

SUPPLEMENT NUMBER 1

Circuit Court Supplement for Volume 12 of

VAN NATTA'S WORKMEN'S COMPENSATION REPORTER

Vol. 12
Add to
Page

- 2 Story, Donald A., WCB 74-890, DOUGLAS; Affirmed.
6 Schmidt, Virginia M., No. 85271, MARION; Settled for increase
8 Fields, Ernest, No. 74-277 E, KLAMATH; Affirmed.
9 Muncy, Gary James, WCB 73-2181, MULTNOMAH; Affirmed.
11 Ward, Robert H., WCB 73-2083, MULTNOMAH; Affirmed.
14 Woody, Zeb, WCB 72-2706, BENTON; Affirmed.
15 House, Frank B., WCB 73-2367, SHERMAN; Back award increased to 144°.
22 Roth, Nathan, WCB 72-2005, UNION; Settled for \$1,000.
23 Fitzgibbons, Ollie, WCB 73-228, WASCO; Affirmed.
23 Hindman, Robert Wayne, WCB 73-1638, MARION; Affirmed.
28 Clark, Jo A., WCB 73-2270, LINCOLN; Award increased to 30%.
37 Jobe, Roger, WCB 72-1201, LINN; Permanent Partial Disability of 40%.
41 Blue, Donald R., No. L-5982, GRANT; Affirmed.
44 Seriganis, Nicholas, No. 404-888, MULTNOMAH; Affirmed.
46 Davis, Albert, WCB 73-1533 and 73-1772, MULTNOMAH; Claim allowed.
49 Rafferty, Raymond L., No. 73-2642, MARION; Leg awards increased to 40% & 60%.
55 Buchanan, Jessie, WCB 73-2169, HOOD RIVER; Claim allowed.
62 Reed, John M., No. 74-3291, LANE; Penalties taxed for using sight drafts.
64 Sylvester, William, WCB 74-351 E, KLAMATH; Left leg award set at 50%.
78 Brinkley, Allen, WCB 73-2022, DOUGLAS; Affirmed.
80 Blair, Robert D., WCB 73-3311 and 73-3312, MULTNOMAH; Claim allowed.
86 Kennedy, Jessie I., No. 34358, COOS; Affirmed.
87 Baker, Chester, WCB 74-403, KLAMATH; Affirmed.
88 Harness, Corma Mary, WCB 72-1819, MULTNOMAH; Affirmed.
90 Johnson, Vivian G., WCB 73-2578, COOS; Affirmed with penalties.
99 James, Henry, No. 74-379-E, KLAMATH; Affirmed.
101 Henry, Earl R., WCB 72-3492, WASCO; Remanded for further proceedings.
102 Negless, Dixie Lee, No. 74-1310-E-2, JACKSON; Compensation reduced.
110 Colfax, Douglas, WCB 73-2575, COOS; Affirmed.
116 Gore, Della E., WCB 74-73, CROOK; Affirmed.
117 Morgan, Charles A., No. 7062, CURRY; Affirmed.
119 Jenkins, Garland R., WCB 72-2721, DOUGLAS; Affirmed.
121 Hinojosa, Osvaldo, WCB 73-1228, MULTNOMAH; Affirmed.
122 Owens, Robert D., WCB 74-4018, LANE; Affirmed.
124 Shaw, Edwin, WCB 73-3041, POLK; Increase to 64°.
126 Sojka, Joseph, WCB 74-1284, DOUGLAS; Affirmed.
127 Weaver, Delmer R., WCB 73-2929, LINN; Award fixed at 20%.
132 Freeman, Roberta Davis, WCB 74-2529, MULTNOMAH; Affirmed.
133 Karns, Harry, WCB 73-1822, UNION; Dismissed with prejudice.
134 Wright, Robert H., No. 406-350, MULTNOMAH; Affirmed.
135 Vester, Robert, WCB 73-3843, TILLAMOOK; Affirmed.
137 Cavins, Harold, WCB 73-2701, MULTNOMAH; Claim allowed.
139 Reiling, Norman, No. 34966, LINCOLN; Dismissed.
140 Yantis, Jeanette, WCB 73-3125, MULTNOMAH; Affirmed.

Vol. 12
Add to
Page

140 Spani, Eugene, WCB 73-388-0, MULTNOMAH; Affirmed.
141 Kolaks, Lowell, WCB 73-1290, MULTNOMAH; Affirmed.
142 Chichester, Martha, WCB 73-1343, CROOK; Increase of 20% based on Judge's
reaction.
143 Liggett, Herbert, WCB 73-2686, LINN; Affirmed.
146 Kane, Mary M., WCB 73-3658, MULTNOMAH; Affirmed.
147 Hurst, Walter F., WCB 73-3121, MULTNOMAH; Dismissed.
150 Downey, George, No. 407-256, MULTNOMAH; Affirmed.
151 McElroy, Gerald, WCB 73-1028, MARION; Affirmed.
152 DePiero, Louis, WCB 74-4180, LANE; Total disability allowed.
158 Herman, Donald, WCB 73-1048, COLUMBIA; Affirmed.
158 Lewis, Donald G., WCB 71-2154, LANE; Increased from 5% for unscheduled neck
and thoracic disability equal to 16° to 10% for unscheduled neck and
thoracic disability equal to 32°.
159 Yancey, Cecil Watts, WCB 74-279, MULTNOMAH; Claim allowed with penalties.
160 Warren, Robert A., WCB 73-807, MULTNOMAH; Total disability.
161 Pike, James W., No. 86337, MARION; Affirmed.
162 Gumbrecht, Gail, No. 406-927, MULTNOMAH; Claim allowed.
164 Unger, Helen, No. 74-1563-E-2, JACKSON; Affirmed.
165 Bliss, Beulah, WCB 73-2334, MULTNOMAH; Affirmed.
167 Ganong, William F. (Deceased), 75-0263, LANE; Affirmed.
167 Ganong, William F. (Deceased), WCB 73-1711, LANE; Affirmed.
168 Carson, James D., WCB 72-257, MULTNOMAH; Affirmed.
170 Ashmore, Patrick J., WCB 73-3456, MULTNOMAH; Claim allowed.
171 Freitag, Jean Viola, WCB 73-1668, LINN, Total permanent disability.
173 Williams, Eugene E., WCB 73-764, POLK; Affirmed.
176 Bishop, Joseph C., WCB 73-3521, MULTNOMAH; Affirmed.
176 Marek, Arthur, No. 406-960, MULTNOMAH; Permanent and total disability.
178 Allen, Mary, No. 406-954, MULTNOMAH; Heart claim allowed.
180 Frazier, Jerry, WCB 73-357, MARION; Affirmed.
181 Arrance, Larry D., WCB 74-4308, LANE; 64° increase.
181 Heitz, Christian C., Jr., WCB 73-3986, MULTNOMAH; Permanent total disability.
184 Mitchell, Mona, WCB 74-75, CLACKAMAS; Affirmed.
185 Parker, Kate, WCB 73-4180, LINN; Permanent total disability.
189 Haas, Benjamin G., No. 34-795, WASHINGTON; Remanded for hearing.
189 Johnson, Dale (Deceased), WCB 73-1064, MULTNOMAH; Affirmed.
193 Rhodes, Homer, WCB 73-3126, LANE; Affirmed.
194 Stogsdill, Joe F., WCB 73-3912, LINN; Affirmed.
195 Bachmann, Lester E., WCB 73-3260, LANE; Claim allowed.
195 Gonser, Donald, WCB 73-3501, CROOK; Affirmed.
199 Blumberg, Jean A., No. 407-089, MULTNOMAH; Affirmed.
199 Cox, Everett, No. 74-1649-E-3, JACKSON; Affirmed.
201 Davis, Dottie S., WCB 73-2408, MARION; Affirmed.
202 Cox, Robert L., No. 19022, DESCHUTES; Affirmed.
203 Walter, Erich J., No. 74-1724-E-2, JACKSON; Affirmed.
205 Scoville, Donald L., WCB 73-4170, LINCOLN; Affirmed.
206 Gammell, Richard J., WCB 73-3351, UMATILLA; Affirmed.
206 Gammell, Richard J., WCB 73-3351, UMATILLA; Affirmed.
206 Grace, Edmund, WCB 73-723, LINN; Settled for \$2,200.
208 Ross, Max J., WCB 73-3148, MULTNOMAH; Back award increased 10%.
209 Davis, Harry Burton, WCB 74-4892, LANE; Affirmed.

210 Hubbard, John W., WCB 73-1565, LANE; Dismissed for defective service.
211 Edwards, Priscilla, WCB 73-3357, LINCOLN; Affirmed.
213 Hermann, E. Earl (Deceased), WCB 73-3769, UNION; Affirmed.
214 Lamb, Walter, WCB 73-2280, LANE; Affirmed.
217 Nelson, Donald F., WCB 73-1925, TILLAMOOK; Claim allowed.
219 Huntley, Floyd L., WCB 73-1043, COOS; Awarded permanent total disability.
221 McCandless, Ronald S., WCB 73-3784, MARION; Affirmed.
222 Hickman, Lila, WCB 73-3632, MULTNOMAH; Affirmed.
222 Solesbee, Jacob W., WCB 73-3940, LANE; Claim allowance reversed.
223 Loerzel, Benedict A., WCB 73-4093, MULTNOMAH; Affirmed.
225 Toureen, Terry L., WCB 73-3922, LANE; Aggravation claim denied.
226 Fout, Ruskin, WCB 74-2936, DOUGLAS; Affirmed.
227 Morgan, Pauline, WCB 74-853, MULTNOMAH; Affirmed.
228 Dalthorp, Gertrude H., WCB 34-932, WASHINGTON; Settled.
229 Szabo, Dortohy J., WCB 73-3733, MULTNOMAH; Medicals inadequate.
234 Richards, Shirley H., WCB 73-4052, COOS; Affirmed.
235 Lawrence, William R., WCB 73-3823, MULTNOMAH; Affirmed.
236 Burnam, Charles W., WCB 74-5036, LANE; Affirmed.
240 Mata, Ramon D., No. 74-1937-E-2, JACKSON; Affirmed.
243 Myers, Evelyn, WCB 73-3146, MULTNOMAH; Affirmed.
246 Bowling, Joseph, WCB 73-2922, YAMHILL; Shall be reversed and be awarded permanent total disability.
247 Babb, Louise, WCB 73-2587, MARION; Permanent and total disability.
250 Moore, Clarence, No. 408-405, MULTNOMAH; Disability increased to 64%.
252 Gouldin, Harry M., No. 6777-E, HARNEY; Affirmed.
253 Privette, Oscar, No. 406-217, MULTNOMAH; Affirmed.
255 Horwedel, Raymond L., WCB 73-2960, MULTNOMAH; Affirmed.
255 Harris, William, No. 86405, MARION; Dismissed.
263 Dawson, Jack, WCB 73-2879, LANE; Disability fixed at 25%.
264 Lash, Merle W., WCB 73-3081, LANE; Affirmed.
264 Lind, Stephen R., WCB 73-4239, MULTNOMAH; Affirmed.
266 Mack, Charles, No. 5481, JEFFERSON; Remanded.
268 Whittle, Aldin V., WCB 73-2167, COOS; Affirmed.
270 Findley, Elwyn C., No. 87520, MARION; Reversed.
270 Martin, Russell L., WCB 73-4048, MULTNOMAH; Claim allowed.
275 Terrell, Lowell J., WCB 74-566, LANE; Claim allowed.
278 Lentz, David, WCB 73-2804, LANE; Settled for \$500.
279 Horwedel, Raymond L., WCB 74-1934, MULTNOMAH; Affirmed.
279 Mandell, Patrick, No. 409-150, MULTNOMAH; Affirmed.
281 Diamond, Esther, No. 409-315, MULTNOMAH; Increase to 40%.
282 Sorenson, Benjamin, WCB 73-1863, UMATILLA; Affirmed.
283 Kerr, Thomas W., No. 409-923, MULTNOMAH; Affirmed.
284 Olsen, Melvin E., WCB 73-3806, BENTON; Affirmed.
284 Olsen, Melvin, No. 29547, BENTON; Affirmed.
286 Morley, James D., WCB 73-3507, MARION; Reversed and remanded.
287 Jones, Marjorie, No. 74-1900-L-3, JACKSON; Disability increased to 192%.
288 Bartley, Arnold G., WCB 74-3724, DOUGLAS; Affirmed.
289 Reinarz, Joseph, WCB 73-1588, LAKE; Affirmed.
289 Schwert, Clara Jean; WCB 73-1726, DOUGLAS; Affirmed.

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PRICE FORTY DOLLARS

CLAIM NO. E 42 CC 68191 RG MAY 22, 1974

GEORGE HANKS, CLAIMANT

ALLEN G. OWEN, CLAIMANT'S ATTY.
THWING, ATHERLY AND BUTLER,
DEFENSE ATTYS.

By a board's own motion order dated June 14, 1972, this claim was ordered reopened pursuant to ORS 656.278 to provide claimant necessary medical care and treatment and temporary disability compensation appropriate thereto. Claimant has received time loss compensation from March 9, 1972 to March 6, 1974 but it appears claimant has not sought any further treatment.

A report from Dr. Kasicki indicates at last examination on February 19, 1974, he found few physical findings but did indicate psychic overlay and a positive malingering test. Claimant is now incarcerated in New Mexico State Penitentiary where he is doing data processing work. It appears therefore, that he is not entitled to any additional compensation.

ORDER

It is therefore ordered that claimant's claim be closed as of March 6, 1974 with no award for permanent partial 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.

Aetna Casualty and Surety Company may request a hearing on this order.

This order is final unless within 30 days from the date hereof Aetna Casualty and Surety Company appeals this order by requesting a hearing.

WCB CASE NO. 73-2818 MAY 23, 1974

ROBERT L. BREWER, CLAIMANT

THOMAS O. CARTER, CLAIMANT'S ATTY.
PHILIP A. MONGRAIN, DEFENSE ATTY.

Claimant requested board review of a referee's order granting him certain permanent disability compensation. That matter is now pending board review.

On May 21, 1974, the parties submitted an agreement and stipulation settling the matter on review.

The board has reviewed the stipulation which is attached hereto as exhibit 'A', and finds it fair and equitable to both parties. It should be approved and executed according to its terms and the request for review dismissed.

IT IS SO ORDERED.

AGREEMENT AND STIPULATION

IT IS HEREBY AGREED AND STIPULATED BY THE PARTIES THAT AS A RESULT OF HIS COMPENSABLE INJURY OF MARCH 19, 1973, THE CLAIMANT IS ENTITLED TO A PERMANENT PARTIAL DISABILITY EQUAL TO 10 DEGREES FOR RIGHT INDEX FINGER DISABILITY, THIS BEING AN INCREASE OF 2.8 DEGREES OVER AND ABOVE THAT AWARDED BY THE REFEREE IN HIS OPINION AND ORDER OF FEBRUARY 12, 1974.

IT IS FURTHER AGREED AND STIPULATED BY THE PARTIES THAT CLAIMANT'S ATTORNEY WILL RECEIVE 25 PERCENT OF THE ABOVE INCREASED COMPENSATION AS A REASONABLE ATTORNEYS FEE, SAID FEE TO BE PAYABLE OUT OF AND FROM SAID INCREASED COMPENSATION.

WCB CASE NO. 73-2163 MAY 23, 1974
WCB CASE NO. 73-2164 MAY 23, 1974

DONALD STORY, CLAIMANT

COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES THE QUESTION OF WHETHER CLAIMANT SUFFERED A NEW INJURY ON MAY 1, 1972, AT A TIME WHEN HIS EMPLOYER WAS INSURED BY THE STATE ACCIDENT INSURANCE FUND, OR WHETHER THIS INCIDENT WAS AN AGGRAVATION OF AN INJURY INCURRED ON AUGUST 28, 1970, WHEN HIS EMPLOYER WAS COVERED BY EMPLOYERS INSURANCE OF WAUSAU.

THE REFEREE FOUND CLAIMANT HAD SUSTAINED A NEW COMPENSABLE INJURY AND REMANDED THE CLAIM TO THE STATE ACCIDENT INSURANCE FUND FOR PAYMENT OF COMPENSATION. THE FUND HAS REQUESTED BOARD REVIEW OF THIS ORDER.

THE REFEREE FOUND CLAIMANT TO BE A CREDIBLE WITNESS. HE ALSO FOUND SUBSTANTIATION, BY MEDICAL EVIDENCE, THAT CLAIMANT'S INCIDENT OF MAY 1, 1972, CONSTITUTED A NEW COMPENSABLE INJURY. THE BOARD, ON REVIEW, CONCURS WITH THESE FINDINGS AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 4, 1973, IS HEREBY AFFIRMED.

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

LORA DALTON, 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.

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HER CERVICAL SPINE ON MAY 26, 1972, FOR WHICH SHE RECEIVED CONSERVATIVE TREATMENT. CLAIM CLOSURE ON APRIL 20, 1973, TERMINATED TEMPORARY TOTAL DISABILITY ON MARCH 14, 1973, AND AWARDED CERTAIN PERMANENT PARTIAL DISABILITY COMPENSATION.

CLAIMANT APPEALED THAT DETERMINATION ORDER CONTENDING SHE WAS NOT MEDICALLY STATIONARY AND THAT SHE WAS ENTITLED TO FURTHER TIME LOSS COMPENSATION AND FURTHER MEDICAL CARE AND TREATMENT.

THE REFEREE FOUND THAT THE CLAIMANT'S CONDITION HAD NOT BEEN STATIONARY AT THE TIME THE DETERMINATION ORDER WAS ISSUED AND THAT SHE WAS ENTITLED TO FURTHER MEDICAL CARE AND COMPENSATION. THE REFEREE REMANDED THE CLAIM TO THE STATE ACCIDENT INSURANCE FUND TO FURNISH THE RECOMMENDED NECESSARY CARE AND TREATMENT AND FOR THE PAYMENT OF TIME LOSS UNTIL THE CLAIM WAS PROPERLY CLOSED PURSUANT TO ORS 656.268. HE FURTHER ORDERED THAT THE DETERMINATION ORDER OF APRIL 20, 1973, WAS PREMATURELY ISSUED AND, THEREFORE, DID NOT QUALIFY AS AN INITIATING EVENT FOR CLAIMANT'S AGGRAVATION PERIOD.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW OF HIS RULING THAT THE DETERMINATION ORDER OF APRIL 20, 1973, DID NOT MARK THE BEGINNING POINT OF CLAIMANT'S AGGRAVATION PERIOD. THE PARTIES AGREED A TRANSCRIPT OF THE TESTIMONY WAS UNNECESSARY FOR THE REVIEW.

THE OREGON WORKMEN'S COMPENSATION LAW PROVIDES -

!!ORS 656.268(1) . . . CLAIMS SHALL NOT BE CLOSED NOR PERMANENT AWARDS, IF ANY, MADE UNTIL THE WORKMAN'S CONDITION BECOMES MEDICALLY STATIONARY. !!

!!ORS 656.271(1) IF SUBSEQUENT TO THE LAST AWARD OR ARRANGEMENT OF COMPENSATION THERE HAS BEEN AN AGGRAVATION OF THE DISABILITY RESULTING FROM A COMPENSABLE INJURY, THE WORKMAN IS ENTITLED TO INCREASED COMPENSATION INCLUDING MEDICAL SERVICES BASED UPON SUCH AGGRAVATION. !!

!!ORS 656.271(2) A REQUEST FOR HEARING ON INCREASED COMPENSATION FOR AGGRAVATION MUST BE FILED WITH THE BOARD WITHIN FIVE YEARS AFTER THE FIRST DETERMINATION MADE UNDER SUBSECTION (3) OF ORS 656.268. !!

READING THESE STATUTES TOGETHER, IT IS CLEAR THE LEGISLATURE INTENDED TO PROVIDE CLAIMANT A PERIOD OF FIVE YEARS FOLLOWING COMPLETION OF THE INITIAL CONVALESCENCE DURING WHICH SHE WOULD BE PROTECTED BY THE COMPENSATION LAW IN THE EVENT THE COMPENSABLE CONDITION WORSENEDED. IF A DETERMINATION ORDER IS ISSUED BEFORE THE

END OF CLAIMANT'S INITIAL CONVALESCENCE PERIOD, I.E., BEFORE SHE WAS MEDICALLY STATIONARY, SHE WOULD NOT POSSESS THE FIVE YEAR AGGRAVATION PERIOD THE LEGISLATURE COMMANDED SHE BE GIVEN.

IN AN ATTEMPT TO SECURE THE BENEFITS GRANTED TO HER BY STATUTE, THE CLAIMANT REQUESTED A HEARING BEFORE A REFEREE OF THE WORKMEN'S COMPENSATION BOARD. THE REFEREE'S ORDER IN QUESTION WILL ASSURE THAT CLAIMANT ENJOYS THE FULL PROTECTION OF THE LAW.

THE FUND CONTENDS THE REFEREE HAS NO JURISDICTION, ABSENT A SHOWING OF CARRIER FRAUD IN OBTAINING THE DETERMINATION, TO SET ASIDE A DETERMINATION ORDER. WE DISAGREE. ORS 656.283 VESTS THE REFEREE WITH JURISDICTION TO HEAR AND DETERMINE ' '. . . ANY QUESTION CONCERNING A CLAIM.!! THE SUBJECT OF WHEN AN AGGRAVATION PERIOD BEGINS OR ENDS IS A ' 'QUESTION CONCERNING A CLAIM.!!

WHEN THE LEGISLATURE REQUIRED THAT AGGRAVATION CLAIMS BE FILED WITHIN FIVE YEARS OF THE FIRST DETERMINATION, IT OBVIOUSLY HAD IN MIND A DETERMINATION WHICH HAD BEEN MADE AFTER THE WORKMAN'S CONDITION HAD BECOME MEDICALLY STATIONARY. THE BOARD'S EVALUATION DIVISION IS CHARGED WITH THE DUTY OF ADMINISTERING ORS 656.268, AND ITS PERSONNEL ARE MINDFUL OF THE STATUTORY NECESSITY OF A COMPLETED CONVALESCENCE. HOWEVER, IN CLAIMS EVALUATION, AS IN ALL HUMAN AFFAIRS, MISJUDGMENTS SOMETIMES OCCUR AND CLAIMS ARE OCCASIONALLY CLOSED WHEN FURTHER TREATMENT IS NECESSARY.

THE FUND APPARENTLY ADMITS THE CLAIMANT IS ENTITLED TO REOPENING OF HER CLAIM BUT CONTENDS THAT THE DETERMINATION ORDER, HAVING ONCE BEEN ISSUED, WHETHER RIGHTLY OR WRONGLY AS A MATTER OF FACT, NEVERTHELESS MARKS THE BEGINNING OF THE FIVE YEAR AGGRAVATION WHICH THE LEGISLATURE WANTED CLAIMANTS TO HAVE. THE FUND HAS PRESENTED NO LEGAL, EQUITABLE OR PRACTICAL REASON SUCH AN INTERPRETATION OF ORS 656.271 (2) IS NECESSARY. THE PROFFERED INTERPRETATION IS TOTALLY OUT OF HARMONY WITH LEGISLATIVE INTENT, AND THE JUDICIAL ADMONITION TO CONSTRUE THE LAW LIBERALLY IN FAVOR OF THE WORKMAN. WE CAN THINK OF NO PERSUASIVE REASON WHY THE CLAIMANT SHOULD BE PERMANENTLY DEPRIVED OF HER LEGAL RIGHTS BECAUSE THE EVALUATION DIVISION HAPPENED TO MISJUDGE THE STATE OF HER CONVALESCENCE.

THE FUND ARGUES ONLY FRAUD WILL JUSTIFY NULLIFYING A DETERMINATION ORDER. WHY ONLY FRAUD? TO ARGUE THAT THE AGENCY, HAVING MISTAKENLY DEPRIVED THE CLAIMANT OF HER LEGAL RIGHT TO A FULL FIVE YEAR AGGRAVATION PERIOD MUST NOW LEGALLY AFFIRM THAT DEPRIVATION, MAKES NO SENSE AT ALL. THIS AGENCY IS NOT JURISDICTIONALLY POWERLESS TO CORRECT ITS OWN MISTAKES. THE REFEREE, VESTED WITH THE POWER NECESSARY TO DECLARE THE RIGHTS OF THE PARTIES UNDER THE WORKMEN'S COMPENSATION LAW, DECLARED THE DETERMINATION ORDER OF APRIL 20, 1973, ANULLITY FOR THE PURPOSE OF QUALIFYING AS AN INITIATING EVENT FOR CLAIMANT'S AGGRAVATION RIGHTS. THE REFEREE DID NOT ' 'ENLARGE' ' THE CLAIMANT'S AGGRAVATION RIGHTS = HE ONLY ORDERED THAT SHE RECEIVE WHAT THE STATUTE GRANTED HER.

THERE ARE A NUMBER OF OREGON CASES, DECIDED PRIOR TO 1965, DEALING WITH WHEN AGGRAVATION CLAIM TIME LIMITS BEGIN TO RUN. THE FUND HAS RELIED ON BILLINGS V. SIAC, 225 OR 52 (1960) AND MARSH V. SIAC, 235 OR 297 (1963). A CAREFUL ANALYSIS WILL REVEAL IN BOTH OF THESE CASES THAT THE FIRST CLOSURE OF THE CLAIM WAS MADE ONLY AFTER THE WORKMAN HAD BECOME MEDICALLY STATIONARY. THIS IS AN IMPORTANT DISTINCTION. THE MARSH CASE WAS CORRECTLY DECIDED BECAUSE IT APPEARS MARSH WAS, IN FACT, MEDICALLY STATIONARY ON MAY 26, 1958, AND SO, PARTICULARLY UNDER THE LANGUAGE OF THE STATUTE

THEN EXISTING AND THE ADMINISTRATIVE PROCEDURE THEN EXISTING, A
' ' CANCELLATION' ' DID NOT DEPRIVE THE JUNE 12, 1959, ORDER OF ITS
EFFICACY FOR THE PURPOSES OF STARTING THE RUNNING OF THE AGGRAVATION
PERIOD.

' ' IT WAS NOT CANCELED UNDER A BELIEF THAT THE
COMMISSION HAD MADE A MISTAKE NOR FOR THE PURPOSE
OF DEPRIVING THE PLAINTIFF OF SUMS ALREADY
RECEIVED, BUT TO ENABLE THE LATER ORDER TO BRING
TO THE PLAINTIFF FROM THAT DAY ON LARGER AMOUNTS. ' '
MARSH V. SIAC, SUPRA, PAGE 301.

THE BILLINGS AND MARSH CASES ARE FACTUALLY DISTINGUISHABLE
FROM THIS CASE AND THUS THEIR ULTIMATE RULINGS ARE NOT APPLICABLE
TO THIS CASE.

THE APPELLANT' S BRIEF BEGINS -

' ' THE OPINION AND ORDER IN THIS CASE ORDERED TIME
LOSS BEGINNING AT A TIME PRIOR TO THE DATE OF
DETERMINATION AND CONTINUING UNTIL RECLOSURE
UNDER ORS 656.268. AS A MATTER OF PROCEDURE, THERE
IS NOTHING WRONG WITH THIS ORDER HAD IT BEEN PRECEDED
BY AN ORDER REOPENING THE CLAIM. ' '

WE THINK THE REFEREE' S ORDER REMANDING THE CLAIM TO THE
STATE ACCIDENT INSURANCE FUND FOR THE FURNISHING OF MEDICAL CARE
AND THE PAYMENT OF TIME LOSS FROM MARCH 14, 1973, UNTIL ' ' SUCH
TIME AS THE CLAIM MAY PROPERLY BE CLOSED IN ACCORDANCE WITH
ORS 656.268 ' ' IS AN ORDER REOPENING THE CLAIM.

WE CONCLUDE THE REFEREE PROPERLY ACTED TO INSURE THAT THE
WORKMAN RECEIVED THE FIVE YEAR PERIOD OF AGGRAVATION WHICH THE
LAW GRANTED TO HER. BY HOLDING THAT THE DETERMINATION ORDER DID
NOT INITIATE THE BEGINNING OF THE AGGRAVATION PERIOD, THE REFEREE
ADOPTED THE SIMPLEST, MOST DIRECT MEANS OF ASSURING THAT CLAIMANT
RECEIVED HER STATUTORY RIGHT OF A FIVE YEAR PERIOD OF AGGRAVATION.
HIS ORDER SHOULD THEREFORE BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 10, 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.

WCB CASE NO. 73-2598 MAY 24, 1974

VIRGINIA SCHMIDT, CLAIMANT
DENNIS W. BEAN, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES A 46 YEAR OLD LADY, EMPLOYED AS AN EGG HANDLER WHO SLIPPED AND FELL INJURING HER BACK ON MAY 17, 1972. A REFEREE AFFIRMED THE AWARD OF PERMANENT DISABILITY AND CLAIMANT REQUESTS BOARD REVIEW, SEEKING A GREATER AWARD.

DR. SPADY TREATED CLAIMANT CONSERVATIVELY, STATED SURGERY WAS NOT INDICATED AND IN DECEMBER, 1972, CONSIDERED HER CONDITION STATIONARY. HER CLAIM WAS CLOSED ON JANUARY 4, 1973, WITH AN AWARD OF 10 PERCENT OF THE MAXIMUM (32 DEGREES) FOR UNSCHEDULED DISABILITY.

CLAIMANT HAS BEEN ATTENDING SALEM BUSINESS COLLEGE WHERE SHE IS A GOOD STUDENT. HER SCHOOLING WILL PREPARE HER TO TAKE A CLERK TYPIST POSITION AND IN THAT FIELD SHE WOULD REALIZE LITTLE OR NO LOSS OF EARNINGS. CLAIMANT IS APPREHENSIVE ABOUT SITTING FOR LONG PERIODS OF TIME WHILE TYPING - HOWEVER, THE PAIN SHE NOW HAS HAS NOT PRECLUDED HER FROM REGULAR SCHOOL ATTENDANCE AND SHOULD NOT MATERIALLY AFFECT HER WORK CAPABILITIES.

AFTER OBSERVING THE WITNESS, THE REFEREE FOUND CLAIMANT'S PERMANENT PARTIAL DISABILITY AWARD TO BE ADEQUATE - AND, ON REVIEW OF RECORD, THE BOARD CONCURS. HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 25, 1974, IS AFFIRMED.

WCB CASE NO. 73-2278 MAY 28, 1974

NORMAN ROSS, CLAIMANT
WILLIAM G. WHITNEY, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS CLAIMANT RECEIVED A PERMANENT PARTIAL DISABILITY AWARD OF 32 DEGREES FOR UNSCHEDULED HEAD AND LEFT SHOULDER DISABILITY BY DETERMINATION ORDER AND AN ADDITIONAL 32 DEGREES WAS AWARDED BY THE REFEREE AT HEARING. CLAIMANT REQUESTS BOARD REVIEW CONTENDING HE IS ENTITLED TO A GREATER AWARD.

CLAIMANT, AT AGE 42, WAS EMPLOYED AS A PIPE LAYER ON A SEWER LINE AND ON NOVEMBER 29, 1972, WAS STRUCK BY A STEEL BEAM BEING SWUNG FROM AN OVERHEAD CRANE. THE MEDICAL CONSENSUS INDICATES MINIMAL OBJECTIVE FINDINGS OF PERMANENT PHYSICAL DISABILITY.

ALTHOUGH CLAIMANT HAS A HIGH SCHOOL EDUCATION AND TWO YEARS OF COLLEGE, HE HAS NOT WORKED SINCE THE INJURY, NOR HAS HE LOOKED FOR WORK. HE WAS DISCHARGED FROM THE VOCATIONAL REHABILITATION CENTER BECAUSE OF LACK OF INTEREST OR MITIVATION.

THE EVIDENCE OF CLAIMANT'S PHYSICAL CAPABILITIES DOES NOT REFLECT A WORKMAN SO SERIOUSLY INJURED THAT HE WOULD BE UNABLE TO WORK. IT WOULD APPEAR HE HAS MADE THE CHOICE OF NOT WORKING ANY FURTHER AND SEEKS TO ESTABLISH THIS AS EQUIVALENT TO AN INABILITY TO WORK.

THE BOARD, ON REVIEW, CONCLUDES THAT THE PERMANENT PARTIAL DISABILITY AWARD OF 64 DEGREES FOR UNSCHEDULED HEAD, LEFT SHOULDER AND BACK DISABILITY ADEQUATELY COMPENSATES CLAIMANT FOR HIS DISABILITY ATTRIBUTABLE TO HIS INDUSTRIAL INJURY.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 5, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 72-2004 MAY 29, 1974

SARAH HOLDEN, CLAIMANT
WILLIAM G. WHITNEY, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S AWARD OF PERMANENT DISABILITY TO CLAIMANT. HIS AWARD OF PENALTIES AND AN ATTORNEY'S FEE IS NOT QUESTIONED.

THE BOARD CONCURS WITH THE REFEREE'S FINDINGS OF FACT BUT DOES NOT CONCUR WITH HIS CONCLUSION THAT THEY ENTITLE CLAIMANT TO AN AWARD OF 112 DEGREES FOR UNSCHEDULED DISABILITY.

MANY OF CLAIMANT'S PHYSICAL PROBLEMS ARE UNRELATED TO HER COMPENSABLE INJURY. THIS, COUPLED WITH THE FACT THAT CLAIMANT REMAINS PHYSICALLY FIT FOR WORK AS A HOSTESS IN SPITE OF HER NECK AND BACK COMPLAINTS, CAUSES THE BOARD TO CONCLUDE HER UNSCHEDULED DISABILITY DOES NOT EXCEED 64 DEGREES. THE REFEREE'S ORDER SHOULD BE MODIFIED ACCORDINGLY.

ANOTHER DISPUTE HAS ALSO BEEN PRESENTED TO THE BOARD FOR RESOLUTION. THE CNA CLAIMS A RIGHT OF RECOUPMENT FROM CLAIMANT'S SETTLEMENT FROM RADIO CAB COMPANY'S UNINSURED MOTORIST COVERAGE.

ORS 743.792(4)(C) PROVIDES THAT UNINSURED MOTORIST COVERAGE !! DOES NOT APPLY SO AS TO INURE DIRECTLY OR INDIRECTLY TO THE BENEFIT OF ANY WORKMEN'S COMPENSATION CARRIER.!! THE CNA IS, THEREFORE, PRECLUDED FROM SHARING IN CLAIMANT'S UNINSURED MOTORIST RECOVERY. THE CNA SHOULD ENDORSE THE SETTLEMENT DRAFT AND RELEASE IT TO CLAIMANT.

ORDER ON REVIEW

THE ORDER OF THE REFEREE, DATED DECEMBER 17, 1973, (AS CORRECTED BY ORDER DATED DECEMBER 19, 1973) IS HEREBY MODIFIED TO REDUCE CLAIMANT'S PERMANENT DISABILITY COMPENSATION TO 64 DEGREES OR 20 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY. HIS ORDER IS AFFIRMED IN ALL OTHER RESPECTS.

ORDER PURSUANT TO ORS 656.593

THE CNA HAS NO LIEN UPON CLAIMANT'S UNINSURED MOTORIST INSURANCE COVERAGE SETTLEMENT. CLAIMANT IS ENTITLED TO THE FULL SETTLEMENT SUM.

WCB CASE NO. 72-2962 MAY 29, 1974

ERNEST FIELDS, CLAIMANT
DEL PARKS, CLAIMANT'S ATTY.
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 REQUIRING THE FUND TO ACCEPT CLAIMANT'S CLAIM FOR BENEFITS RESULTING FROM A MYOCARDIAL INFARCTION.

CLAIMANT IS A 64 YEAR OLD TIMBER FALLER WHO HAD WORKED FOR MANY YEARS IN THE WOODS. ON JULY 6, 1972, CLAIMANT HAD CHEST PAINS AND ON THE NEXT DAY WAS HOSPITALIZED SUFFERING A VERY SEVERE HEART ATTACK.

AT HEARING, THE REFEREE WAS FACED WITH TWO HEART SPECIALISTS WHO AGREED AS TO THE CIRCUMSTANCES UNDER WHICH THE HEART ATTACK OCCURRED, THEREBY ESTABLISHING LEGAL CAUSATION - BUT WHO DISAGREED AS TO THE RELATIONSHIP BETWEEN THE EXERTION ON THE JOB AND THE HEART ATTACK ITSELF. THE OPINION OF DR. HOWARD, THE TREATING PHYSICIAN, WHICH ESTABLISHED MEDICAL CAUSATION, WAS GIVEN GREATER WEIGHT BY THE REFEREE.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 20, 1973, IS HEREBY AFFIRMED.

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

MAY 30, 1974

GARY JAMES MUNCY, CLAIMANTBEMIS, BREATHOUWER AND JOSEPH,
CLAIMANT'S ATTYS.DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES A DENIED OCCUPATIONAL DISEASE CLAIM FOR MONONUCLEOSIS. THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM, THE REFEREE ALLOWED THE CLAIM, AND THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW.

CLAIMANT, A 25 YEAR OLD DEPUTY SHERIFF FOR MULTNOMAH COUNTY, WAS ON A SPECIAL ASSIGNMENT TO DEVELOP A NEW CONCEPT OF LAW ENFORCEMENT INVOLVING CLOSE AND CONSTANT CONTACT WITH DRUG USERS, KNOWN CRIMINALS, AND INFORMANTS WHO WERE IN DETERIORATED HEALTH, INCLUDING INDIVIDUALS SUFFERING FROM HEPATITIS, JAUNDICE, AND MONONUCLEOSIS.

ONE INSTANCE JUST PRIOR TO THE TIME CLAIMANT DEVELOPED THE SYMPTOMS, CLAIMANT SUFFERED PUNCTURES ON A FINGER ON EACH HAND BY A HYPODERMIC NEEDLE WHILE SEARCHING A DUFFLE BAG. CLAIMANT WAS WORKING LONG HOURS IN CLOSE AND CONFINED AREAS EXPOSED DAILY TO PERSONS IN EXTREMELY POOR HEALTH - RUNNY EYES AND NOSES, COUGHING, UNCLEAN, ETC.

THE MEDICAL EVIDENCE IS NOT COMPLETELY DEFINITIVE BUT AS STATED IN ROSE ANN VOLK V. BIRDSEYE DIVISION, 518 PACIFIC 2ND, 672, AND QUOTING LARSEN, 'IN APPROPRIATE CIRCUMSTANCES, AWARDS MAY BE MADE WHEN MEDICAL EVIDENCE FROM THESE MATTERS IS INCONCLUSIVE, INDECISIVE, FRAGMENTARY OR EVEN NON-EXISTENT.'

ON DE NOVO REVIEW OF THE ENTIRE RECORD, THE BOARD CONCURS WITH THE FINDINGS AND ORDER OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 14, 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.

MORRIS M. NOTZ, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE INVOLVED IS THE EXTENT OF PERMANENT DISABILITY. CLAIMANT WAS AWARDED 48 DEGREES FOR UNSCHEDULED DISABILITY AND 8 DEGREES PARTIAL LOSS OF LEFT LEG. THE CLAIM WAS REOPENED TWICE AND THE THIRD DETERMINATION ORDER AWARDED A TOTAL OF 144 DEGREES UNSCHEDULED LOW BACK AND 45.5 DEGREES LEFT LEG.

THE REFEREE INCREASED THE AWARD TO A TOTAL OF 192 DEGREES UNSCHEDULED DISABILITY TO THE BACK AND 75 DEGREES SCHEDULED DISABILITY TO THE LEFT LEG. CLAIMANT REQUESTS BOARD REVIEW SEEKING PERMANENT TOTAL DISABILITY.

CLAIMANT, A 45 YEAR OLD ROOFER, SLIPPED AND FELL TWICE IN THE WINTER AND SPRING OF 1968, CAUSING INJURY TO HIS BACK AND KNEE. CLAIMANT HAS AN IQ OF 114 AND HAS TWO YEARS OF GENERAL COLLEGE WORK. HE HAS HAD SURGERY TO HIS BACK AND MULTIPLE SURGERIES TO HIS KNEE. SINCE THE SURGERY TO HIS BACK, HE HAS WORKED NINE MONTHS AS A CARPENTER.

THE MEDICAL EVIDENCE, INCLUDING THE EVIDENCE OF AN EXAMINING PSYCHOLOGIST, CLEARLY DOES NOT PLACE CLAIMANT PRIMA FACIE IN THE "ODD LOT" PERMANENT TOTAL DISABILITY CATEGORY. THE REFEREE WHO OBSERVED THE CLAIMANT FOUND HIM TO BE NOT TOO IMPRESSIVE AND FELT THE CLAIMANT WAS ATTEMPTING TO MAKE MORE OF THE DISABILITY THAN THE EVIDENCE WARRANTED. CLAIMANT HAS DEMONSTRATED POOR MOTIVATION BY NOT COMPLETING A COURSE AT A COMMUNITY COLLEGE IN WHICH HE HAD ENROLLED AND NOT SEEKING RETRAINING OR REHABILITATION. THE CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE FINDINGS AND ORDER OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED NOVEMBER 6, 1973, IS AFFIRMED.

THOMAS KELLY, CLAIMANT
MIKE DYE, CLAIMANT'S ATTY.
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 WHICH RESTRICTED HIS TIME LOSS ENTITLEMENT AFTER OCTOBER 29, 1973, TO

TEMPORARY PARTIAL DISABILITY INSTEAD OF TEMPORARY TOTAL DISABILITY. HE ALSO SEEKS AN AWARD OF PENALTIES AND ATTORNEY'S FEES ALLEGING THE STATE ACCIDENT INSURANCE FUND UNREASONABLY REFUSED TO PROVIDE HIM FURTHER BENEFITS.

THE REFEREE REMANDED THE CLAIM TO THE STATE ACCIDENT INSURANCE FUND TO PROVIDE FURTHER TEMPORARY TOTAL DISABILITY BENEFITS FROM JULY 27, 1973, TO OCTOBER 29, 1973, AND TEMPORARY PARTIAL DISABILITY UNTIL CLOSURE. THE REFEREE APPARENTLY BASED THE CHANGE IN BENEFITS ON DR. CAREY'S REPORT OF OCTOBER 29, 1973, WHEREIN HE STATED -

"IT IS MY IMPRESSION THAT CLAIMANT SHOULD BE ABLE TO PERFORM LIGHT WORK, AT LEAST, DESPITE HIS PULMONARY DISABILITY." (CLAIMANT'S EXHIBIT J)

DR. CAREY'S OPINION MAY BE CORRECT FROM THE VIEWPOINT OF PHYSICAL CAPABILITIES BUT AS A PRACTICAL MATTER, CLAIMANT COULD NOT BE EXPECTED TO SUCCESSFULLY FIND AND PERFORM LIGHT WORK ON A TEMPORARY BASIS. THE REFEREE SHOULD SIMPLY HAVE REOPENED THE CLAIM FOR PAYMENT OF BENEFITS FROM JULY 27, 1973, UNTIL CLOSURE PURSUANT TO ORS 656,268.

IF CLAIMANT DOES SECURE EMPLOYMENT OR RETURN TO SAME WORK FOR THE EMPLOYER, THE CLOSING DETERMINATION ORDER CAN ALLOW FOR IT. THE RECORD DOES NOT SUPPORT THE CLAIMANT'S ALLEGATION THAT THE STATE ACCIDENT INSURANCE FUND ACTED UNREASONABLY IN THE PROCESSING OF CLAIMANT'S CLAIM. THE REFEREE CORRECTLY ANALYZED THE FACTS AND HIS OPINION IN THAT REGARD SHOULD BE AFFIRMED.

ORDER

THE REFEREE'S ORDER OF JANUARY 9, 1974, RESTRICTING CLAIMANT TO "TEMPORARY PARTIAL DISABILITY BENEFITS FROM OCTOBER 29, 1973, UNTIL SUCH TIME LOSS MAY BE PROPERLY TERMINATED" IS HEREBY REVERSED. HIS ORDER IN ALL OTHER RESPECTS IS AFFIRMED.

WCB CASE NO. 73-2038 MAY 30, 1974

ROBERT H. WARD, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE INVOLVED IS WHETHER THE CLAIMANT IS AN EMPLOYEE OR AN INDEPENDANT CONTRACTOR. THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM ON THE BASIS CLAIMANT WAS NOT A SUBJECT WORKMAN. THE REFEREE AFFIRMED THE DENIAL, FINDING CLAIMANT TO BE AN INDEPENDANT CONTRACTOR. THE BOARD CONCURS WITH THE FINDINGS AND ORDER OF THE REFEREE.

CLAIMANT, 29 YEARS OLD, ANSWERED A NEWSPAPER AD AND COMMENCED A ONE-WEEK TRAINING COURSE ON MAY 14, 1973, WITH ASSOCIATED YACHT BROKERS, INC. CLAIMANT EXECUTED AN AGREEMENT,

DATED MAY 15, 1973, WHICH WAS PREPARED BY ASSOCIATED YACHT BROKERS WITH ALL OF THE LANGUAGE MAKING CLAIMANT AN INDEPENDANT CONTRACTOR. OF SPECIAL INTEREST IS THE PROVISION THAT CLAIMANT SHALL PAY ASSOCIATED YACHT BROKERS A MONTHLY RENTAL SUM FOR USE OF FACILITIES AND SERVICES OF ASSOCIATED YACHT BROKERS OF A BASIC RENTAL OF SIX HUNDRED TWENTY FIVE DOLLARS PER MONTH.

THE VARIOUS ELEMENTS OF INDEPENDANT CONTRACTOR V. EMPLOYEE RELATIONSHIP ARE DISCUSSED IN THE WELL-WRITTEN REFEREE'S OPINION. THE BOARD CONCURS WITH THE FINDINGS AND ORDER OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 26, 1973, IS AFFIRMED.

WCB CASE NO. 73-243 MAY 30, 1974

WALTER R. HUSTON, CLAIMANT
PETERSON, CHAIVOE AND PETERSON,
CLAIMANT'S ATTYS.
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS REVIEW INVOLVES A CLAIMANT WHO WAS ORIGINALLY INJURED IN 1967. HE UNDERWENT A CERVICAL FUSION AND WAS AWARDED PERMANENT PARTIAL DISABILITY EQUIVALENT TO 64 DEGREES FOR UNSCHEDULED NECK DISABILITY. HIS CONDITION WORSENER AND ON DECEMBER 16, 1971, A SECOND CERVICAL LAMINECTOMY WAS PERFORMED. FOR SOME REASON, THE EMPLOYER'S INSURANCE CARRIER WAS NEVER INFORMED OF OR BILLED FOR THIS SURGERY EVEN THOUGH THE TREATING PHYSICIAN CONCLUDED IT WAS DIRECTLY RELATED TO THE COMPENSABLE 1967 INJURY.

A CLAIM FOR BENEFITS ON ACCOUNT OF AGGRAVATION WAS, HOWEVER, FILED IN NOVEMBER OF 1972. IT WAS FIRST IGNORED BY THE CARRIER BUT FINALLY DENIED ON JANUARY 16, 1973. CLAIMANT THEREUPON REQUESTED A HEARING ON THE DENIAL OF HIS CLAIM.

THE REFEREE, AT HEARING, FOUND THAT CLAIMANT HAD A VALID CLAIM FOR AGGRAVATION AND GRANTED AN ADDITIONAL AWARD OF 96 DEGREES FOR LOSS OF WAGE EARNING CAPACITY. ALTHOUGH THE EMPLOYER CONTENDS THE AWARD WAS EXCESSIVE, NO BRIEF SUPPORTING THIS POSITION WAS FILED.

ON REVIEW, THE BOARD PERCEIVES NO ERROR IN THE FINDINGS OR CONCLUSIONS MADE BY THE REFEREE AND THEREFORE CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

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

COUNSEL FOR CLAIMANT IS ALLOWED A REASONABLE ATTORNEY FEE IN THE SUM OF ONE HUNDRED DOLLARS, PAYABLE BY THE EMPLOYER, FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW.

FREEDA BAKER, CLAIMANT

MOORE, WURTZ AND LOGAN, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT IN THIS MATTER RECEIVED A COMPENSABLE BACK INJURY ON AUGUST 24, 1970, FOR WHICH SHE WAS AWARDED 80 DEGREES (OR 25 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY) BY DETERMINATION ORDER OF FEBRUARY 16, 1971. WHEN CLAIMANT APPEALED THIS DETERMINATION, THE HEARING OFFICER GRANTED HER AN AWARD OF PERMANENT TOTAL DISABILITY. UPON THE STATE ACCIDENT INSURANCE FUND'S APPEAL TO THE BOARD, THE HEARING OFFICER'S ORDER WAS REVERSED AND THE FUND WAS ORDERED TO REOPEN THE CLAIM FOR FURTHER CARE AND TREATMENT BY DR. DICKEL.

BY A SECOND DETERMINATION ORDER, CLAIMANT WAS AWARDED AN ADDITIONAL 5 PERCENT OR 16 DEGREES FOR UNSCHEDULED DISABILITY. AT THE SECOND HEARING, THE REFEREE AFFIRMED THIS DETERMINATION AND CLAIMANT HAS REQUESTED BOARD REVIEW CONTENDING SHE IS PERMANENTLY AND TOTALLY DISABLED.

SUBSEQUENT TO THE BOARD'S ORDER REOPENING THE CLAIM, CLAIMANT WAS HOSPITALIZED BY DR. DICKEL AND WAS TREATED BY PSYCHOTHERAPY, PHYSICAL THERAPY, COUNSELING, GUIDANCE AND A GENERAL ATTEMPT TO GET THE PATIENT UP AND ABOUT AND LIVING MORE COMFORTABLY WITH HER PHYSICAL CONDITION.

AT THE SECOND HEARING, DR. GLAEDE TESTIFIED PERSONALLY. THE REFEREE FOUND HIS TESTIMONY TO BE MORE EQUIVOCAL THAN APPEARED BY SIMPLY READING HIS MEDICAL REPORTS WHICH HAD BEEN SUBMITTED AT THE FIRST HEARING. RELYING PRIMARILY ON REPORTS FROM DR. PARVARESH, DR. BROOKSBY, AND DR. DEGGE, THE REFEREE FOUND CLAIMANT NOT TO BE PERMANENTLY AND TOTALLY DISABLED AND STATED IN HIS ORDER -

CLAIMANT MAY VERY WELL BE, FOR ALL INTENTS AND PURPOSES PERMANENTLY AND TOTALLY DISABLED FROM FUTURE GAINFUL EMPLOYMENT. I FIND, HOWEVER, THAT THIS DISABILITY DOES NOT RESULT FROM THE INDUSTRIAL INJURY OF AUGUST 1970. NOR DO I FIND THAT THE INDUSTRIAL INJURY AGGRAVATED ANY PRE-EXISTING PROBLEM (MEDICAL OR PSYCHOLOGICAL) TO SUCH AN EXTENT THAT CLAIMANT QUALIFIES AS PERMANENT AND TOTAL UNDER ORS 656.206.

THE BOARD, ON REVIEW, CONCURS WITH THE REFEREE'S CONCLUSION THAT CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED AS A RESULT OF HER INDUSTRIAL INJURY AND THAT THE AWARD OF 96 DEGREES GRANTED TO CLAIMANT BY THE SECOND DETERMINATION ORDER IS A PROPER AND EQUITABLE AWARD. THE ORDER OF THE REFEREE SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED NOVEMBER 20, 1973, IS AFFIRMED.

THOMAS G. RANSON, CLAIMANT
ROBERT J. MORGAN, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES A DENIED AGGRAVATION CLAIM. THE REFEREE ORDERED THE AGGRAVATION CLAIM TO BE ACCEPTED AND REMANDED TO THE STATE ACCIDENT INSURANCE FUND. THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW.

CLAIMANT, A 25 YEAR OLD CEMENT MIXER, WAS STANDING ON A SCAFFOLDING WHEN IT BROKE. HIS EQUIPMENT CAUGHT IN THE SCAFFOLDING WHICH PREVENTED HIM FROM FALLING FREE. THIS ACCIDENT OCCURRED MAY 1, 1969. HE RECEIVED MEDICAL CARE THE NEXT DAY WITH A DIAGNOSIS OF ACUTE SPRAIN AND STRAIN IN THE LUMBAR REGION OF HIS BACK. THE CLAIM WAS CLOSED WITH A MEDICAL ONLY CLOSURE IN 1969.

CLAIMANT HAD CONTINUING TROUBLE WITH HIS BACK, ALTHOUGH HE WORKED IN A BAKERY. HE HAD CAR ACCIDENTS IN 1969 AND 1973, BUT THE TESTIMONY AND MEDICAL EVIDENCE DOES NOT INDICATE THAT THESE ACCIDENTS WERE INTERVENING INCIDENTS AS FAR AS CLAIMANT'S BACK CLAIM IS CONCERNED. THE MEDICAL EVIDENCE DEFINITELY CONNECTS CLAIMANT'S AGGRAVATED BACK CONDITION TO THE 1969 WORK INJURY.

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

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 9, 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.

ZEB WOODY, 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 HIS SCHEDULED DISABILITY AWARD AND FAILED TO AWARD ANY UNSCHEDULED DISABILITY COMPENSATION.

CLAIMANT IS A 55 YEAR OLD TIMBER FALLER WHO SUFFERED A COMMINUTED FRACTURE OF THE TIBIA AND FIBULA OF THE LEFT LEG ON NOVEMBER 29, 1969. HIS CONVALESCENCE WAS COMPLICATED BY DELAYED UNION OF THE FRACTURED BONES AND BY THROMBOTIC OCCLUSIONS IN THE LEG AND BY MULTIPLE EPISODES OF PULMONARY EMBOLISM.

IN SPITE OF THE EXCELLENT MEDICAL CARE HE RECEIVED AND HIS OWN EFFORTS TO AID HIS RECOVERY, CLAIMANT WAS LEFT WITH SUBSTANTIAL DISABILITY IN THE LEFT LEG. HE WAS AWARDED SCHEDULED DISABILITY COMPENSATION EQUAL 30 PERCENT LOSS OF THE LEFT LEG BY A DETERMINATION ORDER DATED SEPTEMBER 5, 1972. CLAIMANT CONTENDS HE IS ENTITLED TO MORE.

OUR REVIEW PERSUADES US THAT CLAIMANT'S SCHEDULED PERMANENT DISABILITY HAS BEEN PROPERLY RATED. THE REFEREE'S ORDER IN THAT REGARD SHOULD BE AFFIRMED.

CLAIMANT ALSO SEEKS AN AWARD OF UNSCHEDULED DISABILITY FOR LOSS OF CEREBRAL FUNCTION, LOSS OF HEARING, AND LOW BACK DISABILITY. WE THINK THE REFEREE HAS, IN DENYING CLAIMANT UNSCHEDULED DISABILITY FOR CEREBRAL FUNCTION AND HEARING LOSS, PROPERLY ANALYZED THE EVIDENCE. IT APPEARS, HOWEVER, THAT CLAIMANT'S LOW BACK CONDITION HAS BEEN AGGRAVATED BY THE LONG PERIOD OF IMMOBILIZATION AND CASTING NECESSITATED BY THE FRACTURE.

WE CONCLUDE CLAIMANT IS ENTITLED TO AN AWARD OF 15 PERCENT OF THE MAXIMUM ALLOWABLE FOR THE UNSCHEDULED RESIDUAL DISABILITY RESULTING FROM THIS INJURY.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 3, 1974, IS HEREBY MODIFIED TO GRANT AN ADDITIONAL PERMANENT PARTIAL DISABILITY AWARD EQUIVALENT TO 15 PERCENT OR 48 DEGREES FOR UNSCHEDULED BACK DISABILITY.

CLAIMANT'S COUNSEL IS ENTITLED TO 25 PERCENT OF THE INCREASED COMPENSATION PAID UNDER THIS ORDER AS A REASONABLE ATTORNEY'S FEE, NOT TO EXCEED FIFTEEN HUNDRED DOLLARS.

THE REFEREE'S ORDER IS AFFIRMED IN ALL OTHER RESPECTS.

WCB CASE NO. 73-2367 MAY 31, 1974

FRANK B. HOUSE, CLAIMANT
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, CLAIMANT'S ATTYs.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED 25 PERCENT (48 DEGREES) FOR UNSCHEDULED LOW BACK DISABILITY. THE REFEREE AWARDED CLAIMANT PERMANENT TOTAL DISABILITY. THE BOARD, ON REVIEW, REVERSES THE REFEREE AND AWARDS CLAIMANT 50 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT, A 48 YEAR OLD HEAVY EQUIPMENT OPERATOR AND CARPENTER, SUSTAINED A LOW BACK INJURY ON MAY 12, 1966, WHILE LIFTING A TRUCK WHEEL AND TIRE. HE HAS RECEIVED CONSERVATIVE BACK TREATMENT AND THE MYELOGRAM RESULTS WERE NEGATIVE. THE BACK EVALUATION CLINIC CONCLUDED CLAIMANT HAD A CHRONIC LUMBOSACRAL STRAIN AND A SIGNIFICANT FUNCTIONAL OVERLAY.

