

Mujic, Muhamed

BOARD

Petition for review

RCW 51.52.104 and WAC 263-12-145 require a petition for review set forth the details of grounds for relief, and legal theory relied on, and citation of authority and/or argument in support of any legal theory. Failure to comply with these minimum requirements could result in denial of the petition based on non-compliance.*In re Muhamed Mujic*, BIIA Dec., **16 15373 (2017)** [dissent]

Scroll down for order.

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

IN RE: MUHAMED MUJIC) **DOCKET NOS. 16 15373, 16 15375, 16 18677 &**
) **16 20177**
)
CLAIM NO. Y-118992) **DECISION AND ORDER**

Muhamed Mujic injured his low back in 2013, while working as a forklift driver for Henningsen Cold Storage Company. Mr. Mujic was loading a rail car and stacking 40-pound cases, and felt lumbar pain that radiated down his right leg. The Department allowed the claim for a lumbar sprain/strain condition. The Department segregated Mr. Mujic's lumbar disc displacement and degenerative disc disease conditions and denied authorization for payment of lumbar surgery for conditions diagnosed as lumbar region spondylolysis, and right lumbar spondylosis with radiculopathy. The Department also denied continued opioid coverage effective January 13, 2015. The Department paid time-loss compensation benefits from June 30, 2016, through July 13, 2016, and assessed an overpayment due to a social security offset.

Mr. Mujic appealed and our industrial appeals judge affirmed the Department's orders on the basis that the evidence did not establish that Mr. Mujic's industrial injury proximately caused or aggravated any of these conditions. Our judge affirmed the Department order denying continued opioid coverage on the basis that it was palliative only and not medically necessary and dismissed the claimant's appeal of the Department's order assessing an overpayment due to the social security offset for failure to present a prima facie case.

In his two-page Petition for Review, Mr. Mujic's counsel requested that the Department be ordered to allow the above-cited lumbar conditions as proximately caused or aggravated by the industrial injury in this claim and to authorize the surgery requested by the treating orthopedic spine specialist, Dr. Janmeet Sahota, as proper and necessary treatment for the conditions related to this industrial injury. Although we ultimately granted this Petition for Review, we could have denied the petition filed by claimant's counsel for failing to comply with RCW 51.52.104 and WAC 263-12-145. The petition does not detail any grounds for relief, and it sets forth no legal theory relied on and no citation of authority and/or argument in support of any legal theory. Failure to comply with the legal filing requirements for a Petition for Review in the future could result in denial of the petition based on insufficient compliance. In spite of this filing deficiency, we have carefully scrutinized the facts and applicable case law regarding these appeals. We hold that the preponderance of medical evidence supports the acceptance of the conditions diagnosed as lumbar disc displacement, lumbar

1 degenerative disc disease, lumbar spondylolysis, and right lumbar spondylosis with radiculopathy,
2 as proximately caused or aggravated by the industrial injury. The preponderance of evidence
3 supports the authorization for surgery recommended by Mr. Mujic's attending physician for these
4 accepted lumbar conditions, as proper and necessary treatment under this claim. We agree with our
5 judge that the evidence fails to establish that continued opioid coverage is proper or necessary
6 treatment for Mr. Mujic's accepted conditions. We also agree with our judge that the claimant's
7 appeal of the overpayment assessment due to the social security offset is dismissed for failure to
8 present a prima facie case.

