BEFORE THE WORKERS' COMPENSATION APPEALS BOARD

OF THE STATE OF CALIFORNIA

APPLICANT,

VS.

DEFENDANTS.

CASE NOs.

DEPOSITION OF

THURSDAY, AUGUST 19, 2004

10:05 A.M.

CERTIFIED COPY

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CSR NO.: 10534

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WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

Applicant,	)	
vs.	)	NO.
Defendants.	)	

DEPOSITION OF , M.D., taken on behalf of the Applicant, at 415 North Crescent Drive, Suite 300, Beverly Hills, California, at 10:05 A.M. on Thursday, August 19, 2004, before DANA M. DAVIS, CSR #10534, RPR, a Certified Shorthand Reporter within and for the State of California, pursuant to Notice.

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A P P E A R A N C E S

For the Applicant:

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I N D E X

E X H I B I T S

THURSDAY, AUGUST 19, 2004

10:05 A.M. - 10:35 A.M.

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,,

called as a witness on behalf of the Applicant, having been first duly sworn, was examined and testified as follows:

EXAMINATION +

BY MR. KAPLAN:

Q. Good morning,

A. Good morning,

Q. And Dr. , you've been designated by the parties to act as the agreed medical examiner as it relates to an applicant by the name of Wei Kuo Fu.

A. Yes.

Q. And you have written numerous reports, and your deposition was taken initially on July 6, 2000, right?

A. Yes.

Q. Do you have any reports subsequent to December 12, 2003, or is that your most recent report?

MR. ROSENBERG: I've got December 20th.

MR. KAPLAN: I'm looking at the billing page.

THE WITNESS: The date of the exam --

BY MR. KAPLAN:

Q. It says December 20. That's pretty good. You bill in advance, the work you're about to do.

A. No. What does it say?

Q. December 12th.

A. Let me see.

Q. Don't get nervous now.

A. You know what happens when I get nervous.

This is the date of the evaluation. The date of the bill is December 19th; so there you go.

Q. There I go again.

In any event, so that the record is clear, the last report that you've authored is December 20, 2003, true?

A. That's right.

Q. Do you have that one in front of you?

A. Yes.

Q. I want to ask you a couple questions about that report.

Dr. when you examined this applicant, he appeared to be having some significant problems; is that correct?

A. Yes.

Q. This man seemed to stand -- he had to use his hand to hold on to the examining table when he was

standing up?

A. Yes.

Q. Palpation at different areas of the back caused pain, correct?

A. Yes.

Q. Range of motion of his back revealed flexion to distal thigh extension five degrees?

A. Yes. It was limited, quite limited.

Q. That's extreme limitation, is it not?

A. Yes.

Q. It appears to you that he was guarding and resisting motion of the back, correct?

A. Yes.

Q. When he stood up, his knees were flexed. He didn't stand up completely, and he appeared to hunch over.

A. That's right.

Q. He wasn't steady on his feet.

A. Correct.

Q. And, in fact, you didn't ask him to do a heel-toe walk because you were concerned about him falling, true?

A. Exactly.

Q. He also had marked weakness of the dorsiflexion and plantar flexion, power of the left foot and toes; is

that true?

A. Yes.

Q. What does that indicate to you, sir?

A. Well, that means his left lower extremity is weak, that he would have difficulty with ambulatory activities.

Q. He had ongoing atrophy in the left calf, correct?

A. Yes.

Q. And before you saw him this last time, he underwent a two-level discectomy and fusion with instrumentation, true?

A. Yes.

Q. You took X-rays of this man subsequent at the time of your last exam, right?

A. Yes.

Q. And that's postsurgery, true?

A. Yes.

Q. And at that time, you did not see solid bony fusion at L4-5 or at L5-S1, correct?

A. That's right.

Q. There were two cages at L4-5 and no cage at L5-S1, true?

A. That's right.

Q. And the problems that he has with the numbness

and tingling, at least in terms of what he explained to you and what you've documented in your report, as well as the weakness of the dorsiflexion and plantar flexion in the left foot, is consistent with those dermatomes stemming from L4-5 and L5-S1; is that true?

A. Yes. As is the atrophy of the left calf, but those are the muscles that affect dorsiflexion and plantar flexion, yes.

Q. One is stemming from the other?

A. Yes.

Q. Can urinary incontinence be a complication of spinal cord impingement, nerve impingement, or a postoperative complication associated with the type of procedure he underwent?

A. Yes. It affects the S1 nerve root, which affects the bladder, yes.

Q. He gave a history of urinary incontinence, did he not?

A. Yes. He told me he wears a Depends.

Q. These are significant findings, true?

A. Yes, correct.

Q. You believed that this man should use a cane when ambulating; isn't that, in fact, true?

A. Yes. I recommended a cane, yes.

Q. Dr. with all due respect, this man has

got to walk with a cane, he's got atrophy in the left leg, he can't stand up without holding on to something, he hunches over, he's got bladder incontinence, and he uses a Depends. All of these things stem from the complications associated with his lumbar spine, which you deemed to be industrial, true?