THE MEDICAL EVIDENCE CLEARLY SHOWS CLAIMANT IS PHYSICALLY CAPABLE OF LIGHTER WORK AND INTELLECTUALLY CAPABLE OF BEING RETRAINED. THE PSYCHIATRIST AND PSYCHOLOGIST INDICATE A COMPREHENSIVE REHABILITATION PROGRAM IS INDICATED. THE RECORD SHOWS THAT CLAIMANT HAS NOT PROVED A PRIMA FACIE CASE OF 'ODD LOT' DISABILITY.

THE MOTIVATION OF THE CLAIMANT APPEARS POOR FROM ALL ASPECTS IN THE RECORD. THE PSYCHIATRIST REPORTS CLAIMANT PROBABLY HAS LITTLE DESIRE OR MOTIVATION TO CORRECT HIS CONDITION. THE VOCATIONAL REHABILITATION COUNSELOR REPORTS SEVERAL JOB OPPORTUNITIES FOR CLAIMANT WERE FOUND BUT CLAIMANT ALWAYS CAME UP WITH AN EXCUSE WHICH PREVENTED HIM FROM TAKING THE JOB. FURTHER, CLAIMANT HAS LITTLE MOTIVATION IN FINDING EMPLOYMENT AS LONG AS COMPENSATION BENEFITS ARE AVAILABLE. EVEN IN THE TESTING SITUATION, THE COMMENT OF THE EXAMINER WAS THAT IT IS HIGHLY PROBABLE THAT CLAIMANT COULD HAVE DONE MUCH BETTER IF HE HAD WISHED TO DO SO.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 10, 1974, IS REVERSED.

CLAIMANT IS AWARDED A TOTAL OF 50 PERCENT OF THE MAXIMUM AVAILABLE FOR UNSCHEDULED LOW BACK DISABILITY OR A TOTAL OF 96 DEGREES. THIS IS AN INCREASE OF 48 DEGREES PREVIOUSLY AWARDED BY THE DETERMINATION ORDER.

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. 73-1523 MAY 31, 1974

JACK CLAIBORNE, CLAIMANT
PETERSON, CHAIVOE AND PETERSON,
CLAIMANT'S ATTYS.
MCMENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUES INVOLVED ARE THE EXTENT OF PERMANENT PARTIAL DISABILITY AND THE LENGTH OF TEMPORARY TOTAL DISABILITY. THE DETERMINATION ORDER AWARDED TEMPORARY TOTAL DISABILITY TO MARCH 14, 1973, AND AWARDED 16 DEGREES UNSCHEDULED DISABILITY. THE REFEREE AWARDED TEMPORARY TOTAL DISABILITY TO MAY 22, 1973, AND INCREASED THE PERMANENT PARTIAL UNSCHEDULED RIGHT SHOULDER DISABILITY TO A TOTAL OF 80 DEGREES.

CLAIMANT, NOW 44 YEARS OLD, WAS WORKING AS A LADLEMAN AT ESCO CORPORATION FOUNDRY REBRICKING A FURNACE WHEN MOLTEN METAL CAME DOWN ON HIM AND HE FELL EIGHT TO TEN FEET INTO THE HOT METAL, LANDING ON HIS SHOULDER. HE RECEIVED SECOND DEGREE BURNS TO BOTH ARMS, THE LOWER BACK AND THE BUTTOCKS.

THE CLAIMANT HAS MADE REMARKABLY GOOD RECOVERY FROM THE INJURIES AND BURNS. DR. JONES RECOMMENDED CLAIMANT SEEK TRAINING IN SOME LESS DEMANDING TRADE THAN THE FOUNDRY BUSINESS. THE

CLAIMANT HAS ENROLLED IN A COMMUNITY COLLEGE IN CAR PAINTING SCHOOLING. THE CLAIMANT'S LEGITIMATE FEAR OF RETURNING TO FOUNDRY WORK NECESSITATES THE RETRAINING AND CHANGE OF OCCUPATION. THE RESIDUAL EFFECT OF THE BURNS WILL AFFECT HIS ABILITY TO SUCCESSFULLY HOLD MANY TYPES OF EMPLOYMENT AND THUS CLAIMANT HAS SUSTAINED A SUBSTANTIAL PERMANENT LOSS OF WAGE EARNING CAPACITY.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 4, 1974, 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. 73-1632 MAY 31, 1974

ALFRED L. DENTON, CLAIMANT
COONS, MALAGON AND COLE, 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 PARTIAL DISABILITY. THE AUGUST 1966 INJURY WAS CLOSED WITH AN AWARD OF PERMANENT PARTIAL DISABILITY EQUAL TO 25 PERCENT LOSS OF AN ARM BY SEPARATION FOR UNSCHEDULED LOW BACK. THE AGGRAVATION CLAIM OF JUNE 1972 WAS CLOSED WITH NO ADDITIONAL PERMANENT PARTIAL DISABILITY. THE REFEREE AFFIRMED THE DETERMINATION ORDER, CLOSING THIS AGGRAVATION CLAIM WITH NO ADDITIONAL PERMANENT PARTIAL DISABILITY.

CLAIMANT REQUESTS AN INCREASE IN UNSCHEDULED LOW BACK DISABILITY AND AN AWARD OF SCHEDULED LEFT LEG DISABILITY ON THIS REVIEW.

CLAIMANT, A 42 YEAR OLD TRUCK DRIVER, JUMPED OFF A TRAILER IN 1966, HURTING HIS BACK. A HEMILAMINECTOMY WAS PERFORMED IN 1967. CLAIMANT CHANGED JOBS FROM A TRUCK DRIVER TO A TRUCK DISPATCHER WHERE HE HAS WORKED CONTINUOUSLY SINCE 1968.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE OPINION AND FINDING OF THE REFEREE THAT CLAIMANT HAS NOT PROVED ADDITIONAL LOSS OF EARNING CAPACITY AND THEREFORE AFFIRMS THE DENIAL OF AN ADDITIONAL AWARD FOR UNSCHEDULED DISABILITY.

THE BOARD, HOWEVER, DOES FIND THAT THE CLAIMANT HAS PROVED 30 PERCENT LOSS OF FUNCTION OF THE LEFT LEG AND HEREBY AWARDS CLAIMANT 33 DEGREES SCHEDULED DISABILITY OF THE LEFT LEG.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 9, 1974, IS ACCORDINGLY MODIFIED AND CLAIMANT IS AWARDED 33 DEGREES SCHEDULED DISABILITY OF THE LEFT LEG.

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.

THOMAS WARREN, CLAIMANT
INGRAM AND SCHMAUDER, 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 CERVICAL CONDITION WAS CAUSED BY THE INDUSTRIAL INJURY OF AUGUST 14, 1972. THE STATE ACCIDENT INSURANCE FUND ACCEPTED AS COMPENSABLE CLAIMANT'S RIGHT ELBOW CONDITION BUT DENIED CLAIMANT'S CERVICAL PROBLEMS AS BEING NONCOMPENSABLE.

CLAIMANT, A 42 YEAR OLD SAWMILL WORKER, DEVELOPED A SORE AND SWOLLEN RIGHT ELBOW FROM TURNING HEAVY GREEN LUMBER ON A CONVEYER. THIS CONDITION WAS DIAGNOSED AS A "TENNIS ELBOW." CLAIMANT WAS TREATED BY DOCTORS, INCLUDING AN ORTHOPEDIC SPECIALIST, FOR ABOUT SIX MONTHS BEFORE CLAIMANT COMPLAINED OF OR MENTIONED CERVICAL PAINS. THERE WERE ALSO OTHER FACTUAL INCONSISTENCIES IN THE RECORD REGARDING THE FACTS OF THE INJURY.

THE BOARD CONCURS WITH THE FINDINGS OF THE REFEREE THAT CLAIMANT HAS FAILED TO PROVE THAT HIS CERVICAL PROBLEMS RESULTED FROM THE INDUSTRIAL INJURY OF AUGUST 14, 1972.

ORDER

THE ORDER OF THE REFEREE, DATED NOVEMBER 14, 1973, IS AFFIRMED.

BARBARA WILLIAMS, CLAIMANT
HOLMES, JAMES AND CLINKINBEARD,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, 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 CLAIMANT 10 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED NECK, LEFT SHOULDER, AND LOW BACK DISABILITY EQUAL TO 32 DEGREES. THE REFEREE INCREASED THE PERMANENT PARTIAL DISABILITY 20 PERCENT, MAKING A TOTAL AWARD TO CLAIMANT OF 30 PERCENT UNSCHEDULED CERVICAL, LUMBAR AND LEFT SHOULDER DISABILITY.

CLAIMANT, A 32 YEAR OLD MARRIED NURSES' AIDE, RECEIVED INJURY TO PRIMARILY HER NECK, LEFT SHOULDER, AND LOW BACK WHILE LIFTING A BED PATIENT AT ASHLAND COMMUNITY HOSPITAL. CLAIMANT HAS BEEN TREATED AND EXAMINED BY NUMEROUS DOCTORS, INCLUDING PSYCHOLOGISTS, PSYCHIATRISTS, ORTHOPEDISTS, NEUROLOGISTS, ETC. SHE HAS HAD A COMPLETE WORKUP BY THE DISABILITY PREVENTION DIVISION AND HAS BEEN IN CONTACT WITH THE VOCATIONAL REHABILITATION CENTER.

THE CONSENSUS OF ALL OF THESE EXPERTS IS THAT CLAIMANT HAS LITTLE OR MILD ORGANIC DISABILITIES, BUT SHE DOES HAVE SUBSTANTIAL PSYCHOPATHOLOGY. SHE HAD SUBSTANTIAL PREEXISTING PSYCHOPATHOLOGY WHICH WAS TRIGGERED BY THE INDUSTRIAL INJURY. HER HUSBAND HAD A PREVIOUS BACK INJURY BUT IS NOW BACK TO WORK AND IS MAKING SUFFICIENT MONEY TO SUPPORT THE FAMILY. SHE IS NOT HIGHLY MOTIVATED TO GO BACK TO WORK AND WOULD PREFER TO STAY HOME AND TAKE CARE OF HER FAMILY. ONE PSYCHIATRIST COMMENTS SHE'S PRETTY MUCH GOING TO CONDUCT HER FUTURE IN HER PRESENT LIFE STYLE, PRETTY MUCH BEING ABLE TO DO THE THINGS SHE WANTS TO DO AND INDICATING, IN HIS OPINION, THERE IS NOT ANY CONSCIENCE MALINGERING BUT THAT CLAIMANT DOES SOME CONSCIENCE MANIPULATION. CLAIMANT, IN ESSENCE, REFUSES FURTHER PSYCHIATRIC HELP.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT THE AWARD TOTALING 30 PERCENT UNSCHEDULED DISABILITY ADEQUATELY COMPENSATES THE CLAIMANT. THE BOARD ADOPTS AND AFFIRMS THE WELL-WRITTEN ORDER OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 21, 1973, IS AFFIRMED.

WCB CASE NO. 73-2493 MAY 31, 1974

MARY (SIBLEY) CAMPBELL, CLAIMANT

BABCOCK, ACKERMAN AND HANLON
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS IS A DENIED AGGRAVATION CLAIM. THE ISSUE IS WHETHER OR NOT THERE HAS BEEN AN AGGRAVATION OF CLAIMANT'S DISABILITY RESULTING FROM HER INDUSTRIAL ACCIDENT OF AUGUST 8, 1967, SINCE DECEMBER 10, 1969. THE REFEREE AFFIRMED THE STATE ACCIDENT INSURANCE FUND'S DENIAL OF CLAIMANT'S AGGRAVATION CLAIM.

CLAIMANT, NOW 38 YEARS OLD, WAS INJURED AUGUST 8, 1967, WHEN BUMPED FROM BEHIND BY A LAUNDRY CART. THE INITIAL INJURY WAS REPORTED AS A CERVICAL INJURY. HER PSYCHOPATHOLOGY RECEIVED PSYCHIATRIC TREATMENT. A DETERMINATION ORDER WAS ISSUED AUGUST 2, 1968, AWARDING NO PERMANENT DISABILITY. ANOTHER AGGRAVATION CLAIM, FILED IN 1969, WAS DENIED AND THE REFEREE'S OPINION AND ORDER AFFIRMED THAT DENIAL. THE EVIDENCE SUBMITTED FOR THE PRESENT AGGRAVATION CLAIM DOES NOT PREPONDERATE FOR THE CLAIMANT TO SHOW THAT CLAIMANT'S CONDITION, EITHER FROM AN ORTHOPEDIC OR PSYCHIATRIC STANDPOINT, HAS WORSENED.

THE BOARD CONCURS WITH THE OPINION AND ORDER OF THE REFEREE AND ADOPTS THAT OPINION AND ORDER AS ITS OWN.

THE BOARD CALLS ATTENTION TO ORS 656.245 WHICH PROVIDES FOR CONTINUING MEDICAL SERVICES FOR CONDITIONS RESULTING FROM THE INDUSTRIAL INJURY. THE RECORD IN THIS CASE INDICATES THE HOME TRACTION DEVICE ONLY SHOULD BE PROVIDED BY THE STATE ACCIDENT INSURANCE FUND AT THIS TIME.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 17, 1974, AND THE AMENDED ORDER OF THE REFEREE, DATED JANUARY 25, 1974, IS AFFIRMED.

WCB CASE NO. 69-1864 JUNE 4, 1974

ELLA TINCKNELL, CLAIMANT

ON MAY 7, 1974, CLAIMANT FILED A 801 FORM WITH CERTAIN MEDICAL REPORTS ATTACHED WHICH THE BOARD HAS INTERPRETED AS A REVIEWED REQUEST FOR 'OWN MOTION' RELIEF RELATING TO HER COMPENSABLE INJURY OF NOVEMBER 7, 1959.

THE BOARD HAS EXAMINED THE RECENT MEDICAL RECORDS AND REVIEWED ITS PRIOR RECORDS CONCERNING HER OWN MOTION REQUESTS AND AGAIN CONCLUDES NO MODIFICATION OF ANY FORMER ORDERS IF JUSTIFIED.

ORDER

CLAIMANT'S REQUEST FOR OWN MOTION RELIEF IS HEREBY DENIED.

WCB CASE NO. 73-1959 JUNE 4, 1974

THE BENEFICIARIES OF
GERALD PUCKETT, DECEASED
CECIL STICKNEY, CLAIMANTS' ATTY.
MC MENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

EMPLOYER REQUESTS BOARD REVIEW OF A REFEREE'S FINDING THAT THE WORKMAN'S SUICIDAL DEATH WAS A COMPENSABLE CONSEQUENCE OF HIS OCCUPATIONAL INJURY AND THAT ORS 656.156 DID NOT BAR BENEFICIARIES' CLAIM FOR COMPENSATION.

AFTER HAVING REVIEWED THE RECORD DE NOVO AND HAVING CONSIDERED THE BRIEFS FILED ON REVIEW, THE BOARD CONCURS WITH THE WELL-WRITTEN OPINION AND ORDER OF THE REFEREE AND CONCLUDES IT SHOULD BE ADOPTED AND AFFIRMED AS THE ORDER OF THE BOARD.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 18, 1973, IS HEREBY ADOPTED AND AFFIRMED IN ITS ENTIRETY.

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. 73-819

JUNE 4, 1974

WALTER BUCKLEY, CLAIMANT
POZZI, WILSON AND ATCHISON
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOANE.

CLAIMANT ORIGINALLY REQUESTED REVIEW OF A REFEREE'S ORDER WHICH GRANTED CLAIMANT A TOTAL OF 240 DEGREES FOR UNSCHEDULED DISABILITY CONTENDING HE WAS PERMANENTLY AND TOTALLY DISABLED. PENDING THE REVIEW OF THAT OPINION AND ORDER, CLAIMANT SUBMITTED A MEDICAL REPORT FROM DR. KIMBERLEY WHICH APPEARED TO SUGGEST THE CLAIMANT'S CONDITION HAD AGGRAVATED AND THAT HE SHOULD BE RECEIVING TEMPORARY TOTAL DISABILITY RATHER THAN PERMANENT PARTIAL DISABILITY.

THE BOARD ACCORDINGLY REMANDED THE MATTER TO THE REFEREE TO PERMIT THE PARTIES TO OFFER THAT REPORT AND ANY OTHER EVIDENCE BEARING ON THE APPARENTLY NEW DEVELOPMENT.

AT THE REMAND HEARING, COUNSEL FOR THE RESPECTIVE PARTIES WERE OF THE OPINION THAT DR. KIMBERLEY HAD ACTUALLY BELIEVED CLAIMANT'S CONDITION WAS 'MEDICALLY STATIONARY' WITHIN THE MEANING OF THE WORKMEN'S COMPENSATION LAW AND THE MATTER OF AN AGGRAVATION CLAIM WAS NOT PURSUED FURTHER.

THE REFEREE, AFTER CONSIDERING DR. KIMBERLEY'S REPORT, RATIFIED HIS ORDER OF JUNE 15, 1973, BY AN OPINION AND ORDER DATED JANUARY 2, 1974. CLAIMANT HAS AGAIN REQUESTED BOARD REVIEW, CONTINUING TO CONTEND THAT HIS IS PERMANENTLY AND TOTALLY DISABLED.

WE HAVE REVIEWED THE RECORD AND ARE PERSUADED THAT ALTHOUGH THE REFEREE HAS PERHAPS OVERSTATED THE DEGREE OF CLAIMANT'S WORK MOTIVATION, ON BALANCE, HE HAS PROPERLY ANALYZED THE EVIDENCE. WE CONCUR WITH HIS CONCLUSION THAT CLAIMANT'S PERMANENT DISABILITY IS PARTIAL ONLY. THE ORDERS OF THE REFEREE GRANTING CLAIMANT A TOTAL OF 240 DEGREES FOR UNSCHEDULED PERMANENT DISABILITY SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 15, 1973, AND THE ORDER DATED JANUARY 2, 1974, ARE HEREBY AFFIRMED.

WCB CASE NO. 73-2448

JUNE 4, 1974

KENNETH V. KNAPP, CLAIMANT
GREEN, GRISWOLD AND PIPPIN
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTED BOARD REVIEW OF THREE RULINGS OF THE REFEREE BUT DEALT ONLY WITH THE ISSUE OF EXTENT OF PERMANENT DISABILITY IN HIS BRIEF ON APPEAL. WE HAVE REVIEWED ONLY THE ISSUE OF THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY.

WE AGREE WITH CLAIMANT THAT HE IS ENTITLED TO UNSCHEDULED DISABILITY COMPENSATION FOR HIS NECK AND SHOULDER DISABILITIES, CONSIDERING ALL HIS UNSCHEDULED DISABILITY RESULTING FROM THIS AND PRIOR ACCIDENTS, AND GIVING REGARD TO THE COMBINED EFFECT OF HIS INJURIES AND HIS PAST RECEIPT OF MONEY FOR SUCH DISABILITIES, WE CONCLUDE CLAIMANT IS ENTITLED TO AN AWARD OF 40 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY. THE REFEREE'S ORDER SHOULD BE MODIFIED ACCORDINGLY.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 21, 1974, IS HEREBY MODIFIED TO GRANT CLAIMANT AN AWARD OF PERMANENT PARTIAL DISABILITY EQUAL TO 40 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY (128 DEGREES) IN LIEU OF THE AWARD GRANTED BY THE DETERMINATION ORDER.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE EQUAL TO 25 PERCENT OF THE INCREASE IN COMPENSATION, BUT NOT TO EXCEED, WHEN COUPLED WITH ANY FEES RECEIVED PURSUANT TO THE REFEREE'S ORDER, THE SUM OF FIFTEEN HUNDRED DOLLARS.

THE ORDER OF THE REFEREE IS AFFIRMED IN ALL OTHER RESPECTS.

WCB CASE NO. 72-2005 JUNE 4, 1974

NATHAN ROTH, CLAIMANT
CHARLES R. CATER, 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 STATE ACCIDENT INSURANCE FUND'S DENIAL OF CLAIMANT'S AGGRAVATION CLAIM.

IN ADDITION TO CONCLUDING CLAIMANT HAD NOT PROVED A WORSENING OF HIS DISABILITY, THE REFEREE AFFIRMED THE DENIAL IN RECOGNITION OF THE LEGAL EFFECT OF A PRIOR OPINION AND ORDER CONCERNING CLAIMANT'S CLAIM AND DISABILITY.

OUR REVIEW PERSUADES US THE REFEREE CORRECTLY ANALYZED THE FACTS AND THE APPLICABLE LAW AND HIS ORDER SHOULD THEREFORE BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED OCTOBER 22, 1973, IS AFFIRMED.

WCB CASE NO. 73-2693

JUNE 5, 1974

FERRIN BRATTON, CLAIMANT
HUGH COLE, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.

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

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

WCB CASE NO. 73-1638

JUNE 5, 1974

ROBERT WAYNE HINDMAN, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SOLAN.

THE FUND REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH DISALLOWED THE FUND'S OFFSET OF PERMANENT DISABILITY PAYMENTS AGAINST AN AGREED TEMPORARY TOTAL DISABILITY ENTITLEMENT, AND AWARDED PENALTIES AND ATTORNEY'S FEES FOR THE FUND'S ACTION.

HAVING REVIEWED THE RECORD DE NOVO AND HAVING CONSIDERED THE BRIEFS FILED BY THE PARTIES ON REVIEW, THE BOARD CONCURS WITH THE OPINION AND ORDER OF THE REFEREE AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED AND ADOPTED AS THE ORDER OF THE BOARD.

ORDER

THE ORDER OF THE REFEREE DATED DECEMBER 28, 1973, IS HEREBY ADOPTED AND 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. 73-228

JUNE 5, 1974

OLLIE FITZGIBBONS, CLAIMANT
PHIPPS, DUNN AND MOBLEY,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES THE COMPENSABILITY OF A BACK INJURY SUSTAINED BY CLAIMANT WHILE EMPLOYED AT CONDON NURSING HOME. THE CLAIM FOR BENEFITS WAS DENIED BY THE STATE ACCIDENT INSURANCE FUND, BUT ORDERED ALLOWED BY THE REFEREE. THE FUND HAS REQUESTED BOARD REVIEW OF THIS ORDER.

CLAIMANT, A 50 YEAR OLD NURSE'S AIDE, WHOSE DUTY WAS TO BATHE PATIENTS REQUIRING HER TO ASSIST THEM IN AND OUT OF THE TUB, WAS DIAGNOSED TO HAVE A CHRONIC LUMBAR STRAIN. SHE HAD BEEN SO EMPLOYED FOR FOUR AND ONE-HALF YEARS AND HAD A GRADUAL ONSET OF BACK PAIN, BUT NO SEVERE SYMPTOMS UNTIL MAY 4, 1972.

ALTHOUGH IT WAS INDICATED CLAIMANT HAD OTHER MEDICAL PROBLEMS, THE REFEREE FOUND HER TO BE A CREDIBLE WITNESS AND DETERMINED THERE WAS NO REASON TO SURMISE THIS PETITE AIDE COULD NOT HAVE SUSTAINED A BACK STRAIN LIFTING PATIENTS. RELYING ON REPORTS FROM DR. GILICK AND HER TESTIMONY, HE FOUND CLAIMANT TO HAVE SUSTAINED A COMPENSABLE INDUSTRIAL INJURY AND ON REVIEW, THE BOARD CONCURS WITH THIS FINDING.

ORDER

THE ORDER OF THE REFEREE DATED JANUARY 7, 1974, IS HEREBY AFFIRMED.

COUNSEL FOR CLAIMANT IS ALLOWED THE SUM OF ONE HUNDRED TWENTY DOLLARS FOR PREHEARING WORK AND TWO HUNDRED FIFTY DOLLARS FOR SERVICES ON BOARD REVIEW, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR A TOTAL SUM OF THREE HUNDRED SEVENTY DOLLARS AS A REASONABLE ATTORNEY'S FEE.

WCB CASE NO. 73-3038 JUNE 6, 1974

HARRY ZEARING, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS IS A DENIED OCCUPATIONAL DISEASE CLAIM. THE EMPLOYER DENIED THAT CLAIMANT'S THROMBOPHLEBITIS OF THE LEFT KNEE AROSE OUT OF THE COURSE OF HIS EMPLOYMENT AS A WELDER FOR THE EMPLOYER. THE REFEREE ORDERED THE EMPLOYER TO ACCEPT THE CLAIM.

CLAIMANT, A 32 YEAR OLD WELDER, WORKED 80 PERCENT OF HIS TIME WITH HIS LEFT LEG FOLDED UP UNDER HIM ON A CONCRETE FLOOR. ONE VASCULAR SURGEON POSSIBLY RELATES CLAIMANT'S CONDITION TO AN OFF-THE-JOB INCIDENT. THE TREATING DOCTOR DOES NOT BELIEVE THE OFF-THE-JOB INCIDENT CAUSED CLAIMANT'S CONDITION. ALTHOUGH THE MEDICAL REPORTS ARE NOT CONCLUSIVE, THE REFEREE HAS STATED GOOD REASONS FOR BELIEVING THE TREATING DOCTOR AND ORDERING THE CLAIM ACCEPTED.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 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. 73-189 JUNE 6, 1974
WCB CASE NO. 73-997 JUNE 6, 1974

DORIS D. TADLOCK, CLAIMANT

POZZI, WILSON AND ATCHISON

CLAIMANT'S ATTYS.

MIZE, KRIESIEN, FEWLESS, CHENEY

AND KELLEY, DEFENSE ATTYS.

REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT HAS REQUESTED REVIEW OF A REFEREE'S ORDER DISMISSING HER REQUEST FOR HEARING BECAUSE HE FOUND IT WAS NOT MADE WITHIN THE TIME PROVIDED BY LAW.

WE HAVE REVIEWED THE RECORD DE NOVO AND CONSIDERED THE BRIEFS OF THE PARTIES PRESENTED ON APPEAL. HAVING DONE SO, WE CONCUR WITH THE FINDINGS AND OPINION OF THE REFEREE AND CONCLUDE HIS ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE DATED DECEMBER 10, 1973, IS AFFIRMED.

WCB CASE NO. 73- 1459 JUNE 6, 1974

ALICE L. HUNTER, CLAIMANT

RICHARD H. RENN, 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 HE ERRED IN RULING THAT HER CLAIM HAD BEEN PROPERLY CLOSED, THAT SHE WAS PRECLUDED FROM CONTESTING A PARTIAL DENIAL, AND THAT HE HAD FAILED TO ADEQUATELY COMPENSATE HER PERMANENT DISABILITY.

WE HAVE REVIEWED THE RECORD DE NOVO AND CONSIDERED THE BRIEFS FILED ON REVIEW. WE CONCLUDE THE REFEREE MADE NO LEGAL OR FACTUAL ERROR, AND HIS WELL-WRITTEN ORDER SHOULD BE ADOPTED AND AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE, DATED OCTOBER 19, 1973, IS AFFIRMED.

WCB CASE NO. 72-2994 JUNE 6, 1974

GARY ROTH, CLAIMANT

MILLER AND BECK, CLAIMANT'S ATTYS.
PHILIP A. MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES A CLAIMANT WHO WAS AWARDED PERMANENT TOTAL DISABILITY ON JANUARY 24, 1968. PURSUANT TO ORS 656.278, UPON REQUEST BY THE EMPLOYER, THE WORKMEN'S COMPENSATION BOARD, BY OWN MOTION ORDER, REDUCED CLAIMANT'S PERMANENT TOTAL AWARD TO 50 PERCENT PERMANENT PARTIAL DISABILITY, EQUAL TO 96 DEGREES OF THE MAXIMUM OF 192 DEGREES. IN ACCORDANCE WITH THE APPEAL PROVISIONS OF ORS 656.278, CLAIMANT REQUESTED A HEARING AND BY THE REFEREE'S ORDER, DATED DECEMBER 27, 1973, THIS AWARD REDUCTION WAS AFFIRMED. NOW HAVING MADE A FULL RECORD IN THIS MATTER, CLAIMANT HAS REQUESTED THE BOARD TO REVIEW IT, CONTENDING IT ESTABLISHES THAT HE IS PERMANENTLY TOTALLY DISABLED.

DR. KIMBERLEY, WHO EXAMINED THE CLAIMANT BOTH BEFORE AND AFTER HE WAS DECLARED TO BE PERMANENTLY AND TOTALLY DISABLED, WAS OF THE OPINION IN 1973 THAT CLAIMANT'S PHYSICAL CONDITION SHOULD ALLOW HIM TO REGULARLY PERFORM AT LEAST LIGHT WORK IN SPITE OF EMOTIONAL PROBLEMS AND HIS FEELINGS OF INADEQUACY AND FEAR, BUT THAT HE PROBABLY WOULD NOT SEEK SUCH WORK IF HIS PERMANENT TOTAL DISABILITY AWARD WAS REINSTATED.

DR. MASON REPORTED AN APPARENTLY SPONTANEOUS FUSION OF THE PSEUDOARTHROSIS AT THE L4-5 LEVEL SO THERE WAS A SOLID FUSION. HE REPORTED EXCELLENT RANGE OF MOTION, GOOD MUSCULATURE AND CONSIDERABLE ACTIVITY TOLERANCE, = CERTAINLY NOT CONSISTENT WITH A WORKMAN PERMANENTLY AND TOTALLY DISABLED. HE FELT THAT CLAIMANT NEEDED PSYCHOLOGICAL HELP TO FACE UP TO THE POSSIBILITY OF WORKING.

NORMAN HICKMAN, CLINICAL PSYCHOLOGIST, IN JULY OF 1973, AGAIN CONFIRMED THE PRESENCE OF SUPERIOR INTELLECTUAL AND VOCATIONAL RESOURCES POSSESSED BY CLAIMANT, BUT STATED CLAIMANT WOULD NOT VOLUNTARILY DECIDE TO BE REHABILITATED AS LONG AS HE RECEIVED COMPENSATION AND VIEWED HIMSELF TO BE PERMANENTLY AND TOTALLY DISABLED.

BASED ON THE MEDICAL EVIDENCE IN THE RECORD, IT APPEARS TO THE BOARD, ON REVIEW, THE ONLY AVENUE BY WHICH THIS WORKMAN IS GOING TO REENTER THE LABOR MARKET IS TO REMOVE THE CRUTCH OF COMPENSATION ON WHICH HE HAS LEARNED TO LEAN.

BASED ON A REVIEW OF A FULL RECORD, THE BOARD CONCURS WITH THE FINDING OF THE REFEREE THAT CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED, BUT IS ENTITLED TO A PERMANENT PARTIAL DISABILITY

AWARD OF 50 PERCENT, EQUAL TO 96 DEGREES AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED DECEMBER 27, 1973, IS HEREBY AFFIRMED.

WCB CASE NO. 73-2840 JUNE 6, 1974

IVAN L. WILSON, CLAIMANT
COLLINS, REDDEN, FERRIS AND
VELURE, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED 40 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED LOW BACK DISABILITY. THE REFEREE AWARDED CLAIMANT PERMANENT TOTAL DISABILITY.

CLAIMANT, A 56 YEAR OLD LOGGER WITH AN EIGHTH GRADE EDUCATION, RECEIVED A LOW BACK INJURY ON JANUARY 14, 1972, WHICH RESULTED IN A LAMINECTOMY AND TWO-LEVEL SPINAL FUSION. CLAIMANT RECEIVED A LOW BACK INJURY IN 1964 FOR WHICH A LAMINECTOMY WAS PERFORMED. CLAIMANT INJURED HIS UPPER BACK, NECK AND LEFT KNEE IN DECEMBER 1970 FOR WHICH HE RECEIVED NECK SURGERY AND KNEE SURGERY.

ALL OF THE MEDICAL REPORTS AND EVIDENCE SHOW THAT CLAIMANT CANNOT RETURN TO LOGGING OR HEAVY MANUAL LABOR. THE BACK EVALUATION CLINIC FOUND RESIDUALS FROM THE INJURIES WERE MILDLY MODERATE WITH SOME FUNCTIONAL OVERLAY PROBLEMS. THE DIVISION OF VOCATIONAL REHABILITATION CLOSED THEIR FILE BECAUSE OF THE SEVERE STATE OF CLAIMANT'S BACK, CLAIMANT'S AGE, LACK OF FORMAL EDUCATION AND LIMITED WORK EXPERIENCE. AN ADDITIONAL FACTOR WAS THAT CLAIMANT LIVED IN A REMOTE AREA SOME 45 MILES FROM MEDFORD. THE CLAIMANT, ALTHOUGH HIGHLY MOTIVATED, WAS NOT A GOOD CANDIDATE FOR RETRAINING. EVEN IF THE CLAIMANT WERE TO SELL HIS 40 ACRES AND MOVE TO MEDFORD OR ROSEBURG, AND EVEN IF CLAIMANT WERE RETRAINED FOR LIGHTER WORK, THERE WAS TESTIMONY THAT CLAIMANT WOULD BE UNEMPLOYABLE.

THE REFEREE FOUND GOOD MOTIVATION ON THE PART OF THE CLAIMANT. THE CLAIMANT IS CLEARLY OUT OF THE LABOR MARKET THROUGH NO FAULT OF HIS OWN AND UNDER THE 'ODD LOT' DOCTRINE IS PERMANENTLY AND TOTALLY DISABLED.

THE BOARD AFFIRMS AND ADOPTS THE REFEREE'S OPINION AND ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 31, 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.

WCB CASE NO. 73-2270 JUNE 6, 1974

JO A. CLARK, 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.

THIS CLAIM INVOLVES A 40 YEAR OLD NURSES AIDE, INJURED COMPENSABLY ON DECEMBER 27, 1971, WHEN SHE FELL, STRIKING HER RIGHT HIP AND ELBOW.

CLAIMANT SEEKS BOARD REVIEW OF A REFEREE'S ORDER WHEREBY SHE WAS GRANTED A PERMANENT PARTIAL DISABILITY AWARD EQUAL TO 64 DEGREES FOR UNSCHEDULED DISABILITY, CONTENDING SHE IS ENTITLED TO A LARGER AWARD.

CLAIMANT WAS HOSPITALIZED ON SEVERAL OCCASIONS FOR TRACTION AND PHYSICAL THERAPY AND A MYELOGRAM. DR. MARTENS DIAGNOSED A UNILATERAL SACRALIZATION OF L-5 WHICH PRODUCED PAIN ON THE UNFUSED SIDE. DR. TSAI CONCURRED WITH THIS DIAGNOSIS. DR. ROBINSON FOUND A SECOND MYELOGRAM NORMAL AND AT THE DISABILITY PREVENTION DIVISION, DR. TOON FOUND ONLY MINIMAL DEMONSTRABLE DISABILITY ON THE BASIS OF OBJECTIVE FINDINGS. THE CLINICAL PSYCHOLOGIST RECOMMENDED CLAIMANT RETURN TO WORK THEREBY INDICATING NO PSYCHOLOGICAL IMPEDIMENT IN HER EARNING CAPACITY.

CLAIMANT TESTIFIED AT THE HEARING SHE WAS NOT INTERESTED IN PURSUING A CLERICAL JOB, NOT ONLY BECAUSE OF HER BACK DISABILITY, BUT BECAUSE THERE WAS NOT A FINANCIAL NEED REQUIRING IT.

THE BOARD, ON REVIEW, CONCURS WITH THE REFEREE'S FINDING THAT CLAIMANT HAS SUSTAINED PERMANENT PARTIAL DISABILITY EQUAL TO 64 DEGREES AND HIS ORDER SHOULD THEREFORE BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 12, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 73-1172 JUNE 6, 1974

C. M. LEE GREENLEE, 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 ISSUE IS THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 5 PERCENT (16 DEGREES) PERMANENT PARTIAL DISABILITY TO LOW BACK. THE REFEREE GRANTED AN ADDITIONAL 25 PERCENT (80 DEGREES), MAKING A TOTAL AWARD TO THE CLAIMANT FROM THE INDUSTRIAL INJURY OF JANUARY 1972 OF 30 PERCENT (96 DEGREES).

CLAIMANT HAD HAD TWO PREVIOUS BACK INJURIES FOR WHICH PERMANENT PARTIAL DISABILITY AWARDS WERE MADE. THE REFEREE CORRECTLY STATES THE BASIS OF AN AWARD FOR UNSCHEDULED DISABILITY AS BEING THE COMPARISON OF CLAIMANT'S BACK BEFORE AND AFTER THE INDUSTRIAL INJURY INVOLVED.

CLAIMANT IS A 50 YEAR OLD SINGLE CAR SALESMAN AND ASSISTANT MANAGER WITH EDUCATION THROUGH TWO YEARS OF LAW SCHOOL. IN VIEW OF THE CLAIMANT'S EDUCATION AND THE MEDICAL EVIDENCE IN THE RECORD, THE BOARD CONSIDERS THE AWARD OF AN ADDITIONAL 25 PERCENT AWARDED BY THE REFEREE ADEQUATE.

THE REFEREE OBSERVED THE CLAIMANT AND GREAT WEIGHT IS GIVEN HIS FINDING.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 18, 1973, IS AFFIRMED.

WCB CASE NO. 73-3287 JUNE 6, 1974

GLEN SALLEE, CLAIMANT

JERRY KLEEN, 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. THE REFEREE AFFIRMED THE AWARD OF 96 DEGREES PERMANENT PARTIAL DISABILITY FOR UNSCHEDULED LOW BACK AWARDED BY THE DETERMINATION ORDER.

CLAIMANT, A 37 YEAR OLD BRICK MASON, INJURED HIS BACK ON FEBRUARY 28, 1973. AFTER CONSERVATIVE TREATMENT FAILED TO RELIEVE HIS SYMPTOMS, HE HAD SURGERY, CONSISTING OF A LAMINECTOMY AND DISC EXCISION. CLAIMANT IS NOW ENROLLED AT CHEMEKETA

COMMUNITY COLLEGE, THROUGH THE VOCATIONAL REHABILITATION DEPARTMENT, AND HIS PROSPECTS FOR RETRAINING AS A HUMAN RESOURCES ASSISTANT APPEAR GOOD.

THE BOARD AFFIRMS AND ADOPTS THE REFEREE'S OPINION AND ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 19, 1974, IS AFFIRMED.

WCB CASE NO. 73-2705 JUNE 6, 1974

CECIL LONG, CLAIMANT
POZZI, WILSON AND ATCHISON
CLAIMANT'S ATTYS.
GEARIN, CHENEY, LANDIS, AEBI
AND KELLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS IS A DENIED AGGRAVATION CLAIM. CLAIMANT'S INDUSTRIAL INJURY OF APRIL 1, 1971, WAS CLOSED ON FEBRUARY 18, 1972, WITH AN AWARD OF 96 DEGREES PERMANENT PARTIAL DISABILITY FOR UNSCHEDULED LOW BACK. AT THE HEARING THE REFEREE FIRST GRANTED DEFENDANT'S MOTION TO DISMISS THE AGGRAVATION CLAIM ON THE GROUNDS THAT THE REFEREE LACKED JURISDICTION INASMUCH AS THE AGGRAVATION CLAIM WAS NOT SUPPORTED BY SUFFICIENT OR PROPER WRITTEN MEDICAL OPINION. THE REFEREE CONSIDERED OTHER MEDICAL REPORTS AND FOUND THERE WAS MINIMAL OBJECTIVE MEDICAL EVIDENCE THAT CLAIMANT'S CONDITION IS NOW WORSE THAN IT WAS ON FEBRUARY 18, 1972. SINCE THIS WAS A 'DRY AGGRAVATION' CLAIM THE REFEREE THEN AWARDED PERMANENT TOTAL DISABILITY.

ORS 656.273 PROVIDES THE CLAIM FOR AGGRAVATION MUST BE SUPPORTED BY A WRITTEN OPINION FROM A PHYSICIAN THAT THERE ARE REASONABLE GROUNDS FOR THE CLAIM. A REVIEW OF ALL OF THE MEDICAL REPORTS AND EVIDENCE IN THE ENTIRE RECORD EITHER INDIVIDUALLY OR COLLECTIVELY DOES NOT SATISFY THE STATUTORY REQUIREMENT TO GIVE THE REFEREE JURISDICTION. THE PHYSICIANS' OPINION(S) DOES NOT INDICATE THAT THERE ARE REASONABLE GROUNDS FOR THE CLAIM THAT THE DISABILITY HAS BEEN AGGRAVATED SUBSEQUENT TO THE LAST AWARD OR ARRANGEMENT OF COMPENSATION NOR DOES IT SET FORTH FACTS, WHICH, IF TRUE, WOULD CONSTITUTE REASONABLE GROUNDS FOR THE CLAIM.

SINCE SUBMISSION OF A PHYSICIAN'S OPINION WHICH CONFORMS TO THE REQUIREMENTS OF ORS 656.273 IS THE CONDITION PRECEDENT TO A CLAIMANT'S RIGHT TO HAVE A HEARING ON AN AGGRAVATION CLAIM, AND SINCE SUCH AN OPINION WAS NOT SUBMITTED IN SUPPORT OF THE CLAIM, THE REFEREE LACKED JURISDICTION TO MAKE AN AWARD OF INCREASED COMPENSATION ON ACCOUNT OF AGGRAVATION.

ORDER

THE ORDER OF THE REFEREE DATED JANUARY 8, 1974, IS REVERSED.

WCB CASE NO. 73-2233 JUNE 6, 1974

MARY ANN JOHNSON, CLAIMANT
RICHARD H. RENN, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS EXTENT OF PERMANENT PARTIAL DISABILITY. A DETERMINATION ORDER AWARDED TEMPORARY DISABILITY ONLY BUT MADE NO AWARD FOR PERMANENT PARTIAL DISABILITY. THE REFEREE AFFIRMS THE DETERMINATION ORDER.

CLAIMANT, A 32 YEAR OLD PLYWOOD MILL WORKER, RECEIVED A LUMBO-SACRAL STRAIN ON JUNE 23, 1972. CLAIMANT WAS RELEASED TO GO BACK TO FULL TIME WORK IN AUGUST OF 1972 BUT SHE WAS NOT REHIRED. SHE HAS HAD 'FLAREUPS' OF HER BACK CONDITION BUT EACH TIME THE DOCTOR RELEASED HER TO GO BACK TO WORK AND THE MEDICAL REPORTS REFLECT NO PERMANENT PARTIAL DISABILITY. SHE HAD BEEN WORKING 10 HOURS A DAY, FOUR DAYS A WEEK IN A LIGHTER TYPE OF WORK WHEN HER APPLICATIONS TO GO BACK TO PLYWOOD WORK WERE NOT ACCEPTED.

THE BOARD AFFIRMS THE OPINION AND ORDER OF THE REFEREE AND ADOPTS HIS OPINION AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED OCTOBER 29, 1973, IS AFFIRMED.

WCB CASE NO. 73-1607 JUNE 6, 1974

THEODORE JOE WINTER, CLAIMANT
A. C. ROLL, CLAIMANT'S ATTY.
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 PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 5 PERCENT LOSS OF THE RIGHT FOOT EQUAL TO 6.75 DEGREES. THE REFEREE AFFIRMED THIS AWARD.

CLAIMANT, A 51 YEAR OLD CLEAN-UP MAN AT A SAWMILL DURING THE WINTER AND A PAINTER DURING THE SUMMER, RECEIVED AN INJURY TO HIS RIGHT FOOT AND ANKLE WHILE WORKING AT THE MILL. THE MEDICAL EVIDENCE CLEARLY SHOWS THAT THE FOOT AND ANKLE ARE STABLE AND PERMANENT DISABILITY, IF ANY, IS VERY MINIMAL. THE 5 PERCENT LOSS OF THE RIGHT FOOT ADEQUATELY COMPENSATES THE CLAIMANT FOR THIS SCHEDULED DISABILITY.

THE PREPONDERANCE OF THE EVIDENCE AS TO CLAIMANT'S PSYCHOPATHOLOGY IS THAT CLAIMANT HAS NO PSYCHOLOGICAL DISABILITY RESULTING FROM THE INDUSTRIAL INJURY.

THE OPINION AND ORDER OF THE REFEREE IS AFFIRMED AND ADOPTED.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 16, 1974, IS AFFIRMED.

WCB CASE NO. 73-2397 JUNE 6, 1974

BARRY HURD, CLAIMANT
PICKENS AND WEBBER, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE IS EXTENT OF PERMANENT PARTIAL DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 15 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED LOW BACK DISABILITY EQUAL TO 48 DEGREES. THE REFEREE AFFIRMED THIS AWARD. CLAIMANT REQUESTS ADDITIONAL UNSCHEDULED DISABILITY AND A SCHEDULED AWARD FOR THE LEFT LEG.

CLAIMANT, A 29 YEAR OLD JOURNEYMAN ELECTRICIAN, FELL APPROXIMATELY 20 FEET, LANDING ON HIS RIGHT HIP. HE HAS BEEN TREATED AND EXAMINED BY ORTHOPEDISTS, NEUROLOGISTS, PSYCHIATRISTS, PSYCHOLOGISTS AND HAS BEEN THROUGH THE BACK EVALUATION CLINIC. THE BACK EVALUATION CLINIC RECOMMENDED CLAIMANT CONTINUE IN HIS OCCUPATION AND THE LOSS OF FUNCTION DUE TO THE INDUSTRIAL INJURY WAS MILD. THE CONSENSUS OF THE OTHER MEDICAL REPORTS CONCURS WITH THIS EVALUATION.

THE CLAIMANT CONTINUES TO WORK AS A JOURNEYMAN ELECTRICIAN AND HIS FOREMAN TESTIFIES HIS WORK IS AS GOOD AS PRIOR TO THE INDUSTRIAL INJURY.

THE REFEREE'S OPINION AND ORDER IS COMPREHENSIVE AND THOROUGH. THE BOARD ADOPTS THE REFEREE'S OPINION AND ORDER AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED NOVEMBER 16, 1973, IS AFFIRMED.

JAMES D. HOUSTON, CLAIMANT
AND
TED ROGOWAY, DBA CARE-FREE WALLS
ROBERT LEE OLSON, CLAIMANT'S ATTY.
BENHARDT E. SCHMIDT, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS WHETHER OR NOT THE CLAIMANT WAS A SUBJECT EMPLOYEE OR AN INDEPENDENT CONTRACTOR AT THE TIME OF INJURY FOR A NONCOMPLYING EMPLOYER. THE REFEREE FOUND THAT CLAIMANT WAS AN INDEPENDENT CONTRACTOR AND NOT A SUBJECT EMPLOYEE.

CLAIMANT, A 60 YEAR OLD CARPENTER, FELL FROM A LADDER FRACTURING HIS RIGHT ANKLE. THE CLAIMANT AND ANOTHER PERSON SUB-CONTRACTED TO BUILD A GARAGE. CLAIMANT FURNISHED HIS OWN TOOLS AND DETERMINED THE DAYS AND HOURS HE WOULD WORK. THE ALLEGED EMPLOYER HAD THE RIGHT OF INSPECTION AND APPROVAL ON COMPLETION OF THE BUILDING BUT DID NOT HAVE THE RIGHT OF CONTROL. THE CLAIMANT AND HIS CO-WORKER WERE PAID THE AGREED UPON AMOUNT OF 800 DOLLARS WHEN THE JOB WAS COMPLETED. THE CLAIMANT AND HIS CO-WORKER SIGNED A SUBCONTRACT FORM CLEARLY ESTABLISHING CLAIMANT AS AN INDEPENDENT CONTRACTOR. THE EVIDENCE SUBSTANTIATES THE INDEPENDENT CONTRACTOR RELATIONSHIP.

THE BOARD ADOPTS AND AFFIRMS THE OPINION AND ORDER OF THE REFEREE HOLDING THAT THE CLAIMANT WAS AN INDEPENDENT CONTRACTOR AND NOT A SUBJECT EMPLOYEE.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 21, 1973, IS AFFIRMED.

GARY G. WOLANSKI, 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 REVIEW OF A REFEREE'S OPINION AND ORDER WHICH AFFIRMED THE DETERMINATION ORDER, DATED JANUARY 30, 1973, WHEREBY CLAIMANT WAS NOT AWARDED PERMANENT PARTIAL DISABILITY FOR THE INDUSTRIAL INJURY HE SUSTAINED ON OCTOBER 6, 1972.

CLAIMANT WAS EMPLOYED BY FRED MEYER, INC., IN ITS WAREHOUSE WHEN HE FELL TO THE CONCRETE FLOOR AND SUSTAINED A FRACTURE OF THE LEFT FOREARM.

CLAIMANT'S CREDIBLE TESTIMONY CONCERNING DISABILITY IS CORROBORATED BY DR. CHERRY'S REPORT OF SOME PERMANENT IMPAIRMENT OF THE FOREARM. ALTHOUGH THE DISABILITY IS NOT GREAT, CLAIMANT IS ENTITLED TO COMPENSATION FOR IT.

THE BOARD, ON REVIEW, FINDS THIS IMPAIRMENT IS EQUIVALENT TO 10 PERCENT LOSS FUNCTION OF THE LEFT FOREARM.

ORDER

BY THIS ORDER, CLAIMANT IS HEREBY AWARDED PERMANENT PARTIAL DISABILITY OF 10 PERCENT OR 15 DEGREES LOSS FUNCTION OF THE LEFT FOREARM.

CLAIMANT'S COUNSEL IS ENTITLED TO 25 PERCENT OF THE INCREASED COMPENSATION PAID UNDER THIS ORDER, NOT TO EXCEED 1,500 DOLLARS AS A REASONABLE ATTORNEY FEE.

WCB CASE NO. 73-3961 JUNE 6, 1974

ALBERT ROSENSTIEL, CLAIMANT
POZZI, WILSON AND ATCHISON, 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 FINDING CLAIMANT HAD PROPERLY MADE CLAIM FOR AGGRAVATION BENEFITS AND WAS ENTITLED TO PSYCHIATRIC CARE FOR HIS CONDITION.

WE CONCLUDE DR. DIXON'S REPORT (CLAIMANT'S EXHIBIT 2) WAS NOT SUFFICIENT TO VEST THE REFEREE WITH JURISDICTION TO DECIDE THE CASE. THE REPORT ITSELF DOES NOT REVEAL ANY OPINION BY DR. DIXON THAT SINCE THE LAST AWARD OR ARRANGEMENT OF COMPENSATION, THERE HAS BEEN A WORSENING OF THE CLAIMANT'S DISABILITY. MC KINNEY V. G. L. PINE, 98 OR ADV SH 1440, ---OR APP---(MARCH 11, 1974).

THE ONLY INDICATION THAT THE CONDITIONS DR. DIXON REPORTS ARE WORSENERED CONDITIONS IS HIS REPORT THAT THE CLAIMANT FELT THE FUNCTIONING OF HIS MIND WAS DETERIORATING. THIS TOO RENDERS THE REPORT INSUFFICIENT. COLLINS V. STATES VENEER, INC., 97 OR ADV SH 1068, --- OR APP---(JULY 30, 1973).

WE CONCUR WITH THE ANALYSIS OF THIS CASE CONTAINED IN THE APPELLANT'S BRIEF ON REVIEW. CLAIMANT HAS FAILED TO ESTABLISH HIS RIGHT TO PURSUE A CLAIM OF AGGRAVATION AND HAS ALSO FAILED TO ESTABLISH THAT THERE HAS, IN FACT, BEEN A WORSENING OF HIS DISABILITY SINCE THE LAST AWARD OF COMPENSATION IN HIS CLAIM. THE ORDER OF THE REFEREE SHOULD BE REVERSED.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 8, 1974, IS REVERSED.

PURSUANT TO ORS 656.313, ANY COMPENSATION PAID OR PROVIDED TO THE CLAIMANT WHILE THIS REVIEW WAS PENDING IS NOT RECOVERABLE.

WCB CASE NO. 72-2004 JUNE 7, 1974

SARAH HOLDEN, CLAIMANT
WILLIAM G. WHITNEY, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.

ON JUNE 5, 1974, THE EMPLOYER, THROUGH ITS INSURER, CNA, FILED A MOTION FOR RECONSIDERATION OF THE BOARD'S ORDER ISSUED PURSUANT TO ORS 656.593 IN THE ABOVE-ENTITLED CASE.

THE BOARD HAS CONSIDERED THE MOTION FOR RECONSIDERATION AND CONCLUDES IT IS NOT WELL TAKEN.

THE MOTION SHOULD BE, AND IT IS, HEREBY DENIED.

NO NOTICE OF APPEAL IS DEEMED APPLICABLE.

SAIF CLAIM NO. N 817499 JUNE 7, 1974

LAWRENCE L. KELLOGG, CLAIMANT
OWN MOTION ORDER

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

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS LEFT KNEE ON OCTOBER 24, 1942, WHILE WORKING FOR THE COTTAGE GROVE GAS COMPANY. THROUGH THE YEARS, HE HAD OCCASIONAL EPISODES OF TREATMENT TO THE LEFT KNEE. ON JULY 6, 1971, AN ARTHROTOMY AND LEFT LATERAL MENISCECTOMY WAS PERFORMED ON THE KNEE BY DR. JAMES W. BROOKE, AND THE CLAIMANT ASKS THAT WE ORDER THE FUND, AS THE SUCCESSOR TO THE INJURING FUNCTION OF THE STATE INDUSTRIAL ACCIDENT COMMISSION, TO PROVIDE HIM ADDITIONAL BENEFITS RELATED TO THE 1971 DISABILITY.

THE QUESTION IS WHETHER THERE IS A MATERIAL CAUSAL CONNECTION BETWEEN CLAIMANT'S 1942 AND HIS 1971 SURGERY. THE EVIDENCE ON THE SUBJECT IS INSUFFICIENT TO MAKE AN INFORMED JUDGMENT.

THE BOARD THEREFORE CONCLUDES THE MATTER SHOULD BE REMANDED TO THE HEARINGS DIVISION TO CONDUCT A HEARING AND RENDER AN ADVISORY OPINION TO THE BOARD ON THE QUESTION PRESENTED ABOVE.

IT IS SO ORDERED.

JUNE 7, 1974

FARRIS SAMPLEY, CLAIMANT

INGRAM AND SCHMAUDER, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A CLAIM FOR AGGRAVATION. CLAIMANT RECEIVED A LOW BACK INDUSTRIAL INJURY MARCH 2, 1968. CLAIMANT WAS ULTIMATELY AWARDED 65 DEGREES UNSCHEDULED PERMANENT PARTIAL BACK DISABILITY BY THE HEARING OFFICER'S ORDER, DATED FEBRUARY 18, 1970. CLAIMANT WORKED FOR SEVERAL EMPLOYERS, INCLUDING CUSTODIAN DUTIES AT A HIGH SCHOOL AS A SERVICE STATION ATTENDANT.

IN FEBRUARY, 1972, CLAIMANT KICKED AT A CAT AND IMMEDIATELY FELT SHARP PAIN IN HIS FOOT.

THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM FOR AGGRAVATION ON THE BASIS THAT CLAIMANT'S PRESENT PROBLEMS ARE NOT AN AGGRAVATION OF THE MARCH 2, 1968, INDUSTRIAL ACCIDENT BUT CONSTITUTE A NEW AND SEPARATE INJURY. THE SUDDEN ONSET OF PAIN IN THE FOOT INDICATING A NERVE PRESSURE OCCURRENCE FOLLOWING THE CAT KICKING INCIDENT ALONG WITH THE CLAIMANT'S JOB ACTIVITIES CONVINCED THE REFEREE THAT THE INCIDENT WAS A NEW INJURY AND NOT AN AGGRAVATION. THE BOARD CONCURS WITH THE FINDINGS AND ORDER OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 10, 1974, IS AFFIRMED.

JUNE 7, 1974

WESLEY PHILIPPI, CLAIMANT

FRED EASON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE IS EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 10 PERCENT UNSCHEDULED LOW BACK DISABILITY. THE REFEREE AFFIRMED THIS AWARD.

THE CLAIMANT, A 36 YEAR OLD JOURNEYMAN HEAD MECHANIC FOR HONDA DIVISION OF THE EMPLOYER'S BUSINESS, RECEIVED A LUMBOSACRAL STRAIN WHILE LIFTING A CRATE CONTAINING A MOTORCYCLE. A FEW DAYS LATER HE REINJURED HIS BACK WHILE LIFTING A 150 POUND ENGINE. HE HAS RECEIVED CONSERVATIVE CARE FOR APPROXIMATELY TWO YEARS SINCE THE INJURY AND HAS CHANGED HIS OCCUPATION TO LIGHT DUTY, FIRST AS A PARTS MAN AND NOW AS A CHECKER AT THE GROCERY STORE. HIS HOURLY WAGE NOW IS APPROXIMATELY THE SAME AS IT WAS BEFORE THE

INJURY AND HIS PROSPECTS FOR ADVANCEMENT IN THE GROCERY BUSINESS APPEAR GOOD. HIS PRESENT JOB REQUIRES NO HEAVY LIFTING. CLAIMANT CONTINUES TO WEAR A BRACE AND HIS OFF-THE-JOB ACTIVITIES ARE SUBSTANTIALLY CURTAILED.