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13 The Department order under Docket No. 16 15373 segregating Mr. Mujic's lumbar disc
14 displacement and degenerative disc disease conditions is **REVERSED AND REMANDED** to the
15 Department to issue an order accepting these conditions as related to the industrial injury in this
16 claim. The Department order under Docket No. 16 15375 denying payment for outpatient
17 laminectomy services for Mr. Mujic's conditions diagnosed as lumbar spondylolysis and right lumbar
18 spondylosis with radiculopathy on the basis that these conditions were not accepted for coverage
19 under this claim, is **REVERSED AND REMANDED** to the Department to issue an order accepting
20 these conditions as related to the industrial injury in this claim, and authorizing the surgery for the
21 lumbar conditions as recommended by Mr. Mujic's attending physician. The Department order under
22 Docket No. 16 18677 denying continued opioid coverage is **AFFIRMED**. Our denial of continuing
23 opioid coverage does not apply to post-surgery opioids. If Mr. Mujic undergoes further surgery as
24 recommended and if post-surgery opioids are proper and necessary, the Department must provide
25 them. The claimant's appeal of the Department order under Docket 16 20177 assessing an
26 overpayment due to social security offset is **DISMISSED** for failure to present a prima facie case.

34 **DISCUSSION**

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36 Muhamed Mujic is 43 years old, and married, with two children. He has worked as a forklift
37 driver for various employers in the Tri-Cities area for the past 12 years. He injured his back while
38 working for Henningsen Cold Storage Co., on December 3, 2013. He was loading a rail car and
39 stacking 40-pound cases of product, and felt lumbar pain radiating down his right leg. The
40 Department allowed the claim for a lumbar sprain/strain. Mr. Mujic received conservative treatment
41 and returned to work some months later.

