

Roberts, Marian

AGGRAVATION (RCW 51.32.160)

Proximate cause of worsened condition: new injury vs. aggravation

Although the worker's initial low back condition was due to the industrial injury, the subsequent aggravation was due to a new, intervening and independent cause, and was not a proximate result of the industrial injury. The application to reopen the claim was therefore properly denied.*In re Marian Roberts*, BIIA Dec., 17,096 (1963) [Editor's Note: Consider continued application in light of *In re Robert Tracy*, BIIA Dec., 88 1695 (1990).]

Scroll down for order.

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

1 **IN RE: MARIAN Y. ROBERTS**) **DOCKET NO. 17,096**
2))
3 **CLAIM NO. C-733746**) **DECISION AND ORDER**

4 **APPEARANCES:**

5
6 Claimant, Marian Y. Roberts, by
7 Walthew, Warner & Keefe, per
8 Charles F. Warner and Thomas F. Keefe

9
10 Employer, The Boeing Company, by
11 Holman, Marion, Black, Perkins and Coie, per
12 J. David Andrews and Richard Albrecht

13
14 Department of Labor and Industries, by
15 The Attorney General, per
16 Robert O'Gorman, Gayle Barry, and Andrew J. Young, Assistants

17
18 Appeal filed by the claimant, Marian Y. Roberts, on January 24, 1962, from an order of the
19 supervisor of industrial insurance dated January 5, 1962, which denied the claimant's application to
20 reopen this claim for aggravation of condition. **SUSTAINED.**

21
22 **DECISION**

23 It is undisputed in this case that the claimant suffered an exacerbation or aggravation of a
24 low back condition on or about October 13, 1961, which necessitated medical treatment and the
25 only issue presented is whether such aggravated condition, requiring medical treatment, is
26 attributable to the claimant's industrial injury of September 19, 1960, or to a new injury occurring at
27 home.

28 The record discloses that the claimant's injury on September 19, 1960, occurred when she
29 was transferring a box of parts from a waist high cart to a skid, which was about six inches from the
30 floor. The box of parts was about 18 inches long and about 12 inches thick and weighed about 25
31 pounds. At this time, she felt sharp knife-cutting pains through the small of her back, slightly below
32 the belt line and right down the middle. She suffered a recurrence of this type pain on or about
33 October 13, 1961, after disciplining her daughter at home. At that time, claimant held her daughter
34 by the arm, the daughter backed away and sat down in a chair, causing claimant to go down with
35 her.

36 Dr. Allan Sachs testified that he examined claimant for the first time on January 23, 1962,
37 and after reviewing x-rays of the department, receiving a history, taking claimant's complaints and
38 making a physical examination, he concluded as follows:
39
40
41
42
43
44
45
46
47

1 "That this patient originally suffered an injury in which she developed a
2 low back syndrome due to a fascio-muscular traumatic incident and that
3 this latter incident was an aggravation of this low back syndrome."
4

5 When asked concerning the importance of his having knowledge of the child disciplining action on
6 October 13, 1961, Dr. Sachs replied "And my answer is yes and no. It is important to know that she
7 had this intervening strain because it accounts for the ag-gravation of the already injured back. The
8 reason that I say 'no' is that it still wouldn't change the fact that she had an injured back, it just
9 accounts for the aggravation." (Emphasis added)
10

11
12 Dr. John Stewart who examined the claimant on December 8, 1961, testified that his
13 diagnosis was a postural back pain precipitated by her injury of October 13, 1961, when the
14 claimant tripped and fell at home. He expressed the following opinion with respect to causal
15 relationship "I have an opinion, and that was that there was no causal relationship between her
16 symptoms at the time I saw her and her injury of September 19, 1960."
17

18
19 The record, therefore, establishes that, although the claimant's initial low back condition was
20 due to her 1960 injury, the aggravation or exacerbation for which she required medical treatment in
21 October, 1961, was due to a new, intervening and independent cause, namely, the child disciplining
22 incident, and was not proximately caused by the industrial injury sustained on September 19, 1960.
23 Erickson v. Ford's Prairie School District No. 11, 3 Wn. (2d) 475. In the Erickson case, at page 482,
24 the court, in defining proximate cause, stated as follows:
25

26 "The most useful definition of proximate cause of an event is: "that
27 cause which, in a natural and continuous sequence, unbroken by any
28 new, independent cause, produces the event, and without which that
29 event would not have occurred."
30

31
32 If the situation here were reversed and the claimant's 1960 injury had occurred off the job and her
33 condition had been aggravated by an incident such as occurred to the claimant on October 13,
34 1961, while engaged in extra-hazardous employment, there is no doubt that the latter incident
35 which aggravated her condition would have been considered an "injury" compensable under the
36 act. This being true, it necessarily follows, in our opinion, that the aggravation of the claimant's
37 back condition in October, 1961, for which she is now seeking treatment and compensation under
38 the act, must be considered as due to a new injury. (Non-industrial in nature). We conclude,
39 therefore, that the supervisor's order of January 5, 1962, is correct and should be sustained.
40
41
42
43
44
45
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

FINDINGS OF FACT

In view of the foregoing, and after reviewing the entire record, the board finds:

1. On September 19, 1960, the claimant, Marian Y. Roberts, suffered an injury to her low back in the course of her employment with The Boeing Company, when transferring a box of parts from a waist high cart to a skid, which was about six inches from the floor. A report of accident was filed, and on November 16, 1960, the supervisor entered an order allowing time-loss compensation from September 23, 1960, to October 2, 1960, and closing the claim with no permanent partial disability award.
2. On October 25, 1961, the claimant filed an application to reopen the claim for aggravation of condition. On January 5, 1962, the supervisor entered an order denying her application to reopen the claim. On January 24, 1962, the claimant filed notice of appeal, and on February 8, 1962, this board granted the appeal.
3. On October 13, 1961, while disciplining a young daughter at home, the child fell into a chair and the claimant fell over her. As a result thereof, the claimant aggravated the pre-existing condition in her low back to the extent that treatment therefor was required.
4. When the claimant filed her application to reopen this claim on October 25, 1961, she was not in need of treatment for conditions attributal to her injury of September 19, 1960.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the board concludes:

1. This board has jurisdiction of the parties and subject matter of this appeal.
2. The order of the supervisor of industrial insurance dated January 5, 1962, denying the claimant's application to reopen her claim for aggravation of condition should be sustained.

ORDER

Now, therefor, it is hereby ORDERED that the order of the supervisor of industrial insurance dated January 5, 1962, be, and the same is hereby, sustained.

Dated this 28th day of May, 1963.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/ _____
J. HARRIS LYNCH Chairman

/s/ _____
R. H. POWELL Member

/s/ _____
HAROLD J. PETRIE Member