

SUPPLEMENT NUMBER 2

Circuit Court Supplement for Volume 11 of

VAN NATTA'S WORKMEN'S COMPENSATION REPORTER

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- 5 Vicars, Harold F., No. 397-144, MULTNOMAH, Affirmed.
91 Kanna, Sam, WCB 71-1523, KLAMATH; Affirmed.
95 Carraway, Edward J., WCB 73-262 and 73-484, MULTNOMAH; Affirmed.
107 Van Winkle, William, WCB 74-0637, LANE; Affirmed.
140 Lundquist, Ronald E., WCB 73-1347, MULTNOMAH; Affirmed.
147 Pentecost, Milton, WCB 73-709, WASCO; Affirmed.
160 Verment, Arthur Lee, No. 400-670, MULTNOMAH; Affirmed.
199 Randall, James, WCB 73-1367, DOUGLAS; Back award increased to 240°.
208 Delamare, Cathy B., WCB 71-2548, JACKSON; Affirmed.
212 Worrall, Helen H., WCB 73-1000, MULTNOMAH; Affirmed.
220 Surber, Earl, WCB 72-2372, BAKER; Claimant hereby awarded compensation
for unscheduled permanent partial disability for injury to his neck
equal to 160° or 50 percent of the maximum allowable.
226 Snyder, William Wayne, WCB 73-758, MORROW; Affirmed.
230 Schneider, Mary, No. 402-076, MULTNOMAH; Reversed.
235 Seal, Bertman Delmer, WCB 73-746, COLUMBIA; Claim allowed.
237 Jackson, Alvin, WCB 72-87, JEFFERSON; Affirmed.
244 Jones, Morris (Deceased), No. 74-754-E-1, JACKSON, Reversed.
246 Ballweber, Jacob E., WCB 73-394, CLATSOP; Affirmed.
255 Crouch, Arthur, No. 403-870, MULTNOMAH; Affirmed.
262 Ballew, Clarence, WCB 73-2658, LANE; Award increased to 320°.
268 Locke, Jo, No. 34-389, WASHINGTON; Claim not compensable.
268 Locke, Jo, WCB 73-1035, WASHINGTON; Fee of \$1,000 allowed.
269 Stephens, Arthur, WCB 73-369, MULTNOMAH; Dismissed for want of jurisdiction.
272 Gordon, David, WCB 73-359, LINN; Remanded for further proceedings.
277 Calder, Douglas D., WCB 73-3110, BAKER; Affirmed.
282 Simmons, Elizabeth, No. 404-139, MULTNOMAH; Affirmed.
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- 1 Norton, Alberta, WCB 71-1032, MARION; Affirmed.
- 2 Ryan, Ralph, WCB 72-568, MARION; Affirmed.
- 5 Vicars, Harold F., WCB 73-823, MULTNOMAH; Affirmed.
- 7 Turner, Buford, WCB 73-785, MULTNOMAH; Affirmed.
- 9 Williams, Willard, WCB 72-1283, LAKE; Affirmed.
- 26 Crowell, Helen, WCB 72-2671, UMATILLA; Award to claimant of compensation for permanent total disability as of October 30, 1973.
- 27 Rouse, Mancus, WCB 73-423, MULTNOMAH; Affirmed.
- 34 Jaster, William G., WCB 72-1664, MULTNOMAH; Aggravation claim allowed.
- 35 Dinnocenzo, Charla Jean, WCB 73-734 and 73-735, MULTNOMAH; Remanded for further medical care.
- 37 Miller, Delbert, WCB 72-2025, 72-3558, 73-402 and 73-403, MULTNOMAH; Opinion and Order of the Hearing Officer, dated June 11, 1973, is hereby reinstated.
- 42 Pugsley, David W., WCB 71-2814, BENTON; Affirmed.
- 45 Hill, Robert C., WCB 73-904 and 73-905, MULTNOMAH; Affirmed.
- 46 Floyd, Matthew, WCB 72-1582, MULTNOMAH; Remanded for hearing.
- 50 Foster, Robert J., WCB 72-3092, CURRY; Unscheduled award increased to 160°.
- 52 Ruiz, Jennie, WCB 72-3140, BENTON; Award set at 160°.
- 54 Rector, Ruth, WCB 72-3382, BENTON; Claimant is entitled to an award of 64° for unscheduled permanent partial disability.
- 56 Widmaier, Else, WCB 72-264, JOSEPHINE; Total disability allowed.
- 58 Brauer, Paul F., WCB 73-637, MULTNOMAH; Remanded to Medical Board of Review.
- 64 Kline, Roger S., WCB 73-1199, MULTNOMAH; Penalties and attorneys' fees allowed.
- 66 Thompson, Eugenia, WCB 72-2795, UNION; Affirmed.
- 68 Nutini, Mildred, WCB 73-1036, MULTNOMAH; Affirmed.
- 71 Harlow, Jewell, WCB 73-706, MULTNOMAH; Affirmed.
- 72 Maden, Rondall, WCB 73-990, LINN; Back increased to 45%.
- 76 Cristofaro, Anthony, WCB 73-371, CLACKAMAS; Affirmed.
- 76 Taylor, Thomas D., WCB 73-855, MULTNOMAH; Affirmed.
- 77 Causey, Arthur, WCB 73-961, JOSEPHINE; Affirmed.
- 78 Dickerson, Ted O., WCB 71-1263, MULTNOMAH; Affirmed.
- 81 Phillips, Ursula, WCB 73-1541, WASHINGTON; Affirmed.
- 82 Benge, Harold B., WCB 73-1426, MULTNOMAH; Affirmed.
- 87 Smith, Kenan C., Jr., WCB 72-3194, JACKSON; Affirmed.
- 89 Lewis, Jack, WCB 73-105, MULTNOMAH; Affirmed.
- 91 Rios, Gustavo, WCB 73-1490, MARION; Affirmed.
- 93 Geer, Ralph W., WCB 72-3529, LANE; Affirmed.
- 94 O'Neal, Lora, WCB 72-2113, LINN; Remanded for further medical care.
- 98 Johnson, Vivian G., WCB 70-1273, COOS; Reopened.
- 103 Leaming, William (Deceased), WCB 73-778, LANE; Affirmed.
- 106 Pierce, Ronald, WCB 73-1487, KLAMATH; Affirmed.
- 107 Van Winkle, William H., WCB 73-1436 and 73-1437, LANE; Remanded for hearing.
- 112 McInnis, Louis (Deceased), WCB 73-1052, MULTNOMAH; Affirmed.

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113 McCoy, Wilbur, WCB 72-3192, MULTNOMAH; Affirmed.

121 Koroush, Jesse, WCB 73-1171, BENTON; Affirmed.

122 Stewart, J. C., WCB 72-1457, COOS; Affirmed.

102 &

103 Roberts, Gary A., WCB 73-2092 and 73-2105, MULTNOMAH; Liability set with second employer.

125 Langley, William, WCB 73-1106 and 73-1107, MULTNOMAH; Affirmed.

129 Sullivan, William, WCB 73-1767, MULTNOMAH; Affirmed.

137 Blanchard, David, WCB 73-803, MULTNOMAH; Affirmed.

141 Seaberry, George, WCB 73-1148, MULTNOMAH; Permanent total disability.

145 Sutton, Calvin, WCB 72-2465, LANE; Claim dismissed.

146 Odell, Ralph, WCB 73-1354, MULTNOMAH; Affirmed.

155 Krugen, Ludwig, WCB 71-2389-E, MULTNOMAH; Total disability.

157 Gould, Clifton E., WCB 73-1140, MULTNOMAH; Increased 22.5°.

162 Moore, Gordon L., WCB 73-1130, DOUGLAS; Allowance reversed.

163 Anderson, Wilmot, WCB 72-2833, JOSEPHINE; Affirmed.

180 Wallace, Lew E., WCB 72-3128 and 73-1225, WASHINGTON; Affirmed.

197 Lillard, Wayne, WCB 73-508, LANE; Remanded.

207 Williams, Mae, WCB 73-1518, JACKSON; Affirmed.

213 Gronquist, George O., (Deceased), WCB 73-1055, MULTNOMAH; Remanded for testimony.

213 Gronquist, George O., (Deceased), WCB 73-1055, MULTNOMAH; Remanded for hearing.

220 Surber, Earl, WCB 72-2372, BAKER; Neck disability set at 50%.

226 Hopson, Thomas E., WCB 73-2696, MULTNOMAH; Affirmed.

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230 Schneider, Mary, WCB 73-2690, MULTNOMAH; Affirmed.

238 Wright, Harry, WCB 73-1044, MULTNOMAH; Award increased to 75%.

244 Philpott, Jeanne D., WCB 73-1277, 73-1279 and 73-1278, MULTNOMAH; Affirmed.

247 Green, James A., WCB 73-1895, MULTNOMAH; Award increased to 60%.

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252 Larson, Ronald, WCB 73-1253, LANE; Affirmed.

254 Anthony, Ray, WCB 73-944, MULTNOMAH; Affirmed.

261 Almond, Leitha A., WCB 73-1763, MULTNOMAH; Award increased to 20%

269 Miller, Eugene, WCB 73-2115, MULTNOMAH; Affirmed.

271 Brown, Walter L., WCB 73-2424, MULTNOMAH; Back award at 320°.

272 Petit, Jack Lee, WCB 73-1867, LANE; Affirmed.

275 Rutherford, WCB 73-913, MULTNOMAH; Affirmed.

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Robert VanNatta, Editor

VOLUME 11

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WCB CASE NO. 72-3182 OCTOBER 23, 1973

LEONA E. HURD, CLAIMANT
KEITH BURNS, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY,
WILLIAMSON AND SCHWABE, DEFENSE ATTYS.
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW SEEKING AN INCREASE IN HER PERMANENT PARTIAL DISABILITY AWARD.

DISCUSSION

THIS 45 YEAR OLD CLAIMANT SUSTAINED A COMPENSABLE BACK STRAIN FOR WHICH SHE WAS GRANTED 32 DEGREES FOR UNSCHEDULED DISABILITY. SHE REQUESTED A HEARING, SEEKING AN INCREASE IN HER PERMANENT DISABILITY.

THE MEDICAL REPORTS REFLECT MINIMAL OBJECTIVE FINDINGS BUT THERE ARE A MULTITUDE OF EMOTIONALLY FOUNDED SUBJECTIVE COMPLAINTS. THE CLAIMANT'S EMOTIONAL PROBLEMS ARE NOT MATERIALLY RELATED TO HER ON-THE-JOB INJURY BUT RATHER ARE THE RESULT OF UNRELATED PROBLEMS.

CLAIMANT HAS RETURNED TO WORK AND IS DOING WELL AT A LESS DEMANDING JOB AS SHE REQUESTED. HER OLD JOB OR EVEN A JOB BETTER THAN THE OLD JOB, IS AVAILABLE TO HER AND MEDICAL EVIDENCE INDICATES SHE IS CAPABLE AS SOON AS SHE DESIRES TO PROGRESS. THE BOARD CONCLUDES CLAIMANT'S IMPAIRMENT TO EARNING CAPACITY IS MINIMAL AND THAT THE HEARING OFFICER'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED APRIL 2, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 71 -1032 OCTOBER 23, 1973

ALBERTA NORTON, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
MERLIN L. MILLER, DEFENSE ATTY.
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS AN INCREASE OF HER PERMANENT DISABILITY AWARD OVER THAT ALLOWED BY THE HEARING OFFICER.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT RECEIVED, WITHIN THE MEANING OF THE OREGON WORKMEN'S COMPENSATION LAW, A COMPENSABLE INJURY TO BOTH FOREARMS ON JUNE 13, 1967. THE CLAIM HAS BEEN REOPENED AND CLOSED FOUR TIMES WITH INCREASING AWARDS OF DISABILITY TO THE FOREARMS.

ACCORDING TO THE MEDICAL EVIDENCE, THE CLAIMANT'S PRESENT HAND AND ARM CONDITIONS ARE THE RESULT OF A NATURAL PROGRESSION OF DEVELOPING ARTHRITIS. THE MEDICAL OPINIONS ALSO INDICATE THAT THE CLAIMANT'S DETERIORATION IS NOT MATERIALLY RELATED TO THE INDUSTRIAL INJURY.

THERE WAS NO EVIDENCE THAT THE NECK AND SHOULDER DISABILITY ARE CONNECTED WITH THE INDUSTRIAL ACCIDENT.

DR. CASTERLINE'S REPORT SUBSTANTIATES THE EXTENT OF SCHEDULED PERMANENT DISABILITY TO BOTH UPPER EXTREMITIES AS AWARDED BY THE HEARING OFFICER AND WE CONCLUDE HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 13, 1973 IS AFFIRMED.

WCB CASE NO. 72-568 OCTOBER 23, 1973

RALPH RYAN, CLAIMANT
HAROLD W. ADAMS, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS REVERSAL OF THE HEARING OFFICER'S ORDER APPROVING THE DENIAL OF HIS CLAIM OF AGGRAVATION.

DISCUSSION

CLAIMANT, A 45 YEAR OLD WORKMEN'S COMPENSATION BOARD SAFETY REPRESENTATIVE, SUFFERED THREE ON-THE-JOB BACK INJURIES IN 1969 AND 1970, WHICH HAVE BEEN TREATED AS ONE CLAIM FOR THE PURPOSES OF THIS HEARING AND REVIEW. TREATMENT INCLUDED SURGERIES TO THE CERVICAL SPINE.

SHORTLY AFTER THE INDUSTRIAL INJURIES CLAIMS WERE CLOSED, CLAIMANT WAS INVOLVED IN AN OFF-THE-JOB AUTOMOBILE ACCIDENT IN WHICH HIS CAR WAS REAR-ENDED BY ANOTHER CAR WHICH WAS TRAVELING AT A RATE OF 50 MILES PER HOUR. TESTIMONY OF THE CLAIMANT, PREPONDERANCE OF MEDICAL OPINION AND THE FACT THAT CLAIMANT WAS WORKING REGULARLY UNTIL THE INTERVENING AUTOMOBILE ACCIDENT PERSUADES THE BOARD THAT THE CLAIMANT'S PRESENT PROBLEMS ARE

CAUSED BY THE INTERVENING AUTOMOBILE ACCIDENT AND ARE NOT A RESULT OF THE INDUSTRIAL INJURIES IN QUESTION. THE ORDER OF THE HEARING OFFICER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED APRIL 26, 1973, IS AFFIRMED.

WCB CASE NO. 73-390 OCTOBER 23, 1973

LEROY GILSTER, CLAIMANT
COONS, MALAGON AND COLE, CLAIMANT'S ATTYs.
ROGER WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

EMPLOYER REQUESTS A REDUCTION OF THE PERMANENT DISABILITY AWARD GRANTED BY THE HEARING OFFICER.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT IS A 51 YEAR OLD GLUE MIXER AT A PLYWOOD MILL. HE RECEIVED SUBSTANTIAL HOT WATER BURNS TO HIS BODY DURING THE COURSE OF HIS EMPLOYMENT. CLAIMANT HAS NOW RETURNED TO HIS OLD JOB OF GLUE MIXER FOR THE SAME EMPLOYER.

THE HEARING OFFICER'S BASIS FOR AWARDING 80 PERCENT LOSS OF EARNING CAPACITY IS THAT IF THIS CLAIMANT IS OBLIGED TO REENTER THE JOB MARKET, HIS PHYSICAL IMPAIRMENT WOULD UNDOUBTEDLY IMPOSE MUCH DIFFICULTY IN OBTAINING EMPLOYMENT. IN THIS PECULIAR FACTUAL SITUATION IT APPEARS THAT CLAIMANT'S EARNING CAPACITY IS NOW SUBSTANTIALLY THE SAME AS BEFORE THE INJURY. THIS IS NOT BECAUSE HIS IMMEDIATE WAGES ARE THE SAME AS BEFORE, BUT RATHER BECAUSE THE CLAIMANT'S SENIORITY RIGHTS HAVE ENTITLED HIM TO THIS VERY PREFERRED JOB. THE CLAIMANT CAN RETAIN THIS PREFERRED JOB AS LONG AS HE WISHES AND EXPRESSES NO NEED OR INTENTION OF EVER ENTERING THE GENERAL JOB MARKET. CONSEQUENTLY, MEASURING THE CLAIMANT'S EARNING CAPACITY IN THIS PARTICULAR CASE ON THAT BASIS IS VERY SPECULATIVE AND NOT BASED ON EVIDENCE.

IF, FOR REASONS NOW UNFORESEEN, THIS JOB SENIORITY SHOULD CHANGE OR HE SHOULD BE FORCED INTO THE JOB MARKET, THE BOARD CAN AGAIN REVIEW THE SITUATION EITHER ON ITS OWN MOTION AUTHORITY OR BY REASON OF AGGRAVATION.

THE BOARD CONCLUDES CLAIMANT'S DISABILITY EQUALS 50 PERCENT OR 160 DEGREES LOSS OF THE WORKMAN FOR UNSCHEDULED DISABILITY AS A RESULT OF THE JULY 21, 1971 INJURY RATHER THAN THE 80 PERCENT ALLOWED BY THE HEARING OFFICER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 21, 1973, IS SET ASIDE AND IN LIEU THEREOF, CLAIMANT IS HEREBY AWARDED 160 DEGREES OR 50 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

CLAIMANT'S ATTORNEYS ARE ENTITLED TO 25 PERCENT OF THE COMPENSATION AWARDED HEREBY, PAYABLE OUT OF SAID AWARD, AS A REASONABLE ATTORNEYS 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. 72-2368 OCTOBER 23, 1973

DUANE SHARP, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
KEITH SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S AWARD OF 32 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY.

ISSUE

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

DISCUSSION

THIS 34 YEAR OLD SEASONAL CANNERY WORKER SUFFERED A LOW BACK SPRAIN. THE MEDICAL REPORTS SHOW VERY LITTLE IN THE WAY OF RESIDUAL OBJECTIVE FINDINGS. THERE IS, HOWEVER, A CONGENITAL ANOMALY IN THE CLAIMANT'S LOW BACK MAKING THE CLAIMANT MORE PRONE TO BACK PROBLEMS. THE INDUSTRIAL INJURY CONSIDERED HERE HAS PRODUCED SOME LIMITATION OF THE CLAIMANT'S POTENTIAL EARNING CAPACITY AND THE BOARD CONCLUDES THE HEARING OFFICER'S AWARD OF 32 DEGREES SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED APRIL 26, 1973 IS AFFIRMED.

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

HAROLD F. VICARS, 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 AFFIRMED THE AWARD AS PREVIOUSLY GRANTED.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT SUSTAINED A COMPENSABLE INJURY IN 1966 RESULTING IN SUBSTANTIAL IMPAIRMENT AND DISABILITY.

CLAIMANT HAS NOW HAD THREE HEARINGS, THREE BOARD REVIEWS AND TWO CIRCUIT COURT REVIEWS. HE HAS RECEIVED A PERMANENT PARTIAL DISABILITY AWARD EQUAL TO 85 PERCENT UNSCHEDULED DISABILITY AND 20 PERCENT LOSS FUNCTION OF THE LEFT LEG. THIS RECORD CAN HARDLY SUBSTANTIATE CLAIMANT'S CLAIM THAT HE HAS BEEN DEPRIVED OF HIS RIGHT TO HEARING.

THE BOARD, ON REVIEW, DOES NOT AGREE WITH THE HEARING OFFICER'S STATEMENT AS FOLLOWS -

'' THE PROBLEM IS THAT UNDER A 1973 INTERPRETATION OF THE FACTS PRESENTED IN 1968 CLAIMANT WAS THEN PERMANENTLY AND TOTALLY DISABLED BUT THOSE FACTS, DETERMINED IN ACCORDANCE WITH THE LAW IN EFFECT IN 1968 RESULTED IN AN UNALTERABLE FINDING HIS DISABILITY WAS LESS THAN TOTAL. THE LAW HAS CHANGED BUT CLAIMANT'S WAGE EARNING CAPACITY HAS NOT. ''

THE LAW HAS NOT CHANGED, IT HAS ONLY BEEN REFINED BY INTERPRETATION.

CLAIMANT CONSULTED DR. JOHN F. ABELE ON TWO OCCASIONS DURING 1972. DR. ABELE DID NOT PRESCRIBE OR FURNISH ANY TREATMENT BUT DID FIND CLAIMANT'S CONDITION HAD DETERIORATED AND THAT HE WAS ONLY ABLE TO PERFORM ODD JOBS.

THE BOARD IS OF THE OPINION THAT REGARDLESS OF CLAIMANT'S DISABILITY IN 1968, HE IS PERMANENTLY AND TOTALLY DISABLED IN 1973.

CLAIMANT'S CONDITION NOW PRECLUDES HIM FROM BEING EMPLOYED IN A GAINFUL AND SUITABLE OCCUPATION AND IS THEREFORE ENTITLED TO AN AWARD OF PERMANENT TOTAL DISABILITY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 21, 1973, IS HEREBY REVERSED AND CLAIMANT IS GRANTED AN AWARD OF PERMANENT TOTAL DISABILITY.

COUNSEL FOR CLAIMANT IS ENTITLED TO 25 PERCENT OF THE INCREASED COMPENSATION MADE PAYABLE BY THIS ORDER, NOT TO EXCEED FIFTEEN HUNDRED DOLLARS, PAYABLE FROM SAID AWARD AS A REASONABLE ATTORNEY FEE.

WCB CASE NO. 73-856 OCTOBER 23, 1973
WCB CASE NO. 73-1303 OCTOBER 23, 1973

JOHN MARTIN, CLAIMANT
MIKE DYE, CLAIMANT'S ATTYS.
MILLER, BECK AND PARKS, 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 CLAIMANT NO AWARD FOR PERMANENT PARTIAL DISABILITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S DISABILITY?

DISCUSSION

CLAIMANT SUSTAINED A RIGHT ANKLE INJURY ON JUNE 18, 1972 AND A SECOND INJURY TO HIS SHOULDER AND BACK ON JULY 19, 1972. BOTH CLAIMS WERE CLOSED PURSUANT TO ORS 656.268 WITH NO AWARD OF PERMANENT PARTIAL DISABILITY.

CLAIMANT HAD BEEN DRIVING A TRUCK ON THE 1-5 FREEWAY PROJECT WHEN EMPLOYMENT WAS TERMINATED DUE TO A LABOR STRIKE.

THE RECORD IS VOID OF ANY MEDICAL EVIDENCE TO SUPPORT A FINDING OF DISABILITY. THE BOARD CONCURS WITH THE ORDER OF THE HEARING OFFICER AND AFFIRMS HIS ORDER.

THE BOARD DESIRES, HOWEVER, TO INFORM THIS YOUNG CLAIMANT, SHOULD HE DESIRE RETRAINING IN SOME TYPE OF LIGHTER EMPLOYMENT, OF THE OPPORTUNITIES AFFORDED BY THE BOARD'S DISABILITY PREVENTION DIVISION IN PORTLAND. IT IS HOPED CLAIMANT WILL GIVE CONSIDERATION TO FURTHER SCHOOLING OR TRAINING AND CONTACT THIS DIVISION.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 29, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 73-1259 OCTOBER 24, 1973

HERBERT MACKIE, CLAIMANT
MICHAEL V. JOHNSON, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS REVERSAL OF THE HEARING OFFICER'S
DISMISSAL OF HIS REQUEST FOR HEARING.

CLAIMANT WAS AWARDED PERMANENT PARTIAL DISABILITY BY
DETERMINATION ORDER. CLAIMANT MADE APPLICATION, WAS GRANTED
AND ACCEPTED A LUMP SUM AWARD. SUBSEQUENT TO THE LUMP SUM
AWARD CLAIMANT REQUESTED A HEARING TO INCREASE THE PERMANENT
PARTIAL DISABILITY.

ORS 656.304 IS UNAMBIGUOUS. THE CLAIMANT, BY MAKING
APPLICATION, BEING GRANTED AND ACCEPTING SUCH LUMP SUM AWARD,
WAIVED A RIGHT OF HEARING ON SUCH AWARD.

THE HEARING OFFICER CORRECTLY DISMISSED THE REQUEST FOR
HEARING.

ORDER

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

WCB CASE NO. 73-785 OCTOBER 24, 1973

BUFORD TURNER, CLAIMANT
ROGER WALLINGFORD, 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 FOUND CLAIMANT HAD SUFFERED
A COMPENSABLE AGGRAVATION OF HIS INDUSTRIAL INJURY.

ISSUE

IS CLAIMANT'S WORSENEED CONDITION CAUSALLY RELATED TO HIS
INDUSTRIAL INJURY OF 1968?

DISCUSSION

THE ISSUE BEFORE THE HEARING OFFICER, AND NOW BEFORE THE
BOARD, IS WHETHER CLAIMANT'S PRESENT CONDITION IS DUE TO A

SUBSEQUENT BOWLING INCIDENT - WHETHER IT RELATES TO HIS COMPENSABLE INDUSTRIAL INJURY, OR WHETHER IT RELATES BACK TO A 1952 SERVICE CONNECTED INJURY.

THE BOARD HAS REVIEWED THE RECORD AND CONCLUDES THE HEARING OFFICER CORRECTLY FOUND CLAIMANT'S CONDITION CONSTITUTES A COMPENSABLE AGGRAVATION OF HIS INDUSTRIAL INJURY OF 1968.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 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. 73-379 OCTOBER 24, 1973

WAYNE MC GUIRE, CLAIMANT
SAHLSTROM, LOMBARD, STARR AND VINSON,
CLAIMANT'S ATTYS.
J. W. MC CRACKEN, JR., DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS AN INCREASE IN PERMANENT PARTIAL SCHEDULED DISABILITY TO HIS RIGHT HAND.

CLAIMANT, A 26 YEAR OLD SAW FILER, SUSTAINED A LACERATION TO HIS RIGHT WRIST. A NEUROSURGEON PERFORMED SURGERY REMOVING SCAR TISSUE AND DOING SURGICAL REPAIR IN THE AREA OF THE NERVES. THE MEDICAL REPORT STATES CLAIMANT HAD RECOVERED APPROXIMATELY 90 PERCENT OF THE ABDUCTION STRENGTH OF HIS RIGHT THUMB BUT STILL HAD ANESTHESIA OF THE MEDIAL NERVE DISTRIBUTION TO HIS RIGHT THUMB AND MARKED HYPESTHESIA TO HIS RIGHT INDEX FINGER.

THE HEARING OFFICER OBSERVED THE MANIPULATION OF THE FINGERS AND HAND OF THE CLAIMANT AND HEARD THE TESTIMONY OF THE CLAIMANT AND WITNESSES. THE MEDICAL EVIDENCE, THE OBSERVATIONS OF THE HEARING OFFICER AND THE TESTIMONY IN EVIDENCE COINCIDE TO SHOW THAT THE CLAIMANT HAS RETAINED 80 PERCENT OF THE USE OF HIS HAND AND THAT THE AWARD OF 20 PERCENT LOSS OF THE RIGHT HAND EQUAL TO 30 PERCENT PERMANENT PARTIAL DISABILITY IS CORRECT.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 31, 1973 IS AFFIRMED.

WCB CASE NO. 72-1283 OCTOBER 24, 1973

WILLARD WILLIAMS, 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 REQUESTS BOARD REVIEW SEEKING AN AWARD OF PERMANENT TOTAL DISABILITY.

CLAIMANT, A 56 YEAR OLD TIMBER FALLER, SUSTAINED A COMPENSABLE INJURY OCTOBER 3, 1966 WHEN HE WAS STRUCK BY A LIMB ON HIS LEFT SHOULDER AND NECK FOR WHICH HE HAS NOW BEEN AWARDED A TOTAL OF 128 DEGREES FOR UNSCHEDULED DISABILITY.

CLAIMANT HAS A CONSIDERABLE FUNCTIONAL OVERLAY WHICH HAS NOT BEEN SHOWN TO BE CAUSED BY THE INDUSTRIAL INJURY. CLAIMANT'S LACK OF MOTIVATION TO FOLLOW THROUGH ON REHABILITATION OR ACTIVELY SEEK GAINFUL EMPLOYMENT FORECLOSES PERMANENT TOTAL DISABILITY UNDER THE "ODD LOT" DOCTRINE AND THE DEATON RATIONALE. DEATON V. SAIF, 97 OR ADV SH 126, --- OR APP ---, (MAY 14, 1973).

THE OBJECTIVE PHYSICAL DISABILITIES ARE SUBSTANTIAL (AS RECOGNIZED BY THE 128 DEGREES PERMANENT PARTIAL DISABILITY AWARD) BUT ARE NOT SUFFICIENT TO INCAPACITATE CLAIMANT FROM REGULARLY PERFORMING ANY WORK AT A GAINFUL AND SUITABLE OCCUPATION.

AFTER REVIEW OF THE ENTIRE RECORD, THE BOARD WOULD AFFIRM THE HEARING OFFICER'S AWARD OF PERMANENT PARTIAL DISABILITY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED APRIL 27, 1973 IS AFFIRMED.

WCB CASE NO. 72-495 OCTOBER 24, 1973

CLIFTON MOORE, 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 SEEKING AN INCREASE IN HIS PERMANENT DISABILITY AWARD AND A LARGER ATTORNEY'S FEE FROM THE STATE ACCIDENT INSURANCE FUND FOR HIS LAWYER'S EFFORTS IN THIS CASE.

CLAIMANT WAS GRANTED 16 DEGREES OR 5 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY AS A RESULT OF A LOW BACK INJURY. THE HEARING OFFICER AFFIRMED THAT DETERMINATION.

ALTHOUGH THERE IS SOME QUESTION REGARDING CLAIMANT'S MOTIVATION AND CREDIBILITY, THE BOARD CONCLUDES, BASED ON ITS REVIEW OF THE WHOLE RECORD, THAT HIS DISABILITY EXCEEDS THAT AWARDED. CLAIMANT IS ENTITLED TO AN ADDITIONAL 32 DEGREES FOR UNSCHEDULED DISABILITY.

THE ATTORNEY'S FEE ASSESSED AGAINST THE STATE ACCIDENT INSURANCE FUND, THOUGH SMALL, IS REASONABLE, BASED ON THE CIRCUMSTANCES. THE ADDITIONAL FEE TO CLAIMANT'S ATTORNEYS BASED ON THE INCREASED DISABILITY AWARD WILL PROVIDE REASONABLE COMPENSATION TO CLAIMANT'S ATTORNEYS.

THE BOARD WISHES TO EXPRESS ITS CONCERN REGARDING THE HEARING OFFICER'S DELAY IN ISSUANCE OF HIS ORDER. ONE OF THE ADVANTAGES OF THE ADMINISTRATIVE HEARING PROCESS IS ITS ABILITY TO PROVIDE SPEEDY JUSTICE TO THE PARTIES. IN ORDER TO MAINTAIN THAT ADVANTAGE, HEARING OFFICERS ARE URGED TO PAY SPECIAL ATTENTION TO THE 30 DAY LIMITATION CONTAINED IN THE LAW.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 30, 1973 AFFIRMING THE DETERMINATION ORDER AWARD OF PERMANENT DISABILITY, IS MODIFIED TO INCREASE CLAIMANT'S PERMANENT PARTIAL DISABILITY AWARD TO A TOTAL OF 15 PERCENT OR 48 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY.

COUNSEL FOR CLAIMANT IS AWARDED A REASONABLE ATTORNEY'S FEE OF 25 PERCENT OF THE INCREASED COMPENSATION MADE PAYABLE BY THIS ORDER WHICH SHALL IN NO EVENT, WHEN COMBINED WITH FEES ATTRIBUTABLE TO THE ORDER OF THE HEARING OFFICER EXCEED FIFTEEN HUNDRED DOLLARS.

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

WCB CASE NO. 72- 3297 OCTOBER 24, 1973

GARY KRUSSOW, CLAIMANT
RICHARDSON AND MURPHY, CLAIMANT'S ATTYS.
MERLIN L. MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER GRANTING CLAIMANT 25 PERCENT UNSCHEDULED DISABILITY CONTENDING CLAIMANT HAS SUFFERED NO LOSS OF EARNING CAPACITY.

ISSUE

WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

AFTER HAVING CONSIDERED THE EVIDENCE AND THE BRIEFS OF THE PARTIES ON REVIEW, THE BOARD CONCURS WITH THE FINDINGS AND OPINION OF THE HEARING OFFICER AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 13, 1973 IS AFFIRMED.

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

WCB CASE NO. 72-2444 OCTOBER 25, 1973

MARJORIE ARNISON, CLAIMANT
AIL AND LUEBKE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
CROSS-APPEAL BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER SEEKING ADDITIONAL TEMPORARY TOTAL AND PERMANENT PARTIAL DISABILITY COMPENSATION.

THE STATE ACCIDENT INSURANCE FUND CROSS REQUESTS BOARD REVIEW CONTENDING THE HEARING OFFICER ERRED IN CONCLUDING CLAIMANT'S HEADACHES AND NECK PROBLEMS WERE CAUSALLY RELATED TO THE INJURY.

ISSUES

1. IS CLAIMANT ENTITLED TO TEMPORARY TOTAL DISABILITY BEYOND JUNE 1, 1972?
2. WHAT IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY?

DISCUSSION

CLAIMANT WAS EMPLOYED AS A BUS DRIVER FIELD BOSS WHEN THE BRAKES FAILED ON THE BUS SHE WAS DRIVING RESULTING IN A ONE VEHICLE ACCIDENT ON AUGUST 4, 1970. SHE WAS HOSPITALIZED FOR TREATMENT OF A COLLAPSED LUNG, BRUISED CHEST WALL, CONCUSSION, NECK AND BACK STRAIN AND LACERATED TENDONS IN THE LEFT HAND.

SHE LATER DEVELOPED HEPATITIS AS A COMPLICATION OF TREATMENT. IN AUGUST 1971 AND JANUARY 1972 SURGERY TO THE LEFT HAND WAS PERFORMED.

THE HEARING OFFICER CONCLUDED CLAIMANT'S CLAIM WAS PROPERLY CLOSED ON JUNE 1, 1972 BECAUSE HER LIVER CONDITION WAS STATIONARY

ON MARCH 19, 1971. WE DISAGREE. THERE IS PRIMA FACIE MEDICAL EVIDENCE THAT CLAIMANT WAS TEMPORARILY AND TOTALLY DISABLED BEYOND THAT DATE. WE CONCLUDE CLAIMANT IS ENTITLED TO TEMPORARY TOTAL DISABILITY COMPENSATION FROM JUNE 2, 1972 TO MARCH 6, 1973 INCLUSIVE.

REGARDING THE ISSUES OF EXTENT OF DISABILITY AND CONNECTION OF HEAD AND NECK COMPLAINTS TO HER CLAIM, THE BOARD RECOGNIZES THAT THE RECORD REFLECTS THIS CLAIMANT HAS BEEN SEEN BY MANY HIGHLY QUALIFIED PHYSICIANS WHO SEEM TO BE AT A LOSS TO EXPLAIN HER EXTENSIVE COMPLAINTS FROM AN ORTHOPEDIC STANDPOINT. WITH SUCH MINIMAL OBJECTIVE SYMPTOMATOLOGY, THE CRITERIA FOR EVALUATION MUST TURN ON THE CREDIBILITY OF THE WITNESS.

ON REVIEW, WE RELY ON THE OBSERVATIONS OF THE HEARING OFFICER IN THIS AREA. GIVING CLAIMANT THE BENEFIT OF DOUBT, THE HEARING OFFICER AWARDED 5 PERCENT UNSCHEDULED HEAD AND NECK DISABILITY EQUAL TO 16 PERCENT AND AN ADDITIONAL 37.5 DEGREES FOR LEFT HAND DISABILITY, MAKING AN INCREASE OF 53.5 DEGREES.

THE BOARD CONCURS WITH THESE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER AND CONCLUDES THAT PORTION OF HIS ORDER SHOULD BE AFFIRMED.

ORDER

CLAIMANT IS HEREBY AWARDED ADDITIONAL TEMPORARY TOTAL DISABILITY FOR THE PERIOD JUNE 2, 1972 TO MARCH 6, 1973 INCLUSIVE.

CLAIMANT'S ATTORNEYS ARE ENTITLED TO 25 PERCENT OF THE INCREASED TEMPORARY TOTAL DISABILITY AWARDED HEREBY, PAYABLE FROM SAID AWARD. IN NO EVENT, HOWEVER, SHALL THE ATTORNEY'S FEE ALLOWED HEREBY, WHEN COMBINED WITH THAT ALLOWED BY THE HEARING OFFICER, EXCEED FIFTEEN HUNDRED DOLLARS.

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

WCB CASE NO. 72-2338 OCTOBER 25, 1973

DONALD PATTERSON, CLAIMANT
BROWN AND BURT, CLAIMANT'S ATTYS.
MIZE, KRIESIEN, FEWLESS, CHENEY AND
KELLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS AN INCREASE OF PERMANENT PARTIAL DISABILITY.

CLAIMANT IS A 36 YEAR OLD MEAT CUTTER WHO SUSTAINED A JERKING INJURY TO HIS RIGHT ARM WHEN HE ATTEMPTED TO CATCH A FALLING CHUNK OF MEAT. FIVE DAYS LATER CLAIMANT WAS IN A NONINDUSTRIAL AUTOMOBILE ACCIDENT IN WHICH HE FRACTURED THE RADIUS OF THE RIGHT ARM. CLAIMANT CONTINUED ON TEMPORARY TOTAL DISABILITY FOR APPROXIMATELY NINE AND ONE-HALF MONTHS.

CLAIMANT CONTENDS, ON THIS APPEAL, THAT AN INCREASE IN PERMANENT DISABILITY SHOULD BE AWARDED BECAUSE OF PERMANENT PAIN, PERMANENT EFFECT ON HIS JOB, PERMANENT DISFIGURATION, CONTINUOUS MENTAL WORRIES AND AN ADVERSE EFFECT ON HIS FAMILY LIFE. PAIN, PER SE, DISFIGURATION AND WORRY ARE A LEGALLY INSUFFICIENT BASES TO ALLOW AN INCREASE IN THE AWARD OF PERMANENT DISABILITY. CLAIMANT HAS BEEN PROPERLY COMPENSATED FOR HIS LOSS OF EARNING CAPACITY AND THE ORDER OF THE HEARING OFFICER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 22, 1973 IS AFFIRMED.

WCB CASE NO. 73-285 OCTOBER 25, 1973

JERRY W. PETTYJOHN, CLAIMANT
BAILEY, DOBLIE, CENICEROS AND BRUUN,
CLAIMANT'S ATTYS.
MIZE, KRIESIEN, FEWLESS, CHENEY AND
KELLEY, DEFENSE ATTYS.

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS AN INCREASE IN PERMANENT PARTIAL DISABILITY.

CLAIMANT'S LEFT INDEX FINGER WAS AMPUTATED AND HE RECEIVED A LACERATION ON THE PALM OF HIS LEFT HAND WHILE WORKING AT A SAWMILL. CLAIMANT IS 19 YEARS OLD, IS NOW A CHOKER SETTER, IS LEFT-HANDED AND HAS PAIN AT THE SITE OF THE AMPUTATION WHICH IS SENSITIVE TO COLD.

THE DETERMINATION ORDER AWARDED 100 PERCENT LOSS OF THE LEFT INDEX FINGER (24 DEGREES) AND 30 PERCENT LOSS OF LEFT THUMB (14.4 DEGREES) DUE TO LOSS OF OPPOSITION. THE HEARING OFFICER FOUND THAT THE AWARD OF PERMANENT PARTIAL DISABILITY SHOULD BE BASED ON THE PROPORTIONATE LOSS OF THE HAND RATHER THAN RATINGS ON THE INDIVIDUAL DIGITS. THE HEARING OFFICER, HOWEVER, FOUND THAT A TOTAL OF 38.4 DEGREES WAS ADEQUATE FOR THE DISABILITY CLAIMANT SUFFERED TO HIS LEFT HAND.

UPON REVIEW, THE BOARD AGREES WITH THE ANALYSIS OF THE MATTER BY THE HEARING OFFICER AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

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

ROBERT SMITH, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MIZE, KRISIEN, FEWLESS, CHENEY AND KELLEY,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER REQUIRING IT TO ACCEPT CLAIMANT'S CLAIM OF AGGRAVATION, CONTENDING THAT -

- (1) THE STIPULATED ORDER OF MAY 2, 1972 FORECLOSED PROSECUTION OF THE AGGRAVATION.
- (2) CLAIMANT HAS NOT, IN FACT, SUFFERED AN AGGRAVATION.

BETWEEN THE TIME OF CLAIMANT'S COMPENSABLE INJURY AND THE DATE OF A STIPULATION ENTERED INTO BY THE CLAIMANT ON MAY 2, 1972, CLAIMANT WAS ACTIVELY UNDERGOING PSYCHIATRIC CARE, INCLUDING ELECTROSHOCK THERAPY. CLAIMANT WAS THEN REPRESENTED BY COUNSEL. BEFORE THE STIPULATION WAS SIGNED, THE QUESTION OF THE EMPLOYER'S LIABILITY FOR CLAIMANT'S PSYCHIATRIC CONDITION WAS CONSIDERED BY CLAIMANT AND HIS LAWYER BUT NO CLAIM WAS MADE.

WE CONCLUDE THE CLAIMANT IS FORECLOSED FROM NOW PRESSING HIS CLAIM BY THE LEGAL POLICY AGAINST SPLITTING A CAUSE OF ACTION AND BY HIS AGREEMENT THAT THE MATTER, IN THE TERMS OF STIPULATION, HAD BEEN . . . FULLY COMPROMISED AND SETTLED . . .

IN ADDITION WE BELIEVE THE EVIDENCE CONCERNING CLAIMANT'S PSYCHIATRIC CONDITION DOES NOT REVEAL A MATERIAL WORSENING CAUSALLY CONNECTED TO HIS INDUSTRIAL INJURY AS THE HEARING OFFICER CONCLUDED.

CLAIMANT'S BASIC PSYCHIATRIC CONDITION LONG PREDATED HIS INDUSTRIAL INJURY AND A COMPARISON OF HIS CONDITION BEFORE APRIL 21, 1971 AND AFTER SHOWS ESSENTIALLY IDENTICAL COMPLAINTS AND REACTIONS.

WE CONCLUDE THE HEARING OFFICER'S ORDER SHOULD BE REVERSED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MARCH 2, 1973 IS REVERSED.

IN ACCORDANCE WITH ORS 656.313 NO COMPENSATION RECEIVED BY CLAIMANT AS A RESULT OF THE HEARING OFFICER'S ORDER IS RECOVERABLE BY THE EMPLOYER.

RICHARD L. ZORNES, DECEASED
EICHSTEADT, BOLLAND AND ENGLE,
BENEFICIARIES' ATTYS.
PHILIP MONGRAIN, DEFENSE ATTY.

THE ABOVE ENTITLED MATTER INVOLVES THE CLAIM OF THE WIDOW OF A WORKMAN WHOSE DEATH WAS ALLEGEDLY COMPENSABLY RELATED TO AN AORTIC ANEURYSM.

THE CLAIM WAS DENIED BY THE EMPLOYER'S INSURER. A JOINT PETITION FOR SETTLEMENT SEEKING BOARD APPROVAL FOR DISPOSITION OF THE MATTER AS A BONA FIDE DISPUTED CLAIM HAS BEEN SUBMITTED TO THE BOARD PURSUANT TO ORS 656.289 (4).

THE TERMS OF THE DISPOSITION OF THE CLAIM APPEAR TO THE BOARD TO BE A FAIR AND EQUITABLE SETTLEMENT, AND IS HEREBY APPROVED.

THE MATTER PENDING ON REVIEW IS HEREBY DISMISSED AND THE RIGHTS AND RESPONSIBILITIES OF THE PARTIES ARE HEREBY RESOLVED CONFORMING TO THE STIPULATION, COPY OF WHICH MARKED EXHIBIT !!A!! IS ATTACHED HERETO.

AGREEMENT AND STIPULATION

IT IS HEREBY AGREED AND STIPULATED BETWEEN THE PARTIES THAT RICHARD L. ZORNES WAS EMPLOYED BY THE EMPLOYER ON SEPTEMBER 7, 1971, WHEN HE SUFFERED AN APPARENTLY NON-DISABLING ACCIDENT IN THE COURSE OF HIS EMPLOYMENT -- THAT SEVERAL WEEKS SUBSEQUENT TO THIS RICHARD L. ZORNES WAS DIAGNOSED TO HAVE AN AORTIC ANEURYSM -- THAT RICHARD L. ZORNES SUBSEQUENTLY FILED A WORKMEN'S COMPENSATION CLAIM WITH THE EMPLOYER, ALLEGING THE AORTIC ANEURYSM WAS RELATED TO THE ACCIDENT THAT OCCURRED ON SEPTEMBER 7, 1971 -- THAT THE EMPLOYER, BY AND THROUGH ITS INSURANCE CARRIER, EMPLOYERS INSURANCE OF WAUSAU, DENIED THE ANEURYSM WAS IN ANY WAY RELATED TO THE ACCIDENT OR CLAIMANT'S EMPLOYMENT -- THAT RICHARD L. ZORNES THEN REQUESTED A HEARING FROM THE DENIAL -- THAT PRIOR TO CONVENING OF THE HEARING RICHARD L. ZORNES DIED FROM COMPLICATIONS OF A SECOND AORTIC ANEURYSM -- THAT THE WIDOW OF RICHARD L. ZORNES WAS THEN SUBSTITUTED AS THE REPRESENTATIVE OF THE BENEFICIARIES OF RICHARD L. ZORNES -- THAT THE ISSUES RAISED BY THE HEARING REQUEST WERE EXPANDED AT THAT TIME TO INCLUDE THE RIGHT OF THE BENEFICIARIES TO DEATH BENEFITS -- THAT THE HEARING WAS SUBSEQUENTLY HELD AND MEDICAL OPINION PRESENTED BOTH CONFIRMING AND DENYING RELATIONSHIP OF THE ACCIDENT OF SEPTEMBER 7, 1971 TO THE ORIGINALLY DIAGNOSED AORTIC ANEURYSM -- THAT THE HEARING OFFICER ISSUED AN OPINION AND ORDER FINDING THE ORIGINALLY DIAGNOSED ANEURYSM TO BE RELATED TO THE ACCIDENT OF SEPTEMBER 7, 1971, BUT FINDING NO RELATIONSHIP BETWEEN SAID ACCIDENT OR ORIGINAL ANEURYSM AND THE DEATH OF RICHARD L. ZORNES FROM A SECOND ANEURYSM.

IT IS FURTHER AGREED AND STIPULATED BETWEEN THE PARTIES THAT FOLLOWING THE HEARING OFFICER'S OPINION AND ORDER THE PARTIES APPEALED TO THE WORKMEN'S COMPENSATION BOARD -- THAT IN ACCORDANCE WITH THE PROVISIONS OF ORS 656.289 (4) THE PARTIES NOW WISH TO COMPLETELY AND FINALLY DISPOSE OF THIS CLAIM -- THAT A BONA FIDE DISPUTE EXISTS BETWEEN THE PARTIES IN THAT THERE IS MEDICAL OPINION SUPPORTING

THE POSITION OF BOTH PARTIES -- THAT THE EMPLOYER DOES NOT ADMIT LIABILITY AND DOES NOT ADMIT THE CLAIMANT IS ENTITLED TO ANY BENEFITS UNDER THE WORKMEN'S COMPENSATION LAW, AND IN FACT EXPRESSLY DENIES IT -- THAT EVEN THOUGH EXPRESSLY DENYING LIABILITY THE EMPLOYER WISHES, ALONG WITH THE CLAIMANT, TO AVOID PROLONGED LITIGATION AND THEREFORE AGREES TO COMPLETELY AND FINALLY DISPOSE OF THIS CLAIM ACCORDING TO THE PROVISIONS OF ORS 656.289 (4) -- THAT IN ACCORDANCE WITH THE WISHES OF THE PARTIES TO SETTLE, THE EMPLOYER AGREES TO PAY TO CLAIMANT, THROUGH ITS INSURANCE CARRIER, THE TOTAL SUM OF TEN THOUSAND DOLLARS, INCLUDING EIGHTEEN HUNDRED TWENTY FOUR DOLLARS ALREADY PAID, AND TO PAY TO CLAIMANT'S ATTORNEY THE SUM OF SEVEN HUNDRED DOLLARS -- THAT THE SUM PAID TO CLAIMANT IS INTENDED TO INCLUDE AND COVER ALL CHARGES INCURRED BY RICHARD L. ZORNES IN TREATMENT OF HIS AORTIC ANEURYSM IN 1971 AND 1972, EVEN THOUGH THE EMPLOYER ADMITS NO LIABILITY FOR THESE CHARGES.

IT IS FINALLY AGREED AND STIPULATED BY THE PARTIES THAT ALL CONTENTIONS OF THE CLAIMANT ARE COMPLETELY AND FINALLY DISPOSED OF BY THIS STIPULATION.

WCB CASE NO. 73-763 OCTOBER 25, 1973

CHLOLA WILSON, CLAIMANT
JAMES H. LEWELLING, CLAIMANT'S ATTY.
CHARLES PAULSON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

EMPLOYER REQUESTS REVERSAL OF THE HEARING OFFICER'S HOLDING THAT THE PRESENT EYE INJURY IS A COMPENSABLE CONSEQUENCE OF A 1971 ANKLE INJURY.

CLAIMANT IS EXTREMELY OBESE. IN 1965 SHE RECEIVED A SEVERE LEFT ANKLE FRACTURE AND DISLOCATION. CLAIMANT AGAIN INJURED HER LEFT ANKLE IN JANUARY 1971 IN AN INDUSTRIAL ACCIDENT. SINCE THE 1971 ACCIDENT, BECAUSE OF THE OBESITY AND THE ANKLE CONDITION, SHE HAS BEEN ON CRUTCHES OR IN A WHEELCHAIR. AS CLAIMANT WAS GETTING FROM THE WHEELCHAIR TO MOVE FROM THE WHEELCHAIR TO HER BED, HER ANKLE GAVE WAY AND SHE FELL. HER GLASSES FRAME PIERCED HER RIGHT EYE.

WE AGREE WITH THE HEARING OFFICER THAT THIS CLAIM IS COMPENSABLE ON EITHER A THEORY OF 'AGGRAVATION' OR 'COMPENSABLE CONSEQUENCE' OF THE 1971 INJURY.

THE BOARD, AFTER REVIEWING THE ENTIRE RECORD, ADOPTS THE HEARING OFFICER'S OPINION AND ORDER AS ITS OWN.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 14, 1973 IS AFFIRMED.

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

WCB CASE NO. 73-523 OCTOBER 25, 1973

ROBERT J. WRIGHT, CLAIMANT
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF THE HEARING OFFICER'S
DENIAL OF ADDITIONAL TEMPORARY TOTAL DISABILITY BENEFITS.

CLAIMANT SUSTAINED A COMPENSABLE INJURY JUNE 9, 1972. THE
DETERMINATION ORDER AWARDED TEMPORARY TOTAL DISABILITY FROM
JULY 25, 1972 TO SEPTEMBER 20, 1972.

THE BOARD, AFTER FULL REVIEW OF ALL OF THE EVIDENCE, ESPECIALLY
THE MEDICAL REPORTS, CONCURS AND ADOPTS THE HEARING OFFICER'S
OPINION AND ORDER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 20, 1973 IS
AFFIRMED.

WCB CASE NO. 70-1913 OCTOBER 26, 1973

BETTY J. BAILEY (LONGACRE), CLAIMANT
HENRY L. HESS, 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 ALLOWING CLAIMANT 48 DEGREES FOR UN-
SCHEDULED DISABILITY CONTENDING THE EVIDENCE DOESN'T WARRANT
SUCH AN AWARD.

IN SPITE OF CLAIMANT'S PROTESTATIONS OF DISABILITY, THE BOARD
IS PERFECTLY PERSUADED BY THE MEDICAL EVIDENCE THAT CLAIMANT HAS
SUFFERED NO PERMANENT DISABILITY AS A RESULT OF THIS INJURY.

ORDER

THE HEARING OFFICER'S ORDER DATED MAY 18, 1973 ALLOWING
48 DEGREES IS HEREBY REVERSED.

IN ACCORDANCE WITH ORS 656.313, THE STATE ACCIDENT INSURANCE
FUND MAY NOT RECOVER ANY COMPENSATION PAID PURSUANT TO THE
HEARING OFFICER'S ORDER.

WCB CASE NO. 72-2536 OCTOBER 26, 1973

CLARENCE DERO ROSS, CLAIMANT
RASK, HEFFERIN AND CARTER, 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 DENIED CLAIMANT'S CLAIM OF AGGRAVATION.

ISSUE

HAS CLAIMANT SUFFERED A COMPENSABLE AGGRAVATION OF HIS
INDUSTRIAL INJURY?

DISCUSSION

CLAIMANT RECEIVED A COMPENSABLE INJURY TO HIS LOW BACK IN
JUNE, 1966. THE LAST MEDICAL TREATMENT FOR THIS CONDITION WAS
IN AUGUST, 1968.

AT THE HEARING CLAIMANT TESTIFIED HE DID NOT HAVE DIFFICULTY
WITH HIS BACK UNTIL OCTOBER, 1971. WITHOUT HAVING EXAMINED THE
WORKMAN SINCE DECEMBER, 1971, DR. CHURCH STATED IN A LETTER OF
JANUARY, 1973, HE BELIEVED CLAIMANT'S BACK TROUBLE HE WAS
EXPERIENCING WAS CAUSALLY RELATED TO HIS INDUSTRIAL INJURY OF 1966.
THE BOARD CONCLUDES THAT WITHOUT A CURRENT EXAMINATION, THIS
LETTER DOES NOT MEET THE REQUIREMENTS OF ORS 656.271. THE
HEARING OFFICER CONCLUDED THE MEDICAL REPORTS SUPPORTING AGGRAVA-
TION REFLECTED LITTLE OR NO CREDIBILITY.

THE TOTAL PICTURE IS NOT ONE JUSTIFYING FINDING A RELATIONSHIP
BETWEEN PRESENT COMPLAINTS AND THE INDUSTRIAL INJURY, AND THE
BOARD AFFIRMS THE ORDER OF THE HEARING OFFICER DENYING CLAIMANT'S
CLAIM OF AGGRAVATION.

ORDER

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

WCB CASE NO. 73-80 OCTOBER 29, 1973
WCB CASE NO. 73-2332 OCTOBER 29, 1973

CALVIN HARTLEY, CLAIMANT
COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
JAJUA, WHEATLEY AND GARDNER, DEFENSE ATTYS.
ORDER OF DISMISSAL

ON MAY 3, 1973 CLAIMANT REQUESTED BOARD REVIEW OF A HEARING
OFFICER'S ORDER IN THE ABOVE ENTITLED CASE.

ON AUGUST 23, 1973 CLAIMANT'S COUNSEL ADVISED THE BOARD THAT THE PARTIES INTENDED TO STIPULATE A SETTLEMENT OF THE CASE.

AT THAT TIME CLAIMANT HAD ANOTHER REQUEST FOR HEARING PENDING BEFORE THE HEARINGS DIVISION BEARING THE DOCKET NUMBER WCB 73-2332.

THE PARTIES THEREAFTER REACHED A SETTLEMENT OF ALL THE ISSUES INVOLVED IN BOTH CASES.

A STIPULATION WAS SUBMITTED TO A HEARING OFFICER PROVIDING THAT BOTH THE PENDING REQUEST FOR REVIEW (73-80) AND THE PENDING REQUEST FOR HEARING (73-2332) SHOULD BE DISMISSED IN RETURN FOR THE PAYMENT OF ADDITIONAL COMPENSATION.

ON OCTOBER 9, 1973 A HEARING OFFICER APPROVED THAT STIPULATION AND ORDERED THE REQUEST FOR REVIEW DISMISSED AS WELL AS THE REQUEST FOR HEARING.

IN ORDER TO AVOID ANY QUESTION REGARDING THE STATUS OF THE REQUEST FOR BOARD REVIEW THE BOARD HEREBY ORDERS, BASED ON THE PREVIOUSLY SUBMITTED STIPULATION, ATTACHED HERETO AS EXHIBIT A, THAT THE CLAIMANT'S REQUEST FOR REVIEW FILED IN WCB CASE NO. 73-80 BE, AND IT IS HEREBY, DISMISSED.

STIPULATION AND ORDER

COMES NOW THE CLAIMANT, BY HIS ATTORNEYS, AND THE INSURANCE CARRIER, BY ITS ATTORNEYS, AND MOVE THE BOARD FOR AN ORDER DISMISSING CLAIMANT'S REQUEST FOR HEARING ON THE FOLLOWING STIPULATIONS AND RECITALS OF THE PARTIES -

1. THAT CLAIMANT BE PAID AN ADDITIONAL AWARD EQUAL TO TEN PERCENT LOSS OF FUNCTION OF THE HAND, SIX HUNDRED TWENTY FIVE DOLLARS.
2. THAT CLAIMANT'S ATTORNEYS BE AWARDED TWENTY-FIVE PERCENT OF THE INCREASE IN COMPENSATION MADE PAYABLE BY THIS ORDER.
3. THAT A CLAIM HAS BEEN MADE ARISING OUT OF CLAIMANT'S INJURY TO HIS BACK AS A CONSEQUENCE OF HIS INJURY WHILE WORKING FOR SWANSON PAINT AND GLASS COMPANY AND THAT SWANSON PAINT AND GLASS COMPANY DENY THAT SAID INJURY INVOLVED ANY AREA OF THE BODY OTHER THAN THAT WHICH IS DENOTED AS THE HAND UNDER THE OREGON WORKMEN'S COMPENSATION LAW AND THAT UNDER THE PROVISIONS OF THE BONA FIDE DISPUTE STATUTE, CLAIMANT IS TO BE AWARDED AN ADDITIONAL ONE HUNDRED DOLLARS TO SETTLE THE BACK CLAIM ON A DISPUTED CLAIM BASIS.
4. CLAIMANT'S ATTORNEYS ARE AWARDED THE SUM OF FIFTY DOLLARS OUT OF THE AFORESAID ONE HUNDRED DOLLARS AS AND FOR A REASONABLE ATTORNEY'S FEE IN THE MATTER.
5. THAT CLAIMANT'S REQUEST FOR HEARING AND REQUEST FOR REVIEW ARE HEREBY DISMISSED.

WCB CASE NO. 73-1751 OCTOBER 29, 1973

HAZEL MEMORY BRIGGS, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS.
MERLIN MILLER, DEFENSE ATTY.
ORDER ON MOTION

ON OCTOBER 10, 1973 CLAIMANT, THROUGH HER ATTORNEYS, FILED A WRITTEN MOTION TO SUPPLEMENT THE RECORD OR IN THE ALTERNATIVE MOTION TO REMAND REGARDING CERTAIN ADDITIONAL EVIDENCE.

ON OCTOBER 19, 1973 THE EMPLOYER, THROUGH ITS ATTORNEY, PRESENTED A WRITTEN ARGUMENT IN OPPOSITION. THE BOARD, BEING NOW FULLY ADVISED, FINDS CLAIMANT'S MOTION IS NOT WELL TAKEN AND IT IS HEREBY DENIED.

WCB CASE NO. 72-2999 OCTOBER 29, 1973
WCB CASE NO. 73-176 OCTOBER 29, 1973

FLOYD DAVIDSON, CLAIMANT
BURNS AND EDWARDS, 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 THE HEARING OFFICER ERRED IN APPROVING THE DENIAL OF HIS CLAIM.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW OF THE HEARING OFFICER'S ASSESSMENT OF A PENALTY AND ATTORNEY'S FEE AGAINST IT CONTENDING IT DID NOT UNREASONABLY DELAY THE PAYMENT OF COMPENSATION DUE PRIOR TO THE DENIAL.

THE HEARING OFFICER APPLIED THE RULES OF 'LEGAL' AND 'MEDICAL' CAUSATION ADOPTED IN HEART CASES AND FOUND THAT CLAIMANT'S NERVOUS TENSION HAD NEITHER A LEGAL NOR MEDICAL CAUSAL RELATIONSHIP TO HIS EMPLOYMENT.

VIEWING THE EVENTS IN QUESTION AS AN EMOTIONALLY HEALTHY AND STABLE PERSON, AND FROM THE VANTAGE OF HINDSIGHT, THE HEARING OFFICER CONCLUDED THAT THEY COULD NOT, AS A MATTER OF LAW, HAVE PRODUCED A NERVOUS TENSION CONDITION. WE DISAGREE. THE NATURE OF THE EVENTS WERE SUCH THAT THEY COULD LEGITIMATELY BE VIEWED AS POSSESSING A STRESS POTENTIAL - ONE SUFFICIENT TO PRECIPITATE A REACTION IN AN UNSTABLE PERSON. THEREFORE WE CONCLUDE LEGAL CAUSATION HAS BEEN ESTABLISHED.

THE HEARING OFFICER ALSO CONCLUDED MEDICAL CAUSATION HAD NOT BEEN ESTABLISHED BECAUSE DR. MARSHALL LACKED THE KNOWLEDGE,

SKILL AND EMOTIONAL DETACHMENT NECESSARY TO RENDER A PERSUASIVE MEDICAL OPINION ON MEDICAL-CAUSAL CONNECTION. AGAIN WE DISAGREE.

DR. MARSHALL IS WELL QUALIFIED BY REASON OF BOTH TRAINING AND EXPERIENCE TO RENDER AN EXPERT OPINION ON THE EMOTIONAL PROCESSES AND IMPACT PRODUCED BY THE EVENTS IN QUESTION.

WE CONCLUDE FROM THE EVIDENCE THAT CLAIMANT IS ENTITLED TO COMPENSATION FOR HIS DISABLING NERVOUS TENSION CONDITION.

WE ALSO CONCLUDE FROM THE EVIDENCE THAT THE HEARING OFFICER'S ASSESSMENT OF A PENALTY AND ATTORNEY'S FEE WAS APPROPRIATE.

ORDER

IT IS HEREBY ORDERED THAT THE HEARING OFFICER'S DENIAL OF CLAIMANT'S CLAIM OF COMPENSATION IS REVERSED AND THE CLAIM IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR PAYMENT OF WORKMEN'S COMPENSATION BENEFITS AS PROVIDED BY LAW.

IT IS HEREBY FURTHER ORDERED THAT IN ADDITION TO THE ATTORNEY'S FEE ALLOWED BY THE HEARING OFFICER, THAT THE STATE ACCIDENT INSURANCE FUND PAY CLAIMANT'S ATTORNEYS THE SUM OF NINE HUNDRED DOLLARS FOR THEIR SERVICES AT THE HEARING AND ON REVIEW REGARDING THE COMPENSABILITY OF CLAIMANT'S CLAIM.

IT IS HEREBY FINALLY ORDERED THAT THE HEARING OFFICER'S ORDER IS AFFIRMED IN ALL OTHER RESPECTS.

WCB CASE NO. 72-2506 OCTOBER 29, 1973

HARRY S. WELCH, 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 THE AWARD OF PERMANENT TOTAL DISABILITY BE REDUCED TO PERMANENT PARTIAL DISABILITY.

CLAIMANT, A 55 YEAR OLD LOGGER, SUSTAINED AN INDUSTRIAL INJURY SEPTEMBER 24, 1970, DIAGNOSED AS A FRACTURE OF THE UPPER PORTION OF THE FEMORAL HEAD. AN AMPUTATION OF THE FEMORAL HEAD AND REPLACEMENT WITH A PROSTHESIS WAS PERFORMED. CLAIMANT HAD A SUBSTANTIAL PREEXISTING LOSS OF HEARING AND PREEXISTING NARCOLEPSY WHICH MUST BE TAKEN INTO ACCOUNT. CLAIMANT ALSO HAS SUBSTANTIAL PSYCHOLOGICAL DISABILITIES WHICH WERE AGGRAVATED BY THIS INDUSTRIAL ACCIDENT. CONSIDERING ALL THESE FACTORS, THE BOARD CONCLUDES THE CLAIMANT IS PERMANENT AND TOTALLY DISABLED.

THE ORDER OF THE HEARING OFFICER IS ADOPTED AND SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 16, 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.

WCB CASE NO. 72-3496 OCTOBER 30, 1973

JAMES R. COOK, 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 REVERSAL OF THE HEARING OFFICER'S DENIAL OF HIS CLAIM CONTENDING THAT HIS PSYCHIATRIC PROBLEM IS CAUSALLY RELATED TO THE INDUSTRIAL INJURY.

CLAIMANT BUMPED HIS HEAD AND APPROXIMATELY THREE WEEKS LATER DEVELOPED DIZZY SPELLS AND BLACKOUTS. MEDICAL REPORTS INCLUDING NEUROLOGICAL EXAMINATION FINDS NO OBJECTIVE PHYSICAL CAUSAL CONNECTION WITH THE ACCIDENT. PSYCHIATRISTS AND PSYCHOLOGISTS, AT LEAST ON THE FACE, APPEAR TO ARRIVE AT DIFFERENT CONCLUSIONS AS TO CAUSAL RELATIONSHIPS OF THE DIZZY SPELLS AND BLACKOUTS BEING CAUSED BY THE BUMP ON THE HEAD. THE PSYCHIATRIST AND PSYCHOLOGISTS' REPORTS DO NOT APPEAR TO BE AS CONTRADICTORY ON CAREFUL READING AS IT WOULD APPEAR INITIALLY INASMUCH AS THEY ARE BASED SOMEWHAT ON THE DOCTOR'S UNDERSTANDING OF THE FACTS WHICH SEEM TO DIFFER FROM DOCTOR TO DOCTOR.

THE BOARD IS IMPRESSED WITH THE REASONABLE AND LOGICAL FASHION WITH WHICH DR. DIXON PRESENTS THE MATTER AND WITH THE FACT THAT HIS TREATMENT IS HELPING THE CLAIMANT. ALL OF THIS LENDS CREDENCE TO HIS OPINION THAT CLAIMANT'S HYSTERICAL NEUROSIIS WAS PRECIPITATED BY THE HEAD INJURY WITH NO CONSCIOUS MALINGERING. THE BOARD THEREFORE CONCLUDES CLAIMANT HAS ADEQUATELY ESTABLISHED THE RELATIONSHIP BETWEEN HIS NEUROSIIS AND THE INDUSTRIAL ACCIDENT AND THUS, COMPENSABILITY IS ESTABLISHED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED APRIL 23, 1973, IS REVERSED. THE MATTER IS REFERRED TO THE EMPLOYER FOR PAYMENT OF MEDICAL TREATMENT IN ACCORDANCE WITH ORS 656.245.

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

WCB CASE NO. 73-1209 OCTOBER 30, 1973

JIM M. DOZIER, CLAIMANT
ANTHONY PELAY, JR., CLAIMANT'S ATTY.
MCMENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS REVERSAL OF THE HEARING OFFICER'S ORDER AFFIRMING THE EMPLOYER'S DENIAL OF HIS CLAIM.

CLAIMANT, A 23 YEAR OLD MILLWORKER, TESTIFIED THAT HE FELL ON WET CEMENT IN THE PLANT NEAR THE END OF HIS FRIDAY AFTERNOON SHIFT. HE WENT TO THE DOCTOR MONDAY AND THE MEDICAL REPORT REFLECTS THAT CLAIMANT FELL ON WET FLOOR ON CEMENT LANDING ON BACK AND LEFT HIP. CLAIMANT COMPLETED THE 801 REPORT GIVING THE SAME HISTORY OF THE ACCIDENT AND FILED IT EITHER ON MONDAY OR TUESDAY. CLAIMANT RECEIVED A DENIAL LETTER WHICH CONFUSED HIM. CLAIMANT'S WIFE TOOK IT TO THE EMPLOYER'S SECRETARY WHO SUGGESTED CLAIMANT WRITE TO THE HEALTH INSURANCE CARRIER ADVISING THEM THAT HE WAS NOT APPEALING THE DENIAL BY THE COMPENSATION CARRIER AND WOULD, IN THIS WAY, IMMEDIATELY GET PAYMENTS FROM THE HEALTH INSURANCE CARRIER. CLAIMANT LATER REALIZED THE HEALTH INSURANCE BENEFITS PROVIDED INSUFFICIENT PROTECTION AND SOUGHT THE ADVICE OF A LAWYER.

A REQUEST FOR HEARING WAS FILED MORE THAN 60 DAYS AFTER THE DENIAL BUT BEFORE 180 DAYS HAD ELAPSED.

THE BOARD FIRST TAKES NOTICE OF JOINT EXHIBIT NUMBER 1 WHICH IS THE ALLEGED LETTER OF DENIAL. THE LETTER DOES NOT MEET THE REQUIREMENTS OF WORKMEN'S COMPENSATION BOARD ADMINISTRATIVE RULE NO. 4-1970. (3.01) THE EMPLOYER . . . SHALL FURNISH THE WORKMAN . . . A WRITTEN NOTICE OF DENIAL OF HIS CLAIM FULLY INFORMING THE WORKMAN OF THE REASONS FOR DENIAL AND HIS RIGHTS TO HEARING INCLUDING A NOTICE UNDERSCORING THE FACT THAT THE CLAIM WILL BE UNENFORCEABLE IF REQUEST FOR HEARING IS NOT FILED . . . THE NOTICE OF DENIAL USED IN THIS CASE DOES NOT DO THIS. THE RULE WAS OBVIOUSLY INTENDED TO AVOID THE VERY PROBLEM INVOLVED IN THIS MATTER. THE EMPLOYER COULD WELL BE HELD TO HAVE NOT LEGALLY DENIED THE CLAIM BY USING AMBIGUOUS AND IMPROPER LETTERS OF DENIAL.

THE HEARING OFFICER'S AFFIRMANCE OF THE DENIAL IS SUBSTANTIALLY BASED ON HIS OPINION THAT THE CLAIMANT IS NOT A BELIEVEABLE WITNESS. GREAT WEIGHT IS ORDINARILY GIVEN TO A HEARING OFFICER'S ANALYSIS OF THE WITNESS'S DEMEANOR. HOWEVER, IN REVIEWING THE RECORD DE NOVO, THE BOARD FINDS NO CONTRADICTIONS IN FACTS OR FINDINGS TO SUBSTANTIATE THIS OPINION.

THE BOARD CONCURS WITH THE HEARING OFFICER THAT ON PAPER CLAIMANT'S HISTORY IS PLAUSIBLE. ADDITIONALLY, THE UNREBUTTED AND UNCONTRADICTED EVIDENCE IS THAT THE CLAIMANT TESTIFIED HE HAD AN ON-THE-JOB INJURY AND WENT TO THE DOCTOR. HE GAVE THE DOCTOR THE SAME FACTS OF THE ACCIDENT, HE REPORTED THE SAME FACTS TO THE EMPLOYER. THE CLAIMANT HAS MADE A PRIMA FACIE CASE WHICH

WAS NOT REBUTTED NOR CONTRADICTED IN ANY WAY. THE CLAIMANT HAS ALSO SHOWN GOOD CAUSE FOR THE DELAY IN REQUESTING A HEARING. THE BOARD THEREFORE CONCLUDES THE HEARING OFFICER'S ORDER DENYING THE CLAIM SHOULD BE REVERSED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 13, 1973 IS REVERSED AS TO THE ISSUE OF COMPENSABILITY AND THE EMPLOYER IS ORDERED TO ACCEPT SAID CLAIM AND PAY BENEFITS TO WHICH CLAIMANT IS ENTITLED BY LAW.

ALL OTHER PROVISIONS OF THE ORDER OF THE HEARING OFFICER ARE AFFIRMED.

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

WCB CASE NO. 73-539 OCTOBER 30, 1973

ARTHUR LEE VERMENT, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTY.
LINDSAY, NAHSTOLL, HART, DUNCAN, DAFOE AND
KRAUSE, DEFENSE ATTYS.
ORDER ON MOTION

ON OCTOBER 10, 1973 CLAIMANT, THROUGH HIS ATTORNEYS, MOVED TO SUPPLEMENT THE RECORD ON APPEAL WITH A REPORT OF DR. ROBERT A. BERSELLI, DATED OCTOBER 1, 1973 OR, IN THE ALTERNATIVE, REMAND THE MATTER TO THE HEARING OFFICER FOR ADMISSION OF THE DOCUMENT.

THE EMPLOYER FILED A RESPONSE IN OPPOSITION TO SUPPLEMENT ACTION OR REMAND OF THE RECORD AND A RESPONSE OPPOSING THE AFFIDAVIT CONCERNING AN ATTORNEY'S FEE WHICH WAS ALSO SUBMITTED BY CLAIMANT'S ATTORNEYS.

THE CLAIMANT THEN MOVED TO DISMISS THE EMPLOYER'S OPPOSITION TO THE AFFIDAVIT CONCERNING ATTORNEY'S FEES.

THE BOARD HAS REVIEWED THE MOTIONS, AND ARGUMENTS AND BEING NOW FULLY ADVISED, CONCLUDES BOTH MOTIONS ARE NOT WELL TAKEN.

IT IS HEREBY ORDERED THAT BOTH MOTIONS ARE DISMISSED.

WCB CASE NO. 72-2351 OCTOBER 30, 1973

DAVID STUTZMAN, CLAIMANT
COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
THWING, ATHERLY AND BUTLER, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS AN INCREASE IN HIS AWARD OF UNSCHEDULED DISABILITY.

CLAIMANT IS A 28 YEAR OLD HEAVY EQUIPMENT OPERATOR WHO SUSTAINED A COMPENSABLE BACK INJURY ON JULY 21, 1969. CLAIMANT HAS HAD TWO LAMINECTOMIES AND A MULTIPLE LEVEL SPINAL FUSION.

CLAIMANT LATER SUFFERED TWO EXACERBATIONS WHICH THE HEARING OFFICER FOUND WERE NOT INTERVENING ACCIDENTS. WE AGREE.

IN REVIEWING THE ENTIRE RECORD AND ESPECIALLY THE PROSPECTS OF THE CLAIMANT FOR RETRAINING, WE CONCLUDE THE AWARD OF 160 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY IS, FOR THE REASONS EXPRESSED BY THE HEARING OFFICER, ADEQUATE.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 22, 1973 IS AFFIRMED.

WCB CASE NO. 73-548 OCTOBER 30, 1973

AUSTIN C. DRISCOLL, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS AN INCREASE IN PERMANENT PARTIAL DISABILITY.

CLAIMANT, A 53 YEAR OLD CREW LEADER FOR NORTHWEST NATURAL GAS, RECEIVED A COMPENSABLE LOW BACK AND LEFT LEG INJURY AUGUST 10, 1967. THE LOW BACK INJURY WAS SUPERIMPOSED ON A PREVIOUS LOW BACK INDUSTRIAL INJURY. AFTER CONVALESCING, THE CLAIMANT WAS OFF WORK FOR APPROXIMATELY TWO YEARS. CLAIMANT THEREAFTER REQUESTED TO GO BACK TO WORK FOR THE EMPLOYER FOR THE PAST SIX MONTHS BUT WAS NOT REHIRED UNTIL ABOUT A WEEK BEFORE THE HEARING.

THE HEARING OFFICER, IN ARRIVING AT HIS AWARD OF PERMANENT DISABILITY, TOOK INTO ACCOUNT THE AWARD FOR PERMANENT PARTIAL DISABILITY CLAIMANT RECEIVED FOR A PREVIOUS INDUSTRIAL ACCIDENT. THIS INVOLVES AN INTERPRETATION OF ORS 656.222 WHICH STATES

'' . . . AWARD OF COMPENSATION FOR SUCH FURTHER ACCIDENT SHALL BE MADE WITH REGARD TO THE COMBINED EFFECT OF HIS INJURIES AND HIS PAST RECEIPT OF MONEY FOR SUCH DISABILITIES. '' THE HEARING OFFICER'S APPLICATION OF THE STATUTE IN THIS CASE IN ARRIVING AT THE AWARD TO THE CLAIMANT IS AFFIRMED.

THE BOARD, HAVING CONSIDERED ALL OF THE MEDICAL REPORTS AND EVIDENCE, CONCURS WITH THE FINDINGS AND ORDER OF THE HEARING OFFICER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 18, 1973 IS AFFIRMED.

WCB CASE NO. 72-2671 OCTOBER 30, 1973

HELEN CROWELL, CLAIMANT
FRANKLIN, BENNETT, OFELT, DES BRISAY
AND JOLLES, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT RECEIVED A COMPENSABLE INJURY TO THE TAILBONE IN MAY OF 1966. THE CLAIM HAS BEEN REOPENED TWICE AND A CLAIM FOR AGGRAVATION IN 1971 WAS SETTLED BY STIPULATION. CLAIMANT HAS AGAIN FILED A CLAIM FOR AGGRAVATION. THE HEARING OFFICER CORRECTLY RULED THAT CLAIMANT'S AGGRAVATION PERIOD HAD NOT EXPIRED BUT AFFIRMED THE DENIAL OF THE AGGRAVATION ON THE MERITS.

CLAIMANT NOW REQUESTS REVERSAL OF THE HEARING OFFICER'S DENIAL. SHE FURTHER REQUESTS AN AWARD OF PERMANENT TOTAL DISABILITY.

CLAIMANT'S COCCYX WAS SURGICALLY REMOVED IN SEPTEMBER, 1968. THE CLAIMANT NOW SUFFERS FROM A COMBINATION OF PHYSICAL AND EMOTIONAL PROBLEMS. THERE IS MEDICAL TESTIMONY TO THE EFFECT THAT CLAIMANT IS SINCERE AND IS NOT MALINGERING. CLAIMANT HAS SUBMITTED TO ALL RECOMMENDED MEDICAL AND SURGICAL TREATMENT. ALL OF THE MEDICAL EVIDENCE CONFIRMS THAT CLAIMANT SUFFERS EXTREME PAIN AND HAS BEEN VERY TENDER TO PRESSURE AND TOUCH. THE CLAIMANT'S PSYCHOPATHOLOGY, ESPECIALLY, HAS WORSENERD SINCE MARCH, 1971. THIS WORSENERD IS RELATED TO HER INJURY. THUS, THE AGGRAVATION CLAIM IS PROVED.

THE CLAIMANT'S ACCIDENT CAUSED PHYSICAL DISABILITIES AND PSYCHOPATHOLOGY AS SHOWN BY THE MEDICAL EVIDENCE AND THE TESTIMONY OF THE CLAIMANT, ADEQUATELY PROVES PERMANENT TOTAL DISABILITY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 16, 1973 IS REVERSED. THE CLAIMANT IS AWARDED COMPENSATION FOR PERMANENT TOTAL DISABILITY EFFECTIVE ON THE DATE OF THIS ORDER.

THE STATE ACCIDENT INSURANCE FUND IS HEREBY ORDERED TO PAY CLAIMANT'S ATTORNEY, W. A. FRANKLIN, FIVE HUNDRED DOLLARS FOR HIS SERVICES IN ESTABLISHING CLAIMANT'S ENTITLEMENT TO A HEARING. IN ADDITION, CLAIMANT'S COUNSEL IS AUTHORIZED TO RECEIVE 25 PERCENT OF THE INCREASE IN COMPENSATION PAYABLE OUT OF SAID AWARD TO A MAXIMUM OF ONE THOUSAND DOLLARS, AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN SECURING CLAIMANT'S PERMANENT DISABILITY COMPENSATION.

WCB CASE NO. 73-423 OCTOBER 30, 1973

MANCUS ROUSE, 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 MOORE.

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

CLAIMANT RECEIVED A BACK INJURY NOVEMBER 6, 1970. THE MEDICAL REPORTS FROM THE MANY DOCTORS, INCLUDING THOSE AT THE DISABILITY PREVENTION DIVISION AND BACK EVALUATION CLINIC ALL INDICATE NO PERMANENCY OF HIS DISABILITY. THE CLOSEST MEDICAL EVIDENCE TO PERMANENT PARTIAL DISABILITY IS THAT THE CLAIMANT WILL PROBABLY HAVE PERIODIC DISCOMFORT WITH OVERACTIVITY FROM TIME TO TIME AND THIS SHOULD BE THE EXTENT OF HIS PERMANENT PARTIAL DISABILITY. OTHER EVIDENCE TENDS TO NEGATE THIS SPECULATION. IN ANY EVENT, DISCOMFORT, PER SE, DOES NOT EQUAL LOSS OF EARNING CAPACITY.

ALTHOUGH CLAIMANT WAS RELEASED TO RETURN TO HIS PREVIOUS WORK HE IS ATTENDING COMMUNITY COLLEGE AND STATES THAT HE WOULD RATHER GET A COLLEGE DEGREE THAN TO RETURN TO HIS PREVIOUS WORK. THUS, THE EVIDENCE IS CLEAR THAT CLAIMANT COULD HAVE RETURNED TO HIS OLD OCCUPATION.

THE BOARD CONCURS WITH THE HEARING OFFICER THAT THERE IS NO PERMANENT PARTIAL DISABILITY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 19, 1973 IS AFFIRMED.

WCB CASE NO. 73-376 OCTOBER 31, 1973

ARVEST CORBETT ANDERSON, CLAIMANT
HAROLD W. ADAMS, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

ON REVIEW, CLAIMANT REQUESTS FROM THE BOARD, AN INCREASE IN PERMANENT PARTIAL DISABILITY WHICH THE HEARING OFFICER DENIED.

CLAIMANT'S ARM WAS INJURED MAY 13, 1968, IN AN INDUSTRIAL ACCIDENT. IN SEPTEMBER, 1968 CLAIMANT REPORTED TO A DOCTOR THAT THE PAIN IN HIS ARM RADIATED UP INTO HIS SHOULDER. IN DECEMBER, 1968 MEDICAL EVIDENCE REFLECTED AN OLD ACROMIOCLAVICULAR SEPARATION OF THE RIGHT SHOULDER. OTHER MEDICAL EVIDENCE ALSO CONNECTS THE INDUSTRIAL ACCIDENT WITH THE RIGHT SHOULDER PROBLEM. WE CONCLUDE THE HEARING OFFICER ERRED IN FINDING NO CAUSAL CONNECTION BETWEEN HIS SHOULDER PAIN AND THE INJURY OF MAY 13, 1968.

THE BOARD CONCURS HOWEVER, WITH THE FINDING OF THE HEARING OFFICER THAT THERE HAS BEEN NO DIMINUTION OF POTENTIAL WAGE EARNING CAPACITY AS FAR AS THE CLAIMANT IS CONCERNED. THE CLAIMANT NOW HAS A BETTER JOB THAN HE EVER HAS HAD AND HIS FUTURE IS VERY FAVORABLE.

ORDER

EXCEPT AS NOTED ABOVE, THE ORDER OF THE HEARING OFFICER DATED MAY 10, 1973, IS AFFIRMED.

WCB CASE NO. 70-1140 OCTOBER 31, 1973

WAYNE KOIVISTO, CLAIMANT
MIKE DYE, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS INCREASE OF A HEARING OFFICER'S PERMANENT PARTIAL DISABILITY AWARD OF 208 DEGREES TO PERMANENT TOTAL DISABILITY.

CLAIMANT, A 61 YEAR OLD MALE STEAM FITTER WELDER, FELL FROM A LADDER FEBRUARY 26, 1968, RECEIVING A SEVERE FRACTURE OF D-12 AND L-1. WHILE THIS MATTER WAS PENDING FOR BOARD REVIEW, THE FUND AND CLAIMANT'S ATTORNEY AGREED THAT CLAIMANT RETURN FROM MINNESOTA FOR REFERRAL TO THE BACK CLINIC AND THE PHYSICAL REHABILITATION CENTER IN PORTLAND. THE CASE WAS REMANDED FOR THIS PROCEDURE BUT THE WORKUP WAS NEVER COMPLETED BECAUSE OF THE CLAIMANT'S WIFE'S TERMINAL CANCER ILLNESS.

ALTHOUGH IT IS A CLOSE QUESTION, THE BOARD CONCLUDES THE COCCYX PROBLEM IS RELATED TO THE INDUSTRIAL ACCIDENT. THE CLAIMANT IS SO INJURED THAT HE CAN PERFORM NO SERVICES OTHER THAN THOSE WHICH ARE SO LIMITED IN QUALITY, DEPENDABILITY, OR QUANTITY, THAT A REASONABLE, STABLE MARKET FOR HIM DOES NOT EXIST. THUS, CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED AS A RESULT OF THE INDUSTRIAL ACCIDENT.

ORDER

CLAIMANT IS HEREBY GRANTED COMPENSATION FOR PERMANENT TOTAL DISABILITY EFFECTIVE ON THE DATE OF THIS ORDER.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE, 25 PERCENT OF THE INCREASE IN COMPENSATION ASSOCIATED WITH THIS AWARD WHICH, WHEN COMBINED WITH FEES ATTRIBUTABLE TO THE ORDER OF THE HEARING OFFICER, SHALL NOT EXCEED FIFTEEN HUNDRED DOLLARS.

WCB CASE NO. 73-1028 OCTOBER 31, 1973

GERALD MCELROY, CLAIMANT
F. P. STAGER, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ORS 283.140 AND THE DEPARTMENT OF GENERAL SERVICES ADMINISTRATIVE RULE NO. 04-19 PROVIDES FOR CENTRAL MAIL SERVICE FOR INTERAGENCY MAIL IN SALEM. THE AFFIDAVIT OF MAILING CLEARLY SHOWS THE REQUEST FOR REVIEW WAS DEPOSITED IN THE INTERAGENCY MAIL SERVICE WITHIN THE TIME PROVIDED BYLAW FOR MAILING AN APPEAL. THEREFORE, UPON RECONSIDERATION, THE BOARD FINDS THAT THE REQUEST FOR REVIEW WAS TIMELY FILED.

THE ORDER OF DISMISSAL DATED AUGUST 27, 1973 SHOULD BE SET ASIDE AND BOARD REVIEW GRANTED.

IT IS SO ORDERED.

WCB CASE NO. 71-2483 OCTOBER 31, 1973

WENDELL M. DELORME, CLAIMANT
FRANKLIN, BENNETT, OFELT, DES BRISAY AND
JOLLES, CLAIMANT'S ATTYS.
SCHOUBOE AND CAVANAUGH, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW SEEKING AN INCREASE IN HIS PERMANENT PARTIAL DISABILITY AWARD.

THIS 38 YEAR OLD CLAIMANT RECEIVED A COMPENSABLE BACK INJURY DECEMBER 16, 1968, WHICH ULTIMATELY RESULTED IN A SPINAL FUSION BEING PERFORMED.

CLAIMANT CANNOT RETURN TO TRUCK DRIVING BUT IS NOW IN TRAINING TO BECOME A MEDICAL TECHNICIAN. BECAUSE OF THE PRESENT CIRCUMSTANCES OF THE CLAIMANT, IT IS DIFFICULT TO ASCERTAIN THE FUTURE EARNING CAPACITY OF THE CLAIMANT AND THE EXTENT TO WHICH SUCH EARNING CAPACITY IS AFFECTED BY THE INDUSTRIAL ACCIDENT. HOWEVER, BASED ON THE EVIDENCE AVAILABLE AT THIS TIME, THE AWARD OF THE HEARING OFFICER OF 35 PERCENT OR 112 DEGREES APPEARS ADEQUATE.

IT IS TO BE NOTED THAT IN THE FUTURE IF CLAIMANT'S CONDITION WORSENS CLAIMANT HAS THE RIGHT TO ASSERT A CLAIM FOR AGGRAVATION OR PETITION THE BOARD FOR OWN MOTION REVIEW.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 27, 1973, IS AFFIRMED.

WCB CASE NO. 73-1109 NOVEMBER 1, 1973

ROBERT S. QUALLS, CLAIMANT
DENMAN AND COONEY, CLAIMANT'S ATTYS.
KEITH D. SKELTON, 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.

WCB CASE NO. 73-419 NOVEMBER 1, 1973

JOHN LEE COMBS, CLAIMANT
MIKE DYE, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS REVERSAL OF A HEARING OFFICER'S DISMISSAL OF THE REQUEST FOR HEARING BECAUSE THE CLAIMANT REFUSED TO COMPLY WITH THE HEARING OFFICER'S ORDER DATED MAY 4, 1973, FOR THE CLAIMANT TO RELEASE A REPORT OF THE ATTENDING PHYSICIAN OR ALLOW FURTHER EXAMINATION BY THE ATTENDING PHYSICIAN OR ANOTHER PHYSICIAN OF CLAIMANT'S CHOICE.

THE WORKMEN'S COMPENSATION BOARD, ADMINISTRATIVE ORDER
NUMBER 16-1970 CLEARLY IS IN POINT AND DISPOSES OF THIS MATTER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 6, 1973 IS
AFFIRMED.

WCB CASE NO. 73-20 NOVEMBER 1, 1973

JOHN M. ALLISON, CLAIMANT
MYATT, BOLLIGER, HAMPTON AND FREERKSEN,
CLAIMANT'S ATTYS.
MCMENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

EMPLOYER REQUESTS REVERSAL OF A HEARING OFFICER'S AWARD OF
PERMANENT TOTAL DISABILITY.

THE CLAIMANT, A 56 YEAR OLD TRUCK DRIVER, RECEIVED A SEVERE
FRACTURE OF HIS RIGHT LEG. CLAIMANT HAS HAD SEVERAL SURGERIES
INCLUDING TWO BONE GRAFTS. HE HAS A METAL PLATE IN HIS RIGHT LEG
AND OSTEOMYELITIS. AN OPEN DRAINING SORE AND INFECTION REQUIRES
FREQUENT CARE AND MEDICATION. THIS INFECTION ON OCCASION CAUSES
A SYSTEMIC TOXIC CONDITION THROUGHOUT HIS BODY. HE HAS A SEVERE
SITUATIONAL DEPRESSION. ALL ARE RELATED TO THE INDUSTRIAL INJURY.

ALTHOUGH THE INITIAL INJURY WAS TO THE RIGHT LEG AND FOOT, A
SCHEDULED DISABILITY, THE RESULTANT DISABILITY OF PSYCHOPATHOLOGY,
CHRONIC SYSTEMIC INFECTION AND DRAINAGE AND OSTEOMYELITIS WHEN
COMBINED WITH CLAIMANT'S AGE, EDUCATIONAL BACKGROUND, AND LIMITED
RANGE OF JOB SKILLS, MAKES THE AWARD OF PERMANENT TOTAL DISABILITY
APPROPRIATE.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 16, 1973, IS
AFFIRMED.

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

WCB CASE NO. 72-2303 NOVEMBER 1, 1973

DAVID WOODARD, CLAIMANT
WILLIAM G. CARTER, CLAIMANT'S ATTY.
MERLIN L. MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

EMPLOYER REQUESTS REVERSAL OF HEARING OFFICER'S ORDER
ALLOWING THIS AGGRAVATION CLAIM.

CLAIMANT SUSTAINED AN INDUSTRIAL INJURY TO HIS BACK DECEMBER
4, 1967. HIS CLAIM WAS CLOSED WITH NO PERMANENT PARTIAL DISABILITY.
CLAIMANT THEREAFTER ATTEMPTED TO CONTINUE HEAVY PHYSICAL JOBS FOR
A TOTAL OF 13 DIFFERENT EMPLOYERS. HE WAS ABLE TO MAINTAIN EMPLOY-
MENT ONLY FOR SHORT PERIODS OF TIME DUE TO THE EXACERBATIONS OF HIS
BACK CONDITION.

THE MEDICAL EVIDENCE CLEARLY RELATES THE PRESENT CONDITION
TO THE 1967 INDUSTRIAL INJURY. BOTH THE MEDICAL EVIDENCE AND THE
FACTS CLEARLY SHOW THAT HIS CONDITION HAS WORSENERED AND THUS THE
AGGRAVATION OF THE 1967 INJURY IS PROVED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED FEBRUARY 20, 1973,
IS AFFIRMED.

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

WCB CASE NO. 72-3317 NOVEMBER 1, 1973

IVAL CASTLE, CLAIMANT
JERRY G. KLEEN, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS A FURTHER INCREASE IN HIS PERMANENT PARTIAL
DISABILITY.

CLAIMANT, A 37 YEAR OLD PAINTER, SUSTAINED A COMPENSABLE LOW
BACK INJURY. BOTH THE ATTENDING ORTHOPEDIST AND THE BACK EVALUATION
CLINIC STATE CLAIMANT CAN RETURN TO WORK AS A PAINTER AND THAT THE
LOSS OF FUNCTION IS MINIMAL.

THE HEARING OFFICER HEARD AND SAW THE WITNESSES AND WAS IN THE
BEST POSITION TO ASSESS BOTH CREDIBILITY AND MOTIVATION.

IN VIEW OF ALL OF THE MEDICAL EVIDENCE AND THE FINDING OF LOW WORK MOTIVATION, THE BOARD CONCLUDES THAT THE AWARD OF 64 DEGREES UNSCHEDULED LOW BACK PERMANENT PARTIAL DISABILITY IS GENEROUS.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 30, 1973 IS AFFIRMED.

SAIF CLAIM NO. A 931351 NOVEMBER 1, 1973

SHERIDAN GRAVES, CLAIMANT
COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
STATE ACCIDENT INSURANCE FUND, DEFENSE ATTY.

THE BOARD, BY OWN MOTION ORDER DATED JUNE 27, 1973, ORDERED FURTHER MEDICAL EXAMINATION BEFORE DECIDING ON CLAIMANT'S REQUEST TO THE BOARD ON OWN MOTION TO ORDER THE STATE ACCIDENT INSURANCE FUND TO PROVIDE CLAIMANT FURTHER MEDICAL CARE AND COMPENSATION.

THE BOARD NOW HAS A MEDICAL REPORT FROM DR. R. EDWARD HUFFMAN, M.D., PSYCHIATRIST, DATED SEPTEMBER 25, 1973 AND THE LETTER DATED OCTOBER 22, 1973 FROM ALLAN H. COONS.

THE CLAIMANT RECEIVED AN INDUSTRIAL INJURY MAY, 1962. THE CLAIM WAS CLOSED AND THE CLAIMANT WAS ABLE TO WORK FOR SEVERAL YEARS APPARENTLY UNTIL 1970 OR 1971. DR. R. EDWARD HUFFMAN'S EXAMINATION AND REPORT APPEARS FAIR AND COMPLETE.

BASED ON THE MEDICAL REPORTS AND THE FACTS OF THIS PARTICULAR CASE, THE BOARD FINDS THAT THERE IS INSUFFICIENT EVIDENCE TO RELATE CLAIMANT'S PRESENT PROBLEMS TO THE 1962 INJURY. THUS, CLAIMANT'S REQUEST FOR OWN MOTION RELIEF SHOULD BE DENIED.

ORDER

CLAIMANT'S REQUEST FOR ADDITIONAL TESTING IS DENIED.

CLAIMANT'S REQUEST FOR OWN MOTION RELIEF IS DENIED.

WCB CASE NO. 73-217 NOVEMBER 2, 1973

ROLLAND JONES, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
O'REILLY, ANDERSON, RICHMOND AND ADKINS,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

EMPLOYER REQUESTS BOARD REVERSAL OF HEARING OFFICER'S ORDER HOLDING THAT THE CLAIMANT SUSTAINED A COMPENSABLE INDUSTRIAL INJURY.

CLAIMANT TESTIFIED HE SUSTAINED AN UNWITNESSED ACCIDENT OCTOBER 23, 1972. HE TESTIFIED THAT HE CALLED A DOCTOR ON THE SAME DAY WHO TOLD HIM TO GO TO THE HOSPITAL FOR X-RAYS. HE REPORTED TO THE HOSPITAL THE SAME DAY BUT WAS TOLD TO COME BACK THE NEXT DAY FOR THE X-RAYS, WHICH HE DID.

THE TESTIMONY OF THE CLAIMANT IS CORROBORATED BY THE MEDICAL REPORTS SUBMITTED. THE OBJECTIONS TO TWO OF THE MEDICAL REPORTS GOES TO THE WEIGHT TO BE GIVEN THE REPORT RATHER THAN TO THEIR ADMISSIBILITY. THE MEDICAL REPORTS WERE PROPERLY ADMITTED.

IN ADDITION, THE HEARING OFFICER HAD THE OPPORTUNITY TO HEAR AND SEE THE CLAIMANT AND WE GIVE WEIGHT TO HIS FINDINGS.

UPON REVIEW OF THE ENTIRE RECORD, THE BOARD CONCURS WITH THE FINDINGS AND ORDER OF THE HEARING OFFICER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 18, 1973, IS AFFIRMED.

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

WCB CASE NO. 72-1664 NOVEMBER 2, 1973

WILLIAM G. JASTER, 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, MOORE AND SLOAN.

CLAIMANT REQUESTS INCREASED PERMANENT DISABILITY ON THIS CLAIM OF AGGRAVATION.

CLAIMANT, A 64 YEAR OLD RETIRED MILKMAN RECEIVED AN INDUSTRIAL INJURY JULY, 1967 TO HIS LOW BACK. AFTER CONSERVATIVE TREATMENT, HE RETURNED TO WORK OCTOBER 2, 1967 AND WORKED CONTINUOUSLY THROUGH 1968. THE CLAIM WAS CLOSED WITH 10 PERCENT UNSCHEDULED DISABILITY.

IN JANUARY, 1969 CLAIMANT SLIPPED ON ICE AT HIS HOME INJURING HIS LOW BACK. EXAMINATION REVEALED MARKED SPASMS OF THE LUMBAR MUSCULATURES AT THAT TIME. CLAIMANT APPLIED FOR RETIREMENT SHORTLY AFTER THE HOME ACCIDENT IN JANUARY OF 1969.

CLAIMANT HAS A LONG HISTORY OF BACK TROUBLE, SUFFERS FROM OSTEOARTHRITIS OF THE LUMBAR SPINE WITH DEGENERATIVE DISC DISEASE AND SUFFERS RECURRING BACKACHES. THE INDUSTRIAL ACCIDENT OF

JULY 25, 1967 WAS A MILD INJURY. THE ATTENDING DOCTORS DID NOT TAKE X-RAYS AND DIAGNOSED AN ACUTE LUMBOSACRAL STRAIN. AFTER CONSERVATIVE TREATMENT CLAIMANT RETURNED TO WORK OCTOBER 2, 1967 AND CONTINUED WORK FOR OVER A YEAR UNTIL HE SLIPPED ON THE ICE AT HOME, AFTER WHICH HE IMMEDIATELY ELECTED TO APPLY FOR RETIREMENT.

THE BOARD CONCURS WITH THE FINDING OF THE HEARING OFFICER THAT THE MEDICAL OPINION BARELY MEETS THE JURISDICTIONAL TESTS FOR THE CLAIMANT'S RIGHT TO A HEARING ON AGGRAVATION. THE BOARD ALSO CONCURS WITH THE HEARING OFFICER'S FINDING THAT THE DETERIORATION OF THIS CLAIMANT'S SPINE CONDITION IS NOT CAUSALLY RELATED TO THE INDUSTRIAL INJURY OF JULY, 1967.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 4, 1973 IS AFFIRMED.

COMMISSIONER SLOAN DISSENTS -

THE HOME ACCIDENT IN WHICH THE CLAIMANT SLIPPED ON THE ICE REQUIRED ONLY ONE TREATMENT BY A DOCTOR CAUSING ONLY A TEMPORARY EXACERBATION OF HIS BACK CONDITION. AS THE MEDICAL REPORTS STATE, CLAIMANT HAS OTHER INCIDENTS NOT RELATED TO HIS WORK WHICH MAY HAVE CONTRIBUTED TO CLAIMANT'S OVERALL PICTURE BUT IT IS A REASONABLE CERTAINTY THAT HIS INJURY IN 1967 WAS A CONTRIBUTING FACTOR TO CLAIMANT'S WORSENING CONDITION. CLAIMANT HAS PROVED HIS CLAIM OF AGGRAVATION. THE HEARING OFFICER'S OPINION AND ORDER SHOULD BE REVERSED.

--S-- GORDON SLOAN, COMMISSIONER

WCB CASE NO. 73-734 NOVEMBER 6, 1973
WCB CASE NO. 73-735 NOVEMBER 6, 1973

CHARLA JEAN DINNOCENZO, CLAIMANT
FRANKLIN, BENNETT, DESBRISAY AND JOLLES,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER DENYING A CLAIM OF AGGRAVATION.

CLAIMANT'S INDUSTRIAL INJURY OF MAY 27, 1971, A NECK INJURY, AND JUNE 3, 1971, A LUMBOSACRAL INJURY, WERE CONSOLIDATED AND AFTER BOARD REVIEW, CLAIMANT WAS AWARDED 64 DEGREES PERMANENT PARTIAL DISABILITY.

THE BOARD CONCURS WITH THE HEARING OFFICER'S FINDING THAT THE LAST AWARD OR ARRANGEMENT OF COMPENSATION AS REQUIRED IN ORS 656.271 IS THE NEAREST DATE THAT EVIDENCE SUPPORTING HER AWARD, I.E. HEARING OFFICER'S ORDER DATED AUGUST 31, 1972, AND NOT THE DATE OF THE ORDER ON REVIEW OF FEBRUARY 2, 1973. THE

BOARD ALSO FINDS THAT THE MEDICAL REPORTS OF DR. RINEHART FULFILLED ONLY THE BARE MINIMUM TO GIVE THE HEARING OFFICER JURISDICTION IN THIS CLAIM FOR AGGRAVATION.

THE MINIMAL PHYSICAL DISABILITY OF THE INDUSTRIAL ACCIDENTS COMBINED WITH THE MODERATE PSYCHOPATHOLOGY WITH ALMOST NO MEDICAL EVIDENCE OF A WORSENING OR AGGRAVATION ALONG WITH THE PRE-EXISTING PSYCHOPATHOLOGY AND THE INTERVENING PREGNANCY PERSUADE THE BOARD THAT THE CLAIMANT HAS FAILED TO PROVE HER RIGHT TO AGGRAVATION BENEFITS.

THE BOARD ALSO CONCURS WITH THE HEARING OFFICER'S FINDING THAT UPON VERIFICATION BY A PSYCHOLOGICAL EXPERT THE CLAIMANT MAY BE ENTITLED TO PSYCHOLOGICAL OR PSYCHIATRIC COUNSELING PURSUANT TO ORS 656.245.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 9, 1973 IS AFFIRMED.

THE CLAIMANT IS ENTITLED TO PSYCHOLOGICAL OR PSYCHIATRIC THERAPY 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 25 PERCENT OF THE COST OF PSYCHOTHERAPY. IN NO EVENT HOWEVER, SHALL SUCH FEE EXCEED FIFTEEN HUNDRED DOLLARS.

WCB CASE NO. 73-245 NOVEMBER 6, 1973

FAYE F. DIETER, CLAIMANT
SCHROEDER, DENNING AND HUTCHENS,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

A REQUEST FOR REVIEW HAVING BEEN DULY FILED BY THE STATE ACCIDENT INSURANCE FUND WITH THE WORKMEN'S COMPENSATION BOARD IN THE ABOVE ENTITLED MATTER, AND SAID REQUEST FOR REVIEW NOW HAVING BEEN WITHDRAWN BY THE FUND,

IT IS THEREFORE ORDERED THAT THE REVIEW NOW PENDING BEFORE THE BOARD IS HEREBY DISMISSED.

WCB CASE NO. 73-524 NOVEMBER 7, 1973

FAYE PONDER, CLAIMANT
COLLINS, FERRIS AND VELURE, CLAIMANT'S ATTYS.
MERLIN L. MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW SEEKING TO INCREASE HER PERMANENT PARTIAL DISABILITY AWARD TOTALLING 65 PERCENT (208 DEGREES) TO PERMANENT TOTAL DISABILITY.

CLAIMANT, A 50 YEAR OLD COOK, SUSTAINED A LOW BACK INJURY WHICH REQUIRED TWO SURGERIES. THE BACK EVALUATION CLINIC AND THE TREATING PHYSICIAN CONCURRED IN THE OPINION THAT CLAIMANT CANNOT RETURN TO HER FORMER OCCUPATION BUT THAT SHE IS ABLE TO CARRY OUT GAINFUL EMPLOYMENT. THE ATTENDING PHYSICIAN STATED HER DISABILITY IS 'MILDLY MODERATE' AND THAT SHE IS EMPLOYABLE BUT NOT IN HER PREVIOUS TYPE OF JOB. THUS, CLAIMANT IS NOT IN THE 'ODD-LOT' CATEGORY ON THE BASIS OF A PRIMA FACIE CASE. HER MOTIVATION THEN, MUST BE REVIEWED TO DETERMINE WHETHER SHE FALLS WITHIN THE 'ODD-LOT' CATEGORY, PURSUANT TO THE RATIONALE OF THE DEATON CASE.

THE PSYCHOLOGICAL REPORT SPECIFICALLY CONCLUDES THAT CLAIMANT IS NOT MOTIVATED TO SEEK EMPLOYMENT AND THAT HER HUSBAND MAKES AN ADEQUATE INCOME TO SUPPORT THE TWO AND THEIR LAST CHILD REMAINING AT HOME. THE CLAIMANT'S EXCESSIVE WEIGHT CONTINUES TO BE A FACTOR IN HER DISABILITY AND COULD WELL BE INDICATIVE AS TO WORK MOTIVATION.

THE TESTIMONY OF THE OWNER OF AN EMPLOYMENT AGENCY WHICH IS BASED SOLELY ON A HYPOTHETICAL QUESTION, IS NOT PERSUASIVE. EMPLOYMENT AGENCIES SHOULD BE APPRISED OF THE PROVISIONS OF THE SECOND INJURY FUND AND ENCOURAGED TO ATTEMPT TO PLACE PERSONS SUCH AS THIS CLAIMANT.

BASED ON THE ENTIRE RECORD, THE BOARD FINDS THAT THIS CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED AND THAT HER PERMANENT PARTIAL DISABILITY DOES NOT EXCEED 65 PERCENT (208 DEGREES).

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 14, 1973 IS AFFIRMED.

WCB CASE NO. 72-2025	NOVEMBER 7, 1973
WCB CASE NO. 72-3558	NOVEMBER 7, 1973
WCB CASE NO. 73-402	NOVEMBER 7, 1973
WCB CASE NO. 73-403	NOVEMBER 7, 1973

DELBERT MILLER, CLAIMANT
RICHARDSON AND MURPHY, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW OF A HEARING OFFICER'S ORDER DATED JUNE 11, 1973 WHICH, AMONG OTHER THINGS, INCREASED CLAIMANT'S UNSCHEDULED DISABILITY TO A TOTAL OF 128 DEGREES CONTENDING THAT CLAIMANT'S LOSS OF EARNING CAPACITY DOES NOT JUSTIFY SUCH AN AWARD.

ISSUE

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

DISCUSSION

ON MARCH 23, 1972, CLAIMANT WAS STRUCK IN THE FACE BY A CHAIN BINDER SUFFERING A SEVERE FRACTURE OF HIS NOSE. HE NOW SUFFERS FROM A LOSS OF HIS SENSE OF SMELL AND FROM RECURRING SEVERE HEADACHES WHICH OCCUR TWO TO THREE TIMES PER WEEK AND LAST TWO TO THREE HOURS PER DAY.

CLAIMANT IS PRESENTLY ENROLLED IN A COURSE OF BARBER TRAINING WHICH, IT APPEARS, HE WILL SUCCESSFULLY COMPLETE. HIS PREVIOUS EXPERIENCE HAS BEEN ESSENTIALLY IN MANUAL LABOR AND IT APPEARS THAT ALTHOUGH HE IS NOW PRECLUDED FROM HEAVY PHYSICAL LABOR, WITH RETRAINING HIS EARNINGS WILL COMPARE FAVORABLY WITH THOSE HE HAS PREVIOUSLY ENJOYED.

HAVING REVIEWED THE ENTIRE RECORD WE CONCLUDE THE ALLOWANCE OF 128 DEGREES ALLOWED BY THE HEARING OFFICER IS NOT JUSTIFIED. WE FIND THAT THE CLAIMANT'S UNSCHEDULED INJURY HAS PRODUCED A LOSS OF EARNING CAPACITY EQUAL TO 80 DEGREES OR 25 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

THE HEARING OFFICER'S ORDER SHOULD BE MODIFIED ACCORDINGLY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 11, 1973, ALLOWING CLAIMANT 128 DEGREES IS HEREBY SET ASIDE AND IN LIEU THEREOF CLAIMANT IS ALLOWED AN AWARD OF 80 DEGREES FOR UNSCHEDULED DISABILITY BEING AN INCREASE OF 48 DEGREES OVER THAT PREVIOUSLY AWARDED.

IT IS HEREBY ORDERED THAT THE HEARING OFFICER'S ORDER IS AFFIRMED IN ALL OTHER RESPECTS.

WCB CASE NO. 72-2684 NOVEMBER 7, 1973

CLARENCE P. ZACHOW, CLAIMANT
WILLIAM PAULUS, CLAIMANT'S ATTY.
MCMURRY AND NICHOLS, DEFENSE ATTYS.

ON SEPTEMBER 14, 1973, THE EMPLOYER REQUESTED REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED CLAIMANT AN AWARD OF PERMANENT TOTAL DISABILITY.

THE EMPLOYER REQUESTED A BOARD REVIEW, BUT THE REQUEST HAS NOW BEEN WITHDRAWN. THE MATTER BEFORE THE BOARD IS ACCORDINGLY DISMISSED AND THE ORDER OF THE HEARING OFFICER IS FINAL BY OPERATION OF LAW.

NO NOTICE OF APPEAL IS DEEMED APPLICABLE.

WCB CASE NO. 73-376 NOVEMBER 8, 1973

ARVEST CORBETT ANDERSON, CLAIMANT
HAROLD W. ADAMS, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON NOVEMBER 7, 1973, THE BOARD CONSIDERED THOSE MATTERS RAISED IN THE REQUEST FOR RECONSIDERATION PRIOR TO ISSUING ITS ORDER DATED OCTOBER 31, 1973, AND THEREFORE, CONCLUDES THE MOTION FOR RECONSIDERATION IS NOT WELL TAKEN AND IT IS HEREBY DENIED.

‡
NO NOTICE OF APPEAL IS DEEMED APPLICABLE.

WCB CASE NO. 72-2545 NOVEMBER 8, 1973

DESSIE BAILEY, CLAIMANT
MCMENAMIN, JONES, JOSEPH AND LANG,
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 FOR WADDLE'S RESTAURANT IN PORTLAND, OREGON.

UPON HEARING, THE HEARING OFFICER ORDERED THE CLAIM ALLOWED AS A COMPENSABLE OCCUPATIONAL DISEASE. THE ORDER OF THE HEARING OFFICER WAS REJECTED BY THE STATE ACCIDENT INSURANCE FUND TO CONSTITUTE AN APPEAL TO A MEDICAL BOARD OF REVIEW.

A MEDICAL BOARD OF REVIEW CONSISTING OF DOCTORS FREDERICK A. J. KINGERY, LEON F. RAY AND THOMAS S. SAUNDERS WAS APPOINTED ON OCTOBER 2, 1973. THE MEDICAL BOARD OF REVIEW HAS NOW PRESENTED ITS FINDINGS WHICH ARE ATTACHED AS EXHIBIT 'A'.

IN AID OF THE RECORD, THE BOARD NOTES THAT THE MEDICAL BOARD OF REVIEW HAS, IN EFFECT, SET ASIDE THE INCREASE IN SCHEDULED DISABILITY ALLOWED BY THE HEARING OFFICER AND AFFIRMED THE UNSCHEDULED DISABILITY AWARD MADE BY THE HEARING OFFICER.

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.

WCB CASE NO. 73-573 NOVEMBER 8, 1973

KATHLEEN I. COCKRELL, CLAIMANT
BEMIS, BREATHOUWER AND JOSEPH,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS AN INCREASE IN HER PERMANENT PARTIAL
DISABILITY AWARD.

THIS CLAIMANT HAS BEEN EXAMINED BY NUMEROUS DOCTORS, HAS HAD
BACK EVALUATION CLINIC EXAMINATION AND EVALUATION AND HAS HAD
VOCATIONAL REHABILITATION EVALUATION. THE CONSENSUS OF THE MEDICAL
OPINIONS REFLECT NO OBJECTIVE FINDINGS AND THAT PERMANENT DISABILITY
IS MINIMAL.

SHE IS ENROLLED AT CLACKAMAS COMMUNITY COLLEGE AND HER
PROSPECTS FOR GED AND FURTHER EDUCATION IS GOOD. THE BOARD
CONCURS WITH THE FINDINGS OF THE HEARING OFFICER THAT THE PERMANENT
PARTIAL DISABILITY DOES NOT EXCEED 10 PERCENT OR 32 DEGREES.