THE TEST FOR UNSCHEDULED DISABILITY IS PERMANENT LOSS OF WAGE EARNING CAPACITY. THE CLAIMANT HAS BEEN REQUIRED TO GIVE UP THE OCCUPATION OF HEAD MECHANIC ON MOTORCYCLES AND ANY OTHER OCCUPATION REQUIRING HEAVY LIFTING. THE WAGES RECEIVED BEFORE THE INJURY AND AFTER THE INJURY ARE RELEVANT TO THIS TEST BUT ARE ONLY ONE FACTOR. BY NOT BEING ABLE TO WORK AS A MECHANIC OR ON ANY OTHER JOB REQUIRING HEAVY LIFTING, THE CLAIMANT HAS SUSTAINED A LOSS OF WAGE EARNING CAPACITY IN THE GENERAL LABOR MARKET.

THE BOARD FINDS THAT CLAIMANT HAS SUSTAINED A TOTAL OF 25 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED LOW BACK DISABILITY EQUAL TO 80 DEGREES.

ORDER

THE ORDER OF THE REFEREE DATED DECEMBER 19, 1973, IS REVERSED.

CLAIMANT IS HEREBY AWARDED AN INCREASE OF 15 PERCENT (48 DEGREES) OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED LOW BACK DISABILITY. THIS MAKES A TOTAL OF 25 PERCENT (80 DEGREES) UNSCHEDULED LOW BACK DISABILITY AWARD.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE, 25 PERCENT OF THE INCREASE IN COMPENSATION ASSOCIATED WITH THIS AWARD, WHICH SHALL NOT EXCEED 1,500 DOLLARS.

WCB CASE NO. 72-1201 JUNE 7, 1974

ROGER JOBE, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER
CLAIMANT'S ATTYS.
GEARIN, CHENEY, LANDIS, AEBI AND
KELLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT PARTIAL DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT PERMANENT PARTIAL DISABILITY OF 64 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. THE REFEREE AFFIRMED THIS AWARD.

CLAIMANT, A 45 YEAR OLD SAWMILL WORKER, INJURED HIS BACK ON APRIL 22, 1970. CLAIMANT HAS RECEIVED CONSERVATIVE TREATMENT ONLY AND WAS RELEASED IN SEPTEMBER, 1973, TO RESUME LIGHT WORK WITH WEIGHT LIFTING RESTRICTED TO 30 POUNDS. CLAIMANT LIVES IN SWEET HOME WHERE THERE IS LITTLE OR NO LIGHT WORK AVAILABLE. CLAIMANT COMMENCED VOCATIONAL REHABILITATION BUT DISCONTINUED THE TRAINING.

ON DE NOVO REVIEW OF THE ENTIRE RECORD, THE BOARD CONCURS WITH THE OPINION AND ORDER OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 11, 1974, IS AFFIRMED.

WCB CASE NO. 73-2733 JUNE 7, 1974

FRED GOSKA, CLAIMANT

FRANKLIN, BENNETT, OFELT, DES BRISAY
AND JOLLES, 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 REFEREE'S ORDER WHICH GRANTED CLAIMANT AN AWARD OF PERMANENT TOTAL DISABILITY.

THIS 50 YEAR OLD CLAIMANT SUFFERED A COMPENSABLE LOW BACK INJURY ON DECEMBER 1, 1969, WHILE USING A JACKHAMMER AS AN EMPLOYEE OF THE CITY OF CORVALLIS WATER DEPARTMENT. HE RETURNED TO WORK IN JANUARY, 1970, AFTER HIS CLAIM WAS CLOSED WITH NO AWARD FOR PERMANENT PARTIAL DISABILITY. BY JANUARY, 1972, HOWEVER, CLAIMANT'S CONDITION HAD SO DETERIORATED HE WAS UNABLE TO PERFORM HIS JOB AND WAS REQUESTED BY HIS EMPLOYER TO RESIGN.

IN FEBRUARY OF 1973, AFTER CLAIMANT HAD FILED AN AGGRAVATION CLAIM, THE STATE ACCIDENT INSURANCE FUND, BY STIPULATION, NOT ONLY ACCEPTED CLAIMANT'S AGGRAVATION CLAIM BUT ACCEPTED RESPONSIBILITY FOR AN ANXIETY REACTION WHICH IT HAD PREVIOUSLY DENIED.

THE CLAIM WAS CLOSED BY DETERMINATION ORDER AWARDING CLAIMANT 10 PERCENT OF THE MAXIMUM ALLOWED BY STATUTE FOR LOW BACK DISABILITY EQUAL TO 32 DEGREES.

CLAIMANT REQUESTED A HEARING ON THIS DETERMINATION, AND THE REFEREE SUBSEQUENTLY AWARDED PERMANENT TOTAL DISABILITY.

THE REFEREE'S ORDER RECITES THAT CLAIMANT RECEIVED A MILDLY MODERATE BACK STRAIN COMPLICATED BY SEVERE HYSTERICAL CONVERSION REACTION. HIS MENTAL ATTITUDE AND HOSTILITY PRECLUDED SURGERY OR FURTHER THERAPY. THE MEDICAL RECORDS CLEARLY INDICATE CLAIMANT WILL NEVER RETURN TO HEAVY LABOR WHICH IS THE ONLY TYPE OF WORK HE HAS DONE. THERE IS ALSO EVIDENCE THAT HIS FAILURE TO TRY TO WORK IS DUE TO PAIN AND NOT A LACK OF MOTIVATION. AS TESTIFIED TO BY FELLOW WORKMEN, CLAIMANT TRIED TO WORK FOR TWO YEARS, GETTING WORSE AND WORSE AND FINALLY BEING TERMINATED BY THE EMPLOYER.

THE REFEREE FOUND CLAIMANT TO BE IN THE 'ODD LOT' CATEGORY AND AWARDED BENEFITS OF BEING PERMANENTLY AND TOTALLY DISABLED.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDING OF THE REFEREE AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 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. 73-2216 JUNE 10, 1974

JOHN M. REED, CLAIMANT
THWING, ATHERLY AND BUTLER,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS THE BOARD, ON DE NOVO REVIEW, TO CONSIDER EACH OF THE 13 ISSUES SUBMITTED TO THE REFEREE AT HEARING.

THE BOARD, HAVING CONSIDERED THE 13 ISSUES AND THE ENTIRE RECORD, AFFIRMS AND ADOPTS THE REFEREE'S OPINION AND ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED NOVEMBER 19, 1973, IS AFFIRMED.

WCB CASE NO. 70-2348 JUNE 10, 1974

LEONARD L. NASH, CLAIMANT
GRANT AND FERGUSON, CLAIMANT'S ATTYS.
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS CLAIMANT RECEIVED A PERMANENT PARTIAL DISABILITY AWARD OF 15 PERCENT UNSCHEDULED LOW BACK DISABILITY EQUAL TO 48 DEGREES BY A DETERMINATION ORDER OF NOVEMBER 2, 1970, FOR AN INJURY OF MAY 28, 1969. AT HEARING, THE REFEREE INCREASED THE AWARD TO 25 PERCENT EQUAL TO 80 DEGREES. THE EMPLOYER HAS APPEALED FROM THIS ORDER.

IN SPITE OF A LAMINOTOMY AT L5-S1 WHICH WAS PERFORMED JULY 10, 1969, HE CONTINUED TO HAVE BACK PAIN AND UNDERWENT NUMEROUS HOSPITALIZATIONS FOR TRACTION. A SECOND MYELOGRAM WAS NORMAL, HOWEVER.

CLAIMANT RECEIVED A PROLONGED COURSE OF MEDICAL TREATMENT AND EVALUATION BEFORE REACHING MEDICAL STABILITY. REPORTS MADE BY DRs. BOLTON AND CAMPAGNA AND THE BACK EVALUATION CLINIC ALL RECITE CLAIMANT WAS SUFFERING FROM FUNCTIONAL PROBLEMS AND NOTED 'MILD' IMPAIRMENT.

THE REFEREE, ALTHOUGH NOTING CLAIMANT'S WORK EFFORTS HAD

PRODUCED ONLY LIMITED INCOME IN THE PAST, CONCLUDED CLAIMANT'S LOSS OF EARNING CAPACITY AS A RESULT OF HIS INDUSTRIAL INJURY EQUALLED 80 DEGREES OR 25 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY. THE EMPLOYER ARGUES THAT IN VIEW OF CLAIMANT'S SMALL EARNING CAPACITY PRIOR TO THE INJURY AND HIS RELATIVELY SMALL PERMANENT DISABILITY, THAT AN AWARD OF 80 DEGREES IS EXCESSIVE. WE CANNOT ACCEPT THE EMPLOYER'S PROPOSED APPLICATION OF THE LAW. CLAIMANT'S PRE INJURY EARNING CAPACITY, ALTHOUGH CAPABLE OF PRODUCING ONLY MEAGER EARNINGS WAS NEVERTHELESS ALL THE EARNING CAPACITY HE HAD. THE MILD PHYSICAL IMPAIRMENT PRODUCED BY THIS INJURY, WHEN COUPLED WITH THE FACTORS OF CLAIMANT'S AGE, EDUCATION, TRAINING AND EXPERIENCE, HAVE REDUCED HIS EARNING CAPACITY BY 25 PERCENT AND HE IS ENTITLED TO BE COMPENSATED ACCORDINGLY. THE REFEREE'S ORDER SHOULD THEREFORE BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED JANUARY 28, 1974, 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. 73-1661 JUNE 10, 1974

KERMIT EISENLOHR, CLAIMANT
DYE AND OLSEN, CLAIMANT'S ATTYS.
COLLINS, FERRIS AND VELURE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE EMPLOYER'S DENIAL OF HIS CLAIM.

IN OCTOBER OF 1972, CLAIMANT, WHO HAD WORKED FOR ALBANY FROZEN FOODS SINCE JUNE, 1971, IN A SEDENTARY CAPACITY, WAS TRANSFERRED TO MANAGER OF THE REPACK ROOM. THE JOB REQUIRED WALKING AND STANDING ON DAMP, CONCRETE FLOORS. CLAIMANT WAS TERMINATED BY HIS EMPLOYER NOVEMBER 24, 1972, FOR FAILING TO CARRY OUT HIS DUTIES.

ON DECEMBER 1, 1972, CLAIMANT SOUGHT MEDICAL ATTENTION FOR KNEE AND HEEL PROBLEMS. HIS CONDITION WAS DIAGNOSED AS SYNOVITIS BY DR. MACK WHO TREATED THE CLAIMANT THROUGH JULY 20, 1973. A REPORT FROM DR. MACK STATED -

IN MR. EISENLOHR'S CASE, THERE ARE SEVERAL FACTORS THAT SHOULD BE CONSIDERED. APPARENTLY HE HAS ALWAYS BEEN A VERY ACTIVE MAN IN THAT HE PLAYS GOLF, BASKETBALL, ETC. HE ALSO APPARENTLY WAS QUITE ATHLETICALLY ORIENTED IN HIS COLLEGE DAYS. IT IS POSSIBLE TO SPECULATE THAT EVEN THOUGH HE HAD NO SEVERE SYMPTOMS PRIOR TO THE SUBJECT AT HAND, HE MAY HAVE SUSTAINED SUBLIMINAL CHANGES IN THE SYNOVIAL MEMBRANE OF THE KNEES PRIOR TO THE INJURY THAT HE STATES OCCURRED AT ALBANY FROZEN FOODS. ANOTHER FACTOR THAT SHOULD BE CONSIDERED IS THE FAIRLY BRIEF TIME BETWEEN HIS

ASSIGNMENT TO THE REPACK ROOM AND THE BEGINNING OF HIS SYMPTOMS. . . . I SAW MR. EISENLOHR ON JUNE 19, 1972, BECAUSE OF PAIN, TENDERNESS AND SWELLING INVOLVING THE RIGHT KNEE ORIGINALLY INCURRED WHILE PLAYING BASKETBALL JUNE 12, 1972. HE STATES THAT HE TWISTED HIS KNEE AT THAT TIME. HIS SYMPTOMS SUBSIDED UNTIL JUNE 18, 1972, WHEN HE STATES THAT HE TWISTED THE RIGHT KNEE WHILE PLAYING GOLF.'

THIS MEDICAL REPORT FROM DR. MACK, COUPLED WITH THE REFEREE'S FINDING OF LACK OF CREDIBILITY OF THE CLAIMANT AND CONFLICT OF TESTIMONY AMONG THE WITNESSES, CONVINCES THE BOARD THE REFEREE WAS CORRECT IN HIS AFFIRMANCE OF THE DENIAL OF CLAIMANT'S CLAIM.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 31, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 73-1359 JUNE 10, 1974

DONALD R. BLUE, CLAIMANT
INGRAM AND SCHMAUDER, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS CLAIMANT SEEKS BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED THE PERMANENT PARTIAL DISABILITY AWARD OF 5 PERCENT FOR UNSCHEDULED HEAD DISABILITY, EQUAL TO 16 DEGREES, MADE BY THE DETERMINATION ORDER OF JUNE 23, 1972.

ON JULY 30, 1971, CLAIMANT SUSTAINED FACIAL FRACTURES AND THE LOSS OF NINE TEETH WHILE FALLING TIMBER. ALTHOUGH CLAIMANT RECEIVED EXCELLENT MEDICAL CARE HE HAS BEEN PLAGUED BY SEVERE HEADACHES THAT IMPAIRED HIS ABILITY TO THINK AND CONCENTRATE AND HAS RENDERED HIM SHAKY AND NERVOUS.

THE BOARD, ON REVIEW, CONCLUDES THE AWARD OF 5 PERCENT INADEQUATELY COMPENSATES THE CLAIMANT AND IS OF THE OPINION THAT AN AWARD OF 48 DEGREES OR 15 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY MORE REALISTICALLY REFLECTS THE DEGREE OF CLAIMANT'S DISABILITY.

ORDER

THE REFEREE'S ORDER IS MODIFIED TO REFLECT CLAIMANT IS ENTITLED TO AN ADDITIONAL 32 DEGREES MAKING A TOTAL OF 15 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE, 25 PERCENT OF THE INCREASE IN COMPENSATION ASSOCIATED WITH THIS AWARD, NOT TO EXCEED 1,500 DOLLARS.

WALLACE B. PUZIO, CLAIMANT

COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
OWN MOTION ORDER

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

ON JUNE 22, 1959, WHILE EMPLOYED BY NATRON PLYWOOD COMPANY, CLAIMANT WAS PULLED INTO A SET OF ROLLERS WHICH RAN UP TO HIS RIGHT SHOULDER. HE SUSTAINED AN ANTERIOR DISLOCATION OF HIS RIGHT GLENO-HUMERAL JOINT, AND A FRACTURE OF THE GREATER TUBEROSITY OF THE RIGHT HUMERUS. HE WAS TREATED BY CLOSE MANIPULATION AND CAST IMMOBILIZATION FOR A PERIOD OF SIX WEEKS. HE THEN UNDERWENT A FIVE MONTH PERIOD OF PHYSICAL THERAPY AND RETURNED TO WORK IN MARCH, 1960.

ON JULY 29, 1963, CLAIMANT UNDERWENT SURGERY FOR REPAIR OF THE RIGHT SHOULDER, RETURNED TO WORK SOMETIME AFTER SURGERY, AND CONTINUED TO WORK UNTIL 1974.

AFTER THE SURGERY HE CONTINUED TO HAVE PAIN AND HAS NOTED PROGRESSION OF PAIN. IN FEBRUARY, 1974, HE WAS HAVING PAIN WHILE INVOLVED IN LIFTING AND CARRYING, AND AFTER STRENUOUS ACTIVITIES, HAD PAIN WHILE RESTING.

HE UNDERWENT AN OPERATION ON FEBRUARY 19, 1974. THE BOARD, IN REVIEWING THE REPORT OF THE OPERATION AND DR. SCHACHNER'S REPORT OF MARCH 25, 1974, WHICH IS MARKED EXHIBIT 'A' AND MADE A PART HEREOF, CONCLUDES THE NEED FOR THE SURGERY AND FURTHER CARE AND TREATMENT IS RELATED TO HIS INDUSTRIAL INJURY OF JUNE 22, 1959.

IT IS HEREBY ORDERED THAT THE CLAIM OF WALLACE B. PUZIO BE ACCEPTED AND BENEFITS PAID IN ACCORDANCE WITH THE WORKMEN'S COMPENSATION LAW.

IT IS HEREBY FURTHER ORDERED THAT CLAIMANT'S ATTORNEY BE AWARDED 25 PERCENT OF THE COMPENSATION GRANTED HEREBY, TO A MAXIMUM OF 250 DOLLARS, AS A REASONABLE ATTORNEY'S FEE.

NOTICE OF APPEAL

PURSUANT TO ORS 656.278 -

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

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

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

C. M. LEE GREENLEE, CLAIMANT
EMMONS, KYLE, KROPP AND
KRYGER, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.

AN ORDER ON THE MERITS WAS ISSUED IN THE ABOVE ENTITLED MATTER AFFIRMING THE ORDER OF THE REFEREE. NO PROVISION WAS INCLUDED FOR ATTORNEY'S FEES. THE STATE ACCIDENT INSURANCE FUND REQUESTED BOARD REVIEW. ORS 656.382 PROVIDES THAT COUNSEL FOR CLAIMANT IS ENTITLED TO AN ATTORNEY'S FEE, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

THE SUM OF 250 DOLLARS IS DEEMED A REASONABLE FEE FOR THE SERVICES INVOLVED AND THAT SUM IS ORDERED PAID BY THE STATE ACCIDENT INSURANCE FUND TO CLAIMANT'S COUNSEL.

DONALD SMART, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED 10 PERCENT PERMANENT PARTIAL DISABILITY FOR UNSCHEDULED LOW BACK. THE REFEREE AWARDED AN ADDITIONAL 10 PERCENT UNSCHEDULED LOW BACK DISABILITY, MAKING A TOTAL OF 20 PERCENT.

CLAIMANT, A 60 YEAR OLD SCHOOL CUSTODIAN, RECEIVED A LOW BACK INJURY WHICH REQUIRED SURGERY. CLAIMANT HAS ARTHRITIS, SPONDYLITIS, AND INSTABILITY AT L-5. HE ALSO HAS RESIDUALS IN THE FORM OF PAIN IN THE LOW BACK AND PAIN AND PARASTHESIA IN THE RIGHT LEG.

CLAIMANT'S WORK EXPERIENCE HAS BEEN IN LABORING TYPE JOBS. HE HAS A SIXTH GRADE EDUCATION. HE HAS RETURNED TO CUSTODIAL DUTIES WITH THE AID OF A BRACE. CLAIMANT HAS GOOD MOTIVATION.

UNSCHEDULED DISABILITY IS MEASURED BY THE LOSS OF EARNING CAPACITY IN THE BROAD FIELD OF INDUSTRIAL OCCUPATIONS. WHILE IT IS TRUE THAT THE CLAIMANT HAS GONE BACK TO THE JOB HE WAS ENGAGED IN PRIOR TO THE INJURY AND HAS MANAGED TO MAINTAIN THIS JOB WITH THE AID OF A BACK BRACE AND BY WORKING IN AN ALTERED MANNER SO AS NOT TO PUT A SUBSTANTIAL STRAIN ON HIS BACK, IT IS QUITE APPARENT THAT CLAIMANT'S LOSS OF EARNING CAPACITY IN THE BROAD FIELD OF INDUSTRIAL OCCUPATIONS HAS BEEN SUBSTANTIALLY DECREASED.

THE BOARD, ON DE NOVO REVIEW, INCREASES THE AWARD OF PERMANENT PARTIAL DISABILITY FOR UNSCHEDULED LOW BACK TO A TOTAL OF 30 PERCENT.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 30, 1974, IS MODIFIED BY INCREASING THE AWARD OF PERMANENT PARTIAL DISABILITY EQUAL TO A TOTAL OF 30 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED LOW BACK DISABILITY EQUAL TO 96 DEGREES. THIS IS AN INCREASE OF 10 PERCENT (32 DEGREES) OVER THAT AWARDED BY THE REFEREE.

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 REFEREE, SHALL NOT EXCEED 1,500 DOLLARS.

WCB CASE NO. 73-3240 JUNE 10, 1974

NANCY L. MEYER, CLAIMANT
POZZI, WILSON AND ATCHISON
CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.

ON MARCH 27, 1974, THE EMPLOYER REQUESTED BOARD REVIEW OF A REFEREE'S ORDER ENTERED IN THE ABOVE-CAPTIONED MATTER. A COPY OF THE REQUEST WAS NOT MAILED TO CLAIMANT BUT ONLY TO CLAIMANT'S ATTORNEY.

CLAIMANT MOVED TO DISMISS THE REQUEST FOR REVIEW ON THE GROUND THAT, BY FAILING TO SERVE CLAIMANT, THE EMPLOYER HAD FAILED TO PERFECT THE APPEAL IN THE MANNER PROVIDED BY LAW AND THE BOARD WAS THUS WITHOUT JURISDICTION TO REVIEW.

WE CONCLUDE THE CLAIMANT'S MOTION IS WELL-TAKEN AND THE EMPLOYER'S REQUEST FOR REVIEW SHOULD BE DISMISSED.

ORDER

THE EMPLOYER'S REQUEST FOR REVIEW IS DISMISSED AND THE REFEREE'S ORDER, DATED MARCH 18, 1974, IS FINAL BY OPERATION OF LAW.

WCB CASE NO. 73-1858 JUNE 10, 1974

NICHOLAS SERIGANIS, CLAIMANT
WILLIAM E. BLITSCH, CLAIMANT'S ATTY.
RICHARD F. PORTER, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE IS WHETHER OR NOT CLAIMANT SUFFERED A COMPENSABLE INJURY WHILE WORKING AS A SUBJECT EMPLOYEE FOR A SUBJECT NONCOMPLYING EMPLOYER.

CLAIMANT IS A 29 YEAR OLD PAINTER WHO CAME FROM GREECE ABOUT TWO YEARS AGO. CLAIMANT ALLEGES HE INJURED HIS BACK ON THURSDAY, MAY 3, 1973, WHILE MOVING HEAVY BOOKCASES OR SHELVING IN HIS PAINTING OCCUPATION. CLAIMANT'S WIFE TESTIFIED CLAIMANT CAME HOME ON THE EVENING OF MAY 3 IN PAIN AND TOLD HER HE HURT HIS BACK MOVING BOOKCASES.

JOSEPH R. SHIELD, CHIROPRACTOR, TREATED THE PATIENT ON MAY 4 AND MAY 6. THE CHIROPRACTOR REPORTS THE PATIENT GAVE THE HISTORY THAT HE INJURED HIS BACK ON MAY 3 WHILE MOVING A BOOKCASE. CLAIMANT WENT TO THE EMERGENCY ROOM OF THE PORTLAND ADVENTIST HOSPITAL MAY 5 AT 7-40 P.M. AND WAS GIVEN OUTPATIENT CARE FOR HIS BACK, GIVING A CONSISTENT HISTORY. ON MAY 8, CLAIMANT WAS EXAMINED BY ORTHOPEDIST, DR. FRANCIS SCHULER, AND CLAIMANT GAVE THE HISTORY TO DR. SCHULER THAT ON MAY 3, 1973, HE WAS MOVING A BOOKCASE AND BOOKSHELVES IN ORDER TO PAINT AND SOMETHING HAPPENED DOWN LOW IN HIS BACK.

ALTHOUGH THERE IS CONFLICTING AND CONTRADICTORY TESTIMONY AND EVIDENCE IN THE RECORD, THESE CONTRADICTIONS COULD WELL HAVE RESULTED FROM CLAIMANT'S LANGUAGE PROBLEM.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT THE CLAIMANT SUFFERED A COMPENSABLE INJURY ON MAY 3, 1973. THE BOARD FURTHER FINDS THAT WILLIAM T. FLEMING, DBA WILLIAM T. FLEMING CONSTRUCTION CO., WAS A SUBJECT NONCOMPLYING EMPLOYER FOR THE PERIOD OCTOBER 1, 1972, TO MAY 7, 1973, AND THAT NICHOLAS SERIGANIS WAS A SUBJECT EMPLOYEE OF WILLIAM T. FLEMING, DBA WILLIAM T. FLEMING CONSTRUCTION CO. ON MAY 3, 1973, AT THE TIME HE RECEIVED A COMPENSABLE INJURY.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 22, 1974, IS REVERSED. THE CLAIM IS REMANDED TO THE COMPLIANCE DIVISION, WORKMEN'S COMPENSATION BOARD, FOR REFERRAL TO THE STATE ACCIDENT INSURANCE FUND FOR PAYMENT OF WORKMEN'S COMPENSATION BENEFITS TO THE CLAIMANT PURSUANT TO ORS 656.054.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 1,000 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND AND RECOVERABLE FROM THE EMPLOYER PURSUANT TO ORS 656.054, FOR SERVICES IN CONNECTION WITH THE HEARING AND BOARD REVIEW.

WCB CASE NO. 73-3012 JUNE 10, 1974

LAWRENCE W. HAYNES, 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 REFEREE AFFIRMED THE DENIAL.

CLAIMANT, A 65 YEAR OLD ROLLER OPERATOR, RECEIVED A

COMPENSABLE LOW BACK INJURY ON OCTOBER 1, 1970, AND AFTER CONSERVATIVE CARE, RETURNED TO WORK ON APRIL 6, 1971. HE CONTINUED TO WORK UNTIL JUNE 1, 1973, WHEN AN INDUSTRIAL STRIKE TERMINATED THE JOB.

UPON REVIEW OF ALL OF THE MEDICAL EVIDENCE AND THE TESTIMONY IN THE RECORD, THE BOARD CONCURS WITH THE FINDING AND ORDER OF THE REFEREE. THE BOARD ADOPTS AND AFFIRMS THE OPINION AND ORDER OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 1, 1974, IS AFFIRMED.

WCB CASE NO. 73-1533
WCB CASE NO. 73-1772 JUNE 11, 1974

ALBERT DAVIS, CLAIMANT
POZZI, WILSON AND ATCHISON
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES A CONSOLIDATED HEARING ON TWO CLAIMS FOR HEART SEIZURES ON NOVEMBER 4, 1972, AND NOVEMBER 20, 1972, WHICH WERE DENIED BY THE STATE ACCIDENT INSURANCE FUND. THE REFEREE ISSUED HIS ORDER AFFIRMING THE DENIALS AND CLAIMANT HAS APPEALED TO THE BOARD FROM THIS ORDER.

CLAIMANT, NOW 63 YEARS OLD, CONTENDS THAT JOB STRESS GENERATED BY HIS EMPLOYMENT AS A VOCATIONAL COUNSELOR PRECIPITATED TWO OCCURRENCES OF ATRIAL FIBRILLATION AND THE LIKELIHOOD OF RECURRENCE OF THE SYMPTOMS HAVE EXPELLED HIM FROM THE WORK FORCE.

IN 1964, CLAIMANT BEGAN WORK AS A VOCATIONAL REHABILITATION COUNSELOR FOR THE STATE OF OREGON. UNTIL TRANSFERRED TO PORTLAND BY AGENCY REQUEST, HE WORKED VIRTUALLY ON HIS OWN WITHOUT SUPERVISION IN THE AREAS OF MEDFORD AND GRANTS PASS. IN PORTLAND, HE REALIZED A DRASTIC CHANGE OF PACE IN HIS JOB WHEN HIS CASELOAD INVOLVED PERSONS WITH SEVERE PHYSICAL AND/OR MENTAL HANDICAPS. IN ADDITION, HE BECAME INVOLVED WITH SHELTERED WORKSHOPS AND FEDERALLY SUBSIDIZED PROGRAMS. HE HAD NO SECRETARIAL ASSISTANCE AND WAS UNDER RATHER STRICT SUPERVISION.

WITHIN A FEW MONTHS, CLAIMANT WAS NOT FEELING WELL AND FREQUENTLY TOOK SICK LEAVE AND VACATION TIME. THE CLAIMANT AND HIS WIFE HAD ESTABLISHED THEIR HOME ON PUGET SOUND AND HE DROVE THERE WHENEVER POSSIBLE.

CLAIMANT WAS FIRST STRICKEN ON NOVEMBER 4, 1972, AND AGAIN ON NOVEMBER 30, 1972, WHILE ATTENDING A COUNSELORS' MEETING AT THE LLOYD CENTER. HE DID NOT RETURN TO WORK FOLLOWING THE LATTER EPISODE.

DR. DONALD N. WYSHAM, A WELL QUALIFIED CARDIOLOGIST, TESTIFIED IN BEHALF OF THE CLAIMANT. DR. WYSHAM'S OPINION WAS BASED ON AN ASSUMPTION THAT CLAIMANT'S RECENT WORK WAS EXCESSIVELY DEMANDING. ALTHOUGH CLAIMANT WAS SUBJECTED TO INCREASED STRESS AND FATIGUE IN HIS NEW POSITION, WE ARE NOT PERSUADED THE WORK EFFORT ALONE WAS EXCESSIVELY DEMANDING. CLAIMANT'S COMMUTING TO WORK FROM OLYMPIA, WASHINGTON, UNDOUBTEDLY CONTRIBUTED MATERIALLY TO HIS FATIGUE. WE ARE NOT PERSUADED CLAIMANT'S WORK DEMANDS WERE SO SEVERE THAT THEY COULD BE CHARACTERIZED AS A MATERIAL FACTOR IN THE ETIOLOGY OF HIS CARDIAC PROBLEM. THE PERSUASIVE FORCE OF DR. WYSHAM'S OPINION IS DISSIPATED BY THIS FACT.

DR. DAVID T. LEE, INTERNIST WITH A SUBSPECIALTY OF CARDIOLOGY, TESTIFIED THAT UPON REVIEWING CLAIMANT'S FILE, HE WAS OF THE OPINION THAT THERE WAS NO CAUSAL RELATIONSHIP BETWEEN THE ASSUMED EMOTIONAL TENSION AND THE ATTACKS.

THE BOARD, IN REVIEW, FINDS THE PREPONDERANCE OF EVIDENCE FAILS TO SUSTAIN A FINDING OF COMPENSABILITY AND CONCLUDES THE REFEREE'S ORDER APPROVING THE DENIAL SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 9, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 72-1212

JUNE 11, 1974

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER WAS PREVIOUSLY BEFORE THE BOARD WHEN CLAIMANT REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH AWARDED CLAIMANT 48 DEGREES FOR UNSCHEDULED NECK DISABILITY. WHILE THE REVIEW WAS PENDING, BOTH PARTIES REQUESTED THE BOARD TO REMAND THE MATTER TO THE REFEREE TO TAKE FURTHER EVIDENCE AND RECONSIDERATION.

AFTER ADDITIONAL PROCEEDINGS, THE REFEREE AFFIRMED HIS PRIOR OPINION AND ORDER IN ITS ENTIRETY. THE CLAIMANT HAS AGAIN REQUESTED BOARD REVIEW.

CLAIMANT, A 46 YEAR OLD CANNERY WORKER, SUSTAINED A COMPENSABLE INJURY NOVEMBER 19, 1969, DIAGNOSED AS A CERVICAL MYOFASCITIS. FROM THE DATE OF INJURY TO APRIL OF 1972, THE PROCESSING OF CLAIMANT'S CLAIM INVOLVED THREE REOPENINGS AND FOUR DETERMINATION ORDERS, THE SECOND OF WHICH AWARDED 16 DEGREES FOR THE UNSCHEDULED NECK DISABILITY. THE REFEREE CONCLUDED THAT CLAIMANT'S DISABILITY, ALTHOUGH MINIMAL, EXCEEDED 16 DEGREES AND INCREASED HER AWARD TO 48 DEGREES.

ON REVIEW, THE BOARD RELIES ON THE EXTENSIVE MEDICAL EVIDENCE PRODUCED AS THE RESULT OF THE HEARINGS AND CONCURS

WITH THE FINDING OF THE REFEREE THAT CLAIMANT'S DISABILITY ATTRIBUTABLE TO HER INDUSTRIAL INJURY DOES NOT EXCEED 48 DEGREES.

ORDER

THE REFEREE'S ORDER ON REMAND DATED FEBRUARY 25, 1974 IS HEREBY AFFIRMED.

WCB CASE NO. 74-753

JUNE 11, 1974

KENNETH P. MULL, CLAIMANT

EMMONS, KYLE, KROPP AND
KRYGER, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON JUNE 5, 1974, THE STATE ACCIDENT INSURANCE FUND REQUESTED BOARD REVIEW OF A REFEREE'S ORDER, DATED MAY 24, 1974, SETTING ASIDE A PRIOR ORDER, DATED APRIL 25, 1974, WHICH HAD DISMISSED CLAIMANT'S REQUEST FOR HEARING.

THE STATE ACCIDENT INSURANCE FUND'S REQUEST FOR REVIEW ALLEGED THAT THE REFEREE WAS WITHOUT JURISDICTION TO SET ASIDE HIS PRIOR ORDER BECAUSE THE CLAIMANT HAD PREVIOUSLY APPEALED IT TO THE BOARD AND THAT APPEAL REMAINED PENDING.

AS A RESULT OF THE FUND'S REQUEST FOR REVIEW, THE BOARD DISCOVERED THAT CLAIMANT'S ATTORNEY HAD WITHDRAWN HIS APPEAL OF THE REFEREE'S ORDER OF APRIL 25, 1974, BY LETTER OF MAY 24, 1974, BUT, BECAUSE THE LETTER WAS NOT BROUGHT TO THE BOARD'S ATTENTION, NO DISMISSAL OF THE CLAIMANT'S REQUEST FOR REVIEW WAS EVER ORDERED.

WE HAVE CONSIDERED ENTERING AN ORDER NUNC PRO TUNC, DISMISSING CLAIMANT'S REQUEST FOR REVIEW ON MAY 24, 1974, BUT CONCLUDE WE ARE POWERLESS TO ISSUE SUCH AN ORDER. CRANSTON V. STANFIELD, ET. AL., 123 OR 314 (1927). THE REFEREE'S ORDER OF MAY 24, 1974, WAS THEREFORE VOID FOR LACK OF JURISDICTION.

WE HAVE, AS A RESULT OF THE FUND'S REQUEST FOR REVIEW, NOW EXAMINED THE RECORD SUBMITTED FOR REVIEW CONCERNING THE REFEREE'S ORDER OF DISMISSAL, DATED APRIL 25, 1974.

WE CONCLUDE THE REFEREE ERRED IN DEPRIVING THE CLAIMANT OF HIS RIGHT TO ATTEMPT TO PROVE HIS ALLEGATIONS CONCERNING THE LUMP SUM SETTLEMENT PROBLEM. THE MATTER SHOULD THEREFORE BE REMANDED TO THE HEARINGS DIVISION TO DOCKET CLAIMANT'S REQUEST FOR HEARING.

THE REQUEST FOR REVIEW FILED BY THE STATE ACCIDENT INSURANCE FUND, BEING MOOT, SHOULD BE DISMISSED.

JUNE 11, 1974

MICHAEL DESMOND, CLAIMANT
NICHOLAS ZAFIRATOS, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLAON.

THIS IS A DENIED CLAIM. THE REFEREE SUSTAINED THE DENIAL.

CLAIMANT, A 23 YEAR OLD SERVICE STATION ATTENDANT, ALLEGED A COMPENSABLE INJURY WHILE HE WAS MOVING ABOUT TEN BOXES CONTAINING SHEETS OF STEEL, PUSHING THEM WITH HIS RIGHT FOOT WHEN HE FELT A PAIN IN HIS RIGHT GROIN AREA. HE DEVELOPED SEVERE PAIN IN THE RIGHT TESTICLE WHICH WAS DIAGNOSED AS SEVERE EPIDIDYMAL ORCHITIS RIGHT. ONE DOCTOR RELATES HIS CONDITION TO THE WORK ACTIVITY AND ANOTHER DOCTOR TESTIFIED CLAIMANT'S CONDITION WOULD NOT RESULT FROM A STRAIN TYPE INJURY.

THE RECORD WAS HELD OPEN BY THE REFEREE FOR SUBMISSION OF FURTHER MEDICAL EVIDENCE. NO FURTHER MEDICAL EVIDENCE WAS SUBMITTED AND AFTER SEVERAL MONTHS, THE HEARING WAS CLOSED. NO BRIEFS HAVE BEEN SUBMITTED.

ORDER

THE ORDER OF THE REFEREE DATED DECEMBER 27, 1973 IS AFFIRMED.

JUNE 11, 1974

RAYMOND L. RAFFERTY, CLAIMANT
STAGER AND VICK, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW OF A REFEREE'S ORDER GRANTING CLAIMANT PERMANENT TOTAL DISABILITY COMPENSATION FOR SERIOUSLY DISABLING CONDITIONS IN EACH LEG RESULTING FROM A WORK INJURY ON MAY 16, 1971.

THE FUND CONTENDS AN EARLIER STIPULATION CONCERNING THE LEFT LEG BARS THE CLAIMANT FROM RECEIVING FURTHER COMPENSATION. WE DISAGREE. THE STIPULATION, BY ITS TERMS APPEARS TO SETTLE ONLY THE THEN EXTANT PERMANENT DISABILITY DISPUTE BETWEEN THE PARTIES.

THE REFEREE CONCLUDED THAT BECAUSE THE BILATERAL DISABILITIES PRECLUDED REGULAR, GAINFUL AND SUITABLE EMPLOYMENT, HE WAS ENTITLED TO PERMANENT TOTAL DISABILITY, CITING THE EASTBURN CASE AS PRECEDENT. THE FACTS OF THE EASTBURN CASE ARE SIGNIFICANTLY DIFFERENT FROM THIS CASE. MR. EASTBURN'S LEGS RETAINING NO SIGNIFICANT PRACTICAL FUNCTIONAL USEFULNESS FOR ANYTHING. AS A RESULT, IT COULD BE TRULY SAID HE HAD

LOST BOTH LEGS. MR. RAFFERTY'S LEGS CONTINUE TO AT LEAST PARTIALLY FULFILL SOME OF THE ORDINARY FUNCTIONS OF SUCH EXTREMITIES AND THUS, HE HAS NOT SUFFERED THE LOSS LEGALLY REQUISITE TO AN AWARD OF PERMANENT TOTAL DISABILITY ALTHOUGH HE IS PERMANENTLY AND TOTALLY DISABLED IN FACT.

AS WE HAVE PREVIOUSLY OBSERVED, HOWEVER, CLAIMANT DOES HAVE SIGNIFICANT DISABILITY OF EACH LEG. WE CONCLUDE CLAIMANT'S PERMANENT PARTIAL DISABILITY EQUALS 50 PERCENT LOSS OF EACH LEG AND HE SHOULD BE COMPENSATED ACCORDINGLY.

ORDER

THE ORDER OF THE REFEREE GRANTING CLAIMANT PERMANENT TOTAL DISABILITY IS HEREBY REVERSED AND IN LIEU OF THAT OR ANY OTHER PERMANENT DISABILITY AWARD CLAIMANT HAS RECEIVED FOR THIS INJURY, CLAIMANT IS HEREBY GRANTED COMPENSATION REQUAL TO 50 PERCENT (75 PERCENT) LOSS OF EACH LEG FOR SCHEDULED PERMANENT DISABILITY RESULTING FROM THE INJURY OF MAY 10, 1971.

CLAIMANT'S ATTORNEY IS TO RECEIVE 25 PERCENT OF THE INCREASED COMPENSATION MADE PAYABLE BY THIS ORDER WHICH, COMBINED WITH FEES ATTRIBUTABLE TO THE ORDER OF THE REFEREE, SHALL NOT EXCEED ONE THOUSAND FIVE HUNDRED DOLLARS.

WCB CASE NO. 73-3297

JUNE 11, 1974

HELEN M. FRENCH, CLAIMANT
RICHARDSON AND MURPHY, CLAIMANT'S ATTS.
DEPARTMENT 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 20 PERCENT UNSCHEDULED LOW BACK DISABILITY. THE REFEREE INCREASED THE UNSCHEDULED PERMANENT PARTIAL DISABILITY TO A TOTAL OF 35 PERCENT FOR UNSCHEDULED BACK AND PSYCHIATRIC DISABILITY AND AWARDED 10 PERCENT SCHEDULED LEFT LEG DISABILITY. CLAIMANT CONTENTS PERMANENT TOTAL DISABILITY.

CLAIMANT, A 52 YEAR OLD LAUNDRESS, RECEIVED A LOW BACK INJURY ON JUNE 10, 1971, WHEN SHE SAT ON A CHAIR WHICH COLLAPSED. SHE HAS HAD SURGERY ON HER BACK AND COMMENCED SCHOOLING IN BEND BUT COULD NOT CONTINUE IN THE WINTER BECAUSE THE CAMPUS WAS TOO HILLY FOR HER TO NAVIGATE. AN EXERCISE PROGRAM WAS INTERRUPTED BECAUSE OF AN UNRELATED SURGERY.

THE TREATING DOCTOR STATES THAT BECAUSE OF THE CLAIMANT'S EMOTIONAL INSTABILITY AND NEAR-PSYCHOTIC STATE, SHE SEEMS TO BE UNABLE TO LOSE WEIGHT AND FURTHER THAT HE DOES NOT THINK THAT SHE WILL EVER BE ABLE TO WORK AGAIN. THE ORTHOPEDIC SPECIALIST AND PSYCHIATRIST GAVE THE OPINION THAT SHE HAS A PERMANENT PARTIAL DISABILITY BUT IS NOT TOTALLY DISABLED. THE SUBSTANTIAL PREEXISTING PSYCHOLOGICAL PROBLEMS HAVE BEEN AGGRAVATED BY THIS INJURY AND ARE THUS RELATED TO THE INDUSTRIAL INJURY.

CONSIDERING ALL OF THE MEDICAL EVIDENCE, WE FIND THAT CLAIMANT IS NOT TOTALLY DISABLED. HER MOTIVATION TO LOSE WEIGHT AND RETRAIN APPEAR POOR. CLAIMANT SHOULD RECEIVE FURTHER PSYCHIATRIC COUNSELING AND ADDITIONAL VOCATIONAL REHABILITATION EFFORTS.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 29, 1974, IS AFFIRMED.

WCB CASE NO. 73-2578

JUNE 11, 1974

VIVIAN JOHNSON, CLAIMANT
COONS, MALAGON AND COLE,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A REFEREE'S ORDER REQUIRING IT TO COMPLY WITH A PRIOR REFEREE'S ORDER AND AWARDING PENALTIES AND ATTORNEY'S FEES. IT CONTENDS THE REFEREE ORDERED RELIEF NOT REQUESTED BY THE CLAIMANT, THAT THE RELIEF ORDERED WAS AN UNCONSTITUTIONAL APPLICATION OF ORS 656.313, AND THAT HE EXCEEDED HIS JURISDICTION IN GRANTING RELIEF AFTER THE BOARD HAD MODIFIED THE PRIOR REFEREE'S ORDER. THE FUND ALSO OBJECTS TO THE AMOUNT OF THE ATTORNEY'S FEE ALLOWED BY THE REFEREE.

A LOOK AT THE WHOLE RECORD CLEARLY REVEALS THAT CLAIMANT WAS SEEKING AN ORDER FROM THE REFEREE REQUIRING PAYMENT OF THE BENEFITS ORDERED.

THE LEGISLATURE OBVIOUSLY INTENDED, IN PROMULGATING ORS 656.313, THAT A CLAIMANT WAS TO RECEIVE BENEFITS PENDING APPEAL, NOT JUST A 'PAPER JUDGMENT' FOR PENALTIES, TO BE FILED WITH THE ORIGINAL REFEREE'S ORDER FOR POSSIBLE FUTURE REFERENCE, FOLLOWING THE ULTIMATE APPELLATE OUTCOME OF THE CASE.

IN APPLYING ORS 656.313 TO REFEREE MULDER'S ORDER, SUBSEQUENT TO ENTRY OF THE BOARD'S ORDER MODIFYING REFEREE MULDER'S ORDER, REFEREE MC CULLOUGH WAS NOT REVERSING THE BOARD, HE WAS MERELY DECLARING AND ENFORCING CLAIMANT'S LEGAL RIGHTS AS THEY EXISTED PRIOR TO THE MODIFICATION.

WE PRESUME ORS 656.313, AS INTERPRETED AND APPLIED BY THE REFEREE, IS CONSTITUTIONAL. DAVIS, ADMINISTRATIVE LAW TREATISE, 20.04. TO APPLY IT AS THE FUND SUGGESTS WOULD, IN EFFECT, CONSTITUTE AN AGENCY PRESUMPTION THAT ORS 656.313 IS UNCONSTITUTIONAL. THUS, THE INTERPRETATION AND APPLICATION OF ORS 656.313 BY THE REFEREE SHOULD BE AFFIRMED.

THE ALLOWANCE OF A FIVE HUNDRED DOLLAR FEE TO CLAIMANT'S ATTORNEY DOES NOT APPEAR JUSTIFIED. THE OFFICE OF AN ATTORNEY'S FEE IS TO PAY THE ATTORNEY FOR THE REASONABLE VALUE OF HIS SERVICES, NOT TO FURTHER PENALIZE THE FUND. WE CONCLUDE CLAIMANT'S ATTORNEY WOULD BE ADEQUATELY PAID BY A FEE OF 250 DOLLARS, AND THE REFEREE'S ORDER SHOULD BE MODIFIED ACCORDINGLY. BECAUSE THE FUND PREVAILED ON THIS ISSUE, CLAIMANT'S ATTORNEY IS NOT ENTITLED TO ADDITIONAL FEES, PAYABLE BY THE FUND.

ORDER

THE ORDER OF THE REFEREE ALLOWING CLAIMANT'S ATTORNEY THE SUM OF 500 DOLLARS AS A REASONABLE ATTORNEY'S FEE IS MODIFIED TO ALLOW A SUM OF 250 DOLLARS.

THE ORDER IS AFFIRMED IN ALL OTHER RESPECTS.

WCB CASE NO. 73-3240 JUNE 13, 1974

NANCY L. MEYER, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTYS.

ON JUNE 10, 1974, THE BOARD ISSUED AN ORDER GRANTING CLAIMANT'S MOTION TO DISMISS THE EMPLOYER'S REQUEST FOR REVIEW ON THE GROUND THAT FAULTY SERVICE OF THE REQUEST FOR REVIEW LEFT THE BOARD WITHOUT JURISDICTION TO GRANT THE RELIEF REQUESTED. IN THE ORDER, WE DECLARED THE REFEREE'S ORDER FINAL BY OPERATION OF LAW.

AT THE TIME THE ORDER ISSUED, WE OVERLOOKED THE FACT THAT CLAIMANT HAD ALSO REQUESTED BOARD REVIEW OF THE REFEREE'S ORDER. THAT REQUEST WAS PROPERLY SERVED AND THE REVIEW REMAINS PENDING.

THEREFORE, THE LANGUAGE IN THE ORDER ON MOTION TO DISMISS RECITING THAT THE REFEREE'S ORDER, DATED MARCH 18, 1974, IS FINAL BY OPERATION OF LAW SHOULD BE, AND IT IS HEREBY, DELETED.

THE CASE WILL BE REVIEWED BY THE BOARD ON THE ISSUES RAISED BY THE CLAIMANT.

WCB CASE NO. 73-1378 JUNE 13, 1974

VANCE SMITH, CLAIMANT
WILLIAM FLINN, CLAIMANT'S ATTORNEY
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTED BOARD REVIEW OF A REFEREE'S ORDER GRANTING HIM AN AWARD OF PERMANENT TOTAL DISABILITY CONTENDING IT SHOULD HAVE BEEN RETROACTIVE. THE STATE ACCIDENT INSURANCE FUND CROSS APPEALED CONTENDING THE CLAIMANT WAS NOT PERMANENTLY TOTALLY DISABLED.

ON REVIEW, THE CLAIMANT PRESENTED NO ARGUMENT ON HIS CONTENTION THAT THE AWARD SHOULD HAVE BEEN MADE RETROACTIVE BUT ONLY OPPOSED THE FUND'S CROSS APPEAL. WE HAVE, THEREFORE, NOT REVIEWED THAT ISSUE.

OUR REVIEW OF THE EVIDENCE PERSUADES US THAT THE RESIDUAL EFFECTS OF THIS INJURY, CONSIDERING CLAIMANT'S AGE, EDUCATION, WORK EXPERIENCE AND PREEXISTING PHYSICAL CONDITION, HAVE RENDERED CLAIMANT CAPABLE OF NO MORE THAN 'ODD LOT' EMPLOYMENT, NO SUITABLE EMPLOYMENT SITUATION HAVING BEEN DEMONSTRATED BY THE FUND, WE CONCLUDE THE CLAIMANT IS PERMANENTLY TOTALLY DISABLED. THE REFEREE'S ORDER SHOULD, THEREFORE, BE AFFIRMED.

THIS REVIEW, HAVING BEEN INITIATED BY THE CLAIMANT, REQUIRES THAT NO ATTORNEY'S FEE BE PAYABLE BY THE FUND.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 14, 1973, IS AFFIRMED.

WCB CASE NO. 73-2044

JUNE 14, 1974

LEONARD ELKIN, CLAIMANT

DARRELL L. CORNELIUS, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED THE DENIAL OF HIS CLAIM BY THE STATE ACCIDENT INSURANCE FUND.

CLAIMANT WAS WORKING AS A SUBSTITUTE BARTENDER FROM APRIL 4, 1973, TO APRIL 12, 1973. AFTER FINISHING WORK ON APRIL 12, 1973, HE WENT TO THE HOSPITAL EMERGENCY ROOM FOR TREATMENT OF AN INFECTION OF AN INFLAMED LEFT HAND. DR. MILLER, DERMATOLOGIST, DIAGNOSED PALMAR KERATODERMA, A CONDITION ASSOCIATED WITH FREQUENT HAND WASHING WITH AN IRRITATING SOAP.

A SCRUTINY OF THE ENTIRE RECORD REFLECTS AT LEAST SIX DIFFERENT VERSIONS OF THE ORIGIN OF THE INFECTION. DEFENDANT'S EXHIBIT 4 INDICATED CLAIMANT HAD BLISTERED HIS HAND THREE WEEKS BEFORE WHILE MOWING THE LAWN. THIS INCIDENT, ALONG WITH THE TESTIMONY OF THE MANAGER OF THE BAR THAT CLAIMANT WOULD HAVE FEW OCCASIONS TO GET HIS HANDS IN SOAPY WATER AT THE BAR, PERSUADED THE REFEREE THAT CLAIMANT FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HIS CLAIM WAS COMPENSABLE.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 5, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 73-3635 JUNE 14, 1974

DONALD ROBY, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
PAUL ROESS, DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS 27 YEAR OLD WEYERHAEUSER MILL WORKER SUFFERED AN ACUTE MUSCULAR SPRAIN OF THE MID^T DORSAL SPINE ON MAY 7, 1973, WHEN HE SLIPPED AND FELL WHILE PUSHING VENEER INTO A CART. AFTER A PERIOD OF CONSERVATIVE TREATMENT AND A PERIOD OF EVALUATION, HIS CLAIM WAS CLOSED WITH NO AWARD FOR PERMANENT PARTIAL DISABILITY. AN AWARD OF 10 PERCENT OR 32 PERCENT FOR UNSCHEDULED LOW BACK DISABILITY WAS GRANTED BY THE REFEREE. CLAIMANT SEEKS BOARD REVIEW CONTENDING HIS PERMANENT DISABILITY IS GREATER THAN THAT FOR WHICH HE HAS BEEN COMPENSATED.

ALL EXAMINING DOCTORS, AS WELL AS THE BACK EVALUATION CLINIC, RECOMMEND THAT THIS WORKMAN, WHO IS 5 FEET, 7 INCHES, WEIGHING 117 TO 120 POUNDS, SHOULD NOT RETURN TO HEAVY MILL WORK, SUBJECTING HIS BACK TO THE STRESS AND STRAIN OF THAT TYPE OF WORK. HOWEVER, THIS RECOMMENDATION IS BASED ON THE LIGHTNESS OF CLAIMANT'S BUILD RATHER THAN ON THE RESIDUALS OF THE INJURY.

CLAIMANT HAS ATTEMPTED TO RETURN TO LIGHTER WORK IN THE MILL BUT HIS EFFORTS SO FAR HAVE BEEN STYMIED BY THE FACT THAT THERE ARE TWO SENIORITY JURISDICTIONS IN THE MILL AND TO SUCCESSFULLY BID ON SOME OF THE LIGHT JOBS AVAILABLE IN THE MILL WOULD COST HIM HIS SENIORITY.

WE CONCLUDE THAT THE AWARD MADE BY THE REFEREE ADEQUATELY COMPENSATES THE AWARD OF PERMANENT PARTIAL DISABILITY. THAT CONCLUSION IS BASED ON A CONCOMITANT ASSUMPTION THAT THE EMPLOYER WILL FULFILL ITS REMAINING OBLIGATION TO QUICKLY ASSIST CLAIMANT IN SUCCESSFULLY RETURNING TO WORK AT A JOB WITHIN HIS CAPABILITIES.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 22, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 73-2117

JUNE 14, 1974

WILLIAM MATTISON, CLAIMANT
CLEMENS E. ADY, CLAIMANT'S ATTORNEY
KEITH D. SKELTON, DEFENSE ATTORNEY

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 REFEREE IS FINAL BY OPERATION OF LAW.

WCB CASE NO. 73-2169

JUNE 17, 1974

JESSIE BUCHANAN, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
SCHOUBOE, CAVANAUGH AND DAWSON,
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER SUSTAINING THE DENIAL OF CLAIMANT'S OCCUPATIONAL DISEASE CLAIM.

THIS 38 YEAR OLD BODY AND FENDER REPAIRMAN WORKED FROM 1969 TO APRIL, 1973, FOR ALLEN-HAY MOTOR COMPANY. CLAIMANT'S JOB WAS, AMONG OTHER THINGS, TO SAND AND CLEAN DENTS, FILL THEM WITH PLASTIC, RESAND, AND THEN REPAINT THE DAMAGED AREA. AS A RESULT, THE AIR WAS FILLED WITH PAINT FUMES AND DUST PARTICLES FROM THE SANDING. CLAIMANT DID NOT WEAR A PROTECTIVE MASK. HE WAS ALSO A SMOKER OF THREE PACKS OF CIGARETTES A DAY.

IN THE SPRING OF 1972, CLAIMANT CONSULTED DR. ALOYS DAACK CONCERNING PULMONARY COMPLAINTS WHICH WERE DIAGNOSED AS ACUTE TRACHEITIS AND ACUTE BRONCHITIS. HE RECEIVED MEDICAL TREATMENT AND LOST SEVERAL DAYS FROM WORK. DR. DAACK INITIALLY WAS OF THE OPINION THAT CLAIMANT'S PROBLEMS WERE NOT ASSOCIATED WITH HIS EMPLOYMENT, AND A CLAIM WAS MADE WITH HIS OFF-THE-JOB HEALTH INSURANCE COMPANY. AS HE CONTINUED TO TREAT HIM FROM TIME TO TIME THROUGHOUT 1972, HE BECAME BETTER ACQUAINTED WITH THE CLAIMANT'S CONDITION AND THE CAUSAL FACTORS AFFECTING IT.

IN APRIL OF 1973, A YEAR LATER, DR. DAACK AMENDED HIS OPINION OF CAUSAL RELATIONSHIP AND CONCLUDED CLAIMANT'S LUNG DIFFICULTIES HAD AN OCCUPATIONAL ORIGIN. CLAIM FOR WORKMEN'S COMPENSATION BENEFITS WAS THEN FILED. THE CLAIM WAS DENIED ON JUNE 1, 1973.

CLAIMANT TERMINATED EMPLOYMENT WITH ALLEN-HAY MOTOR COMPANY ON APRIL 25, 1973, AND HAS NOT WORKED SINCE. DESPITE THE FACT HE CONTINUES TO SMOKE THREE PACKS OF CIGARETTES A DAY, HE IS PROGRESSIVELY RECOVERING FROM THE SYMPTOMS HE EXPERIENCED AT WORK.

CLAIMANT'S TREATING PHYSICIAN, DR. DAACK, IN HIS REPORT OF MAY, 1973, LISTED CLAIMANT'S COMPLAINTS AS 'TIRED, WEAK, DIFFICULT BREATHING, COUGHING, WEIGHT LOSS AND DEPRESSION.' HE CAUSALLY RELATED THESE COMPLAINTS TO THE INHALATION OF PLASTIC GRINDINGS, DUST AND PAINT VAPORS. DR. COFFEN, AN INTERNIST, IN ESSENCE, AGREED WITH THIS DIAGNOSIS. DR. JOHN E. TUHY, A SPECIALIST IN PULMONARY DISEASES, FELT CLAIMANT'S SYMPTOMS HAD NO CAUSAL CONNECTION TO THE WORK EXPOSURE AND WERE MORE LIKELY THE RESULT OF HIS HEAVY SMOKING. THE REFEREE FOUND DR. TUHY'S TESTIMONY CONVINCING AND AFFIRMED THE DENIAL.

