

Muldrow, Romeo

TIME-LOSS COMPENSATION (RCW 51.32.090)

Attending physician's recommendation against return to work

Where the attending physician's work restrictions were in anticipation of upcoming surgery and not a risk of further injury on return to employment, the rationale for providing time-loss compensation based on *In re Charles Hindman*, BIIA Dec., 32,851 (1970) does not apply.***In re Romeo Muldrow*, BIIA Dec., 19 16111 (2020)** [Editor's Note: The Board's decision was appealed to superior court under Benton County Cause No. 21-2-00023-5]

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

IN RE: ROMEO MULDROW) **DOCKET NO. 19 16111**
)
CLAIM NO. AQ-88001) **DECISION AND ORDER**

The claimant, Romeo Muldrow, appeals a Department order that denied time-loss compensation. Our industrial appeals judge affirmed the denial of time-loss compensation because the attending physician's work restrictions were based solely on an anticipated surgery that never occurred and did not establish any objective findings of physical restrictions that would prevent Mr. Muldrow from working. Although we agree with our judge's decision, we grant review to discuss the application of *In re Charles Hindman*¹ and its progeny to the case before us. The focus in *Hindman* was the risk of further injury on a return to employment against the advice of a treating provider. Here, Mr. Muldrow's return to work would **not** have risked further injury to his low back and he is not entitled to additional time-loss compensation benefits. We **AFFIRM** the Department order denying time-loss compensation benefits from February 5, 2019, through April 17, 2019.

DISCUSSION

Romeo Muldrow is a 33 year-old man who lives in Kennewick. He did not complete high school but earned a GED. His job as the operations manager for Sleep City required him to lift heavy mattresses and box springs and move them throughout the warehouse. Mr. Muldrow injured his low back in July 2012 when he was bending down to pick up a pallet full of mattresses. He was 25 years old at the time of injury and had never experienced low back problems prior to that. Accepted conditions under the claim included lumbar strain and lumbar spondylosis with radiculopathy. The Department closed the claim in August 2012 and Mr. Muldrow returned to his employer of injury, reporting a pain level of zero. In October 2012, Mr. Muldrow sought to reopen the claim and the Department canceled the closing order. Sleep City went out of business in October 2012 when Mr. Muldrow was performing light-duty work for them.

Mr. Muldrow treated with Janmeet Sahota, M.D., an orthopedic surgeon, and Cameron Ritchie, PA-C, a physician's assistant who works under Dr. Sahota's supervision. In May 2015, Dr. Sahota performed decompression surgery of the L5 nerve root, which provided temporary relief. About 18 months later Mr. Muldrow's symptoms returned in full force: burning; stabbing pains in the low back; a vibrating sensation down his leg; a cold, numb right leg; and a left leg that drags when he walks. Mr. Muldrow believes he has seen Dr. Sahota or PA-C Ritchie 60 to 70 times since his 2012 injury.

¹ BIIA Dec., 32,851 (1970).

1 However, from May 2018 to January 2019, he didn't see either PA-C Ritchie or Dr. Sahota because
2 the Department denied authorization for these visits under the claim.
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4 In December 2017, Mr. Muldrow completed a year-long retaining program for medical billing
5 and coding. During this time, he continued to experience low back symptoms. After completing the
6 training program, Mr. Muldrow looked for work for six months but was not successful.
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8 **Cameron Ritchie, PA-C**, is the attending provider under the claim. A January 2019 MRI
9 showed disc space narrowing and neuroforaminal narrowing at L5/S1, which weren't present in the
10 May 2015 MRI. Dr. Sahota saw Mr. Muldrow on February 5, 2019, and recommended disc
11 replacement and fusion surgery at L5/S1. Dr. Sahota signed an Activity Prescription Form (APF)
12 restricting Mr. Muldrow from all work from February 5, 2019, through March 5, 2019.
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15 Mr. Muldrow's next visit to the clinic was on May 6, 2019, and PA-C Ritchie signed an APF
16 restricting Mr. Muldrow from all work until June 4, 2019. PA-C Ritchie explained that the work
17 restrictions were made in anticipation of the surgery that Dr. Sahota recommended. "So, at that point,
18 I didn't feel like it would make sense . . . for him to return to work, if he was going to proceed with a
19 surgery at that time."² PA-C Ritchie believes that the proposed second surgery was related to the
20 2012 industrial injury. In November 2019, PA-C Ritchie placed the same restrictions on Mr. Muldrow
21 as he did in May 2019, because Mr. Muldrow wanted to proceed with disc replacement surgery.
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25 Mr. Ritchie had previously released Mr. Muldrow to the job of injury without restrictions from
26 March 2018 to May 2018. Mr. Ritchie agreed that at that time, Mr. Muldrow could sit, stand, and
27 keyboard on a frequent basis and approved the job of medical coder/biller.
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31 **Dennis Byam, D.C.**, is a chiropractor who performed a panel independent medical
32 examination with Robert Hunnicut, M.D., an orthopedic surgeon, in March 2018. Mr. Muldrow's
33 complaints included global pain and numbness in both legs, including aching and burning; left buttock
34 pain traveling down to the foot; right buttock pain traveling down to the knee; and numbness in his
35 right leg from knee to foot. Dr. Byam found normal motor strength but disregarded Mr. Muldrow's
36 assertion of complete numbness in both legs because it is not anatomically possible.
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40 A January 2019 lumbar MRI showed "encroachment on the S1 nerve root that had moderately
41 narrowed the bilateral root formation at L5 effacement[,]"³ which Dr. Byam explained meant increased
42 arthritis that wasn't related to the industrial injury. Dr. Byam diagnosed Mr. Muldrow with a herniated
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46 ² Ritchie Dep. at 13.

