



Robert E. Beloten
Chair

STATE OF NEW YORK
WORKERS' COMPENSATION BOARD
PO BOX 5205
BINGHAMTON, NY 13902-5205
www.wcb.state.ny.us
(800) 877-1373

State of New York - Workers' Compensation Board
In regard to Marie G Luzzicone, WCB Case #0035 0492

RESERVED DECISION

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Based upon a review of the evidence in the record involving the claim for benefits relative to Marie G Luzzicone, Judge Theresa Merrill made the following decision, findings and directions:

The Claimant, Marie Luzzicone was in the course of her employment on September 11, 2001 at the World Trade Center during the terrorist attacks and as a result claims psychological injuries.

The carrier in controverting this claim raises WCL Section 18 and WCL Section 28.

There is no dispute in this matter that the Claimant was employed by Empire Blue Cross/Blue Shield on September 11, 2001, that the Claimant was present and working in the World Trade Center on September 11, 2001 and that the Claimant was evacuated from the World Trade Center site due to the terrorist attacks on September 11, 2001. The only dispute in this matter is whether or not the Claimant timely filed her workers compensation claim for post-traumatic stress disorder.

It is well established that in order to constitute an accident within the meaning of WCL §2(7), a claimant must establish that something occurred which caused an accidental injury. *Knapp v. Vestal Central School Dist. et al.*, 247 A.D.2d 667, 668 N.Y.S.2d 718 (3d Dept. 1998); *Keck v. NYS Division of Substance Abuse Services, et al.*, 252 A.D.2d 730, 675 N.Y.S.2d 400 (3d Dept. 1998). As indicated above there is no dispute in this matter that the terrorist attacks at the World Trade Center on September 11, 2001 "occurred" causing the Claimant's post-traumatic stress disorder.

Having found that the Claimant had an accident within the meaning of the law, it must now be addressed whether this claim was timely filed.

"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*

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Claimant -	Marie G Luzzicone	Employer -	Empire Blue Cross/Blue Shield
Social Security No. -			
WCB Case No. -	0035 0492		
Date of Accident -	07/20/2003	Carrier Case No. -	
District Office -	NYC	Date of Filing of this Decision-	12/23/2010

ATENCIÓN:

Puede llamar a la oficina de la Junta de Compensación Obrera, en su área correspondiente, cuyo número de teléfono aparece al principio de la página y pide información acerca de su reclamación(caso).

EC-23R (4/98)
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Waldbaums, 276 AD2d 838 [2000] [citations omitted]; see Matter of Oberson v Bureau of Ferry Aviation & Transp., 303 AD2d 795 [2003], lv denied 100 NY2d 507 [2003] . . .). No prejudice will be found to exist '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, lv denied 92 NY2d 816 [1998])" (Matter of Miner v Cayuga Correctional Facility, 14 AD3d 784 [2005]). In this matter I find that the Employer had actual independent knowledge of the events of September 11, 2001 and therefore was not prejudice by the Claimant's failure to provide the required notice under WCL Section 18.

Workers' Compensation Law §28 requires that a claim for an accidental injury be filed within two years of the date of accident. Layton v. General Electric, Co., 176 A.D.2d 390, 574 N.Y.S.2d 97 (3d Dept. 1991). The Board has the authority to select the date of accident. See, American Bldg., 2005 NY Wrk. Comp. LEXIS 3965, WCB case no. 0033 4100 (April 29, 2005) [in which Board upheld establishment of the date of accident as October 18, 2001, the date on which the claimant observed human remains, which caused claimant's post-traumatic stress disorder], and CNY Dept. of Transportation, 2003 NY Wrk. Comp. LEXIS 89276, WCB case no. 0015 4912 (December 19, 2003) [in which the Board found September 14, 2001 the proper date of accident, as that was the date on which the claimant's symptoms became noticeable].

Based upon a review of the entire record, in particular the credible testimony of the Claimant, I hereby establish the date of accident as July 20, 2003; the date of the Claimant's first causally related diagnosis. Inasmuch as the claimant submitted a C-3 form to the Workers' Compensation Board on October 22, 2003, I find that this claim was timely filed.

Accident, notice and causal relationship are hereby established for post-traumatic stress disorder.

Necessary and related medical treatment is hereby authorized.

The case is hereby returned to the Staten Island Part 1 calendar for further proceedings consistent with the above.

The case is continued.

Summary of Findings

DECISION: The claimant Marie G Luzzicone had a work related injury which resulted in post traumatic stress disorder. Case is continued.

Claimant -	Marie G Luzzicone	Employer -	Empire Blue Cross/Blue Shield
Social Security No. -			
WCB Case No. -	0035 0492		
Date of Accident -	07/20/2003	Carrier Case No. -	
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