

CASE STUDY

Elio Employee lives in a rural area between two New England states. He is a 45-year old high school graduate who has had a variety of jobs in retail, manufacturing, and construction. On April 1, 2014, while on his way to work at Trumpe Industries, a local manufacturing concern, Elio slipped and fell on ice in the parking lot, badly jamming his left arm, spraining his left wrist and contusing other parts of his body. Elio is no stranger to workers' compensation; he had a previous injury with another employer, Clinton Construction, that resulted in a 20% whole person impairment to his right upper extremity. He was released from all care associated with that claim years ago. Elio has personal health issues, he has been diagnosed and treated for bipolar disorder. This condition is controlled with appropriate medication and psychiatric treatment. He also has had trouble in the past with alcohol and considers himself a recovering alcoholic. Despite these problems, Elio has been a valued employee and good worker for Trumpe for 10 years prior to this fall. His annual evaluations have been very positive. In addition, he is liked and well respected by his supervisor and co-workers.

Elio reported his injury immediately to Sam Supervisor. Sam said he would complete a First Report, but asked Elio to finish his shift with Trumpe as the shift was understaffed. Elio worked for four hours, but the pain became overwhelming and he walked out of the shop in a very agitated state. Upon leaving work, he drove himself to the local emergency room at New England General Hospital. As part of an employee's initial orientation, Trumpe Industries informs new hires all work-related injuries must be initially evaluated and treated with the company doctor, Sam Shepherd M.D. The New England emergency room physician examined Elio and ordered x-rays. The diagnostic testing showed no fractures, but Elio's left upper extremity was extremely uncomfortable. He had limited range of motion and it appeared swollen. The emergency room doctor was thorough and cautious. He wrapped Elio's left upper extremity, provided medication, advised rest, and told him not to return to work at Trumpe until released by him or another medical care professional.

On April 3, 2014, Trumpe Industries filed the First Report of Injury and the report was forwarded by e-mail to Allison Adjuster at Ace Adjusting.

Elio earned \$650.00 per week for Trumpe Industries, but did not work the two weeks prior to the date of the fall. He was on vacation for a week, and then there was a week-long unexpected plant shut-down. Elio received an annual production bonus of \$1,000.00 on January 15, 2014. Trumpe provides fringe benefits to all full time employees. Mr. Employee's package includes health insurance (\$434.28 monthly), dental insurance (\$1.00 monthly), life insurance (\$30.00 monthly), a 401K, and uniforms (\$28.00 monthly). All stop after an employee is out of work for more than two pay periods. He was also a member of the National Guard and earned \$250.00 a month for weekend guard duty in January, February and March. Elio is self-employed as the sole proprietor in a cleaning business he operates at night cleaning local offices, including the office of F. Lee Bailment, a local trial attorney. Elio earns approximately \$500 per month in this business, with expenses of approximately \$225 per month. Because he is self-employed, there is no workers' compensation coverage for this business.

A week following the accident, Elio was cleaning F. Lee Bailment's office and happened to discuss his fall at Trumpe and his residual arm difficulties. At the end of the conversation, F. Lee Bailment was interested in the case. He agreed to represent Elio. He recommended Elio treat with pain specialist, Oxy M. Contin, M.D. F. Lee Bailment referred Elio to the doctor and

Dr. Contin saw Elio the following day. Dr. Contin examined Elio and found his left upper extremity was excruciatingly painful, swollen and had mottled looking skin. The skin on his hand was cool to the touch, had an unusual sweat pattern, and appeared to be losing hair.

Allison Adjuster investigated the claim and learned that Elio had been building a house in his limited spare time. He worked on this project the weekend before April 1st.

Elio currently lives with his girlfriend and her two children from a previous marriage. He also has three of his own children with dates of birth March 15, 1999, February 15, 2001 and January 15, 2005. The employee pays \$500 a month in child support for these children pursuant to a family court child support order.

On May 1, 2014, the employee gave up his cleaning business because he reported "I just can't do it anymore." He became despondent and started drinking. Despite Dr. Contin's efforts, the employee's pain complaints escalated. On July 1, 2014, Trumpe terminated Elio. They sent him notice of his COBRA rights and paid him his accrued sick leave and vacation pay in the amount of \$1,300.00. Allison Adjuster assigned a Vocational Rehabilitation Counselor and Nurse Rehabilitation specialist to assist on the claim. Elio was drinking so heavily he stopped taking his psychiatric medication. On July 30, 2015, he was in such a funk, he made a suicide gesture by ingesting an almost lethal dose of his pain medication. He slipped into a coma for three days and had follow up treatment in intensive care for two weeks. He incurred medical bills exceeding \$230,00. He recovered and started meaningful rehabilitation on his left extremity and return to his doctor for treatment of his psychiatric problems. On September 1, 2016 F. Lee Bailment filed suit against Trumpe Industries and the snow plow company for failing to keep the property safe; and against Sam Supervisor for making Elio work following his fall and injury report. With the assistance of F. Lee Bailment, Elio applied for, and was awarded, Social Security Disability Income benefits beginning on November 5, 2016.

How do you anticipate the case will be presented? F. Lee severs the relationship with Elio and you enter an appearance as Claimant's counsel. What are the issues and how do you present the case? You are defense counsel, how do you advise your carrier client on these issues and the presentation Claimant's counsel will make in this matter? What specific defenses will you raise? You are an ALJ that must address the issues presented. What are they, and how would you rule on these issues?