

2022 WL 12804781 (N.Y.Work.Comp.Bd.)

Workers' Compensation Board

State of New York

EMPLOYER: DIVERSIFIED AUTOMOTIVE INC

Case No. G285 8781

Carrier ID No. FQS4598 W054001

October 18, 2022

*1 Charter Oak Fire Ins Co
c/o Travelers Insurance
PO Box 4614
Buffalo, NY 14240
Law Offices of John Wallace
P.O. Box 2903
Hartford, CT 06104
Date of Accident 9/11/2020

The Full Board, at its meeting held on September 20, 2022, considered the above captioned case for Mandatory Full Board Review of the Board Panel Memorandum of Decision filed March 28, 2022.

ISSUES

The issues presented for Mandatory Full Board Review are:

- (1) whether the claim should be established for vision loss; and
- (2) whether the record supports awards after December 15, 2020.

The Workers' Compensation Law Judge (WCLJ) amended the claim to include vision loss (convergence insufficiency), found C-8.1 (Part B) objections in favor of the provider, and made awards from September 19, 2020, to February 22, 2021.

The Board Panel majority affirmed the WCLJ decision.

The dissenting Board Panel member would rescind the amendment of the claim to include vision loss, find C-8.1 (Part B) objections in favor of the carrier, and rescind awards after December 15, 2020.

The carrier filed an application for Mandatory Full Board Review on April 27, 2022, arguing that the claim for vision loss should be disallowed based on the credible opinion of its consultant, Dr. Agrawal, that the record does not support awards after December 15, 2020, and that the C-8.1 (Part B) objections should be found in favor of the carrier.

The claimant filed a rebuttal on May 9, 2022, arguing “that the majority and the Law Judge properly and credibly evaluated the evidence and there should be nothing in the record to disturb it.”

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

FACTS

Claimant, a truck driver, filed a C-3 (Employee Claim) on September 30, 2020, reporting that on September 11, 2020, he was injured when he struck his face on a tote. Claimant indicated that he sustained cuts on his nose and cheeks, a bump over his right eye, and was suffering from headaches.

In an October 1, 2020, report, claimant's treating neurologist, Dr. Goel, noted a history of claimant striking his face at work on September 11, 2020. Claimant reported some bleeding from his face and soft tissue swelling in his right forehead following the accident. Claimant reported feeling tired and foggy the next day. He began to develop severe headaches and the bump on his forehead persisted. At the time of the examination, claimant continued "to have headaches, on the top of his head, throbbing, light and sound sensitivity, nausea and vomiting[.]" and pain in his neck and shoulders. Dr. Goel found claimant to be temporarily totally disabled. Dr. Goel indicated that she had ordered an MRI of claimant's brain and cervical spine.

An MRI of claimant's brain was performed on October 21, 2020, the results of which were unremarkable.

*2 Claimant was examined by the carrier's consulting neurologist, Dr. Agrawal, on December 15, 2020. In his report, Dr. Agrawal stated that claimant complained of "daily headaches, which are at the back of his head and they are throbbing and pressure-like in nature." Dr. Agrawal found no objective findings on neurological examination and concluded that claimant had no neurological disability, could return to his regular job without restrictions, and did not require any further neurological treatment or diagnostic testing. Dr. Agrawal diagnosed [cervicogenic headaches](#) which he found were causally related to the September 11, 2020, accident. Regarding his assessment of claimant's cranial nerves, Dr. Agrawal wrote:

Visual fields were full to confrontation. Extraocular movements were full. There was no [nystagmus](#) or [diplopia](#). Pupils were equal and reactive to light and accommodation. Corneal reflex was present bilaterally. There was no [facial asymmetry](#). Hearing was normal. Air conduction was better than bone conduction. Tongue was midline and palate moved symmetrically.

In a January 13, 2021, report, Dr. Goel wrote:

Patient reports that although he has had resolution of majority of his musculoskeletal pain, he is not quite sure about his vision. He reports being hesitant to drive. His mother is driving him everywhere for now. He took an uber for his visit to the IME. He reports that he was having trouble gauging distances and depth perception in the beginning that has improved significantly although he is still hesitant to drive. He is not quite sure why. He also is not sure as to how bright light at night while driving [is] going to affect him.

