

Saeger, Todd

RES JUDICATA

Segregation order

The Department of Labor and Industries' previous determination that the worker didn't have depression at the time it issued its order does not preclude a finding that the worker later developed claim-related depression.*In re Todd Saeger*, BIIA Dec., 19 18448 (2021)

Scroll down for order.

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

1 **IN RE: TODD A. SAEGER**) **DOCKET NOS. 19 18448, 19 25447, 20 11740 &**
2) **20 11741**
3)
4 **CLAIM NO. Y-769857**) **DECISION AND ORDER**

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6 Todd A. Saeger suffered a back injury in 2004 while he was assisting in moving a heavy copy
7 machine while working for Empire Office Machine, Inc. The Department issued orders that denied
8 payment for chiropractic services, ended and denied further time-loss compensation benefits, and
9 closed the claim without any award for permanent partial impairment. Mr. Saeger contends that he
10 suffers a claim-related depressive disorder and is entitled to additional benefits. Our industrial
11 appeals judge found that Mr. Saeger was entitled to payment of the outstanding chiropractic bills for
12 claim-related treatment, but that the Department had previously segregated the depressive disorder
13 condition, and affirmed the Department decisions regarding time-loss and claim closure. We agree
14 that the outstanding chiropractic bills are claim-related and should be paid. We find that the
15 Department's previous determination that Mr. Saeger did not have depression at the time it issued
16 its order does not preclude a finding that Mr. Saeger has developed claim-related depression since
17 that time. Mr. Saeger has established that he has developed depression proximately caused by his
18 industrial injury. Considering Mr. Saeger's claim-related depression along with his other conditions,
19 we find that he is permanently and totally disabled and has established his entitlement to time-loss
20 compensation for the time periods at issue and to a pension thereafter. The Department orders under
21 appeal are incorrect and are **REVERSED AND REMANDED** to the Department to pay the
22 outstanding chiropractic bills, pay time-loss compensation benefits from October 4, 2019, through
23 January 27, 2020, close the claim, and place Mr. Saeger on pension as of January 28, 2020.

DISCUSSION

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25 We agree with our industrial appeals judge that the record establishes that the chiropractic
26 treatment provide by Launy D. Schwartzman, D.C., from January 24, 2019, through April 4, 2019,
27 was proper and necessary as a result of the claimant's December 3, 2004 industrial injury industrial.
28 Thus, the Department determination affirming remittance advices dated February 26, 2019,
29 March 26, 2019, and April 23, 2019, which did not pay for services provided to the claimant by Launy
30 D. Schwartzman, D.C., was incorrect.

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32 We granted review because we disagree with the analysis and determinations of our industrial
33 appeals judge concerning the status of Mr. Saeger's depressive disorder and its impact on his
34 entitlement to benefits. Some background information is helpful to understanding this case.

1 In order to resolve the question of whether or not the Department previously segregated the
2 depressive disorder condition, we conducted an examination of the Department record as provided
3 by *In re Mildred Holzerland*.¹ Our review revealed that on December 6, 2017, the Department issued
4 the following order:
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7 The Department is not responsible for the condition diagnosed as depression because,
8 based on the medical evidence, the worker did not present with the condition upon
9 examination.
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11 We have previously addressed another situation where the Department issued an order
12 segregating a mental health condition that had never been diagnosed by a physician. We found that
13 order to be wrong on its face, and reversed it, holding that segregation was improper.² The facts
14 and case are not squarely on point here because the December 6, 2017 order in Mr. Saeger's claim
15 is not on appeal before us and did become final.
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18 We further note that the facts of this claim fall under the analysis found in the matter of *Dinnis*
19 *v. Department of Labor & Industries*.³ The Washington State Supreme Court held that where the
20 Department reopens a previously closed claim, the Department has conceded that the conditions
21 under the claim have worsened at least temporarily. On appeal an injured worker is not required to
22 show worsening of those conditions in order to obtain additional medical treatment. However, when
23 an injured worker is seeking additional permanent disability—partial or total—the injured worker must
24 establish that the conditions under the claim have permanently worsened since the prior final claim
25 closure.
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30 In the present case, Mr. Saeger's claim was first closed on April 13, 2010. This order became
31 final and binding. The claim was later formally reopened and then closed by a Department order that
32 was affirmed by the January 27, 2020 order on appeal. Under *Dinnis*, Mr. Saeger is required to show
33 that the conditions proximately caused by the industrial injury had permanently worsened based on
34 a comparison of findings between the two "terminal" dates of April 13, 2010, and January 27, 2020.
35 Additional permanent disability needs to be supported by a comparison of medical findings, as
36 required by the supreme court in *Dinnis*. While permanent disability based on physical conditions
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45 ¹ BIIA Dec., 15,729 (1965).

