

## Lesson 2:

### Failing to Understand What “Injury by Accident” Means

**Rule: An injury by accident is an unusual event that interrupts normal work.**

The word **accident** is defined in the Merriam-Webster dictionary as “an unforeseen and unplanned event or circumstance.” That definition makes sense: you don’t have an accident unless something out of the ordinary happens. When you apply that definition to workers’ comp in North Carolina, there isn’t an “accident” if you are doing a job in the usual way. ***Simply put, you cannot have a regular day at work, feel pain in your knee, foot or arm, and have a covered accident under workers’ comp.***

When an injured worker describes an injury as work-related, and says that there was nothing unusual about the injury, he is likely to receive a letter from the insurance company and a form denying the claim. The form probably will state that the claim is being denied because the employee “did not have an accident within the meaning of the Workers’ Compensation Act.” And sometimes, that form will be right.

But since many rules have exceptions, the injury by accident rule is no different. In some kinds of claims it doesn’t matter that the worker didn’t have an accident. Ralph, the forklift driver, was doing his normal job when he was hurt and he won his case. But injuries to the back – and the neck, because it is part of the spine – are treated differently. A worker doesn’t have to have an injury to “by accident” to have it be payable under workers’ comp if the injury is to the back or neck. The injury only has to happen at a specific point in time during the course of employment. Hernias and occupational conditions that arise over time also have different rules. We will cover occupational diseases in a later lesson.

But in claims not involving an exception to the rule it is important for injured workers to describe how the injury was the result of an accident, even if the accident happened because the employee was breaking the rules. Telling the adjuster the truth and describing the accident in detail can make the difference between a workers' comp claim that is promptly paid and one that requires a long fight.

### Anna

Anna was a new assistant at the nursing home. She hadn't reached the end of her 90-day probationary period when her accident happened. Daniel, another new employee, was very friendly, even flirty, and he and Anna were both single. Anna liked Daniel. When she saw Daniel getting ready to leave one night, Anna ran after him, even though she knew she shouldn't. The employee handbook stated that employees must always walk in the hallways. Anna twisted her knee when she bumped into Daniel. The pop she felt made her realize that something was wrong. She limped over to the supervisor's desk and told her that she had twisted her knee.

Anna filled out a report (mentioning nothing about Daniel or running or bumping into him) and was sent by the supervisor to the nearest urgent care center. The doctor told Anna not to stand too long and to elevate her knee whenever possible. Anna was put on light duty at work while the insurance adjuster investigated the claim. After about three weeks, the adjuster called to take her statement. The adjuster explained that she would record the conversation and asked Anna a lot of questions. Anna told the adjuster that she was doing her usual job duties when she got hurt and denied there was anything unusual that had happened. She mentioned that sometimes the floor was slick but she wasn't sure that was what had caused her accident.

"I guess I just twisted my knee somehow," Anna said.

The adjuster thanked her for her time and concluded the recorded statement. After physical therapy didn't help, and an MRI was ordered, Anna was told by the surgeon she was sent to see that she needed to have knee

surgery. Unfortunately, that was on the same day that she received a form in the mail – a Form 61 – denying her workers’ compensation claim.

Anna’s bad luck didn’t stop there. The supervisor called and told her that light duty was only for people with accepted work-related injuries. With no available work, Anna had no money coming in. A week later she received a termination letter from the nursing home. Anna was told that she didn’t qualify for unemployment benefits because of the limitations on her ability to work. And without her job, she lost her insurance. Anna canceled her cable, cut up her Target card and managed to get a job running the register at a barbecue restaurant where she could sit down all day. She didn’t see a lawyer and never filed a claim. She hopes to get the surgery “one day.”

### **Anna’s grade on understanding that an injury must be caused by an accident: F**

Anna didn’t tell the truth. If Anna had admitted that she broke the rules by running and that she had twisted her knee when she accidentally ran into Daniel, she would have earned an A. The insurance adjuster would have accepted her claim and paid her benefits. The law in North Carolina is clear: injuries due to horseplay are accidental. One recent case shows how the horseplay exception works: a woman on a business trip was playing around and tried to ride down on the escalator railing. She was awarded compensation for the massive injuries she sustained when she fell to the floor below.

Anna fell into the trap of thinking that because she was hurt doing her job, she was going to receive compensation but that if her employer knew she caused the injury, she wouldn’t be able to get workers’ comp. That thinking is actually the exact opposite of the rule. The insurance company’s adjusters know this rule well, but workers are often fooled.

Anna met the requirement of having an **injury by accident** under workers’ comp, because despite the accident being her fault, it was a break in her normal work routine that caused her to twist her knee when she accidentally ran into

Daniel. Anna's claim is even stronger because she was at a job that was new to her. Anna should have received workers' comp payments. **It doesn't matter who is wrong or at fault in workers' compensation law.** It could absolutely be the employee's fault, just like it was Anna's fault for running after Daniel against company policy, and workers' comp would still have to pay her.

Why make the employer pay for injuries caused by horseplay, like Anna's? Workers' comp law recognizes people don't always behave perfectly. So had Anna told her boss and the insurance adjuster truthfully what had happened, her claim would have been covered.

### **Anna's final grade: F**

Anna didn't consult with a lawyer or tell the truth. It is true that it would be difficult to fix this one after Anna's misstep. She did have a witness, but Anna just gave up.

What could have happened if Anna had known this lesson? Let's say that Anna reported the horseplay and received a written warning. The nursing home then gave her light duty work until she went out of work for surgery. The insurance company paid her two-thirds of her pay while she recovered. But because she couldn't return to her regular job, and because she broke the rules, she was terminated. Her workers' comp payments continued until she was able to find new work in a doctor's office that fits her permanent restriction of no standing more than two hours at a time. Afraid to sign anything she didn't understand, Anna called a lawyer for help. He settled her case and she was able to move on.

### **Anna's potential grade (sadly, it's too late now): A**

Here's what she **could** have done to have earned an A:

- ✓ Reported how unusual the accident was that caused her injury
- ✓ Told the truth
- ✓ Talked to a lawyer

