

New Jersey Case Law Update

In Ader v. Lebanon Township (decided March 11, 2013) an unpublished Superior Court decision, the court added some teeth to the requirements set forth in N.J.S.A. 34:15 - 17 requiring notice of an injury to your employer. In this case, the petitioner was the captain of a rescue squad that responded to a one car motor vehicle accident. While inspecting one of the vehicles, the petitioner squatted and jumped off of the back of a flatbed truck landing on both feet. He immediately felt pain in his back where he previously had undergone back surgery. This incident occurred on November 18, 2008. Petitioner did not notify anyone associated with his employer of his injury until February 10, 2010.

The workers compensation judge denied petitioner's claim concluding that petitioner had violated N.J.S.A. 34:15 - 17 requiring that an employee seeking compensation notifies employer of injuries sustained in a work-related accident within a maximum of 90 days. The appellate court affirmed the decision of the judge. On appeal, petitioner argued that the judge failed to consider that the delay in providing notice was due to his lack of awareness of the causal relationship between the accident and the injuries he sustained. However, the evidentiary record revealed that the petitioner had informed his primary care physician in January 2009 that the cause of his pain may have been from the incident on November 18, 2008. This discussion was well within the 90 day time frame required by the statute. Interestingly, petitioner's primary care physician referred petitioner to an orthopedist since his symptoms did not subside. The first evaluation with the orthopedist was on October 2, 2009. At that time, petitioner immediately informed the orthopedist of the November 18, 2008 event. The Superior Court concluded that the judge of compensation was correct in concluding that a reasonable person facing the petitioner's circumstances would have been aware that he sustained a work-related injury on November 18, 2008. The court found it significant that the petitioner had been working with the ambulance squad for 29 years and held a high supervisory rank for eight years prior to the accident. Petitioner had multiple consultations with physicians of his choice, therefore, his failure to provide timely notice was legally untenable.

If you have any questions regarding this information, please contact a member of Weber Gallagher's [Workers' Compensation Group](#).