

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

IN RE: KIM S. HUTCHESON ) DOCKET NOS. 11 17789 & 11 18590  
CLAIM NO. AG-47107 )  
 ) PROPOSED DECISION AND ORDER

INDUSTRIAL APPEALS JUDGE: Tom M. Kalenius

**APPEARANCES:**

Claimant, Kim S. Hutcheson, by  
Williams, Wyckoff & Ostrander, PLLC, per  
Dane D. Ostrander

Employer, Stormans, Inc.,  
None

Department of Labor and Industries, by  
The Office of the Attorney General, per  
Judith C. W. Morton, Assistant

In Docket No. 11 17789, the claimant, Kim S. Hutcheson, filed an appeal with the Board of Industrial Insurance Appeals on July 15, 2011, from an order of the Department of Labor and Industries dated May 17, 2011. In this order, the Department denied treatment in the form of a lumbar MRI. The Department order is **REVERSED AND REMANDED**.

In Docket No. 11 18590, the claimant, Kim S. Hutcheson, filed an appeal with the Board of Industrial Insurance Appeals on August 9, 2011, from an order of the Department of Labor and Industries dated August 5, 2011. In this order, the Department superseded a Department order dated August 1, 2011, and affirmed a Department order dated May 18, 2011, that denied responsibility for a L4-5 lumbar disc displacement and lumbrosacral neuritis. The Department order is **REVERSED AND REMANDED**.

## **PROCEDURAL AND EVIDENTIARY MATTERS**

**Docket No. 11 17789:** On August 30, 2011, the parties agreed to include the Jurisdictional History, in Docket No. 11 17789, in the Board's record. That history establishes the Board's jurisdiction in this appeal.

**Docket No. 11 18590:** On October 4, 2011, the parties agreed to include the Jurisdictional History, in Docket No. 11 18590, in the Board's record. That history establishes the Board's jurisdiction in this appeal.

1 The deposition of Robert G.R. Lang, M.D., taken on July 16, 2012, was published on receipt.  
2 All objections are overruled, except for the objections at pages 14, 15, and 17, which are overruled  
3 for foundational purposes only and the objections at pages 26, 28, 31, and 34, which are sustained.  
4 All motions are denied. The depositions of Richard Wohns, M.D., taken on July 12, 2012, and  
5 Thomas L. Gritzka, M.D., taken on April 9, 2012, were published on receipt. All objections are  
6 overruled and motions denied, except for the objection in Dr. Gritzka's deposition at page 23, which  
7 is sustained.

## **ISSUES**

1. As of May 17, 2011, did Ms. Hutcheson require treatment in the form of a lumbar MRI, resulting from the proper and necessary physical therapy treatment she underwent for the occupational disease of April 6, 2008?
  2. As of August 5, 2011, did Ms. Hutcheson develop a L4-5 lumbar disc displacement and lumbrosacral neuritis, resulting from the proper and necessary physical therapy treatment she underwent for the occupational disease of April 6, 2008?

## EVIDENCE

15 Kim Hutcheson was born on October 23, 1962. Ms. Hutcheson testified she was 5 feet  
16 6 inches tall and weighed about 145 pounds. She is right hand dominant. Ms. Hutcheson began  
17 working for Thriftway as a grocery checker in 1998.

On April 6, 2008, Ms. Hutcheson sustained an occupational disease: impingement syndrome of both shoulders with acromioclavicular joint arthritis and a cervical thoracic strain with a worsened disc protrusion at C6-7. The Department denied responsibility for Ms. Hutcheson's cervical disc desiccation and degeneration, osteoarthritis, myotonic dystrophy, and lumbar disc displacement at L4-5, and lumbosacral neuritis, including the diagnostic treatment in the form of a lumbar MRI.

23 Ms. Hutcheson denied any low back, hip or radiating pain at the onset of her shoulder,  
24 cervical and thoracic conditions in April 2008. Ms. Hutcheson underwent extensive diagnostic and  
25 surgical treatment, including steroid injections into her neck and right shoulder surgery. She last  
26 worked on January 23, 2009.

