

VAN NATTA'S WORKMEN'S COMPENSATION REPORTER

Robert VanNatta, Editor

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SUPPLEMENT NUMBER 1

Circuit Court Supplement for Volume 10 of
VAN NATTA'S WORKMEN'S COMPENSATION REPORTER

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- 3 Bradbury, Helen, WCB 70-2552, MARION; Affirmed.
5 Nelson, Wilma, WCB 72-1198, COOS; Affirmed.
6 Abel, Tom, WCB 72-1943, COOS; Affirmed.
9 Robertson, James E., WCB 72-1431, MULTNOMAH; Total Disability.
12 Cox, Rebecca, WCB 72-1499, CROOK; Affirmed.
12 Cox, Rebecca, WCB 72-1499, CROOK; Affirmed.
13 McElhinney, Lawrence, WCB 72-1887, LINN; 30% of left foot.
17 &
20 Harding, Richard, WCB 72-1450, LINN; Affirmed.
21 Jones, Joseph, WCB 72-688, MULTNOMAH; Affirmed.
32 Brown, Jim H., WCB 72-227, MULTNOMAH; Affirmed.
34 Blackford, Rolla, WCB 71-2931 and 71-2932, LINN; Total Disability allowed.
38 Gotcher, Wayne W., WCB 72-2447, MULTNOMAH; Reversed.
35 Pierce, Kenneth E., WCB 71-2227, GRANT; Affirmed.
41 Boone, Jack, WCB 72-1826, MARION; Remanded for reconsideration.
46 Bishop, Keith J., WCB 72-682, CLACKAMAS; Affirmed.
47 DuBell, Todd W., (Beneficiaries of) WCB 72-2051, LANE; Affirmed.
48 McCarty, Cecil, WCB 72-2187, LANE; Settled for \$75 fee.
55 Gonzalez, Simona, WCB 72-28, MARION; Affirmed.
56 Smith, James R., WCB 72-2616, MULTNOMAH; Claimant is hereby awarded 75%
or 18°, for permanent partial disability of the left index finger and
additionally compensation for permanent partial disability for loss of
opposition of the uninjured left thumb of 25%, or 12°, being an in-
crease of 12 degrees over and above the compensation for permanent
partial disability heretofore awarded claimant.
59 Angermeier, Rex R., WCB 72-1731, MULTNOMAH; Affirmed.
61 Jones, Sidney, WCB 72-2453, JACKSON; Affirmed.
65 Dienes, Virginia Ann, WCB 72-1823, MULTNOMAH; Affirmed.
66 Dieu, Frank E., WCB 71-2029, BENTON; Settled for \$1800.
69 Todahl, Rita B., WCB 72-2190, MULTNOMAH; Dismissed.
71 Brittain, Gary W., WCB 71-2214, COOS; Affirmed.
71 Schwehn, Donald, WCB 72-384, MULTNOMAH; Affirmed.
72 Lynch, Virgil, WCB 71-1241, TILLAMOOK; Affirmed.
74 Hendricks, James M., WCB 72-1599, MULTNOMAH; Affirmed.
75 Swing, Barbara J., WCB 72-974, JACKSON; "The evidence is convincing that
claimant is permanently and totally disabled..."
77 Eggers, Clarence C., Jr., WCB 72-3186, Settled for \$2,500.
78 Volk, Rose Ann, WCB 72-459, MULTNOMAH; Affirmed.
79 Atkinson, Leslie, WCB 72-577, JOSEPHINE; Affirmed.
80 Snyder, Jeffery, WCB 72-2066, BENTON; Affirmed.
82 Dalthorp, Gertrude E., WCB 72-2448, MULTNOMAH; Affirmed.
83 Williams, Emmit, WCB 72-2561, MULTNOMAH; Affirmed.
85 Williams, Teresa, WCB 72-1287, LANE; Affirmed.
86 Trudeau, Winfred, (Beneficiaries of) WCB 72-146, LANE; Affirmed.
87 Breese, Keith, WCB 72-2690, JEFFERSON; Settled for disputed claim of \$2,066.50.
89 Davidson, Rose M., WCB 71-878, MULTNOMAH; Affirmed.
90 Glasbrenner, Lawrence, WCB 72-1516, MULTNOMAH; Affirmed.
91 Clark, Daisy, WCB 73-1399, JOSEPHINE; Affirmed.

95 Spargur, Florence, WCB 72-2280 and 72-2730, MULTNOMAH; Affirmed.

97 Wallen, Carl E., WCB 72-2399, MULTNOMAH; Affirmed.

98 Clark, Naomi L., WCB 72-1964, LANE; Permanent Total Disability.

111 Whitney, Bessie F., WCB 71-332, POLK; Affirmed.

112 Stocker, Elmer L., WCB 72-1503, MULTNOMAH; Affirmed.

112 Stocker, Elmer L., WCB 72-1503; MULTNOMAH; Affirmed.

115 Staples, Chester, WCB 72-2702, MULTNOMAH; Award increased 48°.

116 Davis, Cecil E., WCB 72-2089, LANE; Affirmed.

119 Breeding, Floyd (Beneficiary of) WCB 72-1280, UMATILLA; Affirmed.

121 Powers, Jessie, WCB 72-279, TILLAMOOK; Affirmed.

124 Lee, James B., WCB 72-2885, MULTNOMAH; Claim denied.

126 Goodpaster, Majorie, WCB 72-1753, MULTNOMAH; Permanent and Total Disability.

128 Livingston, Marjorie Carl, WCB 72-2096, MULTNOMAH; Claim allowed.

129 Nestman, Kasper, WCB 72-2716, LINN; Affirmed.

133 Baldridge, William I., SCB 72-2184-E, MULTNOMAH; Affirmed.

136 Smith, Mildred L., WCB 72-2647, MULTNOMAH; Affirmed.

136 Delamare, Robert T., WCB 71-2549, JACKSON; Affirmed.

137 Matthews, Betty J., WCB 71-1842, LINN; 96° allowed.

139 Harrington, Eunice, WCB 72-1232, COOS; Increase of 19.2°

139 Muzzy, Gladys, WCB 72-1834, WHEELER; Affirmed.

141 Cain, Martin W., WCB 72-3416, MULTNOMAH; Affirmed.

144 Howton, Arthur, WCB 72-843, LINN; Affirmed.

147 Bray, Joseph H., WCB 72-1454 and 72-1515, JACKSON; Matter be remanded to the Hearing Officer.

149 Helmer, Theodore, WCB 73-43, MULTNOMAH; Claim allowed.

150 Shinkle, Robert, WCB 72-1307, LINCOLN; 15° increase.

152 Ewin, Helen M., WCB 72-2398, MULTNOMAH; Leg increased 30°

153 Tyron, Ada, WCB 72-1787, WASHINGTON; Affirmed.

120 &

155 Francoeur, John W., WCB 72-1570, DOUGLAS; Revised August 19, 1974.

120 &

155 Francoeur, John W., WCB 72-1570, DOUGLAS; Affirmed except that that portion of the Hearing Officer's Order of November 6, 1972 ordering reimbursement to BPA should be and hereby is reversed.

155 Jones, Cecil, WCB 72-1909, WASHINGTON; Affirmed.

156 Seems, Milo, WCB 72-428, MARION; Affirmed.

159 Fry, Donald, WCB 72-479, MULTNOMAH; Affirmed.

161 Kuziowski, Mikolaj, WCB 72-3050, MULTNOMAH; Permanent and Total Disability.

163 Taylor, Arthur F., Jr., WCB 72-3005, MULTNOMAH; 10% increase.

166 Nordstrom, Douglas, WCB 72-3075, DOUGLAS; Affirmed.

168 &

171 McGinnis, Melvin O., WCB 72-967, MULTNOMAH; Remanded.

174 Olson, Genevieve, WCB 72-1234, MULTNOMAH; Leg award to 48°.

175 Cheek, David, WCB 72-821, COOS; Increase to 80°.

175 Mehlhoff, Murray D., WCB 72-3180, MULTNOMAH; Affirmed.

176 Plunk, Cecil, WCB 72-1368, LANE; Affirmed.

179 Bogart, Richard H., WCB 72-3245, MULTNOMAH; Remanded.

179 Bogart, Richard H., WCB 72-3245, MULTNOMAH; Remanded for evidence.

180 Johnson, Dale F., WCB 71-2664, MULTNOMAH; Disability rating on Claimant's right leg increased to 50°.

181 Notestine, Richard L., WCB 72-2908, MULTNOMAH; Increase in Permanent Partial Disability award equal to 32°, for a total award of 128°.

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183 Egger, Mary E., WCB 72-1895-E, MULTNOMAH; Affirmed.
186 Harness, Corma M., WCB 72-1819, MARION; Dismissed.
191 Hobbs, Mary Lucille, WCB 72-3082, UMATILLA; The court finds that Claimant should be awarded Permanent Total Disability.
- 172 &
192 Peck, Ida Sue, WCB 71-2012, JOSEPHINE; Affirmed.
194 Smith, Betty, WCB 72-2712, LINN; Award of 60% loss of the workman for Permanent Partial Disability.
198 Buckner, Julie Ann, WCB 72-2829, MULTNOMAH; Claim allowed.
200 Doran, Jim, WCB 72-2895, POLK; Affirmed.
209 Franklin, Ace R., WCB 73-395 and 73-154, LANE; Affirmed.
210 Nolte, Earl, WCB 73-485, CLACKAMAS; Claim allowed.
- 187 &
215 Almond, Gerald, WCB 72-2384, MULTNOMAH; Award increased to 40°.
215 Wright, Dennis J., WCB 73-9, MARION; Claim denied.
216 Schmidt, Elsie, WCB 73-8, LANE; Affirmed.
218 Means, Barbara, WCB 73-118, LINN; Affirmed.
219 Burkholder, Gary G., WCB 70-1335, MULTNOMAH; Affirmed.
225 Wilson, Ben, WCB 72-3176, MULTNOMAH; 48° increase.
226 Mellen, Clarence H., WCB 72-1837, MULTNOMAH; Affirmed.
227 Snow, Wayne, WCB 73-10, MULTNOMAH; Increase to 100°.
- 15 &
227 Wilson, L. D., WCB 71-236, MARION; Remanded.
- 186 &
229 Larson, Margaret Ruth, WCB 72-1415, MULTNOMAH; Affirmed.
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232 West, Alfred, WCB 72-873 and 72-3514, DOUGLAS; Affirmed.
- 197 &
235 Johnson, Deloris, WCB 72-3018 and 73-564, LANE; Affirmed.
236 Kirkendall, Elmer, WCB 68-561, COOS; Affirmed.
238 Leno, Robert M., WCB 72-3224, MULTNOMAH; Award increased 32°.
239 Albano, John J., WCB 72-1077, MULTNOMAH; Affirmed.
240 Riback, William, WCB 72-2380, MULTNOMAH; Affirmed.
242 Power, Lura (formerly Lura Haugen) WCB 72-433, MULTNOMAH; Permanent Total Disability.
243 Hurt, Charles M., WCB 72-2875, MULTNOMAH; Affirmed.
244 Burgess, Dale, WCB 72-3255, MULTNOMAH; Award increased 32°.
245 Pense, Floyd W., SAIF Claim No. SA 926386, KLAMATH; Affirmed.
251 Nelson, Kenneth E., WCB 72-2165, MULTNOMAH; Affirmed.
252 Mitchell, Mildred A., WCB 72-3065, MULTNOMAH; Affirmed.
- 24 &
253 Dahlstrom, Arthur W., WCB 71-1087 and 71-2336, MULTNOMAH; Ordered that this case is remanded to the Workmen's Compensation Board for entry of an Order allowing compensation to the Claimant in accordance with the findings of the Medical Review Board, either from the State Accident Insurance Fund, successor to the State Industrial Accident Fund, as insurer of Harris Oil Company prior to July 1, 1967, or Time Oil Company, the employer of Claimant from 1969 to January, 1971.
- 254 Martin, Ray, WCB 72-2679, MULTNOMAH; Affirmed.
256 Miller, Dannie, WCB 72-642, BENTON; Total Disability allowed.
257 Balfour, Leonard C., WCB 72-21, COOS; Affirmed.

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259 Ivie, Joseph Thomas, WCB 72-2354, MARION; Dismissed.
260 Hoselton, Nellie, WCB 72-1886, MULTNOMAH; Affirmed.
260 Johnson, Willis C., WCB 73-551, BENTON; Independent medical ordered.
261 Holly, Wilbur, WCB 72-2249, MULTNOMAH; Claim dismissed.
22 &
263 Glenn, George, WCB 71-2898, LANE; Remanded.
263 Thompson, Christine, WCB 72-3583, HOOD RIVER; Affirmed.
268 Lakey, Esther, WCB 72-3189, MULTNOMAH; Affirmed.
271 Sorter, Donald L., WCB 72-2929, MULTNOMAH; Remanded.
273 Danielson, Arnold, WCB 73-59, LANE; Affirmed.
274 Keller, Charles W., WCB 71-2834 and 72-2553, MULTNOMAH; Affirmed.
275 Riutta, Ernest, WCB 71-1903, CLATSOP; Remanded.
275 Riutta, Ernest, WCB 71-1903, CLATSOP; Affirmed.
278 Holifield, James, WCB 72-3279, CURRY; Affirmed.
278 Hall, Annie Louise, WCB 72-981, CURRY; Affirmed.
279 Smith, Eileen, WCB 72-2010, LANE; 28.8° increase.
281 Coleman, Julius, WCB 72-946, UNION; Affirmed.
283 Hanna, Fred, WCB 73-308 and 73-309, MULTNOMAH; Affirmed.
284 Bogard, Carmen, WCB 72-2796, MULTNOMAH; Affirmed.
287 Wright, Rodney S., WCB 73-664, MULTNOMAH; Dismissed.
287 Wright, Rodney S., WCB 73-664, MULTNOMAH; Affirmed.
289 Lundquist, Joseph, WCB 72-3195, MULTNOMAH; Affirmed.
290 Sanders, Richard, WCB 73-231, LANE; Affirmed.
294 Salisbury, Carrol M., WCB 72-2654, WASHINGTON; Dismissed.

EVELYN RUNDBERG, CLAIMANT
JOHN D. RYAN, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
ORDER APPROVING STIPULATION AND DISMISSING REVIEW

ON FEBRUARY 9, 1973, CLAIMANT REQUESTED BOARD REVIEW OF A HEARING OFFICER'S ORDER DATED JANUARY 26, 1973. THAT REQUEST FOR REVIEW IS NOW PENDING.

THE CLAIMANT AND THE STATE ACCIDENT INSURANCE FUND HAVE AGREED TO SETTLE AND COMPROMISE THEIR DISPUTE IN ACCORDANCE WITH THE TERMS OF THE STIPULATION AND ORDER WHICH IS ATTACHED HERETO AS EXHIBIT 'A'.

THE BOARD, BEING NOW FULLY ADVISED, CONCLUDES THE AGREEMENT IS FAIR AND EQUITABLE TO BOTH PARTIES.

ORDER

IT IS THEREFORE ACCORDINGLY ORDERED THAT THE STIPULATION AND ORDER BE EXECUTED ACCORDING TO ITS TERMS.

THE REQUEST FOR REVIEW NOW PENDING BEFORE THE BOARD IS HEREBY DISMISSED.

STIPULATION AND ORDER

THE PARTIES STIPULATE AND AGREE THAT ALL ISSUES RAISED OR WHICH COULD BE RAISED UPON CLAIMANT'S REQUEST FOR REVIEW OF THE OPINION AND ORDER OF THE HEARING OFFICER DATED JANUARY 26, 1973 MAY BE SETTLED AND COMPROMISED BY THE BOARD'S ENTRY OF AN ORDER AWARDING CLAIMANT PERMANENT PARTIAL DISABILITY EQUAL TO 112 DEGREES FOR UNSCHEDULED NECK AND LOW BACK DISABILITY, AN INCREASE OF 32 DEGREES UNSCHEDULED PERMANENT PARTIAL DISABILITY OVER THE AWARD MADE BY THE DETERMINATION ORDER OF APRIL 19, 1972 AND AFFIRMED BY THE ORDER OF THE HEARING OFFICER DATED JANUARY 26, 1973.

THE PARTIES FURTHER STIPULATE AND AGREE THAT CLAIMANT'S ATTORNEY, JOHN RYAN, IS ENTITLED TO AN ATTORNEY FEE EQUAL TO 25 PERCENT OF THE INCREASED COMPENSATION PAYABLE BY REASON OF THIS STIPULATION, TO BE PAID OUT OF THE INCREASED COMPENSATION, AND THAT CLAIMANT'S REQUEST FOR REVIEW MAY BE DISMISSED.

ORDER

THE FOREGOING STIPULATION FOR PAYMENT OF INCREASED COMPENSATION AND AN ATTORNEY FEE IS HEREBY APPROVED AND ORDERED CARRIED INTO EFFECT AND IT IS FURTHER ORDERED THAT THE CLAIMANT'S REQUEST FOR REVIEW BE AND IT IS HEREBY DISMISSED.

HAROLD KEEVER, CLAIMANT
WILLIAM E. BLITSCH, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED CLAIMANT A PERMANENT PARTIAL DISABILITY AWARD OF 272 DEGREES, AN INCREASE OF 80 DEGREES OVER THAT PREVIOUSLY GRANTED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

THIS 45 YEAR OLD CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HIS LOW BACK ON NOVEMBER 3, 1970, RESULTING IN HEMILAMINECTOMIES AT L3 AND L4.

A DETERMINATION ORDER OF FEBRUARY 18, 1972 AWARDED CLAIMANT 192 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. AT HEARING THE HEARING OFFICER INCREASED THIS AWARD TO 270 DEGREES UNSCHEDULED DISABILITY.

THE RECORD REFLECTS AN UNUSUAL NUMBER OF PREVIOUS BACK INJURIES RESULTING IN SURGERIES AS FAR BACK AS 1954. IN SPITE OF THESE INJURIES HOWEVER, CLAIMANT WAS ABLE TO WORK SUCCESSFULLY IN HEAVY CONSTRUCTION. THE MEDICAL REPORTS AND CLAIMANT'S TESTIMONY IN THIS CASE LEAVE NO DOUBT THAT HE IS NO LONGER ABLE TO OPERATE HEAVY EQUIPMENT ASSOCIATED WITH CONSTRUCTION WORK.

CLAIMANT HAS MADE NO EFFORT TO SEEK EMPLOYMENT SINCE CLAIM CLOSURE IN FEBRUARY, 1972. HE AND HIS WIFE ARE NOW LIVING IN MT. VIEW, CALIFORNIA WHERE SHE MANAGES A LARGE APARTMENT COMPLEX RECEIVING AN APARTMENT, FREE UTILITIES AND 380 DOLLARS PER MONTH. AT THE PRESENT TIME THE CLAIMANT ASSISTS IN LIGHT JOBS ABOUT THE COMPLEX. HE HAS BEEN OFFERED A JOB SUPERVISING OTHER MAINTENANCE MEN. HOWEVER, UNTIL SPECIFIC DUTIES ARE OUTLINED, HE DOES NOT KNOW IF HE COULD HANDLE IT. IT APPEARS TO THE BOARD IT WOULD HAVE BEEN BETTER CLAIMS MANAGEMENT IF THE CARRIER HAD POSTPONED EVALUATION AND CLOSURE OF THIS CLAIM TO ASCERTAIN IF CLAIMANT COULD PERFORM THE DUTIES OF THIS JOB OFFER.

THE BOARD FINDS ON DE NOVO REVIEW HOWEVER, THAT CLAIMANT HAS SUSTAINED A MAJOR PERMANENT LOSS OF WAGE EARNING CAPACITY AS A RESULT OF THE LAST INJURY WHICH ENTITLES HIM TO THE AWARD OF 270 DEGREES FOR UNSCHEDULED DISABILITY AWARDED BY THE HEARING OFFICER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED NOVEMBER 17, 1972 IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF 250 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

HELEN BRADBURY, CLAIMANT
MILLIE WRONA, CLAIMANT
MARION B. EMBICK AND ROBERT LOHMAN, CLAIMANTS' ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

ON APRIL 17, 1972, THE BOARD ENTERED AN ORDER IN THE ABOVE ENTITLED CASE AFFIRMING THE HEARING OFFICER'S FINDINGS AND CONCLUSIONS THAT CLAIMANT'S INJURIES AROSE OUT OF AND IN THE COURSE OF HER EMPLOYMENT BY MILLIE WRONA BUT REMANDING IT TO THE HEARING OFFICER TO RESOLVE WHETHER THE OREGONIAN WAS ALSO AN EMPLOYER AND, IF SO, TO DETERMINE THE RESPECTIVE RESPONSIBILITIES OF MILLIE WRONA AND THE OREGONIAN.

ON MAY 1, 1972 THE HEARING OFFICER ACCORDINGLY ISSUED AN ORDER JOINING THE OREGONIAN PUBLISHING COMPANY AS A PARTY IN THE MATTER.

THE WORKMEN'S COMPENSATION CASE OF OREMUS V. OREGONIAN PUBLISHING COMPANY, WCB CASE NO. 68-107, WAS THEN IN THE PROCESS OF APPEAL THROUGH THE COURTS ON ESSENTIALLY THE SAME FACTUAL AND LEGAL ISSUE INVOLVED IN THE REMAND OF THIS CASE. THE PARTIES THEREFORE SUGGESTED, AND THE HEARING OFFICER AGREED, TO POSTPONE THE REMAND HEARING UNTIL OREMUS WAS CONCLUDED ON APPEAL.

ON DECEMBER 1, 1972 THE COURT OF APPEALS DECIDED IN OREMUS V. THE OREGONIAN PUBLISHING COMPANY ET AL, LEIBRAND, 95 ADV SH 2021, ---OR APP---, (DECEMBER 1, 1972) THAT IN THE ABSENCE OF A CONTRACT BETWEEN THE PUBLISHER AND THE NEWSBOY NO EMPLOYER-EMPLOYEE CAN BE FOUND TO EXIST.

ON MARCH 29, 1973 THE EMPLOYER, RELYING ON OREMUS, MOVED THE BOARD FOR AN ORDER VACATING THE JOINDER.

ON APRIL 25, 1973 THE WORKMAN-CLAIMANT, ALSO RELYING ON OREMUS, MOVED THE BOARD FOR AN ORDER VACATING ITS ORDER OF REMAND AND MAKE A FINAL DISPOSITION OF THE CASE, INCLUDING ALLOWANCE OF AN APPROPRIATE ATTORNEY'S FEE FOR PREVAILING ON THE REVIEW.

IN ADDITION, THE EMPLOYER, MILLIE WRONA, MOVED FOR AN ORDER SETTING ASIDE THE HEARING OFFICER'S DECISION AND GRANTING HER A NEW HEARING ON THE GROUND THE HEARING OFFICER COMMITTED PREJUDICIAL ERROR IN THE CONDUCT OF THE PROCEEDING.

THE BOARD HAS REEXAMINED THE RECORD OF THE PROCEEDINGS AND HAS CONSIDERED THE MATTER IN LIGHT OF THE RULING IN OREMUS AND CONCLUDES THAT ITS ORDER REMANDING THE MATTER TO THE HEARINGS DIVISION FOR FURTHER PROCEEDING SHOULD BE VACATED AND SET ASIDE AND ITS ORDER APPROVING THE HEARING OFFICER'S ORDER OF AUGUST 23, 1971 SHOULD BE AFFIRMED.

CLAIMANT'S ATTORNEY, MARION EMBICK, SHOULD RECEIVE A REASONABLE FEE OF 350 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, WITH AN APPROPRIATE RECOVERY FROM THE EMPLOYER, FOR HER SERVICES IN REPRESENTING CLAIMANT ON THIS REVIEW.

IT IS SO ORDERED.

VERNON V. JOHNSON, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTY.
ROGER WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED AN AWARD OF DISABILITY TO THE LEFT HAND AND INCREASED THE CLOSING AND EVALUATION AWARD ON THE RIGHT HAND.

ISSUE

WHAT IS CLAIMANT'S EXTENT OF PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT WAS A 29 YEAR OLD WORKMAN WHO SUSTAINED A COMPENSABLE INJURY SEPTEMBER 3, 1970, WHILE EMPLOYED AS A SHEET METAL WORKER. BOTH HANDS WERE CAUGHT IN A ROLLER RESULTING IN AVULSION OF THE NAILS AND SKIN, FRACTURES OF BONES AND SEVERENCE OF TENDONS. THE RIGHT HAND WAS MOST SERIOUSLY INJURED AND IT REQUIRED MULTIPLE SURGERIES. THE LEFT HAND MADE A GOOD RECOVERY FOLLOWING INITIAL REPAIR SURGERY.

A JUNE 26, 1972 DETERMINATION ORDER AWARDED CLAIMANT 37.5 DEGREES FOR PARTIAL LOSS OF THE RIGHT FOREARM.

CLAIMANT'S LEFT HAND APPEARS NORMAL, BUT THERE IS A LOSS OF STRENGTH IN THE GRIP AND IN COLD WEATHER, A STIFFNESS IN THE JOINTS OF THE FINGERS. THE RIGHT HAND, AS A FUNCTIONAL UNIT, IS SIGNIFICANTLY IMPAIRED BY LOSS OF STRENGTH, DEFORMITY, PAIN, NUMBNESS IN PARTS AND SENSITIVITY IN PARTS.

CLAIMANT IS NOW ATTENDING A COMMUNITY COLLEGE STUDYING CIVIL ENGINEERING UNDER THE AUSPICES OF THE DEPARTMENT OF VOCATIONAL REHABILITATION.

COUNSEL FOR THE EMPLOYER CONTENDS THE MOST RELIABLE METHOD OF MEASUREMENT OF SCHEDULED INJURIES IS BY MEDICAL REPORTS. WHILE MEDICAL REPORTS ARE BASIC TO AN UNDERSTANDING OF THE IMPAIRMENT SUFFERED, UNDOUBTEDLY, A CLEARER PICTURE OF A CONDITION CAN BE CONCEIVED BY ACTUALLY VISUALIZING THE AFFECTED AREA. IN ADDITION, THE HEARING OFFICER HAS HAD THE BENEFIT OF AN ADVERSARY PROCEEDING TO BRING OUT ALL THE FACTS.

THE HEARING OFFICER CONCLUDED THAT CLAIMANT, EVEN THOUGH MEDICAL EVIDENCE SHOWED NO LOSS OF RANGE OF MOTION, HAD MINIMAL RESIDUALS OF THE LEFT HAND SINCE COOL WEATHER ADVERSELY AFFECTED THE FUNCTION OF THE FINGERS. FOR THESE RESIDUALS, HE AWARDED 3 DEGREES FOR THE FIRST FINGER, 2 DEGREES FOR THE SECOND FINGER, 1 DEGREE FOR THE THIRD AND 1 DEGREE FOR THE FOURTH FINGER. IN ADDITION, HE CONCLUDED THAT BECAUSE OF POOR GRIP, AND THE LOSS OF SUSTAINED FUNCTION IN THE RIGHT HAND AND WRIST THAT CLAIMANT WAS ENTITLED TO DISABILITY OF THE RIGHT FOREARM EQUAL TO 50 PERCENT OF THE MAXIMUM AVAILABLE, OR 75 DEGREES, THESE AWARDS TO BE IN LIEU OF AND NOT IN ADDITION TO AWARDS PREVIOUSLY MADE.

THE BOARD RELIES ON THE OBSERVATIONS OF THE HEARING OFFICER, WHICH ARE SUPPORTED BY THE RECORD, AND CONCURS WITH THE AWARDS OF DISABILITY NOTED ABOVE.

ORDER

THE ORDER OF THE HEARING OFFICER DATED NOVEMBER 14, 1972 IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF 250 DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-1198 MAY 3, 1973

WILMA NELSON, CLAIMANT
CLARK AND MARSH, CLAIMANT'S ATTYS.
MCMENAMIN, JONES, JOSEPH AND LANG, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER, CONTENDING HER PERMANENT PARTIAL DISABILITY IS GREATER THAN THAT FOR WHICH SHE WAS AWARDED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

ON DECEMBER 20, 1968 CLAIMANT, A BOOKKEEPER AT DOUGLAS FIR PLYWOOD COMPANY IN ROSEBURG, OREGON, RECEIVED A COMPENSABLE INJURY WHEN THE AUTOMOBILE IN WHICH SHE WAS RIDING WAS STRUCK BY A LUMBER CARRIER AT THE MILL SITE IN COOS COUNTY, OREGON.

THE CLAIM WAS EVENTUALLY CLOSED BY A DETERMINATION ORDER AWARDING CLAIMANT 32 DEGREES PERMANENT PARTIAL DISABILITY FOR LOW BACK DISABILITY AND 8 DEGREES FOR PARTIAL LOSS OF THE RIGHT LEG.

CLAIMANT RETURNED TO WORK ON MARCH 17, 1969 AT THE PLYWOOD COMPANY AND CONTINUED THERE FOR SEVERAL WEEKS UNTIL SHE QUIT WORK TO MOVE TO SALEM WITH HER HUSBAND. SHE HAS DONE GENERAL OFFICE WORK IN THE SALEM AREA SINCE THAT TIME.

IN A CLOSING REPORT, DR. EMBICK STATED THE CLAIMANT'S SYMPTOMS HAD REMAINED RATHER CONSTANT, AND THAT THERE WAS 'SOME' IMPAIRMENT.

BEFORE HER INDUSTRIAL INJURY, CLAIMANT WAS ACTIVE, ENJOYING SKIING, SWIMMING, GOLFING, TENNIS AND DANCING. SHE IS NOW PRECLUDED FROM THESE RECREATIONAL ACTIVITIES. HOWEVER, THE RECORDS SHOW THAT CLAIMANT IS OCCUPATIONALLY ADAPTABLE AND HAS SUCCESSFULLY WORKED IN SEVERAL CLERICAL JOBS SINCE THE ACCIDENT. HER CONDITION HAS NOT PROMPTED HER TO SEEK MEDICAL ATTENTION SINCE SEEING DR. EMBICK IN 1969.

UPON ITS OWN REVIEW OF THE EVIDENCE, THE BOARD CONCLUDES THE HEARING OFFICER'S ORDER GRANTING CLAIMANT AN ADDITIONAL 32 DEGREES MAKING A TOTAL OF 64 DEGREES, AND AFFIRMING THE DISABILITY AWARD OF 8 DEGREES FOR PARTIAL LOSS OF THE RIGHT LEG, IS A TRUE REFLECTION OF CLAIMANT'S DISABILITY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 17, 1972 IS HEREBY AFFIRMED.

WCB CASE NO. 72-1943 MAY 3, 1973

**TOM ABEL, CLAIMANT
FLAXEL, TODD AND FLAXEL, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT**

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED A DETERMINATION ORDER GRANTING CLAIMANT A PERMANENT PARTIAL DISABILITY AWARD OF 16 DEGREES UNSCHEDULED DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS FACE ON JUNE 25, 1971 FOR WHICH HE RECEIVED TEMPORARY TOTAL DISABILITY BENEFITS AND WAS GRANTED AN AWARD OF PERMANENT PARTIAL DISABILITY OF 16 DEGREES FOR UNSCHEDULED LEFT FACIAL MUSCLE DISABILITY. IN ADDITION TO THE FACIAL MUSCLE DISABILITY, THE INJURY AFFECTED CLAIMANT'S ABILITY TO WEAR CONTACT LENS WHICH HE WEARS FOR A PREEXISTING PROBLEM OF NEARSIGHTEDNESS. IT DID NOT CAUSE ANY LOSS OF SIGHT PER SE, HOWEVER.

CLAIMANT HAS SUCCESSFULLY RETURNED TO WORK AND IS CAPABLY PERFORMING HIS PREVIOUS JOB, EVEN TO THE EXTENT OF WORKING OVERTIME.

THE HEARING OFFICER FOUND AND THE BOARD CONCURS, THAT WITH REGARD TO THE EFFECT OF THE INJURY ON HIS EYE AND ITS USE, CLAIMANT HAS SUFFERED NO LOSS OF VISUAL ACUITY OR EARNING CAPACITY. THUS, THE AWARD GRANTED BY THE CLOSING AND EVALUATION DETERMINATION AS AFFIRMED BY THE HEARING OFFICER, SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 25, 1972 IS HEREBY AFFIRMED.

WCB CASE NO. 71-2235 MAY 3, 1973

**DONALD E. DEDMAN, CLAIMANT
COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF**

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AWARDED CLAIMANT COMPENSATION FOR PERMANENT AND TOTAL DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

ON OCTOBER 22, 1969, CLAIMANT, A 52 YEAR OLD LOGGER, SUSTAINED A COMPENSABLE INDUSTRIAL INJURY WHEN STRUCK BY A ROLLING LOG.

A FIRST DETERMINATION ORDER AWARDED HIM 14 DEGREES FOR PARTIAL LOSS OF THE LEFT FOOT AND A SECOND DETERMINATION ORDER ALLOWED 48 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY AND 23 DEGREES FOR PARTIAL LOSS OF THE LEFT LEG.

UPON HEARING, THE HEARING OFFICER FOUND CLAIMANT TO BE PERMANENTLY AND TOTALLY DISABLED, PRIMARILY ON THE BASIS OF PSYCHOLOGICAL FACTORS.

THE ACCIDENT HE SUFFERED WAS DRAMATIC IN NATURE AND LEFT HIM WITH A FEAR OF REINJURY IF HE RETURNED TO WORK IN THE WOODS. THE SYMPTOMS IN CLAIMANT'S LEFT LEG INDICATE THE FOOT AND LEG MUSCULATURE HAS WASTED AWAY AND CLAIMANT IS REQUIRED TO WEAR A LEG BRACE. HE HAS DEVELOPED A LIMP CAUSING A STRAIN ON HIS BACK AND NOW ALSO WEARS A BACK BRACE.

THE MEDICAL EVIDENCE RELATING TO OBJECTIVE FINDINGS OF PHYSICAL IMPAIRMENT FAIL TO SUBSTANTIATE CLAIMANT'S CLAIM OF GREATER PERMANENT DISABILITY. HOWEVER, PSYCHOLOGICAL FINDINGS INDICATE CLAIMANT IS EXPERIENCING VOCATIONAL FRUSTRATION AND A MODERATE PSYCHOLOGICAL REACTION WITH ANXIETY AND DEPRESSION IN A PASSIVE DEPENDENT PERSONALITY. CHARLES C. BROWN, M.D., INDICATED THE VERY TREATMENT CLAIMANT HAD RECEIVED FOR HIS INJURY MADE HIM WORSE BECAUSE IT FIXED IN CLAIMANT'S MIND A VIEW OF HIMSELF AS A DISABLED, WORN-OUT, UNEMPLOYABLE WORKMAN.

THE STATE ACCIDENT INSURANCE FUND ALLEGES DR. BROWN'S HISTORICAL ASSUMPTIONS ARE ERRONEOUS AND THAT HIS CONCLUSIONS LIKEWISE SUFFER. IT IS NOTED THE FUND FAILED TO CROSS-EXAMINE DR. BROWN ALTHOUGH GIVEN THE OPPORTUNITY TO DO SO.

THE BOARD AGREES WITH THE HEARING OFFICER THAT CLAIMANT, BASED ON PHYSICAL IMPAIRMENT, IS NOT TOTALLY DISABLED, HOWEVER, THIS DISABILITY, WHEN COMBINED WITH CLAIMANT'S PSYCHOPATHOLOGY, HAS RENDERED THE CLAIMANT PERMANENTLY AND TOTALLY DISABLED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED NOVEMBER 14, 1972 IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF 250 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 70-2415 MAY 3, 1973

WCB CASE NO. 72-229 MAY 3, 1973

DAN O'CONNOR, CLAIMANT
DAVID R. VANDENBERG, JR., CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AMONG OTHER THINGS, REMANDED THE CLAIMANT'S CLAIM TO THE FUND FOR PAYMENT OF COMPENSATION.

ISSUE

WAS CLAIMANT'S APRIL, 1971 MYOCARDIAL INFARCTION A NEW INCIDENT OR AN AGGRAVATION OF A PREVIOUS INCIDENT?

DISCUSSION

AFTER REVIEWING THE RECORD DE NOVO, THE BOARD FINDS ITSELF IN COMPLETE AGREEMENT WITH THE FINDINGS AND CONCLUSIONS EXPRESSED IN THE HEARING OFFICER'S THOROUGH AND WELL WRITTEN ORDER. HIS OPINION AND ORDER IS ADOPTED BY THE BOARD.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 7, 1972 IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF 250 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 71-1634 MAY 3, 1973

WALTER SHORT, CLAIMANT
JOYCE AND TODORVICH, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE EMPLOYER IN THIS MATTER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH REMANDED CLAIMANT'S CLAIM OF AGGRAVATION TO THE EMPLOYER FOR ACCEPTANCE AND PAYMENT OF COMPENSATION THROUGH ITS INSURANCE CARRIER, INDUSTRIAL INDEMNITY COMPANY.

ISSUE

HAS CLAIMANT SUSTAINED AN AGGRAVATION OF HIS INDUSTRIAL INJURY OF JANUARY 12, 1970?

DISCUSSION

FOR THE RECORD, THE BOARD NOTES THAT THE HEARING OFFICER INAD-

VERTENTLY IDENTIFIED THE CARRIER INVOLVED AS LIBERTY MUTUAL, WHEREAS INDUSTRIAL INDEMNITY WAS, IN FACT, THE CARRIER OF RECORD.

ON JANUARY 12, 1970, CLAIMANT, WHO HAS HAD TWO PREVIOUS BACK INJURIES, ONE IN 1965 AND ANOTHER IN 1969, AGAIN INJURED HIS BACK WHILE LIFTING A TRASH CAN WHILE EMPLOYED BY CORVALLIS DISPOSAL COMPANY WHICH WAS THEN COVERED BY INDUSTRIAL INDEMNITY. ALTHOUGH CLAIMANT RECEIVED ONLY 16 DEGREES PERMANENT PARTIAL DISABILITY TO HIS LOW BACK, HE DID NOT RETURN TO WORK DUE TO A FEAR OF REINJURING HIS BACK AND WENT TO SCHOOL BEFORE TAKING OTHER EMPLOYMENT.

THE NEXT EPISODE MATERIAL TO THE MATTER IN QUESTION WAS A SUDDEN ONSET OF PAIN WHEN CLAIMANT PICKED UP A BOWLING BALL IN APRIL OF 1971, WHICH NECESSITATED A LAMINECTOMY AND DISCOIDECTOMY.

AN AGGRAVATION CLAIM WAS FILED WITH INDUSTRIAL INDEMNITY BASED ON THE 1970 INJURY, WHICH WAS SUBSEQUENTLY DENIED, PROMPTING A REQUEST FOR HEARING BY THE CLAIMANT.

AFTER WAITING ALMOST A YEAR FOR ADDITIONAL MEDICAL EVIDENCE, THE HEARING OFFICER, AFTER REFUSING FURTHER CONTINUANCE OF THE HEARING, ISSUED HIS OPINION AND ORDER FINDING THE BOWLING INCIDENT WAS, IN REALITY, AN AGGRAVATION OF THE 1970 INJURY, AND CONCLUDES HIS ORDER REQUIRING PAYMENT OF COMPENSATION BY INDUSTRIAL INDEMNITY, UNTIL CLOSURE IS AUTHORIZED PURSUANT TO ORS 656.268, SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 30, 1972 IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF 250 DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-1431 MAY 3, 1973

JAMES E. ROBERTSON, CLAIMANT
O'CONNELL, GOYAK AND HAUGH, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AWARDED 128 DEGREES UNSCHEDULED DISABILITY CONTENDING HE IS PERMANENTLY TOTALLY DISABLED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT IS A 67 YEAR OLD PLYWOOD MILLWORKER WHO SUFFERED A LOW BACK INJURY ON JUNLY 11, 1970 WHILE PULLING ON THE DRY CHAIN AT MULTNOMAH PLYWOOD COMPANY, AN EMPLOYEE-OWNED CORPORATION.

IN SEPTEMBER, 1970, CLAIMANT SUBMITTED TO LAMINECTOMY AND EXCISION OF EXTRUDED INTERVERTEBRAL DISC, L4-5, EXPLORATION, DISC SPACE AT L5-S1 ON THE LEFT.

PREVIOUS TO EMPLOYMENT IN PLYWOOD MANUFACTURING, CLAIMANT WAS EMPLOYED IN THE BANKING INDUSTRY AND WAS ALSO A LICENSED PUBLIC ACCOUNTANT. HE HAS SKILLS IN MOST OF THE MILL WORK POSITIONS INCLUDING THOSE IN THE OFFICE.

A DETERMINATION ORDER OF THE CLOSING AND EVALUATION DIVISION AWARDED CLAIMANT 64 DEGREES (20 PERCENT) FOR UNSCHEDULED LOW BACK DISABILITY. THIS AWARD WAS INCREASED 64 DEGREES, MAKING A TOTAL OF 128 DEGREES, (40 PERCENT) BY THE HEARING OFFICER UPON HEARING.

AT THE HEARING CLAIMANT TESTIFIED OF CONSTANT BACK PAIN, NUMBNESS IN THE LEFT LEG, INABILITY TO SIT LONG, STAND LONG, OR ENGAGE IN ANY ACTIVITY FOR A PROLONGED PERIOD, AND DIFFICULTY IN SLEEPING. HE ALSO INDICATES HIS PAIN MEDICATIONS HAVE AFFECTED HIS ABILITY TO CONCENTRATE.

MAX R. REED, PH. D., A CLINICAL PSYCHOLOGIST SPECIALIZING IN EMPLOYMENT SUITABILITY, TESTIFIED CLAIMANT WAS UNEMPLOYABLE. HE FELT, HOWEVER, THIS WAS PARTLY DUE TO THE PAIN MEDICATION CLAIMANT WAS TAKING. THIS MEDICATION HE CHANGED HOWEVER. THE TREATING ORTHOPEDIC SURGEON, DR. FREDERICK GOODWIN, VIEWED THE PROSPECTS OF CLAIMANT'S RETURN TO WORK AS VERY POOR.

AS A RESULT OF THE EFFORTS OF BOTH COUNSEL, AN EXCELLENT RECORD HAS BEEN MADE. THIS RECORD INDICATES CLAIMANT'S PHYSICAL IMPAIRMENT IS NOT SEVERE. IN VIEW OF CLAIMANT'S PAST EXPERIENCE IN ACCOUNTING AND BANKING WHICH REMAINS REASONABLY AVAILABLE TO HIM, THE BOARD AGREES WITH THE HEARING OFFICER'S FINDING THAT CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED. HOWEVER, BASED PRIMARILY ON THE TESTIMONY OF DR. GOODWIN AND DR. MASON, THE BOARD CONCLUDES AND FINDS THAT THE CLAIMANT'S UNSCHEDULED DISABILITY ATTRIBUTABLE TO THIS ACCIDENT IS 192 DEGREES OR 60 PERCENT OF THE WORKMAN AND THE HEARING OFFICER'S ORDER SHOULD BE MODIFIED ACCORDINGLY.

ORDER

THE ORDER OF THE HEARING OFFICER IS MODIFIED TO INCREASE THE AWARD FROM 128 DEGREES (40 PERCENT) TO 192 DEGREES OR 60 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

CLAIMANT'S ATTORNEYS ARE ENTITLED TO RECEIVE 25 PERCENT OF THE INCREASED COMPENSATION MADE PAYABLE BY THIS ORDER. IN NO EVENT HOWEVER, SHALL THE FEE COLLECTED BY VIRTUE OF THIS ORDER AND THE ORDER OF THE HEARING OFFICER, EXCEED 1,500 DOLLARS.

WCB CASE NO. 72-1070 MAY 3, 1973

WILBUR L. BUSH, CLAIMANT
WAYNE R. HARRIS, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS CLAIMANT APPEALS THE ORDER OF THE HEARING OFFICER DENYING HIS CLAIM OF AGGRAVATION BY THE STATE ACCIDENT INSURANCE FUND.

ISSUE

HAS CLAIMANT SUFFERED AN AGGRAVATION OF HIS INDUSTRIAL INJURY OF JUNE, 1970?

DISCUSSION

THIS 69 YEAR OLD CLAIMANT SUSTAINED INJURY TO HIS BACK IN JUNE OF 1970, WHILE EMPLOYED AS A HOTEL MANAGER. THE CLAIM WAS ACCEPTED BY THE STATE ACCIDENT INSURANCE FUND AND CLOSED BY AN ENTRY OF A DETERMINATION ORDER ON MARCH 30, 1971 AWARDING CLAIMANT 32 DEGREES FOR UNSCHEDULED DISABILITY.

THE MEDICAL HISTORY OF THIS CLAIMANT REFLECTS INTERMITTENT BACK PROBLEMS DATING FROM 1938, WITH RECOVERY FROM EACH ONSET ENABLING HIM TO RETURN TO WORK. HOWEVER, CLAIMANT HAS NEVER RETURNED TO WORK SINCE THE INJURY HE SUSTAINED IN JUNE, 1970.

IN JANUARY, 1972 CLAIMANT SUFFERED AN EPISODE OF ACUTE BACK MUSCLE SPASM OF SUFFICIENT INTENSITY TO REQUIRE SEVERAL DAYS HOSPITALIZATION. DURING THIS PERIOD CLAIMANT WAS CARED FOR BY DR. HOWARD NEWTON AND IN CONSULTATION BY DR. L. J. COHEN, AN ORTHOPEDIST.

CLAIMANT FILED AN AGGRAVATION CLAIM WITH THE STATE ACCIDENT INSURANCE FUND. IN RESPONSE TO AN INQUIRY BY THE FUND, DR. COHEN REPORTED...

'IT APPEARS, FROM MY EXAMINATION, THAT HIS CONDITION IN THE HOSPITAL WAS A LITTLE WORSE THAN THAT DESCRIBED BY DR. ANDERSON SO I ASSUME THAT ON JANUARY 8, 1972, THERE WAS SOME AGGRAVATION OF HIS CONDITION. I DOUBT HOWEVER, WHETHER IT IS DUE TO THE INDUSTRIAL ACCIDENT OF JUNE 3, 1970. MORE LIKELY, IT IS PROBABLY DUE TO THE PRE-EXISTING DEGENERATIVE DISC DISEASE' (JOINT EXHIBIT 26.)

ON APRIL 11, 1972, THE STATE ACCIDENT INSURANCE FUND ADVISED CLAIMANT THAT IT WAS DENYING THE REOPENING OF THE CLAIM ON THE BASIS OF AGGRAVATION.

BY DEFINITION, THE TERM 'AGGRAVATION' AS USED IN THE WORKMEN'S COMPENSATION LAW, ORS 656.271, IS 'AN AGGRAVATION OF THE DISABILITY RESULTING FROM A COMPENSABLE INJURY' (EMPHASIS SUPPLIED.) THE HEARING OFFICER WAS OF THE OPINION DR. COHEN'S REPORT WAS INADEQUATE TO SUPPORT A FINDING OF AGGRAVATION WITHIN THE MEANING OF THE OREGON WORKMEN'S COMPENSATION LAW.

ON DE NOVO REVIEW OF THE RECORD, THE BOARD CONCURS WITH THE CONCLUSION OF THE HEARING OFFICER UPHOLDING THE DENIAL OF THE CLAIM FOR AGGRAVATION BY THE STATE ACCIDENT INSURANCE FUND.

ORDER

THE HEARING OFFICER ORDER DATED JULY 21, 1972 IS HEREBY AFFIRMED.

WCB CASE NO. 72-1499 MAY 3, 1973

REBECCA COX, CLAIMANT
JAMES W. POWERS, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER GRANTING CLAIMANT AN AWARD OF 48 DEGREES LOSS OF THE WORKMAN (15 PERCENT) FOR UNSCHEDULED DISABILITY AND 19 DEGREES (10 PERCENT) PARTIAL LOSS OF THE LEFT ARM.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

THE BOARD HAS REVIEWED THE RECORD AND BRIEFS OF COUNSEL AND IS PERSUADED THAT THE HEARING OFFICER CORRECTLY DETERMINED THE DISABILITY CLAIMANT HAS SUFFERED AS A RESULT OF THIS INJURY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 21, 1972 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF 250 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-1935 MAY 3, 1973

WCB CASE NO. 72-545 MAY 3, 1973

ARTHUR L. PALMER, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER FINDING THE FUND TO BE RESPONSIBLE FOR CLAIMANT'S CLAIM OF INJURY.

ISSUE

DID CLAIMANT SUSTAIN A SECOND COMPENSABLE INJURY, OR IS IT AN AGGRAVATION OF HIS ORIGINAL INJURY?

DISCUSSION

THIS CLAIMANT SUSTAINED A COMPENSABLE LOW BACK INJURY ON MARCH 16, 1970 WHILE EMPLOYED AS A FOUNDRY WORKER FOR ESCO CORPORATION

FOR WHICH HE ULTIMATELY RECEIVED AN AWARD FOR PERMANENT PARTIAL DISABILITY EQUAL TO 48 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. THE STATE ACCIDENT INSURANCE FUND WAS THE INSURING AGENCY IN THIS CLAIM.

ON JUNE 26, 1972, CLAIMANT REPORTED A "POPPING" IN HIS BACK AND HAS BEEN UNDER DR. GRITZKA'S CARE SINCE THAT TIME. CLAIMANT'S EMPLOYER, ESCO CORPORATION, WAS THEN INSURED BY EBI COMPANIES.

AS A RESULT OF THE MARCH 16, 1970 INDUSTRIAL INJURY, CLAIMANT UNDERWENT A LAMINECTOMY. HE DID RETURN TO LIGHTER WORK, BUT WAS NEVER FREE FROM LOW BACK SYMPTOMS FOLLOWING THIS ORIGINAL INJURY.

AN AUTOMOBILE ACCIDENT INTERVENING BETWEEN THE ORIGINAL INJURY AND THE JUNE 26, 1972 EVENT PRODUCED INJURIES ONLY TO CLAIMANT'S HEAD, NECK, AND KNEE, AND IS NOT CAUSALLY RELATED TO HIS PRESENT COMPLAINTS.

WITH RESPECT TO THE SECOND INDUSTRIAL INJURY, THE HEARING OFFICER FOUND THERE WAS NO UNUSUAL, UNEXPECTED OR DRAMATIC EVEN SURROUNDING THE INCIDENT. HE RELIED ON THE AUGUST 21, 1972 REPORT OF DR. GRITZKA WHICH UNEQUIVOCALLY ASCRIBED CLAIMANT'S LOW BACK PROBLEMS TO THE 1970 INJURY.

THE HEARING OFFICER CONCLUDED THAT CLAIMANT HAD NOT SUFFERED A SECOND INDUSTRIAL INJURY AND RESPONSIBILITY FOR THE PAYMENT OF COMPENSATION FOR THE ORIGINAL INJURY SHOULD BE ASSUMED BY THE STATE ACCIDENT INSURANCE FUND ON THE BASIS OF AGGRAVATION.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER. HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 10, 1972 IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF 250 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-1887 MAY 4, 1973

LAWRENCE MCELHINNEY, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER, CLAIMANT'S ATTYS.
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED HIM AN ADDITIONAL 13.5 DEGREES, RESULTING IN A TOTAL OF 27 DEGREES OF A MAXIMUM OF 135 DEGREES FOR PERMANENT PARTIAL DISABILITY OF THE LEFT FOOT.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

ON OCTOBER 26, 1970, CLAIMANT, A 22 YEAR OLD CAR LOADER, SUFFERED A SERIOUS FRACTURE OF THE LEFT LOWER LEG WHILE WORKING AT THE U. S. PLYWOOD CHAMPION PAPERS INC. PLYWOOD MILL IN LEBANON, OREGON. ALTHOUGH THE INJURY WAS SERIOUS, GOOD MEDICAL CARE MINIMIZED THE DISABLING EFFECT OF THE INJURY.

CLAIMANT HAS RETURNED TO HIS PRIOR EMPLOYMENT BUT HE DOES HAVE PHYSICAL IMPAIRMENT WHICH THE HEARING OFFICER CONCLUDED EQUALLED 27 DEGREES OF A MAXIMUM OF 135 DEGREES.

THE RECORD FULLY SUPPORTS THE HEARING OFFICERS EVALUATION. CLAIMANT HAS BEEN ADEQUATELY COMPENSATED FOR HIS PRESENT DISABILITY AND THE HEARING OFFICER'S ORDER SHOULD THEREFORE BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED NOVEMBER 29, 1972 IS AFFIRMED.

WCB CASE NO. 69-1129 MAY 4, 1973

HERMAN P. LINGO, CLAIMANT
GREEN, RICHARDSON, GRISWOLD AND MURPHY, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
ORDER APPROVING STIPULATION AND SETTLEMENT

THE CLAIMANT IN THIS MATTER APPEALED A PARTIAL DENIAL AND THE EXTENT OF DISABILITY RESULTING FROM TWO ADMITTEDLY COMPENSABLE INJURIES THROUGH CIRCUIT COURT LEVEL AND WAS PREPARED TO APPEAL TO THE OREGON COURT OF APPEALS WHEN THE PARTIES EFFECTED A COMPROMISE SETTLEMENT.

ON DECEMBER 7, 1972, THE CIRCUIT COURT OF WASCO COUNTY REMANDED THE MATTER TO THE WORKMEN'S COMPENSATION BOARD FOR CONSIDERATION AND APPROVAL OF THE SETTLEMENT STIPULATION.

THE BOARD HAS NOW RECEIVED THE STIPULATED SETTLEMENT AND SUPPORTING DOCUMENTS WHICH ARE ATTACHED HERETO AS EXHIBIT 'A' AND BEING NOW FULLY ADVISED, FINDS THE COMPROMISE FAIR AND EQUITABLE TO BOTH PARTIES. THE AGREEMENT SHOULD BE APPROVED AND EXECUTED ACCORDING TO ITS TERMS.

IT IS SO ORDERED.

WCB CASE NO. 72-1433 MAY 8, 1973

K. W. LANGE, CLAIMANT
SAM WILDERMAN, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER DISMISSING HIS REQUEST FOR HEARING.

ISSUE

IS CLAIMANT ENTITLED TO A HEARING BEFORE THE WORKMEN'S COMPENSATION BOARD?

DISCUSSION

THIS CLAIMANT WAS INJURED ON JUNLY 29, 1964 AND ELECTED IN 1968 TO PROCEED WITH AN APPEAL UNDER THE PRE-1966 LAW. HE IS THUS NOW PRECLUDED FROM PURSUING A HEARING BEFORE THE WORKMEN'S COMPENSATION BOARD.

THE CLAIMANT IS ADVISED THAT THE BOARD DOES HAVE CONTINUING JURISDICTION OF PRE-1966 INJURIES PURSUANT TO ORS 656.278. UPON APPLICATION THE BOARD MAY MODIFY, CHANGE OR TERMINATE FORMER FINDINGS, ORDERS OR AWARDS, IF IN ITS OPINION SUCH ACTION IS JUSTIFIED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 15, 1972 DISMISSING CLAIMANT'S REQUEST FOR HEARING IS HEREBY AFFIRMED.

WCB CASE NO. 71-2385 MAY 8, 1973

L. D. WILSON, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER AWARDING CLAIMANT AN ADDITIONAL 160 DEGREES FOR UNSCHEDULED DISABILITY MAKING A TOTAL AWARD OF 240 DEGREES, CONTENDING HE IS PERMANENTLY AND TOTALLY DISABLED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

THIS MATTER INVOLVES THE CLAIM OF A 37 YEAR OLD WORKMAN WITH PREEXISTING DISABILITIES INVOLVING AN AMPUTATION OF THE LEFT ARM ABOVE THE ELBOW AND A RUPTURE OF THE MEDIAL MENISCUS OF THE RIGHT KNEE, WHO SUFFERED A LOW BACK INJURY ON JUNE 18, 1969, WHILE WORKING FOR THE CITY OF SALEM.

FOLLOWING A COURSE OF CONSERVATIVE TREATMENT CLAIMANT'S TREATING PHYSICIAN, DR. RICHARD EMBICK STATED IN A LETTER DATED NOVEMBER 2, 1972...

'...IT IS MY OPINION THAT MR. WILSON IS EMPLOYABLE AT LIGHT DUTY WHICH DOES NOT REQUIRE HEAVY LIFTING OR ANY HAZARDOUS ACTIVITY WHICH MIGHT INCREASE HIS DISABILITY KEEPING IN MIND THAT HE HAD SEVERAL SEVERE INJURIES WHICH HAVE LEFT DISABILITIES, INCLUDING ARM, BACK AND KNEE.' EXHIBIT 37.

CLAIMANT HAS NOT YET BEEN ABLE TO RETURN TO GAINFUL EMPLOYMENT SINCE THE CITY OF SALEM HAS BEEN UNABLE, REGRETABLY, TO FIND A SUITABLE POSITION. IT IS CLEAR FROM THE RECORD, HOWEVER, THAT BASED ON CLAIMANT'S EDUCATION AND APTITUDES, THAT HE IS A GOOD CANDIDATE FOR REHABILITATION. CLAIMANT IS THUS NOT PERMANENTLY AND TOTALLY DISABLED ALTHOUGH THE RECORD DOES SUPPORT THE HEARING OFFICER'S INCREASE IN DISABILITY TO 240 DEGREES OR 75 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED PARTIAL DISABILITY.

ALTHOUGH PREVIOUS REHABILITATION EFFORTS HAVE NOT BEEN SUCCESSFUL, THE BOARD IS CONVINCED THAT ADDITIONAL EFFORTS ARE WARRANTED TO RETURN THIS WORKMAN TO GAINFUL EMPLOYMENT. TO ASSIST THE CLAIMANT IN THIS REGARD, THE BOARD HEREBY REQUESTS ITS DISABILITY PREVENTION DIVISION TO CONTACT CLAIMANT AND DEVISE WITH HIM A SUITABLE VOCATIONAL REHABILITATION PLAN. IN THE EVENT CLAIMANT'S REHABILITATION PLAN IS NOT SUCCESSFUL, THE BOARD MAY, UPON PROPER APPLICATION, FURTHER CONSIDER ITS CONCLUSIONS CONCERNING THE EXTENT OF CLAIMANT'S DISABILITY. IN THE MEANTIME, HOWEVER, THE BOARD CONCURS WITH THE FINDINGS OF THE HEARING OFFICER AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 18, 1972 IS HEREBY AFFIRMED.

IT IS HEREBY FURTHER ORDERED THAT THE BOARD'S DISABILITY PREVENTION DIVISION TAKE APPROPRIATE ACTION TO IMPLEMENT A VOCATIONAL REHABILITATION PROGRAM FOR THIS CLAIMANT.

WCB CASE NO. 72-1004 MAY 8, 1973

TED W. RIPLEY, CLAIMANT
DONALD G. MORRISON, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED CLAIMANT AN AWARD OF 64 DEGREES FOR UNSCHEDULED LOW BACK INJURY, CONTENDING THE HEARING OFFICER ERRED WHEN HE DID NOT FIND THE BACK CONDITION WAS UNRELATED TO THE INDUSTRIAL INJURY.

ISSUE

IS CLAIMANT'S BACK CONDITION COMPENSABLY RELATED TO HIS INDUSTRIAL ACCIDENT?

DISCUSSION

THIS CLAIM INVOLVES A WORKMAN EMPLOYED BY THE EASTERN OREGON COMMUNITY DEVELOPMENT COUNCIL IN THE CITY OF ECHO, OREGON, WHO SUSTAINED A COMPENSABLE INJURY ON SEPTEMBER 11, 1969 WHEN THE TRACTOR FROM WHICH HE FELL RAN OVER HIS LEFT FOOT, FRACTURING THE DISTAL TIP OF THE LEFT FIBULAR.

IN APRIL, 1970, CLAIMANT SOUGHT TREATMENT FOR HIS BACK CONTENDING IT HAD ALSO BEEN INJURED IN THE ACCIDENT. THE STATE ACCIDENT INSURANCE FUND, ON JULY 14, 1970, DENIED THE BACK PROBLEM AS NOT BEING THE RESULT OF THE INDUSTRIAL INJURY.

ON DECEMBER 21, 1970, THE FUND STIPULATED THAT ITS PARTIAL DENIAL OF THE BACK CONDITION BE SET ASIDE AND CLAIMANT'S CLAIM REOPENED FOR FURTHER TREATMENT AND PAYMENT OF TEMPORARY TOTAL DISABILITY. THIS STIPULATION ESTABLISHES AS A MATTER OF LAW THAT CLAIMANT'S BACK WAS INJURED IN THE ACCIDENT.

BASED ON ITS REVIEW OF THE RECORD, THE BOARD CONCLUDES THE HEARING OFFICER'S FINDINGS AND CONCLUSIONS ARE CORRECT AND SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 17, 1972 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF 250 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-1450 MAY 9, 1973

RICHARD HARDING, CLAIMANT
RICHARD H. RENN, CLAIMANT'S ATTY.
SOUTHER, SPAULDIN, KINSEY, WILLIAMSON AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED CLAIMANT AN ADDITIONAL 64 DEGREES FOR LOW BACK AND RIGHT SHOULDER DISABILITY MAKING A TOTAL OF 128 DEGREES OR 40 PER CENT OF THE MAXIMUM ALLOWED FOR UNSCHEDULED DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT IS A 24 YEAR OLD MAN WHO SUFFERED COMPENSABLE INJURIES ON JULY 11, 1971, WHILE WORKING AS A SANDER-FEEDER IN A PLYWOOD MILL. AS A RESULT OF THE ACCIDENT CLAIMANT WAS LEFT WITH RESIDUAL DISABILITY IN THE LOW BACK AND RIGHT SHOULDER WHICH PREVENT HIS RETURN TO MILLWORK.

THE CLAIMANT WAS WORKING IN THE MILL TO FINANCE HIS COLLEGE EDUCATION. HE HAS COMPLETED THE EQUIVALENT OF THREE YEARS OF COLLEGE, DURING WHICH TIME HE WAS AN OUTSTANDING ATHLETE. HIS INTENTIONS WERE TO BECOME A TEACHER AND A COACH. A COACHING CAREER HAS BEEN JEOPARDIZED BY HIS INDUSTRIAL INJURY.

THE HEARING OFFICER, ALTHOUGH RECOGNIZING THAT THE DISABLING EFFECT OF THIS INJURY HAS BEEN LESSENED BY CLAIMANT'S YOUTH, MENTAL CAPACITY AND ADAPTABILITY, CONSIDERED CLAIMANT 40 PERCENT DISABLED. THE AWARD APPEARS GENEROUS IN VIEW OF CLAIMANT'S POTENTIAL. YET, IN TERMS OF THE EFFECT OF THIS INJURY UPON CLAIMANT'S ABILITY TO ENGAGE IN GENERAL INDUSTRIAL EMPLOYMENT, THE AWARD IS SUPPORTABLE. THUS, THE ORDER OF THE HEARING OFFICER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 21, 1972 IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF 250 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-578 MAY 10, 1973

JOHN MORAVA, DECEASED
THOMAS J. REEDER, CLAIMANT'S ATTY
LONG, NEUNER, DOLE AND CALEY, DEFENSE ATTYS.
ORDER APPROVING STIPULATION AND ORDER OF SETTLEMENT

ON MARCH 12, 1973, THE EMPLOYER REQUESTED BOARD REVIEW OF A HEARING OFFICER'S ORDER DATED FEBRUARY 12, 1973, WHICH SUSTAINED THE BENEFICIARIES CLAIM FOR BENEFITS.

THERE IS A BONA FIDE DISPUTE BETWEEN THE PARTIES OVER THE COMPENSABILITY OF THIS CLAIM AND PURSUANT TO ORS 656.289 (4), THEY HAVE AGREED TO SETTLE AND COMPROMISE THE CLAIM SUBJECT TO THE APPROVAL OF THE BOARD.

ATTACHED HERETO AND MADE A PART OF THIS ORDER AS EXHIBIT 'A' IS THE STIPULATED SETTLEMENT OF THE CLAIM IN WHICH THE EMPLOYER AGREES TO PAY AND THE BENEFICIARY AGREES TO ACCEPT THE SUM OF 13,750 DOLLARS IN FULL AND FINAL SETTLEMENT OF ANY AND ALL CLAIMS FOR WIDOW'S BENEFITS, WITH COUNSEL FOR CLAIMANT TO RECEIVE 1,500 DOLLARS FOR HIS SERVICES.

THE BOARD, BEING NOW FULLY ADVISED, CONCLUDES THE SETTLEMENT IS FAIR AND EQUITABLE FOR BOTH PARTIES AND HEREBY APPROVES THIS AGREEMENT.

ORDER

IT IS THEREFORE ORDERED THAT THE STIPULATION AND ORDER BE EXECUTED ACCORDING TO ITS TERMS.

THE REQUEST FOR REVIEW NOW PENDING IS HEREBY DISMISSED.

STIPULATION

THE CLAIMANT, ROBERTA MORAVA, PERSONALLY AND THROUGH HER ATTORNEY, THOMAS J. REEDER, TOGETHER WITH THE EMPLOYER, PERMANEER CORPORATION AND ITS CARRIER, CHUBB PACIFIC INDEMNITY COMPANY, THROUGH THEIR ATTORNEY, ELDON F. CALEY, DO HEREBY WARRANT AS FOLLOWS...

1. THAT JOHN MORAVA DIED ON NOVEMBER 27, 1971 IN JACKSON COUNTY, OREGON.

2. THAT THE UNDERSIGNED ROBERTA MORAVA WAS THE LAWFUL WIFE OF JOHN MORAVA AND IS NOW HIS WIDOW, THERE BEING NO CHILDREN UNDER THE AGE OF 18 IN THE HOME OR OTHERWISE DEPENDENT UPON THE WORKMAN OR THE UNDERSIGNED.

3. THAT ROBERTA MORAVA INSTITUTED A CLAIM FOR BENEFITS UNDER THE OREGON WORKMEN'S COMPENSATION ACT CLAIMING AND CONTENDING THAT THE DEATH OF JOHN MORAVA WAS LEGALLY AND MEDICALLY CAUSED AND RELATED TO AN ACCIDENTAL INJURY SUSTAINED BY THE SAID JOHN MORAVA WHILE IN THE COURSE AND SCOPE OF HIS EMPLOYMENT WITH PERMANEER CORPORATION, THAT PERMANEER AND ITS CARRIER DENIED THE CLAIM.

4. THAT AS THE RESULT OF A HEARING ON JANUARY 11, 1973, THE HEARING OFFICER'S OPINION AND ORDER WAS ENTERED SUSTAINING THE CLAIM FOR COMPENSATION OF REBERTA MORAVA AND DIRECTING THE EMPLOYER TO PROVIDE COMPENSATION TO THE RIGHTFUL BENEFICIARIES OF JOHN MORAVA.

5. THAT THE EMPLOYER AND ITS CARRIER HAVE APPEALED THE OPINION AND ORDER AND HAVE REQUESTED REVIEW THEREOF BY THE WORKMEN'S COMPENSATION BOARD. THE EMPLOYER AND ITS CARRIER CONTINUE TO DENY AND DISPUTE THE CONTENTION AND FINDING THAT THE DEATH OF JOHN MORAVA WAS MEDICALLY OR LEGALLY CAUSED OR RELATED TO ANY ACCIDENTAL INJURY, EXERTION OR OTHER ACTIVITY TO WHICH THE SAID JOHN MORAVA WAS SUBJECTED WHILE IN THE COURSE AND SCOPE OF HIS EMPLOYMENT.

6. THAT THERE IS A BONA FIDE AND DEFINITE DISPUTE BETWEEN ROBERTA MORAVA, THE SOLE AND ONLY RIGHTFUL BENEFICIARY OF JOHN MORAVA AND THE EMPLOYER.

7. IT IS THE DESIRE OF THE SAID ROBERTA MORAVA AND THE EMPLOYER TO SETTLE, DISPOSE OF AND FOREVER DISMISS ANY AND ALL CLAIMS OF THE COMPENSATION OF THE SAID ROBERTA MORAVA OR ANY BENEFICIARY OF JOHN MORAVA ON A DISPUTED CLAIM BASIS.

THEREFORE, BY REASON OF THE FOREGOING AND FOR THE PURPOSE OF ENTERING UPON A FINAL AND BINDING DISPOSITION OF A BONA FIDE DISPUTE OVER COMPENSABILITY OF THE CLAIMANT'S CLAIM FOR COMPENSATION PURSUANT TO ORS 656.289 (4), THE PARTIES DO HEREBY AGREE AND STIPULATE...

(A) UPON APPROVAL BY THE WORKMEN'S COMPENSATION BOARD OR HEARING OFFICER THEREOF OF THIS SETTLEMENT OF THE BONA FIDE DISPUTE OVER COMPENSABILITY EXISTING BETWEEN THE UNDERSIGNED PARTIES, AN ORDER SHALL BE ENTERED DISMISSING THE WITHIN PROCEEDING AND ALL ASPECTS THEREOF WITH PREJUDICE.

(B) THE EMPLOYER WILL PAY TO ROBERTA MORAVA IN LUMP SUM THE SUM OF 13,750 DOLLARS IN FULL AND FINAL SETTLEMENT OF ANY AND ALL CLAIMS FOR WIDOW'S BENEFITS, DISABILITY OR OTHER COMPENSATION OF ANY NATURE WHATEVER WHICH SHE POSSESSES OR WHICH COULD BE RAISED AT THIS TIME OR AT ANY TIME HEREAFTER BY ANY PROCEDURE UNDER THE WORKMEN'S COMPENSATION ACT OF OREGON.

(C) IN ADDITION TO THE FOREGOING, THE EMPLOYER WILL PAY TO THE ATTORNEY OF ROBERTA MORAVA, TO-WIT... THOMAS REEDER, THE SUM OF 1,500 DOLLARS AS AND FOR A REASONABLE ATTORNEY'S FEE.

(D) ROBERTA MORAVA HEREBY WARRANTS THAT SHE KNOWS AND UNDERSTANDS THAT BY EXECUTING THIS STIPULATION AND RECEIVING AND ACCEPTING THE SUMS MENTIONED SHE FOREVER WAIVES, SETTLES AND DISPOSES OF ANY CLAIM FOR WORKMEN'S COMPENSATION, WIDOW'S BENEFITS OR OTHER BENEFITS OF ANY NATURE WHATEVER. SHE ALSO WARRANTS THAT SHE WAIVES ALL RIGHTS OF APPEAL FROM ANY ORDER THAT THE WORKMEN'S COMPENSATION BOARD OR HEARING OFFICER MAY ENTER HEREIN DISMISSING ALL ASPECTS OF THE WITHIN PROCEEDING. SHE WARRANTS THAT SHE HAS NOT RECEIVED OR ACTED UPON ANY STATEMENTS, REPRESENTATION OR INFORMATION GIVEN HER BY THE EMPLOYER HEREIN BUT, INSTEAD, ACTS UPON HER OWN INFORMATION AND HER OWN INDEPENDENTLY-RETAINED LEGAL COUNSEL.

E. IT IS FURTHER STIPULATED THAT UPON PAYMENT OF THE LUMP SUMS TO ROBERTA MORAVA AND HER ATTORNEY AS HEREINBELOW PROVIDED, ALL CLAIMS FOR COMPENSATION OR ATTORNEY'S FEES, PENALTIES OR OTHER OBLIGATIONS WILL BE DEEMED FULLY AND FINALLY SETTLED.

WCB CASE NO. 72-1450 MAY 11, 1973

RICHARD HARDING, CLAIMANT
RICHARD H. RENN, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE, DEFENSE ATTYS.
AMENDED ORDER

THE ABOVE-ENTITLED MATTER WAS THE SUBJECT OF AN ORDER ON REVIEW DATED MAY 9, 1973.

ON PAGE 1, THE LAST PARAGRAPH ERRONEOUSLY RECITES THE ATTORNEY FEE, 'PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.'

THE SOLE PURPOSE OF THIS ORDER IS TO CORRECT THE RECORD AND CONFIRM THE ORDER SHOULD RECITE, 'PAYABLE BY THE EMPLOYER.'

THE ORDER OF MAY 9, 1973, SHOULD BE, AND IT IS HEREBY AMENDED TO REFLECT THAT CORRECTION.

SAIF CLAIM NO. SB 117044 MAY 11, 1973

FRED DALTON, CLAIMANT
HAL COE, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

CLAIMANT, THROUGH HIS ATTORNEY, HAS REQUESTED THAT THE BOARD ORDER THE STATE ACCIDENT INSURANCE FUND TO PAY THE COST OF CERTAIN SURGERY PERFORMED NOVEMBER 1, 1972 BY DR. MARIO CAMPAGNA ON ITS OWN MOTION.

IN SUPPORT OF THAT REQUEST HE HAS SUPPLIED A REPORT FROM DR. CAMPAGNA STATING THE OPINION THAT THE SURGERY IN QUESTION IS RELATED TO CLAIMANT'S INDUSTRIAL INJURY OF APRIL, 1965 (SAIF CLAIM NO. SB 117044). THE REPORT FAILS TO CONTAIN ANY OF THE FACTUAL ASSUMPTIONS ON WHICH THE OPINION WAS BASED AND THE BOARD REQUESTED THE CLAIMANTS ATTORNEY FURNISH SUCH INFORMATION BEFORE THE BOARD ISSUED ITS ORDER.

THE BOARD IS NOW ADVISED THAT THE EFFORTS OF CLAIMANT'S ATTORNEY TO SECURE SUCH INFORMATION HAS BEEN FRUITLESS TO DATE.

THE BOARD THEREFORE ORDERS THAT THIS MATTER BE AND IT IS HEREBY REFERRED TO THE HEARINGS DIVISION TO HOLD A HEARING TO RECEIVE EVIDENCE ON THE ISSUE AND THEREAFTER SUBMIT THE RECORD TOGETHER WITH A RECOMMENDATION BY THE HEARING OFFICER TO THE BOARD FOR ITS CONSIDERATION.

WCB CASE NO. 72-1633 MAY 11, 1973

LOYD HARRIS, CLAIMANT

MARMADUKE, ASCHENBRENNER, SALTVEIT AND MERTEN, CLAIMANT'S ATTYS.
MCMENAMIN, JONES, JOSEPH AND LANG, DEFENSE ATTYS.
ORDER ON MOTION

ON APRIL 19, 1973 CLAIMANT MOVED THE BOARD FOR AN ORDER REMANDING THE ABOVE ENTITLED CAUSE TO THE HEARING OFFICER FOR TAKING OF FURTHER EVIDENCE AND RECONSIDERATION IN VIEW OF THE FACT THAT CLAIMANT HAD, SUBSEQUENT TO THE HEARING, UNDERGONE SURGERY WHICH CONSTITUTED FURTHER EVIDENCE THAT CLAIMANT'S CONDITION HAD AGGRAVATED.

ON APRIL 26, 1973 THE EMPLOYER RESPONDED OPPOSING THE MOTION, THE BOARD, BEING NOW FULLY ADVISED, CONCLUDES THE CLAIMANT'S MOTION IS WELL TAKEN.

CLAIMANT'S REQUEST FOR BOARD REVIEW IS HEREBY DISMISSED.

WCB CASE NO. 72-688 MAY 14, 1973

JOSEPH W. JONES, CLAIMANT

MARMADUKE, ASCHENBRENNER, MERTEN AND SALTVEIT, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER AWARDING HIM AN ADDITIONAL 15 DEGREES, MAKING A TOTAL OF 45 DEGREES FOR PERMANENT PARTIAL DISABILITY OF THE RIGHT LEG.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S DISABILITY?

DISCUSSION

CLAIMANT WAS 54 YEARS OLD AND A FORGE OPERATOR WHO WAS STRUCK IN THE BACK OF THE RIGHT KNEE BY A PIECE OF FALLING STEEL ON SEPTEMBER 3, 1970. ON NOVEMBER 6, 1970, DR. GILL PERFORMED AN ARTHROTOMY AND MEDIAL MENISCECTOMY OF CLAIMANT'S RIGHT KNEE.

THE CLAIM WAS ORIGINALLY ADMINISTRATIVELY CLOSED AS "MEDICAL ONLY" SEPTEMBER 17, 1970, ALTHOUGH CLAIMANT'S CONDITION WAS NOT STATIONARY. THIS CLOSURE DOES NOT CONSTITUTE A DETERMINATION PURSUANT TO ORS 656.268. THEREFORE, THE DETERMINATION ORDER MAILED FEBRUARY 23, 1972 IS THE FIRST CLOSURE UNDER ORS 656.268 AND CLAIMANT'S AGGRAVATION RIGHTS UNDER ORS 656.271 RUN FROM THAT DATE AS FOUND BY THE HEARING OFFICER.

THE DETERMINATION ORDER DATED FEBRUARY 23, 1972 AWARDED CLAIMANT PERMANENT PARTIAL DISABILITY OF 30 DEGREES FOR PARTIAL LOSS OF THE RIGHT LEG. THE HEARING OFFICER, AFTER CAREFULLY CONSIDERING THE TESTIMONY, MEDICAL REPORTS AND THE GUIDES OF THE AMA, CONCLUDED CLAIMANT'S LOSS OF PHYSICAL FUNCTION WAS EQUAL TO 30 PERCENT

AND THEREFORE AWARDED CLAIMANT AN ADDITIONAL 15 DEGREES FOR PERMANENT PARTIAL DISABILITY OF THE RIGHT LEG, MAKING A TOTAL AWARD OF 45 DEGREES. CLAIMANT NOW CONTENDS HE IS ENTITLED TO AN AWARD OF 90 DEGREES.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE FINDINGS OF THE HEARING OFFICER AND HIS CONCLUSION THAT CLAIMANT'S DISABILITY EQUALS 45 DEGREES. HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 12, 1972 IS HEREBY AFFIRMED.

WCB CASE NO. 71-2898 MAY 14, 1973

GEORGE GLENN, CLAIMANT
BABCOCK AND ACKERMANN, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON, MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER GRANTING CLAIMANT AN ADDITIONAL 45 DEGREES, MAKING A TOTAL OF 120 DEGREES FOR PARTIAL LOSS OF THE LEFT LEG, CONTENDING HE IS ENTITLED TO MORE DISABILITY AND THAT THE HEARING OFFICER ERRED IN RECOGNIZING A PARTIAL DENIAL AND REFUSING TO AWARD TRAVEL EXPENSES.

ISSUES

- 1) IS CLAIMANT PRECLUDED FROM COMPENSATION FOR SHOULDER DISABILITY BECAUSE OF FAILURE TO REQUEST A HEARING AFTER THE PARTIAL DENIAL OF MAY 19, 1971?
- 2) IS CLAIMANT ENTITLED TO REIMBURSEMENT FOR TRAVEL EXPENSES TO ATTEND THE HEARING?
- 3) WHAT IS THE EXTENT OF CLAIMANT PERMANENT PARTIAL DISABILITY?

DISCUSSION

AFTER REVIEWING THE RECORD DE NOVO, THE BOARD CONCURS WITH THE FINDINGS OF FACT MADE BY THE HEARING OFFICER.

THE BOARD IS IN DISAGREEMENT ON THE ISSUE OF WHETHER CLAIMANT SHOULD NOW BE ALLOWED TO PROVE THE RELATIONSHIP OF CERTAIN SHOULDER DISABILITY IN SPITE OF AN UNAPPEALED PARTIAL DENIAL. A MAJORITY OF THE BOARD CONCLUDES THAT CLAIMANT IS BOUND BY HIS FAILURE TO APPEAL THE DENIAL SINCE IT CLEARLY INFORMED THE CLAIMANT OF THE RIGHT OF APPEAL AND THE METHOD AS WELL.

THE HEARING OFFICER DECLINED TO ORDER THE STATE ACCIDENT INSURANCE FUND TO PAY CLAIMANT'S TRAVEL EXPENSE ON THE BASIS THAT A WORKMEN'S COMPENSATION HEARING WAS A PROCEEDING IN THE NATURE OF AN ACTION AT LAW. THE HEARING OFFICER ERRED IN THIS CONCLUSION.

' BROADLY SPEAKING, THE PROCEDURE IN A PROCEEDING FOR THE RECOVERY OF COMPENSATION RESEMBLES THAT OF A SUIT IN EQUITY. IT HAS BEEN STATED THAT CAUSES UNDER A COMPENSATION ACT SHOULD BE TREATED AS EQUITABLE, RATHER THAN LEGAL, IN NATURE, AND THAT ADMINISTRATIVE AS WELL AS JUDICIAL TRIBUNALS, IN ADJUDICATING CLAIMS FOR COMPENSATION, MAY AND SHOULD CONSIDER AND MAKE THE PROPER APPLICATION OF THE RULES OF EQUITY.' 58 AM JUR, WORKMEN'S COMPENSATION, SECTION 403.

TREATING THE MATTER AS A PROCEEDING IN EQUITY, AND APPLYING EQUITABLE PRINCIPLES TO THE FACTS, THE BOARD CONCLUDES CLAIMANT IS NOT ENTITLED TO PAYMENT OF HIS TRAVEL EXPENSES BY THE FUND.

THE FACTS FOUND BY THE HEARING OFFICER JUSTIFY THE AWARD OF DISABILITY MADE AND A MAJORITY OF THE BOARD CONCLUDES HIS ORDER, WITH THE EXCEPTION NOTED, SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 30, 1972 IS AFFIRMED.

WCB CASE NO. 72-1317 MAY 14, 1973

WALTER G. EDGAR, CLAIMANT
MCMENAMIN, JONES, JOSEPH AND LANG, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER REMANDING THE BENEFICIARIES CLAIM TO THE FUND FOR ACCEPTANCE AND PAYMENT OF COMPENSATION.

ISSUE

DID DECEDENT'S DEATH ARISE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT?

DISCUSSION

DECEDENT WAS A 35 YEAR OLD VICE-PRESIDENT AND SHOP FOREMAN OF A FAMILY OWNED CORPORATION, COLLISION REBUILDER'S INC., WHO WAS KILLED IN AN AUTOMOBILE ACCIDENT MARCH 31, 1972 ON THE WAY TO HIS HOME.

THE STATE ACCIDENT INSURANCE FUND DENIED BENEFITS ON THE GROUNDS THERE WAS INSUFFICIENT EVIDENCE THE WORKMAN SUSTAINED AN ACCIDENTAL PERSONAL INJURY WITHIN THE MEANING OF THE WORKMEN'S COMPENSATION LAW AND THAT THE ACCIDENT DID NOT ARISE OUT OF AND IN THE COURSE OF EMPLOYMENT.

THE EVIDENCE ADDUCED AT THE HEARING REFLECTS DECEDENT WAS DRIVING AN AUTOMOBILE WHICH WAS OWNED, AND OPERATING EXPENSES PAID, BY THE EMPLOYER, THAT DECEDENT'S HOME TELEPHONE WAS LISTED IN THE PUBLIC PHONE DIRECTORY AND ON HIS BUSINESS CARDS, THAT DECEDENT OFTEN CONDUCTED BUSINESS BY TELEPHONE FROM HIS HOME EVENINGS AND WEEKENDS, THAT DECEDENT OFTEN MADE CONTACTS WITH WRECKING YARDS ON HIS WAY HOME AND THAT DECEDENT WAS CARRYING CASH BELONGING TO THE EMPLOYER AT THE TIME OF THE FATAL ACCIDENT.

IN ORDER FOR AN ACCIDENT TO BE COMPENSABLE IN OREGON IT IS NECESSARY THAT IT ARISES OUT OF AND IN THE COURSE OF EMPLOYMENT. AN INJURY IS IN THE COURSE OF EMPLOYMENT WHEN IT OCCURS WHILE THE EMPLOYEE IS DOING THE DUTY WHICH HE IS EMPLOYED TO PERFORM. IT ARISES OUT OF THE EMPLOYMENT WHEN THERE IS APPARENT TO THE RATIONAL MIND A CAUSAL CONNECTION BETWEEN THE CONDITION UNDER WHICH THE WORK IS REQUIRED TO BE PERFORMED AND THE RESULTING INJURY.

WHAT QUANTUM OF WORK CONNECTION IS NECESSARY TO PERMIT FINDING COMPENSABILITY? THE FACT THAT CLAIMANT WAS RETURNING HOME AT THE TIME OF THE INJURY IS OF LITTLE IMPORTANCE UNDER THE FACTS OF THIS CASE AS THE COURT SAID IN KOWCUN V. BYBEE, 182 OR 271, 186 12D 790 AT PAGE 279...

...WE DO NOT BELIEVE THAT THE WORKMEN'S COMPENSATION LAW SELECTS THE THRESHOLD OF THE FACTORY AS THE DIVIDING LINE WHICH DECIDES WHETHER OR NOT AN INJURY HAPPENED OUT OF AND IN THE COURSE OF AN EMPLOYMENT... COURTS CONSIDER THE NATURE, CONDITIONS, OBLIGATIONS AND INCIDENTS OF EMPLOYMENT...

THE FACTS OF THIS CASE ARE INDICATIVE OF THE CONCLUSIONS THAT MUCH OF CLAIMANT'S WORK WAS DONE AT HOME AND OTHER LOCATIONS AWAY FROM THE EMPLOYER'S NORMAL PLACE OF BUSINESS. THE CLAIMANT WAS, IN EFFECT, ON 24 HOUR CALL AND HAD NOT, IN FACT, LEFT THE COURSE OF HIS EMPLOYMENT UPON TRAVELING FROM HIS BUSINESS PREMISES TO HIS HOME WHICH WAS, IN REALITY, A SEPARATED PORTION OF HIS BUSINESS PREMISES.

THE HEARING OFFICER FOUND AND THE BOARD CONCURS THAT CONSIDERING THE NATURE, OBLIGATIONS AND CONDITIONS OF DECEDENT'S EMPLOYMENT, THE CONCLUSIONS OF THE HEARING OFFICER THAT THE DECEDENT'S DEATH WAS A RESULT OF A COMPENSABLE INJURY IS CORRECT AND HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 14, 1972, IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF 250 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 71-1087 MAY 15, 1973

WCB CASE NO. 71-2336 MAY 15, 1973

ARTHUR W. DAHLSTROM, CLAIMANT
BLACK, KENDALL, TREMAIN, BOOTHE AND HIGGINS, CLAIMANT'S ATTYS.
MCMENAMIN, JONES, JOSEPH AND LANG, DEFENSE ATTYS.
ORDER OF REMAND

ON MAY 4, 1973, AN ORDER ISSUED FROM THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH, JOINING THE STATE ACCIDENT INSURANCE FUND AS A PARTY IN THE ABOVE-ENTITLED CASE, AND REMANDING THE MATTER TO THE WORKMEN'S COMPENSATION BOARD FOR THE ENTRY OF AN ORDER ALLOWING COMPENSATION EITHER FROM THE STATE ACCIDENT INSURANCE FUND OR TIME OIL COMPANY.

IN ACCORDANCE WITH THE ORDER OF THE CIRCUIT COURT, THE MATTER IS HEREBY REMANDED TO THE HEARING OFFICER FOR SUCH FURTHER PROCEEDINGS AS ARE NECESSARY AND ISSUANCE OF AN ORDER IN CONFORMANCE WITH THE JUDGMENT OF THE CIRCUIT COURT.

SAIF CLAIM NO. BC 23995 MAY 17, 1973

WILLIAM PORTER, CLAIMANT
R. STADELI AND SONS, CLAIMANT'S ATTYS.
STATE ACCIDENT INSURANCE FUND, DEFENSE
OWN MOTION ORDER

THIS MATTER IS BEFORE THE WORKMEN'S COMPENSATION BOARD UPON REQUEST OF CLAIMANT THAT THE BOARD EXERCISE ITS CONTINUING JURISDICTION UNDER OWN MOTION POWER GRANTED PURSUANT TO ORS 656.278.

CLAIMANT RECEIVED A COMPENSABLE INJURY IN JUNE OF 1966 WHICH RESULTED IN AMPUTATION OF THE RIGHT MIDDLE FINGER AT THE DISTAL PHALANX. THE RECORDS INDICATE CLAIMANT HAS RECEIVED PROPER TREATMENT FOR THE INJURED AREA AND NO PHYSICAL IMPAIRMENT EXISTS OTHER THAN TO THIS FINGER, FOR WHICH CLAIMANT HAS BEEN COMPENSATED.

THE BOARD THEREFORE DECLINES AT THIS TIME UPON THE STATE OF THE RECORD TO EXERCISE OWN MOTION JURISDICTION IN THE MATTER.

SAIF CLAIM NO. BB 28990 MAY 17, 1973

ALLMAN M. KINION, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER, CLAIMANT'S ATTYS.
STATE ACCIDENT INSURANCE FUND, CLAIMS DIVISION

PURSUANT TO AN OWN MOTION ORDER BY THE WORKMEN'S COMPENSATION BOARD DATED NOVEMBER 12, 1970, THE ABOVE-ENTITLED MATTER WAS TO BE REFERRED TO THE CLOSING AND EVALUATION DIVISION OF THE BOARD AT SUCH TIME THAT CLAIMANT'S CONDITION HAD BECOME STATIONARY FOR AN ADVISORY DETERMINATION BY THAT DIVISION UPON WHICH FURTHER OWN MOTION ORDER MIGHT ISSUE WITH RESPECT TO THE POSSIBLE OBLIGATIONS OF THE STATE ACCIDENT INSURANCE FUND FOR TEMPORARY TOTAL DISABILITY AND PERMANENT PARTIAL DISABILITY.

PURSUANT TO THAT PROVISION, THIS MATTER IS AGAIN BEFORE THE BOARD FOR A DETERMINATION ON THE EXTENT OF DISABILITY, IF ANY.

THE BOARD FINDS THE WORKMAN'S PRESENT CONDITION IS UNRELATED TO THE INDUSTRIAL INJURY OF OCTOBER 26, 1963 AND NO AWARD FOR PERMANENT PARTIAL DISABILITY IS GRANTED.

ORDER

IT IS THEREFORE ORDERED THAT CLAIMANT IS ENTITLED TO TEMPORARY TOTAL DISABILITY FOR THE PERIOD OF JANUARY 13, 1970 TO MARCH 10, 1970 AND FROM APRIL 18, 1971 TO MAY 4, 1971; AND NO ADDITIONAL AWARD FOR UNSCHEDULED CERVICAL DISABILITY RESULTING FROM THE INJURY OF OCTOBER 26, 1963.

NOTICE OF APPEAL

PURSUANT TO ORS 656.278...

THE CLAIMANT HAS NO RIGHT TO A HEARING, REVIEW OR APPEAL ON THIS AWARD BY THE BOARD ON ITS OWN MOTION.

THE STATE ACCIDENT INSURANCE FUND MAY REQUEST A HEARING ON THIS ORDER.

THIS ORDER IS FINAL UNLESS WITHIN 30 DAYS FROM THE DATE HEREOF, THE STATE ACCIDENT INSURANCE FUND DOES APPEAL THIS ORDER BY REQUESTING A HEARING.

WCB CASE NO. 72-657 MAY 18, 1973

**BENEFICIARIES OF DENNIS SCHULER, DECEASED AS CLAIMANT'S
MISKO, NJUST AND BOWERMAN, CLAIMANT'S ATTYS.
SCHOUBOE AND CAVANAUGH, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER**

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER REQUIRING IT TO ACCEPT THE BENEFICIARIES' CLAIM FOR COMPENSATION.

ISSUE

DID DECEDENT'S DEATH ARISE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WITHIN THE MEANING OF THE WORKMEN'S COMPENSATION LAW?

DISCUSSION

THE DECEDENT, 33 YEARS OF AGE, WAS EMPLOYED BY DICK NILES, LINCOLN MERCURY DEALER AND WAS KILLED IN AN AUTOMOBILE ACCIDENT JANUARY 12, 1972 ABOUT 10.00 P.M. FOLLOWING A COMPANY MEETING ARRANGED PERIODICALLY BY THE EMPLOYER. THESE MEETINGS, USUALLY CALLED FOR 6.00 PM, PROVIDED KENTUCKY FRIED CHICKEN AND SOFT DRINKS, FOLLOWED BY PLAYING TAPES SENT BY FORD MOTOR COMPANY. BEER WOULD THEN BE SERVED, THE MEN WOULD SOCIALIZED AND COULD LEAVE ANYTIME THEREAFTER.

THE RECORD SHOWS THAT AFTER WORK ON THIS PARTICULAR MEETING NIGHT, DECEDENT AND FIVE FELLOW WORKMEN WALKED TO A COCKTAIL LOUNGE A BLOCK AWAY, WHERE THEY ALL HAD SEVERAL INTOXICATING DRINKS. THEY ARRIVED AT THE MEETING AROUND 7.00 P.M. AND WERE BOISTEROUS ENOUGH TO BRING THE MEETING TO AN EARLY ADJOURNMENT ABOUT 7.30 PM. THE GOUP CONSUMED THE EMPLOYER-PROVIDED BEER UNTIL ABOUT 8.30 PM OR 9.00 PM FOLLOWING WHICH THEY WENT TO THE PARKING LOT ACROSS THE STREET, DRANK MORE BEER AND CONSUMED THREE-FOURTHS OF A FIFTH OF WHISKEY BELONGING TO ONE OF THE MEN. AT APPROXIMATELY 10.00 PM, CLAIMANT WAS KILLED FOUR BLOCKS FROM THE AUTOMOBILE AGENCY, WHEN THE DRIVER OF THE CAR, WHO WAS ONE OF HIS FELLOW EMPLOYEES, CRASHED INTO A TREE.

THE BOARD, IN REVIEWING THE EVIDENCE BEFORE IT AND AFTER CONSIDERING THE EXCELLENT AND HELPFUL BRIEFS SUBMITTED BY COUNSEL FOR BOTH PARTIES, CANNOT CONCUR WITH THE CONCLUSION OF THE HEARING OFFICER THAT CLAIMANT WAS IN THE COURSE OF EMPLOYMENT WHEN THE FATAL ACCIDENT OCCURRED. THE TOTALITY OF THE EVIDENCE REVEALS THAT CLAIMANT AND HIS FELLOW EMPLOYEES WERE ON A PERSONAL FROLIC WHICH

BEGAN IMMEDIATELY AFTER THEIR REGULAR SHIFT, WAS ONLY MINIMALLY AND TEMPORARILY INTERRUPTED BY THEIR ATTENDANCE AT THE EMPLOYER'S BUSINESS MEETING AND TO WHICH THEY HAD RETURNED FOLLOWING THE MEETING. IT WAS NOT THE EMPLOYER BUT THE DECEDENT AND HIS FELLOW WORKMEN WHO SET IN MOTION THE CHAIN OF EVENTS WHICH CONTRIBUTED TO HIS DEATH.

THE HEARING OFFICER'S ORDER SHOULD BE REVERSED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 22, 1972 IS HEREBY REVERSED AND THE DENIAL OF THE BENEFICIARIES CLAIM FOR COMPENSATION IS APPROVED.

SAIF CLAIM NO. EB 83069 MAY 18, 1973

MELVIN FARMER, CLAIMANT
SUSAK AND LAWRENCE, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

BY AN OWN MOTION ORDER DATED DECEMBER 15, 1972, THE WORKMEN'S COMPENSATION BOARD ORDERED THE STATE ACCIDENT INSURANCE FUND TO REOPEN CLAIMANT'S CLAIM FOR FURTHER EVALUATION AND TO PROVIDE FURTHER TREATMENT WHICH HAD BEEN RECOMMENDED IN JANUARY OF 1972 BY DR. GEORGE L. BARNARD.

UNFORTUNATELY, BEFORE THE CLAIMANT COULD RECEIVE THE RECOMMENDED TREATMENT, DR. BARNARD WAS DECEASED.

THE STATE ACCIDENT INSURANCE FUND SUBSEQUENTLY ARRANGED AN APPOINTMENT FOR THE CLAIMANT WITH WINFRED H. CLARKE, M.D. DR. CLARKE'S REPORT HAS NOW BEEN RECEIVED INDICATING THAT CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED.

ORDER

IT IS ACCORDINGLY ORDERED THAT THE STATE ACCIDENT INSURANCE FUND COMPENSATE CLAIMANT ON THE BASES OF PERMANENT AND TOTAL DISABILITY FOR UNSCHEDULED INJURIES.

THE GENERAL RULE ON AWARDING ATTORNEY FEES IN OWN MOTION DETERMINATIONS ISSUED BY THE BOARD PRECLUDES AWARDING AN ATTORNEY FEE. HOWEVER, DUE TO THE UNUSUAL CIRCUMSTANCES OF THIS PARTICULAR CASE WHICH DID INVOLVE A HEARING, A SUBSEQUENT BOARD'S OWN MOTION ORDER GRANTED AN ATTORNEY FEE OF 25 PERCENT OF THE INCREASE COMPENSATION NOT TO EXCEED 1,500 DOLLARS. IN THE EVENT CLAIMANT'S ATTORNEY DID NOT RECEIVE THE TOTAL FEE ALLOWED PURSUANT TO THE ORDER OF DECEMBER 15, 1972, THE BALANCE DUE MAY BE RECOVERED FROM THE AWARD GRANTED BY THIS ORDER.

NOTICE OF APPEAL

PURSUANT TO ORS 656.278...

THE CLAIMANT HAS NO RIGHT TO A HEARING, REVIEW OR APPEAL ON THIS AWARD BY THE BOARD ON ITS OWN MOTION.

THE STATE ACCIDENT INSURANCE FUND MAY REQUEST A HEARING.

THIS ORDER IS FINAL UNLESS WITHIN 30 DAYS FROM THE DATE HEREOF, THE STATE ACCIDENT INSURANCE FUND APPEALS THIS ORDER BY REQUESTING A HEARING PURSUANT TO ORS 656.278.

WCB CASE NO. 72-2233 MAY 18, 1973

WALTER STUART, CLAIMANT
MURLEY M. LARIMER, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

THIS MATTER IS BEFORE THE WORKMEN'S COMPENSATION BOARD UPON REQUEST OF CLAIMANT'S COUNSEL THAT THE BOARD EXERCISE ITS CONTINUING JURISDICTION UNDER OWN MOTION POWER GRANTED UNDER ORS 656.278.

CLAIMANT SUSTAINED A COMPENSABLE INDUSTRIAL INJURY ON NOVEMBER 16, 1965 TO HIS RIGHT KNEE, FROM WHICH HE MADE A COMPLETE RECOVERY.

THE WORKMEN'S COMPENSATION BOARD HAS CONSIDERED THE MEDICAL REPORTS OF LESLIE WILSON, M.D. OF JULY 24, 1972. THE BOARD FINDS THAT CLAIMANT'S PRESENT CONDITION IS NOT CAUSALLY RELATED TO THE INDUSTRIAL INJURY OF NOVEMBER 16, 1965. THE BOARD FINDS THERE IS PRESENTLY NO EVIDENCE WHICH HAS BEEN PRESENTED TO THEM THAT WOULD JUSTIFY REMANDING THE MATTER TO THE CARRIER TO REOPEN THE CLAIM PURSUANT TO ORS 656.278.

IT IS THEREFORE ORDERED THAT THE REQUEST OF THE CLAIMANT TO REOPEN HIS CLAIM IS DENIED AND ALL FURTHER PROCEEDINGS HEREIN ARE HEREBY DISMISSED.

WCB CASE NO. 72-2303 MAY 18, 1973

DAVID WOODARD, CLAIMANT
WILLIAM G. CARTER, CLAIMANT'S ATTY.
MERLIN L. MILLER, DEFENSE ATTY.
ORDER OF REMAND

ON MARCH 15, 1973 THE BOARD RECEIVED A REQUEST FROM THE EMPLOYER FOR REVIEW OF THE ABOVE ENTITLED CASE.

