Spriggs, Ronald

SCOPE OF REVIEW

Allowance of claim

In an appeal from an order in which the Department rejected an occupational disease claim the Board's scope of review does not include a determination of the date of manifestation. **….*In re Ronald Spriggs*, BIIA Dec., 07 24270 (2009)**

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: RONALD J. SPRIGGS	)	**DOCKET NOS. 07 24270 & 07 24764**
	)	
CLAIM NOS. W-874198 & SA-62211	)	**DECISION AND ORDER**

APPEARANCES:

Claimant, Ronald J. Spriggs, by
Casey & Casey, P.S., per
Gerald L. Casey

Self-Insured Employer, King County, by
King County Prosecuting Attorney, per
Tylar A. E. Edwards

In Docket No. 07 24270, the claimant, Ronald J. Spriggs, filed an appeal with the Board of Industrial Insurance Appeals on November 2, 2007, from an order of the Department of Labor and Industries dated October 26, 2007. In this order, the Department affirmed the provisions of an order dated July 31, 2007, in which the Department denied an application to reopen the claim. The Department order is **AFFIRMED**.

In Docket No. 07 24764, the claimant, Ronald J. Spriggs, filed an appeal with the Board of Industrial Insurance Appeals on November 16, 2007, from an order of the Department of Labor and Industries dated October 2, 2007. In this order, the Department affirmed the provisions of an order dated June 20, 2007, in which the Department denied the claim. The Department order is **REVERSED AND REMANDED**.

DECISION

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on timely Petitions for Review filed by the self-insured employer to Proposed Decisions and Orders issued on November 26, 2008, in Docket No. 07 24270; and November 25, 2008, in Docket No. 07 24764. In Docket No. 07 24270, the industrial appeals judge reversed and remanded the order of the Department dated October 26, 2007, in which the Department had denied an application to reopen Claim No. W-874198. In Docket No. 07 24764, the industrial appeals judge reversed and remanded the order of the Department dated October 2, 2007, in which the Department had denied Claim No. SA-62211.

The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no prejudicial error was committed in either docket. The rulings are affirmed. All contested issues are addressed in this order.

The self-insured employer's Petitions for Review request that we affirm the orders in which the Department rejected Claim No. SA-62211, and denied reopening of Claim No. W-874198. We have granted review to consolidate these appeals and issue a single Decision and Order. In this Decision and Order, we modify the relief granted by our industrial appeals judge by affirming the order in Docket No. 07 24270, in which the Department denied reopening of the injury claim; and reversing the order in Docket No. 07 24764, remanding Claim No. SA-62211 to the Department to allow the occupational disease claim and provide treatment.

We first address the consolidation issue. At the start of the August 4, 2008 hearing, the attorney representing claimant Ronald J. Spriggs asked that the Board hear Docket No. 07 24764 together with Docket No. 07 24270 because "the condition in both these claims are somehow related." 8/4/08 Tr. at 4. The industrial appeals judge responded that he would consider the appeals separately, but advised that the claimant's attorney could file a written motion to consolidate these matters after the evidence was taken. Mr. Spriggs then presented his own testimony as well as the testimony of his wife and an additional lay witness. At the close of the morning's hearings (in Docket No. 07 24764), the claimant's attorney asked that the judge also consider the hearing testimony as part of the record in Docket No. 07 24270, which had been scheduled for a separate hearing that afternoon. The attorney for the self-insured employer did not object and the judge cancelled the afternoon hearing. All depositions and exhibits were made part of both dockets, without objection. The appeals were never formally consolidated for hearing or decision.

