

FILED

JUL 20 2016

BOARD OF APPEALS
DEPARTMENT OF
LABOR & INDUSTRIES
STATE OF WASHINGTON

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

340686

OLGA KOZUBENKO,
Plaintiff

) Case No: NO. 15-2-01811-1

)

) TRIAL'S BRIEF

vs.

)

DEPARTMENT OF LABOR &
INDUSTRIES,

)

)

Defendant

Come now Olga Kozubenko, Plaintiff, as Pro Se, and respectfully submits trial's brief based on received the case's records and transcripts.

On April 2, 2015, the Board of Industrial Insurance Appeals (Board) rejected Kozubenko's petition for review; therefore, March 5, 2015 Proposed Decision and Order (PD&O) became Board's final Decision and Order. Kozubenko timely submitted Notice of Appeal on May 8, 2015.

Kozubenko respectfully requests the Court (1) to rule on issues ignored and or decided by PD&O and (2) overturn Board's Decision to dismiss her case.

1 Plaintiff hereby renews all objections made before the Industrial Appeal Judge
2 and objects to all adverse rulings on facts, evidence and law.

3
4 **BACKGROUND:**

5 In August 2011, Board of Industrial Appeal (Board) decided that Ms. Kozubenko's
6 industrial injury on January 25, 2008, is responsible for CEREBRAL THROMBOSIS IN THE
7 RIGHT MID TRANSVERSE SINUS, EXTENDING THROUGH THE SIGMOND SINUS
8 (Docket 10-17403), condition of CIRCULATORY SYSTEM. Ms. kozubenko has had treatment
9 in Rockwood Clinic, which used billing codes ICD-9 437.6 and 437.9 for authorization of
10 treatment for the thrombosis.

11
12 Nevertheless, Department contemptuously replaced of Ms. Kozubenko's diagnosis to a
13 condition of NERVIOUS SYSTEM, named PHLEBITIS AND THROMBOPHLEBITIS OF
14 INTRACRANIAL VENOUS SINUSES, using billing code to ICD-9 325, for a treatment Ms.
15 Kozubenko never requested nor has had. Therefore, Department allowed itself continue denial of
16 Ms. Kozubenko's actual thrombosis, including denial of treatment, confusing experts, and so
17 much more.

18
19 Accidentally, Ms. Kozubenko discovered the replacement only in June 2013, asking
20 Department to follow Board's Decision and to accept her CEREBRAL THROMBOSIS IN THE
21 RIGHT MID TRANSVERSE SINUS, EXTENDING THROUGH THE SIGMOND SINUS,
22 using billing codes ICD-9 437.6 and 437.9 as described in the center for Medicare and Medicaid

1 Services (see www.cms.gov). Department accepted 437.6, refusing to accept 437.9, forcing Ms.
2 Kozubenko back into Court.

3
4 Ms. KOZUBENKO TO Department Claim Manager HEIDI JEG: How did they find this fact
5 that I have 325 or Code 325? Where did they find it?

6 Claim Manager HEIDI JEG: I don't know.

7 Ms. KOZUBENKO: So then based on which facts did you change my code from 325 to 437.6?

8 Claim Manager HEIDI JEG: You made the request. I referred the code to my nurse consultant.
9 She agreed that it was appropriate to add that or substitute that. (6/28/14 @23)

10
11 JUDGE FAIRLEY: Ms. Jeg, you did accept 437.6; correct?

12 Claim Manager HEIDI JEG: Yes. ... Actually, we didn't accept it as much as we updated the
13 code so it would reflect more clearly the diagnosis. (6/28/14 @26)

