

Rodriguez, Juan

DEPARTMENT

Authority to segregate undiagnosed condition

The Department's segregation of a condition without evidence that the worker has been diagnosed with the condition is improper.*In re Juan Rodriguez*, BIIA Dec., 17 14084 (2018); *In re Dennis Johnson*, BIIA Dec., 17 18840 (2018)

Scroll down for order.

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

1	IN RE: JUAN DELANEY RODRIGUEZ)	DOCKET NOS. 17 14084, 17 14085, 17 14086 &
2)	17 14781
3)	
4	<u>CLAIM NO. AU-89259</u>)	DECISION AND ORDER
5			

Juan Delaney Rodriguez injured his low back while installing an exhaust fan for Tarragon Property Services. The Department denied time-loss compensation benefits, closed the claim with no permanent partial disability award, and segregated a condition identified as adjustment disorder with mixed anxiety and depressed mood. At hearing, Mr. Rodriguez argued that he was entitled to time-loss compensation benefits and further treatment in the form of a chronic pain management program. He also presented evidence that he had not been diagnosed with a psychological disorder. Our industrial appeals judge found: Mr. Rodriguez failed to prove that he was a temporary and totally disabled worker, that the chronic pain management program constitutes proper and necessary treatment under the Industrial Insurance Act, or that he has a permanent partial disability; the condition diagnosed as adjustment disorder was not related to the industrial injury; and the claim was properly closed. Mr. Rodriguez argues that he was unable to work during the contested period, that the pain program should be authorized as rehabilitative treatment, and that the Department order segregating an undiagnosed psychological condition should be vacated.

We agree with our industrial appeals judge's determination of the time-loss compensation, treatment, and permanent partial disability issues; however, we find the Department order segregating adjustment disorder with mixed anxiety and depressed mood is not supported by the evidence. The Department orders dated April 5, 2017, April 6, 2017, and April 7, 2017, are **AFFIRMED**. The Department order dated March 3, 2017, is **REVERSED AND REMANDED** to the Department to determine that Mr. Rodriguez does not suffer from adjustment disorder with mixed anxiety and depressed mood. We granted review to correct the findings and conclusions related to the March 3, 2017 segregation order.

DISCUSSION

The Department order dated March 3, 2017, affirmed a Department order dated May 16, 2016, that states:

The Department of Labor and Industries is not responsible for the condition diagnosed as: ADJUSTMENT DISORDER MIXED ANXIETY DEPRESSED MOOD, determined by medical evidence to be unrelated to the industrial injury for which this claim was filed.

1 The possibility of a psychological disorder seems to have come to the attention of the
2 Department through the attending physician's chart note dated October 2015. In that note, Thomas
3 B. Curtis, M.D., mentioned his belief that Mr. Rodriguez might be predisposed to chronic depression.
4 He did not offer the diagnosis. The Department ordered an independent psychiatric examination with
5 Jean Dalpe, M.D., in January 2017. Dr. Dalpe did not testify at hearing, but his opinion was offered
6 through Dr. Curtis without objection. Dr. Curtis deferred to Dr. Dalpe's opinion that Mr. Rodriguez did
7 not suffer from adjustment disorder with mixed anxiety and depressed mood. There is no evidence
8 in this record that Mr. Rodriguez was ever diagnosed with this psychological condition nor that any
9 doctor determined it was unrelated to the industrial injury. Considering the evidence presented, the
10 language of the order is incorrect on its face.