ON MAY 15, 1973 THE BOARD RECEIVED A LETTER FROM MERLIN MILLER, COUNSEL FOR THE EMPLOYER, ADVISING THAT HE AND THE CLAIMANT'S COUNSEL HAD AGREED THE MATTER SHOULD BE REMANDED TO THE HEARINGS DIVISION FOR RECEIPT OF FURTHER EVIDENCE CONCERNING A MATERIAL FACTUAL ERROR, MADE DURING THE TAKING OF TESTIMONY AT THE HEARING CONCERNING THE CLAIMANT'S EMPLOYER DURING THE PERIOD COVERING JUNE, 1968. THE LETTER DATED MAY 15, 1973 BECOMES A PART OF THE RECORD.

THE BOARD, BEING NOW FULLY ADVISED, HEREBY ORDERS THAT THE ABOVE ENTITLED MATTER BE, AND IT IS HEREBY, REMANDED TO THE HEARINGS DIVISION FOR FURTHER PROCEEDINGS IN ACCORDANCE WITH THIS ORDER.

WCB CASE NO. 73-345 MAY 18, 1973

AUGUSTA D. JOHNSON, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
ORDER OF DISMISSAL

THIS MATTER IS BEFORE THE WORKMEN'S COMPENSATION BOARD AT THE REQUEST OF CLAIMANT FOR BOARD REVIEW OF A HEARING OFFICER'S ORDER REQUIRING HER TO SUBMIT TO A MEDICAL EXAMINATION.

COUNSEL FOR CLAIMANT NOW ADVISES THE BOARD CLAIMANT IS WILLING TO UNDERGO A MEDICAL EXAMINATION TO BE SET UP FOR HER BY THE STATE ACCIDENT INSURANCE FUND, AND WITHDRAWS THE REQUEST FOR REVIEW.

IT IS THEREFORE ORDERED THAT THE REVIEW NOW PENDING BEFORE THE BOARD IS HEREBY DISMISSED AND THE ORDER OF THE HEARING OFFICER IS FINAL BY OPERATION OF LAW.

WCB CASE NO. 71-1773 MAY 21, 1973

DAVID D. DURBIN, CLAIMANT
FULOP, GROSS AND SAXON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF
CROSS-APPEAL BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW OF A HEARING OFFICER'S ORDER REQUIRING THE FUND TO PAY THE COST OF CLAIMANT'S PSYCHIATRIC CARE AND AN ATTORNEYS FEE TO CLAIMANT'S ATTORNEY.

CLAIMANT IS A 27 YEAR OLD WORKMAN WITH A HISTORY OF SIGNIFICANT EMOTIONAL INSTABILITY PREEXISTING A FALL ON APRIL 10, 1968 WHICH INJURED HIS LOW BACK. AS A RESULT OF THE INJURY CLAIMANT UNDERWENT DISC SURGERY IN JULY 1968 AND INTERVERTEBRAL FUSION IN APRIL 1969.

THE RESIDUAL PHYSICAL LIMITATIONS NECESSITATED VOCATIONAL REHABILITATION. THIS SITUATION WAS QUITE STRESSFUL TO HIM EMOTIONALLY. DUE TO CLAIMANT'S POOR EMOTIONAL HEALTH HE WAS UNABLE TO COPE WITH THIS SITUATIONAL STRESS AND DEVELOPED AN ANXIETY TENSION STATE WHICH REQUIRED HOSPITALIZATION FOR 104 DAYS.

THE MEDICAL EVIDENCE PREPONDERATES IN FAVOR OF A CONCLUSION THAT THE STRESS CLAIMANT EXPERIENCED WAS MATERIALLY CONTRIBUTED TO BY THE INJURY-CAUSED PREDICAMENT AND THAT THE HOSPITALIZATION IN WARD 5A WAS ASSOCIATED WITH TREATMENT OF THAT STRESS CAUSED BREAK-DOWN. THE BOARD THEREFORE CONCLUDES CLAIMANT'S HOSPITALIZATION WAS JOB RELATED.

THE BOARD HAS ALSO REVIEWED THE RECORD WITH REFERENCE TO THE ISSUES OF ATTORNEY FEES AND EXTENT OF DISABILITY ALSO RAISED BY THE PARTIES AND FINDS THE HEARING OFFICER'S DISPOSITION OF THOSE MATTERS CORRECT. THUS, HIS ORDER SHOULD BE AFFIRMED IN ALL RESPECTS.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 7, 1972 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF 250 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 71-577 MAY 21, 1973

JOHN A. MAYER, CLAIMANT
COLLEY AND MORRAY, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH REQUIRED THE FUND TO ACCEPT CLAIMANT'S CLAIM OF AGGRAVATION.

ISSUE

HAS CLAIMANT SUFFERED A WORSENING OF HIS COMPENSABLE INJURY SINCE THE LAST ARRANGEMENT OF COMPENSATION?

DISCUSSION

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS RIGHT ANKLE ON MARCH 18, 1965. THE CLAIM WAS CLOSED ON JULY 14, 1967 WITH AN AWARD OF PERMANENT DISABILITY.

A HEARING ON THE DETERMINATION WAS REQUESTED AND AS A RESULT OF THE HEARING ADDITIONAL COMPENSATION WAS ALLOWED BY AN ORDER OF THE HEARING OFFICER DATE MAY 7, 1971.

ADDITIONAL APPEALS RESULTED IN THE WORKMEN'S COMPENSATION BOARD REVERSING THE HEARING OFFICER BY ORDER DATED NOVEMBER 24, 1971 AND THE CIRCUIT COURT OF BENTON COUNTY RESTORING A PART OF THE INCREASE ALLOWED BY THE HEARING OFFICER.

THE ORDER OF THE CIRCUIT COURT RECITED THAT ITS ORDER ALLOWING 80 PERCENT PARTIAL LOSS OF THE RIGHT LEG WAS BASED ON A REVIEW OF THE RECORD. APPARENTLY NO ADDITIONAL TESTIMONY WAS TAKEN BEYOND THE HEARING OFFICER LEVEL.

THE STATE ACCIDENT INSURANCE FUND CONTENTS ON APPEAL THAT CLAIMANT'S AGGRAVATION CLAIM WAS NOT SUPPORTED BY AN ADEQUATE MEDICAL OPINION AND THAT THE HEARING OFFICER ERRED IN ADOPTING MAY 7, 1971 AS THE DATE OF THE 'LAST AWARD OR ARRANGEMENT OF COMPENSATION' MENTION IN ORS 656.271 (1).

DETERMINING WHETHER AN AGGRAVATION HAS OCCURRED INVOLVED A COMPARISON OF PHYSICAL STATES, SPECIFICALLY, THE WORKMAN'S PRESENT PHYSICAL STATUS WITH HIS EARLIER PHYSICAL STATUS. THE EARLIER PHYSICAL STATUS IN QUESTION IS THAT DEFINED BY THE LAST AWARD OR ARRANGEMENT OF COMPENSATION.

SPEAKING GENERALLY, THERE ARE SIX DATES THAT COULD POSSIBLY BE THE DATE OF THE LAST AWARD OR ARRANGEMENT OF COMPENSATION REFERRED TO IN ORS 656,271 (1).

1. THE DATE OF THE DETERMINATION ORDER.
2. THE DATE OF THE HEARING OFFICER'S ORDER.
3. THE DATE OF THE BOARD REVIEW ORDER.
4. THE DATE OF THE CIRCUIT COURT ORDER.
5. THE DATE OF THE COURT OF APPEALS ORDER.
6. THE DATE OF THE SUPREME COURT ORDER.

UNLESS THE CIRCUIT COURT RECEIVED ADDITIONAL EVIDENCE PURSUANT TO ORS 656,298 (6) ONLY TWO OF THE SIX POSSIBILITIES WILL BE BASED ON A FRESH VIEW OF THE WORKMAN'S THEN CURRENT PHYSICAL CONDITION. THOSE TWO POSSIBILITIES ARE THE DETERMINATION ORDER, OR IF THE MATTER HAD BEEN SUBJECTED TO HEARING, THE HEARING OFFICER'S ORDER, BOTH OF WHICH ARE REQUIRED BY LAW TO BE ISSUED NORMALLY WITHIN 30 DAYS AFTER HAVING RECEIVED EVIDENCE OF THE WORKMAN'S THEN CURRENT PHYSICAL STATUS.

WITH THE POSSIBLE EXCEPTION OF THE CIRCUIT COURT SITUATION MENTIONED ABOVE, ANY FURTHER REVIEW RELATES NOT TO THE WORKMAN'S ACTUAL PHYSICAL CONDITION ON THE DATE OF THE REVIEW, (WHICH IS ORDINARILY WEEKS TO MONTHS LATER) BUT TO THE WORKMAN'S CONDITION AT THE TIME OF THE HEARING.

THUS, WITHIN THE MEANING OF ORS 656,271 (1) THE 'LAST AWARD OF ARRANGEMENT OF COMPENSATION' IN THIS CASE WAS THE DATE OF THE HEARING OFFICER'S ORDER... MAY 7, 1971.

CONCERNING THE ISSUE OF WHETHER CLAIMANT HAS SUFFERED AN AGGRAVATION, THE BOARD IS IN AGREEMENT WITH THE HEARING OFFICER'S CONCLUSION. DR. STEELE'S APRIL 7, 1972 REPORT INDICATES A WORSENING OF HIS SYMPTOMS IN THE HIP, LOW BACK AND SHOULDER DUE PARTLY TO GAIT DISTURBANCE SECONDARY TO THE ANKLE FUSION AND TO WORRY AND CONCERN OVER THE ANKLE. ON PAGE 58 OF THE TRANSCRIPT, DR. WINTERS TESTIFIED ON THE BASIS OF PROBABILITIES THAT CLAIMANT TENDS TO SOMATIZE HIS CONDITION MORE SINCE MARCH OF 1972. THE FUND IS CONCERNED WITH THESE DATES. BOTH PHYSICIANS HAVE INDICATED CLAIMANT IS EXPERIENCING A STEADY WORSENING WHICH ESTABLISHES THAT CLAIMANT'S CONDITION NOT ONLY HAS WORSENERED BUT IS WORSENERING. CLAIMANT HAS THUS PROVED HIS CLAIM OF AGGRAVATION AND THE HEARING OFFICER'S ORDER SHOULD BE AFFIRMED.

ORDER

THE HEARING OFFICER'S ORDER DATED NOVEMBER 30, 1972 IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE AMOUNT OF 250.00 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND FOR SERVICE IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-227 MAY 21, 1973

JIM H. BROWN, CLAIMANT
AIL AND LUEBKE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

THIS MATTER INVOLVED THE AMOUNT OF RESIDUAL DISABILITY SUFFERED BY A 25 YEAR OLD CABINET MAKER WHOSE LEFT HAND WAS INJURED BY THE DADO BLADE OF A TABLE SAW IN THE COURSE OF HIS EMPLOYMENT ON APRIL 10, 1968.

ON JUNE 17, 1969, CLAIMANT WAS GRANTED 35 PERCENT LOSS OF THE LEFT THUMB, 40 PERCENT LOSS OF THE LEFT INDEX FINGER AND 10 PERCENT LOSS OF THE LEFT MIDDLE FINGER. LATER IN 1970 ADDITIONAL SURGICAL TREATMENT WAS PERFORMED BUT, UPON REEVALUATION, NO ADDITIONAL PERMANENT DISABILITY COMPENSATION WAS AWARDED.

A HEARING WAS HELD AT CLAIMANT'S REQUEST, RESULTING IN AN AWARD OF ADDITIONAL COMPENSATION BEING ALLOWED FOR THE LEFT THUMB, INDEX AND MIDDLE FINGERS.

CLAIMANT CONTENDS ON REVIEW THAT HE IS ENTITLED TO COMPENSATION FOR TOTAL LOSS OF THE FOREARM RATHER THAN MERELY THE FINGERS.

THE PERMANENT EFFECT OF THIS INJURY ON CLAIMANT'S FOREARM IS INSUFFICIENT TO EITHER JUSTIFY OR NECESSITATE AN AWARD BASED ON THAT EXTREMITY. ASSUMING THAT THERE WAS, HOWEVER, DISABILITY PRIMARILY CONSISTING OF PARTIAL LOSS OF THREE FINGERS WOULD NEVER JUSTIFY AN AWARD FOR TOTAL LOSS OF FUNCTION OF THE FOREARM AS REQUESTED BY THE CLIENT.

AFTER REVIEWING THE RECORD DE NOVO, THE BOARD AGREES WITH THE HEARING OFFICER'S LIMITATION OF THE AWARD TO THE FINGERS AND WITH THE AMOUNTS OF THE INCREASES ALLOWED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 31, 1972, IS HEREBY AFFIRMED.

WCB CASE NO. 72-3168 MAY 22, 1973

ALEX A. CURRIE, CLAIMANT
FRANKLIN, BENNETT, DES BRISAY AND JOLLES, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

THIS MATTER IS BEFORE THE WORKMEN'S COMPENSATION BOARD UPON THE REQUEST BY CLAIMANT'S COUNSEL FOR OWN MOTION CONSIDERATION BY THE BOARD PURSUANT TO ORS 656.278.

THE BOARD HAS REVIEWED THE MEDICAL EVIDENCE SUBMITTED AND FINDS INSUFFICIENT JUSTIFICATION OF REOPENING THE CLAIM BY THE STATE ACCIDENT INSURANCE FUND. IT APPEARS CLAIMANT'S PRESENT HIP CONDITION BEARS NO RELATIONSHIP TO THE INJURY FOR WHICH THIS CLAIM WAS FILED.

THE BOARD HEREBY DECLINES AT THIS TIME UPON THE STATE OF THE RECORD TO EXERCISE OWN MOTION JURISDICTION IN THIS MATTER.

NO NOTICE OF APPEAL IS DEEMED APPLICABLE.

WCB CASE NO. 72-1444 MAY 22, 1973

ELMO WILLIAMS, DECEASED
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF
CROSS-APPEAL BY BENEFICIARIES

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER REQUIRING THE FUND TO ACCEPT THE WIDOW'S CLAIM FOR DEPENDENT'S BENEFITS AND THE BENEFICIARY CROSS REQUESTS REVIEW CONTENDING THE HEARING OFFICER ERRED IN FAILING TO ALLOW PENALTIES FOR UNREASONABLE RESISTANCE TO PAYMENT OF COMPENSATION, AND IN FAILING TO FIND THE DECEDENT'S FATAL HEART ATTACK WAS COMPENSABLE.

ISSUES

- (1) WAS DECEDENT PERMANENTLY AND TOTALLY DISABLE AT THE TIME OF HIS DEATH
- (2) WAS DECEDENT'S FATAL HEART ATTACK WORK RELATED?
- (3) ARE THE BENEFICIARIES ENTITLED TO PENALTIES?

DISCUSSION

AFTER REVIEWING THE RECORD DE NOVO, THE BOARD CONCURS WITH THE HEARING OFFICER'S CONCLUSION THAT CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED AT THE TIME OF HIS DEATH AS A RESULT OF HIS INDUSTRIAL INJURY OF JANUARY 23, 1969 AND THAT HIS WIDOW IS THUS ENTITLED TO BENEFITS PROVIDED UNDER ORS 656.208. THE BOARD ALSO CONCURS WITH THE HEARING OFFICER'S CONCLUSIONS REGARDING THE COMPENSABILITY OF DECEDENT'S HEART ATTACK AND HIS DENIAL OF PENALTIES.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 6, 1972 IS HEREBY AFFIRMED IN ITS ENTIRETY.

COUNSEL FOR CLAIMANT IS AWARDED A REASONABLE ATTORNEYS FEE IN THE AMOUNT OF 500 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO 71-2931 MAY 23, 1973

WCB CASE NO. 71-2932 MAY 23, 1973

ROLLA BLACKFORD, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS REVIEW OF A HEARING OFFICER'S ORDER WHICH AWARDED HIM AN ADDITIONAL PERMANENT PARTIAL DISABILITY AWARD OF 112 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY RESULTING FROM HIS INJURY OF JULY 15, 1971 FOR WHICH HE HAD RECEIVED 32 DEGREES BY A DETERMINATION ORDER OF DECEMBER 21, 1971.

ISSUE

WHAT IS CLAIMANT'S EXTENT OF PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT, A 61 YEAR OLD PAINTER, SUFFERED TWO COMPENSABLE LOW BACK INJURIES. ONE IN JANUARY AND THE OTHER IN JULY OF 1971.

THE INJURIES PRODUCED A MODERATELY SEVERE STRAIN OF THE MUSCLES AND LIGAMENTS IN THE LUMBOSACRAL PORTION OF THE SPINE, SUPERIMPOSED ON AN OSTEOARTHRITIC DEGENERATIVE SPINE.

BY TWO DETERMINATION ORDERS, CLAIMANT RECEIVED A PERMANENT PARTIAL DISABILITY AWARD EQUAL TO 32 DEGREES UNSCHEDULED DISABILITY. CLAIMANT HAS NOT WORKED SINCE THE JULY, 1971 INJURY.

THE HEARING OFFICER CONCLUDED CLAIMANT WAS NOT A FULLY CREDIBLE WITNESS. A REVIEW OF CLAIMANT'S TESTIMONY AND THE FILMS IN EVIDENCE SUPPORT THAT CONCLUSION.

DR. A. GURNEY KIMBERLEY IS OF THE OPINION THAT CLAIMANT'S LOW BACK CONDITION WARRANTS AN INTERVERTEBRAL FUSION. HOWEVER, DUE TO CLAIMANT'S AGE AND THE POSSIBILITY OF COMPLICATIONS, IT IS NOT BEING RECOMMENDED. BASED PRIMARILY ON THE MEDICAL EVIDENCE, THE HEARING OFFICER GRANTED CLAIMANT ADDITIONAL UNSCHEDULED DISABILITY.

THE BOARD, ON DE NOVO REVIEW, FINDS THE ADDITIONAL COMPENSATION ALLOWED BY THE HEARING OFFICER TO HAVE FULLY COMPENSATED THE CLAIMANT FOR THE DISABILITY ATTRIBUTABLE TO THE ACCIDENT IN QUESTION.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 28, 1972, AS AMENDED, IS HEREBY AFFIRMED.

KENNETH E. PIERCE, CLAIMANT
ESTEP, DANIELS, ADAMS, REESE AND PERRY, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH MODIFIED A CLOSING AND EVALUATION DETERMINATION ORDER BY ELIMINATION THEREFROM THE AWARD OF PERMANENT PARTIAL DISABILITY OF 10 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED DISABILITY.

ISSUE

IS CLAIMANT'S COMPENSATION ENTITLEMENT GOVERNED BY ORS 656.220?

DISCUSSION

CLAIMANT CONTENDS HIS INJURY WAS NOT A HERNIA BUT A SEPARATE ACCIDENT OR AGGRAVATION OF A PREEXISTING CONDITION SUFFERED THROUGH TEARING OF THE AREA IN WHICH A PRIOR OPERATION HAD BEEN PERFORMED. THE FUND CONTENDS CLAIMANT'S CLAIM IS FOR AN INCISIONAL VENTRAL HERNIA AND AS SUCH, IS GOVERNED BY ORS 656.220 WHICH LIMITS BENEFITS TO MEDICAL EXPENSES INCURRED AND TEMPORARY TOTAL DISABILITY FOR MAXIMUM OF 60 DAYS. THE FUND THEREFORE ASSERTS THE PORTION OF THE DETERMINATION ORDER AWARDING 32 DEGREES FOR PERMANENT PARTIAL DISABILITY WAS IN EXCESS OF THE STATUTORY LIMITATION AND SHOULD BE CORRECTED.

THE BOARD AGREES FROM ITS REVIEW THAT CLAIMANT SUFFERED A HERNIA AND THUS IS LIMITED TO THE COMPENSATION ALLOWED BY ORS 656.220. THE HEARING OFFICER CORRECTLY APPLIED THE LAW TO THE FACTS OF THIS CASE AND HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 18, 1972 IS HEREBY AFFIRMED.

CLAIM NO. B53-133555 MAY 23, 1973

CLAIM NO. B53-133711 MAY 23, 1973

HERMAN DOUGLAS, CLAIMANT
JERRY KLEEN, CLAIMANT'S ATTY.
FRANKLIN, BENNETT, DES BRISAY AND JOLLES, DEFENSE ATTY.
OWN MOTION ORDER

THE ABOVE NAMED CLAIMANT CONTACTED THE WORKMEN'S COMPENSATION BOARD REQUESTING ADDITIONAL HELP DUE TO LACK OF FUNDS AND INABILITY TO WORK.

AS A RESULT OF THAT CONTACT, THE BOARD ON ITS OWN MOTION, CAUSED AN INVESTIGATION TO BE MADE INTO THE CIRCUMSTANCES OF CLAIMANT'S SITUATION.

THE BOARD HAS LEARNED THAT CLAIMANT IS A 29 YEAR OLD MAN WHO SUFFERED A LOW BACK INJURY ON JANUARY 4, 1970 WHILE WORKING FOR ARMOR CLAD CORPORATION OF SALEM, OREGON.

MAJOR ORTHOPEDIC AND PSYCHIATRIC RESIDUALS RESULTED IN THE ISSUANCE OF A DETERMINATION ORDER ON JANUARY 6, 1972 COMPENSATING CLAIMANT AS A PERMANENTLY AND TOTALLY DISABLED WORKMAN.

THE INVESTIGATIVE ACTIVITIES CARRIED OUT DURING THE SUMMER OF 1972 BY THE EMPLOYER'S WORKMEN'S COMPENSATION INSURANCE CARRIER, EMPLOYER'S INSURANCE OF WAUSAU, APPARENTLY ANGERED CLAIMANT AND HE CONTACTED REPRESENTATIVES OF THE INSURER. DURING THEIR DISCUSSION, THE POSSIBILITY OF RECEIVING A LUMP SUM PAYMENT WAS CONSIDERED. CLAIMANT DESIRED THE LUMP SUM TO...

1. DISCHARGE DEBTS ACCUMULATED DURING HIS DISABILITY.
2. ACQUIRE EQUIPMENT FOR A PROPOSED BUSINESS ENTERPRISE AND,
3. AVOID ANY FURTHER INVOLVEMENT WITH THE INSURANCE COMPANY.

COUNSEL FOR THE CARRIER INQUIRED OF THE WORKMEN'S COMPENSATION BOARD WHAT ITS POSITION WOULD BE CONCERNING APPROVAL OF A STIPULATION BETWEEN THE PARTIES THAT CLAIMANT WAS NOT PERMANENTLY AND TOTALLY DISABLED, IN ORDER TO PERMIT A LUMP SUM PAYOFF OF THE CARRIERS LIABILITY. THE BOARD REPLIED ON SEPTEMBER 8, 1972...

ORS 651.004 POINTS OUT THAT THE WORKMEN'S COMPENSATION LAW WAS ENACTED PARTLY TO REMOVE FROM THE GENERAL COMMUNITY AT LARGE THE HEAVY BURDEN OF PROVIDING CARE AND SUPPORT FOR INJURED WORKMEN AND THEIR DEPENDENTS, AND PLACING IT WITH THE INDUSTRIAL SECTOR WHERE THE INJURY WAS PRODUCED. WE BELIEVE OUR DUTY TO THE CITIZENS OF THE STATE AS A WHOLE REQUIRES THAT WE NOT MODIFY THE AGENCY'S EVALUATION OF (MR. DOUGLAS') DISABILITY WITHOUT AN ADEQUATE SHOWING TO A HEARING OFFICER THAT HE IS NOT, IN FACT, PERMANENTLY AND TOTALLY DISABLED.

THE EMPLOYER THEREUPON REQUESTED A HEARING CONTENDING THAT CLAIMANT WAS NOT PERMANENTLY TOTALLY DISABLED. CLAIMANT DID NOT SEEK LEGAL COUNSEL. BEFORE A HEARING WAS SCHEDULED THE PARTIES PROPOSED TO STIPULATE A COMPROMISED SETTLEMENT OF THE HEARING REQUEST BY REDUCING THE PERMANENT TOTAL DISABILITY AWARD TO THE MAXIMUM ALLOWABLE FOR UNSCHEDULED PERMANENTLY TOTALLY DISABLED (17,600 DOLLARS).

ON SEPTEMBER 13, 1972 THE PARTIES MET WITH HEARING OFFICER PATTIE AND THE MATTER WAS THOROUGHLY DISCUSSED AMONGST THEM. HEARING OFFICER PATTIE ADVISED CLAIMANT HE WOULD RECOMMEND APPROVAL BUT ALSO ADVISED HIM TO SEEK THE ADVICE OF INDEPENDENT COUNSEL. CLAIMANT WAS ADVISED BY ATTORNEY WES FRNAKLIN NOT TO ENTER INTO THE AGREEMENT. RATHER THAN ACCEPTING THIS ADVICE, CLAIMANT SECURED THE SIGNATURE OF ANOTHER ATTORNEY ON THE STIPULATION AFTER WHICH REPRESENTATIVES OF THE WORKMEN'S COMPENSATION BOARD APPROVED THE COMPROMISE SETTLEMENT OF THE REQUEST FOR HEARING. WITHOUT SECURING APPROVAL OF A LUMP SUM PAYMENT THE INSURER PAID CLAIMANT THE FULL 17,600 DOLLARS ON ITS OWN INITIATIVE. CLAIMANT USED A MAJOR SHARE OF THE PROCEEDS TO PAY ACCUMULATED DEBTS AND USED BETWEEN 3,900-4,000 DOLLARS FOR PURCHASE OF THE EARLIER MENTIONED EQUIPMENT. THE BUSINESS PROMPTLY FAILED.

THE BOARD QUESTIONS THE WISDOM OF HAVING APPROVED THE COMPROMISE SETTLEMENT AGREED TO BY THE PARTIES. HOWEVER, THERE WAS FACTUAL SUPPORT FOR THE POSITIONS OF THE PARTIES AND IT APPEARS THAT CLAIMANT WAS FULLY AND ADEQUATELY INFORMED OF THE RISKS INVOLVED IN ENTERING INTO THE SETTLEMENT.

CLAIMANT IS NOW WITHOUT FUNDS EXCEPT SOCIAL SECURITY, DISABILITY BENEFITS AND HIS WIFE'S PART TIME INCOME. THE BOARD CONCLUDES, HOWEVER, THAT THE STIPULATION SHOULD NOT BE SET ASIDE. ALTHOUGH CLAIMANT IS IN SIGNIFICANT DISTRESS AND MUST WALK WITH THE AID OF A CANE, HE CONTINUES TO BE INTERESTED IN RECEIVED TRAINING FOR SOME SUITABLE JOB.

WE TURN NEXT TO THE PROBLEM OF WAUSAU'S LUMP SUM PAYMENT TO CLAIMANT.

ORS 656.230 (2) LIMITS ADVANCE PAYMENTS TO A MAXIMUM OF 50 PERCENT OF THE TOTAL AWARD AND ONLY WITH THE PRIOR APPROVAL OF THE WORKMEN'S COMPENSATION BOARD. THE INVESTIGATION REPORT INDICATES WAUSAU CONSIDERED THE BOARD'S APPROVAL OF THE STIPULATION TO BE APPROVAL OF THE ADVANCE PAYMENT. THE LANGUAGE OF THE STIPULATION INDICATES OTHERWISE. IT CONTAINS THE PHRASE... '... IN THE EVENT ADVANCE PAYMENT OR LUMP SUM PAYMENTS ARE MADE TO THE CLAIMANT...' INDICATING THE MATTER WAS NOT FORMALLY DECIDED OR APPROVED.

WAUSAU'S FAILURE TO SEEK BOARD APPROVAL OF THE ADVANCE PAYMENT IS A MATERIAL FACTOR IN CAUSING CLAIMANT'S PRESENT PREDICAMENT. IN VIEW OF THIS FAILURE TO OBEY THE LAW, THE BOARD CONCLUDES THE PRIOR ILLEGAL PAYMENT MUST BE IGNORED.

THEREFORE IN CONTEMPLATION OF LAW, WAUSAU STILL OWES THE CLAIMANT 17,600 DOLLARS AND IT MUST FORTHWITH BEGIN PAYMENT OF THAT LIABILITY IN ACCORDANCE WITH THE OREGON WORKMEN'S COMPENSATION LAW.

ORDER

IT IS HEREBY ORDERED THAT ARMOR CLAD CORPORATION ACTING THROUGH ITS WORKMEN'S COMPENSATION CARRIER, EMPLOYER'S INSURANCE OF WAUSAU, IS LIABLE TO HERMAN DOUGLAS FOR WORKMEN'S COMPENSATION BENEFITS FOR PERMANENT PARTIAL DISABILITY IN THE AMOUNT OF 17,600 DOLLARS.

IT IS HEREBY FURTHER ORDERED THAT ARMOR CLAD CORPORATION, THROUGH EMPLOYER'S INSURANCE OF WAUSAU, BEGIN PAYMENT OF SAID LIABILITY TO CLAIMANT FORTHWITH IN ACCORDANCE WITH THE PROVISIONS OF THE OREGON WORKMEN'S COMPENSATION LAW.

THIS ORDER IS FINAL UNLESS WITHIN 30 DAYS FROM THE DATE HEREOF, ARMOR CLAD CORPORATION APPEALS THIS ORDER BY REQUESTING A HEARING PURSUANT TO ORS 656.278.

WCB CASE NO. 70-1052 MAY 24, 1973

GENE NICHOLAS, CLAIMANT
KEITH D. SKELTON, DEFENSE ATTY.
ORDER OF REMAND

AN ORDER OF THE CIRCUIT COURT OF MARION COUNTY FINDING THE CLAIMANT NOT MEDICALLY STATIONARY, REMANDED THE ABOVE ENTITLED MATTER TO THE HEARING OFFICER FOR FURTHER EVIDENCE TAKING AND APPROPRIATE ACTION.

THE HEARING OFFICER, CONSTRUING THE CIRCUIT COURT ORDER, CONCLUDED CLAIMANT MUST BE REINSTATED TO TIME LOSS AS OF MARCH 19, 1971 AND ISSUED HIS ORDER ACCORDINGLY WITHOUT TAKING FURTHER EVIDENCE.

THE EMPLOYER CONTENDS THAT REINSTATEMENT TO TIME LOSS AS OF MARCH 19, 1971 WAS NOT A NECESSARY RESULT OF THE CIRCUIT COURT ORDER AND OBJECTS TO THE HEARING OFFICER'S FAILURE TO TAKE FURTHER EVIDENCE PURSUANT TO THE COURT'S ORDER.

WITHOUT EXPRESSING AN OPINION ON THE MERITS OF THE PARTIES' CONTENTIONS, THE BOARD CONCLUDES THE MATTER SHOULD BE REMANDED TO THE HEARING OFFICER SO THAT THE PARTIES MAY HAVE THE OPPORTUNITY TO PRESENT ANY FURTHER EVIDENCE OR ARGUMENT THEY MAY HAVE BEFORE THE HEARING OFFICER ISSUES HIS OPINION AND ORDER PURSUANT TO THE ORDER OF THE CIRCUIT COURT.

IT IS SO ORDERED.

WCB CASE NO. 72-2447 MAY 24, 1973

WAYNE W. GOTCHER, CLAIMANT
HURLBURT, KENNEDY, PETERSON, BOWLES AND TOWSLEY, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER GRANTING CLAIMANT 125 DEGREES FOR PARTIAL LOSS OF HIS LEFT ARM, AND 128 DEGREES FOR UNSCHEDULED DISABILITY.

ISSUE

WHAT IS EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

ON APRIL 30, 1968 CLAIMANT WAS A 47 YEAR OLD MAN WHO SUFFERED A SEVERE CRUSH INJURY TO HIS LEFT HAND WHEN IT WAS CAUGHT AND DRAWN INTO SOME GEARS. IN EXTRICATING HIS CAPTURED HAND, HE ALSO SUFFERED AN INJURY TO HIS SHOULDER WHICH WAS AGGRAVATED BY THE IMMOBILIZATION PERIOD ASSOCIATED WITH TREATMENT OF THE HAND. WHEN THE CONVALESCENCE WAS FINALLY COMPLETED THE CLAIM WAS CLOSED ON NOVEMBER 19, 1970, WITH AN AWARD OF 128 DEGREES FOR PARTIAL LOSS OF THE LEFT FOREARM. THIS AWARD WAS APPEALED TO A HEARING OFFICER.

AFTER HEARING THE EVIDENCE THE HEARING OFFICER FOUND DISABILITY AFFECTING THE WHOLE ARM AND THE SHOULDER AS WELL. HE GRANTED 125 DEGREES FOR PARTIAL LOSS OF THE LEFT ARM AND 128 DEGREES FOR UNSCHEDULED DISABILITY TO THE SHOULDER.

ALTHOUGH IT IS ADMITTEDLY DIFFICULT TO ASCERTAIN THE COMPARATIVE CONTRIBUTION OF THE SCHEDULED AND UNSCHEDULED INJURIES TO CLAIMANT'S LOSS OF EARNING CAPACITY, IT APPEARS TO THE BOARD THAT THE AWARD OF 128 DEGREES RECOGNIZES PART OF THE DISABLING EFFECT WHICH IS ACTUALLY PRODUCED BY THE ARM IMPAIRMENT AND THUS CONSTITUTES DOUBLE COMPENSATION FOR THE SAME INJURY WHICH THE LAW DOES NOT PERMIT. FOSTER V. SAIF, 259 OR. 86 (1971).

THE BOARD CONCURS WITH THE HEARING OFFICER'S ALLOWANCE OF 125 DEGREES FOR PARTIAL LOSS OF THE LEFT ARM, BUT ITS ANALYSIS OF THE EVIDENCE LEADS IT TO CONCLUDE THAT CLAIMANT'S CONCOMITANT UNSCHEDULED SHOULDER DISABILITY EQUALS 20 PERCENT OR 64 DEGREES OF A MAXIMUM OF 320 DEGREES.

ORDER

CLAIMANT'S AWARD FOR UNSCHEDULED SHOULDER DISABILITY IS REDUCED TO 20 PERCENT OR 64 DEGREES OF A MAXIMUM OF 320 DEGREES IN LIEU OF THE UNSCHEDULED DISABILITY AWARD MADE BY THE HEARING OFFICER.

THE ORDER OF THE HEARING OFFICER DATED AUGUST 24, 1972, IS AFFIRMED IN ALL OTHER RESPECTS.

WCB CASE NO. 71-1713 MAY 25, 1973

WANDA T. SADOSKI, CLAIMANT
ENVER BOZGOZ, CLAIMANT'S ATTY.
HAVILAND, DE SCHWEINITZ AND STARK, DEFENSE ATTS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED THE EMPLOYER'S DENIAL OF HER CLAIM FOR COMPENSATION.

ISSUE

DID CLAIMANT SUSTAIN A COMPENSABLE ON-THE-JOB INJURY?

DISCUSSION

THE HEARING OFFICER APPROVED THE DENIAL OF CLAIMANT'S CLAIM CITING INCONSISTENCIES AND CONFLICTING TESTIMONY AND OTHER EVIDENCE AS THE BASIS FOR HIS RULING.

UPON ITS OWN DE NOVO REVIEW, THE BOARD IS PERSUADED, ALTHOUGH THE EVIDENCE IS CONFLICTING, THAT CLAIMANT DID SUFFER AN INJURY TO HER WRIST ON APRIL 23, 1971 WHICH AGGRAVATED THE OLD UNUNITED FRACTURE OF THE LEFT ULNAR STYLOID AND THAT HER CLAIM SHOULD THEREFORE BE ALLOWED.

ORDER

THE ORDER OF THE HEARING OFFICER DENYING THE CLAIM IS REVERSED AND THE CLAIMANT'S CLAIM IS REMANDED TO THE EMPLOYER FOR ACCEPTANCE, PROCESSING AND PAYMENT OF COMPENSATION ACCORDING TO LAW.

THE CLAIMANT'S ATTORNEY IS ALLOWED 700 DOLLARS, PAYABLE BY THE EMPLOYER, FOR HIS SERVICES AT THE HEARING AND UPON THIS REVIEW.

WCB CASE NO. 72-1969 MAY 25, 1973

BETTY M. WHETSTONE, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH REQUIRED CLAIMANT'S ATTORNEY FEES TO BE PAID BY THE EMPLOYER.

ISSUE

IS CLAIMANT ENTITLED TO HAVE HER ATTORNEY FEES PAID BY THE EMPLOYER?

DISCUSSION

THE ANSWER FILED BY THE EMPLOYER ESTABLISHES THAT THE EMPLOYER DID RESIST AUTHORIZING THE OPERATION. THE EFFORTS OF CLAIMANT'S COUNSEL SECURED FOR CLAIMANT THE COMPENSATION TO WHICH SHE WAS ENTITLED. ON THIS BASIS CLAIMANT IS ENTITLED TO HAVE HER ATTORNEY FEES PAID BY THE EMPLOYER.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE HEARING OFFICER'S FINDINGS AND CONCLUSIONS ON ALL ISSUES AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 19, 1972 IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AN ADDITIONAL 250 DOLLARS, PAYABLE BY THE EMPLOYER, FOR HIS SERVICES TO CLAIMANT ON THIS REVIEW.

WCB CASE NO. 72-1938 MAY 25, 1973

MERIL S. WEIR, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED A SECOND DETERMINATION ORDER WHICH AWARDED CLAIMANT A PERMANENT PARTIAL DISABILITY AWARD EQUAL TO 30 DEGREES FOR LOSS OF THE LEFT FOREARM.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

THIS 52 YEAR OLD LADY INJURED HER LEFT WRIST SEPTEMBER 12, 1969 WHILE OPERATING A MANGLE IN A LAUNDRY.

DR. THOMAS J. BAYDEN, ON FEBRUARY 1, 1971, EXCISED A GANGLION FROM CLAIMANT'S WRIST. BECAUSE OF CONTINUING DIFFICULTY, ON JUNE 9, 1972, DR. PETER NATHAN OPERATED FOR A SUSPECTED NEUROMA, WHICH PROVED TO BE, ON REMOVAL, SCAR TISSUE.

THE CLAIMANT NOW COMPLAINS OF CONSTANT PAIN IN THE PALM AND WRIST OF HER LEFT HAND WHICH BECOMES WORSE UPON USING HER HAND AND HAS PRECLUDED HER FROM BAKING, SEWING, EMBROIDERING. CLAIMANT FEELS UNABLE TO RETURN TO WORK.

CLAIMANT WAS REFERRED TO THE PORTLAND REHABILITATION CENTER AND NORMAN HICKMAN, PH. D. REPORTED CLAIMANT AS HAVING MILD PSYCHO-PATHOLOGY BECAUSE OF HER INJURY. HE STATED...

'SHE (MRS. WEIR) SEEMS GENUINELY CONCERNED WITH HER PREDICAMENT AND SEEMS TO BE GENUINE AND HONEST IN HER SYMPTOMS.'

THE BOARD, AFTER REVIEWING THE RECORD BEFORE THEM, CONCURS WITH THE HEARING OFFICER'S FINDING THAT CLAIMANT'S PERMANENT PARTIAL DISABILITY DOES NOT EXCEED THAT AWARDED BY THE DETERMINATION ORDER. HOWEVER, THE BOARD DOES CONCLUDE THAT CLAIMANT SHOULD BE AFFORDED FURTHER PSYCHOLOGICAL COUNSELING WHICH MIGHT ASSIST CLAIMANT TO LEARN TO LIVE WITH HER DISABILITY AND RESUME GAINFUL EMPLOYMENT.

ORDER

THE ORDER OF THE HEARING OFFICER DATED NOVEMBER 27, 1972, AFFIRMING THE AWARD OF PERMANENT PARTIAL DISABILITY OF 30 DEGREES OF THE LEFT FOREARM, IS AFFIRMED.

IT IS HEREBY FURTHER ORDERED THAT THE EMPLOYER PROVIDE TO CLAIMANT, UNDER THE PROVISIONS OF ORS 656.245, APPROPRIATE PSYCHOLOGICAL COUNSELING TO ASSIST IN CLAIMANT'S ADJUSTMENT TO HER DISABILITY.

CLAIMANT'S ATTORNEYS, GALTON AND POPICK, ARE ENTITLED TO RECOVER FROM CLAIMANT A FEE EQUAL TO 25 PERCENT OF THE COST OF PSYCHOLOGICAL COUNSELING. IN NO EVENT SHALL THE FEE ALLOWED HEREBY EXCEED 1,500 DOLLARS MAXIMUM.

WCB CASE NO. 72-1826 MAY 25, 1973

JACK BOONE, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER, CLAIMANT'S ATTYS.
CHARLES PAULSON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH ALLOWED NO PENALTIES FOR LATE PAYMENT, NO FURTHER TEMPORARY TOTAL DISABILITY AND NO AWARD FOR PERMANENT PARTIAL DISABILITY-

ISSUES

(1) SHOULD PENALTIES BE ASSESSED FOR PARTIAL LATE PAYMENT OF TIME LOSS?

(2) IS CLAIMANT ENTITLED TO FURTHER TEMPORARY TOTAL DISABILITY?

(3) IS CLAIMANT ENTITLED TO AN AWARD OF PERMANENT PARTIAL DISABILITY?

DISCUSSION

THE BOARD HAS REVIEWED THE RECORD AND CONSIDERED THE CONTENTIONS OF THE PARTIES RAISED IN THE BRIEFS. THE BOARD CONCLUDES THIS CLAIM WAS PROPERLY CLOSED AND THAT NO SUFFICIENT BASIS FOR REOPENING HAS BEEN SHOWN.

THE LACK OF OBJECTIVE MEDICAL SUPPORT FOR CLAIMANT'S SUBJECTIVE COMPLAINTS CAUSES THE BOARD TO CONCLUDE THAT CLAIMANT IS SUFFERING NO REAL DISABLING RESIDUAL FROM THE ACCIDENT IN QUESTION.

THE BOARD ALSO AGREES WITH THE HEARING OFFICER'S DISPOSITION OF THE ISSUE OF PENALTIES AND FURTHER TIME LOSS. THUS, THE HEARING OFFICER'S ORDER SHOULD BE AFFIRMED IN ALL RESPECTS.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 27, 1972 IS HEREBY AFFIRMED.

WCB CASE NO. 72-136 MAY 25, 1973

GAYLE DIERDORFF, CLAIMANT
ALAN M. LEE, CLAIMANT'S ATTY.
KOSTA AND BRANT, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS REVIEW OF A HEARING OFFICER'S ORDER APPROVING TERMINATION OF HER TEMPORARY TOTAL DISABILITY ON DECEMBER 1, 1971.

ISSUE

THE ISSUE IS THE ALLEGED REFUSAL OF THE EMPLOYER TO PAY COMPENSATION AND/OR SUBMIT THE MATTER TO CLOSING AND EVALUATION.

DISCUSSION

CLAIMANT IS A 55 YEAR OLD POTATO SORTER WHO SUFFERED A COMPENSABLE NECK INJURY APRIL 16, 1971, WHEN SHE STRUCK HER HEAD ON A BEAM. DR. TENNYSON HER TREATING PHYSICIAN, DESCRIBED CLAIMANT'S INJURY AS A CERVICAL STRAIN WITH FUNCTIONAL OVERLAY.

DR. TENNYSON RELEASED CLAIMANT FOR 'LIGHT' WORK AS OF DECEMBER 1, 1971. ON DECEMBER 2, 1971, UPON BEING ADVISED THAT THE DUTIES INVOLVED IN HER REGULAR JOB CONSTITUTED LIGHT WORK, HE STATED SHE COULD RETURN TO HER REGULAR EMPLOYMENT. A SECOND PHYSICIAN, DR. KLUMP, ALSO AGREED CLAIMANT COULD RETURN TO HER REGULAR WORK. CLAIMANT HOWEVER, TESTIFIED THAT SHE HAD NOT BEEN ABLE TO DO SO.

THE HEARING OFFICER CONCLUDED AND THE BOARD CONCURS, THAT THE MEDICAL OPINION OF DR. TENNYSON, AND KLUMP SUPPORTED A FINDING THAT CLAIMANT'S CONDITION JUSTIFIED TERMINATION OF TIME LOSS AS OF DECEMBER 1, 1971, IN ACCORDANCE WITH ORS 656.268 (2).

IT SHOULD BE CAREFULLY NOTED THAT THE BOARD, IN APPROVING TERMINATION OF CLAIMANT'S TEMPORARY TOTAL DISABILITY COMPENSATION, HAS NOT PASSED ON THE QUESTION OF WHETHER CLAIMANT IS MEDICALLY STATIONARY. THE OCCURRENCE OF THE TWO EVENTS IS NOT NECESSARILY SIMULTANEOUS AS A MATTER OF FACT AND THE PROVISIONS OF ORS 656.268 RECOGNIZE THIS. THUS, THIS ORDER SHOULD NOT BE INTERPRETED AS DISPENSING WITH A CLOSURE PURSUANT TO ORS 656.268.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 16, 1972, IS HEREBY AFFIRMED.

WCB CASE NO. 72-2015 MAY 25, 1973

GARY G. HILL, CLAIMANT
COLLEY AND MORRAY, CLAIMANT'S ATTYS.
RHOTEN, RHOTEN AND SPEERSTRA, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER AFFIRMING THE DENIAL OF HIS CLAIM FOR KNEE INJURY, CONTENDING THE CLAIM IS COMPENSABLE AND ITS DENIAL WAS UNREASONABLE.

ISSUE

DID CLAIMANT SUFFER A COMPENSABLE INJURY TO HIS RIGHT KNEE?

DISCUSSION

THE HEARING OFFICER AFFIRMED THE DENIAL BASICALLY ON THE LACK OF PROOF OF CAUSAL CONNECTION.

URIS V. SCD, 247 OR 420 (1967) STATES...

IN THE COMPENSATION CASES HOLDING MEDICAL TESTIMONY UNNECESSARY TO MAKE A PRIMA FACIE CASE OF CAUSATION, THE DISTINGUISHING FEATURES ARE AN UNCOMPLICATED SITUATION, THE IMMEDIATE APPEARANCE OF SYMPTOMS, THE PROMPT REPORTING OF THE OCCURRENCE BY THE WORKMAN TO HIS SUPERIOR AND CONSULTATION WITH A PHYSICIAN, AND THE FACT THAT THE PLAINTIFF WAS THERETOFORE IN GOOD HEALTH AND FREE FROM ANY DISABILITY OF THE KIND INVOLVED. A FURTHER RELEVANT FACTOR IS THE ABSENCE OF EXPERT TESTIMONY THAT THE ALLEGED PRECIPITATING EVENT COULD NOT HAVE BEEN THE CAUSE OF THE INJURY.

THE BOARD CONCLUDES FROM ITS REVIEW THAT THE HEARING OFFICER CORRECTLY APPLIED THIS INTERPRETATION OF THE LAW TO THE FACTS AND HIS ORDER SHOULD THEREFORE BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 19, 1972 IS AFFIRMED.

JOHN C. LANE, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER, CLAIMANT'S ATTYS.
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH ORDERED THE EMPLOYER TO ACCEPT CLAIMANT'S CLAIM FOR INCREASED COMPENSATION ON ACCOUNT OF AGGRAVATION AND WHICH ESTABLISHED JUNE 2, 1972, AS THE BEGINNING DATE OF CLAIMANT'S TEMPORARY TOTAL DISABILITY, CONTENDING TIME LOSS SHOULD HAVE BEEN ALLOWED FROM APRIL 17, 1972.

ISSUE

THE ONLY ISSUE ON REVIEW IS THE DATE ON WHICH TEMPORARY TOTAL DISABILITY PAYMENTS SHOULD COMMENCE.

DISCUSSION

THIS CLAIMANT SUFFERED A COMPENSABLE LOW BACK INJURY ON JUNE 24, 1969, AND THE CLAIM WAS CLOSED ON JULY 15, 1970 BY A DETERMINATION ORDER GRANTING CERTAIN DISABILITY BENEFITS.

CLAIMANT PRESENTED A CLAIM FOR AGGRAVATION TO THE EMPLOYER'S INSURANCE CARRIER ON JUNE 2, 1972 WITH A SUPPORTING MEDICAL REPORT FROM DR. A. GURNEY KIMBERLEY, DATED APRIL 17, 1972 RECOMMENDING A SPINAL FUSION. THE SPINAL FUSION WAS PERFORMED ON AUGUST 7, 1972.

CLAIMANT FILED A REQUEST FOR HEARING ON HIS CLAIM FOR AGGRAVATION SINCE THE EMPLOYER NEITHER DENIED NOR ACCEPTED THE CLAIM FOR AGGRAVATION AND HIS FAILURE TO DO SO WITHIN 60 DAYS THEREBY CONSTITUTED A DE FACTO DENIAL OF THE CLAIM FOR AGGRAVATION.

UPON HEARING CLAIMANT'S TESTIMONY AT THE HEARING, THE EMPLOYER THEREUPON ACCEPTED HIS CLAIM. THE HEARING OFFICER ORDERED PAYMENT OF TEMPORARY TOTAL DISABILITY TO BEGIN ON JUNE 2, 1972.

PRIOR TO JANUARY 1, 1966, THE LAW RELATING TO APPLICATIONS FOR INCREASED COMPENSATION ON ACCOUNT OF AGGRAVATION PROVIDED...

ORS 656.276

(4) NO INCREASE OR REARRANGEMENT IN COMPENSATION SHALL BE OPERATIVE FOR ANY PERIOD PRIOR TO THE APPLICATION THEREFOR.

THAT PROVISION WAS REPEALED BY SECTION 95, CHAPTER 285 OREGON LAWS OF 1965. THUS, THE HEARING OFFICER WAS NOT REQUIRED TO LIMIT CLAIMANT'S COMPENSATION TO THE PERIOD OF JUNE 2, 1972. SINCE 1965 THE QUESTION OF WHEN TEMPORARY TOTAL DISABILITY SHOULD COMMENCE IN AN AGGRAVATION SITUATION RELATES BASICALLY TO DECIDING WHEN THE CLAIMANT WAS NO LONGER ABLE TO CONTINUE IN HIS REGULAR EMPLOYMENT.

DR. KIMBERLEY'S REPORT ESTABLISHES THAT ON APRIL 17, 1972 CLAIMANT WAS UNABLE TO PERFORM HIS REGULAR EMPLOYMENT WHICH IS THE BASIS FOR ENTITLEMENT TO TEMPORARY TOTAL DISABILITY. DR. KIMBERLEY'S REPORT CONSTITUTES THE FIRST SATISFACTORY EVIDENCE THAT CLAIMANT'S

PREVIOUSLY STABLE CONDITION HAD CHANGED. THE BOARD CONCLUDES THAT CLAIMANT IS ENTITLED TO TEMPORARY TOTAL DISABILITY COMPENSATION COMMENCING ON APRIL 17, 1972, RATHER THAN JUNE 2, 1972 AS FOUND BY THE HEARING OFFICER.

ORDER

THE ORDER OF THE HEARING OFFICER IS MODIFIED TO ALLOW CLAIMANT TIME LOSS BENEFITS COMMENCING AS OF APRIL 17, 1972, RATHER THAN JUNE 2, 1972. IN ALL OTHER RESPECTS, THE HEARING OFFICER'S ORDER IS AFFIRMED.

SAIF CLAIM NO. NC 44038 MAY 29, 1973

HARRY ISSEL, JR., CLAIMANT
STATE ACCIDENT INSURANCE FUND, DEFENSE
OWN MOTION DETERMINATION

THIS CLAIM WAS FILED FOR AN INJURY OF OCTOBER 9, 1966 WHILE CLAIMANT WAS EMPLOYED AS CHIEF OF POLICE FOR THE CITY OF COTTAGE GROVE.

THE CLAIM WAS CLOSED DECEMBER 6, 1966 WITHOUT AN AWARD OF PERMANENT PARTIAL DISABILITY. THE STATE ACCIDENT INSURANCE FUND SUBSEQUENTLY REOPENED THE CLAIM FOR FURTHER TREATMENT. CLAIMANT UNDERWENT A LUMBAR LAMINECTOMY AUGUST 1, 1972 AND WAS RELEASED TO RETURN TO REGULAR WORK DECEMBER 1, 1972.

CLAIMANT IS WORKING AND ATTENDING CLASSES AT PORTLAND STATE UNIVERSITY.

DR. HOCKEY'S CLOSING REPORT OF MAY 8, 1973, ALTHOUGH INDICATING CLAIMANT HAS A FULL RANGE OF BACK MOTION WITHOUT ANY PAIN, NO TENDERNESS IN THE BACK AND NO NEUROLOGICAL ABNORMALITIES, CONCLUDES HE DOES HAVE A VERY MINIMAL PERMANENT PARTIAL DISABILITY.

ORDER

IT IS THEREFORE ORDERED THAT CLAIMANT IS ENTITLED TEMPORARY TOTAL DISABILITY FOR THE PERIOD FROM APRIL 23, 1972 TO DECEMBER 1, 1972 LESS TIME WORKED, AND AN AWARD OF 5 PERCENT LOSS OF AN ARM BY SEPARATION FOR UNSCHEDULED DISABILITY.

NOTICE OF APPEAL

PURSUANT TO ORS 656.278...

THE CLAIMANT HAS NO RIGHT TO A HEARING, REVIEW OR APPEAL ON THIS AWARD MADE BY THE BOARD ON ITS OWN MOTION.

THE STATE ACCIDENT INSURANCE FUND MAY REQUEST A HEARING ON THIS ORDER.

THIS ORDER IS FINAL UNLESS WITHIN 30 DAYS FROM THE DATE HEREOF THE STATE ACCIDENT INSURANCE FUND APPEALS THIS ORDER BY REQUESTING A HEARING.

WCB CASE NO. 72-682 MAY 29, 1973

KEITH J. BISHOP, CLAIMANT
HIBBARD, CALDWELL, CANNING AND SCHULTZ, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AWARDED HIM 25 PERCENT LOSS OF THE LEFT LEG CONTENDING HIS DISABILITY EXCEEDS THAT AWARDED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT IS A 38 YEAR OLD CEMENT FINISHER WHO SUFFERED AN INJURY TO HIS LEFT LEG ON JUNE 2, 1970, WHILE WORKING FOR CASCADE CONSTRUCTION COMPANY ON A ROAD PROJECT NEAR WILSONVILLE, OREGON.

IN SPITE OF EXCELLENT MEDICAL TREATMENT CLAIMANT IS LEFT WITH RESIDUAL PERMANENT IMPAIRMENT CONSISTING OF TENDERNESS ABOUT THE KNEE, LIGAMENOUS LAXITY AND CHONDROMALACIA. A PATELLECTOMY MAY EVENTUALLY BE REQUIRED BUT HIS PRESENT CONDITION DOES NOT NOW WARRANT THE PROCEDURE.

ALTHOUGH CLAIMANT IS A HIGHLY MOTIVATED WORKMAN, HIS RESIDUAL IMPAIRMENT HAS PROVED TO BE A REAL HANDICAP IN PERFORMING HIS TRADE. HOWEVER, THE TEST FOR RATING DISABILITY IN THE EXTREMITIES IS BASED ON LOSS OF PHYSICAL FUNCTION NOT ON LOSS OF EARNING CAPACITY AND THUS THE BOARD IS RESTRICTED IN CONSIDERING THE DISABLING EFFECT OF THIS INJURY.

HAVING REVIEWED THE RECORD DE NOVO, THE BOARD CONCURS WITH THE RATING OF DISABILITY MADE BY THE HEARING OFFICER AND THEREFORE CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 11, 1972 IS HEREBY AFFIRMED.

WCB CASE NO. 72-3122 JUNE 1, 1973

ALBERT GREEN, CLAIMANT
ORDER OF DISMISSAL

ON MAY 9, 1973 THE FUND MOVED TO DISMISS THE CLAIMANT'S REQUEST FOR REVIEW ON THE GROUNDS THAT THE CLAIMANT FAILED TO PROPERLY PERFECT AN APPEAL. ON MAY 16, 1973 THE BOARD GRANTED CLAIMANT 10 DAYS WITHIN WHICH TO RESPOND TO THE MATTER. NO RESPONSE WAS MADE.

IT APPEARS THAT THE REQUEST FOR REVIEW WAS NOT SERVED ON THE OTHER PARTIES WITHIN THE TIME REQUIRED BY LAW AND THUS, THE BOARD LACKS JURISDICTION TO REVIEW.

THE ORDER ON REVIEW IS DISMISSED.

WCB CASE NO. 72-2051 MAY 29, 1973

TODD W. DUBELL, DECEASED
COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
PHILIP A. MONGRAIN, DEFENSE ATTY.
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE BENEFICIARIES REQUEST BOARD REVIEW OF A HEARING OFFICER'S ORDER DISMISSING THEIR CLAIM FOR BENEFITS.

ISSUE

ARE THE BENEFICIARIES ENTITLED TO ENTRY OF AN AWARD OF PERMANENT DISABILITY UNDER THE CIRCUMSTANCES OF THE INSTANT CASE?

DISCUSSION

DESPITE THE EXCELLENT ARGUMENT FILED ON BEHALF OF THE BENEFICIARIES, THE BOARD CONCLUDES THE RULINGS IN MAJORS V. SAIF, 3 OR APP 505 (1970) AND MARSHALL V. SAIF, 94 OR ADV SH 1400, ---OR APP---(1972) WHICH DO RELY ON FERTIG V. SCD, 254 OR 136 (1969) APPLY TO DEFEAT THE BENEFICIARIES ARGUMENT.

THE ORDER OF THE HEARING OFFICER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 23, 1973 IS AFFIRMED.

WCB CASE NO. 72-2246 MAY 29, 1973

RICHARD E. DONKERS, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
KEITH SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED A DETERMINATION ORDER GRANTING HIM 16 DEGREES (5 PERCENT) FOR UNSCHEDULED DISABILITY TO THE LOW BACK, 40.5 DEGREES (30 PERCENT) PARTIAL LOSS RIGHT FOOT, 20.25 DEGREES (15 PERCENT) PA PARTIAL LOSS OF LEFT FOOT.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

GIVING WEIGHT TO THE HEARING OFFICER'S OBSERVATIONS OF CLAIMANT'S CREDIBILITY, THE BOARD CONCURS WITH THE FINDING OF THE HEARING OFFICER AND ADOPTS HIS ORDER AFFIRMING THE AWARDS OF DISABILITY MADE BY THE DETERMINATION ORDER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED NOVEMBER 14, 1972 IS HEREBY AFFIRMED.

SAIF CLAIM NO. AB 114432 MAY 29, 1973

DONALD F. RUDISIL, CLAIMANT
MYRICK, COULTER, SEAGRAVES AND NEALY, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

THIS CLAIM WAS FILED FOR AN INJURY SUSTAINED MARCH 12, 1965. CLAIMANT HAS UNDERGONE TWO LAMINECTOMIES, ONE IN 1965 AND ONE IN 1967. HE HAS BEEN AWARDED PERMANENT PARTIAL DISABILITY EQUAL TO 50 PERCENT LOSS OF AN ARM FOR UNSCHEDULED DISABILITY.

ON MAY 13, 1971 CLAIMANT WAS ADVISED BY THE STATE ACCIDENT INSURANCE FUND THAT HIS CLAIM WAS REOPENED AND A CERVICAL ARTHRODESIS WAS AUTHORIZED.

BY REPORT OF MAY 1, 1973, DR. ROY HANFOR STATES CLAIMANT HAS NOT UNDERGONE THE AUTHORIZED SURGERY AND WISHES TO FOREGO IT UNTIL A FUTURE TIME.

ORDER

IT IS THEREFORE ORDERED CLAIMANT IS ENTITLED TO TEMPORARY TOTAL DISABILITY FROM JANUARY 27, 1971 TO APRIL 20, 1973, AND AN ADDITIONAL AWARD FOR PERMANENT PARTIAL DISABILITY EQUAL TO 10 PERCENT LOSS OF AN ARM FOR UNSCHEDULED DISABILITY, MAKING A TOTAL AWARD FOR PERMANENT PARTIAL DISABILITY EQUAL TO 60 PERCENT LOSS OF AN ARM FOR UNSCHEDULED DISABILITY.

NOTICE OF APPEAL

PURSUANT TO ORS 656.278...

THE CLAIMANT HAS NO RIGHT TO A HEARING, REVIEW OR APPEAL ON THIS AWARD MADE BY THE BOARD ON ITS OWN MOTION.

THE STATE ACCIDENT INSURANCE FUND MAY REQUEST A HEARING ON THIS ORDER.

THIS ORDER IS FINAL UNLESS WITHIN 30 DAYS FROM THE DATE HEREOF THE STATE ACCIDENT INSURANCE FUND APPEALS THIS ORDER BY REQUESTING A HEARING.

WCB CASE NO. 72-2187 MAY 29, 1973

CECIL MCCARTY, CLAIMANT
COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH SUSTAINED THE DENIAL OF HIS CLAIM.

ISSUE

DID CLAIMANT SUSTAIN A NEW COMPENSABLE INJURY JULY 24, 1972, OR WAS IT A AGGRAVATION OF A PREEXISTING CONDITION?

DISCUSSION

THE APPELLANT AGREES THAT THE HEARING OFFICER CORRECTLY FOUND THE FACTS BUT HE ARGUES THAT THEY SHOW A NEW INJURY WITHIN THE MEANING OF THE OREGON WORKMEN'S COMPENSATION LAW RATHER THAN AN AGGRAVATION AS FOUND BY THE HEARING OFFICER.

WRESTLING 24 FOOT LONG 6 INCH BY 14 INCH BEAMS UNQUESTIONABLY PUTS GREAT STRESS ON THE SPINAL COLUMN AND ITS SUPPORTING MUSCLES AND LIGAMENTS. DR. DEGGE REPORTS WHEN HE SAW CLAIMANT ON JULY 25, 1972, THAT CLAIMANT WAS COMPLAINING OF 'ACUTE, RECURRENT BACK ACHES'. ORDINARILY WHEN A PHYSICIAN USES THE WORD 'ACUTE', HE INTENDS TO DENOTE A CONDITION OF SUDDEN ONSET, BUT SHORT AND RELATIVELY SEVERE DURATION. DR. DEGGE ALSO CALLED THE INCIDENT IN QUESTION THE 'CURRENT' INJURY WHICH DENOTES A NEW ACCIDENT.

THE INHERENT NATURE OF THE WORK IN QUESTION PLUS DR. DEGGE'S CHARACTERIZATION OF THE PHYSICAL CONSEQUENCES TO THE CLAIMANT, LEADS THE BOARD TO CONCLUDE WITHOUT QUESTION THAT CLAIMANT SUFFERED A NEW COMPENSABLE INJURY ON JULY 24, 1972.

FOR THE REASONS STATED, THE ORDER OF THE HEARING OFFICER SHOULD BE REVERSED AND THE CLAIM REMANDED TO THE EMPLOYER FOR PAYMENT OF COMPENSATION AS REQUIRED BY LAW.

ORDER

THE ORDER OF THE HEARING OFFICER DATED NOVEMBER 13, 1972, IS HEREBY REVERSED AND THE CLAIMANT'S CLAIM IS REMANDED TO THE EMPLOYER FOR ACCEPTANCE AND PAYMENT OF BENEFITS IN ACCORDANCE WITH THE WORKMEN'S COMPENSATION LAW.

COUNSEL FOR THE CLAIMANT IS AWARDED A REASONABLE ATTORNEY FEE IN THE AMOUNT OF 750 DOLLARS PAYABLE BY THE EMPLOYER FOR HIS SERVICES AT THE HEARING AND A BOARD REVIEW.

WCB CASE NO. 72-892 MAY 29, 1973

BILLY J. WALLS, CLAIMANT
WILLNER, BENNETT AND LEONARD, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT APPEALS THE HEARING OFFICER'S ORDER WHICH SUSTAINED THE DENIAL OF AGGRAVATION AND DISMISSED THE REQUEST FOR HEARING.

ISSUE

HAS CLAIMANT SUFFERED AN AGGRAVATION OF HIS COMPENSABLE LOW BACK INJURY?

DISCUSSION

CLAIMANT SUSTAINED A COMPENSABLE INJURY AUGUST 12, 1968, WHILE EMPLOYED BY ESCO CORPORATION.

FOLLOWING A DENIAL BY THE STATE ACCIDENT INSURANCE FUND OF A CLAIM FOR COMPENSATION ON ACCOUNT OF AGGRAVATION, A HEARING WAS HELD ON THE ISSUE OF JURISDICTION. BY HIS ORDER OF JULY 13, 1972, THE HEARING OFFICER FOUND CLAIMANT HAD SATISFIED THE JURISDICTIONAL REQUIREMENTS OF THE AGGRAVATION STATUTE AND THE CLAIM SHOULD BE HEARD ON THE MERITS.

AT THE HEARING CLAIMANT GAVE A DETAILED MEDICAL HISTORY WHICH WAS CONFLICTING WITH THE HISTORY GIVEN BY DR. PARROTT. THE CLAIMANT ATTEMPTED TO EXPLAIN HIS MAKING CLAIM UNDER A NON-OCCUPATIONAL INSURANCE POLICY AS HAVING BEEN DONE UPON THE ADVICE OF HIS EMPLOYER'S SAFETY DIRECTOR.

THE HEARING OFFICER FOUND A COMPLETE LACK OF CREDIBILITY IN CLAIMANT'S TESTIMONY AND FOUND THAT CLAIMANT HAD FAILED TO SUSTAIN THE BURDEN OF PROVING AN AGGRAVATION.

HAVING REVIEWED THE RECORD DE NOVO IN LIGHT OF THE HEARING OFFICER'S OBSERVATIONS OF CLAIMANT'S CREDIBILITY, THE BOARD CONCURS WITH HIS FINDINGS AND CONCLUSIONS AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 17, 1972 IS HEREBY AFFIRMED.

WCB CASE NO. 68-141 MAY 30, 1973

MICHAEL G. DARDIS, CLAIMANT
EMPLOYERS INSURANCE OF WAUSAU, DEFENSE
OWN MOTION ORDER

ON MAY 9, 1966 CLAIMANT SUFFERED A LOW BACK INJURY ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT BY GOULD NATIONAL BATTERIES, INC. IN SALEM, OREGON. THE FIRST CLOSURE OF HIS CLAIM OCCURRED ON NOVEMBER 21, 1967. THE FIVE YEAR PERIOD FOR FILING A CLAIM OF AGGRAVATION ACCORDINGLY EXPIRED ON NOVEMBER 21, 1972.

ON FEBRUARY 21, 1973, THE BOARD RECEIVED A LETTER FROM CLAIMANT SEEKING 'OWN MOTION' REOPENING OF HIS CLAIM FOR TREATMENT OF NEWLY DEVELOPED PROBLEMS.

CLAIMANT HAS NOW SUBMITTED TWO MEDICAL REPORTS. THE FIRST, A REPORT FROM DR. JOHN RAAF DATED APRIL 4, 1973 AND THE SECOND, A REPORT FROM DR. DUDLEY BRIGHT, CLAIMANT'S TREATING PHYSICIAN, DATED MAY 11, 1973.

THESE REPORTS, ATTACHED HERETO AS EXHIBIT 'A' AND 'B' RESPECTIVELY, ARE INCORPORATED AS A PART OF THIS ORDER.

THESE REPORTS ADEQUATELY SUPPORT THE CLAIMANT'S REQUEST FOR OWN MOTION RELIEF.

ORDER

CLAIMANT'S CLAIM FOR INJURIES OCCURRING ON MAY 9, 1966 IS HEREBY REMANDED TO EMPLOYER'S INSURANCE OF WAUSAU ACTING AS THE WORKMEN'S COMPENSATION INSURANCE CARRIER FOR GOULD NATIONAL BATTERIES, INC. FOR REOPENING AS OF NOVEMBER 13, 1972 AND THE PROVISION OF BENEFITS UNTIL HIS CONDITION AGAIN BECOMES MEDICALLY STATIONARY.

NOTICE OF APPEAL

PURSUANT TO ORS 656.278...

THE CLAIMANT HAS NO RIGHT TO A HEARING, REVIEW OR APPEAL ON THIS AWARD MADE BY THE BOARD ON ITS OWN MOTION.

THE EMPLOYER MAY REQUEST A HEARING ON THIS ORDER.

THIS ORDER IS FINAL UNLESS WITHIN 30 DAYS FROM THE DATE HEREOF THE EMPLOYER APPEALS THIS ORDER BY REQUESTING A HEARING.

WCB CASE NO. 69-321 MAY 30, 1973

CLYDE R. STAIGER, CLAIMANT
A. C. ROLL, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER FINDING HIM PERMANENTLY PARTIALLY DISABLED RATHER THAN PERMANENTLY TOTALLY DISABLED. HE ALSO OBJECTS TO THE HEARING OFFICER'S FAILURE TO AWARD COMPENSATION BETWEEN JANUARY 16, 1969 AND OCTOBER 20, 1969 AND TO HIS REFUSAL TO REQUIRE THE STATE ACCIDENT INSURANCE FUND TO PAY THE COST OF A CERTAIN MEDICAL REPORT.

ISSUES

- (1) WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?
- (2) IS THE STATE ACCIDENT INSURANCE FUND RESPONSIBLE FOR DR. GEORGE C. D. KJAERS' MEDICAL REPORT?
- (3) IS COMPENSATION OWING FOR THE PERIOD JANUARY 16, 1969 TO OCTOBER 20, 1969?

DISCUSSION

AFTER REVIEWING THE RECORD DE NOVO AND STUDYING THE BRIEFS SUBMITTED THE BOARD CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 24, 1972 IS AFFIRMED.

WCB CASE NO. 72-2856 JUNE 1, 1973

CASMER FERGEL, DECEDENT
POAAI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

ON APRIL 23, 1973 THE EMPLOYER REQUESTED BOARD REVIEW OF A HEARING OFFICER'S ORDER ALLOWING THE CLAIM OF THE BENEFICIARIES IN THE ABOVE-ENTITLED CASE FOR WORKMEN'S COMPENSATION BENEFITS ARISING OUT OF THE DECEDENT'S DEATH.

ON MAY 30, 1973 THE BOARD RECEIVED A JOINT PETITION AND ORDER OF BONA FIDE DISPUTE SETTLEMENT WHEREIN THE PARTIES TO THIS DISPUTE HAVE AGREED TO SETTLE AND COMPROMISE THE MATTER IN ACCORDANCE WITH THE TERMS OF THE JOINT PETITION WHICH IS ATTACHED HERETO AS EXHIBIT 'A'.

THE BOARD, BEING NOW FULLY ADVISED, CONCLUDES THE AGREEMENT IS FAIR AND EQUITABLE TO BOTH PARTIES.

ORDER

IT IS THEREFORE ACCORDINGLY ORDERED THAT THE JOINT PETITION AND ORDER OF BONA FIDE DISPUTE SETTLEMENT BE EXECUTED ACCORDING TO ITS TERMS.

THE REQUEST FOR REVIEW NOW PENDING BEFORE THE BOARD IS HEREBY DISMISSED.

SETTLEMENT

FACTS

FOR A RESUME OF FACTS WHICH EXPLAIN THE DISPUTE CONCERNING COMPENSABILITY THE BOARD IS URGED TO REVIEW THE OPINION AND ORDER OF ITS HEARING OFFICER, A COPY OF WHICH IS APPENDED HERETO AND MADE APART OF THIS JOINT PETITION.

SUBSEQUENT TO RECEIPT OF THE HEARING OFFICER'S OPINION AND ORDER EMPLOYER TIMELY FILED A REQUEST FOR BOARD REVIEW, URGING REVERSAL OF THE HEARING OFFICER'S FINDING, TO-WIT... THAT THE NERVOUSNESS FOLLOWING A COMPENSABLE INJURY OF OCTOBER 28, 1970, WAS CAUSED BY SAID INJURY AND WAS A MATERIAL, CONTRIBUTING FACTOR WHICH AT A MINIMUM AGGRAVATED THE DECEDENT'S HEART CONDITION CAUSING DEATH.

THE PARTIES AGREE THAT A BONA FIDE DISPUTE EXISTS CONCERNING COMPENSABILITY OF DECEDENT'S HEART ATTACK AND EACH HAS EVIDENCE SUSTAINING ITS VIEW.

PETITION

CLAIMANT, ISABELLE H. FERGEL, WIFE AND BENEFICIARY OF CASMER FERGEL, ACTING FOR HERSELF AND AS A GUARDIAN OF THE CHILDRE OF THE DECEDENT, IN PERSON AND BY HER ATTORNEY, DAN O'LEARY (POZZI, WILSON AND ATCHISON), AND RESPONDENT, BOISE CASCADE CORPORATION, IN PERSON AND BY ITS ATTORNEY, ROBERT E. JOSEPH, JR. (SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE), NOW MAKE THIS JOINT PETITION TO THE BOARD AND STATE...

1. ISABELLE H. FERGEL AND BOISE CASCADE CORPORATION HAVE ENTERED INTO AN AGREEMENT TO DISPOSE OF THIS CLAIM FOR THE TOTAL SUM OF

SEVENTEEN THOUSAND FIVE HUNDRED TWENTY DOLLARS (17,520 DOLLARS), SAID SUM TO INCLUDE ALL 'BENEFITS' AND ATTORNEY FEES.

2. THE PARTIES AGREE THAT TWO THOUSAND FIVE HUNDRED TWENTY DOLLARS (2,520 DOLLARS) OF THE SETTLEMENT AMOUNT HAS ALREADY BEEN PAID TO CLAIMANT LEAVING A BALANCE OF FIFTEEN THOUSAND DOLLARS (15,000 DOLLARS) DUE AND PAYABLE.

3. THE PARTIES FURTHER AGREE THAT FROM THE SETTLEMENT PROCEEDS TWO THOUSAND DOLLARS (2,000 DOLLARS) SHALL BE PAID TO THE FIRM OF POZZI, WILSON AND ATCHISON AS A REASONABLE AND PROPER ATTORNEYS FEE.

4. BOTH CLAIMANT AND RESPONDENT STATE THAT THIS JOINT PETITION FOR SETTLEMENT IS BEING FILED PURSUANT TO ORS 656.289 (4) AUTHORIZING REASONABLE DISPOSITION OF DISPUTED CLAIMS.

5. ALL PARTIES UNDERSTAND THAT IF THIS PAYMENT IS APPROVED BY THE BOARD AND PAYMENT MADE THEREUNDER, SAID PAYMENT IS IN FULL, FINAL, AND COMPLETE SETTLEMENT OF ALL CLAIMS WHICH CLAIMANT OR HER CHILDREN HAVE OR MAY HAVE AGAINST RESPONDENT FOR INJURIES CLAIMED OR THEIR RESULTS, INCLUDING ATTORNEYS FEES, AND ALL 'BENEFITS' UNDER THE WORKMEN'S COMPENSATION LAW AND THAT SHE AND HER CHILDREN WILL CONSIDER SAID AWARD AS BEING FINAL.

6. IT IS EXPRESSLY UNDERSTOOD AND AGREED BY ALL PARTIES THAT THIS IS A SETTLEMENT OF A DOUBTFUL AND DISPUTED CLAIM AND IS NOT AN ADMISSION OF LIABILITY ON THE PART OF THE RESPONDENT, BY WHOM LIABILITY IS EXPRESSLY DENIED, THAT IT IS A SETTLEMENT OF ANY AND ALL CLAIMS WHETHER SPECIFICALLY MENTIONED HEREIN OR NOT, UNDER THE WORKMEN'S COMPENSATION LAW.

WHEREFORE, THE PARTIES HEREBY STIPULATE TO AND JOIN IN THIS PETITION TO THE BOARD TO APPROVE THE FOREGOING SETTLEMENT AND TO AUTHORIZE PAYMENT OF THE SUMS SET FORTH ABOVE PURSUANT TO ORS 656.289 (4) IN FULL AND FINAL SETTLEMENT BETWEEN THE PARTIES AND TO ISSUE AN ORDER APPROVING THIS COMPROMISE AND WITHDRAWING THIS CLAIM.

WCB CASE NO. 72-1628 JUNE 1, 1973

RUSSELL LEERS, CLAIMANT
POZZI, WILSON, AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON, SLOAN AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AWARDED PENALTIES AND ATTORNEY FEES FOR DELAY IN PAYMENT OF TIME LOSS.

ISSUE

DID THE STATE ACCIDENT INSURANCE FUND UNREASONABLY DELAY PAYMENT OF TIME LOSS BENEFITS SO AS TO ENTITLE CLAIMANT TO PENALTIES AND ATTORNEY FEES?

DISCUSSION

A MAJORITY OF THE BOARD CONCLUDES THE FUND FAILED TO PROPERLY DISCHARGE ITS DUTY TO DILIGENTLY PROCESS THE CLAIM WHEN IT IGNORED THE ADDENDUM TO DR. JOE DAVIS' LETTER OF MAY 2, 1972 WHICH STATES...

' SUBSEQUENT TO THE DICTATION FO THE ABOVE-CAPTIONED REPORT, THIS MAN HAS BEEN IN THE OFFICE AND HE IS HAVING SYMPTOMS AND HE IS NOT WORKING, AS INDICATED. SINCE DR. LANGSTON HAS A SUGGESTION THAT MIGHT LEAD TO MANAGEMENT IN THIS MAN'S INSTANCE, I HAVE RECOMMENDED TO MR. LEERS THAT HE CONSULT DR. LANGSTON FOR DR. LANGSTON TO CONTINUE HIS DIAGNOSIS AND TREATMENT AS HE FELT INDICATED.' JBD (JOINT EXH 22)

TIME LOSS PAYMENTS COULD AND SHOULD HAVE BEEN MADE LONG BEFORE JUNE 22, 1972. AS THE HEARING OFFICER CORRECTLY POINTS OUT, THE FACT THAT CLAIMANT WAS RECEIVING PERMANENT PARTIAL DISABILITY PAYMENTS DOES NOT EXCUSE THE FUND FROM INSTITUTING TIMELY PAYMENT OF TIME LOSS.

THE MAJORITY OF THE BOARD CONCURS WITH THE HEARING OFFICER'S FINDINGS THAT THE STATE ACCIDENT INSURANCE FUND HAD UNREASONABLY DELAYED THE PAYMENT OF TIME LOSS TO CLAIMANT AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 6, 1972 IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF 250 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

COMMISSIONER'S DISSENT

COMMISSIONER GEORGE A. MOORE DISSENTS AS FOLLOWS...

ORS 656.262 (8) IF THE FUND OR THE DIRECT RESPONSIBILITY EMPLOYER UNREASONABLY DELAYS OR UNREASONABLY REFUSES TO PAY COMPENSATION, OR UNREASONABLY DELAYS ACCEPTANCE OR DENIAL OF A CLAIM, IT SHALL BE LIABLE FOR AN ADDITIONAL AMOUNT OF UP TO 25 PERCENT OF THE AMOUNTS THEN DUE PLUS ANY ATTORNEY FEES WHICH MAY BE ASSESSED UNDER ORS 656.382.

ORS 656.382 (1) IF A DIRECT RESPONSIBILITY EMPLOYER OR THE STATE ACCIDENT INSURANCE FUND REFUSES TO PAY COMPENSATION DUE UNDER AN ORDER OF A HEARING OFFICER, BOARD OR COURT, OR OTHERWISE UNREASONABLY RESISTS THE PAYMENT OF COMPENSATION, THE EMPLOYER OR FUND SHALL PAY TO THE CLAIMANT OR HIS ATTORNEY A REASONABLE ATTORNEY'S FEE AS PROVIDED IN SUBSECTION (2) OF THIS SECTION...

THESE TWO SECTIONS TOGETHER DESCRIBE THE ISSUES APPEALED IN THIS MATTER.

THE HISTORY OF THE CLAIM REVEALS THAT THE INJURY WAS ACCEPTED AS COMPENSABLE AND BENEFITS WERE PROMPTLY PAID THROUGHOUT THE DURATION INCLUDING MEDICAL, TIME LOSS AND PERMANENT DISABILITY. A PERIOD OF CONFUSION TOOK PLACE FOR APPROXIMATELY TWO AND ONE-HALF MONTHS BETWEEN APRIL AND MID-JUNE WHEN, WITHIN TEN DAYS OF A CLOSING AND EVALUATION CLOSING ORDER, THE CLAIMANT'S ATTORNEY WROTE

THE STATE ACCIDENT INSURANCE FUND DEMANDING REOPENING FOR ADDITIONAL MEDICAL AND TIME LOSS WITHOUT INCLUDING MEDICAL CORROBORATION, IN FACT, THE LETTER WAS WRITTEN ON THE IDENTICAL DAY THAT AN EXAMINATION WAS MADE OF THE CLAIMANT AND FROM WHICH THE EXAMINING PHYSICIAN OPINED THE CLAIMANT'S CONDITION STATIONARY.

FIVE WEEKS LATER THE CLAIMANT'S ATTORNEY AGAIN DEMANDED REOPENING ALLEGING HIS CLIENT WAS HOSPITALIZED FOR TREATMENT BETWEEN MAY 2 AND MAY 15 BY A DOCTOR WHOSE FINDINGS IN POSSESSION OF THE FUND WERE FROM AN EXAMINATION MADE BEFORE THE CLOSING AND EVALUATION DEGERMINATION MENTIONED ABOVE. THE FUND REQUESTED MEDICAL VERIFICATION OF THE TREATING DOCTOR AND WITHIN THREE DAYS OF RECEIPT OF THAT VERIFICATION, PAID TIME LOSS FOR THE PERIOD MAY 2 TO MAY 15, AND FOUR DAYS LATER PAID TIME LOSS FROM APRIL 10 TO MAY 2, WHICH IS THE PERIOD COVERED IN THE ORIGINAL DEMAND LETTER. IT SHOULD BE BORN IN MIND, THAT THROUGHOUT THIS PERIOD THE CLAIMANT WAS RECEIVING PERIODICAL PAYMENTS OF PERMANENT DISABILITY IN ACCORDANCE WITH THE CLOSING AND EVALUATION AWARD.

FROM THE ABOVE MSHMASH OF CIRCUMSTANCES, THE HEARING OFFICER DETERMINED THAT BECAUSE THE FUND RECEIVED THE REPORT WHICH REVEALED THE RESULTS OF THE EXAMINATION BEFORE THE DATE OF THE CLOSING AND EVALUATION ORDER ON MAY 17TH, AND FAILED TO INSTITUTE TIME LOSS PAYMENTS BEFORE JUNE 22ND, THEY WERE GUILTY OF UNREASONABLY DELAYING OR UNREASONABLY REFUSING TO PAY COMPENSATION AND THEREFORE ENTITLED TO BE PENALIZED 25 PERCENT OF THE TIME LOSS PAYMENT AND ENTITLED TO ASSUME THE OBLIGATION OF PAYING ATTORNEY'S FEES IN THE ABOUT OF 600 DOLLARS.

IN THIS REVIEWER'S OPINION, THE STATE ACCIDENT INSURANCE FUND WAS ACTING AS A PRUDENT CUSTODIAN OF FUNDS WHO REQUIRED CORROBORATIVE PROOF OF LOSS BEFORE RELINQUISHING MONIES ENTRUSTED TO IT MEANWHILE NOT EXERTING UNDEU ECONOMIC PRESSURE UPON THE WORKER WHO CONTINUED TO RECEIVE HIS PERIODICAL PAYMENTS OF PERMANENT PARTIAL DISABILITY. THEREFORE, I RESPECTFULLY DISSENT FROM A MAJORITY OF THE BOARD AND WOULD RECOMMEND REVERSING THE HEARING OFFICER'S ORDER WITH RESPECT TO PENALTY AND ATTORNEY FEE ASSESSMENT.

WCB CASE NO. 72-28 JUNE 1, 1973

SIMONA GONZALEZ, CLAIMANT
MIKE DYE, CLAIMANT'S ATTY.
MERLIN MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED AN AWARD OF 32 DEGREES OF 10 PERCENT FOR UNSCHEDULED DISABILITY CONTENDING HER DISABILITY EXCEEDS THAT AWARDED.

ISSUE

WHAT IS CLAIMANT'S EXTENT OF PERMANENT PARTIAL DISABILITY?

DISCUSSION

THIS CLAIMANT, A THEN 55 YEAR OLD WIDOW SUFFERED A COMPENSABLE INJURY TO HER LOW BACK ON APRIL 14, 1971.

THE CLAIM WAS CLOSED WITHOUT AN AWARD OR PERMANENT PARTIAL DISABILITY.

CLAIMANT IS A WOMAN OF MEXICAN DESCENT WITH LIMITED EDUCATION. HER PRIOR WORK EXPERIENCE IS LIMITED TO FARM FIELD WORK OR GENERAL HOUSEWORK. CLAIMANT HAS A MULTIPLICITY OF MEDICAL COMPLAINTS AND HER PROBLEM OF OBESITY ARE CONTRIBUTING FACTORS TO HER BACK DISABILITY.

THE HEARING OFFICER SEGREGATED THAT PORTION OF CLAIMANT'S DISABILITY ATTRIBUTABLE TO THE INDUSTRIAL INJURY AND CONCLUDED CLAIMANT WAS ENTITLED TO 10 PERCENT LOSS OF THE WORKMAN FOR UNSCHEDULED DISABILITY.

UPON DE NOVO REVIEW, THE BOARD CONCURS WITH THE FINDING AND CONCLUSIONS OF THE HEARING OFFICER AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 8, 1972, IS HEREBY AFFIRMED.

WCB CASE NO. 72-1212 JUNE 1, 1973

BONNIE L. VANCE, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
ORDER OF REMAND

THIS CASE IS NOW BEFORE THE BOARD ON CLAIMANT'S REQUEST FOR REVIEW.

BOTH PARTIES HAVE NOW REQUESTED THE BOARD TO REMAND THE CASE TO THE HEARING OFFICER FOR THE PURPOSE OF HAVING CLAIMANT EXAMINED AND TESTED AT THE DISABILITY PREVENTION DIVISION IN PORTLAND AND FOR THE TAKING OF FURTHER EVIDENCE AND REDETERMINATION BY THE HEARING OFFICER UPON THE COMPLETION OF THIS EXAMINATION.

IT IS THEREFORE, ORDERED THAT THE CASE BE REMANDED TO THE HEARING OFFICER FOR THE PURPOSES SET FORTH ABOVE.

WCB CASE NO. 72-2616 JUNE 1, 1973

JAMES R. SMITH, CLAIMANT
POZZI, WILSON, AND ATCHISON, CLAIMANT'S ATTYS.
ROGER WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED CLAIMANT AN INCREASE OF 12 DEGREES FOR PERMANENT PARTIAL DISABILITY OF HIS LEFT INDEX FINGER CONTENDING HE IS ALSO ENTITLED TO AN AWARD BASED ON LOSS.

ISSUE

IS CLAIMANT ENTITLED TO COMPENSATION FOR LOSS OF OPPOSITION OF THE THUMB?

DISCUSSION

CLAIMANT SUFFERED A COMPENSABLE INJURY MAY 19, 1972, WHICH REQUIRED A SURGICAL AMPUTATION INTO THE DISTAL INTERPHALANGEAL JOINT OF THE LEFT INDEX FINGER.

AFTER CONVALESCENCE A DETERMINATION ORDER GRANTED 6 DEGREES, OR 25 PERCENT OF THE MAXIMUM ALLOWABLE, FOR IMPAIRMENT OF THE LEFT INDEX FINGER.

AFTER THE HEARING, CLAIMANT WAS AWARDED AN ADDITIONAL 12 DEGREES.

THE BOARD, ON REVIEW, AGREES WITH THE ORDER OF THE HEARING OFFICER AND FINDS THE AWARD OF 12 DEGREES ADEQUATELY COMPENSATED FOR ANY LOSS OF OPPOSITION AS WELL AS SENSITIVITY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 3, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 72-1228 JUNE 1, 1973

AMIEL D. ELLIOTT, CLAIMANT
WILLIAM KELLUM, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER AWARDED NO PERMANENT PARTIAL DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

THIS 19 YEAR OLD SERVICE STATION ATTENDANT SLIPPED ON SOME OIL ON FEBRUARY 26, 1972, SUFFERING A LUMBOSACRAL STRAIN. THE TREATING PHYSICIAN RELEASED CLAIMANT FOR WORK MARCH 6, 1972, STATEING THERE WOULD BE NO PERMANENT IMPAIRMENT FROM THE INJURY.

A DETERMINATION ORDER MADE NO AWARD FOR PERMANENT PARTIAL DISABILITY.

UPON HEARING, CLAIMANT'S CREDIBILITY WAS FOUND WANTING IN ALMOST ALL AREAS OF TESTIMONY AND THE HEARING OFFICER MADE NO AWARD FOR PERMANENT PARTIAL DISABILITY.

THE BOARD CONCURS WITH THESE FINDINGS AND AFFIRMS THE ORDER OF THE HEARING OFFICER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 22, 1972, IS HEREBY AFFIRMED.

WCB CASE NO. 72-2397 JUNE 1, 1973

CHARLES HENDERSON, CLAIMANT
PECO, INC., CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH DID NOT INCREASE A PREVIOUS AWARD FOR PERMANENT DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

THIS 32 YEAR OLD WORKMAN SUSTAINED A COMPENSABLE BACK INJURY IN OCTOBER, 1967, WHICH RESULTED IN TWO LAMINECTOMIES AND A SPINAL FUSION. HE RECEIVED AN AWARD OF 25 PERCENT LOSS OF THE WORKMAN FOR UNSCHEDULED DISABILITY.

CLAIMANT HAS NOT COOPERATED WITH THE DIVISION OF VOCATIONAL REHABILITATION WITH THEIR RATHER EXTENSIVE EFFORTS IN RETRAINING.

THE HEARING OFFICER FOUND CLAIMANT EVASIVE AND AT TIMES BELLIGERENT ON THE WITNESS STAND. THE HEARING OFFICER CONCLUDED THAT CLAIMANT WAS UNINTERESTED IN UTILIZING HIS INTELLIGENCE AND ABILITIES TOWARDS RETURN TO THE LABOR MARKET. THE HEARING OFFICER, WEIGHING THE CLAIMANT'S DEemeanOR AND THE MEDICAL EVIDENCE, CONCLUDED THE CLAIMANT'S DISABILITY DID NOT EXCEED THE AWARD PREVIOUSLY GRANTED.

THE BOARD, GIVING WEIGHT TO THE PERSONAL OBSERVATIONS OF THE HEARING OFFICER, CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 5, 1972 IS HEREBY AFFIRMED.

WCB CASE NO. 72-1546 JUNE 4, 1973

PHILLIP JORDAN, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
KEITH SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER AWARDING 64 DEGREES FOR UNSCHEDULED NECK DISABILITY AND 15 DEGREES FOR PARTIAL LOSS OF THE LEFT LEG.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

TWO CLAIMS WERE CONSOLIDATED BY THE HEARING OFFICER IN THIS CASE. THE FIRST INVOLVED AN INJURY OCCURRING NOVEMBER 15, 1970, WHEN AN 8 FOOT BY 8 FOOT TIMBER FELL 12 FEET HITTING CLAIMANT ON HIS BACK AND NECK. THE SECOND INJURY OCCURRED AUGUST 25, 1971, WHEN CLAIMANT FELL OFF A DRYER SUFFERING A POSSIBLE INTERNAL DERANGEMENT OF CLAIMANT'S LEFT KNEE, POSSIBLE MEDIAL MENISCUS AND PROBABLY MEDIAL COLLATERAL LIGAMENT INJURY.

THE BOARD ADOPTS THE HEARING OFFICER'S FINDING RELATIVE TO THE MEDICAL PROCESSING OF CLAIMANT'S INJURIES AND THE RESIDUAL IMPAIRMENT AND EMPLOYMENT PROBLEM CLAIMANT SUFFERED AS A RESULT THEREOF.

THE HEARING OFFICER AWARDED CLAIMANT A PERMANENT PARTIAL DISABILITY AWARD OF 20 PERCENT OF THE MAXIMUM OF 320 DEGREES ALLOWABLE, OR 64 DEGREES FOR UNSCHEDULED DISABILITY TO THE NECK AND 10 PERCENT, OR 15 DEGREES, LOSS OF FUNCTION OF THE LEFT LEG.

ON DE NOVO REVIEW, THE BOARD FINDS THE CLAIMANT TO BE A CREDIBLE WITNESS AND BASED ON DR. CAMPAGNA'S MEDICAL REPORT CONCLUDES CLAIMANT SHOULD BE AWARDED 40 PERCENT OF THE MAXIMUM ALLOWABLE, OR 128 DEGREES, FOR UNSCHEDULED NECK DISABILITY. THE ORDER SHOULD BE AFFIRMED IN ALL OTHER RESPECTS.

ORDER

CLAIMANT IS HEREBY AWARDED AN ADDITIONAL 64 DEGREES MAKING A TOTAL OF 128 DEGREES FOR UNSCHEDULED NECK DISABILITY.

CLAIMANT'S ATTORNEY IS ENTITLED TO 25 PERCENT OF THE ADDITIONAL COMPENSATION AWARDED HEREBY BUT IN NO EVENT SHALL THE ADDITIONAL COMPENSATION ALLOWED HEREBY, WHEN COMBINED WITH THAT PREVIOUSLY AWARDED BY THE HEARING OFFICER, EXCEED 1,500 DOLLARS.

THE ORDER OF THE HEARING OFFICER DATED JANUARY 0, 1973, IS AFFIRMED IN ALL OTHER RESPECTS.

WCB CASE NO. 72-1731 JUNE 4, 1973

REX R. ANGERMEIER, CLAIMANT
KENNETH J. KELLER, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH INCREASED CLAIMANT'S AWARD OF PERMANENT PARTIAL DISABILITY 160 DEGREES, MAKING A TOTAL OF 240 DEGREES OF A MAXIMUM OF 320 DEGREES.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

THIS MATTER INVOLVES A CLAIMANT WHO SUSTAINED A BACK INJURY ON DECEMBER 10, 1970. THE CLAIM WAS ORIGINALLY CLOSED BY A DETERMI-

NATION ORDER ON SEPTEMBER 21, 1971 AWARDING 80 DEGREES FOR UNSCHEDULED DISABILITY TO THE LOW BACK. THE HEARING OFFICER INCREASED THIS AWARD BY 160 DEGREES MAKING A TOTAL OF 240 DEGREES.

CLAIMANT HAD TWO CONGENITAL BACK DEFECTS WHICH MAKES IT APPARENT THAT CLAIMANT WAS FORTUNATE TO BE ABLE TO USE HIS BACK AT HEAVY LABOR AS LONG AS HE DID.

THE BOARD ACCEPTS THE HEARING OFFICER'S STATEMENT OF THE ESSENTIAL FACTS. HOWEVER, THE BOARD DOES NOT ACCEPT THE HEARING OFFICER'S BASIS FOR DECISION. THE BOARD CONCLUDES THAT THE EVIDENCE IN RESPECT TO CLAIMANT'S LOSS OF EARNING CAPACITY JUSTIFIES THE AWARD MADE BY THE HEARING OFFICER AND IT IS AFFIRMED.

IN AN EFFORT TO ASSIST THIS CLAIMANT IN RETURNING TO THE LABOR MARKET, THE BOARD IS, PURSUANT TO ORS 656.245, ORDERING PSYCHOLOGICAL COUNSELING PROVIDED THE CLAIMANT AS THE RESPONSIBILITY OF THE STATE ACCIDENT INSURANCE FUND.

A FURTHER CONSIDERATION AND POSSIBLE ADJUSTMENT OF THIS CLAIM MAY BE MADE PURSUANT TO ORS 656.325.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 31, 1972 IS HEREBY AFFIRMED.

COUNSEL FOR CLAIMANT IS ALLOWED A REASONABLE ATTORNEY FEE IN THE AMOUNT OF 250 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

SAIF CLAIM NO. HC 50120 JUNE 4, 1973

JAMES CALHOUN, CLAIMANT
MARMADUK, ASCHENBRENER, MERTEN AND SALTVEIT, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

THIS MATTER IS BEFORE THE WORKMEN'S COMPENSATION BOARD UPON REQUEST OF CLAIMANT THAT THE BOARD EXERCISE ITS CONTINUING JURISDICTION UNDER OWN MOTION POWER GRANTED PURSUANT TO ORS 656.278.

CLAIMANT SUSTAINED AN INDUSTRIAL INJURY IN OCTOBER OF 1966 FOR WHICH HE RECEIVED A MINIMAL DISABILITY AWARD OF 5 PERCENT LOSS FUNCTION OF AN ARM FOR THE DISABILITY AFFECTING HIS BACK. THE AVAILABLE EVIDENCE INDICATES CLAIMANT HAS RECEIVED PROPER TREATMENT FOR THE INJURED AREA AND THAT THE INDUSTRIAL INJURY OF OCTOBER 31, 1966 IS NOT A MATERIALLY CONTRIBUTING FACTOR TO THE CLAIMANT'S PRESENT CONDITION.

THE BOARD THEREFORE DECLINES AT THIS TIME UPON THE STATE OF THE RECORD TO EXERCISE OWN MOTION JURISDICTION IN THE MATTER.

WCB CASE NO. 72-3315 JUNE 5, 1973

BILLY JOE CLAYBORN, CLAIMANT
BODIE AND MINTURN, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

THIS MATTER IS BEFORE THE WORKMEN'S COMPENSATION BOARD UPON REQUEST OF CLAIMANT THAT THE BOARD EXERCISE ITS CONTINUING JURISDICTION UNDER OWN MOTION POWER GRANTED PURSUANT TO ORS 656.278.

CLAIMANT'S REQUEST FOR AN OWN MOTION RELIEF STEMS FROM A LOW BACK INJURY SUSTAINED ON MAY 13, 1964, WHILE CLAIMANT WAS LOADING FREIGHT CARS WITH LUMBER.

ON AUGUST 14, 1968, CLAIMANT WAS GRANTED AN AWARD EQUAL TO 100 PERCENT LOSS FUNCTION OF AN ARM.

THE BOARD, UPON REVIEWING THE MEDICAL RECORDS IN THE MATTER, CONCLUDES THAT CLAIMANT IS NOW ENTITLED TO AN AWARD OF PERMANENT TOTAL DISABILITY EFFECTIVE APRIL 30, 1973.

CLAIMANT'S ATTORNEY JAMES F. LARSON IS ENTITLED TO RECEIVE 25 PERCENT OF THE INCREASED COMPENSATION, TO A MAXIMUM OF 1,500 DOLLARS, FOR HIS SERVICES IN THIS MATTER.

IT IS SO ORDERED

NOTICE OF APPEAL

PURSUANT TO ORS 656.278...

THE CLAIMANT HAS NO RIGHT TO A HEARING, REVIEW OR APPEAL ON THIS AWARD BY THE BOARD ON ITS OWN MOTION.

THE STATE ACCIDENT INSURANCE FUND MAY REQUEST A HEARING ON THIS ORDER.

THIS ORDER IS FINAL UNLESS WITH 30 DAYS FROM THE DATE HEREOF, THE STATE ACCIDENT INSURANCE FUND APPEALS THIS ORDER BY REQUESTING A HEARING PURSUANT TO ORS 656.278.

WCB CASE NO. 72-2453 JUNE 5, 1973

SIDNEY JONES, CLAIMANT
GRANT AND FERGUSON, CLAIMANT'S ATTYS.
FORD AND COWLING, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER AWARDING CLAIMANT PERMANENT TOTAL DISABILITY.

ISSUE

- (1) HAS CLAIMANT'S CONDITION AGGRAVATED?
- (2) WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

ALTHOUGH THE BOARD CONCLUDES THE CLAIMANT HAS SUFFERED AN AGGRAVATION, THE BOARD IS NOT CONVINCED FROM ITS REVIEW, OF THE EVIDENCE THAT CLAIMANT'S CONDITION HAS WORSENERED TO THAT OF PERMANENT TOTAL DISABILITY. THE MEDICAL EVIDENCE AND CLAIMANT'S TESTIMONY ARE NOT MATERIALLY DIFFERENT THAN THAT PRESENTED AT THE EARLIER HEARING.

