

VIRGINIA:  
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by NEWMAN  
Commissioner

**Apr. 22, 2020**

MICHAEL PERRYMAN v. TARGET CORPORATION  
INDEMNITY INS CO OF N AMERICA (INA INS), Insurance Carrier  
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC, Claim Administrator  
Jurisdiction Claim No. VA00001622211  
Claim Administrator File No. B921335464000101213  
Date of Injury: June 15, 2019

Hobart F. Reed, Esquire  
Corey R. Pollard, Esquire  
For the Claimant.

Emily S. Kirkpatrick, Esquire  
For the Defendants.

REVIEW on the record by Commissioner Marshall, Commissioner Newman, and Commissioner Rapaport at Richmond, Virginia.

The defendants requested review of the Deputy Commissioner's December 4, 2019 Opinion finding the claimant sustained a compensable injury by accident on June 15, 2019, with injuries to his neck, back, and both shoulders, and awarding temporary total disability benefits from July 14 to August 15, 2019. We AFFIRM.<sup>1</sup>

**I. Material Proceedings**

The claimant filed claims on August 14, 2019, and October 9, 2019, alleging injuries to his neck, back, and both shoulders on June 15, 2019. He sought an award of medical benefits and

---

<sup>1</sup> Considering the issues involved and the complete record developed at the hearing and before the Commission, we find oral argument is unnecessary and would not be beneficial in this case. Va. Workers' Comp. R. 3.4; *see Barnes v. Wise Fashions*, 16 Va. App. 108, 112(1993).

temporary partial disability from June 16, 2019, through July 13, 2019, temporary total disability from July 14, 2019, through August 15, 2019, and temporary partial disability beginning August 16, 2019.

The Deputy Commissioner held that the claimant's injury arose out of his employment. He awarded temporary partial disability benefits from June 16 to July 13, 2019, and temporary total disability benefits from July 14 to August 15, 2019, inclusive. He found the claimant suffered injuries to his neck, back, and both shoulders as a result of the work accident. He directed the defendants to provide a panel of orthopedic surgeons.

The defendants filed a timely request for review.

## **II. Findings of Fact and Rulings of Law**

The claimant worked for the employer as an order picker operator in the warehouse. "An order picker is a standup forklift that has a front cab with forks immediately behind you." (Tr. 5.) The claimant stood in the cab of the lift. There is a steel cage behind him that holds boxes. He takes the boxes from the cage and puts them on the racking. The claimant testified that he worked with a quota, and his job was fast-paced.

On the day of his accident, the claimant picked up a box that weighed no more than ten pounds. He testified, "I squatted down, picked it up, stood up, turned, put it on the rack." (Tr. 14.) He was required to push the box back away from the face of the racking so it would not get damaged. He explained: "So, how I got hurt was, I reached up with both hands, pushed the box back and pulled my arms back and when I pulled my arms back, my back popped." (Tr. 15.) The box was at chest to shoulder height. He moved his arm so they were three-quarters extended. After he pushed the box back, he pulled his arms straight back towards his chest. He felt a pop between

the bottom point of his right shoulder blade and his spine when his arms were about half-way back to his chest. On cross-examination, the claimant agreed that at the time he felt the pop, he had nothing in his hands. He was standing straight when he pulled his arms back.

The claimant kept working for fifteen to thirty more minutes until he started feeling pain and tightness in his neck. He found his supervisor to report his accident, and later that day he went to the emergency room. He then treated at NowCare Urgent Care. He returned to work for the employer working light duty until July 13, 2018, when he was informed the position was no longer available. The claimant began looking for work. He submitted a list of job contacts he made from August 6 to November 3, 2018. (Cl.'s Ex. 2.) On August 16, 2018, he started a light duty job earning less than his pre-injury wage. He continued to look for work although he was limited by the hours of his job.

Medical records from before the work accident include notes from a December 17, 2018 visit to Lakeview Family Medicine. The claimant reported for right shoulder pain "ongoing for a few months. No inciting events. Works in a [ware]house and carries heavy items at work all day. Has trouble with reaching out his arms. No motor weakness. He is unable to sleep on his right side." He was diagnosed with right shoulder pain likely secondary to bursitis and prescribed Voltaren gel and told to use ice daily. He was to return in three months. When the claimant returned for follow up on February 22, 2019, he noted continuing right shoulder pain. He was having trouble reaching out his arms. It was noted he "continues to carry heavy items at work." The claimant was referred to an orthopedist to consider injections.