These appeals require that we determine the diagnoses of upper extremity conditions and the proximate cause of those conditions; and analyze the evidence to decide whether the conditions represent the worsening of a July 5, 2005 industrial injury or the manifestation of a separate occupational disease arising naturally and proximately from the conditions of Mr. Spriggs' employment. In two separate Proposed Decisions, our industrial appeals judge reversed and remanded the orders of the Department dated October 26, 2007 and October 2, 2007. In Docket No. 07 24764 (Claim No. SA-62211), the industrial appeals judge determined that conditions diagnosed as right lateral epicondylitis and bilateral neuropathy of the upper extremities were occupational diseases. The matter was remanded to the Department with direction to allow this claim for an occupational disease, with a date of manifestation of March 10, 2007. In Docket No. 07 24270 (Claim No. W-874198), the judge determined that the industrial injury of July 5, 2005, included a traction/twisting injury of the right elbow that proximately caused right upper extremity

cubital tunnel syndrome, but did not cause right lateral epicondylitis and osteochondritis of the right elbow; and that this constituted an aggravation of the July 5, 2005 injury, supporting reopening.

Consolidation is warranted in cases such as this, where "the evidentiary records are identical, the parties are the same, and the issues are inextricably intertwined." *In re April Lackey*, Dckt. Nos. 07 13286 & 07 13583 (November 13, 2008), at 3. A key question is whether Mr. Spriggs' right upper extremity condition represented an aggravation of his industrial injury or an occupational disease arising from his work activities, particularly those subsequent to his return to employment after the industrial injury. We find no basis for distinguishing Mr. Spriggs' case from *Lackey*, where the Board concluded, "it is critical to evaluate the two claims together, and no purpose is served by issuing two separate decisions." *Lackey,* at 3. Therefore, we have consolidated these two appeals and decide the issues in one Decision and Order.

The following is a summary of the evidence necessary to explain our decision. Ronald J. Spriggs is 47 years old, 6'2" tall, and weighs about 270 pounds. He attended school through the eleventh grade and obtained a high-school equivalency diploma. Mr. Spriggs has worked as a commercial fisherman, carpet cleaner, and garbage truck driver. In 1999 or 2000, he obtained employment as a residential service assistant at King County's Cedar Hills Addiction Treatment Center. Mr. Spriggs had no physical problems performing the Cedar Hills work, which included moving furniture. When Cedar Hills closed, Mr. Spriggs was hired at King County's wastewater plant, where he served as a utility/facility maintenance worker. He started at the wastewater plant in 2001.

On July 5, 2005, Mr. Spriggs was asked to direct traffic for fire trucks coming down the winding road to the wastewater plant. He was instructed to get his flagging gear, which was stored upstairs. He retrieved the gear and was quickly descending the metal stairs when he stumbled and started to fall. Mr. Spriggs grabbed the railing with his right arm and fell on his buttocks. Once he hit the stairs he let go of the railing because he could not stop his fall.

Mr. Spriggs initially saw Dr. Choi for back pain. He later mentioned to Dr. Choi that his elbow was aching. Mr. Spriggs understood from Dr. Choi that the pain would probably go away, but it did not.

Exhibit No. 1 is Mr. Spriggs' Application for Benefits in Claim No. W-874198, for a "low back" injury sustained on July 5, 2005, when he "slipped and fell on metal stairwell landing on buttox [*sic*] . . .." The description of the injury states that he "[s]tarted to feel pain in same area in

back, that I hurt last year." Exhibit No. 1. The prior injury the claimant referred to was sustained while he was moving metal grates weighing about 300 pounds, and he felt a snap and a pop.

In mid-October 2005, Mr. Spriggs returned to work following the July 5, 2005 injury. After two weeks of light duty, he returned to his pre-injury employment. The job required that he clean out wet wells using a large vacuum truck called a "vactor." Mr. Spriggs described how he would insert the vactor's 30-foot tube into the well with a rope tied to the tube. To avoid damaging the truck, it was necessary to keep the vactor tube above the water level so that the vacuum would suck the water up rather than sucking the tube down. He wrapped the rope around his right or left arm while holding the tube with the other arm. The tube made a continuous jerking/whipping motion, which impacted his elbows and caused a lot of pain. The pain in the top and bottom of the right elbow joint worsened and he could not spread apart the right ring finger and little finger. Currently, Mr. Spriggs experiences numbness on his palm down to the palmar surface of the ring finger and little finger; and decreased right arm strength.