THE BOARD FINDS THAT THE INJECTIONS AND MEDICAL SERVICES,
INCLUDING THE COST OF THE MEDICAL REPORT IN THIS CASE, ARE FOR
CONDITIONS RESULTING FROM THE INJURIES WHICH SHOULD BE PAID UNDER
THE PROVISIONS OF ORS 656.245.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 27, 1973, IS
MODIFIED TO REQUIRE THE STATE ACCIDENT INSURANCE FUND TO PAY FOR
THE MEDICAL SERVICES OF DR. COTTRELL, INCLUDING THE COST OF HIS
MEDICAL REPORT IN THIS CASE.

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

WCB CASE NO. 73-1817 NOVEMBER 14, 1973

ROBERT WRIGHT, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON NOVEMBER 8, 1973, CLAIMANT REQUESTED BOARD REVIEW OF A
HEARING OFFICER'S ORDER DATED OCTOBER 8, 1973.

ORS 656.289 (3) AND ORS 656.295 TOGETHER PROVIDE THAT UNLESS
A REQUEST FOR REVIEW IS MAILED WITHIN 30 DAYS FROM THE DATE ON
WHICH THE HEARING OFFICER'S ORDER IS MAILED TO THE PARTIES, THE
ORDER BECOMES FINAL.

IT APPEARS THE REQUEST FOR REVIEW FILED BY THE CLAIMANT IS UNTIMELY.

THE CLAIMANT IS HEREBY ORDERED TO, WITHIN 30 DAYS, SHOW CAUSE, IF THERE BE, WHY THE REQUEST FOR REVIEW SHOULD NOT BE DISMISSED FOR LACK OF JURISDICTION.

WCB CASE NO. 73-1156 NOVEMBER 16, 1973

MILDRED CROUCH, CLAIMANT
COONS, MALAGON AND COLE, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REVIEWED REQUESTED BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS REVIEW OF A HEARING OFFICER'S ORDER AFFIRMING AN AWARD OF 32 DEGREES FOR UNSCHEDULED PERMANENT DISABILITY CONTENDING HER DISABILITY EXCEEDS THAT AWARDED.

CLAIMANT IS A 65 YEAR OLD DIABETIC DISHWASHER WHO SUFFERED THE MOST RECENT AND MOST SIGNIFICANT OF SEVERAL BACK INJURIES IN FEBRUARY OF 1972. EVALUATION OF HER CONDITION, WHICH EVENTUALLY INCLUDED EXAMINATIONS BY ORTHOPEDISTS, NEUROLOGISTS, THE BACK EVALUATION CLINIC AND A PSYCHOLOGIST, REVEALED ONLY MINIMAL OBJECTIVE DISABILITY WITH A MODERATE DEGREE OF FUNCTIONAL DISTURBANCE. THE PSYCHOLOGIST FOUND HER PSYCHOPATHOLOGY HAD BEEN MILDLY ENHANCED BY THE INJURY IN QUESTION. THE CLAIMANT, IN HER BRIEF ON APPEAL, OBJECTS TO THE HEARING OFFICER'S RELIANCE ON HIS IMPRESSIONS OF THE CLAIMANT DURING THE COURSE OF THE HEARING AND DECRIED HIS RELIANCE ON "SECRET OBSERVATIONS". AS A FACT FINDER, THE HEARING OFFICER HAS A DUTY TO NOT ONLY HEAR THE TESTIMONY BUT TO OBSERVE THE WITNESSES AND EVALUATE WHAT HE SEES AS WELL. HE NEED NOT IN EVERY CASE RECITE INTO THE RECORD THE DETAILS OF HIS OBSERVATIONS. THE HEARING OFFICER RELYING ON HIS OBSERVATIONS OF THE WITNESSES, AS WELL AS THE EVIDENCE OF RECORD, CONCLUDED THAT HER COMPLAINTS WERE INORDINATELY EXAGGERATED AND AFFIRMED HER AWARD.

THE BOARD HAS REVIEWED THE RECORD AND HAS GIVEN WEIGHT TO THE OBSERVATIONS OF THE HEARING OFFICER BUT HAVING DONE SO, CONSIDERS THE DISABLING EFFECT OF THIS INJURY, AS ENHANCED BY HER RELATED PSYCHOPATHOLOGY, AS EQUAL TO 20 PERCENT OR 64 DEGREES RATHER THAN 10 PERCENT OR 32 DEGREES AS FOUND BY THE EVALUATION DIVISION AND THE HEARING OFFICER.

ORDER

THE ORDER OF THE HEARING OFFICER AFFIRMING THE DETERMINATION OF APRIL 4, 1973, IS HEREBY REVERSED AND CLAIMANT IS HEREBY ALLOWED AN ADDITIONAL 32 DEGREES MAKING A TOTAL OF 64 DEGREES FOR UNSCHEDULED PERMANENT DISABILITY AS A RESULT OF HER INJURY OF FEBRUARY 11, 1972.

COUNSEL FOR CLAIMANT MAY RECOVER AS A REASONABLE ATTORNEY'S FEE, 25 PERCENT OF THE INCREASED COMPENSATION AWARDED HEREBY, PAYABLE FROM SAID AWARD, TO A MAXIMUM OF FIFTEEN HUNDRED DOLLARS.

WCB CASE NO. 71-2814 NOVEMBER 16, 1973

DAVID W. PUGSLEY, CLAIMANT
RINGO, WALTON, MCCLAIN AND EVES,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE HEARING OFFICER SUSTAINED THE DENIAL OF CLAIMANT'S HEART ATTACK CLAIM EITHER AS AN AGGRAVATION OF A 1970 CLAIM OR AS A NEW INJURY AND CLAIMANT REQUESTS REVERSAL OF THE HEARING OFFICER'S ORDER.

CLAIMANT HAD AN EPISODE OF CHEST PAIN AND DIZZINESS ON AUGUST 6, 1970 WHICH WAS ACCEPTED AS AN OCCUPATIONAL INJURY CLAIM AND CLOSED WITHOUT PERMANENT DISABILITY. ON AUGUST 8, 1971, WHICH WAS A SUNDAY, CLAIMANT HAD ANOTHER SIMILAR HEART EPISODE AT HIS HOME. THE CLAIMANT'S WORK OF THE PREVIOUS WEEK HAD BEEN HECTIC AND STRENUOUS BUT HE HAD HAD A FULL NIGHT'S SLEEP AND WAS NOT EXERTING HIMSELF AT THE TIME OF THE INSTANT EPISODE.

THE LENGTH OF TIME SINCE THE JOB EXERTION TO THE TIME OF THE INCIDENT PERSUADES THE BOARD THAT THE EPISODE OF AUGUST 8, 1971 WAS NOT RELATED TO HIS WORK. THE BOARD ALSO CONCLUDES FROM THE MEDICAL EVIDENCE THAT THE ORIGINAL EPISODE PLAYED NO PART IN THE OCCURRENCE OF THE SECOND. THE HEARING OFFICER'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 21, 1973 IS AFFIRMED.

WCB CASE NO. 72-3209 NOVEMBER 16, 1973

GEORGE DICKENSON, CLAIMANT
HAROLD W. ADAMS, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS AN INCREASE IN HIS PERMANENT PARTIAL DISABILITY AWARD.

THIS 49 YEAR OLD TRUCK DRIVER SUSTAINED A LOW BACK INJURY JULY 12, 1972. HE HAS BEEN TREATED BY A CHIROPRACTOR AND REFERRED TO THE DISABILITY PREVENTION DIVISION. THE BACK EVALUATION CLINIC FOUND A CHRONIC LOW BACK STRAIN PRODUCING A MILD LOSS FUNCTION OF THE LOW BACK. THERE IS SOME PSYCHOPATHOLOGY WHICH IS RELATED TO THE INDUSTRIAL ACCIDENT.

CLAIMANT IS WORKING AS A PLUMBER'S HELPER BUT EXPRESSES A DESIRE TO RETURN TO TRUCK DRIVING, WORKING AS A CEMENT TRUCK DRIVER. WHETHER HE CAN DO SO IS SPECULATIVE. HOWEVER, AFTER REVIEWING THE ENTIRE RECORD, THE BOARD CONCURS WITH THE HEARING OFFICER'S CONCLUSION THAT CLAIMANT'S DISABILITY EQUALS 32 DEGREES. IF NEEDED, THE CLAIMANT MAY REQUEST THE HELP OF OUR DISABILITY PREVENTION DIVISION'S SERVICE COORDINATOR IN ATTEMPTING TO RETURN TO THE TRUCK DRIVING FIELD.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 27, 1973, IS AFFIRMED.

SAIF CLAIM NO. SC 30484 NOVEMBER 16, 1973

RAYMOND C. DAY, CLAIMANT
SMITH AND LEE, CLAIMANT'S ATTY.
STATE ACCIDENT INSURANCE FUND,
DEFENSE ATTY.

BY A MOTION DATED AUGUST 21, 1973, CLAIMANT'S COUNSEL REQUESTED THAT THE BOARD, ON ITS OWN MOTION, REOPEN CLAIMANT'S CLAIM IN ORDER TO HEAR THE MEDICAL EVIDENCE WHICH CLAIMANT HAS IN FAVOR OF AGGRAVATION.

ON TWO OCCASIONS THE BOARD REQUESTED THE PARTIES TO SUBMIT CURRENT MEDICAL REPORTS TO SUBSTANTIATE ANY ACTION THE BOARD MIGHT TAKE UNDER OWN MOTION JURISDICTION. SINCE NO REPLIES HAVE BEEN RECEIVED, THE MATTER NOW PENDING BEFORE THE BOARD IS HEREBY DISMISSED AND OWN MOTION CONSIDERATION IS DENIED.

WCB CASE NO. 72-1351 NOVEMBER 19, 1973

JESS FERGUSON, CLAIMANT
JOEL B. REEDER, CLAIMANT'S ATTY.
COLLINS, FERRIS AND VELURE, DEFENSE ATTY.

ON AUGUST 13, 1973 THE PARTIES TO THE ABOVE-ENTITLED CASE ENTERED INTO A STIPULATION PURSUANT TO ORS 656.289 (4) WHEREBY THE CLAIMANT AGREED TO DISMISS HIS PENDING REQUEST FOR BOARD REVIEW IN RETURN FOR THE PAYMENT OF TWO HUNDRED FIFTY DOLLARS IN A LUMP SUM BY THE EMPLOYER'S INSURANCE CARRIER.

ALTHOUGH THE STIPULATION WAS EXECUTED ON AUGUST 13, 1973, IT WAS NOT FORWARDED TO THE WORKMEN'S COMPENSATION BOARD BY THE CLAIMANT'S ATTORNEY UNTIL NOVEMBER 13, 1973.

IN THE MEANTIME, AND WITHOUT KNOWLEDGE OF THE SETTLEMENT AGREEMENT ENTERED INTO BY THE PARTIES, THE BOARD, ON AUGUST 15, 1973, ISSUED ITS ORDER ON REVIEW IN THE ABOVE-ENTITLED MATTER AFFIRMING THE ORDER OF THE HEARING OFFICER.

IN RELIANCE UPON THE STIPULATION OF THE PARTIES WHICH IS ATTACHED HERETO AS EXHIBIT 'A', AND BEING NOW FULLY ADVISED, THE BOARD HEREBY -

- (1) SETS ASIDE ITS ORDER OF AUGUST 15, 1973 -
- (2) APPROVES THE SETTLEMENT STIPULATION ATTACHED HERETO AS EXHIBIT 'A' AND ORDERS IT EXECUTED ACCORDING TO ITS TERMS -
- (3) DISMISSES THE CLAIMANT'S REQUEST FOR REVIEW.

STIPULATION AND ORDER

THE PARTIES STIPULATE AS FOLLOWS -

(1) CLAIMANT SUSTAINED A COMPENSABLE INJURY ON NOVEMBER 29, 1967, WHICH WAS CLOSED BY DETERMINATION ORDER DATED MARCH 7, 1968.

(2) THEREAFTER CLAIMANT REQUESTED RE-OPENING OF HIS CLAIM UNDER HIS AGGRAVATION RIGHTS DEMANDING MEDICAL CARE AND TREATMENT AND DISABILITY BENEFITS.

(3) SAID REQUEST FOR RE-OPENING WAS DENIED BY THE EMPLOYER AND CARRIER. CLAIMANT REQUESTED A HEARING CONTESTING SAID DENIAL.

(4) HEARING WAS HELD AND THE HEARING OFFICER IN HIS OPINION AND ORDER OF MARCH 9, 1973, AFFIRMED THE DENIAL OF THE AGGRAVATION CLAIM. CLAIMANT APPEALS THIS ORDER TO THE BOARD.

(5) THE CLAIMANT CONTENTS THAT HIS CONDITION HAS WORSENEDED AND THAT IT IS THE RESULT OF HIS 1967 INJURY. THE EMPLOYER CONTENTS THAT CLAIMANT SUSTAINED A 'NEW INCIDENT' WHILE IN THE EMPLOY OF ANOTHER EMPLOYER IN AUGUST, 1969.

(6) THAT IT APPEARS TO THE PARTIES THAT A BONA FIDE DISPUTE EXISTS AS TO THE COMPENSABILITY OF THE ABOVE ENTITLED CLAIM AND THAT THE MATTER SHALL BE SETTLED UNDER THE PROVISIONS OF ORS 656.289

(4) BY PAYMENT OF TWO HUNDRED FIFTY DOLLARS LUMP SUM TO CLAIMANT BY CARRIER. THE REQUEST FOR BOARD REVIEW SHALL BE DISMISSED WITH PREJUDICE.

(7) CLAIMANT'S ATTORNEY SHALL BE AWARDED ~~FOUR~~ DOLLARS AS ATTORNEY FEES, SAID SUM TO BE PAID FROM SAID SETTLEMENT.

WCB CASE NO. 72-1247 NOVEMBER 21, 1973

WILLIAM R. BOAZ, CLAIMANT
WILLIAMS, SKOPIL, MILLER AND BECK,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT SUSTAINED A LOW BACK INJURY AND RECEIVED AN AWARD OF 10 PERCENT (32 DEGREES) BY DETERMINATION ORDER WHICH WAS INCREASED TO 20 PERCENT (64 DEGREES) BY THE HEARING OFFICER. THE FUND REQUESTS THAT THE INCREASE FROM 10 PERCENT TO 20 PERCENT UNSCHEDULED DISABILITY BE REVERSED.

CLAIMANT IS A COLLEGE GRADUATE BUT HAS BEEN UNABLE TO SECURE SEDENTARY TYPE JOBS. HIS BACK CONDITION WHEN REPORTED TO PROSPECTIVE EMPLOYERS FOR MANUAL LABOR WORK HAS RESULTED IN NOT BEING HIRED FOR SUCH MANUAL LABOR. HE PRESENTLY HAS A JOB OF MANUAL LABOR TYPE WORK BUT HIS BACK CONDITION PREVENTS ADVANCEMENT TO A HIGHER PAYING JOB WHICH WOULD ENTAIL HEAVIER LIFTING.

THE HEARING OFFICER HAD THE OPPORTUNITY TO OBSERVE THE CLAIMANT AND GREAT WEIGHT IS GIVEN TO HIS FINDINGS.

UPON DE NOVO REVIEW OF THE ENTIRE RECORD THE BOARD AFFIRMS AND ADOPTS THE ORDER OF THE HEARING OFFICER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 24, 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.

WCB CASE NO. 73-904 NOVEMBER 21, 1973
WCB CASE NO. 73-905

ROBERT C. HILL, CLAIMANT
RASK, HEFFERIN AND CARTER, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS THAT HIS PERMANENT PARTIAL DISABILITY AWARD BE INCREASED TO PERMANENT TOTAL DISABILITY.

CLAIMANT HAS HAD NUMEROUS INDUSTRIAL BACK INJURIES SINCE AUGUST 1963. ON MAY 19, 1972 HE HAD A LUMBAR LAMINECTOMY. HE HAS HAD VOCATIONAL REHABILITATION TRAINING AND HAS PASSED THE STATE BARBER'S EXAMINATION AND HAS WORKED PART-TIME AS A BARBER. HE IS ALSO A PART-TIME MINISTER. THE CLAIMANT HAS SUBSTANTIAL PERMANENT DISABILITY AND LOSS OF WAGE EARNING CAPACITY IN THAT HE CAN NO LONGER DO HEAVY MANUAL LABOR AND HIS ABILITY TO DO BARBERING FULL-TIME IS SOMEWHAT IMPAIRED.

THE BOARD FINDS, HOWEVER, THAT THE CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED. THE BOARD CONCURS WITH THE FINDINGS AND AWARD OF THE HEARING OFFICER THAT THE CLAIMANT'S LOSS OF EARNING CAPACITY IS 50 PERCENT OR 160 DEGREES UNSCHEDULED LOW BACK DISABILITY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 25, 1973 IS AFFIRMED.

WCB CASE NO. 72-1582 NOVEMBER 26, 1973

MATTHEW FLOYD, CLAIMANT
BURNS AND EDWARDS, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT APPEALS A HEARING OFFICER'S ORDER SEEKING AN AWARD OF PERMANENT TOTAL DISABILITY AS AN ODD-LOT WORKMAN, CONTENDING THE HEARING OFFICER ERRED IN LIMITING HIS REQUEST FOR ADDITIONAL COMPENSATION TO THE RIGHT LEG.

THE HEARING OFFICER RULED -

'' . . . (A) CONTENTION OF DISABILITY TO THE RIGHT ARM AND LOW BACK WAS BEYOND THE SCOPE OF THIS HEARING, THESE ALLEGED COMPENSABLE INJURIES NOT HAVING BEEN THE SUBJECT OF ANY CLAIM TO DATE - AND ANY CLAIM THEREFOR MUST PRELIMINARILY BE MADE TO THE FUND BEFORE THE HEARINGS DIVISION HAS ANY JURISDICTION THEREOVER.!! (OP AND ORD AT 1).

THAT RULING IS IN ERROR. IT IS NOT NECESSARY FOR A CLAIMANT TO FILE SEPARATE CLAIMS FOR EACH DISABILITY.

THE LAW REQUIRES THE CLAIMANT TO GIVE NOTICE OF THE ACCIDENT ADVISING THE EMPLOYER OF WHEN AND WHERE AND HOW THE INJURY OCCURRED. IF THE NOTICE CONSTITUTES A CLAIM - THAT IS, IF IT ALSO CONTAINS A WRITTEN REQUEST FOR COMPENSATION, THEN, IN ACCORDANCE WITH ORS 656.262 (1) THE STATE ACCIDENT INSURANCE FUND MUST PROCESS THE CLAIM AND PROVIDE COMPENSATION FOR THE INJURY.

PURSUANT TO ORS 656.268, WHEN THE CLAIM IS READY FOR PERMANENT DISABILITY EVALUATION, THE FUND SUBMITS THE CLAIM TO THE EVALUATION DIVISION OF THE WORKMEN'S COMPENSATION BOARD FOR THE RATING OF PERMANENT DISABILITY.

THE EVALUATION DIVISION EXAMINES THE MEDICAL REPORTS SUBMITTED AND DECIDES WHAT DISABILITY OR DISABILITIES HAVE RESULTED FROM THE COMPENSABLE INJURY AND RATES THE EXTENT OF THAT DISABILITY.

IF, IN THE OPINION OF THE CLAIMANT THE EVALUATION DIVISION HAS NOT FULLY COMPENSATED HIM, EITHER IN TERMS OF THE EXTENT OF, OR THE NATURE OF THE DISABILITIES SUFFERED, HE MAY REQUEST A HEARING AND PRESENT HIS PROOF WITHOUT FIRST MAKING A DEMAND ON THE FUND. LIKEWISE, IF, IN THE OPINION OF THE FUND, THE EVALUATION DIVISION OVERCOMPENSATED THE CLAIMANT IN TERMS OF EITHER THE EXTENT OR NATURE OF THE DISABILITIES SUFFERED, IT MAY ALSO REQUEST A HEARING WITHOUT FIRST ISSUING A PARTIAL DENIAL OF THE COMPENSATED CONDITIONS. ORS 656.283 (1)

WE HAVE REVIEWED THE RECORD AND FIND IT ADEQUATE TO DECIDE THE ISSUES WITHOUT REMAND OF THE RECORD TO THE HEARINGS DIVISION. HAVING DONE SO, WE FIND THE MEDICAL EVIDENCE DOES NOT SUPPORT A FINDING OF UNSCHEDULED DISABILITY RESULTING FROM THIS INJURY.

WE DO, HOWEVER, FIND THE CLAIMANT'S RIGHT LEG DISABILITY MORE THAN 65 PERCENT AS FOUND BY THE HEARING OFFICER. WE CONCLUDE CLAIMANT'S RIGHT LEG DISABILITY EQUALS 80 PERCENT AND THAT CLAIMANT IS THEREFORE ENTITLED TO AN ADDITIONAL 16.5 DEGREES.

THE HEARING OFFICER'S ORDER SHOULD BE MODIFIED ACCORDINGLY.

ORDER

CLAIMANT IS HEREBY GRANTED AN ADDITIONAL 16.5 DEGREES MAKING A TOTAL AWARD OF 88 DEGREES OR 80 PERCENT OF THE MAXIMUM ALLOWABLE FOR LOSS OF THE RIGHT LEG.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE, 25 PERCENT OF THE INCREASE IN COMPENSATION ASSOCIATED WITH THIS AWARD, WHICH, COMBINED WITH THE FEES ATTRIBUTABLE TO THE ORDER OF THE HEARING OFFICER SHALL NOT EXCEED FIFTEEN HUNDRED DOLLARS.

WCB CASE NO. 72-3192 NOVEMBER 28, 1973

WILBUR MCCOY, CLAIMANT
RASK, HEFFERIN AND CARTER, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON, MOORE AND SLOAN.

THE EMPLOYER, THROUGH ITS WORKMEN'S COMPENSATION CARRIER, INDUSTRIAL INDEMNITY COMPANY, REQUESTS REVIEW OF A HEARING OFFICER'S ORDER COMPENSATING CLAIMANT FOR DISABLING EMOTIONAL AND GASTRIC DISORDERS, CONTENDING THAT -

1. THEY WERE NOT CAUSED OR MATERIALLY AGGRAVATED BY HIS EMPLOYMENT.
2. THE CONDITION WAS NEITHER AN ACCIDENTAL INJURY OR OCCUPATIONAL DISEASE.

3. IF THE CONDITON WAS COMPENSABLE, THE CLAIMANT'S DISPUTED CLAIM SETTLEMENT WITH THE STATE ACCIDENT INSURANCE FUND, AN EARLIER INSURER OF SUNSET FUEL COMPANY ALSO RELIEVES INDUSTRIAL INDEMNITY OF LIABILITY FOR COMPENSATION.

THE BOARD HAS REVIEWED THE RECORD AND A MAJORITY OF THE BOARD AGREES FULLY WITH THE FINDINGS AND OPINION OF THE HEARING OFFICER EXCEPT FOR HIS CONCLUSION THAT CLAIMANT'S CONDITION CONSTITUTES AN ACCIDENTAL INJURY RATHER THAN AN OCCUPATIONAL DISEASE.

THE HEARING OFFICER STATED =

"THIS IS NOT AN OCCUPATIONAL DISEASE CASE. AN OCCUPATIONAL DISEASE INVOLVES, PRIMARILY, A DISEASE THAT IS PREVALENT IN A PARTICULAR INDUSTRY (SEE ORS 656.802 AND 1A LARSON'S WORKMEN'S COMPENSATION LAW, SECTION 41.00, PAGE 622.89). THERE HAS BEEN NO SHOWING THAT CLAIMANT'S AILMENT IS PECULIAR TO THE OCCUPATION ENGAGED IN."

OREGON'S OCCUPATIONAL DISEASE LAW WAS FIRST ENACTED IN 1943. (OREGON LAWS OF 1943 CHAPTER 442). AN OCCUPATIONAL DISEASE WAS DEFINED THEREIN AS "ANY DISEASE OR INFECTION WHICH IS PECULIAR TO THE INDUSTRIAL PROCESS, TRADE OR OCCUPATION IN EACH INSTANCE AND WHICH ARISES OUT OF AND IN THE SCOPE OF EMPLOYMENT, AND TO WHICH AN EMPLOYEE IS NOT OTHERWISE SUBJECTED OR EXPOSED OTHER THAN DURING A PERIOD OF REGULAR ACTUAL EMPLOYMENT THEREIN." (EMPHASIS SUPPLIED)

THEREAFTER, CHAPTER 351 OF OREGON LAWS OF 1959 AMENDED THAT DEFINITION BY DELETING THE ABOVE EMPHASIZED LANGUAGE.

BEAUDRY V. WINCHESTER PLYWOOD, 225 OR 504 (1970) ESTABLISHES THAT A DISEASE NEED NOT BE PECULIAR TO THE INDUSTRY, TRADE OR OCCUPATION IN ORDER TO BE COMPENSABLE UNDER AN OCCUPATIONAL DISEASE THEORY. PROFESSOR LARSON, CITED BY THE HEARING OFFICER, CORRECTLY EXPRESSES THE GENERAL RULE CONCERNING OCCUPATIONAL DISEASE BUT OREGON DOES NOT FOLLOW THE GENERAL RULE.

THE UNIFORM JURY INSTRUCTIONS DEFINE AN ACCIDENTAL INJURY AS FOLLOWS =

"YOU ARE INSTRUCTED THAT AN ACCIDENTAL INJURY IS AN UNEXPECTED PHYSICAL HARM OR DAMAGE RESULTING FROM AN ACTIVITY THE TIME AND PLACE OF WHICH CAN BE FIXED WITH REASONABLE CERTAINTY, AND WHICH AROSE OUT OF AND TOOK PLACE IN THE COURSE OF EMPLOYMENT. THERE IS NO REQUIREMENT THAT THE INJURY SHOULD HAVE BEEN ACCIDENTALLY CAUSED - IT IS SUFFICIENT THAT THERE HAS BEEN AN UNFORESEEN RESULT. NO VIOL ENT OR EXTERNAL FORCE OR BLOW IS REQUIRED - THE DEFINITION INCLUDES THE UNEXPECTED RESULTS OF EXERTION OR STRAIN. HOWEVER, THE FACT THAT THE INJURY OCCURRED DURING EMPLOYMENT IS NOT CONCLUSIVE - IT MUST HAVE BEEN THE RESULT OF THE EMPLOYMENT ACTIVITY."

NOTE = ORS 656.002 (19) OLSON V. STATE INDUSTRIAL ACCIDENT COMMISSION, 222 OR 407, 352 P2D 1096 (1960). UNIFORM JURY INSTRUCTIONS 150.03

THE EVIDENCE ESTABLISHES THAT CLAIMANT'S CONDITION DID NOT RESULT . . . FROM AN ACTIVITY THE TIME AND PLACE OF WHICH CAN BE FIXED WITH REASONABLE CERTAINTY . . . WITHIN THE MEANING OF THE WORKMEN'S COMPENSATION LAW. THUS, THE CONDITION CONSTITUTES AN OCCUPATIONAL DISEASE.

REGARDING THE LAST CONTENTION, THE STIPULATED SETTLEMENT BETWEEN CLAIMANT AND THE FUND RELATES ONLY TO WHETHER CLAIMANT SUFFERED A COMPENSABLE INJURY OR OCCUPATIONAL DISEASE BEFORE JUNE 30, 1972. IT DOES NOT RELEASE ALL LIABILITY AND CLAIMANT WAS NOT BARRED FROM CLAIMING COMPENSATION FOR CONDITIONS MATURING AFTER JUNE 30, 1972.

A MAJORITY OF THE BOARD WOULD AFFIRM THE HEARING OFFICER'S ORDER EXCEPT AS NOTED ABOVE.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 12, 1973 IS AFFIRMED.

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

COMMISSIONER MOORE DISSENTS AS FOLLOWS -

THIS REVIEWER CONCURS WITH THE MAJORITY OF THE BOARD WITH RESPECT TO THE DISTINCTION BETWEEN ACCIDENTAL INJURY AND OCCUPATIONAL DISEASE BUT IS UNABLE TO AGREE THAT THE CLAIMANT'S CONDITION WAS CAUSED BY HIS EMPLOYMENT AND THEREBY IS COMPENSABLE.

THIS CLAIMANT WAS HOSPITALIZED IN NOVEMBER, 1972 FOR INTERNAL BLEEDING CAUSED BY ULCERS. AT THE TIME OF DIAGNOSIS, THE TREATING PHYSICIAN REPORTED PROBABLE CHRONIC ALCOHOLISM. THE CLAIMANT TERMINATED HIS EMPLOYMENT IN AUGUST, 1972 BECAUSE . . . 'I FINALLY HAD IT UP TO MY NECK - I COULDN'T TAKE IT ANY LONGER. I COULDN'T CONTINUE ALL THE WORK I WAS DOING, AND I JUST FINALLY CAME TO THE CONCLUSION THAT 12 TO 14 HOURS A DAY, SIX DAYS A WEEK, OR THREE OR FOUR DAYS A WEEK WHERE YOU WORK THAT MANY HOURS OR MORE QUITE OFTEN AND SUNDAYS. I HAVEN'T EVEN MENTIONED ALL THESE EXCHANGE CALLS . . . 'I HE RESIGNED AFTER GIVING TWO WEEKS NOTICE. THE FAMILY PHYSICIAN WHO HOSPITALIZED THE CLAIMANT AND REFERRED HIM TO AN INTERNIST MAKES NO NOTATION IN HIS RECORDS OF JOB RELATED STRESS. HOWEVER, CLAIMANT HAS BEEN TREATED BY A CLINICAL PSYCHOLOGIST, DR. MARSH, WHO OPINED ' . . . CLAIMANT'S JOB OCCUPIED TOO MUCH OF HIS ENVIRONMENT AND THIS CAUSED ANXIETY TENSION. ' THE CONTENTION IS THAT THE CLAIMANT'S ULCERS WERE CAUSED BY THE LACK OF SUPPORT (ADVICE AND COUNSELING) FROM HIS SUPERIOR, WITH WHOM CLAIMANT AND HIS WIFE WERE SOCIALLY COMPATIBLE UNTIL THE SUPERIOR AND HIS WIFE DIVORCED AND THE RELATIONSHIP TERMINATED. ALSO, AS SUPERIOR'S ATTENDANCE AT WORK DIMINISHED, THE CLAIMANT FEELS MORE RESPONSIBILITY WAS PLACED UPON HIM. THIS, IN THE CLAIMANT'S OPINION, CONSTITUTES A COMPENSABLE INJURY THREE MONTHS AFTER HE VOLUNTARILY LEFT HIS EMPLOYMENT. THE HEARING OFFICER IS SO PERSUADED AND ASSIGNS THE RESPONSIBILITY TO THE CARRIER OF THE EMPLOYER WHO ASSUMED THE WORKMEN'S COMPENSATION INSURANCE RISK JULY 1, 1972, SLIGHTLY MORE THAN A MONTH PRIOR TO THE CLAIMANT'S QUITTING WORK.

THIS REVIEWER CANNOT BELIEVE THAT THE ABOVE FACTS, WITH THE SOLE ENDORSEMENT OF CLAIMANT'S PSYCHOLOGIST, CONSTITUTE A CONDITION ARISING OUT OF AND IN THE COURSE OF HIS WORK, AND NEITHER, MIGHT I ADD, DID ANYONE UNTIL SEPTEMBER 11, 1972 WHEN CLAIMANT REPORTED ON AN 801 FORM ' EXCESSIVE NERVOUS FATIGUE AND DEPRESSION GENERATED BY JOB ' AND ASSIGNING THE DATE OF INJURY OR EXPOSURE TO DISEASE AS JULY, 1971.

IF, ARGUENDO, IT IS FOUND COMPENSABLE AS AN OCCUPATIONAL DISEASE, THEN THIS REVIEWER WOULD ASSIGN THE RESPONSIBILITY FOR PAYING BENEFITS TO THE CARRIER OF THE EMPLOYER PRIOR TO JULY 1, 1972 WITH WHOM THE CLAIMANT HAS ALREADY MADE A STIPULATED SETTLEMENT.

THEREFORE, I RESPECTFULLY DISSENT FROM THE FINDINGS OF THE MAJORITY OF THE BOARD.

-S- GEORGE A. MOORE, COMMISSIONER

WCB CASE NO. 72-3092 NOVEMBER 28, 1973

ROBERT FOSTER, CLAIMANT
MCKEOWN, NEWHOUSE, FOSS AND WHITTY,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

CLAIMANT SEEKS AN INCREASE IN BOTH HIS SCHEDULED AND UNSCHEDULED DISABILITY AWARD.

CLAIMANT IS A 22 YEAR OLD LOG TRUCK DRIVER WHO RECEIVED INJURY TO THE PELVIC AREA AND LEGS BY A LOG FALLING FROM HIS TRUCK. CLAIMANT HAS RETURNED TO LOG TRUCK DRIVING FOR THE SAME EMPLOYER. TO THE CREDIT OF BOTH THE CLAIMANT AND EMPLOYER, THEY HAVE VOLUNTARILY EFFECTED A PRACTICAL SOLUTION TO THE CLAIMANT'S INJURY CAUSED VOCATIONAL PREDICAMENT.

AFTER REVIEW OF THE ENTIRE RECORD THE BOARD CONCURS WITH THE FINDINGS AND AWARD OF THE HEARING OFFICER ALTHOUGH IT DOES NOTE THAT IN THE EVENT OF A LATER WORSENING OF HIS CONDITION CLAIMANT MAY FILE A CLAIM FOR AGGRAVATION.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 22, 1973 IS AFFIRMED.

WCB CASE NO. 73-436 NOVEMBER 29, 1973

PATRICK T. BELL, CLAIMANT
SMITH, TODD AND BALL, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT ALLEGES AN UNWITNESSED ACCIDENTAL INJURY OCCURRING AT WORK ON NOVEMBER 17, 1972 WHILE EMPLOYED AS A WAREHOUSE MAN AT DOWMAN PRODUCTS IN PORTLAND, OREGON.

THE EMPLOYER DENIED HIS CLAIM FOR COMPENSATION AND REQUESTED THE STATE ACCIDENT INSURANCE FUND INVESTIGATE THE CLAIM. FOLLOWING AN INVESTIGATION THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM ON THE GROUNDS THAT THERE WAS INSUFFICIENT EVIDENCE THAT CLAIMANT HAD SUSTAINED AN ACCIDENTAL PERSONAL INJURY - THAT THE CONDITION REQUIRING TREATMENT WAS NOT THE RESULT OF THE ACTIVITY DESCRIBED AND THAT HIS INJURY DID NOT ARISE OUT OF AND IN THE COURSE OF EMPLOYMENT.

CLAIMANT THEREUPON REQUESTED A HEARING. THE HEARING OFFICER, BASED ON MEDICAL DEDUCTIONS HE MADE AND HIS GENERAL LACK OF FAITH IN CLAIMANT'S CREDIBILITY, AFFIRMED THE DENIAL.

ON REVIEW, CLAIMANT SEEKS REVERSAL OF THE HEARING OFFICER'S ORDER AND ALLOWANCE OF HIS CLAIM OR A REMAND TO DISPUTE THE HEARING OFFICER'S MEDICAL DEDUCTIONS.

THE BOARD REVIEWS THE RECORD DE NOVO AND IS NOT BOUND BY THE MEDICAL DEDUCTIONS OF THE HEARING OFFICER. ALTHOUGH WE DO RECOGNIZE THE HEARING OFFICER'S ADVANTAGE IN WEIGHING CREDIBILITY OF WITNESSES, WE HAVE NOT RELIED HEAVILY ON HIS PERSONAL ASSESSMENT OF CREDIBILITY IN OUR REVIEW OF THE CASE. THE EVIDENCE IS CLEAR THAT CLAIMANT WAS SUFFERING PARA-LUMBAR MUSCLE SPASM ON NOVEMBER 21, 1972 BUT WHAT CAUSED IT IS FAR FROM CLEAR. THERE IS A REAL DISPUTE OVER WHETHER AN ACCIDENT EVER OCCURRED AS CLAIMANT ALLEGES.

CLAIMANT HAS THE BURDEN OF PROVING SUCH AN ACCIDENT OCCURRED. THE RECORD CASTS CONSIDERABLE DOUBT ON CLAIMANT'S CREDIBILITY AND ITS PERSUASIVE POWER IN FAVOR OF CLAIMANT IS THEREFORE MUCH DIMINISHED. DR. RICHARDSON'S REPORT OF THE CAUSE OF CLAIMANT'S LUMBAR SPRAIN, BEING BASED ESSENTIALLY ON HISTORY RATHER THAN PHYSICAL FINDINGS, IS LIKEWISE LACKING IN PERSUASION. THE BOARD THEREFORE CONCLUDES CLAIMANT HAS FAILED HIS BURDEN OF PROVING AN ACCIDENTAL INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT AS THE CAUSE OF HIS LUMBAR COMPLAINTS.

WE NOTE THAT THE HEARING OFFICER, IN DISPOSING OF THIS MATTER, 'DISMISSED' THE CLAIMANT'S REQUEST FOR HEARING. AS WE HAVE REMARKED IN OTHER ORDERS ON REVIEW, TO 'DISMISS' A REQUEST FOR HEARING IMPLIES A DISPOSAL OF THE MATTER WITHOUT CONSIDERATION OF THE MERITS. HERE THE PARTIES HAVE HAD THEIR HEARING BEFORE THE HEARING OFFICER - THEREFORE HE HAS NOT DISMISSED THE REQUEST FOR HEARING - RATHER HE HAS DISPOSED OF IT BY HOLDING THE HEARING AND APPROVING THE DENIAL.

WHILE NOT FULLY AGREEING WITH THE RATIONALE OF THE HEARING OFFICER, WE AGREE WITH HIS RESULT. THE EMPLOYER'S DENIAL SHOULD BE APPROVED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 5, 1973 IS AFFIRMED.

WCB CASE NO. 72-3140 NOVEMBER 30, 1973

JENNIE RUIZ, 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.

THE HEARING OFFICER AWARDED 50 PERCENT OR 160 DEGREES PERMANENT PARTIAL DISABILITY FOR UNSCHEDULED BACK CONDITION. THE CLAIMANT APPEALS TO THE BOARD, REQUESTING PERMANENT TOTAL DISABILITY OR IN THE ALTERNATIVE, A SUBSTANTIAL INCREASE IN THE PERMANENT PARTIAL DISABILITY AWARD.

HAVING REVIEWED THE RECORD DE NOVO, THE BOARD FINDS ITSELF IN COMPLETE AGREEMENT WITH BOTH THE FINDINGS AND OPINION OF THE HEARING OFFICER AND HEREBY ADOPTS HIS ORDER AS ITS OWN.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 2, 1973 IS AFFIRMED.

WCB CASE NO. 71-2715 DECEMBER 3, 1973

DURWARD STEVENS, CLAIMANT
FEITELSON AND PERRY, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS AN INCREASE IN THE SCHEDULED AND UNSCHEDULED PERMANENT PARTIAL DISABILITY AWARD.

THE CLAIMANT, NOW 23 YEARS OLD, WAS INJURED APRIL 8, 1969, WHEN THE LOCKING RIM ON A TRACTOR TIRE FLEW OFF WHILE HE WAS FILLING THE TIRE WITH AIR, FRACTURING BONES IN HIS NOSE, FACE AND LEFT KNEE. HE HAS CONTINUED HAVING HEADACHES AND EPISODES OF EPISTAXIS. HIS LEFT KNEE HAS SOME WEAKNESS AND GIVES HIM TROUBLE AFTER LENGTHY STRENUOUS USE. CLAIMANT IS ALSO ALLEGING A LOSS OF HEARING AT THIS TIME. THE LOSS OF HEARING WAS NOT CLAIMED INITIALLY AND THE BOARD FINDS THERE IS INSUFFICIENT EVIDENCE TO RELATE THE LOSS OF HEARING TO THE INDUSTRIAL ACCIDENT. ONE DOCTOR SUGGESTED SURGICAL EXPLORATION OF THE LEFT KNEE AND PERHAPS SURGERY FOR HIS SINUS CONDITION. THE CLAIMANT HAS ELECTED NOT TO HAVE THIS SURGERY.

TWO DOCTORS AGREE THAT THEY BELIEVE THE CLAIMANT IS OVER-STATING HIS CASE, ALTHOUGH THERE IS SOME BASIS FOR HIS COMPLAINTS.

CLAIMANT HAS BEEN WORKING NINE AND ONE-HALF HOURS PER DAY, FIVE AND ONE-HALF DAYS PER WEEK. THE HEARING OFFICER INCREASED THE SCHEDULED DISABILITY OF THE LEFT LEG TO A TOTAL OF 45 DEGREES AND THE UNSCHEDULED PERMANENT PARTIAL DISABILITY TO 15 PERCENT OR 48 DEGREES. THE STATE ACCIDENT INSURANCE FUND HAS NOT REQUESTED A DECREASE IN THE HEARING OFFICER'S AWARD. THE BOARD CONCLUDES THE HEARING OFFICER'S AWARD IS FULLY ADEQUATE COMPENSATION FOR THE PERMANENT RESIDUALS OF THIS INJURY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 19, 1973 IS AFFIRMED.

WCB CASE NO. 73-628 DECEMBER 3, 1973

WALTER ROGERS, 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 REVIEW OF THE HEARING OFFICER'S OPINION AND ORDER ON THE ISSUES RELATED TO NONPAYMENT OF COMPENSATION.

AFTER REVIEWING THE RECORD DE NOVO, THE BOARD IS FULLY IN AGREEMENT WITH AND ADOPTS THE HEARING OFFICER'S OPINION AND ORDER AS ITS OWN.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 27, 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.

WCB CASE NO. 73-967 DECEMBER 3, 1973

CECIL HINES, CLAIMANT
EDWIN 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 NO ADDITIONAL AWARD FOR PERMANENT PARTIAL DISABILITY, CONTENDING HE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT RECEIVED A COMPENSABLE INJURY IN 1966 TO HIS LOW BACK FOR WHICH HE HAS RECEIVED A TOTAL AWARD OF 192 DEGREES, THE MAXIMUM ALLOWABLE FOR INJURIES OCCURRING IN 1966. AFTER SEVERAL SURGERIES, CLAIMANT HAS LOSS OF BACK MOTION, TAKES PAIN MEDICATION AND IT IS GENERALLY AGREED HE CANNOT RETURN TO HEAVY LABOR.

THE RECORD INDICATES THAT CLAIMANT AND HIS WIFE HAVE WORKED HARD AND NOW HAVE A PROFITABLE INVESTMENT IN A TRAILER COURT. CLAIMANT'S COUNSEL CONTENDS THIS WORKMAN SHOULD NOT BE DEPRIVED OF BENEFITS UNDER THE WORKMEN'S COMPENSATION LAW BECAUSE HE RECEIVES INCOME FROM PRUDENT INVESTMENTS. IT APPEARS TO THE BOARD THAT THIS CLAIMANT'S PRESENT EARNINGS RESULT NOT SIMPLY FROM CAPITAL INVESTMENT, BUT ALSO FROM CLAIMANT'S PHYSICAL AND MANAGERIAL EFFORTS AS WELL. CLAIMANT IS NOT PERMANENTLY PRECLUDED FROM REGULARLY PERFORMING ANY WORK AT A GAINFUL AND SUITABLE OCCUPATION, AND THUS IS NOT PERMANENTLY TOTALLY DISABLED WITHIN THE MEANING OF THE OREGON WORKMEN'S COMPENSATION LAW.

THE BOARD, ON REVIEW, AGREES WITH THE HEARING OFFICER THAT CLAIMANT'S DISABILITY EQUALS 192 DEGREES AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 18, 1973 IS AFFIRMED.

WCB CASE NO. 72-3382 DECEMBER 3, 1973

RUTH RECTOR, CLAIMANT
RINGO, WALTON, MCCLAIN AND EVES,
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 GRANTED AN ADDITIONAL 32 DEGREES UNSCHEDULED PERMANENT PARTIAL DISABILITY, CONTENDING SHE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT WAS EMPLOYED AS AN ELECTRONICS WORKER, AND SUSTAINED A COMPENSABLE INJURY ON FEBRUARY 21, 1972. A DETERMINATION ORDER GRANTED HER AN AWARD OF 32 DEGREES (10 PERCENT) FOR UNSCHEDULED PERMANENT PARTIAL NECK AND LOW BACK DISABILITY.

THE MEDICAL REPORTS IN THIS CASE DO NOT REFLECT GREAT PHYSICAL IMPAIRMENT. AN EVALUATION REPORT BY THE BOARD'S PHYSICAL REHABILITATION CENTER INDICATED CLAIMANT TO BE HIGHLY INTELLIGENT AND DEMONSTRATED SUPERVISORY AND MANAGERIAL ABILITIES. THE APPARENT PSYCHOPATHOLOGY WAS ATTRIBUTED TO A LIFE STYLE AND NOT TO THE INDUSTRIAL INJURY.

THE HEARING OFFICER ORDER GRANTED CLAIMANT AN ADDITIONAL 32 DEGREES, MAKING A TOTAL OF 64 DEGREES UNSCHEDULED PERMANENT PARTIAL DISABILITY. THE BOARD, ON REVIEW, GIVES WEIGHT TO THE OBSERVATIONS OF THE HEARING OFFICER AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 27, 1973 IS AFFIRMED.

WCB CASE NO. 72-2701 DECEMBER 3, 1973

F. MARIE HOLMES, CLAIMANT
BURNS AND EDWARDS, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT, A 69 YEAR OLD BOOKKEEPER AND TYPIST SEEKS ADDITIONAL COMPENSATION FOR DISABLING RESIDUALS OF A FRACTURE OF THE LEFT FOREARM. THIS IS A SCHEDULED INJURY BUT MUCH OF THE EVIDENCE PRESENTED DEALT WITH THE EFFECT OF THE INJURY ON HER EARNING CAPACITY WHICH IS IMMATERIAL TO THE DECISION.

THE EVIDENCE CONCERNING LOSS OF FUNCTION INDICATES A FULL RANGE OF MOTION. THERE IS RESIDUAL WEAKNESS AND A FATIGUE FACTOR FOR WHICH THE HEARING OFFICER ALLOWED SCHEDULED DISABILITY EQUAL TO 30 DEGREES.

THE BOARD CONCLUDES THAT ALLOWANCE IS APPROPRIATE. THE ORDER OF THE HEARING OFFICER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 15, 1973 IS AFFIRMED.

WCB CASE NO. 72-264 DECEMBER 3, 1973

ELSE WIDMAIER, 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 FINDING HER UNSCHEDULED DISABILITY EQUAL TO 40 PERCENT OF THE MAXIMUM ALLOWABLE, CONTENDING THAT THE HEARING OFFICER'S FINDINGS, WITH WHICH SHE AGREES, JUSTIFIES A LARGER PERMANENT PARTIAL DISABILITY AWARD.

CLAIMANT IS NOW A 44 YEAR OLD GERMAN IMMIGRANT WHO WORKED AS A WAITRESS FROM THE TIME OF HER ARRIVAL IN 1960 UNTIL SHE FELL AND INJURED HER LOW BACK ON FEBRUARY 15, 1970 WHILE WORKING AT THE KOPPER KITCHEN RESTAURANT IN GRANTS PASS, OREGON.

THERE ARE MILD PHYSICAL RESIDUALS OF THE INJURY AND THE INJURY HAS PRODUCED A MODERATE AGGRAVATION OF A PREEXISTING PSYCHOPATHOLOGY. ALTHOUGH SHE APPEARS TO BE GENUINELY INTERESTED IN RETURNING TO WORK, HER ATTEMPTS TO RETURN TO HER PRIOR OCCUPATION HAVE FAILED DUE TO COMPLAINTS OF PAIN. RECOGNIZING CLAIMANT'S LANGUAGE LIMITATIONS AND MEAGER VOCATIONAL APTITUDES, THE HEARING OFFICER ALLOWED CLAIMANT 128 DEGREES FOR UNSCHEDULED DISABILITY.

ON REVIEW, WE FIND THE AWARD MADE BY THE HEARING OFFICER ADEQUATE COMPENSATION FOR HER DISABILITY AND CONCLUDE HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 6, 1973 IS AFFIRMED.

WCB CASE NO. 72-1087 DECEMBER 3, 1973

WILSON FULBRIGHT, 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 A MODIFICATION OF THE HEARING OFFICER'S ORDER ASKING FURTHER TEMPORARY TOTAL DISABILITY AND MEDICAL TREATMENT OR, IN THE ALTERNATIVE, AN INCREASE IN HIS PERMANENT PARTIAL DISABILITY AWARD.

THIS 50 YEAR OLD FARM LABORER RECEIVED BURNS TO HIS HANDS, ARMS AND FACE WHEN A BUTANE GAS TANK OR HOSE EXPLODED WHILE HE WAS OPERATING A VINE BURNER. THE BURNS HEALED LEAVING SOME MINOR SCARRING BUT A PREEXISTING ARTHRITIC CONDITION IN THE WRISTS WAS AGGRAVATED BY THE ACCIDENT.

THE HEARING OFFICER AFFIRMED HIS SCHEDULED DISABILITY AWARD OF 8 DEGREES FOR PARTIAL LOSS OF THE RIGHT FOREARM AND 15 DEGREES FOR PARTIAL LOSS OF THE LEFT FOREARM. AN ADDITIONAL ASPECT OF THE INJURY INVOLVED CLAIMANT'S EMOTIONAL REACTION TO THE INJURY.

WE AGREE WITH THE HEARING OFFICER'S FINDINGS, OBSERVATIONS AND SOLUTION TO CLAIMANT'S PSYCHIATRIC RESIDUAL AND THEREFORE CONCLUDE HIS ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 7, 1973 IS AFFIRMED.

WCB CASE NO. 73-1546 DECEMBER 4, 1973

WILLIAM F. GRABLE, CLAIMANT
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON OCTOBER 10, 1973 A REFEREE OF THE WORKMEN'S COMPENSATION BOARD ISSUED HIS OPINION AND ORDER IN THE ABOVE ENTITLED CASE. ON NOVEMBER 7, 1973 THE BOARD RECEIVED A REQUEST FOR REVIEW FROM THE CLAIMANT WHICH CONTAINED NO INDICATION IT HAD BEEN SERVED ON THE OTHER PARTIES IN ACCORDANCE WITH THE PROVISIONS OF ORS 656.295 (2).

BECAUSE NO TELEPHONE LISTING FOR CLAIMANT COULD BE FOUND THE BOARD SENT CLAIMANT A SPECIAL DELIVERY LETTER ON NOVEMBER 9, 1973 INFORMING HIM THAT HE MUST SERVE THE OTHER PARTIES TO THE HEARING ON OR BEFORE NOVEMBER 13, 1973.

ON NOVEMBER 13, CLAIMANT MAILED A LETTER TO THE DEPARTMENT OF JUSTICE, WHICH REPRESENTED THE STATE ACCIDENT INSURANCE FUND AT THE HEARING IN QUESTION, THAT HE HAD EARLIER REQUESTED REVIEW BY THE BOARD.

ON NOVEMBER 21, THE STATE ACCIDENT INSURANCE FUND, ACTING THROUGH MARCUS K. WARD, ASSISTANT ATTORNEY GENERAL, MOVED TO DISMISS THE CLAIMANT'S REQUEST FOR REVIEW ON THE FOLLOWING GROUNDS -

- 1) CLAIMANT HAS NEVER SERVED UPON THIS OFFICE, OR MY CLIENT, AS FAR AS I AM ABLE TO DETERMINE, PROPER COPIES OF NOTICE OF REQUEST FOR REVIEW, AS REQUIRED BY LAW.
- 2) NOTICE SERVED UPON THIS OFFICE IS POSTMARKED NOVEMBER 13, 1973, THREE DAYS AFTER THE EXPIRATION OF CLAIMANT'S TIME TO FILE NOTICE OF APPEAL.

- 3) THAT NOTICE IS FURTHER DEFICIENT IN THAT IT IS NOT A TRUE COPY OF THAT SERVED UPON THE BOARD.

ORS 656.295(2) REQUIRES MAILING OF A REQUEST FOR REVIEW TO THE BOARD AND COPIES TO THE OTHER PARTIES WITHIN 30 DAYS OF THE DATE OF THE REFEREE'S ORDER.

THE CLAIMANT'S NOTICE TO THE DEPARTMENT OF JUSTICE WAS NOT A COPY OF THE REQUEST FOR REVIEW AS REQUIRED BY ORS 656.295(2) NOR IS THE DEPARTMENT OF JUSTICE A PARTY TO THE PROCEEDINGS. ORS 656.002(16) DEFINES A PARTY AS . . . A CLAIMANT FOR COMPENSATION, THE EMPLOYER OF THE INJURED WORKMAN AT THE TIME OF INJURY OR THE STATE ACCIDENT INSURANCE FUND. . . . THUS, THE CLAIMANT STILL DID NOT COMPLY WITH THE REQUIREMENTS OF ORS 656.295(2).

THE CASE OF STROH VS. SAIF, 261 OR 117 (1972), HAS RELAXED SOMEWHAT THE NECESSITY OF STRICT COMPLIANCE WITH STATUTORY PROVISIONS CONCERNING MAILING BUT WE CONCLUDE THAT THE BOARD CANNOT GAIN JURISDICTION TO REVIEW THE APPEAL ABSENT SERVICE OF A COPY OF THE REQUEST FOR REVIEW ON THE OPPOSING PARTY - IN THIS CASE THE STATE ACCIDENT INSURANCE FUND.

BEING NOW FULLY ADVISED IN THE PREMISES, THE BOARD FINDS THE MOTION WELL TAKEN AND HEREBY ORDERS THAT THE CLAIMANT'S REQUEST FOR REVIEW DATED NOVEMBER 1, 1973 BE AND IT IS HEREBY DISMISSED.

WCB CASE NO. 73-637 DECEMBER 4, 1973

PAUL F. BRAUER, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MILLER, ANDERSON, NASH, YERKE AND WIENER,
DEFENSE ATTYS.

THE ABOVE ENTITLED MATTER WAS HERETOFORE THE SUBJECT OF A HEARING INVOLVING THE COMPENSABILITY OF A CLAIM FOR CHRONIC ASTHMATIC BRONCHITIS ALLEGEDLY ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT FOR REYNOLDS METALS COMPANY IN TROUTDALE, OREGON.

ON JULY 13, 1973, AN ORDER OF THE HEARING OFFICER WAS ENTERED FINDING THE CLAIM TO BE COMPENSABLE. THE EMPLOYER REJECTED THAT ORDER AND A MEDICAL BOARD OF REVIEW WAS CONVENED TO CONSIDER THE APPEAL.

A MEDICAL BOARD OF REVIEW CONSISTING OF DOCTORS JOHN J. GREVE, MERLE L. MARGASON AND JAMES L. MACK WAS APPOINTED OCTOBER 2, 1973.

A MAJORITY OF THE MEDICAL BOARD OF REVIEW FOUND THE CLAIMANT DID NOT SUFFER AN OCCUPATIONAL DISEASE ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT. ALTHOUGH DR. JOHN J. GREVE IN A DISSENTING LETTER CONCLUDED THAT CLAIMANT'S EMPLOYMENT AT REYNOLDS METALS COMPANY HAD CAUSED A TEMPORARY AGGRAVATION OF THE DISEASE.

IN AID OF THE RECORD, THE BOARD NOTES THAT THE MEDICAL BOARD OF REVIEW CONVENED IN THIS MATTER, HAS IN EFFECT OVERRULED THE ORDER OF THE HEARING OFFICER DATED JULY 13, 1973.

PURSUANT TO ORS 656.313 ANY COMPENSATION WHICH MAY HAVE BEEN PAID PENDING REVIEW BY THE MEDICAL BOARD OF REVIEW IS NOT RECOVERABLE FROM THE CLAIMANT.

THE ORDER OF THE MEDICAL BOARD OF REVIEW ATTACHED HERETO AS EXHIBIT 'A' ALONG WITH THE DISSENTING OPINION OF DR. GREVE, ATTACHED HERETO AS EXHIBIT 'B' IS FILED AS FINAL AS OF THIS DATE.

WCB CASE NO. 73-872 DECEMBER 6, 1973

RALPH V. JAIME, 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 PERMANENT TOTAL DISABILITY INSTEAD OF THE TOTAL OF 70 PERCENT (224 DEGREES) AWARDED BY THE HEARING OFFICER.

CLAIMANT, A 58 YEAR OLD LONGSHOREMAN SUFFERED A MYOCARDIAL INFARCTION ON JUNE 7, 1971, WHICH WAS ACCEPTED AS A COMPENSABLE INDUSTRIAL INJURY. THE ASSOCIATED PERIPHERAL VASCULAR INSUFFICIENCY ALSO BECAME IMMEDIATELY SYMPTOMATIC. THE BOARD CONCURS WITH THE FINDING OF THE HEARING OFFICER THAT THE COMBINATION OF THE HEART RESIDUALS AND THE VASCULAR CONDITION HAS EXPELLED THE CLAIMANT FROM THE WORK FORCE. THE MEDICAL EVIDENCE CONVINCES THE BOARD, HOWEVER, THAT THE VASCULAR CONDITION, ALTHOUGH PREEXISTING, WAS AGGRAVATED BY THE INDUSTRIAL ACCIDENT.

THE VASCULAR INSUFFICIENCY AT THE LOWER EXTREMITIES DEVELOPED IMMEDIATELY AFTER THE MYOCARDIAL INFARCTION AND THE WRAPPING OF HIS LEGS ON DOCTOR'S ORDERS DURING THE INITIAL HOSPITALIZATION. THE PERIPHERAL VASCULAR INSUFFICIENCY UNDOUBTEDLY PREEXISTED HIS JUNE 7, 1971 INFARCTION BUT WAS BROUGHT TO SYMPTOMATIC LEVEL BY THE CIRCULATORY RESTRICTION IMPOSED BY THE MYOCARDIAL INFARCTION.

THE BOARD THEREFORE FINDS THAT CLAIMANT'S INABILITY TO RETURN TO GAINFUL AND SUITABLE EMPLOYMENT IS THE LEGAL RESULT OF THE INDUSTRIAL ACCIDENT. CLAIMANT IS THEREFORE ENTITLED TO AN AWARD OF PERMANENT TOTAL DISABILITY.

ORDER

THE CLAIMANT IS HEREBY AWARDED COMPENSATION FOR PERMANENT TOTAL DISABILITY AS OF THE DATE OF THIS ORDER.

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.

DONALD P. ELLIOTT, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MERLIN MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

EMPLOYER REQUESTS REVERSAL OF THE HEARING OFFICER'S AWARD OF PERMANENT TOTAL DISABILITY AND REINSTATEMENT OF THE AWARD OF 40 PERCENT UNSCHEDULED LOW BACK PERMANENT PARTIAL DISABILITY AWARDED BY THE DETERMINATION ORDER.

CLAIMANT, A 44 YEAR OLD GROCERY CLERK, INJURED HIS LOW BACK IN OCTOBER, 1969, WHILE HELPING TO MOVE A SAFE IN THE STORE.

CLAIMANT HAS UNDERGONE BACK SURGERY FOR THE PRESENT INDUSTRIAL INJURY WHICH RESULTED IN NO RELIEF FOR HIS LOW BACK CONDITION. HE WAS THEN EXAMINED BY THE PHYSICAL REHABILITATION CENTER INCLUDING THE BACK EVALUATION CLINIC AND THE PSYCHOLOGICAL CENTER. THE DEPARTMENT OF VOCATIONAL REHABILITATION ACCEPTED THE CLAIMANT FOR RETRAINING AND CLAIMANT WAS ENROLLED AT A COMMUNITY COLLEGE IN AN OFFICE MACHINERY REPAIRMAN TRAINING COURSE. HE WAS UNABLE TO COMPLETE THIS COURSE. CLAIMANT HAS ATTEMPTED NUMEROUS JOBS ON HIS OWN BUT HAS BEEN UNABLE TO CONTINUE ANY OF THESE EMPLOYMENTS BECAUSE OF THE INSTABILITY OF HIS BACK.

CLAIMANT HAD PREVIOUSLY RECEIVED AN INDUSTRIAL INJURY IN 1950 WHICH RESULTED IN AN AWARD OF 75 PERCENT UNSCHEDULED PERMANENT PARTIAL DISABILITY FOR THE BACK AND 25 PERCENT FOR THE RIGHT ARM AND SHOULDER.

THE COMBINATION OF THE MODERATELY SEVERE PSYCHOLOGICAL CONDITION AND THE PHYSICAL DISABILITY FROM THIS AND PRIOR INJURIES PERSUADES THE BOARD THAT THE CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED. AS TO MOTIVATION, THE HEARING OFFICER HAD THE ADVANTAGE OF OBSERVING THE WITNESS AND FOUND THAT MOTIVATION IS NOT LACKING. THE RECORD ALSO PERSUADES THE BOARD THAT CLAIMANT IS SUFFICIENTLY MOTIVATED TO SUSTAIN PERMANENT TOTAL DISABILITY AWARD UNDER THE "ODD LOT" DOCTRINE.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 29, 1973 IS AFFIRMED.

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

WCB CASE NO. 73-1356 DECEMBER 10, 1973

ROBERT HADWEN, CLAIMANT
COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
MCMENAMIN, JONES, JOSEPH AND LANG,
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 THE EMPLOYER'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. 72-2510 DECEMBER 10, 1973

GEORGE L. GRAHAM, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
GERALD C. KNAPP, DEFENSE ATTY.

A PREVIOUS MEDICAL BOARD OF REVIEW, WHOSE FINDINGS WERE FILED BY THE WORKMEN'S COMPENSATION BOARD AUGUST 4, 1972, FOUND CLAIMANT HAD SUFFERED A COMPENSABLE OCCUPATIONAL DISEASE AND ORDERED ACCEPTANCE OF HIS CLAIM.

A DETERMINATION ORDER ISSUED BY THE CLOSING AND EVALUATION DIVISION GRANTED NO AWARD FOR PERMANENT PARTIAL DISABILITY. UPON HEARING, THE HEARING OFFICER FOUND THERE WAS A RESTRICTION ON CLAIMANT'S EARNING CAPACITY AND AWARDED 8 DEGREES FOR THIS LOSS.

UPON REQUEST FOR BOARD REVIEW BY CLAIMANT'S COUNSEL, THE BOARD, IN ACCORDANCE WITH UNIVERSAL UNDERWRITERS V. WILSON ET. AL., 96 OAS 1723, OR APP (1973) CAUSED A MEDICAL BOARD OF REVIEW TO BE CONVENED TO DETERMINE THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY. THE FINDINGS OF THIS MEDICAL BOARD OF REVIEW HAVE NOW BEEN SUBMITTED TO THE BOARD WHICH, WE NOTE, AFFIRM THE AWARD OF 8 DEGREES FOR UNSCHEDULED DISABILITY AS AWARDED BY THE HEARING OFFICER.

PURSUANT TO ORS 656.814, THE FINDINGS OF THE MEDICAL BOARD OF REVIEW, MARKED EXHIBIT 'A', ATTACHED HERETO, ARE DECLARED FINAL AS FILED AS OF THE DATE OF THIS ORDER.

WCB CASE NO. 72-846 DECEMBER 13, 1973

VERNADINE STURZINGER, CLAIMANT
MARION B. EMBICK, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

THE ABOVE ENTITLED MATTER INVOLVES A CLAIM FOR OCCUPATIONAL DISEASE DIAGNOSED AS SALMONELLOSIS CONTRACTED BY THE CLAIMANT WHILE SHE WAS EMPLOYED AT A TURKEY PLANT.

CLAIMANT'S CLAIM WAS DENIED BY THE STATE ACCIDENT INSURANCE FUND, BUT UPON HEARING, THE CLAIM WAS ALLOWED AS A COMPENSABLE OCCUPATIONAL DISEASE BY THE HEARING OFFICER. THEREAFTER, THE FUND REJECTED THE ORDER OF THE HEARING OFFICER AND THE MATTER PROCEEDED TO A MEDICAL BOARD OF REVIEW.

THE REPORT OF THE FINDINGS AND CONCLUSIONS OF THE MEDICAL BOARD OF REVIEW FINDING THAT CLAIMANT DOES SUFFER FROM AN OCCUPATIONAL DISEASE, ATTACHED HERETO, MARKED EXHIBIT 'A' IS DECLARED FILED AS OF DECEMBER 11, 1973. PURSUANT TO ORS 656.814, THE FINDINGS OF THE MEDICAL BOARD OF REVIEW ARE FINAL AND BINDING.

WCB CASE NO. 73-1194 DECEMBER 14, 1973

TERRY FISHER, CLAIMANT
FRANKLIN, BENNETT, OFELT, DES BRISAY
AND JOLLES, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON SEPTEMBER 20, 1973, THE ABOVE NAMED CLAIMANT REQUESTED BOARD REVIEW OF A HEARING OFFICER'S ORDER DATED SEPTEMBER 12, 1973.

THE CLAIMANT AND THE STATE ACCIDENT INSURANCE FUND HAVE NOW AGREED TO SETTLE AND COMPROMISE THEIR DISPUTE IN ACCORDANCE WITH THE TERMS OF THE STIPULATED SETTLEMENT, ATTACHED HERETO, MARKED EXHIBIT A, WHEREBY CLAIMANT IS TO RECEIVE AN ADDITIONAL 10 DEGREES FOR UNSCHEDULED PERMANENT PARTIAL DISABILITY IN ADDITION TO, AND NOT IN LIEU OF AWARDS PREVIOUSLY GRANTED.

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

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

WCB CASE NO. 73-1254 DECEMBER 18, 1973

ELBERT D. ISHMAEL, CLAIMANT
FRED P. EASON, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW SEEKING ADDITIONAL PERMANENT
DISABILITY COMPENSATION FOR A RIGHT LEG INJURY OF JUNE 5, 1969.

UPON ITS OWN DE NOVO REVIEW THE BOARD CONCURS WITH THE
FINDINGS AND OPINION OF THE HEARING OFFICER. HIS ORDER SHOULD BE
AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 26, 1973 IS
AFFIRMED.

WCB CASE NO. 73-1791 DECEMBER 18, 1973

ELMER RIKALA, CLAIMANT
COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON NOVEMBER 9, 1973 THE STATE ACCIDENT INSURANCE FUND
REQUESTED BOARD REVIEW OF THE REFEREE'S ORDER IN THE ABOVE
ENTITLED CASE.

ON NOVEMBER 12, 1973 CLAIMANT SOUGHT ADMISSION OF NEWLY
DISCOVERED EVIDENCE INTO THE RECORD FOR REVIEW OR IN THE ALTERNATIVE
TO REMAND THE MATTER TO THE REFEREE FOR ADMISSION AND FURTHER
CONSIDERATION OF THE MATTER.

ON NOVEMBER 21, 1973 THE STATE ACCIDENT INSURANCE FUND
RESPONDED, OPPOSING THE MOTION. THE BOARD, BEING NOW FULLY
ADVISED, FINDS CLAIMANT'S MOTION WELL TAKEN.

IT IS THEREFORE ORDERED THAT THIS MATTER BE, AND IT IS HEREBY,
REMANDED TO THE REFEREE FOR ADMISSION OF THE OFFERED EVIDENCE
INTO THE RECORD AND SUCH FURTHER PROCEEDINGS AS THE REFEREE MAY
DETERMINE.

THE REQUEST FOR REVIEW FILED BY THE STATE ACCIDENT INSURANCE
FUND ON NOVEMBER 9, 1973 IS HEREBY DISMISSED.

WCB CASE NO. 73-1199 DECEMBER 18, 1973

ROGER S. KLINE, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
JACUA AND WHEATLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER
CROSS-APPEAL BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON, MOORE AND SLOAN.

EMPLOYER SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER RULING THAT ORS 656.313 (1) REQUIRES PAYMENT OF MEDICAL EXPENSES DURING THE PENDENCY OF AN APPEAL REGARDING THE COMPENSABILITY OF THE CLAIM. THE DISPUTE IS LEGAL, NOT FACTUAL IN NATURE. CLAIMANT CROSS-REQUESTED REVIEW SEEKING PENALTIES FOR UNREASONABLE DELAY AND RESISTANCE TO THE PAYMENT OF COMPENSATION.

A MAJORITY OF THE BOARD CONCLUDE THE HEARING OFFICER ERRED IN HIS INTERPRETATION OF THE LAW. FOR THE REASONS EXPRESSED BY THE BOARD IN THE CASE OF WILLIAM R. WOOD, WCB CASE NO. 69-319 (JULY 30, 1971), THE HEARING OFFICER SHOULD BE REVERSED. THE ISSUES RAISED ON REVIEW BY CLAIMANT ARE MOOT.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 27, 1973 IS REVERSED.

GORDON SLOAN DISSENTS AS FOLLOWS -

THE TERM "COMPENSATION" IN ORS 656.313 (1) UNQUESTIONABLY INCLUDES MEDICAL SERVICES BECAUSE ORS 656.002 (7) DEFINES IT AS "INCLUDING MEDICAL SERVICES". THE HEARING OFFICER'S INTERPRETATION IS CORRECT AND HIS RULING SHOULD BE AFFIRMED.

-S- GORDON SLOAN, COMMISSIONER

WCB CASE NO. 72-2545 DECEMBER 19, 1973

DESSIE BAILEY, CLAIMANT
MCMENAMIN, JONES, JOSEPH AND
LANG, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON NOVEMBER 8, 1973 THE WORKMEN'S COMPENSATION BOARD FILED THE FINDINGS OF THE MEDICAL BOARD OF REVIEW WHICH FOUND CLAIMANT'S OCCUPATIONAL DISEASE DISABLING AND AWARDED "15 DEGREES FOR EACH HAND" AND "25 PERCENT FOR UNSCHEDULED DISABILITY."

ON DECEMBER 4, 1973 COUNSEL FOR THE STATE ACCIDENT INSURANCE FUND REQUESTED THAT THE FINDINGS OF THE MEDICAL BOARD OF REVIEW BE CLARIFIED TO DETERMINE WHETHER OR NOT THE MEDICAL BOARD OF

REVIEW, IN FINDING CLAIMANT SUFFERED UNSCHEDULED DISABILITY WAS ALLOWING UNSCHEDULED DISABILITY FOR THE RESULTS OF CLAIMANT'S OCCUPATIONAL DISEASE OR WHETHER THE MEDICAL BOARD OF REVIEW HAD INADVERTENTLY CONSIDERED PERMANENT DISABILITY RESULTING FROM CLAIMANT'S ACCIDENTAL INJURY IN REVIEWING THE MATTER.

ON DECEMBER 11, 1973 THE WORKMEN'S COMPENSATION BOARD POSED THE FOLLOWING QUESTION TO THE MEDICAL BOARD OF REVIEW -

' ' DOES CLAIMANT SUFFER ANY PERMANENT UNSCHEDULED DISABILITY AS A RESULT OF THE DERMATITIS CONDITION? (THIS DETERMINATION MUST BE MADE WITHOUT CONSIDERATION OF THE INJURY TO THE SHOULDER, FOR THE DISABILITY TO THE SHOULDER IS SUBJECT ONLY TO BOARD REVIEW AND IS NOT TO BE CONSIDERED BY YOU.) ' '

ON DECEMBER 14, 1973 DR. THOMAS S. SAUNDERS, CHAIRMAN OF THE MEDICAL BOARD OF REVIEW, REPORTED THAT THE 25 PERCENT UNSCHEDULED DISABILITY AWARD WHICH THEY MADE WAS BASED ON THE DERMATITIS CLAIM ALONE AND DID NOT CONSIDER THE INDUSTRIAL INJURY. THAT REPORT IS ATTACHED HERETO AS EXHIBIT ' ' B ' ' .

THE BOARD'S CONCLUSION THAT THE MEDICAL BOARD OF REVIEW HAD MERELY AFFIRMED THE UNSCHEDULED DISABILITY AWARD MADE BY THE HEARING OFFICER WAS THEREFORE IN ERROR. THE AWARD ALLOWED BY THE MEDICAL BOARD OF REVIEW WAS AN ADDITIONAL UNSCHEDULED DISABILITY AWARD MADE FOR THE OCCUPATIONAL DISEASE CLAIM.

THUS, THE ORDER FILING FINDINGS OF MEDICAL BOARD OF REVIEW SHOULD BE AMENDED TO DELETE THE FOLLOWING PARAGRAPH -

' ' IN AID OF THE RECORD, THE BOARD NOTES THAT THE MEDICAL BOARD OF REVIEW HAS, IN EFFECT, SET ASIDE THE INCREASE IN SCHEDULED DISABILITY ALLOWED BY THE HEARING OFFICER AND AFFIRMED THE UNSCHEDULED DISABILITY AWARD MADE BY THE HEARING OFFICER. ' '

IN LIEU THEREOF, THE ORDER SHOULD READ -

' ' IN AID OF THE RECORD, THE BOARD NOTES THAT THE MEDICAL BOARD OF REVIEW HAS, IN EFFECT, SET ASIDE THE INCREASE IN SCHEDULED DISABILITY ALLOWED BY THE HEARING OFFICER AND GRANTED AN UNSCHEDULED DISABILITY AWARD OF 25 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY RESULTING FROM CLAIMANT'S OCCUPATIONAL DISEASE CLAIM. ' '

THE ORDER SHOULD ALSO BE SUPPLEMENTED BY INCLUDING THE FOLLOWING PARAGRAPH -

' ' CLAIMANT'S ATTORNEYS, MCMENAMIN, JONES, JOSEPH AND LANG, ARE ENTITLED TO 25 PERCENT OF THE INCREASED COMPENSATION ALLOWED BY THE MEDICAL BOARD OF REVIEW, BUT IN NO EVENT SHALL THE COMPENSATION ALLOWED HEREBY WHEN COMBINED WITH THE ATTORNEY'S FEE ALLOWED BY THE HEARING OFFICER'S ORDER OF MAY 22, 1973, EXCEED THE SUM OF FIFTEEN HUNDRED DOLLARS. ' '

IT IS SO ORDERED.

WCB CASE NO. 72-2795 DECEMBER 20, 1973

EUGENIA THOMPSON, CLAIMANT.
ROBERT P. COBLENS, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

ON REVIEW, CLAIMANT REQUESTS AN INCREASE IN THE HEARING OFFICER'S AWARD OF 15 PERCENT UNSCHEDULED LOW BACK DISABILITY.

THE CLAIMANT, A 50 YEAR OLD NURSE'S AIDE, RECEIVED A LOW BACK SPRAIN IN MAY OF 1971 WHILE LIFTING A PATIENT. THE MEDICAL EVIDENCE FROM THE TREATING CHIROPRACTOR, THE MEDICAL EVIDENCE FROM THE EXAMINATION BY THE BACK EVALUATION CLINIC AND THE INTERPRETATION OF THE X-RAYS REQUESTED BY THE HEARING OFFICER PERSUADES THE BOARD THAT THE RESULT OF THE HEARING OFFICER'S AWARD OF 15 PERCENT UNSCHEDULED LOW BACK DISABILITY IS CORRECT.

WHILE THE BOARD DOES NOT FIND FROM THE EVIDENCE IN THE RECORD THAT THERE WAS ANY INCREASE IN DISABILITY RESULTING FROM THE WINTER-TIME FALL ON THE ICE, THE BOARD CONCLUDES CLAIMANT'S DISABILITY DOES EQUAL 48 DEGREES OR 15 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

THE BOARD THEREFORE CONCLUDES THE HEARING OFFICER'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 26, 1973, IS AFFIRMED.

WCB CASE NO. 73-1817 DECEMBER 20, 1973

ROBERT WRIGHT, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON NOVEMBER 14, 1973, THE BOARD ISSUED AN ORDER TO SHOW CAUSE WHY CLAIMANT'S REQUEST FOR REVIEW SHOULD NOT BE DISMISSED FOR LACK OF TIMELY FILING.

THE TIME WITHIN WHICH TO SHOW CAUSE HAS NOW EXPIRED. NO GOOD CAUSE HAVING BEEN SHOWN, THE CLAIMANT'S REQUEST FOR REVIEW SHOULD BE, AND IT IS HEREBY, DISMISSED.

WCB CASE NO. 72-1521 DECEMBER 21, 1973

JAMES PIETILA, CLAIMANT
ANDERSON, FULTON, LAVIS AND VAN THIEL,
CLAIMANT'S ATTYS.
DEZENDORF, SPEARS, LUBERSKY AND
CAMPBELL, DEFENSE ATTYS.

THE ABOVE ENTITLED MATTER INVOLVES JAMES PIETILA, AN EMPLOYEE OF PACIFIC MOTOR TRUCKING COMPANY, WHO SUSTAINED AN INDUSTRIAL INJURY AND WAS AWARDED PERMANENT PARTIAL DISABILITY OF 40 PERCENT (54 DEGREES) LOSS OF THE LEFT FOOT AND 45 PERCENT (60.75 DEGREES) LOSS OF RIGHT FOOT BY THE DETERMINATION ORDER. FOLLOWING A HEARING THE HEARING OFFICER AWARDED THE CLAIMANT PERMANENT TOTAL DISABILITY AND THE EMPLOYER HAS FILED A REQUEST FOR BOARD REVIEW.

THE CLAIMANT, BY THE DULY APPOINTED GUARDIAN OF THE PERSON AND ESTATE, THE CLAIMANT'S WIFE AND HIS ATTORNEY AND THE EMPLOYER, PACIFIC MOTOR TRUCKING COMPANY, BY AND THROUGH THEIR ATTORNEY, ROBERT E. MALONEY, HAVE FILED WITH THE BOARD A STIPULATION AND JOINT PETITION FOR SETTLEMENT REQUESTING THE BOARD TO APPROVE A SETTLEMENT OF TWENTY THOUSAND DOLLARS AS TOTAL COMPENSATION AND IN FULL AND FINAL SETTLEMENT BETWEEN PACIFIC MOTOR TRUCKING COMPANY AND JAMES PIETILA, THE CLAIMANT.

THE STIPULATION SPECIFICALLY PROVIDES THAT CLAIMANT HAS A PERMANENT TOTAL DISABILITY AND IS AGREED TO BY BOTH PARTIES.

ORS 656.236(1) PROVIDES SPECIFICALLY THAT NO RELEASE BY A WORKMAN OR HIS BENEFICIARY OF ANY RIGHTS UNDER ORS 656.001 TO 656.794 IS VALID.

ORS 656.289(4) PROVIDES A POSSIBLE EXCEPTION BUT ONLY WHERE THERE IS A BONA FIDE DISPUTE OVER COMPENSATION OF A CLAIM. IN THIS CASE THERE IS NO DISPUTE OVER THE COMPENSABILITY OF THIS CLAIM. THE BOARD THEREFORE CONCLUDES THAT THIS EXCEPTION TO ORS 656.236 WOULD NOT APPLY.

ORS 656.230(1) IS THE ONLY REFERENCE IN THE STATUTE REGARDING LUMP SUM ACCELERATION OF A PERMANENT TOTAL DISABILITY. THIS ONLY APPLIES IN THE CASE OF A NONRESIDENT OF THIS STATE FOR A PERIOD OF TWO YEARS. IT IS OBVIOUS THE CLAIMANT DOES NOT COME UNDER THIS PROVISION. LUMP SUM SETTLEMENTS OF PERMANENT TOTAL DISABILITY AWARDS EXCEPT FOR THIS NONRESIDENT EXCEPTION IS THEREFORE PROHIBITED.

AFTER FULL CONSIDERATION AND REVIEW OF THE MATTER THE BOARD HEREBY DENIES THE JOINT PETITION FOR SETTLEMENT.

WCB CASE NO. 73-1036 DECEMBER 26, 1973

MILDRED NUTINI, CLAIMANT
RASK, HEFFERIN AND CARTER, ;
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS AN INCREASE IN PERMANENT DISABILITY FROM THE 50 PERCENT (169 DEGREES) PERMANENT PARTIAL UNSCHEDULED LOW BACK DISABILITY AWARDED BY THE HEARING OFFICER TO PERMANENT TOTAL DISABILITY.

CLAIMANT, A 35 YEAR OLD MEAT WRAPPER, SUSTAINED A LOW BACK INJURY IN DECEMBER, 1969.

AFTER A PERIOD OF CONSERVATIVE TREATMENT, SHE UNDERWENT A LUMBAR LAMINECTOMY AND A TWO LEVEL FUSION. THE FUSION FAILED TO PROPERLY UNITE AND CLAIMANT HAS BEEN LEFT WITH SIGNIFICANT PHYSICAL DISABILITY. CLAIMANT PERCEIVES HER RESIDUAL DISABILITY AS RENDERING HER PERMANENTLY AND TOTALLY DISABLED. WITH THIS CONVICTION, SHE HAS REFUSED TO TRY RETURNING TO WORK AND SEEKS COMPENSATION INSTEAD.

LIKE THE HEARING OFFICER, THE BOARD IS CONVINCED CLAIMANT'S REMAINING ABILITIES AND APTITUDES ARE SUCH THAT SHE IS NOT PERMANENTLY AND TOTALLY DISABLED OR EVEN IN THE "ODD-LOT" CATEGORY. HER EARNING CAPACITY HAS BEEN SIGNIFICANTLY IMPAIRED HOWEVER, AND SHE IS ENTITLED TO ASSISTANCE WITH VOCATIONAL REHABILITATION IF, AND WHEN, SHE DECIDES TO MAKE USE OF IT. CONSIDERING HER INTELLIGENCE, HER LATENT APTITUDES AND HER RESIDUAL PHYSICAL ABILITIES, THE BOARD CONCLUDES THE ALLOWANCE OF 160 DEGREES BY THE HEARING OFFICER FAIRLY AND ADEQUATELY COMPENSATES CLAIMANT AND HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 26, 1973 IS AFFIRMED.

SAIF CLAIM NO. A 265862 DECEMBER 26, 1973

KENNETH MURRELL, CLAIMANT
STATE ACCIDENT INSURANCE FUND, DEFENSE ATTY.

THIS CLAIMANT HAS REQUESTED BOARD'S OWN MOTION CONSIDERATION OF HIS CLAIM INVOLVING A LOGGING ACCIDENT OF OCTOBER 23, 1951, WHICH SUPERIMPOSED INJURIES ON A CONGENITALLY DEFORMED CERVICAL AND UPPER DORSAL SPINE.

ON MARCH 3, 1952 HIS CLAIM WAS CLOSED WITH AN UNSCHEDULED PERMANENT PARTIAL DISABILITY AWARD OF 35 PERCENT AND HE WAS ADVISED NOT TO RETURN TO LOGGING. IN 1963 CLAIMANT'S CLAIM WAS VOLUNTARILY REOPENED BY THE STATE INDUSTRIAL ACCIDENT COMMISSION FOR ADDITIONAL TREATMENT AND RECLOSED IN FEBRUARY, 1964, AFTER IT WAS APPARENTLY DECIDED THE TREATMENTS BEING GIVEN WERE FOR THE RESULTS OF NATURAL DEGENERATIVE PROCESSES AFFECTING THE SPINE.

IN 1967 CLAIMANT AGAIN SOUGHT TREATMENT WHICH WAS DENIED BY THE THEN STATE COMPENSATION DEPARTMENT. CLAIMANT THEN SOUGHT BOARD'S OWN MOTION INTERCESSION. ON JANUARY 30, 1968 THE BOARD ADVISED CLAIMANT IT COULD FIND NO JUSTIFICATION FOR ORDERING HIS CLAIM REOPENED.

IN 1971, DR. JOEL SERES PERFORMED SURGERIES TO CLAIMANT'S LUMBAR AND CERVICAL SPINE WHICH HE FEELS ARE, WITHIN A REASONABLE MEDICAL PROBABILITY, RELATED TO CLAIMANT'S ACCIDENT OF 1951.

IN DECEMBER 1971 CLAIMANT ASKED THE STATE ACCIDENT INSURANCE FUND (THE SUCCESSOR TO THE STATE COMPENSATION DEPARTMENT WHICH IN TURN HAD SUCCEEDED THE STATE INDUSTRIAL ACCIDENT COMMISSION AS TO THE INSURING FUNCTIONS OF THE OLD STATE INDUSTRIAL ACCIDENT COMMISSION) FOR FURTHER COMPENSATION BUT WAS AGAIN REFUSED BENEFITS. THE REFUSAL WAS BASED ON A LACK OF AGGRAVATION RIGHTS AND INADEQUACY OF THE MEDICAL INFORMATION.

UPON RECEIPT OF THE CLAIMANT'S MOST RECENT REQUEST TO THE BOARD FOR OWN MOTION RELIEF, THE BOARD, THROUGH ITS MEDICAL DIRECTOR, CONTACTED DR. SERES, CLAIMANT'S TREATING SURGEON. DR. SERES IS OF THE OPINION THAT CLAIMANT'S PRESENT DIFFICULTIES ARE CAUSALLY RELATED TO THE OCTOBER 1951 INJURY. FINDINGS WHICH HE ATTRIBUTED TO THAT INJURY LED HIM TO PERFORM THE SURGERIES FOR WHICH CLAIMANT NOW SEEKS COMPENSATION.

WE CONCLUDE THAT THE UNFORTUNATE CIRCUMSTANCE CLAIMANT HAS BEEN PLACED IN BY REASON OF HIS INDUSTRIAL INJURY ENTITLES CLAIMANT TO THE OWN MOTION RELIEF HE HAS REQUESTED.

ORDER

THE STATE ACCIDENT INSURANCE FUND IS HEREBY ORDERED TO PAY THE COST OF CLAIMANT'S MEDICAL AND HOSPITAL COSTS ASSOCIATED WITH THE CERVICAL AND LUMBAR SURGERIES PERFORMED BY DR. JOEL SERES.

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.

CALVIN E. MALES, CLAIMANT
PETERSON, CHAIVOE AND PETERSON,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS AN INCREASE FROM THE PERMANENT PARTIAL DISABILITY OF 5 PERCENT FOR UNSCHEDULED LOW BACK DISABILITY AWARDED BY THE DETERMINATION ORDER AND AFFIRMED BY THE HEARING OFFICER.

CLAIMANT WAS INJURED ON DECEMBER 20, 1972 WHEN HIT IN THE BACK BY A ROLL OF PAPER WHILE WORKING AT CROWN-ZELLERBACH PAPER MILL. HE SAW DR. HICKMAN THE NEXT DAY WHO ADVISED A FEW DAYS REST AND OBSERVED MINIMAL PHYSICAL FINDINGS. CLAIMANT RETURNED TO THE DOCTOR IN ABOUT A WEEK AND BECAUSE OF CLAIMANT'S SUBJECTIVE COMPLAINTS WHICH WERE INCONSISTENT OR NOT RELATED TO THE PHYSICAL FINDINGS, THE DOCTOR PUT THE CLAIMANT IN A HOSPITAL FOR TRACTION AND CONSERVATIVE TREATMENT. WHILE HOSPITALIZED FOR ABOUT TWO WEEKS HE WAS EXAMINED BY ANOTHER DOCTOR WHO ALSO FOUND MINIMAL PHYSICAL PROBLEMS. ON NUMEROUS SUBSEQUENT VISITS TO DOCTORS, THE CLAIMANT REPEATED HIS SUBJECTIVE COMPLAINTS BUT THE DOCTORS FOUND NO OBJECTIVE DISABILITY.

THE MEDICAL REPORTS WHICH MAY, IN MINOR DETAIL, SEEM INCONSISTENT, GENERALLY RECITE SUBJECTIVE COMPLAINTS OF THE CLAIMANT WITH NO OBJECTIVE FINDINGS AND ADVICE OF THE TREATING DOCTOR THAT THE CLAIMANT SHOULD RETURN TO WORK.

IT IS DIFFICULT, EVEN WITH THE TRANSCRIPT AVAILABLE, TO RECONCILE THE TESTIMONY OF THE CLAIMANT IN RESPECT TO THE CHRONOLOGICAL EVENTS AND THE CLAIMANT'S ALLEGED ILLS, WITH THE MEDICAL REPORTS.

CLAIMANT HAS THE BURDEN OF PRESENTING EVIDENCE TO ESTABLISH HIS CONTENTIONS. IF THE EVIDENCE IS UNCERTAIN, INDEFINITE AND CONFUSING, THE CLAIMANT HAS NOT SUSTAINED HIS BURDEN OF PROOF. CLAIMANT'S BRIEF ASSERTS THAT MEDICAL REPORTS ARE CLEAR IN MEANING. THIS IS NOT SO PARTICULARLY WHEN THE REPORTS ARE READ IN CONJUNCTION WITH CLAIMANT'S TESTIMONY. THE SIGNIFICANT REACTION TO THE EVIDENCE IS THAT THE CLAIMANT IS NOT CREDIBLE.

DESPITE CLAIMANT'S CRITICISM OF THE HEARING OFFICER'S ORDER, THE ORDER DOES CORRECTLY REFLECT THE RECORD IN THIS REGARD AND IT IS AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 30, 1973 IS AFFIRMED.

WCB CASE NO. 73-819 JANUARY 2, 1974

WALTER BUCKLEY, CLAIMANT
POZZI, WILSON AND ATCHISON
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

A HEARING WAS HELD IN PORTLAND ON DECEMBER 27, 1973. PRESENT WERE THE CLAIMANT'S ATTORNEY, DON ATCHISON OF POZZI, WILSON AND ATCHISON AND REPRESENTING THE EMPLOYER THROUGH THE STATE ACCIDENT INSURANCE FUND, CLAYTON HESS. THE CLAIMANT WAS NOT PRESENT.

BY OPINION AND ORDER OF JUNE 15, 1973 I HAD AWARDED TO CLAIMANT PERMANENT PARTIAL DISABILITY, UNSCHEDULED, LOW BACK, OF 240 DEGREES, AN INCREASE OF 128 DEGREES OVER THAT PREVIOUSLY AWARDED. CLAIMANT APPEALED THIS OPINION AND ORDER TO THE WORKMEN'S COMPENSATION BOARD, WHICH, BY ORDER OF REMAND DATED JULY 19, 1973 REMANDED THE CASE TO ME !! FOR CONSIDERATION OF DR. KIMBERLEY'S REPORT AND SUCH ADDITIONAL EVIDENCE IN RESPECT THERETO THAT MAY BE APPROPRIATE !! THIS HEARING WAS HELD PURSUANT TO THIS ORDER OF REMAND.

THE FOREGOING REPORT OF DR. KIMBERLEY, DATED JUNE 26, 1973, WAS ADMITTED INTO EVIDENCE AS CLAIMANT'S EXHIBIT 1. THE ATTORNEYS BOTH STATED THEY DID NOT WISH TO OFFER ANY ADDITIONAL EVIDENCE.

CLAIMANT HAS BEEN RECEIVING PALLIATIVE OR SUPPORTIVE TREATMENT FROM DR. MCGREGOR CHURCH. BOTH ATTORNEYS AGREED THAT A REPORT FROM DR. CHURCH WOULD NOT BE HELPFUL.

I HAVE REVIEWED ALL OF THE EVIDENCE HEREIN INCLUDING THE ADDITIONAL REPORT FROM DR. KIMBERLEY (CLAIMANT'S EXHIBIT 1). THE ADDITIONAL EVIDENCE WOULD NOT INDICATE ANY CHANGE IN THE FINDINGS AND CONCLUSIONS IN MY PREVIOUS OPINION AND ORDER.

IT IS ACCORDINGLY ORDERED THAT DEFENDANT PAY TO CLAIMANT AND CLAIMANT'S ATTORNEYS THE AWARD AS SET FORTH IN THE FOREGOING OPINION AND ORDER OF JUNE 15, 1973.

WCB CASE NO. 73-706 JANUARY 4, 1974

JEWELL HARLOW, CLAIMANT
BURTON J. FALLGREN, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS AN INCREASE IN THE 48 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY AWARDED BY THE DETERMINATION ORDER AND AFFIRMED BY THE HEARING OFFICER.

CLAIMANT, A 42 YEAR OLD ROUTE SALESWOMAN WHO HAD A LONG HISTORY OF BACK PROBLEMS AND ACCIDENTS, SLIPPED AND FELL SEPTEMBER 16, 1970 SUSTAINING A LOW BACK INJURY. EXAMINATIONS BY NUMEROUS SPECIALISTS AGREE THAT THE OBJECTIVE FINDINGS OF THE BACK INJURY ATTRIBUTABLE TO THIS INJURY ARE MINIMAL. CLAIMANT HAS SUBJECTIVE COMPLAINTS WHICH FAR EXCEED THE OBJECTIVE FINDINGS. THE EXPERT MEDICAL OPINIONS STATE SHE COULD RETURN TO THE WORK SHE WAS DOING AT THE TIME OF THE INDUSTRIAL INJURY IF SHE WANTED TO. THE CLAIMANT INSISTS ON FURTHER SURGERY WHICH NONE OF THE MEDICAL EXPERTS RECOMMEND OR FIND APPROPRIATE. THE CLAIMANT REJECTS PSYCHOLOGICAL COUNSELING WHICH THE MEDICAL EXPERTS STRONGLY RECOMMEND.

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

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 26, 1973 IS AFFIRMED.

WCB CASE NO. 73-990 JANUARY 4, 1974

RONDALL MADEN, 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 AN INCREASE IN THE HEARING OFFICER'S AWARD OF 40 PERCENT UNSCHEDULED DISABILITY AND 10 PERCENT SCHEDULED LEFT LEG DISABILITY.

THIS 38 YEAR OLD, 300 POUND CLAIMANT RECEIVED A LOW BACK INJURY AND HAS RECEIVED SURGERY ON HIS BACK. THE ATTENDING PHYSICIAN STATES THAT LOSS OF WEIGHT IS ABSOLUTELY ESSENTIAL FOR ANY REAL RECOVERY OF CLAIMANT'S CONDITION. CLAIMANT HAS GAINED APPROXIMATELY 50 POUNDS SINCE THE ACCIDENT.

CLAIMANT'S TREATING DOCTOR STATES THAT CLAIMANT CANNOT RETURN TO HIS TRUCK DRIVING WORK AND RECOMMENDS RETRAINING. CLAIMANT HAS NOT MADE ANY SUBSTANTIAL EFFORT AT RETRAINING AND, IN FACT, HAD NOT COMMENCED TRAINING WHICH WAS ARRANGED AT CHEMEKETA COMMUNITY COLLEGE.

CLAIMANT'S MOTIVATION TO LOSE WEIGHT AND TO RETRAIN APPEAR POOR. THE CLAIMANT IS URGED TO AVAIL HIMSELF OF THE SERVICES OF THE DEPARTMENT OF VOCATIONAL REHABILITATION.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 1, 1973 IS AFFIRMED.

WCB CASE NO. 73-1463 JANUARY 4, 1974

WILDA J. MCCLOSKEY, CLAIMANT
ANDERSON, FULTON, LAVIS AND VAN THIEL,
CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED A DETERMINATION ORDER MAKING NO AWARD FOR PERMANENT PARTIAL DISABILITY.

CLAIMANT IS A 47 YEAR OLD LADY EMPLOYED AS A BARTENDER BY THE FRATERNAL ORDER OF EAGLES. ON AUGUST 20, 1972, SHE SLIPPED AND FELL WITH A POT OF HOT WATER AND SUFFERED SECOND AND THIRD DEGREE BURNS. SHE RETURNED TO FULL-TIME EMPLOYMENT DECEMBER 7, 1972.

CLAIMANT CONTENDS SHE IS ENTITLED TO AN AWARD OF PERMANENT PARTIAL DISABILITY. CLAIMANT'S TESTIMONY REFLECTS NO LOSS OF EARNING CAPACITY AND THE MEDICAL REPORTS SHOW NO PHYSICAL IMPAIRMENT. SINCE THERE IS NO PHYSICAL IMPAIRMENT AND NO LOSS OF EARNING CAPACITY, THE BOARD AFFIRMS THE ORDER OF THE HEARING OFFICER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 31, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 73-553 JANUARY 4, 1974

R. SCOTT MARTIN, 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 AN INCREASE IN THE PERMANENT PARTIAL DISABILITY AWARD OF 5 PERCENT MADE BY THE DETERMINATION ORDER AND AFFIRMED BY THE HEARING OFFICER.

CLAIMANT IS A 19 YEAR OLD, SINGLE MAN WITH BRIEF WORK HISTORY, ESSENTIALLY MANUAL LABOR. CLAIMANT STATES HE HAS NO INTEREST IN HIGHER EDUCATION AND WHEN ENCOURAGED TO PURSUE THIS, DEMONSTRATED HIS LACK OF INTEREST BY NOT COMPLETING COURSES AT COMMUNITY COLLEGE.

CLAIMANT RECEIVED A LUMBOSACRAL STRAIN WITH NERVE ROOT INVOLVEMENT AND THE ATTENDING DOCTOR RECOMMENDED CLAIMANT'S ACTIVITIES BE LIMITED TO EXCLUDE ANY PROLONGED SITTING, STANDING, BENDING, STOOPING, RUNNING, JUMPING OR LIFTING.

REGARDLESS OF CLAIMANT'S LACK OF MOTIVATION FOR HIGHER EDUCATION OR RETRAINING AT THIS TIME, THE BOARD IS PERSUADED THAT THE CLAIMANT DOES HAVE A LOSS OF FUNCTION AND AN IMPAIRMENT OF WAGE EARNING CAPACITY IN THE LABORING FIELD. THE LONG TERM PROGNOSIS OF THIS BACK INJURY APPEARS FAVORABLE IN THAT SOME IMPROVEMENT HAS BEEN NOTED.

UPON DE NOVO REVIEW OF THE ENTIRE RECORD, THE BOARD IS PERSUADED THAT CLAIMANT HAS SUSTAINED 15 PERCENT OF THE MAXIMUM ALLOWABLE UNSCHEDULED LOW BACK PERMANENT PARTIAL DISABILITY.

ORDER

CLAIMANT IS AWARDED A TOTAL OF 15 PERCENT (48 DEGREES) OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED LOW BACK PERMANENT PARTIAL DISABILITY. THIS IS AN INCREASE OF 10 PERCENT (32 DEGREES) OF THAT AWARDED BY THE HEARING OFFICER.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE, 25 PERCENT OF THE INCREASE IN COMPENSATION ASSOCIATED WITH THIS AWARD AND PAYABLE FROM SAID AWARD WHICH SHALL NOT EXCEED FIFTEEN HUNDRED DOLLARS.

WCB CASE NO. 73-49 JANUARY 4, 1974

DELMAR D. KIMBRO, CLAIMANT
COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

BY OWN MOTION ORDER DATED AUGUST 24, 1972 THE WORKMEN'S COMPENSATION BOARD ORDERED THE EMPLOYER, JONES VENEER AND PLYWOOD COMPANY, TO REOPEN CLAIMANT'S CLAIM OF MAY 27, 1966 AND PROVIDE HIM WITH MEDICAL CARE AND COMPENSATION WARRANTED.

ON OCTOBER 30, 1972 CLAIMANT SUSTAINED ANOTHER BACK INJURY WHILE WORKING FOR JIM BANKS TRUCKING WHO WAS INSURED BY THE STATE ACCIDENT INSURANCE FUND. THIS CLAIM WAS DENIED BY THE STATE ACCIDENT INSURANCE FUND. AFTER A HEARING THE HEARING OFFICER ISSUED THE ORDER OF OCTOBER 29, 1973 ORDERING THE STATE ACCIDENT INSURANCE FUND TO ACCEPT CLAIMANT'S CLAIM OF OCTOBER 30, 1972 AS A NEW INJURY CHARGEABLE AGAINST JIM BANKS TRUCKING AND THE STATE ACCIDENT INSURANCE FUND AND FURTHER THAT THE INCIDENT OF OCTOBER 30, 1972 WAS NOT AN AGGRAVATION OF THE MAY, 1966 INJURY CHARGEABLE TO GEORGIA-PACIFIC CORPORATION.

BY MEMORANDUM OPINION DATED OCTOBER 29, 1973 A COPY OF WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN, THE HEARING OFFICER FOUND THAT THE CLAIMANT'S CONDITION WAS STATIONARY AS OF OCTOBER 29, 1972 AND THAT CLAIMANT'S PERMANENT PARTIAL DISABILITY AT THAT TIME DID NOT EXCEED THE PRIOR AWARD TO CLAIMANT ARISING OUT OF THE MAY, 1966 ACCIDENT CHARGEABLE TO GEORGIA-PACIFIC CORPORATION.

THE BOARD ADOPTS THE HEARING OFFICER'S OPINION OF OCTOBER 29, 1973 AND THE HEARING OFFICER'S MEMORANDUM OPINION DATED OCTOBER 29, 1973.

ORDER

IT IS THEREFORE ORDERED THAT THE OWN MOTION REOPENING OF CLAIMANT'S CLAIM OF MAY 27, 1966 AGAINST THE EMPLOYER, JONES VENEER AND PLYWOOD COMPANY IS TERMINATED OCTOBER 29, 1972 AND THAT THIS CLAIM BE CLOSED OCTOBER 29, 1972 WITH NO FURTHER AWARD OF PERMANENT PARTIAL DISABILITY.

NO NOTICE OF APPEAL IS DEEMED APPLICABLE.

WCB CASE NO. 72-3115 JANUARY 4, 1974

DAVID MICHAEL JONES, CLAIMANT
STERLING WILLIVER, CLAIMANT'S ATTY.
GRAY, FANCHER, HOLMES AND HURLEY,
DEFENSE ATTYS.

CLAIMANT SUSTAINED A COMPENSABLE INJURY JANUARY 12, 1971 AND WAS AWARDED 5 PERCENT EQUAL TO 16 DEGREES PERMANENT PARTIAL DISABILITY FOR UNSCHEDULED LOW BACK DISABILITY BY DETERMINATION ORDER WHICH WAS AFFIRMED BY THE HEARING OFFICER'S ORDER DATED JUNE 21, 1973. CLAIMANT REQUESTED BOARD REVIEW.

CLAIMANT AND THE EMPLOYER HAVE SUBMITTED A JOINT PETITION FOR SETTLEMENT REQUESTING THE BOARD TO APPROVE THE SETTLEMENT PURSUANT TO ORS 656.289(4).

ORS 656.289(4) STATES 'IN ANY CASE WHERE THERE IS A BONA FIDE DISPUTE OVER COMPENSABILITY OF A CLAIM, THE PARTIES MAY, WITH THE APPROVAL OF A HEARING OFFICER, THE BOARD OR THE COURT, BY AGREEMENT MAKE SUCH DISPOSITION OF THE CLAIM AS IS CONSIDERED REASONABLE.' IN THIS CASE THERE IS NO DISPUTE OVER COMPENSABILITY. THE ONLY DISPUTE IS OVER THE EXTENT OF DISABILITY.

THE BOARD THEREFORE FINDS THE JOINT PETITION FOR SETTLEMENT TO BE NOT WELL TAKEN SINCE A RELEASE OF THE EMPLOYER FROM ALL FURTHER CLAIMS OR BENEFITS UNDER THE WORKMEN'S COMPENSATION LAW VIOLATES THE PROVISIONS OF ORS 656.236.

ORDER

THE JOINT PETITION FOR SETTLEMENT IS HEREBY DENIED.

WCB CASE NO. 73-855 JANUARY 4, 1974

THOMAS D. TAYLOR, CLAIMANT
FRANKLIN, BENNETT, OFELT, DES BRISAY AND
JOLLES, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT WAS AWARDED TEMPORARY TOTAL DISABILITY AND TEMPORARY PARTIAL DISABILITY ONLY BY THE DETERMINATION ORDER WHICH WAS AFFIRMED BY THE HEARING OFFICER'S ORDER. CLAIMANT REQUESTS BOARD REVIEW REQUESTING AN AWARD OF PERMANENT PARTIAL DISABILITY.

A REVIEW OF ALL OF THE MEDICAL EVIDENCE IN THE RECORD PERSUADES THE BOARD THAT NO PERMANENT IMPAIRMENT HAS BEEN PROVED. THE TESTIMONY AND EVIDENCE COMPARING THE EARNINGS OF THE CLAIMANT BEFORE THE ACCIDENT AND AFTER THE ACCIDENT MAY SHOW A LOSS OF EARNINGS BUT DO NOT PROVE A LOSS OF EARNING CAPACITY.

THE BOARD CONCURS WITH THE FINDING OF THE HEARING OFFICER THAT NO CAUSAL RELATIONSHIP BETWEEN CLAIMANT'S REDUCED EARNINGS AND HIS INDUSTRIAL INJURY HAS BEEN PROVED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 22, 1973 IS AFFIRMED.

WCB CASE NO. 73-371 JANUARY 4, 1974

ANTHONY C. CRISTOFARO, CLAIMANT
RICHARDSON AND MURPHY, 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 REVERSAL OF THE HEARING OFFICER'S FINDING AND ORDER THAT CLAIMANT'S MYOCARDIAL INFARCTION WAS RELATED TO CLAIMANT'S WORK EFFORTS.

THE BOARD FINDS THE TESTIMONY AND REPORTS OF DR. GRISWOLD AND DR. HICKMAN PERSUASIVE AND THEREFORE AFFIRMS THE FINDINGS AND THE ORDER OF THE HEARING OFFICER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 17, 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.

WCB CASE NO. 73-961 JANUARY 7, 1974

ARTHUR CAUSEY, CLAIMANT
MYRICK, COULTER, SEAGRAVES AND NEALY,
CLAIMANT'S ATTYS.
KEITH SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

EMPLOYER REQUESTS A DECREASE IN THE PERMANENT PARTIAL DISABILITY AWARD OF 60 PERCENT (192 DEGREES) UNSCHEDULED PERMANENT PARTIAL DISABILITY ORDERED BY THE HEARING OFFICER.

THE CLAIMANT, A 50 YEAR OLD SAWMILL WORKER, SLIPPED AND FELL INJURING HIS LEFT HIP AND LOW BACK IN JULY, 1971. HE RETURNED TO WORK IN SEPTEMBER, 1971 AND WORKED FOR FIVE OR SIX MONTHS. HE HAS RECEIVED CONSERVATIVE TREATMENT ONLY FOR HIS BACK AND NECK COMPLAINTS.

THE BACK EVALUATION CLINIC RATES HIS DISABILITY AS 'MILDLY MODERATE' AND STATES THERE APPEARS TO BE NO REASON WHY THIS PATIENT COULD NOT WORK BUT THAT HE SHOULD PROBABLY NOT RETURN TO HIS FORMER OCCUPATION. VOCATIONAL REHABILITATION REPORTS THE IMPRESSION THAT THIS MAN DOES NOT WANT TO GO BACK TO WORK. HIS PREACCIDENT GAINFUL EMPLOYMENT RECORD REFLECTS MINIMAL WAGES EARNED. THE WORKMEN'S COMPENSATION MONTHLY BENEFITS AND HIS INSURANCE COVERAGES WHICH PAY HIS MONTHLY PAYMENTS ON HIS VEHICLE AND MOBILE HOME MAY INFLUENCE HIS LACK OF MOTIVATION TO WORK.

THE MEDICAL REPORTS SHOWING MODERATE PHYSICAL DISABILITY COINCIDE WITH THE CLAIMANT'S REGULAR BOWLING TWICE A WEEK WITH AN AVERAGE IN THE 170'S.

THE CLAIMANT SHOULD BE ENCOURAGED TO OBTAIN ASSISTANCE FROM THE DISABILITY PREVENTION DIVISION AND VOCATIONAL REHABILITATION. THIS CAN ONLY REALLY BE EFFECTIVE IF HIS MOTIVATION TO RETURN TO WORK IS SUBSTANTIALLY IMPROVED.

THE BOARD, ON DE NOVO REVIEW, FINDS THE PERMANENT DISABILITY TO BE EQUAL TO A TOTAL OF 30 PERCENT OR 96 DEGREES OF THE MAXIMUM OF 320 DEGREES.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 18, 1973 WHICH AWARDED AN ADDITIONAL 160 DEGREES RESULTING IN A TOTAL OF 192 DEGREES FOR UNSCHEDULED PERMANENT PARTIAL DISABILITY IS MODIFIED BY REDUCING THE PERMANENT PARTIAL DISABILITY AWARD TO A TOTAL OF 30 PERCENT OR A TOTAL OF 96 DEGREES.

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

WCB CASE NO. 71-1263 JANUARY 7, 1974

TED O. DICKERSON, CLAIMANT
MCCARTY AND SWINDELLS, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND
SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS AN INCREASE IN PERMANENT PARTIAL DISABILITY,
FURTHER MEDICAL CARE AND TREATMENT, FURTHER TIME LOSS COMPENSATION
AND PAYMENT OF PAST MEDICAL BILLS.

THE CLAIMANT, A 55 YEAR OLD SANITATION SUPERVISOR, RECEIVED A
LOW BACK INJURY JULY, 1966 FOR WHICH HE HAS HAD TWO SURGERIES. HE
HAS OBTAINED HIS GED CERTIFICATE AND, THROUGH VOCATIONAL REHABILITATION,
HAS COMPLETED NEARLY TWO YEARS AT MOUNT HOOD COMMUNITY COLLEGE
IN RADIO TECHNOLOGY.

THE RECORD INDICATES THE CLAIMANT MAY BE POORLY MOTIVATED AND
PRONE TO EXAGGERATE. THE RECORD ALSO PERSUADES THE BOARD THAT
THERE IS SOME REAL DISABILITY WHICH THE HEARING OFFICER HAS QUITE
ADEQUATELY COMPENSATED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 6, 1973 IS AFFIRMED.

WCB CASE NO. 72-3232 JANUARY 8, 1974

CLIFFORD MATHENY, CLAIMANT
LUVAAAS, COBB, RICHARDS AND FRASER,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND ISSUED A PARTIAL DENIAL
REFUSING TO PAY FOR TREATMENT AFFORDED BY DR. DALROS SUBSEQUENT
TO SEPTEMBER 20, 1972. THE HEARING OFFICER AFFIRMED THIS DENIAL
AND CLAIMANT REQUESTS REVERSAL OF THE HEARING OFFICER REQUESTING
PAYMENT OF THE MEDICAL EXPENSE INCURRED IN THE TREATMENT RENDERED
BY DR. DALROS.

THE CLAIMANT, A 52 YEAR OLD EQUIPMENT OPERATOR, SUFFERED A
COMPENSABLE INJURY SEPTEMBER 7, 1971 TO HIS NECK, RIGHT SHOULDER,
ARM AND BACK. CLAIMANT WAS EXAMINED AND TREATED BY DOCTORS AND
SPECIALISTS AND CONTINUED WORK AS AN EQUIPMENT OPERATOR THROUGH
MAY OF 1972. DR. SERBU, A NEUROLOGIST, EXAMINED CLAIMANT IN

SEPTEMBER, 1972 AND FOUND NO PERMANENT PARTIAL DISABILITY AND RECOMMENDED NO SPECIFIC FURTHER MEDICAL THERAPY AND FURTHER THAT THE CLAIMANT SHOULD IMMEDIATELY GO BACK TO WORK.

SUBSEQUENT TO THE EXAMINATION BY NEUROLOGIST, DR. SERBU, CLAIMANT CONSULTED CHIROPRACTOR DALROS WHO REPORTED THAT THE CLAIMANT WILL BE SUSCEPTIBLE TO REOCCURRENCES OF HIS COMPLAINTS BECAUSE OF ARTHRITIC CHANGES IN HIS CERVICAL REGION. DR. DALROS' REPORT REFLECTS NUMEROUS PAST INJURIES AND SUBSEQUENT INJURIES BUT DOES NOT CONNECT THE CLAIMANT'S CONDITION OR THE TREATMENT WITH THE INDUSTRIAL INJURY HEREIN INVOLVED.

THE BOARD CONCURS WITH THE FINDING OF THE HEARING OFFICER THAT ANY TREATMENT CLAIMANT MAY HAVE OBTAINED FROM DR. DALROS WAS RELATED TO THE UNDERLYING NECK PROBLEM AND NOT TO THE INDUSTRIAL INJURY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 8, 1973 IS AFFIRMED.

WCB CASE NO. 72-2545 JANUARY 8, 1974

DESSIE BAILEY, CLAIMANT
MCMENAMIN, JONES, JOSEPH AND LANG,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON DECEMBER 19, 1973 THE BOARD ENTERED AN ORDER AMENDING AND SUPPLEMENTING ITS ORDER FILING THE FINDINGS OF THE MEDICAL BOARD OF REVIEW IN THE ABOVE ENTITLED CASE.

