

Carrigan, Jeremy

SUBSEQUENT CONDITION TRACEABLE TO ORIGINAL INJURY

***Maphet* acceptance**

Under *Clark County v. Maphet*, 10 Wn. App. 2d 420 (2019), the worker must demonstrate that the self-insured employer accepted the L5-S1 disc protrusion and multi-level lumbar spine degenerative conditions when it authorized and paid for epidural injections. In this appeal, the self-insured employer only authorized injections to treat a lumbar sprain. Distinguishing *Maphet*, the Board held that the employer didn't accept responsibility for L5-S1 disc protrusion.***In re Jeremy Carrigan*, BHA Dec., 20 12899 (2021)** [Editor's Note: The Board's decision was appealed to superior court under Benton County Cause No. 21-2-00930-03]

Scroll down for order.

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

IN RE: JEREMY S. CARRIGAN

) DOCKET NO. 20 12899

CLAIM NO. SK-08415

) DECISION AND ORDER

While working for the Benton County Sheriff's Department, Jeremy Carrigan injured his back while participating in an active shooter training exercise. He filed a claim for benefits, which was allowed. The Department determined that Benton County was not responsible for Mr. Carrigan's condition described as L5-S1 disc protrusion and multi-level lumbar spine degenerative changes on the ground that those conditions were not caused or aggravated by the industrial injury. Mr. Carrigan appealed. Following a hearing, our industrial appeals judge determined that Mr. Carrigan did not demonstrate that either his L5-S1 disc protrusion or his multi-level lumbar spine degenerative changes were proximately caused or aggravated by the industrial injury. Mr. Carrigan filed a Petition for Review asking the Board to find that because Benton County authorized and paid for epidural steroid injections for the L5-S1 disc protrusion and multi-level lumbar spine degenerative conditions, these conditions must be accepted under *Clark County v. Maphet*.¹ We agree with our industrial appeals judge's decision. We granted review to address Mr. Carrigan's argument that the segregated conditions should be allowed under *Clark County v. Maphet* and to correct the date of stipulation to the Jurisdictional History. The Department's order is **AFFIRMED**.

DISCUSSION

Jeremy Carrigan, age 36, has worked for the Benton County Sheriff's Department since 2011. On July 3, 2018, Mr. Carrigan injured his low back while engaging in active shooter training. According to Mr. Carrigan, since this injury, he has developed extreme pain in his low back. His left leg is mostly numb down to the bottom of his foot. His right leg has started going numb and he feels a lot of right hip pain.

Mr. Carrigan also injured his low back in the course of employment in 2016. He treated conservatively and apparently his pain resolved over time. He contends the claim was closed with a permanent partial disability for the low back. (The amount of PPD is not stated in the record.) Mr. Carrigan returned to work without any problems, although he continually had numbness in his left thigh.

¹ 10 Wn. App. 2d 420 (2019).

1 Following the July 3, 2018 industrial injury, Mr. Carrigan was referred to Arash Motaghi, D.O.,
2 an anesthesiologist. In his testimony, Dr. Motaghi could not tell from his notes how Mr. Carrigan was
3 injured. Dr. Motaghi gave Mr. Carrigan two epidural steroid injections that provided only temporary
4 relief. Dr. Motaghi accepted the diagnoses of lumbar radiculopathy and L5-S1 disc protrusion. In his
5 opinion, a disc protrusion at L5-S1 is one of the causes of Mr. Carrigan's radicular symptoms.
6

7
8 Dr. Motaghi was not asked about proximate cause during his direct examination. On cross-
9 examination, he was asked, "Did you ever make the conclusion that Mr. Carrigan's lower back
10 condition was attributable to an industrial injury sustained on July 3, 2018?"² Dr. Motaghi responded,
11 "So, if they didn't have it before and they had it after then, I mean, again, it would be reasonable to
12 assume that."³ Dr. Motaghi had no information about whether Mr. Carrigan had any back conditions
13 before to the industrial injury. Dr. Motaghi also testified that epidural steroid injections can be either
14 therapeutic or diagnostic.
15