Following the work incident, the claimant treated at Sentara Obici Hospital on June 15, 2019. The history reflects: "Pt states was lifting and pushing something at work around 1645 today

and felt a pop when he pulled back, states since has had pain in R back and arm that radiates up to his neck, states can only turn neck a little bit to each side.” Notes from the Physician Assistant state he was being evaluated for “upper back pain that started 4 hours ago while at work. Pt reports he pushed a 30 lbs [sic] box and felt something ‘pop’ between his shoulder blades. He reports pain radiating into his neck and upper arms. Pain is worse with movement of neck. He also reports an ‘electrical sensation’ into his R arm. Denies numbness.” The claimant was diagnosed with a right trapezius muscle strain, discharged with light duty work restrictions, and advised to follow up with occupational health.

The claimant treated at Now Care on June 17, 2019, for “upper back pain, right shoulder pain, and neck pain after lifting a 30lb box to shoulder height; patient states he felt a pop in his upper back through the shoulders.” His differential diagnosis included right trapezius/neck/shoulder strain, muscle spasm, and radiculopathy. He was referred to physical therapy for evaluation and treatment for right neck, upper back, and arm pain. A June 17, 2019 Attending Physician’s Report indicates the claimant reported he “[l]ifted a box, pivoted on heel, lifted box to shoulder height and pushed box onto racking. Pulled arms back and felt pain.” The doctor opined that the claimant’s muscle strain was related to this incident.

On June 26, 2019, the claimant returned to NowCare. The history reflects the following:

Pt presents for f/u for right trapezius strain. He states right sided pain resolved on Monday morning (6/24/19) when he woke up and he all of a sudden had pain on the left side. The pain starts in his left shoulder blade and radiates down left arm. He has pain in the upper arm and numbness/tingling in the lower arm. He also reports pain and pressure in the middle of his back. He has been doing light duty at work.

Britney Emons, PA-C listed diagnoses of thoracic back pain, resolved radicular pain on right side, and new radicular pain down left arm [with] “no associated injury.” X-rays of the thoracic spine showed mild scoliosis and mild compression deformity of the lower thoracic spine. The claimant was prescribed a steroid for radicular pain, and his muscle relaxer was refilled. He was provided light duty work restrictions and referred to an orthopedist and for physical therapy.

The claimant returned to NowCare on July 8, 2019, for “recheck of upper back strains due to injury at work.” Dr. Michael Sotosky noted that at the last visit the claimant reported resolution of his initial right upper back pain and that he was now experiencing left upper back pain with tingling into the left arm and hand. Dr. Sotosky indicated that physical therapy had not been approved by workers’ compensation. On examination, the claimant’s left upper back was tender with mild tightness on medial scapular muscle over the trapezius and rhomboid areas. The left shoulder had full range of motion. The right upper back had no palpable pain. Dr. Sotosky recommended physical therapy with continuation of medications.

On July 15, 2019, the claimant was still having pain in the left shoulder and numbness in the left hand. Physical therapy had never been authorized, and the claimant reported he had been told “today WC coverage is being dropped for him.” Dr. Sotosky noted the thoracic spine was tender to palpation, and the claimant demonstrated paravertebral muscle discomfort. The left upper back muscle also demonstrated discomfort and tightness. Dr. Sotosky’s diagnoses included left upper back strain, left thoracic back pain, left upper arm pain, and paresthesia of the left fourth and fifth fingers. The claimant was referred to orthopedic medicine for evaluation and treatment.

In a July 15, 2019 Rx Order, Dr. Sotosky wrote: “Back injury at work 6/15/19. Initial R upper back pain and strain, resolved. Subsequent L upper back pain, thoracic pain, L upper arm

pain and paresthesia of 4<sup>th</sup> and 5<sup>th</sup> fingers of L hand.” Dr. Sotosky provided light duty work restrictions that included no lifting, pushing, or pulling greater than fifteen pounds, no ladders, climbing, limited reaching or working above the shoulder on the right and prohibited on the left, and no commercial driving.

A. Compensable Injury by Accident

The Deputy Commissioner found the claimant proved he suffered a compensable injury by accident. The Deputy Commissioner found the claimant “credibly testified about the mechanism of his injury, including the brief delay between the movement of the box and the onset of his symptoms,” which delay the Deputy Commissioner found did not defeat the claim.