THE BOARD FINDS CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED, HOWEVER, THE BOARD DOES CONCLUDE THAT CLAIMANT'S AWARD SHOULD BE INCREASED BY 20 PERCENT TO A TOTAL OF 192 DEGREES.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 2, 1973 IS HEREBY MODIFIED IN RESPECT TO THE AWARD OF PERMANENT DISABILITY BY REVERSING THE AWARD OF PERMANENT TOTAL DISABILITY AND GRANTING CLAIMANT, IN LIEU THEREOF, AN ADDITIONAL 64 DEGREES, MAKING A TOTAL OF 192 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED DISABILITY.

THE ORDER OF THE HEARING OFFICER IS AFFIRMED IN ALL OTHER RESPECTS.

WCB CASE NO. 72-2009 JUNE 5, 1973

MERTON C. LENGELE, CLAIMANT
BODIE AND MINTURN, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH ALLOWED A PERIOD OF ADDITIONAL TEMPORARY TOTAL DISABILITY BUT NO ADDITIONAL AWARD FOR PERMANENT PARTIAL DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S TEMPORARY AND PERMANENT DISABILITY?

DISCUSSION

CLAIMANT SUFFERED A COMPENSABLE ACCIDENTAL INJURY TO HIS LOW BACK DECEMBER 1, 1971 FOR WHICH CLAIMANT HAS BEEN AWARDED TIME LOSS AND 15 PERCENT OR 48 DEGREES FOR UNSCHEDULED DISABILITY.

CLAIMANT HAS RETURNED TO WORK FOR THE SAME EMPLOYER AND ALTHOUGH HE CANNOT PERFORM ALL OF THE JOBS IN THE MILL AS HE DID BEFORE, HE IS ABLE TO OPERATE A MANUAL TRIM SAW. CLAIMANT ALSO ENGAGES IN SOME OF THE RECREATIONAL ACTIVITIES HE PREVIOUSLY ENJOYED.

THE HEARING OFFICER FOUND CLAIMANT WAS ENTITLED TO TEMPORARY TOTAL DISABILITY FOR THE PERIOD MARCH 15, 1972 UNTIL APRIL 9, 1972, SINCE HE WAS UNDER MEDICAL TREATMENT DURING THIS PERIOD, AND THAT CLAIMANT HAD FAILED TO SUSTAIN HIS BURDEN OF PROOF SHOWING GREATER DISABILITY AS A RESULT OF THIS INJURY THAN EVALUATED BY THE AWARDED GRANTED TO HIM UNDER THE SECOND DETERMINATION ORDER.

CLAIMANTS REQUEST FOR REMAND DOES NOT ESTABLISH THAT AT THE TIME OF HEARING THE MATTER WAS INCOMPLETELY HEARD OR THE RECORD INSUFFICIENTLY DEVELOPED AS REQUIRED BY ORS 656.295 (5) AND THUS, THE CLAIMANT'S MOTION TO REMAND MUST BE DENIED.

THE BOARD CONCURS WITH THE ORDER OF THE HEARING OFFICER AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 20, 1972 IS HEREBY AFFIRMED.

WCB CASE NO. 72-2749 JUNE 5, 1973

WCB CASE NO. 72-2750 JUNE 5, 1973

CLAUDE WILLHOIT, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
ORDER APPROVING STIPULATION AND DISMISSING MEDICAL BOARD OF REVIEW

ON APRIL 25, 1973 THE STATE ACCIDENT INSURANCE FUND REJECTED A HEARING OFFICER'S ORDER DATED MARCH 30, 1973 AND REQUESTED EMPANELMENT OF A MEDICAL BOARD OF REVIEW AND CERTIFICATION OF CERTAIN LEGAL ISSUES TO THE CIRCUIT COURT IN THE ABOVE-ENTITLED CASE. THAT REQUEST FOR REVIEW AND CERTIFICATION IS NOW PENDING.

THE STATE ACCIDENT INSURANCE FUND AND THE CLAIMANT HAVE AGREED TO SETTLE THEIR DISPUTE IN ACCORDANCE WITH THE TERMS OF THE STIPULATION WHICH IS ATTACHED HERETO AS EXHIBIT 'A'.

THE BOARD, BEING NOW FULLY ADVISED, CONCLUDES THE AGREEMENT IS FAIR AND EQUITABLE FOR BOTH PARTIES AND HEREBY APPROVES THE AGREEMENT.

ORDER

IT IS HEREBY ORDERED THAT THE STIPULATION, DATED MAY 24, 1973, A COPY OF WHICH IS MARKED EXHIBIT 'A', AND ATTACHED HERETO, BE EXECUTED ACCORDING TO ITS TERMS.

IT IS FURTHER ORDERED THAT THE MATTER NOW PENDING FOR REVIEW BY THE MEDICAL BOARD OF REVIEW IS HEREBY DISMISSED.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN CLAUDE E. WILLHOIT, HEREINAFTER CALLED CLAIMANT, ACTING BY AND THROUGH HIS ATTORNEY, RICHARD T. KROPP, AND THE STATE ACCIDENT INSURANCE FUND, ACTING THROUGH ITS COUNSEL, LAWRENCE J. HALL, ASSISTANT ATTORNEY GENERAL, THAT THE APPEAL FROM THE OPINION AND ORDER OF JOHN F. DRAKE, DATED MARCH 30, 1973, TAKEN BY THE STATE ACCIDENT INSURANCE FUND'S REJECTION OF HEARING OFFICER ORDER AND REQUEST FOR REVIEW TO MEDICAL BOARD OF REVIEW, DATED APRIL 25, 1973, MAY BE COMPROMISED AND FULLY AND FINALLY SETTLED SUBJECT TO THE APPROVAL OF THE WORKMEN'S COMPENSATION BOARD, IN ACCORDANCE WITH THE FOLLOWING STIPULATIONS...

(1) THE CLAIMANT FILED A VALID CLAIM FOR A COMPENSABLE OCCUPATIONAL DISEASE CONSISTING OF AN AGGRAVATION ON MAY 21, 1971, OF A PREEXISTING HYPERSENSITIVITY TO VARIOUS MALODOROUS FUMES, WHICH WAS ACCEPTED BY THE STATE ACCIDENT INSURANCE FUND.

(2) CLAIMANT'S PRESENT PERMANENT PARTIAL DISABILITY RESULTING FROM SAID OCCUPATIONAL DISEASE EXPOSURE OF MAY 21, 1971 IS 40 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY FOR PERMANENT, HYPERSENSITIVE RESPONSE TO VARIOUS MALODOROUS FUMES.

(3) IT IS FURTHER STIPULATED THAT SUBSEQUENTLY FILED CLAIMS FOR SUBSEQUENT FUME REACTIONS, TO WIT... CLAIM NO. AC 364943 FOR EXPOSURE OF JANUARY 24, 1972, CLAIM NO. AC 368849 FOR EXPOSURE OF MAY 11, 1972, CLAIM NO. AC 386680 FOR EXPOSURE OF AUGUST 9, 1972, CLAIM NO. AC 401715 FOR EXPOSURE OF OCTOBER 20, 1972, CLAIM NO. AC 404687 FOR EXPOSURE OF NOVEMBER 2, 1972, CLAIM NO. 406968 FOR EXPOSURE OF NOVEMBER 13, 1972, CLAIM NO. AC 413232 FOR EXPOSURE OF DECEMBER 14, 1972, CLAIM NO. AC 419925 FOR EXPOSURE OF JANUARY 31, 1973, SHALL HENCEFORTH BE TREATED AS AGGRAVATIONS OF THE OCCUPATIONAL DISEASE CLAIM NO. AC 304596 (THE EXPOSURE OF MAY 21, 1971) AND SAID SUBSEQUENT CLAIMS SHALL NOT HEREAFTER BE TREATED AS SEPARATE OR NEW CLAIMS.

(4) IT IS FURTHER STIPULATED THAT FUTURE FUME REACTIONS ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT WHICH CAUSE A WORK TIME LOSS OR NEED FOR TREATMENT EXTENDING OVER A DURATION OF SEVEN DAYS OR LESS, SHALL BE COMPENSATED UNDER THE MAY 21, 1971 CLAIM, NO. AC 304596, IN ACCORDANCE WITH EITHER ORS 656.245 OR 656.271.

(5) IT IS FURTHER STIPULATED THAT UPON EXECUTION OF THIS STIPULATION BY THE PARTIES HERETO AND APPROVAL BY THE WORKMEN'S COMPENSATION BOARD THAT THE REQUEST FOR REVIEW TO THE MEDICAL BOARD OF REVIEW AND REQUEST FOR CERTIFICATION OF LEGAL QUESTIONS TO THE CIRCUIT COURT MAY BE DISMISSED.

WCB CASE NO. 72-2177 JUNE 5, 1973

FRED REEDY, CLAIMANT
SAHLSTROM, STARR AND VINSON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER AFFIRMING A DETERMINATION ORDER AWARDING 32 DEGREES UNSCHEDULED BACK DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT IS A 28 YEAR OLD MAN WHO SUSTAINED A COMPENSABLE BACK INJURY ON OCTOBER 1, 1971, WHILE ATTEMPTING TO TURN A HEAVY BEAM.

A LUMBAR LAMINECTOMY WAS PERFORMED BY ARTHUR A. HOCKEY, M.D., ON OCTOBER 12, 1971. ON CLOSING EXAMINATION OF CLAIMANT ON JANUARY 20, 1972, DR. HOCKEY STATED...

' I FEEL THE PATIENT HAS MADE A VERY GOOD RECOVERY AND HAS ONLY VERY MILD PERMANENT PARTIAL DISABILITY. '

FOLLOWING THE DOCTOR'S RELEASE CLAIMANT RETURNED TO HIS FORMER JOB. HE EVENTUALLY TERMINATED THIS EMPLOYMENT DUE TO THE FACT THAT HE DIDN'T RECEIVE A SUPERVISORY JOB HE FELT HE WAS ENTITLED TO, NOT BECAUSE OF ANY PHYSICAL INCAPACITIES.

THE CLAIMANT PRESENTS NO ARGUMENT OR REASON TO JUSTIFY REVERSING THE HEARING OFFICER'S FINDINGS OR ORDER IN THIS CASE AND THE HEARING OFFICER'S ORDER SHOULD THEREFORE BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER, DATED NOVEMBER 9, 1972 IS HEREBY AFFIRMED.

WCB CASE NO. 72-1823 JUNE 5, 1973

VIRGINIA ANN DIENES, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AUTHORIZED PSYCHOLOGICAL COUNSELING TO BE THE RESPONSIBILITY OF THE STATE ACCIDENT INSURANCE FUND AND AFFIRMED THE EXTENT OF DISABILITY GRANTED BY THE DETERMINATION ORDER OF JUNE 30, 1972.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT SUSTAINED A COMPENSABLE INJURY MAY 7, 1969 IN A SLIP-PINT INCIDENT, WHILE WORKING AS A WAITRESS. HER INJURY WAS DIAGNOSED AS A 'STRAINED MESIAL LIGAMENT OF RIGHT LEG' AND HAD 'PAINFUL RIGHT KNEE AND HIP' (JOINT EXHIBIT A-2).

A DETERMINATION ORDER AWARDED CLAIMANT 15 DEGREES FOR 10 PER CENT LOSS OF THE RIGHT LEG.

THE VARIOUS PHYSICAL SYMPTOMS AND ACTIVITY LIMITATIONS EXPRESSED BY THE CLAIMANT AT THE HEARING ARE AT VARIANCE WITH THE HISTORY GIVEN DR. GROSSENBACHER, THE TREATING PHYSICIAN.

DR. GROSSENBACHER EXPRESSED THE OPINION HER KNEE AND LOW BACK CONDITIONS WERE PROBABLY AGGRAVATED BY THE TWISTING MOTION WHEN SHE FELL, HOWEVER, HE FOUND NO RESIDUAL DISABILITY IN THE LOW BACK AS A RESULT OF THE FALL.

THE HEARING OFFICER CONCLUDED SOME OF CLAIMANT'S SYMPTOMATOLOGY ATTRIBUTED TO HER PROBLEM OF OVERWEIGHT AND HER MANY PERSONAL PROBLEMS. IN VIEW OF THE LATTER, THE HEARING OFFICER AUTHORIZED PSYCHOLOGICAL COUNSELING TO BE CHARGEABLE TO THE STATE ACCIDENT INSURANCE

FUND PURSUANT TO ORS 656.245. HE FOUND NO JUSTIFICATION FOR INCREASING THE AWARD OF PERMANENT PARTIAL DISABILITY.

THE BOARD, UPON DE NOVO REVIEW, CONCLUDES THE ORDER OF THE HEARING OFFICER SHOULD BE AFFIRMED. IF, AT SOME FUTURE TIME, CLAIMANT'S CONDITION BECOMES WORSE, ADDITIONAL MEDICAL TREATMENT AND RECONSIDERATION OF HER DISABILITY CAN BE HAD PURSUANT TO ORS 656.271.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 20, 1972 IS HEREBY AFFIRMED.

WCB CASE NO. 71-2029 JUNE 6, 1973

FRANK E. DIEU, CLAIMANT
FRED P. EASON, CLAIMANT'S ATTY.
MCKEOWN, NEWHOUSE AND JOHANSEN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH APPROVED A DENIAL OF LIABILITY FOR A PULMONARY EMBOLISM.

ISSUES

(1) IS CLAIMANT'S PULMONARY EMBOLISM COMPENSABLY RELATED TO HIS INDUSTRIAL INJURY OF JULY 3, 1967?

IF NOT, THE ISSUE BECOMES

(2) THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY.

DISCUSSION

CLAIMANT SUFFERED A COMPENSABLE ACCIDENTAL INJURY TO HIS LOW BACK ON JULY 3, 1967.

TREATMENT FOR THIS INJURY REQUIRED SEVERAL SURGERIES INCLUDING DECOMPRESSIVE LAMINECTOMIES AND TWO SPINAL FUSIONS AT SEPARATE LEVELS. FOURTEEN MONTHS AFTER CLAIMANT'S LAST SURGERY, HE WAS HOSPITALIZED FOR A PULMONARY EMBOLISM.

THERE IS CONFLICTING MEDICAL OPINION CONCERNING THE ISSUE OF CAUSATION. THE BOARD HAS CONSIDERED ALL OF THE EVIDENCE BUT FINDS THE OPINION OF DR. TRIPP MOST PERSUASIVE. HE HAS CAREFULLY CONSIDERED RELEVANT FACTORS AND WHILE THE EVIDENCE IS NOT CERTAIN, THE REASONABLE MEDICAL PROBABILITIES PREPONDERATE IN FAVOR OF CAUSAL CONNECTION.

THE HEARING OFFICER'S ORDER DENYING THE COMPENSABILITY OF THE EMBOLISM SHOULD THEREFORE BE REVERSED. HOWEVER, THE

MATTER NEED NOT BE REFERRED TO THE BOARD'S CLOSING AND EVALUATION DIVISION FOR CLOSURE SINCE ONLY MEDICAL EXPENSES ARE IN QUESTION - CLAIMANT HAVING RECEIVED ALL OTHER COMPENSATION TO WHICH HE WOULD OTHERWISE BE ENTITLED AS A PART OF THE ACCEPTED PORTION OF HIS CLAIM.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 24, 1972, IS HEREBY REVERSED AND THE EMPLOYER IS ORDERED TO ACCEPT RESPONSIBILITY FOR TREATMENT OF CLAIMANT'S EMBOLISM.

CLAIMANT'S ATTORNEY, FRED P. EASON IS AWARDED AN ATTORNEY'S FEE OF EIGHT HUNDRED FIFTY DOLLARS PAYABLE BY THE EMPLOYER FOR HIS SERVICES IN SECURING CLAIMANT'S COMPENSATION.

THE ORDER OF THE HEARING OFFICER IS AFFIRMED IN ALL OTHER RESPECTS.

WCB CASE NO. 72-1885 JUNE 6, 1973

ALBERT GOEBL, CLAIMANT
POZZI, WILSON AND ATCHISON, ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER GRANTING HIM AN AWARD OF SIXTY FOUR DEGREES AND TWENTY PERCENT LOSS OF THE WORKMAN FOR UNSCHEDULED DISABILITY, CONTENDING HE IS PERMANENTLY TOTALLY DISABLED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT SUFFERED UNSCHEDULED PERMANENT DISABILITIES AS THE RESULT OF A DRAMATIC COMPENSABLE ACCIDENT JUNE 30, 1971, WHEN A FAULTY MECHANISM ALLOWED A DUMP BOX TO SUDDENLY DROP.

DUE TO PREEXISTING PERMANENT DISABILITY CLAIMANT HAD A CONSIDERABLY DIMINISHED EARNING CAPACITY PRIOR TO THE INJURY IN QUESTION.

THE HEARING OFFICER CONSIDERED THE PREEXISTING DISABILITY SO SEVERE THAT THE CLAIMANT, EVEN BEFORE THE INJURY IN QUESTION, WAS CAPABLE OF WORKING ONLY ON AN ODD LOT BASIS. SINCE THIS INJURY HE HAS UNSUCCESSFULLY ATTEMPTED TO RETURN TO WORK. THE HEARING OFFICER CONSIDERS THE CLAIMANT STILL CAPABLE OF EMPLOYMENT. WE DO NOT. WE CONCLUDE THE ADDITIONAL UNSCHEDULED DISABILITY RESULTING FROM THE INJURY IN QUESTION HAS RENDERED CLAIMANT PERMANENTLY AND TOTALLY DISABLED WITHIN THE MEANING OF ORS 656.206^b(1) (A).

THE ORDER OF THE HEARING OFFICER SHOULD BE MODIFIED TO GRANT CLAIMANT COMPENSATION FOR PERMANENT TOTAL DISABILITY.

ORDER

PARAGRAPH ONE OF THE HEARING OFFICER'S ORDER DATED OCTOBER 27, 1972 IS SET ASIDE AND CLAIMANT IS GRANTED COMPENSATION FOR PERMANENT TOTAL DISABILITY AS OF THE DATE THIS ORDER IN LIEU OF THE AWARD OF SIXTY FOUR DEGREES ALLOWED.

THE HEARING OFFICER'S ORDER IS AFFIRMED IN ALL OTHER RESPECTS.

WCB CASE NO. 72-1530 JUNE 6, 1973

JOHN M. NEILL, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER, ATTYS.
PHILIP A. MONGRAIN, ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED THE DENIAL OF HIS CLAIM.

ISSUE

HAS CLAIMANT SUSTAINED A COMPENSABLE INJURY?

DISCUSSION

THIS CLAIMANT ALLEGES HE SUSTAINED AN ON-THE-JOB INJURY ON MAY 12, 1972 WHILE WORKING FOR WILLAMETTE INDUSTRIES.

THE HEARING OFFICER FOUND THE CLAIMANT NOT A CREDIBLE WITNESS. HE NOTED NUMEROUS INCONSISTENCIES AND EVASIONS WHICH PRECLUDED A FINDING OF COMPENSABILITY.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER AND ADOPTS HIS ORDER AS ITS OWN.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 28, 1972, IS HEREBY AFFIRMED.

WCB CASE NO. 72-2190 JUNE 7, 1973

RITA TODAHL, CLAIMANT

WHIPPLE, JOHANSEN AND MCCLAIN, ATTYS.
TOOZE, KERR AND PETERSON, ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER ORDER REOPENING CLAIMANT'S CLAIM FOR FURTHER TREATMENT AND TIME LOSS COMPENSATION.

ISSUE

IS CLAIMANT'S CONDITION MEDICALLY STATIONARY? IN THE ALTERNATIVE THE ISSUE IS THE ADEQUACY OF CLAIMANT'S PERMANENT PARTIAL DISABILITY AWARD.

DISCUSSION

THE BOARD IS NOT PERSUADED BY THE OPINION OF DR. CHERRY.

A PREPONDERANCE OF THE EVIDENCE ESTABLISHES THAT CLAIMANT'S CLAIM WAS PROPERLY CLOSED ON FEBRUARY 2, 1972.

HER WORK EXPERIENCE AFTER CLOSURE INDICATES HOWEVER, THAT CLAIMANT HAS MORE THAN TEN PERCENT UNSCHEDULED RESIDUAL DISABILITY. THE BOARD CONCLUDES CLAIMANT'S UNSCHEDULED DISABILITY EQUALS TWENTY PERCENT OR SIXTY FOUR DEGREES AND THAT SHE IS ENTITLED TO BE COMPENSATED ACCORDINGLY.

IN ADDITION IT APPEARS CLAIMANT SHOULD BE OFFERED VOCATIONAL REHABILITATION ASSISTANCE SO THAT SHE MAY RETURN TO SOME LIGHTER EMPLOYMENT. BY A COPY OF THIS ORDER THE DISABILITY PREVENTION DIVISION OF THE WORKMEN'S COMPENSATION BOARD IS BEING ALERTED TO EXTEND SUCH ASSISTANCE TO CLAIMANT - INCLUDING A SUBSISTANCE ALLOWANCE IF APPROPRIATE.

ORDER

THAT PORTION OF THE HEARING OFFICER'S ORDER DATED DECEMBER 29, 1972, REOPENING CLAIMANT'S CLAIM, IS HEREBY REVERSED.

CLAIMANT IS HEREBY GRANTED ADDITIONAL COMPENSATION EQUAL TO THIRTY TWO DEGREES MAKING A TOTAL AWARD OF SIXTY FOUR DEGREES FOR UNSCHEDULED PERMANENT PARTIAL DISABILITY.

CLAIMANT'S ATTORNEY IS ENTITLED TO TWENTY FIVE PERCENT OF THE INCREASED COMPENSATION MADE PAYABLE BY THIS ORDER. IN NO EVENT HOWEVER, SHALL THE FEE ALLOWED BY THIS ORDER, WHEN COMBINED WITH THAT ALLOWED BY THE HEARING OFFICER, EXCEED FIFTEEN HUNDRED DOLLARS.

THE ORDER OF THE HEARING OFFICER IS AFFIRMED IN ALL OTHER RESPECTS.

WCB CASE NO. 72-1672 JUNE 7, 1973

MAX NEATHAMER, CLAIMANT
VANDENBERG AND BRANDSNESS, ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH DENIED HIS CLAIM OF AGGRAVATION.

ISSUE

HAS CLAIMANT SUFFERED AN AGGRAVATION OF HIS COMPENSABLE INJURY OF AUGUST 7, 1968?

DISCUSSION

CLAIMANT HAS FILED A CLAIM FOR INCREASED COMPENSATION ALLEGING AGGRAVATION OF AN AUGUST 7, 1968 COMPENSABLE INJURY. THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM OF AGGRAVATION AND THE HEARING OFFICER SUSTAINED THE DENIAL.

DR. DARRELL T. WEINMAN REPORTED -

' IMPRESSION = CONGENITAL MALFORMATION LUMBOSACRAL SPINE AGGRAVATED BY LOGGING ACCIDENT AND SYMPTOMATIC WHEN AGGRAVATED BY PHYSICAL ACTIVITY SUCH AS LIFTING OR BEING JOLTED WHILE SEATED. '

DR. WEINMAN'S REPORT PERSUADES THE BOARD THAT CLAIMANT HAS SUFFERED AN AGGRAVATION OF HIS 1968 LOGGING ACCIDENT. THE ORDER OF THE HEARING OFFICER SHOULD THEREFORE BE REVERSED AND THE CLAIM ALLOWED.

ORDER

THE HEARING OFFICER'S ORDER DATED NOVEMBER 3, 1972, IS REVERSED AND THE CLAIM FOR COMPENSATION ON ACCOUNT OF AGGRAVATION IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR ACCEPTANCE AND PAYMENT OF COMPENSATION ACCORDING TO LAW.

COUNSEL FOR CLAIMANT IS ALLOWED THE FEE OF SIX HUNDRED FIFTY DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR HIS SERVICES IN CONNECTION WITH HEARING AND THIS REVIEW.

WCB CASE NO. 71-2214 JUNE 7, 1973

GARY W. BRITTAIN, IN COMPLYING STATUS OF
ELMER BENS, DBA STOLE AND BENS
LOGGERS

GILBERT AND ARMSTRONG, CLAIMANT'S ATTY.
HANSON, CURTIS, HENDERSHOTT AND STRICKLAND,
DEFENSE ATTYS.

REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S
ORDER DECLARING HIM TO BE A NONCOMPLYING EMPLOYER DURING THE
PERIOD IN QUESTION.

ISSUE

WAS APPELLANT A NONCOMPLYING EMPLOYER DURING THE PERIOD
JULY 1, 1971 TO AUGUST 14, 1971?

DISCUSSION

IT APPEARS TO THE BOARD, FROM ITS REVIEW OF THE RECORD,
THAT THE HEARING OFFICER'S ANALYSIS OF THE EVIDENCE AND HIS
CONCLUSIONS BASED THEREON ARE CORRECT. HIS ORDER SHOULD
THEREFORE BE AFFIRMED.

SINCE CLAIMANT'S ATTORNEY WAS NOT REQUIRED TO, AND THEREFORE
DID NOT, RESPOND TO THIS APPEAL, NO ATTORNEY'S FEE FOR CLAIMANT'S
ATTORNEY IS AWARDED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 2, 1972
IS AFFIRMED.

WCB CASE NO. 72-384 JUNE 7, 1973

DONALD SCHWEHN, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON, MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF
A HEARING OFFICER'S ORDER WHICH FOUND CLAIMANT'S MYOCARDIAL
INFARCTION COMPENSABLE.

ISSUE

DID CLAIMANT'S MYOCARDIAL INFARCTION ARISE OUT OF AND IN
THE COURSE OF HIS EMPLOYMENT?

DISCUSSION

THE HEARING OFFICER ALLOWED THE CLAIM ON THE BASIS THAT LONG TERM STRESS ASSOCIATED WITH HIS WORK PRECIPITATED THE ATTACK IN QUESTION. THERE IS EXPERT MEDICAL OPINION SUPPORTING THIS POSITION. THERE IS ALSO EXPERT MEDICAL OPINION THAT NO CAUSAL CONNECTION EXISTS.

THE ISSUE CANNOT BE RESOLVED BY COMPARING THIS CASE WITH OTHER CASES. THIS CASE MUST BE DETERMINED BY ITS FACTS AND THE WEIGHT OF THE MEDICAL OPINION DEALING WITH THOSE FACTS. ALTHOUGH LONG TERM CHRONIC STRESS CAN PRODUCE HEART DISEASE, THE CLAIMANT'S REMOTE WORK HISTORY IS LESS RELEVANT THAN THE DIRECTLY ANTECEDENT WORK HISTORY TO THE PRECIPITATION OF A MYOCARDIAL INFARCTION.

THE FACTS INDICATE THAT WHILE CLAIMANT WAS SUBJECTED TO STRESS IN HIS WORK GENERALLY, THE WORK SITUATION ON THE DAY IN QUESTION WAS ALMOST SERENE. THE LACK OF A MEDICALLY SIGNIFICANT PRECIPITATING EVENT CAUSES A MAJORITY OF THE BOARD TO CONCLUDE THAT CLAIMANT'S MYOCARDIAL INFARCTION DID NOT ARISE OUT OF HIS EMPLOYMENT.

THE HEARING OFFICER'S ORDER SHOULD BE REVERSED AND THE DENIAL OF THE CLAIM AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 27, 1972, IS REVERSED AND THE DENIAL ISSUED BY THE STATE ACCIDENT INSURANCE FUND ON JANUARY 28, 1972 IS AFFIRMED.

WCB CASE NO. 71-1241 JUNE 8, 1973

VIRGIL LYNCH, CLAIMANT

MCMINIMEE AND KAUFMAN, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND
SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER FINDING CLAIMANT PERMANENTLY AND TOTALLY DISABLED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

EVALUATING THE EXTENT OF CLAIMANT'S PERMANENT LOSS OF EARNING CAPACITY HAS BEEN RENDERED PARTICULARLY DIFFICULT BY THE PSYCHOLOGICAL FACTORS INVOLVED IN THE CASE.

AFTER REVIEWING THE RECORD DE NOVO, HOWEVER, THE BOARD CONCLUDES THE HEARING OFFICER'S FINDINGS AND CONCLUSIONS ARE CORRECT AND HIS ORDER SHOULD THEREFORE BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 8, 1972, IS AFFIRMED.

CLAIMANT'S ATTORNEY IS HEREBY GRANTED A FEE OF TWO HUNDRED FIFTY DOLLARS PAYABLE BY THE EMPLOYER, FOR HIS SERVICES ON THIS REVIEW.

WCB CASE NO. 72-2539 JUNE 8, 1973

WCB CASE NO. 72-2916 JUNE 8, 1973

TROY WEST, CLAIMANT

COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND
SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH FOUND CLAIMANT SUFFERED A NEW INJURY AS THE RESULT OF EMPLOYMENT BY L. MICHAELS RANCH ON AUGUST 18, 1972, RATHER THAN THE AGGRAVATION OF A JANUARY 5, 1968, INJURY INCURRED WHILE EMPLOYED BY D. R. JOHNSON LUMBER COMPANY. THE STATE ACCIDENT INSURANCE FUND CONTENDS THE FACTS PROVE THE AUGUST 18, 1972 INCIDENT CONSTITUTES AN AGGRAVATION WITHIN THE MEANING OF THE OREGON WORKMEN'S COMPENSATION LAW.

DISCUSSION

IN SPITE OF THE EXCELLENT BRIEF PRESENTED BY COUNSEL FOR THE FUND, THE BOARD IS PERSUADED FROM ITS REVIEW OF THE RECORD THAT THE HEARING OFFICER'S FINDINGS AND CONCLUSIONS ARE CORRECT AND SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 8, 1972 IS AFFIRMED.

WCB CASE NO. 72-2921 JUNE 12, 1973

CHARLES ALLEN, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MARMADUKE, ASCHENBRENNER AND MERTEN AND
SALTVEIT, DEFENSE ATTYS.

CLAIMANT APPEALS FROM AN ORDER OF THE HEARING OFFICER WHICH DISMISSED HIS REQUEST FOR HEARING.

A RECITAL OF THE COMPLICATED PROCEDURAL BACKGROUND OF THIS CASE WOULD BE OF NO BENEFIT TO THE PARTIES EXCEPT TO MENTION THAT THERE WAS AN 'ADMINISTRATIVE CLOSING' OF THIS CLAIM IN 1969. BY THE PRACTICE THEN FOLLOWED, NO NOTICE OF THIS CLOSING WAS PROVIDED CLAIMANT AND BY THE BOARD'S PRESENT RULE THAT CLOSING WAS A NULLITY. CONSEQUENTLY, THE CLAIMANT'S CLAIM HAS NEVER BEEN CLOSED AS REQUIRED BY ORS 656.268 AND CLAIMANT IS NOW ENTITLED TO SUCH A CLOSURE.

IT IS, THEREFORE, ORDERED THAT THE EMPLOYER'S CARRIER SHALL SUBMIT THE PROPER DOCUMENTARY MATERIAL TO THE CLOSING AND EVALUATION DIVISION OF THE WORKMEN'S COMPENSATION BOARD FOR DETERMINATION.

THE BOARD DEEMS THIS AN INTERIM ORDER AND, THEREFORE, NOT APPEALABLE.

WCB CASE NO. 72-1599 JUNE 12, 1973

JAMES M. HENDRICKS, CLAIMANT
JACK, GOODWIN AND ANICKER, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER AFFIRMING THE DETERMINATION ORDER AND DENYING HIS REQUEST FOR ADDITIONAL MEDICAL CARE AND COMPENSATION.

ISSUE

IS THE FUND LIABLE FOR THE MEDICAL TIME LOSS AND PERMANENT DISABILITY COMPENSATION WHICH THE CLAIMANT SEEKS?

DISCUSSION

AFTER REVIEWING THE RECORD THE BOARD AGREES WITH THE HEARING OFFICER'S CONCLUSION THAT THE MEDICAL EVIDENCE FAILS TO ESTABLISH THAT THE CLAIMANT'S INJURY OF JUNE 21, 1971, NECESSITATED THE SURGERY OF FEBRUARY 22, 1972 AND THUS HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 24, 1973 IS AFFIRMED.

WCB CASE NO. 72-974 JUNE 13, 1973

BARBARA J. SWING, CLAIMANT
GRANT AND FERGUSON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH ORDERED THE FUND TO COMPENSATE CLAIMANT AS BEING PERMANENTLY AND TOTALLY DISABLED.

ISSUE

IS CLAIMANT PERMANENTLY AND TOTALLY DISABLED?

DISCUSSION

THE EVIDENCE IS CONVINCING THAT CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED BASICALLY AS A RESULT OF HER EMOTIONAL REACTION TO THE INJURY IN QUESTION. THE BOARD CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 12, 1972 IS HEREBY AFFIRMED.

COUNSEL FOR CLAIMANT IS AWARDED A REASONABLE ATTORNEY FEE IN THE AMOUNT OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-358 JUNE 13, 1973

**HUEY W. ADAMS, IN COMPLYING STATUS OF
WILLIAM H. MOORE**
ROBERT THOMAS, CLAIMANT'S ATTORNEY
DEPARTMENT OF JUSTICE, DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH SUSTAINED THE DENIAL OF HIS CLAIM.

ISSUE

DID CLAIMANT SUSTAIN A COMPENSABLE INDUSTRIAL INJURY AS ALLEGED?

DISCUSSION

CLAIMANT ALLEGES HE SUFFERED A LEFT INGUINAL HERNIA AND POSSIBLY A RIGHT INGUINAL HERNIA ON AUGUST 31, 1971, WHILE WORKING AS A BRICKLAYER FOR WILLIAM H. MOORE IN KLAMATH FALLS, OREGON.

THE HEARING OFFICER FOUND THE CLAIMANT'S ALLEGATIONS NOT CREDIBLE BASED ON NUMEROUS INCONSISTENCIES AND VARIANCES FROM OTHER TESTIMONY AND EVIDENCE IN THE CASE.

THE BOARD'S EXAMINATION OF THE RECORD FAILS TO DISCLOSE ANY BASIS FOR REVERSING THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER AND HIS ORDER SHOULD THEREFORE BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 25, 1972, IS HEREBY AFFIRMED.

WCB CASE NO. 72-2543 JUNE 13, 1973

CAMILLE ROWLAND, CLAIMANT

A. C. ROLL, CLAIMANT'S ATTY.
BENSON AND ARENZ, DEFENSE ATTYs.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AWARDED COMPENSATION FOR TEMPORARY TOTAL DISABILITY FOR THE PERIOD MAY 16, 1972, TO SEPTEMBER 21, 1972, AND ADDITIONAL COMPENSATION OF TWENTY FIVE PERCENT FOR UNREASONABLE DELAY IN THE PAYMENT OF COMPENSATION.

ISSUES

1. IS CLAIMANT ENTITLED TO TEMPORARY TOTAL DISABILITY FOR THE PERIOD OF MAY 16, 1972, TO SEPTEMBER 21, 1972?
2. IS CLAIMANT ENTITLED TO PENALTIES AND ATTORNEY FEES FOR THE PERIOD MAY 1 TO MAY 15, 1972, FOR ALLEGED UNREASONABLE DELAY AND RESISTANCE IN FAILING TO CONTINUE COMPENSATION FROM MAY 16, 1972 TO SEPTEMBER 21, 1972?

DISCUSSION

AFTER REVIEWING THE RECORD DE NOVO AND STUDYING THE BRIEFS SUBMITTED, THE BOARD CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 11, 1973 IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 71-2821 JUNE 13, 1973

JAMES W. COMBS, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER AFFIRMING THE DETERMINATION ORDER OF OCTOBER 26, 1971, WHICH FOUND CLAIMANT MEDICALLY STATIONARY, AND AWARDED PERMANENT PARTIAL DISABILITY EQUAL TO 144 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED DISABILITY.

ISSUES

1. IS FURTHER MEDICAL TREATMENT REQUIRED FOR CLAIMANT'S INJURY?
2. IF CLAIMANT'S CONDITION IS MEDICALLY STATIONARY, WHAT IS THE EXTENT OF HIS PERMANENT DISABILITY RESULTING FROM HIS COMPENSABLE INDUSTRIAL INJURY OF MARCH 21, 1968?

DISCUSSION

NO BRIEFS WERE SUPPLIED ON APPEAL BUT THE BOARD HAS REVIEWED DE NOVO. BASED ON ITS REVIEW, THE BOARD CONCURS THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER ARE CORRECT AND HIS ORDER SHOULD THEREFORE BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 11, 1973, IS AFFIRMED.

WCB CASE NO. 72-3186 JUNE 15, 1973

CLARENCE C. EGGERS, JR., CLAIMANT
ROBERT LEE OLSON, CLAIMANT'S ATTY.
ROGER R. WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER DISMISSING HIS REQUEST FOR HEARING ON A CLAIM OF AGGRAVATION FOR LACK OF JURISDICTION.

ISSUE

HAS THE CLAIMANT ESTABLISHED A RIGHT TO HAVE HIS AGGRAVATION CLAIM HEARD?

DISCUSSION

CLAIMANT SUBMITTED TWO MEDICAL REPORTS FROM DR. ROBERT A. BERSELLI IN SUPPORT OF HIS CLAIM FOR AGGRAVATION. THE DOCTOR'S OPINION STATED THAT -

" . . . OSTEOPOROSIS OF THE THORACIC SPINE THAT THIS PATIENT HAS PROBABLY DID RESULT FROM HIS LOW BACK INJURY OF MARCH 4, 1969 . . . OSTEOPOROSIS AND HIS CHRONIC THORACIC SPINAL STRAIN HAS BECOME AGGRAVATED. !!"

THE HEARING OFFICER DISMISSED THIS CLAIM FOR AGGRAVATION RULING THAT THESE MEDICAL REPORTS DID NOT SATISFY THE REQUIREMENTS OF THE AGGRAVATION STATUTE.

THE BOARD CONCLUDES THAT THE REPORTS OF DR. BERSELLI ARE SUFFICIENT TO ESTABLISH JURISDICTION AND THAT THE CLAIM SHOULD BE HEARD ON ITS MERITS.

CLAIMANT'S ATTORNEY IS NOT ENTITLED TO A FEE AT THIS STAGE OF THE PROCEEDINGS.

ORDER

THE ORDER OF THE HEARING OFFICER, DATED JANUARY 26, 1973 IS REVERSED AND THE MATTER IS HEREBY REMANDED TO THE HEARINGS DIVISION FOR A HEARING ON THE MERITS.

WCB CASE NO. 72-459 JUNE 15, 1973

ROSE ANN VOLK, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MARMADUKE, ASCHENBRENNER, MERTEN AND SALTVEIT,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON, MOORE AND SLOAN.

EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER FINDING CLAIMANT'S CLAIM COMPENSABLE.

ISSUE

DID CLAIMANT'S UVEITIS ARISE OUT OF AND IN THE COURSE OF HER EMPLOYMENT?

DISCUSSION

A MAJORITY OF THE BOARD CONCLUDES THE CLAIMANT HAS FAILED TO PROVE A CONNECTION BETWEEN HER WORK AND THE UVEITIS CONDITION SHE EXPERIENCED.

THE EVIDENCE INDICATES THERE WAS NO TOXIC RESIDUAL ON THE BROCCOLI NOR WAS THE BROCCOLI ITSELF INNATELY TOXIC.

EVEN IF SOME TOXIC AGENT HAD INVADED THROUGH THE EYE SOCKET, IT IS HIGHLY UNLIKELY, PHYSIOLOGICALLY SPEAKING, THAT SUCH AN AGENT WOULD HAVE PRODUCED THE UVEITIS WHICH CLAIMANT SUFFERS.

THE ORDER OF THE HEARING OFFICER SHOULD THEREFORE BE REVERSED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 17, 1972 IS REVERSED AND THE EMPLOYER'S DENIAL OF COMPENSABILITY DATED FEBRUARY 8, 1972 IS HEREBY APPROVED.

WCB CASE NO. 72-2426 JUNE 15, 1973

DOROTHY REESE, CLAIMANT
NIKOLAUS ALBRECHT, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH REFUSED TO ALLOW CERTAIN ADDITIONAL COMPENSATION WHICH SHE SEEKS.

NO ADDITIONAL ARGUMENTS WERE PRESENTED ON APPEAL.

THE BOARD HAS REVIEWED THE RECORD DE NOVO AND AGREES WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER. HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 31, 1973, IS AFFIRMED.

WCB CASE NO. 72-577 JUNE 15, 1973

LESLIE ATKINSON, CLAIMANT
MYRICK, COULTER, SEAGRAVES AND
NEALY, CLAIMANT'S ATTYS.
COLLINS, REDDEN, FERRIS AND VELURE,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH FOUND CLAIMANT'S MYOCARDIAL INFARCTION COMPENSABLE.

ISSUE

DID CLAIMANT'S MYOCARDIAL INFARCTION ARISE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT?

DISCUSSION

CLAIMANT SUFFERED A MYOCARDIAL INFARCTION DURING THE COURSE OF HIS EMPLOYMENT DECEMBER 21, 1971. THE EMPLOYER DENIED THAT THE HEART ATTACK WAS CAUSED BY CLAIMANT'S EMPLOYMENT. THE HEARING OFFICER ORDERED THE CLAIM ACCEPTED.

THE EMPLOYER'S BRIEF, IN THIS REQUEST FOR REVIEW OF THE HEARING OFFICER'S ORDER, ARGUES THAT THE OPINION OF DR. ISERT, THE ATTENDING PHYSICIAN, WAS BASED ON SPECULATION. FOR THAT REASON, THE EMPLOYER CONTENDS THE HEARING OFFICER ERRED IN RELYING ON DR. CASTERLINE WHO EXAMINED CLAIMANT ON BEHALF OF THE EMPLOYER.

THE HEARING OFFICER'S RELIANCE ON DR. ISERT'S OPINION WAS PROPER IN VIEW OF THE POSITION ADOPTED BY THE OREGON COURT OF APPEALS AND THE OREGON SUPREME COURT CONCERNING SUCH MATTERS. THE HEARING OFFICER FOUND DR. ISERT'S OPINION PERSUASIVE. THE BOARD CONCURS IN THAT DETERMINATION. THE ORDER OF THE HEARING OFFICER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 4, 1972 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-2066 JUNE 15, 1973

JEFFERY SNYDER, CLAIMANT
EMMONS, KYLE, KROPP AND KRYER, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER DATED JANUARY 18, 1973, AWARDING HIM AN ADDITIONAL TEN DEGREES MAKING A TOTAL OF 15 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY, CONTENDING HIS DISABILITY EXCEEDS THAT AWARDED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT, A 17 YEAR OLD HIGH SCHOOL SENIOR, WAS INJURED ON AUGUST 18, 1969, WHEN HE FELL FROM AN IRRIGATION PIPE TRAILER WHILE DOING FARM LABOR WORK. THIS RESULTED IN A FRACTURE OF CLAIMANT'S RIGHT LEG AND REQUIRED ORTHOPEDIC SURGERY.

IN SEPTEMBER, 1970, DR. VAN OLST DISCOVERED THE GROWTH CENTER OF THE RIGHT LEG WAS DAMAGED AND THAT CLAIMANT'S RIGHT LEG WAS NOT GROWING AS FAST AS HIS LEFT. LATER EXAMINATIONS SHOWED INCREASED LEG LENGTH DISCREPANCY CAUSING ANKLE STIFFNESS AND COMPLAINTS OF MILD BACK ACHING.

A NOVEMBER 7, 1972 EXAMINATION OF DR. RICHARD BERG NOTED MORE SERIOUS COMPLAINTS OF LOW BACK PROBLEMS INVOLVING A CONGENITAL DEFECT WHICH WAS FURTHER STRAINED BY CLAIMANT'S ABNORMAL GAIT CAUSED BY THE RIGHT FOOT AND ANKLE INJURY.

CLAIMANT HAS SOME PROBLEMS PERFORMING PHYSICAL LABOR, HOWEVER, HE IS ABLE TO PARTICIPATE TO SOME EXTENT IN CROSS COUNTRY TRACK EVENTS AND CAN ENGAGE IN LIFTING 50 TO 80 POUND HAY BALES WITHOUT UNDUE IMMEDIATE PROBLEMS.

IT APPEARS TO THE BOARD, AS IT DID TO THE HEARING OFFICER, THAT THIS CLAIMANT HAS PRESENTLY MADE A SATISFACTORY RECOVERY FROM HIS INJURY AND SURGERY, AND THAT HE HAS SUCCESSFULLY RETURNED TO HIS VARIOUS ACTIVITIES.

IN THE EVENT CLAIMANT'S DISABILITY REQUIRES FUTURE ATTENTION, THE BOARD CAN, PURSUANT TO ORS 656.271, GIVE FURTHER CONSIDERATION TO THE EXTENT OF CLAIMANT'S DISABILITY. IN THE MEANTIME, HOWEVER, THE BOARD CONCURS WITH THE FINDINGS OF THE HEARING OFFICER AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER AFFIRMING THE AWARD OF COMPENSATION GRANTED BY THE DETERMINATION ORDER OF JULY 25, 1972 FOR LOSS OF THE RIGHT LEG, AND INCREASING THE AWARD OF LAW BACK DISABILITY IN LIEU OF THE DETERMINATION ORDER IS HEREBY AFFIRMED.

WCB CASE NO. 72-1075 JUNE 15, 1973

LAVERN MIEBACH, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
ATTYS FOR CLAIMANT
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER GRANTING AN ADDITIONAL 32 DEGREES, RESULTING IN A TOTAL OF 64 DEGREES FOR UNSCHEDULED PERMANENT PARTIAL DISABILITY, CONTENDING HIS DISABILITY EXCEEDS THAT AWARDED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S UNSCHEDULED PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT, A 33 YEAR OLD PLANT ENGINEER, SUSTAINED A COMPENSABLE NECK INJURY ON JULY 1, 1970, WHICH ULTIMATELY LEFT HIM WITH RESIDUAL PHYSICAL IMPAIRMENT WHICH RESTRICTS HIM FROM LIFTING MORE THAN 30 POUNDS.

ALTHOUGH CLAIMANT HAD PREEXISTING DISABILITIES DUE TO A PRIOR LOW BACK INJURY, CLAIMANT WAS EARNING NINE HUNDRED DOLLARS A MONTH BEFORE THE INJURY IN QUESTION OCCURRED. HIS EARNINGS NOW ARE APPROXIMATELY SIX HUNDRED FIFTY DOLLARS PER MONTH AND HE IS WORKING IN A MORE OR LESS SHELTERED EMPLOYMENT WHERE HE CAN AVOID PHYSICALLY STRENUOUS WORK.

THE BOARD IS OF THE OPINION THAT, AS OF NOW, THE COMPENSATION AWARDED BY THE HEARING OFFICER IS ADEQUATE. IN THE EVENT CLAIMANT'S CLAIMANT'S DISABILITY STATUS REQUIRES FUTURE ATTENTION, THE BOARD CAN, PURSUANT TO ORS 656.271, GIVE FURTHER CONSIDERATION TO CLAIMANT'S NEED FOR COMPENSATION. IN THE MEANTIME, THE BOARD CONCURS WITH THE FINDINGS OF THE HEARING OFFICER AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 26, 1972 IS HEREBY AFFIRMED.

WCB CASE NO. 72-2448 JUNE 15, 1973

GERTRUDE DALTHORP, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUEST BOARD REVIEW OF A HEARING OFFICER'S ORDER CONSTRUING THE APPLICABILITY OF ORS 656.220.

THE BASIC ISSUE ON APPEAL IS WHETHER ORS 656.220 LIMITS COMPENSATION FOR VENTRAL HERNIAS.

AFTER REVIEWING THE RECORD AND CONSIDERING THE BRIEFS SUBMITTED ON APPEAL, THE BOARD CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER ON ALL ISSUES AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 7, 1972, IS AFFIRMED.

WCB CASE NO. 72-2036 JUNE 15, 1973

GENE T. BURR, CLAIMANT
FRED ALLEN, CLAIMANT'S ATTY.
JACUA AND WHEATLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH ALLOWED CLAIMANT COMPENSATION FOR UNSCHEDULED DISABILITY IN THE RIGHT EYE.

ISSUE

IS CLAIMANT ENTITLED TO AN AWARD OF COMPENSATION FOR UNSCHEDULED DISABILITY IN THE RIGHT EYE?

DISCUSSION

THE RATIONALE ADOPTED BY THE HEARING OFFICER IS CONSONANT WITH THE REASONING CONCERNING THE ISSUE EXPRESSED BY THE BOARD IN THE RECENT ORDER ON REVIEW IN THE MATTER OF THE COMPENSATION OF RANDALL VAN HECKE, WCB 72-1759, APRIL 2, 1973.

THE BOARD AGREES WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER AND HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED NOVEMBER 9, 1972, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE EMPLOYER FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-2561 JUNE 15, 1973

EMMIT WILLIAMS, CLAIMANT
PETERSON, CHAIVOE AND PETERSON, CLAIMANT'S ATTYS.
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS REVIEW OF A HEARING OFFICER'S ORDER AFFIRMING A DETERMINATION ORDER, DATED SEPTEMBER 14, 1972.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT, A 52 YEAR OLD CASUAL FARM LABORER, WAS INJURED ON JULY 15, 1970, WHEN HE FELL FROM A HAY WAGON CAUSING RESIDUAL

DISABILITY FOR WHICH HE WAS AWARDED 80 DEGREES UNSCHEDULED DISABILITY. THE HEARING OFFICER AFFIRMED THE AWARD.

CLAIMANT CONTENDS ON REVIEW THAT HE IS IN THE ODD-LOT CATEGORY. HE MAY BE, BUT THE CAUSE CANNOT BE ATTRIBUTED, FOR COMPENSATION PURPOSES, TO THE INDUSTRIAL INJURY. THIS, AT BEST, IS ONLY PARTIALLY RESPONSIBLE FOR CLAIMANT'S CONDITION. THE HEARING OFFICER CORRECTLY ANALYZED THE EVIDENCE AND THE BOARD CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 15, 1973, IS AFFIRMED.

WCB CASE NO. 72-873 JUNE 15, 1973

ALFRED WEST, CLAIMANT

COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON, MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER AFFIRMING THE PARTIAL DENIAL OF HIS CLAIM AND ALSO AFFIRMING THE AWARD OF PERMANENT PARTIAL DISABILITY GRANTED BY A DETERMINATION ORDER, CONTENDING THE DENIED PSYCHIATRIC CONDITION IS RELATED TO THE INJURY AND THAT THE COMPOSITE RESIDUALS HAVE LEFT HIM PERMANENTLY AND TOTALLY DISABLED.

DISCUSSION

A MAJORITY OF THE BOARD AGREES WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER.

IT APPEARS THAT THE BASIS OF CLAIMANT'S PSYCHOPATHOLOGY IS BASICALLY ANGER AT THE EMPLOYER'S REFUSAL TO REHIRE HIM FOLLOWING THE INJURY, RATHER THAN AN EMOTIONAL MALADJUSTMENT TO THE INJURY AND ITS SEQUELAE. THE EVIDENCE IS PERSUASIVE THAT THE EMPLOYER'S REFUSAL TO REHIRE THE CLAIMANT STEMMED FROM HIS EARLIER FALSIFICATION OF AN EMPLOYMENT APPLICATION AND NOT BECAUSE OF THE PHYSICAL RESIDUALS OF THE INJURY. THIS BEING SO, THE CLAIMANT'S FAILURE TO RETURN TO WORK IS NOT CAUSALLY RELATED TO THE INJURY AND CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED AS A RESULT OF THE INJURY IN QUESTION.

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 29, 1972 IS AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 29, 1972 IS AFFIRMED.

WCB CASE NO. 71-2737 JUNE 15, 1973

GLEN HENRY BYERS, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED CLAIMANT AN ADDITIONAL 32 DEGREES MAKING A TOTAL OF 64 DEGREES = 20 PERCENT = FOR UNSCHEDULED DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

THE HEARING OFFICER ALLOWED ADDITIONAL UNSCHEDULED DISABILITY COMPENSATION UPON A SHOWING THAT CLAIMANT'S "RESERVE CAPACITY" HAD BEEN PERMANENTLY DIMINISHED.

THE HEARING OFFICER JUSTIFIED THE PRESENT ALLOWANCE OF ADDITIONAL COMPENSATION ON THE BASIS THAT ALTHOUGH CLAIMANT WAS PRESENTLY SUCCESSFULLY EMPLOYED, HIS DIMINISHED RESERVE CAPACITY HAD NECESSARILY AFFECTED HIS EARNING CAPACITY.

THE POTENTIAL DISABLING EFFECT OF THIS INJURY, IN TERMS OF IMPAIRED EARNING CAPACITY, EXISTS NOW AS A RESULT OF THE PERMANENT RESIDUAL PRESENTLY EXPERIENCED AND THUS IT MUST BE COMPENSATED NOW.

THE HEARING OFFICER CORRECTLY ASSESSED THE CLAIMANT'S PERMANENT DISABILITY OF 64 DEGREES AND HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED NOVEMBER 3, 1972, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-1287 JUNE 19, 1973

TERESA WILLIAMS, CLAIMANT
BABCOCK AND ACKERMAN, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER AFFIRMING THE DETERMINATION ORDERS OF AUGUST 29, 1969, AND MAY 3, 1972.

ISSUES

1. IS CLAIMANT IN NEED OF FURTHER MEDICAL TREATMENT?
2. IS CLAIMANT ENTITLED TO ADDITIONAL TEMPORARY TOTAL DISABILITY BENEFITS?
3. IF CLAIMANT'S CONDITION IS MEDICALLY STATIONARY, WHAT IS THE EXTENT OF PERMANENT DISABILITY?

DISCUSSION

CLAIMANT'S BRIEF CONTAINS A VERY INTRIGUING PROPOSAL THAT THE BOARD REFER CLAIMANT TO DR. F. A. SHORT FOR EVALUATION OR TREATMENT BASED ON THE STUDIES DR. SHORT CONDUCTED SOME TIME AGO. CLAIMANT'S COUNSEL IS TO BE COMMENDED FOR THE EFFORT EXPENDED IN SUBMITTING THIS TO THE BOARD AND FOR HIS PROPOSAL TO ADOPT A DIFFERENT APPROACH IN AN ATTEMPT TO SOLVE THIS PARTICULAR KIND OF DISABILITY. UNFORTUNATELY, ORS 656.295 DOES NOT PERMIT THE BOARD TO CONSIDER THE EVIDENTIARY MATTER INCLUDED IN CLAIMANT'S BRIEF.

THIS THEN PRESENTS THE QUESTION, SHOULD THE BOARD REMAND THIS CASE TO THE HEARING OFFICER FOR THE PURPOSE OF HAVING DR. SHORT EXAMINE CLAIMANT TO ASCERTAIN IF HIS STUDIES WOULD SUGGEST ANY FORM OF TREATMENT FOR CLAIMANT THAT WOULD RELIEVE HER SYMPTOMS. BY REASON OF THE LIMITATIONS ON THE BOARD'S AUTHORITY ON REVIEW, WE DO NOT BELIEVE WE ARE AUTHORIZED TO ADOPT THIS COURSE OF ACTION. WE BELIEVE WE MUST EVALUATE THE CASE ON THE BASIS OF THE EVIDENCE SUBMITTED TO THE HEARING OFFICER.

THEREFORE, THE BOARD CONCLUDES THAT THE HEARING OFFICER'S OPINION AND ORDER PROPERLY EVALUATED THE EVIDENCE ON THE ISSUES PRESENTED. IT SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED NOVEMBER 28, 1972, IS AFFIRMED.

WCB CASE NO. 72-146 JUNE 20, 1973

WINFRED TRUDEAU, DECEASED
POZZI, WILSON AND ATCHISON, BENEFICIARIES ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND
SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY BENEFICIARIES

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE BENEFICIARIES OF THE ABOVE NAMED DECEDENT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER DENYING WORKMEN'S COMPENSATION BENEFITS.

ISSUES

1. WAS DECEDENT PERMANENTLY AND TOTALLY DISABLED AT THE TIME OF HIS DEATH?
2. IS THERE A LEGAL CAUSAL RELATIONSHIP BETWEEN DECEDENT'S COMPENSABLE INJURY AND HIS DEATH?

DISCUSSION

THE BOARD HAS CAREFULLY REVIEWED THE COMPREHENSIVE RECORD MADE AT THE HEARING AND THE EXCELLENT BRIEFS FURNISHED ON REVIEW.

HAVING DONE SO, THE BOARD CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER'S ORDER AND HEREBY ADOPTS HIS ORDER AS ITS OWN.

ORDER

THE ORDER OF THE HEARING OFFICER AND THE AMENDMENT THERETO, DATED DECEMBER 19, 1972, IS HEREBY AFFIRMED.

WCB CASE NO. 72-2690 JUNE 20, 1973

KEITH BREESE, CLAIMANT

MCKAY, PANNER, JOHNSON, MARCEAU AND
KARNOPP, CLAIMANT'S ATTYS.
MCMENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH SUSTAINED THE DENIAL OF HIS CLAIM.

ISSUE

DID CLAIMANT'S HEART ATTACK OF JULY 18, 1972 ARISE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT?

DISCUSSION

THE HEARING OFFICER'S ORDER ACCURATELY REFLECTS THE EVIDENCE PRESENTED IN THIS CASE. NOTHING WILL BE GAINED IN REPEATING IT. THAT EVIDENCE SIMPLY DOES NOT JUSTIFY A FINDING THAT THE HEART CONDITION WAS CAUSED BY CLAIMANT'S WORK ACTIVITY AT THE TIME.

AT THE DATE OF THE HEARING THE CLAIMANT WAS UNABLE TO PERSONALLY APPEAR. ON THIS REVIEW CLAIMANT REQUESTS THAT THE CASE BE REMANDED FOR THE TAKING OF ADDITIONAL TESTIMONY. THERE IS NO SHOWING OF ANY KIND THAT, IF THE CASE WERE REMANDED, THE EVIDENCE PRESENTED WOULD BE ANY DIFFERENT THAN THAT NOW IN THE RECORD.

THE BOARD, UPON ITS OWN DE NOVO REVIEW OF THE RECORD, FINDS ITSELF COMPLETELY IN AGREEMENT WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER. HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 27, 1972, IS HEREBY AFFIRMED.

WCB CASE NO. 72-1534 JUNE 21, 1973

CATHERINE WEEKS, CLAIMANT

HANSEN, CURTIS, HENDERSHOTT AND STRICKLAND,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER AFFIRMING A SECOND DETERMINATION ORDER WHICH AWARDED CLAIMANT L60 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT, A 49 YEAR OLD PRINT FEEDER, SUSTAINED A COMPENSABLE INJURY TO HER LOW BACK ON SEPTEMBER 24, 1969.

PRIOR TO THIS 1969 INJURY, CLAIMANT SUFFERED A BACK INJURY WHICH NECESSITATED A LUMBAR LAMINECTOMY. CLAIMANT'S PRESENT BACK INJURY HAS PRODUCED SIGNIFICANT PSYCHIATRIC AS WELL AS PHYSICAL RESIDUALS.

CLAIMANT IS A HIGH SCHOOL GRADUATE, DIVORCED AND THE MOTHER OF SEVEN CHILDREN, NOW EMANCIPATED. HER WORK EXPERIENCE HAS BEEN LIMITED TO UNSKILLED OR SEMI-SKILLED EMPLOYMENT SUCH AS BABYSITTING, DISHWASHER, MILL WORK.

A PSYCHOLOGICAL EVALUATION BY DR. PERKINS SHOWED CLAIMANT TO HAVE MARKEDLY DEFICIENT INTELLECTUAL AND EMOTIONAL CAPACITY. DR. ROCKEY FOUND "CONSIDERABLE LOSS OF FUNCTION" IN THE BACK. COUNSEL FOR CLAIMANT SUBMITTED AT THE HEARING THAT THE EVIDENCE PRESENTED WOULD PLACE CLAIMANT IN THE ODD LOT CATEGORY. THE DEFENSE OFFERED NO EVIDENCE OF EMPLOYABILITY OR SHOWED ANY SPECIFIC OCCUPATION CLAIMANT COULD SUCCESSFULLY PERFORM. BASED ON THESE LIMITATIONS THE HEARING OFFICER CONCLUDED CLAIMANT FELL WITHIN THE ODD LOT CATEGORY AND WAS PERMANENTLY INCAPACITATED FROM REGULARLY PERFORMING ANY WORK AT A GAINFUL AND SUITABLE OCCUPATION.

THE BOARD HAS REVIEWED THE RECORD AND BRIEFS OF COUNSEL. WE ARE PERSUADED THAT THE HEARING OFFICER CORRECTLY DETERMINED THE DISABILITY CLAIMANT HAS SUFFERED AS A RESULT OF THIS INJURY. HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED NOVEMBER 10, 1972, IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 71-878 JUNE 21, 1973

ROSE M. DAVIDSON, CLAIMANT
GREEN, RICHARDSON, GRISWOLD AND
MURPHY, CLAIMANT'S ATTYS.
ROGER B. WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER OF APRIL 13, 1971.

ISSUES

1. IS CLAIMANT IN NEED OF ADDITIONAL MEDICAL CARE AND TREATMENT?
2. IF NOT, WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT, A NOW 31 YEAR OLD WOMAN EMPLOYED AS A NURSE'S AIDE, SUSTAINED A LOW BACK INJURY ON MARCH 4, 1970 WHILE LIFTING A PATIENT. A LUMBAR LAMINECTOMY WAS PERFORMED BUT RESIDUAL COMPLAINTS INDICATED THE POSSIBLE NEED FOR VOCATIONAL REHABILITATION.

CLAIMANT REPORTED SOME IMPROVEMENT AFTER ENROLLMENT AT THE PHYSICAL REHABILITATION CENTER BUT SHE FELT SHE DID NOT IMPROVE ENOUGH TO RETURN TO WORK. THE DEPARTMENT OF VOCATIONAL REHABILITATION CLOSED THE CASE DUE TO CLAIMANT'S LACK OF MOTIVATION TO RETURN TO WORK.

THE HEARING OFFICER NOTED THAT THE OBESITY OF THE CLAIMANT WAS A MAJOR HANDICAPPING FEATURE AS FAR AS SEEKING SUITABLE EMPLOYMENT. HE ALSO NOTED THAT THE CLAIMANT DOES MANY THINGS FOR PLEASURE SUCH AS BOWLING, GOLFING, CAMPING, WHICH ARE FAR MORE STRENUOUS THAN WORK OPPORTUNITIES WHICH SHE HAS DECLINED.

THE HEARING OFFICER THEREUPON CONCLUDED THAT THERE WAS NO SUBSTANTIAL EVIDENCE TO PRODUCE A LOSS OF EARNING CAPACITY AS CLAIMANT HAS NOT PROVED THAT HER PRESENT LIMITATIONS ARE THE RESULT OF HER OCCUPATIONAL ACCIDENT.

ON ITS OWN REVIEW, THE BOARD FULLY CONCURS WITH THE FINDINGS OF THE HEARING OFFICER. THE MINIMAL EVIDENCE OF CLAIMANT'S

LOSS OF EARNING CAPACITY DOES NOT WARRANT AN ADDITIONAL AWARD FOR UNSCHEDULED LOW BACK DISABILITY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 10, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 72-1516 JUNE 21, 1973

LAWRENCE GLASBRENNER, CLAIMANT

KEITH BURNS, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER SUSTAINING A DENIAL OF HIS CLAIM BASED ON AN INJURY ON JANUARY 20, 1972.

ISSUE

HAS CLAIMANT SUSTAINED AN AGGRAVATION OF HIS INDUSTRIAL INJURY OF JANUARY 20, 1972?

DISCUSSION

IN HIS BRIEF ON REVIEW CLAIMANT CONTENDS THAT THIS CLAIM COULD BE CONSIDERED EITHER AS A CLAIM FOR AGGRAVATION OR AS A NEW COMPENSABLE INJURY AND THAT THE HEARING OFFICER, BY HIS ORDER, FAILED TO RECOGNIZE THAT THIS COULD BE SO.

UNFORTUNATELY, THE EVIDENCE DOES NOT JUSTIFY CLAIMANT'S ASSERTION OF AN AGGRAVATION OR A NEW INJURY. THE HEARING OFFICER ADEQUATELY STATED THE REASONS FOR HAVING DENIED THESE CONTENTIONS IN STATING THAT CLAIMANT HAS FAILED TO SUSTAIN THE BURDEN OF PROOF.

THE BOARD CONCLUDES THAT THE EVIDENCE FAILS TO ESTABLISH THAT IT WAS EITHER A NEW INJURY OR AN AGGRAVATION.

THE ORDER OF THE HEARING OFFICER SHOULD THEREFORE BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 7, 1972 IS AFFIRMED.

DAISY CLARK, CLAIMANT
MYRICK, COULTER, SEAGRAVES AND
NEALY, CLAIMANT'S ATTYS.
COLLINS, REDDEN, FERRIS AND
VELURE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED CLAIMANT AN AWARD OF PERMANENT TOTAL DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

THE CLAIMANT IN THIS CASE WAS AWARDED PERMANENT TOTAL DISABILITY BY THE HEARING OFFICER. THE EVIDENCE IN THE CASE IS CLOSE AND THE RESULT DEPENDS IN SUBSTANTIAL MEASURE UPON THE HEARING OFFICER'S DETERMINATION OF THE CREDIBILITY OF THE CLAIMANT. THIS IS PARTICULARLY TRUE WHEN, AS HERE, THERE HAS BEEN OBSERVATION OF THE CLAIMANT BY A PRIVATE INVESTIGATOR, INCLUDING THE USE OF MOVIE FILMS, IN AN ATTEMPT TO DEMONSTRATE LESS PHYSICAL IMPAIRMENT THAN CLAIMED BY THE INJURED PERSON.

OTHER THAN URGING THAT THE EVIDENCE IN TOTAL DOES NOT JUSTIFY THE HEARING OFFICER'S CONCLUSION, THE EMPLOYER'S BRIEF PRESENTS NO PARTICULAR ISSUE OTHER THAN A GENERALIZED ARGUMENT THAT CLAIMANT RETAINS SOME EARNING CAPACITY.

AFTER CAREFULLY CONSIDERING CLAIMANT'S AGE, EDUCATION AND EXTENT OF PHYSICAL IMPAIRMENT, THE HEARING OFFICER CONCLUDED CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED.

IN VIEW OF THE HEARING OFFICER'S DETERMINATION AND SPECIFIC FINDINGS IN REGARD TO THE CREDIBILITY OF CLAIMANT, THE BOARD CONCLUDES THAT THE HEARING OFFICER'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 13, 1972 IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-1772

JUNE 26, 1973

LYNWOOD ROUSE, CLAIMANT

COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER DISMISSING HIS REQUEST FOR HEARING ON A CLAIM OF AGGRAVATION FOR LACK OF JURISDICTION.

ISSUE

DO THE MEDICAL REPORTS SUBMITTED SUPPORTING CLAIMANT'S AGGRAVATION CLAIM PRESENT AN OPINION THAT THERE ARE 'REASONABLE' GROUNDS FOR THE CLAIM?

DISCUSSION

CLAIMANT FILED A REQUEST FOR HEARING ON JUNE 29, 1972, TO OBTAIN INCREASED COMPENSATION ON THE GROUNDS OF AGGRAVATION. THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM OF AGGRAVATION.

AT THE HEARING THE STATE ACCIDENT INSURANCE FUND MOVED FOR DISMISSAL ON THE GROUND THAT THE HEARING OFFICER DIDN'T HAVE JURISDICTION BECAUSE CLAIMANT HAD NOT ATTACHED A SUFFICIENT MEDICAL REPORT TO SUPPORT HIS CLAIM.

WE AGREE WITH THE HEARING OFFICER'S CONCLUSION THAT THE REPORTS SUBMITTED ARE INSUFFICIENT TO VEST THE BOARD OR ITS HEARINGS DIVISION WITH JURISDICTION TO HEAR THE CLAIM.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE RATIONALE OF THE HEARING OFFICER'S DECISION AND ADOPTS HIS ORDER AS ITS OWN.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 13, 1972 IS HEREBY AFFIRMED.

WCB CASE NO. 72-2188

JUNE 26, 1973

WAYNE R. DALZIEL, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF
CROSS-APPEAL BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AWARDED CLAIMANT COMPENSATION FOR PERMANENT PARTIAL DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT SUFFERED A LUMBOSACRAL STRAIN ON DECEMBER 15, 1971 WHILE WORKING AS A CHOKER SETTER FOR HALEY CONSTRUCTION COMPANY. THE INJURY PRODUCED PERMANENT RESIDUAL DISABILITY.

DR. ROBERT LARSON RECOMMENDED RETURNING TO A LESS PHYSICALLY DEMANDING TYPE OF EMPLOYMENT TO AVOID REPETITIVE BENDING OR LIFTING. THIS SAME RECOMMENDATION WAS MADE AT THE BACK EVALUATION CLINIC.

CLAIMANT HAS NOT COOPERATED IN REHABILITATION EFFORTS OR MADE ANY EFFORT TO REJOIN THE WORK FORCE. HE EXPRESSES NO INTEREST IN RETRAINING INVOLVING FORMAL SCHOOLING LIMITING HIS POSSIBILITIES TO AN ON-THE-JOB TRAINING SITUATION - PREFERABLY IN THE SWEET HOME AREA.

THE BOARD IS OF THE OPINION THAT THE LOSS OF EARNING CAPACITY CLAIMANT ALLEGES, STEMS IN LARGE PART, FROM HIS DEMONSTRATED LACK OF MOTIVATION IN RETURNING TO ANY SUITABLE EMPLOYMENT.

UNDER THE CIRCUMSTANCES THE ORDER OF THE HEARING OFFICER SHOULD BE REDUCED. THE REAL DISABLING EFFECT OF CLAIMANT'S INJURY CAN BE FULLY COMPENSATED BY AN AWARD OF 96 DEGREES RATHER THAN 128 DEGREES.

ORDER

THE ORDER OF THE HEARING OFFICER DATED FEBRUARY 16, 1973 IS HEREBY MODIFIED TO ALLOW THE CLAIMANT 96 DEGREES FOR UNSCHEDULED DISABILITY RATHER THAN 128 DEGREES AS PREVIOUSLY AWARDED.

CLAIMANT'S ATTORNEY IS AUTHORIZED TO RECOVER AN ATTORNEYS FEE OF ONE HUNDRED TWENTY FIVE DOLLARS FROM CLAIMANT FOR HIS SERVICES ON THIS REVIEW.

WCB CASE NO. 72-990 JUNE 26, 1973

RALPH ROSS, IN COMPLYING STATUS OF
ALVIN L. AND SHIRLEY H. RUSSELL,

DBA ROW RIVER STORE
COONS, MALAGON AND COLE,
ATTYS FOR BENEFICIARIES
SANDERS, LIVELY AND WISWALL,
DEFENSE ATTYS.
ORDER OF DISMISSAL

ON MARCH 28, 1973 A REQUEST FOR REVIEW WAS FILED IN THE ABOVE ENTITLED MATTER BY JOHN SVOBODA ON BEHALF OF ALVIN L. AND SHIRLEY H. RUSSELL, DBA, ROW RIVER STORE, REQUESTING REVIEW OF A HEARING OFFICER'S ORDER DATED AND ENTERED ON MARCH 2, 1973.

ON JUNE 13, 1973 THE APPELLANTS, THROUGH THEIR ATTORNEY, MOVED FOR AN ORDER DISMISSING THEIR REQUEST FOR REVIEW.

THE BOARD BEING NOW FULLY ADVISED,

IT IS THEREFORE ORDERED THAT THE REQUEST FOR REVIEW ENTERED HEREIN BE, AND IT IS HEREBY DISMISSED.

WCB CASE NO. 72-348 JUNE 26, 1973

VERA L. CLAYBORN, CLAIMANT

GRAY, FANCHER, HOLMES AND HURLEY,
DEFENSE ATTYS.

ORDER ON MOTION

EMPLOYER HAS MOVED FOR AN ORDER DISMISSING CLAIMANT'S REQUEST FOR REVIEW ON THE GROUNDS THAT SHE FAILED TO PERFECT THE APPEAL IN ACCORDANCE WITH ORS 656.295.

BECAUSE CLAIMANT WAS UNREPRESENTED BY COUNSEL AT THIS STAGE OF THE PROCEEDINGS, SHE WAS GRANTED TIME TO RETAIN COUNSEL OR SEEK LEGAL ADVICE BEFORE RESPONDING TO THE EMPLOYER'S MOTION, APPARENTLY CLAIMANT IS STILL NOT REPRESENTED BY COUNSEL.

ON JUNE 5, 1973, CLAIMANT WAS ASKED TO RESPOND TO THE EMPLOYER'S MOTION WITHIN 10 DAYS BUT NO RESPONSE HAS BEEN RECEIVED.

THE FILES OF THE WORKMEN'S COMPENSATION BOARD REFLECT THAT CLAIMANT FAILED TO PROPERLY PERFECT HER APPEAL AND THE BOARD IS THUS WITHOUT JURISDICTION TO REVIEW.

THE EMPLOYER'S MOTION MUST THEREFORE BE GRANTED.

ORDER

CLAIMANT'S REQUEST FOR REVIEW OF THE ABOVE ENTITLED CASE DATED OCTOBER 14, 1972, IS HEREBY DISMISSED.

WCB CASE NO. 72-940 JUNE 26, 1973

KEITH CLYMER, CLAIMANT

GREEN, RICHARDSON, GRISWOLD AND
MURPHY, CLAIMANT'S ATTYS.

ROGER WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH REMANDED CLAIMANT'S CLAIM TO THE EMPLOYER FOR ACCEPTANCE AND PAYMENT OF COMPENSATION.

ISSUE

DID CLAIMANT SUSTAIN A COMPENSABLE OCCUPATIONAL INJURY?

DISCUSSION

THE EMPLOYER ARGUES THAT THE MEDICAL EVIDENCE IN THIS CASE IS INSUFFICIENT TO SUPPORT THE HEARING OFFICER'S ORDER. IT IS NOTED THE HEARING OFFICER DID NOT RELY EXCLUSIVELY ON THE MEDICAL EVIDENCE. THE ORDER RECITES -

!'. . . . THE MEDICAL AND CORROBORATING EVIDENCE SEEMS CLEARLY TO ESTABLISH THAT WITHOUT THAT STRAIN, THE CLAIMANT LIKELY COULD HAVE GONE FOR YEARS, PERHAPS FOR LIFE, WITHOUT THE REFUSION, THAT IS, IF HE DIDN'T ATTEMPT WORK AS DIFFICULT AS ON THE DAY IN QUESTION - THOUGH IN A SENSE THE SURGERY WAS TREATMENT FOR THE ORIGINAL FRACTURE, (OF 1968) THE NECESSITY FOR THE SURGERY WAS ACTIVATED BY THE WORK.!! (EMPHASIS SUPPLIED)

A CRITICAL ELEMENT IN THIS CASE IS THE CREDIBILITY OF THE WITNESSES. IN THIS RESPECT WE HAVE DEFERRED TO THE HEARING OFFICER'S DETERMINATION AND OUR REVIEW OF THE RECORD PROVIDES NO REASON TO REACH A FINDING DIFFERENT FROM THAT OF THE HEARING OFFICER.

THE ORDER OF THE HEARING OFFICER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 16, 1973 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-2280 JUNE 26, 1973

WCB CASE NO. 72-2730 JUNE 26, 1973

FLORENCE SPARGUR, CLAIMANT

FRANKLIN, BENNETT, DESBRISAY AND
JOLLES, CLAIMANT'S ATTYS.
MIZE, KRIESIEN, FEWLESS, CHENEY AND
KELLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A HEARING OFFICER'S ORDER.

ISSUES

1. IS CLAIMANT ENTITLED TO FURTHER MEDICAL CARE AND TIME LOSS FOR HER TWO INDUSTRIAL INJURIES?

2. IN THE ALTERNATIVE, WHAT IS THE EXTENT OF CLAIMANT'S DISABILITY?

DISCUSSION

THIS CASE POSES THE DIFFICULT PROBLEM OF EVALUATING THE RECOMMENDATIONS FOR TREATMENT MADE BY DR. R. E. RINEHART. THE VIEWS EXPRESSED BY DR. RINEHART, WITH WHICH THE BOARD IS VERY FAMILIAR, MAY BE THE BEST SOLUTION YET FOUND FOR THE TREATMENT OF PERSONS SUFFERING THE KIND OF PSYCHOLOGICALLY INDUCED PAIN SUFFERED BY THIS CLAIMANT. HOWEVER, DR. RINEHART'S VIEWS, AS OF NOW, ARE NOT ACCEPTED BY THE MEDICAL PROFESSION GENERALLY AND THE BOARD DOES NOT BELIEVE IT IS IN A POSITION TO DISCOUNT THE COMPLETELY OPPOSING PREVAILING VIEWS OF THE MEDICAL PROFESSION AND ACCEPT DR. RINEHART'S RECOMMENDED TREATMENT.

IN THIS PARTICULAR CASE IT IS UNFORTUNATE THAT THE RECOMMENDATIONS MADE BY DR. SCHULER, IN HIS REPORT OF FEBRUARY 23, 1972 WERE NOT FOLLOWED. IT WOULD APPEAR THAT IF, AT THAT TIME, SOMEONE HAD BOTHERED TO FOLLOW THE RECOMMENDATIONS MADE BY HIM AND ATTEMPTED TO PLACE CLAIMANT IN A SATISFACTORY AREA OF EMPLOYMENT OR VOCATIONAL TRAINING, SHE WOULD TODAY BE MUCH BETTER OFF. EVEN NOW, PSYCHOLOGICAL CONSULTATION MAY BE OF VALUE AND, PURSUANT TO ORS 656.245, CLAIMANT IS ENTITLED TO THAT COUNSELING IF SHE DESIRES.

THE HEARING OFFICER'S ORDER SHOULD ACCORDINGLY BE MODIFIED TO ALLOW SUCH COUNSEL BUT, IT SHOULD BE AFFIRMED IN ALL OTHER RESPECTS.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 8, 1973 IS MODIFIED TO ALLOW CLAIMANT TO RECEIVE PSYCHOLOGICAL CONSULTATION AT THE EMPLOYER'S EXPENSE, UNDER THE PROVISIONS OF ORS 656.245.

CLAIMANT'S ATTORNEY IS ENTITLED TO RECEIVE FROM CLAIMANT, A FEE EQUAL TO TWENTY FIVE PERCENT OF THE COST OF SUCH CONSULTATION, IN NO EVENT HOWEVER, SHALL SUCH FEE EXCEED FIFTEEN HUNDRED DOLLARS.

THE HEARING OFFICER'S ORDER IS AFFIRMED IN ALL OTHER RESPECTS.

WCB CASE NO. 72-1710 JUNE 26, 1973

ROBERT G. THROCKMORTON, CLAIMANT
AIL AND LUEBKE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED A DETERMINATION ORDER OF JUNE 23, 1972.

ISSUES

1. WAS CLAIMANT'S CLAIM PREMATURELY CLOSED?
2. IF CLAIMANT'S CONDITION IS MEDICALLY STATIONARY, WHAT IS THE EXTENT OF HIS DISABILITY?

DISCUSSION

THE BOARD HAS REVIEWED THE RECORD AND BRIEFS OF COUNSEL AND IS PERSUADED THAT THE HEARING OFFICER CORRECTLY DETERMINED THE DISABILITY CLAIMANT HAS SUFFERED AS A RESULT OF THIS INJURY.

THE CLAIMANT PRESENTS NO ARGUMENT OR REASON TO JUSTIFY REVERSING THE HEARING OFFICER'S FINDINGS OR ORDER IN THIS CASE AND THE HEARING OFFICER'S ORDER IS, THEREFORE, AFFIRMED.

WCB CASE NO. 72-2399 JUNE 26, 1973

CARL E. WALLEN, CLAIMANT
BURNS AND EDWARDS, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER DENYING COMPENSABILITY OF HIS CLAIM AND DISMISSING HIS REQUEST FOR HEARING.

ISSUE

DID CLAIMANT SUSTAIN A COMPENSABLE OCCUPATIONAL INJURY?

DISCUSSION

THE HEARING OFFICER AFFIRMED THE EMPLOYER'S DENIAL OF THIS CLAIM BECAUSE THE EVIDENCE WAS CONFUSING, COMPLICATING AND CONTRADICTORY. CLAIMANT'S EVIDENCE AS TO THE DATE OF AN ALLEGED BUMP ON HIS KNEE IS SO CONFUSING THAT IT NOT ONLY MAKES THE DATE OF THE ALLEGED HAPPENING UNCERTAIN BUT CREATES VERY SUBSTANTIAL DOUBT THAT IT OCCURRED AT ALL.

BASED ON ITS REVIEW OF THE RECORD, THE BOARD CONCLUDES THE HEARING OFFICER'S FINDINGS AND CONCLUSIONS ARE CORRECT AND SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 20, 1972 IS AFFIRMED.

WCB CASE NO. 72-2107 JUNE 26, 1973

GEORGE L. HEATON, CLAIMANT
THOMAS G. KARTER, CLAIMANT'S ATTY.
CHARLES PAULSON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH DENIED HIS CLAIM FOR AGGRAVATION.

ISSUE

HAS CLAIMANT SUFFERED AN AGGRAVATION OF HIS INDUSTRIAL INJURY OF OCTOBER 12, 1971?

DISCUSSION

CLAIMANT ASSERTS THAT THE PSYCHOLOGICAL IMPACT OF THE INITIAL INJURY HAS WORSENERED TO THE EXTENT THAT CLAIMANT NOW HAS ADDITIONAL BACK SYMPTONS THAT WERE NOT EVIDENT AT THE TIME OF THE STIPULATION OF SETTLEMENT DATED APRIL 21, 1972.

THE BOARD'S REVIEW OF THE EVIDENCE IS CONVINCING THAT THE HEARING OFFICER'S FINDINGS AND DETERMINATION WERE CORRECT AND THEY SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 8, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 72-1964 JUNE 26, 1973

NAOMI CLARK, CLAIMANT
COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER AFFIRMING A DETERMINATION ORDER WHICH GRANTED AN AWARD OF 192 DEGREES = 60 PERCENT == FOR UNSCHEDULED DISABILITY OF THE LOW BACK, CONTENDING SHE IS PERMANENTLY TOTALLY DISABLED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

THE BOARD IS PERSUADED BY THE OPINIONS OF DR. SLOCUM, CLAIMANT'S TREATING PHYSICIAN, NORMAN W. HICKMAN, PSYCHOLOGIST AND MRS. WILLIAMSON OF THE EUGENE BUSINESS COLLEGE, THAT CLAIMANT IS PERMANENTLY TOTALLY DISABLED.

CLAIMANT'S OBVIOUS PHYSICAL IMPAIRMENTS WHICH REQUIRE THE WEARING OF A BACK BRACE, THE USE OF A CANE AND WHICH LIMIT HER ABILITY TO SIT, STAND, BEND OR LIFT, PLACE HER PRIMA FACIE IN THE ODD LOT CATEGORY.

NO SHOWING WAS MADE THAT SUITABLE WORK IS AVAILABLE TO HER.

THE HEARING OFFICER'S ORDER SHOULD BE SET ASIDE AND CLAIMANT SHOULD BE GRANTED PERMANENT TOTAL DISABILITY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 21, 1972, IS SET ASIDE AND CLAIMANT IS GRANTED COMPENSATION FOR PERMANENT TOTAL DISABILITY TO BEGIN AS OF THE DATE OF THIS ORDER.

CLAIMANT'S ATTORNEYS ARE ENTITLED TO RECEIVE 25 PERCENT OF THE INCREASED COMPENSATION TO A MAXIMUM OF FIFTEEN HUNDRED DOLLARS, PAYABLE FROM SAID AWARD, AS A REASONABLE FEE.

WCB CASE NO. 72—2092 JUNE 26, 1973

GREGORY SIMPSON, CLAIMANT

SIM, WOODSIDE AND HARNISH, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON APRIL 12, 1973, CLAIMANT REQUESTED BOARD REVIEW OF A HEARING OFFICER'S ORDER DATED APRIL 4, 1973. THAT REQUEST FOR REVIEW IS NOW PENDING.

THE CLAIMANT AND THE STATE ACCIDENT INSURANCE FUND HAVE AGREED TO SETTLE AND COMPROMISE THEIR DISPUTE IN ACCORDANCE WITH THE TERMS OF THE STIPULATED SETTLEMENT WHICH IS ATTACHED HERETO AS EXHIBIT A.

THE BOARD, BEING NOW FULLY ADVISED, CONCLUDES THE AGREEMENT IS FAIR AND EQUITABLE TO BOTH PARTIES.

ORDER

IT IS THEREFORE ACCORDINGLY ORDERED THAT THE STIPULATED SETTLEMENT BE EXECUTED ACCORDING TO ITS TERMS.

THE REQUEST FOR REVIEW NOW PENDING BEFORE THE BOARD IS HEREBY DISMISSED.

STIPULATED SETTLEMENT

IT IS HEREBY STIPULATED BY AND BETWEEN MR. GREGORY J. SIMPSON, THROUGH HIS ATTORNEY JON L. WOODSIDE, AND THE STATE ACCIDENT INSURANCE FUND THROUGH R. KENNEY ROBERTS, ASSISTANT

ATTORNEY GENERAL OF ITS ATTORNEYS THAT THE CLAIMANT'S CLAIM WAS ORIGINALLY CLOSED BY DETERMINATION ORDER DATED JULY 21, 1972, AWARDING 32 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. THE CLAIMANT REQUESTED A HEARING AND A HEARING WAS HELD ON MARCH 21, 1973, BEFORE HEARING OFFICER H. L. PATTIE. BY OPINION AND ORDER DATED APRIL 4, 1972, THE DETERMINATION ORDER GRANTING NO ADDITIONAL PERMANENT PARTIAL DISABILITY WAS AFFIRMED. CLAIMANT TIMELY FILED HIS REQUEST FOR REVIEW BEFORE THE WORKMEN'S COMPENSATION BOARD.

IT IS HEREBY STIPULATED AND AGREED THAT THIS APPEAL SHALL BE COMPROMISED AND SETTLED BY MR. SIMPSON ACCEPTING AND THE STATE ACCIDENT INSURANCE FUND PAYING AN ADDITIONAL 11 DEGREES FOR UNSCHEDULED DISABILITY AND IN CONSIDERATION FOR THIS INCREASED COMPENSATION MR. SIMPSON AGREES TO WITHDRAW HIS REQUEST FOR REVIEW BEFORE THE WORKMEN'S COMPENSATION BOARD.

IT IS FURTHER STIPULATED THAT JON L. WOODSIDE, CLAIMANT'S ATTORNEY, IS HEREBY AWARDED AN ATTORNEY'S FEE OF 25 PERCENT OF THE INCREASED COMPENSATION NOT TO EXCEED FIFTEEN HUNDRED DOLLARS.

WCB CASE NO. 71-2531 JUNE 28, 1973

FRED M. KELLEY, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

THE ABOVE ENTITLED MATTER WAS HERETOFORE THE SUBJECT OF A HEARING INVOLVING THE COMPENSABILITY OF A CLAIM FOR PULMONARY DISEASE ALLEGEDLY ARISING OUT OF AND IN THE COURSE OF CLAIMANT'S EMPLOYMENT AT COOS HEAD TIMBER COMPANY IN COOS BAY, OREGON.

ON JULY 10, 1972 AN ORDER OF THE HEARING OFFICER WAS ENTERED FINDING THE CLAIM COMPENSABLE. THE STATE ACCIDENT INSURANCE FUND REJECTED THAT ORDER AND A MEDICAL BOARD OF REVIEW WAS CONVENED TO CONSIDER THE APPEAL.

ON APRIL 3, 1973, THE MEDICAL BOARD OF REVIEW FILED FINDINGS SUPPLEMENTED BY A NARRATIVE REPORT, WHICH DID NOT, IN THE JUDGMENT OF THE WORKMEN'S COMPENSATION BOARD, ADEQUATELY DETERMINE THE ISSUE.

THE WORKMEN'S COMPENSATION BOARD PRESENTED A SUPPLEMENTAL QUESTION TO THE MEDICAL BOARD OF REVIEW AND THE SUPPLEMENTAL FINDINGS HAVE NOW BEEN RECEIVED.

A MAJORITY OF THE MEDICAL BOARD OF REVIEW HAS CONCLUDED, AS DID THE HEARING OFFICER, THAT CLAIMANT SUFFERS A COMPENSABLE OCCUPATIONAL DISEASE.

PURSUANT TO ORS 656.814, THE FINDINGS, SUPPLEMENTAL FINDINGS AND ASSOCIATED NARRATIVE REPORTS, ARE ATTACHED HERETO AS EXHIBIT A. SAID FINDINGS AND REPORTS ARE DECLARED FINAL AS FILED AS OF THE DATE OF THIS ORDER.

SAIF CLAIM NO. A 931351 JUNE 27, 1973

SHERIDAN GRAVES, CLAIMANT
HOLT AND HAIRE, CLAIMANT'S ATTYS.
OWN MOTION ORDER

CLAIMANT REQUESTS THE BOARD, ON ITS OWN MOTION, TO ORDER THE STATE ACCIDENT INSURANCE FUND TO PROVIDE HIM FURTHER MEDICAL CARE AND COMPENSATION.

IN SUPPORT OF THAT REQUEST HE HAS FURNISHED AFFIDAVITS OF HIMSELF AND HIS WIFE AND MEDICAL REPORTS FROM VARIOUS PHYSICIANS WHICH SUGGEST, BUT DO NOT FULLY ESTABLISH, THAT HE IS ENTITLED TO RELIEF.

THE BOARD BELIEVES FURTHER INQUIRY INTO CLAIMANT'S PHYSICAL AND PSYCHOLOGICAL CONDITION SHOULD BE CONDUCTED BEFORE RULING FINALLY ON CLAIMANT'S REQUEST.

ORDER

IT IS THEREFORE ACCORDINGLY ORDERED THAT THE STATE ACCIDENT INSURANCE FUND IMMEDIATELY ARRANGE PHYSICAL AND PSYCHIATRIC EXAMINATIONS OF THE CLAIMANT, AT ITS EXPENSE, AND SUBMIT THE FINDINGS THEREON TO THE WORKMEN'S COMPENSATION BOARD FOR ITS FURTHER CONSIDERATION IN THIS MATTER.

IN THE EVENT CLAIMANT AND THE FUND CANNOT MUTUALLY AGREE UPON THE PHYSICIANS CHOSEN TO EXAMINE CLAIMANT, THE WORKMEN'S COMPENSATION BOARD WILL SELECT THEM.

WCB CASE NO. 72-1604 JULY 5, 1973

GEORGE PARKS, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER CONTENDING HE ERRED IN ALLOWING TEMPORARY TOTAL DISABILITY FOR THE PERIOD MARCH 24, 1971 TO JUNE 2, 1971.

DISCUSSION

THE BOARD AGREES WITH THE FUND'S CONTENTION THAT THE EVIDENCE FAILS TO ESTABLISH CLAIMANT'S ENTITLEMENT TO TEMPORARY TOTAL DISABILITY. ADMITTEDLY HE WAS NOT WORKING DURING THE PERIOD IN QUESTION, BUT HE HAS NOT ESTABLISHED THAT HE COULD NOT WORK DURING THE PERIOD DUE TO THE COMPENSABLE AGGRAVATION IN QUESTION.

THE HEARING OFFICER'S ORDER SHOULD BE MODIFIED ACCORDINGLY.

ORDER

THE HEARING OFFICER'S ORDER ALLOWING TEMPORARY TOTAL DISABILITY FOR THE PERIOD MARCH 24, 1971 THROUGH JUNE 2, 1971, TOGETHER WITH ADDITIONAL COMPENSATION EQUAL TO 25 PERCENT OF SUCH TEMPORARY TOTAL DISABILITY, IS HEREBY REVERSED.

THE ORDER IS AFFIRMED IN ALL OTHER RESPECTS.

WCB CASE NO. 71-2531 JULY 9, 1973

FRED M. KELLEY, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON JUNE 28, 1973, THE BOARD ISSUED ITS ORDER FILING FINDINGS OF THE MEDICAL BOARD OF REVIEW WITHOUT AN ALLOWANCE OF ATTORNEY FEES. THE REJECTION OF THE HEARING OFFICER'S ORDER WAS FILED BY THE STATE ACCIDENT INSURANCE FUND AND THE MEDICAL BOARD OF REVIEW UPHELD THE HEARING OFFICER'S ORDER. CLAIMANT IS THUS ENTITLED TO HAVE HIS ATTORNEY'S FEE RELATING TO THE MEDICAL BOARD OF REVIEW PROCEEDING, PAID BY THE STATE ACCIDENT INSURANCE FUND.

THE BOARD NOW BEING FULLY ADVISED HEREBY ORDERS THE STATE ACCIDENT INSURANCE FUND TO PAY CLAIMANT'S ATTORNEYS POZZI, WILSON AND ATCHISON THE SUM OF THREE HUNDRED DOLLARS AS A REASONABLE ATTORNEYS FEE, SAID FEE TO BE PAID IN THE ADDITION TO AND NOT OUT OF THE CLAIMANT'S COMPENSATION.

WCB CASE NO. 71-1752 JULY 9, 1973

HOLLIS H. COURT, CLAIMANT

EDWIN A. YORK, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

ON APRIL 10, 1972, THE BOARD ENTERED ITS ORDER REMANDING THIS CASE TO A MEDICAL BOARD OF REVIEW AS AN OCCUPATIONAL DISEASE PROCEEDING. THEREAFTER THAT ORDER WAS APPEALED TO THE CIRCUIT COURT FOR MULTNOMAH COUNTY ON CLAIMANT'S CONTENTION THAT THIS WAS NOT AN OCCUPATIONAL DISEASE CASE BUT ONE OF INDUSTRIAL INJURY. ON FEBRUARY 23, 1973, THE CIRCUIT COURT OF MULTNOMAH COUNTY BY A NUNC PRO TUNC ORDER AS OF JUNE 22, 1972 AFFIRMED CLAIMANT'S CONTENTION AND REMANDED THE CASE TO THE BOARD FOR DETERMINATION AS AN INDUSTRIAL INJURY CASE. THIS ORDER WAS NOT CALLED TO THE BOARD'S ATTENTION UNTIL A SHORT TIME AGO.

IN RESPONSE TO THAT ORDER THE BOARD IS ACCEPTING JURISDICTION OF THE CASE, HOWEVER, IN ITS ORDER OF REMAND OF APRIL 10, 1972, THE BOARD NOTED THAT THE LATEST MEDICAL REPORTS IN THIS FILE WERE IN NOVEMBER OF 1970. THE BOARD THEN, IN THAT ORDER, DIRECTED THAT ADDITIONAL PHYSICAL TESTS BE CONDUCTED. THE NEED FOR MORE RECENT MEDICAL REVIEW IS NOW EVEN MORE APPARENT.

IT IS, THEREFORE, ORDERED THAT THIS CASE BE REMANDED TO THE HEARINGS DIVISION FOR THE RECEIPT OF ADDITIONAL MEDICAL TESTIMONY AND FOR SUCH OTHER EVIDENCE AS MAY BE PERTINENT TO SUCH MEDICAL TESTIMONY. UPON RECEIPT OF SUCH MEDICAL OR OTHER EVIDENCE, THE HEARINGS DIVISION SHALL MAKE FINDINGS OF FACT IN RESPECT THERETO AND REPORT THE SAME TO THE BOARD.

WCB CASE NO. 73-475 JULY 9, 1973

WALLACE SCOTT, CLAIMANT

FLAXEL, TODD AND FLAXEL, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

A REQUEST FOR REVIEW, HAVING BEEN DULY FILED WITH THE WORKMEN'S COMPENSATION BOARD IN THE ABOVE-ENTITLED MATTER, AND SAID REQUEST FOR REVIEW NOW HAVING BEEN WITHDRAWN BY CLAIMANT'S COUNSEL,

IT IS THEREFORE ORDERED THAT THE REVIEW NOW PENDING BEFORE THE BOARD IS HEREBY DISMISSED AND THE ORDER OF THE HEARING OFFICER IS FINAL BY OPERATION OF LAW.

WCB CASE NO. 73-932 JULY 9, 1973

APOLINAR CAMARILLO, CLAIMANT

HOWARD J. SCOTT, CLAIMANT'S ATTY.
COLLINS, FERRIS AND VELURE, DEFENSE ATTYS.
ORDER ON MOTION

THE CLAIMANT SUFFERED A COMPENSABLE INJURY ON AUGUST 6, 1971 AND THE CLAIM WAS CLOSED ON MARCH 6, 1973, WITH AN AWARD OF 10 PERCENT UNSCHEDULED MID-BACK DISABILITY EQUAL TO 32 DEGREES.

CLAIMANT, THROUGH HIS ATTORNEY, MR. HOWARD J. SCOTT, OF SAN DIEGO, CALIFORNIA, REQUESTED A HEARING, ASKING THAT IT BE HELD IN SAN DIEGO, CALIFORNIA, DUE TO THE FACT THE CLAIMANT NOW LIVES IN BAJA CALIFORNIA, MEXICO. MR. SCOTT ASSOCIATED AN OREGON ATTORNEY, MR. MICHAEL BRIAN, OF MEDFORD, OREGON, IN THIS MATTER. ON JUNE 15, 1973, MR. BRIAN FILED A MOTION WITH THE BOARD REQUESTING AN ORDER REFERRING THIS MATTER TO THE WORKMEN'S COMPENSATION APPEALS BOARD OF CALIFORNIA FOR HEARING. ON JUNE 19, 1973, MR. LYLE VELURE, ON BEHALF OF THE EMPLOYER AND ITS CARRIER, OBJECTED TO MR. BRIAN'S MOTION ON THE GROUNDS THAT OREGON STATUTES DO NOT AUTHORIZE SUCH A REFERRAL.

WHILE THE STATUTE IS SILENT ON THE SPECIFIC POINT, THE BOARD HAS GENERAL POWER TO ADMINISTER THE WORKMEN'S COMPENSATION LAW WHICH INCLUDES THE POWER TO ORDER AN OUT OF STATE HEARING IN AN APPROPRIATE CASE. AS A GENERAL RULE A HEARING SHOULD BE BEFORE AN OREGON HEARING OFFICER BUT IN EXCEPTIONAL CASES THE RULE MUST BE VARIED IN ORDER TO PROTECT THE RIGHTS OF A PARTY.

IN THE CIRCUMSTANCES OF THIS CASE IT IS APPARENT THAT IF CLAIMANT IS REQUIRED TO RETURN TO OREGON AT HIS OWN EXPENSE IT

WOULD, IN EFFECT, DENY HIM THE RIGHT TO A HEARING. IN THE BOARD'S OPINION, THIS JUSTIFIES AN OUT OF STATE HEARING.

