

THE GREY & GREY REPORT

Published by:

GREY & GREY, L.L.P.

WORKERS' COMPENSATION – SOCIAL SECURITY DISABILITY – PERSONAL INJURY

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WHAT'S NEW AT GREY & GREY ...

Marian Wright Edelman, the founder of the Children's Defense Fund and the first African-American woman admitted to the Mississippi state bar, has said that "you just need to be a flea against injustice. Enough committed fleas biting strategically can make even the biggest dog uncomfortable and transform even the biggest nation." She also asked "whoever said anybody has a right to give up?"

In these difficult times, we continue to fight to improve conditions for our injured and disabled clients. Our battle takes place every day in the courts and at federal and state agencies including the Social Security Administration and the New York State Workers' Compensation Board. In many ways, we are fleas against injustice, pressing employers, insurance companies, and the government to provide just and adequate benefits to people who need and deserve them.



We also fight for injured workers in the political arena. Robert Grey, who serves as the Treasurer of the New York Committee for Occupational Safety and Health, Labor Outreach Chair of the Mount Sinai Center for

In this issue (Winter, 2009):

	Page
What's New at Grey & Grey.....	1
What's New in Workers' Compensation.....	2
What's New in Personal Injury.....	3
What's New in Social Security.....	4

Occupational and Environmental Medicine Advisory Board, and a technical advisor on the New York State September 11th Worker Protection Task Force, was recently named to the New York State Insurance Department's Earning Capacity Task Force by the New York State AFL/CIO and joined the Board of the Workers' Compensation Alliance, a political action group that advocates for injured workers. He also lectured for the second time this year for the New York State Bar Association, speaking to over 350 attorneys in New York City, with simulcasts to Albany and Buffalo.



Robert and our other attorneys continue to lecture regularly to a variety of audiences, including bar associations, unions, and community groups. Recent appearances of note include Robert's participation in a workers' compensation conference at District Council 37 attended by over 200 union members, where he was joined by Grey & Grey attorneys Alissa Gardos, Daniel Dutton, and Christopher Falconetti.



WHAT'S NEW IN WORKERS' COMPENSATION ...

Almost three years after the law was changed (in March, 2007), the Workers' Compensation Board continues to struggle to adapt to the changes. New forms have been issued, modified, and re-modified, the Chairman of the agency resigned to join the Social Security Administration and a new Chairman has been named, and a number of task forces headed by the New York State Insurance Department continue to work to issue new medical treatment guidelines, "medical impairment" guidelines, "functional capacity" guidelines, "earning capacity" guidelines, and return to work guidelines.



While we await the new rules and regulations, we continue to fight for our clients under the existing rules. In October and November, 2009, we won two cases in two weeks at the Appellate Division, Third Department. In each case the Court reversed the Workers' Compensation Board's decision, which rarely happens.

In one case, our client was employed as an auditor for the City of New York, where

her job was to audit programs. After 9/11, she was reassigned to give out benefit checks to people and businesses that were displaced by the World Trade Center attacks. As part of the reassignment she was transferred from her office to the field, where she worked at different sites in lower Manhattan that were set up as help centers. The Workers' Compensation Board ruled that her work was not "rescue, recovery or clean-up work" and therefore that she was not covered under the law covering 9/11 workers.



The Court reversed the Board's decision, writing that "the law was intended to be liberally construed to provide a potential avenue of relief for workers and volunteers suffering ill health as a result of their efforts in the aftermath of the terrorist attacks." The Court concluded that the Board had not fully considered the worker's duties in connection with the September 11th recovery, and sent the case back to the Board for a new decision.

In another case, our client was a track worker who suffered a stroke on the job. Although the hospital record proved that the stroke happened at work, the Workers' Compensation Board required the worker to produce additional medical evidence, even though the law presumes that an injury that happens at work is caused by the work. The Court stated that "the record is clear that neither the Workers' Compensation Law Judge nor the Board gave the claimant the benefit of that presumption" and that it was the employer's obligation to prove that the stroke was not work-related. Again, the Court reversed the Board.



WHAT'S NEW IN PERSONAL INJURY...

As always, our personal injury department has been busy and successful, with a number of notable settlements. Some recent cases include:

- **\$715,000** for a 51 year old nurse whose leg was injured when a doctor lowered an operating room table onto it without warning while performing surgery. The accident caused an infection that left her permanently disabled from work. The doctor, hospital, and manufacturer defended the case vigorously for many years before finally settling after their motions to have the case dismissed were denied.



- **\$500,000** for a 49 year old bus operator who injured his back when his bus hit a pothole created by roadway construction job. Our client had back surgery and missed almost a year from work.



- **\$360,000** for a 58 year old electrician who was a passenger in a shuttle bus which stopped short, throwing him out of his seat, causing neck and back injuries and disabling him from work.



- **\$245,000** for a 37 year old carpenter who fractured his left wrist when he fell from a broken ladder on a construction job.



- **\$187,500** for 61 year old plumber who injured his left knee and back when he tripped and fell, requiring knee surgery and later had to retire due to his injuries.



- **\$175,000** for a 42 year old roofer who fractured his left heel and missed fifteen months from work after falling from a ladder.



- **\$150,000** for a 57 year old park aide who tripped and fell on a cracked sidewalk at a shopping mall, injuring her knee and rupturing her spleen.



WHAT'S NEW IN SOCIAL SECURITY...

Our Social Security clients often ask how they can continue seeing a doctor when they do not have health insurance or workers' compensation coverage. All too often, people who are unable to work for medical reasons lose their health insurance coverage and are unable to get medical care. The lack of medical evidence makes it more difficult to prove a claim for benefits. Many judges are becoming more sympathetic the claims of people who had strong medical evidence and then stopped treating when they lost insurance coverage. However, some judges will consider the absence of treatment to be a sign of medical improvement. The long wait to get a hearing before the Social Security Administration only makes the problem worse.

Continued treatment with a chiropractor or therapist is ordinarily not enough to prove a claim, even if the person was originally treated by a doctor. Social Security's rules state that it is the opinion of the treating *physician* (a medical doctor, not a chiropractor or therapist) that is most important. To be a treating physician, the person must see the same doctor on a regular basis over a period of time.

There are some steps that you can take to help yourself in this situation. You may be eligible for Medicaid benefits (call 1-800-541-2831 or your county Social Services Dept), or you may be eligible for one of the state health coverage plans, such as Family Health Plus (1-877-934-7587), or Healthy NY (1-866-432-5849). In July 2009, New York State law was amended to extend COBRA coverage from 18 months to 36 months. If you are covered by COBRA, you can request an extension. If you encounter problems with requesting an extension of the COBRA coverage, you can contact the NY State Dept. of Insurance Consumer Services Bureau, at 1-800-342-3736 or 1-212-480-6400.

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