eventually allege constituted an occupational disease, arising from the repetitive tasks performed in his position. At hearing, the parties introduced lay testimony describing the type of work the claimant performed, as well as expert testimony as to whether the claimant's condition was proximately caused by his employment. As its central argument through the course of appeals, the employer contended that the claimant did not offer sufficient medical evidence to prove that his condition arose naturally (as opposed to proximately) out of employment.

A medical expert's testimony need only demonstrate proximate causation.

To assess the employer's argument, the Washington Supreme Court was prompted to elaborate on its previous holding in *Dennis*. After a review of case law, the *Street* decision interpreted existing law in the context of occupational disease claims to stand for the proposition that the "cause and extent" of an

Continued

Reinisch Wilson Weier PC
LAW OFFICES

PORTLAND: 10260 SW Greenburg Rd., Suite 1250, Portland, OR 97223 ● T 503-245-1846 / F 503-452-8066
SEATTLE: 159 South Jackson Street, Suite 300, Seattle, WA 98104 ● T 206-622-7940 / F 206-622-5902
www.rwwcomplaw.com

Charles P. Pearson is an attorney at Reinisch Wilson Weier PC. He may be reached at 503.972.2545 or CharlesP @rwwcomplaw.com.

injured workers' disability is a matter involving medical science. From this general rule flowed the following analysis:

> 'Arises proximately' means that the employment conditions must be the proximate cause of the disease. 'Arises naturally' means that the conditions of a worker's particular employment are distinctive, i.e., different from . . . employments in general or activities of daily living. The first requirement involves an issue of medical causation, but the second requirement pertains to observable job activities.[3]

The *Street* Court decision highlighted how the *Dennis* decision expressly required that the 'arises proximately' element be demonstrated by medical evidence, but made no such demand in regard to the 'arises naturally' element. The implication is that the *Dennis* decision meant what it wrote and wrote what it meant — the omission was not happenstance. The *Street* decision further explained that the 'arises naturally' requirement presents a nonscientific question of whether the conditions of a worker's employment are distinctive. Familiarity with specific work conditions and whether they are commonplace is not within the area of medical professionals' expertise. Indeed, lay witnesses with familiarity of certain job tasks would be better equipped to describe them to the trier of fact. In turn, the trier of fact could evaluate the type of work at issue and conclude whether it occurred in everyday life or in all types of employment. As an aside, the *Street* decision noted that a medical expert could also opine as to whether conditions of employment were distinctive, but that a witness need not be a medical expert to do so.

Decades after the text was written by the Washington legislature, the state's supreme court has morphed the unitary grammatical clause "arises naturally and proximately out of employment" into two distinct elements — proximate causation and distinctiveness of employment. Medical testimony is required to prove proximate causation; lay testimony is sufficient to prove distinctiveness.

From a defense perspective, this ruling seems adverse upon first blush. However, it is arguable that the *Street* opinion requires more from claimants than under *Dennis*. Previously, a medical expert could opine both that the conditions of an injured worker's employment were distinctive and that they caused the condition — all in one breath. Now, *Street* embodies a preference for additional testimony from a witness with personal knowledge of working conditions. Indeed, medical experts can only view working conditions through workers' eyes (even if they arrive at conclusions that deviate from the workers' narratives) and, therefore, their knowledge is characteristically second-hand. A deft defense lawyer could argue that distinctiveness as an issue cannot be properly examined without testimony based on first-hand knowledge of the contested working conditions.

The lay of the land has changed. Workers' compensation administrators,

Continued

Distinctive conditions (continued)

advocates, and adjudicators take heed. If you have a current claim that may be impacted by the *Street* decision, you are welcome to contact any of the Washington practice attorneys at Reinisch Wilson Weier PC about your questions or concerns. ■

---

[1] *Street v. Weyerhaeuser Co.*, ___ Wn.2d ___ (Aug. 10, 2017).

[2] *Dennis v. Dep't of Labor and Indus.*, 109 Wn.2d 467 (1987).

[3] Internal citations omitted.

Reinisch Wilson Weier PC
LAW OFFICES

PORTLAND: 10260 SW Greenburg Rd., Suite 1250, Portland, OR 97223 ● T 503-245-1846 / F 503-452-8066
SEATTLE: 159 South Jackson Street, Suite 300, Seattle, WA 98104 ● T 206-622-7940 / F 206-622-5902
www.rwwcomplaw.com