47 ³ Byam Dep. at 40.

1 disc at L5/S1 without nerve root impairment. He also stated the opinion that Mr. Muldrow could
2 physically perform the job of medical biller/coder.
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4 Mr. Muldrow moved for a directed verdict at the close of his case, citing *In re Stephanie Miller*.⁴
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6 In his Petition for Review, Mr. Muldrow argues that he was entitled to time-loss compensation
7 from February 5, 2019, through April 17, 2019, relying on *In re Charles Hindman*⁵ and *In re Stephanie*
8 *J. Miller*.⁶ In *In re Charles Hindman*, the worker suffered a heart attack caused by overexertion while
9 working as a laborer. The worker's attending physician, a general practitioner, told him not to return
10 to work in order to prevent further injury to his heart. Two other physicians who specialized in
11 cardiology stated the opinion that there was no clinical contraindication for the claimant's return to
12 work. We found the opinions of the specialist doctors to be more probative with respect to the effect
13 of the cardiac condition on the claimant's ability to work. Nevertheless, we held in favor of the worker,
14 reasoning that the patient could not be expected to know whether the advice of the doctor was based
15 on valid medical considerations or not.
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21 In *In re Stephanie J. Miller*, the attending physician had treated the claimant continuously for
22 eight years. That doctor maintained that the worker could not return to the job of injury but could
23 work full-time if several restrictions were observed (that is, lifting, carrying, pulling, reaching, etc.).
24 We stated:
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26 We have long held that a worker is entitled to rely on his or her attending physician's
27 work restrictions and recommendations. See *In re Charles Hindman*, BIIA Dec., 32,851
28 (1970), where we noted that it would be foolhardy for an injured worker to ignore his or
29 her physician's advice.⁷
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31 Under the reasoning set forth in *Hindman*, we have consistently approved the payment of time-loss
32 compensation or loss of earning power benefits when the worker's attending physician certifies
33 eligibility for time-loss benefits and then later determines in hindsight that the certification was in
34 error.⁸
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40 ⁴ Dckt. No. 10 21042 (April 17, 2012).

41 ⁵ BIIA Dec, 32,851 (1970).

42 ⁶ Dckt. No. 10 21042 (April 17, 2012).

43 ⁷ Miller at 3.

44 ⁸ See, for example, *In re Betty J. Macomber*, Dckt. No. 00 11890 (August 7, 2001); *In re Toni O'dell*, Dckt. No. 02 17309
45 (November 24, 2003). ("[T]he claimant not only has a right, but a duty, to rely on the advice of an attending physician
46 about a return to work."); *In re Cecila L. Scott*, Dckt. No. 05 16135 (March 19, 2007); *In re Stephanie J. Miller*, Dckt.
47 No. 10 21042 (April 17, 2012); *In re Lisa L. Bizzell*, Dckt. No. 09 15610 (September 8, 2010); *In re James Mullins*, Dckt.
No. 10 11369 (May 11, 2011); *In re Augusta Lorenzo*, Dckt. No. 12 11151 (May 13, 2013); *In re Linda Smiley*, Dckt. No.
16 10197 (October 24, 2017).