IF THE EMPLOYERS' INSURER, INDUSTRIAL INDEMNITY, WISHES TO PAY CLAIMANT'S TRAVEL EXPENSES TO AND FROM MEDFORD, A HEARING WILL BE SCHEDULED IN THAT CITY. IF THE INSURER DOES NOT AGREE TO THAT ARRANGEMENT WITHIN FIFTEEN DAYS OF THIS ORDER, THE HEARINGS DIVISION IS INSTRUCTED TO ARRANGE A HEARING BEFORE THE WORKMEN'S COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA AND REQUEST THAT A TRANSCRIPT BE PREPARED AND SENT TO THE HEARINGS DIVISION OF THE OREGON WORKMEN'S COMPENSATION BOARD. THE HEARINGS DIVISION WILL THEREAFTER, IF THE EMPLOYER DESIRES, SET A SECOND HEARING IN MEDFORD FOR INTRODUCTION OF ANY TESTIMONY OR EVIDENCE NOT TAKEN IN THE CALIFORNIA HEARING.

THIS IS AN INTERIM ORDER AND NO APPEAL RIGHTS APPLY HERETO.

WCB CASE NO. 72-2676 JULY 10, 1973

WILLIAM SMITH, CLAIMANT
O. W. GOAKEY, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH REMANDED THE CLAIMANT'S CLAIM TO THE FUND FOR PAYMENT OF COMPENSATION.

ISSUE

HAS CLAIMANT SUFFERED AN AGGRAVATION OF HIS COMPENSABLE INJURY OF JULY 8, 1969?

DISCUSSION

AFTER REVIEWING THE RECORD DE NOVO, THE BOARD FINDS ITSELF IN COMPLETE AGREEMENT WITH THE FINDINGS AND CONCLUSIONS EXPRESSED IN THE HEARING OFFICER'S ORDER. HIS OPINION AND ORDER IS ADOPTED BY THE BOARD.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 3, 1973 IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-361 JULY 10, 1973

HOWARD MILLER, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER
CONTENDING HIS PERMANENT PARTIAL DISABILITY HAS WORSENERD MORE
THAN THE TEN PERCENT AWARDED BY THE HEARING OFFICER.

ISSUE

IS CLAIMANT ENTITLED TO INCREASED PERMANENT PARTIAL DIS-
ABILITY RESULTING FROM THE AGGRAVATION OF HIS COMPENSABLE INJURY?

DISCUSSION

TO ESTABLISH THE CLAIM FOR INCREASED COMPENSATION FOR
AGGRAVATION OF DISABILITY, THERE MUST BE AN AGGRAVATION OF THE
DISABILITY RESULTING FROM THE COMPENSABLE INJURY. THE HEARING
OFFICER FOUND AND THE BOARD AGREES, THAT WHILE THE EVIDENCE
INDICATES THAT CLAIMANT'S TOTAL PHYSICAL CONDITION MAY HAVE
WORSENERD, IT FAILS TO ESTABLISH THAT ALL OF HIS INCREASED DIS-
ABILITY RESULTS FROM HIS COMPENSABLE INJURY. ONLY A VERY MINIMAL
PART OF CLAIMANT'S INCREASED DISABILITY IS DIRECTLY RELATED TO THE
INDUSTRIAL INJURY.

THE BOARD THEREFORE CONCLUDES THAT THE ADDITIONAL AWARD OF
PERMANENT PARTIAL DISABILITY EQUAL TO TEN PERCENT LOSS OF AN ARM
BY SEPARATION FOR UNSCHEDULED DISABILITY IS JUST AND FAIR COMPENSA-
TION.

THE BOARD CONSIDERS THE HEARING OFFICER'S ANALYSIS OF THE
CASE BOTH THOROUGH AND COMPETENT AND HEREBY ADOPTS THE ORDER OF
THE HEARING OFFICER AS ITS OWN.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 15, 1973 IS
HEREBY AFFIRMED.

WCB CASE NO 72-1287 JULY 17, 1973

TERESA WILLIAMS, CLAIMANT

BABCOCK AND ACKERMAN, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
ORDER ON PETITION FOR RECONSIDERATION

THE CLAIMANT, THROUGH HER COUNSEL, HAS FILED A PETITION FOR
RECONSIDERATION OF THE WORKMEN'S COMPENSATION BOARD ORDER ON REVIEW
OF JUNE 19, 1973.

THE WORKMEN'S COMPENSATION BOARD HAS CONSIDERED THE MOTION AND THE ORDER IS DENIED.

ORDER

IT IS THEREFORE ORDERED THAT THE MOTION FOR RECONSIDERATION IS HEREBY DENIED.

WCB CASE NO. 72-1348 JULY 19, 1973

GLENN LITTEER, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER GRANTING HIM AN ADDITIONAL AWARD OF 48 PERCENT, RESULTING IN A TOTAL OF 80 PERCENT UNSCHEDULED LOW BACK DISABILITY, CONTENDING HIS DISABILITY EXCEEDS THAT AWARDED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HIS LOW BACK MAY 18, 1971, IN A FALLING INCIDENT. HIS INJURY WAS DIAGNOSED AS CHRONIC LUMBOSACRAL STRAIN WITH LEFT L5 NERVE ROOT IRRITATION.

A DETERMINATION ORDER OF APRIL 6, 1972 AWARDED CLAIMANT 32 DEGREES = 10 PERCENT = OF A MAXIMUM 320 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY WHICH, UPON HEARING, WAS INCREASED TO 80 DEGREES OR 25 PERCENT.

PHYSICAL LIMITATIONS ON HEAVY LIFTING OR REPETITIVE BENDING HAVE CREATED A POTENTIAL LOSS OF WAGE EARNING CAPACITY FOR THE CLAIMANT BUT THE INTELLECT POSSESSED BY CLAIMANT TENDS TO REDUCE THE DISABLING IMPACT OF THESE IMPAIRMENTS.

THE BOARD IS OF THE OPINION THAT, AS OF NOW, THE COMPENSATION AWARDED BY THE HEARING OFFICER, IS ADEQUATE. IN THE EVENT CLAIMANT'S DISABILITY STATUS REQUIRES FUTURE ATTENTION, THE BOARD CAN, PURSUANT TO ORS 656.271, GIVE FURTHER CONSIDERATION TO CLAIMANT'S NEED FOR COMPENSATION. IN THE MEANTIME, THE BOARD CONCURS WITH THE FINDINGS OF THE HEARING OFFICER AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED FEBRUARY 21, 1973 IS HEREBY AFFIRMED.

JOHN E. NEUMILLER, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MCCOLLOCH, DEZENDORF, SPEARS AND LUBERSKY,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER GRANTING FURTHER MEDICAL CARE AND COMPENSATION TO CLAIMANT.

ISSUES

1. IS CLAIMANT IN NEED OF ADDITIONAL MEDICAL CARE AND TREATMENT?
2. IF NOT, WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?
3. IS DEFENDANT'S COUNSEL ENTITLED TO HAVE ATTORNEY FEES AND PENALTIES PAID BY THE EMPLOYER?

DISCUSSION

THE EMPLOYER'S BRIEF ON APPEAL ASSERTS THAT THE EVIDENCE DOES NOT JUSTIFY THE HEARING OFFICER'S ORDER REOPENING THIS CLAIM FOR FURTHER MEDICAL TREATMENT AND FOR THE PAYMENT OF OTHER COMPENSATION BENEFITS AS MAY BE INDICATED. THE EMPLOYER ALSO CHALLENGES THE AWARD OF ATTORNEY FEES TO CLAIMANT'S ATTORNEY IN THIS CASE.

AFTER REVIEWING THE RECORD DE NOVO AND STUDYING THE BRIEFS SUBMITTED, THE BOARD CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED NOVEMBER 7, 1972, IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS PAYABLE BY THE EMPLOYER FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-2418 JULY 19, 1973

CHARLES A. ANDERSON, CLAIMANT
KEITH D. SKELTON, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH SUSTAINED THE DENIAL OF HIS CLAIM FOR AGGRAVATION.

ISSUE

HAS CLAIMANT SUFFERED AN AGGRAVATION OF HIS COMPENSABLE INJURY?

DISCUSSION

THE LACK OF CONVINCING CORROBORATIVE MEDICAL REPORTS REGARDING THIS CLAIM HAS PLACED A SPECIAL BURDEN OF PROOF UPON CLAIMANT'S TESTIMONY. THE HEARING OFFICER IN THIS CASE FOUND CLAIMANT'S TESTIMONY TO BE INCONSISTENT AND INACCURATE.

THE CLAIMANT HAS THE BURDEN OF PROVING HIS CLAIM. WITH THE CLAIMANT'S CREDIBILITY DISCOUNTED, THERE REMAIN TOO MANY PERTINENT FACTS WHICH HAVE NOT BEEN ESTABLISHED WITH THE DEGREE OF PROOF ESSENTIAL TO CONCLUDE THAT A COMPENSABLE AGGRAVATION OCCURRED.

THE BOARD CONCURS WITH THE HEARING OFFICER THAT THE CLAIMANT HAS NOT CARRIED THE BURDEN OF ESTABLISHING A COMPENSABLE AGGRAVATION.

THE ORDER OF THE HEARING OFFICER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED FEBRUARY 27, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 72-3437 JULY 19, 1973
WCB CASE NO. 72-2155E JULY 19, 1973

GEORGE HANKS, CLAIMANT
ALLEN G. OWEN, CLAIMANT'S ATTY.
THWING, ATHERLY AND BUTLER, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER REMANDING THE CLAIM TO HIM FOR PAYMENT OF TEMPORARY TOTAL DISABILITY, MEDICAL BILLS AND CLAIMANT'S ATTORNEY FEES AS DIRECTED IN THE WORKMEN'S COMPENSATION BOARD'S OWN MOTION ORDER OF JUNE 14, 1972.

ISSUES

1. HAS CLAIMANT SUFFERED AN AGGRAVATION OF HIS COMPENSABLE INJURY?
2. IS THE DEFENDANT-EMPLOYER LIABLE FOR PENALTIES AND ATTORNEY FEES DUE TO ITS REFUSAL TO PAY COMPENSATION?

DISCUSSION

THE HEARING OFFICER'S ANALYSIS OF THE CASE IS BOTH THOROUGH AND COMPETENT AND THE BOARD HEREBY ADOPTS HIS ORDER AS ITS OWN.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 1, 1973 IS AFFIRMED.

SINCE THIS REQUEST FOR REVIEW WAS MADE BY THE EMPLOYER FROM AN ORDER ALLOWING BENEFITS, COUNSEL FOR CLAIMANT IS ALLOWED A REASONABLE ATTORNEY FEE IN THE AMOUNT OF TWO HUNDRED FIFTY DOLLARS, FOR SERVICES IN CONNECTION WITH AFFIRMING THE ORDER OF THE HEARING OFFICER FROM THIS APPEAL BY THE EMPLOYER.

WCB CASE NO. 72-865 JULY 19, 1973
WCB CASE NO. 72-1970 JULY 19, 1973

ELMER STOCKHAM, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF
CROSS-APPEAL BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH -1- IN WCB CASE NO. 72-865, ORDERED THE FUND TO REOPEN THE CLAIM OF SEPTEMBER 28, 1971 AND -2- IN WCB CASE NO. 72-1970, ORDERED ACCEPTANCE OF CLAIMANT'S CLAIM FOR A MYOCARDIAL INFARCTION OCCURRING MAY 19, 1972.

CLAIMANT CROSS-APPEALED, SEEKING PENALTIES ASSESSED AGAINST THE STATE ACCIDENT INSURANCE FUND.

ISSUE

1. IS CLAIMANT ENTITLED TO THE REOPENING OF HIS SEPTEMBER 28, 1971 CLAIM?
2. DID CLAIMANT SUSTAIN A COMPENSABLE INJURY ON MAY 19, 1972?
3. IS CLAIMANT ENTITLED TO ADDITIONAL COMPENSATION UNDER ORS 656.262 - 8?

DISCUSSION

THIS MATTER INVOLVES TWO DENIED CASES WHICH WERE CONSOLIDATED FOR HEARING. ON SEPTEMBER 28, 1971 CLAIMANT SUFFERED A HEART

ATTACK AFTER BEING INVOLVED IN A DRAMATIC RUNAWAY CAR ACCIDENT. THE INJURY SUSTAINED WAS ACCEPTED BY THE STATE ACCIDENT INSURANCE FUND AS A COMPENSABLE INJURY. HOWEVER, LIABILITY FOR TEMPORARY TOTAL DISABILITY AND CERTAIN MEDICAL CARE RENDERED TO THE CLAIMANT AFTER CLAIM CLOSURE WAS DENIED BY THE STATE ACCIDENT INSURANCE FUND.

THE SECOND DENIAL INVOLVED ANOTHER HEART ATTACK SUFFERED ON MAY 19, 1972.

THE BOARD'S REVIEW OF THE MEDICAL EVIDENCE CLEARLY ESTABLISHES A CAUSAL RELATIONSHIP BETWEEN THE NEED FOR THE CLAIMANT'S ADDITIONAL MEDICAL CARE AND TIME LOSS AND THE SEPTEMBER 28, 1971 INJURY AND ALSO BETWEEN CLAIMANT'S WORK AND THE HEART ATTACK OF MAY 19, 1972. AT THE TIME OF THE DENIALS, HOWEVER, THE EVIDENCE WAS NOT SO CLEAR THAT THE STATE ACCIDENT INSURANCE FUND DENIALS COULD BE CHARACTERIZED AS UNREASONABLE RESISTANCE OR REFUSAL TO THE PAYMENT OF COMPENSATION. THUS, PENALTIES SHOULD NOT BE ASSESSED AGAINST THE STATE ACCIDENT INSURANCE FUND.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 30, 1972 IS AFFIRMED IN ALL RESPECTS.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-84 JULY 19, 1973

PHILIP D. HAY, CLAIMANT
ROY KILPATRICK, ATTORNEY FOR CLAIMANT
MIZE, KRIESIEN, FEWLESS, CHENEY AND
KELLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

A DETERMINATION ORDER, MADE PURSUANT TO ORS 656.268, AWARDED THIS CLAIMANT A PERMANENT PARTIAL DISABILITY AWARD EQUAL TO =

80 DEGREES = UNSCHEDULED LOW BACK DISABILITY
33 DEGREES = LOSS OF EARNING CAPACITY
38 DEGREES = RIGHT ARM DISABILITY
30 DEGREES = RIGHT LEG DISABILITY

AT THE HEARING, THE HEARING OFFICER AFFIRMED THIS AWARD WITH ONE EXCEPTION. HE CONCLUDED THE 33 DEGREE AWARDED FOR LOSS OF EARNING CAPACITY, IN LIGHT OF THE SURRETT AND FOSTER DECISIONS, SHOULD BE AWARDED INSTEAD FOR UNSCHEDULED DISABILITY AFFECTING THE RIGHT SHOULDER AND HE SO ORDERED.

THE CLAIMANT REQUESTS BOARD REVIEW, CONTENDING HE IS PERMANENTLY AND TOTALLY DISABLED.

THERE IS NO QUESTION THAT THIS CLAIMANT SUSTAINED A SERIOUS COMPENSABLE INJURY ON MARCH 4, 1969, WHILE WORKING AS A CARPENTER, WHEN A WALKWAY AT A MARINA COLLAPSED AND FELL UPON HIM.

CLAIMANT HAS BEEN SEEN BY VARIOUS DOCTORS INCLUDING ORTHOPEDISTS, A NEUROLOGIST, AND UNDERWENT EVALUATION AT THE BOARD'S PHYSICAL REHABILITATION CENTER. LOOKING OBJECTIVELY AT THE MEDICAL EVIDENCE, IT APPEARS CLAIMANT HAS MODERATE IMPAIRMENT AFTER A REASONABLY GOOD RECOVERY FROM A SERIOUS INJURY.

CLAIMANT HAS ASSETS WHICH PRECLUDE AN AWARD OF PERMANENT TOTAL DISABILITY. CLAIMANT IS 53 YEARS OF AGE, BUT HAS SUPERIOR INTELLIGENCE, A WIDE RANGE OF APTITUDES WHICH COULD BE DEVELOPED, AND AN INTEREST IN CATTLE RAISING AND BUYING, AN ACTIVITY IN WHICH HE IS PHYSICALLY AND MENTALLY ABLE TO ENGAGE.

NOTWITHSTANDING THESE ASSETS, THE BOARD FINDS THAT CLAIMANT DOES HAVE ADDITIONAL UNSCHEDULED DISABILITY AND HEREBY AWARDS TO CLAIMANT AN ADDITIONAL 79 DEGREES, MAKING A TOTAL AWARD OF 192 DEGREES FOR UNSCHEDULED DISABILITIES. IN ALL OTHER RESPECTS, THE ORDER OF THE HEARING OFFICER IS AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 11, 1972, AS MODIFIED ABOVE, IS AFFIRMED.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE, 25 PERCENT OF THE INCREASE IN COMPENSATION ASSOCIATED WITH THIS AWARD WHICH COMBINED WITH FEES ATTRIBUTABLE TO THE ORDER OF THE HEARING OFFICER SHALL NOT EXCEED FIFTEEN HUNDRED DOLLARS.

WCB CASE NO. 71-332 JULY 19, 1973

BESSIE F. WHITNEY, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER SUSTAINING A DENIAL OF HER AGGRAVATION CLAIM.

ISSUE

HAS CLAIMANT SUSTAINED A COMPENSABLE AGGRAVATION?

DISCUSSION

THE BRIEFS OF THE PARTIES DEALT MOSTLY WITH THE OPINIONS OF DR. GRISWOLD AND LANCEFIELD. THE BOARD HAS NOT IGNORED THESE OPINIONS AND THE RELATED ARGUMENTS BUT UPON ITS OWN DE NOVO REVIEW IT CONCLUDES THE OPINION OF DR. CHARLES CAMPBELL SHOULD BE ADOPTED. HIS REPORTS REVEAL AN OPINION BASED UPON A LONG TERM

FIRST HAND KNOWLEDGE OF THE CLAIMANT'S PROBLEM AND A VERY CAREFUL CONSIDERATION OF THE QUESTION WHICH MAKES HIS CONCLUSION THAT THERE IS A CAUSAL CONNECTION, HIGHLY PERSUASIVE TO THE BOARD. THUS, THE CLAIMANT'S CLAIM SHOULD BE ALLOWED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 19, 1972, DENYING CLAIMANT'S REQUEST FOR INCREASED COMPENSATION FOR AGGRAVATION OF HER COMPENSABLE INJURY, IS HEREBY REVERSED AND THE CLAIM IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR ACCEPTANCE AND PAYMENT OF BENEFITS UNTIL THE CLAIM IS AGAIN CLOSED PURSUANT TO ORS 656.268.

CLAIMANT'S COUNSEL IS AWARDED FIFTEEN HUNDRED DOLLARS FOR SERVICES AT THE HEARING AND UPON THIS REVIEW, SAID FEE TO BE PAID BY THE STATE ACCIDENT INSURANCE FUND IN ADDITION TO AND NOT OUT OF THE COMPENSATION AWARDED TO THE CLAIMANT.

WCB CASE NO. 72-1503 JULY 19, 1973

ELMER L. STOCKER, DECEASED
SUSAK AND LAWRENCE, BENEFICIARIES' ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER FINDING THE DECEDENT'S BENEFICIARIES ENTITLED TO WORKMEN'S COMPENSATION BENEFITS.

ISSUE

DID DECEDENT'S DEATH ARISE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT?

DISCUSSION

THE HEARING OFFICER ACCEPTED THE THEORY OF CAUSAL CONNECTION PROPOUNDED BY DR. GRISWOLD FINDING IT MORE PERSUASIVE THAN THAT OFFERED BY DR. ROGERS. UPON ITS OWN DE NOVO REVIEW, THE BOARD ALSO FINDS DR. GRISWOLD'S THEORY MOST ACCEPTABLE FOR THE REASONS STATED BY THE HEARING OFFICER IN HIS ANALYSIS. THUS, THE ORDER OF THE HEARING OFFICER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 2, 1972, IS HEREBY AFFIRMED.

COUNSEL FOR BENEFICIARIES IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE AMOUNT OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND FOR SERVICES IN CONNECTION WITH THIS REVIEW.

WCB CASE NO. 72-451 JULY 19, 1973

STANLEY KILBURN, CLAIMANT
L. M. GIOVANINI, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

BASED ON DEVELOPMENTS SUBSEQUENT TO THE HEARING, CLAIMANT REQUESTS THE MATTER BE REMANDED TO THE HEARING OFFICER TO DETERMINE WHETHER THERE IS ANY CONNECTION BETWEEN HIS COMPENSABLE INJURY AND A TISSUE MASS DISCOVERED DURING A RECENT SURGERY. IN THE ALTERNATIVE, HE REQUESTS AN AWARD OF PERMANENT TOTAL DISABILITY BASED ON THE RECORD MADE.

DISCUSSION

THE CLAIMANT'S REQUEST FOR REMAND MUST BE DENIED. THE CONDITION RECENTLY DISCOVERED HAS NO INHERENT LIKELIHOOD OF CONNECTION AND THE RECORD IS, OF COURSE, TOTALLY DEVOID OF ANY EVIDENCE SUGGESTING A CONNECTION. THE CLAIMANT HAS THE BURDEN OF ESTABLISHING THE DESIRABILITY OR NECESSITY OF REMANDING THE CASE AND THAT BURDEN HAS NOT BEEN MET.

ON THE ISSUE OF EXTENT OF DISABILITY, THE BOARD CONCLUDES FROM ITS REVIEW OF THE RECORD AND THE BRIEFS SUBMITTED ON APPEAL, THAT THE AWARD ESTABLISHED BY THE HEARING OFFICER IS ADEQUATE.

ORDER

CLAIMANT'S REQUEST FOR REMAND IS DENIED AND THE HEARING OFFICER'S ORDER OF DECEMBER 20, 1972 IS AFFIRMED.

WCB CASE NO. 72-930 JULY 19, 1973

ALVIN C. JAMES, CLAIMANT
SOLOMON, WARREN AND KILLEEN, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW OF A HEARING OFFICER'S ORDER GRANTING CLAIMANT PERMANENT TOTAL DISABILITY CONTENDING CLAIMANT SUFFERS ONLY PARTIAL SCHEDULED DISABILITY NOT UNSCHEDULED PERMANENT TOTAL DISABILITY AS BOTH A MATTER OF LAW AND A MATTER OF FACT.

ISSUE

WHAT IS THE NATURE AND EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

THE HEARING OFFICER DEALT PROPERLY WITH THE LEGAL CONTENTIONS RAISED AND CORRECTLY CONCLUDED CLAIMANT HAS UNSCHEDULED AS WELL AS SCHEDULED DISABILITY WHICH RENDERS THE CLAIMANT PERMANENTLY TOTALLY DISABLED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED NOVEMBER 28, 1972, IS HEREBY AFFIRMED.

CLAIMANT'S ATTORNEY IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 71-1704 JULY 19, 1973

MEREDITH S. STOVALL, CLAIMANT
MITCHELL CREW, CLAIMANT'S ATTY.
KEITH SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

EMPLOYER REQUESTS REVIEW OF A HEARING OFFICER'S ORDER ALLOWING CLAIMANT ADDITIONAL COMPENSATION CONTENDING -

1. THE HEARING OFFICER EXCEEDED HIS POWERS PROCEDURALLY, AND,
2. THERE IS INSUFFICIENT MEDICAL EVIDENCE OF A CONNECTION BETWEEN THE ORIGINAL COMPENSABLE ACCIDENT AND THE SUBSEQUENT INJURY.

DISCUSSION

THE RECORD REVEALS THAT AT THE OUTSET OF THE HEARING, THE PARTIES WERE UNCERTAIN OF THE LEGAL POSTURE OF THE CASE THEY WERE ABOUT TO PRESENT TO THE HEARING OFFICER. AFTER AN INITIAL INQUIRY THE HEARING OFFICER, IN KEEPING WITH THE SPIRIT OF ORS 656.283 - 6, APPLIED A THEORY AND PROCEDURE WHICH PROTECTED BOTH PARTIES' RIGHTS. THE AGGRAVATION PROCEDURE ADOPTED BY THE HEARING OFFICER WAS CONSISTENT WITH LARSON V. SCD, 251 OR 478 1968.

IN VOLUME 1, (13.12) OF LARSON'S WORKMEN'S COMPENSATION LAW, PROFESSOR LARSON FULLY DISCUSSES THE COMPENSABLE CONSEQUENCES PROBLEM WHICH THIS CASE PRESENTS. THE GENERAL RULE SET FORTH IS THAT COMPENSATION IS GENERALLY ALLOWED FOR FALLS ATTRIBUTABLE TO A COMPENSABLY INJURED ANKLE, KNEE OR LEG. IN ADDITION, EVEN IF THE EMPLOYMENT WEAKENED MEMBER DOES NOT ACTUALLY CAUSE THE SUBSEQUENT ACCIDENT, IT GENERALLY RENDERS THE RESULTS OF THAT ACCIDENT COMPENSABLE IF THE WEAKNESS MADE THE LIMB MORE SUSCEPTIBLE TO REFRACTURE.

THUS, BOTH THE LAW AND THE EVIDENCE CLEARLY SUPPORT THE HEARING OFFICER'S CONCLUSION THAT THE EMPLOYER IS LIABLE FOR THE SECOND FRACTURE AND HIS ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 17, 1972 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-2702 JULY 19, 1973

CHESTER STAPLES, CLAIMANT
BURNS AND EDWARDS, CLAIMANT'S ATTYS.
MCMENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED A DETERMINATION ORDER AWARDING COMPENSATION FOR UNSCHEDULED PERMANENT PARTIAL DISABILITY EQUAL TO 32 DEGREES.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT, A 37 YEAR OLD YARDMAN, SUSTAINED A COMPENSABLE BACK INJURY WHEN HE FELL FROM A RAILROAD CAR ON NOVEMBER 6, 1971.

HE HAS CURRENTLY RETURNED TO HIS FORMER OCCUPATION, HOWEVER, HE OFTEN EXPERIENCES PAIN WHEN DOING TOO MUCH HEAVY LIFTING OR REPETITIVE BENDING.

AFTER REVIEWING THE RECORD BEFORE THEM, THE BOARD CONCURS WITH THE HEARING OFFICER'S FINDING THAT CLAIMANT'S PERMANENT PARTIAL DISABILITY DOES NOT EXCEED THAT AWARDED BY THE DETERMINATION ORDER.

THE ORDER OF THE HEARING OFFICER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 5, 1973 IS AFFIRMED.

WCB CASE NO. 72-2089 JULY 19, 1973

CECIL E. DAVIS, CLAIMANT
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER DISMISSING HIS REQUEST FOR HEARING ON THE GROUNDS THAT CLAIMANT FAILED TO TIMELY REQUEST A HEARING.

ISSUE

IS CLAIMANT'S CLAIM BARRED FOR FAILURE TO TIMELY REQUEST A HEARING WITHIN 60 DAYS OR 180 DAYS OF THE DENIAL OF HIS CLAIM?

DISCUSSION

CLAIMANT FILED AN 801 REPORT OF INJURY ON DECEMBER 5, 1969. THIS CLAIM WAS DENIED BY THE STATE ACCIDENT INSURANCE FUND ON JANUARY 8, 1970. A REQUEST FOR HEARING WAS NOT RECEIVED FROM CLAIMANT UNTIL JULY 31, 1972. A MOTION TO DISMISS WAS THEN RECEIVED FROM THE STATE ACCIDENT INSURANCE FUND CONTENDING CLAIMANT FAILED TO APPEAL THE DENIAL WITHIN THE 60 DAYS ALLOWED BY LAW. (ORS 656.319) (2) (A).

A CONFERENCE WAS SCHEDULED IN JANUARY, 1973, HOWEVER, CLAIMANT FAILED TO APPEAR OR TO CONTACT THE HEARING OFFICER REGARDING ANY REASONS FOR HIS NOT ATTENDING. A SHOW CAUSE ORDER WAS ISSUED BY THE HEARING OFFICER AND THE ONLY MEDICAL REPORT SUBMITTED DID NOT SUPPORT ANY KIND OF HEARINGS ACTION.

THE BOARD AGREES WITH THE HEARING OFFICER'S RULING THAT CLAIMANT'S CLAIM IS BARRED BY FAILURE TO TIMELY REQUEST A HEARING ON THE DENIAL OF HIS CLAIM.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 20, 1973 DISMISSING CLAIMANT'S REQUEST FOR HEARING IS AFFIRMED.

WCB CASE NO. 73-1209 JULY 20, 1973

JIM M. DOZIER, CLAIMANT
BOURNE AND PELAY, JR., CLAIMANT'S ATTYS.
MCMENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTYS.
ORDER

THE BOARD HAS CONSIDERED CLAIMANT'S AMENDED REQUEST FOR BOARD REVIEW WHICH IS, IN EFFECT, A MOTION FOR REMAND.

THE AFFIDAVIT OF CLAIMANT'S ATTORNEY STATING THE CONCLUSION THAT DUE DILIGENCE HAD BEEN EXERCISED TO LOCATE WITNESSES PRIOR

TO THE HEARING IS INSUFFICIENT AS A STATEMENT OF FACTS TO MEET THE REQUIREMENTS OF THE OREGON LAW FOR A NEW TRIAL.

THE SPECULATIVE NATURE OF THE PROPOSED EVIDENCE IS ALSO INSUFFICIENT TO JUSTIFY THE BOARD AUTHORIZING FURTHER HEARING.

WCB CASE NO. 72-73 JULY 20, 1973

ROBERT H. ALLMAN, CLAIMANT
LARKIN, BRYAND AND EDMONDS, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

ON APRIL 12, 1973, THE BOARD AFFIRMED ON REVIEW, A HEARING OFFICER'S ORDER FINDING THE PERIOD DURING WHICH CLAIMANT COULD REQUEST FURTHER COMPENSATION AS A MATTER OF RIGHT, HAD EXPIRED. HOWEVER, IN THAT SAME ORDER THE BOARD NOTIFIED THE PARTIES IT INTENDED TO CONSIDER CLAIMANT'S COMPANION REQUEST FOR IT'S OWN MOTION'S RELIEF. ADDITIONAL INFORMATION WAS SOLICITED FROM THE PARTIES.

PURSUANT THERETO CLAIMANT FURNISHED THE REPORT OF DR. JOHN P. CARROLL DATED JUNE 5, 1973.

THE WORKMEN'S COMPENSATION BOARD RECORDS IN WCB CASE NO. 72-73 AND THE REPORT OF DR. CARROLL DATED JUNE 5, 1973, CLEARLY ESTABLISH THAT CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED AS A DIRECT RESULT OF HIS COMPENSABLE INJURY OF NOVEMBER 8, 1965.

ORDER

THE CLAIMANT IS HEREBY AWARDED COMPENSATION FOR PERMANENT TOTAL DISABILITY TO COMMENCE AS OF THE DATE OF THIS ORDER.

CLAIMANT'S ATTORNEY IS ENTITLED TO 25 PERCENT OF THE COMPENSATION GRANTED HEREBY BUT IN NO EVENT SHALL THE FEE EXCEED FIFTEEN HUNDRED DOLLARS.

NOTICE OF APPEAL

PURSUANT TO ORS 656.278 -

THE CLAIMANT HAS NO RIGHT TO A HEARING, REVIEW OR APPEAL ON THIS AWARD MADE BY THE BOARD ON ITS OWN MOTION.

THE STATE ACCIDENT INSURANCE FUND MAY REQUEST A HEARING ON THIS ORDER.

THIS ORDER IS FINAL UNLESS WITHIN 30 DAYS FROM THE DATE HEREOF THE STATE ACCIDENT INSURANCE FUND APPEALS THIS ORDER BY REQUESTING A HEARING.

SAIF CLAIM NO. A 121850 JULY 23, 1973

ELMER F. HAAB, CLAIMANT
OWN MOTION ORDER

THIS MATTER IS BEFORE THE WORKMEN'S COMPENSATION BOARD UPON REQUEST OF CLAIMANT THAT THE BOARD EXERCISE ITS CONTINUING JURISDICTION UNDER OWN MOTION POWER GRANTED PURSUANT TO ORS 656.278.

ACCORDING TO THE RECORDS OF THE STATE ACCIDENT INSURANCE FUND, MR. HAAB SUSTAINED A FRACTURE OF HIS RIGHT ANKLE ON FEBRUARY 11, 1949. HE LATER DEVELOPED A PHLEBITIS OF HIS LEFT LEG, A SUBSTANTIAL PERMANENT PARTIAL DISABILITY AWARD OF 20 PERCENT LOSS FUNCTION OF AN ARM FOR UNSCHEDULED DISABILITY, 60 PERCENT LOSS FUNCTION OF THE RIGHT FOOT AND 75 PERCENT LOSS FUNCTION OF THE LEFT LEG WAS MADE TO CLAIMANT AT THAT TIME.

BASED ON MEDICAL REPORTS BY DR. STAATZ AND DR. MUELLER, IT IS THE BOARD'S CONCLUSION THAT CLAIMANT'S PRESENT CONDITION CANNOT BE CAUSALLY RELATED TO HIS 1949 INJURY.

THE BOARD, THEREFORE DECLINES AT THIS TIME UPON THE STATE OF THE RECORD TO EXERCISE OWN MOTION JURISDICTION IN THE MATTER.

NO NOTICE OF APPEAL IS DEEMED APPLICABLE.

SAIF CLAIM NO. FA 735446 JULY 23, 1973

WILLIAM J. LISH, CLAIMANT
OWN MOTION ORDER

THIS MATTER IS BEFORE THE WORKMEN'S COMPENSATION BOARD UPON REQUEST OF CLAIMANT THAT THE BOARD EXERCISE ITS CONTINUING JURISDICTION UNDER OWN MOTION POWER GRANTED BY ORS 656.278.

ACCORDING TO THE RECORDS OF THE STATE ACCIDENT INSURANCE FUND, CLAIMANT SUSTAINED AN INDUSTRIAL INJURY TO HIS LOW BACK MAY 13, 1959. THE INJURY APPEARS RELATIVELY MINOR WITH CLAIMANT OFF WORK FOR ONE WEEK AND RECEIVING CONSERVATIVE TREATMENT. AN INVESTIGATION REPORT OF DECEMBER, 1972, INDICATES CLAIMANT HAS HAD A NUMBER OF INCIDENTS SINCE THE 1959 ACCIDENT.

AT THIS TIME THERE IS INSUFFICIENT INFORMATION TO INDICATE THAT CLAIMANT'S PRESENT COMPLAINTS ARE THE RESULT OF HIS 1959 INJURY.

THE BOARD THEREFORE DECLINES AT THIS TIME UPON THE STATE OF THE RECORD TO EXERCISE OWN MOTION JURISDICTION IN THE MATTER.

NO NOTICE OF APPEAL IS DEEMED APPLICABLE.

WCB CASE NO. 72-699 JULY 23, 1973

ROBERT L. COOK, CLAIMANT

DWYER, JENSEN AND KULONGOSKI, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
ORDER FILING FINDINGS OF MEDICAL BOARD OF REVIEW

THE ABOVE ENTITLED MATTER WAS HERETOFORE THE SUBJECT OF A HEARING INVOLVING THE COMPENSABILITY OF A CLAIM FOR NERVOUS TENSION ALLEGEDLY ARISING OUT OF AND IN THE COURSE OF CLAIMANT'S EMPLOYMENT AS A FIREMAN FOR THE CITY OF EUGENE, OREGON.

ON AUGUST 10, 1972, AN ORDER OF THE HEARING OFFICER WAS ENTERED FINDING THE CLAIM TO BE COMPENSABLE.

THE ORDER OF THE HEARING OFFICER WAS REJECTED BY THE STATE ACCIDENT INSURANCE FUND THEREBY CONSTITUTING AN APPEAL TO THE MEDICAL BOARD OF REVIEW.

A MEDICAL BOARD OF REVIEW CONSISTING OF DRS. PAUL S. BASSFORD, LEW B. MYERS, AND DENNIS E. MCCAFFERTY WAS APPOINTED ON FEBRUARY 14, 1973. THE MEDICAL BOARD OF REVIEW HAS NOW PRESENTED ITS FINDINGS BY WAY OF THREE SEPARATE MEDICAL REPORTS.

IN AID OF THE RECORD, THE BOARD NOTES THAT THE MEDICAL BOARD OF REVIEW FINDS THAT THE CLAIMANT'S NERVOUS TENSION CONDITION IS COMPENSABLY RELATED TO HIS OCCUPATION THEREBY AFFIRMING THE ORDER OF THE HEARING OFFICER.

PURSUANT TO ORS 656.814, THE FINDINGS OF THE MEDICAL BOARD OF REVIEW, AFFIRMING THE ORDER OF THE HEARING OFFICER DATED AUGUST 10, 1972, WHICH REMANDED THE CLAIM TO THE STATE ACCIDENT INSURANCE FUND FOR ACCEPTANCE AND PAYMENT OF COMPENSATION FROM NOVEMBER 9, 1971, UNTIL CLOSURE IS AUTHORIZED PURSUANT TO ORS 656.268, IS AFFIRMED.

WCB CASE NO. 72-1280 JULY 24, 1973

FLOYD BREEDING, DECEASED

POZZI, WILSON AND ATCHISON, ATTYS. FOR BENEFICIARY
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY BENEFICIARY

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE BENEFICIARY REQUESTS REVIEW OF A HEARING OFFICER'S ORDER APPROVING THE DENIAL OF HER CLAIM FOR WIDOW'S BENEFITS.

ISSUE

DID DECEDENT'S DEATH ARISE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT?

DISCUSSION

IN HIS OPINION THE HEARING OFFICER STATED, 'THE BURDEN IS UPON THE CLAIMANT (DECEDENT'S BENEFICIARY) TO SHOW THE EXISTENCE

OF UNUSUAL WORK EFFORT OR UNUSUAL OR UNDUE STRESS.' STANDING ALONE, THE STATEMENT IS TOO BROAD TO BE AN ACCURATE EXPOSITION OF THE LAW. UNUSUAL WORK EFFORT OR STRESS IS NOT NECESSARY TO ESTABLISH CAUSATION LEGALLY. IT BECOMES GERMANE ORDINARILY ONLY IN CONSIDERING THE ISSUE OF MEDICAL CAUSATION. CODAY V. WILLAMETTE TUG AND BARGE COMPANY, 250 OR 39 (1968).

THE HEARING OFFICER DID, HOWEVER, APPLY THE LAW PROPERLY TO THE FACTS OF THIS CASE WHEN HE CONCLUDED MEDICAL CAUSATION HAD NOT BEEN ESTABLISHED BECAUSE THE EVIDENCE OF ANY UNUSUAL OR STRENUOUS WORK EFFORT WAS LACKING.

WITH THE EXCEPTION OF THE FINDING THAT DR. PARCHER'S OPINION WAS ALIGNED WITH THE OPINIONS OF DRs. UHLAND AND FORD, AND THE PREVIOUSLY MENTIONED STATEMENT ON CAUSATION, THE BOARD CONCURS IN THE HEARING OFFICER'S OPINION AND ADOPTS HIS ORDER AS ITS OWN.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 11, 1973 APPROVING THE DENIAL OF THE BENEFICIARY'S CLAIM, IS AFFIRMED.

WCB CASE NO. 72-1570 JULY 30, 1973

JOHN W. FRANCOEUR, CLAIMANT
BABCOCK AND ACKERMAN, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE BOARD HAS DEFERRED DECISION ON THIS CASE PENDING THE OUTCOME OF THE APPEAL NOW PENDING IN THE CIRCUIT COURT. WE ARE NOW INFORMED THAT THE APPEAL WILL NOT AFFECT THE ULTIMATE DECISION IN THIS CASE.

THE RECORD IN THIS CASE IS SO CONFUSING AND INDEFINITE THAT THE BOARD HAS DETERMINED THAT IT SHOULD NOT SECOND-GUESS THE HEARING OFFICER. THE SITUATION PRESENTED IS MUCH AKIN TO AN UN-SEGREGATED LIST OF LIENABLE AND UNLIENABLE ITEMS FOR NOTICE OF MECHANICS LIEN.

THE ORDER OF THE HEARING OFFICER IS THEREFORE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED NOVEMBER 6, 1972 IS AFFIRMED.

WCB CASE NO. 72-279 JULY 30, 1973

JESSIE POWERS, CLAIMANT

BABCOCK AND ACKERMAN, CLAIMANT'S ATTYS.
ROGER R. WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER DISMISSING HIS REQUEST FOR HEARING CONTENDING THE CARRIER'S WORKMEN'S COMPENSATION CERTIFICATE SHOULD BE REVOKED. HE ALSO SEEKS A BOARD RULING THAT THE EMPLOYER IMPROPERLY OFFSET SIX HUNDRED TWENTY ONE DOLLARS AND FORTY EIGHT CENTS.

DISCUSSION

THE BOARD CONCURS WITH THE HEARING OFFICER'S OPINION IN ALL RESPECTS AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 29, 1972, IS HEREBY AFFIRMED.

WCB CASE NO. 72-74 JULY 31, 1973

FRANKIE E. RENCKEN, CLAIMANT

COREY, BYLER AND REW, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS, WILSON, MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW OF A HEARING OFFICER'S ORDER CONTENDING THE HEARING OFFICER ERRED IN ALLOWING CLAIMANT COMPENSATION FOR PERMANENT TOTAL DISABILITY WHEN THE DISABILITY WAS LIMITED TO THE SCHEDULED MEMBERS OF THE BODY.

DISCUSSION

THE BOARD CONCLUDES THE HEARING OFFICER'S FINDINGS ARE CORRECT. A MAJORITY OF THE BOARD CONCLUDES HE ERRED IN HIS CONCLUSION THAT THE KAJUNDZICH AND JONES CASES ARE NOT APPLICABLE IN THE PRESENT CASE. THE MAJORITY IS UNABLE TO DISCERN ANY BASIS FOR DISTINGUISHING THE APPLICABILITY OF THOSE RULINGS. THUS, THE ORDER OF THE HEARING OFFICER ALLOWING PERMANENT TOTAL DISABILITY SHOULD BE REVERSED.

THE MAJORITY OF THE BOARD CONCURS WITH THE HEARING OFFICER'S FINDINGS THAT CLAIMANT HAS SUFFERED -

(1) 75 PERCENT LOSS FUNCTION OF THE LEFT LEG,

- (2) 10 PERCENT LOSS FUNCTION OF THE RIGHT LEG, AND
- (3) 10 PERCENT LOSS FUNCTION OF THE RIGHT FOREARM.

ORDER

THE ORDER OF THE HEARING OFFICER GRANTING CLAIMANT PERMANENT TOTAL DISABILITY IS HEREBY REVERSED.

CLAIMANT IS HEREBY AWARDED ADDITIONAL COMPENSATION EQUAL TO 49.5 DEGREES FOR SCHEDULED DISABILITY IN THE LEFT LEG MAKING A TOTAL OF 82.5 DEGREES OF A MAXIMUM OF 110 DEGREES (75 PERCENT) FOR SUCH DISABILITY.

CLAIMANT IS HEREBY ALSO AWARDED 11 DEGREES FOR PARTIAL LOSS OF THE RIGHT LEG MAKING A TOTAL AWARD OF 11 DEGREES (10 PERCENT) FOR PARTIAL LOSS OF THE RIGHT LEG.

THE AWARD OF 10 PERCENT OF THE RIGHT FOREARM (12 DEGREES) AS GRANTED BY THE DETERMINATION ORDER OF DECEMBER 28, 1971, IS HEREBY AFFIRMED.

CLAIMANT'S ATTORNEYS, COREY, BYLER AND REW, ARE ENTITLED TO RECEIVE 25 PERCENT OF THE INCREASED COMPENSATION MADE PAYABLE BY THIS ORDER, TO A MAXIMUM OF FIFTEEN HUNDRED DOLLARS PAYABLE FROM SAID AWARD, AS A REASONABLE ATTORNEYS FEE.

WCB CASE NO. 72-3247 JULY 31, 1973

MELVIN LEEDY, CLAIMANT
PAUL J. RASK, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
ORDER OF DISMISSAL

ON APRIL 16, 1973, CLAIMANT'S ATTORNEY REQUESTED REVIEW IN THE ABOVE ENTITLED CASE. HE WAS UNAWARE AT THE TIME THAT ON APRIL 9, 1973, CLAIMANT HAD APPLIED FOR A LUMP SUM PAYMENT OF HIS PERMANENT PARTIAL DISABILITY AWARD. THE APPLICATION WAS APPROVED APRIL 10, 1973.

PURSUANT TO ORS 656.304, CLAIMANT HAS THEREBY WAIVED HIS RIGHT TO APPEAL THE ORDER OF THE HEARING OFFICER.

CLAIMANT'S ATTORNEY ACKNOWLEDGES ON JUNE 27, 1973 THAT CLAIMANT'S REQUEST FOR REVIEW OUGHT TO BE DISMISSED.

THE BOARD BEING NOW FULLY ADVISED IN THE PREMISES HEREBY ORDERS THAT THE REQUEST FOR REVIEW FILED IN THE ABOVE ENTITLED MATTER BE, AND IS HEREBY DISMISSED.

NO NOTICE OF APPEAL IS DEEMED APPLICABLE.

KAREN L. BENT, CLAIMANT

COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

THIS MATTER IS BEFORE THE WORKMEN'S COMPENSATION BOARD UPON REQUEST OF CLAIMANT THAT THE BOARD EXERCISE ITS CONTINUING JURISDICTION UNDER OWN MOTION POWER GRANTED PURSUANT TO ORS 656.278.

THE BOARD IS IN RECEIPT OF MEDICAL REPORTS INDICATING THAT CLAIMANT'S ORIGINAL INJURY IS A MATERIAL CONTRIBUTING FACTOR TO CLAIMANT'S PRESENT CONDITION, AND THAT HER CLAIM SHOULD BE REOPENED ON THE BOARD'S OWN MOTION.

THE BOARD NOTES FOR THE RECORD THAT THE MARCH 27, 1973, LETTER FROM THE STATE ACCIDENT INSURANCE FUND DENYING RESPONSIBILITY IS NOT COMPLETELY ACCURATE. DR. DEGGE FUSED TWO LEVELS OF THE LUMBAR SPINE IN NOVEMBER OF 1972, THE L5-S1 INTERSPACE (WHERE A HERNIATED DISC SPACE WAS REMOVED BY DR. SERBU IN 1965), AND THE L4-5 INTER-SPACE WHICH APPARENTLY DEGENERATED BECAUSE OF THAT PREVIOUS SURGERY AND SUBSEQUENT CHANGES IN THE NORMAL ANATOMY. SYMPTOMS OF THIS ADVANCING CONDITION OF THE LUMBAR SPINE WERE NOTED BY THE PATIENT COMMENCING SHORTLY AFTER THE 1965 SURGERY.

BASED ON MEDICAL EVIDENCE AVAILABLE, THE BOARD CONCLUDES THE CLAIMANT'S CLAIM SHOULD BE REOPENED.

IT IS HEREBY ORDERED THAT THE CLAIM OF KAREN L. BENT BE REOPENED BY THE STATE ACCIDENT INSURANCE FUND FOR FURTHER NECESSARY CARE AND TREATMENT.

NOTICE OF APPEAL

PURSUANT TO ORS 656.278 -

THE CLAIMANT HAS NO RIGHT TO A HEARING, REVIEW OR APPEAL ON THIS AWARD MADE BY THE BOARD ON ITS OWN MOTION.

THE STATE ACCIDENT INSURANCE FUND MAY REQUEST A HEARING ON THIS ORDER.

THIS ORDER IS FINAL UNLESS WITHIN 30 DAYS FROM THE DATE HEREOF THE STATE ACCIDENT INSURANCE FUND APPEALS THIS ORDER BY REQUESTING A HEARING.

WCB CASE NO. 72-1832 JULY 31, 1973

ROBERT KYLE, CLAIMANT
PETERSON, CHAIVOE AND PETERSON,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF
CROSS APPEAL BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER GRANTING ADDITIONAL COMPENSATION FOR PERMANENT PARTIAL DISABILITY AFFECTING THE UPPER BACK AND LEFT ARM.

CLAIMANT SEEKS REVIEW CONTENDING HE IS ENTITLED TO AN AWARD OF PERMANENT TOTAL DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

AFTER HAVING REVIEWED THE RECORD AND CONSIDERED THE BRIEFS OF THE PARTIES SUBMITTED ON APPEAL, THE BOARD ADOPTS THE WELL WRITTEN OPINION AND ORDER OF THE HEARING OFFICER AS ITS OWN.

ORDER

THE ORDER OF THE HEARING OFFICER DATED NOVEMBER 22, 1972, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-2885 JULY 31, 1973

JAMES B. LEE, CLAIMANT
MARVIN S. NEPOM, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH UPHELD THE DENIAL OF HIS CLAIM FOR BENEFITS BY THE STATE ACCIDENT INSURANCE FUND.

ISSUE

DID CLAIMANT SUSTAIN A COMPENSABLE INDUSTRIAL INJURY WITHIN THE MEANING OF THE WORKMEN'S COMPENSATION LAW?

DISCUSSION

ON AUGUST 26, 1972, CLAIMANT WAS EMPLOYED AS A BAKER LIFTING PANS OF SHORTENING WEIGHING 60-70 POUNDS WHEN HE REPORTED SOMETHING SNAPPED IN HIS BACK. SOME TIME THEREAFTER HE EXPERIENCED A SHARP PAIN DOWN THE LEFT LEG UPON BENDING.

THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM BECAUSE OF INSUFFICIENT EVIDENCE THE WORKMAN HAD SUSTAINED AN ACCIDENTAL INJURY AND THE CONDITION REQUIRING TREATMENT WAS NOT THE RESULT OF THE ACTIVITY DESCRIBED.

CLAIMANT HAD RECEIVED SEVERAL PREVIOUS BACK INJURIES WHICH, EVEN WITH MINIMAL STRESS, COULD CAUSE A BACK CONDITION SUCH AS THIS TO BECOME EXACERBATED AND SYMPTOMATIC. THERE WERE AT LEAST TWO WITNESSES TO WHOM CLAIMANT HAD REPORTED THAT HE HAD HURT HIS BACK AND ONE WITNESS TESTIFIED THE WORK CLAIMANT WAS DOING AT THAT TIME WAS A TWO-MAN JOB.

ALTHOUGH THE HEARING OFFICER DOUBTED THE GENERAL CREDIBILITY OF THE CLAIMANT, THE BOARD BELIEVES THAT THE APPARENT PROBLEM IN THIS AREA IS ATTRIBUTABLE TO A LANGUAGE COMMUNICATION BARRIER. THE BOARD CONCLUDES THE EVIDENCE ESTABLISHES THAT CLAIMANT HAS SUSTAINED A COMPENSABLE INDUSTRIAL INJURY AND SHOULD BE COMPENSATED ACCORDINGLY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED FEBRUARY 27, 1973, IS HEREBY REVERSED AND THE STATE ACCIDENT INSURANCE FUND IS ORDERED TO ACCEPT SAID CLAIM AND PAY BENEFITS TO WHICH CLAIMANT IS ENTITLED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF SEVEN HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND FOR SERVICES AT HEARING AND UPON APPEAL.

WCB CASE NO. 72-2624 JULY 31, 1973
WCB CASE NO. 72-2980 JULY 31, 1973

LORETA M. SMITH, CLAIMANT
W. BRAD COLEMAN, CLAIMANT'S ATTY.
MARMADUKE, ASCHENBRENNER, MERTEN
AND SALTVEIT, DEFENSE ATTYs.
REQUEST FOR REVIEW BY EMPLOYER

ON JUNE 18, 1973, THE BOARD RECEIVED A REQUEST FOR REVIEW FROM THE EMPLOYER. THE REQUEST WAS SERVED ONLY ON THE ATTORNEYS FOR THE OTHER PARTIES TO THE CASE RATHER THAN ON THE PARTIES THEMSELVES AS ORS 656.295 (2) REQUIRES. THEREAFTER, THE ATTORNEY FOR GENERAL FOODS CORPORATION MOVED TO DISMISS THE REQUEST FOR REVIEW AND THE CLAIMANT'S ATTORNEY JOINED IN THE MOTION. WRITTEN ARGUMENT WAS PRESENTED AND THE BOARD BEING NOW FULLY ADVISED FINDS THE MOTION WELL TAKEN AND IT IS THEREFORE ACCORDINGLY ORDERED THAT THE REQUEST FOR REVIEW FILED BY THE EMPLOYER, SALEM GENERAL HOSPITAL, IS HEREBY DISMISSED.

MARJORIE GOODPASTER, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
BENSON AND ARENZ, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN,

THE EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AWARDED PERMANENT TOTAL DISABILITY TO THE CLAIMANT.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT, NOW 61 YEARS OF AGE, SUSTAINED A COMPENSABLE INJURY NOVEMBER 21, 1970. CLAIMANT WAS A SEAMSTRESS EMPLOYED BY CHARLES F. BERG, AND INJURED HER BACK WHEN SHE CAUGHT HER HEEL ON THE LINOLEUM AND FELL. SHE WAS AWARDED 48 DEGREES FOR UNSCHEDULED DISABILITY TO THE LOW BACK AND 30 DEGREES FOR LOSS OF THE LEFT LEG. THE HEARING OFFICER FOUND CLAIMANT TO BE PERMANENTLY AND TOTALLY DISABLED.

THE HEARING OFFICER CONCLUDED CLAIMANT WAS HIGHLY MOTIVATED TO RETURN TO WORK. THE BOARD DISAGREES. THE RECORD ESTABLISHES TO ITS SATISFACTION THAT CLAIMANT DOES WISH TO RETIRE. IN THE FACE OF THIS ATTITUDE, THE BOARD CANNOT CONCLUDE CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED. THE BOARD RECOGNIZES THAT CLAIMANT'S RESIDUAL IMPAIRMENT WHEN COUPLED WITH HER AGE HAS SUBJECTIVELY ENHANCED HER DISABILITY.

HER UNSCHEDULED DISABILITY EQUALS 200 DEGREES OF A MAXIMUM OF 320 DEGREES RATHER THAN PERMANENT AND TOTAL DISABILITY. HER SCHEDULED DISABILITY EQUALS 30 DEGREES OF A MAXIMUM OF 150 DEGREES FOR PARTIAL LOSS OF THE LEFT LEG.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 10, 1973 IS REVERSED. IN LIEU OF THE DETERMINATION ORDER DATED JUNE 12, 1972 AND THE HEARING OFFICER'S ORDER, CLAIMANT IS HEREBY AWARDED 200 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED DISABILITY AND 30 DEGREES OF A MAXIMUM OF 150 DEGREES FOR PARTIAL LOSS OF THE LEFT LEG.

CLAIMANT'S ATTORNEY IS ENTITLED TO RECEIVE 25 PERCENT OF THE INCREASED COMPENSATION MADE PAYABLE BY THIS ORDER, PAYABLE FROM SAID AWARD AND IN NO EVENT TO EXCEED FIFTEEN HUNDRED DOLLARS.

WCB CASE NO. 72-2114 JULY 31, 1973

CAROL HEATLEY, CLAIMANT

COLLINS, FERRIS AND VELURE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
ORDER ON MOTION

CLAIMANT, THROUGH HER ATTORNEY, LYLE C. VELURE, HAS OFFERED THREE AFFIDAVITS FOR THE RECORD ON APPEAL CONTENDING THEY CONSTITUTE EVIDENCE UNOBTAINABLE AT THE TIME OF THE HEARING.

THE BOARD, BEING NOW FULLY ADVISED, CONCLUDES THE OFFERED EVIDENCE IS NOT ADMISSIBLE AND THE MOTION IS HEREBY DENIED.

NO NOTICE OF APPEAL IS DEEMED APPLICABLE.

WCB CASE NO. 72-1344 AUGUST 1, 1973

WALTER E. SMITH, CLAIMANT

SCHOUBOE AND CAVANAUGH, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER AWARDING CLAIMANT 160 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY, CONTENDING HE IS PERMANENTLY AND TOTALLY DISABLED.

ISSUE

WHAT IS THE EXTENT OF PERMANENT PARTIAL DISABILITY?

DISCUSSION

THIS CLAIMANT IS A CARPENTER WHO FELL FROM A ROOF ON MAY 4, 1971 INJURING HIS BACK.

BY A DETERMINATION ORDER OF MAY 15, 1972, CLAIMANT WAS AWARDED PERMANENT PARTIAL DISABILITY EQUAL TO 64 DEGREES (20 PERCENT) FOR UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT HAS NOT RETURNED TO GAINFUL EMPLOYMENT SINCE HIS INJURY, DESPITE MEDICAL REPORTS INDICATING MILD PHYSICAL RESIDUALS. HE ATTEMPTED TO DO SOME TILING AND ROOFING BUT WAS UNABLE TO COMPLETE THE JOBS.

A DVR COUNSELOR OBSERVED SOME PHYSICAL LIMITATIONS ON CLAIMANT'S PART, BUT FELT HE WAS WELL MOTIVATED AND COULD FUNCTION AT A LESS STRENUOUS OCCUPATION SUCH AS A DRAFTSMAN.

OBSERVATIONS EXPRESSED BY EXAMINING DOCTORS, A DVR COUNSELOR, AND THE HEARING OFFICER AT THE TIME OF HEARING ALL INDICATE TO THE BOARD THIS CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED AND

HE DOES HAVE ASSETS SUCH AS INTELLIGENCE AND MOTIVATION WHICH SHOULD ENABLE HIM TO BE RETRAINED AT A SUITABLE AND GAINFUL OCCUPATION. THE BOARD CONCURS WITH THE HEARING OFFICER AND CONCLUDES AND FINDS THAT CLAIMANT'S PERMANENT PARTIAL DISABILITY IS PROPERLY EVALUATED AT 160 DEGREES.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 20, 1972 IS HEREBY AFFIRMED.

WCB CASE NO. 72-2096 AUGUST 1, 1973

MARJORIE CAROL LIVINGSTON, CLAIMANT

RONALD A. WATSON, CLAIMANT'S ATTY.
ROGER WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER ORDER WHICH SUSTAINED THE DENIAL OF HER CLAIM BY THE EMPLOYER.

ISSUE

DID CLAIMANT SUSTAIN A COMPENSABLE INDUSTRIAL INJURY?

DISCUSSION

THIS CLAIMANT WAS A 35 YEAR OLD FACTORY EMPLOYEE WORKING AT THE PURDY BRUSH CO., HANDLING BOXES WEIGHING 30-35 POUNDS. HER WORKLOAD BECAME HEAVIER IN AUGUST OF 1971, WHILE HER SUPERVISOR WAS OFF WORK TO HAVE SURGERY. IT IS CLAIMANT'S CONTENTION THIS EXTRA LIFTING AND WORKLOAD AND SET IN MOTION THE SERIES OF EVENTS WHICH CULMINATED IN SPINAL DISC SURGERY FEBRUARY 22, 1972.

THE EMPLOYER DENIED RESPONSIBILITY FOR THIS BACK SURGERY AND THE HEARING OFFICER SUSTAINED THE DENIAL.

CLAIMANT'S INJURY WAS NOT CHARACTERIZED AS RESULTING FROM ONE INCIDENT, BUT RATHER AS A RESULT OF LIFTING BOXES WEIGHING 30-35 POUNDS OVER A PERIOD OF TIME. DR. ROBINSON TESTIFIED THIS WAS A MATERIAL CONTRIBUTING FACTOR TO HER RUPTURED DISC.

ON DE NOVO REVIEW, THE BOARD CONCLUDES THE MEDICAL EVIDENCE OF REPEATED TRAUMA TO THE CLAIMANT'S WEAKENED DISC MATERIALLY CONTRIBUTED TO HER DISABILITY AND THUS CLAIMANT HAS SUSTAINED A COMPENSABLE INDUSTRIAL INJURY WITHIN THE MEANING OF THE OREGON WORKMEN'S COMPENSATION LAW.

ORDER

THE ORDER OF THE HEARING OFFICER DATED NOVEMBER 15, 1972 IS HEREBY REVERSED AND THE EMPLOYER IS HEREBY ORDERED TO ACCEPT CLAIMANT'S CLAIM AND PAY HER THE BENEFITS TO WHICH SHE IS ENTITLED BY LAW.

COUNSEL FOR CLAIMANT IS AWARDED A REASONABLE ATTORNEY FEE IN THE AMOUNT OF FIVE HUNDRED DOLLARS, PAYABLE BY THE EMPLOYER, FOR HIS SERVICES AT HEARING AND REVIEW.

WCB CASE NO. 71-2671 AUGUST 1, 1973

WILBUR E. DODD, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS.
MERLIN L. MILLER, DEFENSE ATTY.
ORDER ON MOTION

THE WORKMEN'S COMPENSATION BOARD HAVING REVIEWED THE MOTION OF THE ATTORNEY FOR ADDITIONAL FEES IN EXCESS OF THAT PRESENTLY ALLOWED BY STATUTE IS DENIED.

THE WORKMEN'S COMPENSATION BOARD NOT HAVING CONSIDERED THE MATTER ON ITS MERITS NOTES PURSUANT TO ORS 656.388 (1) THAT THE PROCEEDINGS WERE AN APPEAL FROM THE ORDER OF THE BOARD AND THE AWARD WAS MADE BEFORE THE COURT.

PROPER CONSIDERATION IS THEREFORE NOT BEFORE THE WORKMEN'S COMPENSATION BOARD BUT BEFORE THE CIRCUIT COURT OF MULTNOMAH COUNTY.

NO NOTICE OF APPEAL IS DEEMED APPLICABLE.

WCB CASE NO. 72-2716 AUGUST 1, 1973

KASPER NESTMAN, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
ROGER WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH SUSTAINED THE DENIAL OF HIS CLAIM.

ISSUE

DID CLAIMANT SUFFER AN ACCIDENTAL INJURY ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT AS ALLEGED?

DISCUSSION

THE ABOVE ENTITLED MATTER INVOLVES THE ISSUE OF WHETHER A 57 YEAR OLD MAINTENANCE MAN SUSTAINED A COMPENSABLE INJURY AS ALLEGED ON AUGUST 30, 1972 WHEN HE PURPORTEDLY INJURED HIS BACK WHILE LIFTING A TRASH BARREL TO EMPTY IN A DUMP BOX.

THE CLAIM WAS DENIED AND THIS DENIAL WAS AFFIRMED BY THE HEARING OFFICER.

THE RECORD REFLECTS THAT THE INCIDENT WAS NOT WITNESSED AND IT WAS NOT REPORTED UNTIL LATER IN THE DAY. CLAIMANT DID REPORT TO HIS DOCTOR AND THE ONLY INFORMATION THE DOCTOR HAD TO RELY ON WAS THAT SUPPLIED TO HIM BY THE CLAIMANT.

THE BURDEN IS UPON THE WORKMAN TO ESTABLISH HIS CLAIM. THERE IS NO BURDEN UPON THE EMPLOYER TO PROVE THE CLAIMANT'S PROBLEMS AROSE FROM OTHER THAN EMPLOYMENT. IN AN UNWITNESSED ACCIDENT THE ISSUE LARGELY IS RESOLVED UPON CREDIBILITY. THE HEARING OFFICER NOTED SOME INCONSISTENCIES IN OBSERVING THE CLAIMANT WHICH HE APPARENTLY CONCLUDED IMPEACHED THE CLAIMANT'S CREDIBILITY.

THE BOARD CONCLUDES THAT THE RECORD DOES NOT CONTAIN EVIDENCE OF SUFFICIENT WEIGHT TO REFLECT ANY ERROR IN THE CONCLUSIONS OF THE HEARING OFFICER. GIVING WEIGHT TO THE OBSERVATIONS OF THE HEARING OFFICER, THE BOARD CONCLUDES THE CLAIMANT DID NOT SUSTAIN A COMPENSABLE INJURY AS ALLEGED.

THE ORDER OF THE HEARING OFFICER IS AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 29, 1972 IS AFFIRMED.

WCB CASE NO. 72-2919 AUGUST 1, 1973

DAVID HOOVER, CLAIMANT

ESTEP, DANIELS, ADAMS, REESE AND
PERRY, CLAIMANT'S ATTYS,
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH SUSTAINED A DETERMINATION ORDER ALLOWING 60 PERCENT LOSS OF LEFT INDEX FINGER AND 10 PERCENT LOSS OF LEFT THUMB DUE TO LOSS OF OPPOSITION FOR PERMANENT DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS LEFT HAND ON MARCH 31, 1971 WHEN CUT WITH A SAW AT BOISE CASCADE CORPORATION. THE HEARING OFFICER AFFIRMED THIS DETERMINATION OF DISABILITY.

IT APPEARED TO THE HEARING OFFICER AND DOES NOW TO THE BOARD ON REVIEW THAT CLAIMANT'S DISABILITY HAS BEEN CORRECTLY EVALUATED. ALTHOUGH CLAIMANT MAY EXPERIENCE EXTREME PAIN WHICH SEEMS TO BE IN THE HAND, THE LAW NOW EXISTING IN THE STATE OF OREGON PRECLUDES ANY AWARD BEING MADE ON THAT MEMBER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 9, 1972 AND THE SUPPLEMENTAL ORDER OF FEBRUARY 8, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 71-1469 AUGUST 1, 1973

JERRY LOCKARD, CLAIMANT

COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER DATED JULY 19, 1972 AND THE SUPPLEMENTAL ORDER ON RECONSIDERATION DATED OCTOBER 12, 1972.

ISSUE

1. IS CLAIMANT ENTITLED TO FURTHER TIME LOSS COMPENSATION AND MEDICAL CARE? IN THE ALTERNATIVE THE ISSUE IS -
2. WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

THIS CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS UPPER AND LOWER BACK ON SEPTEMBER 18, 1970. A DETERMINATION ORDER GRANTED HIM PERMANENT PARTIAL DISABILITY EQUIVALENT TO 48 DEGREES UNSCHEDULED DISABILITY. THIS AWARD WAS AFFIRMED BY THE HEARING OFFICER.

SUBSEQUENT TO THE ISSUANCE OF THE HEARING OFFICER'S OPINION AND ORDER, THE MATTER AGAIN CAME BEFORE THE HEARING OFFICER ON A MOTION FOR RECONSIDERATION SUBMITTED BY THE CLAIMANT, REQUESTING FURTHER MEDICAL TREATMENT BASED ON ADDITIONAL MEDICAL EVIDENCE.

THE HEARING OFFICER FOUND INSUFFICIENT BASIS FOR REOPENING THE CLAIMANT'S CLAIM FOR TIME LOSS COMPENSATION AND MEDICAL TREATMENT, BUT DID, PURSUANT TO ORS 656.245, ORDER THE FUND TO ACCEPT RESPONSIBILITY FOR PSYCHOLOGICAL COUNSELING WHICH CLAIMANT WAS UNDERGOING AT THE DOUGLAS COUNTY FAMILY SERVICE CLINIC.

CLAIMANT'S COUNSEL, ON REVIEW, URGES CLAIMANT'S CLAIM BE REOPENED, PSYCHOLOGICAL TREATMENT AND TEMPORARY TOTAL DISABILITY COMPENSATION PAID, WITH AN EVENTUAL RESUBMISSION TO CLOSING AND EVALUATION FOR A NEW DETERMINATION OF PERMANENT DISABILITY.

UPON REVIEW, THE BOARD CONCURS WITH THE HEARING OFFICER'S DISPOSITION OF THE MATTER AND CONCLUDES HIS ORDERS SHOULD BE AFFIRMED IN THEIR ENTIRETY.

ORDER

THE HEARING OFFICER'S ORDERS DATED JULY 19, 1972 AND OCTOBER 12, 1972 ARE HEREBY AFFIRMED.

WCB CASE NO. 72-2163 AUGUST 1, 1973

JEROME TECHTMAN, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND
SCHWABE, DEFENSE ATTYS.

REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S
ORDER AWARDING CLAIMANT PERMANENT TOTAL DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

ON JULY 17, 1969 CLAIMANT SUSTAINED AN INDUSTRIAL INJURY WHEN HE WAS STRUCK BY A FALLING PIPE WRENCH. THIS ACCIDENT WAS PRECEDED BY A LONG SERIES OF ACCIDENTS CLAIMANT HAD SUSTAINED THROUGHOUT HIS LIFETIME.

CLAIMANT HAS SUFFERED PSYCHOLOGICAL PROBLEMS FOR MANY YEARS WITH EACH NEW INJURY ADDING TO HIS EMOTIONAL INSTABILITY UNTIL HIS COMPLETE DISABILITY FOLLOWING THE 1969 INJURY.

THE EVIDENCE ESTABLISHES THAT CLAIMANT'S DISABLING PSYCHOPATHOLOGY IS MATERIALLY RELATED TO HIS LONG SERIES OF ACCIDENTS, INCLUDING THE ACCIDENT IN QUESTION. IT ALSO ESTABLISHES THAT CLAIMANT WILL REMAIN PERMANENTLY AND TOTALLY DISABLED.

THE ORDER OF THE HEARING SHOULD THEREFORE BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED NOVEMBER 28, 1972 IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 71-2784 AUGUST 1, 1973

CLARENCE W. DEBNAM, CLAIMANT

DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER DENYING HIS CLAIM FOR AGGRAVATION.

ISSUE

HAS CLAIMANT'S CONDITION RESULTING FROM HIS COMPENSABLE INJURY WORSENER SINCE THE CLOSURE OF HIS CLAIM?

DISCUSSION

CLAIMANT HAS NOT PROVED A NEED FOR FURTHER MEDICAL CARE RELATING TO HIS INJURY. HOWEVER, BASED ON THE FACTS OF THE CASE, THE BOARD BELIEVES CLAIMANT IS ENTITLED TO THE FURTHER DIAGNOSTIC PROCEDURES IF HE WILL NOW SUBMIT TO THEM.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 27, 1972, IS ACCORDINGLY AFFIRMED.

IT IS HEREBY FURTHER ORDERED THAT THE STATE ACCIDENT INSURANCE FUND PROVIDE THE FURTHER DIAGNOSTIC PROCEDURES SUGGESTED BY DRs. STORINO AND DENNIS IF, WITHIN THE NEXT 30 DAYS, THE CLAIMANT AGREES TO UNDERGO SUCH PROCEDURES.

WCB CASE NO. 72-2274 AUGUST 1, 1973

DANIEL L. BAILEY, CLAIMANT
BRINK AND MOORE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
ORDER OF DISMISSAL

A REQUEST FOR REVIEW, HAVING BEEN DULY FILED WITH THE WORKMEN'S COMPENSATION BOARD IN THE ABOVE-ENTITLED MATTER, AND SAID REQUEST FOR REVIEW NOW HAVING BEEN WITHDRAWN BY CLAIMANT'S COUNSEL,

IT IS THEREFORE ORDERED THAT THE REVIEW NOW PENDING BEFORE THE BOARD IS HEREBY DISMISSED AND THE ORDER OF THE HEARING OFFICER IS FINAL BY OPERATION OF LAW.

WCB CASE NO. 72-2184-E AUGUST 1, 1, 1973

WILLIAM I. BALDRIDGE, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AT THE INSTANCE OF THE STATE ACCIDENT INSURANCE FUND, REMOVED AN AWARD OF 64 DEGREES FOR UNSCHEDULED DISABILITY AWARDED TO CLAIMANT BY A CLOSING AND EVALUATION DETERMINATION ORDER AND PLACED ALL THE DISABILITY ON THE RIGHT FOREARM IN THE AMOUNT OF 112.5 DEGREES (75 PERCENT).

ISSUE

DOES CLAIMANT SUFFER UNSCHEDULED OR SCHEDULED DISABILITY?
IN ADDITION, THE EXTENT OF DISABILITY IS IN ISSUE.

DISCUSSION

CLAIMANT RECEIVED A CRUSHING INJURY TO HIS HAND FOR WHICH HE RECEIVED AN AWARD OF PERMANENT PARTIAL DISABILITY EQUIVALENT TO 20 PERCENT UNSCHEDULED NECK DISABILITY AND 55 PERCENT LOSS OF THE RIGHT ARM. THE STATE ACCIDENT INSURANCE FUND APPEALED THE DETERMINATION ORDER.

AT THE HEARING, THE HEARING OFFICER SET ASIDE THE PERMANENT PARTIAL DISABILITY AWARDS AND MADE SCHEDULED AWARD ONLY OF 75 PERCENT (112.5 DEGREES) OF THE RIGHT FOREARM.

AFTER HIS INJURY CLAIMANT HAD TO ABANDON HIS JOB IN FAVOR OF A "SWEEPING" JOB AS A CLEAN-UP MAN.

ON DE NOVO REVIEW, THE BOARD CONCLUDES THAT MEDICAL EVIDENCE SUPPLIED BY DRs. KANZLER AND SMITH ESTABLISHES THAT CLAIMANT HAS SUSTAINED INJURY TO THE SHOULDER, NECK AND CERVICAL SPINE AND HE IS THEREBY ENTITLED TO COMPENSATION FOR UNSCHEDULED DISABILITY. THE BOARD FURTHER CONCLUDES THE EXTENT OF THAT DISABILITY WAS PROPERLY MEASURED BY THE DETERMINATION ORDER OF JULY 17, 1972. THUS THE ORDER OF THE HEARING OFFICER SHOULD BE REVERSED AND THE DETERMINATION ORDER REINSTATED.

ORDER

THE HEARING OFFICER'S ORDER DATED FEBRUARY 2, 1973, IS HEREBY REVERSED AND THE PERMANENT PARTIAL DISABILITY AWARD OF 64 DEGREES (20 PERCENT) FOR UNSCHEDULED NECK DISABILITY AND 105.6 DEGREES (55 PERCENT) FOR LOSS OF THE RIGHT ARM, AWARDED BY THE DETERMINATION ORDER, IS HEREBY REINSTATED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF SIX HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR HIS SERVICES TO CLAIMANT AT THE HEARING AND UPON THIS REVIEW.

WCB CASE NO. 71-2293 AUGUST 1, 1973

JACK W. CLAUSON, JR., CLAIMANT
GREEN, RICHARDSON, GRISWOLD AND MURPHY,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER AFFIRMING AN AWARD OF 48 DEGREES FOR UNSCHEDULED DISABILITY AND 8 DEGREES FOR PARTIAL LOSS FUNCTION OF THE LEFT LEG CONTENDING HIS DISABILITY EXCEEDS THAT AWARDED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT HAS A LONG HISTORY OF PREEXISTING BACK TROUBLE INCLUDING A 2 LEVEL LAMINECTOMY IN 1968.

ON APRIL 22, 1970, CLAIMANT AGAIN INJURED HIS BACK. IT REQUIRED FURTHER LAMINECTOMY AND A 2 LEVEL SPINAL FUSION. THE FUSION WAS NOT COMPLETELY SUCCESSFUL.

CLAIMANT IS NOT ABLE TO RETURN TO HIS FORMER EMPLOYMENT. THE WORK HE IS NOW DOING PAYS MORE PER HOUR BUT IS SEASONAL IN NATURE. ALTHOUGH THE CLAIMANT'S RETURN TO WORK HAS BEEN SUCCESSFUL, THE BOARD CONCLUDES THE CLAIMANT HAS PRESENTLY LOST 25 PERCENT OF HIS EARNING CAPACITY AS A RESULT OF THIS INJURY RATHER THAN 15 PERCENT AS THE HEARING OFFICER FOUND.

ORDER

CLAIMANT IS GRANTED AN ADDITIONAL 32 DEGREES MAKING A TOTAL OF 80 DEGREES OR 25 PERCENT OF THE MAXIMUM FOR UNSCHEDULED DISABILITY.

THE AWARD OF 8 DEGREES FOR PARTIAL LOSS OF THE LEFT LEG IS AFFIRMED.

CLAIMANT'S ATTORNEY ALLEN T. MURPHY, JR., IS HEREBY GRANTED 25 PERCENT OF THE INCREASED COMPENSATION MADE PAYABLE HEREBY, PAYABLE FROM SAID AWARD, AS A REASONABLE ATTORNEY'S FEE.

WCB CASE NO. 72-3514 AUGUST 1, 1973

ALFRED WEST, CLAIMANT
COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
KEITH SKELTON, DEFENSE ATTY.

THE EMPLOYER SEEKS -

1. AN ORDER TEMPORARILY STAYING FURTHER PROCEEDINGS BY THE HEARINGS DIVISION AND,
2. A RULING ON REVIEW THAT THE CLAIMANT NOW HAS NO RIGHT TO A HEARING UNLESS HE PROCEEDS ON THE THEORY OF AGGRAVATION.

COUNSEL FOR BOTH PARTIES HAVE SUBMITTED ARGUMENT ON WHETHER THE STAY SHOULD BE GRANTED. THE BOARD BEING NOW FULLY ADVISED -

HEREBY ORDERS THAT FURTHER PROCEEDINGS IN THE ABOVE ENTITLED MATTER SHALL BE, AND THEY ARE HEREBY STAYED FOR 20 DAYS FOR THE PARTIES TO PRESENT ARGUMENT ON WHETHER THE HEARING OFFICER HAS JURISDICTION TO HEAR THE MERITS OF THE CLAIMANT'S CASE.

WCB CASE NO. 72-2647 AUGUST 2, 1973

MILDRED L. SMITH, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS,
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED NEITHER ADDITIONAL TREATMENT NOR A FURTHER AWARD OF DISABILITY.

ISSUE

IS CLAIMANT IN NEED OF FURTHER MEDICAL CARE AND TIME LOSS COMPENSATION? IF NOT THE ISSUE IS THE EXTENT OF CLAIMANT'S SCHEDULED PERMANENT PARTIAL DISABILITY.

DISCUSSION

UPON ITS OWN DE NOVO REVIEW, THE BOARD FINDS THE HEARING OFFICER CORRECTLY ANALYZED THE EVIDENCE BEFORE HIM AND CONCURS WITH HIS FINDINGS AND CONCLUSIONS. HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 16, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 71-2549 AUGUST 2, 1973

ROBERT T. DELAMARE, CLAIMANT
GORDON L. WESTWOOD, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S OPINION AND ORDER WHICH BOUND CLAIMANT TO AN EARLIER STIPULATED SETTLEMENT.

ISSUE

IS CLAIMANT BOUND BY THE STIPULATION HE ENTERED INTO ON MARCH 13, 1972?

DISCUSSION

THE EVIDENCE PRODUCED AT THE REMAND HEARING ESTABLISHED CLAIMANT WAS COMPETENT WHEN THE STIPULATION WAS AGREED UPON. THUS, THE BOARD CONCLUDES THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 21, 1972, SHOULD BE AFFIRMED IN ITS ENTIRETY.

IT IS SO ORDERED.

SAIF CLAIM NO. AA 866054 AUGUST 2, 1973

EDWARD NIXON, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

ON MARCH 6, 1973, THE WORKMEN'S COMPENSATION BOARD RECEIVED FROM CLAIMANT'S COUNSEL, A REQUEST TO REOPEN CLAIMANT'S CLAIM PURSUANT TO THE OWN MOTION JURISDICTION GRANTED THE BOARD UNDER ORS 656.278.

FROM THE RECORD, IT APPEARS THAT THE AWARD OF PERMANENT PARTIAL DISABILITY CLAIMANT HAS RECEIVED ADEQUATELY COMPENSATES HIS RESIDUAL DISABILITY. CLAIMANT'S REMAINING PROBLEMS CONCERNED HIS DESIRE TO BE FREE OF PAIN, AND HIS DESIRE TO RETURN TO WORK.

WITH REFERENCE TO THE FORMER, CLAIMANT HAS RECENTLY ENDED A STAY AT THE PORTLAND PAIN REHABILITATION CENTER. THEIR FINAL DISCHARGE REPORT INDICATED CLAIMANT HAD DISCONTINUED ALL PAIN MEDICATION, HAD MADE CONSIDERABLE GAINS IN MOBILITY AND SHOWED IMPROVEMENT IN HIS MOOD AND ABILITY TO RELATE WITH OTHERS.

THE REMAINING PROBLEM APPEARS TO BE CLAIMANT'S INABILITY TO FIND SUITABLE EMPLOYMENT. THE CLAIMANT HAS BEEN URGED TO AVAIL HIMSELF OF THE SERVICES OF THE DIVISION OF VOCATIONAL REHABILITATION AND THE BOARD IS HOPEFUL THAT CLAIMANT WILL TAKE ADVANTAGE OF THE SERVICES OFFERED BY THIS AGENCY.

THE BOARD THEREFORE DECLINES AT THIS TIME UPON THE STATE OF THE RECORD TO EXERCISE OWN MOTION JURISDICTION IN THE MATTER.

WCB CASE NO. 71-1842 AUGUST 2, 1973

BETTY J. MATTHEWS, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
MIZE, KRIESIEN, FEWLESS, CHENEY AND
KELLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS REVIEW OF A HEARING OFFICER'S ORDER ALLOWING ADDITIONAL COMPENSATION CONTENDING THE EVIDENCE DOES NOT JUSTIFY THE INCREASED AWARD.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S DISABILITY?

DISCUSSION

THE MEDICAL EVIDENCE ESTABLISHES CLAIMANT SUFFERS ONLY MINOR DISABILITY OBJECTIVELY.

THE HEARING OFFICER EXCUSED CLAIMANT'S REFUSAL OF JOB OFFERS ON THE BASIS SHE SINCERELY BELIEVED SHE WAS UNABLE TO COPE WITH PHYSICAL DEMANDS INVOLVED.

THE RECENT CASE OF DEATON V. SAIF -- OR ADV SH --, --OR APP-- (MAY 14, 1973) AFFIRMS THE GENERAL PROPOSITION THAT MOTIVATION IS A FACTOR WHICH MUST BE TAKEN INTO ACCOUNT IN APPRAISING THE DISABLING EFFECT OF INJURIES.

THE EVIDENCE DOES NOT, IN THE BOARD'S OPINION, JUSTIFY CLAIMANT'S REFUSAL TO ATTEMPT A RETURN TO WORK AS HER PHYSICIANS HAVE SUGGESTED.

THE BOARD CONCLUDES THE CLAIMANT IS NOT ENTITLED TO THE INCREASED COMPENSATION ALLOWED BY THE HEARING OFFICER. HIS ORDER SHOULD BE REVERSED AND THE DETERMINATION ORDER REINSTATED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 24, 1973 IS HEREBY REVERSED AND THE DETERMINATION ORDER DATED AUGUST 17, 1971 IS REINSTATED.

WCB CASE NO. 72-1297 AUGUST 2, 1973

FRANCES M. MILLER, CLAIMANT
BROWN AND BURT, CLAIMANT'S ATTYS.
PHILIP A. MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED CLAIMANT AN AWARD OF UNSCHEDULED SHOULDER DISABILITY AND INCREASED THE DETERMINATION ORDER AWARD OF THE RIGHT ARM.

ISSUE

WHAT IS THE NATURE AND EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

UPON ITS OWN DE NOVO REVIEW THE BOARD CONCURS WITH THE FINDINGS, ANALYSIS AND CONCLUSIONS OF THE HEARING OFFICER AND ADOPTS HIS ORDER AS ITS OWN. HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 26, 1973 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-1232 AUGUST 2, 1973

EUNICE HARRINGTON, CLAIMANT

FLAXEL, TODD AND FLAXEL, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AWARDED 77 DEGREES OF A MAXIMUM OF 192 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT CONTENDS THAT THE INCREASE FROM 48 DEGREES TO 77 DEGREES AWARDED BY THE HEARING OFFICER DOES NOT FAIRLY COMPENSATE HER FOR THE DISABLING EFFECT OF HER INJURY. SHE HAS SUCCESSFULLY RETURNED TO WORK AS A BOOKKEEPER BUT FEELS THAT THE LIMITATIONS OF HER PHYSICAL CAPABILITIES HAS PRODUCED A SERIOUS LOSS OF EARNING CAPACITY.

THE HEARING OFFICER SAW AND HEARD CLAIMANT'S TESTIMONY AT THE HEARING AND HAD BEFORE HIM MEDICAL EVIDENCE OF CLAIMANT'S DISABILITY AND WAS CONVINCED FOLLOWING THIS OBSERVATION THAT CLAIMANT WAS ENTITLED TO ADDITIONAL DISABILITY TO THE LOW BACK.

THE BOARD CONCURS WITH THE HEARING OFFICER THAT THE CLAIMANT'S DISABILITY DOES, IN FACT, EXCEED THE 48 DEGREES FOR UNSCHEDULED PERMANENT PARTIAL DISABILITY TO THE LOW BACK AWARDED BY THE TWO DETERMINATION ORDERS. IN TERMS OF POSSIBLE LOSS OF EARNING CAPACITY, THE BOARD CONSIDERS THE AWARD OF AN ADDITIONAL 29 DEGREES TO CLAIMANT AS GENEROUS BUT THE BOARD CONCLUDES NO ADJUSTMENT IS NECESSARY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 31, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 72-1834 AUGUST 2, 1973

GLADYS MUZZY, CLAIMANT

ROY KILPATRICK, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED THE AWARD OF 32 DEGREES FOR UNSCHEDULED DISABILITY MADE BY A THIRD DETERMINATION ORDER DATED JUNE 26, 1972, CONTENDING SHE IS PERMANENTLY TOTALLY DISABLED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT'S DISABILITY IS NOT TOTAL. IT IS MORE CORRECTLY EVALUATED AS 'MILDLY MODERATE.' IT IS CONCEDED SHE CANNOT RETURN TO HEAVY MILL WORK, BUT COULD FUNCTION AT A LESS STRENUOUS JOB.

CLAIMANT'S HUSBAND IS A FOREMAN IN THE MILL AT KINZUA. THIS IS THEIR HOME AND CLAIMANT INDICATES NO DESIRE OR INTENTION OF MOVING TO A VICINITY WHERE SHE MIGHT FIND SUITABLE EMPLOYMENT. SUITABLE EMPLOYMENT IN KINZUA IS SIMPLY NOT AVAILABLE. HOWEVER, EXCEPT FOR THE PERSONAL CONSIDERATIONS WHICH DICTATE CLAIMANT'S STAYING IN KINZUA, SUITABLE EMPLOYMENT IS REASONABLY AVAILABLE TO HER. CLAIMANT IS THUS NOT PERMANENTLY TOTALLY DISABLED WITHIN THE MEANING OF THE WORKMEN'S COMPENSATION LAW.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER AND ADOPTS HIS ORDER AS ITS OWN.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 29, 1972 IS HEREBY AFFIRMED.

WCB CASE NO. 72-1735 AUGUST 3, 1973

MANUEL SILVA, CLAIMANT
GREEN, RICHARDSON, GRISWOLD AND
MURPHY, CLAIMANT'S ATTYS.
MERLIN L. MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH ORDERED ACCEPTANCE OF CLAIMANT'S CLAIM.

ISSUE

DID CLAIMANT SUSTAIN A COMPENSABLE INJURY ON APRIL 29, 1972 AS HE ALLEGED?

DISCUSSION

THE HEARING OFFICER WAS FACED WITH A NUMBER OF CONTRADICTIONS AND DISCREPANCIES IN THE TESTIMONY OFFERED. HE FOUND ONE WITNESS, DENNIS CHALUT, CREDIBLE AND PERSUASIVE.

ALTHOUGH MR. CHALUT DID NOT REMEMBER THE EXACT DATE OF THIS INCIDENT, HIS APPEARANCE, ATTITUDE AND DEMEANOR INDUCED THE HEARING OFFICER TO GIVE FULL WEIGHT TO HIS TESTIMONY. SINCE THIS TESTIMONY AGREED WITH THAT OF CLAIMANT'S, THE HEARING OFFICER FOUND THAT CLAIMANT HAD SUSTAINED A COMPENSABLE INJURY ON APRIL 28, 1972, AS ALLEGED, AND ORDERED ACCEPTANCE OF THE CLAIM BY THE EMPLOYER.

GIVING WEIGHT TO THE HEARING OFFICER'S ASSESSMENTS OF CREDIBILITY OF THE VARIOUS WITNESSES, THE BOARD CONCURS WITH THE FINDING OF THE HEARING OFFICER AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 26, 1972 IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-3416 AUGUST 3, 1973

MARTIN W. CAIN, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND
SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER APPROVING ALLEGED EMPLOYER'S DENIAL OF HIS COMPENSATION CLAIM ON MARCH 23, 1973, CLAIMING HE WAS IN FACT A SUBJECT WORKMAN AND THE INJURY AROSE FROM EMPLOYMENT.

ISSUE

WAS CLAIMANT A SUBJECT WORKMAN OF A SUBJECT EMPLOYER?

DISCUSSION

CLAIMANT ASSERTS AN ON THE JOB INJURY TO HIS LEFT ARM OCCURRED WHEN THE ALLEGED EMPLOYER'S RACING CAR HE WAS OPERATING ROLLED OVER ON SEPTEMBER 9, 1971 PRIOR TO A RACE, AT A TRACK REMOTE FROM ITS OWNER'S PREMISES.

THE HEARING OFFICER FOUND CLAIMANT WAS NOT ON RACING CAR OWNER'S PAYROLL, THAT NO REMUNERATION WHATSOEVER WAS PROMISED CLAIMANT BY OWNER, THAT ANY COURTESIES, INCLUDING CLAIMANT'S FREE USE OF OWNER'S AUTOMOTIVE REPAIR FACILITIES WERE EXTENDED PRIOR TO THE INCEPTION OF THIS ADVENTURE, THAT CLAIMANT RETAINED HIS OWN FULL TIME JOB ELSEWHERE AND THAT CLAIMANT WAS NOT UNDER THE DIRECTION AND CONTROL OF ALLEGED EMPLOYER.

THE BOARD'S REVIEW OF THE RECORD DISCLOSES THAT CLAIMANT AND DEFENDANT WERE ENGAGED IN A JOINT VENTURE. THE RELATIONSHIP OF EMPLOYER = EMPLOYEE DID NOT EXIST THUS THE HEARING OFFICER'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 23, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 72-1994 AUGUST 3, 1973

BENNIE D. KINNEY, CLAIMANT
COTTLE AND HOWSER, CLAIMANT'S ATTYS.
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER CONTENDING THE AWARDS GRANTED FOR SCHEDULED AND UNSCHEDULED PERMANENT PARTIAL DISABILITY ARE NOT SUFFICIENT IN VIEW OF THE MEDICAL EVIDENCE SUBMITTED AND CLAIMANT'S PHYSICAL LIMITATIONS AS A RESULT OF HIS INJURY.

ISSUE

WHAT IS THE NATURE AND EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

ON APRIL 29, 1971, CLAIMANT WAS CLEANING A GLUE ROLL MACHINE WITH A RAG WHEN HIS ARM WAS PULLED INTO THE MACHINE TO THE ELBOW BETWEEN FOUR STEEL ROLLERS. BY A DETERMINATION ORDER HE WAS GRANTED PERMANENT PARTIAL DISABILITY EQUAL TO 32 DEGREES FOR UNSCHEDULED RIGHT SHOULDER DISABILITY.

UPON HEARING, THE HEARING OFFICER FOUND THIS AWARD PROPERLY EVALUATED THE DISABILITY TO THE RIGHT SHOULDER. HOWEVER, HE CONCLUDED THERE WAS DISABILITY IN THE RIGHT ARM FOR WHICH NO AWARD HAD BEEN MADE. THE CLAIMANT STATED, AND THE HEARING OFFICER FOUND HIM A CREDIBLE WITNESS, THAT THERE WAS AN AREA OF HIS ARM THAT WAS STILL NUMB AND HE HAD NOT RECOVERED THE GRIP HE FORMERLY HAD. THE HEARING OFFICER AWARDED 20 DEGREES FOR PARTIAL LOSS OF THE RIGHT ARM FOR THIS DISABILITY.

THE BOARD CONCURS WITH THE HEARING OFFICER'S FINDINGS AND CONCLUSIONS AND ADOPTS HIS ORDER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED FEBRUARY 8, 1973 IS HEREBY AFFIRMED.

EDWARD E. STAHLIK, CLAIMANT
BROWN AND BURT, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED CLAIMANT AN ADDITIONAL 32 DEGREES FOR UNSCHEDULED DISABILITY MAKING A TOTAL OF 64 DEGREES.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT SUSTAINED A COMPENSABLE LOW BACK INJURY APRIL 17, 1971, WHILE WORKING AS AN INSULATION INSTALLER. BY A CLOSING AND EVALUATION DETERMINATION ORDER HE WAS AWARDED 32 DEGREES FOR UNSCHEDULED DISABILITY AND THE HEARING OFFICER INCREASED THIS TO 64 DEGREES ON THE BASIS OF THE RESIDUALS OF A CHRONIC LOW BACK STRAIN WHICH HAS DELETERIOUSLY AFFECTED CLAIMANT'S EARNING CAPACITY.

CLAIMANT HAS WORKED ALMOST ENTIRELY IN "COMMERCIAL" INSULATION INSTALLING WHICH IS LESS STRENUOUS AND DEMANDING THAN "INDUSTRIAL" INSULATING WHICH HE WAS CAPABLE OF HANDLING BEFORE.

THE HEARING OFFICER FOUND THE CLAIMANT TO BE ACREDIBLE AND IMPRESSIVE WITNESS. CLAIMANT'S LIMITATIONS AND RESTRICTIONS ON WHAT HE NOW DOES AND DOES NOT DO ARE REASONABLE IN VIEW OF HIS PHYSICAL IMPAIRMENTS.

FROM ITS REVIEW OF THE MATTER, THE BOARD CONCLUDES THAT THE HEARING OFFICER'S ORDER SHOULD BE AFFIRMED.

UPON REVIEW THE BOARD NOTED THAT THE DETERMINATION ORDER (JOINT EXHIBIT 9) CARRIES A NOTICE THAT CLAIMANT'S AGGRAVATION RIGHTS EXPIRE ON MAY 28, 1971. BECAUSE OF AN AMENDMENT TO WCB 4-1970 PROMULGATED ON JANUARY 15, 1973, THAT NOTICE SHOULD NOW BE DISREGARDED. THE CLAIMANT'S "AGGRAVATION PERIOD" ACTUALLY BEGAN ON JANUARY 5, 1972 RATHER THAN MAY 28, 1971.

ORDER

THE ORDER OF THE HEARING OFFICER DATED FEBRUARY 2, 1973 IS HEREBY AFFIRMED.

IT IS HEREBY FURTHER ORDERED THAT CLAIMANT'S FIVE YEAR PERIOD OF AGGRAVATION EXPIRES ON JANUARY 6, 1977.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

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WCB CASE NO. 72-1879 AUGUST 3, 1973

MANSON TALBOTT, CLAIMANT
ROBERT P. COBLENS, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH DENIED CLAIMANT'S CLAIM OF AGGRAVATION AND DISMISSED THE REQUEST FOR HEARING.

ISSUE

HAS CLAIMANT SUFFERED AN AGGRAVATION OF HIS COMPENSABLE INJURY OF JULY 30, 1969?

DISCUSSION

THE HEARING OFFICER AGREED CLAIMANT'S CONDITION HAD MEDICALLY WORSENERED, BUT FELT THIS WORSENERING WAS DUE TO TWO INTERVENING SLIP-AND-FALL OCCURRENCES SUSTAINED BY CLAIMANT RATHER THAN A NATURAL PROGRESSION OF THE CONDITION CAUSED BY HIS COMPENSABLE INJURY. HE ACCORDINGLY DENIED CLAIMANT'S CLAIM FOR AGGRAVATION.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDINGS OF THE HEARING OFFICER AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 31, 1973 IS AFFIRMED.

WCB CASE NO. 72-843 AUGUST 3, 1973

ARTHUR HOWTON, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH DENIED CLAIMANT'S REQUEST FOR CONTINUED CHIROPRACTIC TREATMENT.

ISSUE

IS CLAIMANT ENTITLED TO ADDITIONAL MEDICAL CARE AND TREATMENT?

DISCUSSION

THE BOARD, UPON ITS OWN DE NOVO REVIEW, CONCURS WITH THE HEARING OFFICER IN CONCLUDING THAT CLAIMANT IS NOT ENTITLED TO ADDITIONAL CHIROPRACTIC TREATMENT.

HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 31, 1973 IS AFFIRMED.

WCB CASE NO. 73-103 AUGUST 3, 1973

ROBERT S. FANNING, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND
SCHWABE, DEFENSE ATTYS.
ORDER OF DISMISSAL

A REQUEST FOR REVIEW, HAVING BEEN DULY FILED WITH THE WORKMEN'S COMPENSATION BOARD IN THE ABOVE-ENTITLED MATTER, AND SAID REQUEST FOR REVIEW NOW HAVING BEEN WITHDRAWN BY CLAIMANT'S COUNSEL.

IT IS THEREFORE ORDERED THAT THE REVIEW NOW PENDING BEFORE THE BOARD IS HEREBY DISMISSED AND THE ORDER OF THE HEARING OFFICER IS FINAL BY OPERATION OF LAW.

WCB CASE NO. 72-3045 AUGUST 6, 1973

CARL L. GILLESPIE, CLAIMANT

COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER AFFIRMING THE DENIAL OF HIS CLAIM FOR A BACK CONDITION, CONTENDING THE CONDITION IS CAUSALLY CONNECTED TO A COMPENSABLE NECK INJURY.

ISSUE

DID CLAIMANT SUFFER A COMPENSABLE INJURY TO HIS BACK?

DISCUSSION

CLAIMANT'S PREVIOUS HEAD AND NECK INJURIES WERE CAUSED BY A COMPENSABLE WORK-CONNECTED TREE FALLING MISHAP ON OCTOBER 4, 1971.

HIS BACK SYMPTOMATOLOGY FOR WHICH HE HAS RECEIVED MEDICAL CARE, BEGAN TO DEVELOP LATER IN MAY OR JUNE, 1972. DR. R. E. WILLIAMS OPINED A CONNECTION. DR. JOHN SERBU, THE PORTLAND REHABILITATION CENTER AND THE BACK EVALUATION CLINIC ALL THINK NOT. DR. CLIFTON E. BAKER'S CONCLUSION WAS SPECULATIVE, I. E. 'IT MAY HAVE BEEN CAUSED BY LOSS OF MUSCLE TONE.'

THE EVIDENCE LEADS THE BOARD TO CONCLUDE, AS DID THE HEARING OFFICER, THAT THE REQUISITE MEDICAL CAUSAL CONNECTION HAS NOT BEEN PROVED.

THE ORDER OF THE HEARING OFFICER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 23, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 72-2903 AUGUST 6, 1973

BONNIE B. PRATER, CLAIMANT
MIZE, KRIESIEN, FEWLESS, CHENEY AND
KELLEY, CLAIMANT'S ATTYS.
POZZI, WILSON AND ATCHISON, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER AND AMENDED ORDER, FINDING THAT -

- (1) CLAIMANT SUFFERED A COMPENSABLE OCCUPATIONAL INJURY
- (2) CLAIMANT HAD GOOD CAUSE FOR DELAY IN REPORTING THE CLAIM
- (3) THE EMPLOYER'S DELAY IN ACCEPTING OR DENYING THE CLAIM WAS UNREASONABLE AND,
- (4) CLAIMANT'S ATTORNEY WAS ENTITLED TO A FEE OF ELEVEN HUNDRED FIFTY DOLLARS.

THE EMPLOYER CONTENDS THE HEARING OFFICER ERRED IN EACH OF THE ABOVE FINDINGS.

DISCUSSION

THE BOARD HAS REVIEWED THE RECORD DE NOVO AND THE BRIEFS FURNISHED ON REVIEW AND CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER. HIS ORDERS SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 25, 1973 AND THE AMENDED ORDER DATED FEBRUARY 12, 1973 ARE HEREBY AFFIRMED.

CLAIMANT'S ATTORNEY IS AWARDED TWO HUNDRED FIFTY DOLLARS,
PAYABLE BY THE EMPLOYER, FOR HIS SERVICES ON THIS REVIEW.

