

**BEFORE THE INDUSTRIAL ACCIDENT BOARD
OF THE STATE OF DELAWARE**

RONALD GOODCHILD,)	
)	
Employee,)	
)	
v.)	Hearing No. 1465323
)	
R&E EXCAVATION,)	
)	
Employer.)	

DECISION ON PETITION TO DETERMINE COMPENSATION DUE

Pursuant to due notice of time and place of hearing served on all parties in interest, the above-stated cause came before the Industrial Accident Board on Friday December 21, 2018, in the Hearing Room of the Board, in Wilmington, Delaware.

PRESENT:

PETER HARTRANFT

VINCENT D'ANNA

Eric D. Boyle, Workers' Compensation Hearing Officer, for the Board

APPEARANCES:

Timothy E. Lengkeek, Attorney for the Employee

Joseph Andrews, Attorney for the Employer

NATURE AND STAGE OF THE PROCEEDINGS

Ronald Goodchild (“Claimant”) sustained injuries to his neck, low back and left shoulder as a result of a motor vehicle accident in the course and scope of his employment with R&E Excavation (“Employer”) on October 2, 2017. On May 24, 2018 Claimant filed a Petition to Determine Compensation Due seeking acknowledgement that his accident and related injuries were work related. The parties have agreed that certain injuries are compensable. The narrow issue for the Board to determine is whether a recommended lumbar spine surgery is causally related to the accident. Employer has also raised an issue of joint Employment with another employer, Crawford Trucking. A hearing was held on Claimant’s petition on December 21, 2018. This is the Board’s decision on the merits.

SUMMARY OF THE EVIDENCE

Dr. Matthew Eppley, a board certified neurosurgeon, testified by deposition on behalf of Claimant. Dr. Eppley has been treating Claimant’s cervical and lumbar spine for number of years before the work accident in 2017. Dr. Eppley was provided by Claimant’s counsel a notebook of Claimant’s medical records for review and deposition preparation. Dr. Eppley performed lumbar spine surgery on January 13, 2014. That procedure involved a fusion and an L5 laminectomy. Dr. Eppley noted that Claimant’s L5 bone was not correctly formed and there was no room to actually put screws into it. Claimant had a fusion from L4 to S1. Dr. Eppley testified that Claimant had a good result from that procedure and was back to work. In March 2015 he had another procedure to remove the screws from the S1 level. Dr. Eppley noted that Claimant was having localized pain in the area where the screws were and because of the prior procedure and the situation with the L5 vertebrae they had to use rather large screws. There was also a rod installed. Sometimes even after

the fusion is complete this hardware continues to provide a nagging pain. Claimant was doing well with some continued achiness in the back.

Dr. Eppley agreed that he did not put any restrictions on Claimant at this point. Claimant saw Dr. Eppley on October 5 and October 6, 2017. The initial note reads that Claimant suffered a motor vehicle collision when his dump truck was hit by a large chemical truck. Claimant had worsening of his neck pain on the right side and an increase in his low back pain so that it was hard to walk. He also had pain shooting down the backs of his legs to the knee. At the cervical spine level he had a CAT scan but the radiologist felt there could be loosening of screws at the C4 level. Dr. Eppley's assessment after that visit was of a patient with a prior cervical and lumbar fusion involved in a truck accident. He may have activated his pseudo-arthritis and loosened screws at C4. He will continue to be followed clinically. Since there was no imaging of the lumbar spine Dr. Eppley wanted to redo imaging there. Claimant returned to Dr. Eppley's office the next day after being seen in the hospital. He was having low back and extremity pain. Claimant was following up with a lumbar CAT scan. The CAT scan showed a solid fusion at L4 to S1 with no fractures and subluxations. He was given some steroids to help with inflammation. Dr. Eppley put Claimant on light duty and referred him to Dr. Downing for pain management.

