

Lynn, Tami

CAUSAL RELATIONSHIP

Chiropractor

Following the amendment of RCW 18.25.006, chiropractors are allowed to treat upper and lower extremities and can testify about causation of upper and lower extremity conditions as matters within the scope of chiropractic practice. ...*In re Tami Lynn*, BIIA Dec.,09 16657 (2010)

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**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

1 **IN RE: TAMI D. LYNN**) **DOCKET NOS. 09 16657 & 09 16658**
2 **CLAIM NOS. SC-91336 & SB-59811**) **DECISION AND ORDER**
3 _____)

4 **APPEARANCES:**

5 Claimant, Tami D. Lynn, Pro Se

6 Employer, Starbucks Corporation, by
7 Maccoll Busch Sato, P.C., per
8 Stephen L. Pfeifer

9 Employer, Everett School District #2, by
10 Thomas G. Hall & Associates, per
11 Thomas G. Hall

12 Department of Labor & Industries, by
13 The Office of the Attorney General, per
14 Mary V. Wilson, Assistant

15 The employer, Starbucks Corp., filed an appeal with the Board of Industrial Insurance
16 Appeals on June 29, 2009, from an order of the Department of Labor and Industries dated June 9,
17 2009. In this order, the Department allowed a claim for benefits under Claim No. SC-91136, and
18 affirmed as correct the Department order dated May 12, 2009, under Claim No. SB-59811, in which
19 it affirmed a Department order dated April 9, 2009, in which it denied reopening of the claim, finding
20 the condition was the result of a new injury. The appeals were assigned Docket Nos. 09 16657 and
21 09 16658, one for each claim, SC-91336 and SB-59811, respectively. The Department order is
22 **AFFIRMED.**

DECISION

23 As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for
24 review and decision. The self-insured employer filed a timely Petition for Review of a Proposed
25 Decision and Order issued on September 10, 2010, in which the industrial appeals judge affirmed
26 the orders of the Department dated June 9, 2009. Contested issues in these appeals included
27 aggravation, allowance and expert testimony. In this order we address only the issue of expert
28 testimony. We have reviewed the remaining contested issues and agree with the determination of
29 the industrial appeals judge.

30 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that
31 no prejudicial error was committed. The rulings are affirmed, with the exception of certain rulings
32

1 made with regard to the testimony of a chiropractor, Gregory W. Beasley, DC. Our industrial
2 appeals judge excluded some of Dr. Beasley's testimony based on his belief that the opinions
3 offered by Dr. Beasley fell outside of the scope of Dr. Beasley's practice. In support of his rulings,
4 our industrial appeals judge cited to *Dobbins v. Commonwealth Aluminum Corp.*, 54 Wn. App. 788
5 (1989) and *In re Karen L. Lahmann*, Dckt. No. 07 23217 (March 3, 2009), a decision we have not
6 designated as significant.

7 Our industrial appeals judge's reliance on the *Dobbins* decision is incorrect because the
8 statute governing chiropractors has changed. Prior to 1992, the scope of chiropractic practice was
9 defined as,

10 For the purpose of chapters 18.25 and 18.26 RCW, the term "chiropractic" shall
11 mean and include that practice of health care which deals with the detection of
12 subluxations, which shall be defined as any alteration of the biomechanical and
13 physiological dynamics of contiguous spinal structures which can cause neuronal
14 disturbances, the chiropractic procedure preparatory to, and complementary to the
15 correction thereof, by adjustment or manipulation of the articulations of the vertebral
16 column and its immediate articulations for the restoration and maintenance of health;
17 it includes the normal regimen and rehabilitation of the patient, physical examination
18 to determine the necessity for chiropractic care, the use of x-ray and other analytical
19 instruments generally used in the practice of chiropractic: Provided, That no
20 chiropractor shall prescribe or dispense any medicine or drug nor practice obstetrics
21 or surgery nor use x-rays for therapeutic purposes: Provided, however, That the term
"chiropractic" as defined in *this act shall not prohibit a practitioner licensed under
chapter 18.71 RCW from performing accepted medical procedures, except such
procedures shall not include the adjustment by hand of any articulation of the spine:
And provided further, That nothing herein shall be construed to prohibit the rendering
of dietary advice.