WCB CASE NO. 72-1454 AUGUST 6, 1973
WCB CASE NO. 72-1515 AUGUST 6, 1973

JOSEPH H. BRAY, CLAIMANT
THOMAS C. HOWSER, CLAIMANT'S ATTY.
GEARIN, LANDIS AND AEBI, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER
WHICH REFUSED CONTINUANCE OF TEMPORARY TOTAL DISABILITY PAYMENTS
AND FURTHER MEDICAL CARE BEYOND JUNE 10, 1972.

ISSUE

SHOULD TEMPORARY DISABILITY AND MEDICAL SERVICES BE ALLOWED
AFTER JUNE 10, 1972?

DISCUSSION

THE HEARING OFFICER AFFIRMED THE DENIAL OF AN ALLEGED SECOND
INJURY AND WENT ON TO FIND THAT CLAIMANT'S DIFFICULTIES FROM A
FIRST INJURY HAD BECOME MEDICALLY STATIONARY ON JUNE 10, 1972.

UPON ITS OWN REVIEW, THE BOARD CONCURS WITH THE HEARING
OFFICER'S FINDING THAT CLAIMANT'S SURGERY WAS NOT NECESSITATED
BY HIS INJURY BUT RATHER BY THE GRADUAL PROGRESSION OF PRE-EXISTING
DEGENERATIVE CHANGES. THE EVIDENCE ESTABLISHES THAT CLAIMANT'S
COMPENSABLE CONDITION WAS STATIONARY ON JUNE 10, 1972 AND THAT
HIS SUBSEQUENT PROBLEMS AROSE FROM THE PRE-EXISTING CONDITION
WHICH EVENTUALLY CULMINATED IN BACK SURGERY.

THE HEARING OFFICER'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 21, 1972
IS AFFIRMED.

WCB CASE NO. 72-1986 AUGUST 7, 1973

MAX N. SANCHEZ, CLAIMANT

SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.
ORDER OF DISMISSAL

A REQUEST FOR REVIEW, HAVING BEEN DULY FILED WITH THE WORKMEN'S COMPENSATION BOARD IN THE ABOVE-ENTITLED MATTER, AND SAID REQUEST FOR REVIEW NOW HAVING BEEN WITHDRAWN BY CLAIMANT'S COUNSEL.

IT IS THEREFORE ORDERED THAT THE REVIEW NOW PENDING BEFORE THE BOARD IS HEREBY DISMISSED.

WCB CASE NO. 72-2792 AUGUST 7, 1973

WILLIAM J. HUCKINS, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MCMENAMIN, JONES, JOSEPH AND LANG, DEFENSE ATTYS.
OWN MOTION ORDER

ON FEBRUARY 28, 1973, A WORKMEN'S COMPENSATION BOARD HEARING OFFICER ENTERED AN ORDER ALLOWING A DENIED AGGRAVATION CLAIM BUT PROVIDING THAT THE CLAIMANT'S ATTORNEY'S FEE BE PAID FROM THE TEMPORARY TOTAL DISABILITY AWARDED RATHER THAN PAYABLE BY THE EMPLOYER AS IT SHOULD HAVE BEEN.

THIS ERROR WAS OVERLOOKED BY CLAIMANT AND HIS ATTORNEY UNTIL APRIL 19, 1973, WHICH WAS BEYOND THE 30 DAY APPEAL PERIOD PROVIDED BY THE STATUTE.

CLAIMANT NOW SEEKS OWN MOTION RELIEF FROM THE HEARING OFFICER'S ERROR.

ORS 656.278 (1) PERMITS THE BOARD TO ' ' . . . MODIFY, CHANGE OR TERMINATE FORMER FINDINGS, ORDERS OR AWARDS IF IN ITS OPINION SUCH ACTION IS JUSTIFIED. ' ' !

THE HEARING OFFICER'S ORDER UNLAWFULLY CHARGED CLAIMANT'S COMPENSATION WITH THE PAYMENT OF HIS ATTORNEY'S FEE RATHER THAN PLACING THE BURDEN ON THE EMPLOYER WHO ERRONEOUSLY DENIED THE CLAIMANT'S CLAIM FOR COMPENSATION.

ON ITS OWN MOTION THE BOARD HEREBY SETS ASIDE THE HEARING OFFICER'S ORDER CONCERNING PAYMENT OF ATTORNEY FEES IN THE ORDER DATED FEBRUARY 28, 1973 AND IN LIEU THEREOF HEREBY ORDERS THE EMPLOYER TO PAY A FEE OF FIVE HUNDRED DOLLARS TO CLAIMANT'S ATTORNEYS, POZZI, WILSON AND ATCHISON, IN ADDITION TO AND NOT OUT OF THE COMPENSATION AWARDED BY THE HEARING OFFICER.

OUT OF THE FEE HEREBY ALLOWED, CLAIMANT'S ATTORNEYS SHALL HOLD CLAIMANT HARMLESS ON ACCOUNT OF ANY ATTORNEY'S FEE PREVIOUSLY PAID FROM HIS COMPENSATION.

NOTICE OF APPEAL

PURSUANT TO ORS 656.278 -

THE CLAIMANT HAS NO RIGHT TO A HEARING, REVIEW OR APPEAL ON THIS AWARD MADE BY THE BOARD ON ITS OWN MOTION.

THE EMPLOYER MAY REQUEST A HEARING ON THIS ORDER.

THIS ORDER IS FINAL UNLESS WITHIN 30 DAYS FROM THE DATE HEREOF THE EMPLOYER APPEALS THIS ORDER BY REQUESTING A HEARING.

WCB CASE NO. 73-43 AUGUST 7, 1973

THEODORE HELMER, CLAIMANT
ALLEN OWEN, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

ISSUE

DID CLAIMANT'S MYOCARDIAL INFARCTION OF OCTOBER 27, 1972 ARISE OUT OF AND IN THE COURSE OF EMPLOYMENT?

DISCUSSION

THE HEARING OFFICER'S ORDER DENIES THE CLAIM AND FAITHFULLY SUMMARIZES THE EVIDENCE INCLUDING THE MEDICAL OPINIONS.

THERE IS EXPERT MEDICAL TESTIMONY THAT NO CAUSAL CONNECTION EXISTS - THERE IS ALSO EXPERT MEDICAL TESTIMONY THAT CAUSAL CONNECTION EXISTS. THIS CASE MUST BE RESOLVED BY ITS OWN FACTS AND THE MEDICAL OPINION APPLIED TO THE FACTS.

CLAIMANT EXPERIENCED DISCOMFORT ON THE JOB OCTOBER 27, 1972 AND THE DAY PRIOR, WHICH HE DIAGNOSED AS NOT UNUSUAL RECURRING ULCER SYMPTOMS, WHICH HE RELIEVED BY DRINKING RICH MILK, TAKING MAALOX, AND BY REST. FRIDAY, OCTOBER 27, 1972, HAVING WORKED ALL DAY, AFTER DINNER, WHILE AT REST WATCHING TELEVISION, CLAIMANT AGAIN EXPERIENCED SIMILAR DISCOMFORT WHICH, HOWEVER, HE WAS UNABLE TO SIMILARLY RELIEVE WITH ANTACIDS. NEVERTHELESS, HE WORKED SATURDAY, THE NEXT DAY, UNTIL 2 P.M. WITH SIMILAR SYMPTOMS AND DID NOT SEEK ADMISSION TO THE HOSPITAL UNTIL SUNDAY, OCTOBER 29, 1972. AS A RESULT OF TESTS CONDUCTED AT PORTLAND ADVENTIST HOSPITAL, DOCTORS ARE IN AGREEMENT CLAIMANT SUFFERED A MYOCARDIAL INFARCTION FRIDAY EVENING, OCTOBER 27, 1972.

THE LACK OF A MEDICALLY SIGNIFICANT PRECIPITATING EVENT CAUSES THE CONCLUSION THAT CLAIMANT'S MYOCARDIAL INFARCTION DID NOT ARISE OUT OF HIS EMPLOYMENT.

ORDER

THE HEARING OFFICER'S ORDER DATED APRIL 6, 1973 IS AFFIRMED.

WCB CASE NO. 72-1541 AUGUST 7, 1973

ELLEN MITCHELL, CLAIMANT
MYRICK, COULTER, SEAGRAVES AND
NEALY, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED THE AWARD OF 64 DEGREES FOR UNSCHEDULED PERMANENT PARTIAL LOW BACK DISABILITY ENTERED BY THE CLOSING AND EVALUATION DIVISION.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT SUFFERED A LOW BACK STRAIN ON APRIL 12, 1971, WHILE EMPLOYED AS A RESTAURANT WORKER. FOLLOWING CONVALESCENCE, SHE WAS LEFT WITH A CHRONIC LUMBOSACRAL STRAIN. SHE WAS AWARDED PERMANENT PARTIAL DISABILITY EQUIVALENT TO 64 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY.

AT THE PHYSICAL REHABILITATION CENTER, CLAIMANT WAS FOUND TO HAVE ONLY MINIMAL PHYSICAL DISABILITY. THE PSYCHOLOGIST REPORTED CLAIMANT LACKS MOTIVATION. CLAIMANT HAS RETURNED TO HER PREVIOUS OCCUPATION BUT THE BOARD CONCLUDES FROM THE WHOLE RECORD, THAT CLAIMANT FAILED TO ESTABLISH THAT HER DISABILITY EXCEEDS THAT AWARDED BY THE DETERMINATION ORDER. THE HEARING OFFICER'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED FEBRUARY 14, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 72-1307 AUGUST 7, 1973

ROBERT SHINKLE, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
MCMENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED AN ADDITIONAL PERMANENT PARTIAL DISABILITY AWARD EQUIVALENT TO 15 PERCENT FOR PARTIAL LOSS OF THE LEFT LEG MAKING A TOTAL AWARD OF 38 DEGREES, OR 25 PERCENT.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT, A 59 YEAR OLD TIMBER FALLER AND BUCKER, SUFFERED A COMPENSABLE INJURY ON MAY 7, 1971, WHEN HE SUSTAINED TRANSVERSE FRACTURES OF THE TIBIAL AND FIBULAR SHAFTS. FOR THIS INJURY HE WAS AWARDED PERMANENT PARTIAL DISABILITY EQUIVALENT TO 23 DEGREES (APPROXIMATELY 15 PERCENT) FOR PARTIAL LOSS OF THE LEFT LEG.

CLAIMANT NOW COMPLAINS OF CONSIDERABLE DIFFICULTY WITH HIS LEFT LEG ON THE JOB. HIS TREATING PHYSICIAN CONCLUDED CLAIMANT NOW HAS PHYSICAL IMPAIRMENT EQUAL TO 25 PERCENT LOSS OF FUNCTION OF THE LEFT LEG DUE TO HIS 1971 INJURY.

PURSUANT TO ORS 656.222, CONSIDERATION WAS GIVEN TO THE DISABILITY RESULTING FROM CLAIMANT'S INJURY IN 1952 TO HIS LEFT FOOT IN ARRIVING AT HIS TOTAL AWARD.

THE BOARD CONCURS WITH THE HEARING OFFICER'S AWARD OF PERMANENT PARTIAL DISABILITY OF AN ADDITIONAL 15 DEGREES, MAKING A TOTAL OF 38 DEGREES OR 25 PERCENT PARTIAL LOSS OF THE LEFT LEG AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 25, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 72-2726 AUGUST 7, 1973

BILL ANGLIN, CLAIMANT
MYRICK, COULTER, SEAGRAVES AND
NEALY, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED CLAIMANT AN AWARD FOR PERMANENT TOTAL DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT WAS CONSIDERED HONEST WITH REFERENCE TO HIS SYMPTOMS AND HE APPEARED AS A CREDIBLE WITNESS BEFORE THE HEARING OFFICER. THE HEARING OFFICER CONCLUDED THAT CLAIMANT'S PHYSICAL DISABILITIES, HIS MINIMAL EDUCATION AND THE SIGNIFICANT AGGRAVATION OF HIS PREEXISTING PSYCHOPATHOLOGY PERMANENTLY PRECLUDED HIM FROM RETURNING TO THE WORK FORCE.

THE BOARD FINDS, AS DID THE HEARING OFFICER, THAT CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED FEBRUARY 15, 1973, IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-2398 AUGUST 7, 1973

HELEN M. EWIN, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED A PERMANENT PARTIAL DISABILITY AWARD MADE BY A DETERMINATION ORDER ALLOWING CLAIMANT 45 DEGREES, (30 PERCENT) FOR PARTIAL LOSS OF THE LEFT LEG AND 23 DEGREES (15 PERCENT) FOR PARTIAL LOSS OF THE LEFT FOREARM.

ISSUE

WHAT IS THE NATURE AND EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT, THEN A 65 YEAR OLD SUBSTITUTE TEACHER, FELL ON JUNE 4, 1970, FRACTURING HER LEFT WRIST AND HER LEFT LEG AT THE HEAD OF THE FEMUR.

THE WRIST, WHEN HEALED, CAUSED A 15 PERCENT IMPAIRMENT OF THE LEFT FOREARM. THE LEG BONE HEALED IN GOOD ALIGNMENT AND CLAIMANT HAS FULL RANGE OF MOTION IN HER LEFT HIP JOINT. PERMANENT DISABILITY COMPENSATION EQUAL TO 35 PERCENT OF THE LEFT LEG WAS ALLOWED HOWEVER, LARGELY BECAUSE OF PAIN IN THE LEG AND LOSS OF STAMINA.

THE HEARING OFFICER AFFIRMED THESE DETERMINATIONS. THE CLAIMANT SEEKS AN AWARD OF PERMANENT TOTAL DISABILITY CONTENDING SHE SUFFERS UNSCHEDULED DISABILITY ALSO.

UPON ITS OWN DE NOVO REVIEW, THE BOARD CONCLUDES, AS DID THE HEARING OFFICER, THAT CLAIMANT'S INJURIES ARE TO SCHEDULED AREAS OF THE BODY ONLY AND SHE IS LIMITED BY LAW TO AN AWARD OF SCHEDULED PERMANENT PARTIAL DISABILITY. THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER SHOULD BE AFFIRMED IN THEIR ENTIRETY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 26, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 72-1787 AUGUST 7, 1973

ADA TRYON, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
MCMENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH UPHELD THE EMPLOYER'S DENIAL OF HER CLAIM.

ISSUE

DID CLAIMANT SUSTAIN A COMPENSABLE INDUSTRIAL INJURY?

DISCUSSION

ON REVIEW CLAIMANT CONTINUES TO URGE THAT THE PHYSICIANS INVOLVED IN THIS CASE ARE TO SOME DEGREE RESPONSIBLE FOR THE DENIAL AND HER INABILITY TO PERSUADE THE HEARING OFFICER THAT SHE INDEED SUFFERED A COMPENSABLE INJURY AS ALLEGED.

UPON DE NOVO REVIEW OF THE RECORD AND CONSIDERATION OF THE BRIEFS FILED ON APPEAL, THE BOARD CONCLUDES THE HEARING OFFICER'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED FEBRUARY 23, 1973 IS AFFIRMED.

JAMES MCCULLOCH, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.

JAUHA, WHEATLEY AND GARDNER, DEFENSE ATTYS.

REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER GRANTING CLAIMANT PERMANENT AND TOTAL DISABILITY PURSUANT TO ORS 656.206.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

THIS 52 YEAR OLD CLEAN-UP AND WATCHMAN, SUFFERED A COMPENSABLE INJURY OCTOBER 16, 1970, WHEN, WHILE CLEANING A BARKER, CONVEYOR, HE SLIPPED AND FELL INTO THE CONVEYOR LANDING ON HIS BACK. HIS INJURY WAS DIAGNOSED AS A CERVICAL STRAIN AND LUMBAR STRAIN.

CLAIMANT WAS FOUND TO BE SUFFERING FROM PREEXISTING DEGENERATIVE DISEASE OF THE LUMBAR SPINE, PRIMARILY AT THE L2-3 LEVEL, AS WELL AS A NUMBER OF OTHER DEBILITATING CONDITIONS.

THERE ARE CONFLICTING MEDICAL OPINIONS IN THE RECORD BUT THE BOARD CONCURS WITH THE HEARING OFFICER IN FINDING THE OPINION OF DR. ENNIS KEIZER MOST PERSUASIVE. THE BOARD CONCLUDES CLAIMANT IS UNABLE TO OBTAIN GAINFUL AND SUITABLE EMPLOYMENT OF ANY TYPE DUE TO HIS PRESENT PHYSICAL CONDITION TO WHICH THE ACCIDENT IN QUESTION HAS MATERIALLY CONTRIBUTED. THE ORDER OF THE HEARING OFFICER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 15, 1973, IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE EMPLOYER FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-1909 AUGUST 8, 1973

CECIL JONES, CLAIMANT

BRINK AND MOORE, CLAIMANT'S ATTYS.
MARMADUKE, ASCHENBRENNER, MERTEN AND
SALTVEIT, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER SUSTAINING A DENIAL OF HIS CLAIM OF AGGRAVATION BASED ON A COMPENSABLE INJURY SUSTAINED ON JULY 29, 1968.

ISSUE

HAS CLAIMANT SUFFERED AN AGGRAVATION OF HIS COMPENSABLE INJURY?

DISCUSSION

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER'S OPINION AND ADOPTS HIS ORDER AS ITS OWN.

ORDER

THE ORDER OF THE HEARING OFFICER DATED FEBRUARY 15, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 72-1570 AUGUST 9, 1973

JOHN W. FRANCOEUR, CLAIMANT

BABCOCK AND ACKERMAN, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
ORDER ON PETITION FOR REHEARING

IN RESPONSE TO CLAIMANT'S PETITION FOR RECONSIDERATION, THE BOARD HAS AGAIN CAREFULLY EXAMINED THE EVIDENCE PRESENTED IN THIS CASE AND, OF NECESSITY, THE EXHIBITS PRESENTED IN THE PRIOR HEARING OF CASE NO. 2522.

DESPITE CLAIMANT'S CONTENTIONS THAT THESE EXHIBITS PRECISELY AND ACCURATELY IDENTIFY THE ITEMS FOR WHICH THE CARRIER IS RESPONSIBLE, EXAMINATION OF THE RECORD IS NOT CONVINCING THAT ALL OF THE ITEMS CLAIMED ARE REIMBURSABLE. CLAIMANT'S ASSUMPTION THAT A TOTAL AMOUNT OF FOURTEEN HUNDRED EIGHT DOLLARS AND FOUR CENTS WAS HELD PAYABLE BY THE HEARING OFFICER'S ORDER IN CASE NO. 2522 IS NOT VALID. IT IS NOT CLEAR WHETHER CERTAIN ITEMS WERE OR WERE NOT CHARGEABLE AS MEDICAL COSTS RELATED TO THE COMPENSABLE INJURY. IT IS CLEAR THAT SOME OF THE ITEMS CLAIMED WERE NOT.

THE BOARD IS STILL CONVINCED THAT THE HEARING OFFICER AWARDED CLAIMANT EVERY ITEM THAT THE EVIDENCE JUSTIFIED. THE BOARD IS ALSO

SATISFIED THAT SOME OF THE ASSERTIONS MADE IN THE INSTANT REVIEW ARE MORE PROPERLY THE SUBJECT OF THE CIRCUIT COURT REVIEW IN CASE NO. 2522. THE PETITION TO REOPEN FOR RECONSIDERATION IS DENIED AND THE ORDER OF THE HEARING OFFICER IS AGAIN AFFIRMED.

NO NOTICE OF APPEAL IS DEEMED APPLICABLE.

WCB CASE NO. 72-428 AUGUST 9, 1973

MILO SEEMS, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH LIMITED HIS COMPENSATION TO PERMANENT PARTIAL DISABILITY, CONTENDING THAT HIS INJURIES ENTITLE HIM TO COMPENSATION FOR PERMANENT TOTAL DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

THE BOARD AGREES WITH THE 'FINDINGS' OF THE HEARING OFFICER'S ORDER BUT NOT WITH HIS CONCLUSION THAT CLAIMANT IS LIMITED ONLY TO AN AWARD OF PERMANENT PARTIAL DISABILITY.

SINCE THE BOARD REVIEWED THE HOWLAND CASE, CITED BY THE HEARING OFFICER, THE COURT OF APPEALS DECIDED THE CASE OF MANSFIELD VS. CAPLENER BROS., 95 OR ADV SH 1018, ---OR APP---, (1972). THE FACTS OF THE MANSFIELD CASE AND THIS CASE ARE QUITE SIMILAR. MANSFIELD WAS CONSIDERED TOTALLY DISABLED FACTUALLY BUT HAD RECEIVED PERMANENT PARTIAL DISABILITY EQUAL TO 85 PERCENT LOSS USE OF THE LEFT LEG AND 10 PERCENT FOR UNSCHEDULED BACK DISABILITY FROM THE CIRCUIT COURT.

THE EMPLOYER URGED, IN RESISTING AN AWARD OF PERMANENT TOTAL DISABILITY, THAT THE REAL CAUSE OF CLAIMANT'S UNEMPLOYMENT WAS HIS LEG INJURY AND SINCE THE LAW ALLOWS ONLY PERMANENT PARTIAL DISABILITY AWARDS FOR SCHEDULED LEG INJURIES HE COULD NOT RECEIVE COMPENSATION FOR PERMANENT TOTAL DISABILITY. THE COURT OF APPEALS DISAGREED.

THE COURT CONCLUDED MANSFIELD'S INABILITY TO WORK RESULTED . . . FROM A COMBINATION OF PHYSICAL DISABILITY, SCHEDULED AND UNSCHEDULED, AND SUBJECTIVE FACTORS, SUCH AS MEAGER EDUCATION AND MINIMAL LEARNING ABILITY.!! (EMPHASIS SUPPLIED.) THE COURT ALLOWED PERMANENT TOTAL DISABILITY.

THE BOARD CONCLUDES THAT MR. SEEMS IS PERMANENTLY TOTALLY DISABLED FROM A COMBINATION OF SCHEDULED AND UNSCHEDULED PHYSICAL DISABILITY AND THE SUBJECTIVE FACTORS OF ADVANCED AGE, LIMITED EDUCATION AND WORK EXPERIENCE ONLY IN MANUAL LABOR OCCUPATIONS AND THUS IS ENTITLED TO AN AWARD OF PERMANENT TOTAL DISABILITY.

ORDER

THE ORDER OF THE HEARING OFFICER IS HEREBY SET ASIDE AND CLAIMANT IS GRANTED COMPENSATION FOR PERMANENT TOTAL DISABILITY FROM THE DATE OF THIS ORDER ONWARD.

CLAIMANT'S ATTORNEYS ARE ENTITLED TO RECOVER 25 PERCENT OF THE INCREASED COMPENSATION MADE PAYABLE BY THIS ORDER, IN NO EVENT, HOWEVER, SHALL THE FEE ALLOWED HEREBY WHEN COUPLED WITH ANY FEE RECEIVED PURSUANT TO THE HEARING OFFICER'S ORDER, EXCEED FIFTEEN HUNDRED DOLLARS.

WCB CASE NO. 72-2992 AUGUST 9, 1973

JONATHAN BARNHART, CLAIMANT
POZZI, WILSON AND ATHISON, CLAIMANT'S ATTYs.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND
SCHWABE, DEFENSE ATTYs.
REQUEST FOR REVIEW BY CLAIMANT
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AWARDED CLAIMANT AN ADDITIONAL 16 DEGREES FOR UNSCHEDULED DISABILITY AND 15 DEGREES FOR LOSS OF THE LEFT LEG CONTENDING HIS DISABILITY EXCEEDS THAT AWARDED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S DISABILITY?

DISCUSSION

ON NOVEMBER 18, 1968, CLAIMANT, A THEN 19 YEAR OLD MILL WORKER, SUSTAINED A COMPENSABLE INJURY WHILE EMPLOYED AT WEYERHAEUSER IN COOS BAY, OREGON.

IN DECEMBER, 1969, DR. WILLIAM R. PARSONS PERFORMED A PARTIAL HEMILAMINECTOMY FOLLOWING WHICH DR. HOWARD CHERRY PERFORMED A SPINAL FUSION. IN SPITE OF THE EXCELLENT MEDICAL CARE BY THESE TWO COMPETENT PHYSICIANS, CLAIMANT HAS BEEN LEFT WITH SIGNIFICANT PHYSICAL IMPAIRMENT. HE ALSO HAS SUBSTANTIAL SUBJECTIVE SYMPTOMATOLOGY. NO IMPROVEMENT IS ANTICIPATED.

A DETERMINATION ORDER GRANTED HIM 80 DEGREES FOR UNSCHEDULED LOW BACK INJURY, 15 DEGREES LOSS OF LEFT LEG AND 135 DEGREES FOR THE RIGHT FOOT.

DURING 1970 AND 1971, CLAIMANT ATTENDED PORTLAND COMMUNITY COLLEGE AND MAINTAINED A 3.55 GPA, BUT HE QUIT SCHOOL, ONLY FIVE CREDITS SHORT OF AN ASSOCIATE DEGREE.

CLAIMANT UNDERWENT A PSYCHOLOGICAL EVALUATION BY NORMAN HICKMAN, PH.D. HIS REPORT INDICATED CLAIMANT HAS VERY SUPERIOR INTELLECTUAL RESOURCES WHICH WOULD ENABLE HIM TO FUNCTION SATISFACTORILY AT THE UNDERGRADUATE OR EVEN GRADUATE LEVEL. VOCATIONAL

INTEREST TESTS REVEALED CLAIMANT POSSESSED A HIGH DEGREE OF INTEREST IN NUMEROUS ACTIVITIES INCLUDING SOCIAL SERVICES, TEACHING, BUSINESS MANAGEMENT, SALES AND OFFICE PRACTICES. HOWEVER, CLAIMANT HAS CERTAIN PSYCHOLOGICAL FACTORS WHICH APPEAR TO HAVE PREVENTED HIM FROM TAKING ADVANTAGE OF HIS SUPERIOR ABILITIES. CLAIMANT IS PRESENTLY WORKING AS A CREW CHIEF FOR A CONTRACT INVENTORY AUDITING FIRM. THE JOB DOES NOT FULLY UTILIZE HIS POTENTIAL ABILITIES AND THUS HIS ACTUAL PRESENT EARNINGS DO NOT TRULY REFLECT HIS REMAINING EARNING CAPACITY LEVEL.

WHILE POST INJURY EARNINGS ARE TO BE CONSIDERED, IT IS THE LOSS OF EARNING CAPACITY AND NOT MERELY LOSS OF WAGES THAT CONTROLS THE RATING OF UNSCHEDULED DISABILITY. SURRETT V. GUNDERSON BROS. ENGINEERING, 295 OR 65 (1971) = HANNAN V. GOOD SAMARITAN HOSPITAL, 4 OR APP 178 (1970) = RYF V. HOFFMAN CONSTRUCTION COMPANY 254 OR 624 (1969).

CLAIMANT IS YOUNG, BRIGHT AND ADAPTABLE. THE HEARING OFFICER, IN FIXING THE PROPER AWARD, PROPERLY TOOK THESE FACTORS INTO ACCOUNT. THE BOARD AGREES WITH THE HEARING OFFICER'S ORDER AND CONCLUDES IT SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED FEBRUARY 17, 1973 IS AFFIRMED.

WCB CASE NO. 72-2577 AUGUST 10, 1973

LELAND GIBBS, CLAIMANT

CLAUD A. INGRAM, CLAIMANT'S ATTY.
CRAMER, GRONSO AND PINKERTON, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE DEFENDANT-EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER REQUIRING ACCEPTANCE OF THE CLAIMANT'S CLAIM.

ISSUES

1. DURING THE PERIOD IN QUESTION WAS THE RELATIONSHIP BETWEEN CLAIMANT AND DEFENDANT THAT OF EMPLOYER-EMPLOYEE OR WERE THEY PARTNERS?
2. IF THE RELATIONSHIP WAS THAT OF EMPLOYER-EMPLOYEE, DID THE ACCIDENT ARISE OUT OF AND IN THE COURSE OF EMPLOYMENT?

DISCUSSION

THE BOARD CONCURS WITH THE "FINDINGS" OF THE HEARING OFFICER BUT NOT WITH THE CONCLUSION THAT A COMPENSABLE INJURY OCCURRED. THE BOARD AGREES WITH THE HEARING OFFICER THAT THE FACTS ESTABLISH LELAND GIBBS WAS WORKING FOR HIS BROTHER CLAYTON GIBBS AS AN "EMPLOYEE" WITHIN THE MEANING OF ORS 656.002 (21). HOWEVER, THE TASK IN WHICH CLAIMANT WAS ENGAGED AT THE TIME OF

HIS INJURY WAS NOT CONNECTED WITH THE BUSINESS OR WITH THE EMPLOYER-EMPLOYEE RELATIONSHIP. LELAND GIBBS WAS EMBARKED UPON A FAMILY ERRAND AT THE REQUEST OF HIS BROTHER WHEN THE ACCIDENT OCCURRED. THUS, THE ACCIDENT DID NOT ARISE OUT OF AND IN THE COURSE OF CLAIMANT'S EMPLOYMENT AND THE HEARING OFFICER'S ORDER MUST BE REVERSED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 22, 1972, IS REVERSED AND THE DENIAL OF CLAIMANT'S CLAIM IS APPROVED.

PURSUANT TO ORS 656.313 NO COMPENSATION PAID PURSUANT TO THE ORDER OF THE HEARING OFFICER IS REPAYABLE.

WCB CASE NO. 72-479 AUGUST 10, 1973

DONALD FRY, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTY'S.
JAQUA, WHEATLEY AND GARDNER, DEFENSE ATTY'S.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER ON REMAND WHICH REAFFIRMED THE DETERMINATION ORDER ISSUED JANUARY 19, 1972, AWARDING CLAIMANT 128 DEGREES FOR UNSCHEDULED DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

THE BOARD PREVIOUSLY REMANDED THIS MATTER TO THE HEARING OFFICER AND EMPLOYER TO ARRANGE FOR CLAIMANT TO BE RE-ENROLLED AT THE DISABILITY PREVENTION DIVISION FOR EVALUATION BY DR. HICKMAN AND SUCH APPROPRIATE PSYCHOLOGICAL AND VOCATIONAL COUNSELING AS WOULD AID IN HIS RETURN TO EMPLOYMENT.

CLAIMANT WAS ACCORDINGLY SEEN BY NORMAN HICKMAN, PH.D., PSYCHOLOGIST, FOR FOLLOW-UP EXAMINATION. THERE IS EVIDENCE THAT THE INDUSTRIAL ACCIDENT NOT ONLY IMPAIRED CLAIMANT'S PHYSICAL DISABILITY BUT ALSO HIS INTELLECTUAL CAPACITY. THE PROGNOSIS FOR RESTORATION AND REHABILITATION OF CLAIMANT WAS !!POOR!!.

THE HEARING OFFICER AFFIRMED THE FORMER PERMANENT PARTIAL DISABILITY AWARD OF 128 DEGREES, REPRESENTING 40 PERCENT OF THE MAXIMUM = HOWEVER, THE BOARD, ON REVIEW CONCLUDES CLAIMANT'S PERMANENT DISABILITY IS EQUAL TO 160 DEGREES OR 50 PERCENT OF THE MAXIMUM ALLOWABLE.

ORDER

CLAIMANT IS HEREBY AWARDED AN ADDITIONAL 32 DEGREES MAKING A TOTAL OF 160 DEGREES FOR UNSCHEDULED DISABILITY.

CLAIMANT'S COUNSEL IS HEREBY AWARDED 25 PERCENT OF THE COMPENSATION MADE PAYABLE HEREBY, PAYABLE FROM SAID AWARD, AS A REASONABLE ATTORNEY'S FEE.

WCB CASE NO. 72-913 AUGUST 10, 1973

LESLIE M. ELKINS, CLAIMANT
GREEN, RICHARDSON, GRISWOLD AND
MURPHY, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED A PERMANENT PARTIAL DISABILITY AWARD EQUAL TO 256 DEGREES FOR UNSCHEDULED DISABILITY AND 15 DEGREES FOR PARTIAL LOSS OF THE RIGHT LEG, CONTENDING HE IS PERMANENTLY AND TOTALLY DISABLED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

THERE IS NO DISAGREEMENT BETWEEN THE PARTIES REGARDING THE FACTS IN THIS CASE.

AS TO THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY, THE BOARD CONCURS WITH THE FINDINGS OF THE HEARING OFFICER AND ADOPTS HIS ORDER AS ITS OWN.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 9, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 72-2835 AUGUST 10, 1973

RONALD H. CHECKLEY, CLAIMANT
MICHAEL D. STURGEON, CLAIMANT'S ATTY.
MCMENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH ALLOWED HIM A TOTAL OF 64 DEGREES FOR UNSCHEDULED DISABILITY CONTENDING HIS DISABILITY EXCEEDS THAT AWARDED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT'S APPEAL BRIEF EMPHASIZES THE CLAIMANT'S ANTICIPATED WAGE LOSS AS A JUSTIFICATION FOR INCREASING THE AWARD. THE FIGURES PRESENTED ARE HIGHLY SPECULATIVE.

THE BOARD CONCURS WITH THE HEARING OFFICER IN CONCLUDING THAT CLAIMANT'S APTITUDES AND ABILITIES HAVE MINIMIZED THE DISABLING EFFECT OF HIS UNJURY. THE AWARD OF 20 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY GENEROUSLY COMPENSATES CLAIMANT'S DISABILITY.

THE HEARING OFFICER'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 29, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 72-3050 AUGUST 10, 1973

MIKOLAJ KUZIEWSKI, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MERLIN MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS REVIEW OF A HEARING OFFICER'S ORDER ALLOWING A TOTAL OF 288 DEGREES FOR PERMANENT PARTIAL DISABILITY, CONTENDING HE IS PERMANENTLY TOTALLY DISABLED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

THE HEARING OFFICER REFUSED TO GRANT CLAIMANT AN AWARD OF PERMANENT TOTAL DISABILITY BECAUSE CLAIMANT REFUSED AN OFFER OF APPARENTLY SUITABLE EMPLOYMENT.

THE RECENT OREGON COURT OF APPEALS CASE OF DEATON V. SAIF, 97 OR ADV SH 126, OR APP , (MAY 14, 1973) CLEARLY ESTABLISHES THAT MOTIVATION IS AN IMPORTANT FACTOR TO CONSIDER IN AWARDING PERMANENT DISABILITY COMPENSATION.

IN LIGHT OF THE DEATON CASE, THE BOARD CONCURS WITH THE HEARING OFFICER'S FINDINGS AND CONCLUSIONS AND ADOPTS HIS ORDER AS ITS OWN.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 2, 1973, IS AFFIRMED.

WCB CASE NO. 72-3124 AUGUST 10, 1973

VERNON J. GOSSO, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH UPHELD THE DENIAL BY THE STATE ACCIDENT INSURANCE FUND OF CLAIMANT'S CLAIM.

ISSUE

DID CLAIMANT HAVE A VALID PERSONAL ELECTION ON FILE WITH THE STATE ACCIDENT INSURANCE FUND AT THE TIME OF HIS INDUSTRIAL INJURY?

DISCUSSION

CLAIMANT SUFFERED SEVERE INJURIES SEPTEMBER 29, 1972, WHEN STRUCK BY A FALLING TREE. HIS CLAIM WAS DENIED BY THE STATE ACCIDENT INSURANCE FUND BECAUSE HE DID NOT, AT THAT TIME, HAVE A PERSONAL ELECTION ON FILE WITH THE FUND.

WHEN THE CLAIMANT FORMED THE J AND L LOGGING COMPANY, AND WAS TO BECOME A SUBJECT EMPLOYER, HE CONTENDS HE COMPLETED AND SIGNED AN APPLICATION FOR WORKMEN'S COMPENSATION INSURANCE AND ALSO AN ELECTION FOR PERSONAL COVERAGE AS A WORKMAN. THESE WERE PURPORTEDLY MAILED WITH A ONE HUNDRED DOLLAR CHECK TO THE STATE ACCIDENT INSURANCE FUND ON JUNE 7, 1972.

THE STATE ACCIDENT INSURANCE FUND CONTENDS THE APPLICATION FOR COVERAGE AND THE ONE HUNDRED DOLLAR CHECK WERE RECEIVED, WHEREUPON IT ISSUED COMPANY COVERAGE BUT THAT NO APPLICATION FOR PERSONAL COVERAGE WAS EVER RECEIVED. CLAIMANT RELIES ON THE PRESUMPTION PERMITTED BY ORS 41.360 (24). THE DIFFICULTY WITH CLAIMANT'S POSITION IS THAT THE EVIDENCE FAILS TO ESTABLISH THAT THE APPLICATION WAS EVER DULY MAILED. THUS, HE DID NOT HAVE AT THE TIME OF INJURY PERSONAL COVERAGE UNDER THE LAW. MONTHLY PAYROLL REPORTS WERE SUBMITTED FOR NEARLY FOUR MONTHS AND IN THAT PERIOD OF TIME IT SHOULD HAVE BECOME EVIDENT TO THE CLAIMANT THAT HE HAD NO PERSONAL COVERAGE.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 13, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 72-3005 AUGUST 10, 1973

ARTHUR F. TAYLOR, JR., CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND
SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED AN AWARD OF PERMANENT PARTIAL DISABILITY EQUAL TO 32 DEGREES, BRINGING HIS TOTAL AWARD TO 96 DEGREES (30 PERCENT).

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

UPON ITS OWN DE NOVO REVIEW, THE BOARD CONCURS WITH THE FINDINGS OF THE HEARING OFFICER AND CONCLUDES CLAIMANT'S DISABILITY DOES NOT EXCEED 96 DEGREES OF A MAXIMUM OF 320 DEGREES FOR 30 PERCENT UNSCHEDULED DISABILITY OF THE LAW BACK. THE ORDER OF THE HEARING OFFICER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 14, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 72-3388 AUGUST 10, 1973

ANN MARY SPENST, CLAIMANT
ERNEST W. KISSLING, CLAIMANT'S ATTY.
MERLIN MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AWARDED 52.5 DEGREES (35 PERCENT) FOR PARTIAL LOSS OF THE RIGHT LEG AND 48 DEGREES (15 PERCENT) FOR UNSCHEDULED LOW BACK DISABILITY CONTENDING HER DISABILITY EXCEEDS THAT AWARDED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT SUSTAINED AN INJURY TO THE RIGHT KNEE AND BACK ON DECEMBER 10, 1968, WHILE EMPLOYED BY TEKTRONIX INC., WHICH PRODUCED PERMANENT PARTIAL DISABILITY.

CLAIMANT HAS SINCE RETURNED TO FULL TIME EMPLOYMENT BUT SHE IS UNABLE TO WORK OVERTIME, TAKE A PROMOTION OR TO CONTINUE WITH THE CLASSES SHE WAS TAKING TO ADVANCE HER EMPLOYMENT POSITION IN THE COMPANY.

THE DOCTORS WHO TREATED CLAIMANT WERE MYSTIFIED BECAUSE OBJECTIVE MEDICAL FINDINGS WERE ALL INCONSISTENT WITH HER SUBJECTIVE SYMPTOMS. HOWEVER, NEITHER THEY, NOR THE HEARING OFFICER, DOUBTED CLAIMANT'S SINCERITY IN HER COMPLAINTS OF PAIN.

THE HEARING OFFICER FOUND SCHEDULED DISABILITY EQUAL TO 52.5 DEGREES FOR PARTIAL LOSS OF THE RIGHT LEG AND UNSCHEDULED DISABILITY EQUIVALENT TO 48 DEGREES.

UPON REVIEW, THE BOARD AGREES WITH THE HEARING OFFICER'S FINDINGS EXCEPT TO CONCLUDE CLAIMANT'S UNSCHEDULED DISABILITY IS EQUAL TO 80 DEGREES RATHER THAN 48 DEGREES AS THE ORDER OF THE HEARING OFFICER ALLOWED.

ORDER

CLAIMANT IS HEREBY AWARDED AN ADDITIONAL 32 DEGREES MAKING A TOTAL OF 80 DEGREES OF A MAXIMUM OF 320 DEGREES (25 PERCENT) FOR UNSCHEDULED DISABILITY.

CLAIMANT'S ATTORNEY, ERNEST W. KISSLING, IS ENTITLED TO RECEIVE 25 PERCENT OF THE INCREASED COMPENSATION MADE PAYABLE HEREBY, PAYABLE OUT OF SAID AWARD, AS A REASONABLE ATTORNEY FEE.

WCB CASE NO. 72-2183 AUGUST 10, 1973

GUADALUPE SERRANO, CLAIMANT

CRAMER, GRONSO AND PINKERTON, CLAIMANT'S ATTYS.
ROGER WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER REMANDING AN AGGRAVATION CLAIM TO IT FOR ACCEPTANCE AND PROVISION OF BENEFITS.

ISSUE

HAS CLAIMANT SUFFERED AN AGGRAVATION OF HER NOVEMBER 27, 1967 INDUSTRIAL INJURY?

DISCUSSION

BASED UPON THE MEDICAL OPINION OF DR. DANFORD, THE HEARING OFFICER CONCLUDED THAT CLAIMANT IS ENTITLED TO RECEIVE COMPENSATION BENEFITS FOR HER AGGRAVATION CLAIM. THE BOARD UPON DE NOVO REVIEW, FINDS DR. DANFORD'S REPORT PERSUASIVE AND ADOPTS THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER AS ITS OWN. HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED APRIL 3, 1973 IS HEREBY AFFIRMED.

COUNSEL FOR CLAIMANT IS AWARDED A REASONABLE ATTORNEY FEE IN THE AMOUNT OF ONE HUNDRED DOLLARS, PAYABLE BY THE EMPLOYER, FOR HIS SERVICES UPON BOARD REVIEW.

WCB CASE NO. 71-1513 AUGUST 10, 1973

MARJORIE PETERSEN, CLAIMANT
PETERSON, CHAIVOE AND PETERSON, CLAIMANT'S ATTYS.
MERLIN L. MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH REFUSED CLAIMANT ADDITIONAL MEDICAL TREATMENT BUT WHICH DID AWARD AN ADDITIONAL 84 DEGREES MAKING A TOTAL AWARD OF 148 DEGREES FOR UNSCHEDULED CERVICAL DISABILITY.

ISSUES

1. WAS CLAIMANT'S CONDITION MEDICALLY STATIONARY AT THE TIME OF CLAIM CLOSURE OR WAS SHE IN NEED OF FURTHER MEDICAL CARE AND TREATMENT AT THE TIME OF THE HEARING?
2. IN THE ALTERNATIVE, WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

THE REVIEW OF A CASE WITH THE MEDICAL COMPLEXITIES OF THIS ONE IS MADE MORE DIFFICULT WHEN NO BRIEFS ARE FILED. IT IS PARTICULARLY HELPFUL TO HAVE BRIEFS SPELL OUT WHEREIN THE HEARING OFFICER IS SAID TO HAVE FAILED TO PROPERLY EVALUATE THE EVIDENCE.

THE BOARD'S REVIEW OF THE EXTENSIVE EVIDENCE IN THIS CASE, AND PARTICULARLY THE TESTIMONY OF DR. SNODGRASS, LEADS THE BOARD TO BELIEVE THAT THE HEARING OFFICER MADE A REASONABLY ACCURATE APPRAISAL OF THE EVIDENCE AND HIS AWARD AND ORDER SHOULD BE AFFIRMED.

AN ADDITIONAL MEDICAL REPORT WAS SUBMITTED TO THE BOARD SUBSEQUENT TO THE HEARING WHICH THE BOARD CANNOT, PURSUANT TO ORS 656.295 (5), CONSIDER AS EVIDENCE.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 17, 1972 IS HEREBY AFFIRMED.

WCB CASE NO. 72-3075 AUGUST 10, 1973

DOUGLAS NORDSTROM, CLAIMANT
MYRICK, COULTER, SEAGRAVES AND NEALY,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER
AWARDING CLAIMANT 192 DEGREES (60 PERCENT) FOR UNSCHEDULED DIS-
ABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT, A 56 YEAR OLD POND MONKEY, SUSTAINED A COMPENSABLE
INJURY TO HIS UPPER BACK AND NECK ON OCTOBER 12, 1970. ALTHOUGH
REPORTS FROM THE PHYSICAL REHABILITATION CENTER INDICATE THE CLAIM-
ANT HAS MINIMAL PHYSICAL DISABILITIES AND MODERATE PSYCHOPATHOLOGY,
A JOB CHANGE WAS RECOMMENDED.

THE CLAIMANT SHOWS A DEFINITE LACK OF MOTIVATION.

BASED ON THE MEDICAL REPORTS SUBMITTED, A BOARD CONCURS
THAT CLAIMANT IS CAPABLE OF OBTAINING SUITABLE AND GAINFUL EMPLOY-
MENT AND THEREFORE, CONCLUDES THAT THE ORDER OF THE HEARING
OFFICER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED FEBRUARY 16, 1973,
IS HEREBY AFFIRMED.

WCB CASE NO. 72-2879 AUGUST 10, 1973

JOHN M. BOONE, CLAIMANT
CHARLES E. HODGES, JR., CLAIMANT'S ATTY.
MERLIN L. MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER
WHICH DISMISSED HIS REQUEST FOR REVIEW AND SUSTAINED THE DENIAL
OF THE CLAIM BY THE EMPLOYER.

ISSUE

HAS CLAIMANT SUSTAINED A COMPENSABLE INJURY?

DISCUSSION

THE HEARING OFFICER FOUND NO EVIDENCE OF CAUSAL CONNECTION BETWEEN THE CLAIMANT'S EMPLOYMENT AND HIS PHYSICAL COMPLAINTS AND UPHELD THE EMPLOYER'S DENIALS.

THE BOARD UPON ITS OWN REVIEW OF THE RECORD, CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED FEBRUARY 2, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 72-1095 AUGUST 10, 1973

HAROLD MCCULLOUGH, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND
SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED A DETERMINATION ORDER AWARDING NO PERMANENT PARTIAL DISABILITY.

ISSUE

SHOULD CLAIMANT'S CLAIM BE REOPENED TO PROVIDE MEDICAL CARE AND TREATMENT AND TIME LOSS AS OF JANUARY 21, 1972?

DISCUSSION

AFTER REVIEWING THE RECORD DE NOVO AND CONSIDERING THE BRIEFS FURNISHED ON REVIEW, THE BOARD CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 6, 1972 IS HEREBY AFFIRMED.

MELVIN O. MCGINNIS, CLAIMANT
WILLIAM E. BLITSCH, CLAIMANT'S ATTY.
MERLIN L. MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTED A HEARING SEEKING AN INCREASE IN PERMANENT PARTIAL DISABILITY. AFTER HEARING THE CASE, THE HEARING OFFICER AWARDED CLAIMANT PERMANENT TOTAL DISABILITY.

THE EMPLOYER APPEALS CONTENDING THE HEARING OFFICER ERRED IN GRANTING CLAIMANT MORE COMPENSATION THAN REQUESTED AND THAT HE ERRED IN ORDERING PERMANENT TOTAL DISABILITY COMPENSATION WITHOUT ALLOWING THE EMPLOYER AN OPPORTUNITY TO PRESENT EVIDENCE ON THE ISSUE OF PERMANENT TOTAL DISABILITY.

THE EMPLOYER ALSO CONTENDS THAT, AS A MATTER OF FACT, CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED.

DISCUSSION

THE BOARD AGREES WITH THE EMPLOYER'S CONTENTION THAT THE HEARING OFFICER ERRED IN GRANTING CLAIMANT PERMANENT TOTAL DISABILITY IN THE ABSENCE OF A REQUEST FOR SUCH RELIEF.

HAD THE CLAIMANT REQUESTED HEARING ON THE EXTENT OF DISABILITY, THE EMPLOYER WOULD HAVE BEEN PROPERLY ON NOTICE THAT PERMANENT TOTAL DISABILITY WAS IN ISSUE. WHEN A CLAIMANT REQUESTS ONLY AN INCREASE IN PARTIAL DISABILITY THE AWARD SHOULD BE LIMITED TO PARTIAL DISABILITY. IF, HOWEVER, AFTER HEARING THE CASE THE HEARING OFFICER CONCLUDES THE EVIDENCE INDICATES PERMANENT TOTAL DISABILITY COMPENSATION IS IN ORDER, THE HEARING OFFICER SHOULD GRANT THE EMPLOYER AN OPPORTUNITY TO PRESENT ADDITIONAL EVIDENCE ON THE ISSUE OF PERMANENT TOTAL DISABILITY BEFORE CONCLUDING THE MATTER.

IT IS UNNECESSARY TO REMAND THE MATTER IN THIS CASE BECAUSE THE BOARD, FROM ITS REVIEW, CONCLUDES THE CLAIMANT IS NOT, IN FACT, PERMANENTLY AND TOTALLY DISABLED.

THE MEDICAL OPINION ESTABLISHES THAT HIS PHYSICAL DISABILITY IS ONLY MODERATE AND THE MEMORY LOSS IS ONLY MILD. THE BOARD RECOGNIZES THAT CLAIMANT'S AGE HAS ENHANCED THE LOSS OF EARNING CAPACITY BUT CONCLUDES THAT CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED. HIS DISABILITY DOES EXCEED THE 40 PERCENT LOSS OF THE WORKMAN ALLOWED BY THE DETERMINATION ORDER. CLAIMANT IS ENTITLED TO 60 PERCENT OF 192 DEGREES FOR UNSCHEDULED DISABILITY AND THE ORDER SHOULD BE MODIFIED ACCORDINGLY.

ORDER

THE ORDER OF THE HEARING OFFICER IS REVERSED AND CLAIMANT IS HEREBY AWARDED AN ADDITIONAL 64 DEGREES MAKING A TOTAL OF 192 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED DISABILITY.

CLAIMANT'S ATTORNEY IS ENTITLED TO 25 PERCENT OF THE INCREASED COMPENSATION AWARDED HEREBY BUT IN NO EVENT SHALL HIS FEE EXCEED FIFTEEN HUNDRED DOLLARS.

WCB CASE NO. 72-2702 AUGUST 10, 1973

ILA R. BAKER, CLAIMANT
MARMADUKE, ASCHENBRENNER, MERTEN
AND SALTVEIT, CLAIMANT'S ATTYS.
MAGUIRE, KESTER AND COSGRAVE,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED THE DENIAL OF HER CLAIM.

ISSUE

DID CLAIMANT SUSTAIN A COMPENSABLE INJURY ARISING OUT OF AND IN THE COURSE OF HER EMPLOYMENT?

DISCUSSION

THE BOARD, ON ITS OWN DE NOVO REVIEW OF THE RECORD, ADOPTS THE HEARING OFFICER'S FINDINGS AND CONCLUSIONS AS ITS OWN. HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED FEBRUARY 15, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 73-574 AUGUST 10, 1973

ARLIE L. KILGORE, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
ORDER ON MOTION

CLAIMANT MOVED TO DISMISS THE STATE ACCIDENT INSURANCE FUND !! REJECTION !! OF A HEARING OFFICER'S ORDER ON THE GROUNDS THAT THE REJECTION WAS UNTIMELY AND THAT THE APPEAL PROCEDURES RELIED ON THE FUND HAD BEEN AMENDED BY PASSAGE OF NEW LEGISLATION (ENGROSSED HOUSE BILL 2376).

ORS 656.808 PROVIDES THE REJECTION OF A HEARING OFFICER'S ORDER IN AN OCCUPATIONAL DISEASE CLAIM MAY BE MADE WITHIN 90 DAYS AFTER THE DATE OF SUCH ORDER AND THE EFFECTIVE OPERATIVE DATE OF ENGROSSED HOUSE BILL 2376 HAS NOT YET ARRIVED, THUS THE APPEAL PROCEDURE RELIED ON BY THE FUND IS STILL THE APPLICABLE LAW.

THE BOARD BEING NOW FULLY ADVISED FINDS THE CLAIMANT'S MOTION IS NOT WELL TAKEN AND IT IS HEREBY DENIED.

WCB CASE NO. 72-1353 AUGUST 13, 1973

LEONARD D. SILLS, CLAIMANT
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH SUSTAINED THE DENIAL OF HIS CLAIM FOR AGGRAVATION BY THE STATE ACCIDENT INSURANCE FUND.

ISSUE

HAS CLAIMANT SUFFERED AN AGGRAVATION OF HIS INDUSTRIAL INJURY OF JUNE 25, 1966?

DISCUSSION

THE BOARD CONCLUDES THE HEARING OFFICER HAS MADE A CAREFUL AND COMPETENT ANALYSIS OF THE MATTER AND THE BOARD CONCURS WITH HIS FINDING THAT THE RECORD AS A WHOLE DOES NOT SUPPORT A FINDING OF AGGRAVATION OF CLAIMANT'S INDUSTRIAL DISABILITY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 19, 1972 IS HEREBY AFFIRMED.

WCB CASE NO. 72-3022 AUGUST 13, 1973
WCB CASE NO. 72-2202 AUGUST 13, 1973

RALPH SCHWAB, CLAIMANT
F. P. STAGER, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

THIS MATTER IS BEFORE THE WORKMEN'S COMPENSATION BOARD UPON REQUEST OF CLAIMANT THAT THE BOARD EXERCISE ITS CONTINUING JURISDICTION UNDER OWN MOTION POWER GRANTED PURSUANT TO ORS 656.278.

THE BOARD IS IN RECEIPT OF A MEDICAL REPORT FROM DENNIS K. COLLIS, M.D., WHICH INDICATES THAT CLAIMANT'S ORIGINAL INJURY IS A MATERIAL CONTRIBUTING FACTOR TO CLAIMANT'S PRESENT CONDITION, AND THAT HIS CLAIM SHOULD BE REOPENED ON THE BOARD'S OWN MOTION.

BASED ON THE MEDICAL EVIDENCE AVAILABLE, THE BOARD CONCLUDES THE CLAIMANT'S CLAIM SHOULD BE REOPENED.

IT IS HEREBY ORDERED THAT THE CLAIM OF RALPH E. SCHWAB BE REOPENED BY THE STATE ACCIDENT INSURANCE FUND FOR FURTHER NECESSARY CARE AND TREATMENT.

CLAIMANT'S ATTORNEY, F. P. STAGER, IS ENTITLED TO RECEIVE 25 PERCENT OF THE TEMPORARY TOTAL DISABILITY COMPENSATION MADE PAYABLE HEREBY, TO A MAXIMUM OF FIVE HUNDRED DOLLARS, FOR HIS SERVICES TO THE CLAIMANT IN THIS MATTER.

NOTICE OF APPEAL

PURSUANT TO ORS 656.278 -

THE CLAIMANT HAS NO RIGHT TO A HEARING, REVIEW OR APPEAL ON THIS AWARD MADE BY THE BOARD ON ITS OWN MOTION.

THE STATE ACCIDENT INSURANCE FUND MAY REQUEST A HEARING ON THIS ORDER.

THIS ORDER IS FINAL UNLESS WITHIN 30 DAYS FROM THE DATE HEREOF THE STATE ACCIDENT INSURANCE FUND APPEALS THIS ORDER BY REQUESTING A HEARING.

WCB CASE NO. 72-967 AUGUST 14, 1973

MELVIN O. MCGINNIS, CLAIMANT
WILLIAM E. BLITSCH, CLAIMANT'S ATTY.
MERLIN L. MILLER, DEFENSE ATTY.
CORRECTED ORDER ON REVIEW NUNC PRO TUNC

WHEN THE ORDER ON REVIEW WAS ISSUED ON AUGUST 10, 1973, A CLERICAL ERROR WAS COMMITTED IN THE LAST SENTENCE ON PAGE 1. THIS CLERICAL ERROR IS HEREBY CORRECTED THIS 14TH DAY OF AUGUST, 1973, BY ISSUANCE OF THIS CORRECTED ORDER ON REVIEW NUNC PRO TUNC.

THE LAST SENTENCE ON PAGE 1 OF SAID ORDER ON REVIEW IS DELETED AND IS HEREBY CORRECTED TO READ AS FOLLOWS -

'CLAIMANT IS ENTITLED TO 60 PERCENT OR 192 DEGREES FOR UNSCHEDULED DISABILITY AND THE ORDER SHOULD BE MODIFIED ACCORDINGLY.'

THE ORDER ON REVIEW IS OTHERWISE RATIFIED AND AFFIRMED.

THIS CORRECTED ORDER ON REVIEW HAVING NO EFFECT ON THE SUBSTANTIVE RIGHTS OF THE PARTIES, NO NOTICE OF APPEAL IS GRANTED.

WCB CASE NO. 73-720 AUGUST 14, 1973

ROBERT A. GRANGER, CLAIMANT
JOHN D. RYAN, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
ORDER OF REMAND

THIS MATTER IS NOW BEFORE THE WORKMEN'S COMPENSATION BOARD FOR REVIEW OF THE HEARING OFFICER'S ORDER DATED JUNE 13, 1973.

SINCE SUPPLEMENTAL MEDICAL REPORTS HAVE BEEN OBTAINED AND CLAIMANT HAS UNDERGONE SURGICAL PROCEDURES FOLLOWING THE HEARING, THE BOARD IN THIS INSTANCE AND THE PARTIES CONCUR, THAT THE BEST INTERESTS OF ALL WOULD BE SERVED BY REMANDING THE MATTER TO THE HEARING OFFICER FOR HIS CONSIDERATION OF SUCH FURTHER EVIDENCE.

THIS MATTER IS ACCORDINGLY REMANDED TO THE HEARING OFFICER FOR FURTHER HEARING AND SUCH FURTHER ORDER AS HE DEEMS APPROPRIATE UPON RECONSIDERATION OF THE MATTER WITH THE BENEFIT OF FURTHER EVIDENCE.

NO NOTICE OF APPEAL IS DEEMED APPLICABLE.

WCB CASE NO. 71-2012 AUGUST 15, 1973

IDA SUE PECK, CLAIMANT
MYRICK, COULTER, SEAGRAVES AND NEALY,
CLAIMANT'S ATTYS.
COLLINS, REDDEN, FERRIS AND VELURE,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH REMANDED CLAIMANT'S CLAIM OF AGGRAVATION TO THE EMPLOYER FOR ACCEPTANCE AND PAYMENT OF COMPENSATION THROUGH ITS INSURANCE CARRIER, AETNA CASUALTY AND SURETY.

ISSUE

HAS CLAIMANT SUFFERED AN AGGRAVATION OF HER COMPENSABLE INJURY OF APRIL 10, 1967?

DISCUSSION

AFTER REVIEWING THE RECORD DE NOVO, THE BOARD FINDS ITSELF IN COMPLETE AGREEMENT WITH THE FINDINGS AND CONCLUSIONS EXPRESSED IN THE HEARING OFFICER'S ORDER. HIS OPINION AND ORDER IS ADOPTED BY THE BOARD.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 26, 1973 IS HEREBY AFFIRMED.

COUNSEL FOR CLAIMANT IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE EMPLOYER, FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-1351 AUGUST 15, 1973

JESS FERGUSON, CLAIMANT

JOEL B. REEDER, CLAIMANT'S ATTY.
COLLINS, FERRIS AND VELURE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT.

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE HEARING OFFICER'S ORDER APPROVING THE DENIAL OF HIS CLAIM FOR AGGRAVATION.

ISSUE

HAS CLAIMANT SUFFERED AN AGGRAVATION OF HIS COMPENSABLE INJURY?

DISCUSSION

THE BOARD, UPON ITS OWN EXAMINATION OF THE RECORD AND BRIEFS OF THE PARTIES, CONCLUDES THAT THE HEARING OFFICER REACHED THE CORRECT RESULT BOTH AS TO HIS FINDINGS AND OPINION.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 9, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 73-78 AUGUST 15, 1973

ROBERT MCKENZIE, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED THE AWARD MADE BY A CLOSING AND EVALUATION DETERMINATION ORDER OF 50 PERCENT LOSS OF LEFT RING FINGER EQUAL TO 5 DEGREES AND 15 PERCENT LOSS OF THE LEFT INDEX FINGER EQUAL TO 3.6 DEGREES.

ISSUES

1. HAS CLAIMANT SUFFERED LOSS OF OPPOSITION BETWEEN THE THUMB AND INDEX FINGER?
2. WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT SUFFERED A COMPENSABLE INJURY DECEMBER 22, 1971, WHEN HIS LEFT HAND WAS FULLED INTO A POWER SAW, AMPUTATING THE DISTAL PHALANX OF HIS LEFT RING FINGER AND LACERATED THE LEFT MIDDLE AND INDEX FINGERS.

THE BOARD HAS REVIEWED THE EVIDENCE AND IS OF THE OPINION THAT THE HEARING OFFICER'S ACTUAL OBSERVATION OF THE CLAIMANT'S HAND IS THE BEST WAY AND MOST OCCURATE WAY TO EVALUATE THE DISABILITY OF THE INJURED HAND.

WITH NO CLEAR EVIDENCE TO THE CONTRARY, THE BOARD CONCURS WITH THE FINDING OF THE HEARING OFFICER THAT CLAIMANT HAS NOT SUFFERED A LOSS OF OPPOSITION AND THE AWARDS MADE FOR DISABILITY TO THE FINGERS ARE CORRECT.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 29, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 72-1234 AUGUST 15, 1973

GENEVIEVE OLSON, CLAIMANT
BURNS AND EDWARDS, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS REVIEW OF A HEARING OFFICER'S ORDER AFFIRMING A DETERMINATION ORDER OF MAY 2, 1972 WHICH AWARDED CLAIMANT 23 DEGREES (15 PERCENT) PERMANENT PARTIAL DISABILITY FOR PARTIAL LOSS OF THE LEFT LEG.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

THE HEARING OFFICER SAW AND HEARD CLAIMANT'S TESTIMONY AT THE HEARING AND HAD BEFORE HIM MEDICAL EVIDENCE OF CLAIMANT'S DISABILITY. HE WAS CONVINCED FOLLOWING THESE OBSERVATIONS THAT CLAIMANT WAS NOT ENTITLED TO ADDITIONAL DISABILITY TO THE LEFT LEG.

THE BOARD CONCURS WITH THE HEARING OFFICER THAT THE CLAIMANT'S DISABILITY, DOES NOT, IN FACT, EXCEED THE 23 DEGREES FOR PERMANENT PARTIAL DISABILITY TO THE LEFT LEG AWARDED BY THE DETERMINATION ORDER.

THE ORDER OF THE HEARING OFFICER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 16, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 72-3180 AUGUST 15, 1973

MURRAY D. MEHLHOFF, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MCMENAMIN, JONES, JOSEPH AND LANG, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AWARDED 80 DEGREES (25 PERCENT) FOR UNSCHEDULED NECK DISABILITY AND 28.8 DEGREES (15 PERCENT) FOR LOSS OF THE RIGHT ARM.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

THE BOARD UPON ITS OWN DE NOVO REVIEW OF THE EVIDENCE SUBMITTED, ADOPTS THE WELL WRITTEN OPINION AND ORDER OF THE HEARING OFFICER AS ITS OWN.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 13, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 72-821 AUGUST 15, 1973

DAVID CHEEK, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MCKEOWN, NEWHOUSE AND JOHNSEN, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AWARDED THE CLAIMANT ADDITIONAL COMPENSATION EQUAL TO 64 DEGREES FOR UNSCHEDULED DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT SUFFERED A COMPENSABLE INJURY JULY 11, 1971, DIAGNOSED AS A COMPRESSION FRACTURE OF L-1. A DETERMINATION ORDER GRANTED A PERMANENT PARTIAL DISABILITY AWARD OF 48 DEGREES UNSCHEDULED LOW BACK DISABILITY. THE HEARING OFFICER AWARDED AN ADDITIONAL 64 DEGREES, MAKING A TOTAL AWARD OF 112 DEGREES.

CLAIMANT WAS OFF WORK APPROXIMATELY THREE MONTHS, AND THEN RETURNED TO HIS FORMER JOB AT WEYERHAEUSER, WHERE HE WAS SUPERVISING A 20 MAN CREW, AND AVERAGING 8 TO 10 HOURS A WEEK IN OVERTIME. THERE IS NO QUESTION CLAIMANT'S BACK HURTS ON OCCASION, AND LIMITS HIS ACTIVITY SOMEWHAT, BUT HE IS ABLE TO CARRY OUT THE TASKS ASSIGNED, IN ADDITION TO WORKING SOME OVERTIME.

THE EVIDENCE OF RECORD SIMPLY DOES NOT SUBSTANTIATE THE FACT THAT THE CLAIMANT'S EARNING CAPACITY HAS BEEN REDUCED BY MORE THAN ONE-THIRD.

THE BOARD CONCLUDES AND FINDS THAT THE ACCIDENT IS NOT RESPONSIBLE FOR ANY LOSS OF EARNING CAPACITY IN EXCESS OF THE 48 DEGREES INITIALLY DETERMINED PURSUANT TO ORS 656.268.

ORDER

THE ORDER OF THE HEARING OFFICER IS ACCORDINGLY MODIFIED AND THE AWARD OF 48 DEGREES AS ESTABLISHED BY THE DETERMINATION ORDER IS HEREBY REINSTATED.

WCB CASE NO. 72-1368 AUGUST 16, 1973

CECIL PLUNK, CLAIMANT

COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF
CROSS-APPEAL BY CLAIMANT
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED CLAIMANT AN ADDITIONAL PERMANENT PARTIAL DISABILITY AWARD EQUAL TO 176 DEGREES, MAKING A TOTAL OF 224 DEGREES.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT SUFFERED A COMPENSABLE INDUSTRIAL INJURY TO HIS LOW BACK JULY 26, 1971. HIS CLAIM WAS ACCEPTED AND CLOSED BY A CLOSING AND EVALUATION ORDER ALLOWING AN AWARD OF PERMANENT PARTIAL DISABILITY EQUIVALENT TO 48 DEGREES.

CLAIMANT ULTIMATELY UNDERWENT A LUMBAR LAMINECTOMY WITH REMOVAL OF A DISC AT THE L4-5 LEVEL. THE MEDICAL EVIDENCE REFLECTS MODERATE PERMANENT RESIDUAL IMPAIRMENT FROM THIS INJURY.

IN REVIEWING THE RECORD, THE BOARD FINDS CLAIMANT HAS NOT ATTEMPTED TO PERFORM ANY WORK SINCE HIS INJURY OR EVEN ATTEMPTED TO FIND ANY WORK WHICH HE COULD PERFORM. THIS FACT, IN LIGHT OF THE RECENT COURT OF APPEALS CASE OF DEATON V. SAIF, 97 ADV SH 126, ---OR APP --- (MAY 14, 1973), WHICH CLEARLY ESTABLISHED THAT MOTIVATION IS AN IMPORTANT FACTOR IN AWARDING PERMANENT DISABILITY COMPENSATION, PERSUADES THE BOARD ON REVIEW THAT CLAIMANT'S PERMANENT PARTIAL DISABILITY IS EQUAL TO 128 DEGREES RATHER THAN 224 DEGREES AS ALLOWED BY THE HEARING OFFICER.

ORDER

THE ORDER OF THE HEARING OFFICER IS HEREBY MODIFIED AND THE AWARD FOR CLAIMANT'S PERMANENT PARTIAL DISABILITY IS DETERMINED TO BE 80 DEGREES, MAKING A TOTAL OF 128 DEGREES.

THE FEE OF CLAIMANT'S COUNSEL IS PAYABLE UPON THE INCREASE FROM 48 DEGREES TO 128 DEGREES BEING PAYABLE AT 25 PERCENT OF THE INCREASED COMPENSATION AND PAYABLE THEREFROM AS PAID.

SAIF CLAIM NO. BB 166322 AUGUST 16, 1973

AGNES BARKDOLL, CLAIMANT
GREEN RICHARDSON, GRISWOLD AND
MURPHY, CLAIMANT'S ATTYS.
OWN MOTION ORDER

THIS MATTER WAS PREVIOUSLY BEFORE THE WORKMEN'S COMPENSATION BOARD, PURSUANT TO REQUEST FOR AN OWN MOTION DETERMINATION, ON MARCH 16, 1973. THE BOARD'S OWN MOTION DETERMINATION ISSUED ALLOWING CLAIMANT TEMPORARY TOTAL DISABILITY FOR THE PERIOD MARCH 6, 1972 TO JUNE 12, 1972 - TEMPORARY PARTIAL DISABILITY FOR THE PERIOD JUNE 12, 1972 TO JULY 15, 1972 AND NO ADDITIONAL AWARD FOR PERMANENT PARTIAL DISABILITY.

UPON REQUEST OF CLAIMANT, THE BOARD HAS AGAIN CONSIDERED A REQUEST FOR ADDITIONAL AWARD OF PERMANENT PARTIAL DISABILITY, AND FINDS NO EVIDENCE IN THE RECORD TO WARRANT SUCH AN INCREASE. THE RECORD INDICATES CLAIMANT HAS RECEIVED PERMANENT PARTIAL DISABILITY AWARDS TOTALLING 35 PERCENT LOSS FUNCTION OF AN ARM FOR UNSCHEDULED DISABILITY, HAS RECEIVED NEEDED MEDICAL CARE AND IS WORKING STEADILY.

UNDER THESE CIRCUMSTANCES, THE BOARD DECLINES AT THIS TIME TO EXERCISE ITS OWN MOTION JURISDICTION PURSUANT TO ORS 656.278.

NO NOTICE OF APPEAL IS DEEMED APPLICABLE.

MARY E. EGGER, CLAIMANT

ALAN M. SCOTT, GALTON AND POPICK,
CLAIMANT'S ATTYS.
MCMENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH SET ASIDE A CLOSING AND EVALUATION DETERMINATION OF PERMANENT TOTAL DISABILITY AND AWARDED CLAIMANT A PERMANENT PARTIAL DISABILITY AWARD OF 60 PERCENT OF THE WORKMAN OR 192 DEGREES FOR UNSCHEDULED DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT SUSTAINED A COMPENSABLE INJURY NOVEMBER 24, 1971, WHEN SHE STRAINED HER BACK WHILE EMPLOYED AS A COOK IN A CONVALESCENT HOME.

PURSUANT TO ORS 656.268, SHE WAS GRANTED PERMANENT TOTAL DISABILITY, TO WHICH THE EMPLOYER OBJECTED AND REQUESTED A HEARING. THE HEARING OFFICER SET ASIDE THE PERMANENT TOTAL DISABILITY AWARD AND ALLOWED CLAIMANT 60 PERCENT OF THE WORKMAN OR 192 DEGREES.

EVIDENCE SUBMITTED AT THE HEARING INDICATED CLAIMANT HAD RETURNED TO HER EMPLOYMENT AND ACCORDING TO WITNESSES HAD NO DIFFICULTY PERFORMING HER JOB. SHE WAS TERMINATED BY THE EMPLOYER FOR UNION ACTIVITIES, AND NOT BECAUSE OF ANY INABILITY TO WORK.

THE MEDICAL EVIDENCE ALSO SUPPORTED A FINDING THAT CLAIMANT WAS NOT PERMANENTLY AND TOTALLY DISABLED, SPECIFICALLY AS TESTIFIED TO BY NATHAN SHLIM, M.D. AND ROBERT H. POST, M.D.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE HEARING OFFICER AND CONCLUDES AND FINDS THAT CLAIMANT'S DISABILITY IN DEGREES DOES NOT EXCEED 192 DEGREES.

ORDER

THE ORDER OF THE HEARING OFFICER DATED FEBRUARY 8, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 72-3222 AUGUST 17, 1973

THEA M. BUCKLEY, CLAIMANT
COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED A DETERMINATION ORDER AWARDING PERMANENT PARTIAL DISABILITY EQUIVALENT TO 32 DEGREES FOR UNSCHEDULED DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT SUFFERED A COMPENSABLE ACCIDENTAL INJURY TO HER LOW BACK ON DECEMBER 4, 1971.

DR. DEGGE, CLAIMANT'S TREATING PHYSICIAN, CHARACTERIZED HER PHYSICAL SYMPTOMS AS BEING OF MODERATE SEVERITY. CLAIMANT HAS BEEN ABLE TO RETURN TO WORK IN A SMALL GROCERY STORE, WORKING APPROXIMATELY THE SAME HOURS AND RECEIVING A SLIGHTLY HIGHER WAGE.

BASED ON FAILURE OF PROOF OF ANY LOSS OF EARNING CAPACITY, THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE FINDINGS OF THE HEARING OFFICER AND AFFIRMS HIS ORDER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 26, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 72-3245 AUGUST 17, 1973

RICHARD H. BOGART, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED A DETERMINATION ORDER ALLOWING TIME LOSS BENEFITS TO JULY 12, 1972, AND AN AWARD OF PERMANENT PARTIAL DISABILITY OF 20 PERCENT (64 DEGREES) FOR UNSCHEDULED BACK AND HEAD INJURY.

ISSUES

- 1) IS CLAIMANT IN NEED OF FURTHER MEDICAL AND ADDITIONAL TEMPORARY DISABILITY PAYMENTS, IF NOT, THE ISSUE BECOMES -
- 2) WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

THE BOARD, UPON ITS OWN DE NOVO REVIEW OF THE RECORD AND THE BRIEFS SUBMITTED ON REVIEW, FINDS IT IS IN AGREEMENT WITH THE HEARING OFFICER'S FINDINGS AND OPINIONS AS SET FORTH IN HIS ORDER OF MARCH 23, 1973.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 22, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 71-2664 AUGUST 17, 1973

DALE F. JOHNSON, CLAIMANT
JACK R. HANNAM, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED A DETERMINATION ORDER AWARD OF 8 DEGREES PARTIAL LOSS TO THE LEFT LEG AND ALLOWED AN ADDITIONAL 15 DEGREES FOR A TOTAL OF 30 DEGREES FOR PARTIAL LOSS OF THE RIGHT LEG.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

THIS MATTER INVOLVES A CLAIMANT WHO WAS SHOT IN THE CHEST DURING A HOLD-UP ON FEBRUARY 7, 1970. THE BULLET WAS LODGED NEAR HIS SPINE AND WAS REMOVED BY SURGERY THROUGH HIS BACK FEBRUARY 26, 1970. AN AREA OF HYPERESTHESIA REMAINS AROUND THE RIGHT SIDE OF THE CHEST TO HIS BACK, BUT THERE IS NO EVIDENCE THIS INTERFERES WITH THE PERFORMANCE OF CLAIMANT'S DUTIES.

CLAIMANT HAS CHANGED JOBS AND IS NOW AN AREA SUPERVISOR FOR DISCOUNT FABRICS, INC. HIS EARNINGS HAVE NOT BEEN DECREASED AND HE IS NOT REQUIRED TO BE ON HIS FEET EIGHT HOURS PER DAY, SIX DAYS PER WEEK. SINCE THERE IS NO LOSS OF EARNING CAPACITY AS A RESULT OF THE INJURY TO CLAIMANT'S CHEST, THERE IS NO BASIS FOR AN AWARD OF UNSCHEDULED DISABILITY.

THE HEARING OFFICER FOUND CLAIMANT'S GREATEST IMPAIRMENT LIES IN HIS RIGHT LEG AND FOR THIS HE INCREASED THE AWARD OF PERMANENT PARTIAL DISABILITY 15 DEGREES, MAKING A TOTAL AWARD OF PERMANENT PARTIAL DISABILITY OF 30 DEGREES OUT OF A MAXIMUM OF 150 DEGREES FOR 20 PERCENT LOSS USE OF THE RIGHT LEG. THE AWARD OF 8 DEGREES FOR 5 PERCENT LOSS USE OF THE LEFT LEG WAS NOT ALTERED.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER AND AFFIRMS HIS ORDER. IF, AT SOME FUTURE TIME, CLAIMANT'S CONDITION BECOMES WORSE, ADDITIONAL MEDICAL TREATMENT AND RECONSIDERATION OF HIS DISABILITY CAN BE HAD PURSUANT TO ORS 656.271.

ORDER

THE HEARING OFFICER'S ORDER DATED FEBRUARY 28, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 72-2908 AUGUST 17, 1973

RICHARD L. NOTESTINE, CLAIMANT

PAUL C. PAULSEN, CLAIMANT'S ATTY.
MCMENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED THE PERMANENT PARTIAL DISABILITY AWARD OF 96 DEGREES FOR UNSCHEDULED DISABILITY MADE BY THE CLOSING AND EVALUATION DIVISION OF THE BOARD.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT IS A 50 YEAR OLD TRUCK DRIVER WHO FELL FROM THE TOP OF A TANKER TO THE GROUND ON JUNE 5, 1970. HE WAS AWARDED 96 DEGREES FOR UNSCHEDULED DISABILITY TO THE LOW BACK.

CLAIMANT HAS UNDERGONE CONSERVATIVE TREATMENT, TAKES PAIN MEDICATION AND SOMETIMES WEARS A BACK BRACE. THE HEARING OFFICER WAS OF THE OPINION HIS SUBJECTIVE SYMPTOMATOLOGY WAS EXAGGERATED.

UNDER THE AUSPICES OF THE DIVISION OF VOCATIONAL REHABILITATION, CLAIMANT OBTAINED SUFFICIENT SCHOOLING TO PASS HIS GED EXAMINATION, AND ALSO ATTEMPTED ATTENDING A DALE CARNEGIE COURSE. BEFORE HIS INJURY CLAIMANT HAD INTELLIGENCE TO SUCCEED IN MANY FIELDS BUT WAS HINDERED BY HIS LACK OF EDUCATION. THIS DEFICIENCY HAS BEEN CORRECTED AND IT NOW APPEARS CLAIMANT HAS THE DUTY TO COOPERATE WITH THOSE PERSONS AND AGENCIES WHICH ARE ASSISTING HIM TO BECOME REGULARLY EMPLOYED AT A GAINFUL AND SUITABLE OCCUPATION.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDING BY THE HEARING OFFICER THAT CLAIMANT'S DISABILITY IS CORRECTLY EVALUATED BY THE AWARD OF 96 DEGREES.

ORDER

THE ORDER OF THE HEARING OFFICER DATED FEBRUARY 15, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 73-729 AUGUST 24, 1973

JIMMIE TROY PALMER, IN THE COMPLYING STATUS OF
C. DALE SPEARS REALTY

CASH R. PERRINE, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE,
DEFENSE ATTYS.

OWN MOTION ORDER

THIS MATTER COMING BEFORE THE WORKMEN'S COMPENSATION BOARD UPON MOTION SUPPORTED BY AFFIDAVIT OF THE ALLEGED EMPLOYER RAISES SUFFICIENT QUESTIONS CONCERNING THE LIABILITY OF THE ALLEGED EMPLOYER AND THE RIGHT OF THE CLAIMANT TO RECEIVE COMPENSATION PURSUANT TO ORS 656.054.

PURSUANT TO ORS 656.278, THE WORKMEN'S COMPENSATION BOARD IS VESTED WITH AUTHORITY TO REEXAMINE PRIOR AWARDS, ORDERS AND DECISIONS AND THEREFORE, UNDER ITS OWN MOTION JURISDICTION, FINDS THAT THE RECORD NOW BEFORE THE BOARD IS INCOMPLETE IN ORDER TO PROPERLY DETERMINE THE LIABILITY, IF ANY, OF THIS ALLEGED EMPLOYER.

IT IS THEREFORE ORDERED THAT THIS MATTER BE REFERRED TO THE HEARINGS DIVISION WITH DIRECTIONS TO HOLD A HEARING ON ALL ISSUES. UPON THE CONCLUSION OF THE HEARING THE HEARING OFFICER SHOULD FORTHWITH CAUSE AN ABSTRACT OF PROCEEDINGS TO BE PREPARED TO SUBMIT TO THE WORKMEN'S COMPENSATION BOARD, TOGETHER WITH FINDING OF FACT, OPINION AND RECOMMENDATIONS.

IT IS FURTHER ORDERED THAT THE CLAIMANT, JIMMIE TROY PALMER, PACIFIC FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION, C. DALE SPEARS, AN INDIVIDUAL AND C. DALE SPEARS, INC., A CORPORATION BE MADE A PARTY TO THESE PROCEEDINGS.

IT IS FURTHER ORDERED THAT THE HEARING OFFICER MAKE A FINDING AS TO ALL ISSUES NOT LIMITED TO THE FOLLOWING -

- (A) COMPENSABILITY.
- (B) RESOLVE THE ISSUE AS TO WHETHER OR NOT PACIFIC FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OR C. DALE SPEARS, AS AN INDIVIDUAL OR C. DALE SPEARS, INC., AS A CORPORATION IS THE EMPLOYER, AND IF THEY WERE, AT THE TIME OF THE ALLEGED INJURY, A NONCOMPLYING EMPLOYER.

NO NOTICE OF APPEAL RIGHTS IS DEEMED REQUIRED ON A MATTER LIMITED TO TAKING EVIDENCE.

WCB CASE NO. 72-1895-E AUGUST 24, 1973

MARY E. EGGER, CLAIMANT

ALAN M. SCOTT, GALTON AND POPICK,
CLAIMANT'S ATTYS.
MCMENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

THE BOARD HAS CONSIDERED CLAIMANT'S MOTION TO RECONSIDER AND HAS AGAIN EXAMINED ITS DETERMINATION OF THIS CASE AND CONTINUES TO BE OF THE OPINION THAT THE OPINION OF DR. BERNARD P. HARPOLE IS NOT SUFFICIENT TO OVERCOME THE TESTIMONY OF THE OTHER DOCTORS.

IN RESPECT TO CLAIMANT'S REQUEST FOR ATTORNEY FEES, THE BOARD, IN THE CASE OF ROBERT S. SMITH, WCB CASE NO. 70-2554, ANSWERED THIS CONTENTION IN THE FOLLOWING MANNER -

AN ATTORNEY FEE WAS ALLOWED TO CLAIMANT'S ATTORNEY AT THE HEARING ON THE BASIS THAT THE STATE ACCIDENT INSURANCE FUND HAD CROSS APPEALED. ATTORNEY FEES MAY ONLY BE ALLOWED UNDER EXPRESS STATUTORY AUTHORITY. ORS 656.382 REQUIRES THAT THE REQUEST BE INITIATED BY THE EMPLOYER. THIS HEARING WAS INITIATED BY THE WORKMAN. IF THE WORKMAN HAD WITHDRAWN AND THE STATE ACCIDENT INSURANCE FUND INSISTED UPON A HEARING FROM THAT POINT, IT COULD BE SAID THAT THE HEARING WAS INITIATED BY THE STATE ACCIDENT INSURANCE FUND. THE ALLOWANCE OF THE ATTORNEY FEE OF ONE HUNDRED TWENTY FIVE DOLLARS AT THE HEARING IS SET ASIDE.

CLAIMANT'S MOTION IS THEREFORE DENIED.

WCB CASE NO. 72-595 AUGUST 24, 1973

FRANK V. THOMAS, CLAIMANT

FLAXEL, TODD AND FLAXEL, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED CLAIMANT AN ADDITIONAL PERMANENT PARTIAL DISABILITY AWARD EQUAL TO 80 DEGREES FOR A TOTAL AWARD OF 112 DEGREES.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S DISABILITY?

DISCUSSION

CLAIMANT IS A MILL WORKER WHO SUFFERED A COMPENSABLE BACK INJURY ON JANUARY 11, 1971, AT AGE 42, WHILE LIFTING LIME SACKS.

HE RECEIVED A PARTIAL LEFT LUMBAR HEMI=LAMINECTOMY WITH REMOVAL OF EXTRUDED DISC, L5-S1 ON FEBRUARY 18, 1971. HIS CLAIM WAS CLOSED FEBRUARY 22, 1972 WITH A PERMANENT PARTIAL DISABILITY AWARD OF 32 DEGREES UNSCHEDULED LOW BACK DISABILITY.

THE DOCTORS HAVE ADVISED CLAIMANT SHOULD NOT RETURN TO HIS FORMER OCCUPATION, AND CLAIMANT HAS NOT DONE SO FEARING RE=INJURING HIS BACK. HE HAS COMPLETED THREE YEAR OF HIGH SCHOOL, HAS A GED, AND TOOK POLICE COURSES SEVERAL YEARS AT SOUTHWESTERN OREGON COMMUNITY COLLEGE.

THERE IS NO EVIDENCE INDICATING A LACK OF MOTIVATION ON THE PART OF THIS CLAIMANT. IN FACT, HE HAS ATTEMPTED TO GET VOCATIONAL REHABILITATION ON HIS OWN VOLITION. THE BOARD FEELS THIS CLAIMANT IS ENTITLED TO AND DESERVING OF ASSISTANCE FROM THE BOARD'S DIS=ABILITY PREVENTION DIVISION IN PROVIDING A VOCATIONAL RETRAINING PROGRAM THAT WILL PREPARE CLAIMANT TO SECURE EMPLOYMENT WITHIN HIS LIMITATIONS AND CAPABILITIES. THE BOARD IS DESIROUS THAT SUCH A PROGRAM BE IMPLEMENTED AT THE EARLIEST POSSIBLE DATE.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER AND CONCLUDES CLAIMANT'S PERMANENT PARTIAL DISABILITY IS EQUIVALENT TO 112 DEGREES.

ORDER

THE ORDER OF THE HEARING OFFICER DATED FEBRUARY 20, 1973 IS HEREBY AFFIRMED.

CLAIMANT'S ATTORNEY IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 73-1028 AUGUST 27, 1973

GERALD MCELROY, CLAIMANT
F. P. STAGER, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON JUNE 29, 1973, A HEARING OFFICER'S ORDER WAS ISSUED IN THE ABOVE ENTITLED CASE.

ON JULY 31, 1973, THE STATE ACCIDENT INSURANCE FUND REQUESTED REVIEW.

MORE THAN 30 DAYS ELAPSED BETWEEN THE MAILING OF THE HEARING OFFICER'S ORDER AND THE MAKING OF THE REQUEST FOR REVIEW.

THE HEARING OFFICER'S ORDER HAS BECOME FINAL BY OPERATION OF LAW IN ACCORDANCE WITH ORS 656.289(3) AND THE FUND'S REQUEST FOR REVIEW SHOULD BE DISMISSED.

IT IS SO ORDERED.

EDWARD J. LONG, CLAIMANT
RICHARDSON AND MURPHY, CLAIMANT'S ATTYS.
MCMENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTYS.

ON JUNE 1, 1972 A HEARING OFFICER OF THE WORKMEN'S COMPENSATION BOARD GRANTED CLAIMANT 67 DEGREES OF A MAXIMUM OF 192 DEGREES FOR PERMANENT BINAURAL HEARING LOSS.

ON JUNE 19, 1973 THE WORKMEN'S COMPENSATION BOARD AFFIRMED THAT ORDER ON REVIEW.

CLAIMANT APPEALED TO THE CIRCUIT COURT OF CLACKAMAS COUNTY WHICH GRANTED AN ADDITIONAL 67 DEGREES MAKING A TOTAL OF 134 DEGREES.

THE BOARD IS ADVISED THAT CLAIMANT THEREUPON APPEALED TO THE OREGON COURT OF APPEALS CONTENDING HIS DISABILITY EXCEEDED THAT AWARDED.

THE PARTIES HAVE NOW COMPROMISED THEIR DISPUTE IN ACCORDANCE WITH THE TERMS OF A STIPULATION OF COMPROMISE WHICH IS ATTACHED HERETO AS EXHIBIT 'A'. THE BOARD IS ADVISED THAT, BASED ON THIS STIPULATION OF COMPROMISE, CLAIMANT HAS WITHDRAWN HIS APPEAL TO THE COURT OF APPEALS.

THE BOARD BEING NOW FULLY ADVISED FINDS THAT IT HAS JURISDICTION TO CONSIDER THE STIPULATION OF COMPROMISE AND THAT HAVING CONSIDERED IT, THE STIPULATION IS FAIR AND EQUITABLE TO BOTH PARTIES AND OUGHT TO BE APPROVED AND EXECUTED ACCORDING TO ITS TERMS.

STIPULATION

THE CLAIMANT RECEIVED A COMPENSABLE INJURY AND A HEARING LOSS THE CLAIMANT WAS ACCEPTED AND CLOSED THROUGH THE WORKMEN'S COMPENSATION BOARD AND THE CLAIMANT EVENTUALLY RECEIVED AWARDS TOTALLY 134 DEGREES FOR A HEARING LOSS AND,

THIS MATTER IS PRESENTLY ON APPEAL AND THE CLAIMANT HAS AGREED TO WITHDRAW HIS APPEAL AND TO RECEIVE AN ADDITIONAL 41 DEGREES FOR A HEARING LOSS, MAKING HIS TOTAL AWARD EQUAL TO 175 DEGREES. CLAIMANT'S ATTORNEY IS TO RECEIVE AN ATTORNEY FEE OF 25 PERCENT PAYABLE OUT OF THE INCREASED AWARD OF 41 DEGREES.

THEREFORE ALL PARTIES TO THIS DISPUTED ISSUE OF PERMANENT PARTIAL DISABILITY REQUEST THE WORKMEN'S COMPENSATION BOARD TO APPROVE THIS STIPULATION.

WCB CASE NO. 72-1819 AUGUST 28, 1973

CORMA M. HARNESS, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH RULED THAT THE STATE ACCIDENT INSURANCE FUND'S VOLUNTARY PAYMENTS OF COMPENSATION TO THE CLAIMANT DID NOT ACT AS A DE FACTO REOPENING OF HER CLAIM.

HAVING REVIEWED THE RECORD AND BRIEFS FURNISHED ON APPEAL, THE BOARD CONCURS WITH THE FINDINGS AND OPINION OF THE HEARING OFFICER AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

BECAUSE ADDITIONAL ISSUES WERE RAISED BY CLAIMANT'S REQUEST FOR HEARING WHICH HAVE NOT BEEN DECIDED, THIS MATTER IS NOT RIPE FOR FURTHER APPEAL. THE CASE SHOULD BE REMANDED TO THE HEARINGS DIVISION FOR COMPLETION OF THE HEARING.

ORDER

THE ORDER OF THE HEARING OFFICER DATED NOVEMBER 7, 1972 IS HEREBY AFFIRMED AND THE MATTER IS HEREBY REMANDED TO THE HEARINGS DIVISION FOR COMPLETION OF THE HEARING.

WCB CASE NO. 72-1415 AUGUST 28, 1973

MARGARET LARSON, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON MARCH 21, 1972, CLAIMANT FILED A REPORT OF OCCUPATIONAL INJURY OR DISEASE WITH THE STATE ACCIDENT INSURANCE FUND STATING THAT CONTINUAL WALKING OR STANDING ON HARD SURFACES IN HER EMPLOYMENT WITH THE MULTNOMAH COUNTY HOSPITAL HAD AFFECTED BOTH FEET. THE STATE ACCIDENT INSURANCE FUND DENIED CLAIMANT'S CLAIM FOR BENEFITS.

UPON HEARING, THE HEARING OFFICER UPHELD THE DENIAL ISSUED BY THE STATE ACCIDENT INSURANCE FUND.

UPON REQUEST OF CLAIMANT THE MATTER WAS CERTIFIED TO MULTNOMAH COUNTY CIRCUIT COURT - WHICH COURT DENIED JURISDICTION. THE MATTER THEN PROCEEDED TO A MEDICAL BOARD OF REVIEW PURSUANT TO ORS 656.810.

THE MEDICAL BOARD OF REVIEW HAS NOW MADE ITS FINDINGS WHICH ARE ATTACHED HERETO, MARKED EXHIBIT 'A' AND MADE A PART HEREOF AND DECLARED FILED AS OF AUGUST 24, 1973.

FOR THE RECORD, THE MEDICAL BOARD OF REVIEW FINDS CLAIMANT'S CONDITION IS COMPENSABLY RELATED TO THE WORK EXPOSURE.

PURSUANT TO ORS 656.814, THE FINDINGS OF THE MEDICAL BOARD OF REVIEW ARE FINAL AS A MATTER OF LAW.

IT IS THEREFORE ORDERED THAT THE CLAIM BE REMANDED TO THE STATE ACCIDENT INSURANCE FOR PAYMENT OF BENEFITS TO WHICH CLAIMANT IS ENTITLED.

WCB CASE NO. 72-2384 AUGUST 28, 1973

GERALD ALMOND, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MIZE, KRIESIEN, FEWLESS, CHENEY AND KELLEY,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON, MOORE AND SLOAN.

CLAIMANT REQUESTS REVIEW OF A HEARING OFFICER'S ORDER WHICH ORDERED THE CARRIER TO PAY CERTAIN MEDICAL BILLS UNDER ORS 656.245 BUT WHICH AFFIRMED THE DENIAL OF HIS AGGRAVATION CLAIM, CONTENDING THAT HIS CONDITION HAS WORSENERED SO AS TO ENTITLE HIM TO COMPENSATION FOR PERMANENT PARTIAL DISABILITY ALSO.

IN HIS ORDER, THE HEARING OFFICER POINTED OUT THAT ALTHOUGH CLAIMANT HAS PERMANENT DISABILITY RESULTING FROM THE INJURY WHICH HAS NEVER BEEN COMPENSATED, HE WAS POWERLESS TO MAKE AN AWARD OF COMPENSATION BECAUSE CLAIMANT FAILED TO SHOW AN AGGRAVATION OF HIS DISABILITY SUBSEQUENT TO THE LAST AWARD OR ARRANGEMENT OF COMPENSATION.

THE BOARD CONCLUDES THE HEARING OFFICER CORRECTLY ANALYZED THE FACTS AND THE LAW CONCERNING THE CASE AND HIS ORDER MUST THEREFORE BE AFFIRMED.

THE HEARING OFFICER ALSO RAISED THE POSSIBILITY OF 'OWN MOTION' RELIEF BEING APPLICABLE TO HIS CASE, A MAJORITY OF THE BOARD CONCLUDE THAT OWN MOTION RELIEF IS WARRANTED. THE CLAIMANT'S CLAIM SHOULD BE REOPENED FOR SUBMISSION TO THE EVALUATION DIVISION OF THE WORKMEN'S COMPENSATION BOARD FOR A DETERMINATION OF PERMANENT DISABILITY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED FEBRUARY 16, 1973 IS AFFIRMED.

THE CLAIMANT'S CLAIM IS HEREBY REOPENED FOR SUBMISSION TO THE EVALUATION DIVISION AND ISSUANCE OF A NEW DETERMINATION ORDER.

LOUIS L. LEETH, CLAIMANT
BENTON FLAXEL, CLAIMANT'S ATTY.
MCKEOWN, NEWHOUSE, FOSS AND WHITTY,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED CLAIMANT AN ADDITIONAL PERMANENT PARTIAL DISABILITY AWARD EQUAL TO 64 DEGREES, MAKING A TOTAL AWARD OF 144 DEGREES UNSCHEDULED DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT WAS INJURED IN JANUARY OF 1968, WHILE EMPLOYED BY WEYERHAEUSER WHEN HE FELL ON A LOG INJURING HIS LEFT LEG AND SIDE.

ON JULY 26, 1971, PURSUANT TO A STIPULATED ORDER, CLAIMANT RECEIVED AN ADDITIONAL 16 DEGREES FOR HIS LOW BACK (MAKING A TOTAL OF 64 DEGREES UNSCHEDULED DISABILITY) AND 15 DEGREES FOR THE LEFT LEG. FOLLOWING A LAMINECTOMY BY DR. SERBU, A SECOND DETERMINATION ORDER AWARDED AN ADDITIONAL 16 DEGREES MAKING A TOTAL OF 80 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY AND 15 DEGREES FOR THE LEFT LEG.

CLAIMANT COULD NOT RETURN TO CHASING ON THE LANDING AT WEYERHAEUSER AND OBTAINED A JOB AT COOS TRUCKING COMPANY DRIVING A LOG TRUCK, WORKING 10 TO 12 HOURS A DAY RECEIVING OVERTIME PAY. THE MANAGER OF THIS COMPANY STATED CLAIMANT WAS A GOOD, HARD WORKER, DID NOT COMPLAIN, AND HAD NOT MISSED ANY TIME FROM WORK BECAUSE OF HIS BACK.

AFTER SURGERY, DR. SERBU REPORTED CLAIMANT'S LEFT LEG TO BE ASYMPTOMATIC, HIS BACK WAS !! FEELING WELL!! , AND HIS CONDITION HAD CERTAINLY IMPROVED FROM HIS PRE-OPERATIVE STATUS. DR. SERBU DESCRIBED THE DISABILITY TO BE MILD TO MODERATE.

THE HEARING OFFICER FOUND CLAIMANT A CREDIBLE WITNESS, HIGHLY MOTIVATED AND WELL ADJUSTED TO HIS PHYSICAL IMPAIRMENT. BASED ON THE THEORY THAT IN HIRING WORKMEN OF APPARENT EQUAL ABILITY, THE ONE WITHOUT THE PAST BACK INVOLVEMENT WOULD BE PREFERRED, THE HEARING OFFICER CONCLUDED THE CLAIMANT SHOULD RECEIVE AN ADDITIONAL 64 DEGREES UNSCHEDULED DISABILITY BASED ON LOSS OF FUTURE EARNING CAPACITY.

THE EMPLOYER CONTENDS THAT IN LIGHT OF THE HEARING OFFICER'S FINDING THAT CLAIMANT IS !! . . . DOUBTLESS BETTER AFTER SURGERY, !! THE INCREASE OF 64 DEGREES AWARDED BY THE HEARING OFFICER IS UNJUSTIFIED.

THE BOARD, ON REVIEW, CONSIDERS THE ADDITIONAL AWARD OF 64 DEGREES MADE BY THE HEARING OFFICER TO BE EXCESSIVE, AND FINDS CLAIMANT'S DISABILITY IS EQUAL TO 80 DEGREES FOR UNSCHEDULED DISABILITY AND 15 DEGREES FOR PARTIAL LOSS OF THE LEFT LEG.

ORDER

THE ORDER OF THE HEARING OFFICER IS ACCORDINGLY MODIFIED AND THE AWARD OF PERMANENT DISABILITY AS PREVIOUSLY ESTABLISHED AT 80 DEGREES FOR UNSCHEDULED DISABILITY AND 15 DEGREES FOR PARTIAL LOSS OF THE LEFT LEG IS REINSTATED.

WCB CASE NO. 72-3028 AUGUST 30, 1973

EZRA E. ZINN, CLAIMANT
ROBERT E. JONES, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER DISMISSING HIS REQUEST FOR HEARING CONTENDING = (1) THAT HE IS ENTITLED TO PERMANENT TOTAL DISABILITY COMPENSATION FROM APRIL 14, 1972 RATHER THAN OCTOBER 2, 1972 = (2) THAT THE FUND'S REFUSAL TO PAY PERMANENT TOTAL DISABILITY COMPENSATION IS UNREASONABLE THUS ENTITLING HIM TO PENALTIES AND ATTORNEYS FEES AND, (3) THAT HIS REQUEST FOR HEARING SEEKING THE ABOVE RELIEF IS NOT BARRED BY THE DOCTRINE OF RES JUDICATA.

DISCUSSION

BOTH THE PETERSON AND PYEATT CASES, CITED BY THE PARTIES, RECOGNIZE THAT THE FACTS OF THE PARTICULAR CASE ULTIMATELY DETERMINE WHEN A MAN BECOMES ENTITLED TO PERMANENT TOTAL DISABILITY COMPENSATION.

THE PETERSON CASE SUGGESTS THAT FOR REASONS OF ADMINISTRATIVE CONVENIENCE, IN THE ABSENCE OF A FINDING BY THE HEARING OFFICER AS TO WHEN THE WORKMAN BECAME PERMANENTLY TOTALLY DISABLED, THE DATE OF THE HEARING OFFICER'S ORDER WOULD CONTROL.