On March 22, 2007, on the advice of his claims manager, Mr. Spriggs filed an Application for Benefits in Claim No. SA-62211, with a date of injury or exposure of March 10, 2007. The part of the body injured or exposed was listed as "elbows right & left." Exhibit No. 2.

James C. Huitt, currently unemployed, worked as a King County facility service maintenance worker for eight years. Mr. Huitt and Mr. Spriggs worked on the same projects 90 percent of the time, including using the vactor truck to clean dirt and leaves from storm drains inside the plant and drains on the road outside the plant. In describing his duties involving using the vactor, Mr. Huitt testified that the pressure of the vacuum "throws the hose everywhere." 8/4/08 Tr. at 11. Mr. Huitt would feel a lot of pain in his arms as the hose moved around; the most demanding part of the job was the pulling, pushing, and lifting.

Tamara L. Spriggs, wife of Ronald J. Spriggs, testified that Mr. Spriggs' arm problem had worsened subsequent to July 2005. During the last year, he started losing his full grip capability and had arm spasms. Worsening pain keeps him awake at night. Mr. Spriggs participates in fewer activities and often avoids shaking hands with his right hand, offering his left arm instead.

William Wagner, Jr., M.D., certified orthopedic surgeon with a certificate in hand surgery, first saw Mr. Spriggs on May 29, 2007, following a referral from Dr. Roger Wang. Dr. Wagner was aware that Mr. Spriggs had previously undergone bilateral carpal tunnel release surgery and bilateral shoulder surgery. Mr. Spriggs described the July 5, 2005 injury when he fell down some stairs. He had stopped working on March 10, 2007, due to increasing symptoms. He complained

to Dr. Wagner of pain over his right and left elbows and numbness radiating into his ring and small fingers from both elbows. On examination of both arms, Dr. Wagner noted positive Tinel's over the cubital tunnel and a positive elbow flexion test, both indicative of abnormalities in the ulnar nerve at the cubital tunnel. Mr. Spriggs also had tenderness of nerves near the medial epicondyle on the right side, but had normal sensation to his fingers and hand and normal strength of the small hand muscles supplied by those nerves.

Based the examination, Dr. Wagner's initial impression was that Mr. Spriggs had bilateral cubital tunnel syndrome. Eighteen months prior to that visit, a nerve study had revealed findings consistent with this diagnosis. Noting that Mr. Spriggs also had tenderness over the right lateral epicondyle on both sides and pain when extending his wrist, Dr. Wagner added the diagnosis of right lateral epicondylitis (tendinitis of the right elbow). Wagner Dep. at 7. In addition, Dr. Wagner diagnosed osteochondritis of the right elbow, which had been noted in a prior MRI. He testified, "We're not sure why that condition happens." Wagner Dep. at 7.

Dr. Wagner explained that ulnar neuropathy is a general term that encompasses cubital tunnel syndrome. Cubital tunnel syndrome usually is independent of lateral epicondylitis and osteochondritis. However, it can overlap with medial epicondylitis because the cubital tunnel and medial epicondyle are immediately adjacent to each other. He did not include medial epicondylitis in his initial impression, but did note tenderness in that area. Lateral epicondylitis and osteochondritis can produce symptoms in the same area on the thumb or outside part of the elbow. Both cubital tunnel syndrome and epicondylitis can develop from similar types of injuries or activities.

Dr. Wagner next saw Mr. Spriggs on June 15, 2007, when a nerve conduction study confirmed the diagnosis of bilateral cubital tunnel syndrome. It also showed some mild slowing, possibly caused by the previous carpal tunnel syndrome, but did not specifically rule out peripheral neuropathy. The findings, which were similar to the prior examination, combined with the positive Tinel's testing over the ulnar nerve, reconfirmed Dr. Wagner's prior diagnosis of a right lateral epicondylitis. Given the length of time that Mr. Spriggs had the symptoms, Dr. Wagner found it unlikely that the symptoms would remit spontaneously. Dr. Wagner recommended a right cubital tunnel release with anterior subcutaneous transposition of the ulnar nerve and an injection in his lateral epicondyle.

