

## Lappin, Didier

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### AGGRAVATION (RCW 51.32.160)

#### Objective evidence requirement

Citing *Price v. Dep't of Labor & Indus.*, 101 Wn.2d 520, 528 (1984), and 6A Wash. Prac., WPI 155.09 (7th ed.), the Board held that because post-concussive syndrome is a psychiatric condition, a worker need not present objective evidence of worsening to prove a claim must be reopened. ....***In re Didier Lappin*, BIIA Dec., 23 11489 (2024)** [*Editor's Note*: The Board's decision was appealed to superior court under Spokane County Cause No. 24-2-02842-32.]

Scroll down for order.

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

1     **IN RE: DIDIER F. LAPPIN**                             )  
2   )  
3     **CLAIM NO. BD-28816**                             )  
4   )  
   **DOCKET NO. 23 11489**  
   **DECISION AND ORDER**

5             In 2017, Didier F. Lappin was working as a truck driver for Roman Freight Lines, Inc. (now  
6 Revo Freight, Inc.). At a rest stop, he opened the hood to investigate overheating. A gust of wind  
7 blew the hood over, and it injured Mr. Lappin when it struck him in the front right side of his head and  
8 knocked him down. The injury caused an unspecified head injury and post-concussive syndrome.  
9 The Department allowed the claim, paid benefits, and eventually closed the claim on July 9, 2018. In  
10 2019, Mr. Lappin applied to reopen his claim. The Department denied the application on  
11 October 9, 2019. On May 12, 2022, Mr. Lappin applied to reopen the claim a second time, and on  
12 December 29, 2022, the Department issued a final order in which it denied reopening. Mr. Lappin  
13 appealed. After a hearing, our industrial appeals judge affirmed the denial. Mr. Lappin petitioned for  
14 review. He argues that our industrial appeals judge erred when she required objective medical  
15 evidence of worsening for post-concussive syndrome and when she weighed the witnesses'  
16 credibility. While we agree with Mr. Lappin that workers need not show objective worsening of  
17 post-concussive syndrome, we agree with our industrial appeals judge that a preponderance of the  
18 evidence shows no worsening of his claim-related conditions. The Department's December 29, 2022  
19 order is **AFFIRMED**.

**DISCUSSION**

20             Didier Lappin is a 50-year-old man. He completed the tenth grade. Mr. Lappin never  
21 completed a GED or any other training. He changed jobs frequently and worked variously as a  
22 dishwasher, busboy, prep cook, line cook, construction laborer, tow truck driver, airport ramp worker,  
23 radiator tech, and commercial truck driver. Around 2006, he acquired his commercial driver's license.

24             On November 10, 2017, Mr. Lappin was hauling a load over Snoqualmie Pass. To investigate  
25 overheating, he pulled off at a rest stop and lifted the vehicle hood. With the lights and the grill, the  
26 hood weighs over 500 pounds. It tilts forward away from the cab on hinges near the front bumper.  
27 A hydraulic actuator smooths the process of raising and lowering the hood and holds it up while  
28 someone works in the engine compartment.