1 Mr. Mujic had an unrelated back injury while at work with a different employer, Lamb-Weston,
2 on April 18, 2014. On that occasion, Mr. Mujic hit his back on a metal platform while lifting
3 20 to 25 pound boxes. This was a separate workers' compensation claim, which has closed.
4 Mr. Mujic had complaints of back pain in 2003 and 2005. He filed a claim in 2007 for an injury to his
5 back while working for Twin City Foods.
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8 The evidence shows that Mr. Mujic's prior back problems did not bother him at the time of his
9 December 2013 industrial injury, but that he was in considerable pain after that accident and required
10 assistance from his other family members with household chores and other activities.
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12 Janmeet Sahota, D.O., an orthopedic spine surgeon, treated Mr. Mujic starting in September
13 2015, and continued to see and treat him for his back issues. He testified that based on his records
14 review, objective findings, MRI and EMG evidence, and physical exams, Mr. Mujic's lumbar spine
15 conditions are related, at least in part, to the December 2013 industrial injury. Dr. Sahota noted that
16 conservative treatment over several years from that injury was not resolving Mr. Mujic's symptoms.
17 Mr. Mujic had had injections, which were not successful. Dr. Sahota recommended spine surgery,
18 specifically, a laminectomy, to resolve Mr. Mujic's symptoms. Dr. Sahota stated that such a
19 procedure was likely to be curative for his back problems, including the moderate degenerative disc
20 disease at L5-S1. A laminectomy removes bone spurs that are crowding the space around and
21 putting pressure on the nerve. He noted that one of the indicators for surgery is the failure of less
22 invasive options, including unsuccessful injections.
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25 Dr. Sahota's opinion relating the lumbar conditions and need for surgery to the 2013 industrial
26 injury was based on the extent of wear and tear at the L5-S1 level. He stated that the amount of
27 wear and tear is atypical for a person as young as Mr. Mujic (currently age 43). Dr. Sahota testified
28 that in his clinical practice he typically sees patients 45 to 50 years old on the early end with the bony
29 changes that would cause the kind of stenosis that Mr. Mujic has.
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32 A lumbar MRI taken in January 2016 showed obvious moderate stenosis that would have
33 started around the time of the December 2013 injury. Dr. Sahota was aware of the mechanism of
34 the 2013 injury and correlated the back symptoms with Mr. Mujic's repetitive heavy lifting of boxes on
35 the date of that injury. Dr. Sahota testified that Mr. Mujic's report of back pain and radiating pain into
36 his right leg correlated with the diagnostic findings, even before Mr. Mujic knew what the MRI showed.
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1 Dr. Sahota compared the 2016 lumbar MRI scan with the scan of the lumbar MRI taken in
2 August 2014. Both MRIs were taken in the clinic where Dr. Sahota practices. The scans showed
3 moderate narrowing on the right side compared to mild narrowing on the left side. This was consistent
4 with Mr. Mujic's reports of right-sided symptoms beginning with the 2013 injury. Dr. Sahota disagrees
5 with Dr. Reiss's opinion that those MRIs show no interval change. Dr. Sahota was generally aware
6 of Mr. Mujic's back injuries that occurred prior to the 2013 injury, but he did not recall the details of
7 those prior injuries. He did not review the MRIs taken in 2006 and 2010, but in response to a
8 hypothetical question from claimant's counsel, Dr. Sahota testified that his opinions would remain the
9 same even if both of the earlier MRIs showed mild bilateral neural foraminal encroachment at L5-S1,
10 since the 2013 injury aggravated and worsened the right side. He testified that Mr. Mujic's low back
11 degenerative condition likely progressed prior to the 2013 injury but was aggravated by it. Dr. Sahota
12 admitted that it is difficult to discern the cause of the stenosis or other findings based just on the
13 MRIs.
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21 Dr. Sahota reviewed a January 2016 EMG study that showed objective signs of radiculopathy
22 at L5. Dr. Sahota stated that Mr. Mujic meets the criteria for a laminectomy by having moderate
23 stenosis and radiculopathy as shown by EMG, and that the surgery is necessary and proper treatment
24 for Mr. Mujic's work-related back conditions. Dr. Sahota distinguishes the 2013 symptoms from the
25 2014 injury based on Mr. Mujic's complaints and symptoms on the right side that started with the
26 2013 injury.
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30 Paul Reiss, M.D., is an orthopedic surgeon. He examined Mr. Mujic once at an independent
31 medical examination on September 28, 2015. Dr. Reiss retired from active practice in the United
32 States in 2008. He testified that he stopped performing surgery on the spine in the 1980s, but still
33 performs other types of surgery on trips overseas. Dr. Reiss reviewed medical records, including the
34 MRI reports and EMG study discussed above. He also reviewed lumbar MRI reports from 2006 and
35 2010. Dr. Reiss did not review any MRI scans and conceded he was not able to discern the fine
36 points without viewing the MRIs themselves. He testified that the MRI reports showed mild
37 degenerative changes at L3-4, L4-5, and L5-S1. He concluded that the EMG was normal. Dr. Reiss
38 was unaware of the details of Mr. Mujic's injury in 2014. He testified he did not ask Mr. Mujic about
39 that injury because the 2014 injury was not part of his IME assignment.
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1 Dr. Reiss found a normal physical exam. He diagnosed Mr. Mujic with degenerative disc
2 disease and transitional lumbosacral anatomy, preexisting and unrelated to the 2013 injury. He noted
3 that degenerative disc disease and lumbar disc displacement are not exactly synonymous terms but
4 tend to be used synonymously in clinical practice. Dr. Reiss testified that it was possible that
5 Mr. Mujic's complaints are consistent with the mechanism of injury in 2013, but even so, Mr. Mujic
6 had a long history of back complaints and injuries, and a back sprain condition usually resolves in six
7 to twelve weeks.
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11 Dr. Reiss testified that the literature (not specified in his testimony) does not support that
12 chronic lifting affects the degeneration of the lumbar spine. Rather, it is dependent on age, gender,
13 and genetics. He stated that, based on the MRI reports, Mr. Mujic was slightly younger than average
14 but well within the normal age curve to have these kinds of changes in his spine. Dr. Reiss noted
15 that men are more likely to experience this type of degeneration than women. He did not have any
16 information about Mr. Mujic's genetic history.
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19 Dr. Reiss saw no evidence that Mr. Mujic's injury in 2013 caused or aggravated his preexisting
20 degenerative spine conditions. He concluded that the back sprain had resolved some time ago. He
21 testified that no further treatment was warranted, but conceded that conservative treatment had
22 brought either no relief or only temporary relief. Dr. Reiss testified that he saw no basis to support
23 spine surgery. He testified that Dr. Sahota's recommended surgery might help alleviate some of the
24 leg pain but would have no possibility helping the spine. In his opinion, Mr. Mujic's ongoing symptoms
25 were caused by job dissatisfaction, based on his review of literature (unspecified in his testimony)
26 starting in Sweden in the 1980s.
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29 The Department order denying authorization of payment for outpatient services (that is, spine
30 surgery) specifies that services were denied on the basis that the lumbar spondylolysis and right
31 lumbar spondylosis with radiculopathy conditions had not been accepted for coverage under this
32 claim. Our judge properly cited our *Blanca E. Campos*¹ decision in determining that we have
33 jurisdiction to determine whether these conditions should be accepted as related to the industrial
34 injury in this claim, and to determine whether the spine surgery recommended by Dr. Sahota is
35 necessary and proper for Mr. Mujic's lumbar conditions. Both parties agreed that allowance of those
36 conditions was properly before the Board. The facts in *Campos* are similar to the facts in this appeal.
37 Dr. Sahota provided the basis for his recommendation for spine surgery, including the right lumbar
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47 ¹ *In re Blanca E. Campos*, Dckt. No. 13 12522 (May 16, 2014).

