

Oneida Tribal Judicial System

Onʌyote ʔ a-ka Tsiʔ Shakotiyaʔ Tolé hte

**ONEIDA TRIBAL JUDICIAL SYSTEM
TRIAL COURT**

**Lori Ellis,
Petitioner**

Docket No: 08-TC-099

v.

Date: January 12, 2009

**Oneida HRD-Benefits and,
Crawford and Company,
Respondents**

Decision

This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers, Mary Adams, Jean M. Webster, and Leland Wigg-Ninham, presiding.

I Background

On August 4, 2008 Petitioner, Lori Ellis – Craps, Table Games Dealer, filed a claim against Respondents, HRD-Benefits and Crawford and Company, for the denial of her Worker's Compensation request. A pre-trial hearing was held on September 9, 2008.

II Analysis

Petitioner claims while she was working she injured her back and shoulder by bending and reaching as her job requires these activities. Petitioner argues she filed her first incident report in April 2008 and again on May 27, 2008. Petitioner argues she tried to file another incident report on June 15, 2008, but was told not to since she filed an earlier report (Petitioner's exhibit # 3).

Petitioner provides documentation from Michael J. Meyer, MD, to support her claim that her

painful condition is not idiopathic but is related to underlying degenerative joint disease and in part related to work activities. Furthermore, Petitioner points out Doctor Meyer's report supports her request for Worker's Compensation benefits because in his opinion, work requirements of repeated bending and lifting clearly made her condition worsen.

Petitioner asserts her doctor is recommending her to have a CAT scan.

Respondents assert their denial of Worker's Compensation was based on two reasons:

1. Petitioner's untimely appeal and;
2. Petitioner's injury is idiopathic.

Respondents argue according to Petitioner her first back pain was reported in April 2008 but failed to provide any evidence to support that she filed a claim. Therefore, it was denied according with the Oneida Worker's Compensation Law, section 13.9-1 which requires the employee to report the accident giving rise to the injury within 48 hours of its occurrence.

Respondents contend the burden of proof lies with Petitioner. Petitioner failed to provide any evidence that she filed an incident report in April 2008.

Respondents also argue Petitioner's claim should be denied because it is idiopathic. Idiopathic injuries are those that appear from unknown causes and are not covered under the Oneida Worker's Compensation Law, section 13.3-13 (L). Respondents point out that had she tripped or fell on something it would be a "cause".

On December 3, 2008 Petitioner filed her MRI Examination Report by Andrew F. Greene, M.D. and signed by Robert Monette, M.D. on October 22, 2008.

On December 16, 2008 a trial was held. All parties were present.

Court's Findings of Fact

The court heard testimony, reviewed the transcripts and documentation submitted by the parties. Petitioner's documents contain two compelling statements. First the memo from Michael J.

Meyer, MD, dated September 5, 2008, stated, "*In my opinion she has a painful condition which is not idiopathic but is in part related to underlying degenerative joint disease and in part related to work activities.*" In addition, doctor Meyer states, "*In my opinion, she had an underlying problem with generative joint disease of the thoracic spine, however, her work requirements of repeated bending and lifting clearly made her condition worsen.*"

Secondly, a report signed by Navjot Kohli, M.D. Orthopedic Surgeon. Within that report listed under Specific Impressions, number (1) "The diagnosis is pre-existing degenerative disk disease unrelated to any work place incident or exposure." Furthermore, number (3) "Regardless of cause, a healing period has been reached as of November 12, 2008. Navjot Kohli, M.D. is an Orthopedic Surgeon whose expertise is in this area. Doctor Kohli supports Respondents' claim that Petitioner has a pre-existing disease unrelated to any workplace incident.

From testimony Ms. Ellis had a history of back spasms from ten years ago while working at Carver Boats. Both physicians concur that Ms. Ellis's condition is a degenerative disease. It's conceivable that any type of movement connected to her back, over time, will worsen her condition.

Conclusion of Law

Therefore, based on the evidence provided to it, this court denies Ms. Ellis' claim. Her injury is idiopathic as that term is used in Section 13.3-13(L) and therefore not eligible for coverage.

However, according to Ms. Ellis' testimony she was referred to an out of network physician by Respondents. According to Respondents' testimony they did not deny the referral. Therefore, her medical referrals shall be paid by Respondents.

The issue of timeliness is moot and shall not be analyzed.

II Decision

The court denies Petitioner's claim.