On October 13, and 14, 2010, Ms. Hutcheson participated in a work hardening evaluation conducted by a physical therapist, Vince Potts, under the supervision of William Linnenkohl. A work hardening evaluation is a protocol of physical tests performed by Ms. Hutcheson to define her physical capacities and serve as a starting point for general fitness and strengthening exercises,

1 leading to performance of simulated work activities and ultimately her return to work. The two-day  
2 evaluation was followed by over 30 conditioning sessions.

3 Ms. Hutcheson testified she felt tightness in her neck, shoulder, and upper back, as well as  
4 in the small of her back. Ms. Hutcheson complained of muscle spasms in her low back, as well as  
5 her neck and the upper back to Mr. Linnenkohl. Mr. Linnenkohl noted in the report dated  
6 October 14, 2010, that Ms. Hutcheson complained of pain, including to her low back, but no  
7 radiating symptoms.

8 Ms. Hutcheson then began a general fitness and strengthening training program designed to  
9 build strength over time. Specific exercises were performed to increase the postural capacities (sit,  
10 stand, and walk) and exertional capacities (push, pull, lift, and carry). The frequency, intensity, and  
11 duration of training were progressive.

12 Ms. Hutcheson was exercising five days per week. During the first hour, she walked on a  
13 treadmill and pedaled on a recumbent bicycle. The second and third hours, she lifted weights,  
14 rotating through the stations that exercised her arms, legs, upper body, and then lower body.  
15 Ms. Hutcheson simulated grocer duties by pushing and pulling, and then stacking bottles on  
16 gradually higher shelves from knee to just below the shoulder. After a lunch break, Ms. Hutcheson  
17 repeated the walking similar to the morning workout and then returned to the final hour of her  
18 exercise, which was additional pushing and pulling, simulating grocer duties. The sessions were  
19 supervised and interrupted by rest breaks to avoid injury.

20 Ms. Hutcheson complained of low back symptoms that worsened over time. On October 25,  
21 2010, Ms. Hutcheson complained of snapping in her groin and popping in her hip after completing  
22 the first hour of walking on a treadmill. She informed the physical therapist of her symptoms. Ms.  
23 Hutcheson's complaints were addressed and the physical therapist demonstrated stretching  
24 exercises tailored to alleviate the groin muscle symptoms.

25 Ms. Hutcheson testified she pedaled the recumbent bicycle after stretching and the pain  
26 started across her low back and into her right hip. She also complained of spasm, but did not  
27 explain which muscles spasmed. She testified that pain radiated across the side of the hip and into  
28 the groin and down the right leg. She completed the fitness regime on October 25, 2010, returned  
29 home, but did not sleep due to low back pain.

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1       On October 26, 2010, Ms. Hutcheson returned to walking and pedaling. During the last hour  
2 of her weight workout, between 11 a.m. and noon, she decreased the weights she was lifting. She  
3 completed her daily workout.

4       On October 27, 2010, Ms. Hutcheson complained of muscle pain in her neck, upper back,  
5 low back, right hip, and into the right leg. Ms. Hutcheson continued to complain of a snapping in  
6 the groin. She continued to work out to the best of her ability. She walked out to her car from the  
7 physical therapist's office, got into her car, drove home, exited the car, shut the door, stepped with  
8 her left foot, and then her right leg buckled when she stepped with her right foot. Ms. Hutcheson  
9 fell at 2 p.m.

10      On October 28, 2010, Ms. Hutcheson returned to physical training and completed her  
11 workout. She was examined by Dr. Lang on November 1, 2010.

12      Dr. Lang attended Ms. Hutcheson's conditions between August 14, 2009, and November 3,  
13 2011. Dr. Lang updated his knowledge by reviewing recent lumbar x-rays taken during an  
14 examination in January 2012.