16 **DECISION**

- 18 1. In Docket No. 17 14084, the claimant, Juan Delaney Rodriguez, filed an appeal with the Board of
19 Industrial Insurance Appeals on April 11, 2017, from an order of the Department of Labor and
20 Industries dated April 5, 2017. In this order, the Department denied the payment of time-loss
21 compensation benefits from February 21, 2016, through April 4, 2017. This order is correct and
22 is affirmed.
- 25 2. In Docket No. 17 14085, the claimant, Juan Delaney Rodriguez, filed an appeal with the Board of
26 Industrial Insurance Appeals on April 11, 2017, from an order of the Department of Labor and
27 Industries dated April 6, 2017. In this order, the Department denied the payment of time-loss
28 compensation benefits from February 21, 2016, through April 5, 2017. This order is correct and
29 is affirmed.
- 33 3. In Docket No. 17 14086, the claimant, Juan Delaney Rodriguez, filed an appeal with the Board of
34 Industrial Insurance Appeals on April 11, 2017, from an order of the Department of Labor and
35 Industries dated April 7, 2017. In this order, the Department closed the claim with time-loss
36 compensation benefits as paid through February 20, 2016, and without a permanent partial
37 disability award. This order is correct and is affirmed.
- 40 4. In Docket No. 17 14781, the claimant, Juan Delaney Rodriguez, filed an appeal with the Board of
41 Industrial Insurance Appeals on April 26, 2017, from an order of the Department of Labor and
42 Industries dated March 3, 2017. In this order, the Department affirmed a May 16, 2016 order that
43 denied responsibility for the condition diagnosed as adjustment disorder with mixed anxiety and
44 depressed mood. This order is incorrect and is reversed and remanded.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FINDINGS OF FACT

1. On July 25, 2017, an industrial appeals judge certified that the parties agreed to include the Jurisdictional History in the Board record solely for jurisdictional purposes.
2. Juan Delaney Rodriguez sustained an industrial injury diagnosed as a lumbar strain on October 15, 2014, while attempting to install a ceiling fan.
3. Prior to October 15, 2014, Mr. Rodriguez had a long history of low back problems, and the MRI studies taken before and after the industrial injury do not show any appreciable changes.
4. Mr. Rodriguez's low back condition proximately caused by the October 15, 2014 industrial injury was fixed and stable as of April 7, 2017.
5. On April 7, 2017, Mr. Rodriguez did not have a permanent partial disability proximately caused by the October 15, 2014 industrial injury
6. Mr. Rodriguez does not suffer from adjustment disorder with mixed anxiety and depressed mood.
7. Mr. Rodriguez was able to perform and obtain gainful employment on a reasonably continuous basis from February 21, 2016, through April 7, 2017, in the light category of work such as he was performing in his maintenance duties at the time of his October 15, 2014 industrial injury.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter in these appeals.
 2. Juan Delaney Rodriguez was not a temporarily totally disabled worker within the meaning of RCW 51.32.090 from February 21, 2016, through April 7, 2017.
 3. On April 7, 2017, Mr. Rodriguez's medical conditions proximately caused by the industrial injury were fixed and stable, and he is not entitled to further medical care and treatment. RCW 51.36.010.
 4. On April 7, 2017, Mr. Rodriguez did not have a permanent partial disability within the meaning of RCW 51.32.080 proximately caused by the industrial injury.
 5. The Department of Labor and Industries orders dated April 5, 2017; April 6, 2017; and April 7, 2017, are correct and are affirmed.
- 39
40
41
42
43
44
45
46
47

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
6. The Department of Labor and Industries order dated March 3, 2017, is reversed and remanded to the Department to determine that Mr. Rodriguez does not suffer from adjustment disorder with mixed anxiety and depressed mood.

Dated: May 29, 2018.

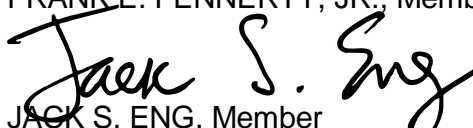
BOARD OF INDUSTRIAL INSURANCE APPEALS



LINDA L. WILLIAMS, Chairperson



FRANK E. FENNERTY, JR., Member



JACK S. ENG, Member

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

Addendum to Decision and Order
In re Juan Delaney Rodriguez
Docket Nos. 17 14084, 17 14085, 17 14086 & 17 14781
Claim No. AU-89259

Appearances

Claimant, Juan Delaney Rodriguez, by Michael Lind Law Office, per Michael S. Lind

Employer, Tarragon Property Services, LLC, None

Retrospective Rating Group, Association of WA Business- Retail, Wholesale, Services #10128,
None

Department of Labor and Industries, by Office of the Attorney General, per Karen M. Dinan

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 March 9, 2018, in which the industrial appeals judge affirmed the orders of the Department dated April 5, 2017, April 6, 2017, April 7, 2017, and March 3, 2017. The Department filed a response to the claimant's Petition for Review.