U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210

Reply to the attention of:

AUG 11 2006

COPY FOR YOUR INFORMATION

Ms. Jill R. Ryan
BU SHEQ Manager
DSM Desotech Inc.
1122 St. Charles St.
Elgin, IL 60120-8498

Dear Ms. Ryan:

Thank you for your letter dated April 21, 2005 regarding clarification of the Injury and Illness Recording and Reporting requirements contained in 29 CFR Part 1904, specifically to work relatedness of a pre-existing condition.

In your letter you state the following, "Last week an operator, with a known history of back trouble that was never determined to be work related, bent over to pick up an empty bucket. A day or so later, the employee could not come to work with the chief complaint being back pain. The employee went to the doctor where he was told to rest. We then sent him to the company doctor to evaluate the injury. The company doctor determined that the person was suffering from a back injury but noted that this event was due to a pre-existing condition that chose to flare up at the particular moment when he was picking up the empty bucket which would weigh about 2 kg. We did actually ask the doctor directly these questions and it was his feeling that the act of picking up the empty bucket did not contribute to the injury (insignificant event). Under the OSHA act we do have a presumption of work relatedness if the injury occurs in the work environment unless a specific exception under 1904.5(b)(2) applies specifically."

Under 1904.5(a), an injury or illness is considered work-related if an injury or illness in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness. For purposes of Part 1904, a work relationship is presumed for such injuries and illnesses unless one of the nine exceptions listed in 1904.5(b)(2) specifically applies.

The exception at 1904.5(b)(2)(ii) provides that a case is not recordable if the injury or illness involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs outside the work environment. This exception allows an employer to exclude cases where an employee's non-work activities are the cause of the injury or illness. This means when work makes no actual contribution to an injury or illness, the case is not recordable. An example of this type of injury would be a diabetic incident that occurs while an employee is working. Because no event or exposure at work contributed in any way to the diabetic incident, the case is not recordable.

In order to determine whether the case you describe in your letter is work-related, it is necessary to define "pre-existing condition" as used for purposes of Part 1904, as well as the term "significantly aggravated" as it pertains to pre-existing injuries and illnesses. Two provisions within section 1904.5 specifically address these definitions.

Section 1904.5(b)(5) provides:

> *Which injuries and illnesses are considered pre-existing conditions?*
>
> An injury or illness is a pre-existing condition if it resulted solely from a non-work-related event or exposure that occurred outside the work environment.

Section 1904.5(b)(4) states:

> *How do I know if an event or exposure in the work environment "significantly aggravated" a pre-existing injury or illness?*
>
> A pre-existing injury or illness has been significantly aggravated, for purposes of OSHA injury and illness recordkeeping, when an event or exposure in the work environment results in any of the following:
>
> (i) Death, providing that the pre-existing injury or illness would likely not have resulted in death but for the occupational event or exposure.
>
> (ii) Loss of consciousness, providing that the pre-existing injury or illness would likely not have resulted in loss of consciousness but for the occupational event or exposure.
>
> (iii) One or more days away from work, or days of restricted work, or days of job transfer that otherwise would not have occurred but for the occupational event or exposure.
>
> (iv) Medical treatment in a case where no medical treatment was needed for the injury or illness before the workplace event or exposure, or a change in medical treatment was necessitated by the workplace event or exposure.

Based on the information you provided in your letter, the doctor concluded that the employee's back pain was caused by a non-work-related event or exposure that occurred outside the work environment and therefore would be considered a "pre-existing condition" for purposes of section 1904.5(b)(5). It also appears from your letter that when the employee lifted the bucket in the work environment he sustained an injury that resulted in days away from work. As a result, the work environment contributed to the injury, the criteria in 1904(b)(4)(iii) for days away from work was met, and the injury significantly aggravated a pre-existing condition resulting in a recordable work-related injury under Part 1904.

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA requirements are set by statute, standards and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. In addition, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at http://www.osha.gov. If you have any further questions, please contact OSHA's Recordkeeping Section at (202) 693-1876.

Sincerely,

Keith L. Goddard, Director
Directorate of Evaluation and Analysis