Reed, Michael

SUBSEQUENT CONDITION TRACEABLE TO ORIGINAL INJURY

Maphet Acceptance

The Department denied responsibility under the claim for lumbar radiculopathy. The worker sought acceptance of the condition under *Clark County v. Maphet*, 10 Wn. App. 2d 420 (2019), because he had received epidural steroid injections for his low back under the claim. But the record showed that epidural steroid injections are never a proper treatment for the worker's accepted lumbar sprain condition. The Board held that the Department properly denied responsibility for radiculopathy. Injections were properly authorized for diagnostic purposes, and the worker didn't prove that he suffers from radiculopathy. The principle of *Maphet* acceptance doesn't apply to undiagnosed conditions. ***….In re Michael Reed,* BIIA Dec., 21 17153 (2022)** [*Editor's Note:* The Board's decision was appealed to superior court under King County Cause No. 22-2-17544-3KNT.]

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: MICHAEL V. REED	**)**	**DOCKET NO. 21 17153**
	)	
CLAIM NO. BF-59295	**)**	**DECISION AND ORDER**

In 2018, Michael V. Reed slipped and fell while working for Tri Star Roofing. The fall caused Mr. Reed's hammer, which was in his tool belt, to dig into his lower ribs and back. The Department issued an order segregating Mr. Reed's lumbar radiculopathy. Mr. Reed appealed. Noting similarities between this record and the facts in *In re Jeremy Carrigan,*[1] our industrial appeals judge concluded that the Department didn't accept responsibility under the claim for lumbar radiculopathy when it authorized lumbar injections for his lumbar sprain. Mr. Reed petitioned for review. Although he is correct that, unlike *Carrigan*, the record before us established that epidural steroid injections are never used to treat lumbar sprain, we granted review to explain why *Maphet*[2] remains inapplicable. Because Mr. Reed did not prove that his industrial injury caused or aggravated the condition known as lumbar radiculopathy, and because *Maphet* does not apply to undiagnosed conditions, we **AFFIRM** the Department's segregation order.

DISCUSSION

On December 5, 2018, roofer Michael Reed slipped and fell on an icy roof. When he landed, the hammer in his tool belt dug into his lower rib cage and back. Five days later, Mr. Reed sought treatment at the emergency room. There, staff noted bruising and ordered a chest x-ray. Mr. Reed underwent an MRI, chest x-ray, and CT scans of his abdomen, pelvis and hip.

The MRI depicted stenosis at L4-5, and L5-S1—something which *could have* affected Mr. Reed's S1 nerve roots. In late December, Mr. Reed's treating physiatrist, Justin Cooper, D.O., conducted a neurological exam. The exam, which included a negative supine straight leg raise test, was normal.

On January 11, 2019, Mr. Reed first reported low back symptoms (severe hip pain which was radiating into his legs.) Dr. Cooper recommended lumbar imaging, which he ultimately compared to a 2016 (pre-injury) lumbar MRI.

Dr. Cooper testified that although his patient's lumbar radiculopathy preexisted the industrial injury, evidence from a February 26, 2019 EMG indicated a more recent injury (for example, an aggravation). In a speculative opinion which relied upon his patient's credibility, Dr. Cooper recalled:

[1] BIIA Dec., 20 12899 (2021).
[2] *Clark County v. Maphet*, 10 Wn. App. 2d 420 (2019).

> The acute changes of the radiculopathy on the EMG that I performed would fall within the date range of the findings from the industrial injury date to the time of when I did the test. And I think there are also records that were presented today that mentioned that -- on earlier visits that -- to the emergency department before Mr. Reed saw me, that there were not exam findings for lumbar radiculopathy.
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> And so what I can say, after discussion and presentation and pointing out of the different records, is that the lumbar radiculopathy, the one that was acute, more probably than not occurred sometime between the reported industrial injury and the time of the EMG test. And I'm not aware of any other mechanisms of injury provided after the --the [sic] date of injury to explain those acute findings on the EMG that I did.[3]

By way of contrast, James Hazel, M.D., an orthopedic surgeon, performed an Independent Medical Exam on July 9, 2020. Although Mr. Reed reported no prior back problems to Dr. Hazel, the claim was inconsistent with the claimant's medical history. Based upon a physical exam replete with non-physiologic responses, considering the global nature of Mr. Reed's claimed right leg pain and numbness, and based upon a completely normal October, 2020 EMG, Dr. Hazel concluded that Mr. Reed did not have lumbar radiculopathy. He also discussed why he felt the February 2019 EMG (which Dr. Cooper relied upon) was medically insufficient to support a diagnosis of radiculopathy.

Considering all of these factors, and although we have carefully considered Dr. Cooper's opinion,[4] we agree with our industrial appeals judge's decision to credit Dr. Hazel's opinion over that of the attending physician. We find Mr. Reed failed to establish, by a preponderance of the evidence, that his industrial injury caused or aggravated the condition known as lumbar radiculopathy.