During the next visit, on August 9, 2007, Mr. Spriggs had a new symptom, hand weakness. Other examination findings were similar to prior examinations. Dr. Wagner noted that the

interosseous muscles of the hand are supplied by the ulnar nerve and that weakness can be caused by a cubital tunnel syndrome or other problems with the ulnar nerve.

On August 9, 2007, Dr. Wagner wrote a letter to the Department recommending an independent medical examination directed at determining whether the diagnosed conditions were an industrial injury related to the July 5, 2005 claim; or an occupational disease caused by the job requirements. He wrote that, if there was documentation of elbow complaints in close proximity to July 5, 2005, the ulnar neuropathy was probably caused by the injury in Claim No. W-874198. Dr. Wagner reviewed the accident report, which did not mention elbow complaints, but later reviewed an August 11, 2005 physician's note, stating "'elbow right, still pain low back, patient recalls grabbing while slipping, hold with right hand, shoulder felt pain, some pain right medial elbow. Now worse.'" Wagner Dep. at 44. Another record from the same date indicated that Mr. Spriggs had a positive Tinel's, right ulnar nerve at elbow and commented on a "'previously unreported or unrecognized right ulnar nerve neuropathy.'" Wagner Dep. at 45. But records also documented elbow complaints as early as 2001, which Dr. Wagner attributed to Mr. Spriggs' heavy work.

Recognizing that he was never made aware of the specific details of the July 5, 2005 injury, Dr. Wagner found it difficult to relate the July 5, 2005 injury to Mr. Spriggs' right cubital tunnel syndrome, more probably than not. Dr. Wagner did review the job analysis for Utility Worker II, Wastewater, and determined that the upper extremity physical requirements of that job can cause the problems he diagnosed in Mr. Spriggs' case. He therefore concluded that, more probably than not, those job duties were a cause of the upper extremity problems noted in 2007.

Guy Earle, M.D., certified family practice physician, evaluated Mr. Spriggs on May 1, 2008. Mr. Spriggs described the July 5, 2005 injury, specifying a pulling and twisting injury of his right arm from grabbing the railing as he fell. Dr. Earle's record review revealed that Mr. Spriggs' elbow problem was first noted by Dr. Choi on August 11, 2005, about five weeks after the July 5, 2005 injury. Mr. Spriggs reported to Dr. Earle that his right elbow, forearm, and hand symptoms increased when he used the vactor. He did not mention the 2001 right elbow symptoms that were noted by Dr. Wagner.

As of May 1, 2008, Mr. Spriggs still had pain on the inside of his right elbow that tracked down the arm into the fourth and fifth fingers. He complained of loss of sensation in his little finger with loss of finger and hand strength and difficulty controlling the digits. Mr. Spriggs reported he was never free of symptoms between the July 5, 2005 injury and March 10, 2007, when he filed an

occupational disease claim for his right elbow. From the medical records, Dr. Earle noted that the neurodiagnostic tests revealed compressive neuropathy (affecting the ulnar nerve where it crossed the elbow) more on the right elbow than the left. He noted that there was some dispute regarding whether this was a compressive neuropathy or a peripheral neuropathy. Dr. Earle found no evidence supporting the independent medical examiners' diagnosis of peripheral neuropathy. Other neurodiagnostic tests were a right elbow MRI on May 17, 2007, which showed bone marrow edema (bone inflammation); and a May 15, 2007 bone scan showing arthritic change in the right elbow.

On examination, Dr. Earle primarily focused on Mr. Spriggs' back and upper extremities. In his examination of the upper extremities, Dr. Earle noted that Mr. Spriggs' right hand showed atrophy of the hypothenar area. This indicated some damage to the ulnar nerve, which passes through the elbow. Muscles controlling finger movement were weakened compared to the left side, and hand strength and pinch strength was mildly diminished on the right side. There was diminished sensation in the right little finger, and Mr. Spriggs' ability to forcibly rotate his right forearm was decreased due to elbow discomfort.