22 At that time, chiropractors were limited to manipulation of the spine. In 1992 and 2002, the
23 Legislature amended the statute to expand the chiropractic scope of practice. The statute currently
24 reads,

25 (1) Chiropractic is the practice of health care that deals with the diagnosis or analysis
26 and care or treatment of the vertebral subluxation complex and its effects, articular
27 dysfunction, and musculoskeletal disorders, all for the restoration and maintenance of
health and recognizing the recuperative powers of the body.

28 (2) Chiropractic treatment or care includes the use of procedures involving spinal
29 adjustments and extremity manipulation. Chiropractic treatment also includes the use
30 of heat, cold, water, exercise, massage, trigger point therapy, dietary advice and
31 recommendation of nutritional supplementation, the normal regimen and rehabilitation
32 of the patient, first aid, and counseling on hygiene, sanitation, and preventive
measures. Chiropractic care also includes such physiological therapeutic procedures
as traction and light, but does not include procedures involving the application of
sound, diathermy, or electricity.

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2 (3) As part of a chiropractic differential diagnosis, a chiropractor shall perform a
3 physical examination, which may include diagnostic x-rays, to determine the
4 appropriateness of chiropractic care or the need for referral to other health care
5 providers. The chiropractic quality assurance commission shall provide by rule for the
6 type and use of diagnostic and analytical devices and procedures consistent with this
7 chapter.

8 (4) Chiropractic care shall not include the prescription or dispensing of any medicine
9 or drug, the practice of obstetrics or surgery, the use of x-rays or any other form of
10 radiation for therapeutic purposes, colonic irrigation, or any form of venipuncture.

11 (5) Nothing in this chapter prohibits or restricts any other practitioner of a "health
12 profession" defined in RCW 18.120.020(4) from performing any functions or
13 procedures the practitioner is licensed or permitted to perform, and the term
14 "chiropractic" as defined in this chapter shall not prohibit a practitioner licensed under
15 chapter 18.71 RCW from performing medical procedures, except such procedures
16 shall not include the adjustment by hand of any articulation of the spine.

17 Thus, chiropractors have been permitted to manipulate and treat extremity conditions since 2002.
18 The intention of the Legislature to permit treatment of the extremities is confirmed by the definitions
19 section of the statute.

20 (6) "Articular dysfunction" means an alteration of the biomechanical and physiological
21 dynamics of a joint of the axial or appendicular skeleton.

22 (7) "Musculoskeletal disorders" means abnormalities of the muscles, bones, and
23 connective tissue.

24 (8) "Chiropractic differential diagnosis" means a diagnosis to determine the existence
25 of a vertebral subluxation complex, articular dysfunction, or musculoskeletal disorder,
26 and the appropriateness of chiropractic care or the need for referral to other health
27 care providers.

28 (9) "Chiropractic adjustment" means chiropractic care of a vertebral subluxation
29 complex, articular dysfunction, or musculoskeletal disorder. Such care includes
30 manual or mechanical adjustment of any vertebral articulation and contiguous
31 articulations beyond the normal passive physiological range of motion.

32 (10) "Extremity manipulation" means a corrective thrust or maneuver applied to a joint
of the appendicular skeleton.

RCW 18.25.006. The definitions, which include musculoskeletal disorders, articular dysfunction,
and manipulation of the appendicular skeleton, clearly indicate that chiropractors are permitted to
treat and manipulate disorders of the upper and lower extremities, including shoulders.