According to the records Claimant followed up with Dr. Downing and had several injections in November 2017. Dr. Eppley testified these were selective nerve root injections. He testified that they specifically target the S1 nerve to calm down the inflammation. This is based on Claimant's complaints of the pain down the backs of his legs. Claimant returned to see Dr. Eppley in November, noting that the injections helped and more were planned. Dr. Eppley was not 100% sure that Claimant was fused in the S1 level. He felt that there may have been some loosening of the screws. Dr. Eppley explained that occasionally the screws work loose after being moved back

and forth a number of times. Loosening can also happen if a patient is slow to fuse. Claimant continued with low back pain and bilateral leg pain on a constant basis. His pain was interfering with activities of daily living. Dr. Eppley plan to repeat the lumbar CAT scan and reassess Claimant in six months. Dr. Eppley did not recommend that Claimant continue working in rough riding trucks, lifting more than 50 pounds or running heavy machinery for any length of time. Dr. Eppley encouraged Claimant to do walking and core strengthening activities. Dr. Eppley also thought a functional capacity evaluation would be helpful. Dr. Eppley summarized that as of November 2017 Claimant was not able to do a large portion of his prior job duties and continued with electric pain shooting down the backs of his legs. The injections only gave temporary relief. There was a CAT scan showing a possible loosening around the S1 screws. Dr. Eppley gave Claimant a disability note and notated that surgery may be likely.

Dr. Eppley next saw Claimant on May 8, 2018. Claimant was still having pain in his back going down to his buttocks especially when he stands. Increased activity caused a worsening pain. Claimant noted that he had stopped smoking. The repeat CAT scan noted a solid fusion across the L5-S1 disc space. Dr. Eppley didn't think the screws are showing any signs of more loosening. The assessment was a solid fusion at L5-S1. Claimant still had aching pain and was unable to work. At that point Dr. Eppley offered a removal of the instrumentation to try to improve this pain. The instrumentation does go across the L4-5 level which is not fused and could be causing problems. Claimant would not be able to return to heavy lifting is he did before. Dr. Eppley believed that the surgery would be related to the accident from October 2017. He noted that his patient was 2 ½ years out from the original fusion and working a job driving a dump truck. He hadn't been in for quite some time he wasn't on any pain medication and then he had the accident. Now Claimant has severe pain down the backs of both legs and is contemplating another surgery.

Dr. Eppley noted that Claimant's back was a little achy before the accident however now it is to the point where the injections didn't work and he is considering surgery. Dr. Eppley also believes that the surgery is reasonable and necessary. He felt that all of the treatment that Claimant had including the emergency treatment and the visits with Dr. Downing have been reasonable necessary and related to this accident. As of the May 8, 2018 date Dr. Eppley placed Claimant on a sedentary duty status. Dr. Eppley noted that he had just saw Claimant on the day the deposition there was no change in the plan. He noted that he would probably do new scans cause of the delay.

On cross examination Dr. Eppley agreed that Claimant's subjective complaints of pain was his main problem. Dr. Eppley agreed that the Christiana Care hospital notes indicated that Claimant had no acute skeletal injury and was in no acute distress. Their diagnosis was mild neck pain and the main complaint was left shoulder pain. Dr. Eppley agreed there was nothing in the emergency room records regarding lumbar spine complaints. Dr. Eppley further agreed that he did not issue any formal workers compensation providers' forms in this case. Dr. Eppley agreed that he saw Claimant on October 5, October 6, November 7 and then May 8, 2018. Dr. Eppley noted that at that time Claimant was also under the care of Dr. Downing. He also wanted to let the fusion healing process continue and wait for a while before getting another CAT scan. Dr. Eppley agreed that Claimant did not call to schedule an appointment with him during the interim. In Dr. Eppley's opinion the diagnosis connected with the accident is that Claimant suffered a bilateral S1 radiculopathy and worsening back pain. It also seemed to have aggravated his neck pain. Dr. Eppley noted that Claimant may not have said anything to him about his shoulder because that's not his area of specialty. Dr. Eppley agreed that in Dr. Piccioni's report Claimant was noted as stating that he was not on any therapy or taking medication and had no plans for surgery. Dr. Eppley agreed that lifting 50 pounds would be moderate duty. Dr. Eppley reduced this to sedentary

because Claimant did not improve after treatment. Dr. Eppley didn't think Claimant has gotten worse since he went on restrictions. He further noted that Claimant's job is more than lifting 50 pounds because it involves the a lot of activity around trucks that include bouncing around while sitting in the truck. Dr. Eppley didn't want to simply say just don't lift 50 pounds but go back to your heavy-duty trucking work. Dr. Eppley also indicated he was trying to restrict Claimant from returning to a heavy duty job that may worsen his back. He agreed that he recommended a functional capacity evaluation which Claimant has not gotten yet. He felt that this would provide a more accurate assessment of his capabilities. Dr. Eppley agreed that he had not placed any specific restrictions on Claimant's activities of daily living.