THE BOARD, HOWEVER, ACCEPTS THE FINDINGS AND OPINIONS OF DRs. DAACK AND COFFEN. THEIR TESTIMONY THAT CLAIMANT, ALTHOUGH STILL A HEAVY SMOKER, HAS PROGRESSIVELY IMPROVED SINCE HE HAS BEEN REMOVED FROM THE EXPOSURE PERSUADES THE BOARD THAT CLAIMANT'S DISEASE DOES, IN FACT, HAVE AN OCCUPATIONAL ORIGIN.

ORDER

THE ORDER OF THE REFEREE, DATED NOVEMBER 7, 1973, AND HIS SECOND OPINION AND ORDER, DATED JANUARY 12, 1974, ARE HEREBY REVERSED AND CLAIMANT'S OCCUPATIONAL DISEASE CLAIM IS HEREBY REMANDED TO THE EMPLOYER'S CARRIER FOR ACCEPTANCE AND PAYMENT OF BENEFITS IN ACCORDANCE WITH THE WORKMEN'S COMPENSATION LAW UNTIL THE CLAIM IS CLOSED PURSUANT TO ORS 656.268.

COUNSEL FOR CLAIMANT IS AWARDED A REASONABLE ATTORNEY'S FEE OF 800 DOLLARS, PAYABLE BY THE EMPLOYER, FOR HIS SERVICES AT THE HEARING AND ON THIS REVIEW.

WCB CASE NO. 73-2488

JUNE 17, 1974

THURMAN MITCHELL. CLAIMANT
FRED EASON, CLAIMANT'S ATTORNEY
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS REVIEW OF A REFEREE'S ORDER DISMISSING HIS CLAIM OF AGGRAVATION FOR WANT OF JURISDICTION.

THE REFEREE FOUND THAT NEITHER DR. CHERRY'S NOR DR. KLOOS' REPORTS CONTAINED A MEDICAL OPINION OR EVALUATION OF WHETHER CLAIMANT'S MEDICAL HISTORY WAS CONSISTENT WITH THEIR CONCLUSIONS BASED ON THEIR PHYSICAL EXAMINATIONS OF CLAIMANT.

IT APPEARS TO THE BOARD ON REVIEW, THAT CLAIMANT'S REQUEST FOR HEARING WAS NOT SUPPORTED BY THE NECESSARY WRITTEN MEDICAL OPINION FOR THE CLAIM AS CONTEMPLATED BY ORS 656.271(1). THE REFEREE'S ORDER SHOULD THERE BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED FEBRUARY 20, 1974, IS
HEREBY AFFIRMED.

WCB CASE NO. 73-2892 JUNE 17, 1974

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW
OF A REFEREE'S ORDER OVERTURNING ITS PARTIAL DENIAL OF
CLAIMANT'S CLAIM, CONTENDING THE CLAIMANT FAILED TO PROVE
A CAUSAL CONNECTION BETWEEN HIS ACCIDENT OF JULY 10, 1973,
AND HIS SUBSEQUENT FAINTING SPELLS.

WE RECOGNIZE THE DIFFICULTIES IN THE EVIDENCE AS DID
THE REFEREE IN HIS OPINION AND THE FUND IN ITS BRIEF ON
APPEAL. WE AGREE WITH THE REFEREE'S ANALYSIS OF THE EVIDENCE
RATHER THAN THE FUND'S.

THE FUND ATTEMPTS TO DISTINGUISH THIS CASE FROM THE
VOLK CASE (VOLK V. BIRDSEYE, 98 OAS 1009, --- OR APP ---
(1974)), CONTENDING THAT VOLK HAD OBJECTIVELY DEMONSTRABLE
PATHOLOGY WHEREAS RUSSELL DOES NOT. WE DISAGREE. VOLK HAD
AN EYE INFLAMMATION = CLAIMANT SUFFERED A FIVE MINUTE PERIOD
OF UNCONSCIOUSNESS. BOTH OF THE CONDITIONS WERE OBJECTIVELY
DEMONSTRABLE.

WHILE THE PATHOLOGICAL PROCESS CAUSING THE UNCONSCIOUSNESS
IS OBSCURE, SOMETHING MUST HAVE CAUSED IT, AND THE HISTORY OF
CLAIMANT'S COMPLAINTS FOLLOWING THE INJURY RAISE A STRONG
LOGICAL IMPLICATION THAT IT WAS THE INJURY OF JULY 10, 1973.
WE CONCLUDE THE STRENGTH OF THE IMPLICATION IS SUFFICIENT TO
CARRY THE CLAIMANT'S BURDEN OF PROOF. THE REFEREE'S ORDER
SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 21, 1974, IS
AFFIRMED.

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

JUNE 17, 1974

WILLIAM B. STARKEY, CLAIMANT

EMMONS, KYLE, KROPP AND
KRYGER, CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF
CROSS-APPEAL BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER GRANTING CLAIMANT PERMANENT DISABILITY, CONTENDING THE REFEREE'S AWARD WAS EXCESSIVE. CLAIMANT HAS CROSS-APPEALED CONTENDING THE REFEREE'S AWARD IS INADEQUATE.

ON JULY 7, 1973, CLAIMANT, A THEN 59 YEAR OLD CARPENTER, RUPTURED THE LONG HEAD OF THE RIGHT BICEPS WHILE IN THE COURSE OF HIS EMPLOYMENT WITH A. D. FORD AND SON, INC. THE CLAIM WAS CLOSED BEFORE THE SERIOUSNESS AND PERMANENCE OF THE INJURY WAS READILY APPARENT AND CLAIMANT WAS AWARDED NO PERMANENT DISABILITY.

EVIDENCE PRESENTED TO THE REFEREE CONVINCED HIM CLAIMANT HAD LOST 50 PERCENT OF THE FUNCTION OF HIS RIGHT ARM AND HE ACCORDINGLY AWARDED CLAIMANT 96 DEGREES OR 50 PERCENT OF THE MAXIMUM ALLOWABLE FOR LOSS OF THE RIGHT ARM.

THE CLAIMANT'S TESTIMONY CONCERNING HIS FUNCTIONAL LIMITATIONS IN THE RIGHT ARM AND HIS WIFE'S TESTIMONY CONCERNING THE DISABLING EFFECT OF HIS RESIDUAL PAIN FULLY SUPPORT THE AWARD GRANTED BY THE REFEREE. THE REFEREE, IN LIMITING HIS AWARD TO 50 PERCENT OF THE MAXIMUM ALLOWABLE, HAD THE ADVANTAGE OF OBSERVING A PHYSICAL DEMONSTRATION OF THE CLAIMANT'S FUNCTIONAL IMPAIRMENT AT THE TIME OF THE HEARING. WE CONCLUDE THAT THE REFEREE'S FINDINGS AND CONCLUSIONS SHOULD NOT BE DISTURBED ON REVIEW.

THE FUND HAVING INITIATED THIS REVIEW, AND NOT HAVING PREVAILED, IS LIABLE FOR CLAIMANT'S REASONABLE ATTORNEY'S FEE ON APPEAL.

ORDER

THE ORDER OF THE REFEREE DATED JANUARY 18, 1974 IS HEREBY AFFIRMED.

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

JUNE 17, 1974

HOWARD CONNAUGHY, CLAIMANT

SCHROEDER, DENNING AND HUTCHENS
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER AFFIRMING THE FUND'S PARTIAL DENIAL OF HIS CLAIM.

ON APRIL 28, 1971, CLAIMANT, A THEN 62 YEARS OLD RANCH HAND EMPLOYED BY THE BISHOP BROTHERS AND RUSSELL RANGE COMPANY, SUFFERED A STROKE AND FELL FROM HIS HORSE. LITIGATION ESTABLISHED THAT THE STROKE WAS A COMPENSABLE INJURY.

DURING THE COURSE OF MEDICAL CARE IN THE ENSUING MONTHS, CLAIMANT WAS NOTED TO HAVE A SIGNIFICANT LOSS OF MENTAL CAPACITY. DR. MICHAEL O'BRIEN, A NEUROLOGIST, TENTATIVELY SUSPECTED THE CONDITION WAS THE PRODUCT OF DIFFUSE ARTERIO-SCLEROTIC DISEASE OR PERHAPS AN OCCULT HYDROCEPHALUS OR, POSSIBLY, ALZHEIMER'S PICK'S DISEASE. HE CONSIDERED ALZHEIMER'S PICK'S DISEASE A STRONG POSSIBILITY.

ON AUGUST 21, 1972, CLAIMANT WAS HOSPITALIZED FOR STUDIES DESIGNED TO DETERMINE THE CAUSE OF HIS DEMENTIA. AFTER SKULL X-RAYS, AN AIR E.E.G. AND DYE INJECTION STUDIES, DR. O'BRIEN TENTATIVELY CONCLUDED CLAIMANT'S CONDITION WAS ALZHEIMER'S DISEASE WITH A POSSIBILITY OF CLAIMANT'S PAST STROKE HAVING CAUSED OR AGGRAVATED THE CONDITION.

DURING THIS PERIOD, CLAIMANT WAS CONTEMPORANEOUSLY RECEIVING MEDICAL TREATMENT FOR OTHER STROKE-PRODUCED CONDITIONS.

ON OCTOBER 4, 1972, A STATE ACCIDENT INSURANCE FUND CLAIM EXAMINER ASKED DR. RUSSELL PARCHER, A FUND MEDICAL CONSULTANT, TO REVIEW THE CLAIMANT'S FILE AND EXPRESS HIS OPINION WHETHER THE STATE ACCIDENT INSURANCE FUND WAS RESPONSIBLE FOR THE TREATMENT CLAIMANT WAS THEN RECEIVING. THE RECORD DOES NOT REVEAL EXACTLY WHAT INFORMATION DR. PARCHER REVIEWED, BUT IT IS APPARENT THE FILE CONTAINED INFORMATION CONCERNING THE CLAIMANT'S DEMENTIA CONDITION AND THE MEDICAL CARE CONCERNING IT.

DR. PARCHER DID NOT COMMENT ON DR. O'BRIEN'S DIAGNOSIS OF ALZHEIMER'S DISEASE. HE MERELY CONCLUDED THAT CLAIMANT'S CONDITION COULD WELL BE A CONTINUED DEGENERATION OCCURRING FROM THE ORIGINAL CEREBRAL VASCULAR ACCIDENT. HE CONSIDERED IT MEDICALLY PROBABLE THAT THE TWO WERE MATERIALLY RELATED.

IN OCTOBER, 1973, DR. K. D. SMYTH WAS CONSULTED CONCERNING CLAIMANT'S OTHER STROKE-PRODUCED CONDITIONS. DR. SMYTH THEREAFTER BECAME CLAIMANT'S PRIMARY TREATING PHYSICIAN. THE 'TREATMENT' WAS ESSENTIALLY SUPERVISING CLAIMANT'S PHYSICAL THERAPY PROGRAM AND CHECKING ON HIS PROGRESS FROM TIME TO TIME.

DR. O'BRIEN SAW HIM ONLY AT INFREQUENT INTERVALS AND HIS MEDICAL SERVICE CONSISTED PRIMARILY OF ADVISING CLAIMANT'S FAMILY ON HOW TO MANAGE THE DAY TO DAY CARE OF THE CLAIMANT AND GIVING THE FAMILY SUPPORTIVE COUNSELING ON HOW TO HANDLE THE SITUATION.

ON MARCH 5, 1973, DR. O'BRIEN WROTE TO THE FUND (JOINT EXHIBIT A-17) CONCERNING THE STATUS OF CLAIMANT'S DEMENTIA. IN THE LETTER, HE REPORTED, AMONG OTHER THINGS, 'HE HAS A DIAGNOSIS OF ALZHEIMER'S PICK'S DISEASE...!' (DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, 24TH EDITION, DEFINES ALZHEIMER'S DISEASE AS 'PRESENILE DEMENTIA' AND PICK'S DISEASE AS 'LOBAR ATROPHY').

THE FUND THEN REQUESTED ITS MEDICAL CONSULTANT, DR. GEORGE W. HARWOOD, JR., TO EXPRESS HIS OPINION ON WHETHER CLAIMANT'S ALZHEIMER'S PICK'S DISEASE WAS A RESULT OF CLAIMANT'S STROKE ON APRIL 28, 1971.

DR. HARWOOD MISTAKENLY INTERPRETED DR. O'BRIEN'S LETTER OF MARCH 5, 1973, AS SAYING THAT CLAIMANT'S DEMENTIA CONDITION HAD PREEXISTED THE APRIL 28, 1971, STROKE AND HE THEREUPON CONCLUDED THERE WAS NO CAUSAL CONNECTION BETWEEN CLAIMANT'S STROKE AND HIS DEMENTIA.

THE FUND ISSUED A PARTIAL DENIAL ON MARCH 22, 1974, STATING -

THE STATE ACCIDENT INSURANCE FUND IS DENYING THE ALZHEIMER'S PICK'S DISEASE AND ANY TREATMENT OR MEDICATIONS NECESSARY FOR THIS FOR THE REASON THAT IT IS NOT THE RESULT OF THE INJURY OF APRIL 28, 1971, FOR WHICH THIS CLAIM WAS ESTABLISHED. (JOINT EXHIBIT B)

DR. O'BRIEN THEREAFTER WROTE ANOTHER LETTER WITH MORE SPECIFIC INFORMATION REGARDING CLAIMANT'S DEMENTIA AND ITS ETIOLOGY. DR. HARWOOD ALSO MISCONSTRUED THIS LETTER. HE CONSTRUED IT AS BEING INCONSISTENT WITH DR. O'BRIEN'S EARLIER REPORT AND CONCLUDED IT WAS FURTHER EVIDENCE THAT CLAIMANT'S CONDITION WAS NOT CAUSALLY RELATED TO ANY FALL FROM A HORSE OR A STROKE.

ON APRIL 6, 1973, THE CLAIMANT WAS FOUND TO BE PERMANENTLY AND TOTALLY DISABLED ON THE BASIS OF THE ADMITTEDLY RELATED OTHER RESIDUALS OF THE APRIL 28, 1971, INJURY.

WHEN THE REFEREE WAS ASKED TO DECIDE WHETHER CLAIMANT WAS SUFFERING FROM ALZHEIMER'S PICK'S DISEASE AND, IF SO, WHETHER IT WAS RELATED TO THE APRIL 28, 1971, INJURY, HE PERCEIVED THE PROBLEM AS AN ESSENTIALLY ACADEMIC DISPUTE BECAUSE CLAIMANT WAS ON PERMANENT TOTAL DISABILITY COMPENSATION AND HAD, IN FACT, BEEN FULLY COMPENSATED FOR ALL BENEFITS CLAIMED DUE. HIS AFFIRMANCE OF THE DENIAL APPEARS TO BE BASED MORE ON A CONCLUSION THERE IS NO ACTUAL CONTROVERSY TO DECIDE RATHER THAN ON ANY ANALYSIS OF THE MEDICAL EVIDENCE.

WE DO NOT BELIEVE THE MATTER IS TOTALLY ACADEMIC. THE FUND HAS, IN REALITY, DENIED LIABILITY FOR WHAT DR. O'BRIEN SEES AS CLAIMANT'S DEVELOPING PROBLEM OF PRESENILE DEMENTIA DUE TO LOBAR ATROPHY. WE CONCLUDE CLAIMANT DOES, IN FACT, HAVE SUCH A CONDITION ALTHOUGH WE HAVE NO REASON TO DISBELIEVE DR. KEIFER'S REPORT THAT IN AUGUST OF 1973 HE WAS "... UNABLE TO DEMONSTRATE ANY OF THE STIGMATA OF ALZHEIMER'S DISEASE." (JOINT EXHIBIT A-23). WE ARE SIMPLY CONVINCED THAT DR. O'BRIEN'S OPINION THAT CLAIMANT SUFFERS FROM A DEVELOPING PRESENILE DEMENTIA, ASSOCIATED WITH LOBAR ATROPHY, IS CORRECT. DR. O'BRIEN SAW THE CLAIMANT MANY TIMES OVER A PERIOD OF MONTHS AND STUDIED CLAIMANT CAREFULLY AND THOROUGHLY DURING A FOUR DAY PERIOD OF HOSPITALIZATION BEFORE COMING TO HIS CONCLUSIONS.

DR. HARWOOD'S OPINION, ON THE OTHER HAND, WAS FORMED WITHOUT BENEFIT OF ANY FIRST HAND KNOWLEDGE OF THE FACTS. HE GRIEVOUSLY MISINTERPRETED DR. O'BRIEN'S REPORTS AND HIS OPINION IS TOTALLY WITHOUT PERSUASIVE EFFECT.

IT IS UNNECESSARY TO ESTABLISH THAT CLAIMANT'S DISEASE IS, OR IS NOT, PATHOLOGICALLY ALZHEIMER'S PICK'S DISEASE. THE REAL QUESTION IS - IS THE CLINICAL ENTITY, PROGRESSIVE PRESENILE DEMENTIA, CAUSALLY RELATED TO CLAIMANT'S STROKE OF APRIL 28, 1971?

WE ARE FULLY PERSUADED BY DR. O'BRIEN'S OPINION AND DR. PARCHER'S OPINION THAT CLAIMANT'S DEMENTIA IS MATERIALLY RELATED TO HIS STROKE OF APRIL 28, 1971.

THE REFEREE'S ORDER SHOULD, THEREFORE, BE REVERSED AND THE FUND ORDERED TO ACCEPT RESPONSIBILITY FOR CLAIMANT'S DEMENTIA.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 17, 1974, AND THE PARTIAL DENIAL ISSUED BY THE STATE ACCIDENT INSURANCE FUND ON MARCH 22, 1973, IS HEREBY REVERSED.

THE STATE ACCIDENT INSURANCE FUND IS HEREBY ORDERED TO PROVIDE SUCH MEDICAL CARE, MEDICINE OR OTHER COMPENSATION BENEFITS AS MAY NOW BE, OR MAY HEREAFTER BECOME, DUE TO THE CLAIMANT ON ACCOUNT OF THE DEMENTIA HE HAS AS A RESULT OF THE INJURY OF APRIL 28, 1971.

THE STATE ACCIDENT INSURANCE FUND IS HEREBY ORDERED TO PAY CLAIMANT'S ATTORNEY, D. S. DENNING, JR., THE SUM OF 750 DOLLARS FOR HIS SERVICES AT THE HEARING AND ON THIS REVIEW.

WCB CASE NO. 72-1195

JUNE 17, 1974

GEORGE HANKS, CLAIMANT
ALLEN G. OWEN, CLAIMANT'S ATTY.
THWING, ATHERLIN AND BUTLER,
DEFENSE ATTORNEYS

ON JUNE 14, 1972, THE BOARD ISSUED AN OWN MOTION ORDER REQUIRING THE EMPLOYER TO PROVIDE ADDITIONAL MEDICAL CARE AND COMPENSATION TO THE CLAIMANT.

IN MAY, 1974, THE BOARD WAS ADVISED THAT CLAIMANT WAS INCARCERATED IN THE NEW MEXICO STATE PENITENTIARY AND THAT IT APPEARED CLAIMANT WAS NO LONGER IN NEED OF FURTHER CARE, TREATMENT OR COMPENSATION.

ON MAY 22, 1974, AN OWN MOTION ORDER TERMINATING CLAIMANT'S RIGHT TO FURTHER COMPENSATION WAS ENTERED. THE NOTICE OF APPEAL RIGHTS APPENDED TO THAT ORDER PROVIDED THE CLAIMANT HAD NO RIGHT TO A HEARING BUT THAT AETNA CASUALTY AND SURETY COMPANY DID.

ON JUNE 4, 1974, CLAIMANT'S OREGON ATTORNEY, ALLEN G. OWEN, OBJECTED TO THE LACK OF A CLAIMANT'S RIGHT OF APPEAL OF THE ORDER OF MAY 22, 1974, CONTENDING THAT CLAIMANT IS ENTITLED TO A ONE YEAR APPEAL PERIOD IF THE BOARD ORDER DIMINISHES OR TERMINATES A FORMER AWARD OR TERMINATES

MEDICAL OR HOSPITAL CARE...! ORS 656.278(3). HE MOVED THAT THE ORDER BE AMENDED ACCORDINGLY.

WE DISAGREE WITH CLAIMANT'S CONTENTION THAT HE IS ENTITLED TO AN APPEAL RIGHT. IN THE CASE WHERE A CLAIMANT REQUESTS OWN MOTION RELIEF BUT THAT REQUEST IS REFUSED BY THE BOARD, ORS 656.278 GRANTS CLAIMANT NO RIGHT TO OBJECT THAT REFUSAL.

IT SHOULD BE CAREFULLY NOTED THAT THE ORDER OF MAY 22 IS A TERMINATION OF BENEFITS ORIGINALLY GRANTED PURSUANT TO ORS 656.278. THE BOARD'S DECISION TO DISCONTINUE FURTHER BENEFITS PROVIDED PURSUANT TO AN OWN MOTION ORDER IS NO DIFFERENT, FOR APPEAL RIGHT PURPOSES, THAN AN ORDER REFUSING CLAIMANT'S ORIGINAL REQUEST FOR OWN MOTION RELIEF. SINCE THE ORDER OF MAY 22 IS, IN LEGAL EFFECT, NO DIFFERENT THAN AN ORDER REFUSING TO GRANT CLAIMANT OWN MOTION RELIEF, CLAIMANT IS NOT ENTITLED TO APPEAL THE ORDER.

IN REVIEWING THE ORDER OF MAY 22, 1974, WE NOTE THE AETNA CASUALTY AND SURETY COMPANY WAS GRANTED A RIGHT OF APPEAL. THE ORDER, NOT HAVING INCREASED THE AWARD OR HAVING GRANTED ADDITIONAL HOSPITAL OR MEDICAL CARE TO THE CLAIMANT, IS NOT APPEALABLE BY THE INSURER. THE ORDER SHOULD THEREFORE BE AMENDED TO DELETE =

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

!AETNA CASUALTY AND SURETY COMPANY MAY REQUEST A HEARING ON THIS ORDER.!

IN LIEU THEREOF, THE FOLLOWING APPEAL NOTICE SHOULD APPEAR =

!NO NOTICE OF APPEAL IS DEEMED APPLICABLE.!

IT IS SO ORDERED.

WCB CASE NO. 73-2216

JUNE 18, 1974

JOHN M. REED, CLAIMANT
THWING, ATHERLY AND BUTLER,
DEFENSE ATTORNEYS

THE BOARD ISSUED ITS ORDER ON REVIEW, DATED JUNE 10, 1974, ON THE ABOVE ENTITLED CASE WHICH ARRIVED AND ADOPTED THE REFEREE'S OPINION AND ORDER. THE BOARD NOW HAS RECEIVED A LETTER, DATED JUNE 14, 1974, FROM THE CLAIMANT WHICH THE BOARD CONSIDERS AS A REQUEST FOR RECONSIDERATION AND ELABORATION OF SAID ORDER ON REVIEW.

THE BOARD FINDS THE REQUEST FOR RECONSIDERATION AND ELABORATION TO BE NOT WELL TAKEN.

ORDER

THE REQUEST FOR RECONSIDERATION AND ELABORATION OF THE ORDER ON REVIEW, DATED JUNE 10, 1974, IS HEREBY DENIED.

WCB CASE NO. 74-741

JUNE 18, 1974

GREGORY B. SMITH, CLAIMANT

BRIAN L. WELCH, CLAIMANT'S ATTY.

CHARLES R. HOLLOWAY, DEFENSE ATTY.

ON MAY 17, 1974, CLAIMANT REQUESTED BOARD REVIEW OF A REFEREE'S ORDER, DATED MAY 9, 1974. CLAIMANT HAS NOW WITHDRAWN HIS APPEAL AND ASKS THAT THE REQUEST FOR REVIEW OF THAT ORDER BE DISMISSED.

ORDER

THE REQUEST FOR REVIEW OF THE REFEREE'S ORDER, DATED MAY 9, 1974, IS DISMISSED.

WCB CASE NO. 73-1751

JUNE 18, 1974

HAZEL M. BRIGGS, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.

MERLIN MILLER, DEFENSE ATTORNEY

ON MAY 22, 1974, THE BOARD ISSUED AN ORDER ON REVIEW IN THE ABOVE ENTITLED MATTER. CLAIMANT HAS MOVED FOR RECONSIDERATION OF THAT ORDER, SEEKING CERTAIN ADDITIONAL RELIEF. THE BOARD CONCLUDES THE MATTERS RAISED BY CLAIMANT DESERVE ADDITIONAL CONSIDERATION.

THE ORDER ON REVIEW, DATED MAY 22, 1974, SHOULD BE WITHDRAWN FOR FURTHER CONSIDERATION.

THE EMPLOYER'S ATTORNEY SHOULD HAVE 20 DAYS FROM THE DATE OF THIS ORDER TO FILE A BRIEF RESPONDING TO CLAIMANT'S ARGUMENTS REGARDING MOTION II AND CLAIMANT SHOULD HAVE 10 DAYS THEREAFTER TO REPLY.

FOLLOWING RECONSIDERATION OF THE MATTER, A NEW APPLICABLE ORDER SHOULD THEN BE ISSUED.

IT IS SO ORDERED.

JUNE 20, 1974

SHAWN SOMMERS, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
SOUTHER, SPAULDING, KINSEY,
WILLIAMSON AND SCHWABE
DEFENSE ATTORNEYS

A REQUEST FOR REVIEW, HAVING BEEN DULY FILED WITH THE WORKMEN'S COMPENSATION BOARD IN THE ABOVE-ENTITLED MATTER, AND SAID REQUEST FOR REVIEW NOW HAVING BEEN WITHDRAWN BY CLAIMANT'S COUNSEL,

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

JUNE 25, 1974

WILLIAM SYLVESTER, CLAIMANT

ROBERT THOMAS, CLAIMANT'S ATTORNEY
COLLINS, FERRIS AND VELURE,
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE IS THE EXTENT OF SCHEDULED PERMANENT DISABILITY TO CLAIMANT'S LEFT KNEE. THE DETERMINATION ORDER AWARDED CLAIMANT 10 PERCENT PERMANENT DISABILITY TO THE LEFT LEG. THE REFEREE INCREASED THIS AWARD TO A TOTAL OF 50 PERCENT PERMANENT DISABILITY OF THE LEFT LEG.

CLAIMANT, A 43 YEAR OLD LABORER, INJURED HIS LEFT KNEE WHILE LOADING A MOVING VAN WITH FURNITURE. A LEFT MEDIAL MENISCECTOMY WAS PERFORMED BY AN ORTHOPEDIC SURGEON. THE ONLY MEDICAL EVIDENCE IN THE RECORD IS FROM THIS ORTHOPEDIC TREATING DOCTOR WHO CONCLUDED, IN HIS DISCHARGE REPORT, THAT CLAIMANT'S LEFT KNEE CONDITION HAD RETURNED TO THE STATUS IT WAS PRIOR TO THE INDUSTRIAL INJURY AND THAT THE LIGAMENTOUS LAXITY PRESENT WAS OF PREVIOUS ORIGIN.

THE CLAIMANT TESTIFIED THAT HE HAD NO PREVIOUS PROBLEMS WITH HIS LEFT KNEE. HE FURTHER TESTIFIED THAT HE HAD BEEN A PROFESSIONAL RODEO RIDER FOR APPROXIMATELY 15 YEARS, HAD DONE HIGH CLIMBING FOR A POWER COMPANY, DONE SOME LOGGING AND BROKE HORSES IN DOING RANCH WORK. CLAIMANT IS PRESENTLY A USED CAR SALESMAN AND TESTIFIES THAT HIS LEFT KNEE BUCKLES CAUSING HIM TO FALL ON OCCASIONS.

SCHEDULED INJURY IS DETERMINED BY THE MEASUREABLE FUNCTIONAL LOSS AND NOT BY LOSS OF EARNING CAPACITY. CONSIDERING BOTH THE MEDICAL EVIDENCE AND THE LAY TESTIMONY, THE BOARD, ON DE NOVO REVIEW, FINDS THE LOSS OF FUNCTION OF THE LEFT LEG TO BE 10 PERCENT.

ORDER

THE ORDER OF THE REFEREE DATED FEBRUARY 26, 1974 IS REVERSED.

THE DETERMINATION ORDER DATED MAY 2, 1973, AWARDING CLAIMANT 10 PERCENT LOSS OF THE LEFT LEG DUE TO THIS INJURY EQUAL TO 15 PERCENT IS REINSTATED.

WCB CASE NO. 72-3096

JUNE 25, 1974

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS REVIEW INVOLVES A DENIAL OF AN OCCUPATIONAL DISEASE CLAIM.

CLAIMANT IS A 47 YEAR OLD MAN WHO WORKED AS A FIREMAN FOR THE CITY OF ASTORIA FROM 1953 TO 1972.

IN MARCH OF 1972 HE FILED A CLAIM FOR WORKMEN'S COMPENSATION BENEFITS UNDER THE OCCUPATIONAL DISEASE LAW ALLEGING THAT HIS HEART CONDITION AND CONSEQUENT BREATHING PROBLEMS WERE CAUSALLY RELATED TO HIS EMPLOYMENT. THE STATE ACCIDENT INSURANCE FUND DENIED HIS CLAIM AND, UPON HEARING, A REFEREE AFFIRMED THAT DENIAL CONCLUDING THERE WAS NO STATUTORY PRESUMPTION OF RELATIONSHIP AND THAT AS A MATTER OF FACT, CLAIMANT'S CONDITION WAS DUE TO ALCOHOLIC CARDIOMYOPATHY, A NON-WORK-RELATED CAUSE.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A PROCEDURAL QUESTION CONTENDING THAT THE REFEREE ERRED IN ACCEPTING MEDICAL REPORTS OF HIS ALCOHOL USAGE AS COMPETENT EVIDENCE. CLAIMANT HAS ALSO REJECTED THE REFEREE'S FINDING THAT HIS CONDITION IS NOT JOB-RELATED AND HAS REQUESTED EMPANELMENT OF A MEDICAL BOARD OF REVIEW. CLAIMANT DOES NOT CONTEND HE IS ENTITLED TO THE PRESUMPTION PROVIDED IN ORS 656.802.

ON OCTOBER 5, 1973, CHAPTER 543, OREGON LAWS 1973, REPEALED THE MEDICAL BOARD OF REVIEW PROVISIONS OF THE OCCUPATIONAL DISEASE LAW. THE CLAIMANT'S APPEAL OF THE REFEREE'S ORDER, OCCURRING AFTER THE CHANGE IN PROCEDURE, IS GOVERNED BY THE NEW PROCEDURE. BILLINGS V. CROUSE, --- OR ADV SH ---, --- OR APP ---, JUNE 11, 1974. THE WORKMEN'S COMPENSATION BOARD THEREFORE NOW REVIEWS ALL ISSUES, LEGAL AND FACTUAL.

WE TURN FIRST THEN, TO THE ISSUE REGARDING THE REFEREE'S RELIANCE ON THE HISTORIES CONTAINED IN THE MEDICAL REPORTS. COMMON SENSE TELLS US THAT THE HISTORIES WERE OBVIOUSLY TAKEN FROM THE CLAIMANT. DR. GRISWOLD'S TESTIMONY REGARDING THE EFFECT OF CLAIMANT'S MEDICATION ON HIS THOUGHT PROCESSES CONVINCES US HE WAS COMPLETELY LUCID AT THE TIME HE CONTENDS HE WAS NOT.

ADDITIONALLY, AS THE STATE ACCIDENT INSURANCE FUND'S BRIEF ON APPEAL POINTS OUT, CLAIMANT WAS ILL AND SEEKING PROPER DIAGNOSIS AND TREATMENT AT THE TIME THE HISTORIES WERE GIVEN. UNDER THESE CIRCUMSTANCES THERE IS A STRONG LIKELIHOOD THAT CLAIMANT GAVE ACCURATE HISTORIES TO THE DOCTORS. RECOGNITION OF THIS LIKELIHOOD PROBABLY IS PART OF THE REASON WHY

THE LEGISLATURE SAW FIT TO ENACT ORS 656.310 WHICH MAKES THE CONTENTS OF MEDICAL REPORTS PRIMA FACIE EVIDENCE OF THE MATTERS CONTAINED THEREIN PROVIDING THE AUTHOR OF THE REPORT CONSENTS TO SUBJECT HIMSELF OR HERSELF TO CROSS-EXAMINATION.

CLAIMANT ARGUES THAT AS A PRACTICAL MATTER CLAIMANT IS FINANCIALLY PRECLUDED FROM CROSS-EXAMINING THESE PHYSICIANS, THAT SIMPLY IS NOT SO. PURSUANT TO SECTION 5.05 D OF WCB ADMINISTRATIVE ORDER 4-1970 CLAIMANT COULD HAVE CROSS-EXAMINED THE AUTHORS OF THE OFFENSIVE MEDICAL REPORTS WITHOUT ANY COST TO HIMSELF.

WHERE CROSS-EXAMINATION HAS BEEN HAD, ONE CAN GENERALLY BE MORE CONFIDENT THAT THE EVIDENCE PRESENTED IS TRUE. HOWEVER, THE NATURE OF THE INFORMATION IN QUESTION IS NOT SUCH THAT IT WOULD EASILY BE MISCONSTRUED OR MISRECORDED BY THE PHYSICIAN. WE THEREFORE THINK THERE IS AN INHERENT PROBABILITY THAT WHAT THE DOCTORS REPORTED (THAT CLAIMANT IMBIBED SIGNIFICANT AMOUNTS OF ALCOHOL) IS ACTUALLY TRUE. COUPLED WITH THE STATUTORY PRESUMPTION, WE ARE CONFIDENT THE REFEREE DID NOT ERR IN ACCEPTING THEM AS TRUE.

WE CONCUR WITH THE REFEREE THAT A PREPONDERANCE OF THE MEDICAL EVIDENCE ESTABLISHES THAT CLAIMANT'S CONGESTIVE HEART FAILURE IS DUE TO ALCOHOLIC CARDIOMYOPATHY WHICH WAS NEITHER CAUSED NOR AGGRAVATED BY ANY CONDITION OF HIS EMPLOYMENT.

THE OPINION AND ORDER OF THE REFEREE SHOULD THEREFORE BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE DATED NOVEMBER 28, 1973 IS AFFIRMED.

WCB CASE NO. 73-1588

JUNE 25, 1974

JOSEPH REINARZ, CLAIMANT
BAILEY, DOBLIE, CENICEROS AND
BRUUN, CLAIMANT'S ATTORNEYS
DEPARTMENT 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 THE FUND'S PARTIAL DENIAL OF HIS CLAIM, CONTENDING THAT HIS OCCUPATIONAL INJURY AGGRAVATED THE PROGRESSION OF A PREEXISTING OSTEOPOROSIS. HE ALSO SEEKS ADDITIONAL MEDICAL TREATMENT AND INCREASED PERMANENT DISABILITY COMPENSATION.

THE REFEREE WAS PERSUADED BY THE OPINIONS OF DRs. DYSART AND PARCHER THAT THERE WAS NO CONNECTION BETWEEN CLAIMANT'S INJURY AND HIS OSTEOPOROSIS. DR. PARCHER ALSO CONCLUDED THAT THE PROGRESSION OF THE DISEASE HAD NOT BEEN HASTENED BY CLAIMANT'S INJURIES.

DR. MARIO CAMPAGNA, CLAIMANT'S TREATING PHYSICIAN, BELIEVES CLAIMANT'S OSTEOPOROSIS WAS AGGRAVATED BY HIS INJURY. WE ARE PERSUADED BY DR. CAMPAGNA'S OPINION. AS THE TREATING PHYSICIAN, HE WAS IN THE BEST POSITION TO DISCERN WHETHER THE PROGRESSION OF THE OSTEOPOROTIC PROCESS HAD BEEN HASTENED. HE FOUND THAT IT HAD BEEN AND IS OBVIOUSLY FULLY CONVINCED THAT THE INJURY AND ITS SEQUELA CONTRIBUTED TO IT.

WE THEREFORE CONCLUDE THERE IS, LEGALLY, A CAUSAL CONNECTION BETWEEN CLAIMANT'S INJURY AND HIS OSTEOPOROSIS. THE FUND'S DENIAL SHOULD BE REVERSED.

THE RECORD DOES NOT DEMONSTRATE A NEED FOR FURTHER MEDICAL CARE OR DISABILITY COMPENSATION AT THIS TIME AND THE REFEREE'S ORDER IN REGARD TO THOSE ISSUES SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE AFFIRMING THE FUND'S DENIAL OF CLAIMANT'S OSTEOPOROSIS CONDITION IS REVERSED AND THE FUND IS HEREBY DECLARED LIABLE FOR ANY FUTURE COMPENSATION BENEFITS NECESSITATED BY THE PROGRESSION OF THE DISEASE.

THE REFEREE'S ORDER IS AFFIRMED IN ALL OTHER RESPECTS.

CLAIMANT'S ATTORNEY IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 750 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR HIS SERVICES AT THE HEARING AND ON THIS REVIEW.

WCB CASE NO. 73-3166

JUNE 25, 1974

WILLIAM L. COLLINS, CLAIMANT
PANNER, JOHNSON, MARCEAU AND KARNOPP,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS EXTENT OF PERMANENT PARTIAL DISABILITY TO CLAIMANT'S RIGHT ARM. THE DETERMINATION ORDERS AWARDED A TOTAL OF 25 PERCENT LOSS OF THE RIGHT ARM. THE REFEREE INCREASED THIS AWARD TO A TOTAL OF 75 PERCENT LOSS OF THE RIGHT ARM.

CLAIMANT, A 43 YEAR OLD FORMER ROOFER, INJURED HIS RIGHT ELBOW, MARCH 23, 1972. THIS WAS DIAGNOSED AS A 'TENNIS ELBOW' PROBLEM. THE CLAIMANT HAD SURGERY IN 1973. CLAIMANT ATTEMPTED TO WORK AS A ROOFER BUT WAS UNABLE TO CONTINUE THIS. HE IS PRESENTLY EMPLOYED WITH THE CITY OF BEND, OPERATING A SWEEPER WHICH REQUIRES VERY LITTLE USE OF HIS RIGHT ARM.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE OPINION AND ORDER OF THE REFEREE AND AFFIRMS AND ADOPTS HIS OPINION AND ORDER.

ORDER

THE ORDER OF THE REFEREE DATED FEBRUARY 22, 1974, AS MODIFIED BY CLAIMANT'S ATTORNEY'S WAIVER OF ATTORNEY'S FEE, IS AFFIRMED.

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

WCB CASE NO. 73-1495

JUNE 26, 1974

CECIL DAVIS, CLAIMANT

**DWYER AND JENSEN, 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 BOARD REVIEW OF A REFEREE'S ORDER REVERSING ITS DENIAL OF CLAIMANT'S CLAIM FOR AN ALLEGED BACK INJURY OF APRIL 16, 1973.

AS THE REFEREE NOTED, THE OUTCOME OF THE CASE BASICALLY HINGED ON THE CREDIBILITY OF THE VARIOUS WITNESSES, HAVING PERSONALLY SEEN AND HEARD THE WITNESSES, AN ADVANTAGE WHICH THE BOARD DOES NOT POSSESS, HE RULED THE CLAIM COMPENSABLE.

THE RECORD GIVES US NO REASON TO QUESTION HIS JUDGMENT AS TO CREDIBILITY AND WE THEREFORE CONCLUDE HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 3, 1974, IS AFFIRMED.

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

WCB CASE NO. 71-709

JUNE 26, 1974

EDWARD MOSLEY, CLAIMANT

**COONS, MALAGON AND COLE,
CLAIMANT'S ATTORNEYS
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT**

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT SEEKS BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED THE EMPLOYER'S DENIAL OF HIS CLAIM.

CLAIMANT CONTENDS THAT AS A RESULT OF A WORK INJURY ON DECEMBER 10, 1970, HE SUSTAINED INJURY TO THE LONG FINGER OF THE LEFT HAND, A HERNIA, AND INJURY TO THE BACK FOR WHICH HE ULTIMATELY UNDERWENT SURGERY.

CLAIMANT, A WOOD PLANT LABORER, SUFFERED AN INDUSTRIAL INJURY ON DECEMBER 10, 1970, WHEN HE STEPPED BACK INTO A HOLE WITH HIS RIGHT FOOT AND FELL AGAINST A UNIT OF LUMBER. AFTER THE ACCIDENTAL FALL, CLAIMANT CONTINUED TO WORK UNTIL MID-AFTERNOON WHEN HE WAS FIRED FOLLOWING A DISPUTE WITH ANOTHER WORKMAN.

CLAIMANT CONSULTED DR. OEHLER THAT DAY AND WAS TREATED FOR A RIGHT SACRUM BRUISE. AT NONE OF THE SUBSEQUENT FOUR VISITS TO DR. OEHLER WAS ANY MENTION MADE OF THE FINGER INJURY AND THE HERNIA. DR. OEHLER FOUND CLAIMANT MEDICALLY STATIONARY, INDICATING NO PERMANENT IMPAIRMENT RESULTING FROM THE INJURY. A DETERMINATION ORDER, DATED JANUARY 28, 1971, GRANTED TEMPORARY TOTAL AND TEMPORARY PARTIAL DISABILITY BUT NO AWARD FOR PERMANENT PARTIAL DISABILITY.

THE EMPLOYER ACCEPTED RESPONSIBILITY FOR THIS INJURY BUT DENIED LIABILITY FOR THE SUBSEQUENT PERSISTING BACK SYMPTOMS, FINGER INJURY AND HERNIA.

DR. BASCOM STATED THAT ACCORDING TO CLAIMANT'S OWN HISTORY, HIS PROBLEM WITH THE LONG FINGER OF HIS LEFT HAND PREDATED THE INCIDENT OF DECEMBER 10, 1970, BY ABOUT A YEAR. REGARDING CLAIMANT'S CHRONIC BACK STRAIN, A MEDICAL HISTORY OF BACK PROBLEMS GOES BACK TO 1962.

CLAIMANT'S COUNSEL ARGUES THAT THE REFEREE DID NOT STRESS CLAIMANT'S CREDIBILITY IN HIS OPINION. HOWEVER, THE BOARD, ON REVIEW, FINDS VARIOUS AREAS OF INCONSISTENCIES WHICH TEND TO CLOUD RATHER THAN STRENGTHEN CREDIBILITY. CLAIMANT TESTIFIED A CO-WORKER, MIKE ADAMS, HAD WITNESSED THE ACCIDENT AND THAT HE HAD DISCUSSED IT WITH ADAMS AS WELL AS WITH A MR. SPLONSKOWSKI. BOTH DENIED ANY MENTION OF THE INJURY. CLAIMANT DID ADMIT HE HAD BEEN INVOLVED IN FIVE AUTOMOBILE ACCIDENTS SINCE THE COMPENSABLE INJURY AND ONE BEFORE THAT INJURY.

BASED UPON THE ENTIRE MEDICAL HISTORY, THE TESTIMONY, AND THE REFEREE'S OBSERVATION OF THE CLAIMANT, THE BOARD CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED OCTOBER 30, 1973, IS AFFIRMED.

CHARLES PEDIGO, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENDANT ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT FILED A CLAIM OF AGGRAVATION REGARDING A COMPENSABLE INJURY OF MARCH 12, 1970. THE CLAIM WAS DENIED ON AUGUST 10, 1973, BY THE STATE ACCIDENT INSURANCE FUND. FOLLOWING A HEARING, THE REFEREE ALLOWED THE AGGRAVATION CLAIM AND THE FUND APPEALS FROM THIS ORDER.

IN 1973, CLAIMANT REPORTED HAVING CHEST PAINS AND JOHN W. FORSYTH, M.D., NEUROLOGICAL SURGEON, FELT CLAIMANT'S THEN WORSENERD CONDITION WAS RELATED TO THE INJURY OF MARCH 12, 1970. ALSO OF THIS OPINION WAS DR. LUCE WHO TESTIFIED AT HEARING THAT CLAIMANT HAD A THORACIC OUTLET SYNDROME DIRECTLY RELATED TO THE 1970 INJURY.

ON REVIEW, THE BOARD CANNOT IGNORE THE EXPERT MEDICAL TESTIMONY OF THESE TWO NEUROSURGEONS WHO RELATED CLAIMANT'S WORSENERD TO HIS ORIGINAL INDUSTRIAL INJURY. THE ORDER OF THE REFEREE SHOULD BE ADOPTED AND AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 20, 1974, IS HEREBY ADOPTED AND AFFIRMED.

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

GEORGE H. BOWMAN, JR., CLAIMANT
FRANKLIN, BENNETT, OFELT, DES BRISAY
AND JOLLES, CLAIMANT'S ATTORNEYS
ROGER R. WARREN, DEFENSE ATTORNEY
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER SEEKS BOARD REVIEW OF A REFEREE'S ORDER WHICH FINDS CLAIMANT PERMANENTLY AND TOTALLY DISABLED.

ON OCTOBER 24, 1962, CLAIMANT SUSTAINED A BACK INJURY WHEN HE WAS CRUSHED BETWEEN THE BOOM OF A MOBILE CRANE AND A CAR BODY. A SECOND INJURY SUSTAINED MAY 3, 1968, RESULTED IN A LUMBAR LAMINECTOMY. CLAIMANT RETURNED TO WORK AT TILLAMOOK

VENEER, WHERE HE AGAIN SUSTAINED AN INJURY ON MAY 22, 1970. CLAIMANT HAS NOT WORKED SINCE HIS INJURY IN 1970.

FOLLOWING PSYCHOLOGICAL EXAMINATION, EVIDENCE OF CHRONIC PSYCHOPATHOLOGY, PERMANENT IN NATURE, AND SO SEVERE THAT IT WAS DOUBTFUL IF CLAIMANT COULD EVER BE RESTORED TO ENGAGE IN A GAINFUL AND SUITABLE OCCUPATION, WAS FOUND BY PSYCHOLOGIST, DR. NORMAN HICKMAN, DR. ARLEN QUAN OF THE UNIVERSITY OF OREGON MEDICAL SCHOOL, FELT CLAIMANT HAD A CONVERSION NEUROSIS PRECIPITATED BY THE INDUSTRIAL INJURY AS WELL AS A LONG STANDING PERSONALITY DISORDER UNRELATED TO THE INDUSTRIAL INJURY, AND THAT ONLY THE SLIGHTEST POSSIBILITY OF IMPROVEMENT COULD EVER BE REALIZED.

THE BOARD, ON REVIEW, CONCLUDES THIS WORKMAN IS NOT GOING TO BE RESTORED BY REHABILITATION EFFORTS, NOR BY PSYCHIATRIC COUNSELING, NOR BY FURTHER MEDICAL CARE AND TREATMENT. THE BOARD FINDS, AS DID THE REFEREE, THAT CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED.

ORDER

THE ORDER OF THE REFEREE DATED FEBRUARY 8, 1974, IS HEREBY AFFIRMED.

COUNSEL FOR CLAIMANT IS ALLOWED A REASONABLE ATTORNEY'S FEE IN THE AMOUNT OF 250 DOLLARS, PAYABLE BY THE EMPLOYER, FOR HIS SERVICES RENDERED ON BOARD REVIEW.

WCB CASE NO. 73-2475 JUNE 26, 1974

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT SEEKS BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED A DETERMINATION ORDER ALLOWING NO AWARD FOR PERMANENT PARTIAL DISABILITY. THE REFEREE WAS NOT FAVORABLY IMPRESSED WITH CLAIMANT'S CREDIBILITY AND NEITHER IS THE BOARD.

DR. JAMES A. MASON, MEDICAL EXAMINER AT THE DISABILITY PREVENTION DIVISION, IN HIS REPORT DATED FEBRUARY 26, 1973, FOUND NO EVIDENCE OF INTERNAL DERANGEMENT OF THE KNEE, NO INSTABILITY, NO ATROPHY. DR. MASON'S STATEMENT THAT CLAIMANT WAS NOT REALLY AN EMOTIONAL CASUALTY AT ALL, BUT RATHER HE WAS 'PLAYING GAMES' WITH ALL CONCERNED, FAIRLY DELINEATES THE POSTURE OF THIS CLAIMANT.

AFTER CONSIDERING THE HISTORY OF THIS CLAIMANT, HIS QUESTIONABLE CREDIBILITY AND THE LACK OF MEDICAL EVIDENCE TO SUPPORT HIS SYMPTOMS, THE BOARD, ON REVIEW, CONCURS WITH THE CONCLUSIONS OF THE REFEREE THAT CLAIMANT IS NOT ENTITLED TO AN AWARD FOR PERMANENT DISABILITY.

ORDER

THE ORDER OF THE REFEREE DATED JANUARY 30, 1974 IS HEREBY AFFIRMED.

WCB CASE NO. 73-2276

JUNE 26, 1974

LEO DOANE, CLAIMANT

FRANKLIN, BENNETT, OFELT, DES BRISDAY
AND JOLLES, CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE ON BOARD REVIEW IS THE EXTENT OF CLAIMANT'S PERMANENT UNSCHEDULED DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 60 PERCENT PERMANENT PARTIAL DISABILITY LOSS OF THE LEFT ARM AND 30 PERCENT UNSCHEDULED LEFT SHOULDER DISABILITY. THE REFEREE AFFIRMED THE 60 PERCENT LOSS OF THE LEFT ARM (115.2 DEGREES), BUT INCREASED THE UNSCHEDULED LEFT SHOULDER PERMANENT PARTIAL DISABILITY TO A TOTAL OF 50 PERCENT (160 DEGREES).

CLAIMANT, NOW 62 YEARS OF AGE, WHILE WORKING AS A BOILER MAKER, HAD HIS CLOTHING CAUGHT IN A DRILL PRESS, PULLING HIS LEFT ARM INTO THE DRILL PRESS SUSTAINING MULTIPLE INJURIES. LEFT SHOULDER DISABILITY SECONDARY TO ADHESIVE CAPSULITIS SECONDARY TO IMMOBILIZATION OF SHOULDER NECESSITATED BY TREATMENT OF THE LEFT UPPER EXTREMITY RESULTED.

ON DE NOVO REVIEW, THE BOARD AFFIRMS AND ADOPTS THE OPINION AND ORDER OF THE REFEREE WITH THE EXCEPTION OF THE AWARD OF 350 DOLLARS ATTORNEY'S FEE TO BE PAID BY THE STATE ACCIDENT INSURANCE FUND TO CLAIMANT'S ATTORNEY.

ORS 656.382 (2) PROVIDES -

IF A REQUEST FOR HEARING, REQUEST FOR REVIEW OR COURT APPEAL IS INITIATED BY AN EMPLOYER OR THE FUND, AND THE REFEREE, BOARD OR COURT FINDS THAT THE COMPENSATION AWARDED TO A CLAIMANT SHOULD NOT BE DISALLOWED OR REDUCED, THE EMPLOYER OR FUND SHALL BE REQUIRED TO PAY TO THE CLAIMANT OR HIS ATTORNEY A REASONABLE ATTORNEY'S FEE IN AN AMOUNT SET BY THE REFEREE, BOARD OR THE COURT FOR LEGAL REPRESENTATION BY AN ATTORNEY FOR THE CLAIMANT AT THE HEARING, REVIEW OR APPEAL.

THE REQUEST FOR HEARING WAS INITIATED BY THE CLAIMANT WITH THE REQUEST FOR HEARING STATING THE ISSUE BEING - 'WHAT IS THE AMOUNT OF DISABILITY?'; THE STATE ACCIDENT INSURANCE FUND COUNTERCLAIMED, CONTENDING THAT THE UNSCHEDULED DISABILITY IN THE AMOUNT OF 30 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED LEFT SHOULDER DISABILITY IS EXCESSIVE.

AS STATED IN A VERY RECENT COURT OF APPEALS CASE, IN THE MATTER OF THE COMPENSATION OF MARY E. EGGER, CLAIMANT, MARY E. EGGER V. GATEWAY CARE CENTER, THE COURT STATED THAT ATTORNEYS

FEES ARE AWARDED ONLY WHERE THE LEGISLATURE HAS PROVIDED FOR THIS ALLOWANCE AND THAT THE QUESTION IS WHETHER A REQUEST FOR HEARING WAS 'INITIATED' BY THE EMPLOYER.

A CROSS CLAIM OR COUNTERCLAIM REQUEST FOR HEARING BY THE STATE ACCIDENT INSURANCE FUND WAS NOT AN INITIATION BY THE STATE ACCIDENT INSURANCE FUND FOR THE HEARING AND THUS CLAIMANT'S ATTORNEY WAS NOT ENTITLED TO ATTORNEY'S FEES IN THE SUM OF 350 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, AT THE HEARING.

ORDER

THAT PORTION OF THE REFEREE'S ORDER DATED FEBRUARY 22, 1974, ORDERING DEFENDANT TO PAY TO CLAIMANT'S ATTORNEYS, AS REASONABLE ATTORNEY'S FEES IN DEFENDING CLAIMANT FROM THE DEFENDANT'S ASSERTION OF A LESSER UNSCHEDULED LEFT SHOULDER DISABILITY, THE SUM OF 350 DOLLARS AS STATUTORY ATTORNEY'S FEES, IS REVERSED.

IN ALL OTHER RESPECTS THE ORDER OF THE REFEREE, DATED FEBRUARY 22, 1974, IS AFFIRMED.

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

WCB CASE NO. 73-494

JUNE 26, 1974

RONALD D. WILLIAMS, CLAIMANT
CRANE AND BAILEY, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

THE ABOVE-ENTITLED MATTER WAS HERETOFORE THE SUBJECT OF A HEARING INVOLVING THE COMPENSABILITY OF CLAIMANT'S CLAIM FOR VERTEBRAL EPIPHYSITIS ALLEGEDLY ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WITH JELD-WEN.

ON SEPTEMBER 17, 1973, THE REFEREE'S OPINION AND ORDER ISSUED FINDING THE CLAIM NONCOMPENSABLE, THE CLAIMANT REJECTED THIS ORDER AND A MEDICAL BOARD OF REVIEW WAS CONVENED TO CONSIDER THE APPEAL.

ON APRIL 4, 1974, A MEDICAL BOARD OF REVIEW WAS DULY APPOINTED CONSISTING OF RONALD W. VINYARD, M.D. = THOMAS C. BOLTON, M.D. = AND JAMES C. LUCE, M.D. THE FINDINGS AND REPORT OF THE MEDICAL BOARD OF REVIEW HAVE NOW BEEN RECEIVED AND ARE ATTACHED HERETO, AS EXHIBIT 'A'. THE FINDINGS AFFIRM THE REFEREE'S DECISION THAT CLAIMANT HAS NOT SUFFERED A COMPENSABLE OCCUPATIONAL DISEASE.

PURSUANT TO ORS 656.814, THE FINDINGS AND CONCLUSIONS OF THE MEDICAL BOARD OF REVIEW ARE FINAL AND BINDING AS A MATTER OF LAW.

SHIRLEY I. TITUS, CLAIMANT
FLAXEL, TODD, FLAXEL AND STEVENSON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE IS THE EXTENT OF PERMANENT PARTIAL DISABILITY. THE DETERMINATION ORDER AWARDED APPROXIMATELY TWO WEEKS TEMPORARY TOTAL DISABILITY AND NO PERMANENT PARTIAL DISABILITY. THE REFEREE AWARDED 30 PERCENT (96 DEGREES) UNSCHEDULED PERMANENT PARTIAL NECK DISABILITY.

CLAIMANT, A 39 YEAR OLD SHINGLE MILL WORKER, STEPPED OFF A RISE CARRYING A BUNDLE OF SHINGLES AND JERKED HER NECK. SHE WAS OFF WORK ABOUT TWO WEEKS AND THE ATTENDING OSTEOPATH, IN HIS REPORT OF AUGUST 4, 1972, STATES SHE WAS RELEASED FOR WORK ON MAY 1, 1972 AND WAS LAST SEEN ON MAY 5, 1972. THE INJURY OCCURRED ON APRIL 14, 1972. THE ATTENDING OSTEOPATH FURTHER REPORTS, AFTER AN EXAMINATION OF SEPTEMBER 5, 1972, CLAIMANT HAS A VERY MILD RADICULITIS OF THE CERVICAL SPINE WHICH HAS BECOME STATIONARY. CLAIMANT DEVELOPED OCCIPITAL NEURALGIA.

CLAIMANT'S WORK HISTORY SINCE TWO WEEKS AFTER THE ACCIDENT IS THAT SHE WENT BACK TO THE SAME TYPE OF WORK SHE WAS DOING AND CONTINUED IT AS WORK WAS AVAILABLE AND LEFT THE WORK WHEN THERE WAS A CUTTING DOWN IN PRODUCTION.

ON DE NOVO REVIEW, THE BOARD FINDS CLAIMANT'S UNSCHEDULED PERMANENT PARTIAL DISABILITY TO BE 20 PERCENT (64 DEGREES).

ORDER

THE ORDER OF THE REFEREE DATED JANUARY 30, 1974 IS MODIFIED. CLAIMANT'S AWARD OF 96 DEGREES UNSCHEDULED PERMANENT PARTIAL DISABILITY IS REDUCED TO 64 DEGREES UNSCHEDULED PERMANENT PARTIAL NECK DISABILITY. IN ALL OTHER RESPECTS THE REFEREE'S ORDER IS AFFIRMED.