Dr. Goel stated in her January 13, 2021, report that claimant was "[p]ositive for blurred vision and photophobia." Dr. Goel stated that claimant's "work involves driving and I am concerned that his vision issues may preclude that activity." According to Dr. Goel, claimant "could return to work with accommodations to hold [off] on driving for now, while he can get vision rehab and evaluation by a neuroophthalmologist." Dr. Goel stated that claimant "[h]as convergence insufficiency on eye movements." In a January 13, 2021, note, Dr. Goel indicated that claimant could return to work on January 14, 2021, with limitations of "NO operating heavy equipment or operating motor vehicles."

The carrier filed a C-8.1 (Notice of Treatment Issue(s)/Disputed Bill Issue(s) - Part B Notice of Objection to Payment of a Bill for Treatment Provided), contending that it should not be liable for treatment rendered by Dr. Goel on January 13, 2021, based on Dr. Agrawal's finding that claimant did not require any further neurological treatment or diagnostic testing.

On January 26, 2021, Dr. Goel filed C-4AUTH (Attending Doctor's Request for Authorization and Insurer's Response) forms requesting authorization for claimant to be referred to a neuroophthalmologist and to undergo vision rehab. The carrier denied both requests based on an addendum report by Dr. Agrawal dated February 15, 2021, in which the doctor found that "[f]rom

a neurological point of view, there is no causal relationship between [claimant's] vision impairment and the injuries sustained on 9/11/20.”

*3 In a February 16, 2021, report, Dr. Goel found that claimant could return to work without restrictions on February 22, 2021. According to Dr. Goel, claimant reported “feeling [almost] back to his normal self and wants to resume regular work. His neurological examination today does not show any obvious impairment to preclude him from returning to work.” The carrier filed a C-8.1 (Part B), contending that it should not be liable for treatment rendered by Dr. Goel on February 16, 2021, based on Dr. Agrawal's finding that claimant did not require any further neurological treatment or diagnostic testing.

By decision filed March 17, 2021, the WCLJ established the claim for injuries to claimant's head and nose, set his average weekly wage at \$1, 451.42, and directed the parties to depose Dr. Goel and Dr. Agrawal, “regarding vision loss.”

Dr. Agrawal was deposed on April 20, 2021, and testified that he diagnosed claimant as having [cervicogenic headache](#) causally related his September 11, 2020, accident. Dr. Agrawal explained how he arrived at the diagnosis of [cervicogenic headache](#):

Well, so typically they are the most common form of injury when people get hurt in the head. There is a [whiplash injury](#) that can cause neck pain and that can radiate to the head, and his brain MRI was normal.

Neurological examination was normal. So based on that physiological data, physical clinical presentation, and his symptoms, that's how I arrived at the diagnosis.

(Deposition, Dr. Agrawal, 4/20/21, p. 8). Dr. Agrawal testified that the impairment of claimant's vision was not causally related, explaining:

When I did examine him, I did not find any neurological deficit. MRI was completely normal. So I do not think there was any causal relationship to this injury. If you have loss of vision, you have got to see some injury in the occipital cortices. There was no evidence of any [stroke](#) or anything of significance on the brain MRI.

(pp. 9-10). Dr. Agrawal testified on cross-examination that claimant did not complain of any visual symptoms during his examination. When asked to explain what convergence deficiency is in laymen's terms, Dr. Agrawal stated:

What [Dr. Goel] is trying to say is that when you try to converge, if you bring a finger or some object close to your nose from a distance, that both the eyes kind of do a conduction, both eyes are coming to the middle, so there is some difficulty. I was just wondering has he been seen by an ophthalmologist or the neurologist is treating for this condition? (p. 13). According to Dr. Agrawal, if claimant had convergence deficiency, it could not be causally related to his accident. Dr. Agrawal explained that convergence deficiency is common and “[i]t is a totally incidental finding. There is no way the [head injury](#) can cause precisely this convergence deficiency” (p. 14).

Dr. Goel was deposed on May 4, 2021, and testified:

So there's two components to our vision. One is our visual acuity, which is just, you know, how good your eyes are, but the second is the eye movement. And the two eyes need to coordinate with each other in order to have a clear image formed in your brain. So, if the two eyes are not coordinating very well with each other, that can lead to impaired vision because your - you know, your vision would be blurry. (Deposition, Dr. Goel, 5/4/21, p. 6). Convergence insufficiency is an impairment involving eye movement abnormality. Dr. Goel diagnosed claimant with convergence deficiency and believed that the condition was causally related to his September 11, 2020, accident. Dr. Goel did not know whether claimant was experiencing convergence insufficiency before his September 11, 2020, accident, although it was not something that she noted during her initial examination of the claimant in October 2020. Convergence insufficiency may occur immediately following trauma, or “after a time lag” (p. 9).