Claimant testified on his own behalf. He testified that he worked for his father at a trucking company called Goodchild Inc. This involved towing, hauling and generally driving big trucks. In 2016 he got a job driving dump trucks for R&E Excavation. Claimant noted that Mr. Crawford hired him but he was working for both companies. He receives two different checks. Claimant explained how he is given job assignments. He is sent a text on which jobsite to go for that particular workday. He agreed that on October 2 he received a text from R&E indicating that he was driving for R&E that day. He agreed that R&E was listed on the police report. Additionally Claimant testified that the secretary from R&E came to the emergency room. He believed he was working for R&E excavation on the day of the accident.

Claimant explained a bit about the accident. He was working on the Route 301 bypass project hauling dirt back and forth. He was coming to the intersection of Hyde Crossing road and Route 13 with a full load. As he was crossing he saw a tanker truck which hit him broadside. Claimant testified that he was knocked over the console. Claimant agreed that following his back surgery in 2015 he had returned to work full duty. He explained that with his current back pain he

cannot stand or sit for long periods of time. His pain is from his surgery site down his leg. He also has trouble sleeping. Claimant agreed that Dr. Eppley recommended surgery and they are just now waiting on approval. Claimant testified that he is not currently working although he has been looking for work.

On cross examination Claimant confirmed that Crawford hired him and he received paperwork from Crawford. He understood that Crawford and R&E were partners. He does get a 1099 from Crawford. Claimant agreed he normally did the 301 project for Crawford. Claimant further elaborated as to how this job situation worked out. Every night he would get a text with the location and which employer he was driving for that day. He received a text on the day before the accident from Eric, his supervisor at R&E. Claimant is 68 years old. Claimant did tell the emergency room that his back was hurting but lots of things were bothering him that day. The nurses note in the emergency room records did indicate a complaint of low back pain. The "History of Present Illness" section of the emergency room record noted that Claimant denied low back pain. He agreed that the section under physical exam indicated his back was non-tender. Claimant was shown the ambulance report which indicated that he had been knocked unconscious and was slumped over the console. It also indicated a complaint of low back pain and leg pain.

Dr. Lawrence Piccioni, a board certified orthopedic surgeon, testified by deposition on behalf of Employer. Dr. Piccioni summarized the importance of a records review as well as obtaining a subjective history from the patient. He noted that the history should comport with the medical records. Dr. Piccioni examined Claimant on March 27, 2018 and in conjunction with his examination he was able to review Claimant's medical records. He also reviewed Dr. Eppley's deposition transcript in preparation for his testimony. Dr. Piccioni reviewed Claimant's medical history going back to around 2006. Dr. Piccioni noted the history of a motor vehicle accident

when Claimant's dump truck was involved in an accident with another truck. As part of the history Claimant indicated that at the time he was employed by the Crawford company. Claimant told the doctor that he worked for Crawford at the time of the injury in October 2017. Claimant stated that he worked for both Crawford and R&E Excavation as they were essentially together but he was working for Crawford.

On the day of the examination Claimant's chief complaints were in three areas, the neck, the left shoulder and the low back. At the time of the examination Claimant had minimal complaints to the neck, left shoulder was fine, and his primary complaint was the low back problem. Dr. Piccioni noted that Claimant previously had a rotator cuff repair surgery on the left shoulder. Following treatment in the emergency room Claimant never had any follow-up treatment with regard to the left shoulder. Dr. Piccioni noted that you look for objective findings to verify subjective complaints on physical examination. In particular with Claimant's diagnosis of bilateral S1 radiculopathy you are looking for a specific pattern of pain. You also look for neurologic deficits. This could be reflexes like ankle jerks. You could also look for atrophy of the calf muscle with that diagnosis. In Claimant's case you can compare diagnostic studies from before and after the accident. None of the diagnostic studies that Claimant had following the accident revealed any objective signs of acute injury for the three symptomatic areas.

On physical examination Dr. Piccioni confirmed that Claimant had not taken any medication. Claimant had neck pain at a 4/10 on the right side. Back pain was 5/10 in the low back with symptoms going to the bottom of both legs towards the top of both feet. Claimant was using no assistive devices and had no trouble sitting during the history portion of the exam. Claimant had no trouble getting on and off the examining table. Dr. Piccioni noted that Claimant was quite muscular given his age of 67. Dr. Piccioni noted that Claimant has had neck surgery, shoulder

surgery and back surgery predating the accident. Prior to that he had been in the landscaping business and as a typical labor was pretty muscular. As we get older we lose muscle mass so it was impressive to the doctor that Claimant was muscular at his age. Dr. Piccioni did not detect any atrophy. Posture and gait was normal, considering that Claimant already had a two level fusion prior to the accident. Claimant did not have any spasm in the lumbar spine but had mild tenderness in the gluteal area. By examination there were no findings to comport with an S1 radiculopathy. There was some questionable decreased sensation around the L5 dermatomal pattern. Straight leg raising as well as sciatic tension signs were negative. Dr. Piccioni did not feel that there was any findings to go along with the significant complaints of pain. There were no clinical signs of a true radiculopathy.