1 spondylosis with radiculopathy diagnosis. Dr. Reiss testified regarding various degenerative spine
2 conditions and noted that both spondylosis and spondylolysis relate to degenerative conditions of the
3 spine, including at L5.
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5 On review of the entire record, we find Dr. Sahota's opinions much more persuasive than those
6 of Dr. Reiss. Dr. Sahota's opinions merit special consideration given the fact that he is a spine
7 specialist in active practice and has seen and treated Mr. Mujic for the last few years for his low back
8 problems. Dr. Sahota has directed Mr. Mujic's medical treatment through conservative options, with
9 little or no success in resolving the spine issues. Dr. Sahota's opinion is that Mr. Mujic has the back
10 conditions alleged in these appeals; that those conditions were proximately caused or aggravated by
11 his 2013 industrial injury; and that further treatment in the form of a laminectomy surgery is medically
12 necessary, meets the Department's criteria, and would benefit Mr. Mujic's back conditions.
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14 In contrast, Dr. Reiss has not performed spine surgery for over 25 years. Dr. Reiss saw
15 Mr. Mujic on only one occasion. He has been retired from active practice for several years. Although
16 he is credentialed and maintains his medical license to serve people in need overseas, he is at a
17 disadvantage when offering medical opinions when compared with Dr. Sahota's credentials and
18 personal experience treating Mr. Mujic's back conditions. The preponderance of evidence supports
19 the acceptance of Mr. Mujic's lumbar conditions at issue in this appeal, as well as spine surgery as
20 proper and necessary treatment for those conditions.
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22 The evidence fails to establish authorization of continued opioid coverage. Such medication
23 might be proper and necessary post-surgery, but there is nothing supporting continued prolonged
24 use as of the date of the Department's order on appeal. Even Dr. Sahota noted that this medication
25 affords only short term relief, and its continued use would depend on the upcoming spine surgery.
26 The Department properly denied continued opioid coverage and determined that the denial would
27 remain in effect until the Department issues a new order reinstating opioid coverage under this claim.
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29 There was no evidence presented on the social security offset issue. Therefore, dismissal of
30 the claimant's appeal to the Department's July 13, 2016 order is appropriate.
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32 **DECISION**