ELMER L. TERRY, CLAIMANT
EDWIN GOODENOUGH, CLAIMANT'S ATTORNEY
JAMES HUEGLI, DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED THE PERMANENT PARTIAL DISABILITY AWARD OF 10 PERCENT UNSCHEDULED DISABILITY GRANTED BY A DETERMINATION ORDER, DATED AUGUST 17, 1973.

WE HAVE REVIEWED THE RECORD AND ARE IN FULL AGREEMENT WITH THE EXTENSIVE FINDINGS MADE BY THE REFEREE WITH THE EXCEPTION OF HIS CHARACTERIZATION OF CLAIMANT'S ABSENTEEISM RATE AS 'HIGH.'

CLAIMANT ADMITTEDLY HAS SOME RESIDUAL PHYSICAL DISABILITY, BUT IT IS APPARENT THAT CLAIMANT'S LOW MOTIVATION TO RETURN TO HIS FORMER TYPE OF EMPLOYMENT ACCOUNTS FOR HIS PRESENT LACK OF EMPLOYMENT RATHER THAN THE RESIDUAL DISABILITY.

WE CONCLUDE THE AWARD GRANTED BY THE DETERMINATION ORDER AND AFFIRMED BY THE REFEREE IS ADEQUATE.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 8, 1974, IS AFFIRMED.

SAIF CLAIM NO. B 48612 JUNE 26, 1974

GEORGE HOLSHEIMER, CLAIMANT
ROD KIRKPATRICK, CLAIMANT'S ATTORNEY

THIS MATTER WAS PREVIOUSLY BEFORE THE WORKMEN'S COMPENSATION BOARD UNDER THE OWN MOTION PROVISIONS OF THE LAW, ORS 656.278, AND AS A RESULT, BY OWN MOTION ORDER DATED MARCH 22, 1974, CLAIMANT'S CLAIM WAS REOPENED FOR FURTHER TREATMENT BY DR. MARXER.

THE TREATMENT CONSISTED OF A BELOW THE KNEE AMPUTATION PERFORMED ON FEBRUARY 11, 1973. THE RECOVERY WAS COMPLICATED BY CLAIMANT'S DIABETES. DR. MARXER, FOLLOWING HIS EXAMINATION OF APRIL 8, 1974, DECLARED THE CONDITION STATIONARY.

THE BOARD, THROUGH ITS EVALUATION COMMITTEE, HAS REVIEWED THE RECORD AND CONCLUDES CLAIMANT IS ENTITLED TO A PERMANENT PARTIAL DISABILITY AWARD EQUAL TO 100 PERCENT OF THE RIGHT FOOT LOSS BY SEPARATION.

ORDER

IT IS THEREFORE ORDERED THAT CLAIMANT IS GRANTED AN AWARD OF PERMANENT PARTIAL DISABILITY OF 100 PERCENT OF THE RIGHT FOOT FOR LOSS BY SEPARATION EQUAL TO 135 DEGREES. THIS AWARD IS TO BE IN LIEU OF AND NOT IN ADDITION TO ANY PREVIOUS AWARD.

IT IS FURTHER ORDERED THAT COUNSEL FOR CLAIMANT, IS TO RECEIVE AS A FEE, 150 DOLLARS TO BE PAID 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.

WCB CASE NO. 73-2814

JUNE 26, 1974

BRUCE COLEMAN, CLAIMANT
NIKOLAUS ALBRECHT, CLAIMANT'S ATTORNEY
MC MENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER GRANTING NO AWARD FOR PERMANENT DISABILITY.

ON NOVEMBER 13, 1972, CLAIMANT WAS COMPENSABLY INJURED WHEN HE WAS EXPOSED TO HOT DUST AND SUFFERED FIRST AND SECOND DEGREE CHEMICAL BURNS ON HIS UPPER AND LOWER EXTREMITIES.

DR. KADWELL RELEASED CLAIMANT TO RETURN TO WORK ON DECEMBER 5, 1972, INDICATING NO PERMANENT IMPAIRMENT AS A RESULT OF THE INJURY. CLAIMANT HAS MISSED NO WORK, BUT DOES HAVE A FLAKY DISCOLORED APPEARANCE ON THE LOWER LEG. HE IS NOW REQUIRED TO WEAR LONG TROUSERS BECAUSE OF SENSITIVITY TO SUNLIGHT.

AS THE REFEREE NOTED, ANY AWARD OF DISABILITY MADE ON THE EXTREMITIES IS A SCHEDULED AWARD, THE MEASURE OF WHICH IS LOSS OF PHYSICAL FUNCTION. THERE IS NO MEDICAL EVIDENCE SUBSTANTIATING ANY PERMANENT LOSS OF PHYSICAL FUNCTION AND, THUS, THERE IS NO COMPENSABLE DISABILITY.

THE BOARD CONCURS WITH THE FINDINGS OF THE REFEREE AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 15, 1974, IS HEREBY AFFIRMED.

JUNE 26, 1974

NELLIEN FARMER, CLAIMANT
WILLIAM CRAMER, CLAIMANT'S ATTORNEY
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A CLAIMANT'S REQUEST FOR BOARD REVIEW OF A REFEREE'S ORDER WHICH GRANTED HER PERMANENT PARTIAL DISABILITY EQUAL TO 25 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED DISABILITY.

CLAIMANT WAS A NURSE'S AIDE WHO RECEIVED A BACK INJURY JANUARY 6, 1969, WHILE LIFTING A PATIENT.

THE COURSE OF THIS CLAIM IS WELL RECITED IN THE REFEREE'S ORDER. BRIEFLY, IT INVOLVES A FIRST DETERMINATION ORDER AWARDING NO PERMANENT PARTIAL DISABILITY = AN AGGRAVATION CLAIM WITHDRAWN PURSUANT TO STIPULATION = CLAIMANT'S REFUSAL OF SURGERY = AN INTERVENING NON-RELATED SURGERY = A SECOND DETERMINATION ORDER GRANTING 48 DEGREES UNSCHEDULED DISABILITY = A REOPENING FOR EXAMINATION BY DR. HALFERTY AND THE BACK EVALUATION CLINIC = A SECOND STIPULATION = AND A THIRD DETERMINATION ORDER ALLOWING NO PERMANENT PARTIAL DISABILITY.

DURING THIS ENTIRE TIME, ENCOMPASSING THE PERIOD FROM MARCH 17, 1969 TO OCTOBER 3, 1973, THERE WAS A LENGTHY PERIOD OF EXAMINATIONS, OPINIONS, REFERRALS AND POSTPONEMENTS. CLAIMANT RECEIVED NO TREATMENT, --ONLY RECOMMENDED EXERCISES AND A BACK BRACE TO WEAR WHEN NEEDED.

A FACTOR CAUSING RELUCTANCE OF PHYSICIANS TO DO SURGERY IS CLAIMANT'S OBESITY, WHICH WAS AT THE TIME OF HEARING, 220 POUNDS. SHE HAS FAILED TO COOPERATE WITH MEDICAL RECOMMENDATIONS IN THIS RESPECT. THIS FAILURE BECOMES QUITE MATERIAL IN LIGHT OF THE FACT THAT THE EXCESS WEIGHT IMPOSES A 24 HOUR A DAY INSULT TO HER BACK PROBLEM AND MAKES ANY MEDICAL EFFORT TO IMPROVE THE SITUATION AN EXERCISE IN FUTILITY. AT THIS POINT, A SUBSTANTIAL PART OF THE DISABILITY IS THE SOLE RESPONSIBILITY OF THE CLAIMANT.

THE CLAIMANT HAS NOT WORKED SINCE THE ACCIDENT, EXCEPT FOR ONE MONTH WHILE EMPLOYED AT A TOY FACTORY IN BURNS. SHE COULD NOT TOLERATE STANDING EIGHT HOURS A DAY AND WAS FORCED TO TERMINATE. THE CLAIMANT'S OBESITY HAS HINDERED HER RECOVERY BUT, BASED ON THE EVALUATION OF THE BACK EVALUATION CLINIC AND CLAIMANT'S TESTIMONY, THE REFEREE CONCLUDED CLAIMANT WAS ENTITLED TO AN ADDITIONAL 32 DEGREES MAKING A TOTAL AWARD OF PERMANENT PARTIAL DISABILITY OF 80 DEGREES OR 25 PERCENT. THE BOARD, ON REVIEW, CONCURS WITH THIS CONCLUSION AND CONCLUDES THE ORDER OF THE REFEREE SHOULD BE ADOPTED AND AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE DATED FEBRUARY 7, 1974 IS HEREBY ADOPTED AND AFFIRMED.

WCB CASE NO. 73-2911

JUNE 27, 1974

ROY HUKILL, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE INVOLVED IS THE EXTENT OF PERMANENT PARTIAL DISABILITY. TWO DETERMINATION ORDERS AWARDED TEMPORARY TOTAL DISABILITY ONLY AND MADE NO AWARD FOR PERMANENT PARTIAL DISABILITY. THE REFEREE AWARDED CLAIMANT 15 PERCENT (48 DEGREES) UNSCHEDULED LOW BACK DISABILITY. CLAIMANT HAD PREVIOUSLY BEEN AWARDED 10 PERCENT UNSCHEDULED LOW BACK DISABILITY FOR AN INDUSTRIAL ACCIDENT IN 1970.

CLAIMANT, A 31 YEAR OLD LABORER, INJURED HIS BACK AUGUST 7, 1972. CLAIMANT HAS RECEIVED CONSERVATIVE CARE ONLY. CLAIMANT'S CONDITION IS DIAGNOSED AS A CHRONIC LUMBO SACRAL STRAIN. THE BACK EVALUATION CLINIC REPORTS CLAIMANT HAS MILD RESIDUAL DISABILITY WITH SOME PSYCHOPATHOLOGY. CLAIMANT INDICATES A DESIRE FOR VOCATIONAL REHABILITATION. POSSIBLE FURTHER TREATMENT IS AVAILABLE TO CLAIMANT UNDER ORS 656.245. VOCATIONAL REHABILITATION IS AVAILABLE TO THE CLAIMANT AND THE BOARD RECOMMENDS THAT THE CLAIMANT AVAIL HIMSELF OF THESE SERVICES AND COOPERATE FULLY TO ACCOMPLISH REHABILITATION.

ON DE NOVO REVIEW, THE BOARD FINDS THAT THE AWARD OF 48 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY ADEQUATELY COMPENSATES THE CLAIMANT FOR CLAIMANT'S PHYSICAL AND PSYCHOLOGICAL IMPAIRMENT RESULTING FROM THIS INDUSTRIAL ACCIDENT WHICH AFFECTS HIS WAGE EARNING CAPACITY.

ORDER

THE ORDER OF THE REFEREE DATED FEBRUARY 15, 1974 IS AFFIRMED.

WCB CASE NO. 73-2022

JUNE 27, 1974

ALLEN BRINKLEY, CLAIMANT

COONS, MALAGON AND COLE,
CLAIMANT'S ATTORNEYS
DEPARTMENT 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, DATED JUNE 19, 1973, FINDING THAT HE HAD SUFFERED NO PERMANENT DISABILITY AS A RESULT OF A BACK INJURY ON MAY 20, 1971.

CLAIMANT HAS SUFFERED SEVERAL PRIOR INJURIES WHICH LEFT HIM WITH SUCH SERIOUS DISABILITY THAT HE WAS LIMITED TO LESS THAN FULL TIME WORK AS AN IRON WORKER AT THE TIME HE SUFFERED HIS LAST INJURY.

THE REFEREE CONCLUDED, IN AFFIRMING THE DETERMINATION ORDER, THAT CLAIMANT HAD SUFFERED NO ADDITIONAL LOSS OF EARNING CAPACITY FROM THE INJURY IN QUESTION, HE CONCLUDED CLAIMANT'S MOTIVATION WAS THE KEY TO HIS CONTINUING UNEMPLOYMENT.

WE THINK THE REFEREE FAILED TO PROPERLY ASSESS THE PSYCHOPATHOLOGY PRODUCED BY THIS INJURY. THE OPINIONS OF THE PSYCHIATRIST AND PSYCHOLOGIST WHO EXAMINED THE CLAIMANT CLEARLY ESTABLISH THE PERMANENT DISABLING CHARACTER OF THIS PSYCHOPATHOLOGY AND RELATE IT TO HIS LATEST INJURY.

CLAIMANT DOES NOT SIMPLY "LACK MOTIVATION", HE IS NOW PERMANENTLY, EMOTIONALLY CRIPPLED BY THE INJURY. THIS CONTRIBUTION BY THE LAST INJURY CANNOT BE IGNORED, WHEN COUPLED WITH THE SERIOUS, PREEXISTING PHYSICAL DISABILITY, CLAIMANT IS, AT BEST, IN THE "ODD-LOT" CATEGORY. NO SUITABLE EMPLOYMENT OPPORTUNITIES HAVE BEEN SHOWN TO EXIST FOR THE CLAIMANT AND WE THEREFORE CONCLUDE CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED WITHIN THE MEANING OF THE OREGON WORKMEN'S COMPENSATION LAW.

ORDER

THE ORDER OF THE REFEREE IS REVERSED AND THE CLAIMANT IS HEREBY GRANTED AN AWARD OF PERMANENT TOTAL DISABILITY, WITH PAYMENTS OF SAID COMPENSATION TO BE INSTITUTED AS OF JUNE 19, 1973.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE, 25 PERCENT OF THE INCREASED COMPENSATION AWARDED HEREBY, PAYABLE FROM SAID AWARD, WHICH SHALL NOT EXCEED, \$500 DOLLARS.

WCB CASE NO. 73-1018

JUNE 27, 1974

MAX E. CORBETT, CLAIMANT

POZZI, WILSON AND ATCHISON,

CLAIMANT'S ATTORNEYS

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER MAKING HIS ATTORNEY'S FEE PAYABLE FROM CLAIMANT'S COMPENSATION RATHER THAN BY THE STATE ACCIDENT INSURANCE FUND.

THE RECORD CLEARLY REVEALS THAT THE FUND'S ACTIONS CONSTITUTE A DE FACTO DENIAL OF BENEFITS TO CLAIMANT. THE CLAIMANT WAS FORCED TO OBTAIN THE SERVICES OF AN ATTORNEY TO SECURE THE BENEFITS TO WHICH HE WAS ENTITLED. THE PAYMENT OF HIS ATTORNEY'S FEE IS, THEREFORE, THE OBLIGATION OF THE FUND. THE REFEREE'S ORDER SHOULD BE MODIFIED ACCORDINGLY.

ORDER

PARAGRAPH (3) OF THE REFEREE'S ORDER DATED JANUARY 7, 1974 IS HEREBY REVERSED AND THE STATE ACCIDENT INSURANCE FUND IS HEREBY ORDERED TO PAY CLAIMANT'S ATTORNEY THE SUM OF 650 DOLLARS FOR HIS SERVICES AT THE HEARING AND ON THIS REVIEW.

WCB CASE NO. 73-3311
WCB CASE NO. 73-3312

JUNE 27, 1974

ROBERT D. BLAIR, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS REVIEW OF A REFEREE'S ORDER FINDING CLAIMANT HAD SUFFERED A NEW INJURY RATHER THAN AN AGGRAVATION. HE CONTENDS THAT HE WAS ENTITLED TO REOPENING AND REDETERMINATION OF BOTH CLAIMS AS ONE.

WE HAVE REVIEWED THE RECORD DE NOVO AND CONCUR WITH THE REFEREE'S CONCLUSION THAT CLAIMANT'S LAST INCIDENT WAS A NEW INJURY. HIS ORDER WAS PROPER IN EVERY RESPECT AND SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED JANUARY 30, 1974 IS AFFIRMED.

WCB CASE NO. 73-2637

JUNE 27, 1974

NORMAN L. KOLLING, CLAIMANT
HIBBARD, CALDWELL, CANNING, BOWERMAN
AND SCHULTZ, CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH INCREASED THE DETERMINATION ORDER AWARD BY ALLOWING CLAIMANT AN AWARD OF PERMANENT PARTIAL DISABILITY EQUAL TO 20 PERCENT (64 DEGREES) OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED BACK DISABILITY.

THIS 34 YEAR OLD PILE DRIVER SUSTAINED A COMPENABLE INDUSTRIAL INJURY ON AUGUST 10, 1972. AS A RESULT OF THIS INJURY CLAIMANT DEVELOPED A PHOBIA (FEAR OF HEIGHTS). EXHIBITS ADMITTED AT THE HEARING, ESPECIALLY THOSE MEDICAL REPORTS OF DRs. PARVARESH AND GAMBEE, INDICATE THAT CLAIMANT PROBABLY WILL NOT ENCOUNTER MUCH DIFFICULTY IN THE FUTURE AS A RESULT OF THE BACK INJURY BUT RETURNING TO THE TYPE OF EMPLOYMENT HE WAS PREVIOUSLY ENGAGED IN COULD CREATE SEVERE PANIC AND ANXIETY TENSION.

THE BOARD IS OF THE OPINION THAT, IN VIEW OF CLAIMANT'S PSYCHIATRIC IMPAIRMENT, HE IS WISE TO AVOID HIGH WORK. AS A RESULT, ALTHOUGH HE HAS RETURNED TO THE SAME TYPE OF EMPLOYMENT, FEWER OPPORTUNITIES FOR ADVANCEMENT ARE AVAILABLE AS HE AVOIDS WORKING IN HIGH PLACES.

THE BOARD THEREFORE CONCURS WITH THE OPINION OF THE REFEREE IN THAT CLAIMANT HAS SUFFERED DISABLING EFFECTS AS A RESULT OF HIS PHOBIA AND THAT THE INCREASED AWARD IS WARRANTED. HIS ORDER SHOULD THEREFORE BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED FEBRUARY 21, 1974 IS HEREBY AFFIRMED.

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

WCB CASE NO. 73-2136 JUNE 27, 1974

HEBER THURSTON, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S REFUSAL TO ORDER TIME LOSS COMPENSATION UNTIL A FORMAL CLOSURE IS MADE PURSUANT TO ORE 656.268.

THE REFEREE PROPERLY RECOGNIZED THE EQUITIES OF THE FACTUAL SITUATION SUPERSEDED CLAIMANT'S TECHNICAL ENTITLEMENTS. SINCE NO HARM HAS BEEN CAUSED CLAIMANT BY THE LACK OF PROCESSING, THE REFEREE'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED JANUARY 11, 1974 IS AFFIRMED.

JUNE 28, 1974

FERNANDO G. SILLER, CLAIMANT

RICHARDSON AND MURPHY, CLAIMANT'S ATTORNEYS
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER GRANTING A PERMANENT PARTIAL DISABILITY AWARD OF 15 PERCENT FOR UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT SUSTAINED A COMPENSABLE INJURY NOVEMBER 16, 1971 WHEN HE WAS ONLY 20 YEARS OF AGE. IN JANUARY, 1973, HE UNDERWENT A LAMINECTOMY. HIS WORK EXPERIENCE INCLUDES AGRICULTURAL AND NURSERY LABOR AND CARNIVAL ATTENDANT.

IT WAS THE CONSENSUS OF ALL THE MEDICAL AUTHORITY THAT CLAIMANT HAD RECOVERED FROM SURGERY WITH NO EVIDENCE OF PHYSICAL DISORDER THAT WOULD IMPAIR HIS WORKING, AND THAT THE LOSS OF PHYSICAL FUNCTION DUE TO THE INJURY WAS MINIMAL.

MUCH OF THE TESTIMONY AT THE HEARING CONCERNED THE ACTIVITIES CLAIMANT COULD OR COULD NOT DO WHILE HE WAS EMPLOYED AT A SERVICE STATION. HIS CLAIM OF INABILITY TO LIFT TIRES, BATTERIES, WORK ON CARS ON A HOIST OR UNDER THE DASHBOARD WAS REFUTED BY MOVIE FILMS SHOWING CLAIMANT ACTUALLY DOING THE THINGS HE HAD DENIED BEING ABLE TO DO.

THE BOARD, ON REVIEW, CONCURS WITH THE REFEREE THAT THE AWARD OF 15 PERCENT UNSCHEDULED DISABILITY ADEQUATELY COMPENSATES CLAIMANT FOR THE DISABILITY ATTRIBUTABLE TO THE INDUSTRIAL INCIDENT.

HOWEVER, THE BOARD IS CONCURRENTLY DESIROUS THAT FURTHER EFFORTS IN THE AREA OF VOCATIONAL REHABILITATION BE MADE ON BEHALF OF THIS YOUNG WORKMAN. EVEN THOUGH CLAIMANT HAS A LIMITED EDUCATION, LANGUAGE BARRIER, AND PERHAPS A LIMITED INTELLECT, THE BOARD IS OF THE OPINION THAT CLAIMANT CAN BE VOCATIONALLY TRAINED IN SOME AREA OF SUITABLE EMPLOYMENT WITHIN HIS ABILITY TO PERFORM, AND BY A COPY OF THIS ORDER TO ITS DISABILITY PREVENTION DIVISION, IS DIRECTING THAT THE DIVISION PURSUE THAT OBJECTIVE.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 6, 1974 IS HEREBY AFFIRMED.

JULIA BROWN, CLAIMANT

EMMONS, KYLE, LROPP AND
KRYGER, CLAIMANT'S ATTORNEYS
DEPARTMENT 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 GRANTED HER A PERMANENT PARTIAL DISABILITY AWARD OF 96 DEGREES, MAKING A TOTAL OF 128 DEGREES, OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY, CONTENDING SHE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT IS A 68 YEAR OLD NURSE'S AIDE WHO INJURED HER BACK ON JUNE 11, 1970, WHILE LIFTING A PATIENT. AFTER NUMEROUS HOSPITALIZATIONS AND DIAGNOSES, IT WAS CONCLUDED CLAIMANT WAS SUFFERING A CHRONIC LUMBO SACRAL BACK SPRAIN AND COCCYDYNIA. SHE WAS GRANTED AN AWARD OF 10 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED LOW BACK DISABILITY EQUAL TO 32 DEGREES BY A DETERMINATION ORDER DATED JUNE 9, 1972.

IN FINDING HER ONLY PERMANENTLY PARTIALLY DISABLED RATHER THAN PERMANENTLY TOTALLY DISABLED, THE REFEREE RECOGNIZED THAT HER SUBJECTIVE COMPLAINTS DO NOT REFLECT THE TRUE EXTENT OF HER DISABILITY.

THE BOARD IS PERSUADED BY THE FINDINGS AND CONCLUSIONS OF DR. STANWOOD THAT CLAIMANT IS NOT AN 'ODD=LOT' WORKMAN AND THAT THE REFEREE'S AWARD OF 128 DEGREES ADEQUATELY COMPENSATES CLAIMANT'S LOSS OF EARNING CAPACITY.

ORDER

THE ORDER OF THE REFEREE DATED JANUARY 30, 1974 IS AFFIRMED.

WARREN R. MITCHELL, CLAIMANT

KLOSTERMAN AND JOACHIMS,
CLAIMANT'S ATTORNEYS
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 THE STATE ACCIDENT INSURANCE FUND,

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

JULY 1, 1974

FRED ASHBY, CLAIMANT

BODIE AND MINTURN, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER FINDING THAT CLAIMANT'S RIGHT KNEE PROBLEMS ARE UNRELATED TO HIS INJURY AND OF HIS FURTHER ORDER REFUSING TO RECONSIDER THE ISSUE OF LEG DISABILITY.

WE CONCUR WITH THE CLAIMANT'S CONTENTION THAT HE HAS A RIGHT TO PRESENT EVIDENCE AND ARGUMENT ON THE ISSUE OF WHETHER CLAIMANT'S RIGHT KNEE PROBLEM IS RELATED TO HIS INJURY. THE MATTER SHOULD BE REMANDED TO THE REFEREE FOR FURTHER PROCEEDINGS REGARDING THAT ISSUE.

ORDER

THE MATTER IS HEREBY REMANDED TO THE REFEREE TO RECEIVE ADDITIONAL EVIDENCE ON THE ISSUE OF WHETHER OR NOT CLAIMANT'S RIGHT KNEE PROBLEMS ARE COMPENSABLY RELATED TO HIS OCCUPATIONAL INJURY AND TO ISSUE AN ORDER IN ACCORDANCE WITH HIS FINDINGS AND CONCLUSIONS.

JULY 2, 1974

CARL E. BROWN, CLAIMANT

RICHARDSON AND MURPHY,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY

ON JUNE 27, 1974, THE WORKMEN'S COMPENSATION BOARD ENTERED AN ORDER FILING THE FINDINGS OF THE MEDICAL BOARD OF REVIEW IN THE ABOVE ENTITLED CASE, WHICH INADVERTENTLY INDICATED A COPY HAD BEEN MAILED TO CLARENCE H. MELLEN RATHER THAN TO THE CLAIMANT HEREIN, CARL E. BROWN.

A COPY OF THE ORIGINAL ORDER AND A COPY OF THIS ORDER OF AMENDMENT HEREBY CORRECTING THE MAILING ERROR SHOULD BE SENT TO ALL PARTIES INTERESTED IN THE MATTER OF THE COMPENSATION OF CARL E. BROWN.

IT IS SO ORDERED.

JULY 2, 1974

VERNON HARRIS, CLAIMANT

RALPH C. SPOONER, CLAIMANT'S ATTORNEY
MC MENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER AFFIRMING THE PARTIAL DENIAL OF HIS CLAIM.

THE REFEREE'S AFFIRMANCE OF THE PARTIAL DENIAL WAS BASED ON A LACK OF EVIDENCE CORROBORATING CLAIMANT'S TESTIMONY THAT HE HAD MADE COMPLAINTS CONSISTENT WITH A LOW BACK INJURY IN THE INTERVAL OF SEVERAL MONTHS BEFORE THERE WAS MEDICAL EVIDENCE THAT THE LUMBAR SPINE WAS DAMAGED. THE BOARD IS NOT PERSUADED THE LACK OF CORROBORATION IS DETERMINATIVE.

DR. CHEN TSAI CLEARLY AND UNEQUIVOCALLY RELATED THE LOW BACK PROBLEM TO THE COMPENSABLE INJURY. TAKING ALL THE EVIDENCE INTO ACCOUNT, WE ARE PERSUADED THAT HIS OPINION IS SOUND AND THAT CLAIMANT'S LOW BACK PROBLEM IS RELATED. THE REFEREE'S ORDER SHOULD BE REVERSED.

ORDER

THE ORDER OF THE REFEREE DATED FEBRUARY 25, 1974 IS REVERSED AND THE EMPLOYER IS HEREBY ORDERED TO PROVIDE CLAIMANT THE WORKMEN'S COMPENSATION BENEFITS TO THE CLAIMANT NECESSARY FOR HIS LOW BACK CONDITION.

CLAIMANT'S ATTORNEYS ARE HEREBY AWARDED A REASONABLE ATTORNEY'S FEE OF 800 DOLLARS, PAYABLE BY THE EMPLOYER, FOR THEIR SERVICES AT HEARING AND ON BOARD REVIEW.

JULY 2, 1974

ROBERT E. CRANDALL, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE FUND REQUESTS BOARD REVIEW OF A SECOND OPINION AND ORDER OF A REFEREE IN WHICH THE FUND WAS HELD RESPONSIBLE FOR COMPENSATION RELATED TO A FALL CLAIMANT SUSTAINED NEAR HIS HOME ON MARCH 14, 1973. THE REFEREE RELIED ON THE OPINION OF DR. ROBERT BUMP TO CONCLUDE THAT THE FALL WAS A COMPENSABLE CONSEQUENCE OF AN INDUSTRIAL LOW BACK INJURY WHICH OCCURRED ON FEBRUARY 15, 1972.

FROM THE RECORD IT IS OBVIOUS THAT CLAIMANT IS AN INDIVIDUAL EXTRAORDINARILY AFFECTED BY HIS EMOTIONS. KEEPING THIS IN MIND, WE ARE CONSTRAINED, AS WAS THE REFEREE, TO ACCEPT DR. BUMP'S THESIS AND FIND THE MARCH 14, 1973 INCIDENT A COMPENSABLE CONSEQUENCE.

THE REFEREE'S SECOND OPINION AND ORDER SHOULD BE AFFIRMED.

ORDER

THE REFEREE'S ORDER DATED JANUARY 9, 1974 IS AFFIRMED.

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

WCB CASE NO. 73-2718

JULY 2, 1974

JESSIE I. KENNEDY, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF
CROSS-APPEAL BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS CLAIMANT WAS AWARDED PERMANENT PARTIAL DISABILITY EQUAL TO 15 PERCENT UNSCHEDULED LEFT SHOULDER DISABILITY BY DETERMINATION ORDER. UPON HEARING, A REFEREE INCREASED THIS AWARD TO 50 PERCENT UNSCHEDULED DISABILITY. THE STATE ACCIDENT INSURANCE FUND HAS APPEALED THIS ORDER AND CLAIMANT CROSS-APPEALED.

CLAIMANT WAS A 50 YEAR OLD GROCERY CLERK, INJURED APRIL 5, 1972, WHEN A FRIENDLY BUT BOISTEROUS CUSTOMER SLAPPED HER ON THE LEFT SHOULDER. THE GESTURE UNFORTUNATELY PRODUCED A THORACIC OUTLET SYNDROME NECESSITATING A SURGICAL DECOMPRESSION OF THE LEFT SUBCLAVIAN ARTERY AND BRACHIAL PLEXUS. REPORTS FROM THE BACK EVALUATION CLINIC AND THE DISABILITY PREVENTION DIVISION NOTED SEVERE FUNCTIONAL OVERLAY TO THE EXTENT OBJECTIVE EVALUATION WAS IMPOSSIBLE WITH SEVERE TENSION STATE, BORDERING ON CONVERSION-HYSTERIA PRESENT. ALTHOUGH LOSS OF FUNCTION WAS CONSIDERED TO BE MILK, IT WAS FELT CLAIMANT COULD PROBABLY NOT RETURN TO WORK AT THE GROCERY STORE.

THE REFEREE CONCLUDED FROM THIS AND OTHER EVIDENCE THAT CLAIMANT'S UNSCHEDULED PHYSICAL AND PSYCHOLOGICAL DISABILITY WAS EQUIVALENT TO 50 PERCENT OF A MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY. HAVING REVIEWED THE RECORD DE NOVO, THE BOARD CONCURS WITH HIS FINDINGS AND CONCLUDES HIS ORDER SHOULD BE ADOPTED AND AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED FEBRUARY 7, 1974 IS HEREBY AFFIRMED.

JULY 2, 1974

CHESTER BAKER, CLAIMANTPOZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYSSOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS REVIEW CONCERNS A CLAIMANT WHO INITIALLY RECEIVED A PERMANENT PARTIAL DISABILITY AWARD OF 40 PERCENT UNSCHEDULED DISABILITY FOR A 1967 HEAD AND NECK INJURY. A REFEREE GRANTED AN ADDITIONAL 15 PERCENT ON ACCOUNT OF AGGRAVATION AND CLAIMANT HAS APPEALED FROM THIS ORDER CONTENDING THE AWARD IS INADEQUATE.

THE DOCTORS SEEM TO AGREE, IRRESPECTIVE OF THE DISCREPANCY BETWEEN OBJECTIVE FINDINGS AND SUBJECTIVE COMPLAINTS, THAT CLAIMANT DOES HAVE RESIDUAL IMPAIRMENT WHICH PRECLUDES A RETURN TO HIS FORMER OCCUPATION OF HEAVY LABOR.

IN DIRECT CONTRAST TO SO MANY CLAIMANTS WHO ARE UNABLE TO FIND A LIGHTER TYPE JOB THEY CAN HANDLE, THIS CLAIMANT HAS SUCCESSFULLY RETURNED TO WORK AS A NIGHT WATCHMAN ON A PERMANENT, YEAR ROUND, 40 HOUR PER WEEK BASIS, AT 2 DOLLARS PER HOUR TO START, INCREASING TO 2 DOLLARS 75 CENTS PER HOUR AFTER THREE MONTHS. ALTHOUGH CLAIMANT IS NOT PHYSICALLY LIMITED TO WORK THIS LIGHT, HE TESTIFIED HE WAS HAPPY WITH THE JOB AND INTENDED TO MAKE IT PERMANENT. WE CONCLUDE, HOWEVER, THAT HE DOES HAVE A GREATER PERMANENT LOSS OF EARNING CAPACITY THAN THE SECOND DETERMINATION ORDER RECOGNIZED.

THE BOARD CONCURS WITH THE REFEREE'S FINDING OF ADDITIONAL DISABILITY DUE TO EARNING LOSS EQUALS 15 PERCENT. HIS ORDER SHOULD THEREFORE BE AFFIRMED.

ORDER

THE ORDERS OF THE REFEREE DATED FEBRUARY 12, 1974 AND FEBRUARY 15, 1974 ARE AFFIRMED.

JULY 2, 1974

THOMAS O. YOUNG, CLAIMANTRICHARDSON AND MURPHY, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT APPEALS A REFEREE'S ORDER AFFIRMING A DETERMINATION ORDER AWARD OF 20 PERCENT LOSS OF THE RIGHT ARM. THE UNSCHEDULED DISABILITY AWARD IS NOT BEING QUESTIONED BY THE CLAIMANT.

THE REFEREE CONCLUDED THAT, UNDER THE FACTS OF THIS CASE, ANY INCREASE IN RIGHT ARM DISABILITY WOULD NECESSITATE A REDUCTION OF CLAIMANT'S UNSCHEDULED DISABILITY AWARD IN KEEPING WITH THE RULING IN FOSTER V. SAIF, 259 OR 86 (1971).

WE DISAGREE. WE CONCLUDE THE EVIDENCE ENTITLES CLAIMANT TO AN AWARD OF COMPENSATION EQUAL TO 50 PERCENT LOSS OF THE RIGHT ARM AS WELL AS THE UNSCHEDULED DISABILITY AWARD PREVIOUSLY GRANTED.

ORDER

CLAIMANT IS HEREBY AWARDED AN ADDITIONAL 57.6 DEGREES OF COMPENSATION, MAKING A TOTAL OF 96 DEGREES FOR 50 PERCENT LOSS OF THE RIGHT ARM.

CLAIMANT'S ATTORNEY IS TO RECEIVE AS A REASONABLE ATTORNEY'S FEE OF 25 PERCENT OF THE INCREASED COMPENSATION AWARDED BY THIS ORDER, NOT TO EXCEED, HOWEVER, 1,500 DOLLARS.

WCB CASE NO. 73-2638 JULY 3, 1974

GREGORY P. MC MAHON, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTORNEYS

ON JUNE 18, 1974, THE L. W. HEMBREE COMPANY MOVED TO DISMISS THE REQUEST FOR BOARD REVIEW MADE BY TICE ELECTRIC, ANOTHER PARTY IN THE ABOVE-ENTITLED MATTER, ON THE GROUND THAT TICE ELECTRIC HAD FAILED TO COMPLY WITH ORS 656.295(2).

NO RESPONSE HAS BEEN RECEIVED BY ANY OTHER PARTY AND THE MOTION APPEARS WELL TAKEN. ACCORDINGLY, THE REQUEST FOR BOARD REVIEW MADE BY TICE ELECTRIC, THROUGH ITS CARRIER, ARGONAUT INSURANCE COMPANY, IS HEREBY DISMISSED.

CLAIMANT'S CROSS REQUEST FOR REVIEW REMAINS PENDING.

WCB CASE NO. 72-1819 JULY 10, 1974

MARY CORMA HARNESS, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER REOPENING CLAIMANT'S CLAIM ON AGGRAVATION.

THE BASIC ISSUE ON REVIEW IS WHETHER CLAIMANT HAS SUFFERED AN AGGRAVATION OF HER COMPENSABLE INJURY.

THERE IS NO NEED TO BURDEN THIS LONG COMPLICATED RECORD WITH AN ADDITIONAL RECITAL OF THE FACTS. THE LAW, AS INTERPRETED BY MC KINNEY V. G. L. PINE, INC., 98 ADV SH 1440, --- OR APP --- (1974 AND DINNOCENZO V. SAIF, --- ADV SH---, --- OR APP --- (JUNE 28, 1974) AND APPLIED TO THE FACTS OF THIS CASE, DO NOT SUPPORT THE REFEREE'S RULING.

REGARDLESS OF OUR DISAPPROVAL OF THE DEFICIENT HANDLING OF THIS CLAIM, THE REQUIREMENTS OF THE LAW CANNOT BE AVOIDED AND THE REFEREE'S ORDER MUST BE REVERSED.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 6, 1974, IS HEREBY REVERSED.

WCB CASE NO. 73-2997 JULY 10, 1974

PHILIP A. OSBORN, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A REFEREE'S OPINION AND ORDER REQUIRING THE FUND TO ACCEPT CLAIMANT'S CLAIM OF COMPENSABLE INDUSTRIAL INJURY.

THE FUND, EMPHASIZING THAT CLAIMANT HAS THE BURDEN OF PROVIDING HIS RIGHT TO COMPENSATION, CONTENDS THAT CLAIMANT'S ACTIONS AND TESTIMONY PROVIDE AN INADEQUATE BASIS ON WHICH TO IMPOSE LIABILITY.

THE REFEREE'S OPINION AND ORDER IS AN ILLUSTRATION OF THE 'AGENCY EXPERTISE' FACTOR BEING APPLIED TO THE RESOLUTION OF A DISPUTED FACTUAL SITUATION, ROMERO V. SCD, 250 OR 368 (1968). WE BELIEVE HE HAS CORRECTLY INTERPRETED THE EVIDENCE AND CONCLUDE HIS OPINION AND ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 16, 1974, IS HEREBY AFFIRMED.

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

JULY 10, 1974

FRANK D. SMITH, CLAIMANT

DALE D. LIBERTY, SR., CLAIMANT'S ATTY.

ON APRIL 16, 1974, CLAIMANT REQUESTED WORKMEN'S COMPENSATION BENEFITS BE GRANTED TO HIM BY THE WORKMEN'S COMPENSATION BOARD PURSUANT TO ITS 'OWN MOTION' JURISDICTION PROVIDED BY ORS 656.278.

IN CONSIDERING THIS REQUEST THE BOARD HAS REVIEWED THE REPORT OF DR. R. E. RINEHART, DATED MAY 20, 1974, AND THE REPORT OF DR. EDWIN G. ROBINSON, DATED MAY 13, 1974.

THE BOARD, HAVING CONSIDERED THE MEDICAL REPORTS SUBMITTED, CONCLUDES CLAIMANT IS NOT ENTITLED TO FURTHER BENEFITS AND HIS REQUEST FOR 'OWN MOTION' RELIEF SHOULD BE, AND IT IS, HEREBY DENIED.

JULY 11, 1974

VIVIAN JOHNSON, CLAIMANT

COONS, MALAGON AND COLE,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY

ON JUNE 11, 1974, THE WORKMEN'S COMPENSATION BOARD ENTERED AN ORDER FOLLOWING A STATE ACCIDENT INSURANCE FUND REQUEST FOR REVIEW. THE ORDER DID NOT REDUCE THE COMPENSATION GRANTED TO THE CLAIMANT BY THE REFEREE'S ORDER BUT DID, AS REQUESTED, REDUCE THE FEE ALLOWED TO CLAIMANT'S ATTORNEY BY THE REFEREE.

BECAUSE THE FUND HAS INITIATED THE REVIEW AND PREVAILED ON THE ISSUE OF ATTORNEY FEES, WE CONCLUDED THE FUND WAS NOT LIABLE FOR AN ADDITIONAL ATTORNEY'S FEE ON REVIEW.

ON JUNE 14, 1974, THE CLAIMANT'S ATTORNEY MOVED FOR RECONSIDERATION AND ALLOWANCE OF AN ADDITIONAL ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THE REVIEW ON THE GROUND THAT THE FUND'S APPEAL DID NOT SUCCEED IN REDUCING OR DISALLOWING ANY 'COMPENSATION' AWARDED TO THE CLAIMANT BY THE REFEREE. BY DEFINITIONS, 'COMPENSATION' DOES NOT INCLUDE ATTORNEY'S FEES.

IN THIS CASE, THE FUND APPEALED NOT ONLY THE AMOUNT OF THE CLAIMANT'S ATTORNEY'S FEE BUT THE CLAIMANT'S ENTITLEMENT TO ADDITIONAL COMPENSATION PURSUANT TO ORS 656.262(8). THE BOARD DID NOT REDUCE OR DISALLOW THE COMPENSATION AWARDED TO THE CLAIMANT. THUS, AS CLAIMANT'S ATTORNEY CORRECTLY POINTS OUT, PURSUANT TO THE SPECIFIC PROVISIONS OF ORS 656.383(2), THE FUND MUST BE REQUIRED TO PAY CLAIMANT'S REASONABLE ATTORNEY'S FEE FOR HIS LEGAL REPRESENTATION OF THE CLAIMANT ON THE REVIEW.

OUR ORDER OF JUNE 11, 1974, SHOULD BE MODIFIED TO ORDER THE FUND TO PAY CLAIMANT'S ATTORNEY, ALLAN H. COONS, THE SUM OF 250 DOLLARS AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW.

IT IS SO ORDERED.

WCB CASE NO. 73-920

JULY 12, 1974

ROY BABCOCK, CLAIMANT

HAL ADAMS, CLAIMANT'S ATTORNEY
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 REFEREE'S ORDER ALLOWING COMPENSATION EQUAL TO 160 DEGREES FOR UNSCHEDULED PSYCHOLOGICAL DISABILITY. CONTENDING CLAIMANT SUFFERED NO PERMANENT DETERIORATION OF HIS PSYCHOLOGICAL CONDITION AS A RESULT OF THE INJURY IN QUESTION. IN THE ALTERNATIVE, THE STATE ACCIDENT INSURANCE FUND CONTENDS THAT IF HE HAS, THE COMPENSATION AWARDED IS EXCESSIVE.

OUR REVIEW OF THE RECORD CONVINCES US THE REFEREE CORRECTLY INTERPRETED THE EVIDENCE AND THE LAW IN AWARDING CLAIMANT 50 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY AND HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 27, 1974, IS AFFIRMED.

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

WCB CASE NO. 73-1508

JULY 12, 1974

OTHEL M. JOHNSTON, CLAIMANT

LINDSAY, NAHSTOLL, HART, DUNCAN,
DAFOE AND KRAUSE, CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEW BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER AFFIRMING THE PARTIAL DENIAL OF HIS CLAIM, CONTENDING THE EVIDENCE PRESENTED PROVES HIS ENTITLEMENT TO FURTHER BENEFITS. WE DISAGREE. HAVING REVIEWED THE EVIDENCE DE NOVO, WE CANNOT FIND SUFFICIENT EVIDENCE TO JUSTIFY OVERTURNING THE PARTIAL DENIAL. WE WOULD ADOPT AND AFFIRM THE ORDER OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 25, 1974,
IS AFFIRMED.

WCB CASE NO. 68-931

JULY 12, 1974

CECIL MC CARTY, CLAIMANT

COONS, MALAGON AND COLE,
CLAIMANT'S ATTORNEYS
SOUTHER, SPAULDING, KINSEY,
WILLIAMSON AND SCHWABE,
DEFENSE ATTORNEYS

ON FEBRUARY 21, 1974, THE WORKMEN'S COMPENSATION BOARD ISSUED ON OWN MOTION ORDER DIRECTING THAT A REFEREE CONDUCT A HEARING ON CLAIMANT'S NEED FOR AND ENTITLEMENT TO FURTHER COMPENSATION FOR AN INJURY OF FEBRUARY 3, 1966.

CLAIMANT HAS NOW WITHDRAWN HIS REQUEST FOR OWN MOTION RELIEF FOR THAT INJURY AND THE ORDER DIRECTING THAT A HEARING BE HELD SHOULD, THEREFORE, BE DISMISSED.

IT IS SO ORDERED.

WCB CASE NO. 73-1170

JULY 12, 1974

HOWARD B. CASEY, CLAIMANT

COONS, MALAGON AND COLE,
CLAIMANT'S ATTORNEYS
COLLINS, FERRIS AND VELURE,
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE EMPLOYER HAS REQUESTED BOARD REVIEW OF A REFEREE'S RULING AGAINST ITS PRESENT CONTENTION THAT CLAIMANT WAS NOT COMPENSABLY INJURED AS ORIGINALLY ASSUMED - HIS FINDING THAT CLAIMANT'S UNSCHEDULED DISABILITY AS A RESULT OF THE INJURY EQUALLED 32 DEGREES, AND HIS ORDER ON RECONSIDERATION GRANTED CLAIMANT'S ATTORNEY A FEE, PAYABLE BY THE EMPLOYER, FOR SUCCESSFULLY RESISTING THE ATTEMPTED DENIAL.

THE REFEREE'S OPINION AND ORDER DEMONSTRATES A VERY CAREFUL CONSIDERATION OF THE EVIDENCE PRESENTED WITH PARTICULAR ATTENTION BEING GIVEN TO THE IMPORTANT MATTER OF CREDIBILITY.

HAVING REVIEWED THE RECORD DE NOVO AND HAVING GIVEN WEIGHT TO THE REFEREE'S OBSERVATIONS REGARDING WITNESS CREDIBILITY, WE CONCUR WITH HIS OPINION AND ORDER, DATED DECEMBER 28, 1973.

SINCE THE REFEREE ENTERED HIS ORDER ON MOTION FOR RECONSIDERATION IN WHICH HE ALLOWED CLAIMANT'S ATTORNEY A FEE OF 500 DOLLARS PAYABLE BY THE EMPLOYER, THE OREGON COURT OF APPEALS ISSUED ITS DECISION IN THE MATTER OF THE COMPENSATION OF MARY E. EGGER V. GATEWAY CARE CENTER, -- OAS --, --OR APP-- (JUNE 17, 1974). IN IT, THE COURT HAS SEEN FIT TO VERY LITERALLY INTERPRET THE STATUTES RELATING TO AN ALLOWANCE OF THE ATTORNEY'S FEES.

CLAIMANT INITIATED THE REQUEST FOR HEARING AND THE COMPENSABILITY OF CLAIMANT'S CLAIM WAS ONLY THEN RAISED AS AN ISSUE. LOOKING AT ORS 656.386(1) LITERALLY, CLAIMANT DID NOT PREVAIL ON AN APPEAL OF A REJECTED CASE. THEREFORE, THE REFEREE'S ORDER ON CLAIMANT'S MOTION FOR RECONSIDERATION SHOULD BE REVERSED.

BECAUSE THE EMPLOYER DID INITIATE THIS BOARD REVIEW AND CLAIMANT'S COMPENSATION WAS NEITHER DISALLOWED NOR REDUCED, EMPLOYER IS LIABLE FOR CLAIMANT'S ATTORNEY'S FEE IN CONNECTION WITH BOARD REVIEW.

ORDER

THE REFEREE'S ORDER ON CLAIMANT'S MOTION FOR RECONSIDERATION, DATED JANUARY 25, 1974, IS HEREBY REVERSED.

THE REFEREE'S OPINION AND ORDER, DATED DECEMBER 28, 1973, IS HEREBY ADOPTED AND AFFIRMED IN ITS ENTIRETY.

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

WCB CASE NO. 73-3470-E JULY 12, 1974

HENRY DEISTER, CLAIMANT
FRANKLIN, BENNETT, OFELT AND JOLLES,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

IN JANUARY, 1971, CLAIMANT MADE A CLAIM FOR WORKMEN'S COMPENSATION BENEFITS ON ACCOUNT OF A CONTACT DERMATITIS. THE CLAIM WAS ACCEPTED AND BENEFITS PROVIDED. UPON CLOSURE, BOTH THE STATE ACCIDENT INSURANCE FUND AND THE CLAIMANT APPEALED THE DETERMINATION ORDER, DATED SEPTEMBER 7, 1973, AWARDED COMPENSATION EQUAL TO 60 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY. THE REFEREE AFFIRMED THE DETERMINATION ORDER.

THE FUND HAS REQUESTED BOARD REVIEW, AND THE CLAIMANT CROSS-REQUESTED REVIEW.

THE REFEREE DID NOT, AS THE FUND SEEMS TO BELIEVE, FOUND HIS AFFIRMANCE OF THE DETERMINATION ORDER ON AN ASSUMPTION THAT CLAIMANT'S DYSHYDROTIC ECZEMA AND POTASSIUM DICHROMATE SENSITIVITY ARE COMPENSABLE CONSEQUENCES OF THE WORK RELATED EXPOSURE. HE STATED -

I CONCLUDE THAT THE BEST READING OF THE REPORTS OF DR. STORRS AND DR. WRIGHT IN CONTEXT WITH ONE ANOTHER IS THAT THE WORK EXPOSURE WAS A MATERIAL CONTRIBUTING CAUSE TO SKIN ERUPTIONS WHICH OCCURRED FOLLOWING EXPOSURE TO ANTIGENS IN THE COURSE OF EMPLOYMENT, INCLUDING THE EXPOSURE OF DECEMBER 29, 1970. I FURTHER CONCLUDE THAT A CAUSAL CONNECTION HAS NOT BEEN DEMONSTRATED BETWEEN CLAIMANT'S EMPLOYMENT AND SKIN ERUPTIONS WHICH HAVE OCCURRED INDEPENDENTLY OF EXPOSURE TO ELEMENTS SIMILAR TO THOSE WHICH WERE THE PRECIPITATING ANTIGENS ON THE JOB. I CONCLUDE THAT THE NET RESULT IS THAT CLAIMANT'S WORK SITUATION HAS GENERATED A CONDITION WHICH EXCLUDES HIM FROM ALL AREAS OF THE LABOR MARKET WHERE HE WOULD BE EXPOSED TO PRECIPITATING ANTIGENS OF THE SAME CHARACTER AS HE WAS SENSITIZED TO ON THE JOB WITH FRERES. BUT THE RECORD DOES NOT DEMONSTRATE THAT THE COMPENSABLE INJURY IS THE FACTOR WHICH PROHIBITS CLAIMANT FROM WORKING IN OTHER AREAS WHERE SKIN ERUPTIONS MIGHT OCCUR AS A RESULT OF EXPOSURE TO IRRITANTS OTHER THAN THOSE CONTACTED AT FRERES.

ALTHOUGH DR. STORRS CONSIDERS THE PERMANENT DISABILITY 'MINOR', EXCLUSION FROM THE PRINCIPAL AREAS OF HIS LIFE-TIME WORK EXPERIENCE HAS SUBSTANTIALLY MORE THAN A MINOR IMPACT UPON CLAIMANT'S EARNING CAPACITY WHEN VIEWED IN CONTEXT WITH HIS AGE, EDUCATION AND 'FAIR TO POOR' RETRAINABILITY. THE AWARD MADE BY THE CLOSING AND EVALUATION DIVISION APPEARS TO ME TO BE AN APPROPRIATE EVALUATION OF THE PERMANENT DISABILITY IN TERMS OF LOSS OF WAGE EARNING CAPACITY.

CLAIMANT'S DISABILITY IS CLEARLY SHOWN BY THE MEDICAL REPORTS TO BE A SYSTEMIC PATHOLOGY WHICH MANIFESTS ITSELF NOT ONLY IN THE EXTREMITIES BUT IN OTHER PARTS OF THE BODY ALSO. I CONCLUDE THAT THE DISABILITY FALLS WITHIN THE UNSCHEDULED AREA AND WAS PROPERLY COMPENSATED AS SUCH BY THE DETERMINATION ORDER. (EMPHASIS SUPPLIED)

REFEREE'S OPINION AND ORDER
PAGES 6 AND 7

WE AGREE WITH THE REFEREE AND CONCLUDE HIS OPINION AND ORDER SHOULD BE ADOPTED AND AFFIRMED IN ITS ENTIRETY.

THE FUND INITIATED THIS REVIEW AND FAILED TO REDUCE THE COMPENSATION AWARDED TO THE CLAIMANT. PURSUANT TO ORS 656.382(2), THE FUND IS LIABLE FOR THE FEE OF CLAIMANT'S ATTORNEY FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 7, 1974, IS AFFIRMED.

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

WCB CASE NO. 73-2290

JULY 12, 1974

JOYCE A NELSON, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER DENIED CLAIMANT'S CLAIM FOR LEFT WRIST AND HAND INJURY. THE REFEREE AFFIRMED THE DENIAL.

CLAIMANT, A 34 YEAR OLD JANITRESS AT PORTLAND AIRPORT, DEVELOPED A PAIN IN HER LEFT WRIST AFTER WORKING AT THE AIRPORT APPROXIMATELY TWO OR THREE MONTHS. SURGERY BY DR. KHAN WAS PERFORMED, AND HE REPORTED THAT IT INVOLVED EITHER AN EXCISION OF A GANGLION CYST OR REMOVAL OF A DEFUSED SYNOVIAL THICKENING. DR. KHAN GRADUATED FROM THE NATIONAL TAIWAN UNIVERSITY SCHOOL OF MEDICINE AND CAME TO THE UNITED STATES IN 1965. HE COMPLETED HIS SURGICAL TRAINING AND ORTHOPEDIC TRAINING IN DECEMBER OF 1972. DR. KHAN WAS CANDID IN HIS DEPOSITION TO THE EFFECT THAT HE DID NOT KNOW THE TRUE ETIOLOGY OF CLAIMANT'S WRIST PROBLEMS. HE DID TESTIFY THAT ANY KIND OF REPETITIVE OR EXCESSIVE MOTION OF THE WRIST WOULD BE A CONTRIBUTING FACTOR, ALTHOUGH HIS TESTIMONY WAS SOMEWHAT EQUIVOCAL.

TAKING DR. KHAN'S TESTIMONY AS A WHOLE, IT APPEARS THAT CLAIMANT'S WRIST CONDITION EITHER WAS CAUSED BY OR AGGRAVATED BY CLAIMANT'S WORK. THE DOCTOR'S TESTIMONY IS NOT DEFINITIVE, BUT THIS IS UNDERSTANDABLE IN VIEW OF THE TRAINING AND EXPERIENCES OF THE DOCTOR. THE THRUST OF HIS TESTIMONY IS SUFFICIENT TO ESTABLISH MEDICAL CAUSATION.

EVEN IF THE MEDICAL EVIDENCE, WHICH IN THIS CASE WAS VERY CLOSE, WERE NOT TO BE SUFFICIENT TO ESTABLISH MEDICAL CAUSATION, THE TESTIMONY OF THE CLAIMANT AND ANOTHER WITNESS WAS SUFFICIENT TO RELATE CLAIMANT'S INJURY TO HER WORK ACTIVITY, NOTWITHSTANDING ABSENCE OF MEDICAL TESTIMONY. URIS V. SCD, 247 OREGON 420.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 19, 1974, IS REVERSED.

THE CLAIM IS REMANDED TO THE EMPLOYER TO BE ACCEPTED FOR PAYMENT OF COMPENSATION AS PROVIDED BY LAW.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 1,000 DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH THE HEARING AND THE BOARD REVIEW.

WCB CASE NO. 73-2327

JULY 12, 1974

WILBUR C. PRIDEAUX, CLAIMANT
BETTIS AND REIF, CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM AS NOT BEING AN ACCIDENTAL PERSONAL INJURY OR AN OCCUPATIONAL DISEASE. THE REFEREE FOUND THAT CLAIMANT HAS A CHRONIC OBSTRUCTIVE LUNG DISEASE, PARTIALLY CAUSED BY HIS WORK ENVIRONMENT AND ORDERED THE STATE ACCIDENT INSURANCE FUND TO ACCEPT THE CLAIM AS AN OCCUPATIONAL DISEASE.

CLAIMANT, A 53 YEAR OLD LONGTIME WELDER, EXPERIENCED A SEVERE DIZZY SPELL ON APRIL 26, 1973, WHILE WORKING AS A WELDER. HE WAS HOSPITALIZED IMMEDIATELY. SEVERAL DOCTORS EXAMINED AND TREATED HIM.

DR. RODNEY L. CRISLIP, A SPECIALIST IN DISEASES OF THE HEART AND LUNGS, REPORTED THAT THE DIRT AND SMOKE THAT CLAIMANT BREATHEES WHILE WELDING THROUGH THE YEARS HAS PLAYED A SIGNIFICANT ROLE IN THE DEVELOPMENT OF HIS CHRONIC OBSTRUCTIVE LUNG DISEASE, AND THAT TO SOME EXTENT, HIS LUNG PROBLEM IS JOB RELATED. HE FURTHER RECOMMENDED THAT CLAIMANT SHOULD NOT RETURN TO A DIRTY ENVIRONMENT.

THE STATE ACCIDENT INSURANCE FUND CONTENDS ON REVIEW THAT THE REFEREE'S ORDER SHOULD BE REVERSED ON THE GROUNDS THAT COMPENSATION SHOULD NOT BE ALLOWED FOR A CONDITION FOR WHICH CLAIMANT DID NOT SEEK TREATMENT AND FOR WHICH NO CLAIM WAS EVER FILED. THE INITIAL REPORT CLEARLY SHOWS THAT THE WORKMAN WAS WELDING AND COLLAPSED ON THE JOB. HE WAS TAKEN TO THE HOSPITAL IN AN AMBULANCE. OBVIOUSLY, THE CLAIMANT OR HIS WIFE WHO MADE THE INITIAL REPORT COULD NOT AND SHOULD NOT BE EXPECTED TO KNOW THE NATURE, EXTENT AND CAUSE OF CLAIMANT'S PROBLEMS. THIS IS ESPECIALLY TRUE IN THIS CASE IN WHICH SEVERAL DOCTORS FOUND MUCH DIFFICULTY IN DEFINITELY DIAGNOSING THE CLAIMANT'S CONDITION.