29             Mr. Lappin released the hood and lifted it on the hinges from the driver's side. As he stepped  
30 down to walk to the passenger side where the water pump was, a gust of wind hit the hood. The gust  
31 caught the hood like a sail, broke the actuator and dropped the hood. As it fell on its hinges, the hood  
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1 struck a glancing blow to the front right side of Mr. Lappin's head and knocked him backwards to the  
2 ground. He had no lacerations, no nausea or vomiting, and no loss of consciousness. Still,  
3 Mr. Lappin needed a few minutes to recover. He checked the water pump and finished his run that  
4 day. Four days later, he sought medical treatment. Medical imaging at that time showed no  
5 intercranial hemorrhage, transcortical infarction, or mass. The accepted conditions under the claim  
6 are unspecified head injury and post-concussive syndrome.  
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10 The record shows that a concussion is a minor brain injury without any changes in the brain  
11 visible on medical imaging. Immediately after a concussion, a patient can experience headaches,  
12 neck pain, memory loss, dizziness, speech disturbances, or visual disturbances. If those symptoms  
13 persist beyond two months, neurologists classify them as *post-concussive syndrome*.  
14 Post-concussive syndrome typically improves with time and resolves within one or two years. It does  
15 not get worse. Worsening of symptoms indicates a new cause, like a new concussion.  
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19 On January 10, 2018, Mr. Lappin had "significant psychiatric issues"<sup>1</sup> unrelated to this claim.  
20 Dr. Bostwick performed a neurocognitive evaluation around April 2018. He diagnosed preexisting  
21 cognitive limitations and a possible personality disorder.<sup>2</sup>  
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24 In reliance on Dr. Bostwick's neurocognitive evaluation, the Department closed Mr. Lappin's  
25 claim on July 9, 2018. As of that date, Mr. Lappin had a stutter, sleep disturbance, emotional lability,  
26 headaches, tinnitus, head numbness, and short-term memory problems. The Department believed  
27 that any remaining impairments were derived from unrelated, preexisting conditions.  
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30 Mr. Lappin had a hard time getting new work. His symptoms ebb and flow daily, but they never  
31 go away. He doesn't believe they have worsened, but neither have they gotten better.  
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33 Mr. Lappin presented only one expert witness, Craig Panos, M.D. Dr. Panos is a  
34 board-certified family practice physician. Over the years, including time as a U.S. Ski Team  
35 physician, he has acquired training and experience treating concussions, traumatic brain injuries, and  
36 post-concussive syndrome. At this point, his clinical practice specializes in concussion care.  
37 Dr. Panos first saw Mr. Lappin in December 2020, after the Department last denied reopening.  
38 According to Dr. Panos, Mr. Lappin's reported symptoms of post-concussive syndrome were  
39 "consistent" from October 9, 2019, through December 29, 2022.<sup>3</sup> He believes that Mr. Lappin needed  
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45 <sup>1</sup> Dalpe Dep. at 22.

46 <sup>2</sup> Dalpe Dep. at 25-27.

47 <sup>3</sup> Panos Dep. at 53-54.

1 more treatment on July 9, 2018, when the Department closed his claim, and on October 9, 2019,  
2 when the Department last denied reopening. Dr. Panos believes he still needs treatment. In other  
3 words, Dr. Panos believed that Mr. Lappin's post-concussive disorder was stable, but required  
4 treatment throughout the aggravation period. He did not believe that Mr. Lappin's post-concussive  
5 syndrome (the condition) worsened between the terminal dates. However, he stated that the  
6 *symptoms* of Mr. Lappin's post-concussive syndrome had worsened by May 12, 2022.<sup>4</sup> His testimony  
7 is sufficient to make a prima facie case of aggravation.  
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11 A prima facie case is not enough for Mr. Lappin to prevail, however. He must prove his  
12 entitlement to benefits by a preponderance of the evidence. Because post-concussive syndrome  
13 only rarely lasts beyond two years and never gets worse, Dr. Panos' opinion carries less weight when  
14 compared to the other testifying experts. Jean Dalpe, M.D., Luis Pary, M.D., and even Dr. Panos all  
15 believe that Mr. Lappin's claim-related post-concussive disorder has been stable or improved through  
16 the aggravation period. Both Mr. Lappin and his father believe that Mr. Lappin's post-concussive  
17 disorder symptoms have been consistently bad since before the claim closed July 9, 2018.  
18 Therefore, the weight of evidence shows there was no worsening during the aggravation period.  
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22 When workers seek to reopen their claims, they must prove by a preponderance of the medical  
23 evidence that at least one claim-related condition worsened between the first terminal date, when the  
24 Department most recently closed the claim or denied reopening, and the second terminal date, when  
25 the Department issued its order denying reopening.<sup>5</sup> In most circumstances, the medical evidence  
26 must be based at least in part on objective medical evidence. However, because psychiatric  
27 conditions manifest through patient reports and behavior, workers cannot show worsening through  
28 objective symptoms.<sup>6</sup> For that reason, a worker isn't required to show mental health disability by  
29 objective medical evidence.<sup>7</sup> Concussions are defined as brain injuries undetectable by imaging or  
30 other objective measures. So, post-concussive syndrome is a psychiatric condition with no objective  
31 means of validation.<sup>8</sup> The current version of *Washington Pattern Jury Instruction* 155.09 specifically  
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43 <sup>4</sup> Panos Dep. at 36.

44 <sup>5</sup> *Eastwood v. Dep't of Labor & Indus.*, 152 Wn. App. 652, 657-658 (2009). See also RCW 51.32.160(1)(a).

45 <sup>6</sup> *Price v. Dep't of Labor & Indus.*, 101 Wn.2d 520, 528 (1984). "Symptoms of psychiatric injury are necessarily subjective  
46 in nature."