46 ² *In re Juan Delaney Rodriguez*, Dckt. No 17 14084 (May 29, 2018).

47 ³ 67 Wn.2d 654 (1965).

1 requires objective findings, such is not the case when a worsening is contended based on psychiatric
2 conditions.⁴
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4 We also note that this appeal raises the issue addressed by the Washington State Supreme
5 Court in *Knowles v. Department of Labor & Industries*.⁵ In *Knowles*, the injured worker established
6 that he developed a new condition **during the aggravation period** as a result of his industrial injury.
7 The court held that the new condition was prima facie evidence of aggravation.
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10 The record before us shows that on November 10, 2017, Michael Friedman, M.D., performed
11 a claim-related psychiatric evaluation of Mr. Saeger. Dr. Friedman did not diagnose Mr. Saeger with
12 depression. This psychiatric evaluation appears to be the basis for the December 6, 2017
13 Department order that denied responsibility for the then undiagnosed depression.
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16 Mr. Saeger presented the expert psychiatric testimony of Ronald Early, M.D., who evaluated
17 him on January 22, 2020. On that date, Dr. Early diagnosed Mr. Saeger with a depressive disorder
18 that he felt was related to the industrial injury. Dr. Early testified that Mr. Saeger's depression
19 symptoms worsened between Department 6, 2017, and the date of his examination. Dr. Early also
20 testified that Mr. Saeger's worsening of his mental health condition between April 13, 2010, and
21 January 27, 2020, was permanent. Dr. Early also testified that Mr. Saeger had a preexisting
22 personality disorder that impacted his ability to interact with people. We found Dr. Early's testimony
23 persuasive and note that there was no evidence presented to rebut his testimony and opinions. We
24 also note that Dr. Friedman, the Department's witness who saw Mr. Saeger one time in
25 November 2017, agreed that Dr. Early, who saw Mr. Saeger in January 2020, was in a better position
26 to understand Mr. Saeger's psychiatric condition at the time of the order under appeal.
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33 We read the December 6, 2017 Department order differently than did our industrial appeals
34 judge. In the Proposed Decision and Order, our industrial appeals judge found that the December 6,
35 2017 Department order segregated the condition of depression in the claim and found that the order
36 was final. For this reason he determined that Dr. Early's testimony that Mr. Saeger developed a
37 depressive condition after Dr. Friedman's examination was moot and did not consider Dr. Early's
38 testimony any further. Essentially, our industrial appeals judge found that the December 6, 2017
39 order precluded a further finding of depression in the claim. However, it is our determination that the
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45 ⁴ *Dinnis*, at 656 (citing *Johnson v. Dep't of Labor & Indus.*, 45 Wn.2d 71 (1954); *Moses v. Dep't of Labor & Indus.*, 44
46 Wn.2d 511 (1954); *Weinheimer v. Dep't of Labor & Indus.*, 8 Wn.2d 14 (1941)). See also, *Price v. Dep't of Labor & Indus.*,
47 101 Wn.2d 520 (1984) regarding comparison of findings in mental health cases.

⁵ 28 Wn.2d 970 (1947).

