

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

Received

IN RE: DEBRA L. FULLERTON)

DOCKET NO. 19 23122

MAR 25 2021

CLAIM NO. BD-97538)

DECISION AND ORDER

Washington Law Center

Debra L. Fullerton's work chair mechanism spontaneously broke while she was sitting in it. She lurched forward and experienced soreness and increased lower back symptoms. The Department denied her claim, finding that it was neither an industrial injury nor an occupational disease. Ms. Fullerton appealed and seeks claim allowance. Our industrial appeals judge found that Ms. Fullerton did not sustain an industrial injury or develop an occupational disease condition, and she affirmed the Department's claim rejection order. We agree with our industrial appeals judge that the claim should not be allowed as an occupational disease condition, but we find that Ms. Fullerton proved she sustained an industrial injury. The Department order is incorrect and is **REVERSED AND REMANDED** to the Department to allow the claim for the industrial injury.

DISCUSSION

We agree with our industrial appeals judge that Ms. Fullerton did not establish her entitlement to claim allowance for an occupational disease condition. We granted review because we weigh the evidence differently and find that Ms. Fullerton is entitled to claim allowance for an industrial injury. We also correct a typographical error in an evidentiary ruling in the addendum.

On March 28, 2019, Debra L. Fullerton, age 60, was working as an independent medical examination scheduler for the Washington State Department of Labor and Industries. Ms. Fullerton's ergonomic work chair mechanism spontaneously broke, so that the seat pan was tilted forward towards the floor. The incident caused her to lurch forward in the chair. Ms. Fullerton experienced soreness and increased lower back symptoms. Before the chair broke, she was able to tilt back and find a comfortable position for her back and her knees. After the chair broke she had to try to keep herself in the chair and not fall out. In use, the chair pitched her forward and rocked from side to side.

Over the course of the next few weeks, Ms. Fullerton tried to use her existing chair. At one point, a wooden wedge was placed in the chair in an attempt to allow further use. This was uncomfortable, so Ms. Fullerton was provided with another chair that was narrower. She felt that the narrower chair caused her conditions to worsen. Ms. Fullerton developed bilateral sciatica and bladder and bowel incontinence. She also had lateral thigh pain, consistent with symptomatic meralgia paresthetica. We note that while she had previously been diagnosed with meralgia

1 paresthetica in 1997, there was no evidence in the record that the condition remained symptomatic
2 in the time period before the chair incident.
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4 Ms. Fullerton decided to use two weeks of her accrued paid time off, assuming that the chair
5 would be replaced in her absence. When she returned to work she found that her chair had not been
6 replaced. Ms. Fullerton testified that her abilities to walk and sit for more than two hours were
7 impacted by the chair issues.
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10 In support of her appeal Ms. Fullerton presented the expert medical testimony of H. Richard
11 Johnson, M.D., an orthopedic surgeon who evaluated her on November 22, 2019. Dr. Johnson
12 reviewed Ms. Fullerton's medical records, including a 2018 MRI. On examination, Ms. Fullerton
13 presented with a halting gait, spinal muscle spasm, limited range of motion, thigh muscle atrophy,
14 decreased sensation, hypersensitivity, asymmetrical ankle reflexes, and a positive Patrick's test
15 related to her sacroiliac joint. Ms. Fullerton reported that while her low back pain stabilized in
16 September 2019, it had not returned to her pre-injury level.
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19 Dr. Johnson diagnosed "acute or chronic" lumbar sprain or strain, "acute or chronic" low back
20 pain, temporary worsening of lumbar spondylosis, temporary worsening of the knee degenerative
21 disc disease, and permanent worsening of bilateral lumbar radiculopathy¹ related to the March 28,
22 2019 chair mechanism breaking incident. He felt that the chair incident resulted in an industrial injury.
23 Dr. Johnson also felt that continued use of the unstable chair aggravated Ms. Fullerton's preexisting
24 low back conditions and resulted in an occupational disease condition.
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27 In defense of its determination, the Department presented the expert medical testimony of
28 Dr. Eugene Toomey, an orthopedic surgeon who evaluated Ms. Fullerton on October 22, 2019.
29 Dr. Toomey reviewed Ms. Fullerton's medical records, including the 2018 MRI. On examination,
30 ~~Ms. Fullerton presented with limited range of motion, a negative straight leg raising test, and~~
31 symmetric extremity measurements. Dr. Toomey attributed Ms. Fullerton's condition and symptoms
32 to the natural progression of her arthritis and obesity, rather than to the chair incident or to her
33 continued use of another unsatisfactory chair. He also attributed her various other symptoms to the
34 preexisting conditions of diabetes, knee degenerative disc disease, and meralgia paresthetica.
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37 Dr. Toomey diagnosed "low back pain due to a broken chair without exam abnormalities."² He
38 also agreed that Ms. Fullerton had diagnosed spondylosis, preexisting degenerative knee arthritis,
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46 ¹ Johnson Dep. at 48.

47 ² Toomey Dep. at 51.

