
WORKERS COMPENSATION



HANDLING TRAUMATIC BRAIN INJURY CLAIMS

Managing Exposure and Limiting Fraud in Mild Cases

By Ashley Talley and Michael Szymanski

Traumatic brain injuries, often the subject of eye-catching headlines, are now drawing the attention of employers, providers, and judges in the workers compensation industry. But what exactly is a traumatic brain injury (TBI)? The Centers for Disease Control defines it as “a disruption in the normal function of the brain caused by a bump,

blow, or jolt to the head, or penetrating head injury.” Everyone is at risk for a TBI, and, more often than not, the symptoms are not visible. Diagnoses are made based upon subjective symptoms and usually without objective safeguards to verify those complaints. This presents a unique set of challenges that, if identified through an early and ongoing investigation, must be addressed in order to successfully manage a work-related TBI claim.

The challenges of any TBI claim begin with verbiage. Although often used interchangeably, an injury to the head is not synonymous with a TBI, which requires actual insult to the brain to cause the hallmark symptoms of headaches, confusion, and dizziness. However, even with this distinction, a TBI is often presumed even if brain trauma cannot be confirmed. In any analysis, it is important to remain mindful that not every bump to the head is injurious, and a head injury doesn’t always necessarily involve the brain.

The verbal distinction is further blurred by the inherent difficulty with diagnosing TBIs. Symptoms can be mild, moderate, or severe based upon the degree of damage. In moderate and severe cases, a brain injury can be visualized by the presence of bleeding or structural abnormalities on diagnostic testing. In



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those cases, there is objective evidence of trauma and, when present, there is little argument over TBI diagnosis.

The more common and difficult question arises in mild cases in which diagnostic studies are normal, limiting a diagnosis to the presence of physical symptoms (loss of consciousness, headache, dizziness); sensory symptoms (blurred vision, ringing in ears, light sensitivity); and cognitive symptoms (memory loss, poor concentration, irritability). The list is non-exhaustive and, without a brightline standard of what constitutes a diagnosis, any diagnostic formula is imprecise at best. When symptoms are reported, TBIs are often presumed, even if those symptoms can be attributed to unrelated conditions. Alternative causes are usually overlooked, which can lead to misdiagnosis and improper treatment.

How, then, can claims professionals, medical providers, and attorneys approach a potential work-related TBI? More often than not, the case will be one of mild severity, which can be particularly challenging when the reliance upon subjective reporting may prove tempting for symptom exaggeration or malingering.

Claims professionals and attorneys must work together to perform an aggressive preliminary investigation to determine questions such as: How did the injury occur? Was there a loss of consciousness? What type of symptoms were there? Securing medical records, obtaining a recorded employee statement, and speaking with the employer are also effective avenues for gaining insights on injuries and time-of-injury complaints, which is critical for assessing the type of injury, severity, and any other factors that could prolong the claim. All of this plays a key role in gauging exposure and potential return-to-work barriers.

A second yet equally important function of the preliminary investigation is identifying potential red flags. Given the reliance on subjective reporting, TBI claims are particularly vulnerable to fraudulent activity, especially when their validity cannot be checked against categorical

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An early and ongoing investigation can uncover common indicators of fraud, such as length of employment, employee performance, and prior history. While subjective complaints may be outside the purview of diagnostic testing, surveillance is a critical way to verify any claims of injury or disability. For example, those suffering from headaches, dizziness, and light sensitivity will not be driving or engaging in physical activities, and capturing such evidence is a valuable way to disprove the authenticity of subjective complaints and, in turn, claims of injury or diagnosis.

To adequately assess the injury, its severity, and the corresponding exposure, early resource management is key. Diagnostic studies are objective assessment tools, although in mild cases, not conclusive. Neuropsychological tests are now commonly used as an objective avenue to verify subjective complaints, although in practice, results must be taken with scrutiny. One tool is the Immediate Post-Concussion Assessment and Cognitive Testing—referred to as “ImPACT”—which is a computerized program designed to evaluate and determine cognitive functioning through comparison of baseline (pre-injury) and post-injury testing.

While there may be utility in instances where ongoing testing is preliminarily available, in workers compensation cases, medical providers are without baseline results to compare post-injury findings. Even without this information, a “positive” result is often viewed as objective evidence of a TBI, although its conclusions are nothing more than enhanced symptom reporting

and are, more often than not, less than perfect. Further complicating any results are an over-reliance on findings, limited knowledge regarding medical history and treatment, and a lack of consideration for alternative causes of the observed abnormalities.

Equally problematic is the treatment of TBIs. Evidence-based medicine suggests a full recovery within three months, although more severe cases often present with significantly longer recovery periods. Mild TBI cases are generally treated with rest and over-the-counter medication, although rehabilitative therapy may be recommended.

Proactive monitoring is the key to ensuring an employee is getting the appropriate care and, in turn, controlling medical costs. Case managers are critical for identifying outliers in treatment, ensuring consistency through comparison of subjective complaints against objective measures, and with assisting in the timely coordination of appropriate care.

Choosing an appropriate expert is also important. Those with experience in treating and evaluating TBI cases provide much greater insight than physicians who claim expertise but cannot provide the results to back up those claims. This practice helps claims professionals identify the need and timing of utilization reviews, vocational rehabilitation, independent medical examinations, or defense counsel involvement.

A work-related TBI claim may present nuances above and beyond a physical injury, but recognizing and mitigating these unique challenges is key to successfully managing exposure. ■