Dr. Earle diagnosed right elbow strain with evidence of bony damage to the joint, and a focal compressive neuropathy where it crossed the elbow, producing cubital tunnel syndrome. The symptoms of this neuropathy primarily affect the ring and little finger and the pattern associated with this condition showed up well on the neurodiagnostic testing. He found no evidence of peripheral neuropathy. This condition usually results from some kind of metabolic or endocrine-type disease, which Mr. Spriggs did not have.

Dr. Earle was confident of his own diagnosis of cubital tunnel syndrome, which was worsening, but felt there was a question as to the etiology of this condition. He concluded that Mr. Spriggs "obviously had pre-existing conditions in his elbow, had a traction and twisting injury in July of 2005 and fell on the stairs. It caused either a cubital tunnel syndrome in his elbow or a worsening of a pre-existing one. This further worsened with his occupational activities at work." Earle Dep. at 47-48. He felt that the intense pulling from the suction tube of the vactor probably aggravated the condition, but did not cause it. Dr. Earle characterized the condition as an occupational injury rather than an occupational disease and recommended a surgical release.

Christopher Olch, M.D., a certified orthopedic surgeon specializing in hand surgery, examined Mr. Spriggs on May 11, 2007. Records reviewed included Dr. Tran's October 20, 2005 note, where Mr. Spriggs' complaints included right elbow pain. Dr. Olch understood from

Mr. Spriggs that he had hit his right elbow on the stair railing. Mr. Spriggs complained of occasional numbness in the fingers of the right hand and the first and third digits; and occasional left elbow pain associated with a 1998 injury. Dr. Olch reviewed the nerve conduction study performed on that date, with findings suggestive of peripheral neuropathy as well as ulnar neuropathy across the elbow at both sides. By January 2006, Dr. Tran had diagnosed elbow tendinitis which was exacerbating Mr. Spriggs' baseline ulnar neuropathy. In April 2007, Mr. Spriggs had increased pain in his right elbow with moderate numbness and sensation in the right upper extremity and ulnar nerve distribution.

During Dr. Olch's examination, Mr. Spriggs complained of pain in both shoulders and in the medial aspect of both elbows, right worse than left; and increasing pain on the lateral aspect of the right and left elbows. His wrist pain and numbness was worse on the right than the left side. Mr. Spriggs could not specifically remember when the left elbow pain started, but reported that the lower back pain was no longer a problem.

Mr. Spriggs told Dr. Olch that he wanted to reopen the low back claim for his elbow worsening and that he tried to open a second claim because he was having symptoms in both elbows that he associated with his work activities. The right elbow pain was attributed to slamming his elbow when he fell on July 5, 2005. On examination, Mr. Spriggs had exquisite tenderness over his right cubital fossa and also was tender over the left cubital fossa. He had decreased sensation in the right ring and little fingers. These findings are consistent with ulnar neuropathy. The electrodiagnostic study also showed ulnar neuropathy bilaterally.

Dr. Olch diagnosed bilateral ulnar neuropathy, right greater than left. He did not feel that this condition had worsened between May 9, 2006 and July 31, 2007, because Dr. Tran had described an ulnar neuropathy which had not changed significantly as of the date of Dr. Olch's examination. Dr. Olch also felt that Mr. Spriggs had not developed cubital tunnel syndrome as a result of the industrial injury because Dr. Tran did not note any elbow pain until October 10, 2005, three months after the July 2005 industrial injury. Also, Mr. Spriggs fell on his right elbow and not the left, yet the ulnar neuropathy is bilateral, which is more consistent with a systemic disease rather than an injury. Dr. Olch acknowledged that he had no records available to review regarding Mr. Spriggs' work duties involving the vactor. He agreed that excessive use of the extremities can aggravate ulnar neuropathy or even precipitate it.