IN REVIEWING THE SUBSEQUENT PYEATT CASE, THE BOARD CONCLUDED THAT PROCEDURAL CONVENIENCE SHOULD GIVE WAY TO REALITY IN FIXING THE DATE A WORKMAN BECAME PERMANENTLY TOTALLY DISABLED AND TO THAT LIMITED EXTENT, OVERRULED THE PETERSON HOLDING.

THE BOARD CONTINUES TO BELIEVE THAT THE ACTUAL DATE A WORKMAN BECOMES PERMANENTLY AND TOTALLY DISABLED SHOULD BE CONTROLLING.

IN THE HEARING OFFICER'S ORDER ISSUED IN PYEATT (WHICH THE BOARD ADOPTED ON REVIEW) THE HEARING OFFICER STATED = ' ' IN CONTRAST, THE DATE ON WHICH A HEARING OFFICER'S OPINION AND ORDER ISSUES HAS NO PARTICULAR SIGNIFICANCE TO THE STATE OF A CLAIMANT'S PHYSICAL CONDITION. ' ' WHILE THAT STATEMENT WAS CORRECT WITH RESPECT TO THE FACTS OF PYEATT, AS A GENERAL STATEMENT IT IS TOO BROAD TO BE CORRECT.

WHERE A HEARING OFFICER MODIFIES THE DETERMINATION ORDER TO ALLOW PERMANENT TOTAL DISABILITY ON THE BASIS OF EVIDENCE THAT DURING THE YEAR FOLLOWING CLAIM CLOSURE THE WORKMAN'S CONDITION HAS DETERIORATED, THEN THE DATE OF THE HEARING OFFICER'S ORDER MAY BE APPROPRIATE AS THE INCEPTION DATE OF THE AWARD.

THE POINT IN BOTH PETERSON AND PYEATT WHICH SHOULD BE EMPHASIZED IS THAT PERMANENT TOTAL DISABILITY MAY BE FOUND TO EXIST AT THE TIME OF THE EARLIER DETERMINATION OR TO HAVE HAD ITS INCEPTION AT ANY TIME THEREAFTER UP TO AND INCLUDING THE DATE OF THE HEARING.

IN THE INSTANT CASE, NO ISSUE WAS MADE AT THE CLAIMANT'S FIRST HEARING AS TO THE PROPER INCEPTION DATE OF THE SOUGHT AFTER AWARD OF PERMANENT TOTAL DISABILITY. IT COULD HAVE APPROPRIATELY BEEN RAISED THEN OR BY A MOTION FOR CLARIFICATION TO THE HEARING OFFICER. HOWEVER, WE DO NOT BELIEVE THAT THE CLAIMANT'S FAILURE TO DO SO THEN NOW BARS HIM FROM REQUESTING A NEW HEARING.

THE FUND CITES THE OREGON RULE THAT A JUDGMENT IS BINDING NOT ONLY AS TO ALL THOSE MATTERS WHICH WERE LITIGATED BUT AS TO THOSE MATTERS WHICH COULD HAVE BEEN LITIGATED. THE RULE IS SOUND BUT THE CASES CITED BY THE FUND IN SUPPORT OF THE PROPOSITION ARE FACTUALLY DISTINGUISHABLE.

CLAIMANT'S FIRST HEARING DEALT WITH THE ISSUE OF EXTENT OF DISABILITY. THE FUND, BY SUGGESTING THAT THE MATTER COULD HAVE BEEN RAISED IS CONTENDING THAT THE MATTER SHOULD HAVE BEEN RAISED. TO SO CONTEND IS TO ASSUME THAT THE PARTIES WOULD NATURALLY AND INEVITABLY QUARREL OVER THE PROPER INCEPTION DATE. WE DO NOT THINK THAT IS A NATURAL ASSUMPTION AND THUS THE BOARD CONCLUDES THAT THE PROPER INCEPTION DATE WAS NOT AN ISSUE WHICH SHOULD HAVE BEEN RAISED AT THE EARLIER HEARING.

ORS 656.283 (1) PERMITS A PARTY TO REQUEST A HEARING AT ANY TIME ON ANY ISSUE CONCERNING A CLAIM.

THE ISSUE OF WHEN THE PERMANENT TOTAL DISABILITY AWARD SHOULD BEGIN DID NOT ARISE UNTIL AFTER THE INITIAL HEARING OFFICER ORDER ISSUED.

THE BOARD CONCLUDES THE HEARING OFFICER ERRED IN CONCLUDING CLAIMANT'S REQUEST FOR HEARING IS BARRED BY THE DOCTRINE OF RES JUDICATA.

APPLYING THE BASIC RATIONALE OF PETERSON AND PYEATT, THE BOARD FURTHER CONCLUDES CLAIMANT HAS BEEN PERMANENTLY TOTALLY DISABLED FROM THE TIME HE LAST BECAME MEDICALLY STATIONARY. HE IS THUS ENTITLED TO AN AWARD OF PERMANENT TOTAL DISABILITY BEGINNING APRIL 14, 1972.

BECAUSE THIS ISSUE HAS NOT BEEN CLEARLY SETTLED IN THE PAST NO PENALTIES SHOULD BE AWARDED. HOWEVER, THE FUND DID REFUSE TO PAY CLAIMANT COMPENSATION. THIS IS A DE FACTO DENIAL AND ENTITLES CLAIMANT TO THE PAYMENT OF HIS ATTORNEY'S FEE.

ORDER

THE ORDER OF THE HEARING OFFICER DATED APRIL 13, 1973 IS REVERSED.

IT IS HEREBY ORDERED THAT CLAIMANT RECEIVE COMPENSATION FOR PERMANENT TOTAL DISABILITY FROM APRIL 14, 1972 RATHER THAN OCTOBER 2, 1972 ONWARD.

CLAIMANT'S ATTORNEY, ROBERT E. JONES, IS HEREBY AWARDED A REASONABLE ATTORNEY FEE OF FOUR HUNDRED DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, IN ADDITION TO AND NOT OUT OF THE CLAIMANT'S COMPENSATION.

WCB CASE NO. 72-3082 AUGUST 30, 1973

MARY LUCILLE HOBBS, CLAIMANT
ROY KILPATRICK, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED AN ADDITIONAL PERMANENT PARTIAL DISABILITY AWARD OF 32 DEGREES, MAKING A TOTAL OF 80 DEGREES, FOR UNSCHEDULED LOW BACK DISABILITY. THE CLAIMANT CONTENDS THAT SHE IS PERMANENTLY AND TOTALLY DISABLED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S DISABILITY?

DISCUSSION

CLAIMANT, WHO WAS EMPLOYED AS A COOK FOR A SCHOOL DISTRICT, RECEIVED A COMPENSABLE INJURY ON MAY 11, 1971 WHEN SHE TOOK THE GARBAGE OUT, STUMBLED OVER A BICYCLE AND LANDED FLAT ON HER BUTTOCKS. THIS INJURY CAUSED A SPONDYLOLISTHESIS TO FLARE UP.

AFTER CONSERVATIVE TREATMENT, THE CLAIM WAS CLOSED BY A DETERMINATION ORDER DATED OCTOBER 5, 1972, AWARDING 48 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY.

AT THE HEARING, CLAIMANT TESTIFIED SHE DID NOT WISH TO HAVE SURGERY WHICH HAD BEEN RECOMMENDED AND WOULD SUBMIT TO SURGERY ONLY AS A LAST RESORT. THE BOARD CANNOT ORDER THE CLAIMANT TO HAVE THIS SURGERY. THE CLAIMANT SHOULD NOT BE COMPENSATED, HOWEVER, FOR ANY DEGREE OF DISABILITY WHICH REASONABLE MEDICAL PROCEDURES WOULD IMPROVE. PAIN IS LARGELY SUBJECTIVE AND WHEN A PATIENT PREFERS TO TOLERATE PAIN RATHER THAN ATTEMPT TO HAVE THE PAIN REMOVED, ONE LOGICAL INFERENCE IS THAT THE PAIN IS NOT AS DISABLING AS THE SUBJECTIVE COMPLAINTS WOULD OTHERWISE INDICATE.

ALSO AT THE HEARING, THE STATE ACCIDENT INSURANCE FUND REQUESTED AN ORDER FROM THE HEARING OFFICER DIRECTING THE CLAIMANT TO MAKE HERSELF AVAILABLE AT THE WORKMEN'S COMPENSATION BOARD DISABILITY PREVENTION DIVISION IN PORTLAND FOR MEDICAL AND PSYCHOLOGICAL EVALUATION. THE HEARING OFFICER, AFTER HEARING CLAIMANT'S TESTIMONY AND DOCUMENTARY EVIDENCE, CONCLUDED THAT WITH CLAIMANT'S ATTITUDE, AN ACCURATE EVALUATION AT THE CENTER WOULD BE IMPOSSIBLE.

THE HEARING OFFICER CONCLUDED THAT, AFTER EVALUATING ALL OF THE EVIDENCE, CLAIMANT WAS ENTITLED TO AN ADDITIONAL AWARD OF 32 DEGREES, MAKING A TOTAL OF 80 DEGREES, FOR UNSCHEDULED LOW BACK DISABILITY.

THE BOARD, ON REVIEW, FINDS NO EVIDENCE TO JUSTIFY ANY INCREASE IN THE AWARD OF PERMANENT PARTIAL DISABILITY MADE BY THE HEARING OFFICER AND AFFIRMS HIS ORDER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 4, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 71-2012 AUGUST 30, 1973

IDA SUE PECK, CLAIMANT

MYRICK, COULTER, SEAGRAVES AND
NEALY, CLAIMANT'S ATTYS.
COLLINS, REDDEN, FERRIS AND VELURE,
DEFENSE ATTYS.

A MOTION BY THE EMPLOYER, MONTGOMERY WARD AND COMPANY, FOR RECONSIDERATION OF BOARD'S ORDER FILED IN THIS CASE ON AUGUST 15, 1973, DIRECTS THE BOARD'S ATTENTION TO A MISTAKE THAT WAS INADVERTENTLY MADE IN THE ORDER ON REVIEW.

THE ORDER ON REVIEW OF AUGUST 15, 1973, STATES THAT THE HEARING OFFICER'S ORDER HAD REMANDED THE CLAIMANT'S CLAIM OF AGGRAVATION FOR PAYMENT OF COMPENSATION BY THE EMPLOYER'S INSURANCE CARRIER, AETNA LIFE AND CASUALTY. THIS, OF COURSE, IS INCORRECT AND THE ORDER ON REVIEW SHOULD BE CORRECTED TO CLARIFY THAT THE CASE IS REMANDED TO THE DEFENDANT, MONTGOMERY WARD AND COMPANY, FOR ACCEPTANCE OF THE CLAIM FOR AGGRAVATION AND PAYMENT OF BENEFITS.

THE MOTION FOR RECONSIDERATION IS DENIED.

WCB CASE NO. 72-2293 AUGUST 30, 1973

HAROLD AYER, CLAIMANT

COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER REMANDING CLAIMANT'S CLAIM OF AGGRAVATION TO THE FUND TO PROVIDE BENEFITS TO WHICH HE IS ENTITLED BY LAW. THE ATTORNEY FOR CLAIMANT CROSS-APPEALED RAISING THE ISSUE OF THE REASONABLENESS OF THE ATTORNEY FEE AWARDED BY THE HEARING OFFICER.

ISSUE

IS THE CLAIMANT ENTITLED TO INCREASED BENEFITS BASED ON AGGRAVATION OF HIS 1970 INDUSTRIAL INJURY?

DISCUSSION

THIS TAXICAB DRIVER, AT AGE 60, SUSTAINED A COMPENSABLE INJURY IN A CAR ACCIDENT ON JUNE 6, 1970, RECEIVING INJURIES TO THE LEFT KNEE, SHOULDER, NECK AND HEAD. BY A DETERMINATION ORDER OF NOVEMBER 6, 1970, HE WAS GRANTED TEMPORARY TOTAL DISABILITY, BUT NO AWARD FOR PERMANENT DISABILITY.

THE CLAIM FOR COMPENSATION ON ACCOUNT OF AGGRAVATION WAS FILED BY CLAIMANT WITH THE STATE ACCIDENT INSURANCE FUND ON OCTOBER 17, 1972 AND DENIED BY THE STATE ACCIDENT INSURANCE FUND ON NOVEMBER 3, 1972. THE CLAIM WAS ACCOMPANIED BY A DOCTOR'S REPORT. THE HEARING OFFICER FOUND THAT THE REPORTS FROM DR. BROWN, PSYCHIATRIST, AND OTHER MEDICAL AND LAY EVIDENCE, THAT CLAIMANT'S CONDITION HAD WORSENERED AND THE REQUIREMENTS OF ORS 656.271 HAD BEEN MET.

WHAT MIGHT HAVE BEEN AN INSIGNIFICANT INCIDENT TO ANOTHER WORKMAN APPEARS TO BE A TRIGGERING EVENT OF MUCH GREATER MAGNITUDE TO THIS CLAIMANT BECAUSE OF HIS HISTORY OF EMOTIONAL AND PSYCHOLOGICAL PROBLEMS. IT APPEARS CLAIMANT'S DISABILITY IS THE RESULT OF THESE PROBLEMS RATHER THAN ACTUAL PHYSICAL IMPAIRMENT.

DR. CHARLES C. BROWN, A WELL KNOWN PSYCHIATRIST, STATED IN HIS REPORT DATED DECEMBER 21, 1972 THAT BECAUSE OF CLAIMANT'S APPARENT DEPRESSION, HIS LEVEL OF ANXIETY INDICATED BY TREMOR, A DISTURBED SPEECH PATTERN AND DIFFICULTY IN CONCENTRATION THAT CLAIMANT WAS IN NEED OF PSYCHOTHERAPEUTIC INTERVENTION. DR. BROWN FELT CLAIMANT'S CONDITION FROM THE ACCIDENT HAD WORSENERED AND HE WAS NOT MEDICALLY STATIONARY. ANOTHER PSYCHIATRIST, PAUL S. BASSFORD, M.D., ALSO AGREED WITH THESE CONCLUSIONS.

THE BOARD, ON REVIEW, CONCURS WITH THE HEARING OFFICER AND FINDS CLAIMANT IS ENTITLED TO FURTHER MEDICAL CARE AND TREATMENT AS SUGGESTED BY DR. CHARLES C. BROWN. THE BOARD FURTHER FINDS THAT THE AWARD OF ATTORNEY'S FEES WAS JUST AND PROPER.

ORDER

THE ORDER OF THE HEARING OFFICER, DATED APRIL 10, 1973 IS HEREBY AFFIRMED.

COUNSEL FOR CLAIMANT IS AWARDED AN ATTORNEY FEE OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

BETTY SMITH, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.

MIZE, KRIESIEN, FEWLESS, CHENEY AND
KELLEY, DEFENSE ATTYS.

REQUEST FOR REVIEW BY EMPLOYER

THE EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED CLAIMANT A PERMANENT PARTIAL DISABILITY AWARD EQUAL TO 144 DEGREES, IN ADDITION TO THE 48 DEGREES PREVIOUSLY AWARDED, MAKING A TOTAL OF 192 DEGREES FOR UNSCHEDULED DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

THIS 32 YEAR OLD NURSE'S AIDE SUSTAINED A COMPENSABLE INJURY FEBRUARY 5, 1970, WHILE ASSISTING A PATIENT. DR. TSAI, A NEURO-SURGEON, DIAGNOSED SEVERE CERVICAL STRAIN WITH IRRITATION OF THE C-7 NERVE ROOT, IMPROVING UNDER CONSERVATIVE TREATMENT.

DR. MELGARD HOSPITALIZED THE CLAIMANT IN TRACTION IN MARCH, 1972, CLAIMANT TESTIFIED THIS RESULTED IN AN EXACERBATION OF HER DIFFICULTY. A MYELOGRAM PERFORMED BY DR. MELGARD WAS NEGATIVE.

A DETERMINATION ORDER ISSUED OCTOBER 2, 1973, AWARDING PERMANENT PARTIAL DISABILITY OF 48 DEGREES FOR UNSCHEDULED RIGHT SHOULDER DISABILITY UPON A CLOSING EXAMINATION BY DR. JOHN MARXER. DR. MARXER EXPRESSED THE OPINION THAT CLAIMANT'S CONDITION, OVER A PERIOD OF TIME WITH GRADUATED EXERCISES AND ACTIVITIES, MASSAGE, HEAT AND MUSCLE RELAXANTS, WOULD RESOLVE ITSELF.

WHILE DR. HARDER STATED IT WAS HIS OPINION THAT NO PERMANENT DAMAGE WOULD RESULT FROM THE INJURY, THE HEARING OFFICER DISCOUNTED THIS OPINION AND INSTEAD RELIED UPON OTHER MEDICAL REPORTS IN THE RECORD, AND THEREUPON AWARDED AN ADDITIONAL 144 DEGREES FOR PERMANENT PARTIAL DISABILITY.

IN ITS REVIEW OF THE RECORD, THE BOARD DOES NOT FIND SUFFICIENT EVIDENCE TO SUBSTANTIATE SUCH AN AWARD. ALTHOUGH CLAIMANT EXPERIENCES PAIN, PAIN IN AND OF ITSELF IS NOT COMPENSABLE UNLESS IT PRODUCES DISABILITY. IT MAY BE THAT THIS CLAIMANT WOULD BE A GOOD CANDIDATE TO BE REFERRED TO A RELIABLE PAIN CENTER FOR CARE AND TREATMENT. SHOULD CLAIMANT DESIRE THIS KIND OF TREATMENT AT SOME TIME IN THE FUTURE, IT COULD BE PROVIDED BY THE CARRIER PURSUANT TO ORS 656.245.

UPON REVIEW, THE BOARD CONCLUDES THE ADDITIONAL AWARD OF 144 DEGREES GRANTED BY THE HEARING OFFICER IS EXCESSIVE. THE BOARD FINDS CLAIMANT'S DISABILITY EQUALS A TOTAL OF 128 DEGREES FOR PERMANENT PARTIAL UNSCHEDULED RIGHT SHOULDER DISABILITY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED APRIL 13, 1973 IS SET ASIDE AND IN LIEU THEREOF, CLAIMANT IS GRANTED AN ADDITIONAL 80 DEGREES, MAKING A TOTAL AWARD OF 128 DEGREES FOR UNSCHEDULED RIGHT SHOULDER DISABILITY.

CLAIMANT'S ATTORNEY IS ENTITLED TO 25 PERCENT OF THE INCREASED COMPENSATION PAID UNDER THIS ORDER AS A REASONABLE ATTORNEY FEE. IN NO EVENT, HOWEVER, SHALL THE FEE ALLOWED ON THIS REVIEW, WHEN COMBINED WITH ANY ATTORNEY FEES WHICH MAY HAVE BEEN RECEIVED UNDER THE HEARING OFFICER'S ORDER, EXCEED A MAXIMUM OF FIFTEEN HUNDRED DOLLARS.

WCB CASE NO. 72-3093 AUGUST 30, 1973

BENNIE WESTBERRY, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER, CLAIMANT'S ATTYS.
KEITH SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED CLAIMANT AN ADDITIONAL AWARD OF 64 DEGREES FOR UNSCHEDULED SHOULDER DISABILITY, MAKING A TOTAL OF 96 DEGREES.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT SUFFERED A SHOULDER INJURY ON MARCH 22, 1971 WHILE EMPLOYED AS A DRYER GRADER IN A MILL. HIS CONDITION WAS DIAGNOSED AS POST TRAUMATIC BURSTITIS. HIS CLAIM WAS CLOSED JANUARY 13, 1972 WITH NO AWARD OF PERMANENT DISABILITY.

AFTER RECEIVING INJECTIONS INTO THE SHOULDER, CLAIMANT ATTEMPTED TO RETURN TO WORK, BUT WAS UNABLE TO PERFORM REPETITIVE MOTIONS OF THE UPPER EXTREMITIES. THE TREATING ORTHOPEDIST RECOMMENDED A JOB CHANGE NOT REQUIRING THIS TYPE OF ACTIVITY AND SUGGESTED RETRAINING.

CLAIMANT WAS 33 YEARS OLD AT THE TIME OF INJURY AND HAD COMPLETED HIGH SCHOOL THROUGH THE GED PROGRAM. WHEN CLAIMANT WAS REFERRED TO THE DISABILITY PREVENTION DIVISION OF THE WORKMEN'S COMPENSATION BOARD FOR TESTING AND EVALUATION, IT WAS FELT HIS PSYCHOLOGICAL PROBLEM WOULD NOT BE PERMANENT IF HE COULD RETURN TO GAINFUL EMPLOYMENT. THE MEDICAL DOCTOR AT THE CENTER FELT CLAIMANT EXHIBITED ONLY MINIMAL LOSS OF FUNCTION OF THE SHOULDER. CLAIMANT'S CONDITION WAS CONSIDERED STATIONARY AND THE CLAIM WAS CLOSED WITH AN AWARD OF 32 DEGREES FOR RIGHT SHOULDER DISABILITY.

THE ONLY EMPLOYMENT IN WHICH CLAIMANT HAS ENGAGED HAS BEEN THAT OF HEAVY LABOR IN LUMBER MILLS OR CONSTRUCTION WORK. HE HAS

REGISTERED WITH THE STATE EMPLOYMENT OFFICE AND HAS APPLIED FOR VARIOUS JOBS SUCH AS WATCHMAN. THERE IS NO LACK OF MOTIVATION DISPLAYED BY THE CLAIMANT AND IT IS HOPED HE WILL TAKE ADVANTAGE OF A RETRAINING PROGRAM. ALTHOUGH HIS PHYSICAL DISABILITY IS CONSIDERED MINIMAL, IT APPEARS THAT CLAIMANT DOES SUFFER A LOSS OF WAGE EARNING CAPACITY. TO ENABLE THE CLAIMANT TO ADJUST HIMSELF BY RETRAINING INTO SOME EMPLOYMENT WITHIN HIS CAPABILITIES, THE HEARING OFFICER AWARDED AN ADDITIONAL 64 DEGREES, MAKING A TOTAL OF 96 DEGREES, FOR UNSCHEDULED RIGHT SHOULDER DISABILITY.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED APRIL 5, 1973, IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE EMPLOYER FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-1488 SEPTEMBER 5, 1973

DOROTHY CRISMON, CLAIMANT
VANDENBERG AND BRANDSNESS, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER AWARDED 32 DEGREES FOR UNSCHEDULED DISABILITY AND INCREASED THE AWARD FOR RIGHT ARM DISABILITY FROM 15 PERCENT (28.8 DEGREES) TO 50 PERCENT (96 DEGREES) LOSS OF THE RIGHT ARM.

CLAIMANT CONTENDS SHE HAS NOT BEEN ADEQUATELY COMPENSATED FOR THE UNSCHEDULED CERVICAL DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT IS A REGISTERED NURSE ACTING AS A SUPERVISOR ON SURGERY STAFFS. SHE RECEIVED A COMPENSABLE INJURY DECEMBER 22, 1970, RESULTING IN A DECOMPRESSIVE LAMINOTOMY. THE CLAIM WAS CLOSED OCTOBER 13, 1971 UPON DR. CAMPAGNA'S REPORT WITH AN AWARD OF 32 DEGREES FOR UNSCHEDULED CERVICAL DISABILITY. A SUBSEQUENT REPORT FROM DR. CAMPAGNA PROMPTED A REEVALUATION AND A SECOND DETERMINATION ORDER AWARDED 15 PERCENT LOSS OF THE RIGHT ARM EQUAL TO 28.8 DEGREES.

CLAIMANT WORKED FOR APPROXIMATELY A YEAR AND A HALF AFTER THE INJURY. SHE TERMINATED THAT EMPLOYMENT FOR REASONS OTHER

THAN HER INDUSTRIAL INJURY. THERE WAS TESTIMONY AT THE HEARING THAT CLAIMANT COULD NOT FUNCTION AS EFFICIENTLY AS SHE DID PRIOR TO THE INJURY, BUT THAT SHE COULD BE WORKING IF SHE SO DESIRED.

THE HEARING OFFICER CONCLUDED THAT CLAIMANT HAD RECEIVED AN ADEQUATE AWARD FOR THE UNSCHEDULED CERVICAL DISABILITY, BUT FOUND SHE WAS ENTITLED TO A GREATER AWARD FOR THE SCHEDULED DISABILITY TO THE RIGHT ARM FOR WHICH HE AWARDED 50 PERCENT LOSS OF THE RIGHT ARM, EQUAL TO 96 DEGREES, IN LIEU OF AND NOT IN ADDITION TO THE PRIOR AWARD OF 15 PERCENT.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDING AND CONCLUSIONS OF THE HEARING OFFICER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED APRIL 5, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 72-3018 SEPTEMBER 5, 1973
WCB CASE NO. 73-564 SEPTEMBER 5, 1973

DELORIS F. JOHNSON, CLAIMANT
COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER DISMISSING HER REQUEST FOR HEARING AS UNTIMELY, CONTENDING THE STATE ACCIDENT INSURANCE FUND SHOULD BE ESTOPPED FROM CLAIMING THE PROTECTION OF THE STATUTORY BAR.

ISSUES

SHOULD THE STATE ACCIDENT INSURANCE FUND BE ESTOPPED FROM RAISING PROCEDURAL BARS TO CLAIMANT'S REQUEST FOR HEARING ON THE DENIAL OF HER CLAIM?

IF SO, DID CLAIMANT SUFFER A NEW INJURY ON NOVEMBER 12, 1971 RATHER THAN AN AGGRAVATION OF AN INJURY OF JUNE 18, 1961?

IS CLAIMANT ENTITLED TO PENALTIES AND ATTORNEY'S FEES?

DISCUSSION

THE HEARING OFFICER CORRECTLY SUMMARIZED THE FACTS OF THE CASE BUT THE BOARD CANNOT AGREE WITH HIS OPINION THAT THE DOCTRINE OF EQUITABLE ESTOPPEL DOES NOT APPLY.

WHEN THE STATE ACCIDENT INSURANCE FUND, OR ANY OTHER CARRIER OR EMPLOYER, SEEKS TO INFORM A CLAIMANT OF PROCEDURAL OR OTHER RIGHTS, IT OWES THE CLAIMANT THE FIDUCIARY OBLIGATION OF FULL DISCLOSURE. THIS IS PARTICULARLY TRUE WHEN THE CLAIMANT IS NOT REPRESENTED BY COUNSEL.

IN THIS INSTANCE, IT SHOULD HAVE BEEN OBVIOUS THAT CLAIMANT DID NOT UNDERSTAND WHAT SHE WAS BEING TOLD. WE DO NOT KNOW WHAT WAS TOLD TO HER PERSONALLY BUT THE WRITTEN INFORMATION WAS WORDED WITH THE APPARENT INTENT TO AVOID DISCLOSURE OF THE REAL PURPOSE OF THE DECISION SUGGESTED TO HER. THE FACT THE CLAIMANT ACCEPTED THE BENEFITS DOES NOT BAR HER WHEN SHE DID SO IN IGNORANCE OF HER RIGHTS.

THIS IS A CLEAR VIOLATION OF A DUTY TO DISCLOSE AND AS SUCH, AVOIDS ANY APPLICATION OF THE TIME LIMITATION IMPOSED BY STATUTE. THIS CONDUCT ENTITLES CLAIMANT TO ADDITIONAL COMPENSATION UNDER ORS 656.262(8).

THE RECORD REVEALS, AND THE HEARING OFFICER FOUND, THAT CLAIMANT INJURED HER BACK CARRYING BEER CASES ON NOVEMBER 12, 1971. IN LIGHT OF THE MECHANICS OF THE INJURY, HER FREEDOM FROM SIGNIFICANT PROBLEMS IMMEDIATELY PRECEDING THE LIFTING INCIDENT, AND THE CHARACTER OF THE PROBLEMS PRECIPITATED BY THE NOVEMBER 12, 1971 INCIDENT, WE THINK THAT WITHIN THE MEANING OF THE OREGON WORKMEN'S COMPENSATION LAW, CLAIMANT SUFFERED A NEW ACCIDENT RATHER THAN AN "AGGRAVATION" OF A PREEXISTING CONDITION ON NOVEMBER 12, 1971.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 22, 1973 IS REVERSED AND CLAIMANT'S CLAIM FOR INJURY OF NOVEMBER 12, 1971 IS HEREBY REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR ACCEPTANCE AS A NEW INJURY AND PAYMENT OF COMPENSATION IN ACCORDANCE WITH THE BENEFIT LAWS IN EFFECT ON NOVEMBER 12, 1971.

IT IS HEREBY FURTHER ORDERED, PURSUANT TO ORS 656.262(8), THAT THE FUND PAY TO CLAIMANT ADDITIONAL COMPENSATION EQUAL TO 25 PERCENT OF ANY ADDITIONAL COMPENSATION NOW DUE AND OWING THE CLAIMANT BY VIRTUE OF THIS ORDER.

IT IS HEREBY FINALLY ORDERED THAT THE STATE ACCIDENT INSURANCE FUND PAY CLAIMANT'S ATTORNEY, ALLAN H. COONS, SEVEN HUNDRED DOLLARS IN ADDITION TO, AND NOT OUT OF, THE CLAIMANT'S COMPENSATION AWARDED ABOVE, FOR HIS SERVICES AT THE HEARING AND ON THIS APPEAL.

WCB CASE NO. 72-2829 SEPTEMBER 5, 1973

JULIE ANN BUCKNER, IN COMPLYING STATUS OF
KENNEDY'S RIDING ACADEMY
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH HELD HIM TO BE A NONCOMPLYING EMPLOYER AND CLAIMANT, JULIE ANN BUCKNER, TO BE HIS EMPLOYEE AT THE TIME SHE SUSTAINED AN ACCIDENTAL INJURY.

ISSUES

(1) WAS THIS EMPLOYER A SUBJECT EMPLOYER AS DEFINED BY ORS 656.023?

(2) WAS THE CLAIMANT A SUBJECT WORKER AND IF SO, DID THE INJURY SHE SUSTAINED OCCUR WITHIN THE COURSE AND SCOPE OF HER EMPLOYMENT?

DISCUSSION

THE ALLEGED EMPLOYER HAS OPERATED A RIDING ACADEMY FOR 15 YEARS. ON JULY 2, 1972, CLAIMANT, A 15 YEAR OLD GIRL, WAS STEPPED ON BY A HORSE AND SUFFERED AN INJURY TO THE RIGHT ANKLE REQUIRING MEDICAL ATTENTION WHILE SHE WAS ON THE PREMISES OWNED BY KENNEDY.

THE BOARD CONCURS WITH THE HEARING OFFICER'S OPINION AND THE EVIDENCE IN FINDING THAT WESLEY V. KENNEDY, DBA KENNEDY'S RIDING ACADEMY, WAS A NONCOMPLYING EMPLOYER SUBJECT TO THE PROVISIONS OF THE OREGON WORKMEN'S COMPENSATION LAW FOR THE PERIOD OF MAY 15, 1972 TO AUGUST 23, 1972 INCLUSIVE.

THE BOARD CANNOT CONCUR WITH THE HEARING OFFICER'S ANALYSIS AND FINDING THAT THE CLAIMANT WAS, ON JULY 2, 1972, AN EMPLOYEE OF WESLEY V. KENNEDY, DBA KENNEDY'S RIDING ACADEMY.

THE EVIDENCE DOES NOT SUBSTANTIATE THE CLAIM THAT SHE WAS, AT THE TIME OF INJURY, AN EMPLOYEE OF KENNEDY. IN FACT THE EVIDENCE IS TO THE CONTRARY.

THE BOARD CONCURS AND AGREES WITH THE EXCELLENT BRIEF AS FILED BY THE APPELLANT AND FINDS THAT THERE WAS NOT A CONTRACT OF HIRE. EMPLOYMENT INVOLVES A CONTRACT. BY STATUTE, THE EMPLOYER CONTRACTS TO PAY REMUNERATION FOR AND SECURES THE RIGHT TO DIRECT AND CONTROL SERVICES WHEN THE WORKMAN ENGAGES OR FURNISHES SERVICES FOR REMUNERATION. THERE IS SOUND REASONING FOR THE REQUIREMENT THAT THE EMPLOYMENT BE FOR HIRE. IN COMPENSATION CASES THE ENTIRE PHILOSOPHY OF THE LEGISLATION ASSUMES THAT THE WORKER IS ENGAGED IN A GAINFUL OCCUPATION AT THE TIME OF THE INJURY. THE EVIDENCE AT MOST DISCLOSES THAT THE CLAIMANT WAS NOTHING MORE THAN A "PERMITTEE" ALLOWED TO BE ON THE PREMISES OF KENNEDY. THE CLAIMANT HAS FAILED TO SHOW THAT THERE WAS IN FACT ANY INDICATION WHATSOEVER THAT THERE WAS A MUTUALITY OF ADVANTAGE. TO HOLD THAT THE CLAIMANT, AT THE DATE SHE RECEIVED THE INJURY WAS AN EMPLOYEE, IS CONTRARY TO THE EVIDENCE AND TO THE LAW IN THIS CASE.

ORDER

IT IS THEREFORE ORDERED THAT THE FINDINGS OF THE HEARING OFFICER THAT WESLEY V. KENNEDY, DBA KENNEDY'S RIDING ACADEMY, WAS IN FACT A NONCOMPLYING EMPLOYER SUBJECT TO THE PROVISIONS OF THE OREGON WORKMEN'S COMPENSATION LAW FOR THE PERIOD OF MAY 15, 1972 TO AUGUST 23, 1972, INCLUSIVE, IS AFFIRMED.

IT IS FURTHER ORDERED THAT WESLEY V. KENNEDY, DBA KENNEDY'S RIDING ACADEMY, IS DIRECTED TO COMPLY WITH THE PROVISIONS OF ORS 656.016 BY EITHER FILING AN APPLICATION WITH THE STATE ACCIDENT INSURANCE FUND AND CONTRIBUTING TO THE INDUSTRIAL ACCIDENT FUND OR QUALIFYING AS A DIRECT RESPONSIBILITY EMPLOYER.

IT IS FURTHER ORDERED THAT THAT PORTION OF THE HEARING OFFICER'S FINDING THAT THE CLAIMANT DID SUFFER A COMPENSABLE INJURY ON JULY 2, 1972 IS REVERSED AND THE ATTORNEY FEE ALLOWED IS SET ASIDE.

WCB CASE NO. 72-2895 SEPTEMBER 6, 1973

JIM DORAN, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED THE SECOND DETERMINATION ORDER OF AUGUST 9, 1972.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HIS LOW BACK WHILE ATTEMPTING TO PICK UP A CARRIER BLOCK ON OCTOBER 12, 1968.

AFTER AN INITIAL CLOSURE HIS CLAIM WAS REOPENED FOR ADDITIONAL MEDICAL TREATMENT UNDER A CLAIM OF AGGRAVATION IN DECEMBER 1971 AND WAS AGAIN CLOSED ON AUGUST 9, 1972 BY A SECOND DETERMINATION ORDER, AWARDING CLAIMANT, IN ADDITION TO FURTHER TEMPORARY DISABILITY BENEFITS, AN AWARD OF PERMANENT PARTIAL DISABILITY OF 64 DEGREES (20 PERCENT) FOR UNSCHEDULED LOW BACK DISABILITY OF A MAXIMUM OF 320 DEGREES. CLAIMANT CONTENDS THAT HIS LOSS OF EARNING CAPACITY EXCEEDS THAT AWARDED.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE FINDINGS OF THE HEARING OFFICER AND HIS CONCLUSIONS CONCERNING CLAIMANT'S DISABILITY. HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED FEBRUARY 8, 1973 IS HEREBY AFFIRMED.

CLAUDE OWENS, CLAIMANT

BAILEY, DOBLIE, CENICEROS AND BRUUN,
CLAIMANT'S ATTYS.

ROGER WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE HEARING OFFICER GRANTED THIS CLAIMANT AN INCREASE OF LEFT ARM PERMANENT PARTIAL DISABILITY FROM 65 PERCENT TO 90 PERCENT, AND AFFIRMED THE CLOSING AND EVALUATION AWARD OF 40 PERCENT UNSCHEDULED LEFT SHOULDER DISABILITY. CLAIMANT SEEKS BOARD REVIEW OF THIS ORDER CONTENDING HE IS PERMANENTLY AND TOTALLY DISABLED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT SUSTAINED A COMPENSABLE INJURY ON NOVEMBER 23, 1970, WHEN HE CAUGHT HIS LEFT ARM IN THE SPOKES OF AN ELECTRIC MOTOR THAT WAS ACCIDENTALLY TURNED ON.

CLAIMANT SUFFERED FRACTURES OF THE LEFT ARM REQUIRING OPEN REDUCTION, BONE GRAFT AND SCREWS FOR INTERNAL FIXATION. HE LATER RETURNED TO SURGERY FOR REMOVAL OF THE SCREWS AND EXCISION OF THE LEFT ULNAR HEAD. DR. JAMES FELT CLAIMANT HAD "SIGNIFICANT DISABILITY" OF THE LEFT UPPER EXTREMITY AND HE WOULD NOT BE ABLE TO RETURN TO HEAVY LABOR.

THIS CLAIMANT, WHO WAS 59 YEARS OLD AT THE TIME OF INJURY, HAD NO FORMAL SCHOOLING. THROUGH ENROLLMENT IN A PROGRAM BY THE DEPARTMENT OF VOCATIONAL REHABILITATION HE HAS REACHED A SECOND GRADE READING LEVEL.

THE HEARING OFFICER IN HIS ORDER STATED HE FELT THAT BECAUSE OF HIS AGE, LACK OF EDUCATION AND ATTENDANT DIFFICULTY IN LEARNING, LIMITED EMPLOYMENT OPPORTUNITIES IN THE ROSEBURG AREA, AND HIS PHYSICAL IMPAIRMENT THAT CLAIMANT WOULD HAVE EXTREME DIFFICULTY IN FINDING EMPLOYMENT. HE GRANTED CLAIMANT ONLY AN AWARD FOR PERMANENT PARTIAL DISABILITY BECAUSE CLAIMANT'S SCHEDULED DISABILITY IN THE LEFT ARM WAS GREATER THAN THE UNSCHEDULED DISABILITY MANIFESTED IN THE LEFT SHOULDER.

THE BOARD, ON REVIEW, DOES NOT CONCUR WITH THE OPINION OF THE HEARING OFFICER THAT CLAIMANT IS ONLY ENTITLED TO AN AWARD OF PERMANENT PARTIAL DISABILITY. THE BOARD CITES THE COURT OF APPEALS' DECISION IN MANSFIELD V. CAPLENER BROS., 95 ADV SH 1018 OR APP (1972), WHERE THE COURT CONCLUDED MANSFIELD'S INABILITY TO WORK RESULTED

"FROM A COMBINATION OF PHYSICAL DISABILITY, SCHEDULED AND UNSCHEDULED, AND SUBJECTIVE FACTORS, SUCH AS MEAGER EDUCATION AND MINIMAL LEARNING ABILITY."

THE COURT ALLOWED PERMANENT TOTAL DISABILITY.

THE BOARD CONCLUDES THAT MR. OWENS IS PERMANENTLY TOTALLY DISABLED FROM A COMBINATION OF SCHEDULED AND UNSCHEDULED PHYSICAL DISABILITY AND THE SUBJECTIVE FACTORS OF ADVANCED AGE, LIMITED EDUCATION AND WORK EXPERIENCE ONLY IN MANUAL LABOR OCCUPATIONS AND THUS IS ENTITLED TO AN AWARD OF PERMANENT TOTAL DISABILITY.

ORDER

THE ORDER OF THE HEARING OFFICER IS HEREBY SET ASIDE AND CLAIMANT IS GRANTED COMPENSATION FOR PERMANENT TOTAL DISABILITY FROM THE DATE OF THIS ORDER ONWARD.

CLAIMANT'S ATTORNEYS ARE ENTITLED TO RECOVER 25 PERCENT OF THE INCREASED COMPENSATION MADE PAYABLE BY THIS ORDER, IN NO EVENT HOWEVER, SHALL THE FEE ALLOWED HEREBY WHEN COUPLED WITH ANY FEE RECEIVED PURSUANT TO THE HEARING OFFICER'S ORDER, EXCEED FIFTEEN HUNDRED DOLLARS.

WCB CASE NO. 72-554 SEPTEMBER 6, 1973

WILLIAM N. MOMPER, CLAIMANT
CHARLES B. GUINASSO, CLAIMANT'S ATTY.
MIZE, KRIESIEN, FEWLESS, CHENEY AND
KELLEY, DEFENSE ATTYS.

ON JUNE 21, 1973, CLAIMANT REQUESTED BOARD REVIEW OF A HEARING OFFICER'S ORDER DATED MAY 24, 1973. THAT REQUEST FOR REVIEW IS NOW PENDING.

THE CLAIMANT AND THE EMPLOYER HAVE NOW AGREED TO SETTLE AND COMPROMISE THEIR DISPUTE IN ACCORDANCE WITH THE TERMS OF THE STIPULATION AND ORDER WHICH IS ATTACHED HERETO AS EXHIBIT 'A'.

THE BOARD, BEING NOW FULLY ADVISED, CONCLUDES THE AGREEMENT IS FAIR AND EQUITABLE TO BOTH PARTIES.

ORDER

IT IS THEREFORE ORDERED THAT THE STIPULATION AND ORDER BE EXECUTED ACCORDING TO ITS TERMS.

THE REQUEST FOR REVIEW NOW PENDING BEFORE THE BOARD IS HEREBY DISMISSED.

THE TOTAL ATTORNEY'S FEE PAYABLE OUT OF COMPENSATION, INCLUDING THAT PREVIOUSLY AWARDED AND THE AMOUNT UNDER THIS ORDER SHALL NOT EXCEED FIFTEEN HUNDRED DOLLARS.

STIPULATION

WHEREAS, CLAIMANT SUSTAINED A COMPENSABLE INJURY ON MARCH 10, 1972, WHILE IN THE COURSE OF HIS EMPLOYMENT FOR AND ON BEHALF OF FLOORCRAFT CARPET COMPANY, AS THE RESULT OF WHICH ALL COMPENSATION FOR TEMPORARY TOTAL DISABILITY AND MEDICAL EXPENSE WAS PAID BY THE EMPLOYER THROUGH ITS COMPENSATION CARRIER,

INDUSTRIAL INDEMNITY COMPANY, AFTER WHICH SAID MATTER WAS SUBMITTED TO THE WORKMEN'S COMPENSATION BOARD AND A DETERMINATION ORDER ENTERED ON JANUARY 22, 1973, AWARDING PERMANENT PARTIAL DISABILITY OF 15 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED LOW BACK DISABILITY EQUAL TO 48 DEGREES, AND

WHEREAS, THEREAFTER CLAIMANT FILED A REQUEST FOR HEARING THROUGH HIS ATTORNEY, CHARLES B. GUINASSO, CLAIMING THAT HIS DISABILITY AS A RESULT OF SAID INDUSTRIAL INJURY WAS GREATER THAN THAT AWARDED BY SAID DETERMINATION ORDER OF JANUARY 22, 1973, ALL OF WHICH CLAIM WAS DENIED BY THE EMPLOYER THROUGH ITS COMPENSATION CARRIER, AND HEARING WAS HELD IN PORTLAND, OREGON ON MAY 7, 1973, AND ON MAY 24, 1973, THE HEARING OFFICER ENTERED HIS OPINION AND ORDER GRANTING AN AWARD OF PERMANENT PARTIAL DISABILITY EQUAL TO 25 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED DISABILITY, EQUAL TO 80 DEGREES, WHICH AWARD WAS IN LIEU OF AND NOT IN ADDITION TO THE AWARD PREVIOUSLY GRANTED, AND

WHEREAS, ON OR ABOUT JUNE 20, 1973, CLAIMANT REQUESTED A REVIEW BY THE WORKMEN'S COMPENSATION BOARD OF THE HEARING OFFICER'S OPINION AND ORDER, AND IT APPEARING THAT THE ISSUES RAISED IN THE REQUEST FOR REVIEW HAVE BEEN FULLY COMPROMISED AND SETTLED BY THE CLAIMANT ACTING THROUGH HIS ATTORNEY, CHARLES B. GUINASSO, AND THE EMPLOYER AND CARRIER ACTING BY AND THROUGH ITS ATTORNEYS, MIZE, KRISIEN, FEWLESS, CHENEY AND KELLEY, NOW, THEREFORE, BASED UPON SAID STIPULATION,

IT IS HEREBY ORDERED THAT CLAIMANT BE AND HE IS HEREBY AWARDED COMPENSATION FOR PERMANENT PARTIAL DISABILITY IN AN ADDITIONAL AMOUNT OF 5 PERCENT OF THE AMOUNT ALLOWABLE BY STATUTE FOR UNSCHEDULED LOW BACK DISABILITY, EQUAL TO 16 DEGREES, WHICH IS IN ADDITION TO THE 80 DEGREES AWARDED TO CLAIMANT IN THE AFOREMENTIONED HEARING OFFICER'S OPINION AND ORDER AND IS AN ADDITIONAL AWARD OF ONE THOUSAND ONE HUNDRED TWENTY DOLLARS.

IT IS FURTHER ORDERED THAT OUT OF THE COMPENSATION MADE PAYABLE BY THIS ORDER, INDUSTRIAL INDEMNITY COMPANY ON BEHALF OF THE EMPLOYER, SHALL PAY TO CHARLES B. GUINASSO AN ATTORNEY'S FEE EQUAL TO 25 PERCENT OF THE COMPENSATION MADE PAYABLE BY THIS ORDER BUT NOT TO EXCEED THE SUM OF -----DOLLARS, AND

IT IS FURTHER ORDERED THAT CLAIMANT'S REQUEST FOR REVIEW BE AND THE SAME IS HEREBY DISMISSED.

WCB CASE NO. 72-3078 SEPTEMBER 7, 1973
WCB CASE NO. 72-2079 SEPTEMBER 7, 1973

EDWIN SAILER, CLAIMANT
VANNATTA AND PETERSON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF
CROSS-APPEAL BY CLAIMANT
CROSS-APPEAL BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

ALL THREE PARTIES HAVE REQUESTED REVIEW OF THE HEARING OFFICER'S ORDER ENTERED IN THE ABOVE ENTITLED CASE.

ISSUES

THE ISSUE RAISED BY THE STATE ACCIDENT INSURANCE FUND IN THIS MATTER IS -

- (1) WHETHER THE INCIDENT IN QUESTION CONSTITUTES A NEW INJURY OR AN AGGRAVATION.

THE ISSUE RAISED BY ANDERSON-HANNAN IS -

- (1) WHETHER IT IS LIABLE FOR THE MEDICAL EXPENSES WHICH THE HEARING OFFICER ORDERED IT TO PAY.

ISSUES RAISED BY THE CLAIMANT ARE -

- (1) THE EXISTENCE AND EXTENT OF PERMANENT DISABILITY RESULTING FROM THE ORIGINAL INJURY.
- (2) WHETHER THE BOARD, THROUGH ITS COMPLIANCE DIVISION, SHOULD HAVE ISSUED A PRELIMINARY ORDER DIRECTING INTERIM PAYMENT OF COMPENSATION PURSUANT TO ORS 656.307.
- (3) WHETHER CLAIMANT IS ENTITLED TO PENALTIES AND ATTORNEY FEES FOR THE EMPLOYER'S UNREASONABLE RESISTANCE -- BASED ON THEIR MUTUAL DENIAL OF AN ADMITTEDLY COMPENSABLE CLAIM.

DISCUSSION

ON MARCH 15, 1972, CLAIMANT SUFFERED A LOW BACK STRAIN WHILE EMPLOYED AS A CONSTRUCTION LABORER FOR ANDERSON-HANNAN. ANDERSON-HANNAN'S WORKMEN'S COMPENSATION LIABILITY WAS INSURED THROUGH THE ARGONAUT INSURANCE COMPANY. A CLAIM WAS FILED AND ACCEPTED BY THE EMPLOYER. AFTER A SHORT PERIOD OF TIME LOSS AND CONSERVATIVE TREATMENT CLAIMANT RETURNED TO WORK.

AS WORK WAS AVAILABLE HE WORKED FOR VARIOUS OTHER EMPLOYERS THEREAFTER. DURING THIS TIME HE EXPERIENCED CONTINUING STIFFNESS BUT NO PAIN OR DISCOMFORT IN HIS BACK.

ON JULY 28, 1972, HIS CLAIM WAS CLOSED WITH A FINDING OF NO PERMANENT DISABILITY.

ON THE EVENING OF AUGUST 11, 1972, AS CLAIMANT STEPPED INTO THE BATHTUB AT HIS HOME HE SUFFERED A RECURRENT LOW BACK STRAIN WHICH AGAIN TEMPORARILY DISABLED HIM FOR A SHORT TIME.

HIS NEXT EMPLOYMENT AFTER THIS WAS WITH HOFFMAN CONSTRUCTION COMPANY, A CONTRIBUTING EMPLOYER. WHILE WORKING AT HOFFMAN ON AUGUST 25, 1972, CLAIMANT STEPPED OVER A PIPE AND AS HE DID SO, AGAIN STRAINED HIS LOW BACK.

THE CLAIM FILED WITH HOFFMAN CONSTRUCTION WAS DENIED ON THE BASIS OF MEDICAL OPINION THAT THE INCIDENT OF AUGUST 25, 1972, WAS AN AGGRAVATION OF THE ORIGINAL MARCH 15, 1972 INJURY.

ON NOVEMBER 10, 1972 ARGONAUT INSURANCE DENIED LIABILITY ON THE BASIS THAT THE AUGUST 25, 1972 INCIDENT WAS AN INTERVENING EXACERBATION AND NOT AN AGGRAVATION.

THE MEDICAL EVIDENCE CLEARLY RELATES THE AUGUST 25TH INCIDENT TO THE MARCH 15TH INJURY. NO TRAUMATIC EFFECT WOULD NORMALLY HAVE BEEN ANTICIPATED FROM MERELY STEPPING OVER A PIPE. BECAUSE THE PATHOLOGICAL PROCESSES OF THE MARCH 15, 1972 AND AUGUST 25, 1972 EVENTS WERE ESSENTIALLY IDENTICAL AND OBVIOUSLY INTIMATELY RELATED MEDICALLY, THE LATTER EVENT CAN LEGITIMATELY BE CONSIDERED AN AGGRAVATION OF THE MARCH 15, 1972 INJURY. AT THE SAME TIME, THE AUGUST EVENT IS, IN AND OF ITSELF, FACTUALLY SUFFICIENT TO CONSTITUTE A NEW COMPENSABLE INJURY WITHIN THE MEANING OF THE OREGON WORKMEN'S COMPENSATION LAW.

WHERE THERE IS NO CLEAR FACTUAL BASIS TO DISTINGUISH WHICH OF TWO EMPLOYERS IS LIABLE FOR AN OBVIOUSLY COMPENSABLE CONDITION, POLICY CONSIDERATION MAY BE RESORTED TO IN ORDER TO RESOLVE THE PROBLEM.

COUNSEL FOR THE PARTIES HAVE SUGGESTED A NUMBER OF VALID POLICY CONSIDERATIONS TO BE WEIGHED INCLUDING ADMINISTRATIVE CONVENIENCE. THE PROPER CHOICE TO MAKE IS THAT WHICH ENHANCES THE WORKMAN'S PROTECTION WHILE FAIRLY PLACING THE LIABILITY. THE FOLLOWING WILL ILLUSTRATE THE POINT.

DUE TO INFLATIONARY TRENDS, BENEFIT LEVELS HAVE BEEN INCREASED SEVERAL TIMES IN RECENT YEARS. A NEW ACCIDENT FINDING MIGHT ENHANCE CLAIMANT'S PROTECTION AGAINST INTERRUPTION OF INCOME. IT MIGHT PROVIDE MORE SUITABLE PROVISION FOR VOCATIONAL REHABILITATION UNDER NEW LEGISLATION. THERE, A FINDING OF NEW ACCIDENT COULD BE JUSTIFIED FOR POLICY REASONS.

ON THE OTHER HAND, FINDING A SUBSEQUENT EXACERBATION A NEW ACCIDENT COULD DISCOURAGE EMPLOYERS FROM EMPLOYING PREVIOUSLY INJURED WORKMEN FOR FEAR OF UNWARRANTED CLAIM COSTS WHICH WOULD ULTIMATELY REDOUND TO THE DETRIMENT OF THE PARTICULAR CLAIMANT, OR TO INJURED WORKERS GENERALLY. WHILE ADMINISTRATIVE CONVENIENCE IS A LEGITIMATE CONCERN, THE MOST BASIS CONCERN OF THE WORKMEN'S COMPENSATION LAW IS THE PROTECTION OF INJURED WORKMEN. THUS, IN A PARTICULAR CASE, WHERE THE ISSUE IS AGGRAVATION VS. NEW INJURY, AND THE CONDITION IS COMPENSABLE UNDER EITHER THEORY, FACTS SUFFICIENT TO IMPOSE LIABILITY MAY NOT BE SUFFICIENT TO SHIFT LIABILITY ONCE IMPOSED.

IN THIS CASE A FINDING OF AGGRAVATION IS WARRANTED BASED ON BOTH THE FACTS AND FOR REASONS OF POLICY. THE ORDER OF THE HEARING OFFICER FINDING CLAIMANT SUFFERED A NEW COMPENSABLE INJURY ON AUGUST 25, 1972 SHOULD BE REVERSED AND ANDERSON-HANNAN ORDERED TO ACCEPT LIABILITY FOR THE EVENT ON THE BASIS OF AGGRAVATION. THE ORDER OF THE HEARING OFFICER REMANDING THE CLAIM FOR MEDICAL EXPENSES FROM AUGUST 11, 1972 TO AUGUST 24, 1972 TO ANDERSON FOR PAYMENT UNDER ORS 656.245 SHOULD BE MODIFIED TO REQUIRE PAYMENT PURSUANT TO ORS 656.271.

CLAIMANT ALSO OBJECTS TO THE REFUSAL OF THE AGENCY TO GRANT RELIEF UNDER ORS 656.307 PENDING THE HEARING, AS HE SOUGHT IN HIS REQUEST FOR HEARING. THE FACT SITUATIONS SET FORTH IN ORS 656.307 INVOLVE CASES WHERE THE EMPLOYERS (OR INSURERS) HAVE SPECIFICALLY ADMITTED TO EACH OTHER THAT ONE OF THEM IS LIABLE TO THE CLAIMANT FOR COMPENSATION. IN THIS CASE NEITHER ANDERSON HANNON NOR THE

STATE ACCIDENT INSURANCE FUND MADE SUCH AN ADMISSION BETWEEN THEMSELVES. EACH ALLEGED TO THE CLAIMANT THAT THE OTHER WAS LIABLE FOR COMPENSATION.

ANDERSON-HANNAN RESPONDED TO THE REQUEST FOR HEARING THAT THE FACTS DID NOT DEMONSTRATE THAT CLAIMANT'S CLAIM WAS OTHERWISE COMPENSABLE WITHIN THE MEANING OF ORS 656.307. THE HEARING OFFICER APPARENTLY AGREED SINCE NO COMPENSATION WAS ORDERED PAID. CLAIMANT'S EXHIBIT NUMBER 107 REVEALS THAT THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM BECAUSE . . . YOUR PRESENT PROBLEM IS THE RESULT OF YOUR INJURY OF MARCH 15, 1972. YOUR CLAIM FOR AGGRAVATION SHOULD BE FILED AGAINST THE EMPLOYER WHO COVERED YOU FOR THAT INJURY.

THE DENIAL LETTER FROM ARGONAUT INSURANCE COMPANY, ON BEHALF OF ANDERSON-HANNAN, CLAIMANT'S EXHIBIT NUMBER 12, STATED =

. . . WE FURTHER INVESTIGATED THE FACTS OF YOUR CASE AND IT WAS LEARNED THAT YOU SUFFERED AN INTERVENING EXACERBATION ON AUGUST 25, 1972 WHILE UNDER THE EMPLOY OF HOFFMAN CONSTRUCTION COMPANY . . .

AT THIS TIME WE RESPECTFULLY DENY OUR FURTHER RESPONSIBILITY FOR YOUR PRESENT DAY MEDICAL CONDITION DUE TO THE SUBSEQUENT INJURY HISTORY AND IT WOULD BE MY RECOMMENDATION THAT YOU PURSUE YOUR OTHER CLAIM. !!

IT IS OBVIOUS FROM THE ABOVE QUOTED LANGUAGE THAT NEITHER EMPLOYER WAS CONTENDING THAT CLAIMANT WAS NOT ENTITLED TO COMPENSATION. THE QUESTION WAS WHICH SHOULD PAY = NOT WHETHER IT SHOULD BE PAID.

WE CONCLUDE THESE CIRCUMSTANCES AMOUNT TO A FIXED RIGHT TO COMPENSATION WITHIN THE MEANING OF WORKMEN'S COMPENSATION BOARD ADMINISTRATIVE ORDER 5-1970 AND THAT THE CLAIM IS OTHERWISE COMPENSABLE WITHIN THE MEANING OF ORS 656.307. THE MATTER SHOULD HAVE BEEN REFERRED TO THE COMPLIANCE DIVISION FOR ENTRY OF AN INTERIM ORDER DIRECTING PAYMENT TO THE CLAIMANT PENDING RESOLUTION OF THE ISSUE BY THE HEARINGS DIVISION.

CLAIMANT HAS REQUESTED PENALTIES FOR THE LACK OF INTERIM PAYMENT. THE CONDUCT OF THE EMPLOYERS, MUST BE VIEWED FROM THEIR PERSPECTIVE.

'REASONABLENESS' (OR UNREASONABLENESS) IS MEASURED BY COMPARING THE CONDUCT IN QUESTION WITH THE CONDUCT OF A REASONABLE MAN UNDER THE SAME OR SIMILAR CIRCUMSTANCES.

AT THE TIME THE DENIALS WERE ISSUED THE DEFENDANTS DID NOT HAVE THE BENEFIT OF THE BOARD'S INTERPRETATION OF ORS 656.307. WE CONCLUDE THAT UNDER THESE CIRCUMSTANCES THE CONDUCT OF ANDERSON-HANNAN AND THE STATE ACCIDENT INSURANCE FUND WAS NOT UNREASONABLE AND THUS NO PENALTIES WILL BE ALLOWED.

BECAUSE OF THE CONCLUSION THAT CLAIMANT HAS SUFFERED AN AGGRAVATION OF HIS INITIAL INJURY THE ISSUE OF THE EXTENT OF PERMANENT PARTIAL DISABILITY ARISING THEREFROM HAS BECOME MOOT. WHEN THE CLAIM IS AGAIN CLOSED THE EXTENT OF PERMANENT DISABILITY (IF ANY) WILL AGAIN BE REVIEWED.

ORDER

THE ORDER OF THE HEARING OFFICER FINDING CLAIMANT SUFFERED A NEW COMPENSABLE INJURY ON AUGUST 25, 1972 IS HEREBY REVERSED AND THE CLAIM IS HEREBY REMANDED TO ANDERSON-HANNAN AND ITS INSURER, ARGONAUT INSURANCE COMPANY, FOR REOPENING AS OF AUGUST 11, 1972, AND FOR PAYMENT OF BENEFITS, UNTIL TERMINATION IS AUTHORIZED PURSUANT TO ORS 656.268.

ANDERSON-HANNAN AND ITS INSURER ARGONAUT INSURANCE COMPANY, ARE HEREBY ORDERED TO REIMBURSE THE STATE ACCIDENT INSURANCE FUND FOR ANY BENEFITS AND ATTORNEY FEES WHICH THE STATE ACCIDENT INSURANCE FUND HAS PAID PURSUANT TO THE HEARING OFFICER'S ORDER.

THE ORDER OF THE HEARING OFFICER AWARDING CLAIMANT'S ATTORNEY A FIVE HUNDRED DOLLAR FEE PAYABLE BY THE STATE ACCIDENT INSURANCE FUND IS REVERSED AND CLAIMANT'S ATTORNEY IS HEREBY AWARDED IN LIEU THEREOF A FEE OF SEVEN HUNDRED DOLLARS PAYABLE BY ANDERSON-HANNAN FOR HIS SERVICES AT THE HEARING AND ON THIS REVIEW.

WCB CASE NO. 73-440 SEPTEMBER 11, 1973

DON W. HOLCOMB, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH REMANDED CLAIMANT'S CLAIM TO THE FUND TO PAY BENEFITS INCLUDING TEMPORARY TOTAL DISABILITY IF AND WHEN APPROPRIATE.

ISSUE

HAS CLAIMANT SUFFERED A COMPENSABLE AGGRAVATION OF HIS INDUSTRIAL INJURY OF JANUARY 22, 1969?

DISCUSSION

CLAIMANT SUFFERED A FRACTURE OF THE LEFT ANKLE JANUARY 22, 1969. DR. RATCLIFFE DID AN OPEN REDUCTION, SUTURE AND SCREW FIXATION. FOLLOWING CLAIM CLOSURE, CLAIMANT RETURNED TO WORK IN THE WOODS.

IN 1970, CLAIMANT AGAIN SAW DR. RATCLIFFE, WHO FELT SURGERY WAS REQUIRED FOR AN INTERNAL DERANGEMENT OF THE LEFT KNEE. THE STATE ACCIDENT INSURANCE FUND REOPENED THE CLAIM TO ALLOW DR. RATCLIFFE TO PERFORM A MEDIAL MENISCECTOMY ON MARCH 12, 1971.

CLAIMANT RECEIVED 45 DEGREES FOR LOSS OF THE LEFT LEG BY A FIRST DETERMINATION ORDER AND AN ADDITIONAL AWARD OF 8 DEGREES BY A SECOND DETERMINATION ORDER.

CLAIMANT RETURNED TO MONTANA TO WORK ON HIS MINING CLAIM, PAN FOR GOLD AND CUT WOOD TO SELL. HE ALSO WORKED UNDER CONTRACT WITH THE FOREST SERVICE. HE CONTINUED TO HAVE TROUBLE WITH HIS KNEE AND ON JANUARY 3, 1973, RETURNED TO DR. RATCLIFFE REQUESTING FURTHER TREATMENT. THE STATE ACCIDENT INSURANCE FUND SUBSEQUENTLY DENIED REOPENING OF THE CLAIM.

UPON HEARING, THE HEARING OFFICER FOUND THE MEDICAL REPORT SUBMITTED BY DR. RATCLIFFE INDICATED CLAIMANT'S CONDITION WAS WORSE AND WAS SEQUEL TO THE ORIGINAL INJURY. HE REMANDED THE CLAIM TO THE FUND TO PROVIDE COMPENSATION IF AND WHEN APPROPRIATE, BUT NOT TO COMMENCE TEMPORARY TOTAL DISABILITY PAYMENTS UNTIL VERIFIED BY CLAIMANT'S TREATING DOCTOR.

THE BOARD CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER AND AFFIRMS HIS ORDER.

THE BOARD WOULD URGE CLAIMANT TO AVAIL HIMSELF OF VOCATIONAL REHABILITATION OPPORTUNITIES UNDER THE BOARD'S DISABILITY PREVENTION DIVISION IN PORTLAND. LIVING IN HIS CABIN "FREE AS THE BIRDS" AS DESCRIBED BY THE HEARING OFFICER, SHOULD NOT PRECLUDE CLAIMANT FROM MAKING AN EFFORT TO SECURE ASSISTANCE AND/OR COUNSELLING IN OBTAINING EMPLOYMENT WITHIN HIS CAPABILITIES.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 24, 1973, IS HEREBY AFFIRMED.

COUNSEL FOR CLAIMANT IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE AMOUNT OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-2902 SEPTEMBER 11, 1973

JAMES C. GRISWOLD, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED A DETERMINATION ORDER WHICH GRANTED A PERMANENT PARTIAL DISABILITY AWARD OF 48 DEGREES REPRESENTING 15 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

THE CLAIMANT, AT AGE 27, SUFFERED A COMPENSABLE INJURY ON AUGUST 5, 1968, LIFTING A PALLET WITH TWO SACKS OF CEMENT ON IT.

FOLLOWING CHIROPRACTIC TREATMENTS, HE RETURNED TO WORK AND THERE WAS NO AWARD MADE FOR PERMANENT DISABILITY.

ON SEPTEMBER 24, 1968, CLAIMANT AGAIN INJURED HIS BACK WHICH RESULTED IN SURGERY. WHEN CLAIMANT CONTINUED TO HAVE PROBLEMS, A SECOND LAMINECTOMY WAS PERFORMED. THE TWO SURGERIES RESULTED IN CLAIMANT RECEIVING A PERMANENT PARTIAL DISABILITY AWARD OF 48 DEGREES.

CLAIMANT IS EMPLOYED BY WAH CHANG CORPORATION AS AN APPRENTICE MACHINIST AND NOW EARNS IN EXCESS OF FIVE DOLLARS PER HOUR. THE EMPLOYER CONSIDERS HIM A GOOD EMPLOYEE. AS HE PROGRESSES TOWARD JOURNEYMAN STATUS, HIS WORK WILL BECOME LIGHTER AND HIS PAY STILL HIGHER.

THE CRITERIA FOR AWARDING UNSCHEDULED DISABILITY IS LOSS OF EARNING CAPACITY. THE RECORD BEFORE THE BOARD CERTAINLY CANNOT SUBSTANTIATE A LOSS IN EXCESS OF THAT AWARDED.

THE BOARD CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER THAT CLAIMANT HAS BEEN ADEQUATELY COMPENSATED FOR HIS INDUSTRIAL INJURY BY THE TOTAL AWARD OF 48 DEGREES FOR UNSCHEDULED DISABILITY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED APRIL 17, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 73-395
WCB CASE NO. 73-154

SEPTEMBER 11, 1973
SEPTEMBER 11, 1973

ACE R. FRANKLIN, CLAIMANT
BABCOCK AND ACKERMAN, CLAIMANT'S ATTYS.
J. W. MCCracken, JR., DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH UPHELD THE EMPLOYER'S DENIAL OF CLAIMANT'S CLAIM.

ISSUE

DID CLAIMANT SUSTAIN A COMPENSABLE INDUSTRIAL INJURY?

DISCUSSION

CLAIMANT WAS A 60 YEAR OLD LOGGER WHO SUSTAINED A CEREBRAL VASCULAR ACCIDENT ON NOVEMBER 14, 1972, WHILE IN THE COURSE OF EMPLOYMENT. HIS CLAIM FOR COMPENSATION WAS DENIED BY THE EMPLOYER, WEYERHAEUSER LUMBER COMPANY, AND THIS DENIAL WAS UPHELD BY THE HEARING OFFICER AT THE TIME OF HEARING.

THE ISSUES AND FACTS OF THE CASE HAVE BEEN ACCURATELY PRESENTED AND ACCEPTED. THE REMAINING CONTENTION INVOLVES THE OPPOSITE VIEWS OF CAUSAL CONNECTION BETWEEN THE EXERTION AND THE

INJURY AS HELD BY TWO DIFFERENT DOCTORS, -- ROGER L. MEHL, M.D., AND ARTHUR HOCKEY, M.D., BOTH CITED AS RESPECTED MEDICAL AUTHORITIES.

DR. ROGER MEHL, A CARDIOVASCULAR SURGEON, TESTIFIED AT THE HEARING CONCERNING THE TWO TYPES OF STROKES -- THE FIRST TYPE BEING A COMPLETE BLOCKAGE OR OCCLUSION OF AN ARTERY WHICH CUTS OFF THE SUPPLY OF BLOOD BEYOND THE POINT OF BLOCKAGE FOR A BRIEF PERIOD OF TIME, AND THE SECOND BEING AN ACTUAL BLEEDING INTO A LOCAL PLACE IN THE BRAIN. HE FURTHER EXPLAINED BLEEDING STROKES COULD BE CAUSED BY PHYSICAL EXERTION, BUT THERE WAS NO CAUSAL CONNECTION BETWEEN EXERTION AND BLOCKAGE STROKES.

FROM THE TOTALITY OF THE EVIDENCE, DR. MEHL CONCLUDED THERE WAS NO INDICATION OF BLEEDING AND THEREFORE THE STROKE SUFFERED BY THE CLAIMANT WAS A BLOCKAGE TYPE STROKE AND WAS NOT CAUSED BY EXERTION.

THE HEARING OFFICER ACCEPTED THE MEDICAL OPINION EXPRESSED BY DR. MEHL AND CONCLUDED THE REQUISITE CAUSAL CONNECTION HAD NOT BEEN ESTABLISHED.

THE BOARD ON REVIEW CONCURS WITH THE FINDINGS OF THE HEARING OFFICER AND ADOPTS HIS ORDER SUSTAINING THE DENIAL OF CLAIMANT'S CLAIM.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 18, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 73-485 SEPTEMBER 11, 1973

EARL NOLTE, CLAIMANT
JOHN SIDMAN, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH SUSTAINED THE DENIAL OF CLAIMANT'S CLAIM BY THE STATE ACCIDENT INSURANCE FUND.

ISSUE

DID CLAIMANT SUSTAIN A COMPENSABLE INJURY IN THE COURSE OF HIS EMPLOYMENT?

DISCUSSION

CLAIMANT WAS HIRED BY THE EMPLOYER ON NOVEMBER 30, 1972, AS A CONSTRUCTION PLUMBER TO WORK ON NEW HOMES BEING CONSTRUCTED. CLAIMANT DID NOT HAVE AN OREGON LICENSE TO DO PLUMBING WORK, BUT WAS PLANNING TO GO TO SALEM TO SECURE ONE.

THE DAY AFTER HIRING, DECEMBER 1, 1972, CLAIMANT WAS SHOWN AROUND THE VARIOUS TRACTS WHERE HOUSES WERE BEING CONSTRUCTED. MONDAY, DECEMBER 4, WAS AN EXTREMELY COLD DAY AND NO EMPLOYEES WORKED THAT DAY. HOWEVER, CLAIMANT PICKED UP SOME TOOLS IN PORTLAND FOR HIS EMPLOYER, RETURNED AND LEFT THEM AT THE OFFICE, AND THEN WENT TO HIS HOME. HE PICKED UP HIS WIFE AND DROVE TO ONE OF THE TRACTS AS SHE WAS INTERESTED IN BUYING A HOME. WHILE WALKING UP AN ICY INCLINE, CLAIMANT SLIPPED AND INJURED HIS BACK AND SHOULDER. A CLAIM FORM 801 WAS FILED AND THE CLAIM FOR BENEFITS WAS DENIED BY THE STATE ACCIDENT INSURANCE FUND.

THE HEARING OFFICER CONCLUDED AND THE BOARD CONCURS THAT CLAIMANT'S PRINCIPAL REASON FOR GOING TO THE CONSTRUCTION SITE WAS TO SEE IF HIS WIFE LIKED THE HOUSE WELL ENOUGH TO BUY IT. THE CLAIMANT HAD NOT YET OBTAINED HIS LICENSE TO DO PLUMBING, NOR DID HE ENGAGE IN ANY PREPARATORY ACTIVITY SUCH AS MEASURING WHILE THERE. THE BOARD CONCURS WITH THE FINDING THAT CLAIMANT WAS NOT ACTING IN THE COURSE OR SCOPE OF EMPLOYMENT AT THE TIME HE SUSTAINED THE INJURY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 24, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 72-452 SEPTEMBER 11, 1973

CHARLES L. NICODEMUS, CLAIMANT
KEITH D. SKELTON, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AWARDED PERMANENT PARTIAL DISABILITY OF 80 DEGREES FOR UNSCHEDULED DISABILITY, BEING AN INCREASE OF 32 DEGREES.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S DISABILITY?

DISCUSSION

CLAIMANT WAS 28 YEARS OLD AND EMPLOYED AS A WELDER WHEN HE INJURED HIS LOW BACK. HE HAS MADE A GOOD RECOVERY FROM SURGERY AND HAS RETURNED TO WORK WITH RESTRICTIONS ON LIFTING, PUSHING OR PULLING HEAVY OBJECTS.

THE EMPLOYER HAS PROMOTED CLAIMANT TO A LESS PHYSICALLY DEMANDING JOB WHICH HE IS ABLE TO PERFORM AND FROM WHICH CLAIMANT RECEIVES A GREAT DEAL OF SATISFACTION.

UNDER THE DEPARTMENT OF VOCATIONAL REHABILITATION CLAIMANT IS TO COMMENCE TRAINING TO ENABLE HIM TO BECOME A VOCATIONAL TEACHER OF WELDING AND LAYOUT.

IT APPEARS TO THE BOARD ON REVIEW THAT CLAIMANT IS FORTUNATE TO HAVE A GOOD EMPLOYER, THAT HE IS THE RECIPIENT OF A GOOD EDUCATIONAL PROGRAM AND THAT HE HAS THE INTELLIGENCE AND ABILITY TO TAKE ADVANTAGE OF THIS OPPORTUNITY.

THE TOTAL AWARD OF 80 DEGREES APPEARS TO ADEQUATELY COMPENSATE FOR HIS DISABILITY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 2, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 73-90 SEPTEMBER 12, 1973

JACK C. ROSS, CLAIMANT
MAURICE V. ENGELGAU, CLAIMANT'S ATTY.
MARMADUKE, ASCHENBRENNER, SALTVEIT
AND MERTEN, DEFENSE ATTYS.

A REQUEST FOR REVIEW, HAVING BEEN DULY FILED WITH THE WORKMEN'S COMPENSATION BOARD IN THE ABOVE-ENTITLED MATTER, AND SAID REQUEST FOR REVIEW NOW HAVING BEEN WITHDRAWN BY DEFENDANT'S COUNSEL,

IT IS THEREFORE ORDERED THAT THE REVIEW NOW PENDING BEFORE THE BOARD IS HEREBY DISMISSED AND THE ORDER OF THE HEARING OFFICER IS FINAL BY OPERATION OF LAW.

WCB CASE NO. 72-3127 SEPTEMBER 12, 1973

TIMOTHEOUS HORN, CLAIMANT
COLLINS, FERRIS AND VELURE, CLAIMANT'S ATTYS.
FORD AND COWLING, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER CONTENDING THAT HE ERRED IN RULING THAT PENDING APPEAL, THE EMPLOYER NEED NOT PAY THE VETERAN'S ADMINISTRATION FOR CERTAIN MEDICAL SERVICES WHICH WERE ULTIMATELY FOUND TO HAVE BEEN NECESSITATED BY A COMPENSABLE INJURY.

THE BOARD IS IN COMPLETE AGREEMENT WITH THE RATIONALE EXPRESSED BY THE HEARING OFFICER IN FINDING THAT THE EMPLOYER HAS NOT UNREASONABLY RESISTED THE PAYMENT OF COMPENSATION.

HIS ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED FEBRUARY 22, 1973 IS AFFIRMED.

WCB CASE NO. 72-2966 SEPTEMBER 12, 1973

LARRY VANDAMME, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW CONTENDING THE HEARING OFFICER IMPROPERLY DISCOUNTED THE TESTIMONY OF A DEFENSE WITNESS WHOSE OBSERVATIONS CALL THE CREDIBILITY OF THE CLAIMANT INTO QUESTION AND ASKS THAT HIS ORDER ALLOWING ADDITIONAL MEDICAL TREATMENT BE REVERSED.

THE HEARING OFFICER'S OPINION AND ORDER REVEALS THAT HE CAREFULLY CONSIDERED THE EVIDENCE PRESENTED BY THE STATE ACCIDENT INSURANCE FUND'S WITNESS IN LIGHT OF ALL THE OTHER RELEVANT EVIDENCE. HAVING DONE SO, HE FOUND THE FUND'S WITHDRAWAL OF AUTHORIZATION FOR FURTHER TREATMENT UNWARRANTED.

THE BOARD, UPON ITS OWN DE NOVO REVIEW OF THE RECORD, CONCLUDES THE HEARING OFFICER'S ORDER IS CORRECT AND SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 9, 1973 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-1207 SEPTEMBER 12, 1973

MILTON W. COOK, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

THE ABOVE ENTITLED MATTER WAS HERETOFORE THE SUBJECT OF A HEARING INVOLVING THE EXTENT OF DISABILITY RESULTING FROM AN ACCEPTED OCCUPATIONAL DISEASE CLAIM FOR CONTACT DERMATITIS CONTRACTED IN THE COURSE OF CLAIMANT'S EMPLOYMENT AT NORTHWEST NATURAL GAS COMPANY IN PORTLAND, OREGON.

ON OCTOBER 9, 1972, A HEARING OFFICER AFFIRMED THE DETERMINATION ORDER OF THE WORKMEN'S COMPENSATION BOARD DATED FEBRUARY 15, 1970, WHICH GRANTED CLAIMANT 8 DEGREES FOR PARTIAL LOSS USE OF EACH FOREARM AND 7 DEGREES FOR PARTIAL LOSS USE OF EACH FOOT MAKING A TOTAL OF 30 DEGREES FOR PERMANENT PARTIAL DISABILITY. THE HEARING OFFICER'S ORDER WAS REJECTED BY THE CLAIMANT THEREBY CONSTITUTING AN APPEAL TO THE MEDICAL BOARD OF REVIEW.

A MEDICAL BOARD OF REVIEW CONSISTING OF DOCTORS DAVID, C. FRISCH, ALFRED H. ILLGE AND J. CLIFTON MASSAR WAS APPOINTED ON AUGUST 24, 1973. THE MEDICAL BOARD OF REVIEW HAS NOW PRESENTED ITS FINDINGS WHICH ARE ATTACHED AS EXHIBIT A AND EXHIBIT B.

IN AID OF THE RECORD, THE BOARD NOTES THAT THE MEDICAL BOARD OF REVIEW INCREASED CLAIMANT'S FOREARM DISABILITY BY 2 DEGREES FOR EACH FOREARM BUT FOUND NO DISABILITY OF THE FEET, MAKING A TOTAL OF 20 DEGREES FOR PERMANENT PARTIAL DISABILITY.

PURSUANT TO ORS 656.814, THE FINDINGS OF THE MEDICAL BOARD OF REVIEW ARE DECLARED FINAL AS FILED AS OF THE DATE OF THIS ORDER.

IN ACCORDANCE WITH ORS 656.313(2), NO COMPENSATION PAID PURSUANT TO THE DETERMINATION ORDER AS AFFIRMED BY THE HEARING OFFICER'S ORDER, IS RECOVERABLE FROM THE CLAIMANT.

WCB CASE NO. 72-230 SEPTEMBER 14, 1973

EARL ADAMS, CLAIMANT
DEPARTMENT OF JUSTICE
DEFENSE ATTY.

THE ABOVE ENTITLED MATTER INVOLVES THE CLAIM OF A 51 YEAR OLD HEAVY EQUIPMENT OPERATOR FOR A BACK INJURY ALLEGEDLY INCURRED ON SEPTEMBER 20, 1972.

THE CLAIM WAS DENIED BY THE STATE ACCIDENT INSURANCE FUND AND THIS DENIAL WAS AFFIRMED BY THE HEARING OFFICER.

A REQUEST FOR REVIEW WAS MADE TO THE WORKMEN'S COMPENSATION BOARD ON JUNE 5, 1973, BY CLAIMANT'S COUNSEL WHO THEN WITHDREW FROM FURTHER REPRESENTATION OF CLAIMANT IN THIS MATTER. THE PREPARATION OF A TRANSCRIPT OF THE PROCEEDINGS WAS CONTINUED PENDING NOTIFICATION OF A POSSIBLE SUBSTITUTION OF COUNSEL. NO NOTIFICATION OF SUBSTITUTE COUNSEL HAS BEEN RECEIVED NOR HAS CLAIMANT TAKEN ANY OTHER ACTION IN THIS MATTER.

THE CLAIMANT HAS FAILED TO REPLY TO CORRESPONDENCE FROM THE WORKMEN'S COMPENSATION BOARD. ON AUGUST 9, 1973, THE CLAIMANT WAS ADVISED THAT THE MATTER WOULD BE DISMISSED IF NO REPLY WAS RECEIVED WITHIN TEN DAYS. NOTHING HAS BEEN RECEIVED.

IT IS THEREFORE ORDERED THAT THE ABOVE ENTITLED REQUEST FOR REVIEW IS DISMISSED.

WCB CASE NO. 72-2384 SEPTEMBER 17, 1973

GERALD ALMOND, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MIZE, KRIESIEN, FEWLESS, CHENEY AND KELLEY,
DEFENSE ATTYS.

CLAIMANT'S ATTORNEY HAS FILED A MOTION REQUESTING THAT THE BOARD SUPPLEMENT ITS ORDER HEREIN AND ALLOW AN ATTORNEY FEE OF 25 PERCENT OF THE AMOUNT THAT MAY BE ULTIMATELY AWARDED CLAIMANT AS A RESULT OF THE BOARD'S OWN MOTION REOPENING OF THIS CASE.

THE BOARD WILL DENY THE MOTION WITH LEAVE TO RENEW THE SAME WHEN THE CASE HAS BEEN ULTIMATELY DETERMINED.

WCB CASE NO. 73-9 SEPTEMBER 17, 1973

DENNIS WRIGHT, CLAIMANT

BROWN AND BURT, CLAIMANT'S ATTYS.
MCMENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

EMPLOYER REQUESTS REVIEW OF A HEARING OFFICER'S ORDER FINDING THE AGGRAVATION CLAIM WHICH IT DENIED, COMPENSABLE.

ISSUE

HAS CLAIMANT SUFFERED AN AGGRAVATION OF HIS COMPENSABLE INJURY?

DISCUSSION

IT IS VERY DIFFICULT TO LOOK THROUGH THE INCIDENT OF SEPTEMBER 7, 1972 WHEREIN THE CLAIMANT FELL ON THE STEPS OF HIS PATIO, TO FIND THE HOSPITALIZATION IN QUESTION COMPENSABLY RELATED TO THE ORIGINAL INJURY IN 1968. THE HEARING OFFICER'S CONCLUSION THAT THE SEPTEMBER 7, 1972 FALL IS A COMPENSABLE CONSEQUENCE OF THE ORIGINAL INJURY IS EXTRAORDINARILY TENUOUS AT BEST. THERE IS CERTAINLY NO MEDICAL OPINION TO THAT EFFECT.

IN ADDITION, THE RECORD DOES NOT REVEAL THAT CLAIMANT'S PERMANENT DISABILITY HAS VARIED FROM THE ORIGINAL CLOSING ORDER WHICH HE FAILED TO APPEAL. ALL TESTIMONY DELIVERED AT THE HEARING BY CLAIMANT, HIS FATHER AND HIS WIFE, RELATE RESIDUALS OF CONSTANT INTENSITY BACK TO THE COMPENSABLE INJURY OF 1968.

THE BOARD CONCLUDES THE CLAIMANT HAS FAILED TO PROVE HIS CLAIM OF AGGRAVATION. THE ORDER OF THE HEARING OFFICER SHOULD BE REVERSED AND THE DENIAL OF THE EMPLOYER APPROVED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED APRIL 4, 1973 IS REVERSED AND THE DENIAL OF CLAIMANT'S CLAIM OF AGGRAVATION ISSUED BY THE EMPLOYER ON DECEMBER 26, 1972, IS APPROVED.

WCB CASE NO. 73-8 SEPTEMBER 17, 1973

ELSIE SCHMIDT, CLAIMANT
COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND, IN BEHALF OF THE EMPLOYER, REQUESTS REVIEW OF AN ORDER OF THE HEARING OFFICER REQUIRING THAT THIS CLAIM BE ACCEPTED AND COMPENSATION PAID.

ISSUE

COMPENSABILITY.

DISCUSSION

THERE IS SERIOUS QUESTION IN THIS CASE AS TO WHETHER OR NOT THE SLIPPING AND FALLING ALLEGED BY CLAIMANT OCCURRED AT ALL. THERE WAS EVIDENCE PRESENTED BY THE CLAIMANT THAT THERE WERE WITNESSES WHO COULD HAVE VERIFIED HER TESTIMONY. THESE WITNESSES WERE NOT CALLED. THE BOARD BELIEVES THAT WHEN THIS EVIDENCE WAS AVAILABLE AND NOT PRESENTED, IT SERVES TO DISCOUNT CLAIMANT'S TESTIMONY. THE BOARD, ON ITS REVIEW OF ALL THE EVIDENCE, IS NOT CONVINCED THAT CLAIMANT'S INJURY OCCURRED AS ALLEGED.

ORDER

IT IS THEREFORE ORDERED THAT THE ORDER OF THE HEARING OFFICER DATED MAY 23, 1973, BE REVERSED AND THAT THE DENIAL OF THE CLAIM BE AFFIRMED. PURSUANT TO ORS 656.313, NO COMPENSATION PAID IN ACCORDANCE WITH THE HEARING OFFICER'S ORDER, IS RECOVERABLE FROM CLAIMANT.

WCB CASE NO. 72-2565 SEPTEMBER 17, 1973

MARGARET L. HILL, CLAIMANT
RASK, HEFFERIN AND CARTER, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

REQUEST FOR REVIEW OF HEARING OFFICER'S ORDER DENYING CLAIMANT'S REQUEST TO HAVE HER CLAIM BE RE-OPENED FOR ADDITIONAL TEMPORARY TOTAL DISABILITY.

DISCUSSION

UPON REVIEW OF THE EVIDENCE IN THE CASE THE BOARD AGREES WITH THE HEARING OFFICER'S ANALYSIS OF THE EVIDENCE THAT CLAIMANT'S CONDITION REMAINS STATIONARY.

ORDER

IT IS THEREFORE ORDERED THAT THE ORDER OF THE HEARING OFFICER DATED APRIL 16, 1973, BE AFFIRMED.

WCB CASE NO. 72-351 SEPTEMBER 17, 1973
WCB CASE NO. 72-1713 SEPTEMBER 17, 1973

NELSON MUIR, CLAIMANT
GRANT AND FERGUSON, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

ISSUE

THE ISSUE IS AGGRAVATION. THE HEARING OFFICER AFFIRMED THE DENIAL OF THE CLAIM.

DISCUSSION

THE ISSUE IS LARGELY DECIDED BY THE WEIGHT TO BE GIVEN THE REPORT OF DR. RALPH THOMPSEN DATED MAY 11, 1972. THE HEARING OFFICER FOUND THAT DR. THOMPSEN'S REPORT CONTAINS NO EXPLANATION OF THE BASIS FOR THE DOCTOR'S OPINION THAT CLAIMANT'S PRESENT PROBLEMS RELATE TO THE ORIGINAL INJURY. THE BOARD DOES NOT AGREE WITH THE HEARING OFFICER'S READING OF THAT REPORT. DR. THOMPSEN STATED THAT THE BASIS FOR HIS OPINION WAS THE READING OF NEW X-RAYS TAKEN AT THE TIME OF DR. THOMPSEN'S EXAMINATION IN COMPARISON WITH THE EARLIER X-RAY DIAGNOSIS. DR. THOMPSEN'S REPORT, TOGETHER WITH THE OTHER EVIDENCE, CONVINCES THE BOARD THAT THE AGGRAVATION OF THE ORIGINAL INJURY HAS BEEN ESTABLISHED.

ORDER

IT IS ORDERED THAT THE HEARING OFFICER'S ORDER BE REVERSED AND THAT THE CLAIM BE RE-OPENED BY THE STATE ACCIDENT INSURANCE FUND FOR APPROPRIATE ACTION.

CLAIMANT'S COUNSEL IS AWARDED AN ATTORNEY FEE IN THE AMOUNT OF SIX HUNDRED FIFTY DOLLARS TO BE PAID BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-1649 SEPTEMBER 17, 1973

HOWARD PULS, CLAIMANT
ANDERSON, FULTON, LAVIS AND
VAN THIEL, CLAIMANT'S ATTYS.
MCMENAMIN, JONES, JOSEPH AND
LANG, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS REVIEW OF AN ORDER OF THE HEARING OFFICER DATED MARCH 30, 1973, WHICH AWARDED CLAIMANT A TOTAL OF 96 DEGREES FOR UNSCHEDULED DISABILITY. CLAIMANT ALLEGES HE IS, IN FACT, PERMANENTLY AND TOTALLY DISABLED.

DISCUSSION

THE BOARD CONCURS IN THE FINDINGS AND OPINION OF THE HEARING OFFICER THAT THE CLAIMANT IS NOT TOTALLY DISABLED. HOWEVER, THE BOARD IS CONVINCED THAT THE PHYSICAL IMPAIRMENT SUFFERED BY CLAIMANT IS A MORE SEVERE HANDICAP TO CLAIMANT'S RE-EMPLOYMENT THAN FOUND BY THE HEARING OFFICER. THE MEDICAL EVIDENCE CONFIRMED THAT CLAIMANT WILL NOT BE ABLE TO RETURN TO THE KIND OF WORK HE HAS FOLLOWED THROUGHOUT HIS WORKING LIFE. THE OPPORTUNITIES FOR RE-EMPLOYMENT ARE NOT AS OPTIMISTIC AS FOUND BY THE HEARING OFFICER. THE BOARD IS OF THE OPINION THAT AN AWARD OF 50 PERCENT DISABILITY WOULD BE MORE APPROPRIATE TO THE CLAIMANT'S LOSS OF EARNING CAPACITY.

ORDER

IT IS ORDERED THAT THE ORDER OF THE HEARING OFFICER BE MODIFIED AND THAT CLAIMANT BE ALLOWED A TOTAL OF 160 DEGREES FOR UNSCHEDULED DISABILITY.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE, 25 PERCENT OF THE INCREASE IN COMPENSATION ASSOCIATED WITH THIS AWARD WHICH, COMBINED WITH FEES ATTRIBUTABLE TO THE ORDER OF THE HEARING OFFICER, SHALL NOT EXCEED FIFTEEN HUNDRED DOLLARS.

WCB CASE NO. 73-118 SEPTEMBER 17, 1973

BARBARA MEANS, CLAIMANT
MIKE DYE, CLAIMANT'S ATTY.
MIZE, KRIESIEN, FEWLESS, CHENEY
AND KELLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT APPEALS FROM HEARING OFFICER'S ORDER WHICH AFFIRMED A DENIAL OF CLAIM FOR UNSCHEDULED INJURY TO HER SHOULDER. THE CASE WAS SUBMITTED WITHOUT BRIEFS.

THE BOARD'S EXAMINATION OF THE RECORD IS CONVINCING THAT THE HEARING OFFICER'S ANALYSIS OF THE EVIDENCE IS CORRECT.

ORDER

IT IS ORDERED THAT THE HEARING OFFICER'S ORDER OF MAY 2, 1973 BE ADOPTED AND AFFIRMED.

WCB CASE NO. 70-1335 SEPTEMBER 17, 1973

GARY G. BURKHOLDER, CLAIMANT
FRANKLIN, BENNETT, DES BRISAY AND
JOLLES, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS REVIEW OF THE HEARING OFFICER'S AFFIRMANCE OF A DENIAL OF A CLAIM FOR INJURY THAT CLAIMANT ALLEGED WAS AN INDUSTRIAL INJURY OCCURRING ON NOVEMBER 3, 1969.

DISCUSSION

WERE IT NOT FOR THE HEARING OFFICER'S FINDING RELATING TO THE CREDIBILITY OF CLAIMANT'S TESTIMONY, THE BOARD WOULD HAVE NO PROBLEM IN ACCEPTING CLAIMANT'S VERSION OF THE ALLEGED ACCIDENT. THE BOARD HAS CONCLUDED, HOWEVER, THAT EVIDENCE IN THE RECORD JUSTIFIES REVERSING THE HEARING OFFICER'S ORDER AND ORDERING THIS CLAIM ACCEPTED. TO SUPPORT THE HEARING OFFICER'S ORDER, IT IS NECESSARY TO FIND THAT CLAIMANT DELIBERATELY AND FRAUDULENTLY STAGED AND FAKED THE ACCIDENT.

A SIGNIFICANT FINDING OF THE HEARING OFFICER WAS THAT CLAIMANT HAD TURNED OFF THE IGNITION AND SHIFTED INTO NEUTRAL GEAR BEFORE HE LEFT THE HYSTER.

THE BOARD BELIEVES THE EVIDENCE ON THE ISSUE IS NOT AS POSITIVE AS DETERMINED BY THE HEARING OFFICER. THE TESTIMONY OF SOME OF THE WITNESSES WAS UNCERTAIN AS TO WHO MAY OR MAY NOT HAVE TURNED OFF THE IGNITION AND IT IS RECOGNIZED THAT THE ENGINE COULD HAVE BEEN STALLED WHEN THE REAR WHEEL OF THE HYSTER FELL IN THE HOLE. FURTHER, THERE IS NO QUESTION BUT THAT THE REAR WHEEL OF THE HYSTER DID FALL IN THE HOLE - THAT IT WAS DIFFICULT TO REMOVE THE HYSTER FROM THAT POSITION - AND THAT THE PLATFORM AND SPACE WAS NARROW AND IT WOULD HAVE BEEN VERY PLAUSIBLE AND BELIEVABLE FOR THE CLAIMANT TO HAVE FALLEN EVEN IF HE HAD STEPPED OFF THE HYSTER IN A HURRIED MANNER. THE BOARD ACCEPTS THE TESTIMONY OF WITNESSES IN DESCRIBING THE PALLOR AND SHAKEN CONDITION OF THE CLAIMANT WHEN THESE WITNESSES FIRST ARRIVED ON THE SCENE. IN CAREFULLY EXAMINING THE TOTAL EVIDENCE, THE BOARD IS CONVINCED THAT THERE IS GREATER PROBABILITY THAT THE EVENT OCCURRED AS DESCRIBED BY CLAIMANT'S EVIDENCE AND THAT IT WAS NOT A FAKED ACCIDENT AS CLAIMED BY THE EMPLOYER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED APRIL 26, 1973, IS REVERSED AND THE CLAIM IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR ACCEPTANCE.

WCB CASE NO. 72-1018 SEPTEMBER 25, 1973
WCB CASE NO. 72-1157 SEPTEMBER 25, 1973

EDWARD MARSDEN, CLAIMANT

BROWN, SCHLEGEL AND MILBANK,
CLAIMANT'S ATTYS.
MIZE, KRIESIEN, FEWLESS, CHENEY AND
KELLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER, ROBERT D. MORROW, INC., REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH REMANDED CLAIMANT'S CLAIM OF AGGRAVATION TO THE EMPLOYER, FOR ACCEPTANCE AND PAYMENT OF COMPENSATION.

ISSUE

IS CLAIMANT'S INJURY OF NOVEMBER 1971 AN AGGRAVATION OF HIS INJURY OF SEPTEMBER 4, 1969, OR WAS A NEW INJURY SUSTAINED AT THAT DATE?

DISCUSSION

THIS CASE INVOLVES TWO INJURIES SUSTAINED WHILE WORKING FOR TWO DIFFERENT EMPLOYERS INSURED BY TWO DIFFERENT CARRIERS.

CLAIMANT SUSTAINED AN INJURY ON APRIL 1, 1967 AND SEPTEMBER 4, 1969, WHILE EMPLOYED BY ROBERT D. MORROW, INC. AND INSURED BY INDUSTRIAL INDEMNITY COMPANY.

CLAIMANT SUSTAINED A FURTHER INJURY NOVEMBER 9, 1971, WHILE EMPLOYED BY ST. JOHN'S DRYWALL WHICH WAS INSURED BY THE STATE ACCIDENT INSURANCE FUND.

CLAIMANT CONTINUED TO HAVE A BACK PROBLEM FOLLOWING THE 1967 INJURY BUT CONTINUED WORKING. AFTER THE 1969 INJURY CLAIMANT WAS HOSPITALIZED AND RECEIVED TRACTION.

IN NOVEMBER 1971 CLAIMANT WAS EMPLOYED BY ST. JOHN'S DRYWALL WHICH WAS COVERED BY THE STATE ACCIDENT INSURANCE FUND. WITHOUT A PRECIPITATING EVENT, HIS BACK CONDITION BECAME WORSE OVER A THREE DAY PERIOD OF HEAVY WORK AND HE WAS FORCED TO QUIT. HE UNDERWENT SURGERY ABOUT JANUARY, 1972 FOR A PROTRUDED INTER-VERTEBRAL DISC AT L4-5 ON THE LEFT SIDE.

THE HEARING OFFICER CONCLUDED THAT CLAIMANT'S EXACERBATION OF SYMPTOMS IN 1971 WAS AN AGGRAVATION OF THE DISABILITY RESULTING FROM THE COMPENSABLE INJURY SUSTAINED ON SEPTEMBER 4, 1969, AND THEREFORE THE RESPONSIBILITY OF INDUSTRIAL INDEMNITY.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDINGS OF THE HEARING OFFICER AND AFFIRMS HIS ORDER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED FEBRUARY 21, 1973 IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE EMPLOYER, ROBERT D. MORROW, INC., FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-1338 SEPTEMBER 25, 1973

DONALD TRACY, CLAIMANT
RAMIREZ AND HOOTS, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH APPROVED THE STATE ACCIDENT INSURANCE FUND'S REFUSAL TO PROVIDE ADDITIONAL BENEFITS FOLLOWING CLOSURE OF HIS CLAIM.

ISSUES

1. IS CLAIMANT IN NEED OF ADDITIONAL MEDICAL AND TEMPORARY TOTAL DISABILITY COMPENSATION FOR HIS COMPENSABLE INJURY?
2. IF NOT, IS CLAIMANT ENTITLED TO AN AWARD OF PERMANENT DISABILITY FOR THE INJURY?

DISCUSSION

ALTHOUGH THE THEORY OF THE CLAIMANT'S CASE WAS NOT CLEARLY DEFINED IT APPEARS FROM THE HEARING OFFICER'S ORDER THAT HE FOUND CLAIMANT'S CONDITION DID NOT WARRANT AN ALLOWANCE OF FURTHER TREATMENT OR PERMANENT DISABILITY COMPENSATION.

FROM ITS OWN DE NOVO REVIEW OF THE RECORD, THE BOARD AGREES WITH THE HEARING OFFICER'S FINDINGS AND CONCLUSIONS AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED APRIL 4, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 71-1429
WCB CASE NO. 72-172

SEPTEMBER 25, 1973
SEPTEMBER 25, 1973

CLEO WHEELER, CLAIMANT

MOORE, WURTZ AND LOGAN, CLAIMANT'S ATTYS.

MIZE, KRIESIEN, FEWLESS, CHENEY AND

KELLEY, DEFENSE ATTYS.

REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND SEEKS REVIEW OF AN ADVERSE ORDER OF THE HEARING OFFICER.

ISSUE

THERE ARE TWO ISSUES - 1. WAS CLAIMANT'S INJURY ON MARCH 12, 1970 A NEW ACCIDENT OR AN AGGRAVATION OF A PRIOR INJURY ON MARCH 21, 1966? IF SO, THE STATE ACCIDENT INSURANCE FUND IS RESPONSIBLE FOR THE LATTER EVENT. AND, 2. IS CLAIMANT A PERMANENT TOTAL.

DISCUSSION

CLAIMANT WAS ORIGINALLY INJURED IN 1966 WHEN A ROLLING LOG HIT HIM, INJURING HIS UPPER TORSO. ON MARCH 12, 1970, CLAIMANT SUSTAINED LOW BACK INJURY WHEN HE SLIPPED WHILE LIFTING A FIVE GALLON CAN OF OIL. THE STATE ACCIDENT INSURANCE FUND CONTENDS THAT THE LATTER EVENT SERVED TO AGGRAVATE THE 1966 INJURY. THIS ISSUE WAS CONTESTED AT A PREVIOUS HEARING IN 1970, AND BY AN ORDER DATED DECEMBER 9, 1970, THE HEARING OFFICER IN THAT PROCEEDING FOUND THAT THE MARCH 12, 1970 EVENT WAS A NEW, DISTINCT INJURY. THAT ORDER BECAME FINAL AND IS DISPOSITIVE OF THE ISSUE. EVEN SO, THE EVIDENCE PRESENTED IN THE INSTANT HEARING SUPPORTS THAT CONCLUSION.