15      During his treatment of Ms. Hutcheson in 2009 and 2011, Dr. Lang recommended fitness  
16 training and studied the cervical degenerative disc disease. Dr. Lang found diminished pinprick  
17 sensation along the claimant's right forearm, hand, and thumb in August 2009. Because strains  
18 resolve within six weeks, the claimant's ongoing pain, weakness, and incapacity implied a  
19 neurological condition. To Dr. Lang, a neurosurgeon, the clinical findings demonstrated the  
20 sensory loss was in the dermatome of the C6 nerve. Dr. Lang acknowledged that a disc herniation  
21 was not always accompanied by symptoms, but nevertheless concluded the cervical disc herniation  
22 was significant and proximately caused by the residual effects of the claimant's occupational  
23 disease.

24      Dr. Wohns, a neurosurgeon, attended Ms. Hutcheson's lumbar disc protrusions at L4-5 and  
25 L5-S1 that displaced the right S1 nerve. Dr. Lang agreed there was no significant back pain and/or  
26 right leg pain complaints prior to October 14, 2010. The medical evidence was consistent in  
27 diagnosing herniated discs at L4-5 and L5-S1, as well as right leg radiculopathy by January 2011.

28      Drs. Wohns and Gritzka testified that the fall on October 27, 2010, was the most likely cause  
29 of her herniated lumbar discs and that the lumbar symptoms followed the dermatome of the S1  
30 nerve root. Dr. Lang testified that Ms. Hutcheson's L4-L5 lumbar disc displacement and

1 lumbosacral neuritis, was not proximately caused by the residual effects of the occupational  
2 disease of April 6, 2008.

3 Dr. Lang relied on his familiarity with the instructions and care of physical therapists to guard  
4 against further injury to their patients for his opinion that Ms. Hutcheson's fall was related to the  
5 undiagnosed condition: muscle-wasting disease. Although Dr. Lang did not diagnose a muscle  
6 condition, his clinical findings included atrophy. On September 2, 2011, Dr. Lang measured  
7 1.5 centimeters of muscle loss in the right thigh. Dr. Lang found the atrophy significant because  
8 Ms. Hutcheson was right handed and the right thigh should have been larger, not smaller, than the  
9 left thigh. Dr. Lang also found loss of muscle mass and tone in the upper extremities.

10 Dr. Lang relied on a negative muscle biopsy of April 13, 2010, for his conclusion that the  
11 muscle loss was not caused by a muscle disease.

12 Dr. Gritzka, an orthopedist, addressed the muscle disease following his single examination  
13 on December 16, 2011. Dr. Gritzka testified the non-verifiable lumbar radicular symptoms and the  
14 inflammation of the muscles may have been due to an unrelated muscle-wasting disease.  
15 Dr. Gritzka testified the negative muscle biopsy, and the negative electrical study on January 25,  
16 2011, did not establish the absence of an undiagnosed muscle-wasting disease. Dr. Gritzka  
17 agreed there was no active electrical muscle dystrophy and the muscle inflammation was not due to  
18 rheumatology, inflammation, or infection. The wasting muscle disease was not ruled out by the  
19 negative muscle biopsy, because Dr. Gritzka recommended a further evaluation with an electron  
20 microscope.

21 Dr. Gritzka based his diagnosis of a muscle wasting disease on the small size of  
22 Ms. Hutcheson's muscles as compared to her overall size. Dr. Gritzka diagnosed shrinking and  
23 weak skeletal muscles. Dr. Gritzka agreed that muscle-wasting disease has only been recently  
24 recognized in the medical community and if it exists, its cause is unknown.

