

CONNECTICUT

Successful Defense in Off-Premises Going-and-Coming-Case



Lois Law Firm was able to secure a disallowance of an alleged occupational disease claim at the Trial Court level after the case was initially filed over four (4) years ago. LOIS attorney, Dan Gillis, was able to achieve this result through effective cross-examination of the claimant and the claimant's attending physician along with a persuasive argument that the Board did not have sufficient jurisdiction over this case and the New York employer was not the last injurious exposure to the claimant's reported neck and back disabilities.

The claimant, a construction carpenter, alleged that he had last endured repetitive stress injuries to his neck and back while working his former New York based employer. Early on, this case was disallowed without prejudice. However, this claimant had relocated out of state in the weeks following his departure from his former New York employer. The claimant subsequently reopened the case with new medical information alleging that his disabilities were causally related to his employment in New York, prompting the claim to return to the Trial Court level.

Despite testifying at a prior Trial Hearing in January 2019, we sought to cross-examine the claimant after Pre-Trial hearing conference when the claimant confirmed that he was still working as a carpenter and new medical evidence was previously filed. At this time, attorney Gillis sought to have the claim disallowed on jurisdictional grounds and on the basis that the claimant continued to be injuriously exposed while continuing to work.

While preparing for the Trial Hearing, attorney Gillis deposed the claimant's attending physician on two separate occasions and discovered that the claimant has continued to work as a carpenter since leaving his former New York employer. During those depositions, attorney Gillis was able to elicit testimony from the claimant's treating physician that the claimant was continuing to cause harm to his neck and back disabilities by working as a carpenter. In addition, attorney Gillis was able to elicit testimony from the claimant's treating physician that the claimant had not fully disclosed the extent of his prior injury history, including the claimant's initial failure to disclose the prior neck injury at the initial evaluation, two years prior.

Following the deposition testimony of claimant's treating physician, the claimant testified once more at the Trial hearing. The claimant

testified that he was still working in another state, lifting up to 40lbs at a time and still bending over to lift items even after leaving his former New York Employer. Attorney Gillis was also able to elicit testimony that the claimant disclosed the extent of his current work activities to his treating physician at the most recent examination. Further, the claimant confirmed that he had worked for several out of state employers after leaving his former New York employer, and the only time he missed from work over the past four years was due to the COVID-19 pandemic. Following the closing arguments, the Law Judge agreed with attorney Gillis that there was not a causal nexus to support any argument that the Board could hear this case as the claimant has continued to work and reside in another state without issue for years, regardless of causal relationship to his former New York employer. In addition, the Law Judge agreed with attorney Gillis, that based upon the prior deposition testimony of claimant's treating physician, the claimant continued work-activities could be adversely impacting his neck and back disabilities. Thus, the claim was disallowed as the claimant did not meet the burden of proof to support the Board's jurisdiction over this claim, and he was he not able to prove that he was no longer injuriously exposed or even that his last exposure was in New York.



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