

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

1 **IN RE: WILLIAM B. GIVENS**) **DOCKET NO. 16 23136**
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3 **CLAIM NO. Y-237032**) **PROPOSED DECISION AND ORDER**
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5 **Tom M. Kalenius, Industrial Appeals Judge** — Mr. Givens injured his shoulder and spine,
6 requiring a discectomy proximately caused by a September 22, 2003 industrial injury. The claimant
7 appeals a Department order dated December 9, 2016, which affirmed an earlier order dated May 5,
8 2016. In that order, the Department denied responsibility for a right paracentral disk extrusion at L4-5
9 as determined by medical evidence to be unrelated to the industrial injury.
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11 Dr. McFarland, an orthopedic surgeon and Dr. Lang, a neurosurgeon, agreed that the July 9,
12 2013 MRI depicted an L4-5 herniation. The preponderance of the medical evidence was persuasive
13 that the industrial injury was a proximate cause of a right paracentral disk extrusion at L4-5.
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15 The Department order dated December 9, 2016, was incorrect and is **REVERSED**. The matter
16 is **REMANDED** to the Department with directions to allow the right paracentral disk extrusion at L4-5
17 as proximately caused by the industrial injury.
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DISCUSSION

19 Mr. Givens denied he had any treatment for any back problems or suffered any
20 substantial back problems prior to the industrial injury of September 22, 2003. Mr. Givens injured
21 his shoulder and spine, and develop depression as a result of the industrial injury that occurred when
22 he lifted heavy automotive parts in the course of his employment as a mechanic.
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24 Dr. Lang, a neurosurgeon, treated Mr. Givens for his conditions and particularly reviewed the
25 diagnostic testing performed.
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27 Dr. Lang reviewed the actual films of the MRIs. In May, 2016, he reviewed the
28 lumbar MRI scans as early as March 3, 2005. The lumbar MRI report dated March 3, 2005 described
29 a mild diffuse bulging annulus at L4-5. Dr. Lang compared the 2005 study to the study performed on
30 June 9, 2004 in which some improvement had been noted at L3-4 and L5 sacral levels, but not at
31 L4-5 presumably.
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33 Dr. Lang testified that later studies described a fissure at L4-5. On July 9, 2013, Dr. Lang
34 testified that there was a disk extrusion with radiological changes at the level at the time or near the
35 time the claim was accepted for a low-back injury in March, 2005.
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1 Dr. Lang acknowledged low-back pain is caused by multiple potential causes, but disc protrusions
2 are usually preceded by low-back pain.¹ Dr. Lang's examination over time informed him of
3 Mr. Givens' ongoing discomfort in the low back from the rupture of the annulus and a herniation of
4 the central part of the disc material, often described as a fissure. Dr. Lang testified that the fissure
5 looked like a linear line and that was a change or an injury to the annulus.
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9 Dr. Lang's opinion was based on the relationship of that appearance of a linear line to the
10 injury back in 2003 because the multiple MRI scans performed over the years showed changes,
11 although not as great a change as would mandate surgery immediately.
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13 Dr. McFarland, an orthopedic surgeon, examined Mr. Givens on November 20, 2015, and
14 issued an addendum report on December 7, 2016, after reviewing an MRI of May 2, 2016, and a
15 memorandum of Dr. Lang. Dr. McFarland noted restriction of the range of motion of the left shoulder
16 and pain in the right leg as well as along the distribution of the L5 nerve root from the low back through
17 the lower extremity that was aggravated by sitting. Dr. McFarland described the location of the
18 leg pain as along the outer right calf and sweeping down into the top of the right foot. Dr. McFarland
19 concluded that the claimant's complaints correlated with the L5 dermatome and the
20 claimant's demonstration of give-way weakness. Dr. McFarland defined give-way weakness as the
21 presence of full contraction against resistance and the abrupt cessation of contraction. Dr. McFarland
22 also found that the low-back pain was accompanied by diminished thigh muscle strength.
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28 Dr. McFarland diagnosed an L5 nerve root radiculopathy on the right lower extremity, related
29 to a right disc extrusion at L4-5. Further, Dr. McFarland diagnosed a developing intervening
30 herniated disc, unrelated, a left shoulder strain related to the industrial injury but resolved by
31 treatment and cervical fusion surgeries in 2004 and 2014. Dr. McFarland concluded that the
32 claimant's current shoulder condition was not related to the industrial injury. Dr. McFarland testified
33 that the conditions had reached maximum medical improvement.
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37 The controversy between the testimony of the medical experts centered on the cause of the
38 herniated or extruded L4-5 disc to the original injury that occurred in 2003, but the condition appeared
39 for the first time approximately 10 years later. Dr. McFarland testified the herniated disc was due to
40 age.² Dr. McFarland argued that initially there were no lumbar symptoms reported but "at some point
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46 ¹ Lang Dep. at 9

47 ² McFarland Dep. at 21

1 later" the symptoms in the lumbar spine onset. Dr. McFarland alleged that the leg complaints were
2 left sided and then changed her description to predominantly left sided.³
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4 Dr. Lang testified that the changes described at L3-4 and the L5 sacrum levels of the spine
5 were greater at those two levels but there was also a change in the L4-5 disc. A radiological report
6 described some improvement at those other two disc levels but no change was reported at the
7 L4-5 level which was the level where a herniation eventually occurred.
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10 Dr. McFarland ultimately agreed that on 18 different occasions, Mr. Givens complained of
11 right leg pain along with lumbar pain between February 6, 2004, and July 17, 2014. Dr. Lang was
12 well-informed because he had the opportunity to treat and attend to Mr. Givens lumbar conditions
13 over time. The foundation for Dr. Lang's opinion was based upon a complete understanding of all
14 material facts. The preponderance of the evidence was persuasive that the industrial injury of
15 September 22, 2003 was a proximate cause of the right paracentral disk extrusion at L4-5.
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18 **DECISION**

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20 In Docket No. 16 23136, the claimant, William B. Givens, filed an appeal with the Board of
21 Industrial Insurance Appeals on December 19, 2016. The claimant appeals a Department order
22 dated December 9, 2016. In this order, the Department affirmed a Department order dated May 5,
23 2016, which denied responsibility for a right paracentral disk extrusion at L4-5. The Department order
24 dated December 9, 2016, was incorrect and is **REVERSED**. The matter is **REMANDED** to the
25 Department with directions to accept responsibility for the right paracentral disk extrusion at L4-5 as
26 proximately caused by the industrial injury.
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29 **FINDINGS OF FACT**

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- 33 1. On March 2, 2017, an industrial appeals judge certified that the
34 parties agreed to include the Jurisdictional History in the Board
35 record solely for jurisdictional purposes.
 - 36 2. William Givens, an automotive mechanic, suffered an industrial injury
37 on September 22, 2003, while lifting heavy automotive parts,
38 proximately causing cervical and lumbar sprains, permanent partial
39 disabilities in the cervical, cervico-dorsal, dorso-lumbar, and
40 lumbosacral spine, and the right paracentral disk extrusion at L4-5.
 - 41 3. Mr. Givens' right paracentral disk extrusion at L4-5 was proximately
42 caused or aggravated by his industrial injury.
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47 ³ McFarland Dep. at 28-29.

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CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter in this appeal.
2. The Department order dated December 9, 2016, is incorrect and is reversed. This matter is remanded to the Department to issue an order accepting responsibility for Mr. Givens' right paracentral disk extrusion at L4-5.

Dated: December 4, 2017



TOM M. KALENIUS
Industrial Appeals Judge
Board of Industrial Insurance Appeals