On review, the defendants argue that claimant’s accident did not arise out of his employment. An injury arises out of the employment where the conditions of the workplace or a significant work-related exertion causes the injury. *Grove v. Allied Signal, Inc.*, 15 Va. App. 17, 21-22 (1992); *Plumb Rite Plumbing Serv. v. Barbour*, 8 Va. App. 482, 484 (1989). Simple acts of walking, bending, reaching or turning, without any work-related exertional or awkward contributing factors, are not risks of the employment. *Southside Va. Training Ctr. v. Ellis*, 33 Va. App. 824, 829 (2000). An injury is considered to arise out of the employment when it appears to the rational mind, upon consideration of all the circumstances, that a causal connection exists between the conditions under which the work is required to be performed and the resulting injury. *Marketing Profiles, Inc. v. Hill*, 17 Va. App. 431, 434 (1993).

Here, the defendants argue that at the time the claimant felt a pop, he had nothing in his hands, he was not in an awkward position, and he was not overreaching or performing any other strenuous task. Rather, he was simply bringing his empty hands toward his body. Therefore, they

argue, his accident did not arise out of his employment. The defendants rely on *Pierce v. Goodwill Indus. of Tenna, Area Inc.*, JCN VA00001389205 (Aug. 24, 2018). In that case, the claimant took ten to fifteen t-shirts out of a shopping cart and reached “comfortably” across the cart to place the shirts in a bin four feet away from him. As he was bringing his arm back, with nothing in his hands, he felt his shoulder pop. He testified his posture was “straight up” when he was placing the t-shirts into the bin. The Commission held: “We are not persuaded environmental factors created a risk of his employment. The evidence does not support the claimant was required to overreach. He did not describe his movements or position at the time of injury as awkward or unusual.”

Here, however, we find that the claimant’s injury was the result of one continuous event that involved picking up a box and pushing it into place. We rely on our recent decision in *Tokhi v. Wal-Mart Associates, Inc.*, JCN VA00001453177 (Feb 25, 2020). In that case, the claimant felt pain after he took a heavy box off a conveyor belt, turned around, twisting, bent his knees, and dropped the box on the ground. We found that the claimant was not engaged in the mere act of squatting but that his “actions constituted a sequence of strenuous physical movements, all part of the same maneuver, which constituted a significant work-related exertion providing the critical link to his employment.” *See also Williams v. CJ Designs Inc.*, JCN VA00001427406 (July 8, 2019) (claimant’s actions in bending down to lift her patient’s feet and placing them into the vehicle “were all part of one continuous event that led to her back strain”); *Brock v. DePaul Med. Ctr.*, JCN VA00000815102 (Feb. 2, 2015) (claimant’s motions in transferring a patient from a stretcher to a hospital bed were “all part of one continuous event that led to her back strain” and therefore the analysis of cases involving arising from awkward positions inapplicable).

In this case, we are not persuaded by the defendants' argument that the claimant's injury involved merely bringing his arms back after pushing a box. Rather, the claimant was standing on a forklift, several feet off the ground, loading boxes onto shelving. He testified that he squatted down, picked up a box, stood up, turned, put the box on the rack, reached up with both hands to push the box back, and then felt pain and a pop as he pulled his arms back. (Tr. 14-15.) We find that the claimant's "actions constituted a sequence of strenuous physical movements, all part of the same maneuver, which constituted a significant work-related exertion providing the critical link to his employment."

B. Injuries

The defendants argue that the evidence does not establish injuries to the neck, back, and both shoulders related to the June 15, 2019 work accident. We disagree. Following the accident, the claimant reported upper back pain, right shoulder pain, and neck pain. He noted problems with turning his neck. His diagnoses included trapezius/neck/shoulder strains, muscle spasm, and radiculopathy. He was referred to physical therapy for evaluation and treatment for the neck, upper back, and arm pain. Although the claimant indicated his right-sided back pain had resolved, he noted he awoke on June 24, 2016, with left-sided upper back pain. There was no new accident associated with this back pain. He was thereafter diagnosed with a resolved right upper back strain and a left upper back strain, left thoracic back pain, and left upper arm pain. Thus, a review of the medical evidence shows the claimant was diagnosed with and prescribed treatment for injuries to his right shoulder, neck, and his upper back related to the accident.

C. Disability

The defendants argue that the Deputy Commissioner erred in extending the claimant's period of light duty beyond July 16, 2019, the date of his last medical appointment wherein he was provided light duty work restrictions, and in excusing his duty to market for this one-month period.

On July 15, 2019, Dr. Sotosky issued light duty work restrictions. He noted that he had ordered physical therapy, but it had not been authorized. He also referred the claimant to an orthopedic surgeon. The claimant testified he was not provided any medical treatment beyond this visit. He also testified that he began looking for work on August 6, 2018, and started a light duty job on August 16, 2018, earning less than his pre-injury average weekly wage.