Dr. Piccioni noted that the MRI scans one done in 2016 and one in 2017, when compared showed a stable condition. Dr. Piccioni summarized Claimant's previous surgical history with regard to his back and neck. Dr. Piccioni agreed that on the date of the accident in the hospital Claimant denied back pain. The physical exam findings on that date also indicated that the low back was non-tender. Dr. Piccioni testified that based on that examination you wouldn't have expected any significant problems ongoing after the accident. Dr. Piccioni agreed that the emergency room records provided an ongoing problem list that included arthritis, back pain, cervical stenosis, sciatica and chronic thumb pain. He agreed that the records also indicated there was no acute skeletal injury. Dr. Piccioni testified that was one of the best records to use with respect of how much injury there was at the time of this accident. They indicated Claimant had mild neck pain but the main complaint was to the left shoulder. If Claimant had a significant injury you'd expect significant subjective complaints as well as objective findings such as spasm, hematoma and more of an acute finding rather than chronic loosening on x-rays. Dr. Piccioni

agreed that Claimant was released by the hospital to return to full duty work without any restrictions on October 9, 2017. As part of his examination Dr. Piccioni testified that Claimant told him about his work restrictions. His main concern was to be able to drive given the bouncing of the truck. He also indicated he had a 50 pound work restriction but didn't appear to be concerned about that. Dr. Piccioni agreed that Claimant had never returned back to work following the accident. He just didn't think he would be able to handle the bouncing up and down in the vehicle. Dr. Piccioni agreed that when Claimant saw Dr. Eppley there was some concern for loosening of the S1 lumbar screws, however based on the most recent CAT scan that was not the case. Dr. Piccioni called the ongoing lumbar complaints a distracting injury. He had minimal treatment and a gap in treatment which indicated to him that the condition wasn't worsening.

Dr. Piccioni was concerned that Claimant had not returned to work even on a trial basis. He noted that there was a possibility of a functional capacity examination but it didn't appear that one had been ordered yet. He felt you should have somebody on a strict timetable when you see them back to potentially lift work restrictions. Dr. Piccioni agreed that at the time of his examination in March Claimant had no issues with station or gait. In May when Dr. Eppley saw him there were no objective findings to put any restrictions on Claimant with regard to his CDL. In that note there was an application for a special handicap license plate and on that note it is indicated that Claimant cannot walk safely without the use of assistance as the reasoning for the handicapped plate. Dr. Piccioni noted that this was signed off as a permanent handicap rather than a 90 day or 30 day temporary. Dr. Piccioni's opinion there was nothing keeping Claimant out of a full duty return to work at the time that he saw him. There didn't appear to be anything that happened since Dr. Piccioni's examination in March to the May 8 examination by Dr. Eppley indicating a significant change justifying a permanent handicapped tag. At the time Dr. Piccioni

saw Claimant in March he would not have given him a note for handicap license even on a temporary basis. Dr. Piccioni indicated that for a CDL license you usually have to have a physical every year. If you get a permanent handicapped plate that makes you ineligible for a CDL licence.

Dr. Piccioni agreed that the surgery discussed by Dr. Eppley, the hardware removal, is to reduce the amount of pain. Dr. Piccioni was concerned because there was potentially some loosening on the initial studies but then no evidence of loosening on the most recent CAT scan. There were no physical findings either in Dr. Eppley's examinations or his own examination that would indicate that there was a prominent hardware issue that would be another reason to remove it. There was also no infection concern. None of the injections that Claimant had were hardware blocks. Dr. Piccioni was not certain that hardware removal at this point would be reasonable and certainly is not causally related to the accident. So there were no objective findings to conclude that hardware removal was required. Dr. Piccioni explained why he did not believe that it was related to the accident. If it was he would have expected to see more objective findings and subjective symptoms initially and on the CAT scans. He would've seen edema for example. The physical examination would be different, you could actually palpate over the hardware and elicit pain if it was loose. There were no studies that indicated an acute hardware loosening either in the cervical or lumbar spine. He did not have any findings on physical examination to verify the subjective complaints.