Lewis Almaraz, M.D., certified neurologist, examined Mr. Spriggs on September 18, 2007. Mr. Spriggs reported to Dr. Almaraz that his right little and ring finger were affected in the fall and

that he had pain in his left medial elbow. These symptoms had worsened despite being off of work since March 2007. He did not report any low back pain or lower extremity symptoms. Dr. Almaraz reviewed various medical records prior to the evaluation and did not see any physician's record indicating a specific trauma to Mr. Spriggs' elbow on July 5, 2005. Rather, he believed Mr. Spriggs' injury was limited to the trauma of falling on his buttocks.

On examination, Dr. Almaraz noted that palpation of Mr. Spriggs' ulnar nerves at the elbows did not cause subluxation. Mr. Spriggs' feeling was minimally diminished in the right little finger and right ring finger. Dr. Almaraz found numbness extending up the entire ulnar border. He concluded that the sensory examination did not correspond with any isolated nerve or nerve root. He also testified that the findings did indicate an ulnar neuropathy, however. Dr. Almaraz found a significant redirection of the vibration senses in Mr. Spriggs' ankles. This finding, considered with his history of bilateral carpal tunnel syndrome, suggested that Mr. Spriggs had an underlying general neuropathic condition such as peripheral neuropathy.

Dr. Almaraz diagnosed status post-fall with contusion of the buttocks and low back strain/sprain; and history of bilateral elbow pain of unknown cause. Electrodiagnostic studies showed evidence of focal neuropathies at the elbows, the ulnar nerves, and the median nerves at the wrists. Dr. Almaraz rejected Mr. Spriggs' assertion that both elbows were affected by a repetitive use syndrome from his job. He felt that Mr. Spriggs should see a private neurologist for further evaluation of the peripheral neuropathy.

In Dr. Almaraz's opinion, Mr. Spriggs could return to his job of injury, without restrictions. He saw no worsening of an industrially-related condition between May 9, 2006 and July 31, 2007; the only condition related to the July 5, 2005 injury was a back strain, which did not worsen. He also saw no evidence of any neurologic condition other than a generalized neuropathy, which was unrelated to Mr. Spriggs' work.

Michael Battaglia, M.D., certified orthopedic surgeon, examined Mr. Spriggs on September 18, 2007, along with Dr. Almaraz. The examination was essentially normal, with the exception of a positive Tinel's sign at his right elbow and wrist. The diagnosis was contusion of his buttocks and low back sprain or strain; and a history of bilateral elbow pain, of unknown etiology. Dr. Battaglia and Dr. Almaraz "felt there was nothing unusual about this gentleman's work that caused this," and believed that there were multiple health conditions unrelated to his work that could "potentially" cause the elbow pain. Dr. Battaglia acknowledged, however, that he was only "somewhat familiar" with what Mr. Spriggs' job entailed. Battaglia Dep. at 18. He also testified, "I

don't know what he did day-in and day-out." Battaglia Dep. at 29. Cubital tunnel syndrome is commonly associated with prolonged exposure to vibration. "And certainly falling on one's butt, which is the main question we were asked about, does not qualify as that type of mechanism." Battaglia Dep. at 23.

The most persuasive medical witness on the issues of diagnoses, causal relationship, and need for treatment, is treating physician Dr. Wagner. Of the medical witnesses who testified in this appeal, Dr. Wagner was the one who examined Mr. Spriggs on several occasions and obtained key diagnostic tests and records. Dr. Wagner reviewed the report of the September 18, 2007 independent medical examination performed by orthopedic surgeon Michael Battaglia, M.D., and neurologist Lewis Almaraz, M.D., and disagreed with their opinions, finding them based on possibilities. Dr. Wagner reiterated that his initial recommendation to the Department was that the examiners focus on causation, not diagnosis. Neither Dr. Wagner, nor any of the medical witnesses, was aware of testing that conclusively diagnosed peripheral neuropathy or any other metabolic disorder.

