

Guyman, Shauna

PROXIMATE CAUSE

Significant cause

An industrial injury need not be a "significant" proximate cause of a condition; an industrial injury need only be a proximate cause of the condition in order for the condition to be covered under the claim. ...*In re Shauna Guyman*, BIIA Dec., 05 13662 (2006)

Scroll down for order.

1 sought. We have long since abandoned the language that the injury must be a significant cause of
2 the condition for which surgery was necessary. See, *Brashear v. Puget Power and Light*,
3 100 Wn.2d 204; 667 P.2d 78 (1983)

4 Despite our disagreement with the standard employed by our industrial appeals judge, we
5 agree with the result reached. We do not believe that the industrial injury was a proximate cause of
6 the need for the L4-5 foraminotomy. Our industrial appeals judge correctly concluded that the
7 claimant's non-industrial injuries and exacerbations proximately caused the need for surgery.

8 With the clarification of the proximate cause issue, we adopt the remaining findings and
9 conclusions reached by our industrial appeals judge.

10 **FINDINGS OF FACT**

- 11 1. On October 22, 2003, Shauna M. Guyman filed an Application for
12 Benefits with the Department of Labor and Industries. She alleged she
13 had suffered an injury on October 18, 2003, while in the employ of
14 PSEW North. On November 14, 2003, the Department issued an order
15 in which it allowed the claim. On December 28, 2004, the Department
16 issued an order in which it closed the claim with time-loss compensation
17 benefits as paid, and with no award for permanent partial disability.
18 That order was communicated to Ms. Guyman on January 3, 2005. On
19 February 28, 2005, Ms. Guyman protested and requested
20 reconsideration of the December 28, 2004 order. On March 23, 2005,
21 the Department issued an order in which it affirmed its December 28,
22 2004 order. On March 28, 2005, the March 23, 2005 order was
23 communicated to Ms. Guyman. On May 24, 2005, Ms. Guyman filed
24 her Notice of Appeal with the Board of Industrial Insurance Appeals from
25 the Department's March 23, 2005 order, and on June 7, 2005, the Board
26 issued an order in which it granted the appeal subject to a finding of
27 timeliness.
- 28 2. On October 18, 2003, Ms. Guyman was lifting a patient while in the
29 employ of Holy Family Hospital, also known as PSEW North. While
30 being lifted, the patient moved and Ms. Guyman experienced a sudden,
31 extreme pain in her back and radiating down her left leg as she felt her
32 back pop. She could not stand up straight. Her supervisor sent her
home. She sought medical treatment.
3. Ms. Guyman was born on August 10, 1968. She stands 5 feet, 6 inches
tall and weighs 208 pounds. She is right-handed. She is separated
from her husband and has four dependent children. She has a ninth
grade education and a GED. She has earned certifications as a
Certified Nurse's Aide (hereinafter, CNA) and a Health Care Assistant,

1 Category A (hereinafter, CCA). Holy Family uses the term CCA II when
2 describing a medical assistant position which includes the duties of a
3 CNA and a CCA. Ms. Guyman had ongoing training at Holy Family
4 Hospital in phlebotomy, EKGs, bladder scans, emergency procedure
5 code training, CPR, Foley Catheter insertions, and some social work.
6 She last worked at Holy Family in September 2004 as a laboratory
7 assistant and phlebotomist. She has some memory difficulties.

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4. Ms. Guyman has suffered prior injuries to her back. On April 6, 1995, she suffered mostly neck injuries and migraine headaches when a car rear-ended her car. She received treatment at Urgent Care and then for some months from a chiropractor.

On January 11, 2001, Ms. Guyman suffered a back strain during a work shift of turning and bending and lifting patients as a CCA II. She received medical treatment at the hospital emergency room and from her attending physician. She had low back spasms and pain radiating down her left leg, with some numbness and tingling into the toes. In February 2002, Ms. Guyman suffered a similar injury with similar symptomatology.

In July 2003, Ms. Guyman suffered a similar injury with similar symptomatology. She went to the hospital emergency room and sought treatment at the Community Health Association of Spokane Clinic.

On October 18, 2003, Ms. Guyman suffered her industrial injury while lifting a patient. She sought treatment at the hospital emergency room and with her attending physician. Her symptoms were similar and she characterized her pain as more severe. The symptomatology lasted longer.

On September 11, 2004, Ms. Guyman suffered an injury when she rolled over in bed at her home. She sought emergency treatment and saw her attending physician. Her symptoms were similar and the symptomatology lasted longer.

In March 2005, Ms. Guyman stepped off of a bus and suffered an injury. She saw her attending physician. Her symptoms were similar.

5. Ms. Guyman suffered from a condition best described as a chronic low back strain/sprain, including a strain/sprain of her sacroiliac joint, with chronic low back pain radiating into her left leg, superimposed on a two-level degenerative disc disease of the lumbar spine. The degenerative condition began in 2001 or before that year. The condition was ongoing and progressively weakened the L4-5 spinal disc.