14 FYI: Center for Medicare and Medicaid (see www.cms.gov), ICD-9 Codes Description

- 15 437.0 CEREBRAL ATHEROSCLEROSIS
- 16 437.1 OTHER GENERALIZED ISCHEMIC CEREBROVASCULAR DISEASE
- 17 437.2 HYPERTENSIVE ENCEPHALOPATHY
- 18 437.3 CEREBRAL ANEURYSM NONRUPTURED
- 19 437.4 CEREBRAL ARTERITIS
- 20 437.5 MOYAMOYA DISEASE
- 21 437.6 NONPYOGENIC THROMBOSIS OF INTRACRANIAL VENOUS SINUS
- 22 437.7 TRANSIENT GLOBAL AMNESIA
- 23 437.8 OTHER ILL-DEFINED CEREBROVASCULAR DISEASE
- 24 437.9 UNSPECIFIED CEREBROVASCULAR DISEASE
- 25 325 PHLEBITIS AND THROMBOPHLEBITIS OF INTRACRANIAL VENOUS SINUSES

1 JUDGE FAIRLEY: Okay. The one thing I notice, the August 23rd order under appeal is ... that
2 diagnosis of unspecified cerebrovascular disease, ICD-9, 437.9 is not accepted [and] treatment is
3 not authorized for cerebrovascular disease.(5/21/14 @21).

4
5 MS. FINDLEY to JUDGE PLEASE: The case before the board was about one issue, and that
6 was whether or not 437.9 should be accepted under this claim. **437.9 is actually a billing code**
7 (12/23/15 @7).

8
9 BOARD JUDGE FAIRLEY: The Board doesn't, when the Board finds that a condition is or isn't
10 related, it typically doesn't attach an ICD-9 code to it. Because ICD-9 codes, as far as I
11 understand, are mainly for **billing purposes**. (CARB 12/17/13 @19-20) (emphasis added)

12
13 The question of Ms. Kozubenko medical diagnosis is not in dispute here, it was decided by the
14 Board. Ms. Kozubenko appeal is about billing code ICD-9 437.9 only.

15
16 JUDGE FAIRLEY: The only issue before me is whether or not ICD-9 Code 437.9 should be
17 accepted. (6/28/14 @35)

18
19 ARNP PONOMARENKO to JUDGE FAIRLEY. 437.9, it's a general description of any disease
20 in cerebrovascular system. And 437.6 give us exact description.(9/5/14 @51)

21
22 JUDGE FAIRLEY: Do you know much about ICD-9 codes?

1 ARNP PONOMARENKO to JUDGE FAIRLEY: I'm not coding specialist. But I went to coding
2 specialist with Rockwood Clinic ... we went through all my notes. And she told me I'm meeting
3 all guidelines for ICD-9 code. (9/5/14 @52)

4
5 ARNP PONOMARENKO to JUDGE FAIRLEY: [Kozubenko] saw Dr. Chaudhry [oncologist
6 hematologist] on 8/6/2014, who prescribed lifelong Coumadin treatment. His dictation indicate
7 prior medical history 289.91, hypercoagulable state; 437.6, nonpyogenic thrombosis sinus;
8 437.9, cerebrovascular disease nonspecified; 401.1, hypertension (9/5/14 @57)

9
10 Accidentally, in May 2013, Ms. Kozubenko did discover that Department did replaced
11 diagnosis, which, now, did explain why independent medical and vocational experts were
12 denying what was obvious to Ms. Kozubenko, and more. Department did acknowledge a
13 'substitution', without any explanation, choosing to accept codes ICD-9 437.6, but denying 437-
14 9.

15
16 Board, Department and Ms. Kozubenko did acknowledge that the one and THE ONLY
17 ISSUE under this appeal whereas ICD-9 437.9 is appropriate billing CODE to describe Ms.
18 Kozubenko's thrombosis.

19
20 JUDGE FAIRLEY to Ms. KOZUBENKO: ... you just need to call somebody who is an expert
21 on ICD-9 Codes. There may be somebody at Rockwood ... (2/28/14 @5).

1 Dr. Sayres DID NOT treat Ms. Kozubenko for thrombosis. In Rockwood Clinic, since
2 2008, under supervision urologist Dr. Chandry. ACNP Ponomarenko administered treatment of
3 Ms. Kozubenko. Rockwood clinic does have BILLING CODING SPECIALISTS:

4
5 **TESTIMONY:**

6 Contrary to coaching and pressure exerted upon her, Ponomarenko did defend existing of
7 code. Nevertheless, Board's Judge Fairly and, subsequently, Judge Please, did ignore witness
8 tampering and pressure upon Ponomarenko.