THE BOARD CONCURS WITH THE FINDINGS AND OPINION AND ORDER OF THE REFEREE. THE WEIGHT OF EVIDENCE IN THE RECORD IS THAT CLAIMANT HAS A CHRONIC OBSTRUCTIVE LUNG DISEASE.

PARTIALLY CAUSED BY HIS WORK ENVIRONMENT AND THAT THIS OCCUPATIONAL DISEASE IS COMPENSABLE.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 11, 1974, IS AFFIRMED.

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

WCB CASE NO. 73-3240 JULY 16, 1974

NANCY L. MEYER, CLAIMANT

THIS MATTER HAVING COME ON REGULARLY BEFORE THE UNDERSIGNED COMMISSIONER OR COMMISSIONERS, UPON THE STIPULATION OF THE PARTIES, CLAIMANT ACTING BY AND THROUGH POZZI, WILSON AND ATCHISON, HER ATTORNEYS, AND THE EMPLOYER-CARRIER ACTING BY AND THROUGH THEIR ATTORNEYS, SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE, AND THE BOARD BEING FULLY ADVISED IN THE PREMISES, NOW, THEREFORE,

IT IS HEREBY ORDERED THAT CLAIMANT'S CROSS-REQUEST FOR REVIEW IS DISMISSED.

WCB CASE NO. 73-2638 JULY 16, 1974

GREGORY P. MC MAHON, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTORNEYS

ON JULY 12, 1974, TICE ELECTRIC, THROUGH ITS CARRIER, ARGONAUT INSURANCE COMPANY, MOVED FOR RECONSIDERATION OF THE BOARD'S ORDER DISMISSING ITS REQUEST FOR REVIEW. THE MOTION WAS SUPPORTED BY A DOCUMENT ENTITLED OBJECTION TO MOTION FOR DISMISSAL.

THE MATTERS RAISED BY THE OBJECTION WERE CONSIDERED BY THE BOARD PRIOR TO ISSUING ITS ORDER OF DISMISSAL. THE BOARD THEREFORE CONCLUDES THE MOTION FOR RECONSIDERATION SHOULD BE DENIED.

IT IS SO ORDERED.

JULY 16, 1974

NELL CRANE, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT SEEKS BOARD REVIEW OF A REFEREE'S ORDER GRANTING HER AN AWARD OF SCHEDULED PERMANENT PARTIAL DISABILITY EQUAL TO 100 DEGREES FOR PARTIAL LOSS OF THE LEFT LEG, CONTENDING SHE IS FACTUALLY AND LEGALLY ENTITLED TO AN AWARD OF PERMANENT TOTAL DISABILITY.

CLAIMANT IS A NOW 71 YEAR OLD WOMAN WHO FRACTURED THE NECK OF THE LEFT FEMUR WHILE WORKING AS A WAITRESS AT THE BOHEMIAN SIDEWALK CAFE ON AUGUST 28, 1968.

IN SPITE OF EXCELLENT MEDICAL TREATMENT, INCLUDING ORTHOPEDIC SURGERY, SHE IS NO LONGER ABLE TO WORK AS A WAITRESS DUE TO RESIDUAL PAIN IN HER LEFT LEG. SHE HAS NOT WORKED SINCE MAY 20, 1971, AND PROBABLY NEVER WILL AGAIN.

RECENTLY SHE HAS COMPLAINED OF BACK PAIN. DR. ZIMMERMAN REPORTED THAT SHE HAS RATHER MARKED DEGENERATIVE ARTHRITIS OF HER BACK. IN HIS OPINION, HER INACTIVITY, THE TIME ON CRUTCHES, AND THE OPERATIONS ON THE HIP HAD PROBABLY POTENTIATED SOME OF THE SYMPTOMATOLOGY IN HER BACK BUT HE DID NOT THINK THE INJURY HAD IN ANY WAY AFFECTED THE ARTHRITIC PROCESS IN HER BACK. CLAIMANT'S EXHIBIT 2

CLAIMANT, CITING DR. WILMER CAUTHORN SMITH'S PRINCIPLES OF DISABILITY EVALUATION AND AUDAS V. GALAXIE, 2 OR APP 520 (1970), CONTENDS HER BACK COMPLAINTS REPRESENT UNSCHEDULED PERMANENT PARTIAL DISABILITY AND THAT HER 'HIP' INJURY IS NOT SOLELY A SCHEDULED INJURY.

DR. ZIMMERMAN'S REPORT DOES NOT, IN OUR OPINION, ESTABLISH ANY UNSCHEDULED BACK DISABILITY - NOR DOES DR. SMITH'S BOOK SUPPORT CLAIMANT'S ARGUMENT. ON PAGE 120, IN DISCUSSING EVALUATION OF THE LEG RADICAL, HE STATES -

' THIS RADICAL BEGINS WITH THE KNEE JOINT AND INCLUDES ALL STRUCTURES PROXIMAL THERETO, INCLUDING THE HIP JOINT... THE HIP JOINT LIES WITHIN THE LEG RADICAL, AND DISABILITY HERE IS TO BE RATED IN TERMS OF THE LEG. '

THE AGENCY HAS UNIFORMLY RATED 'HIP' DISABILITY IN ACCORDANCE WITH THAT PRINCIPLE.

WE DO NOT BELIEVE THE AUDAS CASE, SUPRA, IS APPLICABLE TO HIP INJURIES AS CLAIMANT CONTENDS. DECIDING THE CASE OF RONALD LUNDQUIST, WCB CASE NO. 73-1347 (FEBRUARY 28, 1974), WE STATED -

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.

WE CONCLUDE CLAIMANT IS NOT ENTITLED TO AN AWARD OF PERMANENT TOTAL DISABILITY. THE AWARD MUST BE LIMITED TO THE LEG AND BASED ON THE IMPAIRMENT OF PHYSICAL FUNCTION. SURRATT V. GUNDERSON BROS. ENGINEERING CORP., 259 OR 65 (1971). THE AWARD OF 100 DEGREES GRANTED BY THE REFEREE ADEQUATELY COMPENSATES CLAIMANT'S LEG DISABILITY AND THE REFEREE'S ORDER SHOULD THEREFORE BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 28, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 72-2166 JULY 24, 1974

HENRY JAMES, CLAIMANT
EVA, SCHNEIDER AND MOULTRIE,
CLAIMANT'S ATTORNEYS
STAN JONES, DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW PRESENTING THE ISSUE OF WHETHER OR NOT THERE SHOULD BE AN AWARD OF PERMANENT PARTIAL DISABILITY. THE DETERMINATION ORDER MADE NO AWARD OF PERMANENT PARTIAL DISABILITY AND THE REFEREE AFFIRMED THE DETERMINATION ORDER.

CLAIMANT, 62 YEARS OF AGE AT THE TIME OF THE INDUSTRIAL INJURY ON APRIL 25, 1971, SUFFERED A CONTACT DERMATITIS FROM CHEMICALS USED TO CLEAN BOILERS WHILE WORKING AS A MILLWRIGHT. CLAIMANT'S SKIN, NOSTRILS AND EYES HAVE BECOME CHRONICALLY IRRITATED AND HIS DOCTORS HAVE ADVISED HE SHOULD NOT RETURN INTO AN ENVIRONMENT WHERE HE WOULD BE EXPOSED TO THE CHEMICALS.

REGARDLESS OF WHETHER CLAIMANT HAS REFUSED TO ACCEPT ALTERNATIVE EMPLOYMENT OR WHETHER CLAIMANT WOULD OR WOULD NOT STAY OUT OF THE BOILER ROOM EVEN THOUGH ORDERED TO BY

THE EMPLOYER, HE HAS BEEN PERMANENTLY PRECLUDED FROM A SEGMENT OF EMPLOYMENT OPPORTUNITIES BY REASON OF HIS SENSITIVITY. ON DE NOVO REVIEW, THE BOARD CONCLUDES THAT CLAIMANT HAS SUSTAINED A 10 PERCENT (32 DEGREES) UNSCHEDULED PERMANENT PARTIAL DISABILITY LOSS OF EARNING CAPACITY IN THE FIELD OF GENERAL EMPLOYMENT.

ORDER

THE OPINION AND ORDER OF THE REFEREE, DATED DECEMBER 7, 1973, AND THE SUPPLEMENTAL OPINION AND ORDER OF THE REFEREE, DATED DECEMBER 19, 1973, IS HEREBY MODIFIED TO AWARD CLAIMANT 32 DEGREES FOR UNSCHEDULED PERMANENT PARTIAL DISABILITY.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE 25 PERCENT OF THE INCREASE IN COMPENSATION ASSOCIATED WITH THIS AWARD WHICH WILL NOT EXCEED 1,500 DOLLARS.

IN ALL OTHER RESPECTS, THE OPINION AND ORDER AND SUPPLEMENTAL OPINION AND ORDER OF THE REFEREE IS AFFIRMED.

WCB CASE NO. 73-3360

JULY 24, 1974

JAMES G. WALTER, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE IS WHETHER CLAIMANT'S ATTORNEY'S FEES SHOULD BE ASSESSED AGAINST THE STATE ACCIDENT INSURANCE FUND PURSUANT TO ORS 656.382. THE REFEREE AWARDED CLAIMANT 25 PERCENT PENALTY FOR DELAY IN PAYMENT OF TEMPORARY TOTAL DISABILITY TO CLAIMANT BUT DENIED CLAIMANT'S ATTORNEY'S FEES.

ORS 656.262(8) PROVIDES FOR A PENALTY UP TO 25 PERCENT OF THE AMOUNT DUE THE CLAIMANT FOR UNREASONABLE DELAYS IN PAYMENT AND FURTHER PROVIDES -

'. . . PLUS ANY ATTORNEY'S FEES WHICH MAY BE ASSESSED UNDER ORS 656.382.'

ORS 656.382 PROVIDES FOR PENALTIES AND ATTORNEY'S FEES, PAYABLE BY EMPLOYER OR FUND, FOR MISCONDUCT.

THE BOARD CONCURS WITH THE FINDING AND ORDER OF THE REFEREE THAT UNDER THE FACTS OF THIS CASE, THE ASSESSMENT OF 25 PERCENT OF THE DELAYED TEMPORARY TOTAL DISABILITY WAS CORRECT AND THAT THE DENIAL OF ATTORNEY'S FEES TO BE PAID BY THE FUND PURSUANT TO ORS 656.382 WAS CORRECT.

ORDER

THE ORDER ON RECONSIDERATION OF THE REFEREE, DATED JANUARY 25, 1974, IS AFFIRMED.

JULY 24, 1974

EARL R. HENRY, CLAIMANT

RONALD M. SOMERS, CLAIMANT'S ATTORNEY
MC MENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUES ARE THE EXTENT OF PERMANENT PARTIAL DISABILITY AND NECESSITY FOR PAYMENT OF FURTHER MEDICAL BILLS. THE DETERMINATION ORDER AWARDED CLAIMANT 40 PERCENT LOSS OF HEARING RIGHT EAR EQUAL TO 25 DEGREES. THE REFEREE AFFIRMED THIS AWARD.

CLAIMANT, A 63 YEAR OLD WORKER, SUSTAINED A RIGHT EAR INJURY WHEN SOME HOT SLAG ENTERED HIS RIGHT EAR.

THE BOARD CONCURS WITH THE FINDINGS AND OPINION AND ORDER OF THE REFEREE THAT THERE IS INSUFFICIENT MEDICAL EVIDENCE TO SUPPORT EITHER REOPENING OR AN AWARD IN THE UNSCHEDULED AREA. THE BOARD ADOPTS THE REFEREE'S OPINION AND ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 8, 1974, IS AFFIRMED.

JULY 24, 1974

VERNON C. CULLINGS, CLAIMANT

IN OCTOBER, 1973, IT CAME TO THE ATTENTION OF THE WORKMEN'S COMPENSATION BOARD THAT CERTAIN PHYSICAL PROBLEMS FOR WHICH CLAIMANT WAS THEN SEEKING TREATMENT MIGHT BE THE RESULT OF A 1963 COMPENSABLE INJURY.

ON ITS OWN MOTION, THE BOARD INQUIRED INTO THE MATTER AND LEARNED THAT CLAIMANT'S TREATING PHYSICIAN CONSIDERED CLAIMANT'S PROBLEMS MORE LIKELY THE RESULT OF AN INJURY IN JULY, 1973. CLAIMANT INITIALLY MADE CLAIM FOR BENEFITS UNDER THAT INJURY AND THEN, ON MAY 30, 1974, WITHDREW HIS REQUEST FOR BENEFITS.

IT NOW APPEARING THAT CLAIMANT DOES NOT WISH TO PROCEED WITH ANY CLAIM FOR COMPENSATION, WE CONCLUDE THE MATTER SHOULD BE DISMISSED.

IT IS SO ORDERED.

SAIF CLAIM NO. SC 50801 JULY 24, 1974

BESSIE M. FREMERSDORF, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS

THIS MATTER INVOLVES AN INJURY SUSTAINED BY CLAIMANT IN 1966. AS A RESULT OF THAT CLAIM, AN AWARD WAS GRANTED EQUAL TO 55 PERCENT LOSS OF AN ARM BY SEPARATION FOR UNSCHEDULED BACK DISABILITY AND 50 PERCENT LOSS FUNCTION OF THE LEFT LEG.

THE MATTER WAS AGAIN BEFORE THE WORKMEN'S COMPENSATION BOARD FOR OWN MOTION CONSIDERATION PURSUANT TO THE CONTINUING JURISDICTION OF THE BOARD UNDER ORS 656.278. BY OWN MOTION ORDER DATED JANUARY 18, 1974, THE STATE ACCIDENT INSURANCE FUND WAS ORDERED TO REOPEN CLAIMANT'S CLAIM AS OF JULY 5, 1973.

CLAIMANT HAS UNDERGONE FURTHER SURGERY CONSISTING OF A LUMBAR LAMINECTOMY AND FUSION. MEDICAL REPORTS HAVE REPORTED CLAIMANT HAS RECOVERED SATISFACTORILY AND THE STATE ACCIDENT INSURANCE FUND HAS REQUESTED REEVALUATION OF HER CLAIM.

IT IS HEREBY ORDERED THAT TIME LOSS AUTHORIZED TO, START JULY 5, 1973 BE TERMINATED AS OF JUNE 28, 1974, WITHOUT A FURTHER AWARD OF COMPENSATION FOR PERMANENT DISABILITY.

WCB CASE NO. 73-1485 JULY 24, 1974

DIXIE LEE NEGLESS, CLAIMANT

COLLINS, FERRIS AND VELURE,
CLAIMANT'S ATTORNEYS

JERE M. WEBB, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS IS A DENIED AGGRAVATION CLAIM. THE REFEREE FOUND CLAIMANT'S LEFT LEG CONDITION HAD AGGRAVATED AND AWARDED L5 DEGREES FOR PARTIAL LOSS OF THE LEFT LEG BUT DENIED CLAIMANT'S CLAIM FOR AGGRAVATION CONCERNING LOW BACK. CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE FINDINGS AND OPINION AND ORDER OF THE REFEREE AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 14, 1974, IS AFFIRMED.

GEORGE H. ROGERS, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS.
MERLIN MILLER, DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH SUSTAINED A DENIAL MADE BY THE CARRIER OF CLAIMANT'S CLAIM FOR INJURY IN THE NATURE OF A HERNIA.

CLAIMANT WAS EMPLOYED AS A TRUCK DRIVER FOR SAFEWAY STORES. IN APRIL, 1973, ON A REGULAR DELIVERY FROM PORTLAND TO VARIOUS POINTS IN WASHINGTON, A MEAT DELIVERY TO THE SAFEWAY STORE IN CASTLE ROCK, WASHINGTON WAS MADE. IN THE COURSE OF THE DELIVERY, CLAIMANT WAS CALLED UPON TO ASSIST AN EMPLOYEE WHO SLIPPED WITH A HIND QUARTER OF BEEF ON HIS SHOULDER. TOGETHER THEY LIFTED THE 160 POUND QUARTER ONTO A MEAT HOOK IN THE COOLER.

WITHIN THE NEXT DAY OR TWO AFTER THIS INCIDENT, WHILE TAKING A SHOWER, CLAIMANT NOTICED A SMALL LUMP IN THE RIGHT GROIN AREA. CLAIMANT SAW DR. KAZMIERSKI ON APRIL 27, 1973. ON MAY 5, IN CONSULTATION WITH DR. REICHLE, CLAIMANT WAS INFORMED HE HAD A HERNIA AND SURGERY WOULD BE NECESSARY. A FORM 801 WAS SUBMITTED JUNE 1, 1973.

AT HEARING, THE REFEREE HELD THAT CLAIMANT HAD FILED TIMELY NOTICE, BUT DENIED THE CLAIM AS NOT PROVEN TO BE INDUSTRIALLY RELATED.

THE BOARD, ON REVIEW, IS IMPRESSED BY THE TESTIMONY OF CLAIMANT'S WITNESS, MR. WATTERBERG, IN HIS PRECISE RECOLLECTION AND NARRATION OF THE ACCIDENT WHICH CORROBORATED COMPLETELY WITH CLAIMANT'S VERSION OF THE ACCIDENT. THE BOARD CONCLUDES THE EVIDENCE JUSTIFIES A CONCLUSION THAT CLAIMANT SUSTAINED A COMPENSABLE INDUSTRIAL INJURY AS HE ALLEGED. THE REFEREE'S ORDER SHOULD THEREFORE BE REVERSED.

ORDER

THE ORDER OF THE REFEREE IS REVERSED AND THE CARRIER IS HEREBY ORDERED TO ACCEPT CLAIMANT'S CLAIM AND PAY HIM BENEFITS AS PROVIDED BY LAW.

CLAIMANT'S COUNSEL IS HEREBY AWARDED A REASONABLE ATTORNEY'S FEE OF 650 DOLLARS, PAYABLE BY THE EMPLOYER, FOR HIS SERVICES AT THE HEARING AND ON THIS REVIEW.

JULY 25, 1974

THOMAS CODY, JR., CLAIMANT
 LINDSAY, NAHSTOLL, HART, DUNCAN,
 DAFOE AND KRAUSE, CLAIMANT'S ATTYS.
 DEPARTMENT OF JUSTICE, DEFENSE ATTY.
 REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER SEEKING A RULING THAT A SECOND DETERMINATION ORDER BE CONSIDERED ON A FIRST DETERMINATION ORDER FOR PURPOSES OF ESTABLISHING THE BEGINNING POINT OF CLAIMANT'S AGGRAVATION PERIOD.

THE FUND HAS CROSS-APPEALED THE REFEREE'S ALLOWANCES OF PERMANENT DISABILITY AS UNJUSTIFIED BY THE FACTS OR THE LAW.

CLAIMANT SUFFERED SEVERE BURNS AS A RESULT OF AN INDUSTRIAL ACCIDENT ON MAY 3, 1963. AFTER YEARS OF TREATMENT, HIS PHYSICIANS DECIDED HE WAS MEDICALLY STATIONARY AND HIS CLAIM WAS CLOSED BY THE STATE ACCIDENT INSURANCE FUND ON SEPTEMBER 27, 1971. CLAIMANT THEREAFTER REQUESTED A HEARING OBJECTING TO THE CLOSURE OF THE CLAIM WITHOUT AN AWARD OF PERMANENT DISABILITY. NO HEARING WAS HELD. THE FUND INSTEAD AGREED TO REOPEN THE CLAIMANT'S CLAIM FOR FURTHER CORRECTIVE SURGERY.

IN NEGOTIATING THE REOPENING AGREEMENT, THE CLAIMANT'S ATTORNEY WROTE THE FOLLOWING LETTER TO THE FUND'S ATTORNEY -

I AM IN RECEIPT OF A COPY OF YOUR LETTER OF FEBRUARY 2ND TO THE HEARINGS DIVISION OF THE WORKMEN'S COMPENSATION BOARD. HOWEVER, YOU DID NOT INCLUDE A COPY OF THE ORDER REOPENING MR. CODY'S CLAIM.

THE MATTER OF DISMISSING THE MATTER BEFORE THE COMPENSATION BOARD AT THIS TIME RAISES A POSSIBLE PROBLEM. OUR REQUEST FOR A HEARING FILED ON BEHALF OF MR. CODY IS IN EFFECT AN APPEAL OF THE ORDER OF SEPTEMBER 29, 1971, CLOSING HIS CLAIM WITHOUT ANY AWARD OF COMPENSATION FOR PERMANENT PARTIAL DISABILITY AND NOT ON THE BASIS OF AN AGGRAVATION. I CANNOT ALLOW THE DISMISSAL OF THE REQUEST FOR HEARING IF BY DOING SO I WAIVE MR. CODY'S RIGHT TO APPEAL FROM THE ORDER OF THE BOARD CLOSING HIS CLAIM WITHOUT AN AWARD FOR PERMANENT PARTIAL DISABILITY. IF THE ORDER OF THE BOARD REOPENING MR. CODY'S CLAIM ALSO SETS ASIDE THE ORDER OF SEPTEMBER 29, 1971, I CAN SEE NO PROBLEM. I DO NOT WANT TO PUT MR. CODY IN THE POSITION WHERE WE WILL HAVE TO PROVE AN AGGRAVATION IN ORDER TO CONTEST

THE CLOSING OF HIS CLAIM WITHOUT ANY AWARD FOR PERMANENT PARTIAL DISABILITY. SHOULD THERE BE ANY PROBLEM ALONG THESE LINES, I WOULD PREFER TO HAVE THE REQUEST FOR HEARING CONTINUE SO THAT IF THE MATTER HAS TO BE HEARD IT WILL BE HEARD ON A STRAIGHT APPEAL BASIS, RATHER THAN AN AGGRAVATION BASIS. I WOULD APPRECIATE HEARING FROM YOU AT YOUR EARLY CONVENIENCE.

THE FUND'S ATTORNEY REPLIED -

ANSWERING YOUR LETTER OF FEBRUARY 4, 1972, YOU WILL NOTE MY LETTER OF FEBRUARY 2, 1972 ADDRESSED TO THE BOARD CONTEMPLATES A RE-SUBMISSION TO C AND E WHEN MR. CODY'S CONDITION AGAIN BECOMES STATIONARY.

THE BOARD WILL OF COURSE AT THAT TIME ISSUE A NEW DETERMINATION ORDER EXPRESSING ITS VIEWS AS TO WHETHER OR NOT MR. CODY HAS PERMANENT DISABILITY OR MORE THAN HAS PREVIOUSLY BEEN AWARDED. FROM THAT DETERMINATION YOU WILL HAVE AN 'APPEAL'.

IN THE EVENT SOME OTHER ATTORNEY FOR THE FUND MIGHT HAVE A DIFFERENT VIEW OF THE POSTURE OF THE CASE, I AM PLACING A COPY OF THIS LETTER IN BOTH THE CLAIM AND LEGAL FILES OF STATE ACCIDENT INSURANCE FUND WITH INSTRUCTIONS HEREBY GIVEN TO ANY SUBSEQUENT ATTORNEY TO RAISE NO ISSUE OF 'AGGRAVATION' IN A SUBSEQUENT TIMELY (WITHIN ONE YEAR) REQUEST FOR HEARING FROM THE NEXT DETERMINATION.

AFTER FURTHER TREATMENT AND CONVALESCENCE WAS COMPLETED, THE WORKMEN'S COMPENSATION BOARD ISSUED AN ORDER DENOMINATING A 'SECOND' DETERMINATION ORDER ON SEPTEMBER 11, 1973, GRANTING HIM CERTAIN FURTHER TEMPORARY TOTAL DISABILITY AND AN AWARD OF SCHEDULED PERMANENT DISABILITY OF 15 PERCENT LOSS OF THE RIGHT FOOT AND 10 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

CLAIMANT AGAIN REQUESTED A HEARING CONTESTING THE ADEQUACY OF THE PERMANENT DISABILITY AWARD AND SEEKING AN ORDER FIXING SEPTEMBER 11, 1973, AS THE INCEPTION DATE FOR HIS AGGRAVATION PERIOD.

THE REFEREE INEXPLICABLY FAILED TO DEAL WITH THE AGGRAVATION DATE ISSUE BUT DID INCREASE CLAIMANT'S PERMANENT DISABILITY AWARD BY GRANTING CLAIMANT 6.05 DEGREES FOR PARTIAL LOSS USE OF THE RIGHT FOREARM, 20 DEGREES FOR PARTIAL LOSS USE OF THE RIGHT LEG, 21.75 DEGREES UNSCHEDULED LOW BACK DISABILITY AND 29 DEGREES FOR UNSCHEDULED FACE AND HEAD DISABILITY, BEING A TOTAL INCREASE OF 47.3 DEGREES.

THE REFEREE'S CONCLUSION THAT CLAIMANT HAS SUFFERED UNSCHEDULED DISABILITY DUE TO FACE AND HEAD DISFIGUREMENT IS GIVEN PARTICULAR CREDENCE BY THE BOARD SINCE HE WAS IN A POSITION TO PERSONALLY OBSERVE THE CLAIMANT AND WE ARE NOT. THE RECORD OF CLAIMANT'S PHYSICAL LIMITATIONS AND

THEIR EFFECT ON CLAIMANT'S EARNING CAPACITY IS SUPPORTED BY THE RECORD. THE REFEREE'S ORDER SHOULD THEREFORE BE AFFIRMED.

WE TURN NOW TO THE AGGRAVATION DATE ISSUE. THE SUBJECTIVE INTENTION OF THE PARTIES CONCERNING THIS ISSUE MUST BE GLEANED FROM THEIR OBJECTIVE MANIFESTATIONS MADE AT THE TIME. THESE ARE CONTAINED IN THE TWO LETTERS QUOTED EARLIER.

WE DO NOT DISPUTE CLAIMANT'S ATTORNEY'S ASSERTION THAT HE WAS INTERESTED IN PROTECTING CLAIMANT'S AGGRAVATION PERIOD. HOWEVER, THE DOMINANT THEME OF HIS LETTER IS EXPRESSED BY THE SENTENCE -

' I DO NOT WANT TO PUT MR. CODY IN THE POSITION WHERE WE WILL HAVE TO PROVE AN AGGRAVATION IN ORDER TO CONTEST THE CLOSING OF HIS CLAIM WITHOUT ANY AWARD FOR PERMANENT PARTIAL DISABILITY. '

HE IS DEALING ESSENTIALLY WITH APPEAL RIGHTS, NOT AGGRAVATION RIGHTS.

THE FUND'S ATTORNEY RECOGNIZED THAT THEME AND RESPONDED APPROPRIATELY BY POINTING OUT THAT CLAIMANT WOULD AUTOMATICALLY HAVE A ONE-YEAR APPEAL PERIOD FOLLOWING RECLOSURE OF THE CLAIM WITHOUT A SETTING ASIDE OF THE ORIGINAL ORDER. HAD THE ORIGINAL ORDER BEEN SET ASIDE, THE 'SECOND' DETERMINATION ORDER WOULD HAVE PERFORCE BEEN THE FIRST DETERMINATION ORDER FROM WHICH THE AGGRAVATION TIME LIMIT IS MEASURED. IT WAS NOT SET ASIDE, HOWEVER, AND AT THIS POINT IN TIME, ITS EXISTENCE CANNOT BE DISPUTED. AS A MATTER OF LAW, THE CLAIMANT'S AGGRAVATION PERIOD BEGAN ON SEPTEMBER 27, 1971.

CLAIMANT SHOULD BE FULLY COGNIZANT OF THE WORKMEN'S COMPENSATION BOARD'S AUTHORITY, PURSUANT TO ORS 656.278, TO GRANT ADDITIONAL COMPENSATION IN AN APPROPRIATE CASE REGARDLESS OF THE EXPIRATION OF 'AGGRAVATION RIGHTS.'

BECAUSE OF THE EXTRAORDINARY NATURE OF CLAIMANT'S INJURY RESIDUALS, CLAIMANT SHOULD HAVE NO QUALMS ABOUT SEEKING A BOARD ORDER AWARDED ADDITIONAL TREATMENT OR BENEFITS FOR CONDITIONS SHOWN TO BE RELATED TO THE INJURY.

ORDER

IT IS HEREBY ORDERED THAT THE CLAIMANT'S FIVE-YEAR AGGRAVATION PERIOD BEGAN TO RUN FROM SEPTEMBER 29, 1971, WHICH IS THE DATE OF THE FIRST FINAL AWARD OF COMPENSATION TO THE CLAIMANT.

IT IS HEREBY FURTHER ORDERED THAT THE ORDER OF THE REFEREE, DATED MARCH 14, 1974, IS AFFIRMED.

JULY 25, 1974

ROBERT M. FLICK, CLAIMANT
RICHARDSON AND MURPHY, CLAIMANT'S ATTYS.
MC MENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE EMPLOYER HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER FINDING THAT OF SEVERAL SUCCESSIVE INSURERS OF THE EMPLOYER, MARYLAND CASUALTY COMPANY WAS LIABLE FOR CLAIMANT'S OCCUPATIONAL DISEASE BENEFITS CONTENDING THAT THE 'LAST INJURIOUS EXPOSURE' SOLUTION ADOPTED BY THE REFEREE IS, IN THIS CASE, BOTH UNFAIR AND UNNECESSARY.

THE EMPLOYER ALSO CONTENDS THAT CLAIMANT'S CLAIM FOR BENEFITS IS VOID BECAUSE IT WAS UNTIMELY MADE.

REGARDING THE TIMELINESS ISSUE, WE THINK CLAIMANT'S CLAIM WAS TIMELY. ALTHOUGH CLAIMANT'S PHYSICIAN ADVISED HIM IN 1969 THAT HIS HEARING LOSS WAS OCCUPATIONALLY INDUCED, HE NEVER DID BECOME 'DISABLED' WITHIN THE MEANING OF THAT WORD AS IT IS USED IN ORS 656.807(1). WE THINK 'DISABLED' AS IT IS THERE USED, ENVISIONED AN OVERT CESSATION OF WORK DUE TO THE DISEASE. SINCE THAT NEVER OCCURRED, CLAIMANT'S CLAIM WAS TIMELY FILED ON AUGUST 23, 1972.

REGARDING THE ISSUE OF WHICH CARRIER IS LIABLE, WE AGREE WITH THE REFEREE THAT MARYLAND CASUALTY IS LIABLE. THE REFEREE READ MATHIS V. SAIF, 10 OR APP 139 (1972) AS HOLDING THE LAST INSURER LIABLE. WE READ IT AS HOLDING THE LAST EMPLOYER LIABLE REGARDLESS OF ACTUAL CAUSATION FOR OVERRIDING POLICY REASONS. WE AGREE, HOWEVER, WITH THE REFEREE'S SOLUTION OF THIS DISPUTE BECAUSE CLAIMANT'S HEARING LOSS HAD NOT MATURED INTO A STATIC CONDITION WHILE HE CONTINUED EMPLOYMENT AT DAVIDSON BAKING COMPANY.

TO APPORTION LIABILITY AMONG THE CARRIERS ON THE BASIS OF THE DEGREE OF HEARING LOSS OCCURRING DURING THE RESPECTIVE PERIODS THEY WERE ON THE RISK WOULD, IN OUR OPINION, INVOLVE UNWARRANTED ADMINISTRATIVE BURDEN AND EXPENSE WITHOUT SUFFICIENT CORRESPONDING BENEFIT. AS THE REFEREE OBSERVED, AND THE INSURERS HERE SHOULD CERTAINLY UNDERSTAND, THERE ARE RISKS INSURERS TAKE IN A COMPETITIVE MARKET. WE THINK BEING HELD LIABLE FOR AN EXTANT, BUT PREVIOUSLY UNCLAIMED FOR HEARING LOSS, IS ONE OF THEM.

WE CONCLUDE, THEREFORE, THAT THE REFEREE'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 28, 1974, IS AFFIRMED.

CLAIMANT'S COUNSEL IS HEREBY AWARDED 250 DOLLARS, PAYABLE BY THE EMPLOYER THROUGH ITS CARRIER MARYLAND CASUALTY COMPANY, AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES ON THIS REVIEW.

JULY 26, 1974

MONTE GIBSON, 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 REFEREE'S ORDER GRANTING THE FUND'S MOTION TO DISMISS CLAIMANT'S REQUEST FOR HEARING ON A FINDING THAT THE REQUEST HAD BEEN MADE MORE THAN FIVE YEARS AFTER THE FIRST DETERMINATION ORDER WAS ISSUED IN HIS CLAIM.

THE REFEREE FIRST DECIDED THAT CLAIMANT'S AGGRAVATION TIME PERIOD BEGAN TO RUN FROM MARCH 10, 1969, RATHER THAN JANUARY 3, 1968, WHICH WAS THE DATE OF A DETERMINATION ORDER THAT HAD PREVIOUSLY BEEN SET ASIDE AND HELD FOR NAUGHT BY HEARING OFFICER MERCEDES DEIZ ON A FINDING THAT CLAIMANT'S CONDITION HAD NOT BEEN MEDICALLY STATIONARY AT THE TIME THE CLAIM WAS INITIALLY CLOSED. THE REFEREE THEREFORE CONCLUDED CLAIMANT HAD MADE A TIMELY APPLICATION FOR COMPENSATION BASED ON AGGRAVATION AND THAT HE HAD IN FACT SUFFERED AN AGGRAVATION OF HIS COMPENSABLE CONDITION. HE ISSUED AN ORDER IN ACCORDANCE THEREWITH ON JANUARY 24, 1974.

HE WAS THEN REQUESTED TO RECONSIDER HIS ORDER AND UPON RECONSIDERATION, HE DECIDED THAT CERTAIN INTERPRETATIONS OF THE LAW BY THE OREGON SUPREME COURT REQUIRED HIM TO RECOGNIZE JANUARY 3, 1968, RATHER THAN MARCH 10, 1969, AS THE BEGINNING POINT OF CLAIMANT'S FIVE YEAR AGGRAVATION PERIOD. HE THEN CONCLUDED CLAIMANT'S CLAIM OF AGGRAVATION WAS UNTIMELY AND THEREUPON DISMISSED CLAIMANT'S REQUEST FOR HEARING THUS DENYING HIM COMPENSATION BENEFITS.

IN THE RECENT CASE OF LORA DALTON, WCB 73-1334 (MAY 4, 1974), THE BOARD RULED CONTRARY TO THE FUND'S ARGUMENT IN THIS CASE. AS WE EXPLAINED IN DALTON, THE MARSH CASE (MARCH V. SIAC, 235 OR 297 (1963)) WAS CORRECTLY DECIDED BECAUSE MARSH WAS IN FACT MEDICALLY STATIONARY ON THE DATE OF HIS FIRST CLOSURE. A 'CANCELLATION' OF AN ORDER BY THE OLD SIAC DID NOT NECESSARILY HAVE THE LEGAL EFFECT OF RENDERING THE CANCELLED ORDER NULL AND VOID AS THE REFEREE APPARENTLY ASSUMED.

NEITHER THE MARSH NOR HAMRICK CASES (HAMRICK V. SIAC, 246 OR 229 (1967)) ARE CONTROLLING. IN NEITHER CASE DID THE AGENCY SPECIFICALLY NULLIFY AND RESCIND ITS FORMER ORDER.

IN THIS CASE, HEARING OFFICER DEIZ DID SO ON JULY 8, 1968, AND HER ORDER WAS NEVER APPEALED. FOR THE REASONS EXPRESSED IN DALTON, SUPRA, WE THINK SHE DID SO PROPERLY. WE NOW CONCLUDE OUR COMMENT IN THE GRAVES CASE (TOMMIE L. GRAVES, WCB CASE NO. 71-1220, 8 VAN NATA 96) THAT THE ISSUE IS MOOT PRIOR TO THE ACTUAL FILING OF AN AGGRAVATION CLAIM WHICH WAS IN ERROR. THE DETERMINATION ORDER OF JANUARY 3, 1968, CONTAINS THE NOTICE =

THE LAW PROTECTS YOUR RIGHT TO ADDITIONAL BENEFITS IF YOUR PHYSICAL CONDITION GETS WORSE AS A RESULT OF THIS INJURY. THIS PROTECTION BEGINS WITH THE ABOVE DATE OF DETERMINATION ON THIS CLAIM AND RUNS FOR FIVE YEARS. (EMPHASIS SUPPLIED) DEFENDANT'S EXHIBIT 4.

WHEN CLAIMANT OBJECTED TO THE PREMATURE CLOSURE OF HIS CLAIM BACK IN 1968, HE WANTED MORE THAN ADDITIONAL TEMPORARY TOTAL DISABILITY. HE RAISED THE ISSUE OF WHETHER HIS CONDITION WAS MEDICALLY STATIONARY ON DECEMBER 4, 1967. INHERENT IN THAT ISSUE IS THE QUESTION OF AGGRAVATION TIME LIMITS. HEARING OFFICER DEIZ OBVIOUSLY PERCEIVED THE INHERENT ISSUE AND PROPERLY RULED ON IT AS ONE OF THE JUSTICABLE ISSUES WITH WHICH SHE HAD TO DEAL. HAD CLAIMANT FAILED TO RAISE THE ISSUE OR HAD THE HEARING OFFICER NOT SET ASIDE THE DETERMINATION ORDER, JANUARY 3, 1968, WOULD BE IRREVOCABLY ESTABLISHED AS THE INCEPTION DATE OF CLAIMANT'S AGGRAVATION PERIOD AS A MATTER. TO HOLD OTHERWISE WOULD AMOUNT TO ENTERTAINING AN APPEAL IN 1974 OF ONE PROVISION OF THE 1968 DETERMINATION ORDER.

WE CONCLUDE THE REFEREE'S ORDER OF JANUARY 24, 1974, CORRECTLY DISPOSED OF ALL THE ISSUES PRESENTED. HIS ORDER ON RECONSIDERATION SHOULD BE REVERSED AND HIS PRIOR ORDER AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 22, 1974, IS HEREBY REVERSED AND HIS ORDER DATED JANUARY 24, 1974, IS HEREBY REINSTATED AND AFFIRMED.

CLAIMANT'S ATTORNEYS ARE HEREBY AWARDED A REASONABLE ATTORNEY'S FEE OF 350 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 73-637

JULY 26, 1974

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

THIS MATTER WAS PREVIOUSLY CONSIDERED BY A MEDICAL BOARD OF REVIEW. A MAJORITY OF THE MEDICAL BOARD CONCLUDED THE CLAIM WAS NOT COMPENSABLE. ON DECEMBER 4, 1973, THEIR FINDINGS WERE FILED AS FINAL BY THE WORKMEN'S COMPENSATION BOARD.

FOLLOWING THE FILING OF THESE FINDINGS, A LEGAL DISPUTE AROSE OVER THE PROPRIETY OF THE INSTRUCTIONS WHICH THE BOARD HAD SUBMITTED TO THE MEDICAL BOARD OF REVIEW. UPON APPEAL TO MULTNOMAH COUNTY CIRCUIT COURT, THE BOARD WAS ORDERED BY THE COURT TO RESUBMIT THE CLAIM TO A MEDICAL BOARD OF REVIEW WITH APPROPRIATE INSTRUCTIONS.

A MEDICAL BOARD OF REVIEW WAS DULY RECONVENED AND REINSTRUCTED. A MAJORITY OF THE MEDICAL BOARD OF REVIEW HAVE AGAIN FOUND THAT CLAIMANT DID NOT SUFFER AN OCCUPATIONAL DISEASE ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT. THE MEDICAL BOARD OF REVIEW HAS IN EFFECT OVERRULED THE ORDER OF THE HEARING OFFICER DATED JULY 13, 1973.

THE LATEST FINDINGS OF THE MEDICAL BOARD OF REVIEW, MARKED EXHIBIT 'A' = THE ACCOMPANYING LETTER FROM DR. MACK AND MARGASON, MARKED EXHIBIT 'B' = AND THE SEPARATE, DISSENTING OPINION OF DR. GREVE, MARKED EXHIBIT 'C', ARE FILED AS FINAL AS OF THIS DATE.

WCB CASE NO. 73-2758

JULY 30, 1974

ROBERT A. TEN EYCK, CLAIMANT
GALBREATH AND POPE, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KENSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES A CLAIMANT WHO WAS GRANTED PERMANENT PARTIAL DISABILITY EQUAL TO 32 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY AND 13.5 DEGREES FOR DISABILITY TO THE LEFT FOOT BY A DETERMINATION ORDER. AT HEARING, THE REFEREE FOUND CLAIMANT TO BE ENTITLED TO AN ADDITIONAL 48 DEGREES, MAKING A TOTAL OF 80 DEGREES, FOR UNSCHEDULED DISABILITY. CLAIMANT APPEALS FROM THE REFEREE'S ORDER CONTENDING HIS DISABILITY IS GREATER THAN THIS AWARD.

WE HAVE EXAMINED THE RECORD AND THE BRIEFS OF THE PARTIES SUBMITTED ON REVIEW. HAVING DONE SO, WE CONCLUDE THE REFEREE'S EVALUATION OF CLAIMANT'S DISABILITY IS PROPER IN ALL RESPECTS AND WOULD ADOPT AND AFFIRM HIS OPINION AS OUR OWN.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 23, 1974 IS HEREBY AFFIRMED.

WCB CASE NO. 73-2575

JULY 30, 1974

DOUGLAS COLFAX, CLAIMANT
PAUL ROESS, CLAIMANT'S ATTORNEY
DEPARTMENT 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 AWARDING HIM 10 PERCENT

OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED LOW BACK DISABILITY EQUAL TO 32 DEGREES.

CLAIMANT SUSTAINED A COMPENSABLE INJURY JANUARY 18, 1973, WHILE EMPLOYED AS A TREE PLANTER. HE WAS STRUCK BY A FALLING TREE JUST BELOW THE SHOULDER BLADES AND SUFFERED A FRACTURED RIB AND BACK STRAIN. HE WAS ABLE TO RETURN TO THE WOODS IN AUGUST, 1973, DOING VARIOUS TYPE JOBS, BUT AFTER A CHRISTMAS VACATION, STATED HE WAS UNABLE TO RETURN TO THIS WORK.

CLAIMANT CONTENDS THE AWARD OF 10 PERCENT UNSCHEDULED LOW BACK DISABILITY DOES NOT FAIRLY EVALUATE HIS DISABILITY AS MOST OF HIS TROUBLE STEMS FROM THE UPPER BACK AND NECK AREAS. IT SHOULD BE NOTED THAT AN AWARD FOR UNSCHEDULED DISABILITY REFLECTS THE DISABILITY OF THE 'WHOLE MAN' IN TERMS OF LOST EARNING CAPACITY AND IS NOT SEPARABLE INTO MULTIPLE SOURCES.

LOSS OF EARNING CAPACITY IS THE TEST FOR DETERMINING UNSCHEDULED DISABILITY AND IS BASED ON FACTORS SUCH AS AGE, EDUCATION, INTELLECTUAL RESOURCES, MOTIVATION AND PHYSICAL IMPAIRMENT. THE RECORD REFLECTS CLAIMANT HAS AN EXCELLENT INTELLECT AND A BROAD RANGE OF APTITUDES FOR SUITABLE EMPLOYMENT. HE APPEARS RELUCTANT TO APPLY THESE RESOURCES TO HIS OWN FINANCIAL BENEFIT AND HAS REFUSED TO MOVE TO ROSEBURG WHERE A VOCATIONAL REHABILITATION COUNSELOR WOULD ARRANGE FOR HIM TO LEARN LOG SCALING.

MOST OF THE MEDICAL TESTIMONY INDICATES THAT CLAIMANT'S REASONS FOR HIS CLAIMED INABILITY TO WORK ARE SUBJECTIVE. DR. JAMES MASON OPINED THAT CLAIMANT'S DISABILITY IN THE CERVICAL AREA WAS 'MILD' AND THAT IN THE LUMBOSACRAL AREA, IT WAS 'MINIMAL'.

KEEPING ALL THESE FACTORS IN MIND, WE BELIEVE THAT THE AWARD OF 10 PERCENT UNSCHEDULED DISABILITY ADEQUATELY COMPENSATES CLAIMANT FOR HIS LOSS OF EARNING CAPACITY AS A RESULT OF ALL THE PHYSICAL RESIDUALS OF HIS INDUSTRIAL INJURY. THE ORDER OF THE REFEREE SHOULD THEREFORE BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 26, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 72-2961

JULY 30, 1974

LEWIS HANSET, CLAIMANT
GARRET ROMAINE, CLAIMANT'S ATTORNEY
CHARLES PAULSON, DEFENSE ATTORNEY

ON JUNE 4, 1974, THE ABOVE NAMED CLAIMANT REQUESTED BOARD REVIEW OF A REFEREE'S ORDER DATED APRIL 30, 1974.

THE CLAIMANT AND OREGON AUTOMOBILE INSURANCE COMPANY HAVE NOW AGREED TO SETTLE AND COMPROMISE THEIR DISPUTE IN ACCORDANCE WITH THE TERMS OF THE STIPULATED ORDER, ATTACHED HERETO, MARKED EXHIBIT 'A'.

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. 72-3499

AUGUST 6, 1974

PAULINE KERNAN, CLAIMANT
FRANKLIN, BENNETT, OFELT AND
JOLLES, CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

CLAIMANT HAS MOVED THE BOARD FOR AN ORDER AWARDING A FEE TO HER ATTORNEY FOR ADDITIONAL SERVICES ASSOCIATED WITH THE FUND'S UNSUCCESSFUL APPEAL OF HER CASE.

THE BOARD HAS CONSIDERED THE MOTION AND AFFIDAVIT AND BEING NOW FULLY ADVISED, CONCLUDES THE MOTION IS WELL TAKEN.

ORDER

PURSUANT TO ORS 656.382(2), CLAIMANT'S ATTORNEY, BERNARD JOLLES, IS HEREBY AWARDED 500 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, AS A REASONABLE FEE FOR HIS SERVICES IN CONNECTION WITH THE BOARD REVIEW AND THE ORDER OF REMAND.

WCB CASE NOS 73-527

AUGUST 6, 1974

72-1406 AND 7

JACK E. BARRETT, CLAIMANT
DON G. SWINK, CLAIMANT'S ATTORNEY
ROGER WARREN, DEFENSE ATTORNEY

ALL PARTIES INVOLVED IN THE ABOVE-ENTITLED MATTERS HAVE REQUESTED BOARD REVIEW OF A REFEREE'S ORDER DATED JUNE 27, 1974.

THE STATE ACCIDENT INSURANCE FUND, IN CONJUNCTION WITH ITS REQUEST FOR REVIEW, MOVED THE BOARD FOR AN ORDER PERMITTING IT TO CEASE PAYMENTS ON CLAIMANT'S PERMANENT DISABILITY AWARD, DIRECTING EMPLOYERS OF WAUSAU TO PAY CLAIMANT'S WORKMEN'S COMPENSATION BENEFITS AND AN ORDER REMANDING THE MATTER TO THE REFEREE FOR A RULING ON THEIR RESPECTIVE LIABILITIES.

OFFICIAL NOTICE OF AGENCY RECORDS REVEALS THAT SOME OF THE ISSUES INVOLVED IN THIS CASE WERE FIRST PRESENTED TO THIS AGENCY FOR RESOLUTION IN MAY, 1972. IN VIEW OF THE LAPSE OF OVER TWO YEARS IN THE LITIGATION OF THIS MATTER, ONLY THE MOST COMPELLING CIRCUMSTANCES WOULD JUSTIFY THE FURTHER DELAY INHERENT IN A REMAND SITUATION. THE FUND'S MOTION IMPLIES THAT THE EVIDENCE NECESSARY FOR A DECISION ON THESE ISSUES HAS BEEN PRESENTED TO THE REFEREE BUT THAT HE FAILED TO RULE ON THEM. IN VIEW OF THE BOARD'S POWER

OF DE NOVO REVIEW GRANTED UNDER ORS 656.295, WE CONCLUDE THAT THE BOARD NEED NOT REMAND THE MATTER.

THE FUND HAS PRESENTED NO LEGAL OR EQUITABLE ARGUMENT WHY IT SHOULD BE RELIEVED OF ITS OBLIGATION TO PAY CLAIMANT THE DISABILITY DETERMINED TO BE DUE HIM PENDING THE ULTIMATE DISPOSITION OF THIS MATTER. IF, ON REVIEW, IT IS FOUND WAUSAU SHOULD HAVE BEEN PAYING THE INSTALLMENTS MADE BY THE FUND, AN APPROPRIATE ADJUSTMENT CAN BE ORDERED. IN THE MEANTIME, THE MATTER WILL BE REVIEWED IN THE USUAL MANNER AND ALL ISSUES RAISED BY THE PARTIES WHICH ARE NECESSARY TO A COMPLETE DISPOSITION OF THE CASE WILL BE RULED UPON.

ORDER

THE MOTIONS OF THE STATE ACCIDENT INSURANCE FUND ARE HEREBY DENIED.

WCB CASE NO. 73-444

AUGUST 6, 1974

JOHN RAUSCHERT, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
COLLINS, FERRIS AND VELURE
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER GRANTING CLAIMANT 240 DEGREES FOR UNSCHEDULED DISABILITY, 45 DEGREES FOR PARTIAL LOSS OF THE LEFT LEG, AND 75 PERCENT PARTIAL LOSS OF THE RIGHT LEG, CONTENDING HE IS PERMANENTLY TOTALLY DISABLED.

CLAIMANT, A 37 YEAR OLD MAN, WAS SEVERELY INJURED ON OCTOBER 1, 1968, WHEN HE FELL ABOUT 55 FEET WHILE WORKING AS A CARPENTER. UNDER THE AUSPICES OF THE VOCATIONAL REHABILITATION DIVISION, CLAIMANT RECEIVED CONSIDERABLE RETRAINING ASSISTANCE AND HAS OBTAINED A REAL ESTATE SALESMAN'S LICENSE AS WELL. HOWEVER, HE IS NOT NOW USING ANY OF HIS NEW SKILLS HAVING INSTEAD RETURNED TO HIS FATHER'S FARM WHERE HE ASSISTS IN THE DAIRY OPERATION.

THE RECORD REVEALS THIS YOUNG MAN HAS NEVER FULLY CONCENTRATED ON OVERCOMING THE ADMITTEDLY SUBSTANTIAL EMPLOYMENT HANDICAPS PRODUCED BY THIS INJURY. HE APPEARS TO HAVE BEEN PREOCCUPIED WITH OTHER INTERESTS WHICH HAVE DETRACTED FROM HIS ABILITY TO SUCCEED AS A REAL ESTATE SALESMAN.

WE CONCLUDE CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED. HE IS SIGNIFICANTLY PERMANENTLY PARTIALLY DISABLED, HOWEVER, AND WE AGREE WITH THE REFEREE'S ASSESSMENT OF THAT DISABILITY. HIS ORDER SHOULD, THEREFORE, BE AFFIRMED.

ORDER

**THE ORDER OF THE REFEREE, DATED FEBRUARY 28, 1974,
IS AFFIRMED.**

WCB CASE NO. 73-2960 AUGUST 6, 1974

**RAYMOND HORWEDEL, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF**

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

**THIS IS A DENIED CLAIM FOR INJURY TO THE CLAIMANT'S
BACK AND FOR HERNIA. THE STATE ACCIDENT INSURANCE FUND
DENIED THE CLAIM ON THE BASIS THAT A COMPENSABLE INJURY
DID NOT OCCUR ON THE JOB AND THAT THE CLAIM WAS NOT TIMELY
FILED. THE REFEREE FOUND THE CLAIM TO BE COMPENSABLE AND
ORDERED THE STATE ACCIDENT INSURANCE FUND TO ACCEPT THE
BACK AND HERNIA CLAIM.**

**THE RESOLUTION OF THIS DISPUTE INVOLVES ASSESSING THE
CREDIBILITY OF THE PARTIES AND WITNESSES. THE CREDIBILITY
AND BIAS OF ALL PARTIES AND WITNESSES APPEAR RELATIVELY
DOUBTFUL IN THE RECORD. HOWEVER, THE REFEREE, HAVING HEARD
THE PARTIES AND WITNESSES, ORDERED THE CLAIM ACCEPTED,
GIVING CREDENCE TO THE REFEREE'S EVALUATION OF CREDIBILITY,
THE BOARD CONCURS WITH HIS OPINION AND ORDER AND CONCLUDES
HIS ORDER SHOULD BE AFFIRMED.**

ORDER

**THE ORDER OF THE REFEREE, DATED JANUARY 10, 1974,
IS AFFIRMED.**

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

WCB CASE NO. 73-3252 AUGUST 6, 1974

**ROBERT STEDMAN, CLAIMANT
CAKE, HARDY, BUTTLER, MC EWEN
AND WEISS, CLAIMANT'S ATTORNEYS
MC MENAMIN, JONES, JOSEPH AND
LANG, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY EMPLOYER**

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

**THE EMPLOYER REQUESTS BOARD REVIEW OF A REFEREE'S
OPINION AND ORDER AWARDING UNSCHEDULED LOW BACK DISABILITY
OF 35 PERCENT, AN INCREASE OF 25 PERCENT, AND AWARDING**

CLAIMANT 5 PERCENT OF THE RIGHT FOOT FOR PERMANENT PARTIAL DISABILITY IN THAT MEMBER.

CLAIMANT SUFFERED A COMPENSABLE BACK INJURY IN AUGUST, 1969, WHILE WORKING AS A LONG HAUL TRUCK DRIVER. HE UNDERWENT A LUMBAR LAMINECTOMY WITH NERVE ROOT DECOMPRESSION. BECAUSE OF HIS SENIORITY, CLAIMANT IS ENTITLED TO CHOOSE FROM A WIDE RANGE OF DRIVING OPPORTUNITIES. AS A RESULT, HE ENJOYED EXCELLENT EARNINGS.

BECAUSE OF CLAIMANT'S PHYSICAL DISABILITY, HE IS LIMITED TO THE NUMBER AND TYPE OF TRIPS HE CAN MAKE. NOT ONLY IS HE PRECLUDED FROM LONG HAULS, BUT ALSO FROM CITY DELIVERY BECAUSE OF HIS INABILITY TO HANDLE THE LIFTING, TWISTING AND BENDING. ALTHOUGH HIS EARNINGS HAVE NOT YET SUFFERED BADLY, IF HE WERE TO LOSE HIS PRESENT EMPLOYMENT SITUATION, HE PROBABLY WOULD EXPERIENCE A SIGNIFICANT LOSS OF ACTUAL EARNINGS

THE REFEREE FOUND CLAIMANT TO BE ENTITLED 5 PERCENT PERMANENT PARTIAL DISABILITY FOR THE RIGHT FOOT AND AN INCREASE OF 25 PERCENT, MAKING A TOTAL OF 35 PERCENT UNSCHEDULED LOW BACK DISABILITY DUE TO LOSS OF EARNING CAPACITY. THE BOARD, ON REVIEW, CONCURS WITH THIS AWARD OF PERMANENT PARTIAL DISABILITY AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 26, 1974, IS HEREBY AFFIRMED.

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

WCB CASE NO. 73-2874

AUGUST 6, 1974

JEAN CARPENTER, CLAIMANT
BODIE AND MINTURN, CLAIMANT'S ATTYS.
MC MENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH GRANTED AN ADDITIONAL 10 PERCENT UNSCHEDULED BACK DISABILITY, MAKING A TOTAL OF 20 PERCENT, CONTENDING THIS AWARD INADEQUATELY COMPENSATES FOR PERMANENT DISABILITY.

CLAIMANT SUSTAINED A COMPENSABLE INJURY JUNE 7, 1971, WHEN SHE FELL BACKWARDS OFF A STEP LADDER WHILE EMPLOYED AS A SALESLADY. THE MEDICAL EVIDENCE FROM NUMEROUS DOCTORS STRONGLY SUPPORTS THE CONCLUSION THAT THERE IS A VERY MINIMAL PHYSICAL RESIDUAL FROM THE INCIDENT. THERE IS PSYCHOPATHOLOGY PRESENT, HOWEVER, AND THE QUESTION, THEREFORE, BECOMES ONE OF WHETHER THE CLAIMANT'S PSYCHOPATHOLOGY IS COMPENSABLY RELATED TO THE ACCIDENT.

WE ARE OF THE OPINION THAT CLAIMANT'S PSYCHOPATHOLOGY HAS BEEN ONLY MILDLY AGGRAVATED BY THIS INJURY. ACTUALLY, IT IS THE DISABLING EFFECT OF THE COMPENSABLE PSYCHOPATHOLOGY WHICH JUSTIFIES AN AWARD OF 64 DEGREES FOR UNSCHEDULED DISABILITY. WE CONCLUDE THE REFEREE'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 1, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 73-2394

AUGUST 6, 1974

RUTH RAINES, CLAIMANT

BRUCE W. WILLIAMS, CLAIMANT'S ATTORNEY
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE IS THE EXTENT OF PERMANENT PARTIAL DISABILITY TO CLAIMANT'S RIGHT KNEE. THE DETERMINATION ORDER AWARDED 20 PERCENT LOSS OF THE RIGHT LEG EQUAL TO 30 DEGREES. THIS AWARD WAS AFFIRMED BY THE REFEREE.