THE AMENDED PARAGRAPH INSERTED IN LIEU OF THE ORIGINAL READ -

"IN AID OF THE RECORD, THE BOARD NOTES THAT THE MEDICAL BOARD OF REVIEW HAS, IN EFFECT, SET ASIDE THE INCREASE IN SCHEDULED DISABILITY ALLOWED BY THE HEARING OFFICER AND GRANTED AN UNSCHEDULED DISABILITY AWARD OF 25 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY RESULTING FROM CLAIMANT'S OCCUPATIONAL DISEASE CLAIM."

CLAIMANT'S ATTORNEY HAS POINTED OUT THAT A PART OF THAT PARAGRAPH, DEALING WITH THE SCHEDULED DISABILITY ISSUE, CONTINUES TO BE INCORRECT. THEREFORE THAT PARAGRAPH SHOULD BE DELETED AND THE FOLLOWING PARAGRAPH SHOULD BE INSERTED IN LIEU THEREOF -

"IN AID OF THE RECORD, THE BOARD NOTES THAT THE MEDICAL BOARD OF REVIEW HAS SET ASIDE THE HEARING OFFICER'S ALLOWANCE OF 30 DEGREES OF A MAXIMUM OF 150 DEGREES FOR EACH FOREARM FOR A TOTAL OF 60 DEGREES FOR SCHEDULED DISABILITY. IN LIEU THEREOF THE MEDICAL BOARD OF REVIEW GRANTED CLAIMANT 15 DEGREES OF A MAXIMUM OF 150 DEGREES FOR PARTIAL LOSS OF EACH HAND FOR A TOTAL OF 30 DEGREES FOR SCHEDULED DISABILITY

TOGETHER WITH AN AWARD OF 25 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY RESULTING FROM CLAIMANT'S OCCUPATIONAL DISEASE. !'

THE ORDER OF DECEMBER 19, 1973 SHOULD REMAIN THE SAME IN ALL OTHER RESPECTS.

IT IS SO ORDERED.

WCB CASE NO. 73-483 JANUARY 8, 1974

DANIEL E. ALLEE, CLAIMANT
JACK, GOODWIN AND URBIGKEIT, CLAIMANT'S ATTYS.
MERLIN MILLER, 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 EMPLOYMENT FOR SAFEWAY STORES, INC. IN PORTLAND, OREGON.

ON MAY 30, 1973 AN ORDER OF THE HEARING OFFICER AWARDED CERTAIN COMPENSATION FOR PERMANENT PARTIAL DISABILITY.

THE ORDER OF THE HEARING OFFICER WAS REJECTED BY THE EMPLOYER, THEREBY CONSTITUTING AN APPEAL TO A MEDICAL BOARD OF REVIEW.

A MEDICAL BOARD OF REVIEW CONSISTING OF DRS. JOYLE O. DAHL, LEON F. RAY AND THOMAS S. SAUNDERS WAS APPOINTED ON OCTOBER 2, 1973. THE MEDICAL BOARD OF REVIEW HAS NO PRESENTED ITS FINDINGS ALONG WITH CERTAIN FURTHER RESPONSES RENDERED IN RESPONSE TO ADDITIONAL CLARIFYING QUESTIONS PRESENTED AT THE REQUEST OF THE PARTIES. THE FINDINGS AND CLARIFYING LETTERS ARE HEREBY ATTACHED AS EXHIBITS A, B, C AND D. THE BOARD NOTES DR. RAY FAILED TO RESPOND TO THE BOARD'S LETTER OF NOVEMBER 21, 1973 BUT DID RESPOND TO THE BOARD'S LETTER OF NOVEMBER 26, 1973.

IN AID OF THE RECORD, THE BOARD NOTES THAT THE MEDICAL BOARD OF REVIEW HAS, IN EFFECT, AFFIRMED THE OPINION AND ORDER OF THE HEARING OFFICER DATED MAY 30, 1973.

PURSUANT TO ORS 656.814 THE FINDINGS OF THE MEDICAL BOARD OF REVIEW, TOGETHER WITH THE SUPPLEMENTAL LETTERS, ARE FILED AS FINAL AS OF THE DATE OF THIS ORDER.

URSULA PHILLIPS, CLAIMANT
WARDE H. ERWIN, CLAIMANT'S ATTY.
MERLIN MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW CLAIMING THAT HER INDUSTRIAL INJURY IS NOT MEDICALLY STATIONARY OR, IN THE ALTERNATIVE IF THE CLAIMANT IS MEDICALLY STATIONARY, THAT SHE IS PERMANENTLY TOTALLY DISABLED.

CLAIMANT, A 51 YEAR OLD CANNERY WORKER, RECEIVED BURNS TO FINGERS ON HER RIGHT HAND WHILE HANDLING HOT BEANS JULY 31, 1970. THE BURNS HEALED AND SHE WENT BACK TO WORK IN ABOUT A WEEK AND THE CLAIM WAS CLOSED BY THE FIRST DETERMINATION ORDER AWARDING 3 DEGREES FOR PARTIAL LOSS OF THE RIGHT MIDDLE FINGER AND 2 DEGREES FOR PARTIAL LOSS OF THE RIGHT RING FINGER.

ABOUT A YEAR LATER CLAIMANT CONSULTED A DOCTOR COMPLAINING OF PROBLEMS WITH HER RIGHT HAND. THE DOCTOR DIAGNOSED THE PROBLEM AS A CARPAL TUNNEL SYNDROME AND INDICATED THAT IT WAS NOT NECESSARILY CAUSED BY THE BURN BUT THAT IT WAS INDUSTRIALLY RELATED. SINCE THIS NEW CONDITION INVOLVED BASICALLY THE SAME AREA, THE CLAIMANT AND THE EMPLOYER HANDLED THE TWO CONDITIONS UNDER THE ONE CLAIM FILE ORIGINALLY FILED FOR THE BURN ON THE FINGERS OF JULY 31, 1970.

AFTER SURGERY FOR THE CARPAL TUNNEL SYNDROME AND FURTHER TREATMENT THE CLAIM WAS AGAIN CLOSED BY DETERMINATION ORDER AWARDING 10 PERCENT LOSS OF THE RIGHT FOREARM EQUAL TO 15 DEGREES, IN LIEU OF AND NOT IN ADDITION TO THE FIRST DETERMINATION ORDER WHICH WAS FOR THE BURNS TO THE FINGERS.

COUNSEL FOR THE CLAIMANT AND THE EMPLOYER HAVE SUBMITTED COMPREHENSIVE BRIEFS AND THE BOARD FINDS THAT ORAL ARGUMENT BY COUNSEL ON THIS BOARD REVIEW WOULD BE MERELY CUMULATIVE.

AFTER CAREFUL REVIEW OF THE TRANSCRIPT OF THE HEARING AND OF THE BRIEFS, THE BOARD FINDS THERE WAS NO STIPULATION THAT CLAIMANT'S PRESENT COMPLAINTS ARE MEDICALLY RELATED TO THE INDUSTRIAL INJURIES. WHETHER OR NOT CLAIMANT'S PRESENT COMPLAINTS ARE RELATED TO THE INDUSTRIAL INJURY IS, IN FACT, THE MATTER AT ISSUE BOTH AT THE HEARING AND ON BOARD REVIEW.

THE CLAIMANT HAD SUBSTANTIAL PSYCHOLOGICAL PROBLEMS BEFORE THE INDUSTRIAL INJURY. THE CLAIMANT HAS SUBSTANTIAL PSYCHOLOGICAL PROBLEMS NOW. THERE IS SOME MEDICAL EVIDENCE THAT THE CLAIMANT MAY HAVE A THORACIC OUTLET COMPRESSION. THE BOARD FINDS THERE IS NO PERSUASIVE EVIDENCE EITHER IN THE MEDICAL REPORTS OR THE RECORD THAT THESE CONDITIONS ARE CAUSALLY CONNECTED TO THE INDUSTRIAL INJURY.

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

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 10, 1973 IS AFFIRMED.

WCB CASE NO. 73-1426

JANUARY 8, 1974

HAROLD B. BENGE, CLAIMANT
PETERSON, CHAIVOE AND PETERSON,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT HAD A HEART ATTACK FEBRUARY 26, 1973. THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM. THE HEARING OFFICER AFFIRMED THE DENIAL AND NOW THE CLAIMANT REQUESTS REVERSAL OF THE HEARING OFFICER'S ORDER.

CLAIMANT, A LONG HAUL TRUCK DRIVER, HAULED A LOAD OF LUMBER TO COLORADO AND A LOAD OF CORN HAD JUST BEEN LOADED ON HIS TRUCK. WHILE LIFTING A TARP OVER HIS HEAD ONTO THE TRUCK PREPARING TO COVER THE LOAD, CLAIMANT HAD CHEST PAINS. AFTER RESTING ABOUT AN HOUR HE WAS ABLE TO COMPLETE COVERING THE LOAD WITH THE TARP. CLAIMANT DID NOT FEEL GOOD FOR THE NEXT FEW HOURS BUT AFTER A SHORT REST AND SLEEP FELT SOMEWHAT BETTER. HOWEVER, APPROXIMATELY 12 HOURS LATER CLAIMANT WAS TAKEN TO THE HOSPITAL BY AMBULANCE APPARENTLY UNCONSCIOUS FROM THE EFFECTS OF A MYOCARDIAL INFARCTION.

THERE ARE SOME CONTRADICTIONS AND DISCREPANCIES IN THE DRIVER'S LOG BOOK AND IN THE HISTORY AS REPORTED BY THE DOCTORS IN THE INITIAL MEDICAL REPORTS AS OPPOSED TO THE SUBSEQUENT MEDICAL REPORTS. THE BOARD DOES NOT CONSIDER THESE APPARENT DISCREPANCIES AND CONTRADICTIONS TO BE SUCH AS WOULD IMPEACH THE CLAIMANT OR REFLECT UNFAVORABLY ON HIS CREDIBILITY.

ON DE NOVO REVIEW, THE BOARD IS PERSUADED THAT THE MYOCARDIAL INFARCTION AROSE OUT OF AND IN THE SCOPE AND COURSE OF EMPLOYMENT.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 28, 1973 IS REVERSED AND THE CLAIM IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR PAYMENT OF WORKMEN'S COMPENSATION BENEFITS AS PROVIDED BY LAW.

IT IS FURTHER ORDERED THAT THE STATE ACCIDENT INSURANCE FUND PAY CLAIMANT'S ATTORNEYS THE SUM OF ONE THOUSAND DOLLARS FOR THEIR SERVICES AT THE HEARING AND ON REVIEW REGARDING THE COMPENSABILITY OF CLAIMANT'S CLAIM.

JANUARY 9, 1974

HAROLD STONER, CLAIMANT
ANDERSON, FULTON, LAVIS AND VAN THIEL,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS AN INCREASE IN THE PERMANENT PARTIAL DISABILITY AWARD AND A REVERSAL OF THE HEARING OFFICER'S ORDER WHICH AFFIRMED THE PARTIAL DENIAL INVOLVING CLAIMANT'S LOWER ABDOMINAL DISTRESS.

CLAIMANT, A 41 YEAR OLD DUMP TRUCK DRIVER, RECEIVED INJURY TO HIS NECK AND UPPER BACK AND LEFT WRIST WHEN A BOULDER WAS DROPPED ON THE CAB OF HIS TRUCK CAUSING CLAIMANT'S HEAD TO STRIKE THE TOP OF THE CAB AND HIS LEFT HAND TO BE CAUGHT BETWEEN HIS THIGH AND THE STEERING WHEEL. SOME FIVE OR SIX MONTHS THEREAFTER CLAIMANT WAS TREATED FOR LOWER ABDOMINAL PAIN AND URINARY TRACT DISTRESS.

REVIEW OF THE MEDICAL REPORTS REGARDING THE LOWER ABDOMINAL PAIN AND URINARY TRACT DISTRESS PERSUADES THE BOARD THAT THERE IS INSUFFICIENT EXPERT MEDICAL TESTIMONY TO SHOW A CAUSAL RELATIONSHIP FOR THIS CONDITION TO THE INDUSTRIAL INJURY.

ON DE NOVO REVIEW, THE BOARD FINDS THAT THE AWARD OF PERMANENT PARTIAL DISABILITY MADE BY THE HEARING OFFICER ADEQUATELY COMPENSATES THE CLAIMANT.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 30, 1973 IS AFFIRMED.

JANUARY 9, 1974

WALTER REID, CLAIMANT
DARRELL CORNELIUS, CLAIMANT'S ATTY.
MARMADUKE, ASCHENBRENNER, MERTEN AND
SALTVEIT, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS REVERSAL OF THE HEARING OFFICER'S ORDER HOLDING THAT CLAIMANT IS NOT ENTITLED TO RECEIVE BOTH PERMANENT PARTIAL DISABILITY PAYMENTS AND TEMPORARY TOTAL DISABILITY PAYMENTS AT THE SAME TIME UNDER THE FACTS OF THIS CASE.

THE MATTER WAS SUBMITTED TO THE HEARING OFFICER ON STIPULATED FACTS. THE OPINION AND ORDER OF THE HEARING OFFICER CLEARLY STATE THE FACTS AND THE FINDINGS.

THE BOARD ADOPTS THE OPINION AND ORDER OF THE HEARING OFFICER AS ITS OWN.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 21, 1973 IS AFFIRMED.

WCB CASE NO. 73-1155

JANUARY 9, 1974

GERALDINE M. LUFF(FOX) , CLAIMANT
BUSS, LEICHER, LINDSTEDT AND BARKER,
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 FOUND CLAIMANT HAD FAILED TO SUSTAIN THE BURDEN OF PROVING A DISABILITY IN EXCESS OF THAT PREVIOUSLY AWARDED TO HER. CLAIMANT CONTENDS SHE IS ENTITLED TO AN AWARD OF PERMANENT TOTAL DISABILITY. BY PREVIOUS AWARDS, SHE HAD RECEIVED 133 DEGREES UNSCHEDULED LOW BACK DISABILITY AND 46 DEGREES FOR THE LEFT LEG.

CLAIMANT, NOW AGE 45, SUSTAINED A COMPENSABLE LOW BACK INJURY ON APRIL 14, 1967, WHILE EMPLOYED AS A POWER SEWING MACHINE OPERATOR. HER LAST EMPLOYMENT OF FIVE DAYS OCCURRED IN AUGUST, 1972.

DR. ROBERT G. MCKILLOP'S REPORT OF JANUARY 16, 1973 INDICATES THE DIAGNOSIS OF CLAIMANT'S CONDITION TO BE CHRONIC LUMBOSACRAL STRAIN SYNDROME FOLLOWING LAMINECTOMY AND FUSION SUPERIMPOSED UPON DEGENERATIVE DISC DISEASE AND CHRONIC NEURITIS INVOLVING THE LEFT S-1 NERVE ROOT. HE DOUBTED CLAIMANT COULD RETURN TO A SEWING JOB BECAUSE OF HER POOR TOLERANCE FOR SITTING.

ON REVIEW OF THE MEDICAL REPORTS AND THE ENTIRE RECORD, THE BOARD IS NOT PERSUADED THAT A PRIMA FACIE CASE OF ODD-LOT STATUS HAS BEEN SHOWN. ALTHOUGH THE BOARD DOES NOT CONCUR WITH THE RATIONALE OF THE HEARING OFFICER AS TO MOTIVATION OF THE CLAIMANT, THE BOARD DOES FIND THAT THE LACK OF MOTIVATION OF CLAIMANT PREVENTS THE ODD-LOT STATUS FOR THE CLAIMANT.

THE BOARD, ON REVIEW, FINDS CLAIMANT'S DISABILITY TO BE SUBSTANTIAL AND BY THIS ORDER, GRANTS HER A PERMANENT PARTIAL DISABILITY AWARD TOTALING 200 DEGREES UNSCHEDULED LOW BACK DISABILITY, BEING AN INCREASE OF 77 DEGREES. THE AWARD OF 46 DEGREES FOR LOSS OF THE LEFT LEG IS ADEQUATE.

ALTHOUGH THE FIRST ATTEMPT AT RETRAINING WAS NOT SUCCESSFUL, THE BOARD IS DESIROUS THAT THE DISABILITY PREVENTION DIVISION AGAIN CONTACT CLAIMANT AND POSSIBLY WORK OUT AN ALTERNATIVE PLAN OF RETRAINING GEARED TO CLAIMANT'S PRESENT CAPABILITY.

ORDER

CLAIMANT IS HEREBY AWARDED AN INCREASE OF 77 DEGREES PERMANENT PARTIAL DISABILITY FOR UNSCHEDULED LOW BACK DISABILITY.

COUNSEL FOR CLAIMANT MAY RECOVER AS A REASONABLE ATTORNEY'S FEE, 25 PERCENT OF THE INCREASED COMPENSATION AWARDED HEREBY, PAYABLE FROM SAID AWARD, TO A MAXIMUM OF ONE THOUSAND FIVE HUNDRED DOLLARS.

WCB CASE NO. 72-2042

JANUARY 14, 1974

MIKE SEARS, CLAIMANT
FRED ALLEN, CLAIMANT'S ATTY.
PHILIP MONGRAIN, DEFENSE ATTY.

CLAIMANT SUSTAINED AN INDUSTRIAL INJURY JUNE 1, 1972. CLAIMANT REQUESTED A HEARING BY HIS LETTER OF JULY 21, 1972. VARIOUS PRE-CONFERENCE HEARINGS WERE SET AND THEN SET OVER AND ORDERS TO SHOW CAUSE WHY THE REQUEST FOR HEARING SHOULD NOT BE DISMISSED WERE ISSUED AND VACATED. A HEARING WAS SCHEDULED ON OCTOBER 23, 1973 AT WHICH COUNSEL FOR THE CLAIMANT AND THE EMPLOYER APPEARED, BUT THE CLAIMANT DID NOT APPEAR. ADDITIONAL SHOW CAUSE ORDERS, ORDER OF DISMISSAL AND ORDER ON RECONSIDERATION WERE ISSUED. THE ORDER ON RECONSIDERATION WAS ISSUED DECEMBER 6, 1973 AND AN APPEAL TO THE BOARD WAS RECEIVED DECEMBER 27, 1973. THE LETTER REQUESTING THE APPEAL FROM THE CLAIMANT ALLEGES HE WAS IN THE UNITED STATES COAST GUARD AT ALAMEDA, CALIFORNIA AT THE TIME OF HIS HEARING.

THE BOARD BELIEVES THE MATTER SHOULD BE REMANDED TO THE REFEREE FOR FURTHER DEVELOPMENT OF THE RECORD AS TO WHETHER OR NOT THE CLAIMANT CAN SHOW CAUSE WHY THE REQUEST FOR HEARING SHOULD NOT BE DISMISSED.

ORDER

PURSUANT TO ORS 656.295 THIS MATTER IS HEREBY REMANDED TO THE REFEREE FOR FURTHER EVIDENCE AND RECONSIDERATION BY THE REFEREE ON THE ISSUE OF WHETHER THE CLAIMANT CAN SHOW CAUSE WHY THE REQUEST FOR HEARING SHOULD NOT BE DISMISSED.

WALTER STUART, CLAIMANT
MURLEY M. LARIMER, 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 REVERSAL OF THE HEARING OFFICER'S ORDER WHICH ALLOWED CLAIMANT'S AGGRAVATION CLAIM AND ORDERED THE STATE ACCIDENT INSURANCE FUND TO ACCEPT CLAIMANT'S AGGRAVATION CLAIM.

ORS 656.271 PROVIDES . . . "THE CLAIM FOR AGGRAVATION MUST BE SUPPORTED BY A WRITTEN OPINION FROM A PHYSICIAN THAT THERE ARE REASONABLE GROUNDS FOR THE CLAIM . . ." THE MEDICAL REPORTS UPON WHICH THE CLAIMANT RELIES FALL FAR SHORT OF THIS REQUIREMENT.

DR. EDWARDS' LETTER OF MAY 10, 1973 STATES IT WOULD NOT BE FEASIBLE FOR HIM TO MAKE AN ACCURATE APPRAISAL OF A POSSIBLE CORRELATION OF ETIOLOGY OR AGGRAVATION OF PREEXISTING ARTHRITIS AT THE RIGHT HIP.

DR. WILSON'S REPORT OF JULY 24, 1972 MERELY COMPARES THE X-RAYS TAKEN IN 1969 WITH THE X-RAYS TAKEN IN 1972 AND CONCLUDES THERE IS RATHER SEVERE OSTEOARTHRITIS OF THE RIGHT HIP AND LOWER SPINE AND POINTS OUT THE PROGRESS FROM NORMAL HIP IN NOVEMBER, 1969 TO SEVERE OSTEOARTHRITIS IN JULY OF 1972. NEITHER OF THESE REPORTS CAN BE CONSTRUED AS A WRITTEN OPINION FROM A PHYSICIAN THAT THERE ARE REASONABLE GROUNDS FOR THE AGGRAVATION CLAIM.

DR. GEORGE HARWOOD COMPARED THE X-RAYS IN NOVEMBER OF 1969 TO THE X-RAYS OF JULY, 1972 AND CONCLUDED THAT WITH THE TIME LAPSE OF TWO YEARS AND TEN MONTHS WITHOUT ANY PROGRESSIVE CHANGE IN THE BONES OF THE HIP REVEALS THAT THERE IS NO RELATIONSHIP BETWEEN THE CURRENT CONDITION OF OSTEOARTHRITIS IN THE RIGHT HIP AND THE INJURY OF JANUARY, 1967.

THE BOARD FINDS THERE IS NO REAL MEDICAL EVIDENCE OR OPINION TO SUPPORT THE CLAIM FOR AGGRAVATION EITHER AS A MATTER OF LAW OR AS A MATTER OF FACT.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 7, 1973 IS REVERSED.

JANUARY 14, 1974

KENAN C. SMITH, JR., CLAIMANT
HOLMES, JAMES AND CLINKINBEARD,
CLAIMANT'S ATTYS.
 DEPARTMENT OF JUSTICE, DEFENSE ATTY.
 REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS REVERSAL OF THE HEARING OFFICER'S ORDER HOLDING THAT THE REQUEST FOR HEARING WAS NOT TIMELY FILED.

CLAIMANT AGGRAVATED A PREEXISTING HEEL CONDITION WHEN HE JUMPED FROM A HYSTER. A FELLOW EMPLOYEE NOTICED CLAIMANT'S PROBLEMS IMMEDIATELY THEREAFTER. CLAIMANT CONTINUED TO WORK FOR A COUPLE OF DAYS BUT THE PAIN IN HIS RIGHT HEEL PROGRESSED.

CLAIMANT VISITED A PODIATRIST THINKING HIM A COMPETENT FOOT SPECIALIST. AS A RESULT OF THE PODIATRIST'S LIMITED EXPERTISE HE FAILED TO PROPERLY DIAGNOSE, TREAT OR REPORT ON CLAIMANT'S CONDITION. AS A RESULT THE STATE ACCIDENT INSURANCE FUND WAS MISLED INTO DENYING HIS CLAIM FOR A VARIETY OF REASONS INCLUDING, AMONG OTHERS, THAT HE HAD NOT SUFFERED AN "OCCUPATIONAL DISEASE". THE PODIATRIST THEN INDICATED HE WOULD DISCUSS THE MATTER FURTHER WITH THE STATE ACCIDENT INSURANCE FUND AND CLAIMANT LEFT IT IN HIS HANDS.

ON AUGUST 23, 1972 CLAIMANT ENTERED THE VETERAN'S ADMINISTRATION HOSPITAL IN PORTLAND FOR TREATMENT OF SERVICE CONNECTED FOOT PROBLEMS. WHILE THERE, NO ACCURATE DIAGNOSIS OF HIS JOB CONNECTED PROBLEM WAS MADE AND HE WAS DISCHARGED ON SEPTEMBER 22, 1972 ESSENTIALLY UNTREATED AND UNCHANGED.

HE WAS URGED BY HIS FAMILY TO SEEK FURTHER MEDICAL CARE AND LEGAL ADVICE BUT HE WAS RELUCTANT TO DO SO BECAUSE HE WAS SHORT OF MONEY, NOT HAVING WORKED SINCE MAY, 1972. FINALLY, BECAUSE OF INCREASING PROBLEMS HE SOUGHT FURTHER MEDICAL TREATMENT AND LEGAL ADVICE. A REQUEST FOR HEARING WAS FILED IMMEDIATELY. ON NOVEMBER 28, 1972 CLAIMANT WAS EXAMINED BY DR. JOHN S. CORSON, AN ORTHOPEDIC SURGEON, WHO DEFINITELY CONCLUDED THAT HIS ON-THE-JOB ACCIDENT CAUSED THE DEVELOPMENT OF SYMPTOMATIC PLANTAR FACITIS.

BECAUSE OF THE NUMEROUS ITEMS OF CONFUSION STARTING WITH AN INCORRECT DIAGNOSIS BY A "FOOT SPECIALIST" ON WHICH THE CLAIMANT RELIED, THE DENIAL BY THE STATE ACCIDENT INSURANCE FUND OF AN OCCUPATIONAL DISEASE, THE HOSPITALIZATION OF THE CLAIMANT IN THE VETERAN'S ADMINISTRATION HOSPITAL DURING THIS PERIOD OF TIME, AND OTHER FACTORS, THE BOARD IS PERSUADED THAT THE CLAIMANT HAS SHOWN GOOD CAUSE FOR FAILURE TO FILE THE REQUEST FOR HEARING BY THE SIXTIETH DAY AFTER NOTIFICATION OF DENIAL.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 17, 1973 IS REVERSED AS TO THE ISSUE OF FAILURE TO FILE TIMELY REQUEST FOR HEARING.

THE HEARING OFFICER'S ORDER AS TO COMPENSABILITY IS AFFIRMED AND THE CLAIM IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND TO PROVIDE BENEFITS TO CLAIMANT AS PROVIDED BY THE WORKMEN'S COMPENSATION LAW.

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

WCB CASE NO. 72-1363

JANUARY 14, 1974

ALBERT A. HANSON, 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 REVERSAL OF THE HEARING OFFICER'S ORDER WHICH HELD CLAIMANT'S HEART AND ULCER CONDITIONS COMPENSABLE.

CLAIMANT'S UNREBUTTED TESTIMONY WAS THAT AS A FOREMAN HIS RESPONSIBILITIES HAD BEEN SUBSTANTIALLY INCREASED AND THE NUMBER OF MEN ASSIGNED TO HIS CREWS SUBSTANTIALLY DECREASED OVER THE PAST SEVERAL YEARS. UNUSUAL STRESS AND PRESSURE UPON THE CLAIMANT CONTINUED TO INCREASE OVER THE PAST THREE OR FOUR YEARS BECAUSE A NEW SUPERVISOR OF CLAIMANT TOOK OVER. FROM THAT TIME ON CLAIMANT WAS CONCERNED REGARDING HIS JOB SECURITY BECAUSE OF UNUSUAL PRESSURE ON THE CLAIMANT. CLAIMANT SUFFERED A HEART EPISODE OCTOBER 19, 1971. AFTER RECOVERY FROM THE HEART EPISODE CLAIMANT ATTEMPTED TO RETURN TO WORK AT WHICH TIME THE SUPERVISOR TOLD HIM IT WOULD BE TOUGHER ON HIM THAN WHEN HE LEFT, THAT CLAIMANT COULD NOT SPEAK TO ANYONE IN THE SHOP AND PLACED CLAIMANT ON A JOB IN AN EXTREMELY NOISY ENVIRONMENT. SHORTLY THEREAFTER CLAIMANT WAS ADMITTED TO THE HOSPITAL WITH A BLEEDING ULCER.

CLAIMANT'S TESTIMONY WAS UNREBUTTED. THE IMMEDIATE SUPERVISOR OF CLAIMANT WAS AT THE HEARING BUT WAS NOT CALLED AS A WITNESS.

A MEDICAL OPINION STATES THAT THE OVERALL STRESS SITUATION CONTRIBUTES BOTH TO THE STOMACH PROBLEM AND THE HEART PROBLEM.

THE ACTIONS OF CLAIMANT'S SUPERVISOR WHEN CLAIMANT ATTEMPTED TO RETURN TO EMPLOYMENT AFTER THE HEART CONDITION APPEARS TO CONFIRM THE CLAIMANT'S TESTIMONY THAT CLAIMANT WAS UNDER AN UNUSUAL STRESS AND PRESSURE FOR THE PAST THREE OR FOUR YEARS WHICH CONTRIBUTED TO THE STOMACH PROBLEM AND THE HEART PROBLEM.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 19, 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.

WCB CASE NO. 73-106

JANUARY 14, 1974

PATE VERNON, CLAIMANT
MULDER, MORROW AND MCCREA,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS AN INCREASE IN PERMANENT DISABILITY AWARDED BY THE HEARING OFFICER.

CLAIMANT, A 59 YEAR OLD COUNTY ROAD EQUIPMENT OPERATOR, INJURED HIS HEAD AND NECK WHEN THE GRADER HE WAS OPERATING CAUGHT ON A ROOT AND CLAIMANT WAS THROWN AGAINST THE WINDSHIELD WIPER MOTOR. CLAIMANT'S MAIN COMPLAINTS AT THIS TIME ARE HEADACHES. THE MEDICAL REPORTS REFLECT MINIMAL TO MILD DISABILITY CAUSED BY THIS ACCIDENT. CLAIMANT HAS PREEXISTING ANXIETY TENSION AND CERVICAL ARTHRITIS.

UPON DE NOVO REVIEW OF THE ENTIRE RECORD AND THE MEDICAL REPORTS, THE BOARD FINDS THAT THE AWARD MADE BY THE HEARING OFFICER ADEQUATELY COMPENSATES THE CLAIMANT FOR THE INDUSTRIAL CAUSED INJURIES.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 6, 1973 IS AFFIRMED.

WCB CASE NO. 73-105

JANUARY 14, 1974

JACK LEWIS, CLAIMANT
BURNS AND EDWARDS, 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 UPHELD THE DENIAL OF HIS CLAIM BY THE STATE ACCIDENT INSURANCE FUND. THE ISSUE ON REVIEW IS WHETHER CLAIMANT'S BACK CONDITION IS THE RESULT OF AN INDUSTRIAL INJURY.

CLAIMANT, A 31 YEAR OLD HOD CARRIER, EXECUTED A CLAIM FORM 801 ON NOVEMBER 29, 1972 GIVING AS THE DAY OF INJURY ABOUT ONE MONTH AGO. CLAIMANT'S LEFT FOOT WAS INJURED THAT DAY AND WAS TREATED AT HOME. CLAIMANT KEPT WORKING BUT NECK AND BACK PAIN DEVELOPED.

THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM ON DECEMBER 27, 1972.

IT APPEARS FROM THE RECORD THAT THE STATE ACCIDENT INSURANCE FUND DID NOT DENY CLAIMANT HAD RECEIVED AN INJURY TO HIS LEFT ANKLE, WHICH, IF IT HAD RESULTED IN TIME LOSS OR REQUIRED MEDICAL TREATMENT, WOULD HAVE BEEN COMPENSABLE. THE STATE ACCIDENT INSURANCE FUND DID, HOWEVER, DENY CLAIMANT'S BACK COMPLAINTS, WHICH DEVELOPED MUCH LATER AND FOR WHICH CLAIM WAS NOT MADE UNTIL MORE THAN 30 DAYS FOLLOWING THE INCIDENT TO THE LEFT ANKLE INCIDENT.

THE HEARING OFFICER FOUND AND THE BOARD CONCURS THAT ALTHOUGH A WRITTEN CLAIM WAS NOT FILED WITHIN 30 DAYS, THE EMPLOYER HAD KNOWLEDGE OF THE INJURY SO THE CLAIM IS NOT BARRED.

THE BOARD ALSO FINDS INSUFFICIENT MEDICAL VERIFICATION THAT CLAIMANT'S BACK COMPLAINTS ARE THE RESULT OF A COMPENSABLE INJURY. THE ORDER OF THE HEARING OFFICER SUSTAINING THE DENIAL BY THE STATE ACCIDENT INSURANCE FUND IS AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 27, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 73-2557

JANUARY 14, 1974

DONNA C. JENSEN, CLAIMANT
BUSS, LEICHER, LINDSTEDT, BARKER AND
BUONO, 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 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. 73-1718

JANUARY 14, 1974

SAM KANNA, CLAIMANT
SAM A. MCKEEN, 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 REVERSAL OF A HEARING OFFICER'S ORDER WHICH ORDERED THE STATE ACCIDENT INSURANCE FUND TO ACCEPT THE AGGRAVATION CLAIM.

CLAIMANT SUSTAINED A BACK INJURY IN 1969. THAT CLAIM WAS CLOSED AND AFFIRMED BY THE CIRCUIT COURT. CLAIMANT SUBMITTED A SHORT MEDICAL REPORT FROM THE ATTENDING ORTHOPEDIST WHO HAD PERFORMED SURGERY ON CLAIMANT'S BACK STATING THAT IN HIS MEDICAL OPINION THE CLAIMANT'S CONDITION HAS BEEN AGGRAVATED AND THAT CLAIMANT WILL NEED FURTHER CARE AND TREATMENT.

THE BOARD ADOPTS THE HEARING OFFICER'S OPINION AND ORDER AS ITS OWN.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 5, 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.

WCB CASE NO. 73-1490

JANUARY 14, 1974

GUSTAVO RIOS, CLAIMANT
RAMIREZ AND HOOTS, CLAIMANT'S ATTY.
CHARLES PAULSON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

UPON DE NOVO REVIEW, THE BOARD ADOPTS THE OPINION AND ORDER OF THE HEARING OFFICER DATED OCTOBER 10, 1973 AS ITS OWN.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 10, 1973 IS AFFIRMED.

WCB CASE NO. 70-2691

JANUARY 15, 1974

ARNOLD FREY, CLAIMANT
LAFKY AND DRAKE, CLAIMANT'S ATTYS.
ROGER R. WARREN, DEFENSE ATTY.

THIS MATTER INVOLVES A 64 YEAR OLD WORKMAN WHO WAS EMPLOYED IN A LUMBER MILL FOR NEARLY 48 YEARS. IN DECEMBER, 1970, CLAIMANT'S PHYSICIAN ADVISED HIM TO STOP SUCH EMPLOYMENT BECAUSE OF HIS HYPERTENSION AND HIGH BLOOD PRESSURE. CLAIMANT FILED A CLAIM FOR OCCUPATIONAL DISEASE WHICH WAS REJECTED BY THE EMPLOYER AND SUBSEQUENTLY, UPON HEARING, ALLOWED BY THE HEARING OFFICER. THE MATTER THEN PROCEEDED TO THE CIRCUIT COURT AND COURT OF APPEALS ON LEGAL ISSUES INVOLVED, AND EVENTUALLY TO A MEDICAL BOARD OF REVIEW TO DETERMINE THE ISSUE OF COMPENSABILITY.

THE MEDICAL BOARD OF REVIEW HAS NOW MADE ITS FINDINGS, ESTABLISHING THAT THE CLAIM IS COMPENSABLE. THOSE FINDINGS, ATTACHED HERETO AS EXHIBIT 'A', ARE FILED AS OF DECEMBER 28, 1973.

PURSUANT TO ORS 656.814, THESE FINDINGS ARE DECLARED FINAL AND BINDING.

NO NOTICE OF APPEAL IS DEEMED APPLICABLE.

WCB CASE NO. 73-1340

JANUARY 15, 1974

GEORGIA A. BERLINQUETTE, CLAIMANT
FRANKLIN, BENNETT, OFELT, DES BRISAY AND
JOLLES, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND
SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS AN INCREASE IN PERMANENT PARTIAL DISABILITY AWARDED BY THE DETERMINATION ORDER AND AFFIRMED BY THE HEARING OFFICER.

CLAIMANT, A 22 YEAR OLD ADMITTING CLERK AT A HOSPITAL, RECEIVED A BACK SPRAIN WHEN SHE PUSHED HER CHAIR AWAY FROM HER DESK. SHE WAS OFF WORK FOR SEVEN MONTHS DURING WHICH SHE WAS MARRIED AND HAS RETURNED TO THE SAME JOB FOR THE SAME EMPLOYER.

THE WEIGHT OF THE MEDICAL REPORTS REFLECT MINIMAL OR NO PERMANENT PARTIAL DISABILITY. CLAIMANT HAS AN ANXIETY REACTION WHICH AN EXAMINING PSYCHIATRIST STATES PREEXISTED HER INDUSTRIAL INJURY AND THAT THE INDUSTRIAL INJURY DID NOT AGGRAVATE HER PSYCHIATRIC IMPAIRMENT.

A COMPLETE REVIEW OF ALL OF THE MEDICAL EVIDENCE AND THE TESTIMONY IN THE RECORD PERSUADES THE BOARD THAT THE AWARD OF

16 DEGREES (5 PERCENT) OF THE MAXIMUM FOR UNSCHEDULED LOW BACK DISABILITY IS ADEQUATE.

ORDER

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

WCB CASE NO. 73-1399

JANUARY 15, 1974

WILLIAM B. BRYAN, 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 REVERSAL OF THE HEARING OFFICER'S ORDER WHICH DENIED PERMANENT PARTIAL DISABILITY FROM RESIDUALS OF A COMPENSABLE HEART ATTACK.

CLAIMANT HAD A MYOCARDIAL INFARCTION JANUARY 31, 1972 AND RETURNED TO WORK FEBRUARY 28, 1972. CLAIMANT HAS PERFORMED SUBSTANTIALLY THE SAME HEAVY WORK SCHEDULE AND SCHEDULE OF OUTSIDE ACTIVITIES AS BEFORE THE HEART ATTACK. MEDICAL REPORTS REFLECT NO SUBSTANTIAL PHYSICAL RESIDUALS. THERE IS NO SUBSTANTIAL AFFECT ON HIS PRESENT EARNINGS. ANY POSSIBLE FUTURE AFFECT ON EARNING CAPACITY IS TOO SPECULATIVE AT THIS TIME. IN THE EVENT HIS CONDITION WORSENS, CLAIMANT SHOULD FILE FOR AGGRAVATION.

THE BOARD ADOPTS THE WELL WRITTEN OPINION AND ORDER OF THE HEARING OFFICER AS ITS OWN.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 19, 1973 IS AFFIRMED.

WCB CASE NO. 72-3529

JANUARY 18, 1974

RALPH E. GEER, DECEASED
BABCOCK AND ACKERMAN, BENEFICIARIES' ATTYS.
J. W. MCCRACKEN, JR., DEFENSE ATTY.
REQUEST FOR REVIEW BY BENEFICIARIES

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE BENEFICIARIES SEEK BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH SUSTAINED THE EMPLOYER'S DENIAL OF THE CLAIM.

CLAIMANT SUFFERED A FATAL HEART ATTACK AUGUST 18, 1972, WHILE EMPLOYED AS A LOGGER FOR WEYERHAEUSER. CLAIMANT HAD SYMPTOMS OF A HEART CONDITION IN THE PAST. DECEDENT'S JOB WAS CONSIDERED ONE OF THE EASIER WOODS JOBS. ON THE DAY IN QUESTION THE RECORD INDICATES CLAIMANT WAS WORKING WHERE THE TERRAIN WAS FLAT, THE TEMPERATURE WAS MODERATE, AND NO UNUSUAL EXERTION WAS INVOLVED IN HIS ACTIVITIES.

AT THE HEARING, TWO EXPERTS IN THE FIELD OF CARDIOLOGY, COULD NOT RELATE THE HEART ATTACK TO THE WORK ACTIVITIES.

THE HEARING OFFICER FOUND AND THE BOARD CONCURS THAT MEDICAL CAUSATION HAS NOT BEEN ESTABLISHED.

ORDER

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

WCB CASE NO. 72-2113

JANUARY 18, 1974

LORA O' NEAL, CLAIMANT
DYE AND OLSON, 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 PURSUANT TO WHICH SHE RECEIVED A PERMANENT PARTIAL DISABILITY AWARD EQUIVALENT TO 96 DEGREES (30 PERCENT). THE ISSUE ON REVIEW IS WHETHER CLAIMANT IS ENTITLED TO A GREATER AWARD OF PERMANENT PARTIAL DISABILITY.

CLAIMANT IS A 29 YEAR OLD NURSE'S AIDE WHO SUSTAINED A LUMBOSACRAL STRAIN ON SEPTEMBER 15, 1970 WHILE LIFTING A PATIENT. A DETERMINATION ORDER GRANTED CLAIMANT AN AWARD OF 10 PERCENT UNSCHEDULED LOW BACK DISABILITY WHICH THE HEARING OFFICER INCREASED TO 30 PERCENT UNSCHEDULED LOW BACK DISABILITY.

THIS CLAIMANT HAS BEEN SEEN BY NUMEROUS DOCTORS INCLUDING ORTHOPEDISTS, INTERNISTS, PSYCHOLOGISTS, A RHEUMATOLOGIST AND AN OPHTHALMOLOGIST. LITTLE OBJECTIVE EVIDENCE OF ANY ORGANIC DISEASE HAS BEEN FOUND. A TENTATIVE DIAGNOSIS OF FUNCTIONAL ILLNESS WAS MADE BY DR. ROSENBAUM.

THE HEARING OFFICER CONCLUDED THAT CLAIMANT'S SYMPTOMS, PHYSICAL AND/OR PSYCHOGENIC, TOGETHER WITH HER AGE, EDUCATION AND TRAINING, REFLECTED CLAIMANT HAD A PERMANENT LOSS OF WAGE EARNING CAPACITY OF APPROXIMATELY 30 PERCENT.

THE BOARD, ON REVIEW, FINDS THE HEARING OFFICER'S AWARD ADEQUATELY COMPENSATES THE CLAIMANT. THE BOARD IS ALSO OF THE OPINION THAT SHOULD CLAIMANT DESIRE TO ENTER HOLLADAY PARK HOSPITAL FOR OBSERVATION, PSYCHOTHERAPY AND POSSIBLE DRUG WITHDRAWAL, THIS COULD BE PROVIDED UNDER THE OREGON WORKMEN'S COMPENSATION LAW.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 28, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 73-262
WCB CASE NO. 73-484

JANUARY 18, 1974
JANUARY 18, 1974

EDWARD J. CARRAWAY, CLAIMANT
CHARLES PAULSON, CLAIMANT'S ATTY.
LINDSAY, NAHSTOLL, HART, DUNCAN, DAFRE AND
KRAUSE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE PRIMARY ISSUE IS WHETHER OR NOT CLAIMANT SUSTAINED A NEW INJURY TO HIS RIGHT KNEE OR AN AGGRAVATION TO A PREVIOUS RIGHT KNEE INJURY.

THE CLAIMANT WORKED FOR THE SAME EMPLOYER FROM 1969 TO 1972. THE EMPLOYER CHANGED WORKMEN'S COMPENSATION INSURANCE CARRIERS IN 1970. CLAIMANT SUSTAINED A KNEE INJURY IN 1969 WHICH WAS ACCEPTED BY AETNA AND CLOSED BY DETERMINATION ORDER. CLAIMANT SUSTAINED A NECK AND FINGER INJURY IN 1971 WHICH WAS ACCEPTED BY THE NEW COMPENSATION CARRIER, LUMBERMENS. CLAIMANT FELL IN JUNE, 1972, REQUIRING IMMEDIATE MEDICAL ATTENTION FOR THE RIGHT KNEE AND SURGERY TO THE RIGHT KNEE. THE CLAIMANT, IN GIVING HIS HISTORY TO THE DOCTOR, TREATED THIS AS AN AGGRAVATION TO THE 1969 INJURY. THE EMPLOYER, IN ASSISTING THE CLAIMANT IN FILLING OUT THE REPORT OF ACCIDENT, TREATED THIS AS AN AGGRAVATION TO THE 1969 INJURY BUT SENT THE REPORT TO LUMBERMENS, THE COMPENSATION CARRIER AFTER 1970. LUMBERMENS PAID THE CLAIM BUT PAID IT UNDER THE 1971 INJURY FILE WHICH INVOLVED A NECK AND FINGER INJURY UNTIL THEY DISCOVERED THE CONFUSION AND THEN LUMBERMENS DENIED ANY FURTHER BENEFITS TO THE CLAIMANT ON THE BASIS THAT THIS WAS AN AGGRAVATION TO THE 1969 INJURY WHICH WOULD BE AETNA'S RESPONSIBILITY INSTEAD OF A NEW INJURY.

AFTER REVIEW OF THE RECORD, THE BOARD IS PERSUADED THE FALL OF JUNE 14, 1972 IS A NEW INJURY AND THE RESPONSIBILITY OF LUMBERMENS.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 17, 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.

JANUARY 18, 1974

THEODORE PEARL, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
ATTORNEYS FOR CLAIMANT
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 AFFIRMED THE AWARD MADE PAYABLE BY THE DETERMINATION ORDER.

CLAIMANT SUFFERED A COMPENSABLE INDUSTRIAL INJURY ON JANUARY 17, 1971, FOR WHICH HE WAS AWARDED 60 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY AND 1 DEGREE FOR PARTIAL LOSS OF THE RIGHT LITTLE FINGER.

CLAIMANT IS 67 AND HAD FORMALLY RETIRED AT AGE 65 ON SOCIAL SECURITY BENEFITS. HE UNDERTOOK A JOB, BUT ONLY TO THE EXTENT IT WOULD NOT JEOPARDIZE HIS SOCIAL SECURITY BENEFITS. CLAIMANT HAD EXTENSIVE PREEXISTING DEGENERATIVE OSTEOARTHRITIS OF THE SPINE AND PREEXISTING DEGENERATIVE DISC DISEASE WHICH WERE AGGRAVATED BY THE INJURY.

THE HEARING OFFICER STATED IN HIS OPINION AND ORDER -

"CONSIDERING HIS AGE, PRIOR WORKING EXPERIENCE, THE PRIOR STATUS OF RETIREMENT BEFORE TAKING THE JOB IN WHICH HE WAS INJURED AND THE TYPE AND EXTENT OF INJURY WHICH HE HAS SUSTAINED AND THE RESIDUAL CONSEQUENCES THEREOF, I CONCLUDE THAT THE PERMANENT EFFECT OF CLAIMANT'S PHYSICAL DISABILITY ON HIS POTENTIAL FUTURE EARNING CAPACITY HAS BEEN CORRECTLY EVALUATED BY THE AWARD GRANTED HIM."

THE BOARD CONCURS IN THE FINDING OF THE HEARING OFFICER AND AFFIRMS HIS ORDER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 9, 1973 IS HEREBY AFFIRMED.

JANUARY 18, 1974

SEERE E. BEESON, CLAIMANT
BROWN, SCHLEGEL, MILBANK, WHEELER
AND JARMAN, CLAIMANT'S ATTYS.
KEITH D. SKELTON, 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 DENIAL OF THE DEFENT-EMPLOYER TO CLAIMANT'S HEART CONDITION, AND AFFIRMED THE DETERMINATION ORDER ISSUED BY CLOSING AND EVALUATION ALLOWING NO PERMANENT PARTIAL DISABILITY AS TO HER ASTHMATIC CONDITION.

THIS MATTER INVOLVES A 60 YEAR OLD CANNERY WORKER WHO SUFFERED AN ASTHMATIC CONDITION FROM WORKING NEAR LYE AND BRINE USED IN PROCESSING IN CANNERIES. CLAIMANT ALSO SUFFERED A HEART ATTACK IN 1969. HER EMPLOYER ACCEPTED THE CLAIM FOR THE ASTHMATIC CONDITION AND DENIED THE HEART CONDITION.

THE BOARD CONCURS WITH THE FINDING OF THE HEARING OFFICER THAT CLAIMANT'S HEART CONDITION IS NOT CAUSALLY RELATED TO HER EMPLOYMENT.

DR. O'HALLAREN, AN ALLERGY SPECIALIST, HAS ADVISED CLAIMANT SHE CANNOT ACCEPT ANY FUTURE EMPLOYMENT IN CANNERIES. THE BOARD FINDS CLAIMANT IS ENTITLED TO A PERMANENT PARTIAL DISABILITY AWARD FOR ASTHMATIC CONDITION EQUIVALENT TO 20 PERCENT UNSCHEDULED DISABILITY FOR LOSS OF EARNING CAPACITY.

ORDER

THE DENIAL OF THE CLAIMANT'S HEART CONDITION IS AFFIRMED.

CLAIMANT SHALL RECEIVE AN AWARD OF 20 PERCENT (64 DEGREES) UNSCHEDULED PERMANENT PARTIAL DISABILITY FOR LOSS OF EARNING CAPACITY.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE, 25 PERCENT OF THE INCREASE IN COMPENSATION ASSOCIATED WITH THIS AWARD PAYABLE FROM THE AWARD, WHICH SHALL NOT EXCEED FIFTEEN HUNDRED DOLLARS.

WCB CASE NO. 73-661

JANUARY 18, 1974

FRANKIE JOHNSTON, CLAIMANT
AND COMPLYING STATUS OF
WILMA J. MOE, DBA THE MEADOWS
BERNARD K. SMITH, CLAIMANT'S ATTY.
RALF ERLANDSON, DEFENSE ATTY.

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE INVOLVED IN THIS MATTER IS WHETHER THE CLAIMANT HAS SUSTAINED A COMPENSABLE INJURY WHILE WORKING FOR SUBJECT NONCOMPLYING EMPLOYER.

CLAIMANT, A BARMAID, TESTIFIES THAT SHE INJURED HER BACK WHILE LIFTING A TWO AND ONE-HALF GALLON BEER KEG FROM A SHELF. AN INDEPENDENT WITNESS TESTIFIED THAT CLAIMANT CAME OUT OF THE COOLER, STATED HER BACK HURT AND REQUESTED THE WITNESS TO GET THE BEER KEG FROM THE COOLER. CLAIMANT RECEIVED MEDICAL CARE STATING TO HER DOCTOR THAT SHE WAS INJURED ON THE JOB. THE EMPLOYER WAS NOTIFIED OF THE CLAIM ABOUT THE TIME SHE CONSULTED THE DOCTOR FOR THE FIRST TIME.

THERE ARE SOME CONTRADICTIONS IN THE RECORD AS TO THE EXACT DATE OF THE ACCIDENT AND THE CIRCUMSTANCES OF THE ACCIDENT. THE BOARD IS PERSUADED BY THE TESTIMONY OF THE CLAIMANT AND THE INDEPENDENT WITNESS WHO WAS ASKED BY THE CLAIMANT TO ASSIST HER BECAUSE HER BACK HURT, THAT THE CLAIMANT HAS PROVED THAT A COMPENSABLE INJURY OCCURRED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 31, 1973 IS AFFIRMED.

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

WCB CASE NO. 70-1273

JANUARY 18, 1974

VIVIAN G. JOHNSON, CLAIMANT
COONS AND MALAGON, 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 FINDING THAT CLAIMANT'S CLAIM HAD BEEN PREMATURELY CLOSED AND HIS ORDER REOPENING CLAIMANT'S CLAIM FOR DIAGNOSIS, TREATMENT AND TIME LOSS. THE FUND ALSO OBJECTS TO THE ALLOWANCE OF A FEE TO CLAIMANT'S ATTORNEY FOR HIS ATTENDANCE AT A DEPOSITION AND TO THE ALLOWANCE OF AN ATTORNEY'S FEE TO CLAIMANT'S ATTORNEY, PAYABLE FROM CLAIMANT'S COMPENSATION.

ON DECEMBER 13, 1969, CLAIMANT, A THEN 37 YEAR OLD WAITRESS, FELL AND INJURED HER BACK WHILE WORKING AT THE TIMBER INN IN COOS BAY, OREGON. VARIOUS MODES OF CONSERVATIVE TREATMENT WERE PROVIDED BY CHIRPORACTIC, NEUROLOGIC AND ORTHOPEDIC PHYSICIANS, BUT MILD SYMPTOMS OF A LUMBOSACRAL SPRAIN, SUPER-IMPOSED UPON DEGENERATIVE JOINT DISEASE AT L4-L5 AND L5-S1, PERSISTED.

A DETERMINATION ORDER THEREFORE ISSUED ON JUNE 15, 1970 ALLOWING TIME LOSS TO JUNE 5, 1970 AND 32 DEGREES FOR UNSCHEDULED DISABILITY.

CLAIMANT DID NOT SUCCESSFULLY RETURN TO WORK AND SHE THEREUPON REQUESTED A HEARING. BEFORE THE HEARING FINALLY CONVENED ON JANUARY 23, 1973, CLAIMANT UNDERWENT EXAMINATION AND TREATMENT BY SEVERAL PHYSICIANS SEEKING TO DETERMINE WHETHER HER CONDITION HAD AGGRAVATED OR WHETHER THE CLAIM HAD BEEN PREMATURELY CLOSED. THEY WERE UNABLE TO IMPROVE HER CONDITION OR SATISFACTORILY EXPLAIN THE SEVERITY OF HER COMPLAINTS ON A PHYSICAL BASIS AND PSYCHIATRIC CONSULTATION WAS HAD. DR. GUY PARVARESH, EXAMINING CLAIMANT ON BEHALF OF THE STATE ACCIDENT INSURANCE FUND, FOUND NO DISABLING PSYCHIATRIC DISORDER NOR ANY NEED FOR PSYCHIATRIC CARE. ON THE OTHER HAND, DR. CHARLES F. HOLLAND, A PSYCHIATRIST OF CLAIMANT'S CHOOSING, FELT THAT AS A RESULT OF AN UNDERLYING HYSTERICAL

PERSONALITY PATTERN SHE WAS OVERREACTING TO THE INJURY PRODUCED PAIN STIMULI. HE RECOMMENDED EXPLORATORY PSYCHOTHERAPY LEADING TO POSSIBLE TREATMENT. HE FELT THAT AS A RESULT OF HER HYSTERICAL RESPONSE TO THE INJURY SHE WAS TEMPORARILY TOTALLY DISABLED AT THE TIME HE HAD SEEN HER IN AUGUST.

THE HEARING OFFICER, RELYING ON THIS OPINION, AND ON THE OPINION OF DR. CURTIS ADAMS THAT SHE SHOULD BE PLACED ON A VIGOROUS EXERCISE PROGRAM AND TAKEN OFF ALL MEDICATIONS, CONCLUDED CLAIMANT'S CLAIM HAD BEEN PREMATURELY CLOSED - THAT SHE CONTINUED DISABLED - AND THAT SHE WAS ENTITLED TO FURTHER TREATMENT AND TIME LOSS.

THE BOARD CANNOT AGREE THAT CLAIMANT'S CLAIM WAS PREMATURELY CLOSED. PHYSICALLY, HER CONDITION HAS BEEN STATIONARY SINCE THE ORIGINAL CLOSURE. THE ACCIDENT PRODUCED NO PSYCHOLOGICAL INJURY PER SE AND HER CONDITION THUS WAS AND IS MEDICALLY STATIONARY. THE BOARD DOES, HOWEVER, CONCLUDE THAT CLAIMANT IS ENTITLED, UNDER ORS 656.245 TO THE HELP OF BOTH DR. HOLLAND AND DR. ADAMS IN ADJUSTING TO HER NEW CONDITION. THE HEARING OFFICER'S ORDER SHOULD BE MODIFIED ACCORDINGLY.

REGARDING THE ALLOWANCE OF A SEVENTY FIVE DOLLAR ATTORNEY'S FEE, THE FACTUAL RECORD MADE AT THE HEARING DOES NOT SPECIFICALLY DEAL WITH THE ISSUE. IT APPEARS, HOWEVER, THAT THE FUND WISHED TO CROSS-EXAMINE DR. HOLLAND AT A TIME AND PLACE CONVENIENT TO IT RATHER THAN PRODUCING HIM, AND PAYING FOR HIS ATTENDANCE AT THE HEARING IN COQUILLE, OREGON. UNDER THESE CIRCUMSTANCES, CLAIMANT'S ATTORNEY COULD INSIST ON A REASONABLE FEE FOR ATTENDING A SPECIAL CROSS-EXAMINATION OF A DOCTOR FOR THE STATE ACCIDENT INSURANCE FUND'S CONVENIENCE. THE HEARING OFFICER'S ORDER IN THIS REGARD SHOULD BE APPROVED.

REGARDING PAYMENT OF THE MEDICAL COSTS INCURRED SINCE CLOSURE, THE FUND ARGUES THAT IT SHOULD NOT BE LIABLE FOR THE COST OF DIAGNOSES WHICH ESTABLISH A NON-RELATIONSHIP OF THE CONDITION. WE DISAGREE. ALL DIAGNOSTIC PROCEDURES WHICH WERE REASONABLY UNDERTAKEN AS A CONSEQUENCE OF THE ACCIDENT, EVEN IF THEY "RULE OUT" A RELATIONSHIP BETWEEN THE ACCIDENT AND CLAIMANT'S COMPLAINTS, ARE A LEGITIMATE OBLIGATION OF THE FUND UNDER ORS 656.245.

ORDER

IT IS HEREBY ORDERED THAT THE ORDER OF THE HEARING OFFICER REOPENING CLAIMANT'S CLAIM FOR FURTHER MEDICAL CARE AND TREATMENT AS RECOMMENDED BY DOCTORS HOLLAND AND ADAMS, WITH FURTHER PROCESSING UNDER ORS 656.268, AND THE ORDER OF THE HEARING OFFICER ORDERING THE STATE ACCIDENT INSURANCE FUND TO PAY CLAIMANT APPROPRIATE TEMPORARY TOTAL DISABILITY FROM OCTOBER 23, 1971 UNTIL CLOSURE PURSUANT TO ORS 656.268 IS HEREBY REVERSED, AND IN LIEU THEREOF, CLAIMANT IS ENTITLED TO ADDITIONAL TEMPORARY TOTAL DISABILITY COMPENSATION ONLY FOR THE PERIOD OF FEBRUARY 1, 1972 TO FEBRUARY 14, 1972 INCLUSIVE, FOR APRIL 12, 1972, AND TO THE RECOMMENDED MEDICAL SERVICES OF DR. HOLLAND AND DR. ADAMS, UNDER THE PROVISIONS OF ORS 656.245.

IT IS HEREBY FURTHER ORDERED THAT THE HEARING OFFICER'S ORDER REQUIRING THE STATE ACCIDENT INSURANCE FUND TO PAY THE INJURY RELATED MEDICAL SERVICES SUPPLIED BY ALL OF THE DOCTORS WHOSE REPORTS ARE IN EVIDENCE, INCLUDING BUT NOT LIMITED TO THE BILLS PRESENTED BY DR. HOLLAND IN EXHIBIT 32, AND HIS ORDER REQUIRING THE STATE ACCIDENT INSURANCE FUND TO PAY CLAIMANT'S ATTORNEY SEVENTY FIVE DOLLARS FOR DEPOSITION ATTENDANCE, ARE HEREBY AFFIRMED.

IT IS HEREBY FINALLY ORDERED THAT THE HEARING OFFICER'S ORDER REQUIRING PAYMENT OF 25 PERCENT OF CLAIMANT'S COMPENSATION TO HER ATTORNEYS TO A MAXIMUM OF FIFTEEN HUNDRED DOLLARS BE MODIFIED TO AUTHORIZE CLAIMANT'S ATTORNEYS TO RECOVER 25 PERCENT OF THE ADDITIONAL TEMPORARY TOTAL DISABILITY AWARDED HEREBY FROM SAID COMPENSATION AND TO RECOVER DIRECTLY FROM CLAIMANT A FEE EQUAL TO 25 PERCENT OF THE MEDICAL, HOSPITAL AND OTHER EXPENSES OF TREATMENT WHICH SHE IS RELIEVED OF PAYING BY VIRTUE OF THIS ORDER, BUT IN NO CASE SHALL THE AGGREGATE FEES RECOVERED AS A CONSEQUENCE OF THIS ORDER OR THE ORDER OF THE HEARING OFFICER, EXCEED FIFTEEN HUNDRED SEVENTY FIVE DOLLARS.

NOTICE TO ALL PARTIES - THIS ORDER IS FINAL UNLESS WITHIN 30 DAYS AFTER THE DATE OF MAILING OF COPIES OF THIS ORDER TO THE PARTIES, ONE OF THE PARTIES APPEALS TO THE CIRCUIT COURT AS PROVIDED BY ORS 656.298.

WCB CASE NO. 72-257

JANUARY 18, 1974

JIMMY D. CARSON, CLAIMANT
PAUL J. RASK, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT HAS APPEALED A HEARING OFFICER'S ORDER INCREASING ONLY HIS SCHEDULED LEG DISABILITY AWARD CONTENDING THAT THE LEG DISABILITY WAS IN REALITY THE PRODUCT OF AN UNSCHEDULED INJURY AND THAT HE IS ENTITLED TO A SIGNIFICANT INCREASE IN HIS UNSCHEDULED DISABILITY AWARD BASED ON HIS PRESENT RESIDUALS AND HIS FUTURE LOSS OF EARNINGS.

CLAIMANT, A CONSTRUCTION PROJECT SUPERINTENDENT FOR HOFFMAN CONSTRUCTION COMPANY, SUFFERED A COMPRESSION FRACTURE OF L-3 WITH CONSEQUENT SPINAL NERVE ROOT DAMAGE IN A FALL AT WORK ON OCTOBER 1, 1969.

EARLY IN HIS CONVALESCENCE HE DEVELOPED A SEVERE PHLEBITIS IN HIS RIGHT LEG WHICH, IT ULTIMATELY DEVELOPED, BECAME THE MAJOR RESIDUAL IMPAIRMENT AFFECTING HIS WORK. THE HEARING OFFICER TREATED IT AS A SCHEDULED DISABILITY AND RATED THE DISABILITY IN ACCORDANCE WITH THE RULES APPLICABLE TO SCHEDULED INJURIES. CLAIMANT CONTENDS THE CONDITION AROSE FROM TRAUMA TO HIS BACK AND THUS MUST BE CONSIDERED AN UNSCHEDULED DISABILITY AND RATED IN TERMS OF LOST EARNING CAPACITY.

THERE IS NO QUESTION THE THROMBOPHLEBITIS IS CAUSALLY RELATED TO THE INJURY BUT THE RECORD DOES NOT REVEAL THE PHYSIOLOGICAL MECHANISMS BY WHICH THE INJURY PRODUCED THE PHLEBITIS. WITHOUT THIS THE BOARD IS UNABLE TO DECIDE WHETHER CLAIMANT IS ENTITLED TO AN ADDITIONAL UNSCHEDULED DISABILITY AWARD OR WHETHER THE REFEREE SHOULD BE AFFIRMED. TO ASSURE THAT JUSTICE IS DONE, THE BOARD HAS CONCLUDED THAT THIS MATTER SHOULD BE REMANDED, UNDER ORS 656.295(5), TO THE REFEREE TO -

- (1) PROVIDE CLAIMANT AN OPPORTUNITY TO PRESENT MEDICAL EVIDENCE ON THE ISSUE OF WHETHER CLAIMANT'S THROMBOPHLEBITIS IS A SCHEDULED OR UNSCHEDULED DISABILITY -
- (2) PROVIDE THE STATE ACCIDENT INSURANCE FUND AN OPPORTUNITY TO CROSS-EXAMINE OR REBUT SUCH MEDICAL EVIDENCE OFFERED BY THE CLAIMANT AND,
- (3) TO RECONSIDER HIS OPINION AND ORDER IN LIGHT OF SUCH EVIDENCE.

IT IS SO ORDERED.

WCB CASE NO. 73-376

JANUARY 23, 1974

ARVEST ANDERSON, CLAIMANT
ESTEP, DANIELS, ADAMS, REESE AND
PERRY, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.

ON DECEMBER 4, 1973 CLAIMANT'S ATTORNEY MOVED THE BOARD FOR AN ORDER AWARDING HIM AN ATTORNEY'S FEE UNDER ORS 656.386 CONTENDING THAT THE RECORD WOULD DISCLOSE THAT THERE WAS A PARTIAL REJECTION OF CLAIMANT'S CLAIM BY THE FUND WHICH WAS FOUND ERRONEOUS BY THE BOARD. ALTHOUGH ADEQUATE TIME HAS ELAPSED, THE STATE ACCIDENT INSURANCE FUND HAS MADE NO RESPONSE TO THE MOTION.

THE RECORD REVEALS THAT, WITHIN THE MEANING OF ORS 656.386, THE FUND DID NOT "DENY" LIABILITY FOR CLAIMANT'S SHOULDER COMPLAINTS.

THE REQUEST FOR HEARING RAISED, BASICALLY, THE ISSUE OF THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY. CONTAINED WITHIN THAT BROAD ISSUE WAS WHETHER CLAIMANT WAS ENTITLED TO PERMANENT DISABILITY COMPENSATION FOR THE SHOULDER.

THE FUND'S SUPPORT OF THE ABSENCE OF AN UNSCHEDULED DISABILITY AWARD BY THE BOARD'S EVALUATION DIVISION AT THE TIME OF THE HEARING CANNOT BE CHARACTERIZED AS A DENIAL OF COMPENSATION.

THE BOARD THEREFORE CONCLUDES THAT THE MOTION OF CLAIMANT'S ATTORNEY IS NOT WELL TAKEN AND,

IT IS ACCORDINGLY ORDERED THAT THE MOTION BE, AND IT IS HEREBY DENIED.

WCB CASE NO. 73-2092 JANUARY 24, 1974
WCB CASE NO. 73-2105 JANUARY 24, 1974

GARY A. ROBERTS, CLAIMANT
WALTER E. MANGERICH, JR., CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES THE EXTENT OF PERMANENT PARTIAL DISABILITY OF AN ACCEPTED INDUSTRIAL ACCIDENT OF AUGUST 1, 1972 AND WHETHER OR NOT AN ALLEGED INJURY OF NOVEMBER 24, 1972 IS AN AGGRAVATION OR A NEW INJURY AND IF A NEW INJURY, IS THE NOVEMBER 24, 1972 INCIDENT COMPENSABLE.

AS TO THE AUGUST 1, 1972 INDUSTRIAL ACCIDENT THE BOARD FINDS THAT THERE IS NO PERMANENT PARTIAL DISABILITY ARISING OUT OF THIS ACCIDENT AND THE BOARD AFFIRMS THE DETERMINATION ORDER AND THE HEARING OFFICER'S FINDINGS THAT THE AUGUST 1, 1972 CLAIM WAS CLOSED WITH NO PERMANENT PARTIAL DISABILITY AWARD.

THE HEARING OFFICER FOUND AND THE BOARD AFFIRMS THAT THE NOVEMBER 24, 1972 INCIDENT IS NOT AN AGGRAVATION OF THE AUGUST 1, 1972 INJURY.

THE HEARING OFFICER FOUND CLAIMANT'S TESTIMONY RELATIVE TO THE NOVEMBER 24 INCIDENT TO BE UNCONVINCING AND UNRELIABLE. NEITHER THE CLAIMANT'S WIFE NOR HIS PARTNER WERE CALLED TO TESTIFY IN HIS BEHALF. THE TESTIMONY OF FOUR OREGON CITY POLICEMEN INDICATED CLAIMANT DISPLAYED NO LIMITATION OF MOTION ON DECEMBER 9, 1972, DURING A VIOLENT FIASCO WITH THE POLICE.

AFTER REVIEWING THE ENTIRE RECORD, THE BOARD FINDS THAT CLAIMANT HAS FAILED TO PROVE THAT HIS PRESENT COMPLAINTS AROSE OUT OF AND IN THE SCOPE OF HIS EMPLOYMENT. THE BOARD AFFIRMS THE DENIAL OF THE NOVEMBER 24, 1972 CLAIM EITHER AS A NEW INJURY OR AS AN AGGRAVATION OF THE AUGUST 1, 1972 INDUSTRIAL INJURY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 27, 1973 IS AFFIRMED.

WILLIAM LEAMING, DECEASED
CECIL STICKNEY, BENEFICIARIES' ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY BENEFICIARIES

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE INVOLVED IN THIS MATTER IS WHETHER OR NOT THE DEATH OF THE CLAIMANT IS COMPENSABLE.

ON NOVEMBER 30, 1971, CLAIMANT SUFFERED AN INJURY TO HIS RIGHT LEG. HE HAD CONSIDERABLE SWELLING AND IT REMAINED SORE FOR SEVERAL MONTHS. CLAIMANT LOST NO TIME FROM WORK AND DID NOT SEE A DOCTOR. ON APRIL 11, 1972, CLAIMANT WAS HOSPITALIZED FOR CHEST PAINS AND WAS TREATED FOR THROMBOPHLEBITIS OF THE RIGHT LEG AND PULMONARY EMBOLISM. A TUMOR WAS SUSPECTED BUT WAS NOT DIAGNOSED. EXPLORATORY ABDOMINAL SURGERY WAS PERFORMED JUNE 2, 1972, FOR POSSIBLE INTRA ABDOMINAL MALIGNANCY. NO MALIGNANCY WAS FOUND. A LUNG CANCER WAS DIAGNOSED JULY 20, 1972 AND CLAIMANT DIED OCTOBER 25, 1972.

REVIEW OF THE MEDICAL EVIDENCE PERSUADES THE BOARD THAT THE THROMBOPHLEBITIS WAS CAUSED BY THE LUNG CANCER AND NOT THE LEG INJURY. TRAUMATIC THROMBOPHLEBITIS USUALLY OCCURS WITHIN TEN DAYS TO TWO WEEKS AFTER THE INJURY.

THE MEDICAL EVIDENCE ALSO PERSUADES THE BOARD THAT THE LEG INJURY IN NOVEMBER, 1971 MAY HAVE CONFUSED THE DIAGNOSIS BUT DID NOT MASK THE CANCER SYMPTOMS SIGNIFICANTLY. THE ATTENDING DOCTOR TESTIFIED THAT THE HISTORY OF THE RIGHT LEG INJURY DID NOT CHANGE THE METHOD OF TREATING THE CLAIMANT.

THE BOARD FINDS THAT THE INDUSTRIAL ACCIDENT OF NOVEMBER, 1971, DID NOT CAUSE THE THROMBOPHLEBITIS, DID NOT MASK THE CANCER SYMPTOMS AND DID NOT ACCELERATE, LIGHT UP OR AGGRAVATE THE LUNG CANCER. THE BOARD FURTHER FINDS THAT THE TREATMENT INCLUDING THE EXPLORATORY SURGERY IS NOT CAUSALLY CONNECTED TO THE INDUSTRIAL ACCIDENT.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 28, 1973 IS AFFIRMED.

KIRK FERRELL, CLAIMANT
EDWIN YORK, CLAIMANT'S ATTY.
JACK L. MATTISON, 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 OF AGGRAVATION.

CLAIMANT SUSTAINED SERIOUS AND MULTIPLE INJURIES IN 1966 FOR WHICH HE HAS RECEIVED THE MAXIMUM FOR UNSCHEDULED DISABILITY. NO FURTHER AWARD FOR UNSCHEDULED DISABILITY CAN BE MADE OTHER THAN FOR PERMANENT TOTAL DISABILITY. THE MEDICAL AND LAY TESTIMONY IN THE RECORD PRECLUDES SUCH AN AWARD. THE HEARING OFFICER, AFTER SEEING AND HEARING THE CLAIMANT, CONCLUDED THE DISABILITY IN THE LEFT LEG DID NOT EXCEED THE 75 DEGREES ALREADY AWARDED.

THE RECORD SHOWS THIS CLAIMANT TO HAVE DONE VERY WELL AT THE COMMUNITY COLLEGE LEVEL AS FAR AS HE WENT. THE BOARD RECOMMENDS THAT CLAIMANT AVAIL HIMSELF OF THE SERVICES OF THE DISABILITY PREVENTION DIVISION SO THAT A SUCCESSFUL VOCATIONAL PLAN CAN BE WORKED OUT FOR HIM.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDINGS OF THE HEARING OFFICER AND AFFIRMS HIS ORDER. IT SHOULD BE NOTED THAT THE HEARING OFFICER'S STATEMENT REGARDING THE PAYMENT OF SUBSISTENCE WHILE AN INJURED WORKMAN IS ATTENDING SCHOOL IS NOT A CORRECT STATEMENT. THE BOARD DOES NOT ROUTINELY PROVIDE SUBSISTENCE WHILE A WORKER IS UNDERGOING VOCATIONAL TRAINING. IN CERTAIN CASES IT DOES PROVIDE SUBSISTENCE AND OTHER COSTS. IN THIS PARTICULAR CASE, THE EVIDENCE INDICATES THAT CLAIMANT HAS THE CAPABILITY TO CONTINUE IN TRAINING EITHER IN SCHOOL OR BY ON-THE-JOB TRAINING IF THE LATTER CAN BE ARRANGED. FOR THIS PURPOSE, CLAIMANT IS URGED TO CONTACT THE FIELD COORDINATOR STAFF OF DISABILITY PREVENTION DIVISION FOR ASSISTANCE IN EITHER TRAINING OR FOR JOB PLACEMENT, OR ANY OTHER ON-THE-JOB HELP THAT CAN BE PROVIDED. CLAIMANT IS TOO YOUNG AND POSSESSES TOO MUCH ABILITY TO BE CONVERTED INTO A COMPLETELY NON-PRODUCTIVE LIFE.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 9, 1973 IS AFFIRMED.

JANUARY 28, 1974

IVERA KING, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS EMPLOYER SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH ALLOWED CLAIMANT'S CLAIM AS COMPENSABLE AND REMANDED IT TO THE EMPLOYER TO PAY BENEFITS ACCORDINGLY.

CLAIMANT WAS AN EMPLOYEE OF NABISCO AND SUSTAINED AN INDUSTRIAL NECK INJURY IN NOVEMBER OF 1971, WHILE PACKAGING COOKIES ON A BELT LINE. THE CLAIM, INVOLVING NO TIME LOSS, BUT INVOLVING LIGHT DUTY WORK FOR THREE TO FOUR WEEKS, WAS ACCEPTED BY THE EMPLOYER. ANOTHER EPISODE OF NECK PAIN OCCURRED APRIL 21, 1972, NOT CONSIDERED TO BE AN INDUSTRIAL INCIDENT FOR WHICH CLAIMANT RECEIVED OFF-THE-JOB BENEFITS.

CLAIMANT'S NECK AND SHOULDER CONDITION WORSENERD IN DECEMBER, 1972 AND SHE WAS UNABLE TO WORK FOR SIX WEEKS. HER CLAIM FOR WORKMEN'S COMPENSATION BENEFITS FOR THIS EPISODE WAS DENIED. WHEN CLAIMANT RETURNED TO WORK AFTER SIX WEEKS, THE METHOD OF PACKAGING COOKIES HAD CHANGED, REQUIRING A DIFFERENT POSTURAL POSITION, AND SHE WAS THEN ABLE TO WORK WITHOUT DIFFICULTY.

THE HEARING OFFICER, WHO SAW AND HEARD THE CLAIMANT, FOUND HER TO BE A CREDIBLE WITNESS. CAREFUL REVIEW OF THE MEDICAL EVIDENCE PERSUADES THE BOARD THAT MEDICAL CAUSATION HAS BEEN PROVED. DR. STORINO STATES CLAIMANT HAS A MILD THORACIC OUTLET PROBLEM WHICH IS NOT RELATED TO THE INDUSTRIAL INJURY BUT ALSO STATES 'WHILE REACHING FOR COOKIES ON A BELT AND PACKAGING THEM, SHE HAD THE ABRUPT ONSET OF RIGHT NECK AND RIGHT SHOULDER PAIN. THIS HAS, MORE OR LESS, PERSISTED TO DATE.'

DR. EBERDT RELATES CLAIMANT'S CONDITION TO THE INDUSTRIAL INJURY. THE BOARD FINDS THAT MEDICAL CAUSATION HAS BEEN PROVED. THE BOARD AGREES WITH THE FINDINGS OF THE HEARING OFFICER AND AFFIRMS HIS ORDER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 7, 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. 73-343 JANUARY 28, 1974
WCB CASE NO. 73-1093 JANUARY 28, 1974

JACK W. NEWMAN, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS.
DON G. SWINK, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS REVERSAL OF THE HEARING OFFICER'S ORDER WHICH DENIED PENALTIES AND ATTORNEY'S FEE AND DENIED AN AWARD OF PERMANENT PARTIAL DISABILITY.

ON DE NOVO REVIEW THE BOARD CONCURS WITH THE OPINION AND ORDER OF THE HEARING OFFICER AND ADOPTS HIS OPINION AS ITS OWN.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 22, 1973 IS AFFIRMED.

WCB CASE NO. 73-1487 JANUARY 28, 1974

RONALD PIERCE, CLAIMANT
COLLINS, FERRIS AND VELURE, 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 FOUND THE REQUEST FOR HEARING AS BEING UNTIMELY FILED.

THIS MATTER INVOLVES A WORKMAN WHO REPORTED AN INDUSTRIAL INJURY TO HIS BACK DECEMBER 13, 1972, WHILE EMPLOYED AS A CRANE OPERATOR AT WEYERHAEUSER.

CLAIMANT FILED A CLAIM FORM 801 WITH THE EMPLOYER, WHICH WAS FORMALLY DENIED BY THE EMPLOYER ON DECEMBER 22, 1972. CLAIMANT ALSO FILED FOR OFF-THE-JOB COVERAGE AND RECEIVED BENEFITS THEREFROM.

ON MAY 10, 1973, CLAIMANT FILED A REQUEST FOR HEARING ON THE EMPLOYER'S DENIAL OF HIS CLAIM. THIS REQUEST FOR HEARING WAS NOT MADE WITHIN 60 DAYS AS REQUIRED BY ORS 656.319, BUT WAS WITHIN THE 180 DAY PERIOD WHICH WILL ALLOW A HEARING IF GOOD CAUSE IS ESTABLISHED.

THE RECORD INDICATES THAT CLAIMANT WAS NOT TOTALLY UNAWARE OF CLAIMS PROCESSING, AS HE HAD FILED "TWO DIFFERENT WAYS" IN A PREVIOUS INDUSTRIAL CLAIM IN 1969.

THE BOARD, ON REVIEW, FINDS CLAIMANT ACCEPTED OFF-THE-JOB COVERAGE, WAS FULLY AWARE OF ALL HIS RIGHTS AND OPTIONS, WAS AWARE OF THE 60 DAY LIMITATION TO REQUEST A HEARING AND HAD AMPLE TIME TO CONSULT WITH HIS COUNSEL AND PHYSICIANS. THE CLAIMANT HAS FAILED TO SHOW GOOD CAUSE FOR NOT REQUESTING A HEARING WITHIN 60 DAYS FROM THE EMPLOYER'S DENIAL.

ORDER

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

WCB CASE NO. 73-1436 JANUARY 28, 1974
WCB CASE NO. 73-1437 JANUARY 28, 1974

WILLIAM H. VANWINKLE, 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 REVERSAL OF THE HEARING OFFICER'S ORDER WHICH HELD THAT CLAIMANT FAILED TO FILE A TIMELY REQUEST FOR HEARING AFTER RECEIVING A DENIAL.

CLAIMANT RECEIVED A BACK INJURY FEBRUARY 14, 1972 WHICH WAS CLOSED BY DETERMINATION ORDER WITH NO AWARD FOR PERMANENT DISABILITY.

CLAIMANT FILED A CLAIM IN LATE OCTOBER, 1972 FOR AN AGGRAVATION OF THE FEBRUARY 14, 1972 INJURY, OR IN THE ALTERNATIVE A NEW COMPENSABLE ACCIDENTAL INJURY. THE STATE ACCIDENT INSURANCE FUND MAILED A NOTICE OF DENIAL JANUARY 4, 1973, AND THE CLAIMANT CONCEDED THAT THE DENIAL SPOKE TO BOTH THE AGGRAVATION AND NEW INJURY CLAIM.

CLAIMANT CONSULTED AN ATTORNEY SHORTLY AFTER HE RECEIVED THE JANUARY 4TH NOTICE OF DENIAL. NO REQUEST FOR HEARING WAS FILED UNTIL MAY 9, 1973. THE CLAIMANT, HIS WIFE AND HIS ATTORNEY WELL KNEW OR SHOULD HAVE KNOWN THAT THE REQUEST FOR HEARING MUST BE FILED WITHIN 60 DAYS OF THE DENIAL NOTICE. NO GOOD CAUSE HAS BEEN SHOWN FOR FAILURE TO REQUEST A HEARING WITHIN 60 DAYS.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 20, 1973, IS AFFIRMED.

RONALD STRAUSBAUGH, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE INVOLVED IS WHETHER OR NOT THE CLAIMANT SHOULD RECEIVE PENALTIES AND ATTORNEY'S FEES FOR DELAY IN PAYING TEMPORARY TOTAL DISABILITY COMPENSATION.

CLAIMANT RECEIVED A LOW BACK AND RIGHT FOOT INDUSTRIAL INJURY DECEMBER 8, 1969, WHICH WAS CLOSED BY A DETERMINATION ORDER. CLAIMANT REQUESTED A HEARING CONTESTING THE PARTIAL DENIAL OF AN ARM INJURY AND THE EXTENT OF PERMANENT PARTIAL DISABILITY AWARDED BY THE DETERMINATION ORDER.

BEFORE THE OPINION AND ORDER OF THE HEARING OFFICER WAS ISSUED, CLAIMANT RETURNED TO THE ATTENDING PHYSICIAN FOR FURTHER CARE AND TREATMENT OF HIS LOW BACK INJURY. THE ATTENDING PHYSICIAN SUBMITTED A REPORT OF AUGUST 31, 1972 WHICH WAS SOMEWHAT AMBIGUOUS AS TO WHETHER OR NOT CLAIMANT HAD SUSTAINED A NEW INJURY WHILE WORKING FOR A NEW EMPLOYER OR THAT THIS PRESENT CONDITION WAS AN AGGRAVATION OF THE DECEMBER 8, 1969 INDUSTRIAL INJURY. MANY LETTERS BETWEEN CLAIMANT'S ATTORNEY AND THE STATE ACCIDENT INSURANCE FUND'S ATTORNEY APPEAR TO HAVE MERELY ADDED TO THE CONFUSION.

THE PROBLEM FINALLY COMES DOWN TO THE PAYMENT BY THE STATE ACCIDENT INSURANCE FUND OF ONE HUNDRED FORTY EIGHT DOLLARS IN FEBRUARY, 1973 FOR TWO WEEK TEMPORARY TOTAL DISABILITY INSTEAD OF OCTOBER OR NOVEMBER, 1972. IT IS NOTED CLAIMANT WAS RECEIVING THREE HUNDRED FIFTY ONE DOLLARS PER MONTH CONTINUOUSLY DURING THIS PERIOD OF TIME ON THE PERMANENT PARTIAL DISABILITY AWARD. THE HEARING OFFICER FOUND THAT PENALTIES AND ATTORNEY'S FEES UNDER THE FACTS OF THIS CASE WOULD NOT BE ALLOWED. THE BOARD CONCURS WITH THIS FINDING AND ORDER.

THE CASES CITED BY THE CLAIMANT IN HIS BRIEF ARE CLEARLY DISTINGUISHABLE UPON THE FACTS. THE STATE ACCIDENT INSURANCE FUND HAD A RIGHT AND A DUTY TO INVESTIGATE WHETHER OR NOT THIS INCIDENT WAS AN AGGRAVATION OR A NEW INJURY. THE INVESTIGATION WAS NOT EXPEDITED BY THE MANY LETTERS BETWEEN CLAIMANT'S COUNSEL AND THE STATE ACCIDENT INSURANCE FUND'S COUNSEL.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 31, 1973 IS AFFIRMED.

GERALDINE M. LUFF (FOX) , CLAIMANT
BUSS, LEICHTNER, LINDSTEDT AND BARKER,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.

THE ABOVE-ENTITLED MATTER WAS THE SUBJECT OF AN ORDER ON REVIEW JANUARY 9, 1974.

THE LAST PARAGRAPH OF PAGE 1 IS DELETED AND IS HEREBY CORRECTED TO READ AS FOLLOWS -

''THE BOARD, ON REVIEW, FINDS CLAIMANT'S DISABILITY TO BE SUBSTANTIAL AND BY THIS ORDER, GRANTS HER A PERMANENT PARTIAL DISABILITY AWARD TOTALING 192 DEGREES UNSCHEDULED LOW BACK DISABILITY, BEING AN INCREASE OF 59 DEGREES. THE AWARD OF 46 DEGREES FOR LOSS OF THE LEFT LEG IS ADEQUATE.!!

THE FIRST SENTENCE OF THE ORDER ON PAGE 2 IS DELETED AND IS HEREBY CORRECTED TO READ AS FOLLOWS -

''THE CLAIMANT IS HEREBY AWARDED AN INCREASE OF 59 DEGREES PERMANENT PARTIAL DISABILITY FOR UNSCHEDULED LOW BACK DISABILITY MAKING A TOTAL OF 192 DEGREES UNSCHEDULED PERMANENT PARTIAL DISABILITY. IN ALL OTHER RESPECTS THE HEARING OFFICER'S ORDER OF AUGUST 14, 1973 IS AFFIRMED.!!

THE ORDER ON REVIEW DATED JANUARY 9, 1974 IS OTHERWISE RATIFIED AND AFFIRMED.

CAROLYN TURAN, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
TOOZE, KERR AND PETERSON, DEFENSE ATTYS.

ON DECEMBER 20, 1973, THE STATE ACCIDENT INSURANCE FUND REQUESTED REVIEW OF A REFEREE'S ORDER DATED NOVEMBER 21, 1973 WHICH, AMONG OTHER THINGS, ORDERED CLAIMANT'S CLAIM REOPENED AS OF FEBRUARY 17, 1972.

THE PARTIES HAVE NOW STIPULATED THAT THE DATE OF REOPENING SHOULD BE AMENDED TO FEBRUARY 19, 1973 AND THAT THE REQUEST FOR REVIEW SHOULD THEREUPON BE WITHDRAWN. THE STIPULATION IS ATTACHED HERETO AS EXHIBIT !!A!!.

THE BOARD, BEING NOW FULLY ADVISED, APPROVES THE STIPULATION AND HEREBY ORDERS IT EXECUTED ACCORDING TO ITS TERMS.

THE REQUEST FOR REVIEW FILED BY THE STATE ACCIDENT INSURANCE FUND IS HEREBY DISMISSED.

STIPULATION

IT IS HEREBY STIPULATED BY AND BETWEEN CAROLYN TURAN THROUGH HER ATTORNEY, RICHARD KROPP, AND THE STATE ACCIDENT INSURANCE FUND THROUGH MARCUS K. WARD, ASSISTANT ATTORNEY GENERAL, OF ITS ATTORNEYS THAT THE OPINION AND ORDER OF THE HEARING REFEREE IN THE ABOVE-REFERRED-TO MATTER, DATED NOVEMBER 21, 1973, BE AMENDED IN THE NEXT-TO-LAST PARAGRAPH OF THE THIRD PAGE TO READ AS FOLLOWS -

'' IT IS NOW THEREFORE ORDERED THAT THIS CLAIM BE REMANDED TO THE STATE ACCIDENT INSURANCE FUND TO BE ACCEPTED FOR PAYMENT OF COMPENSATION FROM FEBRUARY 19, 1973 UNTIL THE CLOSURE IS AUTHORIZED PURSUANT TO ORS 656.268. ''

AND IN CONSIDERATION THEREOF, THE STATE ACCIDENT INSURANCE FUND HEREBY WITHDRAWS ITS REQUEST FOR BOARD REVIEW, DATED DECEMBER 19, 1973, AND SIGNED BY R. KENNEY ROBERTS (COPY MAY ERRONEOUSLY SHOW DATE OF OCTOBER 19, 1973).

SAIF CLAIM NO. DB 164517 FEBRUARY 7, 1974

EDWARD C. ASHWORTH, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.

THE ABOVE-ENTITLED MATTER WAS THE SUBJECT OF AN OWN MOTION ORDER DATED JANUARY 4, 1974.

ON PAGE 1, FOURTH LINE OF THE ORDER, THE ORDER ERRONEOUSLY RECITES, ''EQUAL TO 75 PERCENT LOSS OF AN ARM.!! THE SOLE PURPOSE OF THIS ORDER IS TO CORRECT THE RECORD TO RECITE, ''EQUAL TO 65 PERCENT LOSS OF AN ARM. ''

THE OWN MOTION ORDER OF JANUARY 4, 1974, SHOULD BE, AND IT IS HEREBY AMENDED TO REFLECT THIS CORRECTION.

WCB CASE NO. 72-3400-IF FEBRUARY 7, 1974

DONALD R. JOHNSON, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.

UPON MOTION OF THE APPELLANT, THE STATE ACCIDENT INSURANCE FUND, THE REQUEST FOR BOARD REVIEW IS DISMISSED.

SAIF CLAIM NO. FA 735446 FEBRUARY 7, 1974

WILLIAM J. LISH, CLAIMANT

THE CLAIMANT AGAIN REQUESTS OWN MOTION CONSIDERATION SUBSEQUENT TO THE OWN MOTION ORDER DATED JULY 23, 1973. THE QUESTION IS WHETHER OR NOT A NUMBER OF INTERVENING INCIDENTS SINCE THE 1959 ACCIDENT ARE THE CAUSE OF CLAIMANT'S PRESENT CONDITION OR WHETHER OR NOT CLAIMANT'S PRESENT COMPLAINTS ARE THE RESULT OF THE 1959 INJURY.

THE BOARD CONCLUDES THIS MATTER SHOULD BE REMANDED TO THE HEARINGS DIVISION TO CONDUCT A HEARING AND RENDER AN ADVISORY OPINION TO THE BOARD AS TO WHETHER OR NOT CLAIMANT'S PRESENT CONDITION AND COMPLAINTS ARE THE RESULT OF HIS 1959 INJURY.

IT IS SO ORDERED.

WCB CASE NO. 67-1528 FEBRUARY 7, 1974

OWEN W. GAFFNEY, CLAIMANT

THIS MATTER IS BEFORE THE WORKMEN'S COMPENSATION BOARD UPON THE 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 A BACK INJURY JULY 19, 1963 AND THE CLAIM WAS CLOSED SEPTEMBER 29, 1965 WITH A PERMANENT DISABILITY AWARD OF 20 PERCENT LOSS OF FUNCTION OF AN ARM FOR UNSCHEDULED DISABILITY. THE CIRCUIT COURT AFFIRMED THIS AWARD.

IN 1967 CLAIMANT FILED AN AGGRAVATION CLAIM AND THE CLAIM WAS CLOSED BY AWARD OF AN ADDITIONAL 15 PERCENT LOSS OF FUNCTION OF AN ARM AND, THE BOARD, ON REVIEW, AFFIRMED THE PERMANENT PARTIAL DISABILITY TOTALING 35 PERCENT LOSS OF USE OF AN ARM.

THE CLAIMANT HAS PRESENTED MEDICAL EVIDENCE TO SUPPORT HIS REQUEST FOR BOARD'S OWN MOTION RELIEF BUT THE BOARD CONCLUDES FURTHER EVALUATION BY THE DISABILITY PREVENTION DIVISION IS REQUIRED BEFORE FINALLY RULING ON HIS REQUEST.

THEREFORE, THE STATE ACCIDENT INSURANCE FUND IS HEREBY ORDERED TO ARRANGE FOR, AND PAY THE EXPENSE OF, A FULL AND COMPLETE EVALUATION OF CLAIMANT'S CONDITION AT THE DISABILITY PREVENTION DIVISION.

IT IS HEREBY FURTHER ORDERED THAT THE STATE ACCIDENT INSURANCE FUND REQUEST THE OPINION OF THE DISABILITY PREVENTION DIVISION AS TO WHETHER CLAIMANT'S PRESENT PROBLEMS ARE RELATED TO THE INDUSTRIAL INJURY. THE REPORT IS TO BE SUBMITTED TO THE BOARD FOR FURTHER CONSIDERATION AND DISPOSITION OF CLAIMANT'S REQUEST FOR OWN MOTION RELIEF.

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. 73-1052 FEBRUARY 12, 1974

LOUIS MCINNIS, DECEASED
POZZI, WILSON AND ATCHISON,
BENEFICIARIES' ATTYS.
DEPT. 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 REQUIRED THE FUND TO PAY BENEFITS TO A WIDOW OF A WORKMAN BASED ON A FINDING THAT THE WORKMAN DIED DURING A PERIOD OF PERMANENT AND TOTAL DISABILITY. THE FUND CONTENDS THE WORKMAN WAS NOT PERMANENTLY AND TOTALLY DISABLED AT HIS DEATH.

CLAIMANT HAD SUSTAINED A COMPENSABLE RIGHT LEG INJURY ON OCTOBER 26, 1970. WHILE HOSPITALIZED, CLAIMANT SUFFERED A HEART ATTACK. RESPONSIBILITY FOR THE HEART ATTACK WAS DENIED BY THE STATE ACCIDENT INSURANCE FUND. SUBSEQUENTLY, ON REVIEW BY THE BOARD, THE CLAIM FOR THE HEART CONDITION WAS ALLOWED AND THIS ORDER OF THE BOARD WAS LATER AFFIRMED BY THE CIRCUIT COURT.

BY DETERMINATION ORDER OF MARCH 22, 1973, THE CLAIMANT WAS AWARDED 64 DEGREES (20 PERCENT) FOR UNSCHEDULED HEART DISABILITY, IN ADDITION TO THE 30 DEGREES FOR LOSS OF USE OF THE RIGHT LEG PREVIOUSLY AWARDED.

CLAIMANT APPEALED FROM THIS DETERMINATION ORDER ON MARCH 30, 1973. AN AMENDED REQUEST FOR HEARING WAS FILED APRIL 4, 1973, ALLEGING CLAIMANT HAD DIED AND ALLEGING ENTITLEMENT OF THE WIDOW TO BENEFITS.

THE HEARING OFFICER FOUND AND THE BOARD CONCURS, AFTER CONSIDERING THE LAY AND MEDICAL EVIDENCE INCLUDING CLAIMANT'S SUITABILITY ONLY FOR UNSKILLED MANUAL LABOR, HIS AGE, PHYSICAL DISABILITY AND EMOTIONAL PROBLEMS, THAT DECEDENT WAS PERMANENTLY AND TOTALLY DISABLED AT THE TIME OF HIS DEATH.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 11, 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.

WCB CASE NO. 72-3192 FEBRUARY 12, 1974

WILBUR MCCOY, CLAIMANT

RASK, HEFFERIN AND CARTER, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.

FROM THE FILES AND RECORDS OF THE WORKMEN'S COMPENSATION BOARD, IT APPEARS THAT -

(1) CLAIMANT FILED A CLAIM FOR WORKMEN'S COMPENSATION BENEFITS ON OR ABOUT SEPTEMBER 11, 1972 WHICH WAS DENIED BY THE EMPLOYER ON OCTOBER 18, 1972.

(2) CLAIMANT REQUESTED A HEARING AND UPON HEARING THE HEARING OFFICER FOUND THE CLAIM COMPENSABLE AS AN ACCIDENTAL INJURY.

(3) THE EMPLOYER REQUESTED REVIEW BY THE WORKMEN'S COMPENSATION BOARD. A MAJORITY OF THE BOARD, BY ORDER DATED NOVEMBER 28, 1973, FOUND CLAIMANT HAD SUFFERED AN OCCUPATIONAL DISEASE RATHER THAN AN INJURY.

(4) THE EMPLOYER THEREUPON APPEALED THE BOARD'S ORDER TO THE CIRCUIT COURT OF MULTNOMAH COUNTY WHICH RULED ON JANUARY 11, 1974 THAT THE CLAIMANT'S CONDITION WAS A DISEASE RATHER THAN AN INJURY AND ORDERED THAT A MEDICAL BOARD OF REVIEW BE CONVENED TO FINALLY DECIDE THE COMPENSABILITY OF THE CLAIM.

THE PARTIES NOW WISH TO COMPROMISE AND DISPOSE OF THE MATTER IN ACCORDANCE WITH ORS 656.289(4) AND HAVE PRESENTED THE WORKMEN'S COMPENSATION BOARD WITH A STIPULATION OF FACTS, CONTENTIONS AND SETTLEMENT AGREEMENT TO DISPOSE OF THE MATTER IN ACCORDANCE WITH ORS 656.289(4) AND WHICH IS ATTACHED HERETO AS EXHIBIT 'A' AND HEREBY MADE A PART HEREOF.

THE BOARD BEING NOW FULLY ADVISED, FINDS -

(1) THAT A BONA FIDE DISPUTE OVER THE COMPENSABILITY OF CLAIMANT'S CLAIM EXISTS AND,

(2) THAT THE SETTLEMENT AGREEMENT IS FAIR AND EQUITABLE.

THE BOARD CONCLUDES THE AGREEMENT SHOULD BE APPROVED AND EXECUTED ACCORDING TO ITS TERMS.

IT IS SO ORDERED.

STIPULATION OF FACTS, CONTENTIONS AND SETTLEMENT AGREEMENT

IT IS HEREBY STIPULATED BY AND BETWEEN WILBUR MCCOY, CLAIMANT, ACTING FOR HIMSELF AND BY AND THROUGH HIS ATTORNEY, THOMAS O. CARTER, AND SUNSET FUEL CO., THE EMPLOYER, AND ITS INSURER,

INDUSTRIAL INDEMNITY COMPANY, ACTING BY AND THROUGH ITS COUNSEL, MIZE, KRISIEN, FEWLESS, CHENEY AND KELLEY AND MARSHALL C. CHENEY, JR., AS FOLLOWS -

1. COVERAGE UNDER THE WORKMEN'S COMPENSATION LAW OF OREGON WAS AFFORDED SUNSET FUEL COMPANY BY INDUSTRIAL INDEMNITY COMPANY FROM AND AFTER JULY 1, 1972.

2. IN SEPTEMBER, 1972, CLAIMANT FILED A CLAIM WITH HIS EMPLOYER ALLEGING EITHER AN ACCIDENTAL INJURY OR AN OCCUPATIONAL DISEASE ARISING OUT OF AND IN THE COURSE OR SCOPE OF EMPLOYMENT DURING THE PERIOD WHEN SUCH COVERAGE WAS AFFORDED TO SUNSET FUEL COMPANY BY INDUSTRIAL INDEMNITY COMPANY AND CLAIMED ENTITLEMENT TO BENEFITS UNDER THE WORKMEN'S COMPENSATION LAW OF OREGON.

3. THE CLAIMANT CONTENDS THAT THE EMPLOYER, BY AND THROUGH ITS INSURER, INDUSTRIAL INDEMNITY COMPANY, SHOULD PAY MEDICAL EXPENSES, TIME LOSS BENEFITS AND SUCH OTHER BENEFITS TO WHICH CLAIMANT MAY BE ENTITLED UNDER THE WORKMEN'S COMPENSATION LAW OF THE STATE OF OREGON.

4. THE EMPLOYER AND ITS INSURER, INDUSTRIAL INDEMNITY COMPANY, DENY THAT CLAIMANT HAS SUSTAINED EITHER A COMPENSABLE INJURY OR A COMPENSABLE OCCUPATIONAL DISEASE AT ANY TIME WHILE EMPLOYED BY SUNSET FUEL COMPANY, AND FURTHER CONTEND ANY INJURY OR DISEASE FROM WHICH CLAIMANT MAY NOW SUFFER WAS AND IS WHOLLY UNRELATED TO ANY ACTIVITY OF EMPLOYMENT. SUNSET FUEL CO. AND INDUSTRIAL INDEMNITY COMPANY FURTHER CONTEND THAT ANY LOSS OF EARNINGS TO CLAIMANT RESULTED FROM HIS VOLUNTARY CHOICE OR IN THE ALTERNATIVE WAS THE RESULT OF CLAIMANT'S PRIOR PHYSICAL AND MENTAL CONDITION WHICH WAS WHOLLY UNRELATED TO ANY WORK ACTIVITY PERFORMED FOR SUNSET FUEL CO.

5. THERE IS A BONA FIDE DISPUTE BETWEEN CLAIMANT AND SUNSET FUEL CO. AND INDUSTRIAL INDEMNITY COMPANY AS TO WHETHER CLAIMANT HAS SUSTAINED EITHER A COMPENSABLE INJURY OR COMPENSABLE OCCUPATIONAL DISEASE. THE MATTER IS PRESENTLY BEFORE THE WORKMEN'S COMPENSATION BOARD AWAITING REFERRAL TO A MEDICAL BOARD OF REVIEW FOR DETERMINATION WHETHER OR NOT CLAIMANT SUFFERS FROM A COMPENSABLE OCCUPATIONAL DISEASE, THE WORKMEN'S COMPENSATION BOARD HAVING FOUND THAT CLAIMANT HAS NOT SUSTAINED A COMPENSABLE INJURY.

6. THE PARTIES HAVE AGREED THAT AN ORDER MAY BE ENTERED IN THIS CAPTIONED MATTER DISMISSING THIS CLAIM AND CONFIRMING THIS SETTLEMENT AND COMPROMISE. SUCH AGREEMENT HAS BEEN MADE PURSUANT TO THE WISHES OF THE CLAIMANT PERSONALLY AND BEING ADVISED BY HIS ATTORNEY, THOMAS O. CARTER, AND FURTHER THE CLAIMANT IS ADVISED BY HIS OWN DOCTORS - THE EMPLOYER, SUNSET FUEL COMPANY, AND ITS INSURER, INDUSTRIAL INDEMNITY COMPANY, INDEPENDENTLY AND BASED UPON THE FACTS OF THIS CLAIM AND MEDICAL RECORDS FURNISHED TO THE EMPLOYER AND ITS INSURER. THE PARTIES REPRESENT THAT THIS SETTLEMENT AND COMPROMISE IS FAIR AND REASONABLE. THE PARTIES AGREE THAT SUCH AN ORDER IN THIS CLAIM SHALL BE THAT -

A. SUNSET FUEL CO., BY AND THROUGH ITS INSURER, INDUSTRIAL INDEMNITY COMPANY, SHALL PAY AND CAUSE TO BE PAID TO THE CLAIMANT THE SUM OF FIFTEEN THOUSAND DOLLARS, COMMENSURATE WITH THE DISMISSAL OF THIS CLAIM, IN FULL, COMPLETE SETTLEMENT OF ALL CLAIMS ARISING OUT OF THE EMPLOYMENT OF THE CLAIMANT BY THE SAID EMPLOYER, INCLUDING ANY CLAIM ARISING OUT OF THE ALLEGED CONDITION

REPORTED BY CLAIMANT ON SEPTEMBER 11, 1972 PERTAINING TO NERVOUS FATIGUE AND DEPRESSION, INCLUDING AGGRAVATION, PENALTIES AND ATTORNEYS' FEES WHICH SHALL BE IN FULL AND COMPLETE SETTLEMENT OF ALL BENEFITS UNDER THE WORKMEN'S COMPENSATION ACT OF THE STATE OF OREGON FOR AND ON ACCOUNT OF SAID ALLEGED CONDITION, AND THAT SUCH ORDER IS MADE PURSUANT TO THE PROVISIONS OF THE WORKMEN'S COMPENSATION ACT OF OREGON WHEREIN THERE IS A BONA FIDE DISPUTE OVER THE COMPENSABILITY OF SUCH A CLAIM AND THAT UPON APPROVAL OF THIS SETTLEMENT AND ORDER BY THE WORKMEN'S COMPENSATION BOARD, THAT SAID PAYMENT SHALL BE CAUSED TO BE MADE FORTHWITH TO THE CLAIMANT AT HIS ADDRESS OF 7536 S. E. 27TH AVENUE, PORTLAND, OREGON 97202, OR IN CARE OF HIS ATTORNEY, WHICHEVER IS SO DESIGNATED BY THE CLAIMANT.

B. THAT OF AND FROM SAID SUM OF FIFTEEN THOUSAND DOLLARS THERE SHALL BE PAID BY THE CLAIMANT BY AND THROUGH THIS EMPLOYER AND ITS INSURER, INDUSTRIAL INDEMNITY COMPANY, NONE DOLLARS, THEREOF TO THOMAS O. CARTER, ATTORNEY FOR THE CLAIMANT, FOR AND ON ACCOUNT OF SERVICES PERFORMED BY HIM, WHICH SUM IS DEEMED TO BE A REASONABLE AMOUNT.

WCB CASE NOS. 73-527, 72-1406 AND 72-1407

FEBRUARY 12, 1974

JACK BARRETT, CLAIMANT
DON G. SWINK, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

FROM THE FILES AND RECORDS OF THE WORKMEN'S COMPENSATION BOARD IT APPEARS THAT JACK E. BARRETT SUFFERED AN INJURY TO HIS SPINE ON MAY 5, 1971 WHILE IN THE EMPLOY OF LEONETTI FURNITURE MANUFACTURING COMPANY. (LEONETTI)

A CLAIM WAS FILED WITH AND ACCEPTED BY THE STATE ACCIDENT INSURANCE FUND WHICH WAS THEN LIABLE FOR THE COMPENSABLE INJURIES OF LEONETTI WORKMEN. THE CLAIM, NO. DC 302634, REMAINED IN OPEN STATUS UNTIL FEBRUARY 5, 1973.

ON JANUARY 18, 1972 CLAIMANT ALLEGED A SECOND, OR ADDITIONAL SPINE INJURY ARISING OUT OF HIS EMPLOYMENT AT LEONETTI. A CLAIM WAS FILED WITH EMPLOYER'S INSURANCE OF WAUSAU (WAUSAU) WHICH WAS THEN INSURING LEONETTI'S WORKMEN'S COMPENSATION LIABILITY. THE CLAIM FILED WAS FOR A NEW INJURY.

CLAIMANT ALSO FILED AN AGGRAVATION CLAIM CLAIMING THE ALLEGED JANUARY 18, 1972 INCIDENT CONSTITUTED AN AGGRAVATION OF THE MAY 5, 1971 INJURY.

BOTH THE STATE ACCIDENT INSURANCE FUND AND WAUSAU DENIED THE CLAIMS AND CLAIMANT REQUESTED A HEARING ON EACH DENIAL. THE REQUESTS WERE CONSOLIDATED FOR HEARING AND ON OCTOBER 10, 1972 A HEARING OFFICER ORDERED WAUSAU TO ACCEPT THE CLAIM AND PAY THE BENEFITS AS A NEW INJURY. THE ORDER AFFIRMED THE STATE ACCIDENT INSURANCE FUND'S DENIAL.

WAUSAU THEREUPON REQUESTED BOARD REVIEW. PENDING REVIEW CLAIMANT AND WAUSAU STIPULATED TO A DISPUTED CLAIM SETTLEMENT OF THE MATTER. THE STIPULATION PROVIDED THAT -

(1) WAUSAU WOULD PAY CLAIMANT A CERTAIN SUM (TWENTY THOUSAND DOLLARS) AND WITHDRAW ITS REQUEST FOR REVIEW OF THE HEARING OFFICER'S ORDER.

(2) CLAIMANT WOULD RECOGNIZE THE VALIDITY OF WAUSAU'S DENIAL OF HIS CLAIM IN RETURN FOR THE PAYMENT OF TWENTY THOUSAND DOLLARS.

ON NOVEMBER 14, 1972 THE WORKMEN'S COMPENSATION BOARD APPROVED THE SETTLEMENT AND SENT COPIES OF THE ORDER APPROVING IT TO ALL PARTIES, INCLUDING THE STATE ACCIDENT INSURANCE FUND.

ON FEBRUARY 5, 1973 A WORKMEN'S COMPENSATION BOARD DETERMINATION ORDER REGARDING THE MAY 5, 1971 INJURY ISSUED GRANTING CLAIMANT 60 PERCENT OF 320 DEGREES OR 192 DEGREES.

ON MARCH 1, 1973 CLAIMANT REQUESTED A HEARING ON THE EXTENT OF PERMANENT DISABILITY (WCB CASE NO. 73-527) FROM THE MAY 5, 1971 STATE ACCIDENT INSURANCE FUND COVERED CLAIM.

ON MARCH 16, 1973 THE STATE ACCIDENT INSURANCE FUND REQUESTED A HEARING ON THE DETERMINATION ORDER CONTENDING -

(1) THE ORDER ERRED IN ATTRIBUTING ANY PERMANENT DISABILITY TO THE MAY 5, 1971 INJURY -

(2) THAT CLAIMANT WAS PERMANENTLY TOTALLY DISABLED IN FACT, BUT THAT THIS DISABILITY WAS CAUSED BY THE JANUARY 18, 1972 INJURY COVERED BY WAUSAU -

(3) THAT THE DISPUTED CLAIM SETTLEMENT BETWEEN CLAIMANT AND WAUSAU AND THE BOARD APPROVAL THEREOF WAS VOID BECAUSE THERE WAS NO 'BONA FIDE' DISPUTE AS TO 'COMPENSABILITY' OF THE JANUARY 18, 1972 INJURY.

AS A PART OF THAT REQUEST FOR HEARING THE STATE ACCIDENT INSURANCE FUND MOVED TO HAVE WAUSAU JOINED AS A NECESSARY PARTY. PRESUMABLY IT WAS THE INTENTION OF ALL THAT CLAIMANT'S REQUEST FOR HEARING AND THE STATE ACCIDENT INSURANCE FUND'S REQUEST FOR HEARING WOULD BE CONSOLIDATED. A HEARING ON THE MOTION TO JOIN WAUSAU WAS HELD JULY 23, 1973 AND ORAL ARGUMENT WAS HAD. ADDITIONAL WRITTEN ARGUMENT WAS SOLICITED BY THE HEARING OFFICER AND WAUSAU, CLAIMANT AND THE STATE ACCIDENT INSURANCE FUND RESPONDED.

WAUSAU CONTENDED THAT CLAIMANT DID NOT SUFFER AN 'ACCIDENTAL INJURY' ON JANUARY 18, 1972 AND CITED NUMEROUS REFERENCES IN THE ORIGINAL RECORD (WCB CASE NO. 72-1406 AND 1407) TO SUPPORT THAT CONTENTION. IT ALSO CONTENDED THAT THE SETTLEMENT WAS BASED ON A GENUINE QUESTION OF LAW AND FACT AND FELL WITHIN THE DEFINITION OF A 'BONA FIDE DISPUTE' UNDER ORS 656.289(4).

CLAIMANT CONTENDED THAT -

(1) THE SETTLEMENT HE HAD ENTERED INTO WAS A GENUINE BONA FIDE DISPUTE SETTLEMENT OF HIS CLAIM.

(2) THAT THE HEARING OFFICER'S OPINION AND ORDER OF OCTOBER 10, 1972, AFFIRMING THE STATE ACCIDENT INSURANCE FUND'S DENIAL OF THE JANUARY 18, 1972 CLAIM WAS RES JUDICATA AND THAT

(3) THEREFORE, AS A MATTER OF LAW, THE ONLY QUESTION PRESENTED BY HIS REQUEST FOR HEARING WAS THE EXTENT OF PERMANENT DISABILITY RESULTING FROM THE INJURY OF MAY 5, 1971.

THE STATE ACCIDENT INSURANCE FUND CONTINUED TO ASSERT THAT THE FACTS OF THE JANUARY 18, 1972 INCIDENT, WHILE PERHAPS NOT CLEARLY ESTABLISHING LIABILITY AGAINST WAUSAU OR THE STATE ACCIDENT INSURANCE FUND, SO CLEARLY RELATED THE INCIDENT TO HIS EMPLOYMENT AT LEONETTI FURNITURE, THAT THERE COULD BE NO 'BONA FIDE' DISPUTE THAT THE INCIDENT WAS NONCOMPENSABLE UNDER THE OREGON WORKMEN'S COMPENSATION LAW. THUS, THE STATE ACCIDENT INSURANCE FUND CONTINUED, THE STIPULATED SETTLEMENT WAS IN VIOLATION OF ORS 656.236 AND VOID. THE HEARING OFFICER FOUND THAT THIS WAS ESSENTIALLY A DISPUTE BETWEEN TWO INSURANCE COMPANIES OVER WHICH OF THEM WAS LIABLE TO CLAIMANT RATHER THAN WHETHER THE EMPLOYER WAS LIABLE TO CLAIMANT. HE CONCLUDED =

(1) THAT THESE FACTS COULD NOT FORM THE BASIS OF A 'BONA FIDE DISPUTE OVER COMPENSABILITY OF A CLAIM'.

(2) THAT WITHOUT SUCH A FACTUAL BASIS THE BOARD WAS WITHOUT JURISDICTION TO APPROVE THE STIPULATED SETTLEMENT, AND THAT,

(3) THE ORDER APPROVING STIPULATION AND DISMISSING REVIEW WAS VOID FOR LACK OF JURISDICTION.