46 <sup>7</sup> *Price*, at 529.

47 <sup>8</sup> 6A Wash. Prac., WPI 155.09 (7th ed.).

1 recognizes that, under *Price v. Department of Labor and Industries*,<sup>9</sup> a worker need not show  
2 post-concussive syndrome has worsened by objective measures.  
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4 Here, the first terminal date is October 9, 2019, the date the Department last denied reopening.  
5 The second terminal date is December 29, 2022, the date the Department denied Mr. Lappin's  
6 application to reopen this claim. The parties mistakenly identified the second terminal date as  
7 May 12, 2022, the date Mr. Lappin applied to reopen his claim. Their mistaken agreement does not  
8 change the second terminal date.  
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10 To prevail, Mr. Lappin must show his post-concussive syndrome worsened between the first  
11 and second terminal dates: between October 9, 2019, and December 29, 2022. Mr. Lappin failed to  
12 show a worsening, even by subjective evidence. Because he failed to prove worsening during the  
13 aggravation period by a preponderance of the evidence, we must affirm the Department's order.  
14

### 15 **DECISION**

16 In Docket No. 23 11489, the claimant, Didier F. Lappin, filed an appeal with the Board of  
17 Industrial Insurance Appeals on February 9, 2023, from an order of the Department of Labor and  
18 Industries dated December 29, 2022. In this order, the Department denied Mr. Lappin's application  
19 to reopen this claim. This order is correct, and it is affirmed.  
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### 21 **FINDINGS OF FACT**

- 22 1. On April 11, 2023, an industrial appeals judge certified that the parties  
23 agreed to include the Jurisdictional History in the Board record solely for  
24 jurisdictional purposes.
- 25 2. Didier F. Lappin sustained an industrial injury on November 10, 2017,  
26 when the hood of his tractor trailer struck him on the right front of his head  
27 and knocked him down. The injury proximately caused an unspecified  
28 head injury and post-concussive disorder.
- 29 3. The Department last closed this claim on July 9, 2018. At that time,  
30 Mr. Lappin had a stutter, sleep disturbance, emotional lability, headaches,  
31 tinnitus, head numbness, and short-term memory problems attributable  
32 to the injury.
- 33 4. The Department last denied reopening of this claim on October 9, 2019.  
34 At that time, Mr. Lappin had a stutter, sleep disturbance, emotional lability,  
35 headaches, tinnitus, head numbness, and short-term memory problems  
36 attributable to the injury.
- 37 5. Those symptoms persisted without worsening through  
38 December 29, 2022. The medical evidence showed no condition  
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<sup>9</sup> 101 Wn.2d 520, 528 (1984).

1 proximately caused by the industrial injury worsened between  
2 October 9, 2019, and December 29, 2022.

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4 **CONCLUSIONS OF LAW**

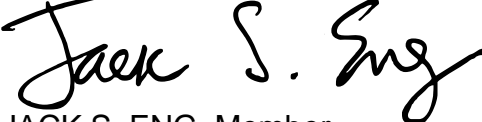
- 5 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties  
6 and subject matter in this appeal.  
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8 2. Between October 9, 2019, and December 29, 2022, none of Mr. Lappin's  
9 conditions proximately caused by the industrial injury worsened within the  
10 meaning of RCW 51.32.160.  
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12 3. The Department's December 29, 2022 order is correct, and it is affirmed.

13 Dated: May 21, 2024.

14 BOARD OF INDUSTRIAL INSURANCE APPEALS

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16 HOLLY A. KESSLER, Chairperson

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18 JACK S. ENG, Member  
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**Addendum to Decision and Order**  
**In re Didier F. Lappin**  
**Docket No. 23 11489**  
**Claim No. BD-28816**

**Appearances**

Claimant, Didier F. Lappin, by We Care Legal, PLLC, per Drew D. Dalton  
Employer, Revo Freight, Inc. (did not appear)

Department of Labor and Industries, by Office of the Attorney General, per Angela R. Zurlini

**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 January 19, 2024, in which the industrial appeals judge affirmed the Department order dated December 29, 2022.

**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.

**Exhibits**

Without objections, our industrial appeals judge admitted two declarations to the record, but she did not mark them or admit them as exhibits. We mark the Declaration of Luann Konrad dated April 27, 2022, as Exhibit 1. We mark the Declaration of Blake Jordan dated May 13, 2022, as Exhibit 2. We formally admit Exhibits 1 and 2 as exhibits to the hearing record.