33 In Docket No. 16 15373, the claimant, Muhamed Mujic, filed an appeal with the Board of
34 Industrial Insurance Appeals on May 19, 2016, from a Department order dated May 13, 2016. In this
35 order, the Department segregated Mr. Mujic's lumbar disc displacement and degenerative disc
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1 disease conditions. This order is incorrect and is reversed and remanded to the Department to issue
2 an order accepting these conditions as related to the industrial injury in this claim.
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4 In Docket No. 16 15375, the claimant, Muhamed Mujic, filed an appeal with the Board of
5 Industrial Insurance Appeals on May 20, 2016, from a Department order dated May 19, 2016. In this
6 order, the Department denied payment for outpatient laminectomy services for Mr. Mujic's conditions
7 diagnosed as lumbar spondylolysis and right lumbar spondylosis with radiculopathy on the basis that
8 these conditions were not accepted for coverage under this claim. This order is incorrect and is
9 reversed and remanded to the Department to issue an order accepting these conditions as related to
10 the industrial injury in this claim and authorizing the surgery recommended by Mr. Mujic's attending
11 physician for these lumbar conditions.
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13 In Docket No. 16 18677, the claimant, Muhamed Mujic, filed an appeal with the Board of
14 Industrial Insurance Appeals on August 9, 2016, from a Department order dated August 8, 2016. In
15 this order, the Department denied continued coverage of opioids effective January 13, 2015. This
16 order is correct, and is affirmed.
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18 In Docket No. 16 20177, the claimant, Muhamed Mujic, filed an appeal with the Board of
19 Industrial Insurance Appeals on September 12, 2016, from a Department order dated July 13, 2016.
20 In this order, the Department paid time loss compensation benefits from June 30, 2016, through
21 July 13, 2016, less a social security offset overpayment. The claimant's appeal of the Department's
22 July 13, 2016 order is **DISMISSED** for failure to present a prima facie case.
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24 **FINDINGS OF FACT**

- 25 1. On October 12, 2016, an industrial appeals judge certified that the parties
26 agreed to include the Jurisdictional History in the Board record solely for
27 jurisdictional purposes.
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- 29 2. Muhamed Mujic sustained an industrial injury on December 3, 2013, while
30 working as a forklift driver for Henningsen Cold Storage Company. Mr. Mujic
31 was stacking 40-pound cases on a rail car when he felt lumbar pain radiating
32 down his right leg that proximately caused a lumbar sprain/strain condition.
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- 34 3. As of May 13, 2016, Muhamed Mujic's degenerative disc disease, lumbar
35 disc displacement, lumbar spondylolysis, and right lumbar spondylosis with
36 radiculopathy conditions were proximately caused or aggravated by the
37 industrial injury.
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- 39 4. Surgery as recommended by Janmeet Sahota, D.O., orthopedic spine
40 specialist, is necessary and proper treatment for Mr. Mujic's lumbar
41 conditions proximately caused or aggravated by the industrial injury.
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5. Continued opioid medication is not necessary and proper treatment for Mr. Mujic's conditions proximately caused or aggravated by the industrial injury.
 6. Based on the entire record, there is insufficient evidence to show that time-loss compensation benefits paid from June 30, 2016, through July 13, 2016, were improperly adjusted due to a social security offset.

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CONCLUSIONS OF LAW

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1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter in these appeals.
 2. The Department order dated May 13, 2016 (Docket No. 16 15373) is incorrect and is reversed and remanded to the Department to issue an order accepting the conditions diagnosed as degenerative disc disease and lumbar disc displacement, as related to the industrial injury in this claim.
 3. The Department order dated May 19, 2016 (Docket No. 16 15375) is incorrect and is reversed and remanded to the Department to issue an order accepting the conditions diagnosed as lumbar spondylolysis and right lumbar spondylosis with radiculopathy, as related to the industrial injury in this claim, and providing necessary and proper treatment to include the surgery recommended by Mr. Mujic's attending physician for his accepted lumbar conditions, under RCW 51.36.010.
 4. The Department order dated August 8, 2016 (Docket No. 16 18677) denying continued opioid coverage, is correct and is affirmed. The denial of continued coverage of opioids effective January 13, 2015, does not serve to deny opioids to Mr. Mujic should they become necessary and proper after Mr. Mujic's surgery or other procedures.
 5. Mr. Mujic failed to establish a prima facie case regarding any adjustment to his time-loss compensation rate from June 30, 2016, through July 13, 2016, as required by RCW 51.52.050.
 6. Mr. Mujic's appeal under Docket No. 16 20177 from the Department order dated July 13, 2016, is dismissed for failure to present a prima facie case for the relief being sought as required by RCW 51.52.050.