We accept Dr. Wagner's opinion that the appropriate diagnoses of Mr. Spriggs' upper extremity conditions are bilateral cubital tunnel syndrome and right lateral epicondylitis, which require treatment. Dr. Olch diagnosed bilateral ulnar neuropathy which, as Dr. Wagner explained, encompasses cubital tunnel syndrome.

Dr. Earle generally agreed with Dr. Wagner in regard to Mr. Spriggs' diagnoses. In addition, these doctors both expressed the opinion that the most difficult question is not the diagnoses but rather, whether these occupationally-related conditions were caused by the July 5, 2005 fall on the stairs; or Mr. Spriggs' exposure to distinctive conditions of his employment, including his exposure upon return to work following his recovery from the fall.

Our industrial appeals judge determined that the evidence supports a reopening of the July 5, 2005 injury claim on grounds that Mr. Spriggs sustained a right elbow condition attributable to the July 5, 2005 injury that objectively worsened subsequent to closure of that claim on May 9, 2006. An August 11, 2005 medical record, which noted right elbow complaints, was referenced by several medical witnesses. However, we find the evidence insufficient to show that a complaint of right elbow symptoms a month after the industrial injury bore a causal relationship to Mr. Spriggs' July 5, 2005 fall on the stairs. It is significant that, according to Dr. Wagner's record review, Mr. Spriggs had complained of similar elbow symptoms as early as 2001. Further, Mr. Spriggs returned to full duty subsequent to the fall on the stairs, and there is no evidence of any significant

impairment from a right elbow condition until March 2007, when he filed a claim for occupational disease affecting his left and right elbows. The evidence shows that the distinctive conditions of his employment—in particular, grasping and stabilizing the vactor tube, which caused upper extremity impacts—worsened Mr. Spriggs' upper extremity conditions to the point that he became disabled and required treatment. Dr. Wagner was familiar with Mr. Spriggs' job duties and concluded that the claimant's upper extremity conditions probably did arise out of conditions of his employment. In contrast, the employer's medical witnesses failed to demonstrate any familiarity with Mr. Spriggs' job duties, in particular, his operation of the vactor which caused significant, repetitive trauma to his upper extremities. A preponderance of the credible evidence shows that the upper extremity conditions arose naturally and proximately from the distinctive conditions of Mr. Spriggs' employment. None of the conditions represented the worsening of a condition proximately caused by the industrial injury.

We need address one final issue regarding Docket No. 07 24764, Mr. Spriggs' appeal from the order in which the Department rejected his occupational disease claim. This Board's jurisdiction is limited to review of those issues previously considered by the Department. *Lenk v. Department of Labor & Indus*., 3 Wn. App. 977, 982 (1970). The Department does not determine a date of manifestation of an occupational disease when the preliminary question—whether the claimant sustained an occupational disease—is decided in the negative. Because the Department order on appeal rejected Mr. Spriggs' occupational disease claim, our industrial appeals judge should not have entered a finding establishing a date of manifestation for the occupational disease. In addition to affirming the Department order in Docket No. 07 24270, which correctly denied reopening of Claim No. W-874198, we remand the occupational disease claim to the Department with directions to issue an order in which it allows the claim and exercises its original jurisdiction to determine the date of manifestation of the occupational disease in Claim No. SA-62211.

FINDINGS OF FACT

1. Docket No. 07 24270, Claim No. W-874198: The claimant, Ronald J. Spriggs, filed an Application for Benefits with the Department of Labor and Industries on July 27, 2005, in which he alleged he sustained an injury on July 5, 2005, while in the course of his employment with King County. On August 2, 2005, the Department issued an order in which it allowed the claim. On May 9, 2006, the self-insured employer issued an order in which it closed the claim with time-loss compensation benefits as paid to October 16, 2005, and without an award for permanent partial disability. On May 7, 2007, the claimant filed an application to reopen the claim, which was denied by the Department in an order of July 31, 2007. On August 14, 2007, the claimant filed a Protest and Request for

Reconsideration of the July 31, 2007 order. The Department entered a further order on October 26, 2007, in which it affirmed the provisions of the July 31, 2007 order. On November 2, 2007, the claimant filed an appeal with this Board to the October 26, 2007 order. On November 27, 2007, the Board of Industrial Insurance Appeals issued an Order Granting Appeal under Docket No. 07 24270 and agreed to hear the appeal.