ON AUGUST 14, 1973 THE HEARING OFFICER, IN EFFECT, SET ASIDE THE BOARD'S ORDER AND HELD IT FOR NAUGHT AND GRANTED THE STATE ACCIDENT INSURANCE FUND'S MOTION TO JOIN WAUSAU.

BEFORE THE MATTER WAS SET FOR FURTHER HEARING WAUSAU REQUESTED REVIEW OF THE HEARING OFFICER'S AUGUST 14, 1973 RULING AND A STAY OF FURTHER PROCEEDING PENDING REVIEW. THE FUND OPPOSED THE REQUEST FOR REVIEW ON THE GROUND THAT THE HEARING OFFICER'S ORDER WAS NOT A 'FINAL REVIEWABLE ORDER'.

AS THE GOVERNING BODY OF THE AGENCY THE BOARD IS CHARGED WITH DUTIES OF ADMINISTRATION, GENERAL SUPERVISION OF ACCIDENT PREVENTION, REHABILITATION, AND PROVIDING OF COMPENSATION, REGULATION AND ENFORCEMENT IN CONNECTION WITH ORS CHAPTER 654 AND ORS 656.001 TO 656.794 - - - .

IT WOULD NATURALLY BE SUPPOSED THEREFORE THAT, HAVING SUCH RESPONSIBILITY, THE BOARD MAY INTERVENE OR ACT IN A PARTICULAR CASE WITHIN THE AGENCY'S JURISDICTION IN FURTHERANCE OF ITS DUTY OF GENERAL SUPERVISION. HOWEVER THE UNITED STATES SUPREME COURT HELD IN BUTTERWORTH V. HOE, 112 U. S. 50 - 28 L. ED 656 - 5 S. CT. 25 (1884) THAT THE EXECUTIVE SUPERVISION AND DIRECTION WHICH THE HEAD OF A DEPARTMENT MAY EXERCISE OVER HIS SUBORDINATES IN MATTERS ADMINISTRATIVE AND EXECUTIVE, DOES NOT EXTEND TO MATTERS IN WHICH THE SUBORDINATE IS DIRECTED BY STATUTE TO ACT JUDICIALLY.

ORS 656.283 AND 656.289 ESTABLISH THAT THE HEARING OFFICER ACTS IN A JUDICIAL CAPACITY IN MAKING THE INITIAL DECISION AND THAT HIS ORDER IS THE ORDER OF THE AGENCY UNLESS A TIMELY REQUEST FOR DE NOVO REVIEW BY THE BOARD OF THE HEARING OFFICER'S FINAL ORDER IS MADE.

IN BARLAU V. MINNEAPOLIS-MOLINE POWER IMPLEMENT CO., MINN., 9 N.W. 2D 6 (1943), THE COURT RULED THAT WHERE AN APPEAL IS TAKEN FROM A REFEREE'S DECISION TO THE COMMISSION, THE COMMISSION EXERCISES APPELLATE, NOT ORIGINAL, JURISDICTION. THE FACT THAT THE COMMISSION MAY HEAR NEW EVIDENCE, TRY THE CASE DE NOVO, IN ITS DISCRETION, AND MAKE ITS OWN FINDINGS AND DECISION IS NOT INCONSISTENT WITH A HEARING ON APPEAL IN ITS TRADITIONAL AND TECHNICAL MEANING.

IT IS APPARENT THEN, THAT WITH RESPECT TO A HEARING OFFICER'S ORDERS IN A PARTICULAR CASE, THE BOARD STANDS IN THE POSITION OF AN APPELLATE BODY. BEING IN SUCH A POSITION, THE BOARD MUST CONSIDER AND APPLY THE WELL ESTABLISHED RULES GOVERNING SUCH RELATIONSHIP.

IT IS A BASIC RULE THAT CASES SHOULD NOT BE BROUGHT BEFORE APPELLATE BODIES IN A PIECEMEAL OR FRAGMENTARY FASHION. THUS IN THE ABSENCE OF STATUTE, A PARTY MAY APPEAL ONLY FROM A FINAL DECISION. DLOUHY V. SIMPSON TIMBER COMPANY, 247 OR 571 (1967). THE ORDER OF THE HEARING OFFICER DATED AUGUST 14, 1973 IS OBVIOUSLY NOT A FINAL ORDER.

HAVING CONSIDERED THESE RULINGS AND THE CASES CITED BY THE STATE ACCIDENT INSURANCE FUND IN ITS BRIEF OPPOSING BOARD REVIEW, THE BOARD CONCLUDES THAT REVIEW SHOULD NOT BE GRANTED. WHEN THE REFEREE HAS ISSUED A FINAL ORDER DISPOSING OF THE WHOLE MATTER RAISED BY THE FUND'S REQUEST FOR HEARING, ANY PARTY AGGRIEVED MAY REQUEST REVIEW IN ACCORDANCE WITH ORS 656.289.

THE REQUEST FOR REVIEW OF THE HEARING OFFICER'S ORDER OF AUGUST 14, 1973 IS HEREBY DENIED.

WCB CASE NO. 72-2530 FEBRUARY 15, 1974

ROBERT C. SMITH, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MIZE, KRIESIEN, FEWLESS, CHENEY AND KELLEY,
DEFENSE ATTYS.

ON FEBRUARY 8, 1974 THE CIRCUIT COURT OF MARION COUNTY, BASED ON THE STIPULATION OF THE PARTIES, DISMISSED THE APPEAL OF THE CLAIMANT TO SAID COURT AND REMANDED THE CLAIM TO THE WORKMEN'S COMPENSATION BOARD OF THE STATE OF OREGON FOR APPROVAL OF THE DISPUTED CLAIM SETTLEMENT.

THE BOARD HAS REVIEWED THE STIPULATED SETTLEMENT, WHICH IS ATTACHED HERETO AS EXHIBIT A, AND FINDS IT FAIR AND EQUITABLE TO BOTH PARTIES AND CONCLUDES THAT THE STIPULATION SHOULD BE APPROVED AND EXECUTED ACCORDING TO ITS TERMS.

IT IS SO ORDERED.

DISPUTED CLAIM SETTLEMENT

COME NOW THE CLAIMANT, HIS ATTORNEY, THE SUBJECT EMPLOYER, BY AND THROUGH ITS INSURANCE CARRIER AND THEIR ATTORNEYS, AND STATE =

THAT ON OR ABOUT THE 21ST DAY OF APRIL, 1971, CLAIMANT SUSTAINED AN INDUSTRIAL INJURY IN THE COURSE OF HIS EMPLOYMENT AS A MEATCUTTER FOR DICKENS' THRIFTWAY. CLAIMANT FILED A CLAIM WITH THE EMPLOYER AND ON OR ABOUT NOVEMBER 4, 1971, A DETERMINATION ORDER WAS ENTERED WHEREIN CLAIMANT WAS AWARDED PERMANENT PARTIAL DISABILITY EQUAL TO 29 DEGREES FOR PARTIAL LOSS OF THE RIGHT THUMB. ON MAY 2, 1972, A STIPULATED ORDER WAS APPROVED BY A HEARING OFFICER OF THE BOARD WHEREUNDER AN ADDITIONAL 20 DEGREES WAS ORDERED FOR LOSS OF OPPOSITION OF THE THUMB OF THE RIGHT HAND. SOME SIX WEEKS AFTER THE APPROVAL OF THE STIPULATED ORDER, CLAIMANT REQUESTED HIS CASE BE REOPENED FOR PSYCHIATRIC TREATMENT. ON SEPTEMBER 11, 1972 THE INSURANCE CARRIER DENIED THE REQUEST FOR REOPENING ON THE GROUND THERE WAS NO MEDICAL EVIDENCE TO SUPPORT THE CONTENTION THAT THE INJURY TO THE THUMB MATERIALLY CONTRIBUTED TO ANY PSYCHONEUROSIS EXISTING IN MARCH, 1972, OR AT THE TIME OF THE REQUEST FOR REOPENING IN JUNE, 1972.

HEARING WAS HELD ON JANUARY 29, 1973, AND ON MARCH 2, 1973, THE HEARING OFFICER DISAPPROVED EMPLOYER'S DENIAL AND REMANDED THE CLAIM TO THE EMPLOYER TO BE ACCEPTED FOR PAYMENT OF COMPENSATION, INCLUDING THE PROVISIONS OF PSYCHIATRIC MEDICAL CARE AND TREATMENT AND TEMPORARY DISABILITY BENEFITS AS DUE UNDER THE PROVISIONS OF THE OREGON WORKMEN'S COMPENSATION LAW FROM THE DATE CLAIMANT WAS FIRST ADMINISTERED ELECTROSHOCK THERAPY UNTIL CLAIM CLOSURE, UNDER THE PROVISIONS OF ORS 656.268.

THE EMPLOYER, DICKENS' THRIFTWAY, AND ITS CARRIER, INDUSTRIAL INDEMNITY, BEING DISSATISFIED WITH SAID OPINION AND ORDER, FILED TIMELY REQUEST FOR REVIEW, AND ON OR ABOUT THE 25TH DAY OF OCTOBER, 1973, THE WORKMEN'S COMPENSATION BOARD ENTERED ITS ORDER ON REVIEW AND HELD -

1. THE STIPULATED ORDER OF MAY 2, 1973, FORECLOSED PROSECUTION OF THE AGGRAVATION.
2. CLAIMANT HAD NOT IN FACT SUFFERED AN AGGRAVATION. THE WORKMEN'S COMPENSATION BOARD REVERSED THE HEARING OFFICER'S ORDER IN ITS ENTIRETY.

CLAIMANT, BEING DISSATISFIED WITH THE ORDER ON REVIEW OF THE WORKMEN'S COMPENSATION BOARD, DULY FILED NOTICE OF APPEAL TO THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MARION AND SAID APPEAL WAS SCHEDULED FOR ARGUMENT ON JANUARY 28, 1974.

CONTENTIONS OF CLAIMANT

CLAIMANT CONTENTS HE SUSTAINED AN ACCIDENTAL INJURY IN THE COURSE OF HIS EMPLOYMENT WITH THE EMPLOYER, AND THAT SAID ACCIDENTAL INJURY AGGRAVATED A PREEXISTING PSYCHONEUROSIS, AND THAT THE EMPLOYER IS RESPONSIBLE FOR MEDICAL CARE AND LOST TIME BENEFITS AND OTHER BENEFITS TO WHICH HE WOULD BE ENTITLED UNDER THE PROVISIONS OF THE WORKMEN'S COMPENSATION LAW OF THE STATE OF OREGON FOR SUCH AGGRAVATION.

CONTENTIONS OF EMPLOYER

THE EMPLOYER CONTENTS THAT AS A MATTER OF FACT NO AGGRAVATION OF ANY PSYCHONEUROSIS OF CLAIMANT OCCURRED AS A RESULT OF THE ACCIDENTAL INJURY OF APRIL 21, 1971, OR AT ANY TIME PRIOR THERETO OR THEREAFTER, WHILE CLAIMANT WAS EMPLOYED BY EMPLOYER, WHICH AROSE OUT OF OR IN THE COURSE OF HIS EMPLOYMENT, WHICH WAS OR IS

CAUSALLY RELATED, EITHER MEDICALLY OR LEGALLY, TO HIS CLAIM FOR MEDICAL EXPENSES OR ANY OTHER BENEFITS UNDER THE WORKMEN'S COMPENSATION ACT OF THE STATE OF OREGON AS A RESULT OF ANY AGGRAVATION OF ANY PREEXISTING CONDITION, AND THAT CLAIMANT'S EXECUTION OF THE STIPULATED ORDER OF MAY 2, 1972, FORECLOSED ANY PROSECUTION OF ANY CLAIM FOR AGGRAVATION, IF IN FACT CLAIMANT SUFFERED AN AGGRAVATION.

DISPUTE

THE PARTIES HERETO REALIZE THEIR CONTENTIONS AND POSITIONS INVOLVE A DISPUTED AND BONA FIDE CONFLICT, AND BOTH PARTIES DESIRE TO COMPROMISE AND SETTLE CLAIMANT'S CLAIM FOR ALL TIME.

SETTLEMENT

THE PARTIES HAVE AGREED THAT AN ORDER MAY BE ENTERED IN THE APPEAL FILED IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MARION DISMISSING SAID APPEAL AND REMANDING THIS CLAIM TO THE WORKMEN'S COMPENSATION BOARD FOR AN ORDER DISMISSING THIS CLAIM AND CONFIRMING THIS SETTLEMENT AND COMPROMISE. SUCH AGREEMENT HAS BEEN MADE AT THE REQUEST OF CLAIMANT PERSONALLY, CLAIMANT HAVING BEEN ADVISED BY HIS OWN DOCTORS AND THROUGH HIS ATTORNEY. THE PARTIES REPRESENT THIS SETTLEMENT AND COMPROMISE IS FAIR AND REASONABLE. THE PARTIES AGREE THAT SUCH ORDER SHALL BE -

1. THAT THE EMPLOYER SHALL PAY TO THE CLAIMANT THE SUM OF FIFTEEN THOUSAND DOLLARS (FIFTEEN THOUSAND DOLLARS) UPON APPROVAL OF THIS STIPULATED ORDER, IN FULL, COMPLETE AND FINAL SETTLEMENT OF ALL CLAIMS ARISING OUT OF THE EMPLOYMENT OF CLAIMANT BY THE EMPLOYER, PARTICULARLY BUT NOT LIMITED TO THE ALLEGED AGGRAVATION OF ANY PSYCHONEUROSIS SUFFERED BY CLAIMANT AND ALLEGEDLY AGGRAVATED AS A RESULT OF THE INDUSTRIAL INJURY OF APRIL 21, 1971, OR ANY OTHER OCCURRENCE DURING THE COURSE OF CLAIMANT'S EMPLOYMENT WITH THE EMPLOYER, AND FOR ALL BENEFITS OF ANY TYPE UNDER THE PROVISIONS OF THE OREGON WORKMEN'S COMPENSATION ACT, INCLUDING BUT NOT LIMITED TO TEMPORARY TOTAL DISABILITY PAYMENTS, MEDICAL EXPENSES, ATTORNEYS' FEES, SURVIVORSHIP BENEFITS, IF ANY, PERMANENT OR TEMPORARY LOSS OF EARNING CAPACITY, PERMANENT PARTIAL DISABILITY, TOTAL DISABILITY OR ANY DISABILITY WHATSOEVER, INCLUDING ANY CLAIM OF AGGRAVATION OF CLAIMANT'S PSYCHONEUROTIC CONDITION.

2. THAT OF AND FROM THE SAID SUM OF FIFTEEN THOUSAND DOLLARS THERE SHALL BE PAID BY THE CLAIMANT TO HIS ATTORNEY, DAN O'LEARY, THE SUM OF FIFTEEN HUNDRED DOLLARS AS AND FOR LEGAL SERVICES RENDERED.

3. THAT CLAIMANT DESIRES TO WITHDRAW HIS APPEAL FROM THE ORDER ON REVIEW OF THE WORKMEN'S COMPENSATION BOARD DATED OCTOBER 25, 1973, AND THAT SAID ORDER OF THE WORKMEN'S COMPENSATION BOARD OF OCTOBER 25, 1973 BE AFFIRMED, AND THAT CLAIMANT'S CLAIM FOR PSYCHIATRIC CARE AND TREATMENT SHALL BE CLOSED AND HE SHALL BE FOREVER BARRED FROM ASSERTING ANY FURTHER CLAIM FOR COMPENSATION UNDER THE WORKMEN'S COMPENSATION ACT OF THE STATE OF OREGON BASED ON THE CONTENTS AND MATTERS CONTAINED AND ASSERTED IN HIS CLAIM FOR AGGRAVATION OF HIS PSYCHONEUROTIC CONDITION - AND IT IS FURTHER UNDERSTOOD AND AGREED THAT CLAIMANT WILL HAVE NO AGGRAVATION RIGHTS AS PROVIDED BY THE WORKMEN'S COMPENSATION ACT AS A RESULT OF THE CLAIMED AGGRAVATION OF CLAIMANT'S PSYCHONEUROTIC CONDITION AS A RESULT OF THE INDUSTRIAL INJURY OF APRIL 21, 1971,

OR ANY OTHER OCCURRENCE ARISING OUT OF OR IN THE COURSE OF CLAIMANT'S EMPLOYMENT BY EMPLOYER.

4. THAT AN ORDER BE ENTERED IN THE APPEAL PENDING IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MARION DISMISSING SAID APPEAL AND REMANDING THIS CLAIM TO THE WORKMEN'S COMPENSATION BOARD OF THE STATE OF OREGON FOR APPROVAL OF THIS SETTLEMENT AND AGREEMENT.

WCB CASE NO. 73-1171 FEBRUARY 19, 1974

JESSE KOROUGH, CLAIMANT
S. DAVID EVES, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE INVOLVED IS WHETHER OR NOT CLAIMANT IS PERMANENTLY TOTALLY DISABLED AS ORDERED BY THE HEARING OFFICER, AND IF NOT, THE EXTENT OF PERMANENT PARTIAL DISABILITY.

CLAIMANT, A 51 YEAR OLD TRUCK DRIVER, HAD EXTENSIVE FRACTURES IN HIS INDUSTRIAL TRUCK ACCIDENT. THE FRACTURE OF THE PELVIS HAS NO RESIDUAL DEFORMITIES IN THE PELVIC RING OR THE SACROILIAC JOINT. THE FINDINGS OF THE BACK EVALUATION CLINIC DIAGNOSED CLAIMANT'S CONDITION AS CHRONIC LOW BACK PAIN, AGGRAVATION OF CERVICAL SPINE STRAIN AND GROSS FUNCTIONAL OVERLAY. THE PSYCHOLOGICAL FINDINGS STATED THAT HIS CONDITION WAS CHRONIC AND AGGRAVATED BY THE INJURY TO A MODERATE DEGREE.

THE BOARD FINDS THAT THE MEDICAL EVIDENCE COUPLED WITH OTHER RELEVANT FACTORS AFFECTING HIS EMPLOYABILITY DOES NOT ESTABLISH PRIMA FACIE THAT THE CLAIMANT IS PERMANENTLY TOTALLY DISABLED. THE CLAIMANT THEREFORE MUST ESTABLISH HIS WILLINGNESS TO SEEK GAINFUL AND SUITABLE REGULAR EMPLOYMENT.

CLAIMANT HAS A TENTH GRADE EDUCATION AND HAS DEMONSTRATED POOR MOTIVATION. THE BOARD CONCURS WITH THE HEARING OFFICER'S OPINION THAT CLAIMANT !!! HAS NOT OVEREXERTED HIMSELF IN SEEKING WORK FOR WHICH HE MIGHT BE QUALIFIED NOR WAS HE VERY COOPERATIVE IN ANY ATTEMPT, EITHER THROUGH DISABILITY PREVENTION DIVISION OR THE DIVISION OF VOCATIONAL REHABILITATION TO DETERMINE WHAT HE CAN DO. CLAIMANT'S LACK OF CANDOR TO THE ATTENDING DOCTOR AND THE EXAMINING DOCTORS REFLECTS POORLY ON HIS CREDIBILITY.

THE BOARD FINDS THAT THE CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED. THE BOARD FURTHER FINDS CLAIMANT HAS SUSTAINED A TOTAL OF FIFTY PERCENT OR 160 DEGREES PERMANENT PARTIAL UNSCHEDULED DISABILITY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 2, 1973 IS REVERSED.

CLAIMANT IS AWARDED A TOTAL OF 50 PERCENT (160 DEGREES) PERMANENT PARTIAL UNSCHEDULED DISABILITY. THIS IS AN INCREASE OF 80 DEGREES AWARDED IN THE DETERMINATION ORDER DATED APRIL 13, 1973.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE, 25 PERCENT OF THE INCREASED COMPENSATION AWARDED HEREBY, PAYABLE FROM SAID AWARD, WHICH WHEN COMBINED WITH FEES RECEIVED UNDER THE ORDER OF THE HEARING OFFICER, SHALL NOT EXCEED FIFTEEN HUNDRED DOLLARS.

WCB CASE NO. 72-1457 FEBRUARY 20, 1974

J. C. STEWART, CLAIMANT
SLACK AND SLACK, CLAIMANT'S ATTYS.
LONG, NEUNER, DOLE AND CALEY,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS REVERSAL OF THE HEARING OFFICER'S ORDER WHICH DENIED PERMANENT TOTAL DISABILITY.

THE DETERMINATION ORDER AWARDED 192 DEGREES UNSCHEDULED LOW BACK DISABILITY AND 23 DEGREES LEFT LEG DISABILITY. THE HEARING OFFICER AWARDED CLAIMANT A TOTAL OF 256 DEGREES UNSCHEDULED LOW BACK PERMANENT PARTIAL DISABILITY AND AFFIRMED THE 23 DEGREES LEFT LEG DISABILITY.

CLAIMANT, A 44 YEAR OLD MILLWRIGHT, FELL ON GREASY STAIRS OCTOBER 6, 1967 INJURING HIS BACK. HE HAS HAD A LAMINECTOMY AND A FUSION. THE BACK EVALUATION CLINIC STATES HE CANNOT RETURN TO HIS FORMER OCCUPATION AS A MILLWRIGHT AND RATES HIS LOSS OF FUNCTION AS MODERATE. THE PSYCHOLOGICAL EXAMINER STATES THERE IS CONSIDERABLE CHRONIC PSYCHOPATHOLOGY WHICH HAS BEEN MODERATELY AGGRAVATED BY THE ACCIDENT. THE ATTENDING PHYSICIAN STATES THE ANXIETY TENSION WOULD APPEAR TO BE UNRELATED TO THE ACCIDENT.

ON DE NOVO REVIEW OF ALL OF THE EVIDENCE AND ESPECIALLY THE MEDICAL EVIDENCE, THE BOARD FINDS CLAIMANT NOT TO BE PRIMA FACIE IN THE ODD LOT CATEGORY.

CLAIMANT'S POOR MOTIVATION PREVENTS AN AWARD OF PERMANENT TOTAL DISABILITY UNDER THE ODD LOT DOCTRINE.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 13, 1973 IS AFFIRMED.

WCB CASE NO. 73-2092
WCB CASE NO. 73-2105

FEBRUARY 20, 1974
FEBRUARY 20, 1974

GARY A. ROBERTS, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.

CLAIMANT'S NEW ATTORNEY, DAN O'LEARY, MOVED THE BOARD FOR AN ORDER WITHDRAWING THE BOARD'S ORDER OF JANUARY 24, 1974 AND RECONSIDERATION AFTER ALLOWING CLAIMANT TO FILE A BRIEF IN SUPPORT OF HIS REQUEST FOR REVIEW.

IN THE AFFIDAVIT SUPPORTING THE MOTION, MR. O'LEARY SUGGESTS A BRIEF MIGHT BE OF ASSISTANCE.

THE BOARD NOTES ITS ORDER OF JANUARY 24, 1974 IS FOUNDED, IN PART, ON THE ABSENCE OF EVIDENCE WHICH CLAIMANT COULD HAVE PRODUCED AND THE UNRELIABILITY OF THAT WHICH CLAIMANT PRESENTED PERSONALLY.

UNDER THESE CIRCUMSTANCES, THE BOARD CONCLUDES THE MOTION SHOULD BE, AND IT IS HEREBY, DENIED.

WCB CASE NO. 72-3026

FEBRUARY 20, 1974

JACK MCCUISTON, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVERSAL OF THE HEARING OFFICER'S AWARD OF PERMANENT TOTAL DISABILITY.

CLAIMANT, A 53 YEAR OLD CEMENT FINISHER, RECEIVED AN AWARD OF 25 PERCENT (80 DEGREES) PERMANENT PARTIAL UNSCHEDULED LOW BACK DISABILITY BY THE DETERMINATION ORDER. THE HEARING OFFICER AWARDED PERMANENT TOTAL DISABILITY.

THE ATTENDING ORTHOPEDIST CONCLUDED CLAIMANT'S CONDITION WAS STABLE AND THAT HIS CONVALESCENCE AND REHABILITATION HAVE BEEN LENGTHENED BY HIS OVERWEIGHT PROBLEM AND PREEXISTING ARTHRITIS OF THE SPINE. HE FURTHER CONCLUDED CLAIMANT WILL BE CAPABLE OF PERFORMING LIGHT WORK NOT REQUIRING BENDING OR HEAVY LIFTING AND SHOULD BE RETRAINED BY THE DIVISION OF VOCATIONAL REHABILITATION.

THE BACK EVALUATION CLINIC DIAGNOSED CHRONIC LOW BACK STRAIN, RECOMMENDED WEIGHT LOSS OF 50 POUNDS AND FOUND !!MILD!! LOSS OF FUNCTION OF THE BACK AND STATED CLAIMANT WAS PHYSICALLY UNABLE TO RETURN TO HIS OCCUPATION BUT CAN DO SOME TYPE OF WORK. THE PSYCHOLOGIST HAS A MORE GUARDED PROGNOSIS.

THE BOARD FINDS THAT THE MEDICAL FACTS AND THE OTHER FACTORS SUCH AS AGE, EDUCATION, MENTAL CAPACITY AND TRAINING OF THIS CLAIMANT DO NOT ESTABLISH A PRIMA FACIE CASE OF ODD-LOT STATUS.

THE BOARD ALSO FINDS THAT CLAIMANT HAS POOR MOTIVATION FOR RETURNING TO EMPLOYMENT. THE CLAIMANT THEREFORE IS NOT PERMANENTLY TOTALLY DISABLED.

THE BOARD RECOMMENDS INTENSIVE JOB PLACEMENT EFFORTS AND DIVISION OF VOCATIONAL REHABILITATION EFFORTS IF THE CLAIMANT WISHES TO AVAIL HIMSELF OF THIS SERVICE.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 19, 1973 IS REVERSED.

CLAIMANT IS AWARDED A TOTAL OF 60 PERCENT (192 DEGREES) UNSCHEDULED PERMANENT PARTIAL DISABILITY FOR LOW BACK, WHICH IS AN INCREASE OF 112 DEGREES FROM THE AWARD GRANTED BY THE DETERMINATION ORDER.

CLAIMANT'S COUNSEL SHALL BE PAID, AS A REASONABLE ATTORNEY'S FEE, 25 PERCENT OF THE INCREASED COMPENSATION (112 DEGREES), PAYABLE FROM CLAIMANT'S COMPENSATION AS PAID. SUCH FEE SHALL NOT EXCEED FIFTEEN HUNDRED DOLLARS.

WCB CASE NO. 72-1324 FEBRUARY 21, 1974

RAMON SALAZAR, CLAIMANT
CRAMER AND PINKERTON, CLAIMANT'S ATTYS.
PHILIP MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS AN INCREASE FROM THE 192 DEGREES UNSCHEDULED PERMANENT PARTIAL DISABILITY AWARDED BY THE HEARING OFFICER TO PERMANENT TOTAL DISABILITY.

CLAIMANT, NOW 58 YEARS OLD, OF MEXICAN DESCENT AND WHO DOES NOT SPEAK ENGLISH, RECEIVED AN INDUSTRIAL INJURY OCTOBER 8, 1969 TO HIS RIGHT SHOULDER. THIS WAS DIAGNOSED AS PARTIAL RUPTURE OF THE ROTATOR CUFF OF THE RIGHT SHOULDER. SURGERY DID NOT SEEM TO HELP AND THE CLAIMANT HAS A FROZEN SHOULDER AND DYSTROPHY OF THE HAND AND ARM. THE SHOULDER AND ARM CONDITION CONTINUES TO DETERIORATE. MEDICAL EVIDENCE INDICATES CLAIMANT COULD LIFT 30 TO 40 POUNDS OF WEIGHT TO THE BELT LEVEL, FIVE POUNDS TO THE SHOULDER LEVEL BUT WOULD BE UNABLE TO LIFT EVEN THE ARM ABOVE THE SHOULDER LEVEL.

CLAIMANT'S WORK EXPERIENCE HAS BEEN IN MANUAL LABOR IN AGRICULTURE IN MEXICO, TEXAS AND OREGON. VOCATIONAL REHABILITATION EXPERTS STATE RETRAINING WOULD BE VERY DIFFICULT BECAUSE OF THE LANGUAGE BARRIER.

IN VIEW OF CLAIMANT'S AGE, THE LANGUAGE BARRIER, THE MEDICAL EVIDENCE AND ALL OF THE EVIDENCE IN THIS RECORD, THE BOARD, ON REVIEW, FINDS THE CLAIMANT TO BE PERMANENTLY TOTALLY DISABLED.

ORDER

THE ORDER OF THE HEARING OFFICER IS MODIFIED TO GRANT CLAIMANT AN AWARD OF PERMANENT TOTAL DISABILITY AS OF THE DATE OF THIS ORDER.

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. 68-931 FEBRUARY 21, 1974

CECIL MCCARTY, CLAIMANT

COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.

ON FEBRUARY 4, 1974 CLAIMANT REQUESTED THAT THE BOARD, ON ITS OWN MOTION, GRANT HIM ADDITIONAL CARE AND COMPENSATION FOR CONDITIONS ALLEGEDLY RESULTING FROM AN INJURY ON FEBRUARY 3, 1966 ON WHICH THE CLAIMANT'S AGGRAVATION RIGHTS HAVE EXPIRED.

THE CLAIMANT HAS ALSO, AS AN ALTERNATIVE MEANS OF RELIEF, REQUESTED A HEARING SEEKING FURTHER COMPENSATION ON THE GROUNDS THAT HIS PRESENT CONDITION MAY RELATE TO AN INJURY ON JULY 24, 1972 WHICH OCCURRED IN THE EMPLOY OF ANOTHER EMPLOYER. THAT REQUEST FOR HEARING, WCB CASE NO. 74-206, IS PRESENTLY PENDING BEFORE THE HEARINGS DIVISION OF THE WORKMEN'S COMPENSATION BOARD.

THE BOARD CONCLUDES THAT THE MATTER OF WHETHER CLAIMANT'S CONDITION IS RELATED TO HIS FEBRUARY 3, 1966 INJURY SHOULD BE REFERRED TO THE HEARINGS DIVISION FOR RECEIPT OF EVIDENCE, SAID EVIDENCE TO BE RECEIVED IN A HEARING CONSOLIDATED WITH THE REQUEST FOR HEARING NOW PENDING. WHEN THE HEARING OFFICER HAS RECEIVED THE EVIDENCE HE SHOULD FURNISH A TRANSCRIPT OF THE PROCEEDINGS AND HIS RECOMMENDATION TO THE WORKMEN'S COMPENSATION BOARD.

IT IS SO ORDERED.

WCB CASE NO. 73-1106 FEBRUARY 21, 1974
WCB CASE NO. 73-1107 FEBRUARY 21, 1974

WILLIAM LANGLEY, CLAIMANT

WILLIAM GROSS, CLAIMANT'S ATTY.
NOREEN SALTVEIT, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF
CROSS-APPEAL BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

FOLLOWING A CONSOLIDATED HEARING IN THE ABOVE ENTITLED CASES, A HEARING OFFICER FOUND CLAIMANT ENTITLED TO COMPENSATION FOR AN

INJURY OF DECEMBER 8, 1972 AND ORDERED THE STATE ACCIDENT INSURANCE FUND (WCB CASE NO. 73-1106) AND LUMBERMEN'S MUTUAL CASUALTY COMPANY (WCB CASE NO. 73-1107) TO SHARE EQUALLY THE COST OF CLAIMANT'S COMPENSATION.

THE STATE ACCIDENT INSURANCE FUND AND LUMBERMEN'S MUTUAL EACH REQUESTED REVIEW OF THAT ORDER.

THE DISPUTE AROSE OUT OF THE FOLLOWING FACTS -

ON DECEMBER 3, 1969 CLAIMANT, A THEN 38 YEAR OLD TRUCK DRIVER WITH A HISTORY OF PREEXISTING BACK DISABILITY, SUFFERED ANOTHER LOW BACK INJURY WHEN HE FELL WHILE WORKING FOR NESS AND COMPANY, WHO CARRIED ITS WORKMEN'S COMPENSATION INSURANCE WITH LUMBERMEN'S MUTUAL CASUALTY COMPANY.

AFTER A SHORT PERIOD OF TEMPORARY DISABILITY HE RETURNED TO WORK AND WORKED STEADILY, ALBEIT WITH DIFFICULTY, UNTIL JANUARY 21, 1971 WHEN INCREASING PAIN FORCED INTERRUPTION OF HIS EMPLOYMENT.

ON JANUARY 28, 1971 DR. LAURENCE LANGSTON PERFORMED A LAMINECTOMY AND DISC EXCISION AT L2-L3.

ON MAY 10, 1971 FURTHER SURGERY FOR SCAR TISSUE REMOVAL, ADDITIONAL LAMINECTOMY AND FUSION OF THE L2-L3 VERTEBRAL BODIES WAS CARRIED OUT.

AFTER A PERIOD OF CONVALESCENCE AND AN UNSUCCESSFUL TRIAL OF LIGHT WORK, AND ADDITIONAL TREATMENT FOR COMPLICATIONS, HE WAS ENROLLED IN A VOCATIONAL REHABILITATION PROGRAM UNDER THE AUSPICES OF THE DIVISION OF VOCATIONAL REHABILITATION. AS A PART OF THAT HE WAS PLACED IN A WORK EXPERIENCE AND EVALUATION PROGRAM INVOLVING BEING ASSIGNED FOR ONE WEEK TO RIDE WITH A DRIVER OF A VAN TRANSPORTING NONAMBULATORY RETARDED CHILDREN.

ON DECEMBER 8, 1972, AN ICY DAY, HE SLIPPED ATTEMPTING TO REENTER THE VAN, FELL, AND SLID A SHORT DISTANCE ON THE ICE CAUSING REINJURY TO HIS BACK. HE SOUGHT AND RECEIVED ADDITIONAL MEDICAL TREATMENT FOR AN ACUTE LOW BACK STRAIN FROM HIS FAMILY PHYSICIAN, DR. GORDON V. MEYERS.

SHORTLY THEREAFTER NOTICE OF THE ADDITIONAL INJURY WAS GIVEN TO LUMBERMEN'S MUTUAL. LUMBERMEN'S MUTUAL SUGGESTED THAT CLAIMANT FILE A CLAIM AGAINST THE STATE ACCIDENT INSURANCE FUND WHICH PROVIDED WORKMEN'S COMPENSATION BENEFITS TO PERSONS INJURED WHILE IN THE COURSE OF A DIVISION OF VOCATIONAL REHABILITATION EVALUATION OR TRAINING PROGRAM. ON FEBRUARY 27, 1973 A CLAIM WAS MADE AGAINST THE STATE ACCIDENT INSURANCE FUND. LUMBERMEN'S MUTUAL THEN UNILATERALLY TERMINATED FURTHER BENEFITS TO CLAIMANT ON THE GROUND THAT HIS INJURY OF DECEMBER 8, 1972 WAS A NEW INJURY AND HIS SUBSEQUENT TEMPORARY TOTAL DISABILITY WAS ATTRIBUTABLE TO THAT INJURY.

THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM FOR THE DECEMBER 8, 1972 INJURY ON THE GROUNDS IT WAS LEGALLY AN AGGRAVATION OF THE DECEMBER 3, 1969 INJURY AND THUS THE RESPONSIBILITY OF LUMBERMEN'S MUTUAL.

CLAIMANT REQUESTED A HEARING TO CONTEST THE STATE ACCIDENT INSURANCE FUND'S DENIAL AND LUMBERMEN MUTUAL'S TERMINATION OF BENEFITS.

ON MARCH 27, 1973, IN ACCORDANCE WITH ORS 656.307(1), THE ADMINISTRATOR OF THE BOARD'S COMPLIANCE DIVISION DIRECTED LUMBERMEN'S MUTUAL CASUALTY COMPANY, TO CONTINUE MAKING PAYMENTS TO CLAIMANT PENDING A FINAL DETERMINATION OF RESPONSIBILITY IN THIS MATTER.

AFTER REVIEWING THE EVIDENCE THE HEARING OFFICER EQUALLY DIVIDED THE LIABILITY FOR THE DECEMBER 8, 1972 INJURY BETWEEN LUMBERMEN'S MUTUAL AND THE STATE ACCIDENT INSURANCE FUND. THE OREGON WORKMEN'S COMPENSATION LAW DOES NOT PERMIT APPORTIONMENT AND THE HEARING OFFICER ERRED IN ADOPTING THAT SOLUTION.

WE ARE THUS CONFRONTED WITH THE TASK OF CORRECTLY DETERMINING FACTUALLY AND LEGALLY, WHERE THE LIABILITY BELONGS.

IN THE EDWIN SAILER CASE, WCB CASE NOS. 72-3078 AND 72-3079, THE BOARD DEALT WITH THE RESOLUTION OF CLOSE AGGRAVATION-NEW INJURY CASES. WE STATED -

' ' WHERE THERE IS NO CLEAR FACTUAL BASIS TO DISTINGUISH WHICH OF TWO EMPLOYERS IS LIABLE FOR AN OBVIOUSLY COMPENSABLE CONDITION, POLICY CONSIDERATIONS MAY BE RESORTED TO IN ORDER TO RESOLVE THE PROBLEM. ' ' ! !

THE PATTERN OF EVIDENCE IN THIS CASE IS MUCH CLEARER THAN IN SAILER AND THE PATTERN SUGGESTS THAT THE STATE ACCIDENT INSURANCE FUND IS SOLELY LIABLE. ALTHOUGH THE EVIDENCE IS SOMEWHAT CONFUSED OVER EXACTLY HOW THE INJURY HAPPENED, THE BOARD IS CONVINCED THAT EITHER THE POOR FOOTING CAUSED BY THE WEATHER OR THE INHERENT DIFFICULTY IN REENTERING THE VEHICLE PLAYED A MAJOR PART IN PRECIPITATING THE FALL. IN ADDITION TO THIS FACTUAL BASIS WE NOTE THAT ORS 655.615(1) PROVIDES -

' ' ALL CLIENTS PARTICIPATING IN A WORK EVALUATION OR WORK EXPERIENCE PROGRAM OF THE DIVISION (OF VOCATIONAL REHABILITATION) ARE CONSIDERED AS WORKMEN SUBJECT TO ORS 656.001 TO 656.794 FOR THE PURPOSES OF THIS SECTION. ' ' ! !

IT IS APPARENT FROM THIS LANGUAGE THAT THE LEGISLATURE INTENDED THE BURDEN OF INJURIES ' ' ARISING OUT OF AND IN THE COURSE OF REHABILITATION ' ' TO BE BORNE BY THE REHABILITATION AGENCY AS FULLY AS THOUGH THE REHABILITATION CLIENT WERE AN ORDINARY EMPLOYEE.

CONSIDERING THE STATUTORY POLICY AND FACTS OF THIS CASE, THE BOARD IS PERSUADED THE CLAIMANT SUFFERED A NEW AND LEGALLY INDEPENDENT INJURY FOR WHICH THE STATE ACCIDENT INSURANCE FUND IS LIABLE. THIS IS NOT TO SAY THAT THE STATE ACCIDENT INSURANCE FUND IS NOW LIABLE FOR ALL CLAIMANT'S PREEXISTING DISABILITY. THE TIME LOSS, MEDICAL CARE AND PERMANENT DISABILITY ASSOCIATED WITH THE DECEMBER 3, 1969 INJURY REMAINS THE LIABILITY OF NESS AND COMPANY AND LUMBERMEN'S MUTUAL CASUALTY COMPANY.

THE STATE ACCIDENT INSURANCE FUND IS LIABLE ONLY FOR THE TIME LOSS, MEDICAL CARE AND PERMANENT DISABILITY (IF ANY) ATTRIBUTABLE TO THE DECEMBER 8, 1972 INJURY.

THE HEARING OFFICER'S ORDER APPORTIONING LIABILITY FOR COMPENSATION AND ATTORNEY'S FEES MUST BE REVERSED. ALTHOUGH LUMBERMEN'S CASUALTY ERRED IN UNILATERALLY TERMINATING TIME LOSS BENEFITS, THE NOVELTY OF THE PROBLEM AND THE LEGITIMACY OF THE QUESTION INDICATE NO PENALTY SHOULD BE ASSESSED AGAINST THE STATE ACCIDENT INSURANCE FUND OR LUMBERMEN'S MUTUAL.

ORDER

PARAGRAPH NUMBER ONE OF THE ORDER PORTION OF THE HEARING OFFICER'S ORDER IS HEREBY AFFIRMED.

PARAGRAPHS TWO, THREE AND FOUR OF SAID ORDER ARE HEREBY REVERSED.

THE LETTER OF DENIAL DATED MARCH 13, 1973, ISSUED BY LUMBERMEN'S MUTUAL CASUALTY COMPANY IS HEREBY APPROVED.

THE STATE ACCIDENT INSURANCE FUND IS HEREBY ORDERED TO ACCEPT CLAIMANT'S CLAIM FOR THE ACCIDENT OF DECEMBER 8, 1972 AND PAY TO CLAIMANT COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM DECEMBER 8, 1972 UNTIL SUCH TIME AS IT MAY PROPERLY BE TERMINATED PURSUANT TO ORS 656.268.

THE STATE ACCIDENT INSURANCE FUND IS HEREBY ORDERED TO REIMBURSE LUMBERMEN'S MUTUAL CASUALTY COMPANY FOR =

(1) ALL SUMS LUMBERMEN'S MUTUAL CASUALTY COMPANY PAID PURSUANT TO THE DIRECTIVE OF THE BOARD'S COMPLIANCE DIVISION DATED MARCH 27, 1973 AND,

(2) ALL SUMS LUMBERMEN'S MUTUAL CASUALTY COMPANY PAID PURSUANT TO THE HEARING OFFICER'S ORDER.

LUMBERMEN'S MUTUAL CASUALTY COMPANY AND THE STATE ACCIDENT INSURANCE FUND SHALL EACH SUBMIT THE CLAIM FOR WHICH THEY ARE RESPECTIVELY LIABLE TO THE EVALUATION DIVISION WHEN WARRANTED UNDER ORS 656.268.

CLAIMANT'S ATTORNEY IS HEREBY AWARDED A REASONABLE ATTORNEY'S FEE OF ONE THOUSAND DOLLARS, FOR HIS SERVICES AT THE HEARING AND ON THIS REVIEW, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, IN LIEU OF THE FEE AWARDED BY THE HEARING OFFICER.

WCB CASE NO. 73-557 FEBRUARY 22, 1974

LEROY A. CHRISTIANSEN, CLAIMANT
BOYER AND PUTNEY, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE IN THIS CASE IS EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED 48 DEGREES (15 PERCENT) FOR UNSCHEDULED PERMANENT PARTIAL DISABILITY OF THE NECK AND SHOULDERS. THE HEARING OFFICER INCREASED THIS AWARD TO A TOTAL OF 192 DEGREES (60 PERCENT) UNSCHEDULED PERMANENT PARTIAL DISABILITY. CLAIMANT APPEALS REQUESTING PERMANENT TOTAL DISABILITY.

THE CLAIMANT, A 50 YEAR OLD AUTO MECHANIC, RECEIVED A STRAIN TO HIS RIGHT ARM AND TO HIS NECK JUNE 11, 1970. HE LATER COMPLAINED OF NECK, SHOULDER AND ARM PAINS AND HEADACHES AND LATER STILL

LOW BACK PAINS. EXAMINATIONS BY ORTHOPEDISTS AND NEUROLOGISTS REVEALS MINIMAL PHYSICAL OBJECTIVE FINDINGS. THE PHYSICAL REHABILITATION CENTER ALSO FOUND MINIMAL PHYSICAL DISABILITY ALONG WITH MODERATE AGGRAVATION OF PREEXISTING PSYCHOPATHOLOGY. THEY FURTHER FOUND CLAIMANT IS ELIGIBLE FOR VOCATIONAL REHABILITATION SERVICES AND PSYCHOLOGICALLY HE IS CONSIDERED A FAIR CANDIDATE FOR REHABILITATION.

THE BOARD RECOMMENDS THAT CLAIMANT AVAIL HIMSELF OF THE SERVICES OF VOCATIONAL REHABILITATION TRAINING WHEN HE DECIDES HE WANTS TO.

ON DE NOVO REVIEW THE BOARD AFFIRMS THE FINDINGS AND ORDER OF THE HEARING OFFICER AND ADOPTS HIS OPINION AND ORDER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 6, 1973 IS AFFIRMED.

WCB CASE NO. 73-1848 FEBRUARY 22, 1974

DANICE FOSTER, CLAIMANT
BURNS AND EDWARDS, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.

A REQUEST FOR REVIEW, HAVING BEEN DULY FILED WITH THE WORKMEN'S COMPENSATION BOARD IN THE ABOVE ENTITLED MATTER BY THE EMPLOYER, AND SAID REQUEST FOR REVIEW NOW HAVING BEEN WITHDRAWN BY THE EMPLOYER'S COUNSEL,

IT IS THEREFORE ORDERED THAT THE REVIEW NOW PENDING BEFORE THE BOARD IS HEREBY DISMISSED.

WCB CASE NO. 73-1767 FEBRUARY 22, 1974

WILLIAM SULLIVAN, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
ROBERT E. JOSEPH, JR., DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS EXTENT OF PERMANENT DISABILITY. CLAIMANT WAS AWARDED 15 PERCENT FOR UNSCHEDULED LOW BACK DISABILITY BY THE DETERMINATION ORDER. THIS AWARD WAS AFFIRMED BY THE HEARING OFFICER. CLAIMANT REQUESTS AN INCREASE IN THE UNSCHEDULED PERMANENT PARTIAL DISABILITY.

CLAIMANT, A 28 YEAR OLD FITTER, RECEIVED A BACK INJURY AUGUST 31, 1971 AND CONTINUED WORK FOR APPROXIMATELY 10 MONTHS AFTER THE INJURY. HE HAD A SPINAL FUSION AND LAMINECTOMY IN

AUGUST OF 1972 AND RETURNED TO WORK FOR HIS FORMER EMPLOYER AT THE SAME OCCUPATION FIVE AND ONE HALF MONTHS LATER. CLAIMANT HAS WORKED CONTINUOUSLY AT STRENUOUS OCCUPATIONS SINCE JANUARY, 1973.

ON DE NOVO REVIEW OF THE ENTIRE RECORD, THE BOARD CONCURS WITH THE FINDINGS AND ORDER OF THE HEARING OFFICER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 13, 1973 IS AFFIRMED.

WCB CASE NO. 73-591 FEBRUARY 22, 1974

BRADLEY G. MATTICE, CLAIMANT

ROBERT E. JONES, CLAIMANT'S ATTY.

KEITH D. SKELTON, DEFENSE ATTY.

REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE INVOLVED IN THIS MATTER IS THE EXTENT OF PERMANENT PARTIAL DISABILITY.

CLAIMANT WAS AWARDED PERMANENT PARTIAL DISABILITY EQUAL TO 32 DEGREES OR 10 PERCENT LOW BACK DISABILITY BY THE DETERMINATION ORDER. THE HEARING OFFICER INCREASED THE AWARD TO A TOTAL OF 112 DEGREES EQUAL TO 35 PERCENT LOW BACK DISABILITY. THE EMPLOYER REQUESTS BOARD REVIEW.

THIS 25 YEAR OLD CHOKER SETTER WAS HIT IN THE HEAD BY A HAUL-BACK CABLE AUGUST 24, 1970. AN ORTHOPEDIST AND NEUROLOGIST FOUND MINIMAL PHYSICAL INJURY AND RECOMMENDED BACK EVALUATION WORKUP. THE BACK EVALUATION CLINIC DIAGNOSED CHRONIC LOW BACK STRAIN WITH NO EVIDENCE OF DISC PATHOLOGY AND NORMAL NEUROLOGICAL FINDINGS. THE PHYSICAL REHABILITATION CENTER FOUND CLAIMANT'S PHYSICAL DISABILITY AS MINIMAL.

CLAIMANT ATTEMPTED ON TWO OCCASIONS TO GO BACK TO STRENUOUS WORK AS A CHOKER SETTER AND AS A CAT DRIVER. HE WAS UNABLE TO MAINTAIN EITHER OF THESE OCCUPATIONS.

CLAIMANT DESIRES TO ESTABLISH HIS OWN MACHINE SHOP WITH THE HELP OF TRAINING BY CLAIMANT'S FATHER IN MACHINE SHOP WORK.

ON DE NOVO REVIEW OF THE ENTIRE RECORD, THE BOARD AFFIRMS THE FINDINGS AND ORDER OF THE HEARING OFFICER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 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 EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 73-574

FEBRUARY 22, 1974

ARLIE L. KILGORE, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS CLAIMANT SEEKS BOARD REVIEW OF A HEARING OFFICER'S ORDER WHICH GRANTED AN AWARD OF PERMANENT PARTIAL DISABILITY EQUAL TO 25 PERCENT OR 80 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY AND 42.04 DEGREES FOR COMBINED BINAURAL HEARING LOSS. THE STATE ACCIDENT INSURANCE FUND REJECTED THAT PORTION OF THE HEARING OFFICER'S ORDER WITH RESPECT TO THE AWARD FOR HEARING LOSS, THEREBY CONSTITUTING REFERRAL TO A MEDICAL BOARD OF REVIEW. THE ONLY ISSUE BEFORE THE BOARD ON REVIEW IS THE EXTENT OF PERMANENT DISABILITY FOR THE INJURY TO THE LOW BACK.

CLAIMANT, A 48 YEAR OLD SAWMILL WORKER, RECEIVED A BACK INJURY MARCH 13, 1972. HE HAS RECEIVED CONSERVATIVE TREATMENT. THE BACK EVALUATION CLINIC RATES HIS BACK INJURY AS MILD AND RECOMMENDS THAT HE SHOULD NOT RETURN TO HIS FORMER OCCUPATION BUT HE CAN ENGAGE IN SOME OCCUPATION.

CLAIMANT'S EMPLOYER AT THE TIME OF THE INJURY REPEATEDLY OFFERED LIGHT DUTY JOBS TO THE CLAIMANT. HE WOULD NOT ATTEMPT THIS LIGHT WORK EVEN THOUGH CLEARED FOR IT BY HIS PHYSICIAN. CLAIMANT HAS ALSO NEGLECTED TO FOLLOW THROUGH ON A RECOMMENDED VOCATIONAL REHABILITATION TRAINING PROGRAM.

CLAIMANT HAS DEMONSTRATED A LACK OF MOTIVATION TO BE GAINFULLY EMPLOYED OR RETRAINED AND THEREFORE THE ORDER OF THE HEARING OFFICER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 3, 1973, WITH RESPECT TO THE PERMANENT PARTIAL DISABILITY AWARD FOR UNSCHEDULED DISABILITY IS AFFIRMED.

WCB CASE NO. 73-574

FEBRUARY 22, 1974

ARLIE L. KILGORE, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.

THIS MATTER INVOLVES THE EXTENT OF DISABILITY RESULTING FROM AN ACCEPTED OCCUPATIONAL DISEASE CLAIM FOR BINAURAL HEARING LOSS CONTRACTED BY CLAIMANT IN THE COURSE OF HIS EMPLOYMENT.

CLAIMANT RECEIVED NO AWARD FOR HEARING LOSS PURSUANT TO A DETERMINATION ORDER, BUT UPON HEARING, THE HEARING OFFICER AWARDED CLAIMANT A COMBINED BINAURAL HEARING LOSS EQUIVALENT TO 42.04 DEGREES

OF A MAXIMUM OF 192 DEGREES OR 21.9 PERCENT. THE STATE ACCIDENT INSURANCE FUND REJECTED THIS PORTION OF THE HEARING OFFICER'S ORDER, THEREBY CONVENING A MEDICAL BOARD OF REVIEW.

THE FINDINGS OF THE MEDICAL BOARD OF REVIEW HAVE NOW BEEN RECEIVED, A COPY ATTACHED HERETO, MARKED EXHIBIT !!A!!, AND DECLARED FILED AS OF DECEMBER 18, 1973. THE MEDICAL BOARD OF REVIEW HAS FOUND CLAIMANT'S OCCUPATIONAL DISEASE IS PERMANENTLY DISABLING AND EQUIVALENT TO 60.48 DEGREES OR 31.5 PERCENT.

PURSUANT TO ORS 656.814, THE FINDINGS AND CONCLUSIONS OF THE MEDICAL BOARD OF REVIEW ARE FINAL AND BINDING AS A MATTER OF LAW.

WCB CASE NO. 72-2883 FEBRUARY 22, 1974

DONALD J. SCHMITZ, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
COLLINS, FERRIS AND VELURE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS AN INCREASE FROM THE 64 DEGREES PERMANENT PARTIAL LOW BACK DISABILITY AWARDED BY THE DETERMINATION ORDER AND AFFIRMED BY THE HEARING OFFICER.

CLAIMANT, A 37 YEAR OLD CARPENTER, INJURED HIS LOW BACK JUNE 3, 1970. CLAIMANT HAS RECEIVED CONSERVATIVE TREATMENT, HAS HAD EXHAUSTIVE EXAMINATIONS BY NUMEROUS ORTHOPEDISTS, NEUROLOGISTS, PSYCHOLOGISTS AND PSYCHIATRISTS. HE HAS HAD TWO MYELOGRAMS WITH NEGATIVE FINDINGS. THE PHYSICAL FINDINGS BY THE BACK EVALUATION CLINIC REFLECT ONLY A MINIMAL AMOUNT OF PHYSICAL FINDINGS. THE PREPONDERANCE OF THE MEDICAL SPECIALISTS' OPINION IS THAT CLAIMANT COULD RETURN TO HIS OLD WORK.

CLAIMANT HAS SUPERIOR LEVEL OF INTELLIGENCE AND RETRAINABILITY AND IN FACT, HAS DEMONSTRATED HIS ABILITY TO RETRAIN BY MAKING EXCELLENT GRADES IN AN ACCOUNTING COURSE AT THE COMMUNITY COLLEGE.

ON DE NOVO REVIEW, THE BOARD AFFIRMS THE OPINION AND ORDER OF THE HEARING OFFICER AND ADOPTS THE HEARING OFFICER'S OPINION AND ORDER AS ITS OWN.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 21, 1973 IS AFFIRMED.

SHEILA M. BEBOUT, DECEASED
AND THE COMPLYING STATUS OF
T.C.I., INC., DBA THE COMPANY, INC.
RHOTEN, RHOTEN AND SPEERSTRA,
BENEFICIARIES' ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE BENEFICIARIES OF THE ABOVE NAMED DECEDENT HAVE REQUESTED REVIEW OF A HEARING OFFICER'S ORDER DATED MAY 31, 1973 DISMISSING THEIR REQUEST FOR HEARING ON THE GROUND THAT IT HAD NOT BEEN FILED WITHIN THE TIME PROVIDED BY LAW.

THE BENEFICIARIES SEEK REVERSAL OF THAT ORDER AND AN ORDER ALLOWING COMPENSATION TO THEM.

FINDINGS

SHEILA M. BEBOUT, A 39 YEAR OLD ADVERTISING AND PUBLIC RELATIONS REPRESENTATIVE FOR T.C.I., INC., A PORTLAND ADVERTISING AGENCY, DIED ON THURSDAY, FEBRUARY 26, 1970, FROM INJURIES RECEIVED IN AN AUTO ACCIDENT WHEN HER CAR LEFT THE SOUTH BOUND LANE OF INTERSTATE 5 JUST NORTH OF SALEM, OREGON AT APPROXIMATELY SIX FIFTEEN P.M. THE PRESIDENT OF T.C.I., INC., JAMES L. BURKHART, HAPPENED TO BE PASSING BY AND, STOPPED AT THE SCENE OF THE ACCIDENT THUS GAINING KNOWLEDGE OF WHEN AND WHERE AND HOW THE ACCIDENT OCCURRED.

WITHIN A FEW DAYS WILLIAM BEBOUT, DECEDENT'S SURVIVING SPOUSE, MET WITH MR. BURKHART AND LEARNED THAT WHILE THE COMPANY HAD NO PARTICULAR INSURANCE PROGRAM COVERING THE DECEDENT HE COULD BE ASSURED THAT IT WOULD PROVIDE MONEY BENEFITS TO HIM FOR THE SUPPORT OF HER CHILDREN FROM A PRIOR MARRIAGE. BETWEEN THEN AND APRIL 13, 1970, T.C.I., INC. PAID A TOTAL OF THREE THOUSAND DOLLARS TO MR. BEBOUT FOR THE FAMILY'S BENEFIT.

THEREAFTER, IT EVENTUALLY BECAME APPARENT TO MR. BEBOUT THAT T.C.I. WAS FAILING FINANCIALLY AND NO FURTHER FUNDS WOULD BE FORTHCOMING. ON OCTOBER 6, 1971, T.C.I. FILED A PETITION FOR BANKRUPTCY.

ON NOVEMBER 26, 1971 MR. BEBOUT MADE A FORMAL CLAIM FOR WORKMEN'S COMPENSATION BENEFITS WITH T.C.I., INC. AND, ON ACCOUNT OF THE PROVISIONS OF ORS 656.054, WITH THE STATE ACCIDENT INSURANCE FUND. T.C.I. MADE NO RESPONSE. THE STATE ACCIDENT INSURANCE FUND SENT THE CLAIM IT RECEIVED TO THE COMPLIANCE DIVISION OF THE WORKMEN'S COMPENSATION BOARD.

ON DECEMBER 22, 1971, THE THEN ADMINISTRATOR OF THE DIVISION, W. L. POMEROY, REFUSED TO PROCESS THE CLAIM UNDER ORS 656.054 ON THE GROUNDS THAT THE CLAIM HAD BEEN UNTIMELY FILED AND FURTHER, THAT BY VIRTUE OF ORS 656.319, THE BENEFICIARIES HAD LOST THE LEGAL ABILITY TO ENFORCE THE CLAIM. IN EFFECT, THE COMPLIANCE DIVISION HAD DENIED THE CLAIM ON BEHALF OF THE EMPLOYER.

ON DECEMBER 29, 1971, THE BENEFICIARIES REQUESTED A HEARING TO ESTABLISH THEIR RIGHT TO MAKE AND ENFORCE A CLAIM FOR SURVIVORS BENEFITS.

A HEARING WAS HELD ON JUNE 5, 1972 BEFORE HEARING OFFICER HAROLD M. DARON. T.C.I., INC. DID NOT APPEAR - THE STATE ACCIDENT INSURANCE FUND HAD NO NOTICE OF THE HEARING. THE HEARING OFFICER RULED THE CLAIM HAD BEEN TIMELY FILED AND WAS LEGALLY ENFORCEABLE AND THEREFORE REMANDED THE MATTER TO THE COMPLIANCE DIVISION FOR PROCESSING. THE COMPLIANCE DIVISION THEREUPON ISSUED A FINAL ORDER DECLARING T.C.I., INC. TO HAVE BEEN A NONCOMPLYING EMPLOYER ON FEBRUARY 26, 1970.

INTERNAL AGENCY COMMUNICATIONS BROUGHT TO THE BOARD'S ATTENTION THAT THE STATE ACCIDENT INSURANCE FUND HAD NEVER BEEN NOTIFIED OF THE JUNE 5, 1972 HEARING NOR HAD T.C.I., INC. EVER BEEN GIVEN THE OPPORTUNITY TO CONTEST THE JUNE 29, 1972 COMPLIANCE DIVISION ORDER DECLARING IT A NONCOMPLYING EMPLOYER.

CONCERNED WITH THE LACK OF PROCEDURAL FAIRNESS CAUSED BY THESE IRREGULARITIES THE BOARD, ON ITS OWN MOTION, ENTERED AN ORDER (1) VACATING THE HEARING OFFICER'S ORDER OF JUNE 22, 1972 AND THE COMPLIANCE DIVISION'S ORDER OF JUNE 29, 1972, (2) DIRECTING THAT THE STATE ACCIDENT INSURANCE FUND BE JOINED AS A PARTY AND (3) REMANDING THE MATTER TO THE HEARINGS DIVISION FOR A NEW HEARING ON ALL THE ISSUES OF THE CLAIM.

PURSUANT TO PROPER NOTICE, THE REMAND HEARING WAS CONVENED ON APRIL 3, 1973 BEFORE JOHN R. MCCULLOUGH, HEARING OFFICER. NEW EVIDENCE ESTABLISHED THAT ALTHOUGH THE CONDUCT OF PUBLIC RELATIONS AND ADVERTISING BUSINESS INHERENTLY INVOLVES LONG AND IRREGULAR HOURS, THE DECEDENT DEVOTED PRACTICALLY ALL HER WAKING HOURS AND ENERGIES (PARTICULARLY DURING THE WEEK) TO FURTHERING HER EMPLOYER'S BUSINESS. T.C.I.'S PRESIDENT WAS AWARE OF THESE PROCLIVITIES AND THEY UNDOUBTEDLY WERE A MATERIAL FACTOR IN HER BEING EMPLOYED BY THE COMPANY.

THE EVIDENCE PRESENTED TO HEARING OFFICER DARON WAS RESUBMITTED TO HEARING OFFICER MCCULLOUGH. HEARING OFFICER MCCULLOUGH DECIDED THAT THE THREE THOUSAND DOLLARS PAID BY T.C.I. COULD NOT BE CONSIDERED COMPENSATION AS THAT TERM IS DEFINED BY ORS 656.002 (7) AND THAT BY VIRTUE OF SUBSECTION (1) (A) OF ORS 656.319 THE BENEFICIARIES' REQUEST FOR HEARING WAS UNTIMELY.

ALL PARTIES HAVE NOW HAD THE OPPORTUNITY TO PRESENT THEIR EVIDENCE AND LEGAL ARGUMENTS ON ALL ISSUES. THE BOARD HAS STUDIED THE EVIDENCE AND STUDIED THE EXCELLENT AND HELPFUL BELIEFS SUBMITTED BY BOTH PARTIES. HAVING DONE SO, IT CONCLUDES HEARING OFFICER MCCULLOUGH ERRED IN HIS FINDING AND ORDER DISMISSING THE MATTER.

THE WORKMEN'S COMPENSATION LAW IMPOSES COMPENSATION LIABILITY UPON ALL SUBJECT EMPLOYERS. ALTHOUGH IT APPEARS THIS EMPLOYER IMPERFECTLY UNDERSTOOD ITS LIABILITY, IT IS APPARENT IT SENSED ITS GENERAL OBLIGATION TO THE SURVIVORS DUE TO THE CIRCUMSTANCES OF THE DECEDENT'S DEATH. THE MAKING OF THE THREE THOUSAND DOLLAR PAYMENT WAS FOUNDED ON THAT SENSE OF LIABILITY AND OBLIGATION. WE THEREFORE CONCLUDE THE PAYMENTS MADE WERE 'COMPENSATION' WITHIN THE MEANING OF ORS 656.265 (4) (B).

WE ALSO DISAGREE WITH HEARING OFFICER MCCULLOUGH'S RULING THAT ORS 656.265 (4) (A) IS NOT APPLICABLE IN THIS CASE.

THE PRINTZ CASE (PRINTZ V. SCD, 253 OR 148 (1969)) REFERRED TO BY THE HEARING OFFICER, IS COMPLETELY DISTINGUISHABLE ON THE

FACTS. IT DEALT PRIMARILY WITH THE QUESTION OF THE APPLICABLE TIME LIMIT FOR REQUESTING A HEARING AFTER THE COURT HAD DECIDED THAT SINCE A REPORT OF AN EMPLOYEE'S DEATH MADE BY THE EMPLOYER TO THE STATE ACCIDENT INSURANCE FUND DID NOT CONSTITUTE A CLAIM, NO VALID DENIAL THEREOF HAD OCCURRED AND THEREFORE ORS 656.319 (2) DID NOT BAR HER REQUEST FOR HEARING.

ORS 656.265(1) RELATES NOT TO CLAIMS BUT TO NOTICES OF ACCIDENTS - ACCIDENTS INVOLVING INJURY OR DEATH. THE LEGISLATURE OBVIOUSLY INTENDED ALL CLASSES OF CLAIMANTS TO GIVE TIMELY WRITTEN NOTICE OF ACCIDENTS AND FURTHER PROVIDED (IN SUBSECTION (4)) THAT THE CLAIM WAS BARRED UNLESS CERTAIN OTHER FACT PATTERNS WERE ESTABLISHED OBTAINING THE NECESSITY FOR, OR EXCUSING THE FAILURE OF, GIVING TIMELY WRITTEN NOTICE.

WE AGREE WITH HEARING OFFICER DARON'S CONCLUSION THAT BY VIRTUE OF THE FACT THAT THE EMPLOYER HAD ACTUAL KNOWLEDGE OF THE DEATH, INCLUDING WHEN AND WHERE AND HOW IT HAD OCCURRED, AND THAT IT HAD BEGUN PAYMENTS OF COMPENSATION, THE BENEFICIARIES' FAILURE TO GIVE TIMELY WRITTEN NOTICE OF THE DEATH DID NOT BAR THE CLAIM MADE ON NOVEMBER 21, 1971.

WE DO NOT AGREE WITH EITHER HEARING OFFICERS' CONCLUSION THAT ORS 656.319 (1) IS APPLICABLE IN THIS CASE.

SUBSECTION (1) OBVIOUSLY APPLIES TO ACCEPTED COMPENSABLE CLAIMS, SUBSECTION (2) APPLIES TO DENIED CLAIMS. W. L. POMEROY'S LETTER OF DECEMBER 22, 1971 WAS PLAINLY A DENIAL OF THE CLAIM, THAT IT WAS NOT MADE BY THE EMPLOYER WHOSE DUTY IT WAS TO ACCEPT OR DENY, BUT RATHER BY THE WORKMEN'S COMPENSATION BOARD, MAKES IT NO LESS A DENIAL AS FAR AS THE BENEFICIARIES ARE CONCERNED UNDER ORS 656.319 (2) (A). THUS, THE BENEFICIARIES HAD 60 DAYS FROM DECEMBER 22, 1971 WITHIN WHICH TO REQUEST A HEARING. THE HEARING REQUEST OF DECEMBER 29, 1971 WAS TIMELY.

HEARING OFFICER MCCULLOUGH'S DISPOSITION OF THE CASE RENDERED THE ISSUE OF COMPENSABILITY MOOT AND HE DID NOT DECIDE IT. THE FUND CONTENDS THE BOARD SHOULD REMAND THE CASE TO THE HEARING OFFICER FOR A DECISION ON THE COMPENSABILITY ISSUE.

WHILE THE BOARD HAS THE POWER TO REMAND UNDER ORS 656.295 (6) IT ALSO HAS THE POWER TO !!! . . . SUPPLEMENT THE ORDER OF THE HEARING OFFICER AND MAKE SUCH DISPOSITION OF THE CASE AS IT DETERMINES IS APPROPRIATE. !! UNDER THE CIRCUMSTANCES THE ONLY APPROPRIATE DISPOSITION IS A FINAL BOARD DECISION ON THE MERITS OF THE CLAIM.

IN THE CIVIL ACTIONS BROUGHT AGAINST THIS EMPLOYER ARISING OUT OF THE DECEDENT'S FATAL ACCIDENT, THE OREGON SUPREME COURT CONCLUDED T.C.I., INC. WAS NOT LIABLE TO THE PLAINTIFFS BECAUSE DECEDENT WAS NOT IN THE FURTHERANCE OF HER EMPLOYER'S BUSINESS NOR WAS SHE SUBJECT TO HIS DIRECTION AND CONTROL. THAT RULING IS NOT DETERMINATIVE. THE COURT RULED ON THE ISSUE IN THE MILIEU OF THE EMPLOYER'S CIVIL TORT LIABILITY TO A THIRD PARTY WHILE THE INSTANT PROCEEDINGS INVOLVE THE RELATIONSHIP OF EMPLOYER TO EMPLOYEE.

IT SHOULD ALSO BE CAREFULLY NOTED THAT THE EVIDENCE PRESENTED IN THE COMPENSATION PROCEEDINGS CONCERNING THE NATURE OF THE RELATIONSHIP BETWEEN DECEDENT AND THE EMPLOYER WAS MORE PRECISE AND COMPLETE THAN THAT PRESENTED IN THE CIVIL TRIAL. FROM THAT

EVIDENCE THE BOARD IS PERSUADED THAT, WITHIN THE MEANING OF THE OREGON WORKMEN'S COMPENSATION LAW, THE DECEDENT'S DEATH AROSE OUT OF AND IN THE COURSE OF HER EMPLOYMENT BY T.C.I., INC., A THEN SUBJECT AND NONCOMPLYING EMPLOYER. THE BENEFICIARIES ARE THUS ENTITLED TO THE BENEFITS PROVIDED BY LAW.

COUNSEL FOR THE BENEFICIARIES HAVE PERFORMED EXTRAORDINARY SERVICES AND ARE ENTITLED TO A FEE BEYOND THAT ORDINARILY ALLOWED.

ORDER

THE HEARING OFFICER'S ORDER OF MAY 31, 1973 IS HEREBY REVERSED.

T.C.I., INC., IS HEREBY DECLARED TO HAVE BEEN A SUBJECT NON-COMPLYING EMPLOYER ON FEBRUARY 26, 1970.

UNDER THE PROVISIONS OF ORS 656.054 THE CLAIM OF THE BENEFICIARIES IS HEREBY REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR PAYMENT OF WORKMEN'S COMPENSATION BENEFITS TO THE BENEFICIARIES WITH APPROPRIATE OFFSET FOR THE THREE THOUSAND DOLLARS PREVIOUSLY PAID BY THE EMPLOYER, AND FOR PAYMENT OF A REASONABLE ATTORNEY'S FEE IN THE AMOUNT OF TWO THOUSAND DOLLARS TO RHOTEN, RHOTEN AND SPEERSTRA, ATTORNEYS AT LAW.

SAID COMPENSATION AND ATTORNEY'S FEES SHALL BE REIMBURSED TO THE STATE ACCIDENT INSURANCE FUND IN ACCORDANCE WITH ORS 656.054(2).

IN ACCORDANCE WITH ORS 656.313 APPEAL OF THIS ORDER SHALL NOT STAY PAYMENT OF COMPENSATION.

WCB CASE NO. 73-2369 FEBRUARY 22, 1974

GRANVEL C. SMALLEY, CLAIMANT
FRANKLIN, BENNETT, OFELT, DES BRISAY
AND JOLLES, CLAIMANT'S ATTYS.
JAQUA AND WHEATLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE INVOLVED IS THE EXTENT OF PERMANENT PARTIAL DISABILITY.

CLAIMANT WAS AWARDED 20 PERCENT FOR UNSCHEDULED LOW BACK DISABILITY AND 15 PERCENT LOSS OF RIGHT LEG BY THE DETERMINATION ORDER WHICH WAS AFFIRMED BY THE REFEREE.

CLAIMANT, A 43 YEAR OLD MILLWRIGHT, FELL JANUARY 12, 1971. HE RECEIVED CONSERVATIVE MEDICAL CARE FOR OVER A YEAR AND THEN HAD A LUMBAR FUSION. HE WENT BACK TO WORK AS A MILLWRIGHT FOR THE SAME EMPLOYER AFTER RECOVERING FROM THE SURGERY AND HAS WORKED STEADILY NINE AND ONE HALF HOURS PER DAY, SIX DAYS PER WEEK. CLAIMANT IS THIRD HIGHEST IN SENIORITY AMONG 11 MILLWRIGHTS AT THE PLANT. HE CANNOT LIFT HEAVY OBJECTS AND REQUIRES HELP FROM FELLOW WORKERS TO PERFORM SOME OF HIS DUTIES. WHEN THE BACK PAIN BECOMES INTOLERABLE HE IS GIVEN SPECIAL REST PERIODS UNTIL HE HAS RECOVERED SUFFICIENTLY TO CONTINUE WORKING.

UPON DE NOVO REVIEW, THE BOARD FINDS THAT CLAIMANT HAS EXCELLENT MOTIVATION, DRIVE AND DETERMINATION. CLAIMANT'S CREDIBILITY IS EXCELLENT. CLAIMANT'S LOSS OF FUTURE EARNING CAPACITY IS SUBSTANTIALLY IMPAIRED.

ORDER

THE ORDER OF THE REFEREE DATED NOVEMBER 16, 1973 IS REVERSED.

CLAIMANT IS AWARDED AN ADDITIONAL 64 DEGREES RESULTING IN A TOTAL OF 128 DEGREES FOR UNSCHEDULED PERMANENT PARTIAL LOW BACK DISABILITY. THE 22.5 DEGREES LOSS OF THE RIGHT LEG AWARDED BY THE DETERMINATION ORDER IS AFFIRMED.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE, 25 PERCENT OF THE INCREASE IN COMPENSATION ASSOCIATED WITH THIS AWARD WHICH SHALL NOT EXCEED FIFTEEN HUNDRED DOLLARS.

WCB CASE NO. 73-803 FEBRUARY 27, 1974

DAVID BLANCHARD, AKA
DANIEL BLANCHARD, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPT. 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 DATED FEBRUARY 15, 1973 AWARDED CERTAIN PERMANENT PARTIAL DISABILITY COMPENSATION, CONTENDING HIS DISABILITY EXCEEDS THAT AWARDED.

ON JULY 25, 1969, CLAIMANT, A 19 YEAR OLD DELIVERYMAN FOR A AND F AUTO PAINT SUPPLY SUFFERED SEVERE, MULTIPLE INJURIES IN A MOTOR VEHICLE ACCIDENT ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT.

A LONG COURSE OF TREATMENT AND CONVALESCENCE ENSUED BUT HE WAS LEFT WITH SIGNIFICANT PERMANENT DISABILITIES. THE DETERMINATION ORDER GRANTED HIM -

50 PERCENT LOSS OF THE LEFT LEG.
15 PERCENT LOSS OF THE RIGHT FOOT.
10 PERCENT LOSS OF THE RIGHT FOREARM.
40 PERCENT FOR UNSCHEDULED HEAD DISABILITY.

THESE DISABILITIES HAVE NECESSITATED VOCATIONAL REHABILITATION EFFORTS, WHICH ALTHOUGH NOT YET SUCCESSFUL, APPEAR TO HAVE A REASONABLE CHANCE OF SUCCEEDING.

THE HEARING OFFICER, IN A WELL WRITTEN OPINION, CONCLUDED THE CLAIMANT HAD BEEN ADEQUATELY COMPENSATED. THE BOARD AGREES WITH HIS FINDINGS AND CONCLUSIONS AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

THIS AGENCY IS INTERESTED IN ASSISTING IN THIS YOUNG MAN'S VOCATIONAL REHABILITATION EFFORTS AND WILL, BY INTRA-AGENCY MEMORANDUM, DIRECT ITS DISABILITY PREVENTION DIVISION TO EXTEND ITS SERVICES TO THE CLAIMANT.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 31, 1973 IS AFFIRMED.

WCB CASE NO. 71-2479 FEBRUARY 28, 1974

MYRON W. CAREY, CLAIMANT
FABRE AND EHLERS, CLAIMANT'S ATTYS.
COREY, BYLER AND REW, DEFENSE ATTYS.

CLAIMANT'S ATTORNEY, LEEROY O. EHLERS, HAS PETITIONED THE BOARD FOR AN ORDER REQUIRING THE EMPLOYER TO PAY HIM A REASONABLE FEE FOR HIS SERVICES IN CONNECTION WITH THE EMPLOYER'S UNSUCCESSFUL APPEAL OF THE ABOVE ENTITLED MATTER TO A MEDICAL BOARD OF REVIEW.

THE BOARD, BEING NOW FULLY ADVISED, FINDS THE PETITION WELL TAKEN AND CONCLUDES IT SHOULD BE GRANTED.

ORDER

THE EMPLOYER, ARROW CHEVROLET INC., THROUGH ITS CARRIER, UNIVERSAL UNDERWRITERS INSURANCE, IS HEREBY ORDERED TO PAY CLAIMANT'S ATTORNEY, LEEROY O. EHLERS, A REASONABLE ATTORNEY'S FEE OF FOUR HUNDRED NINETY DOLLARS, FOR HIS SERVICES IN CONNECTION WITH THE MEDICAL BOARD OF REVIEW PROCEEDING. SAID FEE SHALL BE PAID IN ADDITION TO, AND NOT OUT OF, THE COMPENSATION AWARDED TO THE CLAIMANT.

WCB CASE NO. 72-3405 FEBRUARY 28, 1974

NANCY SCHLECHT, 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 MOORE.

THE ISSUE INVOLVED IS THE EXTENT OF PERMANENT PARTIAL DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 32 DEGREES (10 PERCENT) FOR UNSCHEDULED NECK, LEFT SHOULDER AND LOW BACK PERMANENT PARTIAL DISABILITY. THE HEARING OFFICER AFFIRMED THIS AWARD.

THIS 24 YEAR OLD MARRIED FILE CLERK FELL ON A STAIRWAY ON JANUARY 25, 1972 AND HAS RECEIVED CONSERVATIVE TREATMENT FOR HER NECK, SHOULDER AND LOW BACK PROBLEMS.

VARIOUS SPECIALISTS HAVE TREATED AND EXAMINED CLAIMANT AND THE REPORTS REVEAL NO OBJECTIVE FINDINGS OF SERIOUS INJURY. THE BACK EVALUATION CLINIC STATES LOSS OF FUNCTION IS MINIMAL.

CLAIMANT HAS RETURNED TO HER FORMER JOB AND IS FUNCTIONING WELL. BASED ON THIS AND ALL OF THE OTHER EVIDENCE IN THE RECORD IT IS APPARENT THAT HER LOSS OF EARNING CAPACITY IS ADEQUATELY COMPENSATED BY THE 32 DEGREES AWARDED.

THE HEARING OFFICER SAW AND HEARD THE WITNESSES AND WEIGHT IS GIVEN TO HIS FINDINGS AND ANALYSIS. THE IRRELEVANT COMMENT AS TO THE DOLLAR AMOUNT EXPENDED FOR TEMPORARY TOTAL DISABILITY AND MEDICAL BILLS IS DISREGARDED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 21, 1973. IS AFFIRMED.

WCB CASE NO. 72-3201 FEBRUARY 28, 1974

FRED O' NEALL, CLAIMANT

COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPT. 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 SUBMIT THE WORKMAN'S CLAIM TO THE EVALUATION DIVISION OF THE WORKMEN'S COMPENSATION BOARD FOR A DETERMINATION UNDER ORS 656.268.

PRIOR TO THE ENACTMENT OF CHAPTER 620, OREGON LAWS 1973 (SB 458), THE LAW MADE NO PROCEDURAL DISTINCTION BETWEEN A DIS-ABLING COMPENSABLE INJURY AND A 'MEDICAL ONLY' CLAIM. IN FURTHERANCE OF ITS DUTY TO ADMINISTER THE WORKMEN'S COMPENSATION LAW THE BOARD ADOPTED WCB ADMINISTRATIVE ORDER NO. 4-1970 WHICH, AS AMENDED JANUARY 15, 1973, PROVIDED -

''4.01 THE LAW REQUIRES THE BOARD TO MAKE A DETERMINATION OF COMPENSATION DUE ON EVERY COMPENSABLE INJURY. (ORS 656.268)

''4.01 A. EXCEPTION = CLAIMS INVOLVING NO COMPEN- SABLE LOSS OF TIME FROM WORK, CLAIMS INVOLVING NO MEDICAL SERVICES, AND CLAIMS INVOLVING ONLY MEDICAL SERVICES WILL BE ADMINISTRATIVELY CLOSED. THIS CLOSURE DOES NOT CONSTITUTE A DETERMINATION PUR- SUANT TO ORS 656.268. ''

THE VIRTUE OF THIS RULE WAS THAT IT AVOIDED THE CONSIDERABLE EXPENSE OF FORMALLY DETERMINING A HOST OF MINOR INJURY CLAIMS, THE VAST MAJORITY OF WHICH WOULD NEVER NEED FURTHER MEDICAL OR ADMINISTRATIVE ATTENTION. AT THE SAME TIME, THE WORKMAN'S RIGHT TO SECURE ADDITIONAL COMPENSATION IN THE RARE CASE WHERE IT

LATER PROVED NECESSARY, WAS NOT PREJUDICED BECAUSE HE WAS ENTITLED TO A FORMAL DETERMINATION ORDER. THE RULE MADE SENSE FOR BOTH EMPLOYERS AND WORKMEN.

THE HEARING OFFICER PROPERLY REQUIRED THE FUND TO SUBMIT THE CLAIM FOR DETERMINATION IN ACCORDANCE WITH THE RULES OF THE AGENCY AND HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 30, 1973 IS AFFIRMED.

CLAIMANT'S COUNSEL 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. 73-1347 FEBRUARY 28, 1974

RONALD E. LUNDQUIST, CLAIMANT
KLOSTERMAN AND JOACHIMS, CLAIMANT'S ATTYS.
DEPT. 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 AWARDED CLAIMANT 37.5 DEGREES OF COMPENSATION FOR 25 PERCENT LOSS FUNCTION OF THE RIGHT LEG.

CLAIMANT CONTENDS THAT HIS CLAIM WAS PREMATURELY CLOSED, THAT HIS PERMANENT LEG DISABILITY IS GREATER THAN THAT AWARDED AND THAT HE IS ALSO ENTITLED TO AN AWARD OF UNSCHEDULED DISABILITY.

CLAIMANT, A 53 YEAR OLD SERVICE STATION ATTENDANT, SUFFERED A COMMINUTED INTERTROCHANTERIC FRACTURE OF THE RIGHT FEMUR ON FEBRUARY 7, 1972 WHEN HE FELL AT WORK. ORTHOPEDIC SURGERY WAS NECESSARY TO REPAIR THE FRACTURE. HIS CONVALESCENCE WAS UNEVENTFUL BUT BECAUSE OF EXPECTED PERMANENT RESIDUALS, VOCATIONAL REHABILITATION WAS ADVISED.

HIS TREATING PHYSICIAN RELEASED HIM TO MODIFIED WORK ON DECEMBER 20, 1972 AND ON JANUARY 8, 1973 HE WAS EXAMINED BY DR. POST OF THE VOCATIONAL REHABILITATION DIVISION PREPARATORY TO DEVISING A REHABILITATION PLAN. AMONG OTHER THINGS, HIS EXAMINATION REVEALED THAT CLAIMANT'S CONDITION WAS STILL IMPROVING AND HE RECOMMENDED AGAINST CLAIM CLOSURE AT THAT TIME. THE CLAIM WAS ULTIMATELY CLOSED ON MARCH 9, 1973. IN RELIANCE UPON THE FINDINGS OF DR. NATHAN SHLIM, TEMPORARY DISABILITY BENEFITS WERE TERMINATED AS OF FEBRUARY 28, 1973.

IN HIS APPEAL BRIEF CLAIMANT'S ATTORNEY POSED THIS QUESTION -

' SHOULD CLAIMANT'S CLAIM HAVE BEEN CLOSED WHEN THE STATE DOCTOR (POST), WHO EXAMINED THE CLAIMANT, REPORTED TO THE VOCATION REHABILITATION DIVISION THAT THE CLAIM SHOULD BE LEFT OPEN AT THIS POINT (JANUARY 8, 1973)?'

THE PLAIN FACT OF THE MATTER IS THE CLAIM WAS NOT CLOSED ON JANUARY 8, 1973 - IT WAS CLOSED ON MARCH 9, 1973. THERE WAS NO PREMATURE CLOSURE BECAUSE, BY MARCH 9, 1973, HIS CONDITION HAD BECOME MEDICALLY STATIONARY.

ALTHOUGH THE INJURY SITE HAS BEEN LOOSELY DESCRIBED AS THE 'HIP', THE CLAIMANT'S INJURY WAS ACTUALLY CONFINED TO THE RIGHT FEMUR. NO INVOLVEMENT OF THE UNSCHEDULED AREA HAS BEEN DEMONSTRATED. WE DO NOT ACCEPT THE PROPOSITION THAT THE AUDAS RULING REGARDING UNSCHEDULED 'SHOULDER' DISABILITY CAN BE APPLIED ANALOGOUSLY TO THE HIP. AUDAS V. GALAXIE INC., 2 OR APP 520 (1970). THE PARTICULAR MUSCULAR AND SKELETAL MAKEUP OF THE SHOULDER IS UNIQUE IN THE HUMAN BODY AND CANNOT BE FACTUALLY ANALOGIZED TO THE FEMUR-PELVIS STRUCTURE AND ASSOCIATED MUSCLE SYSTEMS. BASED ON THE EVIDENCE, CLAIMANT IS LIMITED TO AN AWARD FOR SCHEDULED DISABILITY.

HAVING REVIEWED THE RECORD DE NOVO, THE BOARD CONCURS WITH THE HEARING OFFICER'S FINDINGS AND OPINION THAT THE DETERMINATION ORDER ADEQUATELY COMPENSATES CLAIMANT FOR HIS RESIDUAL PERMANENT DISABILITY. HIS ORDER SHOULD THEREFORE BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 19, 1973 IS AFFIRMED.

WCB CASE NO. 73-1148 FEBRUARY 28, 1974

GEORGE SEABERRY, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE IS WHETHER OR NOT THE CLAIMANT IS PERMANENTLY TOTALLY DISABLED. THE HEARING OFFICER AFFIRMED THE DETERMINATION ORDER AWARD OF 25 PERCENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT, A 46 YEAR OLD LABORER, HURT HIS BACK IN 1967 FOR WHICH HE HAD SURGERY. HE WAS RETRAINED BY VOCATIONAL REHABILITATION TO BECOME A BARBER. HE HAD FURTHER PROBLEMS WITH HIS BACK AND HAD MORE SURGERY IN 1971. AFTER EXAMINATION THE BACK EVALUATION CLINIC REPORTS CLAIMANT WAS ABLE TO RETURN TO HIS OCCUPATION AS A BARBER AND CLASSIFIED THE LOSS OF FUNCTION AS MODERATE.

THE HEARING OFFICER OBSERVED THE CLAIMANT. THE BOARD CONCURS WITH THE FINDINGS OF THE HEARING OFFICER. THE OPINION AND ORDER OF THE HEARING OFFICER IS AFFIRMED AND ADOPTED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 7, 1973 IS AFFIRMED.

BERNARD O. CASPER, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.

THIS MATTER ARISES OUT OF THE LITIGATION OF A CLAIMANT'S CLAIM WHICH WAS INITIALLY REJECTED BY THE EMPLOYER. THAT REJECTION WAS SUBSEQUENTLY APPROVED BY A HEARING OFFICER, THE WORKMEN'S COMPENSATION BOARD AND THE CIRCUIT COURT. ON APPEAL THE COURT OF APPEALS OF THE STATE OF OREGON ALLOWED THE CLAIMANT'S CLAIM BUT APPARENTLY REFUSED TO AWARD AN ATTORNEY'S FEE TO CLAIMANT'S ATTORNEY PAYABLE BY THE EMPLOYER.

ON DECEMBER 21, 1973, THE CIRCUIT COURT JUDGE OF UMATILLA COUNTY, RELYING ON THE COURT OF APPEALS' ACTION, REFUSED TO AWARD CLAIMANT'S ATTORNEYS ANY FEE WHATSOEVER FOR THEIR SERVICES BEFORE THE COURT OF APPEALS. ON JANUARY 8, 1974, CLAIMANT'S ATTORNEYS MOVED THE WORKMEN'S COMPENSATION BOARD FOR AN ORDER APPROVING THEIR RECOVERY OF A ONE THOUSAND DOLLAR ATTORNEY'S FEE FROM CLAIMANT'S COMPENSATION FOR THEIR SERVICES BEFORE THE COURT OF APPEALS OF THE STATE OF OREGON.

WHILE THE BOARD MAY AGREE THAT CLAIMANT'S ATTORNEYS ARE ENTITLED TO A FEE FOR THEIR SERVICES BEFORE THE COURT OF APPEALS, THE BOARD BELIEVES CLAIMANT'S ATTORNEYS ERRED IN SEEKING BOARD AUTHORIZATION FOR SUCH A FEE.

ORS 656.388(1) AND (3) PROVIDES =

!!(1) NO CLAIM FOR LEGAL SERVICES OR FOR ANY OTHER SERVICES RENDERED BEFORE A HEARING OFFICER OR THE BOARD, AS THE CASE MAY BE, IN RESPECT TO ANY CLAIM OR AWARD FOR COMPENSATION, TO OR ON ACCOUNT OF ANY PERSON, SHALL BE VALID UNLESS APPROVED BY THE HEARING OFFICER OR BOARD, OR IF PROCEEDINGS ON APPEAL FROM THE ORDER OF THE BOARD IN RESPECT TO SUCH CLAIM OR AWARD ARE HAD BEFORE ANY COURT, UNLESS APPROVED BY SUCH COURT. '!

!!(3) ANY CLAIM SO APPROVED SHALL, IN THE MANNER AND TO EXTENT FIXED BY THE HEARING OFFICER, BOARD OR SUCH COURT, BE A LIEN UPON SUCH COMPENSATION. '!

THESE STATUTES MAKE CLEAR THAT IT IS THE COURT AND NOT THE WORKMEN'S COMPENSATION BOARD, WHICH MUST APPROVE THIS CLAIM FOR FEES RESULTING FROM SERVICES BEFORE THE COURT. THE BOARD CONCLUDES IT HAS NO JURISDICTION TO APPROVE ANY CLAIM FOR LEGAL FEES RESULTING FROM LEGAL SERVICES BEFORE SUCH COURT SO AS TO CREATE A LIEN UPON THE CLAIMANT'S COMPENSATION FOR THE FEE.

THE BOARD, BEING NOW FULLY ADVISED, CONCLUDES THE MOTION IS NOT WELL TAKEN AND IT IS HEREBY DENIED.

JOHN R. LOWE, CLAIMANT
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 AFFIRMING THE DENIAL OF HIS CLAIM OF AGGRAVATION, CONTENDING HE IS ENTITLED TO COMPENSATION.

CLAIMANT INJURED HIS CHEST AND LEFT ARM ON JUNE 1, 1967. THE CLAIM WAS CLOSED WITHOUT AN AWARD OF PERMANENT PARTIAL DISABILITY AND SUBSEQUENT LITIGATION ESTABLISHED THIS WAS PROPER.

ON DECEMBER 7, 1972, CLAIMANT FILED A REQUEST FOR HEARING CLAIMING AN AGGRAVATION OF HIS INJURY. THE EMPLOYER'S INSURER VIEWED THE SUPPORTING MEDICAL REPORT AS INADEQUATE FOR ACCEPTANCE OR DENIAL AND THEREFORE HAD THE CLAIMANT EXAMINED ON FEBRUARY 22, 1973 BY DR. WINFRED H. CLARKE, WHO HAD EXAMINED HIM AFTER THE ORIGINAL INJURY. FOLLOWING THIS EXAMINATION THE CARRIER NEVER ACCEPTED OR DENIED THE CLAIM FORMALLY BUT DID RESIST THE CLAIM AT HEARING THUS CONSTITUTING A DE FACTO DENIAL.

IN SUPPORT OF HIS REQUEST FOR COMPENSATION THE CLAIMANT PRESENTED THE REPORTS OF DR. BENJAMIN KARAS, WHO IS TREATING HIM IN MONTANA WHERE HE NOW LIVES. DR. KARAS OFFERED THE OPINION THAT CLAIMANT'S INJURY RELATED CONDITION HAD WORSENERD. HIS OPINION WAS FORMED, HOWEVER, WITHOUT KNOWLEDGE OF AN INTERVENING 1969 AUTOMOBILE ACCIDENT AND RELIED LARGELY ON A HISTORY FROM THE CLAIMANT AND HIS SUBJECTIVE COMPLAINTS.

DR. CLARKE WAS INFORMED OF THE AUTO ACCIDENT AND NOTED THE SCAR OF A CERVICAL LAMINECTOMY BUT WAS LED TO BELIEVE THAT THE LAMINECTOMY WAS RELATED TO THE JOB-CONNECTED INJURY RATHER THAN THE AUTO ACCIDENT. NEVERTHELESS, DR. CLARKE FELT THERE HAD BEEN NO MATERIAL CHANGE IN HIS CONDITION AND FELT TREATMENT WAS CONTRA INDICATED.

THE HEARING OFFICER CONCLUDED CLAIMANT HAD NOT SUFFERED A COMPENSABLE AGGRAVATION.

ON DE NOVO REVIEW, THE BOARD HAS COME TO THE SAME CONCLUSION AS THE HEARING OFFICER AND FOR THE SAME REASONS. HIS FINDINGS, OPINION AND ORDER SHOULD BE AFFIRMED.

ORDER

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

THE BENEFICIARIES OF
ALBERT ALBANO, DECEASED
AIL AND LUEBKE, BENEFICIARIES' ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

DECEDENT WAS A 55 YEAR OLD MAN WITH SEVERE PREEXISTING CARDIOVASCULAR DISEASE WHO COLLAPSED AND DIED FROM A CARDIAC ARRHYTHMIA ON THE MORNING OF MAY 26, 1971 WHILE IN THE COURSE OF HIS EMPLOYMENT AS A UTILITY WORKER FOR THE CITY OF PORTLAND, WATER BUREAU.

THE WIDOW'S CLAIM FOR BENEFITS WAS DENIED BY THE STATE ACCIDENT INSURANCE FUND. A HEARING OFFICER ALLOWED THE CLAIM AND THE FUND REQUESTS REVIEW CONTENDING THE EVIDENCE WILL NOT SUPPORT A FINDING THAT THE DECEDENT'S DEATH WAS MATERIALLY CONTRIBUTED TO BY HIS WORK ACTIVITY.

THE APPELLANT AGREES GENERALLY WITH THE FACTS FOUND BY THE HEARING OFFICER WITH THE EXCEPTION OF THOSE RELATING TO HIS ACTIVITY SHORTLY BEFORE HIS COLLAPSE. THE FUND POINTS TO TESTIMONY SUGGESTING DECEDENT WAS LAZY AND THAT HE WAS DOING NOTHING BUT "JUST STANDING THERE" WHEN THE ATTACK OCCURRED.

THE RECORD ESTABLISHES TO THE BOARD'S SATISFACTION THAT DECEDENT HAD EXERTED CERTAIN PHYSICAL EFFORT SHORTLY BEFORE HIS DEATH. WHETHER THIS LEVEL OF EFFORT WAS LEGALLY AND MEDICALLY "MATERIAL" CANNOT BE DECIDED IN THE ABSTRACT. CONSIDERING THE SEVERITY OF HIS PREEXISTING ARTERIOSCLEROSIS, ONLY A LITTLE EFFORT WOULD SATISFY THE REQUIREMENT OF LEGAL AND MEDICAL CAUSATION. THIS IS ESSENTIALLY THE BASIS OF DR. GIEDWOYN'S OPINION OF CAUSAL CONNECTION. THE LEGAL VALIDITY OF SUCH A RATIONALE HAS BEEN RECOGNIZED IN OREGON FOR MANY YEARS. ARMSTRONG V. SIAC, 146 OR 569 (1934).

THE HEARING OFFICER, ALTHOUGH RECOGNIZING THE FACTUAL DIFFICULTIES, ACCEPTED THIS RATIONALE IN FINDING THE CLAIM COMPENSABLE. ALTHOUGH THE EVIDENCE PRESENTS A CLOSE QUESTION, THE BOARD CONCLUDES THE OCCURRENCE OF DECEDENT'S FATAL ATTACK OF ARRHYTHMIA ON MAY 26, 1971 WAS BOTH LEGALLY AND MEDICALLY RELATED TO HIS WORK ACTIVITIES.

THE ORDER OF THE HEARING OFFICER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 24, 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.

CALVIN SUTTON, CLAIMANT
SALHSTROM, LOMBARD, STARR AND
VINSON, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVERSAL OF THE HEARING OFFICER'S OPINION AND ORDER HOLDING THAT AN AGGRAVATION OF THE AUGUST 30, 1966 INDUSTRIAL ACCIDENT HAD BEEN PROVED AND THAT THE CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED EFFECTIVE AUGUST 27, 1972.

CLAIMANT SUSTAINED A LOW BACK INJURY AUGUST 30, 1966 WHICH, AFTER APPEAL TO THE CIRCUIT COURT, WAS CLOSED BY AN AWARD OF 25 PERCENT OF AN ARM BY SEPARATION.

DR. JAMES R. DEGGE, IN HIS LETTER OF NOVEMBER 27, 1972, STATES THAT CLAIMANT'S GENERAL CONDITION HAS WORSENERD, PARTICULARLY WITH REFERENCE TO HIS BACK SYMPTOMS. THIS WAS SUFFICIENT TO GIVE THE HEARING OFFICER JURISDICTION TO HEAR THE AGGRAVATION CLAIM. THE HEARING OFFICER DID ALLOW AN ADDITIONAL 30 DAYS FOR CLARIFICATION AND FURTHER MEDICAL EVIDENCE. THE DOCTOR, HIMSELF, TESTIFIED AT THE HEARING AND HIS TESTIMONY NOT ONLY SUSTAINED THE JURISDICTIONAL BASIS BUT ALSO THE CLAIM FOR AGGRAVATION.

UPON REVIEW OF THE ENTIRE RECORD, THE BOARD IS UNABLE TO DETERMINE WHETHER OR NOT THE TRANSCRIPT OF THE PREVIOUS HEARING WAS ACTUALLY OFFERED IN EVIDENCE. THE BOARD THEREFORE IS UNABLE TO DETERMINE WHETHER OR NOT THE TRANSCRIPT WAS REFUSED ADMISSION. THE HEARING OFFICER, ON PAGE 12, REFERS TO THE PREVIOUS ORDERS OF THE BOARD IN THIS MATTER.

AFTER DE NOVO REVIEW OF THE ENTIRE RECORD, THE BOARD CONCURS WITH THE FINDING AND ORDER OF THE HEARING OFFICER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 13, 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.

RALPH O' DELL, CLAIMANT

RASK, HEFFERIN AND CARTER, CLAIMANT'S ATTYS.
COSGRAVE AND KESTER, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS IS AN AGGRAVATION CLAIM. CLAIMANT SEEKS PERMANENT TOTAL DISABILITY.

CLAIMANT, A 65 YEAR OLD DEAF MUTE, WAS IN AN AUTOMOBILE ACCIDENT SEPTEMBER 30, 1969, RECEIVED A FRACTURED ANKLE, ROTATOR CUFF INJURY TO THE RIGHT SHOULDER AND FRACTURE OF THE RIGHT WRIST. THE CLAIM WAS ULTIMATELY CLOSED WITH AN AWARD OF 58 DEGREES FOR PARTIAL LOSS OF RIGHT ARM, 74 DEGREES PARTIAL LOSS OF LEFT FOOT AND 20 DEGREES UNSCHEDULED DISABILITY FOR THE SHOULDER.

ON THIS AGGRAVATION CLAIM THE HEARING OFFICER INCREASED THE AWARD FOR PARTIAL LOSS OF LEFT FOOT TO 115 DEGREES, BEING AN INCREASE OF 41 DEGREES. THE HEARING OFFICER FOUND THAT THE OTHER AREAS OF INJURY WERE NOT WORSENERED AND DENIED PERMANENT TOTAL DISABILITY.

REPORTS FROM TWO ORTHOPEDISTS ARE IN THE RECORD. THE EXAMINING ORTHOPEDIST EXAMINED THE CLAIMANT BOTH AT THE TIME OF THE ORIGINAL CLAIM CLOSURE AND AT THE TIME OF THIS AGGRAVATION. HE FOUND NO WORSENERING OR CHANGE IN THE RIGHT WRIST AND THE RIGHT SHOULDER. HE RECOMMENDED A DISABILITY INCREASE ON THIS AGGRAVATION IN THE LEFT FOOT AND LEG. IT IS NOTED THE EXAMINING ORTHOPEDIST STATES THAT IT IS AMAZING THAT THE CLAIMANT HAD SUCH A STEADY WORK RECORD IN THE PAST WHICH WAS APPARENTLY LARGELY BECAUSE OF AN UNDERSTANDING EMPLOYER.

THE ATTENDING ORTHOPEDIST REPORTS, REGARDING THE AGGRAVATION, A CHANGE ESPECIALLY TO HIS RIGHT WRIST AND LEFT ANKLE. THE TREATING PHYSICIAN ALSO REPORTED IN 1970 THAT THE SHOULDER CONDITION WAS GOOD, BUT IN 1973 THAT THE INTERNAL ROTATION WAS MARKEDLY LIMITED. HE CONCLUDES THAT THE CLAIMANT IS NOW PERMANENTLY TOTALLY DISABLED.

BASED ON THE OBJECTIVE FINDINGS OF THE TREATING PHYSICIAN AND THE TESTIMONY OF THE CLAIMANT, THE BOARD FINDS THAT THE USE OF THE SHOULDER AND ARM IS NOW MORE LIMITED. THE CREDIBILITY OF THE CLAIMANT IS GOOD. THE CASE OF MANSFIELD VS. CAPLENER, 95 OR ADV SH 1018, STATES "THE COMBINATION OF ALL THE PHYSICAL INJURIES AND HIS BASIC MENTAL INADEQUACIES PERMANENTLY INCAPACITATE CLAIMANT FROM REGULARLY PERFORMING ANY WORK AT A GAINFUL AND SUITABLE OCCUPATION." THIS CASE APPEARS TO BE PARTICULARLY IN POINT REGARDING THIS CLAIMANT.

THE BOARD FINDS THE CLAIMANT TO BE PERMANENTLY TOTALLY DISABLED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 27, 1973 IS REVERSED.

CLAIMANT IS AWARDED PERMANENT TOTAL DISABILITY AS OF THE DATE OF THIS ORDER.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE, 25 PERCENT OF THE INCREASED COMPENSATION AWARDED HEREBY, PAYABLE FROM SAID AWARD, WHICH WHEN COMBINED WITH FEES RECEIVED UNDER THE ORDER OF THE HEARING OFFICER, SHALL NOT EXCEED FIFTEEN HUNDRED DOLLARS.

WCB CASE NO. 73-709 MARCH 4, 1974

MILTON PENTECOST, CLAIMANT
RICHARDSON AND MURPHY, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
CROSS-APPEAL BY SAIF)

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS IS A DENIED AGGRAVATION CLAIM. THE HEARING OFFICER FOUND AN AGGRAVATION AND AWARDED THE CLAIMANT AN ADDITIONAL 10 PERCENT FOR UNSCHEDULED BACK DISABILITY. THE CLAIMANT REQUESTS BOARD REVIEW SEEKING PERMANENT TOTAL DISABILITY. THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW FOR THE REASON THAT THERE HAS BEEN NO AGGRAVATION OF CLAIMANT'S CONDITION RESULTING FROM HIS INJURY.

CLAIMANT, A 56 YEAR OLD ROAD MAINTENANCE LABORER, RECEIVED A LOW BACK INJURY SEPTEMBER 25, 1967 WHEN A TRUCK BACKED INTO HIM. HE HAD SEVERE PREEXISTING DEGENERATIVE ARTHRITIS. THE CLAIM WAS CLOSED WITH AN AWARD OF 60 PERCENT UNSCHEDULED DISABILITY. THE AWARD WAS AFFIRMED BY THE CIRCUIT COURT. CLAIMANT HAS NOT WORKED SINCE THE ACCIDENT OF 1967. CLAIMANT'S OBESITY AND POOR MOTIVATION AND LACK OF ATTEMPTS AT VOCATIONAL REHABILITATION ARE EVIDENT.

THE MEDICAL EVIDENCE IN THE RECORD PERSUADES THE BOARD THAT CLAIMANT'S CONDITION HAS WORSENED AND AGGRAVATED SINCE THE LAST AWARD. THE CLAIMANT HAS SEVERE DEGENERATIVE ARTHRITIS INVOLVING THE LUMBAR SPINE WHICH APPARENTLY WAS DORMANT PRIOR TO THE INDUSTRIAL ACCIDENT. THE INDUSTRIAL ACCIDENT EXACERBATED THE PREEXISTING ARTHRITIC CONDITION AND THE BOARD FINDS THAT THE CLAIMANT NOW IS PERMANENTLY TOTALLY DISABLED. THE MEDICAL EVIDENCE CLEARLY TIES THE DISABILITY TO THE INDUSTRIAL ACCIDENT OF SEPTEMBER 25, 1967.

ORDER

THE ORDER OF THE HEARING OFFICER IS MODIFIED. CLAIMANT IS HEREBY AWARDED PERMANENT TOTAL DISABILITY EFFECTIVE THE DATE OF THIS ORDER.

IN ALL OTHER RESPECTS THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 24, 1973 IS AFFIRMED.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE, 25 PERCENT OF THE INCREASED COMPENSATION AWARDED HEREBY, PAYABLE FROM SAID AWARD, WHICH WHEN COMBINED WITH FEES RECEIVED UNDER THE ORDER OF THE HEARING OFFICER, SHALL NOT EXCEED FIFTEEN HUNDRED DOLLARS.

JIMMY MASSINGALE, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
DEPT. 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 AN AWARD OF PERMANENT TOTAL DISABILITY.

ON JULY 11, 1967, CLAIMANT, A THEN 21 YEAR OLD LOGGER, SUFFERED A COMPENSABLE INJURY TO HIS LOW BACK. IN EARLY 1968 THE CLAIM WAS CLOSED WITH AN AWARD OF 32 DEGREES OR 10 PERCENT OF THE MAXIMUM FOR UNSCHEDULED PERMANENT PARTIAL DISABILITY AND HE RETURNED TO WORK BUT HAD INCREASING DIFFICULTY.

ON FEBRUARY 2, 1972 CLAIMANT FILED A CLAIM OF AGGRAVATION WHICH WAS EVENTUALLY ACCEPTED BY STIPULATION. PURSUANT THERETO, THE CLAIMANT RECEIVED COMPENSATION AND MEDICAL TREATMENT.

IN OCTOBER, 1972, DR. R. F. ANDERSON EXAMINED CLAIMANT FOR THE STATE ACCIDENT INSURANCE FUND. HE THOUGHT NO FURTHER TREATMENT WAS INDICATED AND THAT CLAIMANT'S CONDITION HAD STABILIZED. DR. A. G. DENKER, CLAIMANT'S TREATING PHYSICIAN, WAS STILL TREATING CLAIMANT FOR THE INJURY. HE REPORTED THAT CLAIMANT NEEDED VOCATIONAL REHABILITATION AND THAT HE DID NOT CONSIDER HIM MEDICALLY STATIONARY. NEVERTHELESS, THE STATE ACCIDENT INSURANCE FUND SUBMITTED THE CLAIM FOR CLOSURE AND THE EVALUATION DIVISION ISSUED A SECOND DETERMINATION ORDER ON OCTOBER 31, 1972 TERMINATING TIME LOSS ON OCTOBER 19, 1972 AND GRANTING ANOTHER 32 DEGREES FOR UNSCHEDULED DISABILITY.

ON NOVEMBER 6, 1972 CLAIMANT REQUESTED A HEARING SEEKING COMPENSATION FOR TEMPORARY TOTAL DISABILITY OR PERMANENT TOTAL DISABILITY. AT THE HEARING THE REQUEST FOR TEMPORARY TOTAL DISABILITY WAS WITHDRAWN BY CLAIMANT'S COUNSEL AND EVIDENCE DIRECTED TO ESTABLISHING THAT CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED WAS PRESENTED.

THE EVIDENCE ESTABLISHED THAT - (1) CLAIMANT IS NOW A 26 YEAR OLD MARRIED MAN WITH THREE CHILDREN - (2) THAT, BEING ILLITERATE, HE HAD ALWAYS WORKED AT UNSKILLED MANUAL LABOR - (3) THAT HIS PERSISTING PHYSICAL DIFFICULTIES PREVENT HIS RETURN TO THAT TYPE OF EMPLOYMENT AND, (4) THAT HE NEEDS VOCATIONAL REHABILITATION AND COUNSELING WITHOUT WHICH HE IS UNEMPLOYABLE.

THE HEARING OFFICER, ALTHOUGH QUESTIONING WHETHER CLAIMANT WAS MEDICALLY STATIONARY, CONCLUDED IT WAS NOT HIS FUNCTION TO SECOND GUESS CLAIMANT'S COUNSEL AND THEREFORE GRANTED CLAIMANT AN AWARD OF PERMANENT TOTAL DISABILITY.

A FUNDAMENTAL PURPOSE OF THE WORKMEN'S COMPENSATION LAW IS TO RESTORE THE INJURED WORKMAN TO A CONDITION OF SELF SUPPORT AND MAINTENANCE AS AN ABLE-BODIED WORKMAN.

THE BOARD WILL NOT LIGHTLY CONCLUDE A WORKMAN'S CLAIM SHOULD BE CLOSED AND EFFORTS AT RESTORATION ABANDONED WHEN

THE ALTERNATIVE TO SUCH EFFORTS IS THE CONCLUSION THAT HE WILL NEVER AGAIN FUNCTION AS A SELF SUPPORTING, ABLE-BODIED WORKMAN. THE BOARD AGREES COMPLETELY WITH JUDGE TANZER'S RECENT OBSERVATION IN HIS DISSENT TO GUTIERREZ V. REDMAN INDUSTRIES, --OR ADV SH-- , --OR APP -- (FEBRUARY 19, 1974) WHEREIN HE STATED -

!! . . . A PENSION FOR A MAN WHO IS NOT YET OLD IS NO BLESSING FOR HIM. THE SOCIAL EFFECT IS TO COMPOUND THE DEBILITATION AND IT IS TO BE AVOIDED IF THERE IS ANY SIGNIFICANT POSSIBILITY THAT THE CLAIMANT CAN RETURN TO REGULAR EMPLOYMENT. '!

THERE APPEARS TO BE SUCH A POSSIBILITY HERE.

WE CONCLUDE, AS DID THE HEARING OFFICER, THAT DR. DENKER (AND THE DIVISION OF VOCATIONAL REHABILITATION AS WELL) SHOULD BE ALLOWED FURTHER TO MAKE A CONCERTED EFFORT TOWARD RETURNING THIS WORKMAN TO A CONDITION OF SELF SUPPORT AND MAINTENANCE AS AN ABLE-BODIED WORKMAN.

TO THAT END, THE ORDER OF THE HEARING OFFICER DATED MAY 18, 1973 AND THE SECOND DETERMINATION ORDER DATED OCTOBER 31, 1972 SHOULD BE SET ASIDE AND THE CLAIM REOPENED FROM OCTOBER 19, 1972 UNTIL CLOSURE IS AGAIN INDICATED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 18, 1973 AND THE SECOND DETERMINATION ORDER DATED OCTOBER 31, 1972 ARE HEREBY SET ASIDE.

THE CLAIMANT'S CLAIM IS HEREBY REOPENED AS OF OCTOBER 19, 1972 FOR PAYMENT OF TEMPORARY DISABILITY COMPENSATION AND FURTHER MEDICAL CARE AS RECOMMENDED BY CLAIMANT'S TREATING PHYSICIAN, UNTIL THE CLAIM IS AGAIN CLOSED PURSUANT TO ORS 656.268. THE STATE ACCIDENT INSURANCE FUND MAY OFFSET AGAINST THE LIABILITY IMPOSED HEREBY, PAYMENTS OF PERMANENT PARTIAL DISABILITY AND PERMANENT TOTAL DISABILITY PAID PURSUANT TO THE SECOND DETERMINATION ORDER AND THE HEARING OFFICER'S ORDER.

IT IS HEREBY FURTHER ORDERED THAT THE DISABILITY PREVENTION DIVISION OF THE WORKMEN'S COMPENSATION BOARD ASSIST AND COOPERATE FORTHWITH IN CLAIMANT'S VOCATIONAL REHABILITATION EFFORTS.

IT IS HEREBY FINALLY ORDERED THAT CLAIMANT'S ATTORNEY, J. DAVID KRYGER, RECEIVE 25 PERCENT OF THE TEMPORARY DISABILITY BENEFITS, AS THEY ARE PAID PURSUANT TO THIS ORDER, TO A MAXIMUM OF FIFTEEN HUNDRED DOLLARS, AS A REASONABLE ATTORNEY'S FEE.

JOY THROOP, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS IS A DENIED AGGRAVATION CLAIM. THE HEARING OFFICER AFFIRMED THE DENIAL AND THE CLAIMANT REQUESTS BOARD REVIEW.