Dr. Piccioni's diagnosis would be of a resolved sprain of the left shoulder and a sprain of the lumbar spine superimposed on chronic pain. He felt there was no need for the surgery and no need for the sedentary work status. Claimant was back to his baseline pain from prior to the accident. Dr. Piccioni noted it is important to remember that there was a scan done in 2016, 19 months after Claimant's most recent lumbar spine surgery. This scan was done because of chronic

back pain and difficulty walking. Dr. Piccioni feels that that is what Claimant has been complaining of since March 27, 2018. He did not see anything in the records to indicate that condition had been made worse by the accident. Dr. Piccioni believed that the injuries connected with the 2017 accident had by this point basically resolved. This includes the neck for which he had very little treatment other than a Medrol Dosepak. He did not have any physical therapy or injections to the neck. He did not think that there was any confirmed S1 radiculopathy. He disagrees with Dr. Eppley with respect to the persistent problems and surgical management as related to the accident. Dr. Piccioni agreed that Dr. Eppley appeared to rely entirely on Claimant's subjective statements and complaints. In Dr. Piccioni's mind all of the restrictions have been based on the subjective symptoms. Dr. Piccioni summarized, causation aside, the recovery period for a hardware removal procedure.

On cross examination Dr. Piccioni admitted that he believed Claimant's lumbar spine was injured in the motor vehicle accident. He agreed that the treatment for the lumbar spine including emergency room visits, treatment with Dr. Eppley, and injections would be causally related. He also in his report put him on medium duty restrictions. He did not think at this point that that the recommendation for a hardware removal was reasonable because of the failure to administer hardware blocks and the most recent CAT scan showing no evidence of loosening. He assumed that Dr. Eppley was basing it on his clinical experience but he could see nothing objective to base it on. Dr. Piccioni agreed that he does not do spine surgery although he has training in spine treatment. He has not been involved in any spine surgeries where hardware was removed due to pain. Dr. Piccioni agreed that Claimant appeared to be truthful in his history and was cooperative during the examination. Dr. Piccioni also agreed that there were no signs of symptom magnification and his report he noted that there was no significant Waddell signs. Dr. Piccioni

agreed that he did not see any records of treatment for the lumbar spine between the time that Claimant got the CT scan in 2016 and the accident in October 2017 there was also no evidence of any intervening injuries to the lumbar spine. Dr. Piccioni agreed that Dr. Eppley had offered Claimant lumbar surgery to remove the hardware prior to the six-month gap in treatment. Dr. Piccioni reiterated that in his mind there was really no conservative treatment for the spine other than the three injections. During that time, Dr. Piccioni then summarize what he would do with one of his patients complaining of lumbar spine pain and what symptoms would trigger him to refer the patient to a surgeon. Dr. Piccioni did confirm that you don't have to have a radiculopathy for a hardware removal. Although you would want to see some loosening and try a hardware block to verify that. Dr. Piccioni confirmed that his medium duty restrictions noted in the report were solely based on Claimant's subjective complaints.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Causation

The Delaware Workers' Compensation Act states that employees are entitled to compensation "for personal injury or death by accident arising out of and in the course of employment." DEL. CODE ANN. tit. 19, § 2304. If there has been an accident, the injury is compensable if "the injury would not have occurred but for the accident. The accident need not be the sole cause or even a substantial cause of the injury. If the accident provides the 'setting' or 'trigger,' causation is satisfied for purposes of compensability." *Reese v. Home Budget Center*, 619 A.2d 907, 910 (Del. 1992). "A preexisting disease or infirmity, whether overt or latent, does not disqualify a claim for workers' compensation if the employment aggravated, accelerated, or in combination with the infirmity produced the disability." *Reese*, 619 A.2d at 910. *See also State v. Steen*, Del. Supr., 719 A.2d 930, 932 (1998)("[W]hen there is an identifiable industrial accident,

the compensability of any resultant injury must be determined *exclusively* by an application of the ‘but for’ standard of proximate cause.”)(Emphasis in original); *Page v. Hercules, Inc.*, Del. Supr., 637 A.2d 29, 33 (1994). “The claimant has the burden of proving causation not to a certainty but only by a preponderance of the evidence.” *Goicuria v. Kauffman's Furniture*, Del. Super., C.A. No. 97A-03-005, Terry, J., 1997 WL 817889 at *2 (October 30, 1997), *aff'd*, 706 A.2d 26 (Del. 1998).

