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

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

APPEARANCES:

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

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

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

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

DECISION

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

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

Dr. Allan Sachs testified that he examined claimant for the first time on January 23, 1962, and after reviewing x-rays of the department, receiving a history, taking claimant's complaints and making a physical examination, he concluded as follows:

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

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

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

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

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

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

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