#### 25 DECISION

26 Conditions resulting from treatment are considered part and parcel of the original injury.  
27 *In re Arvid Anderson*, BIIA Dec. 65,170 (1986). The absence of a symptomatic pre-existing lumbar  
28 condition undermines the factual basis for the argument that the lumbar and right lower extremity  
29 symptoms were only a natural progression of a pre-existing degenerative lumbar condition. Even if  
30 the claimant's lumbar spine was weakened prior to the fall on April 6, 2008, and the latent or  
31 quiescent infirmity or weakened physical condition was made symptomatic by the physical therapy,

1 physical therapy, then the resulting disability is to be attributed to the occupational disease and not  
2 to the pre-existing condition. There was no controversy that physical therapy to improve her  
3 conditioning was necessary and proper treatment related to the residual effects of the occupational  
4 disease. Here, the claimant's lumbar condition, even if pre-existing, was merely a condition upon  
5 which the treatment operated.

6 Drs. Wohns' and Gritzka's causal relationship opinions were persuasive because they  
7 consistently applied the medical evidence. Although Dr. Gritzka addressed the possibility of a  
8 muscle-wasting disease as a contributing cause, there was no persuasive medical evidence  
9 presented that it was a cause without which the L4-5 lumbar disc displacement and lumbrosacral  
10 neuritis and the claimant's need for treatment in the form of an MRI would not have occurred.

11 The need for lumbar surgery performed by Dr. Wohns was not addressed by the Department  
12 orders under appeal. The Board's scope of review is limited to the orders under appeal and so the  
13 necessary and proper nature of the lumbar decompression surgery performed by Dr. Wohns on  
14 October 18, 2011, was not addressed as the Department had not passed on that issue.

15 The Department order dated May 17, 2011, in which the Department denied treatment in the  
16 form of a lumbar MRI and the Department order dated August 5, 2011, that superseded the  
17 Department order dated August 1, 2011, and denied responsibility for the L4-5 lumbar disc  
18 displacement and lumbrosacral neuritis, should be reversed. The matter should be remanded to  
19 the Department with directions to accept responsibility for the L4-5 lumbar disc displacement and  
20 lumbrosacral neuritis, as well as the lumbar MRI,

21 **FINDINGS OF FACT**

- 22 1. On August 30, 2011, and October 4, 2011, an industrial appeals judge  
23 certified that the parties agreed to include the Jurisdictional Histories in  
the Board record solely for jurisdictional purposes.
- 24 2. Ms. Hutcheson sustained an occupational disease with a manifestation  
25 date of April 6, 2008, while performing distinctive conditions of  
employment in the course of her duties as a grocery checker with  
Stormans, Inc.
- 26 3. Ms. Hutcheson's occupational disease of April 6, 2008, naturally and  
27 proximately caused the need for further medical treatment during the  
28 week of October 25 through October 28, 2010, in the form of physical  
therapy. This treatment proximately caused L4-5 lumbar disc  
29 displacement and lumbrosacral neuritis, as well as the need for a lumbar  
30 MRI.

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CONCLUSIONS OF LAW

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1. Based on the record, the Board of Industrial Insurance Appeals has jurisdiction over the parties to and the subject matter of these appeals.
  2. Ms. Hutcheson's physical therapy constituted necessary and proper medical treatment for the occupational disease onset on April 6, 2008, as contemplated by RCW 51.36.010.
  3. As of August 5, 2011, Ms. Hutcheson's L4-5 lumbar disc displacement and lumbrosacral neuritis were naturally and proximately caused by treatment for the occupational disease and should be allowed as residual effects of the occupational disease.
  4. As of May 17, 2011, Ms. Hutcheson's need for a lumbar MRI was naturally and proximately caused by treatment for the occupational disease and should be allowed as residual effects of the occupational disease.
  5. The Department order of May 17, 2011, is incorrect and is reversed. The matter is remanded to the Department with directions to provide a lumbar MRI.
  6. The Department order of August 5, 2011, is incorrect and is reversed. The matter is remanded to the Department with directions to allow Ms. Hutcheson's L4-5 lumbar disc displacement and lumbrosacral neuritis and take such other and further action as is required by the law and the facts.

OCT 02 2012

DATED: \_\_\_\_\_

*Tom M. Kalenius*

Tom M. Kalenius  
Industrial Appeals Judge  
Board of Industrial Insurance Appeals