Although the *Lahmann* decision was issued after these amendments, we do not find it on
point with regard to Dr. Beasley's ability to treat and testify about shoulder conditions. The decision
in the *Lahmann* case involved the ability of a chiropractor to testify about a worker's permanent
partial impairment. Under RCW 51.32.112, a chiropractor may testify about impairment if the rating

1 was done at the request of the Department. The *Lahmann* case is silent as to a chiropractor's
2 ability to testify about causation, the issue in these appeals. The statute explicitly states a
3 chiropractor may testify to matters within the scope of his or her practice. As we have explained,
4 treatment of the shoulder is within the scope of the chiropractor's practice and we know of no statute
5 or regulation that would prevent a chiropractor from testifying about causation. In fact, the Court of
6 Appeals in *Loushin v. ITT Rayonier*, 84 Wn. App. 13 (1996), found that a chiropractor should be
7 permitted to testify about aggravation of an industrial injury, an issue that necessarily includes
8 testimony about the cause of the aggravated or worsened condition. Therefore, we find that current
9 case law specifically permits chiropractors to testify as to the issue of causation.

10 Based on this analysis, we find that the following objections, as stated in the transcript of the
11 deposition testimony of Dr. Beasley, are overruled: page 7, line 5; page 9, line 9; and page 12, line
12 16. In addition, we note our industrial appeals judge erred when he wrote that Dr. Beasley should
13 have limited his treatment to conditions of the spine.

14 Although we find it necessary to correct the evidentiary rulings made in the Proposed
15 Decision and Order, we agree with the ultimate conclusions of our industrial appeals judge. We do
16 not agree that Dr. Beasley's testimony should not be considered, but we simply do not find it
17 persuasive. The question in this case is whether Ms. Lynn's condition for which she sought
18 treatment in 2008 was caused by her work for the Everett School District or by her work duties while
19 employed at Starbucks.

20 Ms. Lynn developed an upper extremity condition while working for the school district. She
21 testified that she was bothered by lifting and dumping deep frying baskets. After she returned to
22 work in 2003, she no longer performed that particular duty. Dr. Beasley did not seem to be aware
23 that it had been several years since Ms. Lynn had worked with fry baskets. Ms. Lynn testified that
24 her work as a barista at Starbucks required her to lift and pour gallon jugs of milk while preparing
25 drinks, reach overhead, and perform janitorial duties. She testified that these activities made her
26 shoulder pain worse.

27 Dr. Beasley recorded that Ms. Lynn's symptoms were worse when she slept on her right side
28 or when she was doing a lot of overhead work at Starbucks. He felt that Ms. Lynn's condition was
29 the natural progression of the injury she suffered while working for the school district and was not
30 affected by her activities at home, activities of daily living, or her work at Starbucks. Nevertheless,
31 he noted that Ms. Lynn's symptoms improved when she was not working at Starbucks, and that he
32 notified the Department that her work at Starbucks would continue to aggravate the condition.

1 Dr. Beasley's testimony seems inconsistent to us. In addition, he offered an opinion that Ms. Lynn
2 was not spending more time working for Starbucks than she was cleaning at home, even though
3 she was working 20 hours a week. When asked why he held that opinion, he stated he knew her
4 well, but then admitted he had never been to her home. Therefore, we do not find Dr. Beasley's
5 opinion persuasive, even in combination with that of Dr. Kinahan, when weighed against the
6 evidence presented by the school district. Therefore, we find the Department order allowing the
7 claim for a condition related to work activities while employed with Starbucks should be affirmed.

8 FINDINGS OF FACT

9 1. On March 16, 2007, the claimant, Tami D. Lynn, filed an Application for
10 Benefits with the Department of Labor and Industries, in which she
11 alleged that on-going as of January 9, 2007, during the course of her
12 employment with Everett School District No. 2, she had an industrial
13 injury condition to her right arm and wrist which was assigned Claim
14 No. SB-59811. On July 30, 2007, the Department issued an order in
15 which it allowed the claim. On June 17, 2008, the Department issued an
16 order in which it closed the claim with time-loss compensation benefits
17 as paid to October 24, 2007, and no award for any permanent partial
18 disability.