CLAIMANT A 60 YEAR OLD CANNERY WORKER, FELL, FRACTURING HER RIGHT PATELLA. ACCORDING TO THE MEDICAL REPORTS, CLAIMANT MADE A SATISFACTORY RECOVERY AFTER SURGERY TO THE RIGHT KNEE AND HAS RETURNED TO HER NORMAL WORK ACTIVITY. THE RECORD REFLECTS THAT SHE DOES HAVE SOME LOSS OF FUNCTION. THE BOARD CONCURS WITH THE OPINION AND ORDER OF THE REFEREE THAT THE CLAIMANT HAS FAILED TO PROVE THAT SHE HAS SUFFERED A PERMANENT TOTAL DISABILITY GREATER THAN 20 PERCENT (30 DEGREES) ALREADY AWARDED BY THE DETERMINATION ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 25, 1974, IS AFFIRMED.

WCB CASE NO. 74-73

AUGUST 6, 1974

DELLA E. GORE, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS THE EXTENT OF SCHEDULED DISABILITY TO CLAIMANT'S RIGHT ARM AND WHETHER AN AWARD FOR UNSCHEDULED DISABILITY SHOULD BE MADE.

CLAIMANT, A 33 YEAR OLD WAITREE, HIT HER RIGHT ELBOW ON SEPTEMBER 28, 1971, CARRYING A TRAY OF FOOD. THE CONDITION WAS INITIALLY DIAGNOSED AS A 'TENNIS ELBOW' BUT CLAIMANT SUBSEQUENTLY DEVELOPED NECK AND SHOULDER SPASMS.

A DETERMINATION ORDER OF MAY 19, 1972, AWARDED 5 PERCENT LOSS OF RIGHT ARM EQUAL TO 9.6 DEGREES. AFTER A HEARING AND BY OPINION AND ORDER DATED MAY 7, 1973, THE CLAIM WAS REOPENED FOR BOTH THE ARM AND THE NECK AND SHOULDER CONDITION. THE CLAIM WAS AGAIN CLOSED BY DETERMINATION ORDER OF JANUARY 2, 1974, AWARDING AN ADDITIONAL 5 PERCENT (9.6 DEGREES) LOSS OF RIGHT ARM. (CLAIMANT HAD RECEIVED BY STIPULATION A 10 PERCENT AWARD FOR LOSS OF RIGHT ARM IN 1969 FOR A PREVIOUS INDUSTRIAL INJURY.) THE REFEREE INCREASED THE SCHEDULED DISABILITY OF THE RIGHT ARM TO A TOTAL OF 48 DEGREES AND DENIED AN AWARD FOR UNSCHEDULED NECK, SHOULDER AND HEADACHE PROBLEMS FINDING THEM CAUSALLY RELATED TO THE INJURY BUT NOT CAUSING ANY LOSS OF EARNING CAPACITY.

WE HAVE REVIEWED THE RECORD DE NOVO AND CONSIDERED THE BRIEFS FILED ON APPEAL. HAVING DONE SO, THE BOARD CONCLUDES THE OPINION AND ORDER OF THE REFEREE SHOULD BE ADOPTED AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 12, 1974, IS AFFIRMED.

WCB CASE NO. 73-3665

AUGUST 6, 1974

CHARLES A. MORGAN, CLAIMANT
EMMONS, KYLE, LROPP AND KRYGER,
CLAIMANT'S ATTORNEYS
SOUTHER, SPAULDING, ET. AL,
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT PARTIAL DISABILITY FOR CLAIMANT'S OCCUPATIONAL LUNG DISEASE. THE DETERMINATION ORDER AWARDED CLAIMANT 10 PERCENT UNSCHEDULED PERMANENT PARTIAL DISABILITY. THE REFEREE INCREASED THIS AWARD TO A TOTAL OF 75 PERCENT UNSCHEDULED PERMANENT PARTIAL DISABILITY.

CLAIMANT, A 65 YEAR OLD PLYWOOD WORKER AND SHAREHOLDER IN A PLYWOOD PLANT, DEVELOPED CHRONIC BRONCHIAL ASTHMA TRIGGERED BY THE WOODDUST AROUND THE PLYWOOD PLANT. CLAIMANT ALSO HAS A HYPERTENSIVE CARDIOVASCULAR DISEASE. CLAIMANT QUIT HIS REGULAR JOB IN AUGUST OF 1972 BUT HAS DONE SOME NIGHT WATCHMAN WORK AT THE PLYWOOD PLANT SINCE THEN.

THE MEDICAL REPORTS INDICATE CLAIMANT COULD WORK WELL AT A VARIETY OF JOBS FREE OF DUST CONDITIONS. CLAIMANT'S MOTIVATION TO WORK IS QUESTIONABLE IN VIEW OF HIS AGE AND THE RETIREMENT BENEFITS HE PRESENTLY RECEIVES. IF CLAIMANT DESIRES TO WORK, HIS MANAGERIAL EXPERIENCES WILL QUALIFY HIM FOR SOME TYPE OF WORK AWAY FROM A DUST ENVIRONMENT. THIS BEING SO, THE BOARD FINDS CLAIMANT'S PERMANENT PARTIAL

DISABILITY FROM THIS OCCUPATIONAL DISEASE TO BE 50 PERCENT LOSS OF THE WORKMAN FOR PERMANENT PARTIAL DISABILITY. THE REFEREE'S ORDER SHOULD BE MODIFIED ACCORDINGLY.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 1, 1974, IS MODIFIED TO AWARD CLAIMANT A TOTAL OF 50 PERCENT (160 DEGREES) PERMANENT PARTIAL DISABILITY LOSS OF A WORKMAN FOR UNSCHEDULED LUNG DISABILITY AS A RESULT OF THIS OCCUPATIONAL DISEASE. THIS IS AN INCREASE OF 40 PERCENT (128 DEGREES) FROM THAT AWARDED BY THE DETERMINATION ORDER.

IN ALL OTHER RESPECTS, THE ORDER OF THE REFEREE IS AFFIRMED.

WCB CASE NO. 73-2600

AUGUST 6, 1974

MARTHA LAPIN, CLAIMANT

BAILEY, DOBLIE, CENICEROS AND
BRUUN, CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES A CLAIMANT WHO ALLEGES SHE IS PERMANENTLY AND TOTALLY DISABLED FROM A COMBINATION OF KNEE AND BACK INJURIES. SHE HAS RECEIVED A PERMANENT PARTIAL DISABILITY AWARD OF 45 PERCENT LOSS OF THE RIGHT LEG PLUS 5 PERCENT UNSCHEDULED LOW BACK DIABILITY.

THIS VERY SMALL (4 FOOT 9 INCHES, 98 POUND) LADY INJURED HER RIGHT KNEE ON MARCH 25, 1971, WHILE SHE WAS EMPLOYED AS A NURSE'S AIDE. IN SPITE OF TREATMENT, INCLUDING SURGERY, SHE HAS AN UNSTABLE RIGHT LEG. AS A CONSEQUENCE OF THIS INSTABILITY, THE KNEE BUCKLED ON FEBRUARY 8, 1972, CAUSING HER TO FALL AND INJURE HER BACK. CURRENTLY, SHE COMPLAINS OF EXPERIENCING SPASMS AND PAIN IN THE LOWER BACK, RIGHT LEG AND HIP. SHE HAS EXPERIENCED SEVERAL FALLS AND AT THE TIME OF THE HEARING WAS USING A CANE.

CLAIMANT IS 32 YEARS OF AGE AND HAS ONLY AN 8TH GRADE EDUCATION. BEING SO SUSCEPTIBLE TO FALLS, IT IS CLEAR THAT SHE WILL BE UNABLE TO RETURN TO HER FORMER EMPLOYMENT. AN OCCUPATIONAL THERAPY PERFORMANCE REPORT OF THE DISABILITY PREVENTION DIVISION INDICATED CLAIMANT WAS 'A HARD WORKING PERSON', BUT LACKED EDUCATION, APTITUDE OR SKILLS AND WOULD HAVE DIFFICULTY LEARNING A NEW JOB.

IN VIEWING THE RECORD DE NOVO, THE BOARD CONCLUDES THE AWARD OF PERMANENT PARTIAL DISABILITY FOR THE RIGHT LEG SHOULD BE AFFIRMED BUT FINDS THAT CLAIMANT IS ENTITLED TO A GREATER AWARD FOR UNSCHEDULED BACK DISABILITY DUE TO LOSS OF EARNING CAPACITY.

ORDER

THE ORDER OF THE REFEREE IS HEREBY MODIFIED TO REFLECT THAT IN ADDITION TO CLAIMANT'S AWARD OF PERMANENT PARTIAL DISABILITY OF 45 PERCENT LOSS OF THE RIGHT LEG, CLAIMANT IS ENTITLED TO AN ADDITIONAL 15 PERCENT, MAKING A TOTAL OF 20 PERCENT FOR UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT'S COUNSEL IS TO RECEIVE AS A FEE, 25 PERCENT OF THE INCREASE IN COMPENSATION MADE PAYABLE BY THIS ORDER, WHICH WHEN COMBINED WITH FEES ATTRIBUTABLE TO THE ORDER OF THE REFEREE SHALL NOT EXCEED 1,500 DOLLARS.

WCB CASE NO. 73-3927

AUGUST 6, 1974

NORMAN FOUNTAIN, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

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

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

WCB CASE NO. 72-2721

AUGUST 6, 1974

GARLAND JENKINS, CLAIMANT
DYE AND OLSON, 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 BOARD REVIEW OF A REFEREE'S ORDER GRANTING CLAIMANT AN ADDITIONAL 144 DEGREES, MAKING A TOTAL OF 176 DEGREES OR 55 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY, CONTENDING THE AWARD IS EXCESSIVE.

CLAIMANT IS A NOW 39 YEAR OLD MAN WHO SUFFERED AN ACUTE LUMBOSACRAL STRAIN ON SEPTEMBER 9, 1971, WHILE PULLING LUMBER ON THE GREEN CHAIN AT MOUNTAIN FIR LUMBER COMPANY IN GRANTS PASS, OREGON.

FOLLOWING A PERIOD OF CONSERVATIVE TREATMENT AND CONVALESCENCE, HIS CLAIM WAS EVALUATED AND ON SEPTEMBER 6, 1972, A DETERMINATION ORDER WAS ISSUED GRANTING PERMANENT PARTIAL DISABILITY COMPENSATION EQUAL TO 10 PERCENT OF THE MAXIMUM

ALLOWABLE FOR THE DISABLING EFFECTS OF HIS, BY THEN, CHRONIC LUMBOSACRAL STRAIN. UPON HEARING, THE REFEREE, APPARENTLY RELYING HEAVILY ON CLAIMANT'S SUBJECTIVE COMPLAINTS, FOUND OVER HALF HIS EARNING CAPACITY PERMANENTLY DESTROYED.

OUR REVIEW OF THE RECORD LEADS US TO CONCLUDE THAT CLAIMANT'S PERMANENT LOSS OF EARNING CAPACITY IS NOT AS GREAT AS CLAIMANT'S SUBJECTIVE COMPLAINTS WOULD SUGGEST. ALTHOUGH HE CANNOT RETURN TO THE HEAVY LABOR HE FORMERLY PERFORMED, HE HAS SUFFICIENT INTELLECTUAL AND PHYSICAL RESOURCES TO ENGAGE IN A NUMBER OF SUITABLE ENDEAVORS WHICH WILL PRODUCE EARNINGS COMPARABLE TO THOSE HE RECEIVED AS A LABORER. FOR EXAMPLE, WORKING AS A FORKLIFT OPERATOR, MENTIONED BY CLAIMANT AS WORK HE IS INTERESTED IN, SEEMS WELL WITHIN HIS PHYSICAL CAPABILITIES.

WE CONCLUDE THE DISABILITY COMPENSATION GRANTED BY THE REFEREE IS EXCESSIVE AND THAT CLAIMANT'S DISABILITY IS EQUAL TO 30 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

ORDER

PARAGRAPH ONE OF THE ORDER PORTION OF THE REFEREE'S OPINION AND ORDER, DATED MARCH, 15, 1974, IS HEREBY MODIFIED TO LIMIT CLAIMANT'S UNSCHEDULED PERMANENT DISABILITY TO A MAXIMUM OF 96 DEGREES OR 30 PERCENT OF THE MAXIMUM ALLOWABLE. PARAGRAPHS TWO AND THREE OF SAID ORDER ARE HEREBY AFFIRMED.

WCB CASE NO. 73-2746

AUGUST 6, 1974

LLOYD A. GEORGE, CLAIMANT
FRANKLIN, BENNETT, OFELT AND JOLLES,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT MADE A CLAIM FOR BENEFITS ALLEGING HE HAD COMPENSABLY INJURED HIS LEFT KNEE. THE CLAIM WAS DENIED, A HEARING WAS REQUESTED, AND, UPON HEARING, THE REFEREE AFFIRMED THE DENIAL. CLAIMANT REQUEST BOARD REVIEW.

THE CLAIMANT, NOW 65 YEARS OLD, WAS WORKING PART-TIME AS AN UPHOLSTERER TO SUPPLEMENT HIS SOCIAL SECURITY BENEFITS. CLAIMANT HAD WORKED FOR THE EMPLOYER FOR A SHORT PERIOD OF TIME WHEN HE WAS TERMINATED. THREE DAYS AFTER TERMINATION, CLAIMANT FIRST REPORTED HIS LEFT KNEE HAD BEEN INJURED ON THE JOB. FELLOW EMPLOYEES NOTICED NO UNUSUAL EVENT ON THE DAY CLAIMANT WAS TERMINATED.

THE EVIDENCE IN THE RECORD IS CONFLICTING. THE REFEREE WHO SAW AND HEARD THE WITNESSES CONCLUDED CLAIMANT HAD FAILED HIS BURDEN OF PROOF AND ON REVIEW, THE BOARD CONCURS WITH THE REFEREE'S OPINION AND ORDER. IT SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 6, 1974, IS AFFIRMED.

WCB CASE NO. 73-1228 AUGUST 6, 1974

OSVALDO HINOJOSA, CLAIMANT
MARMADUKE, MERTEN AND SALTVEIT,
CLAIMANT'S ATTORNEYS
DEPARTMENT 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 AFFIRMING THE DETERMINATION ORDER WHICH GRANTED HIM 80 DEGREES FOR UNSCHEDULED SHOULDER DISABILITY AND 19.2 DEGREES FOR PARTIAL LOSS OF THE LEFT ARM.

AT THE TIME OF HEARING, CLAIMANT WAS A 56 YEAR OLD NATIVE OF MEXICO WHO HAS LIVED AND WORKED IN OREGON SINCE 1960. HE SUSTAINED AN INJURY TO HIS LEFT ARM AND SHOULDER AUGUST 19, 1970, WHILE WORKING AT A SERVICE STATION OPERATED BY THE VALLEY MIGRANT LEAGUE. THE ACCIDENT PRODUCED A RADICULITIS WITH ULNAR NERVE IMPINGEMENT AND BICEPITAL TENDINITIS.

CLAIMANT WAS ENROLLED AT THE DISABILITY PREVENTION DIVISION AND THE PAIN CENTER WHERE AN IMPROVEMENT IN ABILITY TO USE THE LEFT SHOULDER WAS NOTED. ALTHOUGH CLAIMANT HAS CONTINUED TO COMPLAIN OF PAIN, A LEFT SHOULDER ARTHROGRAM AND ELECTROMYEOLOGRAM OF THE LEFT ARM WERE NORMAL. THERE IS NO MUSCLE ATROPHY.

CLAIMANT CONTENDS THAT BECAUSE OF HIS PHYSICAL DISABILITY, HIS AGE, AND HIS LACK OF EDUCATION, THAT NO EMPLOYMENT IS AVAILABLE TO HIM.

CLAIMANT APPEARED TO THE REFEREE AS A VERY INTELLIGENT MAN WITH GOOD MANUAL DEXTERITY. HE TESTIFIED HE COULD DRIVE A CAR ALL DAY. HE MAINTAINS A YARD AND GARDEN.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDING OF THE REFEREE THAT INSUFFICIENT EFFORTS HAVE BEEN MADE TO RETURN CLAIMANT TO THE LABOR MARKET. THE AWARD MADE PURSUANT TO THE DETERMINATION ORDER ADEQUATELY COMPENSATES CLAIMANT FOR HIS RESIDUAL DISABILITY, BUT HE IS ENTITLED TO RECEIVE REEMPLOYMENT ASSISTANCE FROM THE BOARD'S DISABILITY PREVENTION DIVISION IF HE IS INTERESTED IN SUCH SERVICES.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 13, 1974, IS HEREBY AFFIRMED.

VERNA FERGUSON, CLAIMANT
COONS, MALAGON AND COLE,
CLAIMANT'S ATTORNEYS
KEITH SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE CLAIMANT IN THIS PROCEEDING WAS AWARDED PERMANENT PARTIAL DISABILITY OF 10 PERCENT OF THE RIGHT FOREARM AND AN ADDITIONAL AWARD OF 20 PERCENT UNSCHEDULED NECK DISABILITY BY THE REFEREE AT HEARING. THE EMPLOYER SEEKS BOARD REVIEW OF THE REFEREE'S ORDER.

CLAIMANT WAS A 58 YEAR OLD HOUSEKEEPER EMPLOYED AT ALBANY GENERAL HOSPITAL WHEN SHE FELL FROM A LADDER INJURING HER RIGHT ARM AND CERVICAL SPINE ON APRIL 26, 1972.

THE REFEREE FOUND THE MEDICAL EVIDENCE AND CLAIMANT'S TESTIMONY WARRANTED AN AWARD OF PERMANENT PARTIAL DISABILITY FOR THE RIGHT FOREARM EQUIVALENT TO 10 PERCENT OR 15 DEGREES OF A MAXIMUM OF 150 DEGREES. HE ALSO FOUND CLAIMANT TO BE ENTITLED TO A GREATER AWARD FOR UNSCHEDULED NECK DISABILITY AND AWARDED AN ADDITIONAL 20 PERCENT, MAKING A TOTAL OF 30 PERCENT.

ALTHOUGH ON REVIEW THE AWARD MADE BY THE REFEREE SEEMS SOMEWHAT LIBERAL, CLAIMANT IS NOW PRECLUDED FROM RETURNING TO HER FORMER EMPLOYMENT OR WORK REQUIRING STRENUOUS USE OF THE UPPER BACK. THE REFEREE EVALUATED THE CLAIMANT'S MOTIVATION IN LIGHT OF THAT EVIDENCE. KEEPING THIS IN MIND, WE CONCLUDE THE REFEREE'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 12, 1974, IS AFFIRMED.

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

ROBERT D. OWENS, CLAIMANT
COONS, MALAGON AND COLE,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED A DETERMINATION ORDER GRANTING CLAIMANT PERMANENT PARTIAL DISABILITY EQUAL TO 30 PERCENT UNSCHEDULED MID-BACK DISABILITY.

CLAIMANT, A 42 YEAR OLD TELEVISION REPAIRMAN, SUSTAINED A COMPENSABLE INJURY DECEMBER 7, 1972, DIAGNOSED AS DORSAL COMPRESSION FRACTURE AND LUMBAR SPRAIN SUPERIMPOSED UPON A PREEXISTING CONDITION OF OSTEOGENESIS IMPERFECTA. THIS PREEXISTING CONDITION HAS MADE CLAIMANT VULNERABLE TO FRACTURES AND THE MEDICAL CONSENSUS IS THAT AS A RESULT OF THIS INJURY AND THE PREEXISTING CONDITION, HE SHOULD BE TRAINED FOR SOME TYPE OF SEDENTARY JOB.

TRAINING IS NOW BEING PROVIDED BY VOCATIONAL REHABILITATION AT LANE COMMUNITY COLLEGE IN A TWO-YEAR CLERICAL - ACCOUNTING PROGRAM. THE PROGNOSIS FOR SUCCESSFUL REHABILITATION IS GOOD BUT, NONETHELESS, CLAIMANT HAS BEEN DEPRIVED OF EMPLOYMENT IN THE FIELDS OF TELEVISION REPAIR AND ELECTRONICS.

KEEPING IN MIND THAT PERMANENT PARTIAL DISABILITY IS AWARDED NOT ONLY TO COMPENSATE THE LOSS OF EARNING CAPACITY BUT ALSO TO PROVIDE FINANCIAL ASSISTANCE WHILE CLAIMANT IS ADJUSTING TO HIS NEW STATUS OF DISABILITY (GREEN V. SIAC, 197 OR 160 (1953)), THE BOARD IS OF THE OPINION THAT CLAIMANT IS ENTITLED TO A PERMANENT PARTIAL DISABILITY AWARD EQUAL TO 50 PERCENT UNSCHEDULED DISABILITY.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 1, 1974, IS SET ASIDE AND CLAIMANT IS HEREBY AWARDED AN ADDITIONAL 64 DEGREES FOR UNSCHEDULED PERMANENT PARTIAL DISABILITY, MAKING AN AWARD OF 50 PERCENT UNSCHEDULED DISABILITY OR 160 DEGREES.

CLAIMANT'S COUNSEL IS TO RECEIVE AS A FEE 25 PERCENT OF THE INCREASE IN COMPENSATION ASSOCIATED WITH THIS ORDER AND PAYABLE THEREFROM, NOT TO EXCEED 1,500 DOLLARS.

WCB CASE NO. 73-4243

AUGUST 6, 1974

LLOYD HILLIKER, CLAIMANT
COONS, MALAGON AND COLE,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER FINDING CLAIMANT PERMANENTLY TOTALLY DISABLED.

CLAIMANT, A THEN 56 YEAR OLD MAN, SUFFERED A COMPENSABLE MYOCARDIAL INFARCTION ON AUGUST 19, 1972, WHILE WORKING AS A POWERHOUSE OPERATOR FOR POPE AND TALBOT, INC., AT OAKRIDGE, OREGON. HE RETURNED TO WORK AFTER SIX WEEKS, BUT EPISODES OF ANGINAL PAIN WHICH GRADUALLY BECAME MORE FREQUENT AND INTENSE FORCED HIS TERMINATION FROM EMPLOYMENT ABOUT ONE YEAR LATER. HE HAS BEEN REFUSED VOCATIONAL REHABILITATION BECAUSE OF HIS PHYSICAL CONDITION AND HAS BEEN UNABLE TO FIND SUITABLE EMPLOYMENT WITHOUT IT.

THE EVIDENCE IS PERSUASIVE THAT CLAIMANT'S RESIDUAL DISABILITY HAS PERMANENTLY PRECLUDED HIM FROM RETURNING TO REGULAR, GAINFUL AND SUITABLE EMPLOYMENT. HE IS PERMANENTLY AND TOTALLY DISABLED AND THE ORDER OF THE REFEREE SHOULD, THEREFORE, BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 29, 1974, IS HEREBY AFFIRMED.

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

WCB CASE NO. 73-3041

AUGUST 9, 1974

EDWIN SHAW, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A REFEREE'S ORDER WHICH GRANTED 10 PERCENT UNSCHEDULED LOW BACK DISABILITY EQUAL TO 32 DEGREES.

CLAIMANT, A 40 YEAR OLD SOCIAL WORKER FOR THE MARION COUNTY MENTAL HEALTH CLINIC, INJURED HIS BACK AS HE STEPPED FROM AN ELEVATOR SUPERIMPOSING A BACK STRAIN ON A PREEXISTING BACK CONDITION. AFTER CONSERVATIVE TREATMENT, HE RETURNED TO WORK AT THE SAME JOB, EARNING A HIGHER SALARY NOW THAN WHEN INJURED.

THE REFEREE'S ORDER, WHICH CLEARLY AND CONCISELY PRESENTS THE CASE, IS HEREBY AFFIRMED AND ADOPTED AS THE BOARD'S ORDER ON REVIEW.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 8, 1974 IS AFFIRMED.

WCB CASE NO. 73-2665

AUGUST 9, 1974

HARLEY SHORT, CLAIMANT
DON G. SWINK, CLAIMANT'S ATTY.
THWING, ATHERLY AND BUTLER,
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT PARTIAL DISABILITY. CLAIMANT, A 32 YEAR OLD PLYWOOD WORKER, WAS STRUCK BY A JITNEY HAULING A LOAD OF PLYWOOD ON JANUARY 11, 1968. HE HAS HAD TWO SPINAL FUSIONS - ONE IN MARCH, 1969, AND THE OTHER IN NOVEMBER, 1971.

AFTER FOUR DETERMINATION ORDERS, THE CLAIMANT HAS RECEIVED A TOTAL OF 35 PERCENT (112 DEGREES) LOW BACK UNSCHEDULED DISABILITY. THE FOURTH DETERMINATION ORDER AWARDED CLAIMANT NO ADDITIONAL UNSCHEDULED PERMANENT PARTIAL DISABILITY AND THE REFEREE AFFIRMED THIS FOURTH DETERMINATION ORDER.

CLAIMANT IS ATTEMPTING TO OBTAIN A GED CERTIFICATE. HE HAS HAD TRAINING AS A DIESEL MECHANIC, A LONG-HAUL TRUCK DRIVER, AND A SHOE SALESMAN.

THE MEDICAL REPORTS AND THE RESULTS OF CLAIMANT'S ATTEMPTS AT JOBS SINCE THE TWO FUSIONS DEMONSTRATES THAT CLAIMANT WILL BE CONFINED TO LIGHT WORK. IT THEREFORE FOLLOWS THAT THIS CLAIMANT HAS SUSTAINED A SUBSTANTIAL LOSS OF WAGE EARNING CAPACITY IN THE GENERAL LABOR MARKET.

ON DE NOVO REVIEW, THE BOARD FINDS THAT CLAIMANT HAS SUSTAINED A TOTAL OF 50 PERCENT (160 DEGREES) UNSCHEDULED LOW BACK DISABILITY.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 24, 1974, IS REVERSED AND CLAIMANT IS HEREBY AWARDED AN ADDITIONAL 15 PERCENT (48 DEGREES) UNSCHEDULED LOW BACK DISABILITY.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE 25 PERCENT OF THE INCREASE IN COMPENSATION ASSOCIATED WITH THIS AWARD WHICH SHALL NOT EXCEED 1,500 DOLLARS.

WCB CASE NO. 73-3236

AUGUST 9, 1974

WALTER W. SHROCK, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER CONTENDING CLAIMANT SHOULD BE AWARDED SOME UNSCHEDULED PERMANENT PARTIAL DISABILITY.

THE DETERMINATION ORDER AWARDED CLAIMANT 10 PERCENT (1 DEGREE) LOSS OF THE RIGHT RING FINGER AND MADE NO AWARD FOR PERMANENT UNSCHEDULED BACK DISABILITY. THE REFEREE AFFIRMED THE DETERMINATION ORDER.

CLAIMANT, A 52 YEAR OLD CHECKER AT THE PORT OF PORTLAND, RECEIVED AN INJURY DIAGNOSED AS A MILK LOW-BACK CONTUSION AND CONTUSION AND CAPSULAR STRAIN TO HIS FINGER.

CLAIMANT HAS A B. S. DEGREE IN BUSINESS AND ACCOUNTING AND A MASTERS DEGREE IN ELEMENTARY EDUCATION. THE MEDICAL REPORTS REFLECT THAT THE CLAIMANT HAS MINIMAL BACK RESIDUALS. REVIEW OF THE ENTIRE RECORD REFLECTS THAT THESE RESIDUALS DO NOT AFFECT CLAIMANT'S EARNING CAPACITY AND THUS NO AWARD OF UNSCHEDULED DISABILITY IS IN ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 11, 1974, IS AFFIRMED.

WCB CASE NO. 73-1987 AUGUST 9, 1974

JOSEPH SOJKA, CLAIMANT
COONS, MALAGON AND COLE,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
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 COMPENSATION ON THE BASIS OF AGGRAVATION ON A FINDING THAT CLAIMANT'S OCCUPATIONAL LOW BACK INJURY OF JUNE, 1972 WAS A MATERIAL CONTRIBUTING FACTOR TO THE ONSET OF DISABILITY IN FEBRUARY, 1973.

THE FUND CONTENDS CLAIMANT'S DISABILITY EITHER RESULTED FROM A SPONTANEOUS FLAREUP OF CLAIMANT'S PREEXISTING PAGET'S DISEASE OR FROM THE PROGRESSION OF DEGENERATIVE PROCESSES AFFECTING THE SPINE WHICH ARE UNRELATED TO THE JUNE, 1972 INJURY.

WE HAVE REVIEWED THE RECORD AND CONSIDERED THE EXCELLENT BRIEFS FILED BY THE PARTIES ON REVIEW AND, HAVING DONE SO, CONCUR WITH THE OPINION AND ORDER OF THE REFEREE. WE CONCLUDE HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 8, 1974 IS AFFIRMED.

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

WCB CASE NO. 73-2929

AUGUST 9, 1974

DELMER WEAVER, CLAIMANT
WILLIAM D. LEWIS, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED A DETERMINATION ORDER GRANTING HIM 10 PERCENT UNSCHEDULED BACK AND NECK DISABILITY EQUAL TO 32 DEGREES, CONTENDING THIS AWARD DOES NOT FAIRLY COMPENSATE HIM FOR HIS RESIDUAL DISABILITY.

LIKE THE REFEREE, WE ARE NOT PERSUADED THAT CLAIMANT'S SUBJECTIVE COMPLAINTS TRULY REFLECT HIS ACTUAL PHYSICAL DISABILITY. CLAIMANT HAS THE PHYSICAL AND INTELLECTUAL RESOURCES TO ENGAGE IN A WIDE VARIETY OF OCCUPATIONS. HIS LOSS OF EARNING CAPACITY HAS BEEN PROPERLY EVALUATED BY THE REFEREE WHOSE OPINION IS HEREBY ADOPTED AS OUR OWN.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 8, 1974, IS HEREBY AFFIRMED.

SAIF CLAIM NO. FA 735446

AUGUST 9, 1974

WILLIAM J. LISH, CLAIMANT
ALAN RUBEN, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

PURSUANT TO ORS 656.278, THE BOARD REFERRED THIS MATTER TO A REFEREE OF THE HEARINGS DIVISION TO CONDUCT A HEARING AND RENDER AN ADVISORY OPINION REGARDING WHETHER OR NOT CLAIMANT'S PRESENT CONDITION AND COMPLAINTS ARE RELATED TO A 1959 COMPENSABLE INJURY.

ON MAY 16, 1974 THE REFEREE ADVISED AGAINST ACCEPTANCE CONCLUDING THE RECORD LACKED SATISFACTORY EVIDENCE OF MEDICAL CAUSAL CONNECTION.

THE CLAIMANT, THROUGH HIS ATTORNEY, ALAN RUBEN, SUBMITTED A BRIEF URGING ACCEPTANCE OF DR. LAWRENCE LANGSTON'S OPINION THAT THERE IS A CAUSAL CONNECTION.

OUR EXAMINATION OF THE RECORD LEADS US TO BELIEVE DR. LANGSTON WAS ADEQUATELY APPRISED OF CLAIMANT'S MEDICAL HISTORY AND WE THEREFORE ACCEPT HIS OPINION THAT CLAIMANT'S PRESENT NEED FOR TREATMENT IS RELATED TO HIS INJURY OF MAY 13, 1959.

WE CONCLUDE THE BOARD SHOULD, ON ITS OWN MOTION, GRANT CLAIMANT ADDITIONAL COMPENSATION.

ORDER

THE STATE ACCIDENT INSURANCE FUND IS HEREBY ORDERED TO REOPEN CLAIMANT'S CLAIM NUMBER FA 735446 AS OF THE DATE OF THIS ORDER FOR THE PROVISION OF FURTHER MEDICAL TREATMENT AND ASSOCIATED TIME LOSS AND TO RESUBMIT THE CLAIM TO THE BOARD FOR FURTHER EVALUATION WHEN CLAIMANT'S CONDITION IS BELIEVED AGAIN MEDICALLY STATIONARY.

CLAIMANT'S ATTORNEY IS HEREBY AWARDED 25 PERCENT OF CLAIMANT'S TEMPORARY TOTAL DISABILITY, PAYABLE AS PAID TO A MAXIMUM OF 1,500 DOLLARS, AS A REASONABLE ATTORNEY'S FEE.

WCB CASE NO. 73-1550

AUGUST 9, 1974

SETH A. NELSON, CLAIMANT
MARMADUKE, ASCHENBRENNER, MERTEN
AND SALTVEIT, CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S REFUSAL TO ORDER THE FUND TO PROVIDE CLAIMANT FURTHER TREATMENT RECOMMENDED BY A CHIROPRACTOR AND HIS DECISION THAT CLAIMANT'S UNSCHEDULED DISABILITY EQUALS 15 PERCENT OF THE MAXIMUM ALLOWABLE.

WE RECOGNIZE THAT CLAIMANT'S CONTINUING COMPLAINTS ARE CONSIDERED BIZARRE AND UNREAL BY MANY OF THE PHYSICIANS WHO HAVE DEALT WITH HIM BUT THE PLAIN FACT IS THAT THE CHIROPRACTIC TREATMENTS ADMINISTERED BY DR. NICHOLS HAVE BEEN HELPFUL TO CLAIMANT. EVEN THOUGH THEY MAY NOT BE FULLY CURATIVE CLAIMANT IS ENTITLED TO . . . MEDICAL SERVICES FOR CONDITIONS RESULTING FROM THE INJURY FOR SUCH PERIOD AS THE NATURE OF THE INJURY OR THE PROCESS OF THE RECOVERY REQUIRES . . . ! ORS 656.245. MEDICAL CARE SHOULD NOT BE DISPENSED GRUDGINGLY. IT IS GENERALLY THE KEYSTONE IN EFFORTS TO ! . . . RESTORE THE INJURED WORKMAN AS SOON AS POSSIBLE AND AS NEAR AS POSSIBLE TO A CONDITION OF SELF SUPPORT AND MAINTENANCE AS AN ABLE-BODIED WORKMAN. ! ORS 656.268(1).

WE CONCLUDE CLAIMANT IS ENTITLED, UNDER ORS 656.245, TO THE TREATMENT RECOMMENDED AND PROVIDED BY DR. NICHOLS.

THE REFEREE CONCLUDED CLAIMANT WAS ENTITLED TO A 15 PERCENT UNSCHEDULED DISABILITY AWARD ON THE BASIS OF THE RATIONALE EXPRESSED IN GREEN V. SIAC, 197 OR 160 (1953). WE BELIEVE CLAIMANT IS ENTITLED TO THE AWARD, BUT ON THE BASIS OF THE PERMANENT EFFECTS OF THIS INJURY ON HIS EARNING CAPACITY RATHER THAN THE GREEN RATIONALE. WE WOULD, HOWEVER, AFFIRM THE PERMANENT DISABILITY AWARD MADE BY THE REFEREE.

ORDER

THE ORDER OF THE REFEREE GRANTING CLAIMANT A TOTAL OF 15 PERCENT UNSCHEDULED DISABILITY IS HEREBY AFFIRMED.

THE STATE ACCIDENT INSURANCE FUND IS HEREBY ORDERED TO ACCEPT RESPONSIBILITY FOR AND PROVIDE TO CLAIMANT, PURSUANT TO ORS 656,245, THE COURSE OF TREATMENT RECOMMENDED AND ADMINISTERED BY ADA B. NICHOLS, D. C.

IN ADDITION TO THE CLAIMANT'S ATTORNEY FEE ALLOWED BY THE REFEREE IN CONNECTION WITH THE ADDITIONAL PERMANENT DISABILITY, CLAIMANT'S ATTORNEY IS HEREBY AWARDED A REASONABLE FEE OF 550 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR HIS SERVICES AT THE HEARING AND ON THIS REVIEW, IN CONNECTION WITH SECURING CLAIMANT ADDITIONAL MEDICAL TREATMENT.

WCB CASE NO. 73-2559

AUGUST 9, 1974

EDWARD F. SMITH, CLAIMANT
RICHARDSON AND MURPHY,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE IS THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 16 PERCENT (48 DEGREES) UNSCHEDULED LOW BACK AND LEFT SHOULDER DISABILITY. THE REFEREE INCREASED THIS AWARD TO A TOTAL OF 25 PERCENT. CLAIMANT CONTENDS ON REVIEW THAT HE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT, A 50 YEAR OLD LABORER, FELL FRACTURING A LEFT FEMUR AND RUPTURING THE ROTATOR CUFF OF THE LEFT SHOULDER. CLAIMANT HAS MADE GOOD RECOVERY PHYSICALLY. CLAIMANT'S OBJECTIVE PHYSICAL PROBLEMS ARE MILDLY TO MODERATELY DISABLING. CLAIMANT'S SUBSTANTIAL PREEXISTING PSYCHOPATHOLOGY HAS BEEN SOMEWHAT AGGRAVATED BY THIS INDUSTRIAL INJURY BUT CLAIMANT IS CERTAINLY NOT COMPLETELY DISABLED BY THESE FACTORS.

THE BOARD FINDS THAT THE AWARD OF 25 PERCENT (80 DEGREES) UNSCHEDULED LOW BACK AND LEFT SHOULDER DISABILITY ADEQUATELY COMPENSATES THE CLAIMANT. IF AND WHEN THE CLAIMANT DESIRES, HE SHOULD AVAIL HIMSELF OF THE SERVICES OF THE DISABILITY PREVENTION DIVISION FOR ASSISTANCE IN RETURNING TO THE LABOR MARKET.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 12, 1974 IS AFFIRMED.

AUGUST 9, 1974

L. D. WILSON, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY

ON AUGUST 6, 1973 THE CIRCUIT COURT OF MARION COUNTY REMANDED THIS MATTER TO THE WORKMEN'S COMPENSATION BOARD TO CONSIDER A REHABILITATION PLAN FOR CLAIMANT AND TO REEVALUATE THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY IN LIGHT OF THE SUCCESS OR FAILURE OF SUCH A PLAN. THAT INFORMATION WAS UNAVAILABLE AND IT WAS NECESSARY TO REMAND THE MATTER TO THE HEARINGS DIVISION TO SECURE SUCH EVIDENCE.

ON JUNE 28, 1974, THE REFEREE CERTIFIED TO THE BOARD, EVIDENCE OF THE NATURE REQUESTED BY THE COURT, AND WE HAVE NOW REEXAMINED THE WHOLE RECORD.

CLAIMANT COMPLETED A COURSE IN WELDING AND WORKED IN THAT CAPACITY FOR A FEW DAYS BEFORE BEING LAID OFF FOR BEING TOO SLOW TO SUIT THAT EMPLOYER. CLAIMANT HAS THE NECESSARY RESIDUAL PHYSICAL ABILITY TO BE GAINFULLY AND SUITABLY EMPLOYED IN LIGHT WELDING, BUT HE HAS NOT YET FOUND SUCH A POSITION. IT APPEARS THAT THE PROSPECTIVE EMPLOYERS WHO HE HAS CONTACTED, INCLUDING THE STATE OF OREGON, HAVE GIVEN CLAIMANT LESS CONSIDERATION THAN HE DESERVES. ALTHOUGH IT IS TAKING LONGER THAN NECESSARY, WE ANTICIPATE CLAIMANT WILL SECURE SUITABLE EMPLOYMENT.

ONE OF THE PURPOSES OF A PERMANENT PARTIAL DISABILITY AWARD IS TO ASSIST THE CLAIMANT IN READJUSTING HIMSELF SO AS TO BE ABLE TO AGAIN FOLLOW A GAINFUL OCCUPATION. GREEN V. SIAC, 197 OR 160 (1953). THE PAYMENT PERIOD FOR CLAIMANT'S 240 DEGREE AWARD WILL PROVIDE AMPLE TIME FOR HIM TO SECURE EMPLOYMENT AND TO COMPLETE HIS READJUSTMENT TO HIS NEW DISABILITY.

HAVING RECONSIDERED THIS MATTER, WE CONCLUDE THAT CLAIMANT'S PERMANENT DISABILITY IS ONLY PARTIAL. AN AWARD OF 240 DEGREES WILL ADEQUATELY COMPENSATE HIS PERMANENT LOSS OF EARNING CAPACITY AND AT THE SAME TIME PROVIDE HIM ADEQUATE FINANCIAL ASSISTANCE DURING HIS ADJUSTING PERIOD. THE ORDER OF THE HEARING OFFICER SHOULD THEREFORE BE AFFIRMED.

ORDER

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

AUGUST 9, 1974

CARL FOWLER, CLAIMANT

WILLIAM A. MANSFIELD, CLAIMANT'S ATTORNEY
DEPARTMENT OF JUSTICE, DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE IS THE EXTENT OF PERMANENT PARTIAL DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 15 PERCENT UNSCHEDULED DISABILITY. THE REFEREE INCREASED THIS AWARD TO A TOTAL OF 35 PERCENT AND THE STATE ACCIDENT INSURANCE FUND HAS REQUESTED REVIEW.

CLAIMANT, A 25 YEAR OLD CABINET MAKER, RECEIVED A NECK AND BACK STRAIN ON SEPTEMBER 8, 1972. HE HAS RECEIVED CONSERVATIVE CARE FROM AN OSTEOPATH, CHIROPRACTOR, A NEUROLOGIST, AND AN ORTHOPEDIST AS WELL AS HAVING BEEN THROUGH THE DISABILITY PREVENTION DIVISION, THE BACK EVALUATION CLINIC AND THE PSYCHOLOGY CENTER.

CLAIMANT HAD PREVIOUS BACK INJURIES IN CALIFORNIA BUT SUFFERED NO SIGNIFICANT DISABILITY FROM THEM. THE MEDICAL EVIDENCE CONCERNING THE INJURY IN QUESTION INDICATES THE PSYCHOPHYSIOLOGICAL REACTION AS THE BASIC DISABLING RESIDUAL.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE REFEREE'S FINDING THAT CLAIMANT HAS SUSTAINED MORE UNSCHEDULED PERMANENT PARTIAL DISABILITY THAN AWARDED BY THE DETERMINATION ORDER BUT WE THINK 35 PERCENT IS EXCESSIVE. AN AWARD OF 25 PERCENT WILL ADEQUATELY COMPENSATE CLAIMANT FOR RESIDUAL DISABILITY.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 31, 1974, IS HEREBY MODIFIED TO AWARD A TOTAL OF 25 PERCENT (80 DEGREES) UNSCHEDULED NECK AND BACK PERMANENT PARTIAL DISABILITY INSTEAD OF THE TOTAL OF 35 PERCENT (112 DEGREES) AWARDED BY THE REFEREE.

IN ALL OTHER RESPECTS THE REFEREE'S ORDER IS AFFIRMED.

WCB CASE NO. 73-1563

AUGUST 9, 1974

OSCAR PRIVETTE, CLAIMANT
HOLMES, JAMES AND CLINKINBEARD,
CLAIMANT'S ATTORNEYS
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTORNEYS

THE EMPLOYER HAS MOVED THE BOARD FOR RECONSIDERATION OF ITS ORDER ON REVIEW DATED JULY 18, 1974, SUGGESTING THAT ITS RULING IS IN CONFLICT WITH OTHER OFFICIAL REGULATIONS CONCERNING THE DETERMINATION OF HEARING LOSSES AND THAT IT SHOULD THEREFORE REVERSE ITS POSITION AS EXPRESSED IN THE ORDER ON REVIEW.

WE ARE AWARE THAT OUR DECISION IN THIS CASE REPRESENTS A DEPARTURE FROM PRIOR AGENCY PRACTICE. IT IS NOT NECESSARY THAT THE AGENCY PROVIDE GUIDANCE TO EMPLOYERS IN THIS ORDER. IT WILL BE PROVIDED THROUGH REGULAR ADMINISTRATIVE INFORMATIONAL CHANNELS.

WE ARE NOT PERSUADED THE ARGUMENTS ADVANCED IN SUPPORT OF THE EMPLOYER'S MOTION JUSTIFY FURTHER CONSIDERATION OF OUR ORDER ON REVIEW AND THE MOTION SHOULD THEREFORE BE DENIED.

It IS SO ORDERED.

WCB CASE NO. 73-2529

AUGUST 12, 1974

ROBERTA DAVIS, AKA
ROBERTA DAVIS FREEMAN, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER AFFIRMING THE FUND'S DENIAL OF CLAIMANT'S CLAIM FOR AN ALLEGEDLY CONSEQUENTIAL INJURY. CLAIMANT ALSO SEEKS AN INCREASE IN PERMANENT DISABILITY COMPENSATION FOR HER ORIGINAL INJURY.

SHE SUFFERED A LOW BACK INJURY ON JULY 31, 1968, WHILE WORKING AS A CHECKER FOR KEINOWS MARKETS. SINCE THEN HER CLAIM HAS BEEN REOPENED SEVERAL TIMES FOR ADDITIONAL TREATMENT.

WHILE AT HOME ON AUGUST 20, 1973, HER RIGHT LEG BUCKLED AND SHE FELL INJURING HER HEAD AND NECK. THE CLAIM SHE MADE FOR THESE INJURIES WAS DENIED BY THE FUND.

NO EXPERT MEDICAL OPINION WAS PRESENTED TO RELATE THIS SPECIFIC FALL TO THE 1968 INJURY BUT SHE HAS HAD, EVER SINCE THE ORIGINAL INJURY, A HISTORY OF OCCASIONAL EPISODES OF LEG WEAKNESS AND BUCKLING. WE ARE CONFIDENT THAT THE FALL OF AUGUST 20, 1973 REPRESENTS ANOTHER EPISODE IN HER SYMPTOM PATTERN AND THAT THE FALL THEREFORE REPRESENTS A CONSEQUENTIAL INJURY WHICH THE FUND SHOULD HAVE ACCEPTED. THE REFEREE'S ORDER CONCERNING THE DENIAL SHOULD BE REVERSED. IN VIEW OF THE FAILURE TO SUBMIT ANY CORROBORATIVE MEDICAL OPINION, NO PENALTY WILL BE IMPOSED.

REGARDING THE ISSUE OF PERMANENT DISABILITY, THE FINDING THAT CLAIMANT HAS SUFFERED ADDITIONAL INJURIES REQUIRES REOPENING OF HER CLAIM FOR TREATMENT AND EVENTUAL REEVALUATION. UNDER THESE CIRCUMSTANCES, THE PERMANENT DISABILITY ISSUE IS RENDERED MOOT.

ORDER

THE STATE ACCIDENT INSURANCE FUND IS HEREBY ORDERED TO ACCEPT RESPONSIBILITY FOR CLAIMANT'S CONSEQUENTIAL INJURY OF AUGUST 20, 1973 AND TO PROVIDE HER ADDITIONAL MEDICAL CARE AND TIME LOSS COMPENSATION UNTIL THE CLAIM IS AGAIN EVALUATED PURSUANT TO ORS 656.268.

CLAIMANT'S ATTORNEY IS HEREBY AWARDED THE SUM OF 850 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES AT THE HEARING AND ON THIS REVIEW.

HARRY KARNS, CLAIMANT
CAREY AND GOODING, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS REVIEW INVOLVES A DENIED HEART ATTACK CLAIM. THE REFEREE ORDERED THE CLAIM ACCEPTED AND THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW.

CLAIMANT, A 58 YEAR OLD EXECUTIVE IN PRIVATE LIFE, WAS THE PRESIDENT OF THE LA GRANDE, OREGON CITY COUNCIL. AS SUCH HE WAS ENTITLED TO WORKMEN'S COMPENSATION BENEFITS FOR INJURIES ARISING OUT OF AND IN THE COURSE OF HIS OFFICIAL DUTIES. AS PRESIDENT OF THE CITY COUNCIL, CLAIMANT PRESIDED AT THE COUNCIL MEETINGS. THE STRESS OF THESE COUNCIL MEETINGS WERE REFLECTED IN THE CLAIMANT ON THE DAYS OF THE MEETINGS BY INCREASED SMOKING AND TENSION. CLAIMANT IS DESCRIBED AS AN INTENSE PERSON, PRONE TO BE A LITTLE MORE EMOTIONAL THAN THE AVERAGE PERSON.

ON THE DAY OF THE HEART ATTACK, CLAIMANT PRESIDED OVER A COUNCIL MEETING AT WHICH IT WAS EXPECTED A MATTER OF SUBSTANTIAL PUBLIC CONCERN WOULD BE DEBATED. EARLY IN THE MEETING THE ISSUE WAS PUT OVER FOR LATER DISCUSSION AND A SHORT ORDINARY COUNCIL MEETING WAS HELD. IMMEDIATELY AFTER THE MEETING CLAIMANT COLLAPSED FROM A SEVERE MYOCARDIAL INFARCTION. A CLAIM FOR WORKMEN'S COMPENSATION BENEFITS WAS MADE AND THE FUND DENIED IT.

TWO HEART SPECIALISTS TESTIFIED AT THE RESULTING HEARING. THE TREATING DOCTOR CONNECTED THE STRESS OF THE MEETING WITH THE HEART ATTACK. AN EXAMINING DOCTOR DID NOT CONNECT THE COUNCIL MEETING WITH THE HEART ATTACK.

WE HAVE REVIEWED THE RECORD DE NOVO. WE ARE PERSUADED BY A PREPONDERANCE OF THE EVIDENCE THAT THE STRESS CLAIMANT EXPERIENCED IN ANTICIPATION OF THE MEETING WAS PROBABLY A MATERIAL CONTRIBUTING CAUSE OF HIS INFARCTION ON MARCH 7, 1973.

THE REFEREE'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED FEBRUARY 27, 1974 IS AFFIRMED.

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

WCB CASE NO. 71-2455
WCB CASE NO. 73-2071

AUGUST 12, 1974

CLAUD C. BURRESS, CLAIMANT
SWINK AND HAAS, CLAIMANT'S ATTORNEYS
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER REQUESTS BOARD REVIEW OF THE ISSUE OF EXTENT OF PERMANENT DISABILITY. THE SECOND DETERMINATION ORDER AWARDED CLAIMANT NO PERMANENT DISABILITY. THE REFEREE AWARDED 48 DEGREES OR 15 PERCENT OF THE MAXIMUM FOR UNSCHEDULED DISABILITY RESULTING FROM INJURIES TO CLAIMANT'S HEAD AND LEFT EYE.

CLAIMANT, A 61 YEAR OLD SANDERMAN AT A PLYWOOD MILL, WAS INJURED OCTOBER 26, 1969, WHEN A PANEL FLIPPED OUT OF THE MACHINE HE WAS OPERATING AND HIT HIM IN THE AREA OF THE FOREHEAD AND LEFT EYE. CLAIMANT HAS CONTINUED TO HAVE HEAD-ACHES AND DRYNESS OF HIS EYE. EXPOSURE TO DUST OR COLD AND WINDY WEATHER AGGRAVATES CLAIMANT'S HEADACHES AND EYE CONDITIONS.

ALTHOUGH PAIN IN AND OF ITSELF IS NOT COMPENSABLE, THE AGGRAVATION OF HIS HEADACHES AND EYE CONDITION BY EXPOSURE TO COLD ESSENTIALLY PRECLUDES EMPLOYMENT IN THE OUTDOORS. THUS, CLAIMANT IS PRECLUDED FROM EMPLOYMENT IN A SEGMENT OF THE GENERAL LABOR MARKET AND THE AWARD OF 15 PERCENT (48 DEGREES) PERMANENT PARTIAL UNSCHEDULED DISABILITY TO THE HEAD AND LEFT EYE IS AFFIRMED.

WE CONCLUDE THE REFEREE'S ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE DATED FEBRUARY 20, 1974 IS AFFIRMED.

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

WCB CASE NO. 2614
WCB CASE NO. 73-3705
WCB CASE NO. 73-3706
WCB CASE NO. 73-3707

AUGUST 12, 1974

ROBERT WRIGHT, CLAIMANT
POZZI, WILSON AND ATCHISON
CLAIMANT'S ATTORNEYS
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES A DENIAL OF CLAIMANT'S CLAIMS FOR HEARING LOSS. THE REFEREE AFFIRMED THE DENIAL.

CLAIMANT, A 46 YEAR OLD SHOPWORKER, MADE CLAIMS AGAINST THREE EMPLOYERS FOR LOSS OF HEARING ALLEGING THE NOISE LEVEL IN THE SHOPS WHERE HE HAD WORKED CAUSED LOSS OF HEARING.

THE MEDICAL EVIDENCE DOES NOT SHOW THERE IS A CAUSAL CONNECTION BETWEEN CLAIMANT'S OCCUPATION AT ANY ONE OF THE THREE SHOPS TO HIS LOSS OF HEARING. IN FACT, THE MEDICAL EVIDENCE INDICATES LOSS OF HEARING MAY WELL BE HEREDITARY OR MIGHT BE RELATED TO CHILDHOOD OTITIS.

ON DE NOVO REVIEW THE BOARD AFFIRMS THE ORDER OF THE REFEREE AND ADOPTS HIS OPINION AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 1, 1974 IS AFFIRMED.

WCB CASE NO. 73-3843

AUGUST 12, 1974

ROBERT VESTER, CLAIMANT

A. C. ROLL, CLAIMANT'S ATTORNEY
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY EMPLOYER
CROSS-APPEAL BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES THE EXTENT OF PERMANENT DISABILITY FROM A BACK INJURY AND WHETHER OR NOT AN ABDOMINAL ANEURYSM WHICH REQUIRED SURGICAL REPAIR BEFORE THE BACK INJURY COULD BE TREATED BY SURGERY, IS THE RESPONSIBILITY OF THE EMPLOYER. THE DETERMINATION ORDER AWARDED CLAIMANT 25 PERCENT (80 DEGREES) UNSCHEDULED LOW BACK DISABILITY AND 5 PERCENT (9.6 DEGREES) LOSS OF THE LEFT ARM. THE REFEREE'S OPINION AND ORDER AND ORDER ON RECONSIDERATION REMANDED THE CLAIM TO THE EMPLOYER TO ACCEPT RESPONSIBILITY FOR THE ABDOMINAL ANEURYSM, AND INCREASED THE UNSCHEDULED LOW BACK DISABILITY TO 40 PERCENT (128 DEGREES), AND THE CLAIMANT'S LEFT ARM AWARD TO 10 PERCENT (19.2 DEGREES). IT AWARDED CLAIMANT 10 PERCENT LOSS OF LEFT LEG (15 DEGREES) AND AWARDED CLAIMANT'S ATTORNEY FEES IN THE AMOUNT OF 750 DOLLARS TO BE PAID BY THE EMPLOYER.

THE EMPLOYER REQUESTS BOARD REVIEW CONTENDING THE ABDOMINAL ANEURYSM IS NOT THE RESPONSIBILITY OF THE EMPLOYER AND FURTHER THAT CLAIMANT'S ATTORNEY'S FEE AWARDED BY THE REFEREE IS THEREFORE NOT WARRANTED.

THE CLAIMANT CROSS-APPEALS CONTENDING HE SHOULD BE AWARDED PERMANENT TOTAL DISABILITY.

CLAIMANT, A 47 YEAR OLD FORKLIFT DRIVER, RECEIVED A BACK INJURY JULY 17, 1971. HE HAD PREVIOUSLY HAD AN INDUSTRIAL BACK

INJURY IN 1966 FOR WHICH A LAMINECTOMY WAS PERFORMED AND FROM WHICH THE CLAIMANT HAD APPARENTLY MADE A GOOD RECOVERY. AS A RESULT OF THE 1971 BACK INJURY WHEN A MYELOGRAM WAS PERFORMED THE ABDOMINAL ANEURYSM WAS DISCOVERED.

THE BACK SURGERY WAS DELAYED UNTIL AFTER SURGERY TO CORRECT THE ABDOMINAL ANEURYSM WAS CONCLUDED. AFTER RECOVERY FROM THE SURGERY CLAIMANT ATTEMPTED TO WORK AS A FOREMAN AND WELDER AT A SHINGLE MILL BUT WAS UNABLE TO DO THIS BECAUSE OF BACK PROBLEMS AND A RUPTURE ON THE ABDOMINAL SURGICAL SCAR.

CLAIMANT TOOK A COURSE IN REFRIGERATOR REPAIR THROUGH A VOCATIONAL REHABILITATION PROGRAM AND WENT INTO BUSINESS FOR HIMSELF BUT WAS UNABLE TO CONTINUE BECAUSE HE WAS UNABLE TO MOVE THE HEAVY REFRIGERATORS. CONTINUED VOCATIONAL REHABILITATION IS RECOMMENDED SO THAT CLAIMANT CAN RETRAIN INTO AN OCCUPATION CONSISTENT WITH HIS PHYSICAL ABILITIES.