1 December 6, 2017 order, on its face, was inconclusive as to segregation of the condition of
2 depression. We find that the December 6, 2017 order is limited to a declaration that Mr. Saeger did
3 not have depression as of the date of the order. We were persuaded by the testimony of Dr. Early,
4 and find that Mr. Saeger has established that his present depressive condition was due to the
5 industrial injury and should be covered under the claim.
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9 We have further considered Dr. Friedman's testimony that Mr. Saeger did not present with
10 depression as of November 10, 2017. We have also further considered Dr. Early's testimony that
11 Mr. Saeger did have a depressive disorder as of January 22, 2020, which was caused by the industrial
12 injury. This evidence is un rebutted. It is our determination that the fact that Mr. Saeger developed
13 the depressive disorder condition during the aggravation period provides prima facie evidence of
14 aggravation.
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18 The record shows that Mr. Saeger has significant lifting, sitting, and walking limitations due to
19 his industrial injury. Dr. James Kopp felt that Mr. Saeger would need to lie down during a work shift,
20 and that he was unable to sustain full-time work at any type of job, including a sedentary position
21 based on his physical limitations. Dr. Launy Schwartzman, a treating chiropractor, provided physical
22 restrictions for Mr. Saeger on lifting, sitting, reaching, climbing ladders and stairs, twisting, bending,
23 stooping, squatting, kneeling, and crawling. And while the Department's medical witness, Dr. Scott
24 Hutson, disagreed that Mr. Saeger had physical limitations related to the industrial injury, his opinion
25 failed to take into account Mr. Saeger's claim accepted degenerative spine condition. We find that
26 Mr. Saeger had work restrictions that precluded him from performing work in any category.
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30 If an injured worker is impaired by a physical or mental condition which preexisted the industrial
31 injury, and is later prevented from returning to gainful employment because of the added or combined
32 effects of the industrial injury, the worker is then entitled to benefits as a permanently totally disabled
33 worker.⁶ Once the diagnosed and claim-related depressive disorder condition is factored into
34 consideration along with Mr. Saeger's preexisting personality disorder, and his claim related physical
35 limitations related to his low back condition, Mr. Saeger is clearly unemployable during the time-loss
36 period at issue and thereafter.
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40 When considering the combination of Mr. Saeger's physical conditions, preexisting mental
41 health conditions, and the recently diagnosed depression, no testifying medical or vocational expert
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47 ⁶ Wendt v. Dep't of Labor & Indus., 18 Wn. App. 674 (1977).

1 believed that he could sustain full time gainful employment. Based on the evidence presented,
2 Mr. Saeger has shown persuasively that he has an additional permanent mental health impairment
3 related to the conditions proximately caused by his industrial injury. In view of Mr. Saeger's industrial
4 injury, his claim related depressive disorder condition, his other disabilities, his age, education,
5 training, and work experience, we conclude that Mr. Saeger was a temporarily totally disabled worker
6 from October 4, 2019, through January 27, 2020, and permanently and totally disabled as of
7 January 28, 2020.
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12 **DECISION**

- 13 1. In Docket No. 19 18448, the claimant, Todd A. Saeger, filed an appeal with the Board of Industrial
14 Insurance Appeals on July 1, 2019, from an order of the Department of Labor and Industries dated
15 June 5, 2019. In this order, the Department affirmed remittance advices dated February 26, 2019,
16 March 26, 2019, and April 23, 2019, concerning services claimed to have been provided to the
17 claimant by Launy D. Schwartzman, D.C. This order is incorrect and is reversed and remanded
18 to the Department to pay the bills for services in these remittance advices from January 24, 2019,
19 through April 4, 2019.
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- 24 2. In Docket No. 19 25447, the claimant, Todd A. Saeger, filed an appeal with the Board of Industrial
25 Insurance Appeals on November 18, 2019, from an order of the Department of Labor and
26 Industries dated October 4, 2019. In this order, the Department ended time-loss compensation
27 benefits as paid to October 3, 2019. This order is incorrect and is reversed and remanded to the
28 Department to issue an order that finds Mr. Saeger remained entitled to time-loss compensation.
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- 33 3. In Docket No. 20 11740, the claimant, Todd A. Saeger, filed an appeal with the Board of Industrial
34 Insurance Appeals on February 6, 2020, from an order of the Department of Labor and Industries
35 dated December 31, 2019. In this order, the Department affirmed the provisions of an October 15,
36 2019 order that denied time-loss compensation benefits from October 4, 2019, through
37 October 11, 2019. This order is incorrect and is reversed and remanded to the Department to
38 pay time-loss compensation benefits from October 4, 2019, through October 11, 2019.
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- 43 4. In Docket No. 20 11741, the claimant, Todd A. Saeger, filed an appeal with the Board of Industrial
44 Insurance Appeals on February 6, 2020, from an order of the Department of Labor and Industries
45 dated January 27, 2020. In this order, the Department affirmed the provisions of a November 14,
46 2019 order that closed the claim without any award for permanent partial disability. This order is
47 incorrect and is reversed and remanded to the Department to issue an order paying time-loss

1 compensation benefits from October 12, 2019, through January 26, 2020, closing the claim, and
2 placing Mr. Saeger on pension as of January 27, 2020.
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4 **FINDINGS OF FACT**

