

Claimant first suffered accidental injury in a non-work-related situation in 1994. He underwent back surgery in December 1994. Shortly after the surgery, in January 1995, he was involved in a motor vehicle accident. While claimant at first experienced little back symptomatology from this motor vehicle accident, he soon developed problems severe enough that he underwent a second surgery, including a lumbar fusion at L4-5 and L5-S1 in July 1996.

In August 1996, claimant reported to Dr. Amundson that he had increased back and leg pain, and pain into his hip. By December 1996, the pain had improved, although this was with the assistance of pain-relieving drugs. By March 1997, claimant reported his back and leg pain was minimal, although he was still having significant problems in his left calf. By June 1997, claimant reported the most severe pain was gone, with only residual aches in his buttocks, although claimant was on a daily regimen of pain medication in order to resolve these pain complaints. The medical record is void for the period after June 9, 1997, to January 28, 1999. In January 1999, claimant's problems worsened. At that time, he was diagnosed with moderate to moderately severe spinal stenosis. Dr. Amundson began discussing the possibility of a third surgery to relieve claimant's symptoms. On March 5, 1999, claimant underwent a decompression at L3-4 and an extension of the instruments previously placed in his back. The fusion was extended to L3. On May 6, 1999, claimant underwent a post L4-S1 exploration of the fusion. Pseudoarthrosis was diagnosed.

Dr. Amundson's surgical notes of March 5, 1999, indicated that claimant had progressively debilitating, intractable, refractory-to-multimodality-conservative-treatment low back and left greater than right proximal leg pain. The report went on to state that claimant's low back pain was suspicious for pseudoarthrosis.

In a July 8, 1999, letter to Roger Fincher, claimant's attorney, Dr. Amundson stated that he felt the accelerated breakdown at the L3-4 level requiring surgical decompression and stabilization was in large part due to his occupation as a dentist which required prolonged postures in forward flexed position with arms abducted. In the first paragraph of that letter, Dr. Amundson discussed his understanding of claimant's professional obligations. In that job description, he noted claimant was required to maintain prolonged postures of bending and stooping. He felt that the maintenance of a forward flexed position with arms abducted over prolonged periods of time led to an accelerated, supraadjacent segment breakdown to his previous level of lumbar fusion.

In reviewing the claimant's testimony regarding his job description, it is noted that claimant did not spend long periods of time bending and stooping. His description of the job indicated he spent approximately half of an eight-hour day sitting in a chair with the patient's head in his lap. He would then work on the mouth from that position. While claimant's attorney argues that claimant worked a full eight and a half hours a day, the claimant's testimony is clear that he only spent a portion of the time sitting in the chair. The remainder of the time, he was standing or moving about the office.

The Administrative Law Judge, in comparing Dr. Amundson's letter with the testimony of the claimant, found Dr. Amundson's opinion suspect in that it was based upon what appears to be an inaccurate description of the claimant's job. Dr. Amundson did note that the claimant's condition was progressively worsening and had been so since the motor vehicle accident. Claimant also testified that, after the second surgery, resulted by the motor vehicle accident, his condition continued to worsen. He described it as a slow and continual deterioration after the motor vehicle accident. Claimant acknowledged that the results of the second surgery following the motor vehicle accident were less than either he or the doctor had hoped.

In reviewing the evidence, the Appeals Board agrees that the record is clouded regarding the exact physical activities performed by claimant at his work and what, if any, effect these physical activities would have on his ongoing back problems. It is clear from the record that the motor vehicle accident, which was non-work-related, had a very detrimental effect on claimant's back. The Appeals Board, therefore, finds based upon a review of the credible evidence that claimant has not proven that the third surgery performed by Dr. Amundson resulted from an accidental injury arising out of and in the course of his employment with respondent.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated September 15, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 1999.

BOARD MEMBER

c: Roger D. Fincher, Topeka, KS
Michael J. Haight, Overland Park, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director