16 David M. Karp, M.D., is a Florida orthopedic surgeon specializing in the spine. Dr. Karp
17 performed an independent medical examination of Mr. Carrigan on January 11, 2019. He diagnosed
18 low back strain. Dr. Karp agreed that Mr. Carrigan's condition could be described as an annular tear
19 at L5-S1, but he prefers the term annular degeneration. Dr. Karp also stated,
20

21 Well, I felt that diagnostically he had a low back strain. He had had one prior to the
22 accident of record. I felt that this was aggravated by the accident of July 3, 2018 on
23 a more probable than not basis. I also felt that he had subjective complaints of what
24 sounded like radiculopathy in the right side, which I felt would have been related to
25 the accident of record.⁴
26

27 Dr. Karp recommended a selective S1 nerve block and physical therapy. In his opinion, the
28 nerve block provides additional information for diagnosis and it decreases inflammation to help the
29 patient perform better physically.
30

31 Christopher J. Morgan, M.D., is a radiologist and MRI expert who reviewed Mr. Carrigan's MRI
32 studies from September 2016, August 2018, and February 2019. Comparing the entire series of
33 scans, Dr. Morgan found no difference between them over the years. The main finding in all of the
34 scans is that the L5-S1 disc is degenerated and there is a mild disc bulge. According to Dr. Morgan,
35 the disc bulge does not affect any of the nerve roots, "it's just sort of an interesting but incidental
36
37
38
39
40
41
42
43
44

45 ² Motaghi Dep. at 17.

46 ³ Motaghi Dep. at 17.

47 ⁴ Karp Dep. at 9.

1 finding."⁵ He did not consider the disc bulge to be a likely pain generator. In his opinion, there was
2 no objective worsening of Mr. Carrigan's lumbar condition after the July 2018 industrial injury.
3

4 Benton County's third party administrator, Julianne Desiree Rust, testified that the only condition
5 allowed under the claim is lumbar strain and temporary aggravation of pre-existing strain.
6

7 Proposed Decision and Order
8

9 Our industrial appeals judge issued a Proposed Decision and Order finding that Mr. Carrigan
10 did not establish by a preponderance of the evidence that either his L5-S1 disc protrusion or his multi-
11 level lumbar spine degenerative changes were proximately caused or aggravated by the July 3, 2018
12 industrial injury. Mr. Carrigan filed a Petition for Review asking the Board to find that because the
13 employer authorized and paid for epidural steroid injections for the L5-S1 disc protrusion and
14 multilevel lumbar spine degenerative conditions, these conditions should be accepted under *Clark*
15 *County v. Maphet*.⁶ Benton County filed a response arguing that *Clark County v. Maphet* is
16 inapplicable to the facts of the present appeal.⁷ We agree with Benton County.
17
18

19 In *Clark County v. Maphet*, the claimant underwent eight surgeries for a right knee condition,
20 all of which were expressly authorized by the self-insured employer. As a result of the fifth surgery,
21 the claimant developed patellofemoral instability, which necessitated the sixth, seventh, and eighth
22 surgeries. The patellofemoral instability remained unresolved, requiring a ninth surgery. The
23 self-insured employer refused to authorize the ninth surgery contending that the patellofemoral
24 instability was not proximately caused by the industrial injury or its residuals. The Department issued
25 an order requiring the self-insured employer to authorize and pay for the ninth surgery. The
26 self-insured employer appealed. Ultimately, the Washington Court of Appeals held that because the
27 self-insured employer had previously authorized surgery for patellofemoral instability, it accepted that
28 condition.⁸
29
30
31
32
33
34

35 In the present appeal, the record establishes that the employer authorized treatment for lumbar
36 strain, which included epidural injections, a procedure which has both therapeutic and diagnostic
37 purposes. Mr. Carrigan contends that authorization for epidural steroid injections constitutes
38 acceptance of his L5-S1 disc protrusion and multi-level lumbar spine degenerative conditions.
39 Benton County disputes that it ever accepted responsibility for those conditions. We agree with
40
41
42
43

44
45 ⁵ Morgan Dep. at 9.