A COMPLETE REVIEW OF ALL OF THE MEDICAL EVIDENCE PERSUADES THE BOARD THAT NO AGGRAVATION HAS BEEN PROVED. CLAIMANT SLIPPED AND FELL ON FEBRUARY 27, 1970 RECEIVING A LUMBOSACRAL STRAIN. THE ATTENDING INTERNIST, DR. SNOW, RELEASED HER FOR WORK ON APRIL 7, 1970. SHE HAD FURTHER PROBLEMS AND ORTHOPEDIST, DR. ANDERSON, EXAMINED AND RELEASED HER FOR WORK ON JUNE 10, 1970. DR. ANDERSON REEXAMINED HER ON JULY 10, 1970, ADVISING THE CONDITION WAS STABLE. ON MARCH 16, 1971, DR. ANDERSON AGAIN EXAMINED HER STATING SHE COULD TOUCH THE FLOOR, THAT SHE HAD A MODERATELY SEVERE DEGREE OF PERSISTENT COCCYDYNIA, PRESCRIBED AN INVALID RING AND TWO OR THREE INJECTIONS AND SPECIFICALLY STATED TIME LOSS WAS NOT INVOLVED.

DR. ANDERSON'S REPORT OF AUGUST 21, 1972 AGAIN STATED NO AGGRAVATION AND FURTHER THAT IN HIS OPINION CHIROPRACTIC TREATMENTS WOULD NOT HELP. AGAIN ON SEPTEMBER 14, 1973, DR. ANDERSON REPORTS THAT CLAIMANT'S COMPLAINTS ARE SUBJECTIVE, THAT SHE IS WORKING IN A HOME IN DOMESTIC CARE OF A FAMILY OF THREE. THERE ARE NO MUSCLE SPASMS AND NO WORSENING OF THE CONDITION.

DR. WARNER, A CHIROPRACTOR, REQUESTED AUTHORIZATION FOR CHIROPRACTIC CARE AND TREATMENT. DR. WARNER'S LETTERS OF JULY 10, 1972, JANUARY 24, 1973 AND SEPTEMBER 22, 1972 DO NOT ESTABLISH A CLAIM FOR AGGRAVATION.

DR. WARNER'S TESTIMONY AT THE HEARING INDICATES A WORSENING BUT THIS IS BASED ON COMPARISON OF DR. ANDERSON'S REPORTS WITH THE FINDINGS OF THE CHIROPRACTOR.

DR. ANDERSON WAS A TREATING DOCTOR IN 1970, IS AN ORTHOPEDIC SPECIALIST AND HAS TREATED OR EXAMINED THIS PATIENT IN 1970, 1971, AND 1973. THE WEIGHT OF HIS FINDINGS HAVING PERSONALLY TREATED AND OBSERVED THE CLAIMANT FROM SHORTLY AFTER THE INJURY TO DATE, AND THE FACT THAT HE IS A SPECIALIST IN THIS FIELD, PERSUADES THE BOARD THAT NO WORSENING OR AGGRAVATION HAS BEEN PROVED.

THE REFEREE'S INADVERTENT USE OF THE TERM 'COMPENSABLE AGGRAVATION' IS IMMATERIAL.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 2, 1973 IS AFFIRMED.

GERALD MCELROY, CLAIMANT

F. P. STAGER, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE INVOLVED IS THE EXTENT OF PERMANENT DISABILITY ON CLOSING OF THIS AGGRAVATION CLAIM.

CLAIMANT, A 31 YEAR OLD LABORER, RECEIVED A BACK INJURY MARCH 27, 1968. AFTER EXTENSIVE CONSERVATIVE TREATMENT SURGERY ON THE BACK WAS PERFORMED AND THE CASE WAS CLOSED BY JUDGMENT ORDER OF THE CIRCUIT COURT AWARDING CLAIMANT A TOTAL OF 45 PERCENT (144 DEGREES). CLAIMANT FILED A CLAIM FOR AGGRAVATION (DEFENDANT'S EXHIBIT 30) WHICH WAS ACCEPTED BY THE STATE ACCIDENT INSURANCE FUND AND FURTHER BACK SURGERY WAS PERFORMED BY DR. KIMBERLEY. THE AGGRAVATION CLAIM WAS CLOSED BY DETERMINATION ORDER AWARDING AN ADDITIONAL 5 PERCENT UNSCHEDULED LOW BACK DISABILITY, MAKING A TOTAL OF 50 PERCENT OR 160 DEGREES. THE HEARING OFFICER INCREASED THIS AWARD TO A TOTAL OF 240 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY.

AFTER THE SURGERY PERFORMED BY DR. KIMBERLEY, DR. KIMBERLEY REPORTS THAT SUBJECTIVELY THE CLAIMANT IS GREATLY IMPROVED. THE BOARD CONCLUDES AND FINDS THAT CLAIMANT'S CONDITION HAS IMPROVED AND NOT WORSENER SINCE THE LAST AWARD OR ARRANGEMENT WAS MADE BY THE STIPULATED CIRCUIT COURT JUDGMENT AWARDING 144 DEGREES.

THE BOARD THEREFORE FINDS THAT CLAIMANT IS ENTITLED TO A TOTAL AWARD OF 144 DEGREES FOR UNSCHEDULED LOW BACK PERMANENT PARTIAL DISABILITY. THE ORDER OF THE HEARING OFFICER AWARDING A TOTAL OF 240 DEGREES AND THE SECOND DETERMINATION ORDER AWARDING A TOTAL OF 160 DEGREES IS MODIFIED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 29, 1973 IS REVERSED. THE SECOND DETERMINATION ORDER DATED MARCH 28, 1973 IS MODIFIED. THE AWARD OF PERMANENT PARTIAL DISABILITY OF AN ADDITIONAL FIVE PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED LOW BACK DISABILITY EQUAL TO 160 DEGREES AND THE ORDER IN SAID SECOND DETERMINATION FOR PAYMENT OF EIGHT HUNDRED EIGHTY DOLLARS FOR PERMANENT PARTIAL DISABILITY PAYMENT IS REVERSED. IN ALL OTHER RESPECTS THE SECOND DETERMINATION ORDER IS AFFIRMED.

THE AWARD OF 144 DEGREES MADE BY STIPULATION AND ORDER OF THE CIRCUIT COURT IS REINSTATED.

MARCH 4, 1974

KENNETH O'CONNELL, CLAIMANT

BURTON FALLGREN, CLAIMANT'S ATTY.
GERALD KNAPP, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS WHETHER OR NOT CLAIMANT'S INJURIES AROSE OUT OF AND IN THE SCOPE OF HIS EMPLOYMENT.

CLAIMANT, A 33 YEAR OLD ADMINISTRATOR OF A NURSING HOME IN ST. HELENS, TOOK SOME PERSONAL BELONGINGS OF PATIENTS WHO HAD BEEN TRANSFERRED TO A SEASIDE NURSING HOME. CLAIMANT TOOK HIS GIRLFRIEND, NOW HIS WIFE, WITH HIM AND LEFT AT EIGHT THIRTY A. M. FOR SEASIDE. HE DELIVERED THE PERSONAL BELONGINGS AND SPENT ABOUT AN HOUR AT THE SEASIDE NURSING HOME. HE THEN WENT FOR A WALK ON THE BEACH AND IN THE AFTERNOON WENT TO SEE A FRIEND IN THE CONSTRUCTION BUSINESS. CLAIMANT TESTIFIED HE WAS EXPLORING CONSTRUCTION COSTS FOR POSSIBLE EXPANSION OF THE ST. HELENS NURSING HOME. HIS EMPLOYER TESTIFIED THAT HE HAD SPECIFICALLY TOLD CLAIMANT THAT THE EMPLOYER HAD NO FURTHER INTEREST IN EXPANDING THE ST. HELENS NURSING HOME. CLAIMANT, ENROUTE TO ST. HELENS, AT TWO A. M., AFTER CONSUMPTION OF CONSIDERABLE ALCOHOL, RAN INTO THE BACK END OF A TRUCK STOPPED AT A WEIGH STATION.

THE HEARING OFFICER FOUND THE CLAIMANT NOT CREDIBLE.

THE BOARD CONCURS WITH THE FINDINGS OF THE HEARING OFFICER THAT THE ENTIRE TRIP WAS A PERSONAL TRIP WITH ONLY INCIDENTAL BUSINESS MOTIVES.

THE BOARD AFFIRMS THE FINDINGS AND ORDER OF THE HEARING OFFICER AND ADOPTS HIS OPINION.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 21, 1973 IS AFFIRMED.

MARCH 5, 1974

BILLY R. SMEDLEY, CLAIMANT

BERNAU AND WILSON, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED TEMPORARY DISABILITY ONLY AND NO PERMANENT DISABILITY. THE HEARING OFFICER AWARDED 32 DEGREES UNSCHEDULED PERMANENT PARTIAL DISABILITY. THE CLAIMANT APPEALS REQUESTING PERMANENT TOTAL DISABILITY.

CLAIMANT, A 49 YEAR OLD MILLWORKER, WAS INJURED MARCH 22, 1972 WHEN SOME LUMBER FELL OFF A STACK HITTING HIS SHOULDER. HE WENT TO A DOCTOR FIVE DAYS LATER. HE WAS TREATED AND EXAMINED BY SEVERAL DOCTORS INCLUDING ORTHOPEDIC AND NEUROLOGY SPECIALISTS. CLAIMANT RECEIVED CONSERVATIVE TREATMENT. ALL OF THE DOCTORS FOUND LITTLE IN THE WAY OF OBJECTIVE FINDINGS. CLAIMANT WAS HOSPITALIZED AFTER AN INCIDENT OF CHEST PAINS WHILE HE WAS DANCING. HE WAS HOSPITALIZED FOR ABOUT ONE WEEK IN CANYONVILLE AND THEN TRANSFERRED TO SACRET HEART HOSPITAL IN EUGENE WHERE HE REMAINED FOR ABOUT ONE WEEK.

A REVIEW OF ALL THE MEDICAL EVIDENCE IN THE RECORD COVERING THE PERIOD FROM THE DATE OF ACCIDENT, MARCH 22, 1972 UP TO NOVEMBER 17, 1972, DURING WHICH CLAIMANT WAS TREATED AND EXAMINED BY SEVERAL DOCTORS INCLUDING AN ORTHOPEDIST AND A NEUROLOGIST AND WAS HOSPITALIZED IN TWO DIFFERENT HOSPITALS, FINDS NOTHING IN THE RECORD FOR THIS EIGHT MONTH PERIOD THAT EVEN MENTIONS OBJECTIVE FINDINGS OR A LUMP ON THE CHEST, MUCH LESS A RUPTURED RIGHT PECTORALIS MAJOR MUSCLE. DR. JACK A. BRIDGES, A VETERANS ADMINISTRATION DOCTOR, EXAMINED CLAIMANT ON NOVEMBER 17, 1972, DIAGNOSING RUPTURED RIGHT PECTORALIS MAJOR MUSCLE, CHRONIC CERVICAL SPRAIN AND CAPSULITIS OR TENDONITIS OF BOTH SHOULDERS. DR. BRIDGES, IN HIS TESTIMONY AT THE HEARING, STATED THE RUPTURED MUSCLE WAS PERFECTLY OBVIOUS EVEN TO A LAYMAN. HE STATED THAT THERE WAS A BIG LUMP ON THE CHEST WHICH WAS EASILY SEEN AND ANYONE COULD FIND IT AND FURTHER, THAT THIS MUSCLE DOESN'T RUPTURE EASILY AND THAT IT TAKES A TREMENDOUS AMOUNT OF FORCE TO RUPTURE THIS MUSCLE.

IT IS INTERESTING TO NOTE THAT THE ORIGINAL REPORT OF THE ACCIDENT SIGNED BY THE CLAIMANT DESCRIBED THE ACCIDENT AS 'I WAS STICKING LUMBER WHEN A COUPLE OF PIECES OF LUMBER FELL OFF AND HIT ME ON THE RIGHT SHOULDER.' THE INITIAL TREATING DOCTOR REPORTS WORKMAN'S STATEMENT OF CAUSE OF INJURY OR ILLNESS AS 'LUMBER STICKER AND WAS STICKING LUMBER WHEN A COUPLE OF PIECES OF LUMBER FELL OFF AND HIT HIM ON THE RIGHT SHOULDER.'

ON DE NOVO REVIEW OF THE ENTIRE RECORD AND ESPECIALLY THE MEDICAL EVIDENCE IN THE RECORD, THE BOARD REVERSES THE HEARING OFFICER'S AWARD OF 32 DEGREES AND REINSTATES THE DETERMINATION ORDER AWARDING TEMPORARY DISABILITY ONLY AND MAKING NO AWARD OF PERMANENT PARTIAL DISABILITY ON THE GROUNDS THAT THE FINDINGS OF DR. BRIDGES SOME EIGHT MONTHS AFTER THE ACCIDENT WAS NOT CAUSED BY THE INDUSTRIAL ACCIDENT.

THE BOARD CONCURS WITH THE FINDING OF THE HEARING OFFICER THAT THERE WERE ONLY MINIMAL OBJECTIVE FINDINGS OF ANY KIND WHICH WERE CONNECTED TO THE ACCIDENT. THE HEARING OFFICER ALSO COMMENTED AS TO THE POOR CREDIBILITY OF THE CLAIMANT.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 5, 1973 IS REVERSED.

THE DETERMINATION ORDER DATED DECEMBER 1, 1972 AWARDING TEMPORARY TOTAL DISABILITY TO SEPTEMBER 26, 1972 AND MAKING NO AWARD OF PERMANENT PARTIAL DISABILITY IS HEREBY REINSTATED.

LIONEL BURKHALTER, CLAIMANT

WAYNE HARRIS, CLAIMANT'S ATTY.
MCMENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTYS.

REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF THIS DENIED AGGRAVATION CLAIM.

CLAIMANT SUSTAINED A BACK STRAIN NOVEMBER 10, 1971. HE CONSULTED A CHIROPRACTOR ON ONE OCCASION AND HAD NO LOST TIME FROM WORK. ON APRIL 1, 1973 CLAIMANT WAS FIRED BY THE EMPLOYER AND WENT INTO BUSINESS FOR HIMSELF AS A SCRAP METAL DEALER DOING CONSIDERABLY HEAVIER WORK. CLAIMANT RECEIVED NO MEDICAL CARE BETWEEN NOVEMBER, 1971 AND MAY, 1973. THE SAME CHIROPRACTOR REPORTS 'THIS IS A REACCURANCE (SIC) OF THE ACCIDENT'. THERE IS NO FURTHER MEDICAL INFORMATION IN THE RECORD TO SUPPORT A CLAIM FOR AGGRAVATION.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 22, 1973 IS AFFIRMED.

CARL FREDRICKSON, DECEASED

ROBERT E. JONES, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS IS A FATAL HEART CASE. THE ISSUE IS WHETHER OR NOT THE DEATH AROSE OUT OF AND IN THE COURSE OF EMPLOYMENT. THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM AND THE HEARING OFFICER FOUND THE CLAIM COMPENSABLE. THE STATE ACCIDENT INSURANCE FUND APPEALS.

THE DECEDENT, A 63 YEAR OLD TIMBER FALLER, WORKED FROM 8 A.M. TO 12 NOON ON SEPTEMBER 14, 1972, FALLING AND LIMBING TREES USING A REGULAR POWER SAW. A CATSKINNER LEFT THE DECEDENT AT 12 NOON AND WAS DUE BACK TO PICK UP ANOTHER LOAD SHORTLY AFTER LUNCH. THE CATSKINNER AT THE LANDING HEARD A POWER SAW START SOMETIME BETWEEN TWELVE THIRTY AND ONE THIRTY P.M., PROBABLY ABOUT ONE P.M. AND PRESUMED THIS TO BE THE DECEDENT COMMENCING WORK AFTER LUNCH. THE CATSKINNER ARRIVED BACK FOR THE NEXT LOAD AT TWO P.M. AND FOUND THE DECEDENT LYING ACROSS A STUMP. ONE TREE HAD BEEN FELLED AND WAS PARTIALLY LIMBED. THE DAY WAS A WARM SUMMER DAY, APPROXIMATELY 80 DEGREES.

THE MEDICAL EVIDENCE SHOWS THAT DEATH WAS DUE TO AN ARRHYTHMIA. THE AUTOPSY SHOWED A PREEXISTING HEART CONDITION. THE INTERNIST WHO RECEIVED THE DECEDENT AT THE HOSPITAL FOUND HIM TO BE DEAD ON ARRIVAL AND FOUND THE SKIN TEMPERATURE TO BE EXTREMELY HOT. THIS INTERNIST, AFTER REVIEWING THE AUTOPSY, CONCLUDED THAT THE WORK ACTIVITY WAS A MATERIAL CONTRIBUTING FACTOR TO THE DEATH. THE COMBINATION OF A HOT DAY, THE EXTREMELY HOT TEMPERATURE OF DECEDENT'S SKIN WHEN FIRST EXAMINED AT THE HOSPITAL AND THE 80 DEGREES HEAT ON THIS PARTICULAR SUMMER DAY WAS THE BASIS OF THIS DOCTOR'S OPINION.

DR. GRISWOLD DID NOT RELATE THE DEATH TO THE WORK ACTIVITY BUT BASED HIS OPINION ON THE ASSUMPTION THAT IT DID NOT OCCUR WITHIN A PERIOD OF FIVE MINUTES TO FIFTEEN MINUTES AFTER PHYSICAL ACTIVITY. NEITHER THE EXACT TIME OF DECEDENT'S DEATH NOR THE EXACT TIME THE DECEDENT CEASED STRENUOUS PHYSICAL ACTIVITY IS KNOWN.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE FINDING AND ORDER OF THE HEARING OFFICER AND ADOPTS HIS OPINION.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 7, 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.

WCB CASE NO. 71-2389-E MARCH 5, 1974

LUDWIG KRUGEN, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

EMPLOYER REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER AFFIRMING A DETERMINATION ORDER DATED NOVEMBER 6, 1970, AWARDING CLAIMANT PERMANENT TOTAL DISABILITY.

CLAIMANT WAS A 61 YEAR OLD WELDER AT BEALL PIPE AND TANK COMPANY WHEN HE INJURED HIS LOW BACK ON JULY 18, 1969. HE HAD INTENDED TO VOLUNTARILY RETIRE WHEN HE REACHED AGE 62 IN NOVEMBER, 1970. INSTEAD OF VOLUNTARILY RETIRING THEN, THE WORKMEN'S COMPENSATION BOARD RULED, ON NOVEMBER 6, 1970, THAT HE WAS PERMANENTLY AND TOTALLY DISABLED. HE HAS NOT WORKED SINCE.

ELEVEN MONTHS AFTER THE ISSUANCE OF THAT DETERMINATION ORDER, THE EMPLOYER REQUESTED A HEARING OBJECTING TO THE AWARD OF PERMANENT TOTAL DISABILITY. HOWEVER, AS A RESULT THE EMPLOYER REQUESTED POSTPONEMENTS AND THE HEARING WAS NOT CONVENED UNTIL MAY, 1973.

THE EMPLOYER ATTEMPTED TO SHOW THAT CLAIMANT RETAINED AT LEAST A MINIMAL RESIDUAL EARNING CAPACITY AND THAT, THIS BEING SO, THE CLAIMANT HAD A POSITIVE DUTY TO ATTEMPT RETURN TO WORK.

THE EMPLOYER THEN POINTED TO THE LACK OF SUCH EFFORTS AND ARGUED, RELYING ON DEATON V. SAIF, 97 OR ADV SH 126 (1973) THAT THE CLAIMANT'S LACK OF MOTIVATION PRECLUDED THE GRANTING OF AN AWARD OF PERMANENT TOTAL DISABILITY.

THE EVIDENCE ESTABLISHES THAT CLAIMANT'S PHYSICAL IMPAIRMENTS ARE SUBSTANTIAL. EVEN DISREGARDING THE CLAIMANT'S AGE IT IS QUESTIONABLE THAT ANY EMPLOYER WITH KNOWLEDGE OF HIS LIMITATIONS WOULD HIRE HIM FOR ANY KIND OF WORK AND, WITH RESPECT TO THE CONCEPT OF EARNING CAPACITY, THE TOTAL INABILITY TO GAIN EMPLOYMENT IS JUST AS TOTALLY DISABLING AS THE INABILITY TO HOLD EMPLOYMENT.

IN ITS ATTACK ON CLAIMANT'S MOTIVATION THE EMPLOYER HAS IGNORED THE NATURAL EFFECT OF THE 1970 PERMANENT TOTAL DISABILITY RULING AND ASCRIBES THE LACK OF EFFORT TO CLAIMANT'S EARLY RETIREMENT DECISION. WE DISAGREE.

WE THINK THE HEARING OFFICER CORRECTLY ANALYZED THIS ELEMENT OF THE CASE. WE ARE ALSO IN AGREEMENT WITH HIS ANALYSIS OF THE OTHER ISSUES AS WELL, AND THEREFORE CONCLUDE HIS OPINION AND ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 27, 1973 IS AFFIRMED.

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

WCB CASE NO. 73-1330 MARCH 5, 1974

LEE F. YOAST, CLAIMANT
DON SWINK, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE IS THE EXTENT OF PERMANENT PARTIAL DISABILITY. THE DETERMINATION ORDER AWARDED 5 PERCENT UNSCHEDULED LOW BACK DISABILITY. THE HEARING OFFICER AWARDED 35 PERCENT TOTAL UNSCHEDULED PERMANENT PARTIAL DISABILITY FOR THE LOW BACK. THE EMPLOYER APPEALS.

CLAIMANT, A 33 YEAR OLD COKE TRUCK DRIVER, SPRAINED HIS LOW BACK WHILE LIFTING COKE CASES. AFTER BACK SURGERY, CLAIMANT RETURNED TO WORK FOR THE SAME EMPLOYER IN LIGHTER TYPE WORK INVOLVING LESS LIFTING FOR 10 WEEKS, AND THEN RETURNED TO HIS REGULAR EMPLOYMENT. ON DOCTORS ADVICE CLAIMANT CHANGED JOBS TO AVOID THE HEAVY LIFTING. CLAIMANT RETURNED TO HOUSE CONSTRUCTION APPARENTLY DOING THE LIGHTER TYPE OF WORK INVOLVED AND SUBCONTRACTS THE HEAVY WORK.

THE BOARD, ON DE NOVO REVIEW, FINDS THE CLAIMANT DOES HAVE A REAL AND SUBSTANTIAL LOSS OF EARNING CAPACITY.

ORDER

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

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

WCB CASE NO. 73-1140 MARCH 5, 1974

CLIFTON E. GOULD, 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.

THE ISSUE IS THE EXTENT OF DISABILITY TO THE RIGHT HAND. THE DETERMINATION ORDER AWARDED CLAIMANT PERMANENT PARTIAL DISABILITY OF 30 PERCENT LOSS OF THE RIGHT HAND EQUAL TO 45 DEGREES. THE HEARING OFFICER INCREASED THE AWARD TO 45 PERCENT LOSS OF THE RIGHT HAND EQUAL TO 67.5 DEGREES. THE CLAIMANT APPEALS REQUESTING A HIGHER SCHEDULED AWARD.

CLAIMANT'S RIGHT HAND WAS INJURED BETWEEN A RAILROAD CAR DOOR AND A FRAME. AFTER TWO SURGERIES, CLAIMANT'S RIGHT RING FINGER WAS AMPUTATED JUST PROXIMAL TO THE MIDDLE JOINT LEVEL. THE MIDDLE FINGER SUSTAINED A COMPOUND COMMINUTED FRACTURE WITH NERVE INVOLVEMENT.

THE HEARING OFFICER OBSERVED THE SEVERE LOSS OF STRENGTH AS DEMONSTRATED BY LOSS OF GRIP IN THE RIGHT HAND. CLAIMANT IS RIGHT-HANDED. THE MEDICAL REPORT REFLECTS ONLY 20 PERCENT GRIP IN THE RIGHT HAND COMPARED WITH CLAIMANT'S LEFT HAND. FURTHER IMPAIRMENTS ARE LACK OF CRITICAL SENSATION ON TIP OF THE LONG FINGER, AMPUTATION OF THE RING FINGER NEAR THE MIDDLE JOINT, ABSENCE OF PINCH BETWEEN THUMB AND RING FINGER AND WEAKNESS OF PINCH BETWEEN LONG AND LITTLE FINGER, LACK OF MOTION IN LONG FINGER. THE BOARD CONSIDERS THE LOSS OF GRIP IN THE RIGHT HAND SIGNIFICANT.

ON DE NOVO REVIEW, THE BOARD FINDS CLAIMANT HAS SUSTAINED 55 PERCENT PERMANENT PARTIAL DISABILITY FOR LOSS OF FUNCTION OF THE RIGHT HAND.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 4, 1973 AND THE CORRECTING ORDER DATED OCTOBER 5, 1973 ARE MODIFIED. CLAIMANT IS HEREBY AWARDED PERMANENT PARTIAL DISABILITY TOTALING 82.5 DEGREES FOR PARTIAL LOSS OF RIGHT HAND. THIS IS AN INCREASE OF 37.5 DEGREES OF THE AWARD BY THE DETERMINATION ORDER AND AN INCREASE OF 15 DEGREES OF THE AWARD BY THE HEARING OFFICER.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE, 25 PERCENT OF THE INCREASE IN COMPENSATION ASSOCIATED WITH THIS AWARD WHICH, WHEN COMBINED WITH FEES ATTRIBUTABLE TO THE ORDER OF THE HEARING OFFICER SHALL NOT EXCEED FIFTEEN HUNDRED DOLLARS.

WCB CASE NO. 73-1512 MARCH 5, 1974

ALVIN D. EDWARDS, CLAIMANT
KENNETH W. STODD, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS WHETHER OR NOT CLAIMANT'S HEART ATTACK IS COMPENSABLE. THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM AS BEING NONCOMPENSABLE AND THE HEARING OFFICER AFFIRMED THE DENIAL.

CLAIMANT, A 46 YEAR OLD LONG HAUL TRUCK DRIVER, SUFFERED A MYOCARDIAL INFARCTION MARCH 16, 1973, WHILE DRIVING A PRODUCE LONG HAUL TRUCK. CLAIMANT'S ACTIVITIES DURING THE EIGHT DAYS IMMEDIATELY PRECEDING THE HEART ATTACK INCLUDED TRIPS IN WASHINGTON, OREGON AND CALIFORNIA HAULING APPLES, CHICKENS AND ORANGES. ON MARCH 16, 1973, IN IVANHOE, CALIFORNIA, CLAIMANT ASSISTED IN LOADING A LOAD OF ORANGES WITH ONE HELPER. CLAIMANT BECAME ILL DURING THE LOADING OPERATION BUT AFTER A SHORT REST AND VOMITING, FELT BETTER, CONCLUDED THE LOADING AND DROVE APPROXIMATELY FOUR HOURS. CLAIMANT WAS SICK DURING THE TRIP AND FINALLY WAS TAKEN TO THE HOSPITAL AT MT. SHASTA, CALIFORNIA WITH A SEVERE MYOCARDIAL INFARCTION. CLAIMANT TESTIFIED THAT THE DRIVER'S LOG SUBMITTED IN EVIDENCE IS 'ALMOST ACCURATE'. THE PROBLEM OF HAULING PRODUCE WHICH MUST BE AT A CERTAIN MARKET AT A CERTAIN DATE AND TIME OFTEN CONFLICTS WITH THE ICC REGULATIONS REGARDING MAXIMUM DRIVING TIME AND OFF-DUTY TIME.

THE ATTENDING DOCTOR, DR. STRICKLAND, A GENERAL PRACTITIONER, HAD THE ADVANTAGE OF TREATING THE PATIENT FROM THE ADMISSION AT THE HOSPITAL. DR. STRICKLAND'S REPORT STATES UNEQUIVOCALLY THE MYOCARDIAL INFARCTION WAS A CONTRIBUTING FACTOR TO HIS HEART ATTACK.

DR. SUTHERLAND, A HEART SPECIALIST WHO STUDIED THE STATE ACCIDENT INSURANCE FUND'S INVESTIGATOR'S REPORTS AND SOME OF THE MEDICAL RECORDS, OPINES THAT BASED ON THE INFORMATION FURNISHED TO HIM, CLAIMANT'S WORK AS A TRUCK DRIVER DID NOT CONTRIBUTE SIGNIFICANTLY TO THE ACUTE MYOCARDIAL INFARCTION.

AFTER CONSIDERATION OF THE ENTIRE RECORD, THE BOARD FINDS CLAIMANT'S MYOCARDIAL INFARCTION WAS CAUSED BY THE STRESS AND EXERTION CONNECTED WITH CLAIMANT'S WORK. THE STRENUOUS EIGHT DAY SCHEDULE IMMEDIATELY PRIOR TO THE HEART ATTACK COMBINED WITH THE PHYSICAL STRESS OF LOADING HIS PRODUCE TRUCK WITH BOSES OF ORANGES AND EVEN THOUGH VOMITING OCCASIONALLY, THE CLAIMANT CONTINUED DRIVING APPROXIMATELY 400 MILES BEFORE BEING TAKEN OFF THE TRUCK AND INTO THE HOSPITAL.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 5, 1973 IS REVERSED AND THE CLAIM IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR PAYMENT OF WORKMEN'S COMPENSATION BENEFITS AS PROVIDED 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 AT HEARING AND UPON THIS REVIEW.

WCB CASE NO. 72-2180 MARCH 5, 1974

WILLIAM HOOVER, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
ROGER WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE IS EXTENT OF PERMANENT DISABILITY. CLAIMANT WAS GRANTED 60 PERCENT OF THE MAXIMUM FOR UNSCHEDULED LOW BACK DISABILITY EQUAL TO 192 DEGREES BY THE DETERMINATION ORDER. THE HEARING OFFICER, IN HIS OPINION AND ORDER DATED SEPTEMBER 19, 1973, INCREASED THE AWARD TO 85 PERCENT UNSCHEDULED PERMANENT PARTIAL DISABILITY BUT FOLLOWING A MOTION FOR RECONSIDERATION, THE HEARING OFFICER ISSUED AN AMENDED ORDER DATED OCTOBER 5, 1973, AMENDING THE FORMER OPINION AND ORDER BY DENYING CLAIMANT'S REQUEST FOR ADDITIONAL COMPENSATION AND AFFIRMING THE DETERMINATION ORDER OF 60 PERCENT EQUAL TO 192 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. THE CLAIMANT REQUESTS BOARD REVIEW CONTENDING THAT CLAIMANT IS ENTITLED TO PERMANENT TOTAL DISABILITY OR AT LEAST THE 85 PERCENT PERMANENT PARTIAL DISABILITY FIRST AWARDED BY THE HEARING OFFICER.

CLAIMANT, A 50 YEAR OLD LOGGER AND SAWMILL WORKER, SUFFERED A LOW BACK STRAIN JANUARY 2, 1970. HE WAS TREATED AND EXAMINED BY MANY CHIROPRACTORS, NEUROSURGEONS, ORTHOPEDISTS AND PSYCHIATRISTS. HE HAS HAD A COMPLETE WORKUP BY THE PHYSICAL REHABILITATION CENTER WHO RATES HIS PHYSICAL CONDITION AS A MILDLY MODERATE BACK IMPAIRMENT. CLAIMANT HAS HAD DRUG ABUSE PROBLEMS AND PSYCHIATRIC PROBLEMS MOST OF WHICH PREEXISTED THE INDUSTRIAL ACCIDENT.

IN THE COURSE OF HANDLING THE CLAIM, THE EMPLOYER ENTERED A PARTIAL DENIAL OF RESPONSIBILITY FOR THE PSYCHOLOGICAL PROBLEMS. THE REQUEST FOR HEARING ON THIS DENIAL WAS SETTLED BY A DISPUTED CLAIMS SETTLEMENT, JOINT EXHIBIT NO. 68. THEREFORE, THERE IS NO PSYCHOLOGICAL INVOLVEMENT IN THE CONSIDERATION OF THE PERMANENT DISABILITY AS A MATTER OF LAW.

ORDER

THE AMENDED ORDER OF THE HEARING OFFICER DATED OCTOBER 5, 1973 IS AFFIRMED.

MARCH 6, 1974

ARTHUR LEE VERMENT, CLAIMANT

GALTON AND POICK, CLAIMANT'S ATTYS,
LINDSAY, NAHSTOLL, HART, DUNCAN, DAFOE AND
KRAUSE, DEFENSE ATTYS.

REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A HEARING OFFICER'S ORDER AFFIRMING THE PARTIAL DENIAL OF HIS CLAIM FOR COMPENSATION AND HIS ORDER REMANDING THE CASE RECORD TO THE BOARD'S COMPLIANCE DIVISION FOR APPROPRIATE ACTION CONCERNING ALLEGED ETHICAL IMPROPRIETIES BY CLAIMANT'S ATTORNEY IN HIS REPRESENTATION OF CLAIMANT.

ON MAY 6, 1971 WHILE EMPLOYED AS A SHOE SALESMAN FOR NORDSTROM-BEST, CLAIMANT TRIPPED OVER A BOX AND FELL, INJURING HIS RIGHT ARM, SHOULDER AND LEFT ELBOW. A LONG PERIOD OF CONSERVATIVE TREATMENT FAILED TO RELIEVE HIS RIGHT SHOULDER PROBLEMS AND ONLY AFTER SURGICAL RESECTION OF THE LONG HEAD OF THE RIGHT BICEPS TENDON ON OCTOBER 17, 1972, DID SIGNIFICANT IMPROVEMENT RESULT.

CLAIMANT ALLEGES THAT FOLLOWING HIS RETURN TO WORK SHORTLY AFTER THE INJURY, HE EXPERIENCED PERIODIC PAIN IN HIS LOW BACK ASSOCIATED WITH THE HEAVY LIFTING AND REPETITIVE BENDING ON THE NORDSTROM-BEST JOB. HOWEVER, NO NOTICE OF HIS BACK COMPLAINTS WAS GIVEN TO THE EMPLOYER'S INSURANCE COMPANY (KEMPER) UNTIL ABOUT DECEMBER 1, 1972. THE RECORD INDICATES THAT ON APRIL 26, 1972 CLAIMANT MENTIONED TO DR. R. KENT MARKEE, A CONSULTING PHYSICIAN, THAT HE HAD BEEN TOLD IN THE PAST THAT THE VERTEBRAE IN HIS LOWER BACK WERE OUT OF PLACE BUT THE REPORT CONTAINS NO REFERENCE TO ANY PRESENT LOW BACK PAIN OR BACK PAIN OF ANY KIND, PERIODIC OR OTHERWISE, ASSOCIATED WITH THE ACCIDENT OF MAY 6, 1971 (CLAIMANT'S EXHIBIT 6).

WITHOUT SEEKING A MEDICAL EVALUATION AND APPARENTLY BASED UPON THE LACK OF PRIOR COMPLAINTS OF BACK PAIN, KEMPER ISSUED A PARTIAL DENIAL OF THE CLAIM ON DECEMBER 22, 1972.

ON JANUARY 12, 1973 CLAIMANT VISITED DR. BERSELLI, HIS TREATING ORTHOPEDIST, COMPLAINING OF LOW BACK PAIN AND STATING THAT HE HAD INJURED HIS BACK IN THE FALL AT WORK IN JULY (MEANING MAY) 1971.

DR. BERSELLI THEREAFTER REPORTED =

MY IMPRESSION IS THAT THIS PATIENT HAD A CHRONIC LUMBOSACRAL STRAIN WHICH I THINK IS RELATED TO HIS FALL AT WORK IN JULY OF 1971. CLAIMANT'S EXHIBIT 1.

CLAIMANT REQUESTED A HEARING ON THE PARTIAL DENIAL AND DR. BERSELLI WAS SUBPOENAED BY THE INSURANCE COMPANY TO TESTIFY BECAUSE CLAIMANT'S ATTORNEY HAD REFUSED TO AUTHORIZE ACCESS TO DR. BERSELLI'S INFORMATION OR OPINIONS REGARDING CLAIMANT'S CASE BY LETTER INQUIRY.

AT THE HEARING DR. BERSELLI TESTIFIED THAT THE MECHANICS OF THE FALL COULD HAVE PRODUCED A BACK INJURY BUT HE STATED HIS OPINION OF CAUSAL CONNECTION WAS BASED ESSENTIALLY ON THE HISTORY GIVEN BY THE CLAIMANT THAT HE HAD HURT HIS BACK IN THE FALL AT WORK AND THAT IT HAD CONTINUED TO BOTHER HIM EVER SINCE.

THE HEARING OFFICER APPROVED THE PARTIAL DENIAL AFTER FINDING THE HISTORY ON WHICH DR. BERSELLI RELIED IN EXPRESSING HIS OPINION AT VARIANCE WITH THE TRUE FACTS.

THE BOARD, AFTER REVIEWING THE RECORD DE NOVO, AGREES WITH THE HEARING OFFICER'S FINDINGS AND HIS DECISION ON THE MERITS. HIS ORDER APPROVING THE PARTIAL DENIAL SHOULD BE AFFIRMED.

A DECISION ON THE MERITS WAS HINDERED AND COMPLICATED BY THE REFUSAL OF CLAIMANT'S COUNSEL TO PERMIT THE TREATING DOCTOR TO PROVIDE MEDICAL INFORMATION TO THE CARRIER.

THE HEARING OFFICER WAS ENTIRELY CORRECT IN HIS OPINION THAT THE PAYING AGENCY IN AN ACCEPTED WORKMEN'S COMPENSATION CLAIM IS ENTITLED TO PERIODIC, COMPLETE REPORTS FROM THE TREATING PHYSICIAN. WITHOUT SUCH INFORMATION THE EMPLOYER OR CARRIER WOULD BE UNABLE TO DISCHARGE ITS STATUTORY OBLIGATION TO PROCESS THE CLAIM. THE BOARD IS DISTURBED, HOWEVER, WITH THE SOMEWHAT SHRILL AND INJUDICIOUS ATTACK ON CLAIMANT'S ATTORNEY. IT APPEARS THE ATTORNEY USED A MEDICAL INFORMATION RELEASE FORM OF A TYPE COMMON IN CIVIL LITIGATION, BUT NOT APPROPRIATE IN THIS WORKMAN'S COMPENSATION CASE. THE RECORD DOES NOT SUPPORT THE CONCLUSION, APPARENTLY REACHED BY THE HEARING OFFICER, THAT COUNSEL ACTED OUT OF CONSCIOUS DISREGARD OR DISRESPECT FOR THE LAW. IF VIOLENCE WAS DONE TO AN AGREEMENT BETWEEN THE MEDICAL AND LEGAL PROFESSIONS, THAT IS A MATTER FOR THE OREGON STATE BAR TO CONSIDER, NOT THE COMPLIANCE DIVISION OF THE BOARD. THE HEARING OFFICER SHOULD HAVE DECIDED THE CASE ON THE BASIS OF THE EVIDENCE PRESENTED. IT IS NOT THE FUNCTION OF A HEARING OFFICER OR THE BOARD ITSELF TO WEIGH ALLEGED ETHICAL CONSIDERATIONS. PART 11 OF CLAIMANT'S MOTION TO EXPUNGE THAT PART OF THE HEARING OFFICER'S ORDER SHOULD HAVE BEEN ALLOWED.

THE ORDER OF THE HEARING OFFICER ON THE MOTIONS FILED AFTER THE OPINION AND ORDER WAS ISSUED ON JUNE 15, 1973, ALSO CONTAINS IRRELEVANT STATEMENTS CONCERNING THE HEARING OFFICER'S PERSONAL EXPERIENCE AND ATTITUDE. THESE FACTORS ARE NOT GERMANE TO THE CONTROVERSY AND HAVE NO PLACE IN A DECISION ON THE MERITS OF THE CASE. THE HEARING OFFICER SHOULD HAVE LIMITED HIS OPINION AND DECISION TO THE EVIDENCE AND THE LAW. THE HEARING OFFICER'S REACTION APPEARS OUT OF ALL PROPORTION TO THE ERROR.

HIS ORDER REMANDING THIS CASE TO THE COMPLIANCE DIVISION OF THE WORKMEN'S COMPENSATION BOARD FOR APPROPRIATE ACTION SHOULD THEREFORE BE REVERSED.

ORDER

THE HEARING OFFICER'S ORDERS DATED JUNE 15, 1973 AND JULY 6, 1973 AFFIRMING THE PARTIAL DENIAL OF CLAIMANT'S CLAIM ARE HEREBY AFFIRMED.

THE HEARING OFFICER'S ORDERS DATED JUNE 15, 1973 AND JULY 6, 1973 REFERRING THE WITHIN NUMBERED AND ENTITLED MATTER TO THE COMPLIANCE DIVISION OF THE WORKMEN'S COMPENSATION BOARD FOR SUCH CONSIDERATION, ACTION OR PROCEEDINGS AS IT DEEMS APPROPRIATE, ARE HEREBY REVERSED.

WCB CASE NO. 73-189
WCB CASE NO. 73-997

MARCH 6, 1974
MARCH 6, 1974

DORIS D. TADLOCK, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MIZE, KRIESIEN, FEWLESS, CHENEY AND
KELLEY, DEFENSE ATTYS.

ON JANUARY 18, 1974 THE BOARD ISSUED ITS OWN MOTION ORDER GRANTING CLAIMANT ADDITIONAL COMPENSATION AND AUTHORIZING CLAIMANT'S ATTORNEYS TO RECOVER A FEE OF UP TO FIFTEEN HUNDRED DOLLARS.

CLAIMANT'S ATTORNEYS HAVE NOW ADVISED THEY WISH THEIR FEE LIMITED TO A MAXIMUM OF FIVE HUNDRED DOLLARS AND THE ORDER AMENDED ACCORDINGLY.

IT IS SO ORDERED.

WCB CASE NO. 73-1130

MARCH 7, 1974

GORDON MOORE, CLAIMANT

COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE IS WHETHER OR NOT THE COMPENSABLE MYOCARDIAL INFARCTION CAUSED THE NEED FOR THE CORONARY BYPASS SURGERY, I. E. WAS CLAIMANT'S WORK INJURY A MATERIAL CONTRIBUTING FACTOR CAUSING THE NEED FOR THE CORONARY BYPASS SURGERY.

CLAIMANT SUSTAINED A MYOCARDIAL INFARCTION AUGUST 7, 1972 WHICH WAS ACCEPTED AS COMPENSABLE BY THE STATE ACCIDENT INSURANCE FUND. CLAIMANT CONTINUED TO HAVE CHEST PAINS. A CORONARY ARTERIOGRAPHY SHOWED SEVERE, FAIRLY DIFFUSE, THREE VESSEL OCCLUSIVE CORONARY ARTERY DISEASE. THE ARTERY BYPASS SURGERY WAS PERFORMED TO CORRECT THIS. THE FUND DENIED THAT THIS SURGERY WAS COMPENSABLE CONTENDING THERE WAS MERELY A PROGRESSION OF CORONARY DISEASE WHICH WAS NOT CONNECTED TO OR AGGRAVATED BY THE INDUSTRIAL INCIDENT.

THE FUND HAD THE CLAIMANT EXAMINED BY DR. GRISWOLD. DR. GRISWOLD IS A WELL KNOWN HEART EXPERT. HE FOUND THE CLAIMANT'S MYOCARDIAL INFARCTION RESULTED IN MYOCARDIAL ISCHEMIA WHICH NECESSITATED THE PERFORMANCE OF THE CORONARY ARTERIOGRAPHY AND BYPASS SURGERY. DR. GRISWOLD CONNECTED THE SURGERY TO THE INDUSTRIAL INCIDENT.

DR. ROBINHOLD, ANOTHER HEART SPECIALIST ESSENTIALLY CONNECTED THE SURGERY TO THE INDUSTRIAL INCIDENT.

DR. HARWOOD, A GENERAL PRACTITIONER DID NOT CONNECT THE NEED FOR SURGERY TO THE INDUSTRIAL INCIDENT. IT IS INTERESTING TO NOTE THAT DR. HARWOOD DID STATE, !!THE EPISODE OF AUGUST 7, 1972 MERELY SERVED TO PRECIPITATE THE EPISODE,!!

THE BOARD, IN CONSIDERING THE MEDICAL EVIDENCE, FINDS THAT THE WEIGHT OF THE MEDICAL EVIDENCE CONNECTS THE NEED FOR THE SURGERY TO THE INDUSTRIAL INCIDENT.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 20, 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.

WCB CASE NO. 72-2833 MARCH 7, 1974

WILMOT ANDERSON, CLAIMANT

AND COMPLYING STATUS OF
NEW AGE MISSION
BOLDERREE, KILLORAN AND NELSON,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

NEW AGE MISSION REQUESTS REVERSAL OF THE HEARING OFFICER'S ORDER WHICH -

(1) FOUND THAT CLAIMANT, ANDERSON, WAS A SUBJECT WORKMAN OF A SUBJECT EMPLOYER (NEW AGE MISSION) -

(2) THAT CLAIMANT HAD SUFFERED A COMPENSABLE INJURY WHILE WORKING FOR SAID EMPLOYER AND,

(3) AWARDED CLAIMANT HIS ATTORNEY'S FEES.

THE OPINION AND ORDER OF THE HEARING OFFICER SETS OUT THE FACTS OF THIS MATTER ON EACH OF THE ISSUES RAISED. THE HEARING OFFICER HAD THE ADVANTAGE OF HEARING AND SEEING THE WITNESSES AND, UNDER THE CIRCUMSTANCES, GREAT WEIGHT IS GIVEN TO HIS OPINION. THE APPLICABLE LAW IS CLEAR AND THE HEARING OFFICER PROPERLY APPLIED THE LAW TO THE FACTS. THE BOARD THEREFORE ADOPTS THE HEARING OFFICER'S OPINION AND ORDER AS ITS OWN.

THE MATTER OF ATTORNEY'S FEES FOR CLAIMANT'S ATTORNEY WAS SUBMITTED TO JOSEPHINE COUNTY CIRCUIT COURT JUDGE PURSUANT TO ORS 656.388(2) AND BY ORDER OF HONORABLE SAMUEL M. BOWE, DATED AUGUST 31, 1973, THE CLAIMANT'S ATTORNEY'S FEES WERE AWARDED IN THE AMOUNT OF FIFTEEN HUNDRED DOLLARS.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 6, 1973 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEYS FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND AND RECOVERED BY THE BOARD FROM THE EMPLOYER, PURSUANT TO ORS 656.054 FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 73-1328 MARCH 7, 1974

CLON APPEGATE, CLAIMANT

RICHARDSON AND MURPHY, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVERSAL OF THE REFEREE'S AWARD OF PERMANENT TOTAL DISABILITY.

CLAIMANT, A 60 YEAR OLD LABORER AND OIL TRUCK DRIVER, IS FUNCTIONALLY ILLITERATE WITH A LONG HISTORY OF BACK PROBLEMS WITH A MODERATELY SEVERE DEGREE OF PSYCHOPATHOLOGY, MODERATELY RELATED TO THE INDUSTRIAL ACCIDENT BY WAY OF AGGRAVATION OF A PREEXISTING CONDITION.

THE OBJECTIVE MEDICAL EVIDENCE OF SEVERE DISC DEGENERATION EXACERBATED BY THE INDUSTRIAL INJURY COMBINED WITH THE PSYCHOPATHOLOGY MAKES THE CLAIMANT PRIMA FACIE PERMANENTLY TOTALLY DISABLED. THUS THE CLAIMANT'S MOTIVATION UNDER THE RATIONALE OF THE DEATON CASE IS NOT INVOLVED.

ORDER

THE ORDER OF THE REFEREE DATED OCTOBER 5, 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.

WCB CASE NO. 73-1649 MARCH 7, 1974

ERNEST PIERCE, CLAIMANT

FLAXEL, TODD, FLAXEL AND STEVENSON,
CLAIMANT'S ATTYS.
JACUA AND WHEATLEY, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE IS THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED THE CLAIMANT 15 PERCENT FOR UNSCHEDULED LOW BACK DISABILITY EQUIVALENT TO 48 DEGREES. THE HEARING OFFICER AFFIRMED THIS AWARD AND THE CLAIMANT REQUESTS BOARD REVIEW.

CLAIMANT, A 37 YEAR OLD LUMBER MILL LABORER SUSTAINED A LOW BACK INJURY OCTOBER 23, 1971. HE RETURNED TO WORK DECEMBER 20, 1971 AND HAS WORKED STEADILY. CLAIMANT CONTINUES TO HAVE PAIN IN THE LOW BACK. CLAIMANT'S OBESITY SLOWED HIS RECOVERY ACCORDING TO THE MEDICAL REPORTS. CLAIMANT NOW IS ON A WEIGHT REDUCTION PROGRAM AND APPEARS TO BE SUCCEEDING.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE OPINION AND ORDER OF THE HEARING OFFICER THAT THE 15 PERCENT UNSCHEDULED DISABILITY ADEQUATELY COMPENSATES THE CLAIMANT.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 27, 1973 IS AFFIRMED.

SAIF CLAIM NO. KC 404637 MARCH 7, 1974

JAMES C. CONAWAY, CLAIMANT

OWN MOTION ORDER

ON JANUARY 29, 1974 CLAIMANT REQUESTED THE BOARD TO PERMIT A HEARING ON THE DENIAL OF HIS CLAIM ON ITS OWN MOTION SINCE HE HAD FAILED TO REQUEST A HEARING WITHIN THE TIME PROVIDED BY LAW. HE ALLEGES THAT "I HAVE A GOOD CLAIM BUT JUST DID NOT UNDERSTAND MY RIGHTS."

"OWN MOTION" AUTHORITY RELATES ONLY TO MATTERS OVER WHICH THE BOARD HAS CONTINUING POWER AND JURISDICTION, THAT IS TO SAY COMPENSABLE INJURIES.

BECAUSE THE CLAIMANT FAILED TO ESTABLISH THAT HIS INJURY WAS A COMPENSABLE INJURY, THE BOARD CONCLUDES IT HAS NO CONTINUING JURISDICTION.

THE CLAIMANT'S REQUEST FOR OWN MOTION SHOULD THEREFORE BE DENIED.

ORDER

THE CLAIMANT'S JANUARY 29, 1974 REQUEST FOR OWN MOTION RELIEF IS HEREBY DENIED.

WCB CASE NO. 73-949 MARCH 8, 1974
WCB CASE NO. 73-950 MARCH 8, 1974

JOHN WESTBY, CLAIMANT

MARSH, MARSH, DASHNEY AND CUSHING,
CLAIMANT'S ATTYS.

DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

ON MARCH 13, 1968 CLAIMANT SUFFERED A COMPENSABLE INJURY IN THE EMPLOYE OF ROSS BROS. CONSTRUCTION INC., AN EMPLOYER CONTRIBUTING TO THE STATE ACCIDENT INSURANCE FUND. (SAIF)

ON NOVEMBER 29, 1972, CLAIMANT SUFFERED A SECOND COMPENSABLE INCIDENT WHILE IN THE EMPLOYEE OF DIANE'S FOODS INC. WHICH

WAS INSURED FOR WORKMEN'S COMPENSATION LIABILITY BY EMPLOYER'S INSURANCE OF WAUSAU. (WAUSAU) HE CONSIDERED IT A RECURRENCE OF THE 1968 INJURY AND THEREUPON FILED A CLAIM WITH SAIF. SAIF DENIED CLAIMANT'S CLAIM FOR BENEFITS ON THE BASIS THAT THE NOVEMBER 29, 1972 INCIDENT WAS A NEW INJURY. CLAIMANT THEN FILED A CLAIM WITH WAUSAU WHICH DENIED BENEFITS CLAIMING THE INCIDENT WAS AN AGGRAVATION OF THE 1968 INJURY. A HEARING WAS REQUESTED AND THE HEARING OFFICER RULED THE INCIDENT OF NOVEMBER 29, 1972 A NEW INJURY AND THAT WAUSAU HAD UNREASONABLY REFUSED TO PAY COMPENSATION.

WAUSAU REQUESTS BOARD REVIEW OF THE HEARING OFFICER'S ORDER. CLAIMANT IS ONLY INTERESTED IN ASSURING THAT ONE OF THE CARRIERS PAYS BENEFITS FOR THE OBVIOUSLY COMPENSABLE CONDITION. HE HAS THEREFORE CROSS-APPEALED TO PRESERVE THE BOARD'S JURISDICTION TO IMPOSE LIABILITY ON THE STATE ACCIDENT INSURANCE FUND IF THE BOARD SHOULD REVERSE THE HEARING OFFICER'S RULING. THE BOARD THUS REVIEWS BOTH WCB CASE NO. 73-949 AND WCB CASE NO. 73-950.

ISSUES

(1) DOES THE INCIDENT OF NOVEMBER 29, 1972 CONSTITUTE A NEW COMPENSABLE INJURY OR AN AGGRAVATION OF CLAIMANT'S INJURY OF MARCH 13, 1968?

(2) SHOULD PENALTIES BE AWARDED AGAINST WAUSAU?

FINDINGS

ON MARCH 13, 1968, WHILE WORKING AS A CARPENTER FOR ROSS BROS. CONSTRUCTION INC., CLAIMANT FELL FROM A SCAFFOLDING, SUFFERING AN ACUTE LUMBAR MUSCLE SPRAIN. HE RECEIVED CONSERVATIVE MEDICAL TREATMENT BUT THE SPRAIN NEVER FULLY RESOLVED.

AFTER EXAMINING CLAIMANT FOR CLAIM CLOSURE ON JANUARY 23, 1969, DR. DOUGLAS G. COOPER NOTED -

"HIS COMPLAINTS REMAIN ESSENTIALLY THE SAME AS THEY WERE IN SEPTEMBER. AFTER SQUATTING TO ADJUST MACHINERY AT HIS WORK FOR A FEW MINUTES HE FINDS IT HARD TO STAND UP AND STRAIGHTEN OUT HIS BACK AGAIN."

JOINT EXHIBIT 20.

SINCE THEN, HE HAS EXPERIENCED A NUMBER OF INCIDENTS WHERE MINIMAL PHYSICAL ACTIVITY HAS PRODUCED ACUTE EPISODES OF LOW BACK PAIN. ONE SUCH INCIDENT OCCURRED WHEN HE MERELY REACHED DOWN TO PICK UP SOME PAPER.

ON NOVEMBER 29, 1972, CLAIMANT WAS REPAIRING A MACHINE FOR HIS PRESENT EMPLOYER, DIANE'S FOODS INC. HE WAS WORKING IN A RATHER AWKWARD SQUATTING POSITION. AS HE AROSE HE EXPERIENCED SEVERE PAIN IN THE LOW BACK. HE SOUGHT TREATMENT BY DR. HUSTON WHO HAD TREATED HIM FOR THE ORIGINAL INJURY. DR. HUSTON CONSIDERED THIS INCIDENT A RECURRENCE OF HIS 1968 INJURY INDUCED PROBLEMS.

WHEN THE STATE ACCIDENT INSURANCE FUND REFUSED TO ACCEPT HIS CLAIM HE FILED A CLAIM ON FEBRUARY 2, 1973 WITH WAUSAU. WAUSAU DENIED THE CLAIM ON MARCH 20, 1973 BUT FAILED TO PAY COMPENSATION PENDING THE DENIAL AS REQUIRED BY LAW.

THE HEARING OFFICER CONCLUDED THAT BECAUSE CLAIMANT HAD SQUATTED MANY TIMES PRIOR TO THE LAST INCIDENT, WITHOUT INJURY,

AND BECAUSE THE PAIN FOLLOWING THE NOVEMBER 29, 1972 INCIDENT WAS MORE SEVERE AND EXTENSIVE, THAT HE HAD SUFFERED A NEW INJURY. WE DISAGREE.

IT IS SIGNIFICANT THAT CLAIMANT'S PRESENT PROBLEM WAS BROUGHT ON BY DOING THE VERY THING DR. COOPER FOUND WORTHY OF COMMENT IN HIS CLAIM CLOSURE REPORT.

WE AGREE WITH THE ARGUMENTS PRESENTED BY THE EMPLOYER-APPELLANT ON REVIEW AND CONCLUDE THAT CLAIMANT'S INCIDENT OF NOVEMBER 29, 1972 CONSTITUTES AN AGGRAVATION OF HIS MARCH 13, 1968 INJURY AND THUS A LIABILITY OF THE STATE ACCIDENT INSURANCE FUND.

REGARDLESS OF THE ABOVE CONCLUSION, THE HEARING OFFICER'S CONCLUSION THAT PENALTIES SHOULD BE AWARDED IS CORRECT. THE CLAIMANT'S INJURIES WERE OBVIOUSLY COMPENSABLE. THEY OCCURRED IN THE COURSE OF EMPLOYMENT AND, WERE IT NOT FOR THE PRIOR COMPENSABLE INJURY, WOULD HAVE CLEARLY BEEN THE LIABILITY OF DIANE'S FOODS INC. ALL THIS WAS KNOWN TO THE EMPLOYER OR ITS INSURER, WAUSAU. WAUSAU SHOULD HAVE PROVIDED COMPENSATION IMMEDIATELY FOR THE PERIOD OF CLAIMANT'S TEMPORARY TOTAL DISABILITY AND CONTEMPORANEOUSLY FILED A REQUEST FOR DETERMINATION OF LIABILITY UNDER ORS 656.307. UNDER THAT STATUTE THE BOARD COULD HAVE MADE THE DETERMINATION OF LIABILITY AND ANY NECESSARY MONETARY ADJUSTMENT BETWEEN THE PARTIES. TO SIMPLY DENY LIABILITY WAS WRONG. UNDER THESE CIRCUMSTANCES THE FAILURE TO PAY COMPENSATION WAS UNREASONABLE AND CLAIMANT IS ENTITLED TO A PENALTY EQUAL TO 25 PERCENT OF ALL COMPENSATION DUE CLAIMANT FOR THE PERIOD NOVEMBER 29, 1972 TO JUNE 25, 1973, THE DATE OF THE HEARING OFFICER'S ORDER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 25, 1973 IS REVERSED.

THE LETTER OF DENIAL DATED MARCH 20, 1973, ISSUED BY EMPLOYER'S INSURANCE OF WAUSAU ON BEHALF OF DIANE'S FOODS INC. IS HEREBY APPROVED.

DIANE'S FOODS INC., ACTING THROUGH ITS CARRIER, EMPLOYER'S INSURANCE OF WAUSAU, IS LIABLE TO CLAIMANT FOR PAYMENT OF A SUM EQUAL TO 25 PERCENT OF THE COMPENSATION TO WHICH CLAIMANT WAS ENTITLED FOR THE PERIOD NOVEMBER 29, 1972 TO JUNE 25, 1973. THE PENALTY PAYMENTS MADE PURSUANT TO THE HEARING OFFICER'S ORDER OF JUNE 25, 1973 MAY BE APPLIED TO SATISFY THE LIABILITY HEREBY IMPOSED.

THE STATE ACCIDENT INSURANCE FUND IS HEREBY ORDERED TO ACCEPT CLAIMANT'S CLAIM OF AGGRAVATION FOR THE INCIDENT OF NOVEMBER 29, 1972 AND TO PROVIDE HIM THE APPROPRIATE WORKMEN'S COMPENSATION BENEFITS UNTIL THE CLAIM IS AGAIN CLOSED PURSUANT TO ORS 656.268.

THE STATE ACCIDENT INSURANCE FUND IS HEREBY FURTHER ORDERED TO PAY TO CLAIMANT'S ATTORNEY A REASONABLE FEE OF SEVEN HUNDRED FIFTY DOLLARS FOR HIS SERVICES AT THE HEARING AND ON THIS REVIEW, SAID FEE TO BE PAID IN ADDITION TO, AND NOT OUT OF THE COMPENSATION AWARDED TO CLAIMANT.

FILING OF A REQUEST FOR REVIEW DOES NOT STAY PAYMENT OF COMPENSATION TO THE CLAIMANT.

RITA TODAHL, CLAIMANT

WHIPPLE, JOHANSEN AND MCCLAIN,
CLAIMANT'S ATTYS.

TOOZE, KERR, PETERSON, MARSHALL AND
SHENKER, DEFENSE ATTYS.

REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS REVIEW OF A HEARING OFFICER'S ORDER ALLOWING THE EMPLOYER AN OFFSET AGAINST ITS LIABILITY FOR ADDITIONAL PERMANENT PARTIAL DISABILITY IN AN AMOUNT EQUAL TO AN OVERPAYMENT OF TEMPORARY TOTAL DISABILITY CREATED BY VIRTUE OF A BOARD REVERSAL OF A HEARING OFFICER'S ORDER. CLAIMANT ALSO SEEKS PENALTIES AND ATTORNEY'S FEES FOR THE EMPLOYER'S REFUSAL TO MAKE THE PAYMENTS ALLEGEDLY DUE.

CLAIMANT COMPENSABLY INJURED HER BACK ON JUNE 2, 1970 WHILE WORKING AS AN L. P. N.

ON FEBRUARY 2, 1972 A DETERMINATION ORDER ISSUED FINDING THE CLAIMANT MEDICALLY STATIONARY AS OF JANUARY 13, 1972 AND AWARDING HER 32 DEGREES FOR UNSCHEDULED DISABILITY. CLAIMANT REQUESTED A HEARING CONTENDING SHE WAS NOT MEDICALLY STATIONARY, THAT HER PERMANENT DISABILITY EXCEEDED THAT AWARDED.

ON DECEMBER 29, 1972 A HEARING OFFICER FOUND SHE WAS NOT MEDICALLY STATIONARY, THAT FURTHER MEDICAL TREATMENT WAS NEEDED AND THAT TIME LOSS COMPENSATION SHOULD BE REINSTATED FROM JANUARY 13, 1972 UNTIL TERMINATION PURSUANT TO LAW, WITH CLAIMANT'S ATTORNEY TO RECEIVE 25 PERCENT OF THE TIME LOSS COMPENSATION TO A MAXIMUM OF FIFTEEN HUNDRED DOLLARS AS HIS FEE.

THE EMPLOYER REQUESTED REVIEW BUT, PURSUANT TO ORS 656.313, PAID THE BENEFITS AS ORDERED BY THE HEARING OFFICER, PENDING THE REVIEW.

ON JUNE 7, 1973, THE BOARD REVERSED THE HEARING OFFICER'S REOPENING OF CLAIMANT'S CLAIM. IT CONCLUDED SHE HAD ACTUALLY BEEN MEDICALLY STATIONARY ON AND AFTER JANUARY 13, 1972. THE BOARD FURTHER CONCLUDED HER PERMANENT DISABILITY EQUALLED 20 PERCENT OF THE MAXIMUM RATHER THAN THE 10 PERCENT GRANTED BY THE DETERMINATION ORDER AND ACCORDINGLY AWARDED HER AN ADDITIONAL 32 DEGREES, MAKING A TOTAL OF 64 DEGREES FOR UNSCHEDULED PERMANENT PARTIAL DISABILITY. BASED ON THE LAW IN FORCE AT THE TIME OF THE INJURY, THE ADDITIONAL PERMANENT DISABILITY AWARD AMOUNTED TO AN ADDITIONAL SEVENTEEN HUNDRED SIXTY DOLLARS. THE TIME LOSS BENEFITS ACTUALLY PAID BY THE EMPLOYER PENDING RECEIPT OF THE BOARD'S ORDER ON REVIEW, TOTALLED TWO THOUSAND SEVEN HUNDRED THIRTEEN DOLLARS AND FIFTY EIGHT CENTS. OF THAT, SIX HUNDRED DOLLARS HAS BEEN PAID TO CLAIMANT'S ATTORNEY AS A REASONABLE ATTORNEY'S FEE.

WHEN THE BOARD'S ORDER ISSUED, THE EMPLOYER TOOK THE POSITION THAT ITS PAYMENT OF TIME LOSS BENEFITS WHICH, THE BOARD HAD NOW RULED IT DID NOT OWE, HAD ALREADY SATISFIED ITS LIABILITY FOR THE ADDITIONAL PERMANENT DISABILITY COMPENSATION WHICH THE BOARD GRANTED. CLAIMANT DEMANDED PAYMENT OF THE PERMANENT DISABILITY AWARD PLUS A SMALL SUM OF TEMPORARY TOTAL DISABILITY WHICH HAD

ACCRUED BUT HAD NOT YET BEEN PAID WHEN THE HEARING OFFICER'S ORDER WAS REVERSED.

THE EMPLOYER REFUSED TO PAY CONTENDING ITS OBLIGATION UNDER THE BOARD'S ORDER HAD BEEN MORE THAN SATISFIED BY THE TIME LOSS PAYMENTS ALREADY MADE.

A HEARING WAS REQUESTED AND, AS PREVIOUSLY NOTED, THE HEARING OFFICER AGREED WITH THAT CONTENTION. WE DISAGREE.

ORS 656.313 PROVIDES -

'(1) FILING BY AN EMPLOYER OR THE STATE ACCIDENT INSURANCE FUND OF A REQUEST FOR REVIEW OR COURT APPEAL SHALL NOT STAY PAYMENT OF COMPENSATION TO A CLAIMANT.

'(2) IF THE BOARD OR COURT SUBSEQUENTLY ORDERS THAT COMPENSATION TO THE CLAIMANT SHOULD NOT HAVE BEEN ALLOWED OR SHOULD HAVE BEEN AWARDED IN A LESSER AMOUNT THAN AWARDED, THE CLAIMANT SHALL NOT BE OBLIGATED TO REPAY ANY SUCH COMPENSATION WHICH WAS PAID PENDING THE REVIEW OR APPEAL.'

WE AGREE WITH THE CLAIMANT'S ARGUMENT ON APPEAL THAT THIS STATUTE AND THE INTERPRETATION THEREOF EXPRESSED BY THE COURT IN LEECH V. GEORGIA PACIFIC CORP., 254 OR 351 (1969), IS CONTROLLING. PERMITTING THE EMPLOYER TO RECAPTURE THE FUNDS BY OFFSETTING THE TEMPORARY TOTAL DISABILITY PAYMENTS AGAINST THE PERMANENT PARTIAL DISABILITY LIABILITY WOULD BE TANTAMOUNT TO REPAYMENT IN CONTRAVENTION OF ORS 656.313(2).

UNDER THE CIRCUMSTANCES OF THIS CASE WE DO NOT BELIEVE THAT ORS 656.313 REQUIRES THE EMPLOYER TO NOW PAY THE ACCRUED TEMPORARY TOTAL DISABILITY WHICH REMAINED UNPAID AT THE TIME OF THE BOARD'S ORDER OF JUNE 7, 1973.

UNDER ORS 656.262(8), A CLAIMANT IS ENTITLED TO PENALTIES FOR AN EMPLOYER'S REFUSAL TO PAY COMPENSATION ONLY IF THAT REFUSAL IS UNREASONABLE. WE BELIEVE THE EMPLOYER'S CLAIM TO AN OFFSET WAS MADE IN GOOD FAITH. IT'S OPINION THAT SUCH WAS PERMISSIBLE UNDER THE WORKMEN'S COMPENSATION LAW CANNOT BE CHARACTERIZED AS UNREASONABLE. HOWEVER, IT DID REFUSE TO PAY COMPENSATION DUE UNDER THE BOARD'S ORDER AND CLAIMANT IS THEREFORE ENTITLED TO THE PAYMENT OF HIS ATTORNEY'S FEE IN ACCORDANCE WITH ORS 656.382(1).

ORDER

THAT PART OF THE HEARING OFFICER'S OPINION AND ORDER DATED SEPTEMBER 21, 1973, PERMITTING THE OFFSET OF TEMPORARY TOTAL DISABILITY BENEFIT PAYMENTS MADE PURSUANT TO THE HEARING OFFICER'S ORDER OF DECEMBER 29, 1972 IN WCB CASE NO. 72-2190 AGAINST THE ADDITIONAL PERMANENT PARTIAL DISABILITY LIABILITY ORDERED BY THE BOARD'S ORDER ON REVIEW IN WCB CASE NO. 72-2190, AND HIS ORDER DENYING AN ATTORNEY'S FEE TO CLAIMANT'S ATTORNEY, IS HEREBY REVERSED.

THE EMPLOYER, ACTING THROUGH ITS INSURANCE CARRIER, HARTFORD INSURANCE COMPANY, IS HEREBY ORDERED TO PAY TO CLAIMANT, IN THE MANNER PROVIDED BY LAW, THE ADDITIONAL PERMANENT PARTIAL DISABILITY COMPENSATION AWARDED BY THE BOARD'S ORDER ON REVIEW DATED JUNE 7, 1973.

CLAIMANT'S ATTORNEY, ALAN H. JOHANSEN, IS HEREBY AWARDED A REASONABLE ATTORNEY'S FEE OF FIVE HUNDRED FIFTY DOLLARS, PAYABLE BY THE EMPLOYER, IN ADDITION TO AND NOT OUT OF CLAIMANT'S COMPENSATION, FOR HIS SERVICES AT THE HEARING AND ON THIS REVIEW.

THAT PART OF THE HEARING OFFICER'S OPINION AND ORDER DENYING PENALTIES TO THE CLAIMANT AND ESTABLISHING FEBRUARY 2, 1972 AS THE INCEPTION DATE OF CLAIMANT'S FIVE YEAR AGGRAVATION RIGHTS PERIOD, IS HEREBY AFFIRMED.

SAIF CLAIM NO. FC 443591 MARCH 8, 1974

LAWRENCE V. SULLIVAN, CLAIMANT
OWN MOTION ORDER

ON AUGUST 8, 1967 CLAIMANT STRAINED HIS LOW BACK WHILE WORKING AS A WAREHOUSEMAN FOR STANDARD BRANDS, INC. HE RECEIVED CONSERVATIVE MEDICAL TREATMENT AND WAS OFF WORK A SHORT TIME. AFTER TREATMENT WAS COMPLETED THE CLAIM WAS CLOSED BY A DETERMINATION ORDER DATED SEPTEMBER 22, 1967. SINCE THAT INJURY HE HAS HAD INTERMITTENT BACKACHES AND OCCASIONAL TREATMENT.

ON APRIL 17, 1972 CLAIMANT VISITED DR. LAWRENCE NOALL COMPLAINING OF BACK PAIN. HE HAD HAD NO NEW ACCIDENT OR INJURY BUT HAD BEEN DOING A LOT OF LIFTING AND STOOPING IN HIS PRESENT JOB FOR I.E. FLOORS.

BETWEEN APRIL 17, 1972 AND JANUARY 5, 1973 CLAIMANT RECEIVED ADDITIONAL CONSERVATIVE TREATMENT THROUGH DR. NOALL'S OFFICE. ON FEBRUARY 15, 1973, EMPLOYERS' LIABILITY ASSURANCE CORP., LTD., THE WORKMEN'S COMPENSATION CARRIER WHICH HAD COVERED STANDARD BRANDS AT THE TIME OF CLAIMANT'S AUGUST 8, 1967 INJURY, REFUSED TO PAY DR. NOALL'S BILL (IN THE AMOUNT OF ONE HUNDRED FIFTY THREE DOLLARS AND FIFTY CENTS) RELYING ON THE EXPIRATION OF THE FIVE YEAR PERIOD FOR FILING AGGRAVATION CLAIMS. THE CLAIMANT'S AGGRAVATION PERIOD EXPIRED ON SEPTEMBER 22, 1972.

CLAIMANT'S WIFE CONTACTED A FIELD REPRESENTATIVE OF THIS AGENCY IN JULY, 1973 AND THE BOARD BECAME AWARE OF CLAIMANT'S PROBLEM.

AN INVESTIGATION REVEALS THAT CLAIMANT'S TREATMENT BY DR. NOALL BETWEEN APRIL 17, 1972 AND JANUARY 5, 1973 WAS RELATED TO THE INJURY OF AUGUST 8, 1967.

THE BOARD CONCLUDES THAT EMPLOYERS' LIABILITY ASSURANCE CORP., LTD., AS THE WORKMEN'S COMPENSATION CARRIER FOR STANDARD BRANDS, INC., OUGHT TO PAY THE COST OF TREATMENT PROVIDED BY DR. NOALL FOR THE AUGUST 8, 1967 INJURY UNDER THE PROVISIONS OF ORS 656.245.

ORDER

PURSUANT TO ORS 656.278 THE BOARD HEREBY ORDERS EMPLOYERS' LIABILITY ASSURANCE CORP., LTD. TO PAY THE COST OF CLAIMANT'S MEDICAL TREATMENT BY DR. LAWRENCE NOALL DURING THE PERIOD APRIL 17, 1972 TO JANUARY 5, 1973 IN THE AMOUNT OF ONE HUNDRED FIFTY THREE DOLLARS AND FIFTY CENTS.

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 EMPLOYER MAY REQUEST A HEARING ON THIS ORDER.

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

WCB CASE NO. 73-574 MARCH 8, 1974

ARLIE L. KILGORE, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.

ON FEBRUARY 22, 1974 AN ORDER FILING THE FINDINGS OF MEDICAL BOARD OF REVIEW WAS ENTERED IN THE ABOVE-ENTITLED CASE. THE STATE ACCIDENT INSURANCE FUND HAD REJECTED THE HEARING OFFICER'S ORDER BUT THE MEDICAL BOARD OF REVIEW DID NOT REDUCE THE COMPENSATION ALLOWED BY THE HEARING OFFICER.

CLAIMANT'S ATTORNEYS THEREAFTER MOVED FOR AN ORDER ALLOWING A REASONABLE ATTORNEY'S FEE AND HAVE, BY LETTER DATED MARCH 5, 1974, PRESENTED AN OUTLINE OF THE SERVICES RENDERED WITH REGARD TO THE MEDICAL BOARD OF REVIEW PROCEEDING.

THE BOARD BEING NOW FULLY ADVISED, FINDS THE MOTION WELL TAKEN AND HEREBY ORDERS -

THAT THE STATE ACCIDENT INSURANCE FUND PAY TO CLAIMANT'S ATTORNEYS, EMMONS, KYLE, KROPP AND KRYGER, A REASONABLE FEE OF ONE HUNDRED DOLLARS.

WCB CASE NO. 72-951 MARCH 11, 1974

NELLIE KENDALL, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED 80 DEGREES UNSCHEDULED LOW BACK DISABILITY WAS AFFIRMED BY THE HEARING OFFICER.

CLAIMANT, A 51 YEAR OLD CANNERY AND FIELD WORKER, SLIPPED AND FELL ON SOME STEEL STEPS INJURING HER BACK. AFTER SURGERY TO HER BACK SHE CONTINUED TO HAVE PAIN IN HER BACK EVERY DAY.

CLAIMANT WAS EXAMINED BY THE DISABILITY PREVENTION DIVISION AND WAS REFERRED TO THE DIVISION OF VOCATIONAL REHABILITATION. THE DIVISION OF VOCATIONAL REHABILITATION CONCLUDED CLAIMANT MIGHT BE ABLE TO HANDLE A SEMI-SEDENTARY TYPE OF JOB BUT NOT LIGHT, MEDIUM OR HEAVY WORK.

DR. PERKINS, THE CLINICAL PSYCHOLOGIST, STATED CLAIMANT WAS SUFFERING FROM HYSTERICAL NEUROSIS, CONVERSION TYPE, UTILIZING DEFENSES OF REPRESSION DENIAL AND SOMATIZATION. THE PSYCHOLOGIST RELATED THIS PSYCHOPATHOLOGY TO A MILD DEGREE TO THE INDUSTRIAL INJURY. CLAIMANT IS NOT MOTIVATED TO LEAVE THE FALLS CITY AREA OR TO UNDERGO VOCATIONAL REHABILITATION.

CONSIDERING THE PHYSICAL DISABILITY AND THE PSYCHOPATHOLOGY, BOTH OF WHICH ARE RELATED TO THE INDUSTRIAL INJURY, THE CLAIMANT HAS A SUBSTANTIAL PERMANENT DISABILITY. CLAIMANT IS ON THE SCHOOL BOARD AND OF HIGH AVERAGE INTELLIGENCE BUT HER WORK EXPERIENCE HAS ALL BEEN IN THE CANNERY OR FIELD WORK WHICH SHE CAN NO LONGER DO.

THE BOARD FINDS THE CLAIMANT TO HAVE A 50 PERCENT UNSCHEDULED DISABILITY AND SUGGESTS AND RECOMMENDS PSYCHOLOGICAL AND PSYCHIATRIC COUNSELING.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 29, 1973 IS REVERSED.

CLAIMANT IS AWARDED A TOTAL OF 50 PERCENT EQUAL TO 160 DEGREES FOR UNSCHEDULED LOW BACK PERMANENT PARTIAL DISABILITY. THIS IS AN INCREASE OF 25 PERCENT (80 DEGREES).

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE, 25 PERCENT OF THE INCREASE IN COMPENSATION ASSOCIATED WITH THIS AWARD WHICH SHALL NOT EXCEED FIFTEEN HUNDRED DOLLARS.

WCB CASE NO. 73-1603 MARCH 11, 1974

ALVIN ISRAEL, CLAIMANT
RICHARD H. RENN, CLAIMANT'S ATTY.
MIZE, KRISIEN, FEWLESS, CHENEY AND
KELLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE IS THE EXTENT OF PERMANENT PARTIAL DISABILITY TO CLAIMANT'S RIGHT LEG. CLAIMANT WAS AWARDED 10 PERCENT LOSS OF THE RIGHT LEG EQUAL TO 15 DEGREES BY THE DETERMINATION ORDER WHICH THE HEARING OFFICER AFFIRMED.

CLAIMANT, AN 18 YEAR OLD MACHINE SHOP WORKER, INJURED HIS RIGHT KNEE. AFTER RIGHT ARTHROTOMY AND MEDIAL MENISCECTOMY SURGERY, THE KNEE CONDITION STABILIZED. A SLIGHT ATROPHY OF THE MUSCLES IN THE RIGHT LEG WAS NOTED. CLAIMANT NOW RIDES HIS MOTORCYCLE AND HORSES AND HAS DONE WEIGHT LIFTING TO BUILD

UP HIS RIGHT LEG. THE MEDICAL EVIDENCE SHOWS EXCEPT FOR TENDERNESS, THE KNEE IS RELATIVELY NORMAL. THE DOCTOR RECOMMENDED THAT THE CLAIMANT CONTINUE HIS PRESENT ACTIVITY.

THIS CLAIMANT WAS INTERVIEWED BY THE EVALUATION DIVISION OF THE BOARD. THIS IS A ROUTINE PROCEDURE. NO ADVANTAGE IS TAKEN OF THE CLAIMANT INASMUCH AS THE BOARD AND ITS EVALUATION DIVISION ARE NOT ADVOCATING FOR OR IN ANY WAY FAVORING THE CLAIMANT OR THE CARRIER. THE PURPOSE OF THE INTERVIEW IS TO BRING OUT ALL OF THE FACTS AND TRUTH.

ON DO NOVO REVIEW, THE BOARD FINDS THAT THE AWARD OF 10 PERCENT OR 15 DEGREES ADEQUATELY COMPENSATES THE CLAIMANT.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 7, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 73-2179 MARCH 11, 1974

LUCILE TOWNSEND, CLAIMANT
CASH PERRINE, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE IS WHETHER OR NOT THE MEDICAL REPORTS ARE SUFFICIENT TO GIVE JURISDICTION ON THIS CLAIM OF AGGRAVATION.

THE BOARD, HAVING REVIEWED ALL OF THE MEDICAL REPORTS IN THE RECORD, CONCURS WITH THE FINDING OF THE REFEREE THAT THE MEDICAL REPORTS ARE NOT SUFFICIENT TO SATISFY THE JURISDICTIONAL REQUIREMENTS OF ORS 656.271 TO GIVE THE CLAIMANT A HEARING ON THE MERITS OF HER CLAIM FOR AGGRAVATION.

ORDER

THE ORDER OF THE REFEREE DATED OCTOBER 30, 1973 IS AFFIRMED.

WCB CASE NO. 72-2437 MARCH 11, 1974

JACK E. HOWENSTINE, CLAIMANT
PETERSON, CAHIVOE AND PETERSON, CLAIMANT'S ATTYS.
ALAN J. GARDNER, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS WHETHER OR NOT THE EVIDENCE IN THE RECORD SUSTAINS THE ADDITIONAL RIGHT ARM PERMANENT DISABILITY AWARDED BY THE HEARING OFFICER.

CLAIMANT, A 50 YEAR OLD TELEPHONE SPLICER, FELL FROM A POLE, FRACTURING HIS PELVIS, TWO RIBS, RIGHT ARM AND A DORSAL VERTEBRAE ON NOVEMBER 2, 1968. THE FIRST DETERMINATION ORDER DATED JUNE 20, 1969 AWARDED PERMANENT PARTIAL DISABILITY OF 15 PERCENT LOSS OF RIGHT ARM AND 20 PERCENT UNSCHEDULED BACK INJURIES. THE CLAIM WAS REOPENED IN JUNE OF 1972 FOR FURTHER MEDICAL CARE OF THE BACK. THIS CLAIM WAS CLOSED OCTOBER 25, 1972 WITH AN ADDITIONAL AWARD OF 10 PERCENT UNSCHEDULED DISABILITY FOR AGGRAVATION OF THE UPPER BACK.

THE HEARING OFFICER, IN HIS OPINION DATED AUGUST 10, 1973, ADDED AN ADDITIONAL 5 PERCENT UNSCHEDULED BACK DISABILITY AND 15 PERCENT SCHEDULED RIGHT ARM DISABILITY. THE EMPLOYER APPEALS REQUESTING REVERSAL OF THE HEARING OFFICER'S AWARD OF THE ADDITIONAL 15 PERCENT RIGHT ARM DISABILITY.

CLAIMANT FELL FROM THE POLE ON NOVEMBER 2, 1968 AND RETURNED TO WORK FEBRUARY 10, 1969. CLAIMANT CONTINUED WORK AND DID QUITE WELL EXCEPT FOR CLIMBING POLES OR LADDERS UNTIL APRIL, 1971 WHEN CLAIMANT HAD A MALIGNANT TUMOR ON THE LEFT LUNG REMOVED. THE LUNG TUMOR IS NOT RELATED TO THE INDUSTRIAL ACCIDENT. SUBSEQUENT TO THE REMOVAL OF THE LUNG TUMOR CLAIMANT RETURNED TO WORK IN A MANAGEMENT CAPACITY NOT REQUIRING HEAVY PHYSICAL LABOR.

THE MEDICAL EVIDENCE IN THE RECORD SUSTAINS THE PROPOSITION THAT THE INDUSTRIALLY CAUSED BACK CONDITION WAS AGGRAVATED AND THE BOARD CONCURS WITH THE FINDING OF THE HEARING OFFICER WITH THE ADDITIONAL AWARD OF 10 PERCENT UNSCHEDULED PERMANENT PARTIAL DISABILITY FOR THE BACK.

THE BOARD FURTHER FINDS THERE IS INSUFFICIENT MEDICAL EVIDENCE TO WARRANT THE INCREASED AWARD FOR DISABILITY TO THE RIGHT ARM. THE BOARD'S FINDING AS TO THE RIGHT ARM IS BASED UPON THE ENTIRE RECORD REGARDLESS OF WHETHER OR NOT THE RIGHT ARM CONDITION IS CONSIDERED TO BE AN AGGRAVATION CLAIM OR AN APPEAL FROM THE SECOND DETERMINATION ORDER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 10, 1973 IS MODIFIED. THE AWARD OF AN ADDITIONAL 28.8 DEGREES FOR RIGHT ARM DISABILITY IS REVERSED. THE AWARD OF 16 DEGREES FOR UNSCHEDULED DISABILITY FOR THE BACK IS AFFIRMED.

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

WCB CASE NO. 73-116 MARCH 11, 1974

DELPHIA AVEGIO RODABAUGH, CLAIMANT
TOOZE, KERR, PETERSON, MARSHALL AND SHENKER,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE IS WHETHER OR NOT CLAIMANT'S LUMBOSACRAL SYMPTOMS WITH RADIATING LEFT LEG SYMPTOMS AND CLAIMANT'S HEAD AND NECK SYMPTOMS ARE RELATED TO THE INDUSTRIAL INJURY OF OCTOBER 25, 1972.

THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM IN ITS ENTIRETY. THE HEARING OFFICER FOUND A COMPENSABLE INJURY TO CLAIMANT'S MID-THORACIC AREA BUT SPECIFICALLY FOUND CLAIMANT'S HEAD AND NECK SYMPTOMS, LUMBOSACRAL SYMPTOMS AND LEG SYMPTOMS NOT COMPENSABLE.

CLAIMANT, A 53 YEAR OLD KITCHEN HELPER, RECEIVED A STRAIN TO HER BACK OCTOBER 25, 1972 WHILE LIFTING A BOX OR TRAY OF LETTUCE. CLAIMANT TESTIFIED SHE MENTIONED THIS TO THE EMPLOYER, BUT THE EMPLOYER TESTIFIED SHE DID NOT REMEMBER THIS. CLAIMANT RECEIVED MEDICAL CARE TWO DAYS LATER.

A REVIEW OF THE ENTIRE RECORD AND ESPECIALLY THE MEDICAL EVIDENCE PERSUADES THE BOARD THAT THE NECK, LOW BACK AND LEG SYMPTOMS, ALONG WITH THE MID-THORACIC SYMPTOMS ARE COMPENSABLE.

THE HEARING OFFICER FOUND THE CLAIMANT TO BE CREDIBLE AND STRAIGHTFORWARD. THE MEDICAL REPORTS INDICATE CLAIMANT RELATES THE HISTORY IN A STRAIGHTFORWARD MANNER. THE MEDICAL REPORTS DO INDICATE SOME DISCREPANCIES AS TO DATES AND DETAILS OF THE INCIDENT. A REVIEW OF THE ENTIRE RECORD CONVINCES THE BOARD CLAIMANT SUSTAINED A COMPENSABLE INJURY AND THAT THE LOW BACK, LEG AND NECK SYMPTOMS ALONG WITH THE MID-THORACIC SYMPTOMS ARE COMPENSABLE.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 7, 1973 IS MODIFIED. CLAIMANT'S NECK, LUMBOSACRAL, LEG AND MID-THORACIC SYMPTOMS ARE COMPENSABLE.

IN ALL OTHER RESPECTS THE ORDER OF THE HEARING OFFICER 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.

WCB CASE NO. 73-1783 MARCH 12, 1974

KNUT NEVDAL, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
PAUL ROESS, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT PARTIAL DISABILITY FOR BACK INJURIES. THE DETERMINATION ORDER AWARDED CLAIMANT 15 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED LOW BACK DISABILITY EQUAL TO 48 DEGREES. THE HEARING OFFICER AFFIRMED THIS AWARD.

CLAIMANT, A 64 YEAR OLD SAWMILL WORKER, INJURED HIS BACK MAY 17, 1971. THIS CLAIM WAS FILED WITH THE EMPLOYER BUT THE EMPLOYER NEVER PROCESSED THE CLAIM. THE EMPLOYER PAID HIM FULL

WAGES FOR THE SHORT PERIOD OF TIME HE WAS ABSENT FOR MEDICAL CARE. CLAIMANT THEN TOOK A SIX WEEK VACATION TO RETURN TO NORWAY AND THEN CAME BACK AND WENT BACK TO WORK CARRYING OUT THE USUAL DUTIES OF HIS JOB.

CLAIMANT WAS AGAIN INJURED AUGUST 7, 1972 WITH LOW BACK PAIN RADIATING INTO HIS KNEE AND LEG. THE MEDICAL REPORTS REFLECT THAT CLAIMANT HAS HAD A BAD BACK BUT WITH CARE, CLAIMANT COULD PROBABLY CONTINUE UNTIL HIS NORMAL RETIREMENT. CLAIMANT HAS CONTINUED WORKING EXCEPT FOR VACATIONS, AND, IN FACT, HAS WORKED CONSIDERABLE OVERTIME UNTIL THE THIRD BACK INJURY WHICH OCCURRED AUGUST 21, 1973. THE CLAIM FOR THE BACK INJURY OF AUGUST 21, 1973 IS NOT A PART OF THIS PROCEEDING.

ON DE NOVO REVIEW THE BOARD CONCURS WITH THE FINDING OF THE HEARING OFFICER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 2, 1973 IS AFFIRMED TO THE EXTENT THAT IT SAYS 'THE DETERMINATION ORDER OF THE WORKMEN'S COMPENSATION BOARD DATED MARCH 22, 1973 IS AFFIRMED.!! THE INCORRECT SURPLUSAGE IN THE ORDER !' AND THIS MATTER IS DISMISSED' IS DELETED FROM THE ORDER.

WCB CASE NO. 73-1458 MARCH 12, 1974

ROBERT TENNANT, CLAIMANT
BODIE AND MINTURN, CLAIMANT'S ATTYS.
GRAY, FANCHER, HOLMES AND HURLEY,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS WHETHER OR NOT THE INDUSTRIAL ACCIDENT AGGRAVATED PREEXISTING TENSION AND MYOFIBROSIS.

THE DETERMINATION ORDER DATED JANUARY 19, 1972 AWARDED TEMPORARY DISABILITY ONLY. THE CLAIM WAS REOPENED BECAUSE OF RECURRING HEADACHES. THE EMPLOYER MADE A PARTIAL DENIAL DENYING RESPONSIBILITY FOR THE HEADACHES. THE DETERMINATION ORDER DATED JUNE 25, 1973 AWARDED ONLY TEMPORARY DISABILITY, NO PERMANENT DISABILITY, AND SPECIFICALLY DID NOT RULE ON THE QUESTION OF RELATIONSHIP OF CLAIMANT'S PSYCHONEUROSIS, EMOTIONAL STRESS AND HEADACHES TO THE INDUSTRIAL ACCIDENT.

CLAIMANT HAD PREEXISTING MYOFIBROSIS AND PREEXISTING PSYCHOPATHOLOGY. THE MEDICAL EVIDENCE SHOWS THAT THE INDUSTRIAL INJURY PRECIPITATED AND AGGRAVATED THE PREEXISTING PSYCHOPATHOLOGY.

BASED ON THE MEDICAL EVIDENCE IN THE FILE, THE BOARD CONCURS WITH THE WELL REASONED OPINION AND ORDER OF THE REFEREE WHICH REMANDED THE CLAIM TO THE EMPLOYER FOR MEDICAL CARE AND TREATMENT AND WHICH REVERSED THE PARTIAL DENIAL OF THE EMPLOYER.

ORDER

THE ORDER OF THE REFEREE DATED OCTOBER 23, 1973 IS AFFIRMED.

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

WCB CASE NO. 73-1832 MARCH 12, 1974

JESS D. CARTER, CLAIMANT
BRICE L. SMITH, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES THE EXTENT OF PERMANENT DISABILITY TO CLAIMANT'S RIGHT LEG. THE DETERMINATION ORDER AWARDED 20 PERCENT LOSS OF RIGHT LEG (30 DEGREES). THE REFEREE INCREASED THIS AWARD BY 10 PERCENT TO A TOTAL OF 30 PERCENT (45 DEGREES) PERMANENT PARTIAL DISABILITY OF THE RIGHT LEG.

CLAIMANT HAS HAD THREE INDUSTRIAL INJURIES AND FOUR SURGERIES TO THE RIGHT KNEE. THE 1965 RIGHT KNEE INJURY RESULTED IN AN AWARD OF 40 PERCENT LOSS OF FUNCTION OF THE RIGHT LEG. THE 1967 INJURY RESULTED IN AN ADDITIONAL AWARD OF 20 PERCENT LOSS OF FUNCTION OF THE RIGHT LEG. THE REFEREE'S ORDER IN THE PRESENT CASE ADDS AN ADDITIONAL 30 PERCENT LOSS OF FUNCTION OF THE RIGHT LEG. ALL OF THESE AWARDS TOTAL A 90 PERCENT LOSS OF FUNCTION OF THE RIGHT LEG.

CLAIMANT MUST WEAR A BRACE ON HIS RIGHT KNEE AT ALL TIMES. CLAIMANT HAD BEEN ENROLLED WITH THE DEPARTMENT OF VOCATIONAL REHABILITATION AND HAD COMPLETED THREE TERMS SUCCESSFULLY. FOR NO REASON FOUND IN THE RECORD AND THROUGH NO FAULT OF THE CLAIMANT, ACCORDING TO THE RECORDS ON REVIEW, AT THE END OF THE FIRST PART OF A TWO PART COURSE, AND AFTER SUCCESSFULLY COMPLETING DIESEL ENGINE TRAINING, THE REHABILITATION TRAINING WAS STOPPED.

THE CLAIMANT HAS RECEIVED AWARDS TOTALING 90 PERCENT (135 DEGREES) OF A MAXIMUM OF 150 DEGREES PERMANENT PARTIAL DISABILITY FOR LOSS OF FUNCTION OF THE RIGHT LEG. ON DE NOVO REVIEW THE BOARD AFFIRMS THIS FINDING.

THE BOARD EXTENDS THE SERVICES OF THE DISABILITY PREVENTION DIVISION AND ENCOURAGES THE CLAIMANT TO AVAIL HIMSELF OF THESE SERVICES.

ORDER

THE ORDER OF THE REFEREE DATED NOVEMBER 5, 1973 IS AFFIRMED.

BOB KAGEYAMA, CLAIMANT

RICHARDSON AND MURPHY, CLAIMANT'S ATTYS.
PHILIP MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE IS EXTENT OF UNSCHEDULED PERMANENT PARTIAL DISABILITY. THE DETERMINATION ORDER AWARDED 10 PERCENT (32 DEGREES). THE HEARING OFFICER INCREASED THE AWARD TO 60 PERCENT (192 DEGREES). THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW.

CLAIMANT, A 49 YEAR OLD ORCHARDIST IN HOOD RIVER, HAD A 30 ACRE PEAR ORCHARD FOR THE PAST 26 YEARS AND HAD JUST RECENTLY BOUGHT THE ADJOINING 40 ACRES AND WAS DEVELOPING IT. CLAIMANT SUPPLEMENTED THE ORCHARD INCOME WORKING PART-TIME AS A TRUCK DRIVER FOR DIAMOND FRUIT GROWERS. THE UPPER PANEL OF A BOX ON A DUMP TRUCK FELL STRIKING CLAIMANT ON THE SIDE OF THE HEAD AND SHOULDER, FRACTURING THE LEFT PARIETAL BONE AND CAUSING SEVERE BRAIN CONCUSSION. CLAIMANT HAS LOST THE SENSE OF SMELL AND HAS DIMINISHED SENSATION IN THE LEFT MID CHEEK. HE HAS COMPLAINTS AT THE PRESENT TIME OF HEADACHES, DIZZINESS WITH OCCASIONAL NAUSEA. CLAIMANT WAS UNABLE TO DO THE WORK AS AN ORCHARDIST AND HAD TO SELL THE ORCHARD. CLAIMANT IS IN A VOCATIONAL REHABILITATION PROGRAM BEING TRAINED AS A COMBINATION WAREHOUSEMAN AND SALESMAN. CLAIMANT'S SEVERE HEADACHES, AT TIMES, FORCE HIM TO GO HOME UNTIL THE HEADACHE SUBSIDES. HE IS ABLE TO COMPLETE AN EIGHT HOUR WORKDAY IN ABOUT TEN HOURS.

THE HEARING OFFICER FOUND CLAIMANT TO BE AN HONEST, CREDIBLE WITNESS. CLAIMANT HAS GOOD INTELLECTUAL CAPACITY. CONTINUATION OF VOCATIONAL REHABILITATION TRAINING IS RECOMMENDED.

THE CASES CITED BY THE STATE ACCIDENT INSURANCE FUND IN THE EMPLOYER'S BRIEF ARE CLEARLY DISTINGUISHABLE FROM THIS CASE. THE MOTIVATION AND CREDIBILITY OF THE CLAIMANT IN SOME OF THOSE CASES WERE HIGHLY DOUBTFUL. IN THE CASE OF RAMON SALAZAR IT IS INTERESTING TO NOTE THAT BY THE ORDER ON REVIEW DATED FEBRUARY 21, 1974, CLAIMANT WAS AWARDED PERMANENT TOTAL DISABILITY. EACH CASE MUST BE JUDGED ON THE PARTICULAR FACTS OF THAT CASE.

ON DE NOVO REVIEW THE BOARD CONCURS WITH THE OPINION AND ORDER OF THE HEARING OFFICER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 17, 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.

WCB CASE NO. 73-321

MARCH 12, 1974

WILLIAM J. BIDEGARY, CLAIMANT
SMITH AND LEE, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A DENIED BACK INJURY CLAIM. THE HEARING OFFICER HELD THAT THE CLAIMANT FAILED TO PROVE THAT THE INJURY AROSE OUT OF AND IN THE SCOPE OF HIS EMPLOYMENT AND AFFIRMED THE DENIAL. THE CLAIMANT REQUESTS BOARD REVIEW.

THE CLAIMANT, A SERVICE STATION ATTENDANT, ALLEGED AN INDUSTRIAL BACK INJURY FOR THE DATE OF SEPTEMBER 19, 1972. HE WAS SEEN BY A CHIROPRACTOR SEPTEMBER 22, 1972. THE CHIROPRACTOR REPORTS THE PATIENT STATED HIS BACK HAD BEEN BOTHERING HIM FOR SOME TIME AND HAD BECOME WORSE LATELY.

THE HEARING OFFICER FOUND CLAIMANT'S CREDIBILITY QUESTIONABLE. NUMEROUS DISCREPANCIES IN THE FACTS SUBMITTED BY THE CLAIMANT AND EXHIBITS ARE NOTED.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT THE FACTS ARE NOT STRONGLY PERSUASIVE AS TO THE COMPENSABILITY OF THIS CLAIM. THE QUESTIONABLE CREDIBILITY OF THE CLAIMANT IS ALSO TO BE CONSIDERED.

IT IS NOTED THAT THE ORDER OF THE HEARING OFFICER STATES =

IT IS HEREBY ORDERED THAT CLAIMANT'S REQUEST FOR HEARING IS DISMISSED. THIS IS OBVIOUSLY AN INCORRECT ORDER. THE HEARING OFFICER CONDUCTED THE HEARING AND RENDERED AN OPINION AND ORDER ON THE MERITS OF THE CASE. THUS, THE CLAIMANT'S REQUEST FOR A HEARING OBVIOUSLY WAS NOT DISMISSED. THE BOARD CONCURS WITH THE OPINION OF THE HEARING OFFICER. THE FOLLOWING ORDER IS SUBSTITUTED FOR THE ORDER OF THE HEARING OFFICER.

ORDER

THE DENIAL OF THE CLAIM IS AFFIRMED.

WCB CASE NO. 72-3385

MARCH 12, 1974

ROLAND PETERSON, CLAIMANT
ANDERSON, FULTON, LAVIS AND VAN THIEL,
CLAIMANT'S ATTYS.
MACDONALD, DEAN, MCCALLISTER AND SNOW,
DEFENSE ATTYS.
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 DATED SEPTEMBER 27, 1972 WHICH AWARDED 37.5 DEGREES FOR 25 PERCENT LOSS OF THE LEFT LEG.

UPON DE NOVO REVIEW, THE BOARD CONCURS IN THE FINDINGS AND OPINIONS EXPRESSED IN THE HEARING OFFICER'S ORDER AND CONCLUDES IT SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 15, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 72-3128 MARCH 12, 1974
WCB CASE NO. 73-1225 MARCH 12, 1974

LEW E. WALLACE, CLAIMANT
BENSON AND ARENZ, CLAIMANT'S ATTYS.
MERLIN MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER CONCERNS THE EXTENT OF PERMANENT DISABILITY RESULTING FROM TWO COMPENSABLE LOW BACK INJURIES SUFFERED BY THE CLAIMANT WHILE WORKING FOR THE CARNATION COMPANY.

THE FIRST INJURY OCCURRED ON APRIL 30, 1968 WHILE CARNATION INSURED ITS WORKMEN'S COMPENSATION LIABILITY THROUGH AETNA CASUALTY AND SURETY COMPANY.

A SECOND INCIDENT ON MARCH 23, 1971 WAS FOUND TO BE A NEW INJURY AND THE RESPONSIBILITY OF TRAVELERS INSURANCE COMPANY WHICH INSURED THE CARNATION COMPANY'S WORKMEN'S COMPENSATION LIABILITY ON THAT DATE.

A DETERMINATION ORDER DATED MARCH 19, 1971 GRANTED 15 PERCENT UNSCHEDULED DISABILITY (48 DEGREES) FOR THE FIRST INJURY. A DETERMINATION ORDER DATED MARCH 13, 1973 GRANTED 10 PERCENT UNSCHEDULED DISABILITY (32 DEGREES) FOR THE SECOND INJURY.

REQUESTS FOR HEARING WERE FILED ON EACH DETERMINATION ORDER AND CONSOLIDATED FOR HEARING. THE HEARING OFFICER INCREASED THE UNSCHEDULED DISABILITY AWARD FOR THE SECOND INJURY TO A TOTAL OF 35 PERCENT UNSCHEDULED DISABILITY (112 DEGREES) BUT DID NOT INCREASE THE COMPENSATION ALLOWED FOR THE FIRST INJURY.

CLAIMANT REQUESTED REVIEW BY THE BOARD CONTENDING HE IS PERMANENTLY TOTALLY DISABLED. THE EMPLOYER, THROUGH ITS INSURER, TRAVELERS INSURANCE COMPANY, CROSS-REQUESTED BOARD REVIEW. IT PROTESTS THE HEARING OFFICER'S INCREASE IN PERMANENT DISABILITY BUT ARGUES THAT, IF SUCH PERMANENT DISABILITY EXISTS, IT IS THE RESULT OF THE FIRST, NOT THE SECOND, INJURY.

BASED UPON THE EVIDENCE OF RECORD, THE CLAIMANT IS, AS A MATTER OF LAW, NOT PERMANENTLY AND TOTALLY DISABLED. CLAIMANT HAS EMBARKED ON A NEW COURSE OF EMPLOYMENT AS A WATCHMAKER. DUE TO THE CLAIMANT'S EXCELLENT MOTIVATION, INTELLIGENCE AND APTITUDES, THERE IS EVERY REASON TO BELIEVE HE WILL ULTIMATELY SUCCEED.

CLAIMANT IS NOT IN THE 'ODD-LOT' CATEGORY BECAUSE IT APPEARS CLAIMANT IS ABLE TO REGULARLY PERFORM AT A GAINFUL AND SUITABLE OCCUPATION. IF, HOWEVER, THIS ASSESSMENT PROVES WRONG, THE CLAIMANT MAY REQUEST ADDITIONAL COMPENSATION IN ACCORDANCE WITH ORS 656.271 AND 656.278.

CLAIMANT DOES, OF COURSE, HAVE SIGNIFICANT PERMANENT PARTIAL DISABILITY. WE AGREE WITH THE FINDINGS AND OPINION OF THE HEARING OFFICER IN THIS REGARD. THE EVIDENCE POINTS TO THE SECOND INJURY AS THE CAUSE OF THE CLAIMANT'S INCREASED LOSS OF EARNING CAPACITY. THE ADDITIONAL PERMANENT DISABILITY WAS PROPERLY ATTRIBUTED TO THE INJURY OF MARCH 23, 1971.

THE HEARING OFFICER'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 22, 1973, AS AMENDED AUGUST 23, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 73-1471 MARCH 12, 1974

MARGARET L. HILL, CLAIMANT
RASK, HEFFERIN AND CARTER, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS A REVIEW OF A HEARING OFFICER'S ORDER AFFIRMING A DETERMINATION ORDER DATED AUGUST 29, 1972 WHICH GRANTED NO PERMANENT DISABILITY COMPENSATION. SHE CONTENDS SHE SUFFERS PERMANENT DISABILITY FROM A COMPENSABLE LOW BACK INJURY OF FEBRUARY 27, 1970.

A HISTORY OF THE LITIGATION SURROUNDING THIS CASE IS NECESSARY TO THIS ORDER. ON SEPTEMBER 21, 1972 CLAIMANT FILED A REQUEST FOR HEARING THROUGH HER ATTORNEY, THOMAS O. CARTER, CONTESTING THE ABSENCE OF AN AWARD OF PERMANENT DISABILITY IN THE DETERMINATION ORDER OF AUGUST 29, 1972. (WCB CASE NO. 72-2565) WHEN THE MATTER CAME BEFORE THE HEARING OFFICER ON MARCH 19, 1973, THE CLAIMANT CONTENDED INSTEAD THAT HER CLAIM HAD BEEN PREMATURELY CLOSED AND THAT SHE WAS ENTITLED TO FURTHER MEDICAL CARE AND PAYMENT OF TIME LOSS COMPENSATION. SHE SPECIFICALLY REQUESTED THAT THE ISSUE OF PERMANENT DISABILITY NOT BE CONSIDERED BY THE HEARING OFFICER. THE HEARING OFFICER, BY ORDER DATED APRIL 16, 1973, FOUND HER CONDITION MEDICALLY STATIONARY - THAT THE MEDICAL TREATMENT SHE WAS RECEIVING COULD BE PROVIDED UNDER ORS 656.245 AND, FURTHER, THAT SHE WAS NOT ENTITLED TO TEMPORARY TOTAL DISABILITY COMPENSATION.

SHE REQUESTED BOARD REVIEW OF THAT ORDER ON MAY 2, 1973. ON APPEAL, SHE CONTENDED THE HEARING OFFICER HAD ERRED IN FINDING HER MEDICALLY STATIONARY AND NOT ENTITLED TO TIME LOSS. DURING THE PENDENCY OF THE REVIEW, IN FACT, ON MAY 3, 1973, CLAIMANT REQUESTED ANOTHER HEARING, (WCB CASE NO. 73-1471), RAISING ANEW THE PREVIOUSLY WITHDRAWN ISSUE OF EXTENT OF PERMANENT PARTIAL

DISABILITY, EVIDENCE WAS TAKEN ON THAT ISSUE AT A HEARING ON SEPTEMBER 11, 1973. ON OCTOBER 3, 1973 THE HEARING OFFICER RULED CLAIMANT HAD SUFFERED NO PERMANENT DISABILITY AS A RESULT OF HER ACCIDENT OF FEBRUARY 27, 1970. (WCB CASE NO. 73-1471)

MEANWHILE, ON SEPTEMBER 17, 1973 THE BOARD ISSUED ITS ORDER ON REVIEW IN WCB CASE NO. 72-2565 AFFIRMING THE HEARING OFFICER'S ORDER THAT CLAIMANT WAS MEDICALLY STATIONARY AND NOT ENTITLED TO TIME LOSS COMPENSATION.

ON OCTOBER 11, 1973 CLAIMANT REQUESTED BOARD REVIEW OF THE HEARING OFFICER'S ORDER DATED OCTOBER 3, 1973 IN WCB CASE NO. 73-1471. ON OCTOBER 17, 1973 CLAIMANT APPEALED THE BOARD'S ORDER ON REVIEW IN WCB CASE NO. 72-2565 TO THE CIRCUIT COURT OF MULTNOMAH COUNTY (CASE NO. 396-228).

IN THE NOTICE OF APPEAL TO THE CIRCUIT COURT, CLAIMANT ADMITTED THAT HER CONDITION HAD BECOME MEDICALLY STATIONARY AND SHE COULD RETURN TO HER FORMER EMPLOYMENT ON JULY 31, 1973 BUT CONTENDED SHE WAS ENTITLED TO TIME LOSS COMPENSATION FROM AUGUST 10, 1972 TO JULY 31, 1973.

BY A MEMORANDUM OPINION DATED NOVEMBER 28, 1973, JUDGE JOHN C. BEATTY FOUND THAT SHE WAS MEDICALLY STATIONARY ON AUGUST 10, 1972 AND THAT HER CLAIM HAD BEEN PROPERLY CLOSED. HOWEVER, HE WENT ON TO FIND . . . THAT HER CASE SHOULD BE REOPENED FOR CONTINUED MEDICAL TREATMENT. HE SPECIFICALLY EXPRESSED NO OPINION AS TO WHETHER SHE WAS ENTITLED TO ANY TEMPORARY DISABILITY COMPENSATION. MULTNOMAH COUNTY CIRCUIT COURT RECORDS REVEAL THAT NO ORDER HAS YET BEEN ENTERED IN THE CASE.

THE STATE ACCIDENT INSURANCE FUND CONTENDS IN THIS REVIEW THAT BECAUSE THE CLAIMANT'S ISSUES WERE SPLIT INTO TWO HEARINGS, THE BOARD IS WITHOUT JURISDICTION OVER THE PRESENT REQUEST FOR REVIEW AND THAT THE RECORD OF THIS CASE (WCB CASE NO. 73-1471) SHOULD SIMPLY BE CERTIFIED TO THE CIRCUIT COURT OF MULTNOMAH COUNTY. THE CONTENTION THAT THE BOARD IS WITHOUT JURISDICTION IN THE PRESENT CASE IS TOTALLY WITHOUT MERIT. THE LAW HAS GIVEN THE WORKMEN'S COMPENSATION BOARD AUTHORITY TO DECIDE DISPUTES OF THIS KIND AND THE PARTIES TO THIS DISPUTE HAVE BEEN PROPERLY BROUGHT BEFORE IT. JURISDICTION EXISTS.

WE DO AGREE THAT ORIGINALLY, THE CLAIMANT'S ISSUES SHOULD NOT HAVE BEEN SPLIT FOR HEARING. CLAIMANT SHOULD NOT HAVE WITHDRAWN THE EXTENT OF PERMANENT DISABILITY ISSUE IN WCB CASE NO. 72-2565 BUT SHOULD HAVE PLEADED IT AS AN ALTERNATIVE ISSUE. HAD SHE DONE SO, THE WHOLE MATTER WOULD HAVE BEEN DISPOSED OF LONG AGO, OR AT LEAST WOULD NOW BE PENDING BEFORE THE CIRCUIT COURT ON ALL ISSUES.

WE BELIEVE THE PROPER SOLUTION OF THIS MATTER IS TO SIMPLY DISMISS THE CLAIMANT'S REQUEST FOR REVIEW. BY VIRTUE OF THE OPINION OF THE CIRCUIT COURT IT APPEARS THE CLAIMANT'S CLAIM IS TO BE REOPENED. A NECESSARY CONSEQUENCE OF CLAIM REOPENING IS A SUBSEQUENT RECLOSURE AND EVALUATION OF THE PERMANENT DISABILITY, IF ANY, WHICH MAY REMAIN AFTER MEDICAL TREATMENT IS COMPLETED. IT WOULD BE A USELESS ACT TO DECIDE CLAIMANT'S PERMANENT DISABILITY PRIOR TO THE COMPLETION OF EFFORTS TO RELIEVE CLAIMANT OF HER COMPLAINTS. WE CONCLUDE THE ISSUES PRESENTED TO THE BOARD IN WCB CASE NO. 73-1471 ARE MOOT.

JUDGE BEATTY APPEARS WILLING, BASED ON HIS PRESENT UNDERSTANDING OF CLAIMANT'S TWO CASES, TO CONSIDER JOINING ALL ASPECTS OF THE CASE IN HIS COURT BEFORE ENTERING AN ORDER. IF ONE OR BOTH OF THE PARTIES DISAGREE, THEY MAY APPEAL THIS ORDER TO THE CIRCUIT COURT WHERE IT CAN BE CONSOLIDATED OR CONSIDERED WITH THE PENDING APPEAL IN CASE NO. 396-228.

ORDER

THE CLAIMANT'S REQUEST FOR REVIEW FILED IN WCB CASE NO. 73-1471 IS HEREBY DISMISSED.

WCB CASE NO. NONE

MARCH 13, 1974

DEBRA CEGLIE, CLAIMANT

DEZENDORF, SPEARS, LUBERSKY AND
CAMPBELL, CLAIMANT'S ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

CLAIMANT'S ATTORNEY REQUESTS THE BOARD TO DETERMINE A JUST AND PROPER DISTRIBUTION OF THE PROCEEDS OF SETTLEMENT OF A THIRD PARTY CLAIM PURSUANT TO ORS 656.593(3).

CLAIMANT WAS INJURED IN AN AUTOMOBILE ACCIDENT CAUSED BY THE NEGLIGENCE OF A THIRD PERSON WHILE IN THE COURSE AND SCOPE OF HER EMPLOYMENT. THE EMPLOYER'S CARRIER HAS PAID WORKMEN'S COMPENSATION BENEFITS TO CLAIMANT IN THE AMOUNT OF SEVEN HUNDRED THIRTY DOLLARS AND FIFTY FOUR CENTS. CLAIMANT SETTLED THE THIRD PARTY CLAIM IN THE AMOUNT OF THREE THOUSAND SIX HUNDRED DOLLARS. CLAIMANT INCURRED COSTS AND ATTORNEY'S FEES IN EXCESS OF 25 PERCENT OF THAT AMOUNT IN MAKING THE RECOVERY.

