

2024 WL 3468541 (N.Y.Work.Comp.Bd.)

Workers' Compensation Board

State of New York

EMPLOYER: CONSOLIDATED EDISON CO OF NEW YORK

Case No. G296 0555

Carrier ID No. C178402620000101 W373005

July 15, 2024

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Date of Accident 2/1/2021

The Full Board, at its meeting held on June 11, 2024, considered the above captioned case for Mandatory Full Board Review of the Board Panel Memorandum of Decision filed on January 11, 2024.

#### ISSUE

The issue presented for Mandatory Full Board Review is whether this claim should be established for a left [knee injury](#).

The Workers' Compensation Law Judge (WCLJ) established this claim for a left [knee injury](#).

The Board Panel majority affirmed the WCLJ decision.

The dissenting Board Panel member would reverse the WCLJ and disallow the claim, without prejudice, pending submission of prima facie medical evidence and a medical opinion on causal relationship.

The self-insured employer (SIE) filed an application for Mandatory Full Board Review, arguing that the claimant has not produced prima facie medical evidence of a left [knee injury](#). The SIE concedes that it accepted the claim to the left knee, but argues that it did so without prejudice. The SIE also argues that it had no reason to file a SROI-SJ (Subsequent Report of Injury-Suspend Pending Appeal or Judicial Review), when there were no indemnity or medical benefits to suspend. Finally, the SIE argues that the SIE's "acceptance of this claim under [WCL] § 21-a does not obviate the claimant from the burden of producing medical evidence to substantiate the claim."

The claimant did not file a rebuttal.

Upon review, the Full Board votes to adopt the following findings and conclusions.

## FACTS

On February 15, 2021, the SIE filed a First Report of Injury-Original (FROI-00) to report an accident on February 1, 2021, describing the claimant's injury as "left knee pain." The FROI-00 listed the Claim Type as "M - Medical Only," and the Agreement to Compensate (ATC) as "L - With Liability."

The Board issued a Notice of Case Assembly (EC-1) on February 16, 2021, and informed the claimant that no medical report has been received regarding the [knee injury](#). The claimant was directed to have his health care provider submit any reports of medical treatment to the SIE with a copy to the Board. The notice stated that "[t]he medical report is essential to the timely and ongoing payment of lost wage benefits."

On February 16, 2021, the SIE filed a Subsequent Report of Injury-Employer Paid (SROI-EP) to report that it had paid claimant salary in lieu of compensation from February 2, 2021, through February 23, 2021. The SROI-EP indicated that the Claim Type was "I - Indemnity for Lost Time," and the ATC Code was "W - Without Liability."

\*2 On February 25, 2021, the SIE filed a Subsequent Report of Injury-Suspension, RTW or Medically Determined/Qualified to RTW (SROI-S1) to report the claimant's return to work without restriction on February 24, 2021, noting a suspension effective date of February 23, 2021.

On February 25, 2021, the SIE also filed an Employer's Report of Injured Employee's Change in Employment Status Resulting from Injury (C-11) to report that the claimant first lost time from work on February 3, 2021, and first returned to work on February 11, 2021. Attached to the C-11 was a C-107 (reimbursement request) form dated February 22, 2021, in which the SIE reported that it paid full salary in the amount of \$2, 064.48 for the claimant's lost time from February 3, 2021, to February 11, 2021, and was requesting reimbursement in full in the event of a schedule loss of use or serious facial award.

Beginning on March 4, 2021, the SIE sent several letters to the claimant to request information about the claimant's medical treatment for this injury, attaching a Claimant's Authorization to Disclose Health Information (HIPAA-1) to each communication (ECF Doc ID #s 354180016, 354977131, 357512115, and 392873525).

On July 26, 2021, the SIE filed a Subsequent Report of Injury-Sub-Annual (SROI-SA) noting its prior payment of salary in lieu of compensation for the period from February 2, 2021, through February 23, 2021.

On February 16, 2022, the Board issued a notice (EC-395) to claimant regarding temporary payments that are made without prejudice pursuant to [Workers' Compensation Law \(WCL\) § 21-a](#), which "allows [the SIE] to pay workers' compensation lost wage and appropriate medical benefits to an injured employee for up to one year without admitting liability for the claim and without prejudice to its right to contest the claim." The EC-395 notice further stated that at any time during the one-year period, the SIE may cease temporary payments, upon proper notice, in order to contest the claim. However, if the SIE does not provide such notice within one year of the start of temporary payments, the SIE is deemed to have accepted liability for the claim. The claimant was notified that as the Board has not received a notice from the SIE of its termination of benefits within one year after the start of its temporary payments, the SIE "is considered to have admitted liability for your claim [and the SIE] must file SROI showing acceptance of the claim."

On April 29, 2022, the Board sent correspondence to the claimant advising that no medical reports had been received, and that the Board required a medical report from a medical provider in order to process the claim.

In an Administrative Decision (EC-200X) filed on July 25, 2022, the Board found that the claimant had a work-related injury to the left knee; and made awards for the period from February 3, 2021, to February 11, 2021, at the temporary partial rate of

\$409.82 per week, subject to employer reimbursement. The total award amount was \$81.96 after the seven-day waiting period was deducted.

\*3 On July 26, 2022, the SIE timely objected to the EC-200X because there was no PFME, and no medical evidence to justify lost time. The parties were then notified that the action from the EC-200X would not be taken, and a hearing was scheduled for April 27, 2023, to consider the issues in the claim.