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diabetes, and hypertension. He did not find a diagnosable radiculopathy. He testified repeatedly that any worsening of her preexisting low back pain was not permanent. He also did not believe that the chair incident caused a temporary worsening of Ms. Fullerton's pain.

To establish that an industrial injury occurred, Ms. Fullerton's burden is to show that she suffered an injury as defined by statute. ""Injury" means a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical conditions as result therefrom."³ It is undisputed that Ms. Fullerton's chair broke and that she had pain and soreness as a result. Dr. Toomey's testimony that there was no permanent worsening is irrelevant at this stage of a claim. In addition, the evidence provided about Ms. Fullerton's preexisting conditions fails to persuade us that she did not have an injury from the March 28, 2019 chair incident. The worker is to be taken as is, with all preexisting frailties and bodily infirmities.⁴

Ms. Fullerton's alternate burden in this appeal is to show that she developed an occupational disease. ""Occupational disease" means such disease or infection as arises naturally and proximately out of employment. . . ."⁵ In addition, an occupational disease condition must arise naturally due to distinctive conditions of an employee's specific work.⁶

The evidence in the record before us did not persuade us that Ms. Fullerton's symptoms were attributable to the distinctive conditions of her work. We find that any ongoing symptoms suffered by Ms. Fullerton were more likely a result of the March 28, 2019 industrial injury incident. It is our determination that Ms. Fullerton failed to establish that she developed an occupational disease condition due to continued use of the broken chair and use of a different chair that provided inadequate comfort and support during her work time.

~~The spontaneous breaking of a work chair while in use appears to us to be a "sudden and tangible happening," and Ms. Fullerton had resulting physical symptoms. It is our determination that those undisputed facts show that Ms. Fullerton suffered an industrial injury on March 28, 2019. The Department order is incorrect and must be reversed and remanded.~~

³ RCW 51.08.100.

⁴ *Dennis v. Dep't of Labor & Indus.*, 109 Wn.2d 467, 471 (1987).

⁵ RCW 51.08.140.

⁶ *Dennis*.

DECISION

In Docket No. 19 23122, the claimant, Debra L. Fullerton, filed an appeal with the Board of Industrial Insurance Appeals on November 13, 2019, from an order of the Department of Labor and Industries dated October 31, 2019. In this order, the Department affirmed the provisions of an order dated May 6, 2019, that denied the claim as an industrial injury or an occupational disease because there was no proof of a specific injury at a definite time and place in the course of employment, and her condition was not an occupational disease as contemplated by RCW 51.08.140. This order is incorrect and is reversed. This matter is remanded to the Department to allow the claim for an industrial injury.

FINDINGS OF FACT

1. On December 31, 2019, an industrial appeals judge certified that the parties agreed to include the Jurisdictional History in the Board record solely for jurisdictional purposes.
2. Debra L. Fullerton worked as an independent medical examination scheduler for the past seven years. Her job duties included scheduling examinations, setting up travel, and talking to injured workers.
3. Ms. Fullerton sustained an injury in the course of employment on March 28, 2019, when the ergonomic work chair she was sitting on broke, causing her to lurch forward and experience soreness and increased lower back symptoms.
4. Ms. Fullerton continued to use the broken and unstable ergonomic chair at work. She continued to have back pain. She then used a different narrower chair at work. She experienced continuing back pain and numbness and tingling in her thighs.
5. Ms. Fullerton's conditions diagnosed as bilateral sciatica pain, meralgia paresthetica, bilateral degenerative disease of the knees, and lumbar spondylosis did not arise naturally and proximately out of the distinctive conditions of her employment.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter in this appeal.
2. Debra L. Fullerton did sustain an industrial injury within the meaning of RCW 51.08.100 on March 28, 2019.
3. Ms. Fullerton's conditions diagnosed as bilateral sciatica pain, meralgia paresthetica, bilateral degenerative disease of the knees, and lumbar spondylosis are not occupational disease conditions within the meaning of RCW 51.08.140.

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4. The Department order dated October 31, 2019, is incorrect and is reversed.
The claim is remanded to the Department to allow the claim for an industrial injury.

Dated: March 22, 2021.

BOARD OF INDUSTRIAL INSURANCE APPEALS



LINDA L. WILLIAMS, Chairperson



ISABEL A. M. COLE, Member

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Addendum to Decision and Order
In re Debra L. Fullerton
Docket No. 19 23122
Claim No. BD-97538

Appearances

Claimant, Debra L. Fullerton, by Washington Law Center, PLLC, per Spencer D. Parr
Department of Labor and Industries, by Office of the Attorney General, per Daniel J. Hsieh

Petition for Review

As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision. The claimant filed a timely Petition for Review of a Proposed Decision and Order issued on January 19, 2021, in which the industrial appeals judge affirmed the Department order dated October 31, 2019.

Evidentiary Rulings

The PDO sustained an objection on page 20 of Dr. Johnson's deposition. There is no objection reflected on page 20 of Dr. Johnson's deposition. We sustain the objection on page 29 of Dr. Johnson's deposition, and the sentence that begins on line 7 and ends on line 10 on that page is stricken.