EMPLOYER'S CARRIER DEMANDS FULL REIMBURSEMENT OF SEVEN HUNDRED THIRTY DOLLARS AND FIFTY FOUR CENTS, WORKMEN'S COMPENSATION BENEFITS PAID TO HER. CLAIMANT ALLEGES EMPLOYER'S CARRIER SHOULD RECEIVE SEVEN HUNDRED THIRTY DOLLARS AND FIFTY FOUR CENTS LESS THE 25 PERCENT ATTORNEY'S FEES.

ORS 656.593(A) (B) AND (C) AND (D) PROVIDES THAT THIRD PARTY RECOVERIES SHOULD BE DISTRIBUTED AS FOLLOWS -

- (A) COSTS AND ATTORNEY'S FEES NOT TO EXCEED OREGON STATE BAR MINIMUM CONTINGENCY FEES SHOULD FIRST BE PAID IN FULL.
- (B) CLAIMANT SHALL RECEIVE 25 PERCENT OF THE BALANCE.
- (C) EMPLOYER'S CARRIER SHALL RECEIVE BALANCE OF RECOVERY TO THE EXTENT OF ITS EXPENDITURE.
- (D) BALANCE OF RECOVERY SHALL BE PAID TO THE CLAIMANT.

UNDER THE STATUTE, AND THE FACTS OF THIS CASE, THE PAYING AGENCY IS ENTITLED TO FULL REIMBURSEMENT OF ITS EXPENDITURES FOR COMPENSATION.

ORDER

AETNA LIFE AND CASUALTY SHALL RECEIVE THE SUM OF SEVEN HUNDRED THIRTY DOLLARS AND FIFTY FOUR CENTS FROM THE SETTLEMENT OF THIS THIRD PARTY RECOVERY.

LEONARD CUMMINGS, CLAIMANT
BABCOCK AND ACKERMAN, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS REVIEW OF A HEARING OFFICER'S ORDER DATED JULY 30, 1973, WHICH ALLOWED HIS CLAIM OF AGGRAVATION BUT GRANTED NO COMPENSATION FOR THE PERIOD OF TEMPORARY DISABILITY SUFFERED PRIOR TO THE FILING OF HIS REQUEST FOR HEARING ON AUGUST 28, 1972. CLAIMANT CONTENDS HE IS ENTITLED TO TEMPORARY DISABILITY FROM AUGUST 7, 1971.

AS A MATTER OF JURISPRUDENCE, THE RIGHT TO TIME LOSS COMPENSATION RESTS FUNDAMENTALLY ON THE EXISTENCE OF TEMPORARY TOTAL DISABILITY. THE LEGISLATURE ALWAYS RECOGNIZED THAT PROPOSITION IN THE CASE OF AN ORIGINAL CLAIM FOR COMPENSATION, IN THOSE CASES PAYMENT OF COMPENSATION FOR TIME LOSS OCCURRING PRIOR TO THE MAKING OF A CLAIM (OR EVEN PRIOR TO THE GIVING OF NOTICE OF THE INJURY) IS NOT BARRED.

THE CLAIMANT'S BRIEF CORRECTLY POINTS OUT THAT THE 1965 OREGON LEGISLATURE HARMONIZED THE PROVISIONS APPLICABLE TO AGGRAVATION CLAIMS WITH THE FUNDAMENTAL PRINCIPLE, FOR INJURIES SINCE THEN A WORKMAN IS NOT LIMITED ONLY TO BENEFITS ACCRUED SUBSEQUENT TO THE FILING OF AN AGGRAVATION CLAIM.

ALTHOUGH THE HEARING OFFICER RECOGNIZED THE PRINCIPLE THAT AGGRAVATION CLAIMS HAVE THE DIGNITY OF CLAIMS IN THE FIRST INSTANCE, HE FAILED TO GIVE EFFECT TO THAT PRINCIPLE WHEN HE ORDERED COMMENCEMENT OF TIME LOSS AS OF AUGUST 28, 1972.

CLAIMANT CONTENDS IN HIS BRIEF -

' ' THE RECORD IS CLEAR THAT CLAIMANT RECEIVED MEDICAL CARE AND WAS TOTALLY DISABLED FROM AUGUST 7, 1971 TO THE DATE OF THE HEARING, AS THE RESULT OF AGGRAVATION OF HIS DISABILITY. ' '

THE BOARD AGREES THAT A PREPONDERANCE OF THE MEDICAL OPINION EVIDENCE RELATES CLAIMANT'S HEADACHES AND PSYCHIATRIC DIFFICULTIES, FOR WHICH HE WAS FIRST HOSPITALIZED ON AUGUST 7, 1971, TO THE ACCIDENT-CAUSED BRAIN TRAUMA.

THE BOARD THEREFORE CONCLUDES THE CLAIMANT'S CLAIM SHOULD BE REOPENED AS OF AUGUST 7, 1971 FOR THE PAYMENT OF COMPENSATION.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JULY 30, 1973 IS HEREBY AFFIRMED WITH THE EXCEPTION OF THE COMPENSATION COMMENCEMENT DATE WHICH IS HEREBY MODIFIED TO READ AUGUST 7, 1971.

CLAIMANT'S ATTORNEY, WILLIAM A. BABCOCK, IS HEREBY GRANTED AN ADDITIONAL TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR HIS SERVICES ON THIS APPEAL.

RONALD LARSON, CLAIMANT

COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPT. 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 AN AWARD OF 10 PERCENT UNSCHEDULED DISABILITY ALLOWED FOR HIS MOST RECENT BACK INJURY.

PRIOR TO THE INJURY IN QUESTION, CLAIMANT HURT HIS LOW BACK ON OCTOBER 19, 1970. THAT INJURY NECESSITATED LUMBAR LAMINECTOMY AND LEFT HIM PHYSICALLY UNSUITED FOR HEAVY LABOR OR WORK INVOLVING REPETITIVE BENDING OR STOOPING. AS A CONSEQUENCE HE RECEIVED A 15 PERCENT UNSCHEDULED DISABILITY AWARD.

ON OCTOBER 13, 1971 WHILE HELPING WITH THE CONSTRUCTION OF A POLE FRAME BUILDING, CLAIMANT SUFFERED THE ADDITIONAL BACK INJURY IN QUESTION. A SECOND LUMBAR LAMINECTOMY WAS PERFORMED WITH REMOVAL OF A LARGE HERNIATED DISC.

A DETERMINATION ORDER DATED APRIL 20, 1973 GRANTED CLAIMANT AN ADDITIONAL 10 PERCENT UNSCHEDULED DISABILITY FOR THE RESULTS OF THE SECOND INJURY. CLAIMANT REQUESTED A HEARING ON THE EXTENT OF DISABILITY.

THE HEARING OFFICER CONCLUDED THE LIMITATION ON EMPLOYMENT FOLLOWING THE SECOND INJURY WAS PRACTICALLY THE SAME AS FOLLOWING THE FIRST AND THEREFORE AFFIRMED THE DETERMINATION ORDER.

CLAIMANT CONTENDS THE HEARING OFFICER IMPROPERLY APPLIED ORS 656,222 AND THAT, IN ANY EVENT, HIS DISABILITY EXCEEDS THAT AWARDED.

THE HISTORY OF WHAT IS NOW ORS 656,222 AND THE INTERPRETATION OF THAT SECTION IN THE CASES OF CAIN V. SIAC, 149 OR 29, (1934) - GREEN V. SIAC, 197 OR 160 (1953) AND NESSELRODT V. SIAC, 248 OR 452 (1967) REVEALS THAT -

(1) NESSELRODT REQUIRES THE DEDUCTION OF PRIOR AWARDS FROM SUBSEQUENT AWARDS FOR PERMANENT PARTIAL DISABILITY AFFECTING SCHEDULED MEMBERS.

(2) GREEN PERMITS - BUT DOESN'T NECESSARILY REQUIRE - GRANTING OF AWARDS FOR SUBSEQUENT PERMANENT PARTIAL DISABILITY WITHOUT DEDUCTION FOR PRIOR PERMANENT PARTIAL DISABILITY AWARDS IN UNSCHEDULED MEMBER INJURIES EVEN THOUGH THE SUBSEQUENT INJURY WAS TO THE SAME UNSCHEDULED AREA.

THE LEGISLATIVE RETENTION OF ORS 656,222 SINCE THE ABOVE MENTIONED CASES, PLUS THE ENACTMENT OF ORS 656,214(5) ON JUNE 1, 1967 DISCLOSE A LEGISLATIVE INTENTION THAT UNSCHEDULED DISABILITY AWARDS BE BASED ON THE ACTUAL PERMANENT DISABILITY SUFFERED AS A RESULT OF THE SECOND INJURY AND THAT THE AWARD SHOULD BE MADE ON AN AD HOC BASIS WITHOUT RECOURSE TO RIGID PROCEDURAL RULES OF DEDUCTIBILITY OR NON DEDUCTIBILITY.

WITH RESPECT TO UNSCHEDULED DISABILITY AWARDS, ORS 656.222 REQUIRES ONLY THAT THE AWARD BE MADE WITH REGARD TO THE COMBINED EFFECT OF HIS INJURIES AND HIS PAST RECEIPT OF MONEY FOR SUCH DISABILITIES.

IT APPEARS THE HEARING OFFICER DID NOT AUTOMATICALLY DEDUCT THE PRIOR AWARD. RATHER THE AFFIRMANCE OF THE DETERMINATION ORDER RESTED ON THE BASIC CONCLUSION THAT NO ADDITIONAL LOSS OF EARNING CAPACITY HAD RESULTED. WE DISAGREE. CLAIMANT HAS BEEN LEFT, AS A RESULT OF THE MOST RECENT INJURY, IN A POSITION WHERE HE IS UNABLE TO RETURN TO THE TYPE OF WORK THAT HE WAS ABLE TO DO AFTER HIS FIRST INJURY. HE NOW NEEDS VOCATIONAL REHABILITATION PARTLY FROM THE EFFECTS OF THIS INJURY AND PARTLY FROM THE EFFECTS OF THE ORIGINAL INJURY.

KEEPING IN MIND THE COMBINED EFFECTS OF HIS INJURIES AND HIS PAST RECEIPT OF MONEY FOR SUCH DISABILITIES, THE BOARD CONCLUDES CLAIMANT IS ENTITLED TO 64 DEGREES FOR THE UNSCHEDULED DISABILITY RESULTING FROM THIS INJURY, RATHER THAN THE 32 DEGREES ALLOWED BY THE DETERMINATION ORDER.

ORDER

CLAIMANT IS HEREBY AWARDED AN ADDITIONAL 32 DEGREES MAKING A TOTAL OF 64 DEGREES OR 20 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY RESULTING FROM THE INJURY OF OCTOBER 13, 1971.

CLAIMANT'S ATTORNEY, EVOHL F. MALAGON, IS HEREBY AWARDED 25 PERCENT OF THE INCREASED COMPENSATION GRANTED BY THIS ORDER, PAYABLE FROM SAID COMPENSATION, AS A REASONABLE ATTORNEY'S FEE.

WCB CASE NO. 73-2209 MARCH 14, 1974

ETHEL KENNEDY (STITT), CLAIMANT
GALBREATH AND POPE, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND
SCHWABE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS THE EXTENT OF UNSCHEDULED PERMANENT PARTIAL DISABILITY FOR A BACK INJURY. THE DETERMINATION ORDER AWARDED 15 PERCENT (48 DEGREES) AND THE REFEREE INCREASED THE AWARD TO 25 PERCENT (80 DEGREES).

CLAIMANT, A 50 YEAR OLD CASHIER-CLERK, RECEIVED A BACK SPRAIN IN A LIFTING-TWISTING INCIDENT AUGUST 18, 1969 WHILE WORKING IN A STORE. CLAIMANT HAS RECEIVED CONSERVATIVE TREATMENT AND HAS BEEN EXAMINED BY ENUROLOGISTS, ORTHOPEDISTS AND HAS HAD A COMPLETE WORKUP BY THE DISABILITY PREVENTION DIVISION. A LUMBAR MYELOGRAM IN 1971 INDICATED A FILLING DEFECT BETWEEN THE DURA AND THE NERVE ROOT SLEEVE ON THE RIGHT INDICATING A HERNIATED OR RUPTURED DISC ON THE RIGHT AT THE LUMBOSACRAL LEVEL. CLAIMANT REJECTED SURGERY. CLAIMANT HAS SOME PSYCHOPATHOLOGY. TWO PREVIOUS HUSBANDS HAD DIED SUDDENLY WITH HEART ATTACKS. CLAIMANT IS NOW MARRIED.

SINCE THE ACCIDENT IN 1969, CLAIMANT HAS, FROM TIME TO TIME, CONTINUED PART-TIME CLERK AND CASHIER WORK IN VARIOUS STORES. CLAIMANT'S PATTERN OF PART-TIME WORK PRIOR TO THE INDUSTRIAL INJURY HAS CONTINUED SINCE THE INDUSTRIAL INJURY BUT HAS DECREASED SOME BECAUSE OF HER PAIN AND ALSO BECAUSE OF HER REMARRIAGE. CLAIMANT'S MOTIVATION FOR WORKING IS RELEVANT TO THE ISSUE OF WHETHER OR NOT SHE IS, IN FACT, ABLE TO WORK.

MEASURING THE LOSS OF EARNING CAPACITY FOR THIS PART-TIME CLERK-CASHIER IS COMPLICATED BY THE LACK OF GOOD GUIDEPOSTS AND YARDSTICKS AND FURTHER, BY THE SUBSTANTIAL QUESTION OF WHETHER CLAIMANT REALLY DESIRES TO REENTER THE LABOR MARKET AFTER HER CURRENT MARRIAGE.

ON DE NOVO REVIEW OF THE ENTIRE RECORD, THE BOARD CONCURS WITH THE FINDINGS AND OPINION OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED NOVEMBER 6, 1973 IS AFFIRMED.

WCB CASE NO. 73-85

MARCH 14, 1974

MURIEL PAULSON, CLAIMANT
DEZENDORF, SPEARS, LUBERSKY AND
CAMPBELL, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.

A REQUEST FOR REVIEW HAVING BEEN DULY FILED BY THE STATE ACCIDENT INSURANCE FUND WITH THE WORKMEN'S COMPENSATION BOARD IN THE ABOVE-ENTITLED MATTER, AND SAID REQUEST FOR REVIEW NOW HAVING BEEN WITHDRAWN BY THE FUND WITH AUTHORIZATION BY THE EMPLOYER,

IT IS THEREFORE ORDERED THAT THE REVIEW NOW PENDING BEFORE THE BOARD IS HEREBY DISMISSED.

NO NOTICE OF APPEAL IS APPLICABLE.

WCB CASE NO. 73-2401

MARCH 14, 1974

GENE SCHULTZ, CLAIMANT
BROWN, BURT AND SWANSON, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND
SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE INVOLVED IN THIS MATTER IS WHETHER THE COMPENSABLE BACK INJURY IN FEBRUARY, 1971 AND THE LAMINECTOMY OF JANUARY, 1973 WERE MATERIAL CONTRIBUTING FACTORS TO THE MYOCARDIAL INFARCTION, WHICH OCCURRED MAY 5, 1973.

CLAIMANT, A 39 YEAR OLD EMPLOYEE OF BOISE CASCADE, RECEIVED A COMPENSABLE BACK INJURY FEBRUARY 12, 1971. HE WENT BACK TO WORK IN JUNE, 1971 AND LEFT SHORTLY THEREAFTER FOR A TRUCK DRIVING JOB IN NEVADA. HE WORKED THERE UNTIL NOVEMBER, 1971 WHEN HE HAD SEVERE LOW BACK PAIN AND LEFT LEG PAIN. IN JANUARY, 1973 CLAIMANT HAD BACK SURGERY AND DURING THE POST OPERATIVE PERIOD CLAIMANT HAD A PULMONARY EMBOLISM. ON MAY 5, 1973 CLAIMANT WAS ON A ROUTINE SHOPPING TRIP AND HAD THE MYOCARDIAL INFARCTION. THE EMPLOYER ISSUED A PARTIAL DENIAL DENYING RESPONSIBILITY FOR THE MYOCARDIAL INFARCTION.

THE MEDICAL EVIDENCE IN THE RECORD REGARDING THIS ISSUE INCLUDES THE OPINION OF THREE DOCTORS. THE EVIDENCE FROM DR. WISHAM CONCLUDED THAT THE COMPENSABLE INJURY AND THE LAMINECTOMY WERE NOT MATERIAL CONTRIBUTING FACTORS CAUSING THE MYOCARDIAL INFARCTION. THE MYOCARDIAL INFARCTION WAS TOO REMOTE IN TIME FOR THE STRESS OF THE OPERATION TO BE CONSIDERED A MATERIAL CONTRIBUTING CAUSE OF THE INFARCTION.

ON DE NOVO REVIEW, THE BOARD ADOPTS AND AFFIRMS THE REFEREE'S WELL WRITTEN OPINION.

ORDER

THE ORDER OF THE REFEREE DATED OCTOBER 31, 1974 IS AFFIRMED.

WCB CASE NO. 73-599

MARCH 14, 1974

ROBERT P. HOGAN, CLAIMANT
RICHARDSON AND MURPHY, CLAIMANT'S ATTYS.
MERLIN MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS REVIEW OF A HEARING OFFICER'S ORDER AFFIRMING A DETERMINATION ORDER ALLOWING CLAIMANT 15 PERCENT OF THE MAXIMUM ALLOWABLE (48 DEGREES) FOR ADDITIONAL UNSCHEDULED DISABILITY STEMMING FROM HIS LATEST LOW BACK INJURY.

CLAIMANT SUFFERED A COMPENSABLE BACK INJURY IN 1964 WHILE EMPLOYED BY THE CITY OF PORTLAND FOR WHICH HE RECEIVED 35 PERCENT LOSS USE OF AN ARM.

IN 1966 A SECOND BACK INJURY WHILE IN THE EMPLOY OF SAFEWAY STORES RESULTED IN AN ADDITIONAL UNSCHEDULED PERMANENT DISABILITY AWARD EQUAL TO 5 PERCENT LOSS OF AN ARM.

THE ACCIDENT IN QUESTION OCCURRED ON MAY 1, 1971, WHEN CLAIMANT SLIPPED ON AN ICY FLOOR AND REINJURED HIS BACK. THE ADDITIONAL INJURY NECESSITATED A LAMINECTOMY AT L4-5 ON THE RIGHT PLUS A FUSION OF L5 AND S1. HE HAS A SOLID FUSION BUT THE MOST PRUDENT VOCATIONAL COURSE FOR CLAIMANT, IN LIGHT OF THE EFFECTS OF THIS INJURY COUPLED WITH THE RESIDUALS OF THE PRIOR INJURIES, IS TO FIND LIGHTER EMPLOYMENT. CLAIMANT IS ANXIOUS, HOWEVER, TO CONTINUE HIS PRESENT EMPLOYMENT IN ORDER TO MAINTAIN ELIGIBILITY FOR A PROSPECTIVE UNION BUSINESS AGENT POSITION. ONLY IF HE IS NOT ELECTED TO THAT POSITION WILL HE ACCEPT REHABILITATION FOR LIGHTER WORK.

ON APPEAL CLAIMANT CONTENDS THE PRIOR INJURY AWARDS SHOULD NOT BE TAKEN INTO ACCOUNT BECAUSE THEY WERE DETERMINED ON THE BASIS OF 'IMPAIRMENT' RATHER THAN 'LOSS OF EARNING CAPACITY'. THE LAW IS NOT THAT RESTRICTIVE. ORS 656.222 SIMPLY PROVIDES THAT AWARDS OF COMPENSATION FOR FURTHER ACCIDENTS SHALL BE MADE WITH REGARD TO THE COMBINED EFFECT OF HIS INJURIES AND HIS PAST RECEIPT OF MONEY FOR SUCH DISABILITIES. THE BOARD MAY NOT IGNORE ORS 656.222.

IT MUST BE BORNE IN MIND THAT, EVEN THOUGH CONTINUED EMPLOYMENT AS A MEATCUTTER IS NOT PRUDENT, CLAIMANT IS ABLE TO PERFORM THE WORK. THIS EVIDENCE IS HELPFUL IN ESTABLISHING THE CLAIMANT'S TRUE RESIDUAL PHYSICAL CAPACITY.

THE EVIDENCE REVEALS CLAIMANT HAS THE INTELLIGENCE, APTITUDES, EDUCATION AND RESIDUAL PHYSICAL CAPACITY - IN SPITE OF THESE DISABLING INJURIES - TO GAIN AND HOLD A WIDE VARIETY OF EMPLOYMENTS.

ORS 656.214(5) PROVIDES =

' IN ALL OTHER CASES OF INJURY RESULTING IN PERMANENT PARTIAL DISABILITY, THE NUMBER OF DEGREES OF DISABILITY SHALL BE A MAXIMUM OF 320 DEGREES DETERMINED BY THE EXTENT OF THE DISABILITY COMPARED TO THE WORKMAN BEFORE SUCH INJURY AND WITHOUT SUCH DISABILITY. '

KEEPING IN MIND THE ABOVE QUOTED SECTION AND ORS 656.222, WE CONCLUDE THE HEARING OFFICER'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 20, 1973 IS HEREBY AFFIRMED.

SAIF CLAIM NO. A 967415 MARCH 14, 1974

ROBERT R. PETTENGILL, 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.

THE BOARD HAS RECEIVED A MEDICAL REPORT FROM DR. DONALD T. SMITH, M.D., WHICH INDICATES THAT CLAIMANT'S ORIGINAL INJURY IS A MATERIAL CONTRIBUTING FACTOR TO CLAIMANT'S PRESENT HAND 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 ROBERT R. PETTENGILL 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.

SAIF CLAIM NO. A 596482 MARCH 14, 1974

LUCILE MAE ERVIN, CLAIMANT
OWN MOTION ORDER

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

CLAIMANT ORIGINALLY INJURED HER RIGHT LEG FEBRUARY 26, 1957, WHILE WORKING FOR THE ALBANY LAUNDRY COMPANY. IN 1966, SHE HAD A MEDIAL MENISCECTOMY.

THE BOARD HAS RECEIVED A CURRENT MEDICAL REPORT FROM ROBERT J. FRY, M. D., INDICATING THIS CLAIMANT'S PRESENT CONDITION IS THE RESULT OF HER INDUSTRIAL INJURY AND THAT HER CLAIM SHOULD BE REOPENED FOR FURTHER MEDICAL CARE AND TREATMENT.

UPON REFERRAL TO THE STATE ACCIDENT INSURANCE FUND, THE BOARD WAS ADVISED THEY WERE UNABLE TO LOCATE THIS LADY'S CLAIM FILE AND WERE REQUESTING AN INVESTIGATION BE MADE. A COPY OF THIS INVESTIGATION REPORT HAS NOW BEEN FORWARDED TO THE BOARD, AND AFTER CONSIDERATION OF THIS REPORT AND DR. FRY'S RECOMMENDATION, IT IS HEREBY ORDERED BY THE BOARD THAT THE STATE ACCIDENT INSURANCE FUND REOPEN THIS CLAIM FOR FURTHER MEDICAL CARE AND TREATMENT.

IT IS SO ORDERED.

WCB CASE NO. 73-264 MARCH 14, 1974

EUGENE C. JOHNSON, CLAIMANT
CASH PERRINE, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS WHETHER CLAIMANT'S HEART PROBLEMS ARE CONNECTED TO THE INDUSTRIAL INJURY.

CLAIMANT'S BACK INJURY CLAIM RESULTED IN AN AWARD OF PERMANENT TOTAL DISABILITY ON NOVEMBER 22, 1963. CLAIMANT'S HEART CONDITION WAS NOT ACCEPTED AT THAT TIME. THE STATE ACCIDENT INSURANCE FUND HAS DENIED RESPONSIBILITY FOR THE HEART CONDITION AND DENIED PAYMENT FOR THE DRUGS FOR THE HEART CONDITION AND NO APPEAL WAS TAKEN. THE TREATING PHYSICIAN DID NOT RELATE THE HEART PROBLEM TO THE INDUSTRIAL INJURY.

ON DE NOVO REVIEW OF THE ENTIRE RECORD, THE BOARD FINDS THE HEART CONDITION NOT RELATED TO THE INDUSTRIAL INJURY. THE OPINION AND ORDER OF THE REFEREE IS AFFIRMED AND ADOPTED.

ORDER

THE ORDER OF THE REFEREE DATED OCTOBER 19, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 73-451 MARCH 14, 1974

FLOYD MILES, CLAIMANT
BRUCE WILLIAMS, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT PARTIAL DISABILITY OF THE RIGHT FOOT. THE DETERMINATION ORDER AWARDED PERMANENT PARTIAL DISABILITY OF 60 PERCENT LOSS OF THE RIGHT FOOT EQUAL TO 81 DEGREES. THE REFEREE AFFIRMED THIS AWARD. THE CLAIMANT REQUESTS AN INCREASE IN THE AWARD ON THIS BOARD REVIEW.

CLAIMANT, A 37 YEAR OLD TRUCK DRIVER, HAD HIS RIGHT FOOT CRUSHED BY A FALLING LOG. NO BONES WERE BROKEN BUT THERE WAS SUBSTANTIAL SOFT TISSUE AND TENDON INVOLVEMENT REQUIRING SEVERAL OPERATIONS AND SKIN GRAFTS. CLAIMANT HAS RETURNED TO LOG TRUCK DRIVING AND CONTINUES IT STEADILY WITH EXTRAORDINARY EFFORTS ON HIS PART.

THE BOARD CONCURS THAT THE PERMANENT PARTIAL DISABILITY TO THE RIGHT FOOT IS SUBSTANTIAL. THIS IS REFLECTED IN THE 60 PERCENT LOSS OF FUNCTION AWARDED BY THE DETERMINATION ORDER AND AFFIRMED BY THE REFEREE.

BOTH THE EVALUATION DIVISION AND THE REFEREE HAD THE ADVANTAGE OF SEEING THE FOOT AND HEARING THE CLAIMANT. GREAT WEIGHT IS GIVEN TO THEIR FINDINGS.

ON DE NOVO REVIEW OF THE ENTIRE RECORD, THE BOARD AFFIRMS THE FINDING OF THE REFEREE AND ADOPTS HIS OPINION.

ORDER

THE ORDER OF THE REFEREE DATED OCTOBER 23, 1973 IS AFFIRMED.

WCB CASE NO. 73-1424 MARCH 15, 1974

ALBERT MOORE, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
KEITH D. SKELTON, 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 EMPLOYER'S COUNSEL,

IT IS THEREFORE ORDERED THAT THE REVIEW NOW PENDING BEFORE THE BOARD IS HEREBY DISMISSED.

WCB CASE NO. 73-1435 MARCH 15, 1974

PENNY L. BLANK, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
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 DENYING HER CLAIM FOR COMPENSATION. CLAIMANT CONTENDS SHE SUFFERED A COMPENSABLE OCCUPATIONAL DISEASE AND THAT SHE IS ENTITLED TO PENALTIES FOR THE EMPLOYER'S FAILURE TO PAY COMPENSATION PENDING THE DENIAL OF THE CLAIM AND ALSO FOR ITS FAILURE TO ACCEPT OR DENY WITHIN A REASONABLE TIME.

CLAIMANT IS A YOUNG WOMAN WHOSE WORK ENVIRONMENT AT OPEN ROAD CAMPERS, INC. SUBJECTED HER LUNGS TO INHALATION OF CONSIDERABLE WOOD AND FIBERGLASS DUST. PRIOR TO HER EMPLOYMENT THERE, SHE HAD NEVER HAD ANY RESPIRATORY AILMENT EXCEPT A RARE COLD.

SHORTLY AFTER COMMENCING HER EMPLOYMENT CLAIMANT BEGAN TO DEVELOP A COUGH WHICH BECAME PROGRESSIVELY MORE SEVERE.

ON MARCH 26, 1973 SHE SOUGHT MEDICAL TREATMENT FOR THE COUGH AND FOR CHEST PAINS CAUSED BY THE COUGHING. IN EARLY APRIL SHE SUFFERED FRACTURES OF THE LEFT AND RIGHT TENTH RIB DUE TO HER COUGHING SPELLS.

A FORMAL CLAIM FOR COMPENSATION BENEFITS WAS MADE ON APRIL 5, 1973. ALTHOUGH THE CLAIMANT WAS THEN TEMPORARILY TOTALLY DISABLED BY THE CONDITION, THE EMPLOYER'S INSURANCE CARRIER REFUSED TO PAY COMPENSATION DURING THE PENDENCY OF THE CLAIM. THE CARRIER ISSUED A FORMAL DENIAL ON JUNE 4, 1973 ON THE BASIS THAT !! MEDICAL INFORMATION RECEIVED DOES NOT INDICATE YOUR CONDITION AROSE OUT OF AND IN THE COURSE OF YOUR EMPLOYMENT. !! JOINT EXHIBIT D.

THE PHYSICIAN WHO TREATED CLAIMANT, DR. RICHARD CAVALLI, CONCLUDED HER COUGHING WAS DUE TO AN INFECTIOUS BRONCHITIS WHICH HE THOUGHT WAS !! . . . VERY POSSIBLY CONTRIBUTED TO BY INHALATION OF FIBERGLASS PARTICLES. !! JOINT EXHIBIT A.

CLAIMANT WAS EXAMINED AT THE REQUEST OF THE EMPLOYER'S INSURANCE COMPANY BY DR. JOHN TUHY, WHO SAW HER ON JUNE 4, 1973. HE THOUGHT SHE HAD HAD AN INFECTIOUS BRONCHITIS WHICH MIGHT HAVE BEEN PROLONGED OR AGGRAVATED BY ALLERGENS SUCH AS DUST, RATHER THAN FIBERGLASS, ACTING EITHER TO DIRECTLY AGGRAVATE THE BRONCHITIS OR PERHAPS ACTING AS A MECHANICAL IRRITANT TO THE UPPER AIRWAYS. HOWEVER, BECAUSE OF THE PASSAGE OF TIME SINCE HER ACUTE PHASE, HE FELT IT WAS NO MEDICALLY POSSIBLE TO DETERMINE WHETHER WORK ENVIRONMENT FACTORS HAD CONTRIBUTED TO HER BRONCHITIS.

AT THE HEARING ON THE CLAIM DENIAL THE HEARING OFFICER CONCLUDED CLAIMANT HAD FAILED TO PRODUCE COMPETENT EVIDENCE THAT HER CONDITION WAS COMPENSABLY RELATED TO HER WORK.

ALTHOUGH THE ISSUE IS NOT TOTALLY FREE FROM DOUBT, WE CONCLUDE THERE IS COMPETENT EVIDENCE WHICH ESTABLISHES THAT HER BRONCHITIS IS RELATED TO THE EMPLOYMENT.

WE HAVE THE OPINION OF DR. CAVALLI TO THE EFFECT THAT THE BRONCHITIS WAS 'VERY POSSIBLY' CONTRIBUTED TO BY EMPLOYMENT FACTORS. DR. TUHY DOES NOT DISCOUNT IT. IN FACT, HIS REPORT STRONGLY SUGGESTS HE SUSPECTS THAT SOMETHING IN THE WORK ENVIRONMENT CONTRIBUTED TO THE BRONCHITIS. HOWEVER, HE REFUSES TO ADVANCE AN OPINION BECAUSE 'IT IS NOT MEDICALLY POSSIBLE TO ESTABLISH CERTAINLY WHERE INHALED DUST OR OTHER IRRITANTS AGGRAVATED HER ACUTE BRONCHITIS.' (DR. TUHY'S LETTER DATED JUNE 18, 1973) CERTAINTY OF CAUSAL CONNECTION IS NOT A PREREQUISITE TO IMPOSITION OF LIABILITY FOR WORKMEN'S COMPENSATION.

CLAIMANT'S CLAIM SHOULD NOT BE JEOPARDIZED BECAUSE DR. TUHY FELT RELUCTANT, 59 DAYS AFTER FILING OF THE CLAIM, WHEN HER CONDITION HAD PRACTICALLY RETURNED TO NORMAL, TO EXPRESS HIS OPINION AS A MEDICAL CERTAINTY.

WE THINK THE OBSERVATIONS IN 3 LARSON, WORKMEN'S COMPENSATION LAW, 80.32, PAGE 289, WHICH WAS CITED WITH APPROVAL IN CLAYTON V. SCD, 253 OR 397, 406 (1969), ARE APPLICABLE TO THIS CASE.

'THE DISTINCTION BETWEEN PROBABILITY AND POSSIBILITY SHOULD NOT FOLLOW TOO SLAVISHLY THE WITNESSES' CHOICE OF WORDS, AS SOMETIMES HAPPENS IN RESPECT TO MEDICAL TESTIMONY. A DOCTOR'S USE OF SUCH WORDS AS 'MIGHT', 'COULD', 'LIKELY', 'POSSIBLE' AND 'MAY HAVE', PARTICULARLY WHEN COUPLED WITH OTHER CREDIBLE EVIDENCE OF A NONMEDICAL CHARACTER, SUCH AS A SEQUENCE OF SYMPTOMS OR EVENTS CORROBORATING THE OPINION, IS IN MOST STATES SUFFICIENT TO SUSTAIN AN AWARD.'

URIS V. SCD, 247 OR 420 (1967) HOLDS THAT A PRIMA FACIE CASE OF CAUSATION MAY BE MADE WITHOUT ANY MEDICAL TESTIMONY WHERE THERE IS -

- (1) AN UNCOMPLICATED SITUATION.
- (2) THE IMMEDIATE APPEARANCE OF SYMPTOMS.
- (3) PROMPT REPORTING TO THE EMPLOYER AND CONSULTATION WITH A PHYSICIAN AND,
- (4) PRIOR GOOD HEALTH AND FREEDOM FROM DISABILITY OF THE KIND INVOLVED.

(5) ABSENCE OF EXPERT OPINION THAT THE ALLEGED PRECIPITATING WORK FACTORS COULD NOT HAVE BEEN THE CAUSE OF THE CONDITION.

WHEN ONE RECALLS THAT CLAIMANT WAS IN GOOD HEALTH PRIOR TO HER EMPLOYMENT AT OPEN ROAD — THAT CLAIMANT'S BRONCHITIS APPEARED SOON AFTER COMMENCING EMPLOYMENT — THAT IT CONTINUED TO GET WORSE AND WORSE WHILE ASSOCIATED WITH THE WORK ENVIRONMENT TO THE POINT THAT SHE ULTIMATELY BROKE TWO RIBS COUGHING, AND THAT AS SOON AS SHE LEFT THE WORK ENVIRONMENT SHE QUICKLY RECOVERED — THEN IT SEEMS ONLY REASONABLE TO CONCLUDE THAT THIS IS NOT A PARTICULARLY COMPLICATED SITUATION. KEEPING IN MIND THE FACTORS MENTIONED ABOVE AND THE OPINIONS OF THE PHYSICIANS STRONGLY SUGGESTING A CAUSAL RELATIONSHIP, THE BOARD CONCLUDES THAT CLAIMANT'S BRONCHITIS WAS COMPENSABLY RELATED TO HER EMPLOYMENT AT OPEN ROAD CAMPERS, INC.

THE CARRIER'S FAILURE TO PAY COMPENSATION AFTER THE CLAIM WAS MADE ON APRIL 5, 1973 UNTIL THE DENIAL ISSUED ON JUNE 4, 1973, WAS TOTALLY UNJUSTIFIED UNDER THE LAW. CLAIMANT IS ENTITLED TO ADDITIONAL COMPENSATION EQUAL TO 25 PERCENT OF THE COMPENSATION DUE FOR THAT PERIOD.

CLAIMANT'S ATTORNEYS ARE NOT ENTITLED TO TWENTY THREE HUNDRED DOLLARS FOR THEIR SERVICES IN THIS MATTER.

BASED ON A REASONABLE AMOUNT OF TIME FOR PREPARATION AND PRESENTATION OF THE CASE — TAKING INTO ACCOUNT THE DIFFICULTY OF THE PROBLEM AND THE RESULT OBTAINED, CLAIMANT'S ATTORNEYS ARE ENTITLED TO A FEE OF ELEVEN HUNDRED DOLLARS FOR THEIR SERVICES AT THE HEARING AND ON THIS REVIEW.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 14, 1973 IS HEREBY REVERSED AND THE CLAIMANT'S CLAIM IS REMANDED TO THE EMPLOYER FOR ACCEPTANCE, PROCESSING, AND PAYMENT OF BENEFITS IN ACCORDANCE WITH THE WORKMEN'S COMPENSATION LAW.

CLAIMANT IS HEREBY AWARDED, PURSUANT TO ORS 656.262(8), ADDITIONAL COMPENSATION EQUAL TO 25 PERCENT OF THE COMPENSATION ACCRUED BUT NOT PAID AT THE TIME THE EMPLOYER DENIED CLAIMANT'S CLAIM ON JUNE 4, 1973.

CLAIMANT'S ATTORNEYS, GALTON AND POPICK, ARE HEREBY AWARDED AN ATTORNEY'S FEE OF ELEVEN HUNDRED DOLLARS, PAYABLE BY THE EMPLOYER, FOR THEIR SERVICES AT THE HEARING AND ON THIS REVIEW.

WCB CASE NO. 73-1983 MARCH 15, 1974

WILLIAM COEN, CLAIMANT
COONS, MALAGON AND COLE, CLAIMANT'S ATTS.
J. W. MCCRACKEN, JR., DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
CROSS-APPEAL BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTED REVIEW OF A HEARING OFFICER'S ORDER GRANTING CLAIMANT AN ADDITIONAL 10 PERCENT UNSCHEDULED DISABILITY (32 DEGREES) CONTENDING CLAIMANT'S DISABILITY EXCEEDS THAT AWARDED.

THE EMPLOYER, THROUGH ITS CARRIER, MARYLAND CASUALTY COMPANY, CROSS-REQUESTED REVIEW CONTENDING THE EVIDENCE DID NOT JUSTIFY THE INCREASE GRANTED BY THE HEARING OFFICER.

CLAIMANT HAS BEEN GRANTED UNSCHEDULED PERMANENT PARTIAL DISABILITY EQUAL TO 20 PERCENT OF THE MAXIMUM OR 64 DEGREES FOR PERMANENT LOSS OF EARNING CAPACITY RESULTING FROM A LOW BACK INJURY ON MARCH 3, 1972.

AT THE TIME OF THE INJURY CLAIMANT WAS A YOUNG MAN WITH NOTHING TO OFFER AN EMPLOYER BUT HIS PHYSICAL LABOR AND THAT ABILITY HAS BEEN PERMANENTLY IMPAIRED. HE IS, HOWEVER, A BRIGHT FELLOW, MAKING GOOD GRADES IN COLLEGE AND SHOULD HAVE A BROAD SPECTRUM OF EMPLOYMENT OPPORTUNITIES AVAILABLE TO HIM SHORTLY. IF HE DOES NOT SUCCEED, IT WILL UNDOUBTEDLY BE DUE TO EMOTIONAL PROBLEMS UNRELATED TO THE ACCIDENT RATHER THAN TO ANY INJURY RESIDUALS.

THE HEARING OFFICER MADE A GOOD ANALYSIS OF THE FACTORS INVOLVED AND THE BOARD CONCURS IN THE AWARD OF DISABILITY HE GRANTED.

THE EMPLOYER HAS NOT SUCCEEDED IN THE CROSS-APPEAL AND CLAIMANT'S ATTORNEY CONTENDS HE IS THEREFORE ENTITLED TO A FEE ON REVIEW, PAYABLE BY THE EMPLOYER.

THE BOARD HAS PREVIOUSLY RULED IN AN ANALOGOUS FACT SITUATION THAT CLAIMANT'S ATTORNEY IS NOT SO ENTITLED. (ROBERT S. SMITH, WCB CASE NO. 70-2554, ORDER ON REVIEW, DATED OCTOBER 18, 1971). NO ATTORNEY'S FEE IS PAYABLE BY THE EMPLOYER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 8, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 73-2520 MARCH 15, 1974

NORMAN REILING, CLAIMANT
AND COMPLYING STATUS OF
JERRY MCFARLAND, DBA
MCFARLAND TRUCKING COMPANY
CUSICK AND POLING, CLAIMANT'S ATTYS.
SCOTT WETZEL, DEFENSE ATTY.

THE STATE ACCIDENT INSURANCE FUND MOVED TO DISMISS THE REQUEST FOR REVIEW ON THE GROUNDS THAT IT WAS NOT FILED WITHIN 30 DAYS OF THE MAILING DATE OF THE REFEREE'S ORDER.

THE REFEREE'S ORDER WAS DATED AND MAILED JANUARY 16, 1974. ORS 174.120, ORS 187.010 AND BEARDSLEY V. HILL, 219 OR 440, AS APPLIED TO THIS CASE, MAKES FEBRUARY 15, 1974 THE LAST DATE IN WHICH ONE OF THE PARTIES MAY REQUEST BOARD REVIEW.

ORS 656.289 (3) PROVIDES THE ORDER IS FINAL, UNLESS, WITHIN 30 DAYS AFTER THE DATE ON WHICH COPY OF THE ORDER IS MAILED TO THE PARTIES, ONE OF THE PARTIES REQUESTS A REVIEW BY THE BOARD UNDER ORS 656.295.

ORS 656.295(2) PROVIDES THE REQUEST FOR REVIEW SHALL BE MAILED TO THE BOARD AND COPIES OF THE REQUEST SHALL BE MAILED TO ALL OTHER PARTIES TO THE PROCEEDING BEFORE THE HEARING OFFICER.

THE REQUEST FOR BOARD REVIEW WAS POSTMARKED FEBRUARY 15, 1974 AND THE CERTIFICATION OF MAILING BY THE ATTORNEY REQUESTING THE REVIEW CERTIFIES THAT COPIES OF THE REQUEST FOR REVIEW WERE MAILED TO ALL OF THE OTHER PARTIES FEBRUARY 15, 1974.

THE BOARD FINDS THE REQUEST FOR BOARD REVIEW TO BE TIMELY FILED AND THE MOTION TO DISMISS IS DENIED.

WCB CASE NO. 73-729

MARCH 15, 1974

JIMMIE TROY PALMER, CLAIMANT

AND COMPLYING STATUS OF

C. DALE SPEARS REALTY

DELBERT R. REMINGTON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.

ON FEBRUARY 23, 1973 A PROPOSED FINDING OF NONCOMPLIANCE AND INJURY LIABILITY WAS ISSUED IN THE ABOVE REFERENCED MATTER. ON OR ABOUT FEBRUARY 28, 1973 THE DEFENDANT DENIED RESPONSIBILITY FOR THE CLAIMANT'S INJURY. A HEARING WAS HELD ON MAY 23, 1973. DEFENDANT, C. DALE SPEARS, DID NOT APPEAR AT THE HEARING. THE HEARING OFFICER CONCLUDED ADEQUATE NOTICE HAD BEEN GIVEN AND ENTERED AN ORDER ON JUNE 14, 1973, FINDING THE EMPLOYER SUBJECT AND NONCOMPLYING AND THE INJURY COMPENSABLE.

ON AUGUST 14, 1973, DEFENDANT, THROUGH HIS ATTORNEY, CASH PERRINE, MOVED THE BOARD FOR AN ORDER REOPENING THE MATTER FOR THE PURPOSE OF ALLOWING DEFENDANT, SPEARS, TO PRESENT HIS DEFENSE AND JOINING AN ADDITIONAL PARTY DEFENDANT.

IN RESPONSE TO THAT MOTION THE BOARD ISSUED AN OWN MOTION ORDER REMANDING THE CASE TO THE HEARINGS DIVISION FOR A NEW HEARING AND A RECOMMENDATION TO THE WORKMEN'S COMPENSATION BOARD. A HEARING WAS HELD AND ON FEBRUARY 6, 1974, THE REFEREE ENTERED HIS FINDINGS OF FACT, OPINION AND RECOMMENDATION. SAID DOCUMENT IS ATTACHED HERETO AS EXHIBIT 'A'. THE BOARD AGREES WITH ALL FINDINGS BY THE REFEREE EXCEPT NUMBER 17. THE BOARD CONCLUDES CLAIMANT WAS TO MANAGE OTHER APARTMENTS AS WELL AS THE DREYDUN APARTMENTS AND WAS TO RECEIVE MONEY OR PROPERTY TO THE VALUE OF EIGHT HUNDRED DOLLARS FOR HIS SERVICES.

THE BOARD AGREES WITH THE REFEREE'S CONCLUSIONS OF LAW.

ORDER

C. DALE SPEARS WAS AN EMPLOYER SUBJECT TO, BUT NOT COMPLYING WITH, THE PROVISIONS OF THE OREGON WORKMEN'S COMPENSATION LAW FOR THE PRIOD SEPTEMBER 1, 1971 TO NOVEMBER 14, 1972.

THE CLAIM OF JIMMIE TROY PALMER FOR A COMPENSABLE INJURY ON SEPTEMBER 27, 1972 ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT BY C. DALE SPEARS, IS HEREBY REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR PAYMENT OF BENEFITS AND PROCESSING IN ACCORDANCE WITH THE OREGON WORKMEN'S COMPENSATION LAW.

CLAIMANT'S TEMPORARY TOTAL DISABILITY ENTITLEMENT SHALL BE BASED ON EARNINGS OF EIGHT HUNDRED DOLLARS PER MONTH.

CLAIMANT'S ATTORNEY, DELBERT REMINGTON, IS HEREBY AWARDED A REASONABLE ATTORNEY'S FEE OF ONE THOUSAND DOLLARS TO BE PAID BY THE STATE ACCIDENT INSURANCE FUND, IN ADDITION TO AND NOT OUT OF THE CLAIMANT'S COMPENSATION.

SAID COMPENSATION AND ATTORNEY'S FEES SHALL BE REIMBURSED TO THE STATE ACCIDENT INSURANCE FUND IN ACCORDANCE WITH ORS 656.054(2).

C. DALE SPEARS IS LIABLE TO THE WORKMEN'S COMPENSATION BOARD FOR THE COSTS OF THE CLAIM OF JIMMIE TROY PALMER IN ACCORDANCE WITH ORS 656.054(2).

IN ACCORDANCE WITH ORS 656.313, APPEAL OF THIS ORDER DOES NOT STAY PAYMENT OF COMPENSATION.

WCB CASE NO. 73-728 MARCH 15, 1974

BOB KAGEYAMA, CLAIMANT
RICHARDSON AND MURPHY, CLAIMANT'S ATTYS.
PHILIP MONGRAIN, DEFENSE ATTY.

THE ABOVE-ENTITLED MATTER WAS THE SUBJECT OF AN ORDER ON REVIEW DATED MARCH 12, 1974.

ON PAGE 1, BENEATH THE CLAIMANT'S NAME, THE ORDER ERRONEOUSLY READS, 'REQUEST FOR REVIEW BY SAIF'. THIS IS CORRECTED TO READ, 'REQUEST FOR REVIEW BY EMPLOYER'.

ON PAGE 1, THE FIRST SENTENCE OF THE LAST PARAGRAPH INADVERTENTLY STATES 'THE CASES CITED BY THE STATE ACCIDENT INSURANCE FUND . . .'. THIS STATEMENT IS AMENDED BY DELETING THE WORDS '. . .' BY THE STATE ACCIDENT INSURANCE FUND . . .

ON PAGE 2, THE ATTORNEY'S FEE PARAGRAPH ERRONEOUSLY RECITES THE ATTORNEY'S FEE, 'PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.' THE ORDER SHOULD RECITE 'PAYABLE BY THE EMPLOYER'.

THE ORDER OF MARCH 12, 1974, SHOULD BE, AND IT IS HEREBY AMENDED TO REFLECT THESE CORRECTIONS.

WCB CASE NO. 73-508 MARCH 19, 1974

WAYNE LILLARD, CLAIMANT
COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
J. W. MCCracken, JR., DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS REVIEW OF A HEARING OFFICER'S ORDER DENYING HIM ADDITIONAL WORKMEN'S COMPENSATION BENEFITS FOR A

COMPENSABLE LOW BACK STRAIN INCURRED WHILE SETTING CHOKERS FOR THE WEYERHAEUSER COMPANY IN LANE COUNTY, OREGON ON OCTOBER 12, 1971. AS A RESULT OF THAT INJURY HE RECEIVED A COURSE OF CONSERVATIVE TREATMENT FOR SEVERAL WEEKS FROM THE COMPANY'S MEDICAL DEPARTMENT, ALTHOUGH THE TREATMENTS WERE EVENTUALLY TERMINATED, NO FORMAL CLOSURE OF THE CLAIM, PURSUANT TO ORS 656.268, WAS EVER MADE.

PRIOR TO THE INJURY IN QUESTION CLAIMANT HAD SUFFERED A COMPRESSION FRACTURE OF L2 IN A NONCOMPENSABLE DUNE BUGGY ACCIDENT.

CLAIMANT REQUESTED ADDITIONAL COMPENSATION CONTENDING HIS TREATMENT FOR THE OCTOBER 12, 1971 INJURY HAD EITHER BEEN PREMATURELY TERMINATED BY WEYERHAEUSER OR THAT HE HAD SUFFERED AN AGGRAVATION OF THAT INJURY.

THE HEARING OFFICER BASED HIS DENIAL OF FURTHER BENEFITS ESSENTIALLY ON THE GROUND THAT HIS PRESENT PROBLEMS WERE THE RESULT OF THIS DUNE BUGGY ACCIDENT RATHER THAN THE OCTOBER 12, 1971 ACCIDENT.

REGARDLESS OF THE RULE THAT THE EMPLOYER TAKES THE WORKMAN AS HE FINDS HIM, CLAIMANT IS NOT ENTITLED TO ADDITIONAL BENEFITS FOR THE OCTOBER 12, 1971 INJURY. THE MEDICAL EVIDENCE REVEALS THAT CLAIMANT'S OCTOBER 12, 1971 INJURY PLAYED NO MATERIAL PART IN THE NEED FOR MEDICAL CARE. THE HEARING OFFICER'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 20, 1973 IS AFFIRMED.

WCB CASE NO. 72-2514 MARCH 20, 1974

MARDELL MARSHALL, 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 REFEREE'S ORDER DENYING HER CLAIM OF AGGRAVATION.

ON REVIEW SHE SEEKS AN ORDER AWARDING -

- (1) FURTHER MEDICAL CARE.
- (2) ADDITIONAL TEMPORARY TOTAL DISABILITY BENEFITS.

THE REFEREE RULED IN FAVOR OF CLAIMANT INITIALLY BUT UPON RECONSIDERATION OF THE MATTER CONCLUDED THAT CLAIMANT HAD NOT PROVEN AN AGGRAVATION OF HER CONDITION AND THAT THE EMPLOYER'S INSURANCE HAD PROPERLY DISCHARGED ITS OBLIGATION TO THE CLAIMANT.

OUR OWN DE NOVO REVIEW LEADS US TO CONCUR WITH THE REFEREE'S FINDINGS AND OPINION.

ALTHOUGH THE REFEREE, IN HIS AMENDED OPINION AND ORDER, PROPERLY VACATED PARAGRAPH TWO OF HIS ORIGINAL ORDER, CLAIMANT IS PROTECTED BY THE PROVISIONS OF ORS 656.245. HOWEVER, IN CLAIMING THE PROTECTION OF THAT STATUTE CLAIMANT SHOULD ASSIST THE EMPLOYER'S CARRIER BY SIFTING OUT THOSE MEDICAL EXPENSE CLAIMS THAT ARE OBVIOUSLY NOT RELATED TO HER CLAIM.

THE ORDER OF THE REFEREE SHOULD BE AFFIRMED.

ORDER

THE AMENDED OPINION AND ORDER OF THE REFEREE DATED NOVEMBER 19, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 73-1367 MARCH 20, 1974

JAMES RANDALL, CLAIMANT
COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS REVIEW OF A HEARING OFFICER'S ORDER CONTENDING HE IS NOT TOTALLY DISABLED AND THEREFORE ENTITLED TO EITHER TIME LOSS COMPENSATION UNTIL HE SUCCEEDS AT VOCATIONAL REHABILITATION OR TO PERMANENT TOTAL DISABILITY COMPENSATION UNTIL THE TIME (IF EVER) THAT HE BECOMES GAINFULLY EMPLOYED.

ON APRIL 1, 1971, CLAIMANT, A THEN 38 YEAR OLD MAN, INJURED HIS LOW BACK WHILE WORKING IN A SHINGLE MILL. DECOMPRESSIVE SURGERY WAS PERFORMED BUT DISABLING MOTOR AND SENSORY NERVE DYSFUNCTION PERSISTED. THE EVALUATION DIVISION AWARDED PERMANENT PARTIAL DISABILITY EQUAL TO 35 PERCENT LOSS OF THE RIGHT LEG AND 20 PERCENT OF THE MAXIMUM FOR UNSCHEDULED DISABILITY.

CLAIMANT'S WORK EXPERIENCE HAS INVOLVED ONLY MANUAL LABOR IN THE PAST AND VOCATIONAL REHABILITATION INTO LIGHT WORK WAS RECOMMENDED. HE WAS ENROLLED IN A FOREST TECHNOLOGY PROGRAM WHERE HE DID WELL ACADEMICALLY BUT HAD TROUBLE PHYSICALLY WITH THE FIELD WORK IN THE PROGRAM AND EVENTUALLY DROPPED OUT. AT THE MOMENT HE IS NOT INVOLVED IN ANY KIND OF REHABILITATION PROGRAM AND HAS NOT YET FOUND SUITABLE EMPLOYMENT.

THE HEARING OFFICER INCREASED THE CLAIMANT'S PERMANENT PARTIAL DISABILITY TO 40 PERCENT UNSCHEDULED DISABILITY AND 50 PERCENT LOSS OF THE RIGHT LEG. IN LIGHT OF THE CLAIMANT'S INTELLIGENCE AND MOTIVATION WE BELIEVE THE UNSCHEDULED DISABILITY AWARD ADEQUATELY COMPENSATES THE CLAIMANT FOR HIS PERMANENT LOSS OF EARNING CAPACITY. AS THE HEARING OFFICER OBSERVED, SCHEDULED DISABILITY IS RELATED TO PHYSICAL IMPAIRMENT. THE AWARD OF 50 PERCENT LOSS OF THE RIGHT LEG CORRECTLY COMPENSATES CLAIMANT'S SCHEDULED DISABILITY. THE HEARING OFFICER'S AWARDS OF DISABILITY COMPENSATION SHOULD BE AFFIRMED.

CLAIMANT IS ENTITLED TO FURTHER VOCATIONAL REHABILITATION ASSISTANCE. THE BOARD'S DISABILITY PREVENTION DIVISION WILL BE INSTRUCTED TO CONTACT CLAIMANT AND EXTEND ASSISTANCE TO CLAIMANT IN FURTHER VOCATIONAL REHABILITATION EFFORTS.

ORDER

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

WCB CASE NO. 73-1449 MARCH 20, 1974

JERRY OTTO, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
CROSS-APPEAL BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT APPEALS A REFEREE'S AWARD OF 25 PERCENT OF THE MAXIMUM FOR UNSCHEDULED DISABILITY CONTENDING THE AWARD IS TOO SMALL.

THE STATE ACCIDENT INSURANCE FUND CROSS-APPEALS THE REFEREE'S ORDER CONTENDING IT IS TOO LARGE.

WE CONCLUDE, HAVING REVIEWED THE RECORD DE NOVO, THAT THE REFEREE'S AWARD WAS PERFECTLY PROPER AND WOULD AFFIRM HIS FINDINGS, OPINION AND ORDER.

ORDER

THE ORDER OF THE REFEREE DATED OCTOBER 29, 1973 IS AFFIRMED.

WCB CASE NO. 73-1683 MARCH 20, 1974

LESTER MARSH, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER AFFIRMING THE DENIAL OF HIS CLAIM.

CLAIMANT CONTENDS THAT, AS A RESULT OF HIS EMPLOYMENT AT THE HARVEY CORPORATION IN ALOHA, OREGON, HE DEVELOPED A BACK CONDITION WHICH IS COMPENSABLE EITHER AS AN ACCIDENTAL INJURY OR AN OCCUPATIONAL DISEASE.

ALTHOUGH THERE IS EVIDENCE OF RECORD SUGGESTING AN ACCIDENTAL INJURY OCCURRED ON THE JOB, IN VIEW OF THE UNTRUSTWORTHINESS OF CLAIMANT'S TESTIMONY WE CONCLUDE CLAIMANT HAS FAILED TO PROVE HIS ENTITLEMENT TO COMPENSATION.

THE ORDER OF THE REFEREE SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED OCTOBER 26, 1973 IS AFFIRMED.

WCB CASE NO. 73-153 MARCH 20, 1974

ROBERT F. ATWOOD, CLAIMANT
BULLIVANT, WRIGHT, LEEDY, JOHNSON,
PENDERGRASS AND HOFFMAN, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS REVIEW OF A HEARING OFFICER'S ORDER ALLOWING AN AWARD OF 15 PERCENT OF THE MAXIMUM OF UNSCHEDULED DISABILITY, (48 DEGREES) CONTENDING HE IS PERMANENTLY TOTALLY DISABLED FROM A PSYCHOLOGICAL REACTION TO A SEPTEMBER 12, 1971 AUTO ACCIDENT IN THE COURSE OF HIS EMPLOYMENT AS A TAXICAB DRIVER.

THE HEARING OFFICER DEDUCED THAT MUCH OF CLAIMANT'S PRESENT EARNING CAPACITY PROBLEM WAS RELATED TO A CONTINUING EXCESSIVE USE OF ALCOHOL. THAT DEDUCTION IS NOT WELL SUPPORTED BY THE RECORD.

THE CLAIMANT DOES HAVE A CONTINUING PSYCHOLOGICAL PROBLEM WHICH THE ACCIDENT HAS CLEARLY AGGRAVATED. IT HAS BEEN DEMONSTRATED, HOWEVER, THAT WITH PROPER MEDICAL MANAGEMENT, CLAIMANT CAN FUNCTION REASONABLY WELL AS A SELF SUPPORTING, ABLE-BODIED WORKMAN.

THE BOARD CONCLUDES =

(1) THAT CLAIMANT SHOULD RECEIVE, PURSUANT TO ORS 656.245, SUCH MEDICAL TREATMENT AS IS NECESSARY TO MAINTAIN HIS PSYCHOLOGICAL HEALTH.

(2) THAT CLAIMANT'S AWARD OF 48 DEGREES FOR UNSCHEDULED DISABILITY SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 18, 1973 IS AFFIRMED.

MARCH 22, 1974

LUCILE MAE ERVIN, CLAIMANT

THE OWN MOTION ORDER OF THE BOARD DATED MARCH 14, 1974 FAILED TO PROVIDE THE APPROPRIATE NOTICE OF APPEAL RIGHTS. THE SOLE PURPOSE OF THIS SUPPLEMENTAL ORDER IS TO APPEND THE FOLLOWING NOTICE OF APPEAL.

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. 73-2131

MARCH 22, 1974

ELLISON A. FIELD, CLAIMANT

COONS, MALAGON AND COLE, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS REVIEW OF A REFEREE'S ORDER AFFIRMING A DETERMINATION ORDER.

CLAIMANT IS A 59 YEAR OLD EMPLOYEE OF THE LANE COUNTY ROAD DEPARTMENT WHO SUFFERED TWO COMPENSABLE INJURIES TO HIS LOW BACK. THE FIRST ON JULY 7, 1969 AND THE SECOND ON AUGUST 4, 1971.

THE BOARD'S EVALUATION DIVISION GRANTED CLAIMANT 5 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY AND THE REFEREE AFFIRMED THE AWARD ESSENTIALLY BECAUSE, ALTHOUGH HE FOUND THE CLAIMANT A CREDIBLE WITNESS, HE CONCLUDED HIS PRESENT LIMITATIONS WERE MORE LIKELY THE RESULT OF EMOTIONALLY TRAUMATIC EXPERIENCES IN HIS PERSONAL LIFE. THERE IS UNDOUBTEDLY SOME TRUTH IN THAT OBSERVATION BUT WE CONCLUDE THAT THE INDUSTRIAL INJURIES IN QUESTION HAVE PLAYED A SIGNIFICANT ROLE. AS A RESULT OF THESE INJURIES THERE ARE NEW LIMITATIONS ON WHAT HE CAN DO IN TERMS OF GENERAL INDUSTRIAL EMPLOYMENT. HIS PERFORMANCE IN HIS PRESENT EMPLOYMENT DEMONSTRATES A DIMINUTION OF HIS RESERVE CAPACITY.

UNQUESTIONABLY, THE CLAIMANT WOULD HAVE DIFFICULTY COMPETING ON THE OPEN JOB MARKET WITH HIS RESIDUAL PHYSICAL IMPAIRMENT.

WE CONCLUDE CLAIMANT IS ENTITLED TO AN AWARD OF UNSCHEDULED DISABILITY EQUAL TO 15 PERCENT OF THE MAXIMUM ALLOWABLE.

ORDER

CLAIMANT IS HEREBY AWARDED AN ADDITIONAL 32 DEGREES FOR UNSCHEDULED DISABILITY MAKING A TOTAL OF 48 DEGREES OR 15 PERCENT OF THE MAXIMUM ALLOWABLE OF UNSCHEDULED DISABILITY.

CLAIMANT'S ATTORNEY, ALLAN H. COONS, IS ENTITLED TO 25 PERCENT OF THE INCREASED COMPENSATION AWARDED HEREBY, PAYABLE FROM SAID AWARD, TO A MAXIMUM OF FIFTEEN HUNDRED DOLLARS.

SAIF CLAIM NO. B 48612 MARCH 22, 1974

GEORGE E. HOLSHEIMER, CLAIMANT
ROD KIRKPATRICK, CLAIMANT'S ATTY.

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 JOHN L. MARXER, M.D., WHICH INDICATES THAT CLAIMANT'S ORIGINAL INJURY IS A MATERIAL CONTRIBUTING FACTOR TO CLAIMANT'S RECENT AMPUTATION OF THE FOOT, 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 GEORGE E. HOLSHEIMER BE REOPENED BY THE STATE ACCIDENT INSURANCE FUND FOR PAYMENT OF BENEFITS.

CLAIMANT'S ATTORNEY, ROD KIRKPATRICK, IS ENTITLED TO RECEIVE ONE HUNDRED FIFTY DOLLARS AS A REASONABLE ATTORNEY'S FEE, PAYABLE OUT OF THE INCREASED COMPENSATION AWARDED HEREBY.

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.

RUTH F. GRUNST, CLAIMANT
BURNS AND EDWARDS, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

ON JANUARY 26, 1972 CLAIMANT, A THEN 50 YEAR OLD MACHINE OPERATOR EMPLOYED AT THE NATIONAL BISCUIT COMPANY IN PORTLAND, OREGON, SUFFERED WHAT AT FIRST APPEARED TO BE A MILD LUMBO-SACRAL SPRAIN AT WORK.

IT WAS LATER DISCOVERED THAT THE ACCIDENT HAD ACTUALLY CAUSED A PSEUDOARTHROSIS AT THE UPPER LEVEL OF AN OLD L4-S1 FUSION WHICH HAD BEEN PERFORMED FOLLOWING A COMPENSABLE INJURY IN 1953. AN ATTEMPT TO RE-FUSE THE VERTEBRAL BODIES FAILED AND SHE WAS LEFT WITH VERY SERIOUS IMPAIRMENT OF THE LOW BACK.

SHE WAS GRANTED AN AWARD OF 128 DEGREES OR 40 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED PERMANENT PARTIAL DISABILITY BY A DETERMINATION ORDER DATED MAY 30, 1973.

CLAIMANT REQUESTED A HEARING CONTENDING SHE WAS PERMANENTLY TOTALLY DISABLED. THE REFEREE FOUND SHE WAS AND THE EMPLOYER HAS APPEALED THAT ORDER CLAIMING HER PERMANENT DISABILITY IS ONLY PARTIAL.

CLAIMANT'S MOTIVATION IS NOT THE HIGHEST BUT IN LIGHT OF HER SEVERE SPINE IMPAIRMENT, HER AGE, EXPERIENCE, MEAGER EDUCATION, INTELLECT AND APTITUDES, IT IS APPARENT THAT MOTIVATION OR THE LACK OF IT IS NOT THE KEY TO THE OUTCOME OF THIS CASE. WE BELIEVE THAT, ON THE BASIS OF HER PHYSICAL RESIDUALS, HER AGE, HER EDUCATION AND WORK EXPERIENCE, THAT CLAIMANT IS IN THE 'ODD-LOT' CATEGORY AT BEST.

THIS CASE PRESENTS A PROBLEM CONCERNING THE ROLE OF THE UNION IN REEMPLOYMENT AFTER INDUSTRIAL INJURIES. RETURNING INJURED WORKMEN TO A STATUS OF SELF SUPPORT AND MAINTENANCE AS AN ABLE-BODIED PERSON HAS ALWAYS BEEN A FUNDAMENTAL OBJECTIVE OF THE WORKMEN'S COMPENSATION LAW AND OF THIS AGENCY. IN THE PAST, THE SYSTEM HAS DIRECTED MOST OF ITS ATTENTION TO THE PHYSICAL ASPECTS OF INDUSTRIAL INJURIES, WITH THE ADVENT OF THE TECHNOLOGICAL SOCIETY AND ITS DEMAND FOR EFFICIENT AND SKILLED WORKERS, PROVIDING RELIEF FROM THE ADVERSE VOCATIONAL CONSEQUENCES OF INDUSTRIAL INJURIES HAS BECOME, IN MANY CASES, MOST DIFFICULT.

THE WORKMEN'S COMPENSATION BOARD HAS RECENTLY EMBARKED ON A PROGRAM DESIGNED TO ASSIST THE WORKER IN RETURNING TO WORK AS WELL AS HIS RESTORATION TO HEALTH.

FOR THE VOCATIONAL REHABILITATION EFFORTS OF OUR DISABILITY PREVENTION DIVISION TO SUCCEED, UNIONS ARE GOING TO HAVE TO COOPERATE. THE BOARD WOULD SUGGEST THAT SENIORITY OR OTHER RULES WHICH INTERFERE WITH THE VOCATIONAL REHABILITATION OF INJURED UNION MEMBERS BE AMENDED SO THAT THE INJURED WORKER CAN REMAIN A CONTRIBUTING MEMBER OF SOCIETY.

BASED ON THE EVIDENCE PRESENTED, THE PROBABILITIES OF CLAIMANT SUCCEEDING IN ANY KIND OF EMPLOYMENT ARE SO MARGINAL, THAT WE CONCLUDE CLAIMANT IS PERMANENTLY TOTALLY DISABLED.

ORDER

THE ORDER OF THE REFEREE DATED OCTOBER 29, 1973 IS AFFIRMED.

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

WCB CASE NO. 73-560 MARCH 22, 1974

RICHARD PITTS, CLAIMANT
FRED ALLEN, CLAIMANT'S ATTY.
DEPT. 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 ALLOWING CLAIMANT'S CLAIM FOR AGGRAVATION CONTENDING THAT CLAIMANT'S PRESENT DISABILITIES STEM FROM A NEW INJURY ON NOVEMBER 20, 1972.

HAVING REVIEWED THE RECORD DE NOVO, THE BOARD CONCURS WITH THE FINDINGS, OPINION AND ORDER ENTERED BY THE HEARING OFFICER. HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 14, 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.

EUGENE POIRIER, CLAIMANT

LACHMAN AND HENNINGER, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS REVIEW OF A HEARING OFFICER'S ORDER DENYING HIS CLAIM FOR AN ALLEGED AGGRAVATION.

THE STATE ACCIDENT INSURANCE FUND CONTENDS CLAIMANT'S PRESENT COMPLAINTS STEM EITHER FROM AN INTERVENING TAVERN PARKING LOT BEATING OR FROM A NEW INJURY WHILE WORKING FOR A SUBSEQUENT EMPLOYER.

THE HEARING OFFICER DENIED THE FUND'S MOTION TO DISMISS THE PROCEEDING FOR LACK OF JURISDICTION BUT RULED THAT THE CLAIMANT'S EVIDENCE FAILED TO ESTABLISH AN AGGRAVATION OF THE DISABILITY RESULTING FROM THE COMPENSABLE INJURY OF APRIL 7, 1972.

THE BOARD, AFTER HAVING REVIEWED THE RECORD DE NOVO AND HAVING CONSIDERED THE BRIEFS SUBMITTED ON REVIEW, CONCURS IN THE FINDINGS AND OPINION OF THE HEARING OFFICER AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 10, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 73-1518 MARCH 22, 1974

MAE WILLIAMS, CLAIMANT
HOLMES, JAMES AND CLINKINBEARD,
CLAIMANT'S ATTYS.
DEPT. 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 INCREASING HER PERMANENT PARTIAL DISABILITY TO 60 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY (192 DEGREES). CLAIMANT CONTENDS SHE IS PERMANENTLY TOTALLY DISABLED.

THE BOARD, HAVING REVIEWED THE ENTIRE RECORD DE NOVO, CONCURS WITH THE FINDINGS AND OPINION ENTERED BY THE HEARING OFFICER IN THIS CASE. HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 18, 1973 IS AFFIRMED.

WCB CASE NO. 72-2714 MARCH 22, 1974

EUGENE W. TAYLOR, CLAIMANT
RICHARD H. RENN, CLAIMANT'S ATTY.
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMP.

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER HAS REQUESTED BOARD REVIEW OF A HEARING OFFICER'S ORDER ALLOWING CLAIMANT COMPENSATION FOR PERMANENT PARTIAL DISABILITY EQUAL TO 20 PERCENT OF THE MAXIMUM FOR PARTIAL LOSS OF THE LEFT ARM (38.4 DEGREES) AND 10 PERCENT LOSS OF THE WORKMAN FOR UNSCHEDULED DISABILITY (32 DEGREES).

ALTHOUGH THE PROPRIETY OF THE HEARING OFFICER'S RETENTION OF JURISDICTION OF A PERMANENT DISABILITY ISSUE PENDING COMPLETION OF CURATIVE TREATMENT IS QUESTIONABLE, THE ADOPTION OF SUCH A PROCEDURE IS CERTAINLY NOT REVERSIBLE ERROR.

HAVING REVIEWED THE RECORD DE NOVO, THE BOARD CONCURS WITH THE HEARING OFFICER'S FINDINGS AND CONCLUSIONS AND WOULD ADOPT HIS ORDER AS ITS OWN.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 9, 1973, AS CORRECTED BY HIS ORDER DATED SEPTEMBER 6, 1973, IS AFFIRMED.

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

CATHY B. DELAMARE, CLAIMANT
MYRICK, COULTER, SEAGRAVES AND NEALY,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS CASE BEGAN AS A REQUEST FOR HEARING ON AN AGGRAVATION CLAIM. THE HEARING OFFICER ORIGINALLY RULED THE MEDICAL OPINION TO SUPPORT THE CLAIM WAS INADEQUATE TO SUPPORT JURISDICTION AND DISMISSED THE REQUEST FOR HEARING. ON REVIEW, THE BOARD AFFIRMED.

AN ORDER OF THE JACKSON COUNTY CIRCUIT COURT ISSUED FINDING THE RECORD HAD NOT BEEN DEVELOPED COMPLETELY BEFORE THE HEARING OFFICER. THE ORDER REMANDED THE CASE !! TO THE WORKMEN'S COMPENSATION BOARD WITH DIRECTIONS THAT SAID BOARD INSTRUCT THE HEARING OFFICER TO CONDUCT FURTHER HEARINGS THEREON. . . !! THE HEARING OFFICER DID SO AND THEREUPON ALLOWED THE CLAIM OF AGGRAVATION.

THE MATTER HAS AGAIN BEEN APPEALED TO THE BOARD = THIS TIME BY THE STATE ACCIDENT INSURANCE FUND. THE FUND SUGGESTS THAT BY VIRTUE OF THE RULING IN THE RECENT CASE OF BUSTER V. CHASE BAG CO., 97 OR ADV SH 1190, -- OR APP -- (1973) THE REFEREE ERRED IN ACCEPTING THE REMAND FROM THE CIRCUIT COURT. WE DISAGREE. FOR THE REFEREE TO DISOBEY THE CIRCUIT COURT ORDER WOULD BE TANTAMOUNT AN INFERIOR TRIBUNAL REVERSING A SUPERIOR TRIBUNAL.

IT SHOULD BE CAREFULLY NOTED THAT IN THE BUSTER CASE, SUPRA, AND THE MORE RECENT CASE OF BRENNAN V. SAIF, -- OR ADV SH --, --OR APP -- (FEBRUARY 19, 1974) IT WAS THE COURT OF APPEALS, NOT THE WORKMEN'S COMPENSATION BOARD WHICH REVERSED THE CIRCUIT COURT. IF NOTHING ELSE, A PROPER REGARD FOR PROCEDURAL PROPRIETY WOULD COMPEL OBEDIENCE TO THE REMAND ORDER.

WE HAVE REVIEWED THE FURTHER EVIDENCE PRESENTED AND CONCUR WITH THE HEARING OFFICER'S CONCLUSION THAT CLAIMANT HAS PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT SHE HAS SUFFERED A COMPENSABLE AGGRAVATION. HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 20, 1973 IS AFFIRMED.

CLAIMANT'S COUNSEL IS TO RECEIVE AS A REASONABLE ATTORNEY'S FEE THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-933
WCB CASE NO. 73-947

MARCH 22, 1974
MARCH 22, 1974

SHERRYL TACKETT, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MIZE, KRISIEN, 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 INCREASED HER AWARD OF PERMANENT PARTIAL DISABILITY IN EACH OF TWO SEPARATE INJURY CASES, CONTENDING HER DISABILITY FROM THE FIRST ACCIDENT (WCB CASE NO. 72-933) EXCEEDS THAT AWARDED BY THE HEARING OFFICER.

THE HEARING OFFICER'S REFERENCE TO THE SECOND INJURY DATE IN EACH UNSCHEDULED DISABILITY AWARD IS AN OBVIOUSLY INADVERTENT ERROR. THE FIRST PARAGRAPH OF THE ORDER PORTION OF HIS OPINION AND ORDER UNDOUBTEDLY REFERS TO CLAIMANT'S NOVEMBER 4, 1970 INJURY.

CLAIMANT FIRST INJURED HER LOW BACK ON NOVEMBER 4, 1970. THE INJURY NECESSITATED AN INTERVERTEBRAL FUSION AT L5-S1. FOLLOWING HER RETURN TO WORK AFTER THAT INJURY SHE SUFFERED ANOTHER LOW BACK INJURY FOR WHICH SHE IS PRESENTLY RECEIVING ADDITIONAL TREATMENT AND THAT CLAIM IS NOT IN ISSUE ON THIS REVIEW.

CLAIMANT HAS RECEIVED AN UNSCHEDULED DISABILITY AWARD EQUAL TO 20 PERCENT OF THE MAXIMUM ALLOWABLE TO COMPENSATE HER FOR HER LOSS OF EARNING CAPACITY ASSOCIATED WITH THE FIRST INJURY.

THE HEARING OFFICER NOTED THAT CLAIMANT'S AGE, EXPERIENCE, TRAINING AND INTELLIGENCE HAVE LESSENED THE IMPACT OF HER PHYSICAL IMPAIRMENT ON HER EARNING CAPACITY. WE CONCUR IN THAT OPINION AND CONCLUDE THAT CLAIMANT'S UNSCHEDULED PERMANENT DISABILITY RESULTING FROM THE INJURY OF NOVEMBER 4, 1970 EQUALS 20 PERCENT OF THE MAXIMUM ALLOWABLE OR 64 DEGREES.

HIS FINDINGS AND OPINION SHOULD THEREFORE BE AFFIRMED.

ORDER

THE HEARING OFFICER'S AWARD OF PERMANENT PARTIAL DISABILITY EQUAL TO 20 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY (64 DEGREES) FOR CLAIMANT'S INJURY OF NOVEMBER 4, 1970 IS HEREBY AFFIRMED.

WCB CASE NO. 73-1838

MARCH 22, 1974

RICHARD ROY, CLAIMANT

CASH PERRINE, CLAIMANT'S ATTY.
MERLIN MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER DENYING HIM THE RELIEF HE REQUESTED, CONTENDING -

(1) THE EVIDENCE ESTABLISHES CLAIMANT'S DELAY IN REQUESTING A HEARING IS EXCUSABLE AND

(2) THAT THE EVIDENCE ESTABLISHES THAT HE HAS SUFFERED A COMPENSABLE AGGRAVATION OF HIS CLAIM.

UPON REVIEW OF THE ENTIRE RECORD, THE BOARD CONCURS WITH THE WELL WRITTEN OPINION OF THE REFEREE AND HEREBY ADOPTS IT AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED NOVEMBER 1, 1973 IS HEREBY AFFORMED.

WCB CASE NO. 72-1324 MARCH 22, 1974

RAMON SALAZAR, CLAIMANT
CRAMER AND PINKERTON, CLAIMANT'S ATTYS.
PHILIP MONGRAIN, DEFENSE ATTY.

ON FEBRUARY 21, 1974 THE WORKMEN'S COMPENSATION BOARD ACTED FAVORABLY ON CLAIMANT'S APPEAL OF A HEARING OFFICER'S ORDER BY GRANTING CLAIMANT THE AWARD OF PERMANENT TOTAL DISABILITY WHICH HE SOUGHT. AS A PART OF THAT ORDER THE BOARD AUTHORIZED CLAIMANT'S ATTORNEY TO RECOVER A MAXIMUM ATTORNEY'S FEE OF FIFTEEN HUNDRED DOLLARS FROM CLAIMANT'S COMPENSATION.

BASED ON THE WORK AND EFFORT THEY EXPENDED, CLAIMANT'S ATTORNEYS HAVE MOVED FOR THE ALLOWANCE OF A LARGER FEE.

THE BOARD BEING NOW FULLY ADVISED, FINDS THE MOTION WELL TAKEN AND,

IT IS THEREFORE ORDERED THAT THE BOARD'S ORDER ON REVIEW DATED FEBRUARY 21, 1974 BE, AND IS HEREBY, MODIFIED TO AUTHORIZE THE RECOVERY BY CLAIMANT'S ATTORNEY OF A FEE NOT TO EXCEED SIXTEEN HUNDRED SEVENTY DOLLARS.

WCB CASE NO. 72-1684 MARCH 22, 1974

RONALD OLEMAN, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
DEPT. 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 ADDITIONAL COMPENSATION

FOR PERMANENT DISABILITY, CONTENDING CLAIMANT IS NOT LEGALLY ENTITLED TO AN UNSCHEDULED DISABILITY FOR HIS EYE INJURY AND THAT CLAIMANT'S UNSCHEDULED LOW BACK DISABILITY HAS PRODUCED AT MOST, ONLY A MINOR LOSS OF EARNING CAPACITY.

THE BOARD HAS PREVIOUSLY RULED THAT INJURIES TO THE EYE WHICH DO NOT IMPAIR VISUAL ACUITY, THUS ENTITLING A WORKMAN TO SCHEDULED PERMANENT DISABILITY COMPENSATION, MAY NEVERTHELESS BE COMPENSATED UNDER THE STATUTE RELATING TO UNSCHEDULED DISABILITY IF THE INJURY HAS CAUSED A PERMANENT LOSS OF EARNING CAPACITY. RANDALL VANHECKE, WCB CASE NO. 72-1759, ORDER ON REVIEW (APRIL 2, 1973).

THE FUND EARNESTLY ARGUES FOR REVERSAL OF THE HEARING OFFICER'S ORDER CITING AMONG OTHER THINGS, THE LONG HOURS CLAIMANT IS WORKING AND HIS INCREASED EARNINGS. WE RECOGNIZE THESE ASPECTS OF THE RECORD BUT WE ALSO RECOGNIZE THE REALITY OF HIS RESIDUAL PHYSICAL INJURIES WHICH HAVE IMPAIRED HIS ABILITY TO ENGAGE IN THE BROAD FIELD OF GENERAL INDUSTRIAL EMPLOYMENT PREVIOUSLY AVAILABLE TO HIM.

THE DISABILITY ATTRIBUTABLE TO THE EYE PROBLEM IS MINIMAL BUT THE AWARD GRANTED BY THE HEARING OFFICER IS ALSO MINIMAL. THE UNSCHEDULED DISABILITY AWARD FOR THE LOW BACK IS REALISTIC IN LIGHT OF THE EFFECT OF THE INJURY ON CLAIMANT'S GENERAL EARNING CAPACITY AND WE THUS CONCLUDE THE ORDER OF THE HEARING OFFICER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 1, 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.

WCB CASE NO. 73-1731 MARCH 22, 1974

ROBERT E. PROFFITT, CLAIMANT
FRANKLIN, BENNETT, OFELT, DESBRISAY AND
JOLLES, CLAIMANT'S ATTYS.
FREDRICKSON, TASSOCK, WEISENSEE, BARTON
AND COX, DEFENSE ATTYS.
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 THAT CLAIMANT HAD SUFFERED NO PERMANENT PARTIAL DISABILITY AS A RESULT OF AN INDUSTRIAL INJURY TO HIS NOSE.

THE BOARD HAS REVIEWED THE ENTIRE RECORD DE NOVO AND HAS CONSIDERED THE BRIEFS SUBMITTED ON REVIEW. HAVING DONE SO, WE CONCUR IN THE FINDINGS AND OPINION OF THE HEARING OFFICER AND CONCLUDE HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 9, 1973 IS AFFIRMED.

WCB CASE NO. 73-1000 MARCH 22, 1974

HELEN WORRALL, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPT. 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 FINDING HER CLAIM FOR PSYCHIATRIC ILLNESS COMPENSABLE AS AN OCCUPATIONAL DISEASE.

THE BOARD HAS REVIEWED THE RECORD DE NOVO, INCLUDING THE EXHIBITS WHICH WERE EXCLUDED BY THE HEARING OFFICER. WE BELIEVE ALL THE HOSPITAL RECORDS CONCERNING CLAIMANT'S CONDITION ARE GERMANE AND SO HAVE ADMITTED AND CONSIDERED ALL THE EXCLUDED EXHIBITS.

THE STATE ACCIDENT INSURANCE FUND CONTENDS THAT THIS CASE CANNOT, AS A MATTER OF LAW, BE AN OCCUPATIONAL DISEASE BECAUSE THE CAUSATIVE FACTOR WAS ONE TO WHICH SHE WAS ORDINARILY EXPOSED OFF, AS WELL AS ON THE JOB.

SINCE ENACTMENT OF CHAPTER 351, OREGON LAWS 1959, OREGON HAS NO LONGER REQUIRED THE CAUSATIVE FACTOR TO BE 'PECULIAR TO THE INDUSTRIAL PROCESS, TRADE, OR OCCUPATION' OF THE WORKMAN.

IN BEAUDRY V. WINCHESTER PLYWOOD, 255 OR 503 (1970) THE SUPREME COURT HELD THAT THERE WAS SUFFICIENT EVIDENCE TO FIND AN OCCUPATIONAL DISEASE WHERE, ALTHOUGH THE CAUSATIVE FACTOR EXISTED BOTH ON AND OFF THE JOB, THE ON-THE-JOB FACTOR WAS THE 'MOST TRAUMATIZING = = = . ' ' THE HARMFUL CAUSATIVE FACTOR IN THIS CASE (EMOTIONAL STRESS) WAS A 'DISTINCTIVE EMPLOYMENT HAZARD' BECAUSE IT WAS PRESENT TO AN UNUSUAL DEGREE. AS A RESULT, DR. VOISS EVENTUALLY CONCLUDED THAT CLAIMANT'S WORK SITUATION ' WAS THE PRIMARY FACTOR IN THE PRECIPITATION OF HER PSYCHOLOGICAL DISABILITY. ' CLAIMANT'S EXHIBIT 5.

HAVING REVIEWED THE RECORD DE NOVO, WE FULLY CONCUR WITH THE FINDINGS AND OPINION OF THE HEARING OFFICER IN THIS CASE AND THEREFORE ADOPT HIS OPINION AND ORDER AS OUR OWN.

ORDER

THE OPINION AND ORDER OF THE HEARING OFFICER DATED OCTOBER 8, 1973 IS AFFIRMED.

CLAIMANT'S COUNSEL IS TO RECEIVE AS A REASONABLE ATTORNEY'S FEE THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 73-1102 MARCH 26, 1974

ELMER ASHFORD, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
DEPT. 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 REFEREE'S ORDER GRANTING CLAIMANT AN AWARD OF PERMANENT TOTAL DISABILITY, CONTENDING THAT THE REFEREE ERRED IN FINDING CLAIMANT A MEMBER OF THE "ODD-Lot WORK FORCE", IN DISREGARDING MOTIVATIONAL FACTORS AND IN NOT APPLYING ORS 656.222.

OUR DE NOVO REVIEW CONVINCES US MOTIVATION IS NOT THE KEY TO THIS MAN'S CONTINUING UNEMPLOYMENT. CLAIMANT'S LAST INJURY, WHEN INCLUDED WITH HIS PREEXISTING DISABILITY, HAS PERMANENTLY INCAPACITATED HIM FROM REGULARLY PERFORMING ANY WORK AT A GAINFUL AND SUITABLE OCCUPATION. CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED. TO APPLY ORS 656.222 AS THE FUND SUGGESTS, WOULD UNDER THESE CIRCUMSTANCES, BE ERROR.

THE BOARD CONCURS WITH THE FINDINGS AND OPINION OF THE REFEREE AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED NOVEMBER 14, 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.

WCB CASE NO. 73-1055 MARCH 27, 1974

THE BENEFICIARIES OF
GEORGE O. GRONQUIST, DECEASED
SCHOUBOE, CAVANAUGH AND DAWSON,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY BENEFICIARY

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

DECEDENT'S WIDOW REQUESTS BOARD REVIEW OF A REFEREE'S ORDER DISMISSING HER REQUEST FOR HEARING.

THE BOARD HAS REVIEWED THE RECORD AND THE EXCELLENT AND HELPFUL BRIEFS PRESENTED ON REVIEW. HAVING DONE SO, WE ARE PERSUADED THAT THE REFEREE'S ORDER IS LEGALLY CORRECT AND CONCLUDE THAT IT SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED NOVEMBER 6, 1973 IS AFFIRMED.

WCB CASE NO. 73-2596 MARCH 27, 1974

THE BENEFICIARY OF
MERLIN GARMAN, DECEASED
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY BENEFICIARY

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

DECEDENT'S WIDOW SEEKS BOARD REVIEW OF A REFEREE'S ORDER DISMISSING HER REQUEST FOR HEARING CONTENDING HER CLAIM FOR WIDOW'S BENEFITS WAS TIMELY FILED. SHE ARGUES THE LAW ESTABLISHING THE FILING PERIOD IS PROCEDURAL AND THEREFORE THE LAW IN FORCE AT THE TIME OF DECEDENT'S DEATH, RATHER THAN AT THE TIME OF HIS INJURY, CONTROLS.

UPON REVIEW, WE AGREE THAT THIS CASE IS CONTROLLED BY ROSELL V. SIAC, 164 OR 173 (1940) AND HER CLAIM WAS THEREFORE UNTIMELY FILED.

THE REFEREE'S DISMISSAL SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED DECEMBER 20, 1973 IS AFFIRMED.

WCB CASE NO. 73-2690 MARCH 27, 1974

MARY SCHNEIDER, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS.
MIZE, KRISIEN, FEWLESS, CHENEY AND
KELLEY, DEFENSE ATTYS.

CLAIMANT'S ATTORNEYS HAVE APPEARED SPECIALLY TO MOVE THE BOARD FOR AN ORDER DISMISSING THE EMPLOYER'S REQUEST FOR REVIEW ON THE GROUNDS THAT THE EMPLOYER FAILED TO SERVE A COPY OF ITS REQUEST FOR BOARD REVIEW UPON THE CLAIMANT AS ORS 656.295(2) PROVIDES.

THE BOARD HAS EXAMINED THE REQUEST FOR REVIEW, THE STATUTES AND AUTHORITIES CITED BY CLAIMANT AND, BEING NOW FULLY ADVISED, FINDS THE MOTION WELL TAKEN.

ORDER

IT IS THEREFORE ACCORDINGLY ORDERED THAT THE EMPLOYER'S REQUEST FOR REVIEW BE, AND IT IS HEREBY, DISMISSED.

NAOMI R. GOODE, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED A DETERMINATION ORDER AWARD OF 20 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED LOW BACK DISABILITY (64 DEGREES), CONTENDING SHE IS PERMANENTLY AND TOTALLY DISABLED.

AFTER REVIEWING THE RECORD WE ARE FULLY PERSUADED CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED. WE AGREE WITH THE REFEREE'S OPINION THAT CLAIMANT'S MOTIVATION IS NIL AND THAT SHE EXAGGERATES HER DISABILITY. IF SHE WAS PROPERLY MOTIVATED HOWEVER, SHE WOULD HAVE DIFFICULTY RETURNING TO GAINFUL AND SUITABLE WORK DUE TO THE REAL RESIDUALS THE INJURY HAS PRODUCED. THE REFEREE CONCLUDED THE DETERMINATION ORDER FAIRLY COMPENSATED CLAIMANT FOR HER PERMANENT PARTIAL DISABILITY. WE DISAGREE.

ON OUR DE NOVO REVIEW, WE CONCLUDE CLAIMANT'S PERMANENT DISABILITY EQUALS 30 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

ORDER

THE ORDER OF THE REFEREE IS HEREBY SET ASIDE AND CLAIMANT IS HEREBY GRANTED AN ADDITIONAL 32 DEGREES MAKING A TOTAL OF 96 DEGREES OF A MAXIMUM OF 320 DEGREES (30 PERCENT) FOR UNSCHEDULED DISABILITY.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE, 25 PERCENT OF THE INCREASED COMPENSATION AWARDED HEREBY, PAYABLE FROM SAID AWARD TO A MAXIMUM OF FIFTEEN HUNDRED DOLLARS.

LOU B. JELKS, CLAIMANT
PAUL J. RASK, CLAIMANT'S ATTY.
MIZE, KRIESIEN, FEWLESS, CHENEY AND
KELLEY, DEFENSE ATTYS.

ON JANUARY 15, 1974 THE EMPLOYER REQUESTED REVIEW OF A REFEREE'S FINDING THAT CLAIMANT'S CLAIM WAS PREMATURELY CLOSED AND OF HIS ORDER TO REOPEN THE CLAIM FOR FURTHER MEDICAL CARE.

THE EMPLOYER'S ATTORNEY HAS OFFERED FOR ADMISSION TO THE RECORD ON REVIEW, A REPORT FROM DR. JOHN RAAF DATED FEBRUARY 21, 1974 RELATING TO AN EXAMINATION OF FEBRUARY 14, 1974. CLAIMANT'S ATTORNEY HAS NO OBJECTION TO ITS ADMISSION TO THE RECORD.

THE BOARD CONCLUDES THIS MATTER SHOULD BE REMANDED TO THE HEARING OFFICER FOR ADMISSION OF THE DOCUMENT, CROSS-EXAMINATION

OF ITS AUTHOR IF SO DESIRED, BY CLAIMANT'S ATTORNEYS, AND FOR SUCH FURTHER PROCEEDINGS THAT THE REFEREE MAY ORDER. THE REFEREE SHOULD THEN RECONSIDER THE MATTER AND DECIDE THE MATTER ANEW.

ORDER

THE ABOVE ENTITLED MATTER IS REMANDED TO THE REFEREE FOR ADMISSION OF DR. RAAF'S REPORT OF FEBRUARY 21, 1974 AND FURTHER ACTION CONSISTENT WITH THIS ORDER OF REMAND.

THE ORDER OF THE REFEREE DATED DECEMBER 21, 1973 SHALL REMAIN IN EFFECT UNTIL FURTHER ORDER OF THE REFEREE.

THE EMPLOYER'S REQUEST FOR REVIEW DATED JANUARY 15, 1974 IS HEREBY DISMISSED.

WCB CASE NO. 73-1965 MARCH 28, 1974

PERCY LANGDON, CLAIMANT

COONS, MALAGON AND CLOSE, CLAIMANT'S ATTY.
DEPT. 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 REFEREE'S ORDER AWARDING CLAIMANT COMPENSATION FOR PERMANENT TOTAL DISABILITY.

THE STATE ACCIDENT INSURANCE FUND CONTENDS THE CLAIMANT IS NOT IN THE ODD-LOT CATEGORY AND CITES CLAIMANT'S ADMISSION THAT HE MIGHT BE A FIRE WATCHMAN IN SUPPORT THEREOF. FROM THE CONTEXT OF THE TESTIMONY IT IS CLEAR CLAIMANT WAS REFERRING TO A FIRE WATCH JOB ASSOCIATED WITH LOGGING OPERATIONS, WHICH JOB IS NORMALLY NEITHER FULL TIME NOR YEAR ROUND. OUR REVIEW OF THE RECORD PERSUADES US CLAIMANT IS DEFINITELY IN THE ODD-LOT CATEGORY.

THE FUND FURTHER SUGGESTS THAT CLAIMANT IS NOT ENTITLED TO A PERMANENT TOTAL DISABILITY AWARD BECAUSE HE OWNS TIMBER FROM WHICH HE CAN EVENTUALLY RECEIVE AN INCOME. INCOME REALIZED FROM THE TIMBER WOULD UNDOUBTEDLY BE DUE TO THE APPRECIATION OF THE ASSETS VALUE BY GROWTH AND HIS LABOR WOULD LIKELY ADD LITTLE TO THE INCREASE.

CLAIMANT'S ATTITUDE CONCERNING RETURN TO WORK IS REALISTIC WHEN CONSIDERED IN THE CONTEXT OF HIS PHYSICAL DISABILITIES, HIS AGE, HIS OWNERSHIP OF PROPERTY AND HIS PLANS TO USE IT ADVANTAGEOUSLY.

WE DISAGREE WITH THE FUND'S CONTENTION REGARDING THE APPLICATION OF ORS 656.222. WHEN DEALING WITH THE ISSUE OF PERMANENT TOTAL DISABILITY, ORS 656.206 (1) (A) CONTROLS. IT PROVIDES -

'' 'PERMANENT TOTAL DISABILITY' MEANS THE LOSS, INCLUDING PREEXISTING DISABILITY OF - - - OR OTHER CONDITION PERMANENTLY INCAPACITATING THE WORKMAN FROM REGULARLY PERFORMING ANY WORK AT A GAINFUL AND SUITABLE OCCUPATION. !!

THUS PREEXISTING DISABILITY MUST BE INCLUDED RATHER THAN EXCLUDED FROM CONSIDERATION OF WHETHER A WORKMAN IS PERMANENTLY AND TOTALLY DISABLED.

THE REFEREE HAS CAREFULLY CONSIDERED ALL THE DEFENSES RAISED BY THE FUND AND WE CONCUR FULLY IN HIS OPINION AND ORDER. WE CONCLUDE HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED NOVEMBER 7, 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.

WCB CASE NO. 73-940 MARCH 28, 1974

PATRICK J. MITTS, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, CLAIMANT'S ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF A REFEREE'S ORDER AWARDING CLAIMANT ADDITIONAL UNSCHEDULED DISABILITY, CONTENDING THE EVIDENCE DOES NOT JUSTIFY ANY INCREASE.

CLAIMANT IS A NOW 29 YEAR OLD DELIVERY TRUCK DRIVER WHO SUFFERED AN ACUTE LUMBAR STRAIN ON AUGUST 19, 1971, WHILE WORKING FOR CONSOLIDATED FREIGHTWAYS IN PORTLAND, OREGON. RADICULAR PAIN IN THE RIGHT LEG SUGGESTED DISC HERNIATION BUT IT WAS RULED OUT BY MYELOGRAPHY.

HE UNDERWENT A COURSE OF CONSERVATIVE TREATMENT AND EVENTUALLY RETURNED TO HIS REGULAR WORK ALTHOUGH HE DOES HAVE MILD RESIDUAL PHYSICAL IMPAIRMENT DUE TO LOSS OF MOTION AND RESIDUAL PAIN. DR. POST, HIS TREATING PHYSICIAN, SUGGESTED, IN HIS CLOSING MEDICAL REPORT, AVOIDANCE OF HEAVY, REPETITIVE OR AWKWARD LIFTING.

A DETERMINATION ORDER DATED MARCH 22, 1972 AWARDED CLAIMANT 32 DEGREES FOR UNSCHEDULED DISABILITY (10 PERCENT OF THE MAXIMUM).

THE REFEREE GRANTED CLAIMANT AN ADDITIONAL 48 DEGREES ON THE GROUNDS HE COULD NOT NOW WORK AS MANY HOURS WITHOUT HIS BACK TIRING ALTHOUGH HIS WORK WAS NOW LIGHTER AND BECAUSE THE INJURY WOULD MAKE HIM LESS COMPETITIVE IN THE GENERAL INDUSTRIAL JOB MARKET.

WE AGREE WITH THE REFEREE'S FINDINGS IN THIS REGARD BUT DISAGREE THAT THEY JUSTIFY AN INCREASE IN THE PERMANENT DISABILITY AWARD.

THE FACT IS CLAIMANT'S PAIN IS ONLY MINIMALLY DISABLING. HE HAS RETURNED TO HIS REGULAR WORK AND IS ABLE TO WORK LONG HOURS EACH DAY. HIS INCOME REMAINS GOOD AS DO HIS PROSPECTS FOR THE FUTURE.

WE CONCLUDE THAT CLAIMANT'S PERMANENT DISABILITY WAS ADEQUATELY COMPENSATED BY THE DETERMINATION ORDER AWARD OF 32 DEGREES AND THE REFEREE'S ORDER SHOULD THEREFORE BE REVERSED.

ORDER

THE ORDER OF THE REFEREE DATED NOVEMBER 13, 1973 IS HEREBY REVERSED AND THE AWARD GRANTED BY THE DETERMINATION ORDER DATED MARCH 22, 1973 IS AFFIRMED.

WCB CASE NO. 73-3440-E MARCH 28, 1974

PHILIP J. PYPER, CLAIMANT

PAUL J. RASK, CLAIMANT'S ATTY.
CHARLES PAULSON, DEFENSE ATTY.

ON MARCH 7, 1974 CLAIMANT REQUESTED BOARD REVIEW OF A REFEREE'S ORDER IN THE ABOVE-ENTITLED MATTER.

CLAIMANT, THROUGH HIS ATTORNEY, HAS NOW WITHDRAWN HIS REQUEST FOR REVIEW.

ORDER

THE REQUEST FOR REVIEW FILED BY THE CLAIMANT IS HEREBY DISMISSED AND THE ORDER OF THE REFEREE DATED FEBRUARY 22, 1974 IS FINAL BY OPERATION OF LAW.

WCB CASE NO. 73-2882 MARCH 28, 1974

LESTER ADAMS, CLAIMANT

GALBREATH AND POPE, CLAIMANT'S ATTYS.
KOTTKAMP AND O'Rourke, DEFENSE ATTYS.

ON FEBRUARY 8, 1974 CLAIMANT REQUESTED BOARD REVIEW OF A REFEREE'S ORDER ENTERED IN THE ABOVE ENTITLED CASE, DISMISSING HIS REQUEST FOR HEARING. THEREAFTER CLAIMANT MOVED THE BOARD FOR AN ORDER REMANDING THE CASE TO THE REFEREE.

CLAIMANT HAS NOW DECIDED TO WITHDRAW THE REQUEST FOR REVIEW AND THE MOTION TO REMAND AND INSTEAD PETITION THE BOARD FOR RELIEF UNDER THE PROVISIONS OF ORS 656.278.

THE BOARD BEING NOW FULLY ADVISED,

HEREBY ORDERS THAT THE CLAIMANT'S REQUEST FOR REVIEW DATED FEBRUARY 8, 1974 IS DISMISSED AND THE REFEREE'S ORDER IS FINAL BY OPERATION OF LAW.

JOHN BROSSAU, CLAIMANT
MARMADUKE, ASCHENBRENNER, MERTEN
AND SALTVEIT, CLAIMANT'S ATTYS.
GEARIN, LANDIS AND AEBI, DEFENSE ATTYS.

ON JANUARY 10, 1974, CLAIMANT REQUESTED BOARD REVIEW OF A REFEREE'S ORDER AFFIRMING AN AWARD OF UNSCHEDULED PERMANENT DISABILITY WHICH IS NOW PENDING.

SINCE THE HEARING CLAIMANT HAS UNDERGONE PSYCHIATRIC COUNSELING WHICH HE CONTENDS IS NECESSITATED BY REASON OF HIS COMPENSABLE INJURY. THE EMPLOYER DISAGREES AND A DISPUTE HAS THEREFORE ARISEN OVER THIS ASPECT OF THE CLAIM.

CLAIMANT AND THE EMPLOYER HAVE AGREED TO COMPROMISE AND SETTLE THEIR DISPUTE OVER THE COMPENSABILITY OF THE PSYCHIATRIC CARE UNDER THE PROVISIONS OF ORS 656.289 (4). AS A COLLATERAL MATTER THEY HAVE ALSO AGREED TO DISPOSE OF THE PENDING REQUEST FOR REVIEW.

THE JOINT PETITION FOR SETTLEMENT IS ATTACHED HERETO AS EXHIBIT !!!

IT SHOULD BE CAREFULLY NOTED THAT THE EMPLOYER DOES NOT DISPUTE THAT CLAIMANT SUFFERED A COMPENSABLE ACCIDENT ON MARCH 18, 1974, WHICH PRODUCED PHYSICAL INJURIES - THE EMPLOYER DISPUTES ONLY THAT CLAIMANT'S ACCIDENT PRODUCED EMOTIONAL INJURIES.

THE BOARD, HAVING REVIEWED THE STIPULATION AND BEING NOW FULLY ADVISED, FINDS THE DISPUTED CLAIM SETTLEMENT FAIR AND EQUITABLE TO BOTH PARTIES.

IT IS THEREFORE ACCORDINGLY ORDERED -

- (1) THAT THE SETTLEMENT AGREEMENT BE EXECUTED ACCORDING TO ITS TERMS.
- (2) THAT CLAIMANT'S REQUEST FOR REVIEW IN WCB CASE 73-1084 IS DISMISSED AND THE REFEREE'S ORDER IS FINAL BY OPERATION OF LAW.

JOINT PETITION FOR SETTLEMENT

CLAIMANT, JOHN BROSSAU, WAS AT ALL TIMES MATERIAL AN EMPLOYEE OF J. B. L. AND K. AND WAS INJURED IN THE COURSE AND SCOPE OF HIS EMPLOYMENT ON OR ABOUT MARCH 18, 1968. AS A RESULT OF SAID ACCIDENT, CLAIMANT SUSTAINED INJURY TO HIS NECK AND LOW BACK.

ON OR ABOUT JULY 12, 1968, CLAIMANT'S CLAIM WAS CLOSED WITH NO AWARD OF TEMPORARY TOTAL DISABILITY OR PERMANENT PARTIAL DISABILITY. THE PARTIES AGREE THAT THIS CLOSURE CONSTITUTED THE FIRST DETERMINATION MADE UNDER SECTION (3) OF ORS 656.268 FOR PURPOSES OF DETERMINING CLAIMANT'S AGGRAVATION BENEFITS UNDER ORS 656.271 (2).

THEREAFTER, CLAIMANT'S CLAIM WAS VOLUNTARILY REOPENED BY A STIPULATED ORDER OF HEARING OFFICER H. L. PATEE, DATED JULY 28, 1972.

FOLLOWING SURGERY, THE CLAIM WAS AGAIN CLOSED ON APRIL 4, 1973, WITH AN AWARD OF 64 DEGREES FOR UNSCHEDULED DISABILITY AND 10 PERCENT LOSS OF USE OF RIGHT ARM FOR SCHEDULED DISABILITY. THEREAFTER, CLAIMANT REQUESTED A HEARING WHEREIN THE AWARD OF THE CLOSING EVALUATION DIVISION WAS SUSTAINED BY REFEREE FINK IN HIS OPINION AND ORDER, DATED DECEMBER 28, 1973. SAID OPINION AND ORDER IS PRESENTLY BEFORE THE WORKMEN'S COMPENSATION BOARD FOR REVIEW.

CLAIMANT IS PRESENTLY UNDERGOING PSYCHIATRIC COUNSELLING WHICH CLAIMANT CONTENDS IS RELATED TO HIS INDUSTRIAL ACCIDENT OF MARCH 18, 1968. EMPLOYER-CARRIER CONTEND THAT CLAIMANT'S NEED FOR PSYCHIATRIC CARE IS RELATED TO FACTORS OTHER THAN THE INDUSTRIAL ACCIDENT OF MARCH 18, 1968 AND HAS, THEREFORE, DENIED RESPONSIBILITY FOR THAT CARE AND TREATMENT.

THE PARTIES JOINTLY PETITION THE HEARING OFFICER TO ENTER AN ORDER DISPOSING OF ALL ISSUES IN THIS CASE AND APPROVING A SETTLEMENT PURSUANT TO ORS 656.289 (4) AS FOLLOWS -

1. EMPLOYER-CARRIER WILL PAY TO CLAIMANT THE SUM OF TWO THOUSAND DOLLARS.
2. CLAIMANT'S ATTORNEY WILL RECEIVE OUT OF THE PROCEEDS OF SAID SETTLEMENT THE SUM OF TWO HUNDRED DOLLARS AS HER REASONABLE ATTORNEY'S FEE.
3. CLAIMANT WILL DISMISS HIS REQUEST FOR REVIEW BY THE WORKMEN'S COMPENSATION BOARD.
4. CLAIMANT WILL WAIVE HIS RIGHT TO APPEAL THE DENIAL OF PSYCHIATRIC CARE AND BENEFITS AND ANY CLAIM FOR TEMPORARY TOTAL DISABILITY OR PERMANENT DISABILITY ARISING OUT OF ANY PSYCHIATRIC CONDITION.

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 TO THE PARTIES AND TO ISSUE AN ORDER APPROVING THIS COMPROMISE.

WCB CASE NO. 72-2372 APRIL 1, 1974

EARL SURBER, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S OPINION AND ORDER AFFIRMING PERMANENT DISABILITY AWARDS TO THE CLAIMANT TOTALLING 10 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY DUE TO A OB RELATED NECK INJURY.

WE HAVE REVIEWED THE RECORD DE NOVO AND HAVE CONSIDERED THE BRIEFS FILED ON REVIEW. HAVING DONE SO, WE CONCLUDE THE REFEREE'S FINDINGS AND CONCLUSIONS ARE CORRECT. THEY SHOULD BE AFFIRMED IN THEIR ENTIRETY.

ORDER

THE OPINION AND ORDER OF THE REFEREE DATED NOVEMBER 7, 1973 IS ADOPTED AND AFFIRMED.

WCB CASE NO. 72-2548 APRIL 2, 1974

EDGAR W. DAVIS, CLAIMANT
BRUCE WILLIAMS, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT APPEALS A HEARING OFFICER'S ORDER AFFIRMING A DETERMINATION THAT CLAIMANT SUFFERED NO PERMANENT DISABILITY AS A RESULT OF INHALING CHLORINE GAS ON JULY 6, 1972.

HAVING REVIEWED THE RECORD DE NOVO AND HAVING CONSIDERED THE BRIEFS FILED ON REVIEW, WE CONCLUDE THE FINDINGS, OPINION AND ORDER OF THE HEARING OFFICER SHOULD BE AFFIRMED IN THEIR ENTIRETY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED OCTOBER 4, 1973 IS AFFIRMED.

WCB CASE NO. 73-242 APRIL 2, 1974

REINHOLD J. UNTERSEHER, CLAIMANT
JOE B. RICHARDS, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS REVIEW OF A HEARING OFFICER'S ORDER AWARDING HIM PERMANENT DISABILITY EQUAL TO 35 PERCENT LOSS OF THE RIGHT LEG, CONTENDING HIS DISABILITY EXCEEDS THAT AWARDED.

CLAIMANT IS A 55 YEAR OLD MAN WHO SUFFERED A TEAR OF THE RIGHT MEDIAL MENISCUS WHILE WORKING AS A MECHANIC ON MAY 13, 1971. AFTER AN UNSUCCESSFUL COURSE OF CHIROPRACTIC TREATMENT, DR. DONALD B. SLOCUM PERFORMED A MEDIAL MENISCECTOMY ON APRIL 17, 1972. BY A DETERMINATION ORDER DATED JANUARY 3, 1973, THE CLAIMANT WAS EVALUATED TO HAVE SCHEDULED DISABILITY EQUAL TO 20 PERCENT LOSS OF THE RIGHT LEG (30 DEGREE). CLAIMANT THEREUPON REQUESTED A HEARING.

IN JULY, 1973, DR. SLOCUM REEXAMINED CLAIMANT'S RIGHT LEG. BASED ON THE CLAIMANT'S COMPLAINTS OF PAIN AND ON HIS FINDINGS ON EXAMINATION, DR. SLOCUM CONSIDERED CLAIMANT TO HAVE MODERATELY SEVERE PERMANENT DISABILITY IN THE RIGHT LEG.

THE HEARING OFFICER, FINDING THE CLAIMANT 'ESSENTIALLY CREDIBLE AS TO HIS RIGHT KNEE SYMPTOMS', AWARDED CLAIMANT AN ADDITIONAL 15 PERCENT TO THE AWARD ALLOWED BY THE DETERMINATION ORDER IN QUESTION.

CREDIBILITY PLAYS AN IMPORTANT PART IN DETERMINING THE DEGREE OF DISABILITY WHICH CLAIMANT ACTUALLY SUFFERS. ALTHOUGH THE RECORD SUGGESTS CLAIMANT IS NOT ENTITLED TO A FINDING OF ESSENTIAL CREDIBILITY, THE BOARD WILL ACCEPT THE HEARING OFFICER'S FINDING IN THAT REGARD SINCE HE HAD THE ADVANTAGE OF OBSERVING THE CLAIMANT AS A WITNESS. ON THAT BASIS THE HEARING OFFICER'S AWARD WILL BE AFFIRMED BUT IT CERTAINLY WILL NOT BE INCREASED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 21, 1973 IS AFFIRMED.

WCB CASE NO. 72-2773 APRIL 4, 1974

DESSIE BAILEY, CLAIMANT
MCMENAMIN, JONES, JOSEPH AND LANG,
CLAIMANT'S ATTYs.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND SEEKS BOARD REVERSAL OF A HEARING OFFICER'S ORDER DATED MAY 22, 1973, GRANTING CLAIMANT 80 DEGREES OF COMPENSATION FOR UNSCHEDULED DISABILITY (25 PERCENT).

CLAIMANT IS A 58 YEAR OLD WOMAN WHO FELL AND INJURED HER RIGHT ARM AND SHOULDER ON JUNE 9, 1971 WHILE WORKING AS A DISHWASHER AT WADDLE'S RESTAURANT IN PORTLAND, OREGON. SHE WAS EVALUATED AS NOT HAVING SUFFERED ANY PERMANENT DISABILITY FROM THE INJURY AND A SECOND DETERMINATION ORDER, DATED OCTOBER 4, 1972, GRANTED HER ONLY CERTAIN TEMPORARY TOTAL DISABILITY PURSUANT TO AN EARLIER HEARING OFFICER'S ORDER CONCERNING THE CLAIM.

THE CLAIMANT OBJECTED TO THE LACK OF A PERMANENT DISABILITY AWARD IN THE DETERMINATION ORDER AND REQUESTED A HEARING. THE HEARING OFFICER, AFTER CONSIDERING THE MEDICAL EVIDENCE, HER TESTIMONY OF PHYSICAL PROBLEMS WITH THE SHOULDER, HER AGE, EDUCATION, TRAINING AND WORK EXPERIENCE, CONCLUDED SHE HAS SUFFERED UNSCHEDULED PERMANENT PARTIAL DISABILITY EQUAL TO 25 PERCENT OF THE MAXIMUM (80 DEGREES).

THE STATE ACCIDENT INSURANCE FUND POINTS OUT THAT CLAIMANT HAS ALSO BEEN AWARDED 80 DEGREES FOR UNSCHEDULED DISABILITY CAUSED BY AN OCCUPATIONAL DISEASE THAT DEVELOPED IN 1968. THE STATE ACCIDENT INSURANCE FUND OBJECTS TO AN AWARD FOR THE SHOULDER POINTING OUT THAT CLAIMANT HAS NOW RECEIVED AWARDS TOTTALLING 50 PERCENT OF THE MAXIMUM. THIS ARGUMENT AMOUNTS TO A COLLATERAL ATTACK ON THE OCCUPATIONAL DISEASE CLAIM AWARD. THE BOARD MAY ONLY CONSIDER WHETHER THE AWARD ALLOWED BY THE HEARING OFFICER WAS JUSTIFIED BY THE FACTS.