At the hearing on April 27, 2023, the attorney for the SIE and the claimant, who is unrepresented, were present, and the attorney for the SIE noted that no medical evidence and no C-3 had been submitted to the file. The claimant stated that he is not treating for the left knee. He went once and had it looked at, there was an x-ray, but nothing was torn or broken. Initially, the claimant stated he lost no time from work due to the injury, but then stated that he thinks it was only one day, when he went to have his knee looked at. When the WCLJ told him that the employer indicated that he was out from February 3rd to the 11th, the claimant explained that he is on a rotating work schedule and is off for four days at a time, and those days may have been during that period in February. The WCLJ then directed the SIE to submit an updated C-11; directed the claimant to submit medical evidence within 45 days if he has a claim of lost time; and directed the claimant to submit an employee claim form (C-3.0). The WCLJ then established the claim for the left knee, noting that although there are no medical reports in the file, the SIE accepted the case with liability. No indemnity awards were made. The SIE noted its exception to establishing the claim because although the claim was accepted for the left knee, the claimant still has the burden to produce medical evidence to substantiate establishment. As no such evidence has been produced, establishment of the claim is premature. The WCLJ's findings were set forth in the decision filed May 2, 2023, and the SIE filed an application for administrative review.

The SIE requested that the WCLJ decision to establish the claim be rescinded, noting that while it accepted the claim for the left knee, the WCLJ erred in establishing a claim for the left knee, as there was no medical evidence to substantiate a causally related left [knee injury](#).

The claimant did not file a rebuttal.

## LEGAL ANALYSIS

When a carrier or employer is unsure about the extent of liability for a claim, the protections of [WCL § 21-a\(1\)](#) allow for temporary payments of lost wage benefits and the cost of prescription medicine to be made for one year without prejudice.

In order to preserve its right to controvert a claim, the employer is required to invoke [WCL § 21-a](#) before beginning temporary payments of compensation and before a decision of the Board establishing or disallowing the claim (12 NYCRR 300.22[e] [1]). If [WCL § 21-a](#) is properly invoked, the employer is permitted to suspend temporary payments during this year and to controvert the claim.

Here, the SIE properly invoked [WCL § 21-a](#) when it filed its first SROI with Claim Type “I - Indemnity for Lost Time,” and ATC Code “W - Without Liability,” advising that it paid claimant salary in lieu of compensation from February 2, 2021, through February 23, 2021 (see SROI-EP filed on February 16, 2021).

\*4 Nevertheless, based on the following analysis, the Full Board finds that the claim was properly established pursuant to [WCL § 21-a\(4\)](#).

Where, as here, a FROI is filed as “medical only,” the SIE cannot use an ATC code of “W - Without Liability” because use of such code is available only when temporary payments of lost wage benefits and the cost of prescription medicine are being made without prejudice pursuant to [WCL § 21-a](#) (Matter of New York City Transit Authority, 2024 NY Wrk Comp G2863152; citing “eClaims-Process for [Section 21-a](#) and Claims Paid Without Liability” [<https://www.wcb.ny.gov/content/ebiz/eclaims/sec21a-claims-paid-without-liability.jsp>]).

Therefore, in this case, the SIE did not waive its right to controvert this claim by filing its “medical only” FROI with an ATC code of “L - With Liability” and was still able to controvert the claim if done timely and within the statutory and regulatory requirements (New York City Transit Authority, 2024 NY Wrk Comp G2863152). As noted herein, the SIE also properly invoked WCL § 21-a when it filed a SROI-EP on February 16, 2021. Thereafter, in order to properly controvert the claim, the SIE was required to file a SROI “with a Full Denial Reason Code” (eClaims-Process for Section 21-a and Claims Paid Without Liability [<https://www.wcb.ny.gov/content/ebiz/eclaims/sec21a-claims-paid-without-liability.jsp>]). WCL § 21-a(4) provides that the failure of an employer or carrier who commences temporary payments of compensation without prejudice pursuant to WCL § 21-a(1) to file a notice of controversy within one year “shall be deemed to be an admission of liability ...”

In this case, the only SROI forms filed within one year of invoking WCL § 21-a were the SROI-S1 filed on February 25, 2021, and the SROI-SA filed on July 26, 2021. No SROI was filed with a Full Denial Reason Code to object to the claim on the merits.

As such, the Board properly issued its EC-395 notice on February 16, 2022, stating that the SIE “is considered to have admitted liability for [the] claim [[and the SIE] must file SROI showing acceptance of the claim.”

Therefore, the Full Board finds that the preponderance of the evidence in the record supports establishment of this claim for a left knee injury pursuant to WCL § 21-a(4).

However, “[i]t is axiomatic that a claimant bears the burden of establishing a causal relationship between his or her employment and a disability by the proffer of competent medical evidence” (Matter of Williams v Colgate Univ., 54 AD3d 1121 [2008] [citations omitted]).

As this record contains no medical evidence of causal relationship, the Full Board finds that the WCLJ properly made no indemnity awards.

The Full Board further finds that the claim is closed, and if the claimant wishes to pursue any claim for compensation beyond the prior payment of wages that was voluntarily made by the SIE for the period from February 2, 2021, through February 23, 2021, he must submit sufficient evidence of causal relationship with a request for reopening of the claim.

## CONCLUSION

\*5 ACCORDINGLY, the WCLJ decision filed on May 2, 2023, is MODIFIED to find that the case is CLOSED until such time that the claimant requests a reopening of the claim with sufficient evidence of causal relationship. The rest of the WCLJ decision remains in effect. The case is closed.

Clarissa Rodriguez

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