

Virginia Workers' Compensation Brain Injury: A Very Big Problem

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FIRST, if you suffer a head injury while working in Virginia and you start receiving workers' compensation benefits (weekly wage replacement checks and medical care) for this work place injury, it would appear you have no problems but things are not always what they seem for your comp claim in Virginia.

SECOND, the usual procedure is when you suffer the head injury, the insurance company for your employer will send you a form to sign which will be filed with the Virginia Workers' Compensation Commission. The Commission will then enter an award based on that form. The insurance form is called "An Agreement to Pay" form.

THIRD, the important thing to note is the paragraph on the form that describes your injury. Most of the time if you have had a head injury, the form will say only "head injury." When you sign the form, it is your agreement that this is the only injury you have.

FOURTH, the problem that arises is that the Virginia Workers' Compensation Commission (which regulates workers' compensation in Virginia) and the Virginia Court of Appeals which hears appeals from the Commission have decided that "head injury" on the Agreement to Pay form does not include "brain injury" even if the "brain" has been injured when the head injury occurred at the time of the original accident.

FIFTH, the next problem is that the Commission and the Court of Appeals has decided that you only receive compensation for the injuries you have listed on the Agreement to Pay form and you only have two (2) years from the date of your accident to amend the Agreement to Pay form to add new injuries (such as a brain injury) if this was not inserted on the original Agreement to Pay form).

SIXTH, the remedy is to file a Claim for Benefits with the Virginia Workers' Compensation Commission within two (2) years of the date of one's accident and add "brain injury" to your claim.

SEVENTH, if the Agreement to Pay only says "head injury," then a major problem is created after the claimant has been paid 500 weeks of compensation. Normally, the cap on workers' compensation in Virginia is 500 weeks of compensation for almost all injuries. However, there are a few exceptions to the 500 week cap. One of those exceptions is a "brain injury" but not a head injury.

EIGHTH, thus if one has had one's injury listed as a "head injury" and not a "brain injury" and 500 weeks of compensation have elapsed and one is still "disabled," you would want to extend benefits under the 500 week "brain injury" exception in Virginia. However, because you never amended the Agreement to Pay form to add "brain injury" you would likely be barred from having your compensation extended beyond 500 weeks by the Commission.

In summary, if one has a serious head injury in Virginia, it is critical to always file a Claim for Benefits within two (2) years to add a "brain injury" claim. This is so because the ill effects of any head injury could develop later and could always involve a brain injury. You should not lose your rights because of this "technicality."

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