

# Sanchez Jimenez, Leticia

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## EVIDENCE

### Hearsay statement of non-testifying expert

When no objection is made to a hearsay statement of a non-testifying expert, the statement is admissible as substantive evidence. ....*In re Leticia Sanchez Jimenez*, BIA Dec., 18 21048 (2019) [*Editor's Note*: The Board's decision was appealed to superior court under Franklin County Cause No. 19-2-50226-9.]

Scroll down for order.

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

**IN RE: LETICIA SANCHEZ JIMENEZ ) DOCKET NO. 18 21048**  
**CLAIM NO. BA-49643 ) DECISION AND ORDER**

Leticia Sanchez Jimenez sustained an industrial injury to her elbows and shoulders while working as a bath aide for Tri-Cities Retirement. The Department determined that treatment was concluded and closed the claim. Ms. Sanchez Jimenez seeks further treatment. Although we agree with our industrial appeals judge that Ms. Sanchez Jimenez failed to prove entitlement to further medical treatment, we grant review solely to clarify the analysis of Dr. Heather Phipps' hearsay statement. The Department order dated December 15, 2017, is **AFFIRMED**.

**DISCUSSION**

Leticia Sanchez Jimenez, sustained an industrial injury to her elbows and shoulders on May 4, 2017. She sought treatment from Heather Phipps, M.D., an orthopedic surgeon, who did not testify in this appeal. Ms. Sanchez Jimenez testified that Dr. Phipps prescribed braces to treat her ulnar neuropathy. She further stated, "[Dr. Phipps] said [the braces] would help a little bit, and I was supposed to follow up with her, but then my case got closed."<sup>1</sup>

Ronald Fleck, M.D., is an occupational medicine physician who also treated Ms. Sanchez Jimenez. Dr. Fleck reviewed nerve conduction studies that revealed ulnar neuropathy in both elbows, which he said were proximately caused by the industrial injury. However, Dr. Fleck had no specific treatment recommendations for Ms. Sanchez Jimenez, explaining that surgery rarely improves (and often worsens) mild or moderate neuropathy. Dr. Fleck believes that the claim was ready for closure as of December 11, 2017.

Dr. Fleck did not have access to Dr. Phipps' chart notes during his testimony. The following is an excerpt of Dr. Fleck's direct examination during the hearing on September 17, 2018:

Q. I'd like you to assume that Ms. Jimenez testified that she saw Dr. Phipps and that she was prescribed braces for her bilateral elbow condition and that she was told to follow up regarding that condition but was never able to due to her claim being closed. In your opinion, Doctor, would it be proper and necessary for Ms. Jimenez to follow up with an orthopedic surgeon to discuss ongoing treatment and care for her bilateral elbow condition?

A. If Dr. Phipps recommended that and it was never done, then I think it would be advisable to follow up.<sup>2</sup>

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<sup>1</sup> 9/17/18 Tr. at 21.

<sup>2</sup> 9/17/18 Tr. at 37.

1 Neither the Department nor the employer entered an objection to the hearsay statement of Dr. Phipps  
2 (recommending a follow-up appointment). Therefore, it is admissible as **substantive** evidence,  
3 rather than merely as the basis of an expert's opinion, as indicated by our industrial appeals judge.  
4 However, at no point did Dr. Fleck indicate that he actually relied on Dr. Phipps' recommendation in  
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### DECISION

In Docket No. 18 21048, the claimant, Leticia Sanchez Jimenez, filed an appeal with the Board of Industrial Insurance Appeals on January 31, 2018, from an order of the Department of Labor and Industries dated December 15, 2017. In this order, the Department closed the claim effective December 15, 2017. This order is correct and is affirmed.

### FINDINGS OF FACT

1. On March 28, 2018, an industrial appeals judge certified that the parties agreed to include the Jurisdictional History in the Board record solely for jurisdictional purposes.
2. Leticia Sanchez Jimenez sustained an industrial injury on May 4, 2017, while working for Tri-Cities Retirement when she reached out to catch a patient, which proximately caused ulnar neuropathy in both elbows.
3. As of December 15, 2017, Ms. Sanchez Jimenez's conditions proximately caused by the industrial injury were fixed and stable and did not need further proper and necessary treatment.

### CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter in this appeal.
2. Ms. Sanchez Jimenez's conditions proximately caused by the industrial injury were fixed and stable as of December 15, 2017, and she is not entitled to further treatment. RCW 51.36.010.

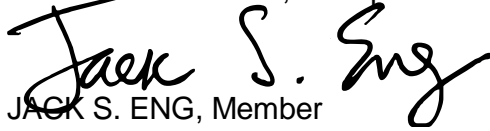
1 3. The Department order dated December 15, 2017, is correct and is  
2 affirmed.  
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4 Dated: March 1, 2019.

5 BOARD OF INDUSTRIAL INSURANCE APPEALS

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7 LINDA L. WILLIAMS, Chairperson

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9 JACK S. ENG, Member  
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**Addendum to Decision and Order**  
**In re Leticia Sanchez Jimenez**  
**Docket No. 18 21048**  
**Claim No. BA-49643**

**Appearances**

Claimant, Leticia Sanchez Jimenez, by Smart Law Offices, per Marcus R. Henry  
Employer, Tri-Cities Retirement Inn, by Employer Resources Northwest Inc., per Erin J. Dickinson  
Retrospective Rating Group, WA Health Care Association - WHCA Retro #00136, (did not appear)  
Department of Labor and Industries, by Office of the Attorney General, per Bryan Ovens

**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 claimant filed a timely Petition for Review of a Proposed Decision and Order issued on December 17, 2018, in which the industrial appeals judge affirmed the Department order dated December 15, 2017.

**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.