

**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"¹ 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.²
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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, 2022.³ He believes that Mr. Lappin needed
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45 ¹ Dalpe Dep. at 22.

46 ² Dalpe Dep. at 25-27.

47 ³ 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, 2022.⁴ 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.⁵ 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.⁶ For that reason, a worker isn't required to show mental health disability by
29 objective medical evidence.⁷ 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.⁸ The current version of *Washington Pattern Jury Instruction* 155.09 specifically
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43 ⁴ Panos Dep. at 36.

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

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

46 ⁷ *Price*, at 529.

47 ⁸ 6A Wash. Prac., WPI 155.09 (7th ed.).

1 recognizes that, under *Price v. Department of Labor and Industries*,⁹ 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.
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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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⁹ 101 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.