19 On December 15, 2008, Tami D. Lynn filed an aggravation application
20 with the Department and on April 9, 2009, the Department issued an
21 order in which it denied a reopening of her claim, SB-59811. On
22 April 15, 2009, the claimant filed a protest to the denial order and on
23 May 12, 2009, the Department issued an order in which it affirmed as
24 correct the April 9, 2009 denial order. On May 26, 2009, the employer,
25 Starbucks, filed a protest to the May 12, 2009 order. On June 1, 2009,
26 the Department issued an order in which it resumed jurisdiction of the
27 claim.

28 On May 5, 2009, Tami D. Lynn filed an Application for Benefits with the
29 Department of Labor and Industries in which she alleged that on
30 December 4, 2008, during the course of her employment with
31 Starbucks, she sustained an industrial injury to her right wrist, which was
32 assigned Claim No. SC-91336. On June 9, 2009, the Department
issued an order in which it allowed Claim No. SC-91336 as an
occupational disease and affirmed as correct the Department order
dated May 12, 2009, in which it affirmed the April 9, 2009 order in which
it denied a reopening of Claim No. SB-59811 for aggravation of
condition.

2. In mid-December 2006, Tami D. Lynn last worked for Everett School
District No. 2.

3. Prior to her last day of work, Tami D. Lynn worked with some limited
physical restrictions, mostly as a taco bar server, which was within her

1 capabilities. Her work activities did require repetitive use of her hands,
2 wrists, and arms.

- 3 4. Prior to her last day of work for the Everett School District, Tami D. Lynn
4 suffered from pain associated with her right wrist and arm that arose
5 naturally and proximately from the distinctive conditions of her
6 employment with the Everett School District No. 2 and constituted an
7 occupational disease condition.
- 8 5. On June 17, 2008, claimant's medical condition, related to her allowed
9 claim, No. SB-59811, had reached maximum medical improvement and
10 was not in need of any further medical treatment. There were no
11 objective findings to support any permanent impairment as a result of
12 her allowed condition.
- 13 6. Commencing at some point in time prior to February 1, 2008, Tami D.
14 Lynn started working for Starbucks Corporation as a barista. Her work
15 activities required lifting cartons of milk, reaching overhead, janitorial
16 duties, and repetitive use of her hands, wrists, arms, and shoulders
17 while preparing various coffee drinks and serving customers. These
18 work activities were not the same as the ordinary incidents of daily
19 living.
- 20 7. As of December 4, 2008, claimant suffered from right wrist, arm, and
21 shoulder pain that arose naturally and proximately from the distinctive
22 conditions of her employment with Starbucks Corporation and
23 constituted an occupational disease condition under Claim
24 No. SC-91336.
- 25 8. The work activity while working for Starbucks Corporation was a
26 supervening cause of claimant's right wrist, arm, and shoulder condition
27 that aggravated a preexisting degenerative condition in her right
28 AC shoulder joint and the conditions required proper and necessary
29 medical treatment.
- 30 9. The claimant's industrially related conditions allowed under Claim
31 No. SB-59811 as an occupational disease did not objectively worsen
32 between June 17, 2008, and June 9, 2009.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties to and the subject matter of this appeal.
2. Tami D. Lynn developed an occupational disease condition, as defined by RCW 51.08.140 effective December 4, 2008, during the course of her employment with Starbucks Corporation under Claim No. SC-91336. Her condition aggravated a preexisting degenerative condition to her right AC shoulder joint that required medical treatment.
3. Between June 17, 2008, and June 9, 2009, Tami D. Lynn's conditions covered under her occupational disease Claim No. SB-59811 did not objectively worsen within the meaning of RCW 51.32.160.

1 4. The Department order dated June 9, 2009, is correct and is affirmed.

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3 DATED: November 15, 2010.

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5 BOARD OF INDUSTRIAL INSURANCE APPEALS

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8 /s/ _____
DAVID E. THREEDY Chairperson

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

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14 /s/ _____
LARRY DITTMAN Member

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