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Dated: October 9, 2017.

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BOARD OF INDUSTRIAL INSURANCE APPEALS



LINDA L. WILLIAMS, Chairperson



FRANK E. FENNERTY, JR., Member

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DISSENT

I agree with the majority that the Department order denying continued opioid coverage should be affirmed, and that Mr. Mujic's appeal to the Department's time-loss compensation order should be dismissed for failure to present a prima facie case. I disagree with the majority's determinations holding the Department responsible for the claimant's lumbar disc displacement and degenerative disc disease conditions, and authorizing surgery for lumbar spondylolysis and right lumbar spondylosis with radiculopathy, as related to the injury in this claim. The Department orders segregating these conditions and denying authorization for surgery should be affirmed, based on the strength of Dr. Reiss's opinions. I dissent.

Dr. Reiss found a normal physical examination on September 28, 2015, which was nearly two years after Mr. Mujic's 2013 industrial injury. Dr. Reiss noted that Mr. Mujic had a history of lumbar complaints dating back to 2003, including a similar industrial injury in 2006, and a subsequent unrelated industrial injury to his back in 2014. The accepted condition under this claim was a lumbar sprain. Dr. Reiss noted that back sprains typically resolve in six to twelve weeks and that Mr. Mujic's back sprain related to this claim had resolved some time ago. It was Dr. Reiss's strong opinion that Mr. Mujic's degenerative lumbar conditions preexisted his 2013 industrial injury and were not caused or aggravated by that industrial injury. He found no objective evidence of an acute disc displacement on examination. His review of the MRI reports showed mild degenerative changes of the spine at three levels, unrelated, and a normal EMG.

Dr. Reiss stated that the laminectomy surgery recommended by Dr. Sahota would have no possibility of helping Mr. Mujic's back pain and had the potential to destabilize his spine because that procedure involves removal of not just soft tissue, but also some bone around the nerve. According to Dr. Reiss that surgery was not necessary and proper treatment for any work-related condition in this claim.

By contrast, Dr. Sahota was unable to establish aggravation caused by normal degeneration of Mr. Mujic's preexisting lumbar degenerative condition, or aggravation caused by the unrelated 2014 industrial injury, in the absence of an MRI study between 2013 and 2014. Dr. Sahota was unable to effectively relate Mr. Mujic's need for surgery to any work-related condition. The evidence is insufficient to establish that such a surgery would be curative, diagnostic, or rehabilitative. Dr. Reiss's opinions are more persuasive than those of Dr. Sahota. Our industrial appeals judge correctly determined that Mr. Mujic's lumbar conditions were preexisting and unrelated to his

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industrial injury, and correctly denied authorization for a laminectomy for any work-related condition.
The Department orders should be affirmed.

Dated: October 9, 2017.

BOARD OF INDUSTRIAL INSURANCE APPEALS


JACK S. ENG, Member

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3 **Addendum to Decision and Order**
4 **In re Muhamed Mujic**
5 **Docket Nos. 16 15373, 16 15375, 16 18677 & 16 20177**
6 **Claim No. Y-118992**

7 **Appearances**

8 Claimant, Muhamed Mujic, by Smart Law Offices, per Christopher L. Childers
9 Employer, Henningsen Cold Storage Co., by Sedgwick CMS, per Shannon Babb
10 Retrospective Rating Group, Association of WA Business #10690, None
11 Department of Labor and Industries, by Office of the Attorney General, per Sarah A. McCalmant

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14 **Petition for Review**

15 As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
16 and decision. The claimant filed a timely Petition for Review of a Proposed Decision and Order issued
17 on June 26, 2017, in which the industrial appeals judge affirmed the orders of the Department dated
18 May 13, 2016, May 19, 2016, and August 8, 2016, and dismissed the appeal in Docket No. 16 20177.

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20 **Evidentiary Rulings**

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