

Nemr, Kamil

DEPARTMENT

Authority to accept conditions under a claim

Symptoms will not be allowed as an accepted condition under a claim and are distinguishable from diagnosable medical conditions.*In re Kamil Nemr*, BIIA Dec., 15 24606 (2018)

Scroll down for order.

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

1 **IN RE: KAMIL R. NEMR**) **DOCKET NOS. 15 24606 & 15 24606-A**
2))
3 **CLAIM NO. W-547939**) **DECISION AND ORDER**
4

5 Kamil Nemr was working for The Boeing Company when he injured his cervical spine and right
6 shoulder while lifting an overhead projector from the ground. The claim was closed in 2002 with a
7 permanent partial disability award for Category 3 cervico-dorsal impairment. The claim was reopened
8 in 2005, and Mr. Nemr received extensive conservative care under the claim. He has declined further
9 surgical intervention. The Department closed the claim with time-loss compensation benefits as paid
10 and no increase in permanent partial disability.
11

12 Mr. Namr requests further treatment, time-loss compensation benefits, and either an increased
13 permanent partial disability award or a pension as an alternative to treatment. Boeing cross-appealed
14 asking for segregation of seven conditions, including permanent aggravation of multilevel preexisting
15 cervical degenerative disc disease, compression in the left C8 nerve root, left sided C8 radiculopathy,
16 left upper extremity symptoms, stenosis at C7-T1, and adhesive capsulitis of the right shoulder. Our
17 industrial appeals judge denied further treatment and time-loss compensation benefits, granted an
18 increased permanent partial disability award, segregated left carpal tunnel syndrome, and accepted
19 the remaining contested conditions.
20

21 Boeing seeks segregation of the six accepted conditions and claim closure with no increase
22 in permanent partial disability. We agree with the decision of our industrial appeals judge, except
23 that we decline to accept left upper extremity symptoms because it is not a diagnosable condition.
24 We granted review to amend Conclusion of Law No. 6 accordingly.
25

26 The Department order of November 2, 2015, is **REVERSED** and **REMANDED** to the
27 Department to affirm the closure of the claim, deny permanent total disability, deny additional
28 time-loss compensation benefits for the period June 19, 2015, through November 2, 2015, and award
29 a Category 4 cervical and/or cervico-dorsal impairment, less the previously paid Category 3 cervical
30 impairment. With respect to the cross-appeal, the November 2, 2015 order is **REVERSED** and
31 **REMANDED** to the Department to accept the conditions diagnosed as permanent aggravation of
32 multilevel preexisting cervical degenerative disc disease, compression in the left C8 nerve root, left
33 sided C8 radiculopathy, stenosis at C7-T1, and adhesive capsulitis of the right shoulder of the
34 conditions identified in the cross-appeal, and to segregate the left carpal tunnel syndrome.
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DISCUSSION

Boeing seeks segregation of left upper extremity symptoms. We have previously distinguished symptoms from diagnosable medical conditions and declined to allow a symptom as an accepted condition under a claim.¹ In *Nguyen*, the claimant advocated for acceptance of parascapular pain as a medical condition. We agreed with the Department's arguments that the evidence presented did not support such a diagnosis. Moreover, we found the alleged condition was actually a symptom, rather than a diagnosable condition. Accordingly, we held it was inappropriate to allow the pain symptom under the claim as a diagnosed condition.

Likewise, we find no basis to allow or segregate the undiagnosed left upper extremity symptoms under Mr. Nemr's claim. Further, we find the C8 nerve compression and left-sided radiculopathy diagnoses adequately cover the accepted left arm conditions that were proximately caused by the industrial injury and its subsequent treatment, without causing unnecessary confusion with the properly segregated left carpal tunnel syndrome diagnosis, which was not proximately caused by the industrial injury.

DECISION

1. In Docket No. 15 24606, the claimant, Kamil R. Nemr, filed an appeal with the Board of Industrial Insurance Appeals on December 31, 2015, from an order of the Department of Labor and Industries dated November 2, 2015. In this order, the Department affirmed an August 17, 2015 order ending time-loss compensation benefits as paid through June 18, 2015, and closing the claimant without an additional award for permanent partial disability. This order is incorrect and is reversed and remanded to the Department to end time-loss compensation benefits effective June 18, 2015, and close the claim with an award of a Category 4 cervical and/or cervico-dorsal impairment, less a previously paid Category 3 cervical impairment.
2. In Docket No. 15 24606-A, the employer, The Boeing Company, filed an appeal with the Board of Industrial Insurance Appeals on February 12, 2016. The employer appeals a Department order dated November 2, 2015. In this order, the Department affirmed an August 17, 2015 order ending time-loss compensation benefits as paid through June 18, 2015, and closing the claimant without an additional award for permanent partial disability. This order is incorrect and is reversed and remanded to the Department as described above in Docket No. 15 24606; to accept the conditions

¹ *In re Thai V. Nguyen*, Dckt. No. 11 18407 (April 11, 2013).