The Board has reviewed the remaining evidentiary rulings in the record of proceedings and finds that no prejudicial error was committed. The rulings are affirmed.



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State of Washington
BOARD OF INDUSTRIAL INSURANCE APPEALS
2430 Chandler Court SW
PO Box 42401
Olympia WA 98504-2401

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CA1

SPENCER D. PARR, ATTY
WASHINGTON LAW CENTER PLLC
651 STRANDER BLVD BLDG B #215
TUKWILA, WA 98188

EM1

DEPT OF LABOR & INDUSTRIES
OFFICE OF HUMAN RESOURCES
PO BOX 44821
OLYMPIA, WA 98504

ELR1

KATHRYN BALZER, PARALEGAL
OFFICE OF THE ATTORNEY GENERAL
PO BOX 40121
OLYMPIA, WA 98504-0121

AG1

DANIEL J. HSIEH, AAG
OFFICE OF THE ATTORNEY GENERAL
800 5TH AVE #2000
SEATTLE, WA 98104-3188

CL1

DEBRA L. FULLERTON
33020 10TH AVE SE #X-103
FEDERAL WAY, WA 98023

In re: DEBRA L. FULLERTON
Docket No. 19 23122



231-2



STATE OF WASHINGTON

BOARD OF INDUSTRIAL INSURANCE APPEALS

2430 Chandler Ct SW PO Box 42401 • Olympia, WA 98504-2401 • (360) 753-6823 • www.biiia.wa.gov

Enclosed is the Board's final order in this appeal. It is written in English. If you would like the order translated, please return the Request for Translation of Order.

What if I disagree with the decision reached in the final order?

- Any party who disagrees with any portion of this decision may appeal to superior court.

How much time do I have to appeal to superior court?

- In **workers' compensation** and **WISHA** cases, your appeal to superior court must be filed within 30 days from the date you receive the Board's final order.
- In **crime victim** and **employer premium** cases, your appeal must be filed within 30 days from the date the order was mailed to you.

In what county do I file a superior court appeal?

- In a **workers' compensation** case, file the appeal either (1) in the county where the injured worker or beneficiary lives, or (2) in the county where the injury took place. If the worker's residence and the place of injury are outside Washington State, file the appeal in Thurston County Superior Court.
- In a **WISHA** case, file the appeal in the county where the alleged violation occurred.
- In a **crime victim** or **employer premium** case, file the appeal either (1) in Thurston County, (2) in the county where you live or where your principal place of business is located, or (3) in any county where the property owned by the petitioner and affected by the contested decision is located.

Do I need to send copies of the appeal to anyone?

- Copies of the appeal **MUST** be mailed or hand-delivered to the BIIA, L&I, and (if applicable) to the Self-Insured Employer:

Board of Industrial Insurance Appeals 2430 Chandler Court SW P.O. Box 42401 Olympia, WA 98504-2401	Department of Labor and Industries Office of the Director P.O. Box 44001 Olympia, WA 98504-4001
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Is there a form for filing an appeal in superior court?

- No. Each superior court has its own filing requirements. There is a directory available on the Washington Courts website to help you locate the appropriate superior court: http://www.courts.wa.gov/court_dir.

What evidence will the superior court consider?

- The case will be tried based on the record made before the BIIA. The record consists of transcripts, depositions, and exhibits offered during Board hearings.

Get more information about superior court appeals:

This letter is for informational purposes only. It doesn't contain all filing requirements for superior court appeals. If you file an appeal in superior court you are solely responsible for complying with all applicable laws, including the superior court local rules. More information can be found in the Revised Code of Washington (RCW) and Washington Administrative Code (WAC). These legal publications are available in law libraries and on the Washington State Legislature website: www.leg.wa.gov/LawsAndAgencyRules.

Most of these rules can be found in the Board's *Rules of Practice and Procedure*, a publication found on the Board's web site: www.bia.wa.gov.

- **Workers' Compensation** – See RCW 51.52.110 and WAC 263-12-170.
- **Washington Industrial Safety and Health Act (WISHA)** – See RCW 49.17.150.
- **Employer Premium** – See RCW 51.48.131, RCW 51.52.112, and RCW 34.05.510-598.
- **Crime Victims** – See RCW 7.68.110 and RCW 34.05.510 – RCW 34.05.598.

Superior court local rules may be consulted on the Washington Courts website: http://www.courts.wa.gov/court_rules.

Attorney Fees:

This section applies **only** to injured workers, beneficiaries, and crime victims. It does **not** apply to employers or to WISHA or employer premium cases.

- A worker/beneficiary/crime victim represented by an attorney who succeeds in their appeal may ask the Board to set the attorney fee. The request must be in writing and must be filed within one year of receipt of the Board's final order. The Board has authority to set the fee even though a fee agreement was made with the attorney. The responsibility for paying the fee, however, remains with the worker/beneficiary/crime victim.