Docket No. 07 24764, Claim No. SA-62211: On March 29, 2007, Mr. Spriggs filed an Application for Benefits with the Department, in which he alleged he sustained an occupational disease arising from the conditions of his employment with King County. On June 20, 2007, the Department issued an order in which it rejected the claim. Mr. Spriggs filed a Protest and Request for Reconsideration of the June 20, 2007 order with the Department on August 6, 2007. On October 2, 2007, the Department issued an order in which it affirmed the provisions of the order dated June 20, 2007. On November 16, 2007, Mr. Spriggs filed an appeal with the Board of Industrial Insurance Appeals to the October 2, 2007 order. On December 16, 2007, the Board of Industrial Insurance Appeals issued an Order Granting Appeal under Docket No. 07 24764 and agreed to hear the appeal.

2. On July 5, 2005, while in the course of his employment as a utility/facility maintenance worker for King County, Mr. Spriggs slipped while descending a flight of metal stairs at a County facility. As he fell, he grabbed the handrail with his right arm but was unable to stop his fall, and landed on his buttocks.

3. The industrial injury of July 5, 2005, proximately caused a low back condition that subsequently resolved. The July 5, 2005 injury did not proximately cause or aggravate a right upper extremity condition.

4. As of May 9, 2006, when the Department closed the claim for an industrial injury of July 5, 2005, Mr. Spriggs' low back condition, proximately caused by his industrial injury, had reached maximum medical improvement.

5. Between May 9, 2006, and October 26, 2007, Mr. Spriggs' low back condition, proximately caused by his July 5, 2005 industrial injury, did not worsen and did not require further proper and necessary medical care and treatment.

6. Mr. Spriggs' job as a King County utility/facility maintenance worker, which he performed from sometime in 2001 and continuing into March 2007, required that he lift grates and manhole covers and operate a suction device known as a vactor. When he operated the vactor, Mr. Spriggs was required to hold on to a suction tube that he grasped with his arms or with one of his arms tied to the tube while also holding the tube with his other arm. The suction tube would thrash about and Mr. Spriggs was required to keep it in place. These duties constituted distinctive conditions of Mr. Spriggs' employment with King County.

7. As of March 10, 2007, Mr. Spriggs suffered from right lateral epicondylitis and bilateral cubital tunnel syndrome, conditions that arose naturally and proximately from the distinctive conditions of his employment with King County, which required treatment.

8. Mr. Spriggs' condition diagnosed as osteochondritis of the right elbow did not arise naturally and proximately from the distinctive conditions of his employment with King County.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties to and the subject matter of these appeals.

2. Between May 9, 2006, and October 26, 2007, claimant Ronald J. Spriggs' conditions, proximately caused by the industrial injury of July 5, 2005, did not objectively worsen within the meaning of RCW 51.32.160.

3. The claimant's right lateral epicondylitis and bilateral cubital tunnel syndrome constitute an occupational disease within the meaning of RCW 51.08.140.

4. Docket No. 07 24270: The order of the Department of Labor and Industries dated October 26, 2007, is correct and is affirmed.

5. Docket No. 07 24764: The order of the Department of Labor and Industries dated October 2, 2007, is incorrect and is reversed. This matter is remanded to the Department with directions to issue an order in which it allows the claim, and to thereupon take such other and further action as is necessary and proper under the facts and the law.

DATED: March 24, 2009.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/_____
THOMAS E. EGAN Chairperson

/s/_____
FRANK E. FENNERTY, JR. Member