1 The Board has also distinguished *Hindman* from cases where the worker chose to discontinue
2 a light-duty job, stating that the "focus in *Hindman* was on the claimant's risk of further injury had he
3 returned to employment against the advice of his doctor."⁹ In *In re Mitchell D. Calvo*,¹⁰ the worker
4 argued that even if his doctor was wrong about his inability to work, he is entitled to the time-loss
5 compensation benefits because he relied that doctor's restrictions. In that case, the worker's doctor
6 conceded that the claimant would not further injure himself by working. The Board explained that
7 "our holding in *Hindman* [is not] meant to prevent a worker from performing work when there is no
8 risk of further injury to the worker."¹¹ Because the claimant in *Calvo* was not at risk of further injury
9 in returning to work, he was not entitled to time-loss compensation benefits based on his reliance on
10 his treating provider's restrictions.
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12 Applying these decisions to the facts of the instant case results in a denial of time-loss
13 compensation benefits to Mr. Muldrow. The focus in *Hindman* was the **worker's risk of further**
14 **injury on a return to employment against the advice of a treating provider**. Here, PA-C Ritchie
15 and Dr. Sahota restricted Mr. Muldrow from all work, solely in anticipation of his upcoming surgery.
16 Had it not been for this proposed surgery, they would have released him to work. Indeed,
17 PA-C Ritchie had released Mr. Muldrow to work with no restrictions prior to the February 2019 APF.
18 There is no information in the record as to why this surgery never took place, and we can only
19 speculate as to the reasons. Here, Mr. Muldrow's return to work would **not** have risked further injury
20 to his low back because the only reason the attending provider placed those work restrictions was
21 the impending surgery. Mr. Muldrow is not entitled to time-loss compensation from February 5, 2019,
22 through April 17, 2019.
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24 DECISION

25 In Docket No. 19 16111, the claimant, Romeo Muldrow, filed an appeal with the Board of
26 Industrial Insurance Appeals on May 16, 2019, from an order of the Department of Labor and
27 Industries dated April 18, 2019. In this order, the Department denied time-loss compensation from
28 February 5, 2019, through April 17, 2019. This order is correct, and is **AFFIRMED**.
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⁹ *In re Teresa H. Terrien*, Dckt No. 10 17216 (February 14, 2012).

¹⁰ Dckt. No. 18 12892 (Sept. 18, 2019).

¹¹ *Calvo* at 3.

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3 **FINDINGS OF FACT**
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- 5 1. On August 6, 2019, an industrial appeals judge certified that the parties
6 agreed to include the Jurisdictional History in the Board record solely for
7 jurisdictional purposes.
8 2. Romeo Muldrow is a 33-year-old man with a GED, and was the operations
9 manager for Sleep City. He also has training in medical billing and coding.
10 3. Mr. Muldrow sustained an industrial injury to his low back on July 14,
11 2012, when he bent down to pick up a pallet of mattresses. Accepted
12 conditions under the claim include lumbar strain and lumbar spondylosis
13 with radiculopathy.
14 4. From February 5, 2019, through April 17, 2019, Mr. Muldrow was able to
15 sit and stand frequently, keyboard frequently, and work with his wrists
16 frequently.
17 5. Mr. Muldrow was able to perform and obtain gainful employment on a
18 reasonably continuous basis from February 5, 2019, through April 17,
19 2019.
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22 **CONCLUSIONS OF LAW**

- 23 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties
24 and subject matter in this appeal.
25 2. Romeo Muldrow was not a temporarily and totally disabled within the
26 meaning of RCW 51.32.090 from February 5, 2019, through April 17,
27 2019.
28 3. The Department order dated April 18, 2019, is correct and is affirmed.
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30 Dated: December 14, 2020.
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32 BOARD OF INDUSTRIAL INSURANCE APPEALS

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35 LINDA L. WILLIAMS, Chairperson

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38 JACK S. ENG, Member
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**Addendum to Decision and Order
In re Romeo Muldrow
Docket No. 19 16111
Claim No. AQ-88001**

Appearances

Romeo Muldrow, by Smart Law Offices, per Christopher L. Childers

Employer, Sleep City (did not appear)

Department of Labor and Industries, by Office of the Attorney General, per Steven Foster

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 August 25, 2020, in which the industrial appeals judge affirmed the Department order dated April 18, 2019.

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.