

2022 NY WRK. COMP. LEXIS 2402; 2022 NY Wrk. Comp. G3058386

New York State Workers' Compensation Board

April 29, 2022

G305 8386 Carrier ID No. - W036636

New York State Workers' Compensation Board

Reporter

2022 NY WRK. COMP. LEXIS 2402 *; 2022 NY Wrk. Comp. G3058386

AMAZON.COM SERVICES INC

Core Terms

claimant, notice, untimely notice, carrier, timely notice

Panel: Clarissa Rodriguez, Pamela Caggianelli, Arelis Tavares

Opinion

[*1] Date of Accident : January 15, 2021

Carrier : American Zurich Insurance Co

Carrier Case No. : 4A21078B3770001

RULING

The claimant requests review of the Workers' Compensation Law Judge (WCLJ) decision filed December 13, 2021. The carrier filed a timely rebuttal. **ISSUE** The issue presented for administrative review is whether the claim should be disallowed for failure to provide timely notice pursuant to Workers' Compensation Law 18. **FACTS** The claimant filed a C-3 (Employee Claim) on July 12, 2021, setting forth that she sustained an injury to both knees, left foot and low back as a result of a work-related accident on January 15, 2021, while working as warehouse worker on a conveyor belt and stacking heavy stack of totes on wooden pallets, which started slipping off and ended up hitting her on the knees and her left foot became stuck between the planks. The claimant indicated that she did not give notice of injury to the employer; did not receive medical treatment; and that she had no prior injury to the same body parts.

At the hearing held on August 16, 2021, the employer raised all defenses including untimely notice. The case was adjourned for the claimant to obtain [*2] counsel. These findings were memorialized in a decision filed on August 10, 2021.

The claimant testified at a hearing held on December 6, 2021, consistent with her C-3 regarding her work-related accident on January 15, 2021. She has had no prior injuries to these sites of injury. She did not think her condition/injuries were serious and thought they would go away. She generally experienced pain, cuts, scrapes and

bruises while performing her regular warehouse job duties. So, she thought it would resolve itself. However, gradually over time it became worse, and in May 2021, when she noticed on days off that the pain was not going away and became excruciating, she requested leave for a couple weeks to rest and see if it would resolve her problems. She informed the employer's Human Resources (HR) at that time that she was seeking time off due to an injury in January 2021 at work. Her request was initially denied. She replied to the denial noting the injury at work and that she needed a few weeks off. The employer requested documentation from her physician; but she did not have any documentation. She told the employer that since she did not have documentation, to forget her leave request. [*3] She also sought medical treatment at that time (May 2021); but was told it would be two to three and even four months before she could obtain an appointment due to the pandemic. She continued working her regular job until June 20, 2021, when she showed up for work and her badge did not work and she was told that her leave had been granted. She received training from the employer and was told to notify manager of injuries.

After summations on the record, the WCLJ disallowed the claim for untimely notice, noting that in this instance there are multiple prejudices to the employer including lack of ability of the employer to investigate and the possibility of worsening of the condition due to the claimant continuing to work without restrictions. The WCLJ resolved the C-8.1s in favor of the carrier and closed the case. These findings were memorialized in the decision on appeal filed on December 13, 2021. LEGAL ANALYSIS The claimant, in the application for review, contends that the WCLJ erred in disallowing the claim for an accidental injury to both knees and the left foot based on untimely notice and prejudice to the employer. Specifically, the claimant argues that the WCLJ erred in [*4] considering whether the employer was prejudiced by the lack of timely notice, as the claimant's failure to notify the employer should be excused as the claimant was unaware of the seriousness of her injury; and once she realized that it was not the usual run-of-the-mill injury, she notified the employer and sought medical treatment. As such, the late notice should be excused.

The carrier, in rebuttal, contends that the WCLJ's decision should be affirmed as the claimant failed to give timely notice and to provide any reason why she failed to do so. As such, the carrier argues that the decision should be affirmed in its entirety.

