

2022 WL 3135052 (N.Y.Work.Comp.Bd.)

Workers' Compensation Board

State of New York

EMPLOYER: B & W ELECTRICAL CONTRACTORS

Case No. 9980 1481

Carrier ID No. TFM99801481 W997001

July 27, 2022

\*1 Neuman Claim Administrators  
14 Lafayette Square, Suite 700  
Buffalo, NY 14203-1917  
Coughlin and Gerhart, LLP  
Attorneys & Counselors at Law  
99 Corporate Drive  
PO Box 2039  
Binghamton, NY 13902-2039  
Vecchione, Vecchione Connors & Cano, LLP  
147 Herricks Road  
Garden City, NY 11040  
Alison Kent-Friedman  
State Dept of Law Labor Bureau  
28 Liberty St.  
New York, NY 10005  
Date of Accident 1/29/1998

The Full Board, at its meeting on July 19, 2022, considered the above captioned case for Mandatory Full Board Review of the Board Panel Memorandum of Decision filed April 4, 2022.

#### ISSUE

The issue presented for Mandatory Full Board Review is whether this claim should be established for consequential [hypertension](#).

The Workers' Compensation Law Judge (WCLJ) amended the claim to include consequential [hypertension](#).

The Board Panel majority reversed and disallowed the claim for consequential [hypertension](#).

The dissenting Board Panel member would affirm the WCLJ.

The claimant filed an application for Mandatory Full Board Review on April 20, 2022, arguing that the record supports a finding that his [hypertension](#) was causally related to his established anxiety.

Special Funds filed a rebuttal on May 20, 2022, arguing that the opinion of its IME, Dr. Wein, is more credible than that of claimant's treating provider and that the Board Panel majority's decision should be affirmed.

Upon review, the Full Board votes to adopt the following findings and conclusions.

## FACTS

On January 29, 1998, claimant was involved in a work-related motor vehicle accident and this claim was established for injuries to claimant's head, neck, back, knees, and pelvis. By a decision filed September 6, 2005, claimant was classified permanently partially disabled and continuing benefits were directed at the rate of \$400.00 per week.

In a January 4, 2010, report, claimant's treating physician, Dr. Martin, noted that claimant's blood pressure was elevated. In a January 26, 2012, report, Dr. Martin stated that claimant had non-causally related [hypertension](#) which was "well controlled on [lisinopril](#) 10 mg daily."

The WCLJ, in a reserved decision filed October 29, 2010, found that claimant had violated [WCL § 114-a\(1\)](#), and assessed mandatory and discretionary penalties permanently disqualifying claimant from receiving lost wage benefits from November 4, 2009, forward. Those findings were upheld on appeal by the Board Panel and the Appellate Division, Third Department.

Liability for this claim was transferred to the Special Fund for Reopened Cases (Special Fund) pursuant to [WCL § 25-a](#) by a decision filed February 6, 2014.

In a reserved decision filed September 30, 2015, the WCLJ amended this claim to include chronic pain syndrome, depression, and [post-traumatic stress disorder](#), and that decision was affirmed by a May 25, 2016, Board Panel decision.

\*2 In a January 27, 2021, report, claimant's treating family nurse practitioner, Meghan Laing, diagnosed [hypertensive disorder](#) which was "[n]ot well controlled due to his extreme anxiety and dealing with workers comp." NP Laing indicated that claimant was taking, among other medications, [lisinopril](#) (40 mg daily) and [hydrochlorothiazide](#) (12.5 mg daily), and noted that she had advised claimant to increase his blood pressure medication and return in two months.

The WCLJ, by a decision filed April 1, 2021, found prima facie medical evidence for "aggravation of [hypertension](#)" based on NP Laing's January 27, 2021, report. The claim was amended to include consequential anxiety by a decision filed July 15, 2021.

The carrier's consultant, Dr. Wein, issued a report dated August 13, 2021, based on a review of claimant's medical records. Dr. Wein concluded that claimant's [hypertension](#) was not related to this claim.

Because claimant was not represented by counsel at the time medical testimony was directed, the testimony of NP Laing and Dr. Wein was taken at a hearing on November 17, 2021, although claimant had obtained counsel at the time of the hearing. NP Laing testified that she first treated claimant on April 19, 2018, at which time claimant reported "a history of [high blood pressure](#) and anxiety" (Hearing Transcript, 11/17/21, p. 7). At that time, claimant was taking two medications ([lisinopril](#) and [hydrochlorothiazide](#)) for [high blood pressure](#), which had been prescribed by Dr. Ni. NP Laing did not know when claimant began experiencing [hypertension](#). According to NP Laing, the anxiety that claimant "has been dealing with has caused a fluctuation with his blood pressure" (p. 11). NP Laing testified that claimant's [hypertension](#) was the result of his workers' compensation accident. When asked why she believed that claimant's [hypertension](#) resulted from his workers' compensation accident, NP Laing explained that during some appointments claimant was able to manage his anxiety and his blood pressure was within acceptable limits, but on other occasions claimant was "very worried, visibly upset in the exam room, his blood pressure is quite elevated" (p. 12). NP Laing had prescribed medication to address claimant's anxiety, but claimant chose to discontinue the medication. NP Laing testified that claimant's "life is okay and that really it's workers' comp that is consuming him" (p. 18). However, NP Laing did not know if claimant was married, or had any children or siblings. She did not know anything about claimant's personal life.