HAVING REVIEWED THE EVIDENCE DE NOVO, WE CONCUR IN THE HEARING OFFICER'S EVALUATION OF PERMANENT DISABILITY AND CONCLUDE HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 22, 1973 IS AFFIRMED.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A REASONABLE ATTORNEY'S FEE THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 72-3489 APRIL 4, 1974

ARLIE RAMBO, CLAIMANT
CHARLES CATER, CLAIMANT'S ATTY.
MCMENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER DENYING HIS CLAIM FOR BENEFITS ON ACCOUNT OF AGGRAVATION. THE REFEREE BASED HIS DENIAL ON A CONCLUSION THAT CLAIMANT'S PRESENT PROBLEMS WERE DUE TO AN INTERVENING ACCIDENT.

THE MOST COGENT REASON FOR DENYING CLAIMANT'S CLAIM FOR COMPENSATION ON ACCOUNT OF AGGRAVATION IS THAT HE FAILED TO SUPPORT HIS REQUEST FOR HEARING BY A WRITTEN OPINION OF A PHYSICIAN THAT THERE ARE REASONABLE GROUNDS FOR THE CLAIM AS REQUIRED BY ORS 656.271. CLAIMANT HAS THUS FAILED TO ESTABLISH THE JURISDICTION NECESSARY TO SUPPORT AN ORDER OF RELIEF EVEN IF THE EVIDENCE LATER PRESENTED HAD JUSTIFIED SUCH RELIEF.

ORDER

THE ORDER OF THE REFEREE DATED NOVEMBER 16, 1973 IS AFFIRMED.

SAIF CLAIM NO. KA 864856 APRIL 4, 1974

GARY ELLIS, CLAIMANT
GALBREATH AND POPE, CLAIMANT'S ATTYS.

ON NOVEMBER 27, 1973 CLAIMANT REQUESTED THE BOARD, PURSUANT TO ORS 656.278, TO ORDER THE STATE ACCIDENT INSURANCE FUND TO PROVIDE HIM ADDITIONAL MEDICAL CARE AND COMPENSATION FOR A KNEE INJURY SUFFERED ON MAY 31, 1961.

CLAIMANT HAS PROVIDED MEDICAL REPORTS IN SUPPORT OF HIS REQUEST. THE STATE ACCIDENT INSURANCE FUND HAS PRESENTED EVIDENCE SUGGESTING THAT CLAIMANT'S PRESENT PROBLEMS ARE THE RESULT OF AN INTERVENING ACCIDENT.

THE BOARD CONCLUDES IT NEEDS A FULL PRESENTATION OF THE FACTS RELATING TO THIS MATTER BEFORE RULING ON THE CLAIMANT'S REQUEST.

IT IS THEREFORE ACCORDINGLY ORDERED THAT THIS MATTER IS HEREBY REMANDED TO THE HEARINGS DIVISION OF THE WORKMEN'S COMPENSATION BOARD FOR RECEIPT OF EVIDENCE BEFORE A REFEREE ON THE ISSUE OF WHETHER OR NOT THE CLAIMANT'S RECENT KNEE PROBLEMS ARE RELATED TO HIS INDUSTRIAL INJURY. WHEN THE REFEREE HAS CONDUCTED THE HEARING HE SHALL CERTIFY THE RECORD MADE TO THE BOARD FOR ITS DECISION ALONG WITH A RECOMMENDED FINDING OF FACT AND OPINION.

WCB CASE NO. 73-2361 APRIL 9, 1974

NORMAN L. COBB, CLAIMANT
BROWN AND BURT, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.

ON MARCH 29, 1974 THE STATE ACCIDENT INSURANCE FUND MAILED A REQUEST FOR BOARD REVIEW OF A REFEREE'S OPINION AND ORDER ENTERED IN THE ABOVE ENTITLED CASE ON FEBRUARY 26, 1974.

THE REQUEST FOR REVIEW WAS MADE BEYOND THE TIME LIMIT PROVIDED BY LAW AND THE BOARD IS THEREFORE WITHOUT JURISDICTION TO ENTERTAIN THE APPEAL.

ORDER

THE REQUEST FOR REVIEW IS HERBY DISMISSED.

WCB CASE NO. 72-3321 APRIL 9, 1974

GEORGIA GOLDS, CLAIMANT
VANDYKE, DUBAY, ROBERTSON AND PAULSON,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS CLAIMANT SUFFERED A COMPENSABLE ACCIDENTAL INJURY FEBRUARY 3, 1971, WHEN SHE TWISTED HER BACK WHILE EMPLOYED AT THE MEDFORD HOTEL. A SECOND DETERMINATION ORDER GRANTED AN AWARD FOR PERMANENT PARTIAL DISABILITY OF 20 PERCENT OR 64 DEGREES, FOR UNSCHEDULED LOW BACK DISABILITY. THE HEARING OFFICER GRANTED AN ADDITIONAL 48 DEGREES, MAKING A TOTAL OF 112 DEGREES OR 35 PERCENT LOSS OF THE WORKMAN FOR UNSCHEDULED DISABILITY. THE CLAIMANT HAS REQUESTED BOARD REVIEW OF THIS ORDER CONTENDING HER DISABILITY EXCEEDS THAT AWARD.

CLAIMANT HAS BEEN TREATED CONSERVATIVELY FOR A LONG PERIOD OF TIME BY VARIOUS DOCTORS. MOST ARE AGREED THAT CLAIMANT HAS MILD PHYSICAL DISABILITY WITH MAJOR FUNCTIONAL OVERLAY, A SMALL DEGREE OF WHICH IS ATTRIBUTABLE TO THE INDUSTRIAL INJURY. CLAIMANT

HAS NOT WORKED FOR APPROXIMATELY THREE YEARS AND HAS DEMONSTRATED NO MOTIVATION TO BE REEMPLOYED. EVEN THOUGH HER PAIN IS DESCRIBED AS "INTENSE", CLAIMANT IS APPREHENSIVE ABOUT AND HAS REFUSED SURGICAL PROCEDURES AND IS NOT COOPERATIVE WITH THOSE WHO MIGHT BE ABLE TO HELP IMPROVE HER SITUATION.

THE HEARING OFFICER FOUND THAT DESPITE CLAIMANT'S LACK OF MOTIVATION, UNCOOPERATIVE ATTITUDE, AND CONSIDERING HER AGE, EXPERIENCE, MENTAL AND VOCATIONAL APTITUDE, THAT BASED ON LOSS OF EARNING CAPACITY, CLAIMANT WAS ENTITLED TO AN ADDITIONAL PERMANENT PARTIAL DISABILITY AWARD OF 15 PERCENT (48 DEGREES) MAKING A TOTAL OF 35 PERCENT (112 DEGREES) LOSS OF THE WORKMAN FOR UNSCHEDULED LOW BACK DISABILITY.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE HEARING OFFICER AND AFFIRMS HIS ORDER.

ORDER

THE ORDER OF THE HEARING OFFICER DATED AUGUST 17, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 72-2429 APRIL 9, 1974

DELBERT LEWIS, CLAIMANT
ERNEST LUNDEEN, CLAIMANT'S ATTY.
KEITH SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH SUSTAINED THE PARTIAL DENIAL OF HIS CLAIM BY THE EMPLOYER.

CLAIMANT WAS A 42 YEAR OLD MEAT CUTTER AND ON JANUARY 8, 1972 WAS STRUCK IN THE ABDOMEN BY THE HANDLE ON A DOOR OF A MEAT COOLER. NUMEROUS TESTS AND EXAMINATIONS WERE GIVEN CLAIMANT AND ULTIMATELY CHRONIC PANCREATITIS WAS DIAGNOSED. THE EMPLOYER AND ITS CARRIER DID ACCEPT THIS PORTION OF CLAIMANT'S CLAIM, BUT DENIED RESPONSIBILITY FOR HIS MANY OTHER COMPLAINTS.

THE REFEREE'S DETAILED ORDER EXPLICITLY AND PROPERLY RECITES THE MEDICAL SUBSTANTIATION FOR THE EMPLOYER'S DENIAL AND THE BOARD ON REVIEW, CONCURS WITH THE FINDINGS OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE DATED NOVEMBER 20, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 73-2696 APRIL 9, 1974

THOMAS E. HOPSON, CLAIMANT

CHARLES PAULSON, CLAIMANT'S ATTY.
PHILIP A. MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES THE ISSUE OF WHETHER A 45 YEAR OLD DRYWALL APPLICATOR SUSTAINED A COMPENSABLE BACK INJURY WHILE EMPLOYED IN THE CONSTRUCTION OF GRANT TOWERS IN PORTLAND. THE CLAIM WAS DENIED BY THE CARRIER AUGUST 21, 1973, AND UPON HEARING, THIS DENIAL WAS UPHELD BY THE REFEREE.

THE BOARD HAS REVIEWED THE RECORD DE NOVO AND CONSIDERED CLAIMANT'S BRIEF WHICH HE PERSONALLY SUBMITTED ON REVIEW. IN SPITE OF CLAIMANT'S EXPLANATIONS WE ARE PERSUADED THAT THE RECORD LACKS THE CREDIBLE EVIDENCE NECESSARY TO SUPPORT A FINDING OF COMPENSABILITY.

THE ORDER OF THE REFEREE IS CORRECT AND SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED NOVEMBER 20, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 73-758 APRIL 9, 1974

WILLIAM WAYNE SNYDER, CLAIMANT

PETERSON AND PETERSON, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS IS A DENIED HEART CASE. THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM BECAUSE IT DID NOT ARISE OUT OF AND IN THE SCOPE AND COURSE OF EMPLOYMENT. THE REFEREE AFFIRMED THE DENIAL.

CLAIMANT, A 53 YEAR OLD HEAVY EQUIPMENT OPERATOR, HAS HAD TWO HEART ATTACKS PRIOR TO THE ONE IN QUESTION. ONE ON APRIL 13, 1968 AND ONE ON OCTOBER 26, 1972.

REGARDING THE ATTACK IN QUESTION, THE INITIAL CLAIM REPORT STATES = "HAULING GRAVEL OVER ROUGH, CROOKED ROAD. HAD A FLAT BUT DIDN'T FEEL WELL ENOUGH TO CHANGE IT, SO TRADED TRUCKS.!!" THE REPORT OF THE INITIAL ATTENDING DOCTOR ALSO RELATES THIS HISTORY AS GIVEN BY THE CLAIMANT. THE HISTORIES REFLECTED IN SUBSEQUENT MEDICAL REPORTS, A SIGNED STATEMENT BY THE CLAIMANT TO A STATE ACCIDENT INSURANCE FUND INVESTIGATOR, AND THE TESTIMONY OF THE CLAIMANT AT THE HEARING, PRESENT SEVERAL DIFFERENT HISTORIES. ALL IN ALL, THE CLAIMANT'S STORIES ARE SO CONFLICTING AND CONFUSING THAT IT IS DIFFICULT TO ACCEPT ANY OF HIS TESTIMONY.

ON DE NOVO REVIEW THE BOARD IS NOT PERSUADED BY THE RECORD THAT CLAIMANT'S MYOCARDIAL INFARCTION OF OCTOBER 26, 1972 AROSE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT. THE ORDER OF THE REFEREE SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED NOVEMBER 1, 1973 IS HEREBY AFFIRMED.

WCB CASE NO. 73-2029	APRIL 10, 1974
WCB CASE NO. 73-2030	APRIL 10, 1974
WCB CASE NO. 73-2031	APRIL 10, 1974

DARRELL G. VIRELL, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND
SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY SAIF
CROSS-APPEAL BY EMPLOYER
CROSS-APPEAL BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUES INVOLVED ARE WHETHER CLAIMANT'S MULTIPLE RIGHT LEG INFECTIONS ARE NEW INJURIES OR AGGRAVATION OF AN ORIGINAL RIGHT LEG INJURY AND WHETHER THE ASSESSMENT OF PENALTIES AND CLAIMANT'S ATTORNEY'S FEE ON BOTH THE STATE ACCIDENT INSURANCE FUND AND INSURANCE COMPANY OF NORTH AMERICA IS WARRANTED.

CLAIMANT WORKED FOR THE SAME EMPLOYER SINCE 1955. ON NOVEMBER 21, 1969 CLAIMANT CUT HIS RIGHT LEG OVER THE SHIN AREA AND A CELLULITIS AND INFECTION DEVELOPED WHICH FAILED TO HEAL NORMALLY. HOWEVER, AFTER SEVERAL MONTHS, THE CLAIM WAS CLOSED WITH NO PERMANENT PARTIAL DISABILITY. SINCE THEN, ANY SIGNIFICANT TRAUMA TO THIS AREA OF THE RIGHT LEG CAUSES REACTIVATION OF THE CELLULITIS.

AFTER THE 1969 INJURY THE EMPLOYER CHANGED ITS WORKMEN'S COMPENSATION COVERAGE FROM THE STATE ACCIDENT INSURANCE FUND (SAIF) TO THE INSURANCE COMPANY OF NORTH AMERICA (INA).

CLAIMANT HAD ANOTHER CLAIM ON THE RIGHT LEG OCTOBER 27, 1972 WHICH WAS PAID (THIRTY SIX DOLLARS) AND CLOSED AS A "MEDICAL ONLY" BY INA.

CLAIMANT AGAIN BUMPED HIS SHIN FEBRUARY 16, 1973. CLAIMANT CLAIMED THIS WAS AN AGGRAVATION OF THE 1969 INJURY. THE FUND DENIED HIS CLAIM. CLAIMANT THEN FILED A CLAIM WITH INA WHICH DENIED HE HAD SUFFERED A NEW INJURY. EVENTUALLY INA PAID THE CLAIMANT'S MEDICAL BILLS SUBJECT TO REIMBURSEMENT BY THE FUND IF SAIF WERE FOUND TO BE THE RESPONSIBLE PARTY, BUT NO TEMPORARY TOTAL DISABILITY PAYMENTS WERE EVER MADE TO CLAIMANT.

THE EMPLOYER, SAIF AND INA AGREE THAT ALL THREE INCIDENTS ARE COMPENSABLE YET THE INJURED WORKMAN'S BENEFITS WERE DELAYED MERELY BECAUSE THE EMPLOYER CHANGED COMPENSATION CARRIERS. BOTH

THE FUND, ADVOCATING THE NEW INJURY THEORY, AND INA, ADVOCATING THE AGGRAVATION THEORY, RETIONALIZE AND JUSTIFY THEIR DENIAL IN A LOGICAL MANNER. EACH, HOWEVER, HAS IGNORED THE FACT THAT THIS IS AN OBVIOUSLY AND ADMITTEDLY COMPENSABLE INCIDENT AND THAT THE CLAIMANT'S RIGHTS ARE SUBSTANTIALLY AFFECTED BY THE UNCONSCIONABLE DELAY IN PROVIDING COMPENSATION TO THE CLAIMANT. NEITHER CARRIER SUBMITTED THE MATTER TO THE WORKMEN'S COMPENSATION BOARD, AS PROVIDED IN ORS 656.307 (1) WHICH PROVIDES -

' WHERE THERE IS AN ISSUE REGARDING -

(A) WHICH OF SEVERAL SUBJECT EMPLOYERS IS THE TRUE EMPLOYER OF A CLAIMANT WORKMAN -

(B) WHICH OF MORE THAN ONE INSURER OF A CERTAIN EMPLOYER IS RESPONSIBLE FOR PAYMENT OF COMPENSATION TO A WORKMAN -

(C) RESPONSIBILITY BETWEEN TWO OR MORE EMPLOYERS OR THEIR INSURERS INVOLVING PAYMENT OF COMPENSATION FOR TWO OR MORE ACCIDENTAL INJURIES - OR

(D) JOINT EMPLOYMENT BY TWO OR MORE EMPLOYERS,

THE BOARD SHALL, BY ORDER, DESIGNATE WHO SHALL PAY THE CLAIM, IF THE CLAIM IS OTHERWISE COMPENSABLE. PAYMENTS SHALL BEGIN IN ANY EVENT AS PROVIDED IN SUBSECTION (4) OF ORS 656.262. WHEN A DETERMINATION OF THE RESPONSIBLE PAYING PARTY HAS BEEN MADE, THE BOARD SHALL DIRECT ANY NECESSARY MONETARY ADJUSTMENT BETWEEN THE PARTIES INVOLVED. ANY FAILURE TO OBTAIN REIMBURSEMENT FROM A DIRECT RESPONSIBILITY EMPLOYER OR ITS INSURER SHALL BE RECOVERED FROM THE DIRECT RESPONSIBILITY EMPLOYERS ADJUSTMENT RESERVE. '!

THERE IS NO VALID REASON WHY SAIF OR INA COULD NOT HAVE REQUESTED BOARD INTERVENTION UNDER ORS 656.307 OR HAVE IMMEDIATELY AGREED BETWEEN THEMSELVES THAT ONE OR THE OTHER WOULD UNDERTAKE THE PAYMENT OF COMPENSATION IN FULL TO A CLAIMANT ON AN ADMITTEDLY COMPENSABLE CLAIM, WITH AN AGREEMENT OF REIMBURSEMENT FROM THE OTHER CARRIER ULTIMATELY FOUND LIABLE.

CARRIERS WOULD BE WELL ADVISED, IN ORDER TO AVOID THE MAXIMUM PENALTY ON EACH CARRIER AND ATTORNEY'S FEES TO BE PAID BY EACH CARRIER, TO FACE UP TO THEIR JOINT DUTY TO THE EMPLOYER AND THE INJURED WORKMAN BY INITIATING PROCEEDINGS TO RESOLVE THE CONFLICT IMMEDIATELY, RATHER THAN FOR EACH CARRIER TO DENY THE INJURED WORKMAN'S CLAIM - IN EFFECT ' WASHING THEIR HANDS ' , OF THE MATTER, AND IN THE PROCESS LEAVING THE CLAIMANT WITHOUT COMPENSATION AND DAMAGING THE EMPLOYER WHO PAID BOTH OF THEM A PREMIUM FOR THEIR SERVICES. THE PRACTICE OF EACH CARRIER DENYING THE CLAIM IN THESE SITUATIONS INVITES THE MAXIMUM PENALTY ON BOTH OF THE CARRIERS AND CLAIMANT'S ATTORNEY'S FEES TO BE PAID BY BOTH CARRIERS.

ON DE NOVO REVIEW THE BOARD CONCURS WITH THE FINDINGS OF THE REFEREE THAT ALL OF THE INCIDENTS INVOLVING CLAIMANT'S LEG CONDITION ARE AGGRAVATIONS OF THE 1969 LEG INJURY.

THE BOARD FURTHER CONCURS THAT THE FUND SHOULD PAY A 25 PERCENT PENALTY FOR UNREASONABLE DELAY IN PAYMENT OF COMPENSATION TO THE CLAIMANT AND INA SHOULD PAY A 25 PERCENT PENALTY FOR UNREASONABLE DELAY IN PAYMENT OF COMPENSATION AND THAT EACH SHOULD PAY CLAIMANT'S REASONABLE ATTORNEY'S FEES IN THE AMOUNT OF THREE HUNDRED DOLLARS EACH, FOR HIS SERVICES AT THE HEARING.

ORDER

THE ORDER OF THE REFEREE DATED NOVEMBER 21, 1973 IS HEREBY 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 AND, A REASONABLE ATTORNEY'S FEE IN THE SUM OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY INSURANCE COMPANY OF NORTH AMERICA FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW.

THE STATE ACCIDENT INSURANCE FUND SHALL REIMBURSE INSURANCE COMPANY OF NORTH AMERICA ONLY FOR THE AMOUNT PAID BY INSURANCE COMPANY OF NORTH AMERICA FOR ONLY THE MEDICAL AND COMPENSATION OF CLAIMANT ARISING OUT OF THE OCTOBER 16, 1972 AND FEBRUARY 16, 1973 AGGRAVATIONS. THE STATE ACCIDENT INSURANCE FUND SHALL NOT REIMBURSE INSURANCE COMPANY OF NORTH AMERICA FOR ANY PENALTIES OR ATTORNEY'S FEES ASSESSED AGAINST INSURANCE COMPANY OF NORTH AMERICA.

WCB CASE NO. 72-2624 APRIL 10, 1974
WCB CASE NO. 72-2980 APRIL 10, 1974

LORETA M. SMITH, CLAIMANT
W. BRAD COLEMAN, CLAIMANT'S ATTY.
MARMADUKE, ASCHENBRENNER, MERTEN AND
SALTVEIT, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES THE ISSUE OF WHETHER THE INCIDENT IN QUESTION IS AN AGGRAVATION OF AN OLD INJURY OR A NEW COMPENSABLE INJURY.

ON MAY 11, 1969 CLAIMANT SUFFERED A COMPENSABLE LOW BACK INJURY WHILE WORKING AS A NURSE'S AIDE AT SALEM GENERAL HOSPITAL. THE CLAIM WAS CLOSED WITH NO PERMANENT PARTIAL DISABILITY.

CLAIMANT THEREAFTER CHANGED HER JOB AND WORKED AS A CANNERY WORKER AT GENERAL FOODS CORPORATION ON A SEASONAL BASIS, COMMENCING IN 1970.

ON JULY 25, 1972 CLAIMANT WENT TO THE EMERGENCY ROOM AT THE HOSPITAL FOR TREATMENT OF PAIN WHICH SHE RELATED TO THE BACK INJURY OF MAY, 1969. LATER THE CLAIMANT REPORTED THAT SHE HAD INJURED HER BACK WHILE LIFTING TRAYS OF BEANS AT GENERAL FOODS, ON JULY 25TH OR 26TH.

GENERAL FOODS DENIED THE CLAIM ON THE BASIS THAT IT WAS AN AGGRAVATION OF THE 1969 INJURY AND SALEM GENERAL HOSPITAL DENIED THE CLAIM ON THE BASIS THAT IT WAS A NEW INJURY WHILE SHE WAS WORKING AT GENERAL FOODS.

IN HIS ORDER THE HEARING OFFICER SEEMS TO QUESTION CLAIMANT'S CREDIBILITY IN CONCLUDING THAT CLAIMANT'S PRESENT CONDITION WAS AN AGGRAVATION OF THE SALEM GENERAL HOSPITAL INJURY AND NOT A NEW INCIDENT WHILE EMPLOYED AT GENERAL FOODS CORPORATION.

FROM OUR REVIEW WE ARE PERSUADED CLAIMANT IS A BASICALLY HONEST PERSON WHO LACKS THE ABILITY TO RECALL AND REPORT PRIOR EVENTS WITH COMPLETE PRECISION. WE DO, HOWEVER, AGREE WITH THE BASIC FINDINGS AND OPINION OF THE HEARING OFFICER AND CONCLUDE HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED MAY 25, 1973 IS AFFIRMED.

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

WCB CASE NO. 73-2690 APRIL 11, 1974

MARY SCHNEIDER, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS.
GEARIN, CHENEY, LANDIS, AEBI AND KELLEY,
DEFENSE ATTYS.

ON MARCH 29, 1974 THE EMPLOYER, THROUGH HIS ATTORNEY, MOVED THE BOARD FOR RECONSIDERATION OF ITS ORDER OF DISMISSAL DATED MARCH 27, 1974. THE EMPLOYER DID NOT RESPOND TO THE CLAIMANT'S MOTION FOR THE ORDER OF DISMISSAL PRIOR TO ITS ISSUANCE BECAUSE IT WAS AWAITING A SPECIFIC INVITATION TO RESPOND.

BECAUSE THE BOARD ISSUED ITS ORDER WITHOUT A RESPONSE IT HAS RECONSIDERED THE MATTER.

THE EMPLOYER CONTENDS ITS COMPLIANCE WITH ORS 16.770 IS SUFFICIENT TO VEST THE BOARD WITH JURISDICTION TO REVIEW AND CITES A MARION COUNTY CIRCUIT COURT RULING SUPPORTING HIS CONTENTION.

THAT SECTION PERMITS SERVICE OF NOTICES ON THE ATTORNEY IN THE MANNER SPECIFIED BY ORS 16.780 TO 16.800, WHERE NOT OTHERWISE PROVIDED BY LAW. ORS 656.295 (2) DOES PROVIDE OTHERWISE, IT PROVIDES SPECIFICALLY THAT A COPY OF THE REQUEST FOR REVIEW MUST BE MAILED TO ALL OTHER PARTIES. PARTIES ARE SPECIFICALLY DEFINED BY ORS 656.002. A PARTY'S ATTORNEY IS NOT IN THE DEFINED CLASS.

IT IS AXIOMATIC THAT WHERE TWO STATUTES SPEAK REGARDING A SUBJECT, ONE IN GENERAL TERMS AND THE OTHER SPECIFICALLY, THE SPECIAL PROVISION MUST PREVAIL OVER THE GENERAL.

WE ARE CONSTRAINED TO CONCLUDE, UPON RECONSIDERATION, THAT THE BOARD IS WITHOUT JURISDICTION AND WE MUST RATIFY OUR FORMER ORDER OF DISMISSAL.

ORDER

THE ORDER OF DISMISSAL DATED MARCH 27, 1974 IS RATIFIED AND AFFIRMED.

VICTOR LUEDTKE, CLAIMANT
RICHARDSON AND MURPHY, CLAIMANT'S ATTYS.
COSGRAVE AND KESTER, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS REVERSAL OF THE REFEREE'S AWARD OF PERMANENT TOTAL DISABILITY TO CLAIMANT ON ACCOUNT OF AN AGGRAVATION OF HIS CONDITION.

CLAIMANT, A NOW 57 YEAR OLD MAN, HAD PREVIOUSLY RECEIVED AN AWARD OF 240 DEGREES (75 PERCENT) FOR UNSCHEDULED DISABILITY RESULTING FROM A BACK INJURY OF APRIL 11, 1968.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE FINDINGS AND THE OPINION OF THE REFEREE THAT CLAIMANT IS PERMANENTLY TOTALLY DISABLED AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED NOVEMBER 2, 1973 IS AFFIRMED.

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

RONALD LARSON, CLAIMANT
COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.

ON APRIL 5, 1974, THE STATE ACCIDENT INSURANCE FUND MOVED THE BOARD TO RECONSIDER ITS ORDER ON REVIEW IN THE ABOVE-ENTITLED CASE, DATED MARCH 14, 1974.

IN SUPPORT OF THE MOTION TO RECONSIDER, THE FUND ALLEGES FACTS WHICH TEND TO INDICATE THAT RECONSIDERATION IS IN ORDER.

THE BOARD'S LEGAL COUNSEL WAS VERBALLY ADVISED BY CLAIMANT'S ATTORNEY THAT A RESPONSE HAD BEEN MAILED ON OR ABOUT APRIL 9, 1974. TO DATE THAT RESPONSE HAS NOT BEEN RECEIVED.

BECAUSE THE APPEAL PERIOD ON THE BOARD'S ORDER ON REVIEW IS ALMOST TO EXPIRE THE MOTION TO RECONSIDER SHOULD BE GRANTED IN ORDER TO AVOID THE NECESSITY OF THE STATE ACCIDENT INSURANCE FUND FILING AN APPEAL WITH THE CIRCUIT COURT, WHEN THE BOARD HAS RECEIVED THE CLAIMANT'S RESPONSE, IT WILL GIVE FURTHER CONSIDERATION TO THE MATTER AND ENTER AN APPROPRIATE APPEALABLE ORDER.

ORDER

IT IS THEREFORE ACCORDINGLY ORDERED THAT THE MOTION TO RECONSIDER, SHOULD BE AND IT IS HEREBY, GRANTED.

THE CLAIMANT IS HEREBY ORDERED TO FURNISH ITS RESPONSE TO THE WORKMEN'S COMPENSATION BOARD WITHIN 10 DAYS OF THE DATE OF THIS ORDER.

WCB CASE NO. 73-3364 APRIL 16, 1974

DENNIS MARVIN, CLAIMANT

MYRICK, COULTER, SEAGRAVES AND NEALY,
CLAIMANT'S ATTYS.
JAQUA AND WHEATLEY, DEFENSE ATTYS.

A REQUEST FOR REVIEW, HAVING BEEN DULY FILED WITH THE WORKMEN'S COMPENSATION BOARD IN THE ABOVE ENTITLED MATTER BY THE EMPLOYER, AND SAID REQUEST FOR REVIEW NOW HAVING BEEN WITHDRAWN BY THE EMPLOYER'S COUNSEL,

IT IS THEREFORE ORDERED THAT THE REVIEW NOW PENDING BEFORE THE BOARD IS HEREBY DISMISSED.

WCB CASE NO. 73-2422 APRIL 16, 1974

ALVY SERRY, CLAIMANT

HOLMES, JAMES AND CLINKINBEARD,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS IS AN AGGRAVATION CLAIM. THE ISSUE IS WHETHER THE MEDICAL REPORTS SUBMITTED ARE SUFFICIENT TO GIVE THE REFEREE JURISDICTION AS PROVIDED BY ORS 656.271 (1).

CLAIMANT RECEIVED A LOW BACK SPRAIN JULY 23, 1971 WHICH WAS CLOSED BY DETERMINATION ORDER DATED DECEMBER 9, 1971 WITH NO PERMANENT PARTIAL DISABILITY. THIS DETERMINATION ORDER WAS NOT APPEALED. THE STATE ACCIDENT INSURANCE FUND DENIED CLAIMANT'S AGGRAVATION CLAIM ON JULY 24, 1973 AND CLAIMANT REQUESTED A HEARING. THE REFEREE DISMISSED ON THE GROUND THAT THE REQUEST WAS NOT SUPPORTED BY PROPER MEDICAL REPORTS TO GIVE JURISDICTION FOR THE HEARING AS PROVIDED BY ORS 656.271 (1).

THE MEDICAL REPORTS SUBMITTED CONTAINED ONLY THE DOCTOR'S OPINION THAT THE INJURY OF JULY 23, 1971, AGGRAVATED A PRE-EXISTING DEGENERATIVE DISC DISEASE. THE MEDICAL REPORTS DID NOT INDICATE A WORSENING SINCE THE DETERMINATION ORDER. THUS, THE MEDICAL REPORTS SIMPLY DO NOT GIVE THE REFEREE JURISDICTION TO HEAR THE AGGRAVATION CLAIM AND HIS ORDER MUST BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED NOVEMBER 5, 1973 IS AFFIRMED.

WCB CASE NO. 72-1521 APRIL 16, 1974

JAMES PIETILA, CLAIMANT
ANDERSON, FULTON, LAVIS AND
VAN THIEL, CLAIMANT'S ATTYS.
DEZENDORF, SPEARS, LUBERSKY AND
CAMPBELL, DEFENSE ATTYS.

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE EMPLOYER REQUESTS REVERSAL OF THE AWARD OF PERMANENT TOTAL DISABILITY AND REQUESTS THAT THE SCHEDULED DISABILITY TO BOTH FEET BE REINSTATED.

CLAIMANT, A 52 YEAR OLD TRUCK DRIVER, FRACTURED BOTH HEELS WHEN HE FELL FROM A LUMBER TRUCK APPROXIMATELY 12 FEET TO THE GROUND. SHORTLY AFTER THE CLAIMANT WAS HOSPITALIZED HE SUFFERED A SEVERE EPISODE OF RESPIRATORY DEPRESSION AND CONSEQUENT ANOXIA. INTENSIVE CARE STABILIZED HIS BREATHING BUT NOT BEFORE SOME IMPAIRMENT OF THE CEREBRAL FUNCTION OCCURRED BECAUSE THE BRAIN WAS DEPRIVED OF OXYGEN DURING THIS RESPIRATORY DEPRESSION.

THE DETERMINATION ORDER AWARDED CLAIMANT PERMANENT PARTIAL DISABILITY OF 40 PERCENT LOSS OF LEFT FOOT AND 45 PERCENT LOSS OF RIGHT FOOT.

THE HEARING OFFICER AWARDED CLAIMANT PERMANENT TOTAL DISABILITY. PERMANENT DISABILITY COMPENSATION FOR BILATERAL HEEL FRACTURE NORMALLY WOULD BE LIMITED TO THE AWARD OF THE LOSS OF FUNCTION OF THE SCHEDULED MEMBER. IN THIS CASE HOWEVER, THE MEDICAL EVIDENCE FROM THE ATTENDING DOCTOR ALSO STATES - 'HOWEVER MR. PIETILA'S MAJOR PROBLEM, I FEEL MAY BE IN THE SPHERE OF HIS MENTATION.' THE ATTENDING DOCTOR COULD NOT SPECIFICALLY PROVE THIS NEUROLOGICALLY BUT FROM HIS OBSERVATIONS OF THE REACTIONS OF THE PATIENT HE DIAGNOSED SOME BRAIN DAMAGE. CLAIMANT IS NOW UNDER A COURT ORDERED GUARDIANSHIP.

THIS, IN ADDITION TO OUR DE NOVO REVIEW OF THE RECORD PRESENTED ON APPEAL, LEADS THE BOARD TO CONCUR WITH THE FINDING AND ORDER OF THE HEARING OFFICER. WE CONCLUDE HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER DATED APRIL 19, 1973 IS AFFIRMED.

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

WCB CASE NO. 72-3155 APRIL 16, 1974

DAVID JONES, CLAIMANT
STERLING WILLIVER, CLAIMANT'S ATTY.
GRAY, FANCHER, HOLMES AND HURLEY,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE IS EXTENT OF PERMANENT DISABILITY. THE HEARING OFFICER AFFIRMED THE DETERMINATION ORDER WHICH AWARDED CLAIMANT 5 PERCENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT, A 30 YEAR OLD CAR SALESMAN, RECEIVED AN ACUTE LUMBOSACRAL STRAIN JANUARY 12, 1971. THERE WERE MINIMAL OBJECTIVE MEDICAL FINDINGS WHEN TREATED AND EXAMINED BY SEVERAL DOCTORS INCLUDING SPECIALISTS IN NEUROSURGERY AND ORTHOPEDICS. CLAIMANT WAS MAKING GRADUAL IMPROVEMENT UNTIL AN INCIDENT OF THROWING A STICK FOR HIS DOG TO RETRIEVE, CAUSING SEVERE ACUTE PAIN.

WE DISAGREE WITH THE HEARING OFFICER'S INTERPRETATION OF THE STICK THROWING INCIDENT AS A SUBSEQUENT INTERVENING INCIDENT, BUT WE DO NOT PERCEIVE IT AS HAVING PRODUCED SIGNIFICANT ADDITIONAL PERMANENT DISABILITY.

ON DE NOVO REVIEW OF THE RECORD, THE BOARD FINDS THAT THE 5 PERCENT UNSCHEDULED PERMANENT DISABILITY ADEQUATELY COMPENSATES THE CLAIMANT FOR THE PERMANENT DISABILITY WHICH HE SUFFERS.

ORDER

THE ORDER OF THE HEARING OFFICER DATED JUNE 21, 1973 IS AFFIRMED.

WCB CASE NO. 72-207 APRIL 16, 1974

LESTER W. SHORTREED, CLAIMANT
GREEN, GRISWOLD AND PIPPIN, CLAIMANT'S ATTYS.
DEPT. 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 LIMITED HIS COMPENSATION TO VARIOUS AWARDS FOR SCHEDULED AND UNSCHEDULED PERMANENT DISABILITY, CONTENDING HE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT IS A NOW 59 YEAR OLD MAN WHO SUFFERED SEVERE MULTIPLE INJURIES ON SEPTEMBER 25, 1968 WHEN HE WAS CAUGHT IN A GRAIN AUGER WHILE WORKING AT SCOTTY'S FEED STORE IN REDMOND, OREGON.

THE FINDINGS OF THE HEARING OFFICER FULLY AND ACCURATELY SET FORTH THE CLAIMANT'S PHYSICAL IMPAIRMENTS AND THEIR CONSEQUENCES ON HIS EMPLOYABILITY.

THE HEARING OFFICER CONCLUDED THE CASE WAS FACTUALLY DISTINGUISHABLE FROM THE CASE OF MANSFIELD V. CAPLENER BROS., 10 OR APP 545 (1972). HE RELIED ON THE BOARD'S RATIONALE IN DICK C. HOWLAND, WCB CASE NOS. 70-855 AND 70-856 TO DECIDE THAT CLAIMANT WAS NOT LEGALLY ENTITLED TO AN AWARD OF PERMANENT TOTAL DISABILITY. THE RATIONALE EXPRESSED BY THE BOARD IN HOWLAND (DECIDED BEFORE MANSFIELD) RESULTED FROM, AND IS LIMITED TO, A FACT SITUATION INVOLVING MINIMAL UNSCHEDULED DISABILITY. THE HEARING OFFICER CHARACTERIZED CLAIMANT'S DISABILITIES AS MORE THAN MINIMAL. WE AGREE WITH THAT CHARACTERIZATION AND THEREFORE CONCLUDE THE COURT'S LANGUAGE IN MANSFIELD SPEAKS DIRECTLY TO MR. SHORTREED'S SITUATION. CLAIMANT'S EFFORTS AT SELF EMPLOYMENT REVEAL STRONG MOTIVATION TO RETURN TO WORK. UNFORTUNATELY, CLAIMANT HAS NOT BEEN ABLE TO SUCCEED IN RETURNING TO REGULAR, GAINFUL EMPLOYMENT AND IS THEREFORE LEGALLY ENTITLED TO AN AWARD OF PERMANENT TOTAL DISABILITY.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 12, 1973 IS REVERSED.

CLAIMANT IS HEREBY GRANTED AN AWARD OF PERMANENT TOTAL DISABILITY, PAYABLE FROM THE DATE OF THIS ORDER ONWARD.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE, 25 PERCENT OF THE INCREASED COMPENSATION AWARDED HEREBY, PAYABLE FROM SAID AWARD, WHICH WHEN COMBINED WITH FEES RECEIVED UNDER THE ORDER OF THE HEARING OFFICER, SHALL NOT EXCEED FIFTEEN HUNDRED DOLLARS.

WCB CASE NO. 73-746 APRIL 16, 1974

BERTMAN DELMER SEAL, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE IS THE COMPENSABILITY OF THE CLAIMANT'S HEART ATTACK. CLAIMANT, NOW 61 YEARS OLD, WHILE WORKING AS A LONG-SHOREMAN, SUFFERED A MYOCARDIAL INFARCTION OCTOBER 16, 1972. CLAIMANT HAD BEEN WORKING MOVING LARGE PIPES. HE HAD WHAT HE THOUGHT WAS HEARTBURN AND TOOK SOME ANTACID WHICH PARTIALLY RELIEVED THE DISTRESS BUT LATER IN THE DAY HAD THE HEART ATTACK IN QUESTION AND WAS TAKEN TO THE HOSPITAL.

CLAIMANT WAS WORKING AT PIER 4 WHICH IS NEAR A GRAIN LOADING AND FLOUR MILL WHICH EMITS LARGE QUANTITIES OF DUST. ON THE DAY OF THE HEART ATTACK THE DUST CONDITIONS WERE HEAVY. THE AIR POLLUTION INDEX IN DOWNTOWN PORTLAND WAS MODERATELY HIGH BUT THERE WAS NO SPECIFIC EVIDENCE AS TO AIR POLLUTION AT PIER 4. THE EXPERT OPINION AS TO AIR POLLUTION AND PARTICULATE MATTER WAS BASED ON ACTUAL READINGS IN DOWNTOWN PORTLAND BUT ONLY ESTIMATES OF WHAT IT PROBABLY WAS AT THE PLACE CLAIMANT WAS WORKING. LAY WITNESSES TESTIFIED THAT THE AIR AT PIER 4 WAS HEAVILY CONTAMINATED WITH DUST ON THE DAY OF THE HEART ATTACK. WE BELIEVE THE LAY WITNESS OBSERVATIONS PROVIDE THE MOST RELIABLE EVIDENCE OF THE DUST CONDITIONS INVOLVED.

THE ATTENDING DOCTOR TESTIFIED THAT THE COMBINATION OF AIR POLLUTION, DUST CONDITIONS AND EXERTION OF THE CLAIMANT PROBABLY PRECIPITATED CLAIMANT'S HEART ATTACK.

ON DE NOVO REVIEW THE BOARD FINDS CLAIMANT HAS PROVED BY PREPONDERANCE OF EVIDENCE, THAT CLAIMANT'S HEART ATTACK WAS PRECIPITATED BY THE CLAIMANT'S STRENUOUS WORK ACTIVITY IN THE HEAVILY CONTAMINATED AND DUSTY WORKING CONDITIONS. THE CLAIMANT'S HEART ATTACK IS CLEARLY COMPENSABLE.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 19, 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.

WCB CASE NO. 73-427 APRIL 16, 1974

VIOLET MCKINNON, CLAIMANT

TOOZE, KERR, PETERSON, MARSHALL AND
SHENKER, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
CROSS-APPEAL BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUES SUBMITTED BY CLAIMANT FOR BOARD REVIEW ARE -

1. WHETHER THE CLAIM WAS PREMATURELY CLOSED, I. E., WHETHER CLAIMANT WAS ENTITLED TO TEMPORARY DISABILITY EXTENDING BEYOND NOVEMBER 22, 1972 AS ORDERED BY THE THIRD DETERMINATION ORDER OF JANUARY 12, 1973.
2. THE EXTENT OF DISABILITY, I. E., WHETHER 60 PERCENT (81 DEGREES) PERMANENT PARTIAL DISABILITY AWARD FOR LOSS OF THE LEFT FOOT IS SUFFICIENT. THE FUND, ON CROSS-APPEAL, CONTENDS THE REFEREE ERRED IN ATTRIBUTING PERMANENT DISABILITY TO THIS INJURY.
3. WHETHER CLAIMANT SHOULD BE ENTITLED TO RECOVER FOR HER BACK DISABILITY AND TREATMENT.

AS TO THE ISSUE OF THE ALLEGED PREMATURE CLOSING AS ORDERED BY THE DETERMINATION ORDER ALLOWING TEMPORARY TOTAL DISABILITY TO NOVEMBER 22, 1972 THIS ISSUE WAS NOT RAISED OR DISCUSSED AT THE HEARING OFFICER LEVEL AND WILL NOT BE CONSIDERED ON BOARD REVIEW.

AS TO THE CLAIMANT'S REQUEST FOR AN INCREASE IN PERMANENT PARTIAL DISABILITY AWARD FOR THE LOSS OF LEFT FOOT, THE BOARD REVERSES THE HEARING OFFICER AND REINSTATES THE DETERMINATION ORDER OF JANUARY 12, 1973 WITH AN AWARD OF NO PERMANENT PARTIAL DISABILITY.

AS TO THE BACK DISABILITY AND TREATMENT, THE BOARD CONCURS WITH THE FINDING AND ORDER OF THE HEARING OFFICER THAT THE BACK CLAIM IS BOTH UNTIMELY FILED AND UNRELATED TO THE ORIGINAL ACCIDENT.

CLAIMANT, NOW 54 YEARS OLD, HAS A LONG HISTORY OF SEVERE DIABETES MELLITUS. ON DECEMBER 31, 1969 WHILE WORKING AT FRED MEYER STORE IN PORTLAND, SHE HAD AN ALTERCATION WITH FIVE TEEN-AGE BOYS WHEN SHE ATTEMPTED TO CLOSE THE CABINET HOLDING PHONOGRAPH RECORDS. ONE OF THE BOYS ALLEGEDLY TRIPPED HER AND A KNIFE WAS PULLED ON HER BUT NOT USED. APPARENTLY THERE WAS SCUFFLING AND KICKING INVOLVED AND HER LEFT FOOT WAS BRUISED.

CLAIMANT'S LEFT FOOT HAD HAD PREVIOUS PROBLEMS PRIMARILY BECAUSE OF THE DIABETES AND THE INJURIES RECEIVED IN THIS INCIDENT AGGRAVATED A TENDENCY TO DEVELOPMENT OF RECURRENT NEUROPATHIC DIABETIC ULCER. AFTER AN UNCERTAIN AND EXTENDED CONVALESCENCE, WHICH FINALLY CULMINATED IN SURGERY, THE ULCER HEALED. THE ATTENDING DOCTOR STATES - '!' HOWEVER, AS I UNDERSTAND IT FROM THE PATIENT, HER CURRENT STATUS IS NOT GREATLY DIFFERENT FROM THAT EXISTING PRIOR TO HER INJURY.' IT IS NOTED THAT THE ATTENDING DOCTOR MAKING THIS REPORT DID NOT SEE CLAIMANT UNTIL 13 TO 14 MONTHS AFTER THE INJURY. SHE WAS TREATED BY VARIOUS OTHER DOCTORS IN THIS INTERVAL. THE ATTENDING DOCTOR WAS CONCERNED REGARDING THE POSSIBILITY OF FUTURE ULCERS UPON THIS FOOT BUT DID NOT AND COULD NOT SPECIFICALLY STATE THAT IF FUTURE FOOT ULCERS OCCURRED, WHETHER OR NOT IT WOULD BE CAUSED BY HER DIABETES OR IN ANY WAY CONNECTED WITH THE INDUSTRIAL ACCIDENT.

INASMUCH AS THE CONDITION AFTER THE ACCIDENT IS NOT GREATLY DIFFERENT FROM THAT EXISTING PRIOR TO THE ACCIDENT, THE BOARD FINDS THERE IS NO PERMANENT PARTIAL DISABILITY TO THE LEFT FOOT.

ORDER

THE ORDER OF THE HEARING OFFICER DATED SEPTEMBER 12, 1973 IS AFFIRMED TO THE EXTENT THAT THE BACK CLAIM IS BOTH UNTIMELY FILED AND UNRELATED TO THE ORIGINAL ACCIDENT OF DECEMBER 30, 1969.

THE REMAINDER OF THE ORDER OF THE HEARING OFFICER IS REVERSED AND THE DETERMINATION ORDER DATED JANUARY 12, 1973 IS REINSTATED.

WCB CASE NO. 72-87 APRIL 16, 1974

ALVIN JACKSON, CLAIMANT

LARKIN, BRYANT AND EDMONDS, CLAIMANT'S ATTYS.
GRAY, FANCHER, HOLMES AND HURLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS REVIEW OF A HEARING OFFICER'S ORDER AFFIRMING THE DETERMINATION ORDER OF FEBRUARY 24, 1971, WHICH FOUND THAT NO PERMANENT PARTIAL DISABILITY RESULTED FROM THE INJURY OF OCTOBER 6, 1969.

THE BOARD, HAVING EXAMINED THE TRANSCRIPT OF TESTIMONY AND THE BRIEFS SUBMITTED ON APPEAL, CONCURS WITH THE OPINIONS OF THE HEARING OFFICER AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER, DATED NOVEMBER 21, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 73-1044 APRIL 16, 1974

HARRY WRIGHT, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE IS EXTENT OF DISABILITY. THE DETERMINATION ORDER AWARDED 50 PERCENT (160 DEGREES) FOR UNSCHEDULED BACK DISABILITY. THE REFEREE AFFIRMED THIS ORDER. THE CLAIMANT REQUESTS BOARD REVIEW CONTENDING CLAIMANT IS PERMANENTLY TOTALLY DISABLED.

CLAIMANT, A 62 YEAR OLD TRUCK DRIVER, WAS INJURED AUGUST 30, 1971 WHEN HE WAS KNOCKED FROM THE REAR OF A TRUCK BY A CONTAINER, FALLING ABOUT THREE AND ONE HALF FEET TO THE PAVEMENT, LANDING ON HIS BACK AND HEAD WITH THE CONTAINER ON TOP OF HIM.

CLAIMANT HAD A PREEXISTING RHEUMATOID ARTHRITIS AND OSTEO-ARTHRITIS AT THE TIME OF THE ACCIDENT WHICH WAS AGGRAVATED BY THE INJURY. AFTER A COURSE OF CONSERVATIVE TREATMENT HE WAS LEFT WITH PERMANENT PHYSICAL IMPAIRMENTS WHICH PREVENTED HIS RETURN TO TRUCK DRIVING.

CLAIMANT, THROUGH THE DIVISION OF VOCATIONAL REHABILITATION, TOOK TWO TERMS OF SMALL MOTOR REPAIR TRAINING BUT DID NOT COMPLETE THE COURSE. THE RECORD REVEALS CLAIMANT HAS POOR MOTIVATION TO RETURN TO WORK. HE IS CONCERNED THAT A RETURN TO WORK WOULD JEOPARDIZE OR MINIMIZE HIS UNION RETIREMENT BENEFITS.

SINCE THE MEDICAL EVIDENCE DOES NOT ESTABLISH A PRIMA FACIE CASE OF ODD-LOT STATUS, THE EVIDENCE OF MOTIVATION TO SEEK AND WORK AT GAINFUL EMPLOYMENT BECOMES DETERMINATIVE. CLAIMANT'S MOTIVATION TO ENGAGE IN GAINFUL AND SUITABLE EMPLOYMENT IS POOR. THUS CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED.

THE BOARD CONCURS WITH THE REFEREE'S AFFIRMANCE OF THE DETERMINATION ORDER AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED NOVEMBER 28, 1973 IS AFFIRMED.

WCB CASE NO. 73-1014 APRIL 19, 1974
WCB CASE NO. 73-1430 APRIL 19, 1974

DONALD NEILSEN, CLAIMANT

COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS REVIEW OF THAT PART OF A REFEREE'S ORDER WHICH REFUSED TO IMPOSE LIABILITY ON THE FUND FOR THE COSTS OF A PSYCHIATRIC EXAMINATION AND REPORT BY DR. CHARLES F. HOLLAND, JR.

BASED ON THE RESULTS OF DR. HOLLAND'S DIAGNOSTIC INTERVIEWS, THE FUND AGREED TO PAY CLAIMANT TEMPORARY TOTAL DISABILITY BENEFITS PENDING AN EXAMINATION AND REPORT FROM A PSYCHIATRIST OF ITS CHOICE. THE REQUESTED REPORT CORROBORATED DR. HOLLAND'S DIAGNOSIS AND TREATMENT RECOMMENDATIONS AND THE FUND THEREUPON AGREED TO REOPEN CLAIMANT'S CLAIM FOR TREATMENT BY THE PHYSICIAN OF CLAIMANT'S CHOICE. CLAIMANT CHOSE DR. HOLLAND AS HIS TREATING PHYSICIAN AND IS PRESUMABLY RECEIVING THE THERAPY RECOMMENDED. THE CHARGES FOR DR. HOLLAND'S DIAGNOSTIC INTERVIEWS AND HIS THERAPY RECOMMENDATIONS AMOUNTED TO TWO HUNDRED TWELVE DOLLARS, WHICH THE CLAIMANT WISHED TO HAVE THE FUND PAY.

THE REFEREE STATED -

!! I CAN SEE NO BASIS FOR REQUIRING THE FUND TO REIMBURSE CLAIMANT'S ATTORNEY FOR THE BILLS SUBMITTED BY DR. HOLLAND FOR HIS EXAMINATION OF CLAIMANT. THE EVALUATION BY DR. HOLLAND WAS AT THE REQUEST AND FOR THE BENEFIT OF CLAIMANT. !!

THE REFEREE ERRED IN REFUSING TO ORDER PAYMENT OF THIS COST BY THE STATE ACCIDENT INSURANCE FUND. WORKMEN'S COMPENSATION MEDICAL BENEFITS INCLUDE PAYMENT OF ALL MEDICAL EXPENSES, BOTH DIAGNOSTIC AND CURATIVE, RESULTING FROM AN OCCUPATIONAL INJURY. WHILE THE DIAGNOSIS AND REPORT BY DR. HOLLAND WAS USED IN LITIGATION, IT WAS ALSO REQUIRED FOR PROPER CURATIVE TREATMENT. THEREFORE, SINCE THE FUND IS LIABLE FOR COSTS OF DIAGNOSIS, IT IS LIABLE FOR THE COST OF DR. HOLLAND'S DIAGNOSTIC INTERVIEWS AND HIS REPORT DATED MAY 30, 1973.

THE REFEREE'S ORDER SHOULD BE MODIFIED ACCORDINGLY.

ORDER

IT IS, THEREFORE, ACCORDINGLY ORDERED THAT THE STATE ACCIDENT INSURANCE FUND PAY THE COST OF CLAIMANT'S EXAMINATION AND SUBSEQUENT REPORT RENDERED BY DR. CHARLES F. HOLLAND, JR., AND THAT IT HOLD CLAIMANT AND HIS ATTORNEY HARMLESS ON ACCOUNT OF HAVING SECURED SAID SERVICES.

EARL A. BURNS, CLAIMANT
HARRY A. ENGLISH, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.

ON JANUARY 30, 1974, A REFEREE'S ORDER GRANTED CLAIMANT 40 PERCENT OF THE MAXIMUM (128 DEGREES) FOR UNSCHEDULED DISABILITY.

ON FEBRUARY 7, 1974, THE STATE ACCIDENT INSURANCE FUND REQUESTED REVIEW OF THE REFEREE'S ORDER AND ON FEBRUARY 8, 1974, CLAIMANT CROSS-REQUESTED REVIEW.

THE BOARD HAS RECEIVED FROM THE PARTIES A SETTLEMENT STIPULATION COMPROMISING THEIR DISPUTE. THAT STIPULATION IS ATTACHED HERETO AS EXHIBIT 'A'.

THE BOARD, HAVING REVIEWED THE STIPULATION, FINDS IT FAIR AND EQUITABLE TO BOTH PARTIES AND CONCLUDES IT SHOULD BE APPROVED AND EXECUTED ACCORDING TO ITS TERMS AND THAT THE REQUESTS FOR REVIEW FILED BY THE PARTIES SHOULD BE FORTHWITH DISMISSED.

IT IS SO ORDERED.

SETTLEMENT STIPULATION

IT IS STIPULATED BY AND BETWEEN THE CLAIMANT, EARL A. BURNS WITH THE APPROVAL OF HIS ATTORNEY, HARRY A. ENGLISH, AND THE STATE ACCIDENT INSURANCE FUND, THE INSURANCE CARRIER OF LA PINE RURAL FIRE DISTRICT THAT THE REQUEST FOR REVIEW AND A CROSS REQUEST FOR REVIEW HERETO FOR FILE BY THE PARTIES FROM THE OPINION AND ORDER OF KIRK A. MULDER OF JANUARY 30, 1974 AS AMENDED ON FEBRUARY 5, 1974, SHALL BE SETTLED AND COMPROMISED BY AND BETWEEN THE PARTIES BY THE STATE ACCIDENT INSURANCE FUND PAYING TO THE CLAIMANT AND THE CLAIMANT ACCEPTING FROM THE STATE ACCIDENT INSURANCE FUND PERMANENT PARTIAL DISABILITY OF 25 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED LOW BACK DISABILITY EQUAL TO 80 DEGREES (FIVE THOUSAND SIX HUNDRED DOLLARS). THIS AWARD IS IN LIEU OF ANY AND ALL OTHER COMPENSATION PREVIOUSLY AWARDED BY THE OPINION AND ORDERS OF KIRK A. MULDER ON JANUARY 30, 1974 AND FEBRUARY 5, 1974.

IT IS FURTHER STIPULATED AND AGREED THAT THERE SHALL BE AWARDED TO HARRY A. ENGLISH, ATTORNEY FOR THE CLAIMANT, AN ATTORNEY FEE EQUAL TO 25 PERCENT OF THE COMPENSATION AWARDED TO THE CLAIMANT BY VIRTUE OF THIS STIPULATION. THE SAME TO BE A LIEN UPON AND PAYABLE OUT OF SUCH COMPENSATION.

IT IS FURTHER STIPULATED AND AGREED THAT THE REQUEST FOR REVIEW FILED BY THE STATE ACCIDENT INSURANCE FUND AND THE CROSS REQUEST FOR REVIEW FILED BY THE CLAIMANT MAY BE DISMISSED WITH PREJUDICE.

APRIL 25, 1974

LARRY E. BEAVER, CLAIMANT

GARY E. LOCKWOOD, CLAIMANT'S ATTY.
MCMENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTYS.

ON FEBRUARY 6, 1974, A REFEREE ORDERED ACCEPTANCE OF CLAIMANT'S CLAIM FOR COMPENSATION.

ON FEBRUARY 27, 1974, THE EMPLOYER REQUESTED REVIEW OF THE REFEREE'S ORDER.

THE BOARD HAS RECEIVED FROM THE PARTIES A SETTLEMENT STIPULATION COMPROMISING THEIR DISPUTE UNDER THE PROVISIONS OF ORS 656.289 (4). THAT STIPULATION IS ATTACHED HERETO AS EXHIBIT !!A!!.

THE BOARD, HAVING REVIEWED THE STIPULATION, FINDS IT FAIR AND EQUITABLE TO BOTH PARTIES AND CONCLUDES IT SHOULD BE APPROVED AND EXECUTED ACCORDING TO ITS TERMS AND THAT THE REQUEST FOR REVIEW FILED BY THE EMPLOYER SHOULD BE FORTHWITH DISMISSED.

IT IS SO ORDERED.

STIPULATION OF COMPROMISE

IT IS HEREBY STIPULATED BY AND BETWEEN THE UNDERSIGNED THAT =

CLAIMANT, LARRY E. BEAVER, CONTENDS HE SUSTAINED A COMPENSABLE INJURY TO HIS RIGHT KNEE ON NOVEMBER 6, 1972 WHILE EMPLOYED WITH MARTIN MARIETTA ALUMINUM CO.

ON DECEMBER 14, 1972, THE EMPLOYER, THROUGH ITS WORKMEN'S COMPENSATION CARRIER, ARGONAUT INSURANCE COMPANY, REJECTED THE CLAIM ON THE GROUND IT DID NOT ARISE OUT OF OR OCCUR IN THE COURSE OF HIS EMPLOYMENT.

THE CLAIMANT REQUESTED A HEARING ON FEBRUARY 12, 1973.

A HEARING WAS CONVENED ON JANUARY 22, 1974 AND, BY ORDER OF FEBRUARY 6, 1974, THE CLAIM WAS REFERRED TO THE EMPLOYER FOR ACCEPTANCE AND PAYMENT OF TEMPORARY TOTAL DISABILITY FROM THE DATE OF THE INJURY UNTIL CLAIMANT'S ATTENDING PHYSICIAN APPROVED HIS RETURN TO REGULAR EMPLOYMENT.

ON FEBRUARY 27, 1974, THE EMPLOYER SUBMITTED A REQUEST FOR BOARD REVIEW BY THE WORKMEN'S COMPENSATION BOARD WHICH WAS ACKNOWLEDGED MARCH 1, 1974 AND IS PRESENTLY PENDING BEFORE THE BOARD.

SUBSEQUENT TO FILING OF THE REQUEST FOR BOARD REVIEW, THE PARTIES HEREIN HAVE REACHED A VOLUNTARY SETTLEMENT AND DISPOSAL OF ALL OF THE RIGHTS AND CLAIMS OF THE CLAIMANT AS TO SAID INJURY AND RESULTING LOSS AND DAMAGE. IN RETURN FOR THE EMPLOYER WITHDRAWING ITS REQUEST FOR BOARD REVIEW, THE CLAIMANT HAS AGREED TO ACCEPT AND THE EMPLOYER, THROUGH ITS COMPENSATION CARRIER, HAS AGREED TO PAY TO THE CLAIMANT FORTHWITH, SUBJECT ONLY TO APPROVAL BY THE WORKMEN'S COMPENSATION BOARD OF THE STATE OF OREGON, THE

SUM OF SEVEN THOUSAND FIFTY EIGHT DOLLARS AND NINETY CENTS AND THE CLAIMANT HAS AGREED TO DISCHARGE AND FOREVER RELEASE MARTIN MARIETTA ALUMINUM CO. AND ARGONAUT INSURANCE COMPANY FROM ANY AND ALL CLAIMS UNDER THE WORKMEN'S COMPENSATION ACT PRESENTLY EXISTING OR WHICH MAY OCCUR IN THE FUTURE BY REASON OF ALLEGED INJURIES RECEIVED ON OR ABOUT NOVEMBER 6, 1972, INCLUDING ANY CLAIM FOR AGGRAVATION.

THEREFORE, ALL PARTIES TO THIS DISPUTED ISSUE REQUEST THE WORKMEN'S COMPENSATION BOARD TO APPROVE THIS STIPULATION OF COMPROMISE AND TO DISMISS THE EMPLOYER'S REQUEST FOR BOARD REVIEW.

SAIF CLAIM NO. A849946 APRIL 26, 1974

CHARLES A. WILLIAMS, CLAIMANT
JOHN BASSETT, CLAIMANT'S ATTY.

THE ABOVE ENTITLED MATTER INVOLVES A 42 YEAR OLD CONSTRUCTION WORKER WHO SUSTAINED A COMPENSABLE BACK INJURY IN 1961. AT THAT TIME, HE UNDERWENT A SPINAL FUSION AND RECOVERED SUFFICIENTLY TO RETURN TO WORK.

CLAIMANT WAS HOSPITALIZED MAY 30, 1973, AND HAD FURTHER BACK SURGERY WHICH HE NOW CONTENDS IS A CONTINUATION OF HIS ORIGINAL INJURY OF 1961.

THE INFORMATION SUBMITTED, INCLUDING A REPORT FROM EMANUEL HOSPITAL, IS OF SUCH A NATURE THAT THE BOARD DEEMS IT ADVISABLE TO REFER THE MATTER FOR A HEARING TO ENABLE THE CLAIMANT AND THE STATE ACCIDENT INSURANCE FUND TO BE HEARD.

THE MATTER IS ACCORDINGLY HEREBY REFERRED TO THE HEARINGS DIVISION FOR THE PURPOSE OF TAKING EVIDENCE WITH RESPECT TO WHETHER THE CLAIMANT HAS INCURRED AN AGGRAVATION OF HIS UNJURY OF FEBRUARY 22, 1961. UPON CONCLUSION OF THE HEARING, THE HEARING OFFICER SHALL FORTHWITH CAUSE A TRANSCRIPT OF THE PROCEEDINGS TO BE PREPARED FOR BOARD CONSIDERATION. THE HEARING OFFICER SHALL NOT ISSUE AN ORDER ON THE MERITS, BUT SHALL MAKE A REPORT OF THE PROCEEDINGS AND INCLUDE THEREIN HIS RECOMMENDATION IN THE MATTER. DECISION ON THE MERITS IS RESERVED AS A MATTER OF LAW TO THE WORKMEN'S COMPENSATION BOARD.

WCB CASE NO. 73-1353 APRIL 26, 1974

JOHN MOLINE, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.

ON APRIL 12, 1974, THE CLAIMANT'S ATTORNEY, RICHARD KROPP, MOVED THE BOARD FOR AN ORDER RECONSIDERING THAT PART OF ITS ORDER ON REVIEW WHICH PROVIDED -

'' ALTHOUGH THE FUND DID NOT PREVAIL ON THE BASIC COMPENSABILITY ISSUE APPEALED, IT DID PREVAIL IN REVERSING THE HEARING OFFICER'S APPLICATION OF ORS 656.218 WHICH WAS A MATTER OF MATERIAL IMPORTANCE. WE THEREFORE CONCLUDE THAT THE FUND IS NOT LIABLE, UNDER ORS 656.382 (2), FOR AN ATTORNEY'S FEE TO CLAIMANT'S ATTORNEY. !!

IN SUPPORT OF THE MOTION, THE CLAIMANT'S ATTORNEY ARGUES =

'' IT SHOULD BE POINTED OUT TO THE WORKMEN'S COMPENSATION BOARD THAT THE ISSUE PROVIDED FOR IN THIS REVIEW WAS THE QUESTION OF COMPENSABILITY OF A REVIEW WAS THE QUESTION OF COMPENSABILITY OF A WIDOW'S CLAIM. THE WIDOW'S CLAIM WAS ESTABLISHED AND THE BOARD DID NOT DISALLOW OR REDUCE HER COMPENSATION. UNDER THE CLEAR LANGUAGE OF ORS 656.382, SUBSECTION 2, ATTORNEY'S FEES ARE PAYABLE REGARDLESS OF WHETHER OR NOT THE BOARD REVERSED THE HEARING OFFICER'S APPLICATION OF 656.218. ''

THE FUND RAISED TWO ISSUES ON REVIEW, NOT ONE. THE MAJOR ISSUE WAS, NATURALLY, THE COMPENSABILITY OF THE WIDOW'S CLAIM. THE PROPRIETY OF THE HEARING OFFICER'S APPLICATION OF ORS 656.218 WAS SECONDARY TO THE BASIC ISSUE OF COMPENSABILITY BUT, NEVERTHELESS, UNDER THE FACTS OF THIS CASE, WAS OBVIOUSLY A MATTER OF CONSIDERABLE FINANCIAL SIGNIFICANCE TO THE FUND DUE TO THE THEN LARGE DIFFERENCE BETWEEN MONTHLY PERMANENT PARTIAL DISABILITY PAYMENTS AND MONTHLY WIDOW'S BENEFIT PAYMENTS.

CLAIMANT'S ATTORNEY IS TECHNICALLY CORRECT WHEN HE STATES = '' . . . THE BOARD DID NOT DISALLOW OR REDUCE HER COMPENSATION'' IN THAT IT DID NOT REDUCE HER WIDOW'S BENEFITS. HOWEVER, THE BOARD DID FIND, ON A REQUEST FOR REVIEW INITIATED BY THE FUND, THAT THE COMPENSATION AWARDED TO A 'CLAIMANT' SHOULD BE DISALLOWED WHEN IT REVERSED THE HEARING OFFICER'S ORDER REQUIRING THE FUND TO PAY THE DECEDENT'S PERMANENT PARTIAL DISABILITY AWARD TO THE WIDOW.

'' CLAIMANT'' IS NOT A TERM DEFINED BY THE STATUTE, BUT IT OBVIOUSLY REFERS TO ANYONE SEEKING BENEFITS WHICH ARE PROVIDED BY THE WORKMEN'S COMPENSATION LAW. DECEDENT'S WIDOW, AS A PARTY TO THE ABOVE ENTITLED MATTER, IS A CLAIMANT FOR COMPENSATION WITHIN THE MEANING OF ORS 656.002 (16) AND THUS, A CLAIMANT WITHIN THE MEANING OF ORS 656.382 (2).

THE FUND, HAVING SUCCEEDED IN REDUCING THE COMPENSATION AWARDED TO THE CLAIMANT BY THE HEARING OFFICER, IS NOT LIABLE FOR THE PAYMENT OF HIS FEE TO CLAIMANT OR HER ATTORNEY.

THE MOTION FOR RECONSIDERATION IS HEREBY DENIED.

WCB CASE NO. 73-1277 APRIL 29, 1974
WCB CASE NO. 73-1278 APRIL 29, 1974
WCB CASE NO. 73-1279 APRIL 29, 1974

JEANNE D. PHILPOTT, CLAIMANT
EDWIN A YORK, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES WHETHER CLAIMANT HAS SUBMITTED SUFFICIENT MEDICAL REPORTS TO GIVE THE REFEREE JURISDICTION TO HEAR AND DECIDE HER AGGRAVATION CLAIMS.

THE CLAIMANT HAD A RIGHT FOOT INJURY, CLOSED BY DETERMINATION ORDER, A LOW BACK DISABILITY, CLOSED BY DETERMINATION ORDER, AND A LEFT FOOT INJURY, CLOSED BY DETERMINATION ORDER. CLAIMANT REQUESTED A HEARING ON THESE THREE CONSOLIDATED CASES FOR HER AGGRAVATION CLAIMS.

THE REFEREE RECESSED THE HEARING FOR PRESENTATION BY THE CLAIMANT OF ADEQUATE MEDICAL REPORTS TO GIVE THE REFEREE JURISDICTION TO HEAR THE AGGRAVATION CLAIMS. NOTHING FURTHER WAS PRESENTED. THE BOARD CONCURS WITH THE FINDING OF THE REFEREE THAT AT NEITHER HEARING DID THE CLAIMANT PRODUCE MEDICAL REPORTS OR MEDICAL TESTIMONY TO GIVE THE REFEREE JURISDICTION TO HEAR THE AGGRAVATION CLAIMS AS REQUIRED BY ORS 656.271. THE BOARD AFFIRMS AND ADOPTS THE CONSOLIDATED ORDER OF DISMISSAL OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED NOVEMBER 23, 1973, IS AFFIRMED.

WCB CASE NO. 73-2411 APRIL 29, 1974
WCB CASE NO. 73-1067 APRIL 29, 1974

THE BENEFICIARIES OF
MORRIS JONES, DECEASED
A. E. PIAZZA, CLAIMANTS' ATTY.
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY BENEFICIARIES

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

DECEDENT'S WIDOW REQUESTS REVIEW OF A HEARING OFFICER'S ORDER WHICH AFFIRMED THE DENIAL OF HER CLAIM FOR SURVIVOR'S BENEFITS.

THE FACTS CONCERNING DECEDENT'S COMPENSABLE INJURY AND SUBSEQUENT DEATH BY SUICIDE ARE WELL SET FORTH IN THE HEARING OFFICER'S FINDINGS AND WILL NOT BE REPEATED.

THE HEARING OFFICER CONCLUDED THAT BUT FOR THE INDUSTRIAL INJURY, THE SUICIDE PROBABLY WOULD NOT HAVE OCCURRED. HOWEVER,

AFTER REVIEWING THE POSITIONS OTHER JURISDICTIONS HAVE TAKEN ON THE COMPENSABILITY OF SUICIDAL DEATHS RELATED TO COMPENSABLE INJURIES AND EXAMINING THE ARGUMENTS IN SUPPORT OF THOSE POSITIONS, HE APPROVED THE DENIAL BECAUSE HE CONCLUDED THE DECEDENT DELIBERATELY INTENDED TO END HIS LIFE BY THE SUICIDAL ACT, THUS BARRING PAYMENT OF COMPENSATION BY VIRTUE OF ORS 656.156(1).

WE ARE NOT PERSUADED THAT ORS 656.156 (1) WAS MEANT TO BAR CLAIMS FOR COMPENSATION IN EVERY CASE WHERE THE WORKMAN WILLED HIS OWN DEATH. WILLIAM TOLBERT, DEC., WCB 68-1646 (DECEMBER 5, 1969).

THE STATUTE BARS COMPENSATION ONLY WHERE THE DEATH OR INJURY RESULTED FROM THE DELIBERATE INTENTION OF THE WORKMAN TO PRODUCE SUCH DEATH OR INJURY. THE HEARING OFFICER STATED - 'THE QUESTION IS WHETHER OR NOT THE DECEDENT HAD THE DELIBERATE INTENTION TO COMMIT SUICIDE.' FROM THIS, IT APPEARS THE HEARING OFFICER PRESUMED THE DECEDENT'S ABILITY TO FORM A 'DELIBERATE INTENT', FROM THE FACT THAT HE SUCCESSFULLY EXECUTED HIS SUICIDAL PLAN.

WE THINK IT GOES FARTHER THAN THAT. 'DELIBERATION' RELATES TO THE WORKING OF THE MIND AND PRESUPPOSES A MIND CAPABLE OF EFFECTIVELY FUNCTIONING IN SUCH CAPACITY. STATE V. JANCIGAJ, 54 OR 361, 366 (1909). IT INVOLVES MORE THAN MERE INTELLECTUAL COGNITION BUT REQUIRES EMOTIONAL APPRECIATION AS WELL FOR THE MIND TO BE FULLY CONSCIOUS OF ITS OWN PURPOSE AND DESIGN. STATE V. DYER, 98 OAS 805 -- OR APP -- (JANUARY 21, 1974).

THE EFFECTS OF AN INJURY CAN TOTALLY OR PARTIALLY IMPAIR A PERSON'S CAPACITY TO DELIBERATE. HARPER V. INDUSTRIAL COMMISSION, ET AL, 24 ILL 2D 103, 180 N. E. 2D 480 (1962) - DANIELS V. NEW YORK, N. H. AND H. R. CO., 183 MASS. 393, 67 N. E. 424 (1903) - TOLBERT, SUPRA. WE DO NOT BELIEVE THE LEGISLATURE INTENDED, IN WORKMAN'S COMPENSATION CASES, TO BAR THE CLAIMS OF BENEFICIARIES UNLESS THE DECEDENT WAS TOTALLY UNCONSCIOUS OF THE NATURE AND QUALITY OF HIS SUICIDAL ACT, WHILE AT THE SAME TIME EXCUSING AN ACT OF HOMICIDE IF THE KILLER LACKED SUBSTANTIAL CAPACITY AS A RESULT OF MENTAL DISEASE OR DEFECT, TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW. ORS 161.295.

REGARDLESS OF THE INTERPRETATION PLACED ON ORS 656.156(1), WE DO CONCUR IN THE APPROVAL OF THE DENIAL. WE COME TO THAT CONCLUSION BECAUSE THE EVIDENCE FAILS TO AFFIRMATIVELY SHOW A CAUSAL CONNECTION BETWEEN THE COMPENSABLE INJURY AND THE DECEDENT'S DEATH. AS THE HEARING OFFICER'S FINDINGS NOTE, DR. ARLEN QUAN, WHILE FINDING A PSYCHIATRIC CONDITION RELATED TO THE ACCIDENT, FAILED TO CONNECT THE ACT OF SUICIDE WITH THAT PSYCHIATRIC CONDITION. THE COMPLICATED QUESTION OF PSYCHIATRIC CAUSE AND EFFECT REQUIRES PROOF BY WAY OF EXPERT TESTIMONY. IT IS THE BENEFICIARY'S BURDEN TO PRODUCE THAT EVIDENCE. IT IS LACKING IN THIS RECORD. SINCE THE EVIDENCE IS LACKING, THE HEARING OFFICER'S ORDER APPROVING THE DENIAL MUST BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER, DATED OCTOBER 9, 1973, IS AFFIRMED.

WAYNE ODOM, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS REVIEW OF A REFEREE'S ORDER AWARDING HIM A TOTAL OF 96 DEGREES (30 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY), CONTENDING HIS DISABILITY EXCEEDS THAT AWARDED.

OUR REVIEW OF THE EVIDENCE REVEALS TO US THAT CLAIMANT HAS CONSIDERABLE PHYSICAL IMPAIRMENT IN THE UNSCHEDULED AREA. HE POSSESSES, HOWEVER, SUFFICIENT INTELLIGENCE, APTITUDES, TRAINING, AND EXPERIENCE TO SIGNIFICANTLY MINIMIZE THE IMPACT OF HIS PHYSICAL IMPAIRMENTS ON HIS EARNING CAPACITY. KEEPING IN MIND THAT UNSCHEDULED PERMANENT DISABILITY COMPENSATION IS RELATED PERMANENT LOSS OF EARNING CAPACITY, WE CONCLUDE THAT CLAIMANT HAS BEEN ADEQUATELY COMPENSATED.

CLAIMANT IS ENTITLED TO RECEIVE ASSISTANCE IN JOB PLACEMENT FROM THE BOARD'S DISABILITY PREVENTION DIVISION. BY A COPY OF THIS ORDER, THAT DIVISION IS REQUESTED TO EXTEND ITS SERVICES TO THE CLAIMANT IF HE IS INTERESTED IN PURSUING THIS AVENUE OF AID.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 26, 1973, IS AFFIRMED.

JACOB BALLWEBER, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
DEPT. 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 OPINION AND ORDER FINDING CLAIMANT'S CLAIM WAS NOT BARRED BY LATE FILING AND THAT HE HAD SUFFERED A COMPENSABLE INJURY AS ALLEGED.

THE FACTS ARE WELL SET FORTH IN THE HEARING OFFICER'S FINDINGS AND WILL NOT BE REPEATED HERE.

REGARDING THE ISSUE OF TIMELINESS, WE CONCLUDE THE FUND HAS FAILED TO AFFIRMATIVELY SHOW PREJUDICE AND THEREFORE, CLAIMANT'S CLAIM IS NOT BARRED BY ORS 656.265. SATTERFIELD V. SCD, 10 OR APP 524 (1970).

THE FUND ARGUES THAT CLAIMANT DID NOT ACTUALLY INJURE HIMSELF LIFTING THE WINCH ON OCTOBER 25, 1972, BUT INSTEAD SUFFERED A SPONTANEOUS AGGRAVATION OF AN EARLIER NON-INDUSTRIAL WHIPLASH INJURY.

THE HEARING OFFICER BELIEVED THE CLAIMANT'S TESTIMONY THAT HE SUFFERED A SIGNIFICANT SETBACK AS A RESULT OF THE LIFTING INCIDENT. THE TESTIMONY OF DR. STEINMANN IS HIGHLY CORROBORATIVE OF THE CLAIMANT'S ALLEGATIONS - AND WE CONCLUDE, KEEPING IN MIND THE RULE THAT THE EMPLOYER TAKES THE WORKMAN AS HE FINDS HIM, THAT CLAIMANT SUFFERED A NEW COMPENSABLE INJURY TO HIS NECK AND UPPER BACK ON OCTOBER 25, 1972.

THE ORDER OF THE HEARING OFFICER BELIEVED THE CLAIMANT'S TESTIMONY THAT HE SUFFERED A SIGNIFICANT SETBACK AS A RESULT OF THE LIFTING INCIDENT. THE TESTIMONY OF DR. STEINMANN IS HIGHLY CORROBORATIVE OF THE CLAIMANT'S ALLEGATIONS - AND WE CONCLUDE, KEEPING IN MIND THE RULE THAT THE EMPLOYER TAKES THE WORKMAN AS HE FINDS HIM, THAT CLAIMANT SUFFERED A NEW COMPENSABLE INJURY TO HIS NECK AND UPPER BACK ON OCTOBER 25, 1972.

THE ORDER OF THE HEARING OFFICER SHOULD, THEREFORE, BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER, DATED AUGUST 31, 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.

WCB CASE NO. 73-1895 APRIL 29, 1974

JAMES GREEN, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER AFFIRMING A DETERMINATION ORDER. THE BASIC ISSUE ON REVIEW IS THE EXTENT OF PERMANENT DISABILITY.

CLAIMANT IS A NOW 47 YEAR OLD MAN WHO SUFFERED, AMONG OTHER THINGS, A RUPTURE OF HIS SPLEEN IN A FALL ON NOVEMBER 30, 1970, WHILE WORKING AS AN IRON WORKER. AN EXPLORATORY LAPAROTOMY AND SPLENECTOMY WAS PERFORMED BY DR. RONALD GRAHAM ON THE SAME DAY. AFTER RECOVERING FROM THIS AND OTHER INJURIES RECEIVED IN THE FALL, HE WAS DETERMINED TO HAVE SUFFERED UNSCHEDULED PERMANENT DISABILITY EQUAL TO 48 DEGREES OR 15 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

HE THEREAFTER RETURNED TO IRON WORK, WORKING OUT OF A UNION HIRING HALL, BUT HAD PROGRESSIVELY WORSENING PAIN ALONG THE MEDIAL ASPECT OF THE LEFT SUBCOSTAL INCISION SITE.

DR. RICHARD P. HALL, A MEDICAL CONSULTANT FOR THE STATE ACCIDENT INSURANCE FUND, CONCLUDED CLAIMANT'S PROBLEM WAS A COMPLICATION OF THE SPLEENECTOMY INCISION WHICH HE DESCRIBED AS A !!POST OPERATIVE VENTRAL HERNIA.!! JOIN EXHIBIT 12.

ON AUGUST 25, 1971, DR. GRAHAM SURGICALLY REPAIRED THE HERNIA. FOLLOWING HIS CONVALESCENCE FROM THAT SURGERY, THE CLAIM WAS CLOSED BY A SECOND DETERMINATION ORDER WHICH GRANTED NO ADDITIONAL PERMANENT DISABILITY COMPENSATION.

CLAIMANT AGAIN RETURNED TO WORK AND AGAIN DEVELOPED A VENTRAL HERNIA, THIS TIME SLIGHTLY BELOW THE AREA OF THE PREVIOUS VENTRAL HERNIA WHICH DR. GRAHAM HAD REPAIRED ON NOVEMBER 7, 1972. IN SPITE OF THE LATEST CORRECTIVE SURGERY, CLAIMANT HAS HAD PERSISTING PAIN AND WEAKNESS IN THE AREA OF THE EPIGASTRIUM WHICH CAUSED DR. GRAHAM TO RECOMMEND TO CLAIMANT A LIFTING LIMITATION OF 20 POUNDS AND AVOIDANCE OF WORK WHICH STRESSES THE MARKEDLY WEAKENED ABDOMINAL WALL.

CLAIMANT IS UNABLE TO RETURN TO IRON WORK OR WELDING FOR A LIVING. HE HAS FOUND WORK AS A MEAT CUTTER, WHICH HE LEARNED IN THE MILITARY SERVICE, BUT HE IS NOT ABLE TO DO ALL THE LIFTING THAT IS REQUIRED OF A JOURNEYMAN MEAT CUTTER. HIS PRESENT MEAT CUTTING JOB, HOWEVER, APPEARS TO HAVE A REASONABLE PROSPECT OF BECOMING A PERMANENT SITUATION WITH SUFFICIENT EARNINGS TO BE CONSIDERED REGULAR, GAINFUL, AND SUITABLE EMPLOYMENT. CLAIMANT'S DISABILITY IS, THEREFORE, NOT PERMANENT AND TOTAL.

THE ACCIDENTAL INJURY OF NOVEMBER 30, 1970, DID NOT CAUSE A HERNIA WITHIN THE MEANING OF ORS 656.220. IT PRODUCED A RUPTURED SPLEEN. HIS DISABILITY RESULTS NOT FROM A 'HERNIA' BUT FROM COMPLICATIONS OF HIS SPLEENECTOMY SURGERY. THUS, THE LIMITATION ON COMPENSATION PROVIDED BY ORS 656.220 DOES NOT APPLY. PREWITT V. SAIF, OAS 771, --- OR APP --- (1974) = TUCKER V. SIAC, 216 OR 74 (1959).

ON DE NOVO REVIEW, WE CONCLUDE CLAIMANT'S PERMANENT UNSCHEDULED DISABILITY RESULTING FROM THE COMPLICATIONS OF THE NOVEMBER 30, 1970, INJURY EQUALS 30 PERCENT OF THE MAXIMUM ALLOWABLE OR 96 DEGREES.

ORDER

CLAIMANT IS HEREBY AWARDED AN ADDITIONAL 48 DEGREES, MAKING A TOTAL AWARD FOR UNSCHEDULED DISABILITY RESULTING FROM THE ACCIDENT OF NOVEMBER 30, 1970, OF 96 DEGREES OR 30 PERCENT OF THE MAXIMUM ALLOWABLE.

CLAIMANT'S ATTORNEY IS AUTHORIZED TO RECEIVE 25 PERCENT OF THE INCREASED COMPENSATION AWARDED HEREBY TO A MAXIMUM OF FIFTEEN HUNDRED DOLLARS, FROM THE COMPENSATION AWARDED BY THIS ORDER.

APRIL 29, 1974

TOM GRAVES, CLAIMANT

DON G. SWINK, CLAIMANT'S ATTY.

COLLINS, FERRIS AND VELURE,

DEFENSE ATTYS.

REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS THE EXTENT OF DISABILITY. THE CLAIMANT CONTENDS HE IS PERMANENTLY TOTALLY DISABLED.

CLAIMANT HAS BEEN AWARDED A TOTAL OF 60 PERCENT LOSS OF LEFT LEG AND 45 PERCENT LOSS OF AN ARM BY SEPARATION FOR UNSCHEDULED DISABILITY. THE HEARING OFFICER AWARDED AN INCREASE OF 55 PERCENT FOR A TOTAL OF 100 PERCENT LOSS OF AN ARM BY SEPARATION FOR UNSCHEDULED DISABILITY.

CLAIMANT, NOW 64 YEARS OLD, WAS INJURED ON MAY 17, 1967, WHEN A LOG ROLLED OFF A TRUCK AND STRUCK HIM. NINE MONTHS AFTER THE INJURY, HE RETURNED TO WORK AS A WINCHMAN, DUMPING LOGS OFF THE LOGGING TRUCKS AND WORKED FOR APPROXIMATELY TWO YEARS. THE CLAIMANT CONTINUED HAVING MORE DIFFICULTY WORKING AND THE ATTENDING DOCTOR, IN DECEMBER 1970, WHEN THE CLAIMANT WAS 61 YEARS OLD, RECOMMENDED MEDICAL RETIREMENT. THE ATTENDING DOCTOR, IN MARCH 1971, EXPLAINED THAT THE CLAIMANT ASKED THAT THE DOCTOR SEND THE LETTER TO THE EMPLOYER RECOMMENDING MEDICAL RETIREMENT AND THAT THIS DOES NOT MEAN THAT THE CLAIMANT IS TOTALLY DISABLED. THE CLAIMANT IS DRAWING MONTHLY BENEFITS FROM THE EMPLOYER, APPARENTLY UNDER A UNION MEDICAL RETIREMENT PLAN, AND SOCIAL SECURITY.

A CONSULTING DOCTOR GAVE THE OPINION THAT CLAIMANT COULD WORK AS A PARKING LOT ATTENDANT AT MEDFORD AIRPORT. THE HEARING OFFICER FOUND THAT CLAIMANT HAD LIGHT WORK CAPABILITIES.

THE MEDICAL REPORTS, COMBINED WITH ALL OTHER FACTORS, DO NOT PLACE THE CLAIMANT PRIMA FACIE IN THE 'ODD-LOT' CATEGORY. WE MUST, THEREFORE, EXAMINE THE CLAIMANT'S MOTIVATION TO RETURN TO THE WORK FORCE. THE CLAIMANT REQUESTED FROM THE DOCTOR THE OPINION THAT CLAIMANT SHOULD RETIRE FOR MEDICAL REASONS. THE DOCTOR CLEARLY INDICATED IN A SUBSEQUENT LETTER THAT THIS WAS SOLICITED BY THE CLAIMANT FROM THE DOCTOR AND THE DOCTOR DID NOT CONSIDER THE CLAIMANT TO BE PERMANENTLY TOTALLY DISABLED. THE CLAIMANT HAS NOT ACTIVELY SOUGHT WORK OR REHABILITATION. THE CLAIMANT'S ALLEGATION THAT HIS CONDITION HAS 'PROGRESSIVELY DEGENERATED' IS NOT SUSTAINED BY THE MEDICAL REPORT OF DR. MCINTOSH OF MARCH 6, 1973, WHICH STATES THERE IS LITTLE CHANGE IN HIS CONDITION BETWEEN 1972 AND 1973.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE OPINION AND ORDER OF THE HEARING OFFICER.

ORDER

THE ORDER OF THE HEARING OFFICER, DATED OCTOBER 4, 1973, IS AFFIRMED.

APRIL 30, 1974

MYRNA EATWELL, CLAIMANT

RHOTEN, RHOTEN AND SPEERSTRA,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER GRANTING HER 15 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY (48 PERCENT) CONTENDING HER DISABILITY EXCEEDS THAT AWARDED.

CLAIMANT IS A 22 YEAR OLD WOMAN WHO SUFFERED A LUMBO-SACRAL STRAIN IN A FALL WHILE WORKING AS A PSYCHIATRIC AIDE AT FAIRVIEW HOSPITAL AND TRAINING CENTER ON MAY 15, 1972. SHE WAS TREATED CONSERVATIVELY BUT NOW SUFFERS FROM A CHRONIC LUMBOSACRAL STRAIN WHICH PREVENTS HER RETURN TO WORK AS AN AIDE OR TO OTHER WORK IN WHICH SHE IS EXPERIENCED.

ALTHOUGH SHE DOES HAVE SIGNIFICANT PHYSICAL DISABILITY, HER APPARENT INTELLIGENCE, APTITUDES AND MOTIVATION CAN REASONABLY BE EXPECTED TO MINIMIZE ITS PERMANENT IMPACT ON HER EARNING CAPACITY. WE CONCUR WITH THE REFEREE'S ASSESSMENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY AND CONCLUDE HIS ORDER SHOULD BE AFFIRMED.

OUR REVIEW CONVINCES US THIS CLAIMANT COULD BENEFIT FROM THE SERVICES OF OUR DISABILITY PREVENTION DIVISION IN HER RETRAINING EFFORTS. BY A COPY OF THIS ORDER, WE ARE ALERTING THAT DIVISION TO EXTEND ITS SERVICES TO THE CLAIMANT IF REQUESTED BY HER.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 12, 1973, IS AFFIRMED.

APRIL 30, 1974

ROY G. SELANDER, CLAIMANT

COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS REVIEW OF A REFEREE'S ORDER REOPENING HIS CLAIM FOR FURTHER TREATMENT AND TIME LOSS CONTENDING HE SHOULD RECEIVE TIME LOSS FROM AN EARLIER DATE AND ALSO CONTENDING THE COSTS OF CERTAIN MEDICAL REPORTS SHOULD BE BORNE BY THE FUND.

THE REFEREE CONCLUDED THAT CLAIMANT WAS NOT MEDICALLY STATIONARY BECAUSE OF THE PSYCHIATRIC ASPECTS OF HIS INJURY BUT

FURTHER CONCLUDED THAT TIME LOSS COMPENSATION SHOULD COMMENCE WITH THE DATE OF THE FIRST PROFESSIONAL PSYCHIATRIC APPOINTMENT.

ENTITLEMENT TO TEMPORARY TOTAL DISABILITY RELATES MORE SPECIFICALLY TO INABILITY TO WORK THAN TO PHYSICAL STATUS. WHETHER A MAN IS TOTALLY DISABLED FROM WORKING DUE TO PSYCHIATRIC, AS OPPOSED TO PHYSICAL DISABILITY, IS PARTICULARLY DIFFICULT TO ASCERTAIN. IT IS OFTEN SIMPLY A MATTER OF WHETHER A MAN WILL WORK, NOT WHETHER HE CAN WORK, IN PSYCHIATRIC MATTERS.

THE CLAIMANT'S TESTIMONY, AS EXCERPTED IN DEFENDANT'S BRIEF, REVEALS THAT CLAIMANT IS NONE TOO WILLING TO UNDERGO PSYCHOTHERAPY. UNDER THESE CIRCUMSTANCES, THE REFEREE WAS JUSTIFIED TO CONDITION CLAIMANT'S TIME LOSS ENTITLEMENT ON HIS ACCEPTANCE OF TREATMENT. ORS 656.325(2).

CLAIMANT ALSO OBJECTS TO THE REFEREE'S FAILURE TO ORDER THE FUND TO PAY THE COST OF DR. BROWN'S EXAMINATION AND REPORT. THE BOARD RECENTLY RULED IN THE CASE OF DONALD NEILSEN, WCB 73-1014, 73-1430 (4-19-74) THAT THE FUND IS LIABLE FOR THE COST OF DIAGNOSTIC PSYCHIATRIC INTERVIEWS AND REPORTS WHICH ARE USED IN LITIGATION IF THEY ARE ALSO REQUIRED FOR PROPER CURATIVE TREATMENT.

WE ALSO ADD, IN RESPONSE TO THE FACTS OF THIS CASE, THAT AS WELL AS BEING REQUIRED FOR PROPER CURATIVE TREATMENT, THEY MUST ACTUALLY BE USED IN SUCH TREATMENT. IN OTHER WORDS, IF MR. SELANDER DOES NOT ACCEPT THE TREATMENT SUGGESTED BY DR. BROWN'S REPORT, THE FUND NEED NOT PAY THE COST OF THE INTERVIEWS AND REPORT SINCE THEY WERE NEVER USED FOR ANYTHING BUT LITIGATION.

THE ORDER OF THE REFEREE REGARDING FURTHER TREATMENT, TIME LOSS, AND ATTORNEY'S FEES SHOULD BE AFFIRMED, BUT HIS ORDER SHOULD BE SUPPLEMENTED BY AN ORDER REQUIRING THE FUND TO PAY THE COST OF DR. BROWN'S DIAGNOSTIC INTERVIEWS AND REPORT ON THE CONDITION CLAIMANT AVAILS HIMSELF OF THE TREATMENT OFFERED.

ORDER

THE ORDER OF THE REFEREE, DATED OCTOBER 9, 1973, IS HEREBY AFFIRMED.

THE STATE ACCIDENT INSURANCE FUND IS HEREBY ORDERED TO PAY THE COST OF CLAIMANT'S EXAMINATION AND SUBSEQUENT REPORT RENDERED BY DR. CHARLES C. BROWN AND HOLD CLAIMANT AND HIS ATTORNEY HARMLESS ON ACCOUNT OF HAVING SECURED SAID SERVICES, ON THE CONDITION THAT CLAIMANT AVAIL HIMSELF OF, AND COOPERATE IN, THE OFFERED TREATMENT.

WCB CASE NO. 72-2389 APRIL 30, 1974

ESTELLA MURDOCK, CLAIMANT
BURTON J. FALLGREN, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.

ON NOVEMBER 27, 1973, A MEDICAL BOARD OF REVIEW WAS APPOINTED TO DECIDE THE CLAIMANT'S APPEAL OF A HEARING OFFICER'S ORDER AFFIRMING A DETERMINATION ORDER AWARD OF 32 DEGREES FOR UNSCHEDULED DISABILITY RESULTING FROM HER OCCUPATIONAL DISEASE.

ON APRIL 15, 1973, THE WORKMEN'S COMPENSATION BOARD RECEIVED THE FINDINGS OF THE MEDICAL BOARD OF REVIEW IN THE FORM OF MEDICAL REPORT BY DR. JOHN L. MARXER WHICH REPORT WAS ADOPTED AND APPROVED BY THE OTHER MEMBERS OF THE MEDICAL BOARD OF REVIEW. THE FINDINGS AND REPORT ARE ATTACHED HERETO AS EXHIBIT 'A.' ALSO ATTACHED, AS EXHIBIT 'B,' IS A SEPARATE REPORT RENDERED BY DR. RAAF.

THE ESSENTIAL CONCLUSION OF DR. MARXER'S MEDICAL REPORT IS THAT CLAIMANT'S PREVIOUS AWARD IS CERTAINLY ADEQUATE. THE EFFECT OF THIS CONCLUSION IS TO AFFIRM THE HEARING OFFICER'S ORDER.

PURSUANT TO ORS 656.814, THE FINDINGS OF THE MEDICAL BOARD OF REVIEW, AFFIRMING THE HEARING OFFICER'S ORDER, DATED DECEMBER 4, 1972, ARE HEREBY FILED AS FINAL AND BINDING.

WCB CASE NO. 73-1253 MAY 2, 1974

RONALD LARSON, CLAIMANT

COONS, MALAGON AND COLE, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.

ON APRIL 12, 1974, THE BOARD ISSUED AN ORDER GRANTING A MOTION TO RECONSIDER ITS ORDER ON REVIEW BASED ON THE FUND'S ALLEGATION THAT THE PARTIES HAD STIPULATED TO REOPENING OF THE CLAIMANT'S CLAIM.

HAVING NOW RECEIVED CLAIMANT'S RESPONSE, IT APPEARS THE REOPENING RELATES TO A SUBSEQUENT WORSENING OF HIS CONDITION AFTER HE HAD ORIGINALLY BECOME MEDICALLY STATIONARY. UNDER THESE CIRCUMSTANCES, THERE IS NO NECESSITY OF SETTING ASIDE THE PERMANENT DISABILITY AWARD PREVIOUSLY GRANTED. THE EFFECT OF THE BOARD'S ORDER ON REVIEW IS TO DECLARE HIS STATUS BEFORE THE WORSENING OCCURRED. THE HELTON CASE, CITED BY THE FUND, IS FACTUALLY DISTINGUISHABLE FROM THIS CASE.

IT IS TRUE CLAIMANT'S CLAIM WILL BE REEVALUATED UPON COMPLETION OF HIS CURRENT TREATMENT AND CONVALESCENCE. THE EVALUATORS MAY THEN FIND CLAIMANT'S PERMANENT DISABILITY HAS BEEN REDUCED, INCREASED, OR HAS REMAINED THE SAME. HOWEVER, BECAUSE THE REOPENING OF CLAIMANT'S CLAIM HAS SUSPENDED THE FUND'S OBLIGATION TO PAY THE PERMANENT DISABILITY COMPENSATION AWARDED BY OUR ORDER ON REVIEW UNTIL THE CLAIM IS AGAIN REEVALUATED, THE FUND WILL NOT BE PREJUDICED BY THE EXISTENCE OF THE PERMANENT DISABILITY AWARD.

THE COURT OF APPEALS HAS SPECIFICALLY RULED 'THERE IS NOTHING IN THE WORKMEN'S COMPENSATION LAW WHICH PROHIBITS AN INJURED EMPLOYEE FROM RECEIVING A PERMANENT PARTIAL DISABILITY AWARD AND THEN LATER RECEIVING TEMPORARY TOTAL DISABILITY BENEFITS IF HIS CONDITION DETERIORATES TO THE POINT WHERE HE CANNOT WORK.' HORN V. TIMBER PRODUCTS, INC., 12 OR APP 365 (1973). THIS IS PRECISELY THE SITUATION WE HAVE HERE. WE THUS CONCLUDE THAT THE PERMANENT DISABILITY AWARD GRANTED BY OUR ORDER ON REVIEW, DATED MARCH 14, 1974, SHOULD NOT BE SET ASIDE.

ORDER

THE ORDER ON REVIEW ENTERED IN THE ABOVE ENTITLED CASE ON MARCH 14, 1974, IS HEREBY RATIFIED IN ITS ENTIRETY AND REPUBLISHED AS THE BOARD'S FINAL ORDER ON REVIEW AS OF THE DATE OF THIS ORDER.

WCB CASE NO. 73-1740 MAY 3, 1974

BOB JOE SHELL, CLAIMANT
SAHLSTROM, STARR AND VINSON,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER AWARDING HIM 48 DEGREES OR 15 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT, A THEN 20 YEAR OLD CARPENTER, SUFFERED A COMPENSABLE LOW BACK INJURY ON DECEMBER 26, 1972, WHILE CARRYING LUMBER ON A CONSTRUCTION JOB. DR. CHEN TSAI PERFORMED BACK SURGERY ON JANUARY 12, 1973, FROM WHICH CLAIMANT HAS SUCCESSFULLY RECOVERED. UPON ADVICE NOT TO RETURN TO HEAVY CARPENTRY, CLAIMANT HAS TRAINED FOR AND IS EMPLOYED IN CABINET MAKING. WHILE CLAIMANT'S PRESENT EARNINGS HAVE BEEN REDUCED, HIS POTENTIAL FUTURE EARNINGS MAY SUBSTANTIALLY INCREASE WITH LESS PHYSICAL OUTPUT REQUIRED.

THE HEARINGS REFEREE WAS OF THE OPINION THAT CLAIMANT HAD BEEN ADEQUATELY COMPENSATED FOR ANY PERMANENT LOSS OF WAGE EARNING CAPACITY SUFFERED AS A RESULT OF THE INDUSTRIAL INJURY BY THE AWARD OF 48 DEGREES OR 15 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED INJURY.

THE BOARD, ON REVIEW, CONCURS WITH THE OPINION OF THE REFEREE AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 14, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 72-1484 MAY 3, 1974

THE BENEFICIARIES OF
ALFRED F. HOLST, DECEASED
HUSBAND, JOHNSON AND FECHTEL,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ABOVE ENTITLED MATTER INVOLVES THE ISSUE OF WHETHER A FATAL HEART ATTACK SUSTAINED BY A LOG TRUCK DRIVER WAS COMPENSABLY PRECIPITATED BY HIS WORK EFFORTS. THE WIDOW'S CLAIM WAS DENIED BY THE STATE ACCIDENT INSURANCE FUND. UPON HEARING, THE REFEREE ORDERED ALLOWANCE OF THE CLAIM AND PAYMENT OF BENEFITS. THE STATE ACCIDENT INSURANCE FUND HAS REQUESTED BOARD REVIEW OF THIS ORDER.

CLAIMANT WAS A LOG TRUCK DRIVER WHO SUFFERED A FATAL HEART ATTACK ON JANUARY 27, 1972. HE HAD DRIVEN A LOG TRUCK FOR APPROXIMATELY 30 YEARS, BUT HAD BEEN EMPLOYED ONLY TWO OR THREE MONTHS BY THIS EMPLOYER. DEATH CAME WHILE CLAIMANT WAS PUTTING ON TIRE CHAINS ON THE LOG TRUCK.

AS IN SO MANY HEART CASES, THE DECISION RESTS UPON THE ACCEPTANCE OF THE EXPERT MEDICAL TESTIMONY. ON DE NOVO REVIEW, WE CONCUR WITH THE REFEREE'S ACCEPTANCE THAT THE WORK THE CLAIMANT DID ON THE MORNING IN QUESTION WAS A MATERIAL CONTRIBUTING CAUSE OF CLAIMANT'S HEART ATTACK AND DEATH. THE ORDER OF THE REFEREE REQUIRING THE STATE ACCIDENT INSURANCE FUND TO ACCEPT THE CLAIM AND PAY BENEFITS SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED OCTOBER 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 RENDERED ON BOARD REVIEW.

WCB CASE NO. 73-944 MAY 6, 1974

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

A REFEREE'S ORDER GRANTED CLAIMANT AN ADDITIONAL 32 DEGREES FOR UNSCHEDULED DISABILITY, MAKING A TOTAL OF 80 DEGREES. CLAIMANT NOW SEEKS BOARD REVIEW OF THIS ORDER CONTENDING HE IS ENTITLED TO A GREATER PAID AWARD.

CLAIMANT HAD A GOOD EMPLOYMENT RECORD IN PLYWOOD MILLS, HAVING STARTED IN 1957 ON THE GREEN CHAIN AND HAD PROGRESSED TO THE PLACE WHERE HE COULD ACT AS A MILL SUPERINTENDENT. AFTER BEING OUT OF THE STATE OF OREGON FOR SOME TIME, HE RETURNED TO WORK AS A MILLWRIGHT AND ON SEPTEMBER 11, 1971, SUSTAINED A COMPENSABLE INJURY TO HIS BACK WHILE SO EMPLOYED. DR. WEINMAN PERFORMED A MYELOGRAM AND LUMBAR LAMINECTOMY WHICH HAS LEFT CLAIMANT WITH RESIDUALS PRECLUDING HIS RETURN TO MILL WORK.

THE REFEREE FOUND CLAIMANT TO BE HIGHLY MOTIVATED, TALENTED AND ANXIOUS TO SECURE RETRAINING AND ADDITIONAL EDUCATION. AT THE PRESENT, CLAIMANT IS NEARING COMPLETION OF A TWO-YEAR JUNIOR COLLEGE PROGRAM IN BUSINESS TECHNOLOGY WHERE HE HAS MADE A 3.67 G.P.A., AND IS DESIROUS OF CONTINUING HIS EDUCATION FOR ANOTHER TWO YEARS AND RECEIVE HIS BACHELOR'S DEGREE.

THE BOARD, ON REVIEW, CONCLUDES THE AWARD OF DISABILITY MADE BY THE REFEREE SHOULD BE AFFIRMED. CLAIMANT IS, HOWEVER, ADVISED TO CONTACT THE BOARD'S DISABILITY PREVENTION DIVISION WHICH CAN, IN APPROPRIATE CIRCUMSTANCES, PROVIDE ASSISTANCE IN FURTHER SCHOOLING FOR VOCATIONAL REHABILITATION PURPOSES.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 12, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 73-1007 MAY 6, 1974

ARTHUR CROUCH, CLAIMANT

BURTON BENNETT, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUES INVOLVED ARE WHETHER CLAIMANT IS ENTITLED TO FURTHER MEDICAL CARE AND TEMPORARY TOTAL DISABILITY OR, IF CLAIMANT IS MEDICALLY STATIONARY, THE EXTENT OF HIS PERMANENT DISABILITY.

THE DETERMINATION ORDER OF MARCH 6, 1973, TERMINATED TEMPORARY TOTAL DISABILITY EFFECTIVE MARCH 6, 1973, AND ESTABLISHED A 25 PERCENT UNSCHEDULED NECK AND SHOULDER DISABILITY. THE REFEREE REVERSED THE DETERMINATION ORDER AND FOUND CLAIMANT NOT TO BE MEDICALLY STATIONARY, ORDERING TEMPORARY TOTAL DISABILITY TO BE REINSTATED. THE BOARD REVERSES THE REFEREE AND REINSTATES THE DETERMINATION ORDER.

THE CLAIMANT, A 56 YEAR OLD, MARRIED, HEAVY EQUIPMENT OPERATOR, RECEIVED AN INDUSTRIAL INJURY NOVEMBER 23, 1970. IT IS INTERESTING TO NOTE THAT THE ORIGINAL 801 REPORT OF ACCIDENT STATES "DRIVING GRADER, HIT ROCK -- STRUCK SHOULDER AGAINST STEEL STEERING WHEEL." THE INITIAL REPORT FROM THE ATTENDING PHYSICIAN STATES "RUNNING A GRADER -- HIT CHEST AND SHOULDER AGAINST STEERING WHEEL." ANOTHER ATTENDING PHYSICIAN GIVES A HISTORY OF THE PATIENT DRIVING A GRADER WHEN THE GRADER SUDDENTLY STOPPED. THE CLAIMANT'S TESTIMONY AND THE SUBSEQUENT MEDICAL REPORTS REFLECT A COLLISION BETWEEN THE GRADER AND A LOGGING TRUCK. REGARDLESS OF THIS DISCREPANCY IN THE RECORD, THE BOARD ACCEPTS THE FINDING THAT CLAIMANT WAS INJURED WHILE OPERATING A ROAD GRADER.

CLAIMANT HAS RECEIVED CONSERVATIVE CARE SINCE THE DATE OF THE ACCIDENT, NOVEMBER 23, 1970. A CHRONOLOGICAL RECITAL OF THE TREATMENT AND EXAMINATION BY THE VARIOUS DOCTORS IS AS FOLLOWS -

1. DR. JOHN H. WEARE, M.D., BURNS, OREGON = FIRST TREATMENT NOVEMBER 23, 1970. PRESCRIBED REST AND HEAT AND ESTIMATED THE TIME FOR RETURN TO REGULAR EMPLOYMENT OF ONE TO TWO WEEKS.
2. DR. WILLIAM D. GUYER, M.D. = SAW THE CLAIMANT NOVEMBER 24, 1970, AND REPORTED CLAIMANT HAD NO GROSS BRUISING OR DEFORMITY OF THE CHEST OR SHOULDERS. ESTIMATED CLAIMANT WOULD BE OFF WORK FOR A COUPLE OF WEEKS, BUT THEN WOULD BE ABLE TO RESUME ACTIVITIES.
3. DR. WILLIAM D. GUYER, M.D. = REPORT OF JANUARY 11, 1971, REFLECTS DATE OF LAST TREATMENT, DECEMBER 16, 1970, STATING CLAIMANT CANCELED THE APPOINTMENT OF JANUARY 6, 1971, AND THAT HE WAS CHANGING DOCTORS.

4. REPORT OF FEBRUARY 16, 1971 = DR. EDWARD FORBY, M.D. = REFLECTING DATE OF LAST TREATMENT FEBRUARY 8, 1971 AND IS REFERRING PATIENT TO DR. THOMAS ADAMS.
5. REPORT, DATED FEBRUARY 26, 1971 = DR. THOMAS ADAMS, M.D. = SHOWING DATE OF LAST TREATMENT FEBRUARY 26, 1971, AND ESTIMATING THREE WEEKS FURTHER TIME LOSS.
6. NUMEROUS REPORTS FROM DR. R. L. CUTTER, M.D. - AND BILLINGS SHOWING OFFICE CALLS WITH DR. CUTTER AND PHYSICAL THERAPY TREATMENTS FROM MARCH 18, 1971 TO OCTOBER 19, 1972, CONSISTING OF 151 PHYSICAL THERAPY TREATMENTS AND 14 OFFICE CALLS.
7. REPORT, DATED SEPTEMBER 14, 1972, FROM DR. ANTHONY S. WATTLEWORTH, M.D., BEND ORTHOPEDIC AND FRACTURE CLINIC, REFLECTING THE PATIENT SEEMS TO BE STABLE AT THIS TIME AND THERE IS SOME PERMANENT DISABILITY.
8. LETTER OF OCTOBER 5, 1972, FROM DR. CUTTER, REBUTTING THAT PATIENT WAS STABLE.
9. INITIAL REPORT FROM DR. RINEHART OF OCTOBER 23, 1972, AND SUBSEQUENT REPORTS AND BILLINGS FOR 16 OFFICE CALLS AND 45 PHYSICAL THERAPY TREATMENTS FROM OCTOBER 23, 1972 TO MARCH 2, 1973.
10. DISABILITY PREVENTION DIVISION WORK-UP INCLUDING PSYCHOLOGIST DR. NORMAN HICKMAN'S STATEMENT THAT PROGNOSIS FOR RESTORATION AND REHABILITATION IS RELATIVELY GOOD AS FAR AS PSYCHOLOGICAL FACTORS ARE CONCERNED AND BACK EVALUATION CLINIC REPORT, SIGNED BY TWO ORTHOPEDIC SURGEONS AND A NEUROSURGEON, RECOMMENDING THAT THE PATIENT NOT RECEIVE FURTHER TREATMENT, THAT THE PATIENT'S CONDITION IS STATIONARY AND HIS CLAIM CAN BE CLOSED. FURTHER, THAT THE PATIENT IS ABLE TO RETURN TO HIS FORMER OCCUPATION AND THE PATIENT HAS A MILDLY MODERATE LOSS OF FUNCTIONS DUE TO THE INDUSTRIAL INJURY. THIS REPORT IS DATED OCTOBER 31, 1972.
11. OCTOBER 31, 1972, REPORT FROM DR. RINEHART INDICATING 'MR. CROUCH PRESENTS A CLASSICAL SYMPTOM COMPLEX WHICH IS POORLY UNDERSTOOD BY THE MAJORITY OF THE MEDICAL PROFESSION, AND FURTHER, IT IS MY OPINION THAT HE IS PRESENTLY TOTALLY DISABLED AND WILL REMAIN SO FOR PERHAPS A YEAR.
12. A LETTER OF DECEMBER 14, 1972, SIGNED BY DR. R. E. RINEHART, SHOWING THAT THE TEMPORARY DISABILITY CONTINUES AND ANTICIPATING CONSERVATIVE TREATMENT OVER THIS NEXT SEVERAL MONTHS.

THE BOARD DOES NOT ACCEPT OR CONDONE THE REMARKS OF CLAIMANT'S COUNSEL IN HIS OPENING STATEMENT AS REFLECTED IN THE RECORD MADE AT THE HEARING. (P 11, L 13 AND 14 = LINES 3, 4, 5, 6, 9, 10, 11, 12, 13). THE BOARD IS PERSUADED BY THE MEDICAL REPORTS AND OPINIONS OF THE ORTHOPEDISTS, THE NEUROLOGIST, AND GENERAL PRACTITIONERS WHO EXAMINED AND TREATED CLAIMANT SHORTLY AFTER THE INJURY, THAT THE CLAIMANT'S CONDITION IS MEDICALLY STATIONARY AND HAS BEEN SINCE MARCH 6, 1973. THE BOARD FURTHER CONCURS WITH THE DETERMINATION ORDER THAT 25 PERCENT UNSCHEDULED PERMANENT PARTIAL DISABILITY ADEQUATELY COMPENSATES THE CLAIMANT'S PERMANENT DISABILITY.

PURSUANT TO ORS 656.245 (2) CLAIMANT IS ENTITLED TO CHOOSE HIS OWN TREATING PHYSICIAN. HOWEVER, ORS 656.245 (1) OBLIGATES THE FUND TO PROVIDE MEDICAL SERVICES ONLY FOR SO LONG = = = AS

THE NATURE OF THE INJURY OR THE PROCESS OF RECOVERY REQUIRES -- -- --'.
ORS 656.268 ESTABLISHES THAT THE WORKMEN'S COMPENSATION BOARD,
RATHER THAN THE TREATING PHYSICIAN, CLAIMANT, OR THE STATE
ACCIDENT INSURANCE FUND HAS THE POWER AND AUTHORITY TO DETERMINE,
BASED ON FACTUAL EVIDENCE, WHEN THAT POINT HAS BEEN REACHED.