THE EVIDENCE OF CLAIMANT'S DISABILITY, INCLUDING HIS LOSS OF EARNING CAPACITY, AS NOTED IN THE ORDER UNDER REVIEW IS ALSO PERSUASIVE THAT CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED.

ORDER

IT IS ORDERED THAT THE ORDER OF THE HEARING OFFICER DATED MARCH 9, 1973, IS AFFIRMED.

CLAIMANT'S ATTORNEY IS AWARDED AN ADDITIONAL ATTORNEY FEE OF THREE HUNDRED DOLLARS TO BE PAID BY THE STATE ACCIDENT INSURANCE FUND.

SEPTEMBER 25, 1973

MARY WRIGHT, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

RECITAL

THE ISSUES BY THE HEARING OFFICER ORIGINATED OVER WHETHER OR NOT THE INDUSTRIAL INJURY CLAIMANT SUSTAINED ON AUGUST 6, 1969, HAD AGGRAVATED AND WHETHER OR NOT THE STATE ACCIDENT INSURANCE FUND HAD REJECTED THE CLAIMANT'S CLAIM FOR AGGRAVATION.

THE HEARING OFFICER FOUND THAT THE CLAIMANT'S DISABILITY AS A RESULT OF THE INDUSTRIAL INJURY, HAD BECOME AGGRAVATED AND THAT THE STATE ACCIDENT INSURANCE FUND HAD IN FACT, DENIED THE AGGRAVATION CLAIM.

THE BOARD ON DE NOVO, CONCURS WITH THE HEARING OFFICER'S FINDINGS AND OPINIONS, THAT THE CLAIMANT'S DISABILITY HAD BECOME AGGRAVATED BUT, AT THE TIME OF THE HEARING SHE WAS IN FACT, MEDICALLY STATIONARY.

THE HEARING OFFICER THEN PROPERLY MADE THE DETERMINATION AS TO THE EXTENT OF HER DISABILITY. THE BOARD CONCURS AND AGREES WITH THE AWARD OF 48 DEGREES FOR UNSCHEDULED SHOULDER DISABILITY.

ISSUES

THE ISSUES BEFORE THE WORKMEN'S COMPENSATION BOARD ARE -

1. THE PROPRIETY OF THE HEARING OFFICER PAYING TO THE CLAIMANT'S COUNSEL AN ADDITIONAL ATTORNEY FEE EQUAL TO 25 PERCENT OF THE INCREASE IN COMPENSATION AND -
2. THE PROPRIETY OF THE STATE ACCIDENT INSURANCE FUND (ATTORNEY GENERAL) TO RAISE THE ISSUE INVOLVING THE PAYMENT OF ATTORNEY FEES OUT OF THE INCREASED COMPENSATION.

DISCUSSION

THE WORKMEN'S COMPENSATION BOARD DOES NOT AGREE WITH THE CONTENTIONS OF THE RESPONDENT THAT THE STATE ACCIDENT INSURANCE FUND (ATTORNEY GENERAL) DOES NOT HAVE AUTHORITY TO PRESENT THIS ISSUE TO THE WORKMEN'S COMPENSATION BOARD. THE WORKMEN'S COMPENSATION BOARD HAS JURISDICTION OVER ALL MATTERS CONCERNING A CLAIM. THE STATE ACCIDENT INSURANCE FUND (ATTORNEY GENERAL) NOT ONLY HAS THE RESPONSIBILITY TO RAISE ISSUES TO THE WORKMEN'S COMPENSATION BOARD BUT HAS AN OBLIGATION TO DO SO WHEREIN IT WOULD APPEAR THAT SUCH A RULING WOULD BE AGAINST THE RIGHTS OF THE PUBLIC.

WE COMPLIMENT THE STATE ACCIDENT INSURANCE FUND FOR BRINGING THIS MATTER TO THE ATTENTION OF THE WORKMEN'S COMPENSATION BOARD.

THE BOARD POLICY AT ALL TIMES IS TO ENCOURAGE INFORMAL, AMIABLE AND JUST DISPOSITION OF THE ISSUES. TO THIS END AND THESE RULES THE STATUTE WILL BE LIBERALLY INTERPRETED SO THAT NO INJUSTICE WILL BE PERMITTED IN ANY MATTER SUBJECT TO BOARD JURISDICTION. THE PURPOSE OF THESE RULES IS TO ASSIST THE ORDERLY DISPOSITION OF CONTESTED ISSUES.

THE WORKMEN'S COMPENSATION BOARD, IN ORDER TO MORE EFFICIENTLY ADMINISTER THE WORKMEN'S COMPENSATION LAW, ISSUED ADMINISTRATIVE POLICY DIRECTIVE 6-1972. IT PROVIDES THAT WHEN A HEARING OFFICER FINDS A DENIED AGGRAVATION CLAIM COMPENSABLE AND THAT THE CLAIMANT'S CONDITION IS THEN MEDICALLY STATIONARY, HE SHOULD ALSO DETERMINE THE EXTENT OF DISABILITY. IN DOING SO, THE HEARING OFFICER IS PERFORMING FUNCTIONS NORMALLY PERFORMED BY CLOSING AND EVALUATION. DETERMINING EXTENT OF DISABILITY IS NOT NECESSARILY INVOLVED IN RULING ON THE PROPRIETY OF THE DENIAL BUT IF THE EVIDENCE IS THERE, THE HEARING OFFICER SHOULD USE IT TO RATE THE DISABILITY AND AVOID THE DELAY INHERENT IN REFERRING THE MATTER TO CLOSING AND EVALUATION.

IT IS A BOARD POLICY IN CASES LIKE THIS WHICH CONSTITUTE A REJECTED AGGRAVATION CLAIM WHERE IT IS ORDERED ACCEPTED AND IN ADDITION THERETO, THE EXTENT OF DISABILITY IS DETERMINED, THAT THE HEARING OFFICER WILL NOT AWARD A FEE BASED ON THE INCREASED DISABILITY AWARD. THE FEE IN SUCH CASES WILL BE LIMITED TO THE FEE SET FOR THE DENIAL OF THE AGGRAVATION CLAIM.

THE BOARD RECOGNIZES THAT IN UNUSUAL AND CERTAIN CIRCUMSTANCES A FEE MAY BE ALLOWED OUT OF THE ADDITIONAL DISABILITY AWARDED. HOWEVER, THIS CASE DOES NOT WARRANT OR JUSTIFY OR CREATE AN EXCEPTIONAL CIRCUMSTANCE. IT IS BELIEVED HOWEVER, THAT THE ATTORNEY FEE BASED ON THE DENIAL OF FOUR HUNDRED DOLLARS IN THIS INSTANCE IS NOT ADEQUATE. THE HEARING OFFICER'S ORDER AS TO THE ATTORNEY FEES OUT OF THE CLAIMANT'S AWARD IS IMPROPER AND THEREFORE REVERSED AND SET ASIDE.

ORDER

THE HEARING OFFICER'S ORDER AS TO THE ATTORNEY FEES OUT OF THE CLAIMANT'S AWARD IS IMPROPER AND THEREFORE REVERSED AND SET ASIDE.

THE HEARING OFFICER'S ORDER AWARDED ATTORNEY FEES IN THE AMOUNT OF FOUR HUNDRED DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND IS HEREBY MODIFIED AND IN LIEU THEREOF, THE ATTORNEY IS AWARDED A REASONABLE ATTORNEY FEE IN THE AMOUNT OF SIX HUNDRED DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

THE BOARD CONCURS WITH THE HEARING OFFICER IN HIS FINDINGS AND CONCLUSIONS IN ALL OTHER MATTERS AND ACCORDINGLY AFFIRMS THE REMAINING PORTIONS OF HIS ORDER.

WCB CASE NO. 73-700 SEPTEMBER 25, 1973

MINNIE MARIE FOX, CLAIMANT

GREEN, GRISWOLD AND PIPPIN, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

A REQUEST FOR REVIEW, HAVING BEEN DULY FILED WITH THE WORKMEN'S COMPENSATION BOARD IN THE ABOVE-ENTITLED MATTER, AND SAID REQUEST FOR REVIEW NOW HAVING BEEN WITHDRAWN BY CLAIMANT'S COUNSEL,

IT IS THEREFORE ORDERED THAT THE REVIEW NOW PENDING BEFORE THE BOARD IS HEREBY DISMISSED AND THE ORDER OF THE HEARING OFFICER IS FINAL BY OPERATION OF LAW.

WCB CASE NO. 72-3176 SEPTEMBER 25, 1973

BEN WILSON, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER GRANTING AN ADDITIONAL PERMANENT PARTIAL DISABILITY AWARD OF 32 DEGREES, MAKING A TOTAL OF 64 DEGREES FOR UNSCHEDULED DISABILITY BASED ON LOSS OF EARNING CAPACITY, CONTENDING HIS DISABILITY EXCEEDS THAT AWARDED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT SUFFERED A BACK STRAIN JANUARY 3, 1972, WHILE EMPLOYED AS A WAREHOUSEMAN. THE INJURY NECESSITATED ONLY CONSERVATIVE CARE BUT CLAIMANT HAS BEEN ADVISED TO CHANGE OCCUPATIONS.

UNDER THE AUSPICES OF THE DEPARTMENT OF VOCATIONAL REHABILITATION, CLAIMANT, AT THE TIME OF HEARING, WAS ATTENDING PORTLAND COMMUNITY COLLEGE TAKING BUSINESS ADMINISTRATION AND RECEIVING ABOVE-AVERAGE GRADES. CLAIMANT APPEARS TO HAVE A VARIETY OF INTERESTS AND APTITUDES AND ADEQUATE MENTAL AND EMOTIONAL RESOURCES TO ACHIEVE HIS VOCATIONAL REHABILITATION GOALS.

THE CLAIMANT IS ADVISED THAT SHOULD FURTHER COUNSELING OR ASSISTANCE BE NECESSARY FOR VOCATIONAL READJUSTMENT, THE SERVICES OF THE BOARD'S DISABILITY PREVENTION DIVISION ARE AT ALL TIMES AVAILABLE TO CLAIMANT IF THE NEED ARISES.

THE BOARD CONCURS WITH THE HEARING OFFICER IN FINDING THAT CLAIMANT IS ENTITLED TO A PERMANENT PARTIAL DISABILITY AWARD

EQUAL TO 64 DEGREES FOR UNSCHEDULED DISABILITY BASED ON LOSS OF EARNING CAPACITY AND HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 14, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 72-1837 SEPTEMBER 25, 1973

CLARENCE H. MELLEN, CLAIMANT
RICHARDSON AND MURPHY, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH UPHELD THE DENIAL OF HIS CLAIM FOR BENEFITS BY THE STATE ACCIDENT INSURANCE FUND.

ISSUE

IS THERE SUFFICIENT MEDICAL EVIDENCE TO SUSTAIN THAT CLAIMANT DID SUFFER A COMPENSABLE INJURY?

DISCUSSION

CLAIMANT WAS A 53 YEAR OLD GRINDER IN A MACHINE SHOP, WHO HAS WORKED MOST OF HIS LIFE AS A MACHINIST. WHILE SO EMPLOYED ON JANUARY 17, 1972, HE SUFFERED AN EPISODE OF HYPERVENTILATION AND LATER TERMINATED EMPLOYMENT BECAUSE OF A CONTINUING PSYCHO-PHYSIOLOGICAL REACTION TO THE SHOP NOISE.

THE HEARING OFFICER DENIED THE CLAIMANT'S CLAIM FINDING THE EVIDENCE INSUFFICIENT TO CONVINCE HIM A CAUSAL CONNECTION EXISTED.

ON DE NOVO REVIEW, THE BOARD CONCLUDES THE MEDICAL EVIDENCE SUBMITTED BY DRS. JONES AND HODGSON ESTABLISHES THAT CLAIMANT DID SUSTAIN A COMPENSABLE INDUSTRIAL INJURY AND THAT HE SHOULD BE COMPENSATED ACCORDINGLY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 25, 1973, IS HEREBY REVERSED AND THE STATE ACCIDENT INSURANCE FUND IS ORDERED TO ACCEPT SAID CLAIM AND PAY BENEFITS TO WHICH CLAIMANT IS ENTITLED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF EIGHT HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND FOR SERVICES AT HEARING AND UPON THIS REVIEW.

WCB CASE NO. 71-2385 SEPTEMBER 25, 1973

L. D. WILSON, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
R. J. CHANCE, DIRECTOR, WORKMEN'S
COMPENSATION BOARD, DEFENSE ATTY.

ON AUGUST 6, 1973 THE CIRCUIT COURT OF MARION COUNTY REMANDED THE ABOVE ENTITLED MATTER TO THE WORKMEN'S COMPENSATION BOARD FOR CONSIDERATION OF THE REHABILITATION PLAN FOR THE CLAIMANT AND FURTHER CONSIDERATION OF EXTENT OF HIS DISABILITY IN LIGHT OF SAID REHABILITATION PLAN, IF ANY, AND THE SUCCESS OR FAILURE OF THE SAME.

THE EVIDENCE OF RECORD DOES NOT PROVIDE THE BOARD WITH THE INFORMATION CONTEMPLATED BY THE COURT AND IT IS THUS NECESSARY TO REMAND THE MATTER TO THE HEARINGS DIVISION FOR RECEIPT FROM THE PARTIES OF THE EVIDENCE NECESSARY TO COMPLY WITH THE COURT'S ORDER. UPON THE RECEIPT OF SUCH EVIDENCE THE HEARINGS DIVISION SHOULD CERTIFY THIS EVIDENCE TO THE BOARD FOR ITS USE IN DETERMINING THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY.

IT IS SO ORDERED.

WCB CASE NO. 69-1864 SEPTEMBER 25, 1973

ELLA TINCKNELL, CLAIMANT

THIS MATTER IS BEFORE THE WORKMEN'S COMPENSATION BOARD UPON REQUEST OF CLAIMANT THAT THE BOARD EXERCISE ITS CONTINUING JURISDICTION UNDER OWN MOTION POWER GRANTED BY ORS 656.278.

THE BOARD, IN REVIEWING THE MEDICAL REPORTS AS SUBMITTED BY THE CLAIMANT, THE TRANSCRIPTS OF THE PRIOR HEARING, AND MEDICAL REPORTS INVOLVING THE ORIGINAL INJURY, CONCLUDES THAT CLAIMANT'S PRESENT CONDITION IS NOT RELATED TO THE INDUSTRIAL INJURY.

THE BOARD THEREFORE DECLINES AT THIS TIME UPON THE STATE OF THE RECORD TO EXERCISE OWN MOTION JURISDICTION IN THE MATTER.

NO NOTICE OF APPEAL IS DEEMED APPLICABLE.

WCB CASE NO. 73-10 SEPTEMBER 25, 1973

WAYNE SNOW, CLAIMANT

B. G. BIRCH, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER GRANTING CLAIMANT 112 DEGREES FOR UNSCHEDULED DISABILITY, (AN INCREASE OF 96 DEGREES) AND 10 PERCENT LOSS USE OF THE LEFT LEG.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT SUSTAINED A COMPENSABLE LOW BACK INJURY AUGUST 13, 1970, WHILE EMPLOYED AS A MACHINIST. CLAIMANT HAD HAD A HERNIATED LUMBAR DISC REMOVED IN CONNECTICUT IN 1969, BUT HAD BEEN PAIN FREE UNTIL THE PRESENT ACCIDENT.

CLAIMANT RECEIVED CONSERVATIVE TREATMENT AND RETURNED TO HIS REGULAR EMPLOYMENT IN FEBRUARY OF 1971. DURING THIS TIME HE HAD BEEN TAKING 9 TO 12 HOURS OF COLLEGE WORK AT PORTLAND COMMUNITY COLLEGE.

IN FEBRUARY, 1972, CLAIMANT WAS ADVISED BECAUSE OF PERSISTENT SYMPTOMS HE SHOULD NOT RETURN TO HIS JOB AS A MACHINIST. DR. PASQUESI REPORTED THAT THIS WORKMAN WHO WEIGHED 125 POUNDS AND WAS 5 FEET FIVE AND ONE-HALF INCHES TALL WOULD HAVE TO FIND LIGHTER WORK. DR. SNODGRASS INDICATES LEFT LEG PROBLEMS ARE A POSTOPERATIVE RESIDUAL OF THE OLD HERNIATED DISC.

CLAIMANT TESTIFIED IN FEBRUARY OF 1972, HE WAS FIRED FROM HIS JOB. THE EMPLOYER TESTIFIED HE WAS LAID OFF DUE TO LACK OF WORK. WITH THE ASSISTANCE OF THE DEPARTMENT OF VOCATIONAL REHABILITATION, CLAIMANT SECURED A JOB AS A SECRETARY PERFORMING GENERAL OFFICE WORK, AT THE OREGON PRIMATE CENTER, EARNING FOUR HUNDRED FORTY SEVEN DOLLARS PER MONTH. CLAIMANT STILL HAS CONSISTENT BACK PAIN, TAKES MEDICATION DAILY, HAS NO HOPE OF RETURNING TO THIS TRADE AS A MACHINIST AND WILL BE HANDICAPPED FOR LIFE IN SEEKING EMPLOYMENT.

THE HEARING OFFICER CONCLUDED CLAIMANT'S ABILITY TO COMPETE ON THE OPEN LABOR MARKET HAD DIMINISHED AND HE WAS ENTITLED TO AN AWARD FOR A LOSS OF WAGE EARNING CAPACITY, AND THEREUPON ALLOWED A TOTAL AWARD OF 112 DEGREES FOR UNSCHEDULED DISABILITY AND 15 DEGREES FOR LOSS OF USE OF THE LEFT LEG.

THE BOARD, ON REVIEW, CONCLUDES CLAIMANT IS NOT ENTITLED TO ANY AWARD OF COMPENSATION FOR THE LEFT LEG.

THE BOARD CONCLUDES CLAIMANT'S AWARD OF PERMANENT PARTIAL DISABILITY FOR UNSCHEDULED LOW BACK DISABILITY IS EQUAL TO 80 PERCENT, AN INCREASE OF 64 DEGREES.

ORDER

IT IS HEREBY ORDERED THAT THE ORDER OF THE HEARING OFFICER ENTERED APRIL 12, 1973, IS MODIFIED AS FOLLOWS -

1. CLAIMANT IS HEREBY AWARDED 80 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY, AN INCREASE OF 64 DEGREES -

2. THE HEARING OFFICER'S AWARD OF 10 PERCENT LOSS OF USE OF THE LEFT LEG IS REVERSED AND CLAIMANT WILL RECEIVE NO AWARD OF PERMANENT PARTIAL DISABILITY OF THE LEFT LEG.
3. CLAIMANT'S ATTORNEYS ARE HEREBY AWARDED REASONABLE ATTORNEYS FEES IN THE AMOUNT OF 25 PERCENT OF THE INCREASED COMPENSATION AWARDED HEREIN.

WCB CASE NO. 72-1415 SEPTEMBER 25, 1973

MARGARET LARSON, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON AUGUST 28, 1973, THE FINDINGS OF THE MEDICAL BOARD OF REVIEW ALLOWING CLAIMANT'S CLAIM FOR OCCUPATIONAL DISEASE BENEFITS WAS FILED WITH THE WORKMEN'S COMPENSATION BOARD. THE ORDER PROVIDED NO ALLOWANCE FOR ATTORNEY FEES.

ON SEPTEMBER 14, 1973, CLAIMANT'S ATTORNEYS REQUESTED THE ALLOWANCE OF AN ATTORNEY FEE PURSUANT TO ORS 656.386. CLAIMANT'S ATTORNEYS ARE ENTITLED TO A REASONABLE FEE FOR THEIR SERVICES PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

ORDER

CLAIMANT'S ATTORNEYS, POZZI, WILSON AND ATCHISON ARE HEREBY AWARDED A REASONABLE ATTORNEY FEE OF NINE HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND FOR THEIR SERVICES IN ESTABLISHING CLAIMANT'S RIGHT TO COMPENSATION.

WCB CASE NO. 72-3308 SEPTEMBER 25, 1973

ROBERT WOLF, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MERLIN MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED HIM AN ADDITIONAL AWARD OF 10 PERCENT (19.2 DEGREES) FOR UNSCHEDULED LOSS OF AN ARM BY SEPARATION FOR LOW BACK DISABILITY MAKING A TOTAL PERMANENT PARTIAL DISABILITY AWARD OF 25 PERCENT.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT INJURED HIS BACK MAY 24, 1967, LIFTING A HEAVY MOTOR WHILE WORKING AS A MAINTENANCE ENGINEER FOR THE MILK DIVISION OF SAFEWAY STORES, FOR WHOM HE HAD WORKED FOR 26 YEARS.

ON MARCH 17, 1970, CLAIMANT UNDERWENT A LAMINECTOMY. ON OCTOBER 22, 1971, HIS CLAIM WAS REOPENED AND HE UNDERWENT A BILATERAL, TWO-LEVEL FUSION. CLAIMANT RECEIVED A PERMANENT PARTIAL DISABILITY AWARD TOTALING 25 PERCENT FOR UNSCHEDULED BACK DISABILITY. AT HEARING, THE HEARING OFFICER AWARDED AN ADDITIONAL 10 PERCENT FOR A TOTAL OF 35 PERCENT OF THE MAXIMUM ALLOWABLE.

EVEN THOUGH CLAIMANT RETURNED TO HIS JOB, THE BOARD FINDS HE DOES HAVE SIGNIFICANT AND SUBSTANTIAL BACK IMPAIRMENT WHICH RESTRICTS HIS PERFORMANCE ON HIS PRESENT JOB. HIS PHYSICAL RESERVE HAS BEEN REDUCED AND HIS ABILITY TO FIND OTHER SUITABLE EMPLOYMENT THEREBY LESSENED.

THE BOARD FINDS CLAIMANT TO BE HIGHLY MOTIVATED AND DETERMINED TO MAKE THE BEST OF HIS MISFORTUNE. AFTER CONSIDERING THE MEDICAL EVIDENCE PLUS THE WAGE-LOSS FACTOR, THE BOARD FINDS AND CONCLUDES THAT CLAIMANT IS ENTITLED TO AN ADDITIONAL AWARD OF 15 PERCENT FOR UNSCHEDULED LOSS OF AN ARM BY SEPARATION.

ORDER

IT IS THEREFORE ORDERED THAT CLAIMANT IS GRANTED AN ADDITIONAL AWARD OF 15 PERCENT, MAKING A TOTAL OF 50 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED LOSS OF AN ARM BY SEPARATION.

COUNSEL FOR CLAIMANT IS ALLOWED A FEE EQUAL TO 25 PERCENT OF THE INCREASED COMPENSATION PAYABLE FROM THE INCREASE AS PAID.

WCB CASE NO. 72-406

SEPTEMBER 25, 1973

EDWARD SCHARTNER, DECEDENT
BABCOCK AND ACKERMAN, BENEFICIARIES¹, ATTYS.
ROGER WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON, MOORE AND SLOAN.

THE EMPLOYER SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH REMANDED THE CLAIM TO THE EMPLOYER FOR ACCEPTANCE AND PAYMENT OF BENEFITS.

ISSUE

WAS DECEDENT'S WORK ACTIVITY ON NOVEMBER 29, 1971, A MATERIAL CONTRIBUTING FACTOR TO HIS COLLAPSE AND DEATH ON THAT DAY?

DISCUSSION

THIS DECEDENT WAS EMPLOYED AS A DRYER FEEDER AT THE ROSEBURG LUMBER COMPANY PLYWOOD PLANT, AND SUFFERED A FATAL HEART ATTACK ON NOVEMBER 29, 1971. DECEDENT'S WIDOW AND BENEFICIARY FILED A CLAIM FOR BENEFITS WHICH WAS DENIED BY THE CARRIER ON BEHALF OF THE DEFENDANT-EMPLOYER.

DECEDENT WORKED SWING SHIFT, HAD FIVE HOURS SLEEP AND WAS WORKING ON DAY SHIFT ON THE DAY OF THE FATALITY. HIS JOB ON THE DRYER WAS EXTREMELY FAST. MID-MORNING A 'PLUG-UP' OCCURRED ON THIS DRYER. IN CLEARING THE 'PLUG-UP' DECEDENT WORKED WITH DRYER DOORS OPEN IN HOT CONDITIONS. DECEDENT WAS 'FLUSHED' AT LUNCHTIME. SHORTLY AFTER LUNCH DECEDENT COLLAPSED AND DIED.

THERE IS NO QUESTION BUT THAT DECEDENT'S DEATH OCCURRED DURING EMPLOYMENT, BUT TO BE COMPENSABLE THE DEATH MUST HAVE 'ARISEN OUT OF THE EMPLOYMENT', AS WELL.

WHETHER THE EMPLOYMENT MATERIALLY CONTRIBUTED TO HIS DEATH IS A MATTER REQUIRING EXPERT MEDICAL OPINION. THE ISSUE CANNOT BE DECIDED BY COMPARING OTHER APPELLATE DECISIONS. THE RESULT MUST DEPEND UPON THE MEDICAL EVIDENCE IN EACH CASE AS APPLIED TO THE FACTS OF THAT CASE.

SINCE THERE WAS NO TREATING PHYSICIAN, THE MEDICAL OPINION EVIDENCE WAS BASED UPON HYPOTHETICAL STATEMENTS GIVEN TO DRS. ANDERSON, GRISWOLD AND ROGERS AT THE TIME EACH WAS DEPOSED. ALL THREE DOCTORS WERE AGREED THAT THE CAUSE OF THE DECEDENT'S DEATH WAS CARDIAC ARRHYTHMIA. DR. ANDERSON AND DR. GRISWOLD WERE OF THE OPINION THAT, BASED ON MEDICAL PROBABILITY, THERE WAS A DIRECT RELATIONSHIP BETWEEN CLAIMANT'S WORK ACTIVITY ON NOVEMBER 29, 1971, AND HIS DEATH ON THAT DATE. DR. ROGERS WAS OF A CONTRARY OPINION.

THE BOARD, ON REVIEW, IS NOT UNANIMOUS IN ITS DECISION IN THIS MATTER. THE MAJORITY OF THE BOARD CONCURS WITH THE FINDING OF THE HEARING OFFICER THAT LEGAL CAUSATION WAS ESTABLISHED IN THE ABSENCE OF ANY DISPUTE REGARDING DECEDENT'S EXERTION OF THE JOB. THE MEDICAL OPINION EVIDENCE OF DRS. GRISWOLD AND ANDERSON ESTABLISHES MEDICAL CAUSATION.

CLAIMANT'S ATTORNEY WAS AWARDED THE MAXIMUM FEE ALLOWABLE ABSENT A SHOWING OF 'EXCEPTIONAL CIRCUMSTANCES' AS PROVIDED BY SECTION (A) OF WCB ADMINISTRATIVE ORDER 3-1966. THEREFORE NO ADDITIONAL ATTORNEY FEE IS ALLOWED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 19, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 73-1028 SEPTEMBER 25, 1973

GERALD MCELROY, CLAIMANT
F. P. STAGER, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON SEPTEMBER 21 THE BOARD RECEIVED A PETITION FOR RECONSIDERATION FROM THE STATE ACCIDENT INSURANCE FUND IN THE ABOVE-ENTITLED CASE. BASED ON THE STATUTORY CITATIONS RELIED ON BY THE FUND AND THE AFFIDAVIT TENDERED IN SUPPORT THEREOF, THE BOARD CONCLUDES THE PETITION FOR RECONSIDERATION SHOULD BE GRANTED AND THAT THE PARTIES SHOULD THEREUPON FURNISH BRIEFS ON THE ISSUES RAISED IN THE PETITION FOR RECONSIDERATION WITHIN 20 DAYS OF THE DATE HEREOF.

IT IS SO ORDERED.

WCB CASE NO. 72-3514 SEPTEMBER 25, 1973

ALFRED WEST, CLAIMANT
COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
KEITH SKELTON, DEFENSE ATTY.

ON AUGUST 1, 1973, THE BOARD GRANTED AN EMPLOYER MOTION FOR A TEMPORARY STAY OF FURTHER PROCEEDINGS IN THE ABOVE ENTITLED MATTER AND RESERVED RULING PENDING FURTHER ARGUMENT, ON WHETHER THE CLAIMANT MAY TWICE QUESTION THE ADEQUACY OF A DETERMINATION ORDER WITHIN THE ONE YEAR APPEAL PERIOD.

FROM THE FILES AND RECORDS OF THE WORKMEN'S COMPENSATION BOARD IT APPEARS THAT CLAIMANT SUFFERED A COMPENSABLE INJURY ON APRIL 16, 1970. PURSUANT TO TWO DETERMINATION ORDERS THE LATEST BEING DATED MARCH 23, 1972, CLAIMANT RECEIVED A TOTAL OF 32 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY.

HE THEREAFTER REQUESTED A HEARING (WCB 72-873) CONTESTING, AMONG OTHER THINGS, THE ADEQUACY OF THE PERMANENT DISABILITY AWARD.

ON SEPTEMBER 29, 1972, A HEARING OFFICER RULED ADVERSELY TO CLAIMANT'S CONTENTION THAT A PSYCHIATRIC CONDITION WAS COMPENSABLY RELATED TO CLAIMANT'S INDUSTRIAL ACCIDENT, WHICH COLLATERALLY INVOLVED A QUESTION OF MEDICAL TREATMENT AND AFFIRMED THE AWARD OF PERMANENT DISABILITY.

THE MATTER WAS SUBSEQUENTLY REVIEWED BY THE BOARD AND THE HEARING OFFICER'S ORDER WAS AFFIRMED ON JANUARY 15, 1973, AN APPEAL OF THE BOARD ORDER IS NOW PENDING IN THE CIRCUIT COURT OF DOUGLAS COUNTY.

ON DECEMBER 21, 1972, WHILE THE ABOVE MATTERS WERE PENDING, A SECOND REQUEST FOR HEARING WAS FILED ALLEGING CLAIMANT HAD SUFFERED AN AGGRAVATION OF DISABILITY REQUIRING A LAMINECTOMY, RESPONSIBILITY FOR WHICH THE EMPLOYER HAD ALLEGEDLY REFUSED TO ACCEPT OR DENY, AND THAT IT HAD FAILED TO PAY COMPENSATION WITHIN 14 DAYS OF NOTICE. THE REQUEST FOR HEARING INFORMED THE HEARINGS DIVISION THAT A MEDICAL REPORT WOULD FOLLOW.

AT THE HEARING ON THIS REQUEST (WCB 72-2514) WHICH WAS HELD ON JUNE 12, 1973, THE EMPLOYER MOVED TO DISMISS THE REQUEST FOR HEARING ON THE GROUNDS THAT CLAIMANT'S MEDICAL OPINION SUPPORTING THE CLAIM OF AGGRAVATION WAS INSUFFICIENT TO INVEST THE HEARING OFFICER WITH JURISDICTION TO CONDUCT A HEARING ON THE MERITS OF THE CASE.

THE HEARING OFFICER AGREED, SPECIFICALLY FINDING THE MEDICAL REPORT AND TESTIMONY SUPPLIED AND RELIED ON BY THE CLAIMANT INSUFFICIENT TO SUPPORT A CLAIM OF AGGRAVATION. HOWEVER, HE REFUSED TO DISMISS THE CLAIMANT'S REQUEST FOR HEARING NOTING THAT CLAIMANT WAS STILL WITHIN THE ONE YEAR PERIOD PROVIDED FOR APPEALING DETERMINATION ORDERS. HE HELD THAT A REQUEST FOR HEARING MADE WITHIN THE ONE YEAR APPEAL PERIOD DID NOT REQUIRE A SUPPORTING WRITTEN MEDICAL OPINION PURSUANT TO ORS 656.271 EVEN IF, IN FACT, THE BASIS OF CLAIMANT'S PRESENT REQUEST FOR HEARING INVOLVED A CHANGE IN CLAIMANT'S CONDITION, SUCH AS A NEWLY DISCOVERED NEED FOR FURTHER TREATMENT AS HERE CONTENDED, AFTER A PRIOR REQUEST FOR HEARING HAD BEEN HELD AND CONSIDERED OR EVEN BY THE TENOR OF HIS LANGUAGE, IF IT INVOLVED A WORSENING OF SUCH CONDITION.

THE EMPLOYER CONTENTS (1) THAT CLAIMANT IS ENTITLED TO ONLY ONE APPEAL OF THE CORRECTNESS OF THE DETERMINATION ORDER AND (2) THAT THE RULING ON THE MARCH 23, 1973, ORDER IS RES JUDICATA, (3) THAT CLAIMANT MUST NOW PROCEED ON THE THEORY OF AGGRAVATION TO ENFORCE HIS ALLEGED RIGHT TO COMPENSATION.

DEALING WITH THESE CONTENTIONS IN REVERSE ORDER - IN THE CASE OF CECIL B. WHITESHIELD WCB 69-641, CLAIMANT AGREED THE DETERMINATION ORDER, WHEN ISSUED, WAS CORRECT BUT THAT HE LATER NEEDED FURTHER TREATMENT. IT WAS DENIED AND HE REQUESTED A HEARING WITHIN THE ONE YEAR PERIOD ALLEGING THE NEED OF FURTHER TREATMENT. HE REFUSED TO ATTACK THE DETERMINATION THAT HE WAS MEDICALLY STATIONARY WHEN CLOSED AND LIKewise REFUSED TO PROCEED ON A THEORY OF AGGRAVATION. A HEARING OFFICER DISMISSED HIS REQUEST, RULING THAT THE CLAIMANT MUST DO ONE OR THE OTHER.

ON REVIEW, THE BOARD REVERSED THE HEARING OFFICER EXPLAINING =

"THE PROCEDURE PRIOR TO JANUARY 1, 1966 (ORS 656.284 REPEALED) REQUIRED A CLAIMANT TO SEEK REHEARING WITHIN 60 DAYS OR BE BOUND BY THE CLOSING ORDER. IT WAS FOUND THAT MANY REQUESTS FOR REHEARING AND APPEAL WERE FILED DUE TO THE WORKMAN'S UNCERTAINTY ABOUT HIS CONDITION IMMEDIATELY FOLLOWING CLAIM CLOSURE. IN THE LEGISLATIVE PROCESS THE TIME FOR CHALLENGING CLAIM CLOSURE UNDER ORS 656.268 WAS EXTENDED TO A FULL YEAR. THE CONCEPT WAS NOT ONE OF REQUIRING A CLAIMANT TO PROVE THAT THE ORDER WAS IN ERROR BY EVIDENCE OF THE CLAIMANT'S CONDITION AS OF THAT DATE. THE TEST IS WHETHER THE ORDER WAS PROPER BY THE EVIDENCE AS OF THAT DATE AS AMPLIFIED BY THE CLAIMANT'S EXPERIENCE WITHIN ONE YEAR FROM THE DATE OF THAT ORDER. A CLAIM COULD BE PROCESSED AS ONE FOR AGGRAVATION WITHIN THAT PERIOD BUT THE CLAIMANT IS NOT REQUIRED TO DO SO IN ORDER TO ESTABLISH THE RIGHT TO HEARING. THE HEARING, IN THIS INSTANCE, SHOULD HAVE PROCEEDED UPON THE MERITS OF WHETHER THE CLAIM SHOULD BE REOPENED. THE HEARING OFFICER WAS NOT MADE AWARE OF THIS LEGISLATIVE HISTORY." (EMPHASIS SUPPLIED) THUS CLAIMANT MAY PROCEED ON EITHER THEORY DURING THE ONE YEAR APPEAL PERIOD.

CONCERNING CONTENTION NO. 2 - THE DOCTRINE OF RES JUDICATA HAS LIMITED APPLICABILITY IN WORKMEN'S COMPENSATION CASES.

THE DOCTRINE OF RES JUDICATA IS LIMITED IN ITS OPERATION WHEN SOUGHT TO BE APPLIED TO MAN'S PHYSICAL CONDITION WHICH CONSTANTLY CHANGES AND UNDER A STATUTE WHICH PROVIDES THAT WEEKLY PAYMENTS MAY BE REVIEWED AND ENDED, DIMINISHED OR INCREASED AS THE FACTS WARRANT.

HOUG V. FORD MOTOR CO., 288 MICH 478, 285 NW 27 (1939),

AN ORDER OR DECREE NOT APPEALED, OR ONE AFFIRMED ON APPEAL GRANTING OR DENYING A PETITION FOR A MODIFIED COMPENSATION, CONSTITUTES A FINAL DETERMINATION OF THE RIGHT TO COMPENSATION ON THE DATE OF THE ORDER, AND IS RES JUDICATA AS TO THE ISSUE DETERMINED, BUT DOES NOT PRECLUDE FURTHER PROCEEDINGS BASED ON A CHANGE OF CONDITION SINCE THE DATE OF THE AWARD.

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IT DOES NOT PRECLUDE FURTHER PROCEEDINGS BASED ON A CHANGE OF CONDITIONS SINCE THE DATE OF THE AWARD, SINCE THE COMMISSION CANNOT ADJUDGE THAT THERE WILL BE NO FURTHER DISABILITY. CONSEQUENTLY A PROCEEDING FOR ADDITIONAL COMPENSATION ON THE GROUND OF A CONTINUING DISABILITY IS NOT CONSIDERED AS A COLLATERAL ATTACK ON A JUDGMENT DENYING ADDITIONAL COMPENSATION. CJS WORKMEN'S COMPENSATION 874

THE EMPLOYER RECOGNIZES AND ADMITS IN HIS ARGUMENT FOR THE STAY OF PROCEEDINGS THAT WHAT THE CLAIMANT'S ATTORNEY IS ATTEMPTING TO DO IN THIS CASE IS TO PUT IN EVIDENCE MEDICAL AND TESTIMONY WHICH CHANGES THE SITUATION AFTER THE DETERMINATION ORDER OF MARCH 23, 1972. CLAIMANT IS NOT COLLATERALLY ATTACKING THE MARCH 23, 1972 ORDER BUT INSTITUTING FURTHER PROCEEDINGS BASED ON A CHANGE IN CONDITIONS SINCE THE DATE OF THE AWARD. THUS THE DOCTRINE OF RES JUDICATA DOES NOT BAR FURTHER HEARING.

IF CLAIMANT IS TO BE NOW PRECLUDED FROM PROCEEDING TO HEARING, IT MUST BE ON THE BASIS THAT EMPLOYERS SHOULD BE PROTECTED FROM A MULTIPPLICITY OF SUITS.

THE POLICY WHICH FORBIDS A MULTIPPLICITY OF SUITS IS DESIGNED TO PREVENT MORE THAN ONE SUIT GROWING OUT OF THE SAME SUBJECT MATTER OF LITIGATION AND TO REQUIRE PARTIES TO SETTLE THEIR CONTROVERSIES IN A SINGLE SUIT, IF PRACTICABLE. HARTFORD ACCIDENT AND INSURANCE CO. V. WEEKS DRUG STORE, TEX CIV. APP., 161 S. W. 2D 153 () THE KEY PHRASE IS, OF COURSE, "IF PRACTICABLE." IT WAS NOT PRACTICABLE FOR CLAIMANT TO HAVE BROUGHT THE INSTANT QUESTION BEFORE THE HEARING OFFICER IN THE EARLIER CASE BECAUSE THE NEED FOR SURGERY WAS NOT THEN APPARENT.

CONSTRUING THE FACTS MOST STRONGLY IN FAVOR OF THE CLAIMANT FOR THE PURPOSE OF DECIDING THIS ISSUE, THE CLAIMANT CAN FOR THE FIRST TIME PROVE, BASED ON HIS EXPERIENCE WITHIN ONE YEAR FROM THE DATE OF THE DETERMINATION ORDER, THAT THE CLAIM WAS PREMATURELY CLOSED AND THAT HE IS IN NEED OF FURTHER MEDICAL TREATMENT.

IF CLAIMANT IS ENTITLED TO FURTHER MEDICAL TREATMENT NOW, HE IS ALSO NOW ENTITLED TO ENFORCE HIS RIGHT TO RECEIVE TREATMENT, WITHOUT REGARD TO THE FACT THAT HE MAY HAVE SOUGHT TO ENFORCE

SOME OTHER RIGHT CONCERNING HIS CLAIM BEFORE HIS PRESENT PROBLEM REVEALED ITSELF.

WE CONCLUDE THE HEARING OFFICER CORRECTLY RULED THAT CLAIMANT IS ENTITLED TO A HEARING IN THIS MATTER REGARDLESS OF THE LACK OF ADEQUATE SUPPORTING MEDICAL OPINION AND REGARDLESS OF THE FACT THAT A PRIOR HEARING HAS BEEN CONDUCTED IN THIS CASE.

ORDER

THE TEMPORARY STAY OF FURTHER PROCEEDINGS ENTERED BY THE BOARD ON AUGUST 1, 1973, IS HEREBY DISSOLVED AND THE MATTER IS REMANDED TO THE HEARING OFFICER FOR COMPLETION OF THE HEARING IN ACCORDANCE WITH HIS RULING.

WCB CASE NO. 73-8

SEPTEMBER 26, 1973

ELSIE SCHMIDT, CLAIMANT

COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON SEPTEMBER 19, 1973, CLAIMANT, THROUGH HER ATTORNEY ALLAN H. COONS, MOVED FOR RECONSIDERATION OF THE BOARD'S SEPTEMBER 17, 1973, ORDER ON REVIEW.

THE BOARD HAS CONSIDERED CLAIMANT'S MOTION AND ARGUMENT IN SUPPORT THEREOF AND CONCLUDES THE MOTION SHOULD BE DENIED.

ORDER

IT IS THEREFORE ORDERED THAT THE MOTION FOR RECONSIDERATION IS DENIED.

WCB CASE NO. 72-3018

SEPTEMBER 26, 1973

WCB CASE NO. 73-564

SEPTEMBER 26, 1973

DELORIS F. JOHNSON, CLAIMANT

COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON SEPTEMBER 14, 1973, THE STATE ACCIDENT INSURANCE FUND MOVED THE BOARD FOR RECONSIDERATION OF THIS ORDER IN THE ABOVE ENTITLED MATTER ENTERED ON SEPTEMBER 5, 1973.

THE BOARD HAS CONSIDERED THE FUND'S MOTION AND CONCLUDES THE MOTION SHOULD BE DENIED.

ON SEPTEMBER 14, 1973, THE CLAIMANT, ACTING THROUGH HER ATTORNEY ALLAN H. COONS MOVED THE BOARD TO RECONSIDER THE AMOUNT OF ATTORNEY FEES AWARDED BY ITS ORDER. IN SUPPORT OF THE MOTION MR. COONS SUPPLIED A RECAPITULATION OF HIS ACTIVITIES IN REPRESENTING CLAIMANT. THE FUND FILED A RESPONSE ON SEPTEMBER 19, 1973, OPPOSING AN ADDITIONAL FEE.

THE BOARD, BEING NOW FULLY ADVISED CONCLUDED CLAIMANT'S ATTORNEY IS ENTITLED TO A FEE OF ONE THOUSAND DOLLARS RATHER THAN SEVEN HUNDRED DOLLARS AS ALLOWED BY THE ORDER OF SEPTEMBER 5, 1973.

ORDER

THE MOTION OF THE STATE ACCIDENT INSURANCE FUND FOR RECONSIDERATION, IS DENIED. IN LIEU OF THE ATTORNEY'S FEE AWARDED BY THE BOARD'S ORDER ON REVIEW DATED SEPTEMBER 5, 1973, CLAIMANT'S ATTORNEY, ALLAN H. COONS IS HEREBY AWARDED A FEE OF ONE THOUSAND DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND IN ADDITION TO AND NOT OUT OF THE CLAIMANT'S COMPENSATION AWARDED ABOVE, FOR HIS SERVICES AT THE HEARING AND ON THIS APPEAL.

WCB CASE NO. 68-561

SEPTEMBER 26, 1973

ELMER KIRKENDALL, CLAIMANT

WALSH, CHANDLER AND WALBERG, CLAIMANT'S ATTYS.
MCNUTT, GANT AND ORMSBEE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

ON OCTOBER 21, 1966, CLAIMANT WAS A 58 YEAR OLD AUTO MECHANIC EMPLOYED BY STAMPER'S J AND J TIRE SERVICE AS A FRONT END ALIGNMENT SPECIALIST.

WHILE SO EMPLOYED, HE SUFFERED A COMPRESSION FRACTURE OF THE FIRST LUMBAR VERTEBRA. BECAUSE OF A SERIOUS PREEXISTING CEREBROVASCULAR INSUFFICIENCY CLAIMANT COULD NOT UNDERGO A SPINAL FUSION WHICH WOULD REDUCE THE PRESENT IMPAIRMENT OF SPINAL FUNCTION.

BECAUSE CLAIMANT COULD NOT UNDERGO THE SURGERY, HIS CLAIM WAS CLOSED ON SEPTEMBER 18, 1967 WITH AN AWARD OF PERMANENT PARTIAL DISABILITY EQUAL TO 25 PERCENT LOSS OF AN ARM BY SEPARATION FOR UNSCHEDULED DISABILITY.

CLAIMANT REQUESTED A HEARING AND UPON HEARING THE AWARD WAS INCREASED TO 144 DEGREES OF A MAXIMUM OF 192 DEGREES FOR UNSCHEDULED DISABILITY. CLAIMANT THEN REQUESTED REVIEW SEEKING ADDITIONAL PERMANENT DISABILITY COMPENSATION. UPON REVIEW THE BOARD CONCLUDED THE CASE HAD BEEN INSUFFICIENTLY DEVELOPED IN LIGHT OF THEN RECENT COURT OPINIONS AND REMANDED THE MATTER TO THE HEARING OFFICER FOR ISSUANCE OF A FURTHER ORDER CONSISTENT WITH THE NEW COURT OPINIONS AND ADDITIONAL EVIDENCE RECEIVED.

UPON FURTHER HEARING THE HEARING OFFICER GRANTED CLAIMANT PERMANENT TOTAL DISABILITY COMPENSATION.

THE EMPLOYER THEREUPON REQUESTED THIS REVIEW CONTENDING CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED.

THE RECORD ESTABLISHES THAT AFTER CLOSURE CLAIMANT RETURNED TO WORK AS A MECHANIC, BUT WAS TERMINATED IN DECEMBER OF 1968 BECAUSE HE COULD PRODUCE ONLY ABOUT ONE HALF THE WORK HE DID

BEFORE THE INJURY. HE HAS NOT ATTEMPTED TO USE HIS REMAINING PHYSICAL CAPACITY IN ANY SORT OF GAINFUL EMPLOYMENT OTHER THAN TO DO HANDYMAN TYPE WORK AROUND TWO RENTAL UNITS WHICH HE OWNS.

AS A FAVOR TO A FRIEND WHO OPERATES A SERVICE STATION AND SOMETIMES FOR OTHER FRIENDS, HE OCCASIONALLY APPLIES HIS MECHANICAL EXPERTISE TO THE DIAGNOSIS OF MECHANICAL PROBLEMS IN AUTOMOBILES AT THE STATION AND ELSEWHERE. HE HAS NEVER CHARGED FOR THIS SERVICE NOR ATTEMPTED TO USE IT GAINFULLY IN ANY SYSTEMATIC WAY. ALTHOUGH CLAIMANT HAS ONLY FIVE PLUS YEARS OF EDUCATION, HE HAS BEEN SELF EMPLOYED AS A MECHANIC IN THE PAST. HE HAS NOT ATTEMPTED ANY SELF EMPLOYMENT NOR HAS HE APPLIED FOR WORK WITH ANY SHOPS SINCE HE LEFT STAMPERS IN DECEMBER OF 1968. HE IS NOW DRAWING DISABILITY BENEFITS FROM SOCIAL SECURITY AS WELL AS WORKMEN'S COMPENSATION BENEFITS.

TO AWARD PERMANENT TOTAL DISABILITY TO A WORKMAN, UNLESS HE IS A STATUTORY PERMANENT TOTAL HE MUST PROVE THAT HE IS PERMANENTLY INCAPACITATED FROM REGULARLY PERFORMING ANY WORK AT A GAINFUL AND SUITABLE OCCUPATION. THE COURTS HAVE RULED THAT THE PHRASE . . . INCAPACITATED FROM REGULARLY PERFORMING ANY WORK . . . DOES NOT MEAN UTTER AND ABJECT HELPLESSNESS. AN AWARD OF PERMANENT TOTAL DISABILITY MAY BE MADE IF THE DISABILITY IS SUCH THAT THE WORKMAN . . . CAN PERFORM NO SERVICES OTHER THAN THOSE WHICH ARE SO LIMITED IN QUALITY, DEPENDABILITY, OR QUANTITY THAT A REASONABLY STABLE MARKET FOR THEM DOES NOT EXIST . . . COOPER V. PUBLISHERS PAPER COMPANY, 3 OR APP 415 (1970).

IN THE LATER CASE OF SWANSON V. WESTPORT LUMBER COMPANY ET AL, 4 OR APP 417 (1971) THE COURT AMPLIFIED ITS THINKING ON THIS SUBJECT BY RECOGNIZING THE 'ODD LOT DOCTRINE' AND ITS COROLLARY BURDEN OF PROOF RULE. IT HELD THAT TOTAL DISABILITY AWARDS MAY BE GRANTED TO WORKMEN WHO, WHILE NOT ALTOGETHER INCAPACITATED FOR WORK, ARE SO HANDICAPPED THAT THEY WILL NOT BE EMPLOYED IN ANY WELL KNOWN BRANCH OF THE LABOR MARKET.

THE CLAIMANT HAS THE BURDEN OF PROVING THAT SUCH CONDITION EXISTS. HOWEVER, IF THE WORKMAN'S EVIDENCE OF DEGREE OF OBVIOUS PHYSICAL IMPAIRMENT, COUPLED WITH OTHER FACTORS SUCH AS CLAIMANT'S MENTAL CAPACITY, EDUCATION, TRAINING, OR AGE, PLACES CLAIMANT PRIMA FACIE IN THE ODD-LOT CATEGORY, THE BURDEN IS ON THE EMPLOYER TO SHOW THAT SOME KIND OF SUITABLE WORK IS REGULARLY AND CONTINUOUSLY AVAILABLE TO THE CLAIMANT.

IT SHOULD BE CAREFULLY NOTED THAT A PRIMA FACIE SHOWING OF INABILITY TO GAIN OR HOLD EMPLOYMENT IN ANY WELL KNOWN BRANCH OF THE LABOR MARKET DOES NOT NECESSARILY REQUIRE AN AWARD OF PERMANENT TOTAL DISABILITY IT ONLY PERMITS IT. THEREFORE, IN SOME CASES, EVEN THOUGH A WORKMAN IS NOT EMPLOYABLE IN THE GENERAL LABOR MARKET, HE MAY NOT BE PERMANENTLY AND TOTALLY DISABLED.

THE CASE OF SURRATT V. GUNDERSON BROS. ENGINEERING CORP., 259 OR 65 (1971) ESTABLISHES THAT ONE MUST LOOK AT THE PARTICULAR CIRCUMSTANCES OF THE INDIVIDUAL WORKMAN IN QUESTION IN DETERMINING WHETHER HE HAS ANY (AS THAT TERM HAS BEEN DEFINED) EARNING CAPACITY LEFT.

THE EVIDENCE ESTABLISHES THAT CLAIMANT PROBABLY HAS SIGNIFICANT EARNING CAPACITY REMAINING. CLAIMANT CONTENDS NO

ONE WILL EMPLOY HIM. THAT MAY BE TRUE OR IT MAY NOT. SINCE HE HAS NOT SOUGHT WORK, THE QUESTION IS STILL OPEN.

THE RECENT CASE OF DEATON V. SAIF, 97 OR ADV SH 126, OR APP (1973) EMPHASIZES THAT THE ELEMENT OF MOTIVATION TO RETURN TO WORK MUST BE ESTABLISHED BY THE CLAIMANT . . . UNLESS THE TRIER OF THE FACT CAN SAY THAT REGARDLESS OF MOTIVATION THIS MAN IS NOT LIKELY TO BE ABLE TO ENGAGE IN GAINFUL AND SUITABLE EMPLOYMENT. CLAIMANT HAS NOT SOUGHT GAINFUL WORK AND THE BOARD CAN ONLY SPECULATE AS TO THE . . . GENUINENESS OF HIS CLAIMED (TOTAL DISABILITY) AS COMPARED TO THE POSSIBLE ATTRACTION OF CONTINUED DISABILITY AND THE INCOME IT BRINGS WITHOUT THE NECESSITY OF LABOR. SURRETT SUPRA, AT PAGE 80. UNDER THESE CIRCUMSTANCES THE BOARD CONCLUDES CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED. AN AWARD OF 144 DEGREES OF A MAXIMUM OF 192 DEGREES WILL PROPERLY COMPENSATE CLAIMANT FOR HIS LOSS OF EARNING CAPACITY.

THE REMAINING ISSUES RAISED BY THE EMPLOYER NEED NOT BE DISCUSSED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED FEBRUARY 15, 1973, IS REVERSED AND THE ORDER OF THE HEARING OFFICER DATED JANUARY 11, 1971, IS HEREBY REINSTATED IN ITS ENTIRETY.

WCB CASE NO. 72-3224 SEPTEMBER 26, 1973

ROBERT M. LENO, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MIZE, KRIESIEN, FEWLESS, CHENEY AND KELLEY,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS REVIEW OF A HEARING OFFICER'S ORDER WHICH SUSTAINED A DETERMINATION ORDER ALLOWING 10 PERCENT (32 DEGREES) FOR UNSCHEDULED LOW BACK DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT IS 22 YEARS OF AGE AND SUSTAINED A LUMBOSACRAL SPRAIN ON AUGUST 6, 1971. HE RECEIVED A PERMANENT PARTIAL DISABILITY AWARD OF 32 DEGREES FOR UNSCHEDULED DISABILITY.

CLAIMANT RESPONDED TO CONSERVATIVE TREATMENT AND HAS MINIMAL IMPAIRMENT. HE HAS NOW PASSED THE GED HIGH SCHOOL EQUIVALENCY TEST AND IS SUCCESSFULLY PERFORMING ON A JOB.

CONSIDERING THE MINIMAL IMPAIRMENT, HIS AGE, EDUCATION, INTELLIGENCE AND TRAINABILITY, CLAIMANT SHOULD SUFFER NO FURTHER LOSS OF EARNING CAPACITY.

THE BOARD CONCURS WITH THE HEARING OFFICER THAT CLAIMANT'S DISABILITY IS COMMENSURATE WITH THE 32 DEGREES AWARDED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED APRIL 10, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 72-1077 SEPTEMBER 26, 1973

JOHN ALBANO, CLAIMANT

EVA, SCHNEIDER AND MOULTRIE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AWARDED CLAIMANT AN ADDITIONAL PERMANENT PARTIAL DISABILITY AWARD OF 28 DEGREES, ALLEGING HE IS PERMANENTLY AND TOTALLY DISABLED.

ISSUE

DID CLAIMANT PROVE A COMPENSABLE AGGRAVATION?

DISCUSSION

ON OCTOBER 14, 1968 CLAIMANT WAS STRUCK IN THE CHEST BY A PIPE AND KNOCKED AGAINST HIS TRUCK, HIS CLAIM WAS ACCEPTED AND PURSUANT TO TWO DETERMINATION ORDERS AND A STIPULATED ORDER DATED SEPTEMBER 20, 1971, RECEIVED A TOTAL OF 52 DEGREES FOR UNSCHEDULED DISABILITY. CLAIMANT THEREAFTER FILED AN AGGRAVATION CLAIM WHICH THE STATE ACCIDENT INSURANCE FUND DENIED. CLAIMANT REQUESTED A HEARING.

THE HEARING OFFICER WAS OF THE OPINION CLAIMANT HAD SUFFERED AN AGGRAVATION OF CLAIMANT'S PREEXISTING ARTHRITIS AND ALLOWED ADDITIONAL PERMANENT PARTIAL DISABILITY.

THE RECORD REFLECTS NUMEROUS MEDICAL INCONSISTENCIES. DR. RINEHART BEGAN TREATING CLAIMANT IN MAY, 1970, AND IT WAS HIS OPINION CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED FROM THAT DAY ON. HOWEVER, CLAIMANT HAD BEEN WORKING AT HIS REGULAR JOB, MISSING ONLY TWO WEEKS FROM WORK FOLLOWING THE INJURY SOME 19 MONTHS PREVIOUS. CLAIMANT QUIT WORK IN SEPTEMBER, 1970, BUT THIS WAS DUE TO A FOOT INFECTION UNRELATED TO THE INDUSTRIAL INJURY.

DR. MARXER AND DR. MCGREEVEY BOTH OPINED CLAIMANT WAS NOT PRECLUDED FROM BEING EMPLOYED AND THAT HIS MOTIVATION TO RETURN TO WORK WAS !!!NIL!!!.

THE TOTALITY OF THE BELIEVABLE EVIDENCE ESTABLISHES THAT, ON THE MERITS, CLAIMANT HAS NOT PROVED AGGRAVATION OF THE DISABILITY RESULTING FROM A COMPENSABLE INJURY.

ORDER

THE ORDER OF THE HEARING OFFICER, DATED FEBRUARY 20, 1973 IS HEREBY REVERSED.

WCB CASE NO. 72-2380 SEPTEMBER 26, 1973

WILLIAM RIBACK, DECEASED
POZZI, WILSON AND ATCHISON, BENEFICIARIES' ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY BENEF.

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE BENEFICIARY REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH UPHELD THE STATE ACCIDENT INSURANCE FUND'S DENIAL OF HER CLAIM FOR WIDOW'S BENEFITS.

ISSUES

1. WAS DECEDENT'S DEATH ON JUNE 19, 1972 CAUSED BY WORK-RELATED STRESS OR EXERTION?
2. WAS THERE 'LEGAL CAUSATION'?

DISCUSSION

THE WORKMAN IN QUESTION SUSTAINED A MYOCARDIAL INFARCTION ON JULY 8, 1970, WHILE WORKING AS A TRUCK DRIVER AND FURNITURE DELIVERY MAN. A CLAIM FOR COMPENSATION WAS ACCEPTED BY THE STATE ACCIDENT INSURANCE FUND. AFTER CONVALESCING HE RETURNED TO WORK FOR THE SAME EMPLOYER AT THE SAME WAGES, BUT AS A SALESMAN AND MANAGER INSIDE THE FURNITURE STORE. HE WORKED IN THIS CAPACITY UNTIL JUNE 17, 1972 WHEN HE WENT ON VACATION. ON JUNE 19, 1972, WHILE DANCING WITH HIS WIFE ON VACATION, HE COLLAPSED AND DIED. THE WIDOW'S CLAIM FOR COMPENSATION WAS SUBSEQUENTLY DENIED.

AT HEARING, THE HEARING OFFICER UPHELD THE DENIAL.

TO ESTABLISH A VALID CLAIM IN THIS INSTANCE, LEGAL CAUSATION MUST BE ESTABLISHED. PROOF OF LEGAL CAUSATION REQUIRES THAT CLAIMANT SHOW DECEDENT EXERTED HIMSELF IN HIS JOB. THIS HAS NOT BEEN DONE. THE RECORD CLEARLY REFLECTS DECEDENT'S DEATH OCCURRED FROM VENTRICULAR FIBRILLATION ATTENDANT UPON THE EXERTION OF DANCING WHICH WAS NOT RELATED TO HIS EMPLOYMENT.

THE BOARD THEREFORE CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER AND AFFIRMS HIS ORDER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED FEBRUARY 21, 1973 IS HEREBY AFFIRMED.

SEPTEMBER 26, 1973

CHARLES BURNHAM, CLAIMANT
MARTIN T. WINCH, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER
DISMISSING HIS REQUEST FOR HEARING.

ISSUE

HAS THE CLAIMANT SUPPORTED HIS CLAIM FOR AGGRAVATION WITH
A WRITTEN OPINION FROM A PHYSICIAN THAT THERE WERE REASONABLE
GROUNDS FOR THE CLAIM, AS REQUIRED BY ORS 656.271 (1)?

DISCUSSION

A DETERMINATION ORDER OF JUNE 14, 1972, AWARDED CLAIMANT
PERMANENT PARTIAL DISABILITY.

CLAIMANT ACCEPTED AN ADVANCE LUMP SUM PAYMENT PRECLUDING
A HEARING ON THE DETERMINATION ORDER.

CLAIMANT, BY HIS ATTORNEY'S LETTER DATED SEPTEMBER 28, 1972,
REQUESTED A HEARING TO INCREASE TEMPORARY TOTAL DISABILITY AND
PERMANENT PARTIAL DISABILITY. THE FUND NOTIFIED CLAIMANT THAT
A CLAIM FOR HEARING ON THE DETERMINATION ORDER WAS PRECLUDED BY
ACCEPTANCE OF ADVANCE LUMP SUM AWARD AND THAT THE REQUEST FOR
AN AGGRAVATION CLAIM WAS NOT SUPPORTED BY WRITTEN MEDICAL
OPINION AND WAS THEREFORE DENIED.

THE HEARING OFFICER SUSTAINED THE FUND'S MOTION TO DISMISS
THE CLAIMANT'S REQUEST FOR HEARING ON AGGRAVATION ON THE GROUNDS
THAT THE MEDICAL REPORTS SUBMITTED FAILED TO PRESENT REASONABLE
GROUNDS FOR THE CLAIM AS REQUIRED BY ORS 656.271 AND LARSON V.
SCD, 251 OR 478.

THE BOARD, ON DE NOVO REVIEW, AGREES THAT THE MEDICAL
REPORTS SUBMITTED FAIL TO SATISFY THE CONDITION PRECEDENT TO THE
RIGHT TO HAVE A HEARING ON THE CLAIM FOR AGGRAVATION.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 23, 1973 IS
HEREBY AFFIRMED.

SEPTEMBER 26, 1973

GUY ALLEN, CLAIMANT

BROWN AND BURT, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SUFFERS PHYSICAL IMPAIRMENT TO HIS RIGHT KNEE. HE ALLEGES THAT THIS IMPAIRMENT WAS CAUSED BY A TRUCK ACCIDENT IN WHICH CLAIMANT SUSTAINED COMPENSABLE INJURY. THE HEARING OFFICER FOUND THAT THE ACCIDENT DID NOT CAUSE THE KNEE IMPAIRMENT. CLAIMANT SEEKS REVIEW OF THAT DECISION.

AFTER DE NOVO REVIEW OF THE EVIDENCE, THE BOARD CONCURS IN THE HEARING OFFICER'S FINDINGS AND IN THE REASONS HE EXPRESSED IN HIS ORDER FOR REACHING THAT CONCLUSION.

ORDER

IT IS ORDERED THAT THE ORDER OF THE HEARING OFFICER DATED MAY 1, 1973, BE AFFIRMED.

SEPTEMBER 27, 1973

LURA HAUGEN, CLAIMANT

WHEELOCK, RICHARDSON, NIEHAUS, BAINES
AND MURPHY, CLAIMANT'S ATTYS.
GEARIN, LANDIS AND AEBI, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS REVIEW OF A HEARING OFFICER'S ORDER ON REMAND WHICH SET ASIDE HIS PREVIOUS AWARD OF PERMANENT TOTAL DISABILITY ALLOWING CLAIMANT ONLY PERMANENT PARTIAL DISABILITY INSTEAD.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

THE HEARING OFFICER FOUND THE DIFFERENCES BETWEEN CLAIMANT'S DEMEANOR AS A WITNESS AND HER DEMEANOR WHILE SHE WAS BEING SURREPTITIOUSLY PHOTOGRAPHED BY AN INVESTIGATOR, HIGHLY REVEALING OF HER TRUE DISABILITY. HAVING PERSONALLY OBSERVED THE CLAIMANT AT THE HEARING, THE HEARING OFFICER HAS AN ADVANTAGE IN JUDGING THE TRUE SIGNIFICANCE OF THESE DIFFERENCES IN DEMEANOR. BASED ON THESE REVELATIONS PLUS OTHER EVIDENCE OF RECORD, HE FOUND SHE WAS NOT PERMANENTLY AND TOTALLY DISABLED.

AFTER REVIEWING THE RECORD, INCLUDING THE FILMS, THE BOARD CAN FIND NO REASON TO DISTURB THE FINDINGS, OPINION OR ORDER OF THE HEARING OFFICER. HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 15, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 72-2875 SEPTEMBER 27, 1973

CHARLES M. HURT, CLAIMANT
ROD KIRPATRICK, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER OF 10 PERCENT (32 DEGREES), CONTENDING HIS DISABILITY EXCEEDS THAT AWARDED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT SUSTAINED A COMPENSABLE STRAIN TO HIS MIDDLE AND LOWER BACK WHILE LIFTING MATERIALS IN THE COURSE OF HIS EMPLOYMENT AS A CONSTRUCTION LABORER AT THE FREMONT BRIDGE SITE.

DUE TO THE HEAVY LABOR INVOLVED, CLAIMANT WAS ADVISED TO SEEK LIGHTER WORK. HE IS CURRENTLY ENROLLED IN A SMALL ENGINE REPAIR COURSE AT PORTLAND COMMUNITY COLLEGE AND SEEMS DETERMINED TO WORK DESPITE THE LIMITATIONS IMPOSED UPON HIM BY THIS INJURY.

THE BOARD CONSIDERS THE HEARING OFFICER'S ANALYSIS OF THE CASE BOTH THOROUGH AND COMPETENT AND HEREBY ADOPTS HIS ORDER AS ITS OWN.

ORDER

THE ORDER OF THE HEARING OFFICER DATED APRIL 9, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 73-1435 SEPTEMBER 28, 1973

PENNY L. BLANK, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS.
MERLIN MILLER, DEFENSE ATTY.

ON SEPTEMBER 27, 1973, THE BOARD RECEIVED A STIPULATION JOINED IN BY CLAIMANT AND THE EMPLOYER TO DISMISS THE REQUEST FOR REVIEW FILED IN THE ABOVE-ENTITLED MATTER WITHOUT PREJUDICE.

THE BOARD BEING NOW FULLY ADVISED IN THE PREMISES, HEREBY ORDERS THAT CLAIMANT'S REQUEST FOR REVIEW IS DISMISSED WITHOUT PREJUDICE.

WCB CASE NO. 72-3255 OCTOBER 2, 1973

DALE BURGESS, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS REVIEW OF A HEARING OFFICER'S ORDER AFFIRMING EXTENT OF DISABILITY ALLOWED BY THE EVALUATION DIVISION OF THE BOARD.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

THE BOARD WOULD ADOPT THE OPINION OF THE HEARING OFFICER AS ITS OWN EXCEPT TO NOTE THAT WE SEE NO SPECIAL SIGNIFICANCE IN THE MENTAL HEALTH SERVICE'S REPORT OF REPEATED LAMINECTOMIES AND FUSIONS WHICH THE HEARING OFFICER FOUND WORTHY OF PARTICULAR NOTE.

THE CLAIMANT HAS, IN FACT, HAD A MULTILEVEL LAMINECTOMY AND FUSION AND THIS MAY ACCOUNT FOR THE HISTORY RECORDED BY THE MENTAL HEALTH SERVICE.

WITH THIS OBSERVATION MADE, THE BOARD WOULD AFFIRM THE ORDER OF THE HEARING OFFICER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 23, 1973 IS AFFIRMED.

FLOYD W. PENSE, CLAIMANT
ALEXANDER SCHNEIDER, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER ENTERED PURSUANT TO ORS 656.278.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT WAS INJURED IN 1962 AND RECEIVED AN AWARD OF PERMANENT TOTAL DISABILITY IN 1965.

IN 1972, THE BOARD, AFTER RECEIVING INFORMATION THAT CLAIMANT HAD BEEN GAINFULLY EMPLOYED FOR A SUBSTANTIAL PERIOD OF TIME, ON ITS OWN MOTION REFERRED THE MATTER TO THE HEARINGS DIVISION FOR EVIDENCE TAKING AND A RECOMMENDATION ON THE ISSUE OF PRESENT PERMANENT DISABILITY.

ON OCTOBER 13, 1972 THE BOARD ORDERED CLAIMANT'S PERMANENT TOTAL DISABILITY DISCONTINUED. IN LIEU THEREOF HE WAS GRANTED A TOTAL OF 166 DEGREES FOR VARIOUS SCHEDULED AND UNSCHEDULED DISABILITIES.

PURSUANT TO ORS 656.278 CLAIMANT REQUESTED A HEARING. HE HAS THUS HAD TWO OPPORTUNITIES TO PRESENT HIS CASE. IN SPITE OF HIS CONTENTIONS, THE RECORD CLEARLY ESTABLISHES CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED FROM HIS INJURY. HE WORKED AS A SECURITY GUARD WALKING EIGHT MILES PER DAY ON CONCRETE FLOORS AND STAIRWAYS AND WAS TERMINATED ONLY FOR REASONS OTHER THAN DISABILITY AFTER 18 MONTHS CONTINUOUS EMPLOYMENT. DURING THIS PERIOD CLAIMANT DISHONESTLY CONTINUED TO REPORT TO THE FUND THAT HE HAD NO INCOME DURING THIS PERIOD AND THUS CONTINUED TO RECEIVE FULL PERMANENT TOTAL DISABILITY BENEFIT MONTHLY PAYMENTS.

THE FACTS SPEAK FOR THEMSELVES AS TO DENYING CONTINUATION OF PERMANENT TOTAL DISABILITY. THE PERMANENT PARTIAL DISABILITY AWARD OF 166 DEGREES SHOULD BE AFFIRMED.

BECAUSE OF THE CLAIMANT'S DISHONEST AND FRAUDULENT CONDUCT, THE FUND WILL BE ALLOWED TO CREDIT THE AMOUNT OF MONEY PAID THE CLAIMANT DURING THE 18 MONTHS HE WORKED AS A SECURITY GUARD AGAINST THE PERMANENT PARTIAL DISABILITY AWARD HE WILL RECEIVE.

ORDER

THE ORDER OF THE HEARING OFFICER DATED FEBRUARY 22, 1973 ALLOWING CLAIMANT =

- (1) 50 PERCENT LOSS FUNCTION OF AN ARM FOR UNSCHEDULED DISABILITY.

- (2) 25 PERCENT LOSS FUNCTION OF THE RIGHT LEG AND,
- (3) 60 PERCENT LOSS FUNCTION OF THE LEFT LEG FOR A TOTAL OF 166 DEGREES,

IS HEREBY AFFIRMED.

THE STATE ACCIDENT INSURANCE FUND IS HEREBY AUTHORIZED TO CREDIT THE COMPENSATION PAID CLAIMANT DURING HIS 18 MONTH EMPLOYMENT AS A SECURITY GUARD AGAINST THE PERMANENT PARTIAL DISABILITY LIABILITY AFFIRMED BY THIS ORDER.

WCB CASE NO. 72-3054 OCTOBER 2, 1973

LEONA F. BRISTOR, CLAIMANT
JAMES W. POWERS, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS REVIEW OF A HEARING OFFICER'S ORDER AFFIRMING THE DETERMINATION ORDER ISSUED IN HER CLAIM.

ISSUE

IS CLAIMANT ENTITLED TO ADDITIONAL TEMPORARY OR PERMANENT DISABILITY COMPENSATION?

DISCUSSION

THIS 43 YEAR OLD MILL WORKER WAS STRUCK ACROSS THE BREASTS BY A BOARD DURING THE COURSE OF HER EMPLOYMENT. SHE HAS BEEN SEEN BY FIVE DOCTORS, NONE OF WHOM REPORT OBSERVABLE INJURY AT THIS TIME.

THE BOARD CONCURS WITH THE HEARING OFFICER THAT THE CLAIMANT FAILED TO PROVE ADDITIONAL TEMPORARY DISABILITY OR PERMANENT DISABILITY RESULTING FROM THE INDUSTRIAL INJURY IN QUESTION.

ORDER

THE ORDER OF THE HEARING OFFICER DATED APRIL 5, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 72-2878 OCTOBER 2, 1973

LEONARD H. BAUER, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MCMENAMIN, JONES, JOSEPH AND LANG, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

EMPLOYER REQUESTS REVIEW OF A HEARING OFFICER'S ORDER ALLOWING COMPENSATION FOR THE PRESENT WORSENING OF CLAIMANT'S PRE-EXISTING SPONDYLITIS. THE BASIC ISSUE ON REVIEW IS WHETHER THE WORSENING OF CLAIMANT'S RHEUMATOID SPONDYLITIS IS A COMPENSABLE CONSEQUENCE OF CLAIMANT'S INDUSTRIAL ACCIDENTS.

DISCUSSION

AMONG OTHER THINGS, THE EMPLOYER OBJECTS TO THE HEARING OFFICER'S RULING THAT THE EMPLOYER HAS THE BURDEN OF PROVING CLAIMANT'S WORSENING WAS SPONTANEOUS.

THE HEARING OFFICER STATED -

' ' UNDER THESE CIRCUMSTANCES IT IS THE POSTURE OF THE HEARING OFFICER THAT WHEN CLAIMANT HAS MADE A PRIMA FACIE CASE BY EITHER AN INCREASE IN DISABILITY OR AN INCREASED NEED FOR MEDICAL CARE AND TREATMENT DEFENDANT THEN HAS THE BURDEN OF GOING FORWARD WITH EVIDENCE THE WORSENING WAS SPONTANEOUS. ' '

A PRIMA FACIE CASE CANNOT BE MADE MERELY BY SHOWING A WORSENING CONDITION. THE ALL IMPORTANT ELEMENT OF CAUSAL CONNECTION MUST ALSO BE SHOWN. WITHOUT ALL ELEMENTS OF COMPENSABILITY ESTABLISHED BY THE CLAIMANT, THE EMPLOYER HAS NO ' ' BURDEN OF PROOF ' '. THE CLAIMANT'S CASE WILL FAIL REGARDLESS OF WHETHER THE EMPLOYER PUTS ON EVIDENCE THAT THE WORSENING WAS SPONTANEOUS OR NOT.

WHILE WE CONCLUDE THE HEARING OFFICER ERRED IN HIS STATEMENT OF THE LAW, WE AGREE WITH HIS ULTIMATE CONCLUSION THAT THE EMPLOYER IS LIABLE FOR THE TREATMENT CLAIMANT HAS RECEIVED FOR HIS SPONDYLITIS.

IN LARSON'S WORKMEN'S COMPENSATION LAW, SECTION 12.20, PROFESSOR LARSON DISCUSSES THE TIME HONORED ' ' THE EMPLOYER TAKES A WORKMAN AS HE FINDS HIM ' ' PHRASE.

THE RULE, MORE FULLY STATED, PROVIDES -

' ' PREEXISTING DISEASE OR INFIRMITY OF THE EMPLOYEE DOES NOT DISQUALIFY A CLAIM UNDER THE ' ARISING OUT OF EMPLOYMENT ' REQUIREMENT IF THE EMPLOYMENT AGGRAVATED, ACCELERATED, OR COMBINED WITH THE DISEASE OR INFIRMITY TO PRODUCE THE DEATH OR DISABILITY FOR WHICH COMPENSATION IS SOUGHT. ' '

THE BOARD IS PERSUADED BY THE MEDICAL OPINIONS OF DRS. CHURCH AND JONES THAT THE PRESENT WORSENING OF THE CLAIMANT'S SPONDYLITIS IS A COMPENSABLE CONSEQUENCE OF THE ORIGINAL INJURY.

IT IS LEGALLY IMMATERIAL THAT THE WORSENING DID NOT OCCUR IMMEDIATELY FOLLOWING THE ACCIDENTS. CLAIMANT HAS SUFFERED AN AGGRAVATION OF HIS DISABILITY SINCE THE LAST AWARD OF COMPENSATION WITHIN THE MEANING OF THE OREGON WORKMEN'S COMPENSATION LAW AND THE ORDER OF THE HEARING OFFICER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 20, 1973 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-1921 OCTOBER 2, 1973

SETH W. CLINE, CLAIMANT
KEITH D. SKELTON, CLAIMANT'S ATTY.
MIZE, KRISIEN, FEWLESS, CHENEY AND
KELLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS IS A CLAIM FOR AGGRAVATION OF LOW BACK INJURY OF OCTOBER 29, 1969. CLAIMANT RECEIVED 32 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY AND CLAIM WAS CLOSED JUNE 30, 1973.

ISSUE

HAS CLAIMANT PROVED AGGRAVATION OF THE OCTOBER 29, 1969 INJURY?

DISCUSSION

CLAIMANT HAS HAD CHRONIC KNEE AND LOW BACK PROBLEMS PRIOR TO THE INDUSTRIAL INJURY. THE MEDICAL OPINION THAT THERE WAS AGGRAVATION WAS FOUNDED ON AN ERRONEOUS HISTORY THAT CLAIMANT HAD NO PREVIOUS BACK PROBLEMS. THEREFORE, AN ADEQUATE MEDICAL OPINION REQUIRED TO SUSTAIN AN AGGRAVATION CLAIM IS LACKING. IT IS MORE LIKELY THAT THE BACK CONDITION IS CAUSED BY THE UNRELATED KNEE PROBLEM AND BACK CONDITION PRIOR TO THE 1969 INDUSTRIAL INJURY RATHER THAN AN AGGRAVATION OF THE 1969 INJURY. WE AGREE WITH THE RULING OF THE HEARING OFFICER AND CONCLUDE HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 27, 1973 IS AFFIRMED.

WCB CASE NO. 72-1405 OCTOBER 2, 1973

WILLIAM B. HUEY, CLAIMANT
HACHLER AND RIDGWAY, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE,

ISSUE

IS CLAIMANT ENTITLED TO ADDITIONAL PERMANENT DISABILITY?

DISCUSSION

UPON ITS OWN DE NOVO REVIEW OF THE RECORD THE BOARD CONCLUDES THE FINDINGS AND OPINION OF THE HEARING OFFICER ARE CORRECT AND HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 16, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 72-2871 OCTOBER 2, 1973

LAWRENCE G. THOMPSON, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON JUNE 19, 1973, CLAIMANT REQUESTED BOARD REVIEW OF A HEARING OFFICER'S ORDER DATED JUNE 1, 1973. THAT REQUEST FOR REVIEW IS NOW PENDING.

THE CLAIMANT AND THE STATE ACCIDENT INSURANCE FUND HAVE AGREED TO SETTLE AND COMPROMISE THEIR DISPUTE IN ACCORDANCE WITH THE TERMS OF THE STIPULATION WHICH IS ATTACHED HERETO AS EXHIBIT !!A!!.

THE BOARD, BEING NOW FULLY ADVISED, CONCLUDES THE AGREEMENT IS FAIR AND EQUITABLE TO BOTH PARTIES.

ORDER

IT IS THEREFORE ACCORDINGLY ORDERED THAT THE STIPULATION BE EXECUTED ACCORDING TO ITS TERMS.

THE REQUEST FOR REVIEW NOW PENDING BEFORE THE BOARD IS HEREBY DISMISSED.

STIPULATION

IT IS HEREBY STIPULATED BY AND BETWEEN MR. LAWRENCE G. THOMPSON AND HIS ATTORNEY RICHARD NOBLE AND THE STATE ACCIDENT INSURANCE FUND THROUGH R. KENNEY ROBERTS, ASSISTANT ATTORNEY GENERAL OF ATTORNEYS FOR CLAIMANT, CLAIMANTS CLAIM WAS CLOSED

BY A SECOND DETERMINATION ORDER MAILED ON OCTOBER 6, 1972 AWAR-
ING CLAIMANT PERMANENT PARTIAL DISABILITY IN THE AMOUNT OF 20
PERCENT UNSCHEDULED DISABILITY. CLAIMANT REQUESTED A HEARING
AND A HEARING WAS HELD BEFORE HEARINGS OFFICER PAGE PFERDNER ON
DECEMBER 26, 1972. AS A RESULT OF THE AFORESAID HEARING AN
OPINION ORDER ISSUED ON JUNE 1, 1973 AWARING CLAIMANT AN ADDI-
TIONAL 10 PERCENT FOR UNSCHEDULED DISABILITY. MAKING A TOTAL
AWARD OF 30 PERCENT UNSCHEDULED DISABILITY. CLAIMANT REQUESTED
REVIEW OF THIS OPINION AND ORDER BY THE WORKMEN'S COMPENSATION
BOARD.

IT IS HEREBY STIPULATED AND AGREED THAT THIS MATTER SHALL BE
COMPROMISED AND SETTLED SUBJECT TO THE APPROVAL OF THE WORKMEN'S
COMPENSATION BOARD BY THE STATE ACCIDENT INSURANCE FUND PAYING
AND MR. THOMPSON RECEIVING AN ADDITIONAL 5 PERCENT OF THE MAXIMUM
ALLOWED FOR UNSCHEDULED DISABILITY. FOR THIS INCREASED COMPENSA-
TION CLAIMANT AGREES TO WITHDRAW HIS REQUEST FOR REVIEW. THE
INCREASED COMPENSATION MAKES A TOTAL AWARD OF 35 PERCENT OF THE
MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

IT IS FURTHER STIPULATED THAT RICHARD NOBLE, CLAIMANT'S
ATTORNEY BE AND HEREBY IS AWARDED AN ATTORNEYS FEE EQUAL TO
25 PERCENT OF THE INCREASE COMPENSATION NOT TO EXCEED FIFTEEN
HUNDRED DOLLARS SAID FEE TO BE A LEIN UPON AND PAYABLE OUT OF
SAID AWARD.

WCB CASE NO. 72-3499 OCTOBER 3, 1973

PAULINE K. KERNAN, CLAIMANT
FRANKLIN, BENNETT, DES BRISAY AND
JOLLES, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

THE STATE ACCIDENT INSURANCE FUND SEEKS BOARD REVIEW OF A
HEARING OFFICER'S ORDER FINDING CLAIMANT HAD SUFFERED AN AGGRAVA-
TION AND GRANTED AN AWARD OF PERMANENT TOTAL DISABILITY.

DISCUSSION

INITIALLY, CLAIMANT FILED A CLAIM FOR A BACK INJURY WHICH WAS
ACCEPTED AND PROCESSED AS AN INDUSTRIAL INJURY. A DETERMINATION
ORDER ISSUED OCTOBER 19, 1970 INDICATING THE DATE OF INJURY OF
DECEMBER 1, 1969 AND AWARING TO CLAIMANT 32 DEGREES FOR UN-
SCHEDULED MID BACK DISABILITY AND 0 DEGREES FOR LOSS OF EARNING
CAPACITY.

THEREAFTER, CLAIMANT FILED CLAIM FOR AGGRAVATION WITH THE
STATE ACCIDENT INSURANCE FUND WHICH WAS DENIED. SHE THEN RE-
QUESTED A HEARING.

THE CLAIMANT'S ATTORNEY AND THE STATE ACCIDENT INSURANCE
FUND DEALT WITH THE CASE AS ONE INVOLVING WHETHER OR NOT THERE
WAS AN AGGRAVATION OF AN INDUSTRIAL INJURY. THE HEARING OFFICER
CONCLUDED CLAIMANT HAD SUFFERED AN OCCUPATIONAL DISEASE RATHER
THAN AN INDUSTRIAL INJURY AND PROCEEDED TO HEAR THE CASE ON THE
ISSUE OF THE AGGRAVATION OF AN OCCUPATIONAL DISEASE AND THE
EXTENT OF DISABILITY. THE EVIDENCE INDICATES HER ONLY PHYSICAL

DISABILITY IS DORSAL PAIN. THE HEARING OFFICER, ASSUMING HER ADAPTABILITY WAS LIMITED BY HER AGE, GRANTED HER PERMANENT TOTAL DISABILITY.

THE BOARD BELIEVES THE RECORD HAS BEEN INCOMPLETELY AND INSUFFICIENTLY DEVELOPED BY THE PARTIES AS TO EVIDENCE OF THE LOSS OF EARNING CAPACITY OF THE CLAIMANT. THE MATTER SHOULD BE REMANDED TO THE HEARING OFFICER FOR FURTHER DEVELOPMENT OF THE RECORD AND RECONSIDERATION OF ALL ISSUES PREVIOUSLY CONSIDERED. IN THE INTERIM, THE ORDER OF THE HEARING OFFICER DATED APRIL 11, 1973 WILL REMAIN IN FULL FORCE AND EFFECT.

ORDER

PURSUANT TO ORS 656.295, THIS MATTER IS HEREBY REMANDED TO THE HEARING OFFICER FOR FURTHER EVIDENCE AND RECONSIDERATION BY THE HEARING OFFICER OF THE CLAIMANT'S LOSS OF EARNING CAPACITY. THE PRIOR ORDER OF THE HEARING OFFICER SHALL REMAIN IN EFFECT UNTIL SUPERSEDED BY THE HEARING OFFICER'S SUBSEQUENT ORDER.

WCB CASE NO. 72-2165 OCTOBER 4, 1973

KENNETH E. NELSON, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MIZE, KRIESIEN, FEWLESS, CHENEY AND KELLEY,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS REVIEW OF A HEARING OFFICER'S ORDER DENYING HIS AGGRAVATION CLAIM FOR AN INDUSTRIAL INJURY OF DECEMBER 30, 1966.

ISSUE

HAS CLAIMANT SUFFERED AN AGGRAVATION OF THE DECEMBER 30, 1966 INDUSTRIAL INJURY?

DISCUSSION

THE HEARING OFFICER DENIED THIS CLAIM BASICALLY BECAUSE HE DISTRUSTED CLAIMANT'S CREDIBILITY AND FELT IT HAD TAINTED THE HISTORIES WHICH DOCTORS BERSELLI AND SERES RECEIVED. HE SUSPECTED, WITHOUT EVIDENCE, THAT CLAIMANT HAD SUFFERED A SUBSEQUENT ACCIDENT.

THE BOARD CONCLUDES CLAIMANT HAS SUFFERED AN AGGRAVATION. DR. SERES' REVIEW OF THE X-RAYS WHICH WERE TAKEN RECENTLY COMPARED TO X-RAYS TAKEN ON 1969 DEMONSTRATE A RATHER DRAMATIC CHANGE FOR THE WORSE. THAT CLAIMANT HAS SUFFERED AN OBJECTIVE WORSENING IS ALSO SUPPORTED BY DR. BERSELLI'S FINDINGS OF NERVE ROOT COMPRESSION. THE CLAIM SHOULD HAVE BEEN ALLOWED.

THE DEFENDANT'S VIGOROUS DEFENSE FROM SEPTEMBER 13, 1972 THROUGH FEBRUARY 9, 1973, CONSTITUTES A DE FACTO DENIAL AND THUS CLAIMANT IS ENTITLED TO ATTORNEY'S FEES BOTH FOR THE HEARING AND THIS REVIEW.

ORDER

THE ORDER OF THE HEARING OFFICER IS REVERSED AND THE CLAIMANT'S CLAIM FOR AGGRAVATION IS HEREBY REMANDED TO THE EMPLOYER FOR PAYMENT OF COMPENSATION UNTIL THE CLAIM IS AGAIN CLOSED PURSUANT TO ORS 656.268.

COUNSEL FOR CLAIMANT IS TO RECEIVE A FEE OF FIVE HUNDRED DOLLARS FOR THE HEARING AND ONE HUNDRED FIFTY DOLLARS FOR THIS REVIEW TO BE PAID BY THE EMPLOYER.

WCB CASE NO. 72-3065 OCTOBER 4, 1973

MILDRED MITCHELL, CLAIMANT
MCMENAMIN, JONES, JOSEPH AND LANG,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER ALLOWING HER CERTAIN COMPENSATION FOR PERMANENT PARTIAL DISABILITY, CONTENDING SHE IS PERMANENTLY AND TOTALLY DISABLED DUE TO SCHEDULED AND UNSCHEDULED INJURIES.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

THE BOARD HAS CAREFULLY REVIEWED THE RECORD SUBMITTED ON REVIEW AND FINDS ITSELF IN COMPLETE AGREEMENT WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER. HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 1, 1973 IS AFFIRMED.

WCB CASE NO. 72-2432 OCTOBER 9, 1973

HOMER BELL, CLAIMANT
BEMIS, BREATHOUWER AND JOSEPH,
CLAIMANT'S ATTYS.
MIZE, KRISIEN, FEWLESS, CHENEY
AND KELLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED CLAIMANT AN ADDITIONAL PERMANENT PARTIAL DISABILITY AWARD OF 122 DEGREES, MAKING A TOTAL OF 144 DEGREES, CONTENDING THE AWARD IS NOT SUPPORTED BY THE EVIDENCE.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY.

DISCUSSION

CLAIMANT SUSTAINED A LOW BACK INJURY JANUARY 19, 1971, WHEN HE SLIPPED AND FELL ON A WET FLOOR WHILE EMPLOYED AS A BAKER BY ALBERTSON'S INC. A DETERMINATION ORDER GRANTED A PERMANENT PARTIAL DISABILITY AWARD OF 32 DEGREES FOR UNSCHEDULED DISABILITY. CLAIMANT APPEALED THAT ORDER AND UPON HEARING A HEARING OFFICER GRANTED HIM AN ADDITIONAL 112 DEGREES.

CLAIMANT IS A SMALL MAN BUT WHILE HE WAS EMPLOYED AS A BAKER, HE WAS LIFTING SACKS OF FLOUR WEIGHING 100 POUNDS. THE MEDICAL EVIDENCE INDICATES CLAIMANT CANNOT RETURN TO THIS KIND OF EMPLOYMENT.

CLAIMANT HAS LIMITED EDUCATION AND HIS ONLY OTHER WORK EXPERIENCE WAS IN CONSTRUCTION WORK FROM WHICH HE IS ALSO PRECLUDED.

THE PSYCHOLOGICAL REPORT AND VOCATIONAL REHABILITATION EVALUATIONS INDICATE CLAIMANT EXHIBITS A MODERATELY SEVERE ANXIETY TENSION REACTION WITH DEPRESSION ENHANCED BY THE INJURY IN QUESTION.

AFTER HAVING CONSIDERED THE RECORD BEFORE IT, THE BOARD CONCURS WITH THE HEARING OFFICER'S FINDINGS AND THAT CLAIMANT'S DISABILITY IS EQUIVALENT TO 144 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 1, 1973, IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 71-1087 OCTOBER 10, 1973
WCB CASE NO. 71-2336 OCTOBER 10, 1973

ARTHUR N. DAHLSTROM, CLAIMANT
BLACK, KENDALL, TREMAIN, BOOTHE AND
HIGGINS, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

THE ABOVE ENTITLED MATTER WAS HERETOFORE THE SUBJECT OF A HEARING INVOLVING THE COMPENSABILITY OF A CLAIM FOR HEARING

LOSS ALLEGEDLY ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT.

ON MAY 22, 1972, AN ORDER OF THE HEARING OFFICER WAS ENTERED FINDING THE CLAIM NONCOMPENSABLE.

THE ORDER OF THE HEARING OFFICER WAS REJECTED BY THE CLAIMANT THEREBY CONSTITUTING AN APPEAL TO A MEDICAL BOARD OF REVIEW. IN ADDITION, THE CLAIMANT REQUESTED CERTIFICATION TO THE CIRCUIT COURT OF A LEGAL ISSUE NOT TO BE DECIDED BY THE MEDICAL BOARD OF REVIEW.

ON JANUARY 2, 1973, THE FINDINGS OF THE MEDICAL BOARD OF REVIEW WERE RECEIVED BY THE WORKMEN'S COMPENSATION BOARD BUT WERE NOT FILED AS FINAL BECAUSE THE APPEAL TO THE CIRCUIT COURT HAD NOT BEEN CONCLUDED. THE CIRCUIT COURT RULED ON MAY 4, 1973, THAT THE CASE BE REMANDED FOR ENTRY OF AN ORDER ALLOWING COMPENSATION TO THE CLAIMANT IN ACCORDANCE WITH THE FINDINGS OF THE MEDICAL BOARD OF REVIEW, EITHER FROM THE STATE ACCIDENT INSURANCE FUND, SUCCESSOR TO THE STATE INDUSTRIAL ACCIDENT COMMISSION AS INSURER OF HARRIS OIL COMPANY PRIOR TO JULY 1, 1967, OR TIME OIL COMPANY THE EMPLOYER FOR CLAIMANT FROM 1969 TO JANUARY, 1971.

IN ACCORDANCE WITH THAT ORDER, THE BOARD REMANDED THE MATTER TO THE HEARINGS DIVISION FOR FURTHER PROCEEDINGS CONCERNING WHICH EMPLOYER SHOULD BE CHARGED WITH THE OCCUPATIONAL DISEASE.

ON OCTOBER 1, 1973, THE HEARING OFFICER, BASED UPON THE EVIDENCE AND LAW, FOUND THAT COMPENSATION SHOULD BE PAID BY TIME OIL COMPANY.

PURSUANT TO ORS 656.814, THE FINDINGS AND ASSOCIATED NARRATIVE REPORTS WHICH ARE ATTACHED HERETO AS EXHIBIT 'A', ARE FILED AND DECLARED FINAL AS OF THE DATE OF THIS ORDER.

WCB CASE NO. 72-2679 OCTOBER 10, 1973

RAY MARTIN, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER AWARDING CLAIMANT 64 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY CONTENDING HE IS PERMANENTLY AND TOTALLY DISABLED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT SUSTAINED A LOW BACK INJURY JUNE 10, 1970 WHILE EMPLOYED AS A WELDER. HE WAS TREATED CONSERVATIVELY AND LATER UNDERWENT A MYELOGRAM WHICH INDICATED NERVE ROOT COMPRESSION

AT L5, S-1. NO SURGERY HAS BEEN PERFORMED BECAUSE OF AN UNRELATED PROBLEM OF DIABETES.

CLAIMANT'S EMPLOYMENT RECORD PRIOR TO INJURY WAS RATHER SPOTTY. THE VOCATIONAL COUNSELING EXTENDING OVER THE PERIOD OF A YEAR WAS TERMED UNSUCCESSFUL. A VOLUMINOUS MEDICAL HISTORY REFLECTED WRIST AND ANKLE FRACTURES, GALL BLADDER SURGERY, INJURY TO THREE FINGERS OF THE RIGHT HAND, INJURIES INVOLVED IN A CAR ACCIDENT, PLUS A PROBLEM WITH ALCOHOLISM. WITH THIS BACKGROUND, IT IS ALMOST IMPOSSIBLE TO ESTIMATE THE PERMANENT LOSS OF WAGE EARNING CAPACITY SUFFERED BY CLAIMANT THAT COULD BE ATTRIBUTED TO HIS INDUSTRIAL INJURY.

AS STATED IN THE DEATON CASE, EVIDENCE OF MOTIVATION TO SEEK AND WORK AT GAINFUL EMPLOYMENT IS NECESSARY TO ESTABLISH A PRIMA FACIE CASE OF ODD-LOT STATUS IF THE INJURIES, EVEN THOUGH SEVERE, ARE NOT SUCH THAT THE TRIER OF FACT CAN SAY THAT REGARDLESS OF MOTIVATION THIS MAN IS NOT LIKELY TO ENGAGE IN GAINFUL AND SUITABLE EMPLOYMENT. THE BURDEN OF PROVING ODD-LOT STATUS RESTS UPON THE CLAIMANT.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER THAT CLAIMANT'S PERMANENT PARTIAL DISABILITY DOES NOT EXCEED 64 DEGREES AWARDED PURSUANT TO ORS 656.268.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 29, 1973 IS AFFIRMED.

WCB CASE NO. 72-2965 OCTOBER 10, 1973

ZELLA BAXTER, CLAIMANT
BABCOCK AND ACKERMAN, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S FINDING THAT THE CLAIMANT'S CLAIM HAD BEEN PREMATURELY CLOSED AND THAT SHE IS ENTITLED TO FURTHER MEDICAL CARE AND COMPENSATION.

ISSUE

IS CLAIMANT ENTITLED TO FURTHER MEDICAL CARE AND COMPENSATION FOR HER INDUSTRIAL INJURY?

DISCUSSION

UPON ITS OWN DE NOVO REVIEW OF THE RECORD, THE BOARD FINDS ITSELF IN AGREEMENT WITH THE FINDINGS AND OPINION OF THE HEARING OFFICER AND HEREBY ADOPTS HIS ORDER AS ITS OWN. HIS ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED APRIL 3, 1973 IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-642

OCTOBER 10, 1973

DANNIE MILLER, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
ROGER R. WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER AFFIRMING AN AWARD OF 15 DEGREES LOSS FUNCTION OF THE LEFT LEG AND INCREASING HIS UNSCHEDULED DISABILITY AWARD TO 240 DEGREES, CONTENDING HE IS PERMANENTLY AND TOTALLY DISABLED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT WAS A 37 YEAR OLD LUMBER CARRIER DRIVER WHO SUFFERED A LOW BACK INJURY ON AUGUST 29, 1970 WHEN HIS CARRIER TURNED OVER. CLAIMANT UNDERWENT A LUMBAR LAMINECTOMY AT L4-5, WITH DISC EXCISION ON JANUARY 30, 1971. BY A CLOSING AND EVALUATION DETERMINATION ORDER MAILED MARCH 3, 1972, CLAIMANT WAS AWARDED 64 DEGREES UNSCHEDULED DISABILITY FOR LOW BACK DISABILITY AND 15 PERCENT PARTIAL LOSS OF THE LEFT LEG. CLAIMANT REQUESTED A HEARING SEEKING PERMANENT TOTAL DISABILITY. BASED ON THE EVIDENCE SUBMITTED THE HEARING OFFICER FOUND CLAIMANT'S UNSCHEDULED DISABILITY EQUAL TO 240 DEGREES AND AFFIRMED HIS SCHEDULED LEFT LEG DISABILITY AWARD OF 15 DEGREES.

WE AGREE BASICALLY WITH THE HEARING OFFICER'S FINDINGS BUT IT APPEARS TO THE BOARD THAT CLAIMANT'S COMPLAINTS ARE TO A MATERIAL EXTENT, BEING CONSCIOUSLY RATHER THAN SIMPLY EMOTIONALLY EXAGGERATED AND THAT IN LIGHT OF THE RECENT CASE OF DEATON V. SAIF, 97 OR ADV SH 126, THAT THE PERMANENT PARTIAL DISABILITY AWARD OF 15 DEGREES OF LOSS FUNCTION OF THE LEFT LEG AND 240 DEGREES OR 75 PERCENT UNSCHEDULED LOW BACK DISABILITY, CORRECTLY COMPENSATES CLAIMANT FOR HIS RESIDUAL DISABILITY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 12, 1973 IS HEREBY AFFIRMED.

LEONARD BALFOUR, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S DENIAL OF ITS MOTION TO DISMISS THE CLAIMANT'S REQUEST FOR HEARING ON A SECOND DETERMINATION ORDER. IT CONTENDS THE HEARING OFFICER ERRED IN USING THE HEARING PROCEDURE TO CORRECT THE LACK OF A PERMANENT DISABILITY AWARD RATHER THAN REQUIRING THE AGENCY TO CORRECT THE PROBLEM INTERNALLY.

THE FUND DOES NOT ATTACK THE HEARING OFFICER'S FINDING THAT THE CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED.

ISSUE

DID THE HEARING OFFICER ERR IN HEARING CLAIMANT'S APPEAL OF THE SECOND DETERMINATION?

DISCUSSION

CLAIMANT WAS COMPENSABLY INJURED ON NOVEMBER 29, 1967. THE CLAIM WAS FIRST CLOSED ON NOVEMBER 7, 1969, WITH AN AWARD OF 16 DEGREES FOR UNSCHEDULED DISABILITY AND 100 DEGREES FOR TOTAL LOSS VISION OF THE LEFT EYE.