*4 On cross-examination, Dr. Goel testified that when she examined claimant in October 2020, she would have noticed any convergence insufficiency, had it been present, during eye movement examination, which is part of a neurological examination. However, she did not note any convergence insufficiency in October 2020. In January 2021, she did note convergence insufficiency during her neurological examination of the claimant. She tested for convergence insufficiency by moving her finger while claimant focused his eyes on it. Dr. Goel testified that “[w]hen we focus on something, we converge our eyes. But in a person with [head trauma](#), doing those things can be very hard because they are not able to converge their eyes” (p. 11). Dr. Goel did not believe that claimant was “faking it” when he tested positive for convergence insufficiency in January 2021. When she examined claimant in February 2021, convergence insufficiency was not noted. Claimant appeared to be under a lot of pressure from his employer to return to work at the time of the February 2021 examination.

By a decision filed August 5, 2021, the WCLJ amended the claim to include vision loss (convergence insufficiency), found C-8.1 (Part B) objections in favor of the provider, and made awards from September 19, 2020, to September 26, 2020, at the temporary total rate of \$966.78 per week (payable as reimbursement to the employer), from September 26, 2020, to December 15, 2020, at the temporary total rate, and from December 15, 2020, to February 22, 2021, at the temporary partial disability rate of \$483.81 per week. The WCLJ also approved a fee of \$600.00 to claimant's attorney.

The carrier requested administrative review, arguing that the claim for vision loss should be disallowed based on the credible opinion of Dr. Agrawal.

In rebuttal, claimant asked that the WCLJ decision be affirmed, arguing that the record supports a finding that he “suffered from convergence insufficiency regardless of whether it resolved.”

LEGAL ANALYSIS

“It [i]s claimant's burden to establish a causal relationship between his employment and his disability by competent medical evidence (see [Matter of Sale v Helmsley-Spear, Inc.](#), 6 AD3d 999 [2004]; [Matter of Keeley v Jamestown City School Dist.](#), 295 AD2d 876 [2002]). To this end, a medical opinion on the issue of causation must signify ‘a probability as to the underlying cause’ of the claimant's injury which is supported by a rational basis ([Matter of Paradise v Goulds Pump](#), 13 AD3d 764 [2004]; see [Matter of Van Patten v Quandt's Wholesale Distribs.](#), 198 AD2d 539 [1993]). [M]ere surmise, or general expressions of possibility, are not enough to support a finding of causal relationship’ ([Matter of Ayala v DRE Maintenance Corp.](#), 238 AD2d 674 [1997], [affd](#) 90 NY2d 914 [1997]; see [Matter of Zehr v Jefferson Rehab. Ctr.](#), 17 AD3d 811 [2005])” ([Matter of Mayette v Village of Massena Fire Dept.](#), 49 AD3d 920 [2008]).

*5 Here, Dr. Goel credibly testified that claimant tested positive for convergence insufficiency when she examined him in January 2021, and that the condition was causally related to the [head trauma](#) claimant sustained in his September 11, 2020, accident. Dr. Goel explained that “[w]hen we focus on something, we converge our eyes. But in a person with [head trauma](#), doing those things can be very hard because they are not able to converge their eyes.” She credibly testified that convergence insufficiency may occur immediately following trauma or, as here, “after a time lag.” While the condition appears to have resolved by the time of Dr. Goel's February 16, 2021, examination, the credible evidence in the record nonetheless supports establishing this claim for causally related convergence insufficiency, and to find C-8.1 (Part B) objections in favor of the provider, Dr. Goel.

In addition, the awards made by the WCLJ are supported by the October 1, 2020, and February 16, 2021, reports of Dr. Goel, finding claimant to be temporarily totally disabled.

CONCLUSION

ACCORDINGLY, the WCLJ decision filed on August 5, 2021, is AFFIRMED. No further action is planned by the Board at this time.

Clarissa Rodriguez
Chair

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