The Deputy Commissioner found that the claimant's disability should extend one month following his last medical appointment. The Deputy Commissioner reasoned:

Given that Perryman last received medical attention on July 15, 2019 with the extension of his existing work restrictions as well as a recommendation that he undergo an evaluation by an orthopedic surgeon, it is found that he remained under restrictions for a month after this evaluation but then failed to meet his burden of proof regarding continuing disability after that date.

(Op. 5.) The Deputy Commissioner awarded temporary total disability benefits beginning July 14, 2019, through August 15, 2019. He found this period too brief to require marketing. We find no error. The claimant's treating doctor provided light duty work restrictions. We find it reasonable to extend the claimant's temporary partial disability for a brief period following the doctor's appointment, especially where further medical treatment had been denied by the carrier. We also agree that under the circumstances of this case, the one-month period was too brief to require marketing.

### **III. Conclusion**

The Deputy Commissioner's December 4, 2019 Opinion is AFFIRMED.

An attorney's fee in the total amount of \$1000, which includes the \$750 awarded by the Deputy Commissioner below, is awarded to Corey R. Pollard, Esquire, for legal services rendered to the claimant, the payment of which shall be deducted from accrued compensation or to the extent that accrued compensation is insufficient, to be collected directly from the claimant.

This matter is hereby removed from the review docket.

#### RAPAPORT, COMMISSIONER, Dissenting:

I respectfully dissent. I disagree that the claimant proved a compensable injury by accident arising out of the employment. Contrary to the majority's conclusion, the facts in this case do not illustrate "a sequence of strenuous physical movements . . . which constituted a significant work-related exertion." *Tokhi v. Wal-Mart Assocs., Inc.*, JCN VA00001453177 (Feb. 25, 2020).

The claimant testified that "I reached up with both hands, pushed the box back and pulled my arms back and when I pulled my arms back, my back popped." (Tr. 15.) His arms were approximately three-fourths extended when he pushed the box, i.e., not fully extended. The claimant said that he felt the pop when his arms were "about half-way back to my chest." (Tr. 16.) He was reaching "[j]ust slightly above the chest." (Tr. 35.) He denied twisting or overreaching.

Simple acts of walking, bending, reaching, or turning, without any work-related exertion or awkward contributing factors, are not risks of the employment. *Southside Va. Training Ctr. v. Ellis*, 33 Va. App. 824, 829 (2000); *Crawford v. Va. Elec. & Power Co.*, VWC File No. 190-16-53 (Apr. 23, 1999), *aff'd*, No. 1125-99-3 (Oct. 5, 1999); *Cobb v. Westmoreland Coal Co.*, VWC File

No. 163-86-99 (July 8, 1994), *aff'd*, No. 1459-94-3 (Feb. 14, 1995). The record here is void of any evidence of an awkward or unusual exertion. The claimant was standing, straight up, and working at the shoulder level. The claimant testified that he estimated the box at issue weighed less than ten pounds. The claimant placed the box on the shelf. Then, with nothing in his hands, he felt a pop as he retracted his arms.

The majority's reliance upon *Tokhi* is inappropriate and clearly distinguishable. In *Tokhi*, the injured employee was lifting and twisting while setting down a heavy box. We found that although the claimant had nothing in his hands at the exact moment he felt pain, the manner in which he was required to perform his job was sufficiently awkward for the injury to arise out of his work. None of those factors exist in the case before us. As I voiced in my dissent in *Williams v. CJ Designs, Inc.*, JCN VA00001427406 (July 8, 2019), "There was no condition of the workplace or additional exertion necessitated by work . . . that caused the claimant's injury."

In *Pierce v. Goodwill Industries of Tenna, Area, Inc.*, JCN VA00001389205 (Aug. 24, 2018), we addressed a substantially similar situation. In *Pierce*, the claimant described feeling his shoulder "pop" as he was bringing his arms back after placing ten to fifteen T-shirts in a shopping cart that was four feet away. Pierce was raising straight up at the time he felt the pop. The evidence did not reflect that the claimant was in an awkward position or making an unusual movement at the time he felt the pop as he moved his arms back toward his body.

Based upon the facts of the case *sub judice* and our prior decisions, I would reverse the award of an injury by accident.

APPEAL

You may appeal this decision to the Court of Appeals of Virginia by filing a Notice of Appeal with the Commission and a copy of the Notice of Appeal with the Court of Appeals of Virginia within 30 days of the date of this Opinion. You may obtain additional information concerning appeal requirements from the Clerks' Offices of the Commission and the Court of Appeals of Virginia.