

Riggs, Matthew

TREATMENT

*Diagnostic treatment

Proof that diagnostic treatment is proper and necessary does not also require proof of specific curative treatment the diagnostic testing is expected to identify.*In re Matthew Riggs, BIA Dec., 19 23004 (2021)*

Scroll down for order.

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

IN RE: MATTHEW R. RIGGS) **DOCKET NO. 19 23004**
)
CLAIM NO. BC-22203) **DECISION AND ORDER**

The claimant, Matthew Riggs, was involved in a head on collision in the course of his employment with Homesley Construction, Inc. He sustained a low back injury and neck injury. He returned to work after taking a few days off. Mr. Riggs received conservative treatment throughout the claim. His claim was closed without an award for permanent partial disability. Mr. Riggs appealed that claim closure, and our hearing judge affirmed the Department's order. Mr. Riggs argues that he is entitled to further treatment, in particular diagnostic imaging. Proof that diagnostic treatment is proper and necessary does not also require proof of specific curative treatment the diagnostic testing is expected to identify, and without this requirement, Mr. Riggs has proved that further diagnostic treatment is proper and necessary. The Department order closing the claim is **REVERSED AND REMANDED** to the Department to provide Mr. Riggs further diagnostic medical treatment.

DISCUSSION

Our industrial appeals judge accurately summarized the evidence and expert opinions presented in his proposed decision and order. Because the only contested issue is further diagnostic treatment, our discussion is limited to that issue.

Mr. Riggs is 43 years old. He was injured in August 2017 in a head-on auto collision. Within a few hours, he experienced severe low back pain and cervical pain. Over time, Mr. Riggs experienced numbness and tingling in his left leg and left arm. Though still present to some extent, his low back condition and leg symptoms have improved over time. However, he continues to experience unimproved neck pain and numbness and tingling in his left arm. Except for four days off work after the accident, he has continued working as a carpenter despite his continuing symptoms. Mr. Riggs has a preexisting low back condition, but before the 2017 industrial injury, he had never experienced neck problems. Other than a CT scan done the day of the accident, Mr. Riggs has not had any diagnostic imaging since the accident.

All three of the experts who testified acknowledged that Mr. Riggs continues to have neck pain and symptoms in his left upper and lower extremities. Mr. Riggs presented the testimony of Daniel Seltzer, M.D., who examined Mr. Riggs at his attorney's request. The Department presented the testimony of Paul Allen, M.D., Mr. Riggs's attending physician, and Frederick Hopp, M.D., who examined Mr. Riggs at the Department's request. Dr. Seltzer recommended MRIs of Mr. Riggs's

1 lumbar and cervical spines because of continuing radicular symptoms and because these imaging
2 studies had never been done. He testified he would not speculate on what he might expect MRIs to
3 reveal. Dr. Allen and Dr. Hopp did not feel diagnostic imagining was necessary because they did not
4 believe it would lead to further curative treatment.
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7 We have granted review because it appears our industrial appeals judge believed the law
8 requires proof that further diagnostic treatment will lead to further curative treatment. We have
9 addressed this issue in a several of our decisions.¹ Neither a positive diagnosis nor recommended
10 curative treatment is required to establish entitlement to further diagnostic treatment.
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12 Viewing the evidence with this perspective, we find Dr. Seltzer persuasive. Requiring proof of
13 curative treatment resulting from diagnostic treatment puts the cart before the horse. Dr. Hopp also
14 testified to a lack of findings as an argument against MRIs. Of course there are no imaging findings
15 because the studies have not been done—exactly Dr. Seltzer's point. If Dr. Hopp meant clinical
16 findings on examination, other than reflexes and Tinel testing, it is not clear what testing he did.
17 Dr. Seltzer, on the other hand, explained in detail the testing he did on physical examination and the
18 findings he made. Dr. Allen also argued against the necessity of diagnostic imaging because
19 Mr. Riggs's symptoms were not consistent with the cervical arthritis he knew he had. Dr. Allen's
20 argument actually supports Dr. Seltzer's opinion that further diagnostic treatment is appropriate to
21 find the cause of Mr. Riggs's continuing symptoms in his left arm and leg.
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28 **DECISION**

29 In Docket No. 19 23004, the claimant, Matthew R. Riggs, filed an appeal with the Board of
30 Industrial Insurance Appeals on November 25, 2019, from an order of the Department of Labor and
31 Industries dated October 17, 2019. In this order, the Department affirmed its June 24, 2019 order
32 that affirmed an April 8, 2019 order closing the claim. This order is incorrect and is reversed and
33 remanded.
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46 ¹ *In re Nora G. Mendez*, Dckt. No. 17 11500 (August 23, 2018); *In re Paula M. Davis*, Dckt. No. 14 21990 (March 4, 2016);
47 *In re Gus C. Crocker*, Dckt. No. 08 14406 (June 30 2009); *In re Rachel E. Peebles*, Dckt. No. 02 11457 (June 18, 2003).

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FINDINGS OF FACT


1. On February 10, 2020, an industrial appeals judge certified that the parties agreed to include the Jurisdictional History in the Board record solely for jurisdictional purposes.
2. Mr. Riggs sustained an industrial injury on August 2, 2017, when he was involved in a motor vehicle accident that resulted in neck and low back pain and tingling and numbness in his left upper and lower extremities.
3. As of October 17, 2019, Mr. Riggs's neck and low back conditions proximately caused by the industrial injury were not fixed and stable and needed further proper and necessary diagnostic medical treatment.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter in this appeal.
2. Mr. Riggs's neck and low back conditions proximately caused by the industrial injury were not fixed and stable as of October 17, 2019, and he is entitled to further diagnostic treatment. RCW 51.36.010
3. The Department order dated October 17, 2019, is incorrect and is reversed. This matter is remanded to the Department to provide proper and necessary diagnostic treatment.

Dated: February 2, 2021.

BOARD OF INDUSTRIAL INSURANCE APPEALS


LINDA L. WILLIAMS, Chairperson


ISABEL A. M. COLE, Member

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**Addendum to Decision and Order
In re Matthew R. Riggs
Docket No. 19 23004
Claim No. BC-22203**

Appearances

Claimant, Matthew R. Riggs, by Calbom & Schwab, P.S.C., per Ashley Grout

Employer, Homesley Construction, Inc. (did not appear)

Retrospective Rating Group, Building Industry Assoc. of WA #00025, by Alan S. Gruse

Department of Labor and Industries, by Office of the Attorney General, per Tomas S. Caballero

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. Mr. Riggs filed a timely Petition for Review of a Proposed Decision and Order issued on September 4, 2020, in which the industrial appeals judge affirmed the Department order dated October 17, 2019. The Department filed a response to the claimant's 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.