1 Evidence of this condition included: progressively degenerative findings
2 in MRI scans taken on November 11, 2003, October 11, 2004, and
3 March 15, 2005: denervating left S1 radiculitis upon October 11, 2004
4 EMG testing; and, adhesions present in the March 15, 2005 MRI and on
5 subsequent surgery. Evidence upon clinical testing included limitations
6 in range of motion, pain, and spasm until 2004. After September 11,
2004, Ms. Guyman had a straight-leg raising test positive for a
compressed nerve root.

7 6. On November 30, 2005, Ms. Guyman underwent spinal surgery, a
8 bilateral L4-5 foraminotomy that removed parts of both sides of the L4-5
9 discs and the dense adhesions the March 15, 2005 MRI had shown
10 around the seven-millimeter annular tear. The body creates scarring to
11 protect annular tears and the scarring of the annular tears builds up over
12 time and adheres to the surrounding tissues. The density of the
13 adhesions showed they most likely had been growing for four years,
14 since the January 11, 2001 injury, so the January 11, 2001 injury more
15 probably than not caused the annular tear.

16 7. Ms. Guyman's weight and the progressive nature of the degenerative
17 lumbar disc condition were significant contributing causes to the
18 herniation of disc material through the annular tear, where the mass of
19 disc material compressed the L4-5 nerve root. More probably than not,
20 the September 11, 2004 event when Ms. Guyman turned over in bed
21 proximately caused the herniation of the disc material through the
22 L4-5 annual tear. By September 11, 2004, the progression of the
23 degenerative disc disease had caused the L4-5 disc to be susceptible to
24 herniation of the disc material through the annular tear with little force.

25 8. Ms. Guyman's October 18, 2003 industrial injury did not cause the
26 annular tear of the L4-5 disc and that injury did not cause the herniation
27 of the L4-5 disc material through that annular tear.

28 9. Ms. Guyman's October 18, 2003 industrial injury did not cause her need
29 for spinal surgery.

30 **CONCLUSIONS OF LAW**

31 1. The Board of Industrial Insurance Appeals has jurisdiction over the
32 parties to and the subject matter of this appeal, which was timely filed.

1. On March 23, 2005, Shauna M. Guyman was not in need of proper and
necessary treatment for any condition proximately caused by her
October 18, 2003 industrial injury.

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2 3. The order of the Department of Labor and Industries dated March 23,
3 2005, is correct and is affirmed.

4 It is so **ORDERED**.

5 Dated this 6th day of November, 2006.

6 BOARD OF INDUSTRIAL INSURANCE APPEALS

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9 /s/
10 THOMAS E. EGAN Chairperson

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12 /s/
13 CALHOUN DICKINSON Member

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15 **DISSENT**

16 While I completely agree with the majority's position regarding the proper legal standard to
17 apply to the proximate cause issue, I vehemently disagree with the end result reached. The
18 industrial injury was clearly a proximate cause of the need for surgical intervention.

19 I am aware that Ms. Guyman had a significant history of back problems. She was involved
20 in a motor vehicle accident in 1995. Although she injured her back, she made a full recovery. On
21 January 11, 2001, Ms. Guyman suffered a low back strain at work. She suffered similar industrial
22 injuries in February of 2002 and July of 2003. She was able to return to work as a nurse's aid
23 within a short time following these injuries.

24 On October 18, 2003, Ms. Guyman sustained the industrial injury in question. She sought
25 treatment in the emergency room. Although her symptoms were similar to those she experienced
26 in the past, she described these complaints as considerably more severe. This injury precluded her
27 return to the job of injury. She was eventually able to return to the lighter duty position as a
28 phlebotomist.

29 In April of 2004, Ms. Guyman sustained an exacerbation when she rolled over in bed. Her
30 condition was further aggravated when she stepped off a bus in the spring of 2005. It seems
31 obvious that the October 18, 2003 injury was a proximate cause of the need for surgery.
32 Drs. Royce VanGerpen and Richard Bransford both support the link between the need for surgery

1 and the October 18, 2003 injury. Dr. Bransford provided the most logical explanation when he
2 stated that Ms. Guyman suffered an annular tear at the time of the injury. The tear weakened the
3 disc and lead to the herniation. The incidents where she turned over in bed and stepped off the bus
4 were coincidental. The tear in the disc started in October of 2003 and would have progressed
5 regardless of the sequence of events. Consequently, the claimant is entitled to receive necessary
6 and proper surgical treatment.

7 Dated this 6th day of November, 2006.

8 BOARD OF INDUSTRIAL INSURANCE APPEALS

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11 /s/ _____
12 FRANK E. FENNERTY, JR. Member