A. Yes.

Q. Dr. when you wrote your report of December 20, 2003, you gave a work restriction of substantial -- no substantial work, which is between no heavy work and light work.

Taking into consideration everything that we've just gone over, that you've just seen, understanding that this man is unsteady on his feet, and you didn't even ask him to do a heel-toe walk, wouldn't it, in fact -- and isn't it, in fact, true, based on his bowel incontinence, use of a cane, inability to stand up, hunched over, the numbness and tingling in his legs, all of the other findings on physical exam, plus the fact that he does not have a fusion at L5-S1, on an orthopedic basis, in truth and in fact, he's unable to compete in the open labor market and 100 percent disabled from an orthopedic basis?

A. In view of all the things you just mentioned, I would answer yes to that question. I would also point out, when I put down "substantial" as a work restriction,

I was unaware of the level of disability reflected. I thought it was greater. Certainly, I would have never put down less than light work for this man. With all of those other problems, I thought it was greater. It sounded very ominous. I started to see "substantial" in reports, but I never saw the definition in the QME manual.

So if you're saying it's 40 percent, it's between heavy work and light work, that was in error of the work restriction.

Q. All right. Now, this man needs a cane?

A. Yes. I recommended that.

Q. Do you think that a walker, in light of his instability, would give him greater protection during ambulation?

A. Yes. And Mr has fallen many times. I think a walker would be advisable for him.

Q. He fell at the hospital.

A. That's right.

Q. I saw it in one of the notes.

Based on his level of restriction, sir, do you believe that it is safe for him to operate a motor vehicle, or should transportation be provided on an industrial basis?

A. No. He requires transportation services.

Q. Public transportation where he has to walk to a bus or stand at a curb and wait for mass transit isn't going to work, is it?

A. No.

Q. He needs transportation service to pick him up, take him where he needs to go, and bring him back?

A. That's right.

Q. He told you he took medicine before he came to see you; so his pain was a little less at the time of the exam, true?

A. Yes.

Q. You know he's utilizing a Depends because of his urinary incontinence, right?

A. That's right.

Q. He's got internal problems. He's taking pharmacology-based -- strike that.

He's taking medicine from his orthopedist, and Dr. his pain management specialist, both of which are treatment that you believe needs to proceed in the future, true?

A. Yes.

Q. And to the extent he's got this medication issue, he's got weakness and instability, he needs to use a walker, and he needs transportation, do you believe that some form of home healthcare should be provided to

this man?

A. Yes.

Q. And can you give an estimate, in terms of what you think would be appropriate on a daily basis for this man, in light of his physical condition and your evaluation of his overall disability?

A. Well, home care, I assume, includes housekeeping services and making the bed and things like that.

Q. And meals, heavy work, going to the grocery store, things that he can't do. I mean, he can't walk up and down the aisles of a supermarket, can he?

A. No. I think he requires home care eight hours a day, three days a week.

Q. This person doesn't have to be a certified nurse's assistant or an LVN, does that individual?

A. No.

Q. The bladder incontinence is a very significant finding, is it not?

A. Yes, absolutely.

Q. What is that indicative of?

A. Well, it's indicative of the fact that -- I understand that people who are incontinent are unable to participate in the work force. It's also indicative of probable neurologic problems resulting from either instability or -- probably instability in the lower back

affecting the S1 nerve root.

Q. I'm more concerned with the instability in the L5-S1 nerve root. Someone who has incontinence as a result of a problem at that level, is that a significant sign of instability and ongoing impingement at that level?

A. Yes.

Q. And to the extent we did not see -- or you didn't see a fusion at that level and there is no instrumentation at that level, is he potentially a candidate for future surgical intervention?

A. Yes.

Q. And what would that procedure involve?

A. That would involve an attempt at the exploration of the fusion mass, particularly at L5-S1, bone grafting. And if the fusion requires -- if the fusion is not solid, bone grafting and instrumentation with cages and possibly a posterior fusion at that level, as well.

Q. The surgery they did was an anterior. They went in through the front.

A. That's right.

Q. And when you do that, if you're to -- strike that.

Based on what you saw at the time of his examination, understanding his history, understanding his

urinary incontinence, the numbness and tingling he reports down the leg, your findings on physical examination with the dorsiflexion and plantar flexion weakness, do you believe it's within reasonable degree of medical probability that he's going to require that surgery in the future?

A. Well, it's been a year between the time of the fusion and the time that I examined him. And within nine months to a year, you would expect to see the fusion become solid. And due to his ongoing difficulties, I think there is a good chance that he will require some additional surgery.

Q. So is that yes?

A. That's a yes.

Q. Now, your opinions with regard to his inability to compete in the open labor market are based strictly from an orthopedic standpoint, correct?

A. Yes.

Q. You're not taking into consideration his neurologic problems from his stroke or psychiatric problems, internal medical problems, true?

A. That's right.

MR. KAPLAN: Now, I don't think I have anything further at this point. Go ahead, Counsel.

MR. ROSENBERG: Thank you.