Both parties agree that Claimant suffered a work related injury on October 2, 2017. The parties and the experts agree that Claimant injured his left shoulder, cervical spine and lumbar spine. The question is essentially over the severity of his injuries. The issue in this case is whether Claimant sustained sufficient injury to his lumbar spine so that he now requires a surgery to remove hardware in place from a prior lumbar spine fusion procedure. In other words the Board must answer the question of whether this accident aggravated Claimant’s chronic back condition to the extent that surgery is now required to alleviate the increased pain. Claimant must establish that the surgery recommended by Dr. Eppley is reasonable, necessary and causally related to the accident. It is the Claimant’s burden to establish this relationship by a preponderance of the evidence. After hearing testimony and reviewing all the evidence presented, the Board finds that Claimant has not met his burden to establish a causal connection between the accident and the recommended surgery. The Board relies on the medical opinion of Dr. Piccioni in reaching this conclusion.

The Board finds Dr. Piccioni’s opinion more persuasive than that of Dr. Eppley. *See, Standard Distributing Co. v. Nally*, Del. Supr., 630 A.2d 640, 646 (1993). Dr. Eppley’s causation opinion relies on the history presented by Claimant as well as his subjective complaints. *See, Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del.1988). The evidence is conflicting on whether Claimant had complaints of low back pain immediately following the accident. He did

shortly thereafter report back pain to Dr. Eppley in any case. That is not necessarily the issue as Dr. Piccioni admitted that Claimant injured his low back in the accident. However the lack of significant complaints and objective findings immediately following the accident is relevant and probative. It is also notable that the diagnostic imaging was the same before and after the accident. There was also no signs of acute findings, such as edema, on the CAT scan taken just after the accident. The second scan taken in 2018 confirmed that there was no loosening of the hardware. So in the end the rationale for the hardware removal procedure is based on Claimant's complaints of pain. The 2016 CAT scan is instructive here because there is mention of Claimant having back pain and difficulty walking. This is the same complaint noted on the post-accident request for a handicapped license plate. This supports Dr. Piccioni's view that the hardware removal would be related to Claimant's chronic back pain for which he already had a two level fusion and a previous hardware issue. In the Board's view there was no long term significant change in Claimant's condition following the accident. Had Claimant's condition worsened he could have received treatment in the interim between visits with Dr. Eppley. He received no physical therapy and more importantly they did not try a hardware block in an attempt to rule out the hardware as a pain generator.

Employer also raised the possibility that Claimant was in a dual employment situation at the time of the accident based on his statement to Dr. Piccioni that he was working for Crawford Company at the time of the accident. The Board is satisfied that this was an understandable misinterpretation as Claimant was in fact working for both companies at different times. Claimant testified that he was hired by Mr. Crawford to work at both companies, but on the day of the accident he received text messages from his supervisor at R&E giving him work instructions. Frankly this was a motor vehicle accident and as such probably easier than some situations to

ascertain the correct employer. Claimant testified that R&E was noted on the Police Report so it stands to reason that he was driving an R&E truck at the time. The Board finds Claimant's testimony that on the day of this accident he was working for R&E Excavation to satisfactorily clear up this misunderstanding.

Having noted that, the issue in this case was whether the proposed lumbar spine hardware removal surgery was related to the 2017 accident. After reviewing all the evidence the Board finds that Claimant's current complaints are not casually related to the 2017 accident and he has returned to his baseline chronic back pain. Consequently the proposed surgery still would relate back to the prior fusion surgery. As a result Claimant's Petition to Determine Compensation Due is therefore, **DENIED**.

STATEMENT OF THE DETERMINATION

For the reasons set forth above, the Board finds the recommended hardware removal surgery is not causally related to the acknowledged October 2, 2017 accident. Accordingly, Claimant's Petition is hereby **DENIED**.

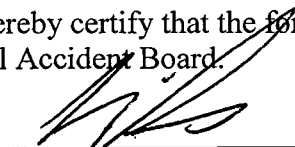
IT IS SO ORDERED THIS 8th DAY OF FEBRUARY 2019.

INDUSTRIAL ACCIDENT BOARD

for Peter 
PETER W. HARTRANFT


VINCENT D'ANNA

I, Eric D. Boyle, Hearing Officer, hereby certify that the foregoing is a true and correct decision of the Industrial Accident Board.



Mailed Date: 2-12-19


_____ OWC Staff