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6 1. On March 10, 2020, an industrial appeals judge certified that the parties
7 agreed to include the Jurisdictional History in the Board record solely for
8 jurisdictional purposes.
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10 2. Todd A. Saeger sustained an industrial injury on December 3, 2004, when
11 he sustained a low back injury while lifting a copy machine. He had a
12 lumbar sprain, a herniated disc, and left S1 radiculopathy.
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14 3. Todd A. Saeger's depressive disorder condition was proximately caused
15 by the December 3, 2004 industrial injury and developed after
16 December 6, 2017.
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18 4. Todd A. Saeger has a preexisting personality disorder.
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20 5. Todd A. Saeger needs to lie down during a work shift, and has restrictions
21 in his abilities to lift, sit, reach, climb ladders and stairs, twist, bend, stoop,
22 squat, kneel and crawl. Mr. Saeger is unable to sustain full time work at
23 any type of job
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25 6. Todd A. Saeger's conditions causally related to his December 3, 2004
26 industrial injury became permanently aggravated and worsened between
27 April 13, 2010, and January 27, 2020.
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29 7. Todd A. Saeger was unable to perform and obtain gainful employment on
30 a reasonably continuous basis from October 4, 2019, through January 27,
31 2020, due to the residuals of the December 3, 2004 industrial injury and
32 taking into account the claimant's age, education, work history, and
33 preexisting conditions.
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35 8. Todd A. Saeger was unable to perform and obtain gainful employment on
36 a reasonably continuous basis as of January 27, 2020, due to the
37 residuals of the December 3, 2004 industrial injury and taking into account
38 the claimant's age, education, work history, and preexisting conditions.
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40 9. As of January 27, 2020, Todd A. Saeger's conditions proximately caused
41 by the December 3, 2004 industrial injury were fixed and stable.
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43 10. The chiropractic services provided by Launy D. Schwartzman, D.C., from
44 January 24, 2019, through April 4, 2019, were proper and necessary
45 treatment as a result of the claimant's December 3, 2004 industrial injury.
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41 **CONCLUSIONS OF LAW**

- 42 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties
43 and subject matter in these appeals.
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45 2. Todd A. Saeger was a temporarily totally disabled worker within the
46 meaning of RCW 51.32.090 from October 4, 2019, through January 27,
47 2020.

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3. Todd A. Saeger was a permanently totally disabled worker within the meaning of RCW 51.08.160 as of January 28, 2020.
 4. The medical services provided by Launy D. Schwartzman, D.C. between January 24, 2019, and April 4, 2019, were proximately caused by the industrial injury and proper and necessary within the meaning of WAC 296-20-01002.
 5. The June 5, 2019 order of the Department of Labor and Industries is reversed and remanded to the Department to pay for the services provided by Dr. Schwartzman between January 24, 2019, and April 4, 2019.
 6. The October 4, 2019 order of the Department of Labor and Industries ending time-loss compensation as paid through October 3, 2019, is incorrect and is reversed and remanded to the Department to take such action consistent with the facts and the law.
 7. The December 31, 2019 order of the Department of Labor and Industries denying time-loss compensation from October 4, 2019, through October 11, 2019, is incorrect and is reversed and remanded to the Department to pay time-loss compensation benefits from October 4, 2019, through October 11, 2019.
 8. The January 27, 2020 order of the Department of Labor and Industries closing the claim without an increased permanent partial disability award, is incorrect and is reversed and remanded to the Department to pay time-loss compensation benefits from October 12, 2019, through January 27, 2019, to close the claim and find Todd A. Saeger permanently totally disabled as of January 28, 2019.

29 Dated: March 4, 2021.

30 BOARD OF INDUSTRIAL INSURANCE APPEALS

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32 LINDA L. WILLIAMS, Chairperson

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34 ISABEL A. M. COLE, Member

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Addendum to Decision and Order
In re Todd A. Saeger
Docket Nos. 19 18448, 19 25447, 20 11740 & 20 11741
Claim No. Y-769857

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Appearances

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Claimant, Todd A. Saeger, by Washington Law Center, PLLC, per Alden L. Byrd
Employer, Empire Office Machine, Inc. (did not appear)
Department of Labor and Industries, by Office of the Attorney General, per Benjamin J. Blohowiak

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Petition for Review

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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 September 1, 2020, in which the industrial appeals judge reversed and remanded the Department order dated June 5, 2019, and affirmed the orders of the Department dated October 4, 2019, December 31, 2019, and January 27, 2020.

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.