"Workers' Compensation Law 18 requires that a claimant give his or her employer notice of an injury for which compensation is sought 'within thirty days after the accident causing the injury' (see [*Matter of Hogencamp v Amscam*, 2 AD3d 937 \[2003\]](#)). 'Failure to give the required notice may be excused by the Board based upon a finding that such notice could not, for some reason, be given, or that the employer or an agent thereof had actual knowledge of the accident or death or, finally, that the employer was not prejudiced by the delay' ([*Matter of Ray v Waldbaums*, 276 AD2d 838 \[2000\]](#) [additional citations omitted]). No prejudice will be found to exist [*5] 'where the employer had actual independent knowledge of the event or where the delay neither aggravated the injury nor prevented the employer from properly investigating the claim' ([*Matter of Thousand v Human Resources Admin. Community Dev. Agency*, 252 AD2d 664 \[1998\]](#), lv denied 92 NY2d 816 [1998])" ([*Matter of Miner v Cayuga Correctional Facility*, 14 AD3d 784 \[2005\]](#); see also [*Matter of Lopadchak v R.W. Express LLC*, 133 AD3d 1077 \[2015\]](#)).

The Board may excuse a claimant's failure to provide timely written notice if (1) the claimant had sufficient reason for failing to provide timely notice, (2) the employer had actual knowledge of the accident, or (3) the employer was not prejudiced by the lack of notice (Workers' Compensation Law 18; [*Matter of Coffey v Shop-Rite Supermarkets N.*, 39 AD3d 1006 \[2007\]](#); [*Matter of Miner v Cayuga Correctional Facility*, 14 AD3d 784 \[2005\]](#)). The burden is on the claimant to show that the employer was not prejudiced by the lack of timely notice ([*Matter of Flynn v Ace Hardware Corp.*, 38 AD3d 1143 \[2007\]](#)). The claimant can meet this burden by showing that "the employer had actual independent knowledge of the event or [that] the delay neither aggravated the injury nor prevented the employer from properly investigating the claim" ([*Matter of Thousand v Human Resources Admin., Community Dev. Agency*, 252 AD2d 664 \[1998\]](#), lv denied 92 NY2d 816 [1998]).

Late notice may also be excused, regardless of possible prejudice, if the claimant was not aware of the seriousness or causal connection of an injury to employment ([*Matter of Sedlock v Employ Bridge*, 172 AD3d 1684 \[2019\]](#)).

"The Board 'is the sole arbiter of witness credibility' ([*Matter of Hammes v Sunrise Psychiatric Clinic, Inc.*, 66 AD3d 1252 \[2009\]](#); accord [*Matter of Richman v NYS Unified Ct. Sys.*, 91 AD3d 1014 \[2012\]](#))" ([*Matter of Wiess v Mittal*, 96 AD3d 1175 \[2012\]](#)).

"The WCLJ's assessment of the evidence received at the hearing, and his resolution of [*6] contradictions that may exist, is entitled to great deference, unless no support in the record exists." (see [*Matter of Hernandez v Vogel's Collision Serv.*, 48 AD3d 861 \[2008\]](#); [*Matter of Provenzano v Pepsi Cola Bottling Co.*, 30 AD3d 930 \[2006\]](#))" ([*Matter of Barth v Hanson Aggregates, Inc.*, 57 AD3d 1042 \[2008\]](#)).

Here, the claimant's failure to give timely written notice of her work-related accident is excused because she did not appreciate the seriousness of her injury, as the claimant continued to work and only stopped working after the pain worsened and she was granted leave for her condition. She did not notify the employer until May 2021 because she thought the injuries were minor and the regular run-of-the-mill injuries she experienced in her daily work duties as a warehouse worker, and she would get better and move on. However, when she noticed that she was experiencing pain even while off work and the condition progressed, she informed the employer's HR in May 2021. The claimant also credibly testified that she sought treatment at that time; but due to the pandemic, she was not able to get an appointment until July 13, 2021. When she informed the employer in May 2021 of her injury, they required medical documentation, which she did not have, so she continued working until June 20, 2021, when her leave request was granted. Based on the aforementioned, the Board Panel [*7] finds that under the circumstances of this case, that untimely notice is excused, regardless of any possible prejudice.

Therefore the Board Panel finds, upon review of the record and based upon a preponderance of the evidence, that claimant's untimely notice is excused as the claimant gave notice when she realized the seriousness of her injury. CONCLUSION ACCORDINGLY, the WCLJ decision filed on December 13, 2021 is REVERSED and a finding is made that the untimely notice is excused. The case is continued for proceedings consistent with the finding herein.

All concur.

ADDRESSES

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