

Peterson, Virginia

EVIDENCE

Judicial notice of AMA guides

The Board will not take judicial notice of the diagnostic criteria found in the AMA *Guides to the Evaluation of Permanent Impairment* when permanent impairment is not an issue in the appeal. ...***In re Virginia Peterson, BIA Dec., 15 21676 (2017)*** [*Editor's Note: The Board's decision was appealed to superior court under Grays Harbor Cause No. 17-2-00215-8.*]

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

1 **IN RE: VIRGINIA C. PETERSON**) **DOCKET NO. 15 21676**
2))
3 **CLAIM NO. AU-90658**) **DECISION AND ORDER**
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5 Virginia C. Peterson sustained an industrial injury in 2014 while working as an in-home care
6 provider for HCRR. The Department allowed the claim but determined that it was not responsible for
7 the condition diagnosed as Complex Regional Pain Syndrome (CRPS) in her left foot because she
8 did not present with this condition on examination. Ms. Peterson appealed, contending that she had
9 CRPS in her left foot proximately caused by the industrial injury. Our industrial appeals judge
10 reversed and remanded the Department order with direction to allow CRPS. We disagree with our
11 industrial appeals judge's decision to allow the CRPS. We also conclude that it was not appropriate
12 to take judicial notice of the diagnostic criteria for CRPS in the *AMA Guides to the Evaluation of*
13 *Permanent Impairment*, 6th Edition (2008) (*AMA Guides*) when permanent impairment was not at
14 issue. We find that Ms. Peterson has not proved that she has CRPS. The Department order is
15 **AFFIRMED.**
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DISCUSSION

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23 On September 4, 2014, Ms. Peterson lifted a hospital bed to retrieve a patient's leg brace and
24 the bed fell on her left foot. She immediately went to the local hospital where x-rays were taken of
25 her foot and she was referred to Robert Hovancsek, DPM, for follow up. Dr. Hovancsek saw
26 Ms. Peterson for the first time on September 11, 2014. The x-rays showed that nothing was broken,
27 but Ms. Peterson was having severe pain and swelling in her left foot. Dr. Hovancsek noted on the
28 first visit that her skin temperature was warm and she had a hematoma on the top of her left foot that
29 measured 3by-5 centimeters.
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34 Dr. Hovancsek initially diagnosed Ms. Peterson with a fracture dislocation of the Lisfranc joint
35 on the top, middle of the left foot with a subdermal hematoma, and severe edema caused by the
36 industrial injury. To further evaluate the Lisfranc joint, he ordered an MRI of the left foot, which
37 showed no fracture or contusion. Dr. Hovancsek then ordered a triphasic bone scan of the left foot
38 to try to rule out CRPS. The bone scan performed on November 26, 2014, was negative. Despite
39 the negative results Dr. Hovancsek diagnosed Ms. Peterson with CRPS in her left foot and treated
40 her with physical therapy and multiple nerve injections.
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1 In support of her contention that she has CRPS in her left foot as a proximate cause of the
2 industrial injury on September 4, 2014, Ms. Peterson presented the expert testimony of
3 Dr. Hovancsek, who is certified by his peers as a podiatrist and foot surgeon. As described by
4 Dr. Hovancsek, CRPS is a rare condition that sometimes happens after a major injury where the
5 nerves become overactive and cause severe pain. Dr. Hovancsek stated that on a more-probable-
6 than-not basis Ms. Peterson had CRPS in her left foot as a proximate cause of the industrial injury.
7 He based his opinion on her symptoms after the industrial injury that were typical for CRPS, including
8 difficulty walking and severe pain out of proportion to the injury that lasted longer than it should have..
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10 The Department presented the expert testimony of George Delyanis, M.D., a neurologist, and
11 David Scott Smith, M.D., an orthopedic surgeon. Together they conducted an independent panel
12 medical examination of Ms. Peterson on January 21, 2015. Drs. Delyanis and Smith testified that on
13 a more-probable-than-not basis that Ms. Peterson does not have CRPS in her left foot based on the
14 Department's diagnostic criteria.
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16 According to Dr. Smith, the Department's diagnostic criteria for CRPS requires that four of the
17 following objective findings be present: hyperalgesia (a pin-pick response); or allodynia (more pain
18 than would be expected with light touch); edema; or vasomotor changes, such as changes in skin
19 color, mottling, or temperature; skin abnormalities like shiny skin or abnormal hair growth; and
20 impaired motor functioning (tremor, abnormal limb positioning, and diffuse weakness). Drs. Smith
21 and Delyanis testified that none of these objective findings were present with Ms. Peterson. Although
22 on cross-examination Dr. Smith acknowledged that he documented skin mottling.
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24 After carefully considering the evidence we find the diagnosis of Drs. Smith and Delyanis that
25 Ms. Peterson does not have CRPS in her left foot to be more persuasive. Although Dr. Hovancsek
26 treated Ms. Peterson and had the opportunity to evaluate her over a period of time, he did not observe
27 or record the findings necessary to diagnosis CRPS based on the Department's diagnostic criteria
28 other than the swelling that she had initially. Dr. Hovancsek testified that his assessment that
29 Ms. Peterson had CRPS was based primarily on her pain complaints, which is not enough to support
30 a diagnosis of CRPS.
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32 Although not necessary to reach our decision we will briefly address whether it was appropriate
33 for our industrial appeals judge to take judicial notice of the diagnostic criteria for CRPS found in the
34 *AMA Guides* when permanent impairment is not at issue. While it is true that the Board has a
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1 longstanding practice of taking judicial notice of the *AMA Guides* for the purpose of rating
2 impairment,¹ we have not done so solely for diagnostic purposes.

