

DEMYSTIFYING PRE-EXISTING CONDITIONS

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Is there a pre-existing condition?

- Many employees have pre-existing injuries or diseases.
- Whether there is a pre-existing injury or disease is relevant in every case.
- The pre-existing injury or disease must be identified.
- Does it involve the body part injured in the industrial accident?
- If so, does it combine with the work injury to cause or prolong incapacity and a need for treatment?

Work-Related or Non-Work-Related?

- It is essential to determine if the pre-existing injury or disease is work-related or non-work-related.
- The answer determines the burden of proof to be met by the employee to entitle him to benefits.
- The burden of proof is defined in Section 1(7A) of the Massachusetts Workers' Compensation Statute.

If the pre-existing injury or disease is work-related:

- Is it an injury or disease that was compensable under the Massachusetts Workers' Compensation Statute?
- If yes, did it combine with the work injury to cause or prolong incapacity and a need for treatment?
- If yes, all the employee has to prove is that the work injury is a cause, however minor, of the incapacity and need for treatment to recover workers' compensation benefits.
- It's simple causation—an easy case!

Is the pre-existing injury or disease non-work-related?

- If yes, does it combine with the work injury to cause or prolong incapacity and a need for treatment?
- If yes, the employee must prove that the work injury is a major but not necessarily predominant contributing cause.
- A major cause is an important, serious or moderately significant cause.
- There can be multiple major causes.
- To defeat the claim the insurer must prove that the work injury is no more than a minor or marginal cause

How do you find out about pre-existing injuries or diseases?

- Pre-placement medical questionnaires and exams
- Notations in the medical records regarding prior medical history
- Co-workers and supervisors
- Index inquiries
- Findings on diagnostic studies including comparison notations
- Ask the employee