Dr. Wein testified that he is board certified in internal medicine and cardiology. Dr. Wein was unable to find causal relationship between claimant's [hypertension](#) and his work injury based on the medical reports provided to him. The medical records he reviewed periodically indicated that claimant suffered from [hypertension](#). Dr. Wein testified that claimant “most likely does have [hypertension](#)” (p. 32). According to Dr. Wein, “there are many causes of [high blood pressure](#), including [heart disease](#) itself, anxiety, stress, lifestyle” (p. 33). Dr. Wein did not know what caused claimant's [hypertension](#), but noted that reference was made in some of the reports that he reviewed to “[Morgellons syndrome](#),” which is an uncommon psychiatric illness, and suggested that stress resulting from that condition “can clearly also contribute to [high blood pressure](#)” (p. 34).

\*3 After listening to the medical testimony and summations by the parties, the WCLJ amended the claim to include consequential [hypertension](#). The findings made at the November 17, 2021, hearing are reflected in a decision filed November 22, 2021.

Special Funds requested administrative review, arguing that the Board should disallow the claim for consequential [hypertension](#) based on the credible opinion of Dr. Wein. In rebuttal, claimant argued that the record supported amending the claim to include consequential [hypertension](#).

## LEGAL ANALYSIS

The courts have long recognized that a consequential injury is compensable, provided there is a sufficient causal nexus between the initial work-related injury for which a claim is established and the subsequent injury (see e.g. *Matter of Barre v Roofing & Flooring*, 83 AD2d 681 [1981]; *Matter of Pellerin v N.Y.S. Dept. of Corrections*, 215 AD2d 943 [1995], lv den 87 NY2d 806 [1996], *Matter of Scofield v City of Beacon Police Dept.*, 290 AD2d 845 [[2002]]).

This claim is established for injuries to claimant's head, neck, back, knees, and pelvis resulting from a January 29, 1998, work-related motor vehicle accident, as well as for consequential chronic pain syndrome, depression, [post-traumatic stress disorder](#), and anxiety. In a January 27, 2021, report, NP Laing diagnosed [hypertensive disorder](#) which was “[n]ot well controlled due to his extreme anxiety and dealing with workers comp.” NP Laing recommended in her January 27, 2021, report that claimant increase his blood pressure medication. NP Laing testified that claimant's [hypertension](#) was causally related to his workers' compensation injury, explaining that the stress that claimant was experiencing caused fluctuations in his blood pressure, and that his blood pressure became elevated when he was unable to manage his anxiety. Special Funds' consultant, Dr. Wein, conceded during his testimony that [hypertension](#) can be caused by anxiety and stress, but failed to explain why the claimant's causally related anxiety did not contribute to his [hypertension](#). Therefore, the opinion of Dr. Wein, who did not examine the claimant and based his opinion on causal relationship solely on a review of his medical records, is less credible than that of NP Laing.

While the claimant has experienced [hypertension](#) for many years, at least since 2010, it is clear that claimant's causally related anxiety at the very least exacerbated and worsened that condition. In a January 26, 2012, report, Dr. Martin stated that claimant had [hypertension](#) which was “well controlled” by taking 10 mg of [lisinopril](#), whereas in 2021, NP Laing reported and testified that claimant's blood pressure was not well controlled even though he was taking two medications to control his [hypertension](#), that she recommended that he increase the dosage of his blood pressure medications ([lisinopril](#) [[40 mg daily] and [hydrochlorothiazide](#) [12.5 mg daily]), and that the claimant's elevated blood pressure resulted from his causally related anxiety.

\*4 Therefore, the Full Board finds that the preponderance of the credible evidence in the record supports amending this claim to include consequential [hypertension](#).

## CONCLUSION

ACCORDINGLY, the WCLJ decision filed November 22, 2021, is AFFIRMED. No further action is planned by the Board at this time.

Chair - Clarissa Rodriguez

2022 WL 3135052 (N.Y.Work.Comp.Bd.)

---

End of Document

© 2022 Thomson Reuters. No claim to original U.S. Government Works.