46 ⁶ 10 Wn. App. 2d 420 (2019).

47 ⁷ Self-insured employer's response to Claimant's petition for review, at 5.

⁸ *Maphet*, at 438.

1 Benton County that authorization for epidural injections does not constitute acceptance of
2 Mr. Carrigan's L5-S1 disc protrusion and multi-level lumbar spine degenerative conditions. The
3 authorization for the epidural injections was for treatment of the lumbar strain and not for the purpose
4 of treating the disc protrusions or multi-level degenerative spine conditions.
5

6
7 In order to prevail in this appeal, Mr. Carrigan must demonstrate by a preponderance of the
8 evidence that his conditions described as L5-S1 disc protrusion and multi-level lumbar spine
9 degenerative changes were proximately caused or aggravated by the industrial injury. He did not
10 meet his burden. In the alternative, under *Maphet*, Mr. Carrigan must demonstrate that Benton
11 County accepted his L5-S1 disc protrusion and multi-level lumbar spine degenerative conditions
12 when it authorized and paid for epidural injections. Again, he failed to meet his burden.
13

14
15 We agree with the decision made by our industrial appeals judge in his Proposed Decision
16 and Order. We granted review to address Mr. Carrigan's argument in his Petition for Review that the
17 segregated conditions should be accepted under *Maphet* and to correct the date of stipulation to the
18 Jurisdictional History.
19

20 21 22 **DECISION**

23
24 In Docket No. 20 12899, the claimant, Jeremy S. Carrigan, filed an appeal with the Board of
25 Industrial Insurance Appeals on February 27, 2020, from an order of the Department of Labor and
26 Industries dated February 20, 2020. This order is correct and is affirmed.
27

28 **FINDINGS OF FACT**

- 29
30 1. On March 31, 2021, for the claimant, and on April 8, 2021, for the self-
31 insured employer, an industrial appeals judge certified that the parties
32 agreed to include the Jurisdictional History in the Board record solely for
33 jurisdictional purposes.
34
35 2. Jeremy S. Carrigan sustained an industrial injury on July 3, 2018, when
36 he injured his back while engaged in active shooter training during the
37 course of his employment with the Benton County Sheriff's Department.
38
39 3. Jeremy S. Carrigan's condition described as L5-S1 disc protrusion and
40 multi-level lumbar spine degenerative changes were not proximately
41 caused or aggravated by his industrial injury.
42

43 **CONCLUSIONS OF LAW**

- 44 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties
45 and subject matter in this appeal.
46
47

2. Benton County Sheriff's Department did not accept the conditions described as L5-S1 disc protrusion and multi-level lumbar spine degenerative changes by authorizing epidural steroid injections. *Clark County v. Maphet*, 10 Wn. App. 2d 420 (2019).
3. The Department order dated February 20, 2020, is correct and is affirmed.

BOARD OF INDUSTRIAL INSURANCE APPEALS

LINDA L. WILLIAMS, Chairperson

**Addendum to Decision and Order
In re Jeremy S. Carrigan
Docket No. 20 12899
Claim No. SK-08415**

Appearances

Claimant, Jeremy S. Carrigan, by Smart Law Offices, per Christopher L. Childers
Self-Insured Employer, Benton County, by Wallace, Klor, Mann, Capener & Bishop, P.C., per
Lawrence E. Mann

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. Jeremy S. Carrigan filed a timely Petition for Review of a Proposed Decision and Order issued on April 19, 2021, in which the industrial appeals judge affirmed the Department order dated February 20, 2020. Benton County filed a response to the Petition for Review.