But, our analysis does not end there. In his Petition for Review Mr. Reed attempts to distinguish this case from our recent holding in *Carrigan*. He argues that, pursuant to *Maphet*, the Department accepted his lumbar radiculopathy when it authorized injections for his low back sprain. We disagree.

Relying upon *In re Jeremy Carrigan,*[5] our industrial appeals judge concluded that the Department didn't accept Mr. Reed's lumbar radiculopathy when it authorized lumbar injections to treat Mr. Reed's accepted lumbar sprain. *Carrigan* involved a claimant who injured his back while participating in an "active shooter" training for the Benton County Sheriff's Department. After Mr. Carrigan's claim was allowed, the Department segregated the conditions known as L5-S1 disc

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[3] Cooper Dep. at 53-54.
[4] *Hamilton v. Dep't of Labor & Indus.*, 111 Wn.2d 569 (1988).
[5] BIIA Dec., 20 12899 (2021).

protrusion and multi-level lumbar spine degeneration. Following hearing, the *Carrigan* industrial appeals judge determined that he failed to demonstrate that either condition was caused or aggravated by the industrial injury. Mr. Carrigan filed a Petition for Review, arguing that, under *Maphet,* Benton County accepted his conditions when it authorized epidural steroid injections.

We resolved *Carrigan* by first noting testimony which indicated that epidural injections had both therapeutic and diagnostic purposes. Then, we held that because the injections were authorized to treat Mr. Carrigan's accepted lumbar strain, the authorization did not constitute acceptance of Mr. Carrigan's disc protrusions or multi-level degenerative spine conditions.

As in *Carrigan*, Mr. Reed's case involves an accepted lumbar sprain/strain condition. As in *Carrigan,* this record indicates that epidural injections can be used for diagnostic purposes when a lumbar sprain patient doesn't improve with conservative treatment.[6] But this case differs from *Carrigan* in that this record shows that practitioners never treat a sprain with epidural injections.[7] Instead, epidural injections treat nerve root irritation.[8]

But the record also indicated that although lumbar injuries are commonly and initially diagnosed as lumbar sprain/strains, diagnoses evolve if pain persists and physicians pinpoint an alternate or contributing source.[9] As such, this appeal raises a novel issue: *Does authorization of diagnostic procedures under an already accepted condition trigger Maphet acceptance?* We conclude that it does not.

In *Clark County v. Maphet*,[10] the claimant underwent nine surgeries for a right knee condition. Ms. Maphet's sixth, seventh and eighth surgeries were to correct a condition known as patellofemoral instability, caused by Ms. Maphet's fifth surgery. Although the self-insured employer expressly authorized the sixth, seventh, and eighth surgeries to treat patellofemoral instability, it refused to authorize a ninth surgery. The self-insured employer contended that the patellofemoral instability was not proximately caused by the industrial injury or its residuals. The Department ordered the self-insured employer to authorize and pay for the ninth surgery. The self-insured employer appealed. Ultimately, the Washington Court of Appeals held that when an employer authorizes

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[6] Cooper Dep. at 11-12.
[7] See Cooper Dep. at 15. Note: Mr. Reed's accepted condition, and the condition for which the injections were authorized, is lumbar sprain.
[8] Cooper Dep. at 15.
[9] Cooper Dep. at 11-12.
[10] 10 Wn. App. 2d 420 (2019).

surgery, it accepts the condition treated.[11] Division Two reached this conclusion based upon regulatory interpretations and the plain language of the Department's rule, which provides the same definition for the terms "acceptance," "accepted condition," and similar definitions for the term "authorization," for example,

> **Acceptance, accepted condition:** Determination by a qualified representative of the department or self-insurer that reimbursement for the diagnosis and curative or rehabilitative treatment of a claimant's medical condition is the responsibility of the department or self-insurer. **The condition being accepted must be specified by one or more diagnosis codes** from the current edition of the International Classification of Diseases, Clinically Modified (ICD-CM).
>
> **Authorization:** Notification by a qualified representative of the department or self-insurer that specific proper and necessary treatment, services, or equipment provided for the diagnosis and curative or rehabilitative treatment of an accepted condition will be reimbursed by the department or self-insurer. [12]

A grand compromise, the Industrial Insurance Act was designed to provide workers with 'speedy and sure relief' while simultaneously protecting employers from common law responsibility.[13] While the Act, caselaw, and Department regulations govern the legal effect of Department actions, the practice of medicine is a science. By way of example, Dr. Hazel provided extensive testimony setting forth the criteria for a lumbar radiculopathy diagnosis.[14] But, a diagnosis can require diagnostic procedures. And, providers should be compensated for the time and expenses incurred in determining what conditions are the source of a claimant's symptoms and whether those conditions are claim-related.