ON OCTOBER 12, 1970, THE UNSCHEDULED DISABILITY AWARD WAS INCREASED TO 160 DEGREES BY A HEARING OFFICER OF THE BOARD.

THEREAFTER A CLAIM FOR AGGRAVATION WAS MADE AND ON AUGUST 11, 1972, A HEARING OFFICER FOUND CLAIMANT'S CONDITION HAD MEDICALLY WORSENERED AND ORDERED THE STATE ACCIDENT INSURANCE FUND TO SUBMIT THE CLAIM TO THE BOARD'S CLOSING AND EVALUATION DIVISION FOR REEVALUATION OF THE EXTENT OF DISABILITY SINCE NO MEDICAL TREATMENT WAS RECOMMENDED.

A SECOND DETERMINATION ORDER DULY ISSUED ON SEPTEMBER 11, 1972, BUT IT AWARDED CLAIMANT NO ADDITIONAL COMPENSATION FOR EITHER TEMPORARY OR PERMANENT DISABILITY.

CLAIMANT THEREUPON REQUESTED A HEARING CONCERNING THE DETERMINATION ORDER, SEEKING ADDITIONAL TEMPORARY AND-OR PERMANENT DISABILITY CONTENDING THE LACK OF AN AWARD OF ADDITIONAL COMPENSATION BY THE CLOSING AND EVALUATION DIVISION WAS ERRONEOUS AS A MATTER OF LAW. THE FUND AGREED WITH THIS CONTENTION AND WHEN THE HEARING CONVENED IT MOVED TO DISMISS THE CLAIMANT'S REQUEST FOR HEARING APPARENTLY CONCLUDING THAT BECAUSE THE CLOSING AND EVALUATION DIVISION HAD ERRED AS A MATTER OF LAW ON THE AMOUNT OF COMPENSATION TO WHICH CLAIMANT WAS ENTITLED, THAT THE FUND COULD NOT BE REQUIRED TO DEFEND THE DEFECTIVE ORDER.

THE BOARD AGREES THAT ITS CLOSING AND EVALUATION DIVISION FAILED TO PROPERLY DISCHARGE ITS DUTY. THE CLAIMANT (OR THE STATE ACCIDENT INSURANCE FUND) COULD PROBABLY HAVE SUCCESSFULLY

ATTACKED THE DETERMINATION ORDER BY WAY OF A MANDAMUS PROCEED-
ING AGAINST THE BOARD. HOWEVER, IT DOES NOT FOLLOW THAT THE
CLAIMANT'S REQUEST FOR HEARING SHOULD BE DISMISSED.

ORS 656.283 PROVIDES BROAD HEARING RIGHTS ON " " - - - ANY
QUESTION CONCERNING A CLAIM = = = " " AND SPECIFICALLY ALLOWS,
UNDER ORS 656.268(4), A HEARING " " = = = ON THE DETERMINATION
MADE UNDER SUBSECTION (3) OF THIS SECTION = = = " ". IN THE FACE
OF THIS LANGUAGE, IT WOULD HAVE BEEN CLEARLY WRONG TO GRANT
THE FUND'S MOTION.

THE CLAIMANT PROCEEDED PROPERLY IN REQUESTING A HEARING ON
THE SECOND DETERMINATION ORDER. THE HEARING OFFICER HAD JURIS-
DICTION OF THE SUBJECT MATTER AND THE PARTIES AT THE TIME HE DENIED
THE FUND'S MOTION TO DISMISS. HIS RULING DENYING THE MOTION IS
SUPPORTED BY THE LAW. HIS CONCLUSION THAT CLAIMANT IS PERMANENTLY
AND TOTALLY DISABLED IS SUPPORTED BY THE EVIDENCE AND THE BOARD
THEREFORE CONCLUDES HIS ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

FOR THE RECORD, THE BOARD HAS SINCE TAKEN ADMINISTRATIVE
STEPS TO AVOID A REPETITION OF THIS SITUATION BY DIRECTING THAT
THE HEARING OFFICER ALSO DETERMINE THE EXTENT OF DISABILITY RESULT-
ING FROM AN AGGRAVATION IN CASES WHERE NO FURTHER TIME LOSS OR
MEDICAL TREATMENT IS INVOLVED. (ADMINISTRATIVE POLICY DIRECTIVE
6-1972)

ORDER

THE ORDER OF THE HEARING OFFICER DATED DECEMBER 19, 1972,
IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN
THE SUM OF TWO HUNDRED FIFTY DOLLARS PAYABLE BY THE STATE
ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD
REVIEW.

WCB CASE NO. 72-2970 OCTOBER 12, 1973

NORRIS MARSHALL, CLAIMANT
BROWN AND BURT, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND
SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

ISSUE

IS THE CLAIMANT ENTITLED TO FURTHER MEDICAL CARE AND TREAT-
MENT? AN ALTERNATIVE ISSUE IS THE EXTENT OF PERMANENT DISABILITY.

DISCUSSION

CLAIMANT RECEIVED AN INDUSTRIAL INJURY ON AUGUST 14, 1972.
THE CLAIM WAS CLOSED SEPTEMBER 29, 1972 WITH A DETERMINATION
ORDER AWARDING NO PERMANENT DISABILITY. A HEARING WAS HELD BUT
THE OPINION AND ORDER EXPLICITLY COVERED ONLY THE ISSUE OF

PERMANENT DISABILITY AND NOT THE ISSUE OF FURTHER MEDICAL CARE AND TREATMENT.

THE BOARD REMANDED THE MATTER TO THE HEARING OFFICER FOR FURTHER CONSIDERATION OF THE EVIDENCE AND ENTRY OF AN ORDER DISPOSING OF THE ISSUE OF WHETHER THE CLAIMANT IS ENTITLED TO FURTHER MEDICAL CARE AND TREATMENT. BY ORDER ON REMAND DATED APRIL 24, 1973 THE HEARING OFFICER FOUND THAT THE EMPLOYER HAS NO RESPONSIBILITY FOR ANY MEDICAL CARE AND TREATMENT AFFORDED THE CLAIMANT FOR HIS LOW BACK PROBLEMS AND CLAIMANT HAS NO PERMANENT DISABILITY.

THE EVIDENCE SUBSTANTIATES THAT MEDICAL CARE RECEIVED AFTER THE DETERMINATION ORDER WAS NOT FOR TREATMENT OF THE INDUSTRIALLY CAUSED ACCIDENT AND THAT THERE IS NO PERMANENT DISABILITY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JANUARY 29, 1973 AND THE ORDER ON REMAND DATED APRIL 24, 1973 ARE AFFIRMED.

WCB CASE NO. 72-2354 OCTOBER 12, 1973

JOSEPH THOMAS IVIE, CLAIMANT
AND COMPLYING STATUS OF
T.L.P. COMPANY
BROWN AND BURT, CLAIMANT'S ATTS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

ISSUE

WAS CLAIMANT AN EMPLOYEE OF THE T. L. P. COMPANY?

DISCUSSION

CLAIMANT WAS HURT IN A FALL FROM A LADDER WHILE CHANGING A LIGHT BULB IN A RENTAL UNIT OWNED BY THE EMPLOYER. CLAIMANT ALLEGES THAT BOTH HE AND HIS WIFE WERE HIRED AS A TEAM TO MANAGE AND CARE FOR THE RENTAL UNITS. EMPLOYER ALLEGES THAT CLAIMANT'S WIFE WAS THE ONLY EMPLOYEE. THERE IS A CONFLICT OF TESTIMONY AS TO THE EXISTENCE OF AN EXPRESS EMPLOYMENT CONTRACT WITH THE CLAIMANT. HOWEVER, THE CLAIMANT HAD DONE A NUMBER OF CHORES AROUND THE RENTAL UNIT AND THE EMPLOYER KNEW THAT THE CLAIMANT WAS DOING SOME MAINTENANCE SUCH AS MOWING LAWNS, FIXING LOCKS AND SO FORTH ON A CONTINUOUS BASIS RATHER THAN AS A SINGLE ISOLATED EVENT. WHETHER IT BE AN EXPRESS CONTRACT OF EMPLOYMENT OR AN IMPLIED CONTRACT OF EMPLOYMENT, THE RESULT IS THE SAME. THE CLAIMANT ACTED AS AN EMPLOYEE AND THE EMPLOYER KNOWINGLY ACCEPTED THE BENEFITS OF HIS WORK ON A CONTINUING BASIS. THUS, WE CONCLUDE, AS DID THE HEARING OFFICER, THAT CLAIMANT WAS AN EMPLOYEE AND THAT THE INJURY WAS COMPENSABLE UNDER THE OREGON WORKMEN'S COMPENSATION LAW.

ORDER

THE ORDER OF THE HEARING OFFICER DATED APRIL 30, 1973 IS AFFIRMED.

CLAIMANT'S ATTORNEY IS ALLOWED AN ADDITIONAL ATTORNEY'S FEE OF TWO HUNDRED FIFTY DOLLARS, TO BE PAID BY THE STATE ACCIDENT INSURANCE FUND, AND CHARGED TO THE EMPLOYER PURSUANT TO ORS 656.054.

WCB CASE NO. 73-551

OCTOBER 12, 1973

WILLIS C. JOHNSON, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

ISSUE

Is the CLAIMANT REQUIRED TO SUBMIT TO A PHYSICAL EXAMINATION AT THE REQUEST OF THE EMPLOYER IN A DENIED CLAIM?

DISCUSSION

THE BOARD BELIEVES ITS INTERPRETATION OF THE LAW UPON WHICH WCB ADMINISTRATIVE ORDER 16-1970 IS FOUNDED IS CORRECT AND THEREFORE CONCLUDES THE HEARING OFFICER'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 10, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 72-1886

OCTOBER 12, 1973

NELLIE HOSELTON, CLAIMANT

HIBBARD, CALDWELL, CANNING, BOWERMAN
AND SCHULTZ, CLAIMANT'S ATTYS.
CHARLES PAULSON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

ISSUE

WAS THE CLAIMANT INJURED WHILE IN THE COURSE AND SCOPE OF EMPLOYMENT?

DISCUSSION

CLAIMANT IS A 62 YEAR OLD COOK WORKING A SPLIT SHIFT AT ALPENROSE DAIRY WORKING FROM FIVE THIRTY A. M. TO ELEVEN A. M. AND TWO THIRTY P. M. TO FIVE P. M. NORMALLY. CLAIMANT LIVED ON THE PREMISES AT THE EMPLOYER'S REQUEST AND WAS ON CALL FOR THE CONVENIENCE OF THE EMPLOYER ALTHOUGH SHE WAS NOT CALLED OFTEN.

THE INJURY OCCURRED BETWEEN THE MORNING SHIFT AND THE AFTERNOON SHIFT ON THE EMPLOYER'S PREMISES WHEN SHE STUBBED HER TOE ON A PROTRUDING BRICK AND FELL, FRACTURING HER LEFT ARM.

THE EMPLOYER DENIED THE CLAIM BUT THE HEARING OFFICER ORDERED IT ACCEPTED CITING APPLICABLE PRINCIPLES REGARDING CLAIMS OF RESIDENT EMPLOYEES, THE RESIDENT EMPLOYEE, OR "BUNKHOUSE RULE" HAS BEEN HISTORICALLY GIVEN A BROAD INTERPRETATION IN THIS STATE.

THE EARLY PREVALENCE OF LOGGING CAMPS IN REMOTE AREAS AND THE DESIRE OF EMPLOYERS TO AVOID LIABILITY SUITS ARISING OUT OF "BUNKHOUSE" INJURIES LEG OREGON EMPLOYERS TO INTERPRET THE "ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT" CRITERIA LIBERALLY IN FAVOR OF COMPENSABILITY.

BASED ON THIS BROAD INTERPRETATION OF THE "BUNKHOUSE RULE" THE BOARD CONCURS WITH THE OPINION OF THE HEARING OFFICER AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 15, 1973 IS AFFIRMED.

CLAIMANT'S ATTORNEY IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-2249 OCTOBER 12, 1973

WILBUR HOLLY, CLAIMANT
MERCER, MACLAREN, WILLIAMS, TALNEY
AND CREW, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S DENIAL OF HIS CLAIM FOR AGGRAVATION OF AN INDUSTRIAL INJURY OF JANUARY 23, 1968.

ISSUE

HAS THE CLAIMANT PROVED AN AGGRAVATION OF THE 1968 INDUSTRIAL INJURY?

DISCUSSION

UPON DE NOVO REVIEW, THE BOARD FINDS THE WEIGHT OF THE MEDICAL EVIDENCE ESTABLISHES THAT THE PROGRESSION OF THE MARIE-STRUMPEL DISEASE HAS NO CONNECTION WITH THE 1968 INDUSTRIAL ACCIDENT AND THAT A CLAIM FOR AGGRAVATION HAS NOT BEEN PROVED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 9, 1973 IS AFFIRMED.

WCB CASE NO. 71-1910 OCTOBER 12, 1973

THOMAS E. DUFFY, CLAIMANT

RHOTEN, RHOTEN AND SPEERSTRA, CLAIMANT'S ATTYS.
PHILIP A. MONGRAIN, DEFENSE ATTY.

ON APRIL 18, 1973, THE EMPLOYER FARMERS GROUP INC., REJECTED A HEARING OFFICER'S AMENDED ORDER DATED MARCH 26, 1973, AND REQUESTED EMPANELMENT OF A MEDICAL BOARD OF REVIEW. THAT REQUEST FOR REVIEW IS NOW PENDING.

THE EMPLOYER AND THE CLAIMANT HAVE AGREED TO SETTLE THEIR DISPUTE IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT AND STIPULATION WHICH IS ATTACHED HERETO AS EXHIBIT !!A!!.

THE BOARD, BEING NOW FULLY ADVISED, CONCLUDES THE AGREEMENT IS FAIR AND EQUITABLE FOR BOTH PARTIES AND HEREBY APPROVES THE SETTLEMENT.

ORDER

IT IS HEREBY ORDERED THAT THE AGREEMENT AND STIPULATION, DATED OCTOBER 2, 1973, A COPY OF WHICH IS MARKED EXHIBIT !!A!!, AND ATTACHED HERETO, BE EXECUTED ACCORDING TO ITS TERMS.

IT IS FURTHER ORDERED THAT THE MATTER NOW PENDING FOR REVIEW BY THE MEDICAL BOARD OF REVIEW IS HEREBY DISMISSED.

AGREEMENT AND STIPULATION

IT IS HEREBY AGREED AND STIPULATED BY THE PARTIES THAT FOLLOWING A MENTAL BREAKDOWN IN JUNE, 1971, THE CLAIMANT FILED A CLAIM WITH HIS EMPLOYER, CONTENDING THAT THE BREAKDOWN AROSE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WITH THE EMPLOYER - THAT ON JULY 13, 1971 THE EMPLOYER, ACTING THROUGH ITS INSURANCE CARRIER, DENIED IN WRITING THAT THE CLAIMANT'S MENTAL BREAKDOWN AROSE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WITH THE EMPLOYER - THAT THE CLAIMANT SUBSEQUENTLY REQUESTED A HEARING FROM THE DENIAL OF JULY 13, 1971 - THAT FOLLOWING A HEARING IT WAS HELD BY THE HEARING OFFICER THAT THE CLAIMANT'S MENTAL DIFFICULTY DID IN FACT ARISE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WITH THE EMPLOYER - THAT THE HEARING OFFICER FOUND COMPENSABILITY ON THE BASIS OF AN OCCUPATIONAL DISEASE AND THE EMPLOYER THEREAFTER TIMELY REJECTED THE HEARING OFFICER'S FINDINGS AND APPEALED TO THE MEDICAL BOARD OF REVIEW - THAT THE CLAIM IS CURRENTLY PENDING BEFORE THE MEDICAL BOARD OF REVIEW AND A FINAL DETERMINATION OF COMPENSABILITY HAS NOT THEREFORE BEEN MADE - THAT THE CLAIMANT'S CLAIM THEREFORE REMAINS DENIED BY THE EMPLOYER - THAT THERE IS A BONA FIDE DISPUTE AS TO COMPENSABILITY IN THIS MATTER IN THAT THERE IS COMPETENT MEDICAL OPINION RELATING THE CLAIMANT'S EMPLOYMENT TO HIS MENTAL BREAKDOWN AND MENTAL PROBLEMS BEGINNING IN JULY, 1971 AND THERE IS ALSO COMPETENT

MEDICAL OPINION STATING THAT THERE IS NO SUCH RELATIONSHIP - THAT IN ACCORDANCE WITH THE PROVISIONS OF ORS 656.289(4) THE PARTIES WISH TO COMPLETELY AND FINALLY SETTLE THIS BONA FIDE DISPUTE - THAT IN ORDER TO COMPLETELY AND FINALLY SETTLE THIS BONA FIDE DISPUTE THE EMPLOYER, THROUGH ITS INSURANCE CARRIER, AGREE TO PAY TO THE CLAIMANT THE SUM OF ELEVEN THOUSAND FIVE HUNDRED DOLLARS, SAID SUM NOT TO INCLUDE THE THREE THOUSAND SEVEN HUNDRED SIXTY SIX DOLLARS ALREADY PAID TO CLAIMANT AS OF THE DATE OF THIS STIPULATION - THE EMPLOYER, THROUGH THE INSURANCE CARRIER, ALSO AS PART OF THE COMPLETE AND FINAL SETTLEMENT OF THIS BONA FIDE DISPUTE AGREES TO PAY TO THE CLAIMANT'S ATTORNEY THE SUM OF FIFTEEN HUNDRED DOLLARS FOR REASONABLE ATTORNEYS FEES AND THREE THOUSAND DOLLARS TO FARMERS NEW WORLD LIFE INSURANCE COMPANY FOR REIMBURSEMENT OF MEDICAL EXPENSES PAID ON CLAIMANT'S BEHALF.

IT IS FURTHER AGREED AND STIPULATED BY THE PARTIES THAT BY PAYMENT OF THESE AMOUNTS IN COMPLETE AND FINAL SETTLEMENT OF THIS CLAIM THE EMPLOYER DOES NOT ADMIT LIABILITY, AND IN FACT THE EMPLOYER EXPRESSLY DENIES ANY RELATIONSHIP BETWEEN THE CLAIMANT'S EMPLOYMENT AND THE MENTAL BREAKDOWN AND MENTAL DIFFICULTIES EXPERIENCED BY HIM BEGINNING IN JUNE, 1971 - THAT BOTH PARTIES WISH TO COMPLETELY AND FINALLY DISPOSE OF THIS DISPUTED CLAIM BECAUSE IT IS RECOGNIZED THAT SUCH A SETTLEMENT IS IN THE BEST INTEREST OF THE PARTIES CONCERNED.

IT IS FINALLY AGREED AND STIPULATED BY THE PARTIES THAT ALL CONTENTIONS OF THE PARTIES ARE COMPLETELY AND FINALLY DISPOSED OF BY THIS STIPULATION AND THE CLAIM SHOULD BE DISMISSED.

WCB CASE NO. 71-2898 OCTOBER 15, 1973

GEORGE GLENN, CLAIMANT
BABCOCK AND ACKERMAN, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

THE ORDER ON REMAND ISSUED OCTOBER 12, 1973, ON THE ABOVE NAMED CASE WAS INCORRECTLY DENOMINATED AS WCB CASE NO. 73-2259.

THE SOLE PURPOSE OF THIS ORDER IS TO CORRECTLY IDENTIFY THE WCB CASE NO. AS 71-2898.

IT IS SO ORDERED.

WCB CASE NO. 72-3583 OCTOBER 15, 1973

CHRISTINE THOMPSON, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
ROGER WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

ISSUES

1. IS CLAIMANT ENTITLED TO FURTHER MEDICAL CARE AND TREATMENT AND TEMPORARY TOTAL DISABILITY COMPENSATION?
2. WHAT IS THE EXTENT OF PERMANENT DISABILITY?

DISCUSSION

THE CLAIMANT, A 39 YEAR OLD FRUIT PACKER, RECEIVED A LUMBO-SACRAL STRAIN. TWO LAMINECTOMIES WERE PERFORMED. MEDICAL OPINIONS STATE A RANGE OF 9 PERCENT TO 30 PERCENT PERMANENT PARTIAL DISABILITY. THE HEARING OFFICER QUESTIONS THE CREDIBILITY AND MOTIVATION OF THE CLAIMANT. AN INTERVENING AUTOMOBILE ACCIDENT APPARENTLY HAD ONLY MINOR TEMPORARY AGGRAVATION OF THE INDUSTRIAL INJURY.

NO FURTHER TEMPORARY TOTAL DISABILITY OR NEED FOR ADDITIONAL MEDICAL CARE WAS PROVED. ADDITIONAL MEDICAL CARE NECESSITATED BY THE CLAIMANT'S INDUSTRIAL INJURY WILL BE PAID PURSUANT TO ORS 656.245.

ALTHOUGH THE BOARD DOES NOT AGREE WITH THE STYLE OF EXPRESSION, RELIANCE ON PERSONAL KNOWLEDGE OR WITH SOME OF THE STATEMENTS MADE OR THE CONCLUSIONS REACHED BY THE HEARING OFFICER, THE BOARD, ON DE NOVO REVIEW, WOULD AFFIRM THE RESULT.

ORDER

THE ORDER OF THE HEARING OFFICER DATED APRIL 23, 1973 IS AFFIRMED.

WCB CASE NO. 71-322

OCTOBER 15, 1973

WILLIAM E. DICKEY, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
MIZE, KRIESIEN, FEWLESS, CHENEY AND
KELLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER
CROSS-APPEAL BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

ISSUE

HAVE THE INJURIES RECEIVED IN THE INDUSTRIAL ACCIDENT OF AUGUST 23, 1966 BEEN AGGRAVATED? IF SO, WHAT IS THE EXTENT OF PERMANENT DISABILITY?

DISCUSSION

THE DETERMINATION ORDER DATED OCTOBER 27, 1967 AWARDED NO PERMANENT DISABILITY. THE MEDICAL REPORTS RELATING TO HIS PRESENT STATUS FULLY ESTABLISH THE WORSENING OF HIS CONDITION AND THUS AGGRAVATION IS PROVED AS A MATTER OF LAW. THE REPORTS ALSO FULLY SUPPORT THE ALLOWANCE BY THE HEARING OFFICER OF PERMANENT DISABILITY EQUAL TO 25 PERCENT LOSS OF USE OF AN ARM AND 15 PERCENT LOSS OF USE OF THE RIGHT EYE.

HIS ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE HEARING OFFICER'S ORDER DATED APRIL 16, 1973 IS AFFIRMED.

COUNSEL FOR CLAIMANT IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-2501 OCTOBER 15, 1973

EMMA JEANNE L. BERGH, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.

KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER CONTENDING THE HEARING OFFICER ERRED IN CONCLUDING CLAIMANT HAD SUFFERED AN ACCIDENTAL INJURY RATHER THAN OCCUPATIONAL DISEASE.

IT ALSO OBJECTS TO HIS ASSESSMENT OF PENALTIES AGAINST THE EMPLOYER CONTENDING IT WAS THE CLAIMANT'S ATTORNEY'S FAULT THAT COMPENSATION WAS NOT PROPERLY PROCESSED.

ISSUES

- (1) DID CLAIMANT SUFFER AN ACCIDENTAL INJURY OR AN OCCUPATIONAL DISEASE?
- (2) DID THE EMPLOYER UNREASONABLY DELAY ACCEPTANCE OR DENIAL OF THE CLAIM?

DISCUSSION

THE EMPLOYER APPARENTLY DOES NOT NOW CONTEST CLAIMANT'S RIGHT TO COMPENSATION. THE LAW PROVIDES IDENTICAL SUBSTANTIVE BENEFITS FOR AN ACCEPTED OCCUPATIONAL DISEASE AND AN ACCEPTED ACCIDENTAL INJURY. ORS 656.804(1) SINCE CLAIMANT'S CLAIM IS NOW ACCEPTED BY THE EMPLOYER, THE ISSUE OF WHETHER CLAIMANT'S CONDITION IS AN OCCUPATIONAL DISEASE OR ACCIDENTAL INJURY IS OF MERELY ACADEMIC INTEREST AND NEED NOT BE DECIDED. WE DO, HOWEVER, AGREE WITH THE HEARING OFFICER'S CONCLUSION THAT CLAIMANT HAS SUFFERED AN ACCIDENTAL INJURY WITHIN THE MEANING OF THE OREGON WORKMEN'S COMPENSATION LAW.

THE EMPLOYER HAD KNOWLEDGE OF THE CLAIM ON JUNE 16, 1972, BUT DID NOT DENY THE CLAIM FOR NEARLY THREE MONTHS EVEN THOUGH THEY HAD REPORTS OF DR. ELLISON RELATING THE CONDITION TO HER EMPLOYMENT. THE LATE DENIAL AND THE FAILURE TO MAKE TEMPORARY TOTAL DISABILITY PAYMENTS PENDING THAT DENIAL FAIRLY RESULTS IN THE PENALTIES.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 28, 1973, IS AFFIRMED.

CLAIMANT'S ATTORNEY IS AWARDED TWO HUNDRED FIFTY DOLLARS AS REASONABLE ATTORNEY FEES TO BE PAID BY THE DEFENDANT-EMPLOYER.

WCB CASE NO. 72-2021 OCTOBER 15, 1973

RAYMOND L. COMER, CLAIMANT
KENNETH COLLEY, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS IS AN AGGRAVATION CLAIM IN WHICH THE CLAIMANT REQUESTS BOARD REVIEW OF THE HEARING OFFICER'S DENIAL OF ADDITIONAL TEMPORARY TOTAL DISABILITY AND HIS EVALUATION OF THE EXTENT OF PERMANENT PARTIAL DISABILITY.

ISSUES

- (1) IS THE CLAIMANT ENTITLED TO TEMPORARY TOTAL DISABILITY AFTER AUGUST 4, 1970.
- (2) WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT'S INDUSTRIAL INJURY OF MAY 9, 1967, FOR LOW BACK INJURY WAS CLOSED BY A DETERMINATION ORDER OF AUGUST 4, 1970, WITH AN AWARD OF 32 DEGREES FOR LOW BACK DISABILITY. MEDICAL EVIDENCE SUSTAINS THAT THERE IS AN AGGRAVATION TO THE LOW BACK CONDITION. THERE IS INSUFFICIENT EVIDENCE TO RELATE THE MANY, MANY OTHER PROBLEMS OF THIS CLAIMANT TO THE INDUSTRIAL INJURY. THE CLAIM FOR TEMPORARY TOTAL DISABILITY AFTER THE DETERMINATION ORDER IS ALSO UNSUPPORTED BY EVIDENCE THAT THE TIME LOSS IS RELATED TO OR CAUSED BY THE INDUSTRIAL INJURY. THE ORDER OF THE HEARING OFFICER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 25, 1973, IS HEREBY AFFIRMED.

OCTOBER 15, 1973

MICHAEL CEARLEY, CLAIMANT

DEZENDORF, SPEARS, LUBERSKY AND
CAMPBELL, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

THIS 19 YEAR OLD CLAIMANT RECEIVED A COMPENSABLE LOW BACK INJURY ON MARCH 21, 1972 WHICH WAS CLOSED BY A DETERMINATION ORDER DATED AUGUST 4, 1972 AWARDED UNSCHEDULED PERMANENT PARTIAL DISABILITY OF 16 DEGREES.

THE HEARING OFFICER'S ORDER INCREASED THIS DISABILITY TO A TOTAL OF 32 DEGREES COMMENTING THAT CLAIMANT'S TOTAL IMPAIRMENT OF EARNING CAPACITY EQUALLED 20 PERCENT BUT THAT ONLY 10 PERCENT WAS ATTRIBUTABLE TO THE INJURY IN QUESTION. WE DO NOT AGREE THAT CLAIMANT'S TOTAL DISABILITY EQUALS 20 PERCENT. THE MEDICAL EVIDENCE ESTABLISHES CLAIMANT HAS A CHRONIC, MILD LUMBOSACRAL STRAIN SUPERIMPOSED UPON A CONGENITAL LOW BACK CONDITION.

THE MEDICAL REPORTS CLEARLY SHOW THAT THE REASON THE DOCTORS RECOMMENDED THAT THE CLAIMANT SHOULD PURSUE A LIGHTER TYPE OF WORK WAS BECAUSE OF THE CONGENITAL LOWER BACK CONDITION AND NOT BECAUSE OF ANY AGGRAVATION, ACCELERATION OR ENHANCEMENT OF THE PREEXISTING INFIRMITY BY THE INDUSTRIAL INJURY. WE CONCLUDE CLAIMANT'S DISABILITY DOES EQUAL 10 PERCENT OR 32 DEGREES AND THUS WE WOULD AFFIRM THE RESULT OF THE HEARING OFFICER'S OPINION AND ORDER.

WE NOTE THAT THE DEFENDANT CALLED A SERVICE COORDINATOR AS A WITNESS AT THE HEARING. WHILE WE RECOGNIZE THE BROAD RIGHT OF PARTIES TO PRODUCE ANY EVIDENCE RELEVANT TO THE CASE, THE BOARD IS EXTREMELY INTERESTED IN ASSURING THE SUCCESS OF ITS NEW DISABILITY PREVENTION PROGRAM. A KEY PART OF THAT PROGRAM IS THE SERVICE COORDINATOR POSITION.

THE BOARD IS CONCERNED THAT IF ITS SERVICE COORDINATORS ARE ROUTINELY CALLED AS WITNESSES AT HEARINGS THEY WILL NOT HAVE ADEQUATE TIME FOR THEIR WORK NOR WILL THEY BE AS EFFECTIVE AS POSSIBLE. SERVICE COORDINATOR MOORE SUCCINCTLY EXPLAINED THAT HIS FUNCTION IS TO MAKE EARLY CONTACT WITH THE WORKMAN . . . WITH THE IDEA OF RETURNING HIM TO GAINFUL EMPLOYMENT IN THE SHORTEST POSSIBLE TIME WITH THE LEAST AMOUNT OF DISABILITY. IT IS NOT HIS FUNCTION TO BECOME A PROFESSIONAL WITNESS IN COMPENSATION LITIGATION. IF THE SERVICE COORDINATOR SUCCEEDS IN HIS TASK, BOTH THE INJURED WORKER AND THE EMPLOYER ARE HELPED.

FOR THESE REASONS WE URGE THE PARTIES TO REFRAIN FROM CALLING SERVICE COORDINATORS AS WITNESSES UNLESS THEIR TESTIMONY IS ABSOLUTELY NECESSARY TO THE FAIR RESOLUTION OF A CRITICAL ISSUE IN THE CASE.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 24, 1973 IS AFFIRMED.

WCB CASE NO. 72-3189 OCTOBER 15, 1973

ESTHER LAKEY, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MERLIN MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT APPEALS THE HEARING OFFICER'S AWARD OF 20 PERCENT UNSCHEDULED PERMANENT DISABILITY CONTENDING HER DISABILITY EXCEEDS THAT AWARDED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

THIS 45 YEAR OLD GROCERY CHECKER SUSTAINED AN INDUSTRIAL ACCIDENT JANUARY 4, 1971. SHE RECEIVED MEDICAL CARE FOR LOW BACK AND LEG INJURIES. THEREAFTER SHE WAS INVOLVED IN AN AUTOMOBILE ACCIDENT ON FEBRUARY 10, 1971. THE CLAIMANT'S TESTIMONY AND THE CLAIMANT'S STATEMENTS TO ATTENDING DOCTORS ATTEMPTED TO MINIMIZE THE INJURIES RECEIVED IN THE AUTOMOBILE ACCIDENT.

ON DE NOVO REVIEW, THE BOARD FINDS THE CLAIMANT'S UNSCHEDULED DISABILITY ATTRIBUTABLE TO THE INDUSTRIAL INJURY DOES NOT EXCEED THE 20 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED LOW BACK DISABILITY AND THEREFORE CONCLUDES THE HEARING OFFICER'S OPINION SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 13, 1973 IS AFFIRMED.

WCB CASE NO. 72-2467 OCTOBER 16, 1973

NORMAN GLEASON CAMERON, CLAIMANT

RICHARDSON AND MURPHY, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS, WILSON, MOORE AND SLOAN.

ISSUE

IS CLAIMANT'S CLAIM BARRED BY LACK OF TIMELY NOTICE TO HIS EMPLOYER?

DISCUSSION

CLAIMANT, A DEAF MUTE, TESTIFIED THAT HIS BACK SNAPPED WHEN HE BENT OVER TO PICK UP PAPER ON FEBRUARY 22, 1972. A FELLOW WORKMAN TESTIFIED THAT HE SAW THE CLAIMANT IMMEDIATELY THEREAFTER. CLAIMANT WAS HOLDING HIS BACK, THE INCIDENT WAS IMMEDIATELY CALLED TO THE ATTENTION OF THE FOREMAN.

A CLAIM FORM FOR AN OFF-THE-JOB INJURY WAS HANDED TO THE CLAIMANT AND HE COMPLETED THIS FORM AND COMMENCED TREATMENT UNDER BLUE CROSS COVERAGE AND RECEIVED BENEFITS AS AN OFF-THE-JOB INJURY. THE WRITTEN REPORT TO THE FUND WAS SIGNED BY THE CLAIMANT ON APRIL 21, 1972, AND SIGNED BY THE EMPLOYER APRIL 26, 1972.

THE OBVIOUS DIFFICULTY OF THE CLAIMANT IN COMMUNICATION IS GIVEN SUBSTANTIAL CONSIDERATION. BASED ON TESTIMONY OF CREDIBLE WITNESSES IT APPEARS THE COMPANY HAD TIMELY KNOWLEDGE OF WHERE, WHEN AND HOW THE ACCIDENT OCCURRED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 6, 1973 IS HEREBY AFFIRMED.

COMMISSIONER MOORE DISSENTS AS FOLLOWS -

THIS REVIEWER IS PERSUADED FROM THE TOTALITY OF THE EVIDENCE AND TESTIMONY THAT THE THREAD OF JUSTIFICATION HAS BEEN OVERSTRETCHED TO FIND THAT THE CLAIMANT HAS PROVEN KNOWLEDGE OF THE INJURY SUFFICIENT TO PUT A REASONABLE PERSON ON INQUIRY AND THEREFORE, I RESPECTFULLY DISSENT FROM AFFIRMING THE ORDER OF THE HEARING OFFICER.

WCB CASE NO. 72-281

OCTOBER 16, 1973

JEWEL L. TAYLOR, CLAIMANT
BAILEY, DOBLIE, CENICEROS AND BRUUN,
CLAIMANT'S ATTYS.
GRAY, FANCHER, HOLMES AND HURLEY,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF THE HEARING OFFICER'S REDUCTION OF PERMANENT TOTAL DISABILITY TO 48 DEGREES ADDITIONAL UNSCHEDULED DISABILITY.

ISSUE

HAS CLAIMANT SUFFERED AN AGGRAVATION AND IF SO, WHAT IS THE EXTENT OF HIS PERMANENT DISABILITY?

DISCUSSION

THIS 61 YEAR OLD MILLWRIGHT SUSTAINED A LOW BACK INDUSTRIAL INJURY FEBRUARY 1, 1966. THIS CLAIM WAS CLOSED WITH AN AWARD OF 58 DEGREES UNSCHEDULED PERMANENT PARTIAL DISABILITY. CLAIMANT REQUESTED THE CLAIM BE REOPENED FOR AGGRAVATION OF THE 1966 INJURY WHICH WAS DENIED BY THE EMPLOYER. A HEARING OFFICER'S ORDER DATED DECEMBER 28, 1972, FOUND THERE WAS AGGRAVATION AND AWARDED PERMANENT TOTAL DISABILITY. THE EMPLOYER PETITIONED TO REOPEN THE HEARING AND ADDITIONAL EVIDENCE WAS RECEIVED THAT THE CLAIMANT HAD BEEN WORKING CONTINUOUSLY AT HIS OLD JOB SINCE SHORTLY AFTER THE LAST HEARING, A PERIOD OF APPROXIMATELY SEVEN MONTHS.

THE CLAIMANT ARGUES THAT HE WAS WORKING ESSENTIALLY IN A SHELTERED WORKSHOP POSITION. WE DISAGREE.

THE BOARD, ON DE NOVO REVIEW, FINDS THERE HAS BEEN AN AGGRAVATION OF THE 1966 INJURY AND THAT THE CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED. THE ADDITIONAL AWARD OF 48 DEGREES SHOULD BE AFFIRMED.

ORDER

THE SUPPLEMENTAL ORDER ON RECONSIDERATION OF THE HEARING OFFICER DATED MARCH 1, 1973 IS AFFIRMED.

WCB CASE NO. 72-3572 OCTOBER 16, 1973

FRANK L. GAST, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

THIS 25 YEAR OLD DIVORCED COLLEGE STUDENT HAD A BACK INJURY IN MAY OF 1969 WHICH WAS CLOSED WITH NO PERMANENT DISABILITY. THE PRESENT INDUSTRIAL BACK INJURY OCCURRED AUGUST 21, 1970 AND WAS CLOSED BY A DETERMINATION ORDER WITH 5 PERCENT UNSCHEDULED DISABILITY WHICH THE HEARING OFFICER INCREASED TO 20 PERCENT OR 64 DEGREES.

THE CLAIMANT IS A CAPABLE YOUNG MAN WITH GOOD PROSPECTS. HE HAS TWO YEARS OF COLLEGE AND PLANS TO RE-ENROLL. HE IS ABLE TO ENGAGE IN MANY TYPES OF PHYSICAL WORK SIMILAR TO THE WORK HE PERFORMED PRIOR TO THIS INDUSTRIAL INJURY. HE HAS TRAVELED EXTENSIVELY SINCE THE INJURY REQUIRING VIGOROUS PHYSICAL ACTIVITIES.

BASED ON THESE CONSIDERATIONS, THE BOARD CONCURS WITH THE HEARING OFFICER'S OPINION AND ORDER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 26, 1973, IS AFFIRMED.

WCB CASE NO. 72-3376 OCTOBER 16, 1973

MICHAEL L. SCOTT, CLAIMANT

**POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND
SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT**

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

ISSUE

WHAT IS THE EXTENT OF PERMANENT DISABILITY?

DISCUSSION

THE CLAIMANT, A 47 YEAR OLD TRUCK DRIVER, SUSTAINED AN INDUSTRIAL INJURY OCTOBER 25, 1970, WHICH WAS CLOSED JANUARY 29, 1971 BY A DETERMINATION ORDER AWARDING NO PERMANENT DISABILITY. CLAIMANT CONTINUED HIS EMPLOYMENT AS A TRUCK DRIVER UNTIL MARCH, 1971 WHEN HE TERMINATED HIS EMPLOYMENT ADVISING THE EMPLOYER HE HAD RECEIVED HIS SECOND CITATION FOR DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR. ALSO, IN MARCH 1971, CLAIMANT WAS IN AN AUTOMOBILE ACCIDENT. THEREAFTER, THE CLAIM WAS REOPENED FOR FURTHER TREATMENT OF HIS BACK AND ULTIMATELY CLOSED BY A DETERMINATION ORDER OF AUGUST 29, 1972, AWARDING 20 PERCENT UNSCHEDULED DISABILITY.

THE LACK OF CANDOR AND CREDIBILITY AS OBSERVED BY THE HEARING OFFICER AND THE LACK OF OBJECTIVE MEDICAL EVIDENCE OF SUBSTANTIAL PERMANENT DISABILITY ALONG WITH THE INTERVENING PERSONAL PROBLEMS OF THE CITATION AND THE AUTOMOBILE ACCIDENT CLEARLY SHOW NO INCREASE OF PERMANENT DISABILITY HAS BEEN PROVED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED APRIL 25, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 72-2929 OCTOBER 16, 1973

DONALD LEE SORTER, CLAIMANT

**POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF**

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER OVERTURNING ITS DENIAL OF CLAIMANT'S CLAIM.

ISSUE

DID CLAIMANT RECEIVE A COMPENSABLE INJURY AS ALLEGED?

DISCUSSION

THE HEARING OFFICER ALLOWED THE CLAIMANT'S CLAIM ON A FINDING THAT THE FOREMAN WAS BIASED, A FELLOW WORKMAN FEARFUL OF TELLING THE TRUTH AND, EVEN THOUGH EVIDENCE OF THE MECHANICS OF THE ALLEGED INJURY WERE UNLIKELY, BECAUSE HE BELIEVED THE CLAIMANT'S STORY. REGARDLESS OF THE CREDIBILITY OF THE WITNESSES, THE BOARD CONCLUDES THE DENIAL SHOULD BE AFFIRMED.

NO MACHINERY WAS MOVING OR OPERATING AT THE TIME. THE MEDICAL EVIDENCE SHOWED NO ABRASIONS, CONTUSIONS OR VISUAL SIGNS OF EXTERNAL TRAUMA. ADDITIONALLY, THE MECHANICS OF THE ALLEGED INJURY APPEAR SO UNLIKELY THAT THE BOARD IS REASONABLY PERSUADED NO ACCIDENT OCCURRED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 12, 1973, IS REVERSED AND THE DENIAL OF THE STATE ACCIDENT INSURANCE FUND IS APPROVED.

WCB CASE NO. 72-2467 OCTOBER 17, 1973

NORMAN GLEASON CAMERON
RICHARDSON AND MURPHY, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON OCTOBER 16, 1973, THE BOARD ISSUED AN ORDER ON REVIEW IN THE ABOVE ENTITLED CASE WHICH FAILED TO AWARD AN ATTORNEY'S FEE.

THE REVIEW WAS REQUESTED BY THE STATE ACCIDENT INSURANCE FUND AND THE ORDER OF THE HEARING OFFICER WAS AFFIRMED BY THE BOARD. THUS, PURSUANT TO SUBSECTION (C) (10) OF WCB ORDER 3-1966, RELATING TO ATTORNEYS FEES, CLAIMANT'S ATTORNEY IS ENTITLED TO A REASONABLE ATTORNEY FEE OF TWO HUNDRED FIFTY DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

ORDER

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 73-180

OCTOBER 17, 1973

WESLEY BOOTHE, CLAIMANT
COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

THE CLAIMANT RECEIVED 5 PERCENT PERMANENT PARTIAL DISABILITY BY THE DETERMINATION ORDER WHICH WAS AFFIRMED BY THE HEARING OFFICER BASED UPON WHAT HE PERCEIVED AS A SUBSTANTIAL DISCREPANCY BETWEEN THE MEDICAL EVIDENCE AND THE TESTIMONY OF CLAIMANT.

IT APPEARS THAT THE HEARING OFFICER GAVE INADEQUATE CONSIDERATION TO THE MEDICAL REPORTS OF DR. ROCKEY. THESE REPORTS, ALONG WITH THE OTHER EVIDENCE IN THE CASE, CONVINCES THE BOARD THAT A PERMANENT PARTIAL DISABILITY OF 15 PERCENT EXISTS.

THE ORDER OF THE HEARING OFFICER SHOULD BE MODIFIED ACCORDINGLY.

ORDER

THE ORDER OF THE HEARING OFFICER IS MODIFIED ACCORDINGLY. CLAIMANT IS HEREBY AWARDED AN ADDITIONAL 10 PERCENT OR 32 DEGREES MAKING A TOTAL OF 15 PERCENT OR 48 DEGREES FOR UNSCHEDULED DISABILITY.

COUNSEL FOR THE CLAIMANT IS ALLOWED 25 PERCENT OF THE INCREASED COMPENSATION MADE PAYABLE HEREBY, PAYABLE OUT OF SAID AWARD.

WCB CASE NO. 73-59

OCTOBER 18, 1973

ARNOLD DANIELSON, CLAIMANT
SAHLSTROM, LOMBARD, STARR AND
VINSON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED A DETERMINATION ORDER MADE PURSUANT TO ORS 656.268.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT WAS EMPLOYED AS A HEAVY CONSTRUCTION WORKER AND ON AUGUST 17, 1971 SUSTAINED A FRACTURE OF THE DISTAL TIBIA AND FIBULA. UPON CLAIM CLOSURE, HE RECEIVED 20 PERCENT LOSS OF THE RIGHT LEG EQUAL TO 30 PERCENT.

CLAIMANT RETURNED TO HEAVY CONSTRUCTION WORK AND NOW ARGUES HE SUFFERS A TRAUMATIC ARTHRITIC CONDITION INVOLVING THE RIGHT KNEE. DR. SCHACHNER DID NOT CONNECT THE KNEE CONDITION TO THE INDUSTRIAL INJURY EITHER AS A CAUSE OR AN AGGRAVATION. THE ONLY RESIDUAL THIS DOCTOR ATTRIBUTED TO THE INJURY WAS PAIN AND DISCOMFORT AS THE RESULT OF TRAUMA TO THE FRACTURE SITE.

THE BOARD CONCURS WITH THE HEARING OFFICER'S FINDING THAT CLAIMANT'S DISABILITY DOES NOT EXCEED 20 PERCENT LOSS OF THE RIGHT LEG.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 31, 1973 IS AFFIRMED.

WCB CASE NO. 71-2834 OCTOBER 18, 1973
WCB CASE NO. 72-2553 OCTOBER 18, 1973

CHARLES W. KELLER, CLAIMANT
ROD KIRKPATRICK, CLAIMANT'S ATTY.
MIZE, KRISIEN, FEWLESS, CHENEY AND
KELLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER MADE IN WCB CASE NO. 72-2553 AND GRANTED AN INCREASE OF PERMANENT PARTIAL DISABILITY EQUAL TO 48 DEGREES FOR UNSCHEDULED DISABILITY IN WCB CASE NO. 71-2834.

ISSUE

WHAT IS CLAIMANT'S EXTENT OF PERMANENT PARTIAL DISABILITY?

DISCUSSION

A CONSOLIDATED HEARING WAS HELD ON TWO CLAIMS, NAMELY -

(1) WCB CASE NO. 71-2834 INVOLVED A LOW BACK INJURY SUSTAINED IN 1970 FOR WHICH CLAIMANT RECEIVED A PERMANENT PARTIAL DISABILITY AWARD EQUAL TO 32 DEGREES UNSCHEDULED LOW BACK DISABILITY, AND,

(2) WCB CASE NO. 72-2553 INVOLVED A LEFT ELBOW AND SHOULDER INJURY FOR WHICH HE WAS GRANTED A PERMANENT PARTIAL DISABILITY AWARD EQUAL TO 32 DEGREES (10 PERCENT) FOR UNSCHEDULED LEFT SHOULDER INJURY AND 9.6 DEGREES (5 PERCENT) LOSS OF THE LEFT ARM.

CLAIMANT, 61 YEARS OF AGE, HAD NO TRAINING OTHER THAN THAT RECEIVED IN A LIFE-LONG CAREER OF TRUCK DRIVING. HE HAS BEEN UNABLE TO WORK SINCE NOVEMBER, 1972.

THE HEARING OFFICER FOUND CLAIMANT'S CONDITION HAD DETERIORATED SINCE THE DATE OF THE DETERMINATION ORDER, BUT THIS CHANGE WAS DUE TO THE NATURAL PROGRESSION OF THE ARTHRITIC CONDITION AND OBESITY WHICH PRE-EXISTED HIS INDUSTRIAL INJURY.

DR. RICHARD CANTRELL AND DR. FRANCIS B. SCHULER REPORTED THEY EXPECTED CLAIMANT'S BACK CONDITION TO WORSEN DUE TO ARTHRITIC DEGENERATIVE DISEASE AFFECTING HIS SPINE. THIS WORSENING COULD NOT BE ATTRIBUTED TO THE INDUSTRIAL INJURY.

WITH RESPECT TO WCB CASE NO. 72-2553, THE HEARING OFFICER FOUND CLAIMANT'S LEFT ELBOW AND SHOULDER DISABILITY DID NOT EXCEED 10 PERCENT FOR UNSCHEDULED LEFT SHOULDER DISABILITY AND 5 PERCENT LOSS OF THE LEFT ARM AS AWARDED BY THE DETERMINATION ORDER.

WITH RESPECT TO WCB CASE NO. 71-2834, THE HEARING OFFICER AWARDED AN ADDITIONAL 48 DEGREES, MAKING A TOTAL OF 80 DEGREES FOR UNSCHEDULED LOW BACK INJURY.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDINGS AND CONCLUSION OF THE HEARING OFFICER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 16, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 71-1903 OCTOBER 18, 1973

ERNEST RIUTTA, CLAIMANT
MACDONALD, DEAN, MCCALLISTER AND
SNOW, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF THE HEARING OFFICER'S ORDER AFFIRMING THE EMPLOYER'S PARTIAL DENIAL.

ISSUE

DID THE CLAIMANT SUFFER A COMPENSABLE HEART INJURY BEYOND THAT ADMITTED BY THE EMPLOYER.

DISCUSSION

CLAIMANT, A 53 YEAR OLD DRIVER SALESMAN, SUFFERED AN ATTACK OF CORONARY INSUFFICIENCY ON JUNE 25, 1971 DURING A PERIOD OF VIGOROUS WORK ACTIVITY. HE WAS HOSPITALIZED FOR FIVE DAYS AND DISCHARGED ASYMPTOMATIC.

ALTHOUGH THERE ARE CONFLICTING MEDICAL OPINIONS THEY SUPPORT THE FACT THAT CLAIMANT SUFFERED FROM CORONARY ARTERY DISEASE PRIOR TO THE JULY 25, 1971 EPISODE AND THE EFFECTS OF THE CLAIMANT'S WORK ACTIVITIES ON CLAIMANT'S HEART HAD CEASED BY THE TIME HE WAS DISCHARGED FROM THE HOSPITAL ON JULY 1, 1971. IN OTHER WORDS, THE WORK ACTIVITIES CAUSED THE CLAIMANT'S TEMPORARY EPISODE OF CORONARY INSUFFICIENCY BUT THE PROGRESSION OF THE UNDERLYING CONDITION IS RESPONSIBLE FOR HIS PRESENT DISABILITY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 16, 1973 IS AFFIRMED.

WCB CASE NO. 72-3279 OCTOBER 18, 1973

JAMES HOLIFIELD, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
JAUHA AND WHEATLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS AN INCREASE IN PERMANENT DISABILITY OVER THAT AWARDED BY THE HEARING OFFICER'S ORDER.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

THE CLAIMANT, A 64 YEAR OLD MILLWORKER, SUSTAINED A FRACTURED FOREARM AND THE SHOULDER DEVELOPED A LIMITATION OF MOVEMENT. CLAIMANT HAS RECEIVED SOCIAL SECURITY DISABILITY STATUS AND SHOWS A LOW WORK MOTIVATION.

THE DEATON RATIONALE, AS APPLIED TO THIS CASE, CLEARLY ELIMINATES THIS CLAIMANT FROM ENTITLEMENT TO PERMANENT TOTAL DISABILITY COMPENSATION, DEATON V. SAIF, 97 OR ADV SH 126, -- OR APP --, (1973).

THE HEARING OFFICER'S AWARD TOTTALLING 192 DEGREES FOR BOTH SCHEDULED AND UNSCHEDULED DISABILITY SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 30, 1973 IS AFFIRMED.

LLOYD PATRICK BARBER, CLAIMANT
COMPLYING STATUS OF
P. AND M. TRAILER REPAIR
TAGGART AND WALTER, CLAIMANT'S ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH FOUND THE EMPLOYER TO BE NONCOMPLYING AND A SUBJECT EMPLOYER AND THAT CLAIMANT HAD SUSTAINED A COMPENSABLE INJURY.

ISSUES

1. IS THE EMPLOYER A NONCOMPLYING EMPLOYER?
2. DID CLAIMANT SUSTAIN A COMPENSABLE INJURY?

DISCUSSION

COUNSEL FOR THE EMPLOYER ARGUES THAT THE WORKMEN'S COMPENSATION BOARD DOES NOT HAVE JURISDICTION TO HOLD HEARINGS RELATIVE TO NONCOMPLYING EMPLOYERS. WCB ADMINISTRATIVE ORDER NO. 10-1970 OUTLINES THE PROCEDURE APPLICABLE TO SUCH MATTERS.

IN ANY CASE WHERE THE EMPLOYER ANSWERS THE NOTICE OF PROPOSED ORDER AND RAISES ANY ISSUE OF COMPENSABILITY OF THE CLAIM INCLUDING BUT NOT RESTRICTED TO THE COMPLYING STATUS OF THE EMPLOYER, THE MATTER SHALL BE REFERRED TO THE HEARINGS DIVISION OF THE WORKMEN'S COMPENSATION BOARD. THE PROCEDURE SHALL THEREUPON FOLLOW THE PROCEDURE PROVIDED BY STATUTE AND THE RULES AND REGULATIONS OF THE WORKMEN'S COMPENSATION BOARD PERTAINING TO CLAIMS DENIED BY THE EMPLOYER REGARDLESS OF WHETHER THE EMPLOYER HAS MADE A FORMAL DENIAL OF THE CLAIM. PAGE 2, PARAGRAPH 3, WCB ADMINISTRATIVE ORDER NO. 10-1970.

THE HEARING OFFICER FOUND AND THE BOARD CONCURS ALL OF THE EVIDENCE AND AUTHORITIES APPLICABLE ARE INDICATIVE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP RATHER THAN AN INDEPENDENT CONTRACTOR STATUS, AND P AND M TRAILER REPAIR IS THEREBY A SUBJECT EMPLOYER.

THE HEARING OFFICER FOUND, AND THE BOARD CONCURS, THAT THERE WAS PERSUASIVE EVIDENCE THAT CLAIMANT'S HERNIA CONDITION ON OR ABOUT MAY 22, 1972 WAS CAUSED OR CONTRIBUTED TO BY THE WORK HE WAS DOING AS A SUBJECT WORKMAN.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 26, 1973 IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A FURTHER FEE OF TWO HUNDRED FIFTY DOLLARS, FOR SERVICES ON REVIEW, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, AND RECOVERABLE FROM THE EMPLOYER, PURSUANT TO ORS 656.054.

OCTOBER 19, 1973

ANNIE LOUISE HALL, CLAIMANT
MAURICE ENGELGAU, CLAIMANT'S ATTY.
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED A TOTAL PERMANENT PARTIAL DISABILITY AWARD EQUAL TO 200 DEGREES, CONTENDING SHE IS PERMANENTLY AND TOTALLY DISABLED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S DISABILITY?

DISCUSSION

CLAIMANT SUSTAINED A COMPENSABLE INJURY AUGUST 5, 1968, WHILE EMPLOYED AS A DRYER GRADER. INITIALLY, SHE WAS SEEN BY DR. SAMUEL FOR CHIROPRACTIC TREATMENTS AND SUBSEQUENTLY CONSULTED DR. LUCE. IN APRIL, 1969, A LAMINOTOMY AND FORAMINOTOMY WAS PERFORMED. CLAIMANT RETURNED TO WORK IN NOVEMBER FOR TWO DAYS AND HAS NOT WORKED SINCE. THE ABOVE PROCEDURES WERE CARRIED OUT A SECOND TIME IN JANUARY OF 1971. TWO DETERMINATION ORDERS AWARDED CLAIMANT 128 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY.

FOLLOWING THE LAST PROCEDURE, CLAIMANT WAS REFERRED TO THE BOARD'S DISABILITY PREVENTION DIVISION IN PORTLAND. AFTER EXAMINATION AND EVALUATION SHE WAS DISCHARGED WITH MODERATE PHYSICAL DISABILITY.

A PROGRAM INITIATED BY THE DEPARTMENT OF VOCATION REHABILITATION TO ASSIST CLAIMANT IN RETRAINING WAS NOT SUCCESSFUL WHEN SHE LOST INTEREST IN EDUCATIONAL PURSUITS.

THE HEARING OFFICER FOUND CLAIMANT'S AGE (36), MENTAL CAPACITY, ABILITY TO BE RETRAINED, AND MOTIVATION PRECLUDED PLACING HER IN THE "ODD-LOT" CATEGORY. THE HEARING OFFICER ALSO FOUND CLAIMANT HAD AN OBLIGATION TO SEEK RETRAINING, BUT LACKED MOTIVATION FOR DOING SO. THIS FINDING PRECLUDED AN AWARD OF PERMANENT TOTAL DISABILITY.

THE HEARING OFFICER GRANTED AN AWARD OF UNSCHEDULED LOW BACK DISABILITY EQUAL TO 200 DEGREES AND THE BOARD, ON REVIEW, CONCURS THIS AWARD ADEQUATELY COMPENSATES CLAIMANT FOR THE DISABILITY SUSTAINED.

THE BOARD ALSO AGREES WITH THE HEARING OFFICER'S OPINION THAT THE TESTIMONY OF DR. SAMUELS, D. C., IS ACCORDED ADMISSIBILITY EQUAL TO THAT ACCORDED ANY OTHER MEDICAL WITNESS.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 28, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 73-482

OCTOBER 19, 1973

MARIE JANSSEN, CLAIMANT

J. W. MCCracken, JR., CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS REVIEW OF THE HEARING OFFICER'S ORDER AFFIRMING THE STATE ACCIDENT INSURANCE FUND'S DENIAL OF LIABILITY FOR CERTAIN MEDICAL TREATMENT.

ISSUE

WAS THE MEDICAL TREATMENT CLAIMANT RECEIVED ON DECEMBER 20, 1972, NECESSITATED BY THE CLAIMANT'S COMPENSABLE INJURY?

DISCUSSION

ON MARCH 30, 1970, CLAIMANT WAS INJURED IN AN AUTOMOBILE ACCIDENT FOR WHICH SHE RECEIVED REGULAR AND CONTINUING MEDICAL CARE. THE INDUSTRIAL ACCIDENT OCCURRED AUGUST 15, 1972, AND CLAIMANT RECEIVED TREATMENT BY THE SAME DOCTOR AND PHYSIOTHERAPIST WHO WERE TREATING HER FOR THE AUTOMOBILE ACCIDENT.

THE HEARING OFFICER, HAVING IN THIS CASE, THE IMPORTANT ADVANTAGE OF HEARING AND SEEING THE WITNESSES TESTIFY, CONCLUDED THAT THE MEDICAL CARE RECEIVED DECEMBER 20, 1972, WAS NECESSITATED BY THE AUTOMOBILE ACCIDENT AND NOT BY HER INDUSTRIAL ACCIDENT. HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 1, 1973, IS AFFIRMED.

WCB CASE NO. 72-2010

OCTOBER 19, 1973

EILEEN SMITH, CLAIMANT

BABCOCK AND ACKERMAN, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT, A 45 YEAR OLD MARRIED WAITRESS AND NURSES AIDE, SUSTAINED A LOW BACK INJURY SEPTEMBER 22, 1966. THAT CLAIM WAS CLOSED WITH 10 PERCENT LOSS OF AN ARM BY SEPARATION FOR UNSCHEDULED

DISABILITY. ANOTHER COMPENSABLE INJURY OCCURRED MAY 3, 1969, TO THE SAME LUMBOSACRAL AREA. THIS CLAIM WAS CLOSED WITH NO PERMANENT PARTIAL DISABILITY. THE 1966 INJURY WAS THEREAFTER REOPENED AND ULTIMATELY A LAMINECTOMY AND DISC REMOVAL WAS PERFORMED. CLAIMANT WAS THEN AWARDED 28.8 DEGREES FOR UNSCHEDULED DISABILITY AND 16.5 DEGREES FOR PARTIAL LOSS OF THE LEFT LEG. THE CLAIMANT NOW ALLEGES PERMANENT TOTAL DISABILITY UNDER THE 'ODD LOT' DOCTRINE.

THE MEDICAL EVIDENCE ESTABLISHES THAT THE CLAIMANT IS NOT TOTALLY DISABLED AND THAT SHE PROBABLY SHOULD AND COULD RETURN TO HER FORMER OCCUPATION BUT IT IS UNLIKELY THAT SHE WILL DO SO BECAUSE OF A SEVERE BUT UNRELATED FUNCTIONAL OVERLAY. THE BACK EVALUATION CLINIC FELT THE LOSS OF FUNCTION OF THE BACK DUE TO THIS INJURY WAS MILD.

THE THEORY OF THE CLAIMANT'S BRIEF THAT SOCIETY OUGHT TO PROTECT THE CLAIMANT FOR 'TREATMENT FAILURE' IS NOT NOW A PART OF THE WORKMEN'S COMPENSATION LAW. THE EVIDENCE OF LACK OF MOTIVATION AND THE RATIONALE OF THE DEATON CASE, (DEATON V. SAIF, 97 OR ADV SH 126, --- OR APP---, (1973)) PRECLUDES A FINDING OF PERMANENT TOTAL DISABILITY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 9, 1973 IS AFFIRMED.

WCB CASE NO. 73-259

OCTOBER 19, 1973

JACK F. GRUBER, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE FUND REQUESTS BOARD REVERSAL OF THE HEARING OFFICER'S AWARD OF PERMANENT TOTAL DISABILITY.

ISSUE

IS THE CLAIMANT PERMANENTLY TOTALLY DISABLED?

DISCUSSION

CLAIMANT SUSTAINED A COMPENSABLE NECK INJURY MAY 10, 1968. SURGERY FOR CERVICAL DISC RESULTED IN LOSS OF VISION OF HIS RIGHT EYE. THERE WAS SUBSEQUENT SURGERY FOR REMOVAL OF A CERVICAL DISC IN 1972.

CLAIMANT IS A 42 YEAR OLD FUNCTIONALLY ILLITERATE WORKMAN WITH AN EIGHTH GRADE EDUCATION WITH EXPERIENCE IN LABORING TYPE EMPLOYMENT ONLY. PHYSICAL REHABILITATION AND VOCATIONAL REHABILITATION EFFORTS WERE UNSUCCESSFUL.

A HEARING OFFICER OBSERVED THE CLAIMANT AND FOUND THAT HE WAS A FUNCTIONALLY ILLITERATE LABORER, BLIND IN THE RIGHT EYE, UNABLE TO DO HEAVY LIFTING AND UNABLE TO STAND VERY LONG.

THE BOARD CONCURS WITH THE HEARING OFFICER THAT PERMANENT TOTAL DISABILITY IS PROVED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 2, 1973, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-946 OCTOBER 19, 1973

JULIUS COLEMAN, CLAIMANT
CHARLES R. CATER, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH SUSTAINED THE DENIAL OF CLAIMANT'S CLAIM BY THE STATE ACCIDENT INSURANCE FUND.

ISSUE

DID CLAIMANT SUFFER A COMPENSABLE MYOCARDIAL INFARCTION IN THE COURSE OF HIS EMPLOYMENT?

DISCUSSION

CLAIMANT, AGE 65, WAS EMPLOYED AS A FALLER AND BUCKER AND ON SEPTEMBER 25, 1971, SUFFERED A MYOCARDIAL INFARCTION. THIS DIAGNOSIS IS NOT QUESTIONED.

AT THE HEARING, CLAIMANT DESCRIBED HIS WORK ACTIVITIES ON THE MORNING OF SEPTEMBER 25. HE TESTIFIED THE SECOND TREE HE CUT GOT HUNG UP IN TWO OTHER TREES. WHILE CUTTING ONE OF THE TREES, IT STARTED UPROOTING AND HE JUMPED OVER DEBRIS AND RAN 40 FEET AWAY. A MINUTE LATER SEVERE PAINS HIT HIM IN THE CHEST.

THE EMPLOYER LEARNED ABOUT CLAIMANT'S HEART ATTACK SOON THEREAFTER, BUT WAS NOT AWARE UNTIL DECEMBER 24, 1971 THAT CLAIMANT THOUGHT IT SHOULD BE COMPENSABLE.

WHEN CLAIMANT WAS INTERVIEWED BY THE FUND'S INVESTIGATOR, NO MENTION WAS MADE OF THE ALLEGED TREE "HANGING UP" INCIDENT. DR. JONES, THE TREATING PHYSICIAN, TESTIFIED CLAIMANT HAD NOT TOLD HIM OF THE INCIDENT WHILE TAKING THE HISTORY.

IN AN UNWITNESSED ALLEGED INDUSTRIAL INJURY, CLAIMANT'S CREDIBILITY IS A DECISIVE FACTOR AND TOGETHER WITH A DELAY OF FOUR MONTHS IN FILING SUCH CLAIM OF INJURY, THE HEARING OFFICER FOUND CLAIMANT HAD FAILED TO SUSTAIN THE BURDEN OF PROVING A COMPENSABLE INJURY. ON REVIEW, THE BOARD CONCURS WITH THIS FINDING.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 9, 1973, IS AFFIRMED.

WCB CASE NO. 71-2453 OCTOBER 19, 1973

DONNA M. MCCULLOCH, CLAIMANT
BEDDOE AND HAMILTON, CLAIMANT'S ATTY.
PHILIP A. MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT, A 42 YEAR OLD GROCERY CHECKER, SUFFERED A COMPENSABLE LOW BACK INJURY JULY 20, 1970 WHICH REQUIRED TREATMENT BY LAMINECTOMY. A DETERMINATION ORDER DATED SEPTEMBER 17, 1971 AWARDED HER 64 DEGREES FOR UNSCHEDULED DISABILITY.

THE ATTENDING PHYSICIAN FINDS ONLY MINIMAL OBJECTIVE FINDINGS. THE DISABILITY PREVENTION DIVISION REPORTS CLAIMANT COULD, WITH RELATIVE EASE, INVOLVE HERSELF IN A TRAINING PROGRAM TO LEARN NEW SKILLS IF SHE MUST DO LIGHTER WORK BUT THE BACK EVALUATION CLINIC FOUND NO OBJECTIVE EVIDENCE OF PHYSICAL IMPAIRMENT. THERE IS A MARKED FUNCTIONAL OVERLAY. THE CLAIMANT HAS NOT AVAILED HERSELF OF THE SERVICES OF THE DIVISION OF VOCATIONAL REHABILITATION ALTHOUGH PSYCHOLOGICAL AND MEDICAL REPORTS INDICATE THIS WOULD BE HELPFUL. IN LIGHT OF THIS EVIDENCE THE BOARD IS PERSUADED CLAIMANT'S DISABILITY DOES NOT EXCEED THAT AWARDED BY THE DETERMINATION ORDER AND AFFIRMED BY THE HEARING OFFICER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 10, 1973 IS AFFIRMED.

JAMES D. PUCKETT, CLAIMANT
QUENTIN D. STEELE, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT, A 47 YEAR OLD LOG TRUCK DRIVER, REQUESTS AN AWARD OF PERMANENT TOTAL DISABILITY RATHER THAN THE 224 DEGREES FOR UNSCHEDULED DISABILITY AWARD GRANTED BY THE DETERMINATION ORDER AND AFFIRMED BY THE HEARING OFFICER.

DISCUSSION

CLAIMANT RECEIVED A SUBSTANTIAL INDUSTRIAL INJURY IN 1958 AND UNDERWENT TWO SURGERIES INVOLVING THE LOW BACK. SUBSEQUENT TO THIS INDUSTRIAL ACCIDENT CLAIMANT HAS HAD A FUSION WHICH WAS LATER FOUND TO BE NOT SOLID AND HAD A SUBSEQUENT FUSION IN THE SAME AREA.

MEDICAL REPORTS SHOW A FUNCTIONAL OVERLAY AND THAT THE CLAIMANT COULD NOT DO HEAVY WORK BUT THAT THERE IS NO ORTHOPEDIC REASON WHY THE CLAIMANT SHOULD NOT DO LIGHT MODERATE TYPES OF WORK. IN FACT, GAINFUL EMPLOYMENT SHOULD BE ATTEMPTED AND FROM A PSYCHIATRIC STANDPOINT, CLAIMANT DOES NOT HAVE ANY IMPAIRMENT TO PRECLUDE HIM FROM EMPLOYMENT. THUS, FROM BOTH AN ORTHOPEDIC AND PSYCHIATRIC STANDPOINT CLAIMANT IS NOT SO IMPAIRED THAT HE IS INCAPABLE OF SOME GAINFUL EMPLOYMENT. THE AWARD OF 224 DEGREES ADEQUATELY COMPENSATES CLAIMANT FOR HIS RESIDUAL DISABILITY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED APRIL 9, 1973 IS AFFIRMED.

WCB CASE NO. 73-308 OCTOBER 19, 1973
WCB CASE NO. 73-309 OCTOBER 19, 1973

FRED HANNA, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH SUSTAINED THE DENIALS BY THE STATE ACCIDENT INSURANCE FUND.

ISSUE

DID CLAIMANT SUSTAIN TWO COMPENSABLE INJURIES IN THE COURSE OF HIS EMPLOYMENT?

DISCUSSION

TWO CLAIMS, DENIED AS COMPENSABLE BY THE STATE ACCIDENT INSURANCE FUND, WERE CONSOLIDATED FOR HEARING. CLAIMANT, AGE 52, FILED A CLAIM ON OCTOBER 3, 1972, WHILE EMPLOYED AT THE BLARNEY CASTLE FOR AN ALLEGED INJURY OCCURRING JULY 21, 1972. ON OCTOBER 6, 1972, HE FILED A CLAIM AGAINST HENRY THIELES' RESTAURANT ALLEGING AN INDUSTRIAL INJURY ON SEPTEMBER 14, 1972.

CLAIMANT HAD SUSTAINED A COMPENSABLE INJURY IN FEBRUARY, 1971 AND HAD UNDERGONE SURGERY FOR A HERNIATED DISC. HIS TESTIMONY INDICATED A GOOD RECOVERY AND A RETURN TO RELATIVELY HEAVY WORK.

ON REVIEW, THE BOARD IS FACED WITH A RECORD SO COMPLETELY FILLED WITH DISCREPANCIES RELATING TO THE MECHANICS, DATES, MEDICAL HISTORIES AND SYMPTOMS, IT CAN, AT BEST, ONLY RELY ON THE FINDINGS AND CONCLUSIONS REACHED BY THE HEARING OFFICER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 5, 1973, SUSTAINING THE DENIALS BY THE STATE ACCIDENT INSURANCE FUND, IS HEREBY AFFIRMED.

WCB CASE NO. 72-2796 OCTOBER 19, 1973

CARMEN O. BOGARD, CLAIMANT
EDWIN A. YORK, CLAIMANT'S ATTY.
HOMER L. ALLEN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED A PERMANENT PARTIAL DISABILITY EQUIVALENT TO 10 PERCENT OF HER LEFT LOWER EXTREMITY, OR 15 PERCENT OF A POSSIBLE 150 DEGREES.

ISSUES

1. THE COMPENSABILITY OF THE PRESENT CONDITION OF THE DERANGEMENT OF THE LEFT LEG.
2. EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY.

DISCUSSION

CLAIMANT WAS A 59 YEAR OLD JANITRESS WHEN SHE INJURED HER LEFT KNEE WHILE MOVING A PATIENT'S BED. CLAIMANT HAS APPEALED FROM A PARTIAL DENIAL, AND THE ISSUE IS WHETHER THE INTERNAL DERANGEMENT OF THE LEFT KNEE IS THE RESULT OF THE COMPENSABLE INJURY.

THE MECHANICS OF THE ACCIDENT, AS DEMONSTRATED AT THE HEARING, DID NOT PRESENT A CLEAR PICTURE OF THE INCIDENT. IN ADDITION, A DEFINITIVE CLINICAL DIAGNOSIS HAS NOT BEEN MADE BY THE TREATING AND CONSULTING DOCTORS, AND CLAIMANT HAS REFUSED SUGGESTED MEDICAL PROCEDURES.

THE HEARING OFFICER, GIVING CLAIMANT THE BENEFIT OF DOUBT, AWARDED 15 DEGREES OF A POSSIBLE 150 DEGREES FOR HER LEFT LEG DISABILITY. THE BOARD CONCURS WITH THIS AWARD.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 19, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 72-2114 OCTOBER 19, 1973

CAROL HEATLEY, CLAIMANT
COLLINS, FERRIS, REDDEN AND VELURE,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER MADE PURSUANT TO ORS 656.268, AWARDING 16 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S DISABILITY?

DISCUSSION

CLAIMANT WAS WORKING AS A NURSE'S AIDE AND WHILE LIFTING A PATIENT, INJURED HER BACK NOVEMBER 17, 1971, SUSTAINING A LUMBAR STRAIN AND A MILD LUMBOSACRAL SPRAIN.

DR. LILLY REPORTED MILD DEGENERATIVE CHANGES, NO NERVE ROOT COMPRESSION AND FELT CLAIMANT WOULD RECOVER WITHOUT ANY PERMANENT RESIDUAL DISABILITY. DR. KILGORE, A PSYCHIATRIST, CONCLUDED THERE WAS A LARGE SECONDARY GAIN FACTOR INVOLVED IN CLAIMANT'S CASE.

BASED ON THE LACK OF OBJECTIVE MEDICAL EVIDENCE AND SOME LACK OF MOTIVATION ON CLAIMANT'S BEHALF, THE HEARING OFFICER CONCLUDED THE PERMANENT PARTIAL DISABILITY DID NOT EXCEED THE AWARD OF 16 DEGREES UNSCHEDULED LOW BACK DISABILITY. THE BOARD CONCURS.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 1, 1973, IS AFFIRMED.

HAL G. MOORE, CLAIMANT
MYRICK, COULTER, SEAGRAVES AND
NEALY, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH SUSTAINED THE DENIAL OF THE STATE ACCIDENT INSURANCE FUND.

ISSUE

IS CLAIMANT'S CORONARY ARTERY BY-PASS SURGERY COMPENSABLY RELATED TO HIS INDUSTRIAL INJURY?

DISCUSSION

CLAIMANT HAD ESTABLISHED A WORKMEN'S COMPENSATION CLAIM IN CONNECTION WITH CHEST SYMPTOMS IN SEPTEMBER, 1970. THIS REVIEW IS CONCERNED WITH THE QUESTION OF WHETHER OR NOT A SUBSEQUENT CORONARY ARTERY BY-PASS SURGERY SHOULD BE ACCEPTED BY THE STATE ACCIDENT INSURANCE FUND AS A COMPENSABLE CLAIM FOR BENEFITS ON ACCOUNT OF AGGRAVATION. THE HEARING OFFICER SUSTAINED THE STATE ACCIDENT INSURANCE FUND'S DENIAL OF RESPONSIBILITY.

THE BOARD DOES NOT CONCUR WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER.

THE BOARD HAS CONSIDERED THE OPINIONS EXPRESSED BY THREE MEDICAL EXPERTS, DR. EDWARD B. STINSON, DR. DONALD N. WYSHAM AND DR. R. H. FRANTZ, THE STANFORD UNIVERSITY MEDICAL GROUP WHO PERFORMED THE BY-PASS SURGERY. ALTHOUGH CAUTIOUSLY WORDED, (A DENOTATION OF EXPERTISE) THESE OPINIONS EXPRESSED CAUSAL RELATIONSHIP BETWEEN THE CARDIAC SURGERY AND THE MYOCARDIAL INFARCTION OF DECEMBER, 1970. DOCTORS PARCHER AND GRISWOLD, WHO EXPRESSED A CONTRARY OPINION, WERE NOT INVOLVED IN THE TREATMENT OR EXAMINATION OF THE CLAIMANT.

LEGAL CAUSATION HAS BEEN ESTABLISHED, AND AS IN MOST HEART CASES, THE QUESTION OF MEDICAL CAUSATION IS A CLOSE ONE. AS STATED IN CLAIMANT'S BRIEF, THE BOARD CAN LOOK TO THE RECENT LANGUAGE BY THE COURT OF APPEALS WHEREIN THE DECISIONS IN THIS ADMITTEDLY UNCERTAIN AREA ARE TO BE WEIGHED IN THE LIGHT OF THE PROBLEM PRESENTED TO THE EXPERT.

IN VIEW OF THE ABOVE, THE BOARD FINDS CLAIMANT'S CLAIM INVOLVING A CORONARY ARTERY BY-PASS TO BE A COMPENSABLE AGGRAVATION OF HIS SEPTEMBER, 1970 INFARCTION.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 25, 1973, IS REVERSED AND CLAIMANT'S CLAIM IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR ACCEPTANCE AND PAYMENT OF COMPENSATION REQUIRED BY LAW.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF ONE THOUSAND DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 73-664 OCTOBER 22, 1973

RODNEY S. WRIGHT, CLAIMANT
EDWIN A. YORK, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED AN ADDITIONAL 22 DEGREES FOR PARTIAL LOSS OF THE RIGHT LEG MAKING A TOTAL OF 30 DEGREES OF A POSSIBLE 150 DEGREES.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HIS RIGHT FOOT AND LEG APRIL 7, 1971. A SUBSEQUENT EXACERBATION OCCURRED IN 1972 WHEN CLAIMANT STEPPED FROM A PLATFORM.

SINCE THIS EPISODE, CLAIMANT'S CONDITION HAS BEEN DIAGNOSED AS CHRONIC VENOUS INSUFFICIENCY, TEARING OF THE MEDIAL MENISCUS AND BURSITIS OF THE LEG AND KNEE.

THE HEARING OFFICER WAS FACED WITH A DIFFICULT PROBLEM IN ATTEMPTING TO SEGREGATE THE DISABILITY ATTRIBUTABLE TO THE INDUSTRIAL INJURY FROM THE DISABILITY CAUSED BY UNRELATED CONDITIONS. FROM OUTWARD APPEARANCE AT THE HEARING, CLAIMANT WAS SUFFERING REAL PAIN. PAIN IN AND OF ITSELF, HOWEVER, IS COMPENSABLE ONLY WHEN IT PRODUCES DISABILITY.

THE HEARING OFFICER FOUND CLAIMANT TO HAVE PERMANENT PARTIAL DISABILITY OF 20 PERCENT LOSS OF HIS RIGHT LEG OR 30 DEGREES, BEING AN INCREASE OF 22 DEGREES. THE BOARD ON REVIEW CONCURS WITH THIS FINDING OF DISABILITY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 5, 1973 IS AFFIRMED.

OCTOBER 22, 1973

W. C. WYLES, CLAIMANT

R. A. STANDLEY, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVERSAL OF THE HEARING OFFICER'S
DISMISSAL OF HIS CLAIM FOR AGGRAVATION.

ISSUE

WAS THE MEDICAL REPORT SUBMITTED IN SUPPORT OF THE CLAIM
FOR AGGRAVATION ADEQUATE TO INVEST THE HEARING OFFICER WITH
JURISDICTION TO HEAR THE CASE?

DISCUSSION

CLAIMANT WAS INJURED IN A LOGGING ACCIDENT IN 1966 AND BY
STIPULATION THAT CLAIM WAS CLOSED IN 1969 WITH AN AGREED 75
PERCENT PERMANENT PARTIAL DISABILITY. THE MEDICAL REPORT JUST
PRIOR TO THAT STIPULATED PERMANENT PARTIAL DISABILITY AWARD
STATED IN THE OPINION OF THE ATTENDING DOCTOR THAT CLAIMANT WAS
PERMANENTLY TOTALLY DISABLED.

THIS CLAIM FOR AGGRAVATION IS SUPPORTED BY NO MEDICAL OPINION
THAT THE CLAIM OF 1966 HAS BEEN AGGRAVATED OTHER THAN BY REFERENCE
TO THE MEDICAL REPORT AND OPINION PRIOR TO THE STIPULATED 75
PERCENT AWARD, GIVING THE OPINION OF PERMANENT TOTAL DISABILITY.
IN FACT, THE MEDICAL REPORTS SUBSEQUENT TO THE STIPULATED
PERMANENT PARTIAL DISABILITY AWARD SUBSTANTIALLY REFLECT THAT
THERE HAS BEEN NO ACTUAL WORSENING OF CLAIMANT'S CONDITION.

CICRICH V. SIAC, 143 OR 637, (1933) HOLDS THAT INTRODUCTION
OF EVIDENCE WHICH IN ITS FINAL ANALYSIS IMPEACHES THE FINAL AWARD
IS IMPROPER AND THAT THE TRUE TEST FOR AGGRAVATION SHOULD BE
WHETHER THERE HAD BEEN AN AGGRAVATION OF THE WORKMAN'S CONDITION
SINCE THE LAST AWARD.

THE BOARD CONCLUDES THAT THE REQUEST FOR HEARING WAS
APPROPRIATELY DISMISSED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED APRIL 20, 1973 IS
AFFIRMED.

WCB CASE NO. 73-581 OCTOBER 22, 1973

DONALD LANE, CLAIMANT
BABCOCK AND ACKERMAN, CLAIMANT'S ATTYS.
JAQUA AND WHEATLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF THE HEARING OFFICER'S ORDER AFFIRMING A SECOND DETERMINATION ORDER'S AWARD OF PERMANENT DISABILITY, CONTENDING HIS DISABILITY EXCEEDS THAT AWARDED.

DISCUSSION

CLAIMANT, A 36 YEAR OLD MILLWORKER, SUSTAINED AN INDUSTRIAL INJURY IN JANUARY, 1967. THIS CLAIM WAS CLOSED WITH AN AWARD OF 19 DEGREES FOR UNSCHEDULED DISABILITY. BY STIPULATION, THE PARTIES RAISED THIS AWARD TO 38 DEGREES. THEREAFTER THE CLAIMANT'S CLAIM WAS REOPENED FOR A SPINAL FUSION AT L5-S1. A SECOND DETERMINATION ORDER AWARDED AN ADDITIONAL 9.6 DEGRES WHICH THE HEARING OFFICER AFFIRMED.

CLAIMANT HAS A FUNCTIONAL OVERLAY AND HIS PERSONAL DRINKING PROBLEMS UNDOUBTEDLY CAUSED THE TERMINATION OF EMPLOYMENT RATHER THAN HIS INDUSTRIAL INJURY.

CLAIMANT HAS APPARENTLY NOW OVERCOME HIS PERSONAL DRINKING PROBLEMS AND IS NEARING COMPLETION OF RETRAINING AS A WELDER.

THE PREPONDERANCE OF MEDICAL EVIDENCE SHOW THAT THE CLAIMANT IS PHYSICALLY ABLE TO RETURN TO TYPES OF MANUAL WORK HE HAS DONE IN THE PAST AND WE CONCLUDE THEREFORE, THAT THE ORDER OF THE HEARING OFFICER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 12, 1973 IS AFFIRMED.

WCB CASE NO. 72-3195 OCTOBER 22, 1973

JOSEPH LUNDQUIST, CLAIMANT
ROD KIRKPATRICK, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT, A 60 YEAR OLD MILLWRIGHT, REQUESTS AN INCREASE OF A HEARING OFFICER'S AWARD OF A TOTAL OF 30 PERCENT FOR UNSCHEDULED DISABILITY IN THE LOW BACK ARISING OUT OF AN ACCIDENT OF JULY 31, 1970.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT HAD A PREVIOUS LOW BACK INJURY IN 1965 FOR WHICH HE WAS AWARDED 30 PERCENT PERMANENT PARTIAL DISABILITY OF THE LOW BACK. A LAMINECTOMY WAS PERFORMED AFTER THE 1965 INJURY AND THE CLAIMANT WAS RELEASED TO RETURN TO HIS REGULAR EMPLOYMENT.

THE MOTIVATION AND CREDIBILITY OF THIS 60 YEAR OLD WORKMAN WHO HAS JUST RECEIVED DISABILITY UNDER SOCIAL SECURITY, IS QUESTIONED ON THE EVIDENCE AND RECORD OF THIS HEARING ONLY. OBVIOUSLY, ANY CHALLENGE TO CREDIBILITY DUE TO PERSONAL KNOWLEDGE DERIVED FROM A PREVIOUS HEARING IS INAPPROPRIATE.

BASED ON THE ENTIRE RECORD, THE CLAIMANT HAS NOT PROVED PERMANENT TOTAL DISABILITY BUT THE COMBINATION OF PHYSICAL INJURY AND MODERATE PSYCHOPATHOLOGY MAKES AN AWARD OF 50 PERCENT PERMANENT TOTAL DISABILITY MORE APPROPRIATE THAN THE 30 PERCENT ALLOWED BY THE HEARING OFFICER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED APRIL 26, 1973 IS ACCORDINGLY MODIFIED TO ALLOW CLAIMANT A TOTAL OF 160 DEGREES OR 50 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY OF THE LOW BACK, THIS BEING AN INCREASE OF PERMANENT PARTIAL DISABILITY OF 64 DEGREES MORE THAN THE HEARING OFFICER ALLOWED.

CLAIMANT'S ATTORNEY IS ALLOWED AN ATTORNEY'S FEE EQUAL TO 25 PERCENT OF THE INCREASED COMPENSATION GRANTED HEREBY AND PAYABLE FROM SAID AWARD. IN NO EVENT, HOWEVER, SHALL THE FEE ALLOWED BY THE HEARING OFFICER AND BY THIS ORDER EXCEED A MAXIMUM OF FIFTEEN HUNDRED DOLLARS.

WCB CASE NO. 73-231

OCTOBER 22, 1973

RICHARD SANDERS, CLAIMANT
COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE FUND REQUESTS REDUCTION OF THE PERMANENT DISABILITY AWARD MADE BY THE HEARING OFFICER.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

ON NOVEMBER 19, 1971 CLAIMANT, A THEN 38 YEAR OLD CARPET LAYER, INJURED HIS BACK, NECK AND SHOULDER LIFTING A CARPET OUT OF A TRUCK. AFTER A SHORT PERIOD OF TEMPORARY TOTAL DISABILITY HE RETURNED TO WORK AND WORKED CONTINUOUSLY FOR APPROXIMATELY SEVEN MONTHS WHEN HE AGAIN RECEIVED MEDICAL CARE FOR COMPLAINTS IN THE RIGHT SHOULDER. HIS CLAIM WAS CLOSED ON JANUARY 16, 1973 WITH 32 DEGREES FOR UNSCHEDULED DISABILITY IN THE RIGHT SHOULDER. CLAIMANT APPEALED THAT ORDER AND THE HEARING OFFICER FOUND HIS DISABILITY EQUALLED 160 DEGREES.

ALTHOUGH THE ACTUAL DISABILITY FROM AN OBJECTIVE STANDPOINT WAS CONSIDERED MINIMAL BY THE DISABILITY PREVENTION DIVISION, IT DOES PREVENT CLAIMANT'S RETURN TO CARPET LAYING. CLAIMANT HAS CHANGED HIS OCCUPATION, HE IS NOW RAISING CHICKENS AND MAKING AN AVERAGE SUCCESS OF THE BUSINESS IN ITS BEGINNING.

THE FACT THAT CLAIMANT HAS SUCCESSFULLY MOVED INTO THE CHICKEN RAISING BUSINESS BUT HAS SUFFERED A SUBSTANTIAL LOSS OF EARNING FROM HIS CARPET LAYING DAYS AS SUCH DOES NOT PROVE, AS THE HEARING OFFICER CONCLUDED, 'A SUBSTANTIAL LOSS OF EARNING CAPACITY'. THE LOSS OF EARNING CAPACITY MUST BE DETERMINED FROM HIS PRESENT CONDITION AND AN EVALUATION OF HIS FUTURE PROSPECTS, AND NOT DEFINITELY JUDGED ON PRESENT INCOME AS COMPARED TO PRE-ACCIDENT INCOME LEVELS.

CLAIMANT'S SUPERIOR INTELLECTUAL RESOURCES AND APTITUDES REMAINING INDICATE AN EARNING CAPACITY EXCEEDING 50 PERCENT. THE BOARD CONCLUDES, AFTER REVIEWING THE ENTIRE RECORD, THAT CLAIMANT'S PERMANENT PARTIAL DISABILITY EQUALS 35 PERCENT.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 9, 1973 IS SET ASIDE AND IN LIEU THEREOF CLAIMANT IS HEREBY AWARDED AN ADDITIONAL 80 DEGREES MAKING A TOTAL OF 112 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED RIGHT SHOULDER DISABILITY.

CLAIMANT'S ATTORNEYS ARE ENTITLED TO 25 PERCENT OF THE INCREASED COMPENSATION AWARDED HEREBY, PAYABLE OUT OF SAID AWARD, AS A REASONABLE ATTORNEY'S FEE. IN NO EVENT HOWEVER, SHALL THE FEE ALLOWED HEREBY, WHEN COMBINED WITH ANY FEES RECEIVED PURSUANT TO THE HEARING OFFICER'S ORDER, EXCEED FIFTEEN HUNDRED DOLLARS.

WCB CASE NO. 72-3260 OCTOBER 22, 1973

LOUIS CUMMINGS, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS,
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE FUND REQUESTS BOARD REVIEW OF THE HEARING OFFICER'S ORDER DENYING THE MOTION TO QUASH, ESTABLISHING THE DATE OF ENTITLEMENT TO PERMANENT TOTAL DISABILITY OF APRIL 9, 1969, THE DATE OF THE DETERMINATION ORDER AND ASSESSING A PENALTY AND CLAIMANT'S ATTORNEY'S FEE TO BE PAID BY THE FUND.

DISCUSSION

THE STIPULATED FACTS ARE WELL STATED IN THE HEARING OFFICER'S OPINION AND ORDER. THE CLAIMANT'S CONDITION WAS MEDICALLY STATIONARY AS OF APRIL 9, 1969. THE CIRCUIT COURT AWARDED PERMANENT TOTAL DISABILITY WITHOUT CONSIDERING OR SPECIFYING THE EFFECTIVE DATE.

BASED ON THE RATIONALE EXPRESSED IN THE RECENT ORDER ON REVIEW IN THE MATTER OF THE COMPENSATION OF EZRA E. ZINN, CLAIMANT, WCB CASE NO. 72-3028, THE ORDER OF THE HEARING OFFICER IS CORRECT. THE BOARD CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 14, 1973, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-471-E OCTOBER 22, 1973

HARLAN E. HALL, CLAIMANT

CHARLES R. CATER, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

ON FEBRUARY 3, 1972 THE WORKMEN'S COMPENSATION BOARD, PURSUANT TO ORS 656.278(1), ORDERED THE STATE ACCIDENT INSURANCE FUND TO REOPEN CLAIMANT'S CLAIM AND PROVIDE HIM FURTHER COMPENSATION AND MEDICAL TREATMENT.

PURSUANT TO ORS 656.278(3) THE STATE ACCIDENT INSURANCE FUND REQUESTED A HEARING WHICH WAS DULY HELD. THE STATE ACCIDENT INSURANCE FUND NOW REQUESTS BOARD REVIEW CONTENDING THE HEARING OFFICER ERRED IN -

1. FAILING TO CONSIDER AND RULE ON THE CONSTITUTIONALITY OF THE BOARD'S OWN MOTION PROCEDURE USED IN THIS MATTER.
2. HOLDING THAT THE DEFENDANT HAD THE BURDEN OF PROOF.
3. HOLDING THAT CLAIMANT WAS ENTITLED TO ADDITIONAL COMPENSATION AND PAYMENT OF HIS ATTORNEY FEES BY THE STATE ACCIDENT INSURANCE FUND.

THE HEARING OFFICER CORRECTLY RULED THAT THE CONSTITUTIONAL ISSUES RAISED BY THE FUND WERE NOT PROPERLY BEFORE HIM. THE GENERAL RULE IS THAT ADMINISTRATIVE AGENCIES DO NOT DETERMINE THE CONSTITUTIONALITY OF STATUTES UNDER WHICH THEY ACT AND THAT THEY MUST ASSUME THEM CONSTITUTIONAL UNTIL A JUDICIAL DECLARATION TO THE CONTRARY. AM JUR 2D ADMINISTRATIVE LAW, 185.

BECAUSE THE BOARD ASSUMES ORS 656,278 CONSTITUTIONAL AND BECAUSE IT HAS PROPERLY FOLLOWED THE PROCEDURES REQUIRED UNDER THAT SECTION, THE BOARD CONCLUDES THAT THE STATE ACCIDENT INSURANCE FUND'S OBJECTIONS TO THE CONSTITUTIONALITY AND REGULARITY OF THE PROCEDURE ARE NOT WELL TAKEN.

IN HIS ORDER THE HEARING OFFICER CONCLUDED THAT BECAUSE THE BOARD'S ORIGINAL ORDER IN EFFECT REJECTED THE FUND'S INTERVENING ACCIDENT CONTENTION, THE BOARD'S OWN MOTION ORDER MAY WELL CONSTITUTE RES JUDICATA ON THIS ASSERTED DEFENSE. THE ORIGINAL ORDER ISSUED EX PARTE. THE DOCTRINE OF RES JUDICATA REQUIRES THE PARTY BE GIVEN HIS DAY IN COURT WHICH IT HAD NOT YET HAD, THEREFORE THE DOCTRINE DOES NOT APPLY.

REGARDING THE MERITS OF THE CASE, THE BOARD IS PERSUADED BY DR. JOHNSON'S OPINION, AS THE HEARING OFFICER WAS, THAT CLAIMANT IS IN NEED OF FURTHER MEDICAL CARE AND COMPENSATION AS A RESULT OF HIS INJURY OF MARCH 1963.

THE ORDER OF THE HEARING OFFICER AFFIRMING THE BOARD'S ORIGINAL OWN MOTION ORDER AND ALLOWING AN ATTORNEY'S FEE SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 5, 1973 IS AFFIRMED.

COUNSEL FOR CLAIMANT IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-3060 OCTOBER 22, 1973

DANNIE L. JONES, CLAIMANT
LARKIN, BRYANT AND EDMONDS, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

THIS MATTER IS BEFORE THE WORKMEN'S COMPENSATION BOARD UPON THE REQUEST OF THE CLAIMANT THAT THE BOARD EXERCISE ITS CONTINUING JURISDICTION UNDER OWN MOTION POWER GRANTED BY ORS 656,278.

THE BOARD IS IN RECEIPT OF MEDICAL REPORTS INDICATING THAT THE CLAIMANT'S ORIGINAL INJURY IS A MATERIAL CONTRIBUTING FACTOR TO CLAIMANT'S PRESENT CONDITION, AND THAT HIS CLAIM SHOULD BE REOPENED ON THE BOARD'S OWN MOTION.

IT IS HEREBY ORDERED THAT THE CLAIM OF DANNIE L. JONES BE REOPENED FOR FURTHER DIAGNOSTIC PROCEDURES AND TREATMENT OF HIS INJURY RELATED CONDITION.

PURSUANT TO WCB ADMINISTRATIVE ORDER NO. 3-1966, RELATING TO ATTORNEY'S FEES, RONALD L. BRYANT IS ENTITLED TO RECEIVE 25 PERCENT OF CLAIMANT'S TEMPORARY TOTAL DISABILITY TO A MAXIMUM OF ONE HUNDRED FIFTY DOLLARS, FOR HIS SERVICES IN ESTABLISHING CLAIMANT'S ENTITLEMENT TO BENEFITS.

NOTICE OF APPEAL

PURSUANT TO ORS 656.278 -

THE CLAIMANT HAS NO RIGHT TO A HEARING, REVIEW OR APPEAL ON THIS AWARD MADE BY THE BOARD ON ITS OWN MOTION.

THE STATE ACCIDENT INSURANCE FUND MAY REQUEST A HEARING ON THIS ORDER.

THIS ORDER IS FINAL UNLESS WITHIN 30 DAYS FROM THE DATE HEREOF THE STATE ACCIDENT INSURANCE FUND APPEALS THIS ORDER BY REQUESTING A HEARING.

WCB CASE NO. 72-2654 OCTOBER 22, 1973

CARROL M. SALISBURY, CLAIMANT
HUFFMAN AND ZENGER, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED CLAIMANT AN ADDITIONAL PERMANENT PARTIAL DISABILITY AWARD EQUIVALENT TO 45 DEGREES FOR LEFT LEG DISABILITY.

ISSUE

WHAT IS THE EXTENT OF PERMANENT PARTIAL DISABILITY?

DISCUSSION

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HIS LEFT KNEE OCTOBER 9, 1971. A DETERMINATION ORDER ISSUED SEPTEMBER 20, 1972 AWARING CLAIMANT PERMANENT PARTIAL DISABILITY OF 15 PERCENT LOSS OF THE LEFT LEG EQUAL TO 22.5 DEGREES.

THE HEARING OFFICER AND THE BOARD ARE IN AGREEMENT THAT THIS AWARD ACCURATELY REFLECTS THE LOSS OF ORGANIC PHYSICAL FUNCTION OF THE LEG. THE STATE ACCIDENT INSURANCE FUND DOES NOT TAKE ISSUE WITH THIS CONCLUSION. THE FUND DOES OBJECT TO THE HEARING OFFICER'S AWARD OF 30 PERCENT LOSS OF THE LEFT LEG FOR PSYCHOLOGICAL DYSFUNCTION ATTRIBUTABLE TO THE INJURY.

THE BOARD, ON REVIEW, CONCLUDES THE PSYCHOLOGICAL EVALUATION BY NORMAN W. HICKMAN, PH.D., WAS BASED ON ERRONEOUS INFORMATION OFFERED BY THE CLAIMANT. THE RECORD SHOWS CLAIMANT HAD OPPORTUNITY OF RETRAINING UNDER VOCATIONAL REHABILITATION DIVISION, OF WHICH HE DID NOT AVAIL HIMSELF. CLAIMANT INDICATED TO DR. HICKMAN HE HAD NO FINANCIAL PROBLEMS, WHICH WAS UNTRUE. HE FAILED TO MENTION HIS TRANSIENT LIFE STYLE AND HIS ACTIONS CONTRARY TO THE DICTATES OF SOCIETY. IF PSYCHOLOGICAL DYSFUNCTION EXISTS, IT APPEARS UNRELATED TO THE INDUSTRIAL INJURY.

FOR THE REASONS STATED, THE BOARD CONCLUDES THE AWARD OF 15 DEGREES LOSS OF THE LEFT LEG, AS GRANTED BY THE DETERMINATION ORDER, ADEQUATELY COMPENSATES CLAIMANT'S DISABILITY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 9, 1973 IS ACCORDINGLY MODIFIED, AND THE AWARD OF PERMANENT PARTIAL DISABILITY EQUAL TO 15 PERCENT LOSS OF THE LEFT LEG MADE PURSUANT TO ORS 656.268 IS REINSTATED.

WCB CASE NO. 72-2880 OCTOBER 23, 1973

CHARLES G. LEE, CLAIMANT

MOORE, WURTZ AND LOGAN, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE FUND REQUESTS REVERSAL OF THE HEARING OFFICER'S ORDER ALLOWING FURTHER TREATMENT AND TEMPORARY TOTAL DISABILITY COMPENSATION.

DISCUSSION

THE CLAIMANT, A 28 YEAR OLD CARPENTER, RECEIVED A LOW BACK INJURY JULY 15, 1971. TWO DETERMINATION ORDERS HAVE ISSUED AWARDING TEMPORARY TOTAL DISABILITY ONLY. MEDICAL EVIDENCE SHOWS THAT THE PHYSICAL CONDITION IS STATIONARY AND PHYSICAL PERMANENT DISABILITY MINIMAL BUT, THAT AN HYSTERICAL NEUROSIIS IS NOT STATIONARY AND THAT FURTHER PSYCHIATRIC CONSULTATION SHOULD BE AFFORDED TO CLAIMANT WHICH WOULD, MOST PROBABLY, BE PRODUCTIVE IN REDUCING CLAIMANT'S DISABLING MANIFESTATIONS AND INCREASE THE POSSIBILITY OF FAVORABLE REHABILITATION.

DR. HICKMAN RELATES THE PSYCHOPATHOLOGY TO THE INDUSTRIAL INJURY AND RECOMMENDS REHABILITATION AS SOON AS POSSIBLE BEFORE THE SYMPTOMS BECOME MORE FIXED. WE ARE PERSUADED DR. HICKMAN IS CORRECT.

THE BOARD CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 15, 1973, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

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