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4 One of the reasons that we previously endorsed taking judicial notice of the *AMA Guides* for
5 rating impairment is that for specified disabilities WAC 296-20-2015 requires physicians to use the
6 *AMA Guides* for rating impairment.² There is no similar WAC instructing physicians to use the *AMA*
7 *Guides* for diagnostic purposes. In addition the *AMA Guides* themselves in the section on "Criteria
8 for Rating Impairments Related to [CRPS]," which was the section cited by our industrial appeals
9 judge, cautions that "[n]o diagnostic criteria have been accepted uniformly for CRPS."³ It also states
10 only that the objective parameters provided to confirm a CRPS diagnosis are necessary before rating
11 for permanent impairment,⁴ which is not the same as providing diagnostic criteria for all situations.
12 We conclude that it was not appropriate for our industrial appeals judge to take judicial notice of the
13 *AMA Guides* in this case.
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19 **DECISION**

20 The claimant, Virginia C. Peterson, filed an appeal with the Board of Industrial Insurance
21 Appeals on October 5, 2015, from an order of the Department of Labor and Industries dated
22 September 1, 2015. In this order, the Department affirmed an order dated June 8, 2015, determining
23 that the Department is not responsible for the condition diagnosed as CRPS because the worker did
24 not present with this condition on examination. This order is correct and is **AFFIRMED**.
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28 **FINDINGS OF FACT**

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30 1. On December 9, 2015, an industrial appeals judge certified that the
31 parties agreed to include the Jurisdictional History in the Board record
32 solely for jurisdictional purposes.
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34 2. Ms. Peterson sustained an industrial injury on September 4, 2014, when
35 a bed fell on her left foot, proximately causing a subdermal hematoma.
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37 3. Ms. Peterson did not develop Complex Regional Pain Syndrome (CRPS)
38 in her left foot as a proximate cause of the industrial injury.
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45 ¹ *In re Bertha Ramirez*, BIIA Dec., 03 14933 (2004).

46 ² *In re Thomas J. Moore*, Dckt. No. 06 28210 (May 5, 2000).

47 ³ *AMA Guides to the Evaluation of Permanent Impairment*, 6th Edition (2008), at 341.

⁴ *AMA Guides*, at 538-39.

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CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter in this appeal.
2. The Department order dated September 1, 2015, is correct, and is affirmed.

Dated: March 3, 2017.

BOARD OF INDUSTRIAL INSURANCE APPEALS



LINDA L. WILLIAMS, Chairperson



JACK S. ENG, Member

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**Addendum to Decision and Order
In re Virginia C. Peterson
Docket No. 15 21676
Claim No. AU-90658**

Appearances

Claimant, Virginia C. Peterson, by Solan & Solan, P.S., per Stephen J. Solan
Employer, Home Care Referral Registry, per Courtney Beauchene, Claims Representative
Department of Labor and Industries, by The Office of the Attorney General, per Susan Pierini

Petition for Review

As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision. The Department filed a timely Petition for Review of a Proposed Decision and Order issued on November 15, 2016, in which the industrial appeals judge reversed and remanded the Department order dated September 1, 2015.

Evidentiary Rulings

The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no prejudicial error was committed. The rulings are affirmed.