The rules of statutory construction apply to administrative rules and regulations.[15] To determine the intent of a rule, the court first looks to the plain language of the provision.[16] If a rule or regulation's meaning is clear on its face, we will give effect to that plain meaning.[17] "Administrative rules and regulations are interpreted as a whole, giving effect to all the language and harmonizing all

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[11] *Maphet* at 433, 438.
[12] WAC 296-20-01002.
[13] *Nelson v. Dep't of Labor & Indus.*, 198 Wn. App. 101, 110 (2017) (*quoting Flanigan v. Dep't of Labor & Indus.*, 123 Wn.2d 418, 422 (1994)); *See also*, RCW 51.36.010(2)(a).
[14] *See* Hazel Dep. at 18-23. Practitioners must not only look for symptoms consistent with the condition (. for example, motor weakness, asymmetry, loss of reflex, sensory loss consistent with a dermatomal distribution) but they must also have diagnostic studies like EMG and MRI which are consistent with their diagnosis.
[15] *Maphet,* 433-434, *citing*, ***Dep't of Licensing v. Cannon***, 147 Wash.2d 41, 56 (2002).
[16] *Maphet*, at 434, *citing Cannon* at 56.
[17] *Maphet*, at 434, *citing Cannon*.

provisions."[18] If a rule or regulation is ambiguous, we look to principles of statutory construction, legislative history, and case law to assist in interpreting it.[19]

Although WAC 296-20-01002 allows the Department to accept responsibility for reimbursing providers for specific treatment, services, or equipment provided for the diagnosis of an accepted condition, that same rule specifies that no condition may be accepted without "one or more diagnosis codes from the current edition of the International Classifications of Diseases, Clinically Modified (ICD-CM)." Simply put, for a condition to be accepted, it must have already been diagnosed.

Here, the Department authorized Mr. Reed's injections so his doctor could pinpoint an evolving (and only *potentially* claim-related) diagnosis. Unlike the self-insured employer in *Maphet*, who authorized three surgeries for an already diagnosed condition, the Department in this case signaled its intent to provide only *diagnostic* services. It did so by authorizing the services under Mr. Reed's already diagnosed, previously accepted lumbar sprain condition.

In so doing, the Department followed the letter and spirit of WAC 296-20-01002. In essence, the Department signaled its intent to remain financially responsible for these diagnostic costs without binding itself to accept any subsequently diagnosed conditions. Because Mr. Reed did not prove that his industrial injury caused or aggravated the condition known as lumbar radiculopathy, and because *Maphet* acceptance does not apply to undiagnosed conditions, the Department's segregation order is AFFIRMED.

DECISION

In Docket No. 21 17153, the claimant, Michael V. Reed, filed an appeal with the Board of Industrial Insurance Appeals on June 18, 2021, from an order of the Department of Labor and Industries dated May 4, 2021. In this order, the Department affirmed its order dated February 26, 2021, which segregated the condition known as lumbar radiculopathy. This order is correct and is affirmed.

FINDINGS OF FACT

1. On August 17, 2021, an industrial appeals judge certified that the parties agreed to include the Jurisdictional History in the Board record solely for jurisdictional purposes.

2. Michael V. Reed sustained an industrial injury on December 5, 2018, when he slipped and fell on an icy roof. When he landed, the hammer in

[18] *Maphet*, at 434, *citing Cannon* at 57.
[19] *Maphet*, at 434, *citing Cannon* at 57.

his tool belt dug into his lower rib cage and back. He sustained contusions and a lumbar sprain in the fall.

3. During the course of treatment for Mr. Reed's lumbar sprain, the Department authorized a physician to administer epidural injections for diagnostic purposes.

4. Mr. Reed's condition described as lumbar radiculopathy was not proximately caused or aggravated by his industrial injury.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter in this appeal.

2. The Department did not accept the condition described as lumbar radiculopathy by authorizing epidural steroid injections. *Clark County v. Maphet*, 10 Wn. App. 2d 420 (2019).

3. The Department order dated May 4, 2021, is correct and is affirmed.

Dated: September 22, 2022.

BOARD OF INDUSTRIAL INSURANCE APPEALS

HOLLY A. KESSLER, Chairperson

JACK S. ENG, Member

Addendum to Decision and Order
In re Michael V. Reed
Docket No. 21 17153
Claim No. BF-59295

Appearances

Claimant, Michael V. Reed, by Law Office of Daniel R. Whitmore, P.S., per Daniel R. Whitmore

Employer, Tri Star Roofing (did not appear)

Department of Labor and Industries, by Office of the Attorney General, per Evan D. Hejmanowski

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 July 12, 2022, in which the industrial appeals judge affirmed the Department order dated May 4, 2021. On August 25, 2022, the Department filed a response to the petition for review.

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.