THE BOARD HAS PREVIOUSLY BEEN REQUESTED TO RESOLVE CONFLICTS
BETWEEN DR. RINEHART'S RECOMMENDATIONS AND THE RECOMMENDATIONS
OF OTHER PHYSICIANS. FLORENCE SPARGUR, WCB CASE NO. 72-2280 AND
72-2730, ORDER ON REVIEW, JUNE 6, 1973. IN THIS CASE, AS IN THE
SPARGUR CASE, WE ARE NOT REJECTING DR. RINEHART'S OPINION OUT OF
HAND -- WE ARE SIMPLY PERSUADED BY OUR DE NOVO REVIEW THAT THE
MINISTRATIONS OF DR. RINEHART WERE NOT REQUIRED BY THE NATURE OF
THE INJURY NOR DID THEY AID THE PROCESS OF CLAIMANT'S RECOVERY.
THE BOARD'S EVALUATION DIVISION, IN NOT TERMINATING TIME LOSS
BEFORE MARCH 6, 1973 GAVE CLAIMANT THE BENEFIT OF THE DOUBT.

WE ARE ALSO PERSUADED BY A PREPONDERANCE OF THE EVIDENCE
THAT CLAIMANT IS NOT PHYSICALLY PREVENTED FROM RETURNING TO
FULL TIME WORK OF THE SORT HE FORMERLY PURSUED. THE REFEREE'S
ORDER SHOULD BE REVERSED AND THE DETERMINATION ORDER DATED MARCH
6, 1973 SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 19, 1973 IS
REVERSED AND THE DETERMINATION ORDER DATED MARCH 6, 1973 IS
AFFIRMED.

PURSUANT TO ORS 656.313, NO COMPENSATION PAID PURSUANT TO
THE REFEREE'S ORDER IS RECOVERABLE.

WCB CASE NO. 73-1288 MAY 7, 1974

MILAN UPPENDAHL, CLAIMANT
MILO W. POPE, CLAIMANT'S ATTY.
ROGER WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A REFEREE'S ORDER WHICH
DISMISSED THE CLAIMANT'S REQUEST FOR HEARING FOR INCREASED
COMPENSATION ON ACCOUNT OF AGGRAVATION ON THE GROUNDS THAT THE
MEDICAL REPORTS SUBMITTED WERE NOT SUFFICIENT TO CONFER JURISDIC-
TION REQUIRED BY ORS 656.271(1).

THE BOARD, ON REVIEW, NOTES THE RECENT DECISION OF THE
COURT APPEALS IN THE CASE OF DONALD MCKINNEY V. G. L. PINE, INC.,
98 ADV SH 1440, --- OR APP --- (MARCH, 1974) WHICH STATES --

''. . . IN ORDER TO SUPPORT AN AGGRAVATION CLAIM,
THE PHYSICIAN'S OPINION WOULD HAVE HAD TO
INDICATE THAT THERE WAS A REASONABLE BASIS FOR
BELIEVING THAT CLAIMANT'S CONDITION HAD WORSENEDED
. . . IT DOES NOT DO SO. IT STATES ONLY THAT
CLAIMANT HAS EXPERIENCED 'MORE PAIN' SINCE HIS
INJURY. . . THERE IS NO INDICATION OF WHAT
CHANGE, IF ANY, OCCURRED. . . !!

THAT RULING IS APPLICABLE TO THE FACTS OF THIS CASE.

THE BOARD CONCURS WITH THE FINDING OF THE REFEREE AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 4, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 73-1554 MAY 7, 1974

CHARLES BALLARD, CLAIMANT
BABCOCK AND ACKERMAN, CLAIMANT'S ATTY.
PHILIP A. MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A CLAIMANT WHO SUSTAINED A BACK INJURY FOR WHICH HE WAS GRANTED A PERMANENT PARTIAL DISABILITY AWARD EQUAL TO 25 PERCENT OR 80 DEGREES UNSCHEDULED DISABILITY BY DETERMINATION ORDER. THE HEARING OFFICER GRANTED AN ADDITIONAL AWARD, MAKING A TOTAL OF 35 PERCENT OR 112 DEGREES. CLAIMANT REQUESTS BOARD REVIEW OF THIS ORDER, CLAIMING HE IS ENTITLED TO A GREATER AWARD OF DISABILITY.

CLAIMANT'S WORK HISTORY BEGAN IN 1958 WORKING FOR DEFENDANT EMPLOYER, FOLLOWED BY SEVERAL YEARS OF MILITARY SERVICE, SEVERAL YEARS OF OUT-OF-STATE EMPLOYMENT AND A RETURN TO OREGON TO WORK FOR THE SAME EMPLOYER, AL PIERCE LUMBER COMPANY.

ON APRIL 2, 1971, CLAIMANT INJURED HIS BACK WHICH RESULTED IN A FUSION AND LEAVING SOME RESIDUAL DISABILITY. AN ATTEMPT TO RETURN TO WORK WAS NOT SUCCESSFUL AND CLAIMANT QUIT IN MAY, 1973.

CLAIMANT IS A YOUNG MAN, 35 YEARS OLD, WHO HAS HAD TRAINING AS AN AIRCRAFT MECHANIC AND LACKS JUST A FEW HOURS SHORT OF OBTAINING A COMMERCIAL PILOT'S LICENSE. IN ADDITION, CLAIMANT HAS BEEN FURNISHED A FISHING BOAT BY HIS FATHER, WHICH HE AND HIS WIFE HAVE BEEN USING TO DO COMMERCIAL FISHING. ALTHOUGH CLAIMANT IS NOW PRECLUDED FROM RETURNING TO THE HEAVY TYPE WORK WHICH HE HAD ALWAYS DONE, HE DOES HAVE AT LEAST THESE TWO AREAS IN WHICH HE CAN SUCCESSFULLY WORK. HOWEVER, THE EVIDENCE CONCERNING THE EXTENT TO WHICH HIS EARNINGS HAVE BEEN PERMANENTLY REDUCED IS, IN SUMMARY, VAGUE AND IMPRECISE.

THE BOARD, ON REVIEW, FINDS THE EVIDENCE WITH RESPECT TO CLAIMANT'S EARNING CAPACITY DOES NOT SUBSTANTIATE A FINDING OF A GREATER AWARD OF DISABILITY.

ORDER

THE ORDER OF THE HEARING OFFICER, DATED SEPTEMBER 14, 1973, IS HEREBY AFFIRMED.

SANDRA HUSSEY, CLAIMANT
BURTON J. FALLGREN, CLAIMANT'S ATTY.
MCMENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER SEEKING ADDITIONAL TIME LOSS COMPENSATION TO OCTOBER 1, 1973, AND CONTENDING THE AWARD OF 48 DEGREES PERMANENT PARTIAL DISABILITY, GRANTED BY A DETERMINATION ORDER, IS INADEQUATE. AT HEARING, THE REFEREE ALLOWED TIME LOSS FROM JANUARY 30, 1973 TO JULY 11, 1973, ASSESSED A PENALTY FOR UNREASONABLE RESISTANCE AND DELAY, AND AFFIRMED THE PERMANENT DISABILITY AWARD.

CLAIMANT, AGE 38, WAS EMPLOYED AS A NURSE'S AIDE WHEN SHE SLIPPED AND FELL ON A WET FLOOR, SUFFERING A LOW BACK STRAIN ON MAY 2, 1972. SHE RECEIVED CONSERVATIVE TREATMENT BUT RECOVERY WAS HAMPERED BY HER EXTREME OBESITY.

TIME LOSS COMPENSATION WAS TERMINATED AS OF JANUARY 30, 1973, WHEN CLAIMANT TELEPHONED TO REPORT SHE WISHED TO RETURN TO WORK. CLAIMANT DID NOT ACTUALLY DO SO FOR REASONS THAT ARE DISPUTED BY THE PARTIES. THEREAFTER, NO FURTHER PAYMENTS WERE MADE UNTIL AUGUST 10, 1973, IN SPITE OF MEDICAL EVIDENCE RECEIVED IN MAY INDICATING THEIR NECESSITY. THE REFEREE CORRECTLY OBSERVED, IN AWARDING PENALTIES, THAT THE EMPLOYER'S HANDLING OF THIS MATTER WAS UNREASONABLE. HE AWARDED TIME LOSS FROM JANUARY 30, 1973, TO JULY 11, 1973, THE POINT AT WHICH DR. BERSELLI REPORTED CLAIMANT'S CONDITION WAS STATIONARY. ALTHOUGH DR. BERSELLI'S LETTER REPORTED HER CONDITION MEDICALLY STATIONARY, HE WENT ON TO STATE IN THE SAME LETTER -

'2. I DO THINK SHE WAS TOTALLY DISABLED AFTER MAY 18, 1973.

'3. AT THIS POINT I DO NOT FEEL SHE IS NOW ABLE TO WORK.'
JOINT EXHIBIT E.

IT WAS NOT UNTIL OCTOBER 1, 1973 THAT HE CONCLUDED SHE COULD NOW RETURN TO WORK ON A FULL TIME BASIS (HEARING OFFICER'S EXHIBIT 1).

WE ARE OF THE OPINION THAT CLAIMANT IS ENTITLED TO TIME LOSS TO OCTOBER 1, 1973, BEING THE FIRST POINT, OF RECORD, THAT THE TREATING PHYSICIAN INDICATED CLAIMANT COULD BE SELF SUPPORTING FOLLOWING THE INJURY. THE REFEREE'S ORDER SHOULD BE MODIFIED ACCORDINGLY.

REGARDING THE EXTENT OF PERMANENT DISABILITY ISSUE, CLAIMANT CONTENDS THE EMPLOYER MUST COMPENSATE CLAIMANT FOR THE DISABLING EFFECTS OF HER OBESITY, CITING THE AXIOM THAT 'THE EMPLOYER TAKES THE WORKMAN AS HE FINDS HIM' AND THE RECENT CASES OF HOFFMAN V. BUMBLE BEE SEAFOODS, 97 ADV SH 2146 (1973) AND PATITUCCI V. BOISE CASCADE CORP., 8 OR APP 503 (1972). THE HOFFMAN CASE DEALT WITH THE QUESTION OF WHETHER A COMPENSABLE ACCIDENTAL INJURY HAD OCCURRED RATHER THAN WITH THE ISSUE OF PERMANENT DISABILITY.

HOFFMAN WAS AN OBESE WORKER WHO FILLETED AND SCALED FISH. HER OBESITY ALONE PRODUCED STRESS AND STRAIN ON HER BODY STRUCTURE. THE STRAIN PRODUCED BY HER WORK, WHEN ADDED WITH THE OBESITY CAUSED STRAIN, INJURED HER BACK. WITHOUT THE OBESITY, PROBABLY NO INJURY WOULD HAVE OCCURRED. LIKEWISE, WITHOUT THE WORK STRAIN, SHE PROBABLY WOULD NOT HAVE SUFFERED INJURY. THE BOARD, THEREFORE, FOUND THAT HER INJURY WAS COMPENSABLE ON THE BASIS THAT THE EMPLOYER TAKES THE WORKMAN AS HE FINDS HIM.

IN THIS CASE, WE ARE DEALING WITH A DIFFERENT ISSUE THAN IN HOFFMAN. WE RECOGNIZE CLAIMANT'S OBESITY PROBABLY PRODUCED A MORE SEVERE PHYSICAL INJURY AND A MORE SEVERE PERMANENT PHYSICAL IMPAIRMENT AS A CONSEQUENCE THAN WOULD HAVE OCCURRED TO A PERSON OF NORMAL WEIGHT. THE PERMANENT DISABLING EFFECT OF THE OBESITY PRODUCED IMPAIRMENT IS LEGALLY A LIABILITY OF THE EMPLOYER UNDER THE 'EMPLOYER TAKES THE WORKMAN AS HE FINDS HIM' DOCTRINE.

THE CLAIMANT'S OBESITY, COMBINED WITH HER INJURY PRODUCED DISABILITY, MAKES HER A LESS DESIRABLE PROSPECTIVE EMPLOYEE. ASSUMING SHE REMAINS OBESE, SHE WILL PROBABLY HAVE CONTINUING DIFFICULTY OBTAINING AND HOLDING EMPLOYMENT.

IN PATITUCCI, CLAIMANT HAD AN UNDERLYING AND PREEXISTING NEUROSIS WHICH WAS FIXED AND UNTREATABLE. HER PHYSICAL IMPAIRMENT AND THE NEUROTIC REACTION TO IT, BEING PERMANENT, RENDERED HER PERMANENTLY AND TOTALLY DISABLED. THE EMPLOYER WAS LIABLE FOR ALL THE DISABILITY BECAUSE THE COMBINATION OF FACTORS RESULTED IN A PERMANENT CONDITION.

HERE, WE ARE ALSO DEALING WITH A COMBINATION OF FACTORS - PHYSICAL IMPAIRMENT, WHICH IS BEYOND THE ABILITY OF CLAIMANT TO CHANGE, AND OBESITY.

WE RECOGNIZE THAT FOR SOME PEOPLE, LOSING WEIGHT IS EXTREMELY DIFFICULT. HOWEVER, IT IS WITHIN THE REALM OF THE POSSIBLE AND THUS IS NOT A PERMANENT CONDITION. ADDITIONALLY, ORS 656.325 REQUIRES INJURED WORKMEN TO, IN EFFECT, 'MITIGATE THE DAMAGES' RESULTING FROM AN INDUSTRIAL INJURY.

CLAIMANT CANNOT VOLUNTARILY REMAIN OBESE AND DEMAND PERMANENT DISABILITY COMPENSATION FOR THE ADVERSE ECONOMIC CONSEQUENCES WHICH NATURALLY RESULT FROM THE OBESITY SIMPLY BECAUSE SHE HAS SUFFERED A COMPENSABLE INJURY.

THE REFEREE CORRECTLY RULED IN AFFIRMING THE DETERMINATION ORDER, THAT '... A REALISTIC EVALUATION OF CLAIMANT'S ABILITY TO WORK, BEING COMPOUNDED BY HER SEVERE OVERWEIGHT PROBLEM, REMAINS PURELY SPECULATIVE.'

HAVING REVIEWED THE RECORD DE NOVO, WE CONCUR WITH THE OPINION OF THE REFEREE CONCERNING CLAIMANT'S DISABILITY AWARD.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 6, 1973 IS HEREBY MODIFIED TO ALLOW CLAIMANT TEMPORARY TOTAL DISABILITY THROUGH OCTOBER 1, 1973.

THE REFEREE'S ORDER IS HEREBY AFFIRMED IN ALL OTHER RESPECTS.

CLAIMANT'S ATTORNEY IS TO RECEIVE AS A FEE, 25 PERCENT OF THE INCREASED COMPENSATION AWARDED HEREBY, PAYABLE FROM SAID AWARD, WHICH, WHEN COMBINED WITH FEES RECEIVED UNDER THE REFEREE'S ORDER, SHALL NOT EXCEED FIFTEEN HUNDRED DOLLARS.

WCB CASE NO. 73-1824 MAY 8, 1974

LARRY DAVIS, CLAIMANT

ADY AND BLAIR, CLAIMANT'S ATTYS.
RHOTEN, RHOTEN AND SPEERSTRA,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS CLAIMANT, A 35 YEAR OLD CANNERY WORKER, SUSTAINED A COMPENSABLE INJURY ON OR ABOUT JANUARY 14, 1972, AND BY DETERMINATION ORDER OF OCTOBER 2, 1972, WAS AWARDED 15 PERCENT UNSCHEDULED NECK DISABILITY EQUAL TO 48 DEGREES. UPON HEARING, THE REFEREE AWARDED CLAIMANT AN ADDITIONAL 48 DEGREES FOR A TOTAL UNSCHEDULED AWARD OF 96 DEGREES. THE EMPLOYER REQUESTS BOARD REVIEW OF THIS ORDER, CONTENDING THE MEDICAL REPORTS AND LAY TESTIMONY DO NOT SUPPORT SUCH AN INCREASE.

CLAIMANT WAS HOSPITALIZED AND UNDERWENT A MYELOGRAM AND AN ANTERIOR DISC REMOVAL AND FUSION, C5-6 AND C6-7 FOLLOWING WHICH HIS CONDITION IMPROVED. HE HAS, HOWEVER, BEEN LEFT WITH SIGNIFICANT PERMANENT DISABILITIES.

THE REFEREE'S AWARD, WHILE AMPLE, IS SUPPORTED BY THE EVIDENCE AND THE BOARD CONCLUDES HIS ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 3, 1973, IS AFFIRMED.

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

WCB CASE NO. 73-1763 MAY 8, 1974

LEITHA A. ALMOND, CLAIMANT

FRANK W. MOWRY, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED A DETERMINATION ORDER AWARDED CLAIMANT AN AWARD OF 32 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY.

WE HAVE REVIEWED THE RECORD DE NOVO AND, HAVING DONE SO, CONCLUDE THE REFEREE'S ORDER SHOULD BE ADOPTED AS THE ORDER OF THE BOARD.

ORDER

THE ORDER OF THE REFEREE, DATED NOVEMBER 29, 1973, IS
HEREBY AFFIRMED.

WCB CASE NO. 73-2658 MAY 8, 1974

CLARENCE BALLEW, CLAIMANT
SAHLSTROM, LOMBARD, STARR AND VINSON,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES THE EXTENT OF PERMANENT DISABILITY
RESULTING FROM A MYOCARDIAL INFARCTION WHICH THE WORKMAN
SUFFERED ON AUGUST 15, 1972, WHILE DELIVERING APPLIANCES FOR
RUBENSTEIN'S FURNITURE. THE REFEREE AFFIRMED THE DETERMINATION
ORDER WHICH GRANTED CLAIMANT A PERMANENT PARTIAL DISABILITY
AWARD OF 192 DEGREES OR 60 PERCENT OF THE MAXIMUM ALLOWABLE BY
STATUTE.

CLAIMANT HAS REQUESTED BOARD REVIEW CONTENDING HE IS ENTITLED
TO PERMANENT TOTAL DISABILITY AS A MEMBER OF THE ODD-LOT CATEGORY
OF THE WORK FORCE.

FOR YEARS PRIOR TO THE INFARCTION, CLAIMANT SUFFERED FROM
ARTERIOSCLEROTIC HEART DISEASE AND EXPERIENCED EPISODES OF
AURICULAR FIBRILLATION. ADMITTEDLY, CLAIMANT IS NOT NOW ABLE TO
RETURN TO EMPLOYMENT REQUIRING STRENUOUS EXERTION OR MANUAL
LABOR - HOWEVER, THE REFEREE FOUND HIM NOT COMPLETELY INCAPACITATED
FROM REGULARLY PERFORMING ANY WORK. THE MAJOR PART OF THE
PROBLEM OF RE-EMPLOYMENT APPEARS TO BE THE LACK OF AVAILABLE
WORK RATHER THAN INABILITY TO DO THE WORK.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDINGS OF THE
REFEREE THAT THE EVIDENCE DOES NOT PRIMA FACIE ESTABLISH
CLAIMANT IN THE ODD-LOT CATEGORY AND CONCLUDES HIS ORDER SHOULD
BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 8, 1974, IS HEREBY
AFFIRMED.

WCB CASE NO. 72-3410 MAY 8, 1974

JUDY SKOGSETH, CLAIMANT
BAILEY, DOBLIE, CENICEROS AND BRUUN,
CLAIMANT'S ATTYS.
DEPT. 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 A DETERMINATION ORDER GRANTING A PERMANENT PARTIAL DISABILITY AWARD OF 5 PERCENT (16 DEGREES) FOR UNSCHEDULED DISABILITY.

CLAIMANT FELL DOWN SOME STAIRS ON JUNE 9, 1971, AND SUSTAINED A COMPENSABLE INJURY TO THE COCCYX FOR WHICH SHE RECEIVED CONSERVATIVE TREATMENT FROM DR. HOWARD L. CHERRY.

DR. NATHAN SHLIM REPORTED MAY 17, 1972, THE CLAIM WAS READY FOR CLOSURE AND THE DISABILITY EXTREMELY MINIMAL. CLAIMANT RELIED ON DR. CHERRY'S STATEMENT THAT SHE WOULD NOT BE ABLE TO RETURN TO HER SECRETARIAL POSITION, BUT CLAIMANT IS NOW GAINFULLY EMPLOYED AT A TRAVEL AGENCY AND THAT PROGNOSIS HAS BEEN PROVEN INACCURATE.

THE BOARD, ON REVIEW, FINDS THAT CLAIMANT'S DISABILITY DOES NOT EXCEED THE AWARD OF 5 PERCENT UNSCHEDULED DISABILITY MADE PURSUANT TO ORS 656.268.

ORDER

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

SAIF CLAIM NO. K 738366 MAY 8, 1974

JOHN H. CROGHAN, CLAIMANT
CAREY AND GOODING, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.

THIS CLAIM WAS FILED ON BEHALF OF THE WORKMAN AND ACCEPTED BY THE THEN STATE INDUSTRIAL ACCIDENT COMMISSION FOR AN INJURY TO HIS RIGHT HIP OCCURRING JANUARY 23, 1941 AND DESCRIBED AS A FRACTURE OF THE RIGHT ACETABULUM. THE CLAIM WAS CLOSED WITH NO AWARD OF PERMANENT PARTIAL DISABILITY.

PURSUANT TO ORS 656.278, THE CLAIM WAS REOPENED BY THE BOARD'S OWN MOTION ORDER DATED FEBRUARY 4, 1972, FOR BENEFITS TO BE PROVIDED TO THE WORKMAN THROUGH THE STATE ACCIDENT INSURANCE FUND.

DEFINITIVE TREATMENT WAS DELAYED UNTIL MAY, 1973, BY THE WORKMAN'S UNRELATED INTERVENING PHYSICAL PROBLEM. HOWEVER, ON MAY 3, 1973, DR. HOWARD JOHNSON, AN ORTHOPEDIST IN BOISE, IDAHO, SURGICALLY REPLACED THE WORKMAN'S RIGHT HIP JOINT WITH A PROSTHETIC

DEVICE. FOLLOWING HIS CONVALESCENCE, THE WORKMAN RETURNED TO PART-TIME SELF EMPLOYMENT IN HIS 'ONE MAN' LOGGING AND SAWMILL OPERATION ON SEPTEMBER 12, 1973. DR. JOHNSON'S REPORT OF AN EXAMINATION ON MARCH 12, 1974 DESCRIBES SOME RESIDUALS, INDICATES THE CLAIMANT'S CONDITION IS NOW MEDICALLY STATIONARY AND THE CLAIM SHOULD BE CLOSED WITH A DISABILITY AWARD APPROPRIATE TO HIS CONDITION.

ORDER

IT IS THEREFORE ORDERED THAT CLAIMANT BE ALLOWED ADDITIONAL COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM MAY 1, 1973 THROUGH SEPTEMBER 4, 1973 AND COMPENSATION FOR TEMPORARY PARTIAL DISABILITY FROM SEPTEMBER 5, 1973 THROUGH MARCH 12, 1974.

IT IS FURTHER ORDERED THAT CLAIMANT BE GRANTED A PERMANENT PARTIAL DISABILITY AWARD OF 35.2 DEGREES WHICH IS EQUAL TO 40 PERCENT OF THE MAXIMUM ALLOWABLE LOSS OF THE RIGHT LEG BY SEPARATION.

CLAIMANT'S ATTORNEY MAY RECOVER FROM THE COMPENSATION AWARDED BY THIS ORDER, ANY UNPAID BALANCE OF THE FEE AWARDED BY THE BOARD'S ORDER OF FEBRUARY 4, 1972.

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. 67-1528 MAY 8, 1974

OWEN W. GAFFNEY, CLAIMANT

ON JANUARY 7, 1974 THE WORKMEN'S COMPENSATION BOARD RECEIVED A LETTER FROM DR. N. J. WILSON, AN ORTHOPEDIC SPECIALIST FROM MEDFORD, OREGON, CONCERNING THE CLAIMANT, OWEN W. GAFFNEY. AMONG OTHER THINGS CONTAINED IN HIS LETTER HE STATED -

!!! I WOULD BE OF THE OPINION THAT CONSIDERATION OF SURGICAL TREATMENT AT THIS POINT TO RETURN THIS MAN TO EMPLOYMENT WOULD PROBABLY BE MOST IMPRACTICAL. WOULD STATE VERY BLUNTLY THAT IT WOULD APPEAR THAT THIS MAN HAS BEEN LOST IN THE BUREAUCRATIC SHUFFLE AND HE PROBABLY WAS DESERVING OF MORE MEDICAL ATTENTION THAN HE RECEIVED FOR HIS INDUSTRIAL INJURY. I HAVE ALWAYS HAD THE GREATEST FAITH IN THE FAIRNESS OF THE STATE ACCIDENT INSURANCE FUND IN LOOKING OUT FOR INJURED WORKMEN, FOR WHOM IT EXISTS. I WOULD LIKE TO ENTER A PLEA THAT THIS MAN'S LOW BACK INJURY CLAIM BE REVIEWED AND THAT HE AT LEAST BE GIVEN THE CONSIDERATION OF INCREASED DISABILITY WITH TREATMENT PRIVILEGES. !!!

IN RESPONSE TO DR. WILSON'S REQUEST ON BEHALF OF THE CLAIMANT, THE BOARD ISSUED AN ORDER ON FEBRUARY 7, 1974, REQUIRING THE STATE ACCIDENT INSURANCE FUND TO ARRANGE FOR, AND UNDERWRITE THE COST OF, A FULL EVALUATION OF THE CLAIMANT'S PRESENT CONDITION BY THE STAFF OF ITS DISABILITY PREVENTION DIVISION IN PORTLAND, OREGON. THAT TASK HAS NOW BEEN ACCOMPLISHED.

WHILE DR. WILSON BELIEVES THERE HAS BEEN A LONG HISTORY OF WORSENING OF CLAIMANT'S LOW BACK CONDITION, THE PHYSICIANS OF THE BACK EVALUATION COMMITTEE AT THE DISABILITY CENTER STRONGLY HOLD A COATRYARY OPINION. IN FACT, AFTER HAVING EXAMINED CLAIMANT AND COMPARING THEIR FINDINGS WITH THE EARLIER MEDICAL FINDINGS REGARDING THE CLAIMANT'S CONDITION, THEY COMMENTED -

!! THE EXAMINERS ARE TOTALLY AT A LOSS TO UNDER-
STAND THE REASON FOR REFERRING THIS 1963 INJURY,
WHICH ALREADY HAS BEEN REVIEWED FROM THE STANDPOINT
OF DISABILITY RATING AND INCREASED AND SHOWS OBVIOUSLY
NO CHANGES NOW FROM THE TIME OF PREVIOUS CONSIDERATION.
SPECIFICALLY FROM THE STANDPOINT OF OBJECTIVE PHYSICAL
FINDINGS, WE FEEL THAT THIS WAS A WASTE OF THE TIME
OF THE BACK EVALUATION CLINIC. !! BACK EVALUATION
COMMITTEE REPORT, DATED MARCH 28, 1974.

WE ISSUED THE ORDER OF FEBRUARY 7, 1974 IN RESPONSE TO DR. WILSON'S REQUEST AND TO ASSURE OURSELVES THAT THE CLAIMANT HAD NOT BEEN LOST IN THE !! BUREAUCRATIC SHUFFLE'!. THE BOARD HAS NOW CAREFULLY REVIEWED THE RECORDS OF MR. GAFFNEY'S FULL AND FAIR EVALUATION BY THE STAFF OF THE CENTER AND, HAVING THE BENEFIT OF ALL THE DISABILITY PREVENTION DIVISION FINDINGS, FINDS ITSELF IN AGREEMENT WITH THE COMMENTS OF THE BACK EVALUATION CLINIC.

THE BOARD CONCLUDES THAT THE CLAIMANT HAS RECEIVED ALL THE BENEFITS TO WHICH HIS CONDITION ENTITLES HIM UNDER THE WORKMEN'S COMPENSATION LAW.

ORDER

THE CLAIMANT'S REQUEST FOR FURTHER WORKMEN'S COMPENSATION BENEFITS PURSUANT TO ORS 656.278 IS HEREBY DENIED.

PURSUANT TO ORS 656.278(3) NO APPEAL IS PROVIDED WHERE NO MODIFICATION IS MADE UPON OWN MOTION CONSIDERATIONS.

WCB CASE NO. 73-1930 MAY 9, 1974

ELIE B. SINGLETARY, CLAIMANT
DON G. SWINK, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER GRANTING HIM 50 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY (160 DEGREES), CONTENDING HIS DISABILITY EXCEEDS THAT AWARDED.

CLAIMANT IS A 57 YEAR OLD WORKMAN WHO SUFFERED MULTIPLE INJURIES FROM A FALL WHILE WORKING AT THE AMERICAN LUMBER COMPANY ON APRIL 24, 1972. THE PHYSICAL INJURIES EVENTUALLY HEALED ALTHOUGH WITH SOME RESIDUAL LIMITATIONS, BUT HIS GREATEST DISABILITY RESULTED FROM AN ADVERSE EMOTIONAL REACTION WHICH HAS PRODUCED A MULTITUDE OF PSYCHOSOMATIC COMPLAINTS. IT WAS PRIMARILY THIS EMOTIONAL REACTION THAT LED THE REFEREE TO INCREASE THE DETERMINATION ORDER AWARD OF 80 DEGREES TO 160 DEGREES.

AS IN ALL CASES WE HAVE REVIEWED THIS RECORD DE NOVO AND OUR REVIEW REVEALS TO US THAT THE CLAIMANT'S DISABILITY RESULTS ESSENTIALLY FROM PSYCHOLOGICAL FACTORS. HE HAS NOT WORKED SINCE APPROXIMATELY JANUARY 22, 1973 AND NOW REFUSES EVEN TO TRY WHICH RENDERS THE EVALUATION OF EARNING CAPACITY LOSS MORE DIFFICULT.

WE CONCLUDE THE REFEREE HAS PROPERLY COMPENSATED CLAIMANT FOR THE PERMANENT DISABLING EFFECTS OF THIS INJURY AND WE CONCLUDE HIS ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE DATED NOVEMBER 21, 1973 IS AFFIRMED.

WCB CASE NO. 73-1337 MAY 9, 1974

ROBERT L. WRIGHT, CLAIMANT
HAROLD ADAMS, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER GRANTING HIM 60 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED PERMANENT PARTIAL DISABILITY, CONTENDING HE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT IS A 57 YEAR OLD MAN WHO SUFFERED AN INJURY TO HIS LOW BACK ON FEBRUARY 10, 1968, WHILE WORKING AS A MECHANIC FOR A FARM MACHINERY COMPANY IN MCMINNVILLE, OREGON. AS A RESULT OF THE PERMANENT EFFECTS OF THE INJURY, CLAIMANT HAS BEEN PRECLUDED FROM RETURNING TO HIS FORMER WORK AS A HEAVY MECHANIC OR TO OTHER HEAVY LABOR. WHILE HE POSSESSES THE NECESSARY EDUCATION, TRAINING, WORK EXPERIENCE, AND PHYSICAL ABILITY TO BE SUCCESSFULLY EMPLOYED IN LIGHTER FORMS OF ENDEAVOR IN THE MECHANICAL FIELD, HE HAS NOT WORKED AT NOR SOUGHT GAINFUL EMPLOYMENT SINCE MID-1971. HE CONTENDS HE IS PERMANENTLY AND TOTALLY DISABLED.

ON MAY 6, 1974, THE COURT OF APPEALS DECIDED THE CASE OF BLACKFORD V. SAIF, -- OR ADV SH-- OR APP-- (MAY 6, 1974). IN THAT CASE, THE COURT, IN DISCUSSING THE ISSUE OF MOTIVATION, OBSERVED THAT WHERE A CLAIMANT CITES HIS PRESENT UNEMPLOYED STATUS AS EVIDENCE THAT HE IS INCAPABLE OF OBTAINING GAINFUL AND SUITABLE EMPLOYMENT THAT THE QUESTION OF HIS SINCERITY IN SEEKING SUCH EMPLOYMENT IS HIGHLY RELEVANT. WE CONCLUDE CLAIMANT'S FAILURE TO MAKE REASONABLE EFFORTS TO RETURN HIMSELF TO THE LABOR MARKET CLEARLY REVEALS A LACK OF MOTIVATION.

THE REFEREE LIMITED CLAIMANT'S AWARD TO PERMANENT PARTIAL DISABILITY ON THE GROUND THAT CLAIMANT'S POOR MOTIVATION WAS THE KEY TO HIS UNEMPLOYMENT. HAVING REVIEWED THE RECORD, WE CONCUR WITH THE FINDINGS AND OBSERVATIONS OF THE REFEREE IN THIS REGARD AND CONCLUDE HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED NOVEMBER 26, 1973, IS AFFIRMED.

WCB CASE NO. 73-1791 MAY 10, 1974

ELMER RIKALA, CLAIMANT

COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH ALLOWED HIM 192 DEGREES FOR UNSCHEDULED DISABILITY (60 PERCENT OF THE MAXIMUM) RATHER THAN AN AWARD OF PERMANENT TOTAL DISABILITY WHICH HE SEEKS.

THE REFEREE, HAVING A FULL RECORD OF THE CLAIMANT'S INJURY, TREATMENT, AND RESPONSE THERETO HAS CONCLUDED CLAIMANT'S ESSENTIAL PROBLEM IS A LACK OF MOTIVATION.

HAVING REVIEWED THE RECORD DE NOVO, WE TOO ARE CONVINCED CLAIMANT'S POOR MOTIVATION IS THE KEY TO HIS CONTINUING UNEMPLOYMENT. CLAIMANT HAS A POSITIVE DUTY TO AT LEAST ATTEMPT A RETURN TO THE LABOR MARKET WHENEVER THERE IS A REASONABLE CHANCE OF SUCCESS. HAVING FAILED IN THAT REGARD, WE CONCLUDE CLAIMANT IS NOT ENTITLED TO AN AWARD OF PERMANENT TOTAL DISABILITY. THE AWARD GRANTED BY THE REFEREE IS ADEQUATE AND SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 21, 1974, IS AFFIRMED.

WCB CASE NO. 73-1475 MAY 10, 1974

GENE PAYNE, CLAIMANT

GALBREATH AND POPE, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER GRANTING HIM AN ADDITIONAL 48 DEGREES, MAKING A TOTAL OF 204 DEGREES FOR UNSCHEDULED DISABILITY AND AFFIRMING A PRIOR AWARD OF 100 DEGREES FOR PERMANENT DISABILITY OF THE LEFT LEG, CONTENDING THAT HE IS PERMANENTLY AND TOTALLY DISABLED.

THE BOARD HAS REVIEWED THE RECORD DE NOVO AND HAVING DONE SO, CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE AND CONCLUDES THAT HIS ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 18, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 73-1035 MAY 10, 1974

JO LOCKE, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER APPROVING THE DENIAL OF HER CLAIM FOR COMPENSATION.

THE FUND'S DENIAL OF CLAIMANT'S CLAIM WAS BASED ON ITS OPINION THAT THERE WAS INSUFFICIENT EVIDENCE CLAIMANT HAD SUSTAINED AN ACCIDENTAL INJURY AS SHE ALLEGED.

THE FUND ARGUES THAT "CLAIMANT'S STORY STRAINS CREDULITY." WE DISAGREE. THE REFEREE MADE NO MENTION OF CLAIMANT'S CREDIBILITY. HAD HER CREDIBILITY BEEN DETERMINATIVE OF THE CASE HE UNDOUBTEDLY WOULD HAVE COMMENTED ON IT. THE OPINION OF THE REFEREE IS, IN FACT, UNCLEAR AS TO THE RATIONALE OF HIS AFFIRMANCE. THE EVIDENCE PRESENTED BY THE FUND DOES NOT PERSUADE US THAT CLAIMANT'S TESTIMONY IS UNWORTHY OF BELIEF. THE REFEREE PROPERLY ORDERED PAYMENT OF TIME LOSS COMPENSATION FOR THE PERIOD PRECEDING THE DENIAL. HE ERRED IN NOT FINDING THE CLAIM COMPENSABLE AND TO THAT EXTENT HIS ORDER SHOULD BE REVERSED.

IN OUR OPINION THE LAW DOES NOT REQUIRE PAYMENT OF MEDICAL EXPENSES PENDING ACCEPTANCE OR DENIAL OF A CLAIM AND NO PENALTIES OR ATTORNEY FEES HAVE ACCRUED ON THAT ACCOUNT.

SINCE THE CLAIMANT HAS NOW SUCCEEDED IN ESTABLISHING THAT HER CLAIM WAS ERRONEOUSLY DENIED, SHE IS ENTITLED TO HAVE HER ATTORNEY'S FEES PAID BY THE FUND.

THE SIX HUNDRED DOLLARS FEE AWARDED BY THE REFEREE ADEQUATELY COMPENSATED CLAIMANT'S ATTORNEYS FOR THEIR SERVICES AT HEARING. THEY ARE ALSO ENTITLED TO TWO HUNDRED FIFTY DOLLARS FOR THEIR SERVICES ON BOARD REVIEW.

ORDER

THE ORDER OF THE REFEREE APPROVING THE DENIAL OF CLAIMANT'S CLAIM IS REVERSED.

CLAIMANT'S CLAIM IS HEREBY REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR ACCEPTANCE AND PAYMENT OF COMPENSATION UNTIL TERMINATION IS AUTHORIZED PURSUANT TO ORS 656.268.

THE STATE ACCIDENT INSURANCE FUND IS HEREBY FURTHER ORDERED TO REIMBURSE CLAIMANT FOR ANY MEDICAL EXPENSES RELATED TO THE INJURY WHICH SHE HAS PERSONALLY PAID.

THE STATE ACCIDENT INSURANCE FUND IS HEREBY FINALLY ORDERED TO PAY CLAIMANT'S ATTORNEYS A FEE OF TWO HUNDRED FIFTY DOLLARS FOR SERVICES ON THIS REVIEW.

WCB CASE NO. 73-2115 MAY 10, 1974

EUGENE MILLER, CLAIMANT
BEMIS, BREATHOUWER AND JOSEPH,
CLAIMANT'S ATTYS.
DEPT. 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 REFEREE'S ORDER ALLOWING CLAIMANT'S CLAIM FOR OCCUPATIONAL DISEASE BENEFITS.

THE REFEREE CONCLUDED CLAIMANT'S WORK AS A FIREMAN WAS FRAUGHT WITH TENSION. DR. ROY A. PAYNE CONCLUDED THIS TENSION MATERIALLY CONTRIBUTED TO HIS HIGH BLOOD PRESSURE.

HAVING REVIEWED THE RECORD DE NOVO, WE ARE PERSUADED THAT CLAIMANT'S JOB-RELATED TENSION WAS ACTUALLY SO MINIMAL THAT IT CANNOT PROVIDE THE NECESSARY LEGAL FOUNDATION FOR A CONCLUSION OF COMPENSABILITY. CODAY V. WILLAMETTE TUG AND BARGE CO., 250 OR 39 (1968).

WE CONCLUDE THE REFEREE'S ORDER SHOULD BE REVERSED.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 4, 1973, IS REVERSED.

WCB CASE NO. 73-369 MAY 10, 1974

ARTHUR G. STEPHENS, CLAIMANT
GEORGE A. HASLETT, JR., CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS REVIEW OF A REFEREE'S ORDER AFFIRMING THE DENIAL OF HIS CLAIM FOR BENEFITS ARISING OUT OF A HEART ATTACK.

THE STATE ACCIDENT INSURANCE FUND ALSO REQUESTS REVIEW, CONTESTING THAT PORTION OF THE REFEREE'S ORDER REQUIRING THE FUND TO MAKE CERTAIN TEMPORARY TOTAL DISABILITY PAYMENTS AND ASSESSING A PENALTY AND AN ATTORNEY'S FEE.

WE HAVE REVIEWED THE RECORD DE NOVO AND CONSIDERED THE POINTS RAISED BY THE BRIEFS SUBMITTED ON REVIEW. HAVING DONE SO, WE CONCLUDE THE REFEREE'S ORDER IS CORRECT IN ALL RESPECTS AND SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE, DATED NOVEMBER 5, 1973, IS AFFIRMED.

WCB CASE NO. 71-2898 MAY 10, 1974

GEORGE GLENN, CLAIMANT
BABCOCK AND ACKERMAN, CLAIMANT'S ATTYS.
DEPT. 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 REFEREE'S ORDER GRANTING CLAIMANT AN AWARD OF PERMANENT TOTAL DISABILITY.

THE FUND ARGUES ON REVIEW THAT CLAIMANT'S INJURY PRODUCED PERMANENT DISABILITY ONLY IN THE LEFT LEG. DR. CARR'S REPORTS ESTABLISH THAT CLAIMANT DOES HAVE A SIGNIFICANT AMOUNT OF PERMANENT DISABILITY IN HIS LEFT SHOULDER.

CONSIDERING THE TOTALITY OF THE MEDICAL EVIDENCE, CLAIMANT'S CIRCUMSTANCES AND THE RULING OF MANSFIELD V. CAPLENER BROS., 10 OR APP 545, (1972) CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED.

THE ORDER OF THE REFEREE SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 13, 1974, IS AFFIRMED.

CLAIMANT'S ATTORNEY IS HEREBY GRANTED AN ATTORNEY'S FEE OF TWO HUNDRED FIFTY DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WALTER L. BROWN, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MIZE, KRISIEN, FEWLESS, CHENEY AND KELLEY,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS REVIEW RELATES TO THE CLAIM OF A WORKMAN WHO SUFFERED A COMPENSABLE INJURY TO HIS LOW BACK ON SEPTEMBER 18, 1967. HE PRINCIPALLY WORKED AS A ROOFER, ALTHOUGH HE HAS PURSUED A NUMBER OF OTHER OCCUPATIONS DURING HIS WORKING LIFE. THE PERMANENT EFFECTS OF THE INJURY HAVE PRECLUDED HIS EMPLOYMENT IN SEVERAL SKILL AREAS AND MATERIALLY INTERFERED WITH HIS ABILITY TO PURSUE THE ROOFING OCCUPATION.

AS A CONSEQUENCE, HE HAS BEEN AWARDED, BY VIRTUE OF PRIOR ORDERS ISSUED IN THE CASE, A TOTAL OF 240 DEGREES FOR UNSCHEDULED PERMANENT DISABILITY. THE MOST RECENT ORDER WAS A THIRD DETERMINATION ORDER MAILED JULY 19, 1973, WHICH ALLOWED THE CLAIMANT ADDITIONAL TEMPORARY TOTAL DISABILITY COMPENSATION ASSOCIATED WITH THE SURGICAL EXCISION OF BILATERAL MORTON'S NEUROMAS BUT AWARDED HIM NO FURTHER PERMANENT PARTIAL DISABILITY.

THE REFEREE CONCLUDED THAT THE CLAIMANT'S LATEST PHYSICAL DIFFICULTIES HAD NOT INCREASED CLAIMANT'S PERMANENT DISABILITY BEYOND THE AWARD ALREADY GRANTED. HAVING REVIEWED THE RECORD DE NOVO, WE CONCUR IN THE REFEREE'S ASSESSMENT. IT WOULD BE DIFFICULT TO CONCLUDE THAT THE CLAIMANT, WHO IS NOW WORKING 25 TO 30 HOURS A WEEK ON A PIECE-WORK BASIS AS A ROOFER AND EARNING WHAT HE CHARACTERIZES AS A FAIRLY DECENT LIVING, HAS LESS THAN 25 PERCENT OF HIS EARNING CAPACITY REMAINING. -TRANSCRIPT PAGE 8, LINE 16 -

WE CONCLUDE THE ORDER OF THE REFEREE AFFIRMING THE THIRD DETERMINATION ORDER SHOULD BE AFFIRMED. CLAIMANT DOES HAVE AGGRAVATION RIGHTS IF HE SUFFERS A FURTHER WORSENING OF HIS CONDITION IN THE FUTURE. IF A WORSENING OCCURS BEYOND THE PERIOD PROVIDED FOR AGGRAVATION CLAIMS AS A MATTER OF RIGHT, HE MAY PURSUE THE REMEDIES PROVIDED IN ORS 656.278.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 7, 1974, IS AFFIRMED.

MAY 13, 1974

DAVID GORDON, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS REVIEW OF A REFEREE'S ORDER CONTENDING HE IS ENTITLED TO PERMANENT TOTAL DISABILITY BENEFITS OR VOCATIONAL REHABILITATION ASSISTANCE.

CLAIMANT, A 49 YEAR OLD SIGN PAINTER, SUFFERED A COMPENSABLE INJURY ON FEBRUARY 28, 1970, WHEN HE FELL FROM A SIGN. AT THE HEARING, CLAIMANT TESTIFIED THAT HE SUFFERS CONSIDERABLE PAIN AND DISCOMFORT IN HIS BACK AND LEG WHICH INCREASES WITH ACTIVITY, EXTENDED DRIVING BOTHERS HIM AND THAT COLD WEATHER ANTAGONIZES HIS SYMPTOMS. CLAIMANT HAS HAD SOME ALCOHOL PROBLEMS IN THE PAST AND SEEMED TO EXAGGERATE SOMEWHAT, ALTHOUGH MEDICAL REPORTS DO SUBSTANTIATE HIS COMPLAINTS.

HAVING REVIEWED THE RECORD DE NOVO, THE BOARD CONCURS WITH THE FINDINGS OF THE REFEREE AND CONCLUDES THAT CLAIMANT IS NOT, IN FACT, PERMANENTLY AND TOTALLY DISABLED FROM HIS INJURY OF FEBRUARY 28, 1970.

THE RECORD REFLECTS THAT THE CLAIMANT'S MOTIVATION, AGE AND REMAINING PHYSICAL RESOURCES ARE SUCH THAT HE IS PROBABLY CAPABLE OF RETURNING TO SUITABLE EMPLOYMENT. THE BOARD IS OF THE OPINION THAT THIS MATTER SHOULD BE REFERRED TO THE DISABILITY PREVENTION DIVISION FOR ACTIVE VOCATIONAL HELP. IN ALL OTHER RESPECTS, THE ORDER OF THE REFEREE SHOULD BE AFFIRMED.

ORDER

IT IS ACCORDINGLY ORDERED THAT THE ORDER OF THE REFEREE, DATED OCTOBER 19, 1973, AWARDING CLAIMANT 50 PERCENT PERMANENT PARTIAL DISABILITY IS AFFIRMED.

IT IS FURTHER ORDERED THAT THE BOARD'S DISABILITY PREVENTION DIVISION EXTEND TO CLAIMANT SUCH CONSULTATIVE OR OTHER SERVICES AS MAY BE FOUND SUITABLE BY THE CENTER TO ASSIST CLAIMANTS RETURN TO SUITABLE EMPLOYMENT.

MAY 13, 1974

JACK PETIT, CLAIMANT

JOHN SVOBODA, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS REVIEW OF A REFEREE'S ORDER CONTENDING THAT HIS PERMANENT DISABILITY EXCEEDS THAT AWARDED.

CLAIMANT, A THEN 23 YEAR OLD CHOKER-SETTER, SUFFERED A COMPENSABLE INJURY FEBRUARY 15, 1971, WHICH RESULTED IN A FRACTURED RIGHT FEMUR, PELVIC AND INTERNAL INJURIES. CONSIDERING THE SEVERITY OF THE INJURIES HE SUSTAINED, CLAIMANT'S RECOVERY WAS REMARKABLE.

ALTHOUGH HE CANNOT RETURN TO HIS FORMER OCCUPATION IN LOGGING, HIS EARNINGS IN A MILL WHERE HE IS NOW EMPLOYED ARE FAIRLY COMPARABLE TO THOSE WHICH HE PREVIOUSLY EARNED. THERE ARE VARIOUS SKILLED JOBS IN ANY MILL THAT HE CAN PERFORM WITH EASE.

THE FAVORABLE FACTORS OF AGE AND INTELLIGENCE WILL ALLOW THE CLAIMANT TO MAINTAIN HIS PRESENT EARNING LEVEL WHICH IS, IN FACT, SLIGHTLY HIGHER THAN AT THE TIME OF INJURY.

ALTHOUGH FUTURE PHYSICAL PROBLEMS MAY POSSIBLY OCCUR AS A RESULT OF HIS ACCIDENT, THE EVALUATION MUST NOW BE MADE IN ACCORDANCE WITH HIS PRESENT CONDITION. SHOULD AN AGGRAVATION OCCUR, CLAIMANT MAY SEEK ADDITIONAL MEDICAL CARE AND FURTHER DISABILITY COMPENSATION, PURSUANT TO ORS 656.273 OR ORS 656.278 IF WARRANTED. IN THE MEANTIME, THE BOARD CONCURS WITH THE FINDINGS OF THE REFEREE AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED OCTOBER 31, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 73-1432 MAY 15, 1974

KAYE SCHALLER, CLAIMANT
MCGEORGE, MCLEOD AND YORK,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER OF APRIL 10, 1973, AWARDING CLAIMANT AN ADDITIONAL 32 DEGREES UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT, A 34 YEAR OLD PRESS TENDER, RECEIVED A COMPENSABLE INJURY ON JANUARY 27, 1970, RESULTING IN A LOW BACK INJURY. AFTER A SERIES OF MEDICAL EXAMINATIONS AND A SPINAL FUSION AT L4-S1, DR. KIMBERLEY SUBMITTED A REPORT STATING THAT CLAIMANT HAD FULLY RECOVERED FROM HER INDUSTRIAL ACCIDENT.

BY VARIOUS DETERMINATION ORDERS, CLAIMANT HAS BEEN AWARDED 20 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY. THE REFEREE CONCLUDED THAT THIS AWARD IS ADEQUATE AS NO POTENTIAL LOSS OF EARNING CAPACITY CAN BE DETERMINED AT THIS TIME.

CLAIMANT TERMINATED HER EMPLOYMENT FOR REASONS OTHER THAN HER INDUSTRIAL INJURY AND THEREFORE COULD POSSIBLY BE WORKING IF SHE SO DESIRED.

BASED ON THE FAILURE OF SUITABLE PROOF OF EARNING CAPACITY LOSS, THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE FINDINGS OF THE REFEREE THAT CLAIMANT'S DISABILITY DOES NOT EXCEED THAT AWARDED AND ADOPTS HIS ORDER AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 24, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 72-1353 MAY 15, 1974

LEONARD D. SILLS, CLAIMANT
RICHARD H. RENN, CLAIMANT'S ATTY.

ON MARCH 25, 1974, ATTORNEY, RICHARD L. RENN REQUESTED THE WORKMEN'S COMPENSATION BOARD'S APPROVAL OF AN ATTORNEY'S FEE OF NINETY SEVEN DOLLARS AND TWENTY CENTS FOR HIS SERVICES IN ATTEMPTING TO PERFECT AN APPEAL OF A BOARD ORDER ON REVIEW TO THE LINN COUNTY CIRCUIT COURT.

MR. RENN DID NOT UNDERTAKE REPRESENTATION OF CLAIMANT ON A CONTINGENT FEE BASIS. CLAIMANT PAID MR. RENN FORTY DOLLARS ON SEPTEMBER 12, 1973 AND ANOTHER EIGHTY DOLLARS ON OCTOBER 5, 1973, FOR FEES AND EXPENSES. OUT OF POCKET EXPENSES TOTALED TWENTY TWO DOLLARS AND EIGHTY CENTS, LEAVING A BALANCE OF NINETY SEVEN DOLLARS AND TWENTY CENTS TO APPLY TO PAYMENT FOR MR. RENN'S PROFESSIONAL SERVICES.

THE BOARD HAS REVIEWED THE CIRCUMSTANCES SURROUNDING MR. RENN'S EMPLOYMENT AND HAS BEEN ADVISED THROUGH ITS COUNSEL, NORMAN F. KELLEY, THAT CLAIMANT HAS WITHDRAWN A PREVIOUS OBJECTION TO APPROVAL OF MR. RENN'S FEE.

WE CONCLUDE THAT A FEE OF NINETY SEVEN DOLLARS AND TWENTY CENTS FOR THE SERVICES PERFORMED BY MR. RENN IS, UNDER THE FACTS, REASONABLE.

PURSUANT TO ORS 656.388, ATTORNEY, RICHARD L. RENN'S CLAIM FOR LEGAL SERVICES IN THE AMOUNT OF NINETY SEVEN DOLLARS AND TWENTY CENTS, IS HEREBY APPROVED.

WCB CASE NO. 73-558 MAY 15, 1974

ANN ELMORE, CLAIMANT
MCNUTT, GANT, ORMSBEE AND GARDNER,
CLAIMANT'S ATTYS.
KEITH SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER REQUESTS REVIEW OF A HEARING OFFICER'S ORDER WHICH REMANDED THE CLAIM TO THE EMPLOYER FOR PAYMENT OF COMPENSATION BENEFITS FOR DISABILITY RESULTING FROM A BLOW TO THE HAND ON JULY 30, 1972.

CLAIMANT, A 32 YEAR OLD DESK CLERK, SUSTAINED A COMPENSABLE INJURY ON AUGUST 22, 1971, WHEN SHE STRUCK HER HAND ON A STAIRWAY POST, RESULTING IN THE FRACTURE OF A BONE IN HER HAND.

IN JULY, 1972, CLAIMANT REINJURED HER HAND WHILE ENGAGED IN AN ALTERCATION WITH HER HUSBAND AT THEIR HOME.

IT IS THE EMPLOYER'S CONTENTION THAT THE HEARING OFFICER HAD NO BASIS ON WHICH TO MAKE HIS CONCLUSION REGARDING CAUSAL RELATIONSHIP. THE BOARD, HOWEVER, IS PERSUADED BY DR. SMITH'S REPORT WHICH STATES THAT "... THE FRACTURE PROBABLY WOULD NOT HAVE OCCURRED HAD SHE NOT HAD THE ORIGINAL INJURY AND SUBSEQUENT OSTEOTOMY"

THE BOARD CONCLUDES THAT THE HEARING OFFICER HAS MADE A COMPETENT AND THOROUGH ANALYSIS OF THE MATTER AND THE BOARD CONCURS WITH HIS FINDING THAT THE RECORD DOES SUPPORT A FINDING OF AGGRAVATION IN THAT THE DISABILITY RESULTING FROM THE SECOND INJURY WAS A CONSEQUENTIAL RESULT OF CLAIMANT'S ORIGINAL INDUSTRIAL INJURY. HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE HEARING OFFICER, DATED AUGUST 17, 1973, IS AFFIRMED.

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

WCB CASE NO. 73-913 MAY 15, 1974

JACK RUTHERFORD, CLAIMANT
C. RODNEY KIRKPATRICK, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER CONTENDING THAT HIS DISABILITY EXCEEDS THAT AWARDED AND THAT HE IS, IN FACT, PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT, A 44 YEAR OLD BARTENDER, SUSTAINED A LOW BACK INJURY ON AUGUST 10, 1968, RESULTING IN A LAMINECTOMY. HE HAS SUFFERED NUMEROUS BACK PROBLEMS DATING BACK TO 1959 AND HAS WORKED PRIMARILY ON SHORT DURATION JOBS LASTING NO MORE THAN A FEW MONTHS AT A TIME. SEVERAL OF THESE JOBS ENDED IN HIS BEING TERMINATED AND OTHERS HE VOLUNTARILY QUIT.

THE BOARD, ON DE NOVO REVIEW, FINDS NO JUSTIFICATION IN THE RECORD TO INDICATE THAT CLAIMANT'S DISABILITY IS TOTAL. IT IS CONCEDED THAT HE COULD FUNCTION AT JOBS WHICH ARE NOT TOO STRENUOUS. HIS LACK OF MOTIVATION TO RETURN TO THE WORK FORCE RATHER THAN ANY PHYSICAL DISABILITIES RESULTING FROM HIS INDUSTRIAL ACCIDENT IS THE KEY TO CLAIMANT'S CONTINUING UNEMPLOYMENT. CLAIMANT SIMPLY DOES NOT HAVE THE INCENTIVE TO SEEK SUITABLE AND GAINFUL EMPLOYMENT.

IT APPEARS TO THE BOARD THAT CLAIMANT'S DISABILITY HAS BEEN CORRECTLY EVALUATED. THE BOARD CONCLUDES FROM ITS REVIEW OF THE RECORD THAT THE AWARD ESTABLISHED BY THE SECOND DETERMINATION ORDER AND AFFIRMED BY THE REFEREE IS ADEQUATE.

ORDER

~~THE ORDER OF THE REFEREE, DATED DECEMBER 6, 1973, IS AFFIRMED.~~

SAIF CLAIM NO. NA 689320 MAY 15, 1974

JERRY L. ROBERTSON, CLAIMANT
CAREY AND GOODING, CLAIMANT'S ATTYS.

PURSUANT TO ORS 656.278, THE WORKMEN'S COMPENSATION BOARD ISSUED AN ORDER ON JANUARY 2, 1973, REOPENING CLAIMANT'S CLAIM FOR ADDITIONAL TREATMENT AND COMPENSATION RELATIVE TO HIS SEPTEMBER 19, 1958, INJURY.

THE NECESSARY TREATMENT, CONSISTING OF A LAMINECTOMY AND SPINAL FUSION, HAS NOW BEEN CARRIED OUT. CLAIMANT'S CONVALESCENCE HAS BEEN COMPLETED AND THE BOARD HAS NOW REEVALUATED THIS CLAIM.

BEING NOW FULLY ADVISED, THE WORKMEN'S COMPENSATION BOARD HEREBY ORDERS THE STATE ACCIDENT INSURANCE FUND TO PAY CLAIMANT TEMPORARY TOTAL DISABILITY FOR THE PERIOD OF MAY 15, 1972, TO MAY 13, 1973, INCLUSIVE, ADDITIONAL TEMPORARY TOTAL DISABILITY FOR THE PERIOD SEPTEMBER 23, 1973, TO SEPTEMBER 27, 1973, INCLUSIVE, AND TEMPORARY PARTIAL DISABILITY FROM SEPTEMBER 28, 1973, TO FEBRUARY 15, 1974, INCLUSIVE.

IN ADDITION, THE FUND IS HEREBY ORDERED TO PAY CLAIMANT ADDITIONAL PERMANENT PARTIAL DISABILITY COMPENSATION EQUAL TO 30 PERCENT LOSS USE OF AN ARM FOR CLAIMANT'S ADDITIONAL 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.

SAIF CLAIM NO. C 487 MAY 15, 1974

JAMES H. PLANCK, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.

THIS CLAIMANT SUFFERED AN INJURY TO HIS SPINE ON JANUARY 1, 1966, WHILE EMPLOYED AT TELEDYNE WAH CHANG CORPORATION IN ALBANY, OREGON. HE WAS GRANTED COMPENSATION EQUAL TO 15 PERCENT LOSS OF AN ARM FOR UNSCHEDULED DISABILITY ON MAY 20, 1966. HIS AGGRAVATION RIGHTS EXPIRED IN 1971.

ON NOVEMBER 6, 1973, CLAIMANT PETITIONED THE BOARD TO EXERCISE ITS CONTINUING JURISDICTION UNDER ORS 656.278 OVER HIS CLAIM ON THE GROUNDS THAT HE HAD SUFFERED A WORSENING OF THE ORIGINAL INJURY WHICH REQUIRED HOSPITALIZATION AND SPINAL SURGERY. CLAIMANT HAS COMPLETED HIS CONVALESCENCE AND SEEKS COMPENSATION FOR THE MEDICAL EXPENSES, TIME LOSS, AND PERMANENT DISABILITY INVOLVED.

THE BOARD HAS REVIEWED THE MATTER AND CONCLUDES AND HEREBY ORDERS ON ITS OWN MOTION, THAT CLAIMANT RECEIVE REIMBURSEMENT OF HIS MEDICAL EXPENSES ASSOCIATED WITH THE INJURY - THAT HE RECEIVE TEMPORARY TOTAL DISABILITY COMPENSATION FOR THE PERIOD OCTOBER 20, 1972, TO JULY 15, 1973, INCLUSIVE AND FOR THE PERIOD OF FEBRUARY 25, 1974, TO APRIL 8, 1974, INCLUSIVE, AND THAT HE RECEIVE AN ADDITIONAL 15 PERCENT LOSS OF AN ARM FOR UNSCHEDULED DISABILITY (28.8), MAKING A TOTAL OF 30 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY AS A RESULT OF HIS INJURY OF JANUARY 1, 1966.

CLAIMANT'S ATTORNEY IS HEREBY AWARDED 25 PERCENT OF THE COMPENSATION GRANTED HEREBY, TO A MAXIMUM OF TWO HUNDRED FIFTY DOLLARS, AS A REASONABLE ATTORNEY'S FEE.

WCB CASE NO. 73-3110 MAY 15, 1974

DOUGLAS CALDER, CLAIMANT
JACKSON AND JOHNSON, CLAIMANT'S ATTYS.
MCMENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTYS.

ON APRIL 23, 1973, THE EMPLOYER MOVED FOR AN ORDER REMANDING THE ABOVE ENTITLED MATTER TO THE REFEREE FOR RECEIPT OF ADDITIONAL EVIDENCE.

WRITTEN ARGUMENT HAS BEEN RECEIVED AND CONSIDERED, AND THE BOARD, BEING NOW FULLY ADVISED, FINDS THE MOTION WELL TAKEN.

IT IS, THEREFORE, ACCORDINGLY ORDERED THAT THE MATTER BE, AND IT IS HEREBY, REMANDED TO THE REFEREE FOR RECEIPT AND CONSIDERATION OF EXHIBIT 'A' TO THE MOTION AND ISSUANCE OF SUCH ORDER AS THE REFEREE, UPON FURTHER CONSIDERATION, DEEMS APPROPRIATE.

THE REQUEST FOR REVIEW IS HEREBY DISMISSED.

HOWARD SMITH, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW OF A REFEREE'S ORDER WHICH FOUND CLAIMANT PERMANENTLY AND TOTALLY DISABLED.

ON NOVEMBER 16, 1971, CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS SHOULDER AND AGGRAVATED DEGENERATIVE CHANGES IN HIS BACK. IN HIS PRESENT CONDITION, THERE IS LITTLE HOPE THAT HE CAN RETURN TO THE BUCKING AND FALLING OF TIMBER, WHICH WAS THE ONLY TYPE OF EMPLOYMENT THIS MAN HAD EVER HAD.

CLAIMANT'S AGE, EDUCATION, MENTAL CAPACITY, AND ADAPTABILITY RENDER THE LIKELIHOOD OF RETURNING TO ANY OTHER OCCUPATION PRACTICALLY NIL. THE DIVISION OF VOCATIONAL REHABILITATION DID VERY LITTLE TO ENCOURAGE CLAIMANT TO MAKE ANY EFFORT TO BE TRAINED TO PERFORM IN SOME OTHER AREA OF EMPLOYMENT. THE CLAIMANT, BECAUSE OF HIS LIMITED MENTAL RESOURCES AND LIMITED PHYSICAL CAPABILITIES, HAS RESIGNED HIMSELF TO BELIEVING HIS IMPAIRMENT IS TOTALLY DISABLING.

ON DE NOVO REVIEW, THE BOARD FINDS THAT THE AWARD OF THE REFEREE CORRECTLY TAKES INTO ACCOUNT THE REAL DISABLING EFFECT OF THIS INJURY. CLAIMANT'S PRESENT IMPAIRMENT, WHEN COUPLED WITH HIS REMAINING PHYSICAL AND INTELLECTUAL ABILITIES JUSTIFIES THIS INCREASE IN HIS AWARD.

THE ORDER OF THE REFEREE SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 23, 1974, 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.

RONALD A. BUTLER, CLAIMANT
IRVIN D. SMITH, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE INVOLVED IN THIS MATTER IS WHETHER THE CLAIMANT SUSTAINED A COMPENSABLE INJURY WHILE WORKING FOR A SUBJECT, NON-COMPLYING EMPLOYER.

CLAIMANT WAS EMPLOYED AS A RANCH HAND, WORKING VARIED HOURS AT NO SET RATE OF PAY. HE DID, HOWEVER, RECEIVE SOME CASH PAYMENTS AND WAS PROVIDED WITH ROOM AND BOARD FOR HIS SERVICES RENDERED. IT IS THE EMPLOYER'S CONTENTION THAT CLAIMANT WAS NOT ACTUALLY AN EMPLOYEE AS NO REAL AGREEMENT REGARDING SALARY HAD BEEN MADE CONCERNING COMPENSATION FOR CLAIMANT'S WORK. THE LAW STATES THAT--

'' 'WAGES' MEANS THE MONEY RATE AT WHICH THE SERVICE RENDERED IS RECOMPENSED . . . INCLUDING THE REASONABLE VALUE OF BOARD, RENT, HOUSING, LODGING OR SIMILAR ADVANTAGE RECEIVED FROM THE EMPLOYER . . . !'

IT GOES ON TO DEFINE ''WORKMAN'' AS =

'' ANY PERSON . . . WHETHER LAWFULLY OR UNLAWFULLY EMPLOYED, WHO ENGAGES TO FURNISH HIS SERVICES FOR A REMUNERATION, SUBJECT TO THE DIRECTION AND CONTROL OF AN EMPLOYER . . . '' ORS 656.002(20) (21).

THE REFEREE CORRECTLY DECIDED THAT CLAIMANT WAS A SUBJECT WORKMAN OF A SUBJECT NONCOMPLYING EMPLOYER AND THAT HE SUFFERED A COMPENSABLE INJURY WHILE IN SUCH EMPLOYMENT.

THE BOARD CONCLUDES THAT THE OPINION AND ORDER OF THE REFEREE CORRECTLY SETS OUT THE FACTS OF THIS MATTER ON EACH OF THE ISSUES RAISED. THE APPLICABLE LAW IS CLEAR AND THE REFEREE PROPERLY APPLIED THE LAW TO THE FACTS. THE BOARD THEREFORE ADOPTS THE OPINION AND ORDER OF THE REFEREE AS ITS OWN.

IT IS HEREBY ORDERED THAT MARTIN CARELLI WAS AN EMPLOYER SUBJECT TO, AND NONCOMPLYING WITH, THE WORKMEN'S COMPENSATION LAW FOR THE PERIOD OF DECEMBER 6, 1972, TO APRIL 10, 1973.

IT IS HEREBY FURTHER ORDERED THAT RONALD A. BUTLER SUSTAINED A COMPENSABLE INJURY AS A SUBJECT EMPLOYEE WHILE IN THE EMPLOY OF MARTIN CARELLI ON JANUARY 21, 1973.

IT IS HEREBY FURTHER ORDERED THAT THE ORDER OF THE REFEREE REMANDING THE CLAIM TO THE COMPLIANCE DIVISION OF THE WORKMEN'S COMPENSATION BOARD FOR PROCESSING BE, AND IT IS, HEREBY AFFIRMED AND.

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

WCB CASE NO. 73-1549 MAY 16, 1974

TRUMAN S. DILLINGHAM, CLAIMANT
COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS CLAIM INVOLVES A 35 YEAR OLD FURNITURE MOVER WHO SUSTAINED A COMPENSABLE KNEE INJURY FEBRUARY 27, 1972, FOR WHICH HE WAS AWARDED PERMANENT PARTIAL DISABILITY EQUAL TO 20 PERCENT LOSS OF THE LEFT LEG BY A DETERMINATION ORDER. CLAIMANT APPEALED THE DETERMINATION ORDER AND AT HEARING, THE REFEREE AFFIRMED THE DETERMINATION ORDER. CLAIMANT NOW SEEKS BOARD REVIEW CONTENDING HE IS ENTITLED TO A GREATER AWARD FOR PERMANENT PARTIAL DISABILITY.

CLAIMANT UNDERWENT A MENISCECTOMY ON APRIL 6, 1972, INCLUDING AN EXTENSIVE PATELLAR SHAVING PROCEDURE AND REMOVAL OF THREE LOOSE BODIES IN THE KNEE JOINT. A YEAR AFTER SURGERY, DR. DONAHOO NOTED CLAIMANT HAD A 15 POUND LIMIT IN LEG LIFTING DESPITE A LONG PERIOD OF PHYSICAL THERAPY.

CLAIMANT WAS NOT FULLY RELEASED TO RETURN TO WORK UNTIL A YEAR AFTER SURGERY, WITH WEAKNESS AND INSTABILITY OF THE KNEE AND ACHING AND SWELLING AT NIGHT WHICH PREVENTED HIS RETURN TO HIS PREVIOUS EMPLOYMENT.

IT APPEARS TO THE BOARD, IN REVIEWING THE MEDICAL REPORTS SUBMITTED BY DR. DONAHOO THAT THE CLAIMANT'S RESIDUAL PHYSICAL IMPAIRMENT, TAKING INTO ACCOUNT THE CERTAINTY OF FUTURE TRAUMATIC ARTHRITIS, ENTITLES HIM TO AN AWARD OF PERMANENT PARTIAL DISABILITY EQUAL TO 50 PERCENT LOSS USE OF THE LEFT LEG. THE ORDER OF THE REFEREE SHOULD BE MODIFIED ACCORDINGLY.

ORDER

CLAIMANT IS HEREBY AWARDED ADDITIONAL 45 DEGREES FOR SCHEDULED DISABILITY IN THE LEFT LEG MAKING A TOTAL OF 50 PERCENT OR 75 DEGREES FOR SUCH DISABILITY.

CLAIMANT'S COUNSEL IS ENTITLED TO RECEIVE 25 PERCENT OF THE INCREASED COMPENSATION, MADE PAYABLE BY THIS ORDER, TO A MAXIMUM OF FIFTEEN HUNDRED DOLLARS AND PAYABLE FROM SAID AWARD AS A REASONABLE ATTORNEY FEE.

WCB CASE NO. 73-1675 MAY 17, 1974

JALMER OREN, CLAIMANT
NICHOLAS D. ZAFIRATOS, CLAIMANT'S ATTY.
MACDONALD, DEAN, MCCALLISTER AND SNOW,
DEFENSE ATTYS.

A REQUEST FOR REVIEW, HAVING BEEN DULY FILED WITH THE WORKMEN'S COMPENSATION BOARD IN THE ABOVE ENTITLED MATTER BY THE CLAIMANT, AND SAID REQUEST FOR REVIEW NOW HAVING BEEN WITHDRAWN BY THE CLAIMANT'S COUNSEL,

IT IS THEREFORE ORDERED THAT THE REVIEW NOW PENDING BEFORE THE BOARD IS HEREBY DISMISSED.

WILLIAM KERN, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH FOUND CLAIMANT TO BE PERMANENTLY AND TOTALLY DISABLED.

ORIGINALLY CLAIMANT SUSTAINED A COMPENSABLE HEART ATTACK IN 1966. HIS CONDITION HAS WORSENERD IN RECENT YEARS DUE TO A SECOND HEART ATTACK OCCURRING SEPTEMBER 27, 1972, WHILE LIFTING AT WORK.

PURSUANT TO THREE DETERMINATION ORDERS, CLAIMANT WAS GRANTED A PERMANENT PARTIAL DISABILITY AWARD EQUAL TO 50 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED HEART DISABILITY.

DR. CRISLIP CONSIDERED CLAIMANT IN CLASS 111 OF THE IMPAIRMENT SCALE OF THE AMERICAN HEART ASSOCIATION. THE DOCTOR ADVISED CLAIMANT AGAINST RETURNING TO WORK AT THE SCHOOL DISTRICT AS A MAINTENANCE MAN, AND ADMITTED THAT HE COULD NOT THEN CONCEIVE OF A JOB CLAIMANT COULD DO. VOCATIONAL COUNSELOR, GEORGE ENNIS, AFTER CONSIDERING ALL OF CLAIMANT'S LIMITATIONS IN CONJUNCTION WITH HIS PRIOR HISTORY, EDUCATION, TRAINING AND EXPERIENCE THE LAW REQUIRES, CONCLUDED THAT CLAIMANT !!WOULD NOT BE EMPLOYABLE.!! THE REFEREE AGREED.

THE BOARD, ON REVIEW, CONCURS WITH THE REFEREE'S OPINION THAT CLAIMANT'S PRESENT CONDITION PRECLUDES HIM FROM ENGAGING IN GAINFUL AND SUITABLE EMPLOYMENT WHICH RENDERS HIM PERMANENTLY AND TOTALLY DISABLED. HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED DECEMBER 12, 1973, IS HEREBY 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.

OSCAR HANSON, CLAIMANT

GREEN, GRISWOLD AND PIPPIN, 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 REFEREE'S ORDER WHICH AFFIRMED A DETERMINATION ORDER ALLOWING 5 PERCENT PERMANENT PARTIAL DISABILITY OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

CLAIMANT, A 31 YEAR OLD DREDGE OPERATOR, SUSTAINED A COMPENSABLE INDUSTRIAL INJURY, DIAGNOSED AS A LUMBAR CONTUSION AND SPRAIN, ON JULY 1, 1972.

MEDICAL EVIDENCE PRODUCED AT THE HEARING INDICATES THAT CLAIMANT'S COMPLAINTS OF CONTINUING BACK PAIN ARE TOTALLY SUBJECTIVE. 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 TYPE OF EMPLOYMENT.

THE REFEREE WAS CORRECT IN FINDING CLAIMANT HAD FAILED TO MEET HIS BURDEN OF PROVING THAT THE PERMANENT PARTIAL DISABILITY AWARD WAS IMPROPER AND HIS ORDER SHOULD, THEREFORE, BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 4, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 73-1070 MAY 22, 1974

ELIZABETH SIMMONS, CLAIMANT
KISSLING AND KEYS, CLAIMANT'S ATTYS.
JERARD WEIGLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS REVIEW INVOLVES THE QUESTION OF WHETHER CLAIMANT IS ENTITLED TO A HEARING TO ENFORCE HER RIGHT TO COMPENSATION FOR AN OCCUPATIONAL DISEASE AND, IF SO, WHICH OF TWO INSURANCE CARRIERS OF HER EMPLOYER IS LIABLE FOR THAT COMPENSATION.

THE REFEREE CONCLUDED SHE WAS ENTITLED TO A HEARING AND RULED THAT ARGONAUT INSURANCE COMPANY WAS THE RESPONSIBLE CARRIER. ARGONAUT HAS REQUESTED REVIEW.

BEFORE ENTERING THE PROCEDURAL THICKET WE SHALL DISCUSS THE RELEVANT FACTS CONCERNING CLAIMANT'S ILLNESS.

CLAIMANT IS A 52 YEAR OLD WOMAN WHO HAS BEEN EMPLOYED IN THE KITCHEN OF THE ARLINGTON CLUB SINCE 1953. WHILE SO EMPLOYED SHE WAS EXPOSED TO VARIOUS SOAPS, DETERGENTS AND CHEMICALS.

BEGINNING ABOUT 1958, SHE OCCASIONALLY SUFFERED FROM A CONTACT DERMATITIS OF HER HANDS FOR WHICH SHE WAS TREATED BY DR. SHELDON WALKER OFF AND ON FOR SEVERAL YEARS. THE CONDITION EVENTUALLY BEGAN TO SPREAD UP HER FOREARMS AND ON OCTOBER 2, 1967, SHE FILED A CLAIM FOR WORKMEN'S COMPENSATION BENEFITS WITH HER EMPLOYER.

AT THAT TIME ARLINGTON CLUB INSURED ITS WORKMEN'S COMPENSATION LIABILITY WITH THE ARGONAUT INSURANCE COMPANY. ARGONAUT ACCEPTED THE DERMATITIS CLAIM AS AN OCCUPATIONAL DISEASE.

ON DECEMBER 12, 1967, IT REQUESTED CLOSURE OF THE CLAIM AND ON DECEMBER 13, 1967, THE WORKMEN'S COMPENSATION BOARD ADMINISTRATIVELY CLOSED THE CLAIM WITHOUT ISSUING A FORMAL DETERMINATION ORDER SINCE THE CARRIER REPORTED CLAIMANT HAD LOST NO TIME FROM WORK ALTHOUGH, IN FACT, SHE DID MISS THREE OR FOUR DAYS WHILE THE CLAIM WAS OPEN.

FOLLOWING THIS EPISODE OF DERMATITIS HER JOB ASSIGNMENT WAS CHANGED FROM WASHING DISHES TO OPERATING A DUMB WAITER AND PREPARING VEGETABLES. ON THIS ASSIGNMENT SHE HAD ONLY OCCASIONAL DIFFICULTY WITH THE DERMATITIS.

IN JUNE, 1968, SHE DEVELOPED A CELLULITIS AND LYMPHANGEITIS SECONDARY TO HER DERMATITIS WHICH DR. WALKER TREATED. IN JULY HE ALSO TREATED HER DERMATITIS WHICH FLARED UP AFTER SHE ATE SOME CHOCOLATE. THIS TREATMENT WAS APPARENTLY PAID FOR BY HER PRIVATE INSURANCE COMPANY. THE MEDICAL REPORTS ASSOCIATED WITH THAT TREATMENT INDICATE SHE HAD HAD CONTINUING DRYNESS AND OCCASIONAL CRACKING OF THE SKIN PRIOR TO THESE EPISODES.

ON JUNE 19, 1969, CLAIMANT VISITED DR. JOYLE DAHL FOR ANOTHER OF HER DERMATITIS ERUPTIONS. HIS RECORDS CONTAIN THE NOTATION "'HAS HAD RUNNING TROUBLE'" WITH THE PROBLEM. JOINT EXHIBIT 6, PAGE 2. WITH THIS INITIAL VISIT SHE BEGAN A COURSE OF DERMATITIS TREATMENTS AT APPROXIMATE TWO WEEK INTERVALS WHICH LASTED UNTIL MAY 29, 1973.

SHE WAS ADVISED AT THAT TIME THAT THE CONDITION WAS OCCUPATIONAL IN ORIGIN. THE RECORD IS SILENT AS TO WHO PAID THE COST OF THIS TREATMENT, HOWEVER THE PARTIES HAVE STIPULATED THAT THE EMPLOYER DID NOT PROVIDE OR PAY FOR THE SERVICES OF DR. DAHL.

ABOUT SEPTEMBER, 1969, AFTER A NEW CHEF AT THE CLUB ASSIGNED HER, OVER HER OBJECTION, TO WORK AS AN ASSISTANT COOK, HER CONDITION GRADUALLY AGGRAVATED BUT SHE CONTINUED WORKING.

IN MARCH, 1971, SHE WAS ASSIGNED AS A FULL TIME COOK AND HER CONDITION WORSENERD TO THE POINT SHE WAS IN AGONY IN SPITE OF WEARING RUBBER GLOVES AND THE TREATMENTS BY DR. DAHL.

ON JULY 1, 1971, THE ARLINGTON CLUB CHANGED ITS WORKMEN'S COMPENSATION INSURANCE COVERAGE FROM ARGONAUT TO FIREMAN'S FUND INSURANCE COMPANY.

ON JANUARY 8, 1973, AFTER LONG EFFORTS TO HEAL CLAIMANT'S DERMATITIS, DR. DAHL PREPARED A NOTE TO NORMAN MOYER, CLUB MANAGER, ADVISING THAT THE CLAIMANT SHOULD TERMINATE HER KITCHEN JOB BECAUSE HER DERMATITIS WOULD NEVER IMPROVE IF SHE CONTINUED IN THAT TYPE OF WORK.

CLAIMANT IS A WIDOW WITH A FIFTH GRADE EDUCATION WHOSE ONLY EXPERIENCE AND TRAINING HAS BEEN AS A CULINARY WORKER. SHE HAD HOPED TO REMAIN AT THE ARLINGTON CLUB BECAUSE SHE NEEDED THE WORK AND WAS INTERESTED IN PRESERVING HER RETIREMENT BENEFITS. HOWEVER, SHE ACCEPTED DR. DAHL'S ADVICE AND TERMINATED HER EMPLOYMENT. WHEN SHE DID SO, SHE FILED ANOTHER CLAIM FOR WORKMEN'S COMPENSATION BENEFITS WITH THE CLUB WHICH SUBMITTED IT TO FIREMAN'S FUND.

FIREMAN'S FUND CONCLUDED HER CONDITION WAS A CONTINUATION OF HER 1967 CLAIM PROBLEM AND THEREFORE DENIED LIABILITY TO HER "'UNDER THE WORKMEN'S COMPENSATION POLICY YOUR EMPLOYER HAS WITH US'" BECAUSE "'(Y)OUR CONDITION DID NOT ARISE DURING THE TIME WE CARRIED THE WORKMEN'S COMPENSATION INSURANCE FOR YOUR EMPLOYER.'" FIREMAN'S FUND, EXHIBIT 2.

CLAIMANT, THROUGH COUNSEL, REQUESTED A HEARING ON THE DENIAL BY FIREMAN'S FUND AND LATER AMENDED IT TO JOIN ARGONAUT IN THE PROCEEDING.

ARGONAUT OBJECTED TO BEING JOINED IN THE HEARING CONTENDING THAT CLAIMANT'S TIME LIMIT FOR RECOURSE AGAINST IT HAD EXPIRED AND THAT, IN ANY EVENT, FIREMAN'S FUND WAS LIABLE TO CLAIMANT UNDER THE 'LAST INJURIOUS EXPOSURE' RULE.

THE REFEREE REFUSED TO GRANT ARGONAUT'S MOTION TO DENY REQUEST FOR HEARING AND, AS MENTIONED EARLIER, WENT ON TO CONCLUDE ARGONAUT WAS RESPONSIBLE FOR PAYMENT OF ARLINGTON CLUB'S LIABILITY TO CLAIMANT.

ON DECEMBER 18, 1973, ARGONAUT REQUESTED BOARD REVIEW. ON DECEMBER 20, IT PETITIONED FOR RELIEF UNDER ORS 656.307(1)(B) PENDING ISSUANCE OF THE BOARD'S ORDER ON REVIEW. ON DECEMBER 21, 1973 AN ORDER ISSUED DESIGNATING ARGONAUT THE PAYING AGENT PENDING REVIEW.

WE HAVE REVIEWED THE RECORD DE NOVO, STUDIED THE BRIEFS FILED ON REVIEW AND, HAVING DONE SO, NOW CONCLUDE, AS DID THE REFEREE, THAT ARGONAUT INSURANCE COMPANY IS RESPONSIBLE FOR PAYMENT OF THE ARLINGTON CLUB'S LIABILITY.

THERE IS MUCH DEBATE IN THE RECORD OVER THE APPLICATION OF THE 'LAST INJURIOUS EXPOSURE' PRINCIPLE AND WHAT 'DISABILITY' MEANS.

PROFESSOR LARSON STATES IN 3 LARSON, WORKMEN'S COMPENSATION LAW, SECTION 95.21 -

' IN THE CASE OF OCCUPATIONAL DISEASE, LIABILITY IS MOST FREQUENTLY ASSIGNED TO THE CARRIER WHO WAS ON THE RISK WHEN THE DISEASE RESULTED IN DISABILITY, IF THE EMPLOYMENT AT THE TIME OF DISABILITY WAS OF A KIND CONTRIBUTING TO THE DISEASE. IT WILL BE OBSERVED THAT, IN BROAD OUTLINE, THIS IS COMPARABLE TO THE 'LAST INJURIOUS EXPOSURE' RULE DISCUSSED IN THE PREVIOUS SUBSECTION, EXCEPT THAT IT PLACES MORE STRESS ON THE MOMENT OF DISABILITY. OCCUPATIONAL DISEASE CASES TYPICALLY SHOW A LONG HISTORY OF EXPOSURE WITHOUT ACTUAL DISABILITY, CULMINATING IN THE ENFORCED CESSATION OF WORK ON A DEFINITE DATE. IN THE SEARCH FOR AN IDENTIFIABLE INSTANT IN TIME WHICH CAN PERFORM SUCH NECESSARY FUNCTIONS AS TO START CLAIM PERIODS RUNNING, ESTABLISH CLAIMANT'S RIGHT TO BENEFITS, AND FIX THE EMPLOYER AND INSURER LIABLE FOR COMPENSATION, THE DATE OF DISABILITY HAS BEEN FOUND THE MOST SATISFACTORY. LEGALLY, IT IS THE MOMENT AT WHICH THE RIGHT TO BENEFITS ACCRUES - AS TO LIMITATIONS, IT IS THE MOMENT AT WHICH IN MOST INSTANCES THE CLAIMANT OUGHT TO KNOW HE HAS A COMPENSABLE CLAIM - AND, AS TO SUCCESSIVE INSURERS, IT HAS THE ONE CARDINAL MERIT OF BEING DEFINITE, WHILE SUCH OTHER POSSIBLE DATES AS THAT OF THE ACTUAL CONTRACTION OF THE DISEASE ARE USUALLY NOT SUSCEPTIBLE TO POSITIVE DEMONSTRATION.

' AMONG THE CONDITIONS TO WHICH THIS RULE HAS BEEN APPLIED ARE ASBESTOSIS, SILICOSIS, PNEUMOCONIOSIS, TUBERCULOSIS, DERMATITIS, OCCUPATIONAL LOSS OF HEARING, AND VARIOUS DISEASES PRODUCED BY INHALATION OF CHEMICALS AND FUMES.

'' IT GOES WITHOUT SAYING THAT, BEFORE THE LAST-INJURIOUS-EXPOSURE RULE CAN BE APPLIED, THERE MUST HAVE BEEN SOME EXPOSURE OF A KIND CONTRIBUTING TO THE CONDITION. SO, IF A SILICOSIS CLAIMANT HAD BEEN TRANSFERRED TO OUTSIDE WORK OR TO WORK IN A PLACE WHERE DUST CONDITIONS WERE NOT HARMFUL, THE CARRIER ON THE RISK DURING THE LATER PERIOD WILL NOT BE HELD LIABLE. BUT, ONCE THE REQUIREMENT OF SOME CONTRIBUTING EXPOSURE HAS BEEN MET, COURTS APPLYING THIS RULE WILL NOT GO ON TO WEIGH THE RELATIVE AMOUNT OR DURATION OF THE EXPOSURE UNDER VARIOUS EMPLOYERS AND CARRIERS. AS A RESULT, IN SOME CASES CARRIERS AND EMPLOYERS THAT HAVE BEEN ON THE RISK FOR RELATIVELY BRIEF PERIODS, PERHAPS ONLY A FEW WEEKS, HAVE NEVERTHELESS BEEN CHARGED WITH FULL LIABILITY FOR A CONDITION THAT HAD DEVELOPED OVER A NUMBER OF YEARS.

'' SINCE THE ONSET OF DISABILITY IS THE KEY FACTOR IN ASSESSING LIABILITY UNDER THE LAST-INJURIOUS-EXPOSURE RULE, IT DOES NOT DETRACT FROM THE OPERATION OF THIS RULE TO SHOW THAT THE DISEASE EXISTED UNDER A PRIOR EMPLOYER OR CARRIER, OR HAD BECOME ACTUALLY APPARENT, OR HAD RECEIVED MEDICAL TREATMENT*, OR, INDEED, AS HELD IN NORTH CAROLINA, HAD ALREADY BEEN THE SUBJECT OF A CLAIM FILED AGAINST THE PRIOR EMPLOYER, SO LONG AS IT HAD NOT RESULTED IN DISABILITY.!!

* SEE RYCIAK V. EASTERN PRECISION RESISTOR, 12 N.Y. 2D 29, 234, N.Y.S. 2D 207, 186 N.E. 2D 408 (1962) CITED IN FOOTNOTE 90 TO SECTION 95.21.

IT SHOULD BE CAREFULLY NOTED THAT '' THE MOMENT OF DISABILITY'' OF WHICH LARSON SPEAKS IS, LEGALLY, '' * * * THE MOMENT AT WHICH THE RIGHT TO BENEFITS ACCRUES . . . IT IS THE MOMENT AT WHICH, IN MOST INSTANCES THE CLAIMANT OUGHT TO KNOW HE HAS A COMPENSABLE CLAIM.!!

UNDER THE OREGON WORKMEN'S COMPENSATION LAW, CLAIMANT BECAME ENTITLED TO BENEFITS WHEN HER OCCUPATIONAL DISEASE GAVE RISE TO A NEED FOR MEDICAL SERVICES. SHE CLAIMED FOR BENEFITS, I.E. MEDICAL SERVICES, ON OCTOBER 2, 1967. ON BEHALF OF THE EMPLOYER, ARGONAUT ACCEPTED THE CLAIM AND PROVIDED '' COMPENSATION'' TO THE CLAIMANT. ORS 656.002 (7). BECAUSE OF THIS, WE THINK CLAIMANT'S '' DISABILITY'', FOR THE PURPOSE OF APPLYING THE LAST INJURIOUS EXPOSURE RULE UNDER THE OREGON LEGISLATIVE SCHEME, BEING THE MOMENT AT WHICH THE RIGHT TO BENEFITS ACCRUED, OCCURRED IN 1967. IN ADDITION, CLAIMANT, EMPLOYER AND INSURER ALL BECAME AWARE OF HER COMPENSABLE OCCUPATIONAL DISEASE.

LIABILITY FOR CLAIMANT'S OCCUPATIONAL DERMATITIS HAVING BEEN FIXED UPON ARGONAUT IN 1967, REMAINS UPON THEM FOR SO LONG AS THE CONDITION REMAINS AND FOR SO LONG AS THE LAW REQUIRES.

FIRST THEN, WE MUST DECIDE WHETHER CLAIMANT'S PRESENT DERMATITIS IS THE SAME OCCUPATIONAL DISEASE SHE HAD IN 1967. THE EVIDENCE CLEARLY SHOWS IT IS. THE CLAIM CLAIMANT FILED ON JANUARY 23, 1973 NOTES THE CONDITION CLAIMED FOR DEVELOPED IN 1967. CLAIMANT'S ALLERGIC REACTION HAS NEVER BEEN CURED SINCE IT STARTED. EVEN THE CONSEQUENCES OF THAT REACTION HAVE NEVER BEEN FULLY CONTROLLED - ESPECIALLY SINCE 1969.

THE NEXT QUESTION THEN, IS WHETHER ARGONAUT REMAINS LIABLE TO CLAIMANT FOR WORKMEN'S COMPENSATION BENEFITS. ARGONAUT CONTENDS THAT CLAIMANT'S MEDICAL ONLY CLAIM CLOSURE ON DECEMBER 13, 1967 BEGAN THE RUNNING OF THE FIVE YEAR PERIOD PROVIDED FOR FILING AGGRAVATION CLAIMS AND THAT HER AGGRAVATION RIGHTS HAD THEREFORE EXPIRED BEFORE SHE REQUESTED HER HEARING. SOME BACKGROUND OF THE PRACTICAL CONSIDERATIONS WHICH LEAD TO THE "MEDICAL ONLY" CLOSURE POLICY IS NECESSARY TO THE DISCUSSION OF THIS ISSUE.

THE WORKMEN'S COMPENSATION BOARD WAS CREATED BY THE 1965 OREGON LEGISLATURE. AMONG OTHER DUTIES IT WAS ASSIGNED THE TASK OF EVALUATING CLAIMS AND DETERMINING COMPENSATION.

ON MAY 4, 1966, THE BOARD ISSUED ITS FIRST RULES OF PRACTICE AND PROCEDURE. THOSE RULES, WCB 5-1966, PROVIDED -

"4.01 THE LAW REQUIRES THE BOARD TO MAKE A DETERMINATION OF COMPENSATION DUE ON EVERY COMPENSABLE INJURY."

"4.05 THE BOARD WILL REFER ALL SUCH REQUESTS FOR DETERMINATION TO THE CLOSING AND EVALUATION DIVISION. THIS DIVISION WILL, IN ADDITION TO NECESSARY ADMINISTRATIVE PERSONNEL, BE ASSIGNED A FULL-TIME PHYSICIAN AND ASSISTANT ATTORNEY GENERAL FOR THE PURPOSE OF RESOLVING MEDICAL AND LEGAL ISSUES."

"4.07 THE DETERMINATIONS OF THE CLOSING AND EVALUATION DIVISION SHALL BE DEEMED DETERMINATIONS OF THE BOARD. THE DETERMINATIONS SHALL BE DEEMED MADE THE DATE THE DETERMINATION IS MAILED TO THE PARTIES."

THE AGENCY SOON LEARNED THAT THE GREAT MAJORITY OF THE APPROXIMATELY 100,000 INJURY CLAIMS EACH YEAR INVOLVED ONLY NOMINAL MEDICAL CARE. REALIZING THAT FORMALLY CLOSING THESE CLAIMS WOULD RESULT IN ENORMOUS ADMINISTRATIVE COSTS, AND BECAUSE THE STATUTE PERMITS THE EMPLOYER TO SPECIFICALLY REQUEST A DETERMINATION IN ANY CASE, THE BOARD CONCLUDED AN INFORMAL "ADMINISTRATIVE" CLOSURE COULD SUFFICIENTLY FULFILL AND CARRY OUT THE LEGISLATIVE INTENT WHILE SAVING THE UNNECESSARY COSTS. THE ADMINISTRATIVE PRACTICE OF MAKING "MEDICAL ONLY" CLOSURES WAS THEREFORE DEVELOPED. IN THE PROCESS AN ESTIMATED ONE MILLION DOLLARS OF UNPRODUCTIVE ADMINISTRATIVE EXPENSE, A COST ULTIMATELY BORNE BY EMPLOYERS, WAS SAVED. IT WAS THE BOARD'S POSITION, HOWEVER, THAT SINCE NO FORMAL WRITTEN DETERMINATION ORDER WAS ISSUED OR MAILED, THE MEDICAL ONLY CLOSURE DID NOT, UNDER ORS 656.268(4), START THE RUNNING OF THE AGGRAVATION PERIOD.

IT WAS WCB ADMINISTRATIVE ORDER 5-1966 WITH ITS ASSOCIATED POLICY RATHER THAN SECTION 4.01 OF WCB ADMINISTRATIVE ORDER 4-1970 (ADOPTED MAY 15, 1970 AND SINCE REPEALED) THAT WAS IN EFFECT ON DECEMBER 12, 1967 WHEN ARGONAUT REQUESTED A "NO TIME LOSS" CLOSURE. HAD ARGONAUT, IN 1967, WISHED TO START THE FIVE YEAR AGGRAVATION PERIOD RUNNING, IT COULD HAVE REQUESTED A FORMAL CLOSURE RATHER THAN A "NO TIME LOSS CLOSURE".

THE BOARD CONCLUDES THAT ARGONAUT WAS PROPERLY JOINED AT THE HEARING AND THAT CLAIMANT THEREFORE HAS PROPERLY ESTABLISHED HER RIGHT TO ADDITIONAL WORKMEN'S COMPENSATION BENEFITS FROM THE ARLINGTON CLUB THROUGH ITS INSURER, ARGONAUT INSURANCE COMPANY, FOR HER OCCUPATIONAL DERMATITIS. H. A. KLEEMAN, WCB CASE NO. 67-1049, ORDER ON REVIEW, (APRIL 7, 1969).

ARGONAUT'S RESISTANCE TO THE CLAIMANT'S HEARING REQUEST AND TO THE REFEREE'S ORDER OF DECEMBER 13, 1973, CONSTITUTE A DE FACTO DENIAL OF CLAIMANT'S CLAIM FOR ADDITIONAL BENEFITS AND JUSTIFIES THE ATTORNEY'S FEE ALLOWED BY THE REFEREE, AND A FURTHER FEE ON REVIEW.

THE DENIAL OF LIABILITY BY FIREMAN'S FUND SHOULD BE APPROVED.

IT IS HEREBY ORDERED THAT THE ORDER OF THE REFEREE DATED DECEMBER 13, 1973 IS AFFIRMED.

IT IS HEREBY FURTHER ORDERED THAT THE DENIAL OF LIABILITY ISSUED BY FIREMAN'S FUND INSURANCE COMPANY IS APPROVED.

IT IS HEREBY FURTHER ORDERED THAT THE ARGONAUT INSURANCE COMPANY IS RESPONSIBLE FOR PAYMENT OF THE BENEFITS WHICH THE REFEREE ORDERED THE ARLINGTON CLUB TO PROVIDE TO CLAIMANT.

IT IS HEREBY FURTHER ORDERED THAT ARGONAUT INSURANCE COMPANY PAY CLAIMANT'S ATTORNEY TWO HUNDRED FIFTY DOLLARS FOR HIS SERVICES ON THIS REVIEW - SAID FEE TO BE PAID IN ADDITION TO AND NOT OUT OF CLAIMANT'S COMPENSATION.

IT IS HEREBY FINALLY ORDERED THAT THE BOARD'S ORDER DESIGNATING PAYING AGENT PURSUANT TO ORS 656.307 IS SUPERSEDED BY THIS ORDER ON REVIEW. ALL PAYMENTS MADE PURSUANT TO THAT ORDER, INCLUDING BENEFITS AWARDED BY THE DETERMINATION ORDER DATED MARCH 12, 1974, ARE DECLARED TO BE THE SOLE RESPONSIBILITY OF ARGONAUT INSURANCE COMPANY.

WCB CASE NO. 73-2223 MAY 22, 1974

SHARON KEELER, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTYS.
MCMENAMIM, JONES, JOSEPH AND
LANG, DEFENSE ATTYS.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH ORDERED THE REOPENING OF THE CLAIMANT'S CLAIM FOR MEDICAL CARE AND TREATMENT AND THE ASSESSMENT OF PENALTIES.

CLAIMANT SUSTAINED A COMPENSABLE BACK INJURY ON MAY 21, 1969, WHILE EMPLOYED BY JARMAN COMPANY IN MILWAUKIE, OREGON. THE CLAIM WAS CLOSED BY A DETERMINATION ORDER, DATED OCTOBER 3, 1969, WITH NO AWARD OF PERMANENT PARTIAL DISABILITY.

CLAIMANT'S TESTIMONY AND THE MEDICAL EVIDENCE PRESENTED AT THE HEARING SHOWED THAT HER BACK HAS GIVEN HER CONTINUOUS PROBLEMS SINCE THE INJURY OF MAY 21, 1969. SHE NOW COMPLAINS OF INCREASING PAIN WHICH RADIATES DOWN HER LEG.

THE REFEREE CONCLUDED THAT CLAIMANT HAD NOT SUFFERED A SECOND INDUSTRIAL INJURY AND THAT THE RESPONSIBILITY FOR THE PAYMENT

OF COMPENSATION FOR THE ORIGINAL INJURY SHOULD BE ASSUMED BY THE STATE ACCIDENT INSURANCE FUND ON THE BASIS OF AGGRAVATION. HE ALSO FOUND THAT THE FUND FAILED TO PAY CLAIMANT BENEFITS WITHIN THE TIME PROVIDED BY LAW (ORS 656.262(4)) AND ERRED IN NOT ACCEPTING THE CLAIM ON THE MEDICAL OPINION SHE PRESENTED. (THE FUND DID NOT PRODUCE ANY EVIDENCE AT THE HEARING TO SUPPORT ITS DENIAL.)

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE FINDINGS OF THE REFEREE THAT CLAIMANT IS ENTITLED TO REOPENING OF HER CLAIM AND THAT HER BACK CONDITION IS AN AGGRAVATION OF HER 1969 INDUSTRIAL INJURY.

THE BOARD FURTHER CONCURS THAT THE FUND SHOULD PAY A 25 PERCENT PENALTY FOR UNREASONABLE DELAY IN PAYMENT OF COMPENSATION TO THE CLAIMANT.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 3, 1974, IS HEREBY 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.

WCB CASE NO. 69-1801 MAY 22, 1974

EUGENE E. FIELDS, CLAIMANT
MYRICK, COULTER, SEAGRAVES AND
NEALY, CLAIMANT'S ATTYS.

CLAIMANT, THROUGH HIS COUNSEL, C. H. SEAGRAVES, JR., HAS PETITIONED THE BOARD TO CONSIDER NEWLY DISCOVERED EVIDENCE BEARING ON THE COMPENSABILITY OF HIS CLAIM AND TO SET ASIDE PRIOR AGENCY ORDERS APPROVING THE DENIAL OF HIS CLAIM.

ORS 656.278 GRANTS THE BOARD JURISDICTION TO ALTER EARLIER ACTIONS ON A CLAIM. THAT AUTHORITY, HOWEVER, IS GRANTED IN TERMS OF 'CONTINUING' POWER AND JURISDICTION. THE BOARD INTERPRETS THIS LANGUAGE TO MEAN THAT IN ORDER TO HAVE CONTINUING POWER AND JURISDICTION CLAIMANT MUST HAVE ESTABLISHED A COMPENSABLE CLAIM. JAMES C. CONAWAY, OWN MOTION ORDER, DATED MARCH 7, 1974.

WE CONCLUDE, BECAUSE CLAIMANT HAS FAILED TO ESTABLISH THAT HIS CLAIM WAS COMPENSABLE, THAT THE BOARD IS POWERLESS TO AFFECT FORMER ORDERS ISSUED IN THE CLAIM PURSUANT TO ORS 656.278.

ORDER

THE CLAIMANT'S PETITION FOR OWN MOTION ACTION FILED APRIL 30, 1974 IS HEREBY DENIED.

HAZEL M. BRIGGS, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS.
MERLIK MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A HEARING OFFICER'S ORDER SEEKING AN ADDITIONAL AWARD OF TIME LOSS COMPENSATION BEYOND THAT GRANTED BY THE HEARING OFFICER, PENALTIES AND ATTORNEY'S FEES FOR ALLEGEDLY IMPROPERLY SECURING CLAIM CLOSURE AND AN INCREASE IN HER PERMANENT DISABILITY AWARD.

CLAIMANT IS A 50 YEAR OLD WOMAN WHO STRAINED HER LOW BACK ON APRIL 7, 1972, WHILE WORKING AS A GROCERY CHECKER FOR SAFEWAY STORES, INC.

SHE WAS TREATED WITH PHYSICAL THERAPY BY W. M. BURGET, M.D., AND LATER ALSO BEGAN RECEIVING CHIROPRACTIC MANIPULATIONS FROM DR. GEORGE DUNN. DR. BURGET WAS HER PRIMARY TREATING PHYSICIAN. ON NOVEMBER 14, 1972, HE REPORTED TO TRAVELER'S =

!!! DO THINK MRS. BRIGGS IS IMPROVING WITH PHYSIOTHERAPY AND I WOULDN'T BE SURPRISED IF SHE WON'T BE FAIRLY STATIONARY IN ANOTHER THREE OR FOUR WEEKS.!! JOINT EXHIBIT A-27

HOWEVER, ON NOVEMBER 29, 1972, DR. BURGET ESTIMATED ANOTHER EIGHT WEEKS OF TREATMENT. SHORTLY THEREAFTER, THE EMPLOYER'S INSURANCE COMPANY (TRAVELER'S), ARRANGED TO HAVE CLAIMANT EXAMINED BY DR. THEODORE J. PASQUESI, AN ORTHOPEDIC PHYSICIAN. WHEN HE SAW HER ON DECEMBER 21, 1972, HE CONCLUDED THE TREATMENTS OF DRs. BURGET AND DUNN WERE OF SYMPTOMATIC RATHER THAN CURATIVE BENEFIT AND THEREFORE RECOMMENDED CLAIM CLOSURE.

THE EMPLOYER'S INSURER THEN SUBMITTED CLAIMANT'S TREATMENT RECORDS TOGETHER WITH DR. PASQUESI'S REPORT TO THE WORKMEN'S COMPENSATION BOARD'S EVALUATION DIVISION WITH A FORM 802 REQUESTING A DETERMINATION OF CLAIMANT'S CLAIM. THE FORM WAS INCOMPLETE IN SOME RESPECTS AND INTERNALLY INCONSISTENT IN OTHERS. DURING THIS PERIOD, CLAIMANT WAS CONTINUING HER TREATMENT BY DR. BURGET. HE DID NOT CONSIDER HER STATIONARY AND HAD NOT RELEASED HER FOR WORK. THE EVALUATION DIVISION, APPARENTLY WITHOUT SEEKING FURTHER INFORMATION OR OPINION FROM DR. BURGET, NEVERTHELESS PROCEEDED TO ISSUE A DETERMINATION ORDER TERMINATING CLAIMANT'S TIME LOSS COMPENSATION ON DECEMBER 22, 1972, AND AWARDING 32 DEGREES FOR UNSCHEDULED NECK AND BACK DISABILITY.

CLAIMANT CONTINUED RECEIVING THERAPY, BUT IT PRODUCED LITTLE BENEFIT. HOWEVER, IN APRIL, 1973, A NEW KIND OF THERAPY WAS APPLIED WHICH APPARENTLY IMPROVED HER CONDITION FAIRLY STEADILY UNTIL HER SOCIAL SECURITY APPLICATION WAS REJECTED. DR. BURGET CONTINUED TREATING CLAIMANT UNTIL JULY 23, 1973, WHEN HE CONCLUDED THAT CLAIMANT WAS ABLE TO RETURN TO WORK.

THE HEARING ON THIS CLAIM WAS HELD JULY 10, 1973, BUT THE RECORD REMAINED OPEN FOR ADDITIONAL EVIDENCE UNTIL SEPTEMBER 6, 1973.

DR. PASQUESI REPORTED, BEFORE HER TREATMENT HAD BEEN COMPLETED, THAT CLAIMANT HAD A PERSISTENT LUMBOSACRAL MYOFACITIS WITH LIMITATION OF MOTION. DR. BURGET CONCLUDED AT THE CLOSE OF TREATMENT THAT SHE HAD A CHRONIC LUMBAR STRAIN. ON JULY 10, 1973, CLAIMANT TESTIFIED TO LIMITATIONS ON HER ABILITY TO SIT, STAND, STOOP OR LIFT DUE TO BACK PAIN.

CLAIMANT IS CORRECT THAT HER CLAIM WAS PREMATURELY CLOSED, BUT SHE HAS NOT PERSUADED US THAT THE CARRIER'S CONDUCT IN SECURING THE CLOSURE JUSTIFIES THE IMPOSITION OF PENALTIES AND ATTORNEY FEES.

THE 802 FORM FILED BY TRAVELER'S IS A PERFECT EXAMPLE OF HOW ONE SHOULD NOT BE PREPARED. THE BOARD HAS LEARNED, HOWEVER, THAT DEMANDING PERFECTION IN THE COMPLETION OF FORMS BY INSURERS, EMPLOYERS, DOCTORS OR CLAIMANTS IS, ON THE WHOLE, COUNTERPRODUCTIVE.

IT WAS NOT THE DEFICIENT 802 FORM WHICH CONTRIBUTED TO THE PREMATURE CLOSURE NOR EVEN THE CARRIER'S PERSISTENCE IN REQUESTING CLOSURE AFTER DR. BURGET CHANGED HIS MIND. ORS 656.268 PERMITS THE EMPLOYER TO REQUEST CLOSURE WHEN IT BELIEVES THE CLAIMANT IS MEDICALLY STATIONARY. TRAVELER'S HAD DR. PASQUESI'S REPORT ON WHICH TO FOUND SUCH A BELIEF AND WAS ENTITLED TO PRESENT THE CLAIM TO THE BOARD REGARDLESS OF DR. BURGET'S CONTINUING TREATMENT.

SINCE, AT THE TIME OF THE DETERMINATION REQUEST, THE BOARD WAS FURNISHED WITH ALL THE INFORMATION CONCERNING CLAIMANT'S CLAIM, AND BECAUSE THE STATUTE EMPOWERS ONLY THE BOARD, THROUGH ITS EVALUATION DIVISION, TO EFFECT CLAIM CLOSURE, THE KNOWLEDGE OR MOTIVATION OF TRAVELER'S INSURANCE COMPANY AND/OR SAFEWAY STORES CANNOT LEGALLY BE CONSIDERED THE CAUSE OF CLAIMANT'S PREMATURE CLAIM CLOSURE. THE PREMATURE CLOSURE OCCURRED BECAUSE THE BOARD'S EVALUATION DIVISION FAILED TO DEVELOP THE FULL RECORD NEEDED IN THE FACE OF THE CONFLICTING MEDICAL REPORTS FROM DR. PASQUESI AND DR. BURGET.

WE CONCLUDE, HOWEVER, THAT THE LAW DOES NOT ENTITLE CLAIMANT TO THE PAYMENT OF PENALTIES OR ATTORNEY FEES FOR THE BOARD'S PREMATURE CLOSURE OF THE CLAIM.

THE NEXT ERROR OCCURRED WHEN, ALTHOUGH THE CLAIMANT WAS TEMPORARILY TOTALLY DISABLED BETWEEN DECEMBER 22, 1972, AND JULY 23, 1973, THE HEARING OFFICER ALLOWED TIME LOSS COMPENSATION ONLY FOR THE PERIOD SHE WAS AFFIRMATIVELY RESPONDING TO DR. BURGET'S TREATMENT. UNDER THE WORKMEN'S COMPENSATION LAW, AN INJURED WORKMAN IS ENTITLED TO TIME LOSS COMPENSATION WHILE HE OR SHE IS TOTALLY BUT TEMPORARILY PREVENTED FROM EARNING A LIVING DUE TO THE INJURY. A SUCCESSFUL THERAPY PROGRAM IS NOT A CONDITION PRECEDENT TO RECEIVING TEMPORARY TOTAL DISABILITY BENEFITS.

WE CONCLUDE CLAIMANT IS ENTITLED TO TEMPORARY TOTAL DISABILITY BENEFITS FOR THE PERIOD DECEMBER 23, 1972, TO JULY 23, 1973, INCLUSIVE.

WE DO AGREE WITH THE HEARING OFFICER'S CONCLUSIONS CONCERNING THE NATURE, LOCATION AND EXTENT OF CLAIMANT'S PERMANENT PHYSICAL IMPAIRMENTS AND WITH HIS EVALUATION OF THE UNSCHEDULED DISABILITY WHICH THE INJURY PRODUCED - AND HIS ORDER SHOULD BE AFFIRMED IN THAT REGARD.

ORDER

THE ORDER OF THE HEARING OFFICER, DATED SEPTEMBER 27, 1973, IS HEREBY MODIFIED TO GRANT CLAIMANT TEMPORARY TOTAL DISABILITY FROM DECEMBER 23, 1972, TO JULY 23, 1973, INCLUSIVE.

CLAIMANT'S ATTORNEYS ARE HEREBY AWARDED 25 PERCENT OF THE ADDITIONAL TEMPORARY DISABILITY COMPENSATION AWARDED HEREBY. IN NO EVENT, HOWEVER, SHALL THE FEE AWARDED BY THIS ORDER, WHEN COMBINED WITH THE FEE RECEIVED PURSUANT TO THE HEARING OFFICER'S ORDER, EXCEED FIFTEEN HUNDRED DOLLARS.

IN ALL OTHER RESPECTS, THE HEARING OFFICER'S ORDER, DATED SEPTEMBER 27, 1973, IS AFFIRMED.

WCB CASE NO. 73-1175 MAY 22, 1974

FLORENCE V. MORELLI, CLAIMANT
SCHUMAKER AND GILROY, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER AFFIRMING A DETERMINATION ORDER WHICH AWARDED 48 DEGREES UNSCHEDULED DISABILITY FOR BOTH SHOULDERS, 28.8 DEGREES FOR LOSS OF THE RIGHT ARM AND 19.2 DEGREES FOR LOSS OF THE LEFT ARM. CLAIMANT CONTENDS SHE IS PERMANENTLY AND TOTALLY DISABLED.

WE ARE PERSUADED FROM OUR REVIEW OF THE EVIDENCE THAT THE REFEREE HAS MISCONSTRUED THE EVIDENCE. THERE APPEARS LITTLE NEED TO REITERATE ALL OF THE MEDICAL EVIDENCE. IT IS SUFFICIENT TO NOTE THAT THE DOCTORS ARE IN GENERAL AGREEMENT AS TO THE DISABLING CONSEQUENCES OF CLAIMANT'S COMPENSABLE RESIDUALS. THE TOTALITY OF THE EVIDENCE SUSTAINS THE CLAIMANT'S CONTENTION THAT SHE IS UNABLE TO REGULARLY PERFORM WORK AT A GAINFUL AND SUITABLE OCCUPATION. FOR A WORKMAN TO REGULARLY PERFORM WORK, HE OR SHE MUST BE EXPECTED TO FULFILL THE REQUIREMENTS OF THE JOB DAY AFTER DAY AND FOR THE FULL NUMBER OF HOURS REQUIRED. TO BE GAINFUL WOULD REQUIRE THE OCCUPATION TO BE SOMETHING AT WHICH A WORKMAN COULD MAKE A REASONABLE LIVING WAGE. TO BE SUITABLE WOULD NEED TO BE INTERPRETED AS BEING ATTAINABLE AND WITHIN THE ABILITIES OF THE WORKMAN. CLAIMANT HAS BEEN TOTALLY PRECLUDED FROM WORK OF SUCH KIND.

ORDER

THE ORDER OF THE REFEREE IS MODIFIED TO GRANT CLAIMANT AN AWARD FOR PERMANENT, TOTAL DISABILITY.

COUNSEL FOR CLAIMANT IS ENTITLED 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 REFEREE, SHALL NOT EXCEED FIFTEEN HUNDRED DOLLARS.

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