9
10 Ms. Kozuenko: Tania, on August 28th of 2014 you removed 437.9. Why?

11 Ms. Ponomarenko: I never removed anything (12/15/214 @.14)

12
13 Judge Fairley: Okay. [Kozubenko's] question is how come it's gone [ICD-9 437.9] now.

14 Ms. Ponomarenko: It's not gone. (12/15/214 @.15)

15
16 Ms. Kozubenko: Tania, did Dr. Chaudhry give you an advice to remove 437.9 from Kozubenko's
17 record?

18
19 Ms. Ponomarenko: Nobody -- that would be really unlegal process ... (12/15/214 @.18)

20
21 Ms. Ponomarenko: ... we have a whole department, the coding specialists. And I asked my
22 coding department to review my medical records to see if my information and documentation is

1 appropriate, and all of them told me my documentation's perfect as well as assessments and
2 they all correlate with the description of diagnosis ... (12/15/214 @ 19) (emphasis added).

3
4 In addition to ignoring Ponomarenko testimony, they somehow decided whereas Ms.
5 Kozubenko has a medical condition Hemiplegia. It is a mystery what moved Judge Fairley and
6 Judge Please to decide that Ms. Kozubenko does not has Hemiplegia, unless they decided to
7 please Department for whatever reason.

8
9 Furthermore, Judge and Department itself did acknowledge, but did ignore Department's
10 violation of Law; therefore, refusing to impose sanctions, nor follow ETHICS RULES reserved
11 for attorneys and judges in The State of Washington.

12
13 **HEARING AND DECISION ON MARCH 7, 2016:**

14 On January 4, 2016 Judge Please did issue a decision. Ms. Kozubenko has had 30 days to
15 file an appeal and on the 30th day did file it on February 3, 2016.

16
17 Thereafter, on February 4, 2016, after 30day has past, Department filed Motion Hearing
18 to Judge Please. On the Proof of Service dated February 19, 2016, only Judge Please is name. On
19 March 7, 2016 WITHOUT informing Ms. Kozubenko about it, Judge Please and Department
20 held a trial.

1 During the trial on March 7, 2016, Judge Please, did notice that it is unusual for Ms.
2 Kozubenko not to show up:

3
4 THE COURT: Thank you for coming. I didn't know how much longer to wait since it's about ten
5 after. She's usually early for her hearings.

6 MS. FINDLEY: Correct.

7 THE INTERPRETER: Yep.

8 THE COURT: This is not usual (3/14/16 @15).

9 Nevertheless, Judge Please, did not ask Department whereas it informed Ms. Kozubenko about
10 the hearing, denying Ms. Kozubenko's any chance to respond.

11
12 **CONCLUSION**

13 Ms. Kozubenko respectfully requests the Order of Department of Labor and Industries
14 dated January 25, 2012, Docket No. 14 11409 be reversed; and Department directed (1) to
15 recognize Ms. Kozubenko condition as Cerebrovascular Disease and to accept ICD-9 code 437.9

16 Furthermore, I respectfully ask this Court to overturn and or cancel Judge Please's
17 decision dated March 7, 2016.

18 I certify (or declare) under penalty of perjury under the laws of the State of Washington.

19
20 DATED this 8 day of July, 2015

21
22 
23 Olga Kozubenko

1 **PROOF OF SERVICE**

2 I certify that I served a copy of this document on all parties or their counsel of records on
3 the date below as follows:

- 4 ✓ US Mail Postage Prepaid and or
5 ✓ E-mail and or
6 ✓ In person.

7
8 Board of Industrial Insurance Appeal
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15 I certify under penalty of perjury under the laws of the State of Washington that the foregoing is
16 true and correct.

17 DATED this 8 day of July, 2016, at Spokane, Washington.

18
19 

20 _____
Olga Kozubenko