1 diagnosed as permanent aggravation of multilevel preexisting cervical degenerative disc disease,
2 compression in the left C8 nerve root, left sided C8 radiculopathy, stenosis at C7-T1, and adhesive
3 capsulitis of the right shoulder; and to segregate the condition of left carpal tunnel syndrome.
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6 **FINDINGS OF FACT**

- 7 1. On March 6, 2018, an industrial appeals judge certified that the parties
8 agreed to include the Jurisdictional History in the Board record solely for
9 jurisdictional purposes.
10
- 11 2. Kamil R. Nemr sustained an industrial injury on March 15, 2000, when, in
12 the course of employment with The Boeing Company, he picked up a
13 projector and experienced a tearing sensation in the cervical area, with
14 right arm and neck pain. As a proximate result of this industrial injury, the
15 claimant suffered the following conditions proximately caused by the
16 industrial injury: conversion disorder with hysterical paralysis of the right
17 upper extremity, anterior foraminotomy and discectomy at C5, C6, and
18 C7, permanent aggravation of multilevel preexisting cervical degenerative
19 disc disease, compression in the left C8 nerve root, left sided C8
20 radiculopathy, stenosis at C7-T1, and adhesive capsulitis of the right
21 shoulder with evidence of tear.
22
- 23 3. The claimant's condition diagnosed as left carpal tunnel syndrome was
24 not proximately caused by the industrial injury of March 15, 2000.
25
- 26 4. Kamil R. Nemr, age 55, was born October 15, 1962, in Lebanon, but came
27 to the United States at age 16. He obtained a degree in mathematics
28 from the University of Washington in 1987. He worked as a copy center
29 clerk part-time during his college years, and afterwards worked briefly at
30 a civil engineering firm and in the land surveying business. He was hired
31 by Boeing in 1990, and from 1992 to 2000 worked as a reliability and
32 safety engineer, also called a product support technical specialist, where
33 his job included meeting with airlines to address on-time performance.
34
- 35 5. In a final closing order dated March 6, 2002, Kamil R. Nemr was awarded
36 a permanent partial disability consistent with Category 3 cervical and/or
37 cervico-dorsal impairments. The claim was reopened effective
38 February 10, 2005, for objective worsening of the claimant's injury-related
39 condition.
40
- 41 6. Between February 10, 2005, and November 2, 2015, the claimant's injury-
42 related condition objectively worsened on a permanent basis.
43
- 44 7. As of November 2, 2015, the claimant's injury-related medical conditions
45 were fixed and stable, and did not require further medical treatment.
46
- 47 8. As a proximate result of Kamil R. Nemr's injury-related conditions, he has
been limited to performing a full range of light-duty work, meaning that he
may perform work with a force or load of up to 10 pounds frequently and
up to 20 pounds occasionally. He has no restrictions upon his ability to

1 sit, stand, or walk, and may work full time. He may perform reaching and
2 fine manipulation of objects with both the right and left upper extremities.

- 3
4 9. As of June 19, 2015, Mr. Nemr was capable of returning to his job of injury
5 as a reliability and safety engineer (product support technical
6 specialist 3), and to full-time work as a customer service representative,
7 a data entry clerk, parking garage attendant/cashier, receptionist, and
8 data analyst.
- 9 10. As of November 2, 2015, Kamil R. Nemr had a permanent partial
10 disability, proximately caused by the industrial injury, equal to Category 4
11 cervical and/or cervico-dorsal impairments as set forth in WAC 296-20-
12 240.
- 13 11. In view of his age, education, and the effects of his industrial injuries,
14 Mr. Nemr was capable of obtaining and performing gainful occupation on
15 a reasonably continuous basis from June 18, 2015, through November 2,
16 2015, and as of November 2, 2015.

17 **CONCLUSIONS OF LAW**



- 18
- 19 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties
20 and subject matter in these appeals.
- 21
- 22 2. Boeing was not entitled to amend its cross-appeal to assert an
23 overpayment of time-loss compensation benefits for the period April 17,
24 2010, through June 18, 2015, when this claim for relief had never been
25 presented to the Department for adjudication and issuance of an order.²
26 From June 18, 2015, through November 2, 2015, Kamil R. Nemr was not
27 temporarily totally disabled as that term is used in RCW 51.32.090
28 because of any condition proximately caused by his industrial injury of
29 March 15, 2000.
- 30 3. Effective November 2, 2015, Mr. Nemr was not a permanently totally
31 disabled worker as that term is used in RCW 51.08.160 as a proximate
32 result of the industrial injury of March 15, 2000.
- 33 4. As of November 2, 2015, Mr. Nemr had a permanent partial disability,
34 consistent with a Category 4 cervical and/or cervico-dorsal impairment,
35 less the previously paid permanent partial disability award, within the
36 meaning of RCW 51.32.080, proximately caused by the industrial injury.
- 37 5. In Docket Nos. 15 24606 and 15 24606-A, the Department order of
38 November 2, 2015, is incorrect and is reversed. This matter is remanded
39 to the Department to close the claim with a permanent partial disability
40 award of a Category 4 cervical and/or cervico-dorsal impairment, less the
41 previously paid Category 3 cervical impairment; and to direct the
42 self-insured employer to accept the conditions diagnosed as permanent
43 aggravation of multilevel preexisting cervical degenerative disc disease,
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46 ² RCW 51.32.240; *Lenk v. Department of Labor & Indus.*, 3 Wn. App. 977 (1970); *In re Sheri Gorham*, BIIA Dec., 11 23281
47 (2013).

1 compression in the left C8 nerve root, left sided C8 radiculopathy,
2 stenosis at C7-T1, and adhesive capsulitis of the right shoulder; and
3 segregate the condition of left carpal tunnel syndrome.
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5 Dated: June 7, 2018.

6 BOARD OF INDUSTRIAL INSURANCE APPEALS

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**Addendum to Decision and Order
In re Kamil R. Nemr
Docket Nos. 15 24606 & 15 24606-A
Claim No. W-547939**

Appearances

Claimant, Kamil R. Nemr, by Law Office of James R. Walsh, per James R. Walsh
Self-Insured Employer, The Boeing Company, by Flynn Law Group, LLC, per Deborah K. Flynn
Department of Labor and Industries, by Office of the Attorney General, per Marta Lowy

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 employer filed a timely Petition for Review of a Proposed Decision and Order issued on March 12, 2018, in which the industrial appeals judge reversed and remanded the order of the Department dated November 2, 2015.