THE MEDICAL EVIDENCE AND THE TESTIMONY IN THE RECORD CLEARLY SHOWS THAT THE ABDOMINAL ANEURYSM WAS IN NO WAY RELATED TO OR AGGRAVATED BY THE INDUSTRIAL ACCIDENT NOR DID THE BACK INJURY MASK THE ABDOMINAL ANEURYSM. THE ANEURYSM WAS MERELY DISCOVERED AT THE TIME OF THE MYELOGRAM. THE SURGERY ON THE BACK WAS DELAYED UNTIL AFTER THE ANEURYSM WAS SURGICALLY REPAIRED. THE DELAY IN THE BACK SURGERY DID NOT MATERIALLY AFFECT THE LONG RANGE DISABILITY OF THE CLAIMANT. THE DELAY IN THE BACK SURGERY DID, INCIDENTALLY, INCREASE THE TEMPORARY TOTAL DISABILITY PAYMENTS WHICH THE EMPLOYER HAS PAID ALTHOUGH THE MEDICAL BILLS FOR TREATMENT OF THE ABDOMINAL ANEURYSM HAVE BEEN PAID BY A GROUP HEALTH INSURANCE PLANT.

THE BOARD FINDS THAT THE ABDOMINAL ANEURYSM WAS IN NO WAY RELATED TO, AGGRAVATED BY, ACCELERATED OR LIGHTED UP BY THE INDUSTRIAL INJURY. THE ABDOMINAL SURGERY MERELY DELAYED THE BACK SURGERY BUT THERE IS NO EVIDENCE THAT THE ULTIMATE BACK CONDITION WAS IN ANY WAY AFFECTED BY THIS DELAY.

THE BOARD THEREFORE CONCLUDES THE REFEREE SHOULD BE REVERSED ON THIS PART OF HIS ORDER WHICH REMANDED THE ABDOMINAL ANEURYSM TO THE EMPLOYER TO BE ACCEPTED FOR PAYMENT OF COMPENSATION.

SINCE THE ORDER OF THE REFEREE AWARDED CLAIMANT'S ATTORNEY FEES TO BE PAID BY THE EMPLOYER BECAUSE THE EMPLOYER 'DENIED' THE ABDOMINAL ANEURYSM MEDICAL BILLS, THE ORDER OF THE REFEREE AWARDED CLAIMANT'S ATTORNEY FEES TO BE PAID BY THE EMPLOYER SHOULD ALSO BE REVERSED.

ON DE NOVO REVIEW OF THE ENTIRE RECORD THE BOARD FINDS THAT THE CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED AS A RESULT OF CLAIMANT'S COMPENSABLE INJURY. THE PERMANENT DISABILITY COMPENSATION GRANTED BY THE REFEREE PROPERLY COMPENSATES HIS COMPENSABLE RESIDUAL DISABILITY.

IT MAY WELL BE THAT THE CLAIMANT WILL NEED FURTHER SURGERY TO CORRECT THE RUPTURE AT THE SURGICAL SCAR FOR THE ABDOMINAL ANEURYSM BUT THIS IS NOT RELATED TO THE INDUSTRIAL INJURY. AFTER THIS PROBLEM IS CORRECTED FURTHER VOCATIONAL REHABILITATION COULD WELL BE INDICATED.

ORDER

THE ORDER ON RECONSIDERATION OF THE REFEREE DATED MARCH 12, 1974, IS REVERSED TO THE EXTENT THAT IT ORDERED THE CLAIM FOR THE ABDOMINAL ANEURYSM TO BE REMANDED TO THE EMPLOYER FOR ACCEPTANCE AND PAYMENT OF COMPENSATION AND TO THE EXTENT OF THE AWARD TO CLAIMANT'S ATTORNEY FOR PAYMENT OF 750 DOLLARDS FOR REASONABLE ATTORNEY'S FEE TO BE PAID BY THE EMPLOYER.

IN ALL OTHER RESPECTS THE ORDER ON RECONSIDERATION IS AFFIRMED.

WCB CASE NO. 73-2701

AUGUST 12, 1974

HAROLD CAVINS, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES WHETHER OR NOT CLAIMANT'S LEFT ANKLE SURGERY RESULTED FROM AN AGGRAVATION OF A 1970 LEFT ANKLE INJURY OR A NEW INJURY TO HIS LEFT ANKLE ON SEPTEMBER 21, 1972. THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIMANT'S CLAIM OF A NEW INJURY IN 1972 AND THE REFEREE AFFIRMED THIS DENIAL.

OUR REVIEW OF THE RECORD PERSUADES US THAT THE SURGERY IN 1973 RELATED TO THE 1970 ANKLE INJURY AND NOT THE 1972 ANKLE INJURY. THE REFEREE HAS PROPERLY ANALYZED THE EVIDENCE AND HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED FEBRUARY 15, 1974 IS AFFIRMED.

WCB CASE NO. 72-3476

AUGUST 12, 1974

GEORGE R. NELSON, CLAIMANT

MC GEORGE, MC LEOD AND YORK,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES A DENIED AGGRAVATION CLAIM. THE REFEREE ORDER THE STATE ACCIDENT INSURANCE FUND TO ACCEPT THE CLAIM BUT DID NOT AWARD CLAIMANT'S ATTORNEY'S FEE TO

BE PAID BY THE STATE ACCIDENT INSURANCE FUND AND DID NOT AWARD PENALTIES. THE CLAIMANT REQUESTS BOARD REVIEW REQUESTING HIS ATTORNEY'S FEE BE PAID BY THE STATE ACCIDENT INSURANCE FUND AND AN AWARD OF PENALTIES.

CLAIMANT, A 49 YEAR OLD MACHINIST, RECEIVED A LOW BACK INJURY FEBRUARY 3, 1972. MEDICAL TREATMENT WAS CONCLUDED MARCH 3, 1972. ON JULY 17, 1972, CLAIMANT WAS REACHING OVER HIS HEAD WHILE ON A STEP LADDER AT HOME WHEN HE HAD A SHARP PAIN IN HIS BACK CAUSING HIS LEG TO GO NUMB.

THE REFEREE CORRECTLY COUND, UNDER THE FACTS OF THIS CASE, THAT THE JULY LADDER INCIDENT WAS AN EXACERBATION OF THE CLAIMANT'S BACK CONDITION WHICH WAS RELATED TO THE FEBRUARY, 1972 INDUSTRIAL ACCIDENT. ALSO, UNDER THE FACTS OF THIS CASE, THE REFEREE CORRECTLY DID NOT AWARD CLAIMANT ATTORNEY'S FEES OR PENALTIES INASMUCH AS THE EVIDENCE WHICH THE STATE ACCIDENT INSURANCE FUND HAD AT THE TIME OF THE DENIAL AND NEARLY UP TO THE TIME OF HEARING MADE THE DENIAL APPROPRIATE.

THE BOARD AFFIRMS THE OPINION AND ORDER OF THE REFEREE AND ADOPTS THE OPINION AND ORDER AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED FEBRUARY 12, 1974 IS AFFIRMED.

WCB CASE NO. 73-3536

AUGUST 12, 1974

JOHN LUNDBERG, CLAIMANT

EMMONS, KYLE, LROPP AND KRYGER,
CLAIMANT'S ATTORNEYS
KEITH SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES A DENIED OCCUPATIONAL DISEASE CLAIM AND PENALTIES FOR ALLEGED UNREASONABLE RESISTANCE BY THE EMPLOYER. THE REFEREE ORDERED THE CLAIM ACCEPTED BY THE EMPLOYER, AWARDED CLAIMANT'S ATTORNEY'S FEES TO BE PAID BY THE EMPLOYER BUT AWARDED NO PENALTY. CLAIMANT REQUESTS BOARD REVIEW BECAUSE THE REFEREE AWARDED NO PENALTIES.

CLAIMANT, A 61 YEAR OLD SAWMILL WORKER, HAD WORKED FOR YEARS ON A SAW THAT WAS APPROXIMATELY 32 INCHES HIGH. HE HAS BEEN DEVELOPING PAINS IN THE MID-BACK SINCE THE LATE 1950'S AND IT HAS PROGRESSIVELY WORSENEDED. THE TREATING DOCTOR AND AN EXAMINING DOCTOR CONCUR THAT THERE IS A RELATIONSHIP OF HIS PRESENT CONDITION TO THE PROVOCATION OF HIS DISEASE BY HIS MANY YEARS OF WORKING IN A STRESSFUL POSTURAL POSITION AND THAT THE TYPE OF WORK WAS AGGRAVATING TO A PROBABLE PREEXISTING ARTHRITIS OF THE SPINE.

THE INSURANCE CARRIER CONTINUED TO REFUSE PAYMENT OF COMPENSATION AND DELAYED THEIR DENIAL FOR ABOUT A MONTH AND A HALF AFTER THEY HAD THESE MEDICAL OPINIONS. THE BOARD

FINDS THAT THE EMPLOYER'S CONDUCT FELL BELOW THE STANDARD OF CONDUCT REQUIRED AND THAT THE CARRIER DID UNREASONABLY REFUSE TO PAY COMPENSATION. A PENALTY EQUAL TO 10 PERCENT OF THE COMPENSATION DUE AND OWING THE CLAIMANT ON MARCH 25, 1974, THE DATE OF THE REFEREE'S ORDER, SHOULD BE ASSESSED.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 25, 1974 IS MODIFIED. THE CLAIMANT IS AWARDED ADDITIONAL COMPENSATION EQUAL TO 10 PERCENT OF THE COMPENSATION DUE AND PAYABLE AS OF MARCH 25, 1974, PURSUANT TO ORS 656.262(8).

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE 25 PERCENT OF THE INCREASE IN COMPENSATION ASSOCIATED WITH THIS AWARD.

IN ALL OTHER RESPECTS THE ORDER OF THE REFEREE, DATED MARCH 25, 1974, IS AFFIRMED.

WCB CASE NO. 73-2520 AUGUST 12, 1974

NORMAN REILING, CLAIMANT
JERRY MC FARLAND, DBA MC FARLAND
TRUCKING COMPANY

CUSICK AND POLING, CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS IS A NONCOMPLYING EMPLOYER CASE. THE SOLE ISSUE IS WHETHER OR NOT THE STATE ACCIDENT INSURANCE FUND HAD COVERAGE AT THE TIME OF INJURY TO NORMAN REILING. IT IS STIPULATED THAT CLAIMANT WAS INJURED IN THE COURSE AND SCOPE OF EMPLOYMENT FOR THIS EMPLOYER.

EMPLOYER'S COVERAGE WITH THE STATE ACCIDENT INSURANCE FUND LAPSED JANUARY 1, 1973 FOR NONPAYMENT OF MINIMUM PREMIUM. ON JUNE 15, 1973, THE EMPLOYER MAILED THE REQUIRED PREMIUM AND APPLICATION TO THE STATE ACCIDENT INSURANCE FUND. THE STATE ACCIDENT INSURANCE FUND RECEIVED THE APPLICATION AND PREMIUM ON JUNE 18, 1973. THE CLAIMANT WAS INJURED ON JUNE 16, 1973.

ORS 656.442(1) SPECIFICALLY PROVIDES -

'. . . COVERAGE TO BE EFFECTIVE THE DATE WHEN THE APPLICATION TO CONTRIBUTE TO THE INDUSTRIAL ACCIDENT FUND TOGETHER WITH SUCH FEES OR MINIMUM PREMIUM AS THE STATE ACCIDENT INSURANCE FUND MAY REQUIRE IS RECEIVED BY AN AUTHORIZED REPRESENTATIVE OF THE STATE ACCIDENT INSURANCE FUND.'

IN THIS CASE THE APPLICATION AND FEES AND MINIMUM PREMIUM WERE RECEIVED BY THE STATE ACCIDENT INSURANCE FUND ON JUNE 18, 1973, AND THAT IS THE EFFECTIVE DATE OF THE COVERAGE. THE EMPLOYER THEREFORE WAS A NONCOMPLYING EMPLOYER ON JUNE 16, 1973, AT THE TIME OF THE INJURY TO THE CLAIMANT.

THE ORDER OF THE REFEREE SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED JANUARY 16, 1974 IS AFFIRMED.

WCB CASE NO. 73-3125

AUGUST 12, 1974

JEANETTE YANTIS, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES A DENIED AGGRAVATION CLAIM. THE REFEREE AFFIRMED THE STATE ACCIDENT INSURANCE FUND'S DENIAL.

CLAIMANT A 30 YEAR OLD PRODUCTION WORKER, INJURED HER LOW BACK IN AN AUTOMOBILE ACCIDENT IN 1964 FOR WHICH SHE HAD A LAMINECTOMY AND FUSION.

ON MAY 26, 1972, WHILE WORKING AS A PRINTER, A FEW CARTONS WEIGHING ABOUT THREE AND ONE HALF POUNDS EACH, CONTAINING EMPTY PLASTIC BOTTLES, TOPPED OVER HER FROM BEHIND. THIS CLAIM WAS CLOSED AS A 'MEDICAL ONLY' CLAIM. ON APRIL 10, 1973, CLAIMANT WAS HOSPITALIZED FOR LOW BACK PAIN. THE STATE ACCIDENT INSURANCE FUND DENIED HER CLAIM OF AGGRAVATION OF THE MAY 26, 1972 INDUSTRIAL INJURY. ONE DOCTOR RELATES THE 1973 BACK CONDITION TO THE 1972 INDUSTRIAL INJURY BUT THE HISTORY GIVEN THIS DOCTOR BY THE CLAIMANT IS QUESTIONABLE. THERE IS ALSO SOME EVIDENCE CLAIMANT MAY HAVE INJURED HER BACK MOVING A REFRIGERATOR FOR A NEIGHTBOR.

THE REFEREE SAW AND HEARD THE WITNESSES AND GREAT WEIGHT SHOULD BE GIVEN HIS FINDINGS, ESPECIALLY IN A CASE WHERE CREDIBILITY IS IMPORTANT.

ON DE NOVO REVIEW THE BOARD AFFIRMS THE OPINION AND ORDER OF THE REFEREE AND ADOPTS HIS OPINION AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 14, 1974 IS AFFIRMED.

WCB CASE NO. 73-3880

AUGUST 12, 1974

EUGENE SPANI, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE IS THE EXTENT OF SCHEDULED RIGHT LEG PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 5 PERCENT (7.5 DEGREES) LOSS OF THE RIGHT LEG. THE REFEREE AFFIRMED THE DETERMINATION ORDER.

CLAIMANT, A 53 YEAR OLD WELDER, INJURED HIS RIGHT KNEE MAY 9, 1973. AFTER SURGERY TO THE KNEE HE HAS RETURNED TO WORK. AN EXAMINING ORTHOPEDIST CONSIDERED THAT HE HAD MINIMUM IMPAIRMENT. CLAIMANT TESTIFIES HE HAS SOME PAIN WHEN KNEELING ON OR BENDING HIS RIGHT KNEE AND FINDS SQUATTING PAINFUL. THE MEDICAL REPORTS INDICATE THE PROGNOSIS IS GOOD.

ON DE NOVO REVIEW THE BOARD AFFIRMS THE AWARD MADE BY THE DETERMINATION ORDER AND AFFIRMED BY THE REFEREE.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 1974 IS AFFIRMED.

WCB CASE NO. 73-1290

AUGUST 12, 1974

LOWELL KOLAKS, CLAIMANT
MARMADUKE, MERTEN AND SALTVEIT
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES A DENIED AGGRAVATION CLAIM. THE REFEREE FOUND THAT THE MEDICAL REPORTS SUBMITTED FAILED TO STATE REASONABLE GROUNDS FOR THE CLAIM AS REQUIRED BY ORS 656.273 AND THEREFORE DISMISSED THE REQUEST FOR HEARING FOR WANT OF JURISDICTION. CLAIMANT HAS FORWARDED ADDITIONAL MEDICAL REPORTS WITH HIS BRIEFS.

THE STATE ACCIDENT INSURANCE FUND STATES IN ITS BRIEF THAT CLAIMANT HAS NOT SUBMITTED THIS NEW MATERIAL TO THE FUND THEREBY PROVIDING AN OPPORTUNITY FOR ACCEPTANCE OR DENIAL OF THE AGGRAVATION CLAIM.

THE BOARD AFFIRMS THE DISMISSAL ORDER OF THE REFEREE WITHOUT PREJUDICE TO THE CLAIMANT'S RIGHT TO SUBMIT NEW MEDICAL REPORTS TO THE STATE ACCIDENT INSURANCE FUND FOR THEIR ACCEPTANCE OR DENIAL OF CLAIMANT'S AGGRAVATION CLAIM.

ORDER

THE ORDER OF DISMISSAL OF THE REFEREE, DATED MARCH 26, 1974, IS AFFIRMED WITHOUT PREJUDICE TO THE CLAIMANT'S RIGHT TO RESUBMIT NEW MEDICAL REPORTS TO THE STATE ACCIDENT INSURANCE FUND FOR THE STATE ACCIDENT INSURANCE FUND'S ACCEPTANCE OR DENIAL OF CLAIMANT'S AGGRAVATION CLAIM.

AUGUST 12, 1974

MARTHA CHICHESTER, CLAIMANT
BODIE AND MINTURN, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT APPEALS FROM A REFEREE'S ORDER WHICH GRANTED A 20 PERCENT UNSCHEDULED PERMANENT PARTIAL DISABILITY AWARD (64 DEGREES) FOR A CERVICAL INJURY, CONTENDING SHE IS ENTITLED TO A GREATER AWARD.

ON FEBRUARY 11, 1970, CLAIMANT, A 52 YEAR OLD CHEF, INJURED HER NECK WHILE LIFTING, ACUTELY AGGRAVATING A PRE-EXISTING DEGENERATIVE ARTHRITIS OF THE CERVICAL SPINE. SHE WAS TREATED CONSERVATIVELY AND BY JUNE OF 1972 HAD IMPROVED TO THE EXTENT THE STIFFNESS WAS GONE, BUT SHE CONTINUED TO EXPERIENCE NECK PAIN AND HEADACHES. CLAIMANT SUFFERED A MYOCARDIAL INFARCTION IN OCTOBER, 1972, WHICH WAS UNRELATED TO THE INDUSTRIAL INJURY.

IN FEBRUARY, 1973, A MYELOGRAM WAS PERFORMED AND WAS NORMAL. DR. JOHN B. BURR STATED THE INDUSTRIAL INJURY HAD LEFT CLAIMANT WITH RESIDUALS DIFFICULT TO EVALUATE BECAUSE OF A POSSIBLE EMOTIONAL OVERLAY DEMONSTRATED BY FREQUENT HEADACHES ASSOCIATED WITH TENSION AND FATIGUE.

WHILE CLAIMANT MAY NOT BE ABLE TO RETURN TO HER FORMER EMPLOYMENT, THE REFEREE FOUND SHE WAS STILL CAPABLE OF PERFORMING GAINFUL AND SUITABLE EMPLOYMENT IF SHE DESIRED. SHE DOES HAVE SOME OUTSIDE ACTIVITIES AND CONTEMPLATES REESTABLISHING AN AVON BUSINESS TO A PROFITABLE STATUS.

THE BOARD, ON REVIEW, CONCLUDES THE AWARD OF 64 DEGREES UNSCHEDULED NECK DISABILITY MADE BY THE REFEREE, IS A FAIR EVALUATION OF CLAIMANT'S DISABILITY ATTRIBUTABLE TO THE ACCIDENT AT ISSUE.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 20, 1974 IS AFFIRMED.

AUGUST 14, 1974

**THE BENEFICIARIES OF
HOWARD COX, DECEASED**
RICHARDSON AND MURPHY
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE
DEFENSE ATTORNEY

A REQUEST FOR REVIEW, HAVING BEEN DULY FILED WITH THE WORKMEN'S COMPENSATION BOARD IN THE ABOVE ENTITLED MATTER BY THE STATE ACCIDENT INSURANCE FUND, 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 AND THE ORDER OF THE REFEREE IS FINAL BY OPERATION OF LAW.

WCB CASE NO. 73-2686

AUGUST 14, 1974

HERBERT LIGGETT, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES A DENIED AGGRAVATION CLAIM. THE REFEREE DISMISSED THE REQUEST FOR HEARING ON THE BASIS THAT THE MEDICAL REPORTS SUBMITTED BY CLAIMANT IN SUPPORT OF HIS CLAIM FOR AGGRAVATION DID NOT SATISFY THE JURISDICTIONAL REQUIREMENTS OF ORS 656.271 (NOW ORS 656.273).

THE TWO MEDICAL REPORTS SUBMITTED DO SET FORTH SUFFICIENT FACTS TO CONSTITUTE REASONABLE GROUNDS TO BELIEVE THAT AN AGGRAVATION HAS OCCURRED. THE CLAIMANT HAD BEEN AWARDED 50 PERCENT UNSCHEDULED PERMANENT PARTIAL DISABILITY. THE MEDICAL REPORTS STATE HE PROBABLY WILL NOT BE ABLE TO WORK IN A GAINFUL EMPLOYMENT AND 'I CERTAINLY FEEL THAT THE INDUSTRIAL INJURY PROBABLY ACCELERATED THIS CONDITION.' READING THESE TWO MEDICAL REPORTS IN THE CONTEXT OF THIS CASE, THE BOARD FINDS THEY SET FORTH REASONABLE GROUNDS TO CONCLUDE THE CLAIMANT'S CONDITION HAS BECOME WORSENERD SINCE THE LAST AWARD OF COMPENSATION WAS MADE.

ALTHOUGH CLAIMANT HAS PREVAILED ON THIS PROCEDURAL ISSUE, HE HAS NOT YET PREVAILED ON THE MERITS. IN THE EVENT HE DOES SO, HIS ATTORNEY SHALL BE ENTITLED TO A FEE FOR HIS SERVICES IN DEALING WITH THE PROCEDURAL AS WELL AS SUBSTANTIVE ISSUES IN THIS CLAIM.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 12, 1974 IS REVERSED.

THE CLAIM IS REMANDED TO THE HEARINGS DIVISION TO HEAR THE CASE ON ITS MERITS.

AUGUST 14, 1974

PALMA W. BRUSCO, CLAIMANT
 LINDSAY, NAHSTOLL, HART, DUNCAN, DAFOE
 AND KRAUSE, CLAIMANT'S ATTORNEYS
 MERLIN L. MILLER, DEFENSE ATTY.
 REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER REOPENING HER CLAIM FOR FURTHER MEDICAL TREATMENT ON JANUARY 4, 1974, CONTENDING THE REOPENING DATE SHOULD HAVE BEEN CARRIED BACK TO JUNE 13, 1973, THE DATE TIME LOSS WAS TERMINATED. SHE ALLEGES SHE WAS NOT MEDICALLY STATIONARY WHEN THE CLAIM WAS CLOSED ON JULY 23, 1973.

THE RECORD CLEARLY REVEALS THAT THE TERMINATION OF CLAIMANT'S TIME LOSS WAS BASED ON THE PHYSICIANS' CONSENSUS THAT SHE WAS THEN MEDICALLY STATIONARY, THAT BEING SO, IT IS THE CLAIMANT'S BURDEN TO PRODUCE SATISFACTORY EVIDENCE THAT SHE WAS NOT, IN FACT, THEN MEDICALLY STATIONARY. THIS REQUIRES EXPERT MEDICAL OPINION. DIMITROFF V. SIAC, 209 OR 316 (1957).

NOT UNTIL DR. GRITZKA'S LETTER OF DECEMBER 26, 1973, (CLAIMANT'S EXHIBIT 2) DID CLAIMANT PRODUCE EVIDENCE CONCERNING HER PHYSICAL STATUS. HIS REPORT DOES NOT ESTABLISH THAT SHE WAS IN NEED OF FURTHER TREATMENT AND TIME LOSS AT THE TIME OF CLOSURE. IT DOES ESTABLISH HOWEVER, THAT AT LEAST ON DECEMBER 26, 1973, SHE NEEDED MEDICAL TREATMENT.

THE REFEREE REOPENED THE CLAIM AS OF JANUARY 4, 1974, THE DATE EVIDENCE WAS PRESENTED TO HIM THAT SHE NEEDED FURTHER TREATMENT. THAT DATE IS IRRELEVANT TO CLAIMANT'S ENTITLEMENT. SINCE EVIDENCE EXISTED ON DECEMBER 26, 1973 THAT SHE NEEDED FURTHER TREATMENT AND WAS THEN DISABLED, THE CLAIM SHOULD BE REOPENED AS OF THAT DATE.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 18, 1974, IS HEREBY MODIFIED TO REQUIRE COMMENCEMENT OF TIME LOSS AS OF DECEMBER 26, 1973, INSTEAD OF JANUARY 4, 1974.

HIS ORDER IS AFFIRMED IN ALL OTHER RESPECTS.

AUGUST 14, 1974

BETTY RIVERA, CLAIMANT
 MC KINNEY, CHURCHILL AND MC KINNEY,
 CLAIMANT'S ATTORNEYS
 ADY AND BLAIR, DEFENSE ATTYS.
 REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER DENIED CLAIMANT'S CLAIM FOR COMPENSATION FOR CERVICAL INJURY RESULTING FROM AN ACCIDENT OF FEBRUARY 6, 1971. THE REFEREE ORDERED THE CLAIM TO BE ACCEPTED BY THE EMPLOYER AND THE EMPLOYER REQUESTS BOARD REVIEW.

ON FEBRUARY 6, 1971, CLAIMANT, A 50 YEAR OLD MEDICAL LIBRARIAN, SLIPPED AND FELL IN THE PARKING LOT OF THE DOCTOR'S OFFICE WHERE SHE WORKED. SHE RECEIVED MEDICAL CARE ON AN INFORMAL BASIS BY THE DOCTOR FOR WHOM SHE WORKED AND FROM TIME TO TIME BY THAT DOCTOR'S NURSE. CLAIMANT TESTIFIED THAT HER NECK CONTINUED TO GIVE HER PROBLEMS BUT SHE CONTROLLED THIS WITH PAIN MEDICATION GIVEN TO HER BY THE OFFICE NURSE. CLAIMANT FILED A CLAIM ON FEBRUARY 22, 1973, WHICH WAS DENIED.

ON DE NOVO REVIEW THE BOARD CONCURS WITH THE FINDINGS OF THE REFEREE AND ADOPTS HIS OPINION AND ORDER AS ITS OWN. THE BOARD AFFIRMS THAT NO PENALTIES SHOULD BE AWARDED EITHER IN THE REFEREE'S ORDER OR AT THIS TIME.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 26, 1974 IS AFFIRMED.

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

WCB CASE NO. 73-3225

AUGUST 14, 1974

JOHN GONZALES, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE IS THE EXTENT OF PERMANENT PARTIAL DISABILITY. THE DETERMINATION ORDER MADE NO AWARD OF PERMANENT PARTIAL DISABILITY. THE REFEREE AWARDED CLAIMANT 15 PERCENT (48 DEGREES) UNSCHEDULED LOW BACK DISABILITY AND CLAIMANT REQUESTS BOARD REVIEW CONTENDING HIS DISABILITY EXCEEDS THAT AWARDED.

WE AGREE WITH CLAIMANT THAT THE FINDINGS OF THE REFEREE'S OPINION AND ORDER JUSTIFY A LARGER PERMANENT DISABILITY AWARD THAN HE WAS AWARDED. WE THINK HIS FINDINGS, WITH WHICH WE AGREE, JUSTIFY AN AWARD OF 25 PERCENT OF THE MAXIMUM FOR UNSCHEDULED DISABILITY. THE REFEREE'S ORDER SHOULD BE MODIFIED ACCORDINGLY.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 25, 1974, IS MODIFIED.

CLAIMANT IS AWARDED A TOTAL OF 80 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. THIS IS AN

INCREASE OF 32 DEGREES OVER THAT AWARDED BY THE REFEREE.

IN ALL OTHER RESPECTS THE ORDER OF THE REFEREE DATED FEBRUARY 25, 1974 IS AFFIRMED.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE 25 PERCENT OF THE INCREASE IN COMPENSATION ASSOCIATED WITH THIS AWARD.

WCB CASE NO. 73-1243

AUGUST 14, 1974

RICHARD E. SEARS, CLAIMANT
THOMAS O. CARTER, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES THE EXTENT OF PERMANENT DISABILITY TO CLAIMANT'S RIGHT EYE AND WHETHER OR NOT CLAIMANT'S RIGHT EYE CONDITION IS MEDICALLY STATIONARY. THE DETERMINATION ORDER AWARDED CLAIMANT 50 PERCENT LOSS OF VISION OF THE RIGHT EYE. THE REFEREE INCREASED THIS AWARD TO 100 PERCENT (100 DEGREES) FOR COMPLETE LOSS OF INDUSTRIAL VISION OF THE RIGHT EYE.

CLAIMANT, AT THE TIME OF THE INJURY, WAS 18 YEARS OLD AND EMPLOYED AS A LABORER IN A WRECKING YARD. SURGERY FOR TRAUMATIC CATARACT WAS SUCCESSFUL. CLAIMANT IS UNABLE TO TOLERATE CONTACT LENSES. REGULAR GLASSES WITHOUT A CONTACT LENSE WOULD PRODUCE DOUBLE VISION. CLAIMANT'S VISION IN THIS EYE IS EXTREMELY LIMITED (FINGER COUNTING AT TWO FEET).

AS THE REFEREE STATED - 'ALTHOUGH THE VISION IN HIS RIGHT EYE IS THEORETICALLY FULLY CORRECTABLE, SUCH CORRECTION IS NOT MEDICALLY FEASIBLE.'

ON DE NOVO REVIEW THE BOARD AFFIRMS THE FINDINGS AND ORDER OF THE REFEREE AND ADOPTS HIS OPINION AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 22, 1974 IS AFFIRMED.

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

WCB CASE NO. 73-3658

AUGUST 14, 1974

MARY M. KANE, CLAIMANT
LINDSAY, NAHSTOLL, HART, DUNCAN, DAFOE
AND KRAUSE, CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT.

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES A DENIED BACK CLAIM. THE REFEREE AFFIRMED THE DENIAL.

CLAIMANT, A 23 YEAR OLD LUMBER GRADER, DEVELOPED A PAIN IN HER RIGHT FLANK AND RIGHT LUMBAR AREA. THE PAIN CONTINUED TO INCREASE AND SHE CONSULTED A DOCTOR SOME 21 DAYS LATER FOR WHAT SHE THOUGHT MIGHT BE DUE TO PASSAGE OF A KIDNEY STONE BECAUSE OF PRIOR HISTORY OF THIS TYPE OF PROBLEM. THE DOCTOR RULED OUT ANY KIDNEY STONE PROBLEM AND FOUND MUSCLE SPASM IN THE RIGHT FLANK AND RIGHT LUMBAR AREA WHICH HE RELATED TO HER JOB ACTIVITY. CLAIMANT FILED AN 801 REPORT SHOWING LOW BACK INJURY FROM LIFTING BOARDS OF VARIOUS SIZES AND THROWING OVER HER LEFT SHOULDER INTO A BOX.

THERE IS MUCH DISCUSSION IN THE RECORD AND THE BRIEFS AS TO WHETHER OR NOT CLAIMANT WAS THROWING THE LUMBER OVER HER LEFT SHOULDER OR RIGHT SHOULDER. THE BOARD DOES NOT CONSIDER THIS FACTOR DETERMINATIVE OF THE ISSUE OF WHETHER OR NOT CLAIMANT'S CONDITION IS COMPENSABLE.

ON DE NOVO REVIEW THE EVIDENCE IN THE RECORD PERSUADES THE BOARD THAT CLAIMANT'S INJURY AROSE OUT OF AND IN THE SCOPE OF HER EMPLOYMENT.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 26, 1974 IS REVERSED.

THE CLAIM IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR PAYMENT OF COMPENSATION AS PROVIDED BY LAW.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 750 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH THE HEARING AND BOARD REVIEW.

WCB CASE NO. 73-3121

AUGUST 14, 1974

WALTER F. HURST, CLAIMANT
RICHARDSON AND MURPHY, CLAIMANT'S ATTYS.
DON G. SWINK, DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES THE CLAIM FOR HEARING LOSS WHICH WAS DENIED BY THE EMPLOYER. THE REFEREE AFFIRMED THE DENIAL BECAUSE THE CLAIM FOR THIS OCCUPATIONAL DISEASE WAS NOT TIMELY FILED.

CLAIMANT, A 55 YEAR OLD WORKER AT ZIDELL EXPLORATION, INCL, HAS BEEN WORKING IN A NOISY ENVIRONMENT FOR THE PAST 22 YEARS. HE WAS SEEN BY AN EAR SPECIALIST IN AUGUST OF 1962 FOR A HEARING PROBLEM. A MEDICAL REPORT IN EVIDENCE DATED JANUARY 19, 1970, REFLECTS CLAIMANT WAS ADVISED BY A DOCTOR THAT THERE WAS A RELATIONSHIP BETWEEN HIS WORK AND HIS PHYSICAL DIFFICULTY. THE DOCTOR ADVISED HIM TO WEAR EAR DEFENDERS WHILE WORKING IN HIS OCCUPATION OR CHANGE

JOB LOCATIONS. THE CLAIMANT'S OWN TESTIMONY REFLECTS THE CLAIMANT KNEW THAT HIS CONDITION WAS JOB-RELATED.

ORS 656.807 SPECIFICALLY STATES -

ALL OCCUPATIONAL DISEASE CLAIMS SHALL BE VOID UNLESS A CLAIM IS FILED . . . WITHIN THREE YEARS AFTER THE LAST EXPOSURE IN EMPLOYMENT SUBJECT TO THE WORKMEN'S COMPENSATION LAW AND WITHIN 180 DAYS FROM THE DATE CLAIMANT BECOMES DISABLED OR IS INFORMED BY A PHYSICIAN THAT HE IS SUFFERING FROM AN OCCUPATIONAL DISEASE WHICHEVER IS LATER.

THE CLAIMANT FILED HIS CLAIM ON MAY 23, 1973, WHICH WAS APPROXIMATELY THREE AND ONE HALF YEARS AFTER HE KNEW HIS HEARING LOSS WAS WORK-RELATED.

THE OPINION AND ORDER OF THE REFEREE MUST BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 26, 1974 IS AFFIRMED.

WCB CASE NO. 73-4104 AUGUST 14, 1974

VIRGIL L. SLAUGHTER, CLAIMANT
JAMES W. POWERS, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT HAS REQUESTED BOARD REVIEW OF THE ISSUE OF EXTENT OF DISABILITY AND NEED FOR FURTHER MEDICAL CARE AND TREATMENT. THE DETERMINATION ORDER AWARDED NO PERMANENT PARTIAL DISABILITY AND THE REFEREE AFFIRMED THE DETERMINATION ORDER.

CLAIMANT, A 41 YEAR OLD MILLWRIGHT, INJURED HIS BACK MARCH 2, 1972. HE HAS HAD TWO MYELOGRAMS, HAS BEEN THROUGH THE BACK EVALUATION CLINIC TWICE, AND HAS BEEN EXAMINED BY NUMEROUS SPECIALISTS. ALL ANY OF THE DOCTORS CAN FIND WAS THE CHRONIC LUMBAR BACKACHES WITH SEVERE CONVERSION REACTION. THE DOCTORS SAY THAT HE CAN GO BACK TO HIS OLD TYPE OF WORK AND THE CLAIMANT FEELS HE COULD RETURN TO HIS JOB IN THE MILL. CLAIMANT IS CURRENTLY EMPLOYED ON A FARM WORKING STEADILY. THE REFEREE CONCLUDED THIS EVIDENCE JUSTIFIED AFFIRMANCE OF THE DETERMINATION ORDER.

ON DE NOVO REVIEW THE BOARD CONCURS WITH THE REFEREE'S EVALUATION OF THE EVIDENCE AND ADOPTS HIS OPINION AND ORDER AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 12, 1974 IS AFFIRMED.

AUGUST 14, 1974

LEONA SAMSON, CLAIMANT

MARSH, MARSH, DASHNEY AND CUSING,
CLAIMANT'S ATTORNEYS
ADY AND BLAIR, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE EMPLOYER REQUESTS THE BOARD TO REVIEW THE EXTENT OF CLAIMANT'S DISABILITY. THE DETERMINATION ORDER AWARDED 10 PERCENT (32 DEGREES) PERMANENT PARTIAL LOW BACK DISABILITY. THE REFEREE AWARDED PERMANENT TOTAL DISABILITY.

CLAIMANT, A 35 YEAR OLD FRUIT PICKER, FELL FROM A LADDER FRACTURING HER RIGHT WRIST AND INJURING HER BACK. A SPONDYLOLYSIS AND SPONDYLOLISTHESIS WERE RENDERED SYMPTOMATIC BY THE FALL. IN ADDITION SHE HAS SOME PERMANENT LOSS OF MOTION IN HER RIGHT WRIST AND LOSS OF GRIPPING STRENGTH.

CLAIMANT'S WORK EXPERIENCE IS LIMITED TO SEASONAL HARVESTING OF FRUITS AND VEGETABLES AND OTHER UNSKILLED AGRICULTURAL LABOR. SHE HAS ONLY COMPLETED THE EIGHTH GRADE, HAS A LOW IQ AND, ACCORDING TO THE PSYCHOLOGIST, IS AN EXCEEDINGLY POOR CANDIDATE REGARDING JOB PLACEMENT OR VOCATIONAL TRAINING. THE PROGNOSIS FOR RESTORATION OR VOCATIONAL REHABILITATION IN THIS INSTANCE IS THUS CONSIDERED VERY POOR.

ON DE NOVO REVIEW THE BOARD CONCURS IN THE OPINION OF THE REFEREE AND ADOPTS HIS ORDER AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 18, 1974 IS AFFIRMED.

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

AUGUST 14, 1974

THOMAS TOMPKINS, CLAIMANT

RINGO, WALTON, MC CLAIN AND EVES,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ONLY ISSUE CONSIDERED ON THIS BOARD REVIEW IS THE REFEREE'S RETROACTIVE APPLICATION OF OL 1973, CH. 664, (SENATE BILL 251) REGARDING TEMPORARY TOTAL DISABILITY PAYMENTS TO BE PAID DURING VOCATIONAL REHABILITATION. THE

REFEREE ORDERED TEMPORARY TOTAL DISABILITY PAYMENTS PURSUANT TO ORS 656.268 AS AMENDED BY SENATE BILL 251 TO APPLY TO CLAIMANT WHO WAS INJURED ON MAY 12, 1971.

THE ACT SPECIFICALLY PROVIDES - THIS ACT SHALL TAKE EFFECT ON JANUARY 1, 1974. OREGON ADMINISTRATIVE RULES OAR 436-61, 61-065 APPLIES TO VOCATIONAL REHABILITATION OF ANY INJURED WORKER HAVING A DISABLING INJURY WHICH OCCURS AFTER DECEMBER 31, 1973. THUS, THE REFEREE'S ORDER ORDERING THE STATE ACCIDENT INSURANCE FUND TO PAY CLAIMANT TEMPORARY TOTAL DISABILITY DURING VOCATIONAL RETRAINING MUST BE REVERSED.

SINCE THE CLAIMANT HAS BEEN REHOSPITALIZED AND THE STATE ACCIDENT INSURANCE FUND HAS REOPENED THE CLAIM THE ISSUE OF EXTENT OF DISABILITY IS MOOT.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 10, 1974 IS REVERSED.

WCB CASE NO. 72-2738

AUGUST 14, 1974

GEORGE DOWNEY, CLAIMANT
BAILEY AND DOBLIE, CLAIMANT'S ATTYS.
PHILIP MONGRAIN, DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

ON THIS REVIEW CLAIMANT SEEKS FURTHER MEDICAL OR AN AWARD OF PERMANENT DISABILITY. THE REFEREE GRANTED HIM NEITHER.

CLAIMANT, A 46 YEAR OLD LABORER WITH SUBSTANTIAL COLLEGE POST GRADUATE CREDITS, HAD SEVERAL EPISODES OF BURSITIS PRIOR TO FEBRUARY 11, 1972, WHICH WERE RELATED TO VARIOUS TRAUMATIC INCIDENTS CAUSING FLAREUPS OF THE BURSITIS. CLAIMANT, JUST PRIOR TO FEBRUARY 11, 1972, WAS CARRYING HEAVY METAL SCAFFOLDING AND AS A RESULT HAD A SUBSTANTIAL FLAREUP OF HIS BURSITIS. A DETERMINATION ORDER WAS MAILED APRIL 27, 1972, GRANTING NO PERMANENT PARTIAL DISABILITY. CLAIMANT CONTINUED TO HAVE PROBLEMS OVER THE NEXT TWO YEARS IN WHICH HIS PHYSICAL ACTIVITIES HAVE SUBSTANTIALLY DECREASED. SEVERAL ATTENDING PHYSICIANS DIAGNOSED ARTHRITIS AND STATED THE ARTHRITIS WAS NOT A RESULT OF HIS OCCUPATION OR AGGRAVATED BY IT.

A MEDICAL REPORT DATED THE DAY BEFORE THE HEARING AND RECEIVED THE MORNING OF THE HEARING FROM DR. EDWARD E. ROSENBAUM, CLEARLY DIAGNOSED RHEUMATOID ARTHRITIS AND CONNECTED IT WITH CLAIMANT'S OCCUPATION BY STATING RHEUMATOID ARTHRITIS IS AGGRAVATED BY STRESS, STRAIN AND FATIGUE. IT IS THEREFORE MY OPINION THAT HIS JOB HAS AGGRAVATED HIS ILLNESS . . .

THE EXAMINATION BY DR. EDWARD ROSENBAUM WAS AGREED TO BY THE EMPLOYER'S ATTORNEY WHO HAD AGREED TO PAY FOR THE EXAMINATION. THUS, THE EMPLOYER'S ATTORNEY WAS NOT PREJUDICED OR SURPRISED (OTHER THAN BY THE ADVERSE OPINION OF THE DOCTOR) BY THE REPORT NOT HAVING BEEN SUBMITTED 10 DAYS PRIOR TO THE HEARING. THE EMPLOYER'S ATTORNEY CHOSE NOT TO PRESERVE HIS RIGHT OF CROSS-EXAMINATION. THE EMPLOYER'S ATTORNEY INSTEAD EXPRESSED THE DESIRE FOR EXAMINATION BY ANOTHER DOCTOR.

INSTEAD OF AN EXAMINATION BY ANOTHER DOCTOR, THE EMPLOYER'S ATTORNEY TRANSMITTED EVIDENCE SUBMITTED AT THE HEARING TO A CALIFORNIA DOCTOR ASKING HIS OPINION (DEFENSE EXHIBIT 7). THE CALIFORNIA DOCTOR, WITHOUT EXAMINING THE CLAIMANT, WROTE A LETTER EXPRESSING AN OPINION FAVORABLE TO THE EMPLOYER (DEFENSE EXHIBIT 8). THE REFEREE ADMITTED DEFENSE EXHIBIT 7 AND DEFENSE EXHIBIT 8 OVER THE OBJECTION OF THE CLAIMANT AFTER THE HEARING.

ORS 656.310(2) PROVIDES -

THE CONTENTS OF MEDICAL, SURGICAL AND HOSPITAL REPORTS PRESENTED BY CLAIMANTS FOR COMPENSATION SHALL CONSTITUTE PRIMA FACIE EVIDENCE AS TO THE MATTER CONTAINED THEREIN - SO, ALSO, SHALL SUCH REPORTS PRESENTED BY THE STATE ACCIDENT INSURANCE FUND OR DIRECT RESPONSIBILITY EMPLOYERS, PROVIDED THAT THE DOCTOR RENDERING MEDICAL AND SURGICAL REPORTS CONSENTS TO SUBJECT HIMSELF TO CROSS-EXAMINATION. THIS SUBSECTION SHALL ALSO APPLY TO MEDICAL OR SURGICAL REPORTS FROM ANY TREATING OR EXAMINING DOCTOR WHO IS NOT A RESIDENT OF OREGON . . . (EMPHASIS SUPPLIED)

DR. ENGLEMAN, THE CALIFORNIA DOCTOR, WAS NOT A TREATING OR EXAMINING DOCTOR. THE BOARD STRONGLY DISCOURAGES MAIL ORDER MEDICAL OPINIONS. DEFENSE EXHIBITS 7 AND 8 SHOULD NOT HAVE BEEN ADMITTED AT THE HEARING AND WILL BE DISREGARDED ON BOARD REVIEW.

THE RECORD, ON BOARD REVIEW (EXCLUDING THE ABOVE TWO EXHIBITS) REFLECTS THAT THE MOST CREDIBLE MEDICAL EVIDENCE, I.E., THE OPINION OF DR. ROSENBAUM, ESTABLISHES THAT CLAIMANT'S RHEUMATOID ARTHRITIS WAS AGGRAVATED BY CLAIMANT'S JOB ACTIVITY.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 5, 1974 IS REVERSED.

THE CLAIM IS REMANDED TO THE EMPLOYER TO REOPEN THIS CLAIM AND PROVIDE MEDICAL CARE AND COMPENSATION TO THE CLAIMANT.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 1,000 DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH THE HEARING AND BOARD REVIEW.

LOUIS DEPIERO, CLAIMANT
SAHLSTROM, LOMBARD, STARR AND VINSON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
CROSS-APPEAL BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER INCREASING HIS UNSCHEDULED DISABILITY FROM 96 DEGREES TO 150 DEGREES CONTENDING HE IS PERMANENTLY AND TOTALLY DISABLED.

THE STATE ACCIDENT INSURANCE FUND HAS CROSS-APPEALED CONTENDING THAT THE REFEREE FAILED TO APPLY ORS 656.222 TO THE FACTS OF THIS CASE.

WE CONCUR WITH THE REFEREE'S CONCLUSION THAT CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED. WE ARE PERSUADED HIS PRESENT UNEMPLOYMENT STEMS PRIMARILY FROM A LACK OF CONCENTRATED EFFORT AT RETURNING TO WORK.

HE DOES HAVE A SERIOUS HANDICAP HOWEVER, AND THE REFEREE HAS PROPERLY APPLIED ORS 656.222, AS INTERPRETED IN GREEN V. SIAC, 197 OR 160 (1953), IN EVALUATING CLAIMANT'S PERMANENT DISABILITY. THE NESSELRODT CASE CITED BY THE FUND DEALT WITH APPLYING ORS 656.222 TO SCHEDULED INJURIES AND IS THEREFORE NOT CONTROLLING. HAVING EXAMINED THE RECORD DE NOVO, WE CONCLUDE THE ORDER OF THE REFEREE SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE REFEREE'S ORDER DATED MARCH 25, 1974, IS HEREBY AFFIRMED.

HAZEL M. BRIGGS, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTORNEYS
MERLIN MILL, DEFENSE ATTORNEY

ON MAY 22, 1974, THE BOARD ISSUED ITS ORDER ON REVIEW IN THE ABOVE ENTITLED CASE. CLAIMANT THEN MOVED THE BOARD FOR RECONSIDERATION OF ITS ORDER SEEKING A RULING THAT THE DETERMINATION ORDER WHICH WAS PREMATURELY ISSUED IN CLAIMANT'S CLAIM DID NOT QUALIFY AS THE INITIATING EVENT FOR CLAIMANT'S AGGRAVATION PERIOD AND A RULING THAT HER ATTORNEY'S FEES SHOULD BE PAID BY THE EMPLOYER ON THE BASIS OF EMPLOYER MISCONDUCT IN SECURING CLOSURE OF THE CLAIM.

THE CONTENTION CONCERNING THE EMPLOYER'S ALLEGED MISCONDUCT WAS THOROUGHLY ARGUED TO AND CONSIDERED BY THE BOARD

IN ISSUING ITS ORDER ON REVIEW, WE ARE SATISFIED WITH OUR EARLIER DECISION ON THAT POINT.

WITH REGARD TO CLAIMANT'S MOTION #1, WE CONCLUDE CLAIMANT'S ARGUMENT ON RECONSIDERATION IS WELL TAKEN. THE EVIDENCE INDICATES CLAIMANT'S CONDITION BECAME MEDICALLY STATIONARY ON JULY 23, 1973. THE REFEREE LEFT THE RECORD OPEN UNTIL SEPTEMBER 6, 1973, FOR THE PRODUCTION OF ADDITIONAL EVIDENCE. NO ADDITIONAL EVIDENCE CONCERNING CLAIMANT'S PERMANENT DISABILITY WAS SUBMITTED. THE REFEREE THEN ISSUED HIS ORDER ON SEPTEMBER 27, 1973, DECLARING HER ENTITLEMENTS.

SEPTEMBER 27, 1973, AS THE DATE OF THE FIRST ORDER ISSUED AFTER THE CLAIMANT BECAME MEDICALLY STATIONARY, IS THE APPROPRIATE DATE ON WHICH TO INITIATE THE RUNNING OF CLAIMANT'S AGGRAVATION PERIOD.

CLAIMANT IS INTERESTED IN SECURING AN OPPORTUNITY TO FURTHER LITIGATE THE ISSUE OF CLAIMANT'S PERMANENT DISABILITY. SHE HAD A PERFECT OPPORTUNITY TO PRESENT EVIDENCE ON THAT ISSUE TO THE REFEREE. SHE SHOULD NOT NOW BE PERMITTED TO PRESENT EVIDENCE THAT COULD HAVE BEEN PRESENTED THEN. WE HAVE PREVIOUSLY RULED, HOWEVER, THAT CLAIMANTS ARE ENTITLED TO A HEARING TO SEEK FURTHER COMPENSATION WITHOUT A SHOWING OF AGGRAVATION AND REGARDLESS OF THE FACT THAT A PRIOR HEARING HAS BEEN CONDUCTED IN THE CASE, IF THE EVIDENCE TO BE PRESENTED DEALS STRICTLY WITH EXPERIENCES GAINED AND EVENTS WHICH HAVE OCCURRED, SINCE THE FIRST HEARING. ALFRED WEST, WCB CASE NO. 72-3514 (9-25-73).

IN SUMMARY THEN, WE HAVE CONCLUDED THAT CLAIMANT'S AGGRAVATION SHOULD BEGIN TO RUN FROM SEPTEMBER 27, 1973, AND THAT SHE MAY FURTHER CONTEST HER AWARD OF PERMANENT DISABILITY FOR A PERIOD OF ONE YEAR FROM SEPTEMBER 27, 1973, ONLY ON THE BASIS OF EVIDENCE CONCERNING HER PERMANENT DISABILITY THAT WAS NOT AVAILABLE PRIOR TO SEPTEMBER 27, 1973.

ORDER

THE DETERMINATION ORDER DATED JANUARY 4, 1973, IS HEREBY SET ASIDE AND HELD FOR NAUGHT.

THE REFEREE'S ORDER DATED SEPTEMBER 27, 1973, AS PREVIOUSLY MODIFIED BY THE BOARD'S ORDER ON REVIEW DATED MAY 22, 1974, IS HEREBY REAFFIRMED.

THE REFEREE'S ORDER DATED SEPTEMBER 27, 1973, CONSTITUTES THE FIRST DETERMINATION ORDER FOR THE PURPOSE OF MEASURING CLAIMANT'S AGGRAVATION PERIOD AND HEARING RIGHTS PURSUANT TO ORS 656.273.

CLAIMANT'S REQUEST FOR AN ORDER REQUIRING THE EMPLOYER TO PAY HER ATTORNEY FEES IS HEREBY DENIED.

HEBRON WOMACK, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 10 PERCENT (32 DEGREES) UNSCHEDULED NECK AND LOW BACK DISABILITY. THE REFEREE INCREASED THIS AWARD TO 100 DEGREES PERMANENT PARTIAL DISABILITY FOR UNSCHEDULED NECK AND LOW BACK DISABILITY.

CLAIMANT, A 62 YEAR OLD LONGSHOREMAN, RECEIVED AN INJURY TO HIS NECK, SHOULDER AND LEFT ARM WHEN STRUCK BY FALLING CARGO. HIS RETURN TO WORK WAS ALLOWED BUT HE WAS UNABLE TO DO HIS FORMER DUTIES. BY SUBMITTING A MEDICAL REPORT TO THE UNION EACH 90 DAYS CLAIMANT IS ALLOWED TO OPERATE A FORKLIFT WHICH IS LIGHTER WORK THAN LONGSHORING. AS A FORKLIFT OPERATOR CLAIMANT MAKES SLIGHTLY MORE PER HOUR THAN HE DID LONGSHORING.

THE REFEREE'S OPINION AND ORDER CORRECTLY STATES THAT THE CRITERIA FOR DETERMINING UNSCHEDULED DISABILITY IS NOT PHYSICAL IMPAIRMENT BUT LOSS OF EARNING CAPACITY. IN DETERMINING LOSS OF EARNING CAPACITY PRESENT EARNINGS ARE RELEVANT BUT ARE NOT CONCLUSIVE EVIDENCE OF FUTURE EARNING CAPACITY.

THE RECORD ADEQUATELY SHOWS THAT CLAIMANT'S LOSS OF FUTURE EARNING CAPACITY IS SUBSTANTIALLY IMPAIRED WHEN THE TEST OF CLAIMANT'S ABILITY TO OBTAIN AND HOLD GAINFUL EMPLOYMENT IN THE BROAD FIELD OF GENERAL INDUSTRIAL OCCUPATION IS APPLIED.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 24, 1974 IS AFFIRMED.

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

DUANE HANNEMAN, CLAIMANT

HUFFMAN AND ZENGER, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE IS THE EXTENT OF SCHEDULED PERMANENT PARTIAL DISABILITY TO CLAIMANT'S RIGHT HAND. THE DETERMINATION ORDER AWARDED CLAIMANT 15 PERCENT (22.5 DEGREES). THE REFEREE INCREASED THE AWARD TO 20 PERCENT (30 DEGREES).

CLAIMANT, A 52 YEAR OLD JOURNEYMAN ELECTRICIAN, SUFFERED AN INJURY TO HIS RIGHT HAND WHICH ULTIMATELY NECESSITATED AMPUTATION OF THE SMALL FINGER.

CLAIMANT ARGUES THAT THE EFFECT OF THIS INJURY ON HIS EARNING CAPACITY JUSTIFIES A LARGER AWARD. SCHEDULED DISABILITY IS RATED ON THE LOSS OF FUNCTION AND NOT THE LOSS OF EARNING CAPACITY BASIS. THE REFEREE HAS PROPERLY EVALUATED THE IMPAIRMENT OF FUNCTION.

THE BOARD CONCURS IN HIS FINDINGS AND ADOPTS HIS OPINION AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 25, 1974, IS AFFIRMED.

WCB CASE NO. 73-1558

AUGUST 14, 1974

ESTELLE MACKAY, CLAIMANT

GOLDSMITH, SEIGEL AND ENGEL
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT HAD A CEREBRAL VASCULAR ACCIDENT (STROKE). THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM. THE REFEREE AFFIRMED THE DENIAL.

CLAIMANT, A 67 YEAR OLD UPHOLSTERY SEAMSTRESS, WAS AT HER SEWING MACHINE WHEN THE ELECTRIC MOTOR CAUGHT FIRE. SHE REACHED UP TO PULL OUT THE PLUG AND SOMETHING EXPLODED. SHE DID DISCONNECT THE PLUG. THE DOORS IN THE SHOP WERE OPEN TO LET OUT THE SMOKE AND SMELL. SEVEN OR EIGHT HOURS LATER CLAIMANT HAD A STROKE WHILE AT HOME.

THE TREATING DOCTOR, AN INTERNIST, TESTIFIED CLAIMANT WAS A VERY APPREHENSIVE PERSON WITH HIGH BLOOD PRESSURE IN WHOM A MINIMAL STIMULUS CAN PRODUCE A MAXIMAL RESPONSE. THE DOCTOR'S CONFIDENCE IN HIS OWN OPINION AND HIS OBJECTIVITY IS EXCELLENT. THE INFORMATION CLAIMANT GAVE TO THE DOCTOR UNDER THE FACTS OF THIS CASE ARE MOST LIKELY TO BE DEPENDABLE. THE FACTS GIVEN TO THE DOCTOR WERE GIVEN BY THE CLAIMANT SPONTANEOUSLY. THE DOCTOR TESTIFIED THAT THE EVENTS ASSOCIATED WITH THE MALFUNCTIONING OF THE SEWING MACHINE WERE A MATERIAL CONTRIBUTING CAUSE OF CLAIMANT'S CEREBRAL VASCULAR ACCIDENT.

CLAIMANT WAS ALONE AT THE TIME OF THE SEWING MACHINE MALFUNCTION. OTHER WORKMEN OBSERVED CLAIMANT FIVE OR TEN MINUTES LATER BUT DID NOT NOTE EXCITEMENT.

THE BOARD FINDS THAT CLAIMANT'S CEREBRAL VASCULAR ACCIDENT AROSE OUT OF AND IN THE COURSE OF HER EMPLOYMENT.

THERE ARE ALLEGATIONS IN THE BRIEFS THAT SOME OF THE REFEREE'S ADMONITIONS TO THE CLAIMANT AT THE TIME OF THE HEARING ARE OMITTED FROM THE TRANSCRIPT. THE REVERSAL OF THE REFEREE'S OPINION AND ORDER RENDERS THIS ISSUE MOOT. REPORTERS MUST RECORD ALL CONVERSATIONS VERBATIM ABSENT SPECIFIC INSTRUCTIONS FROM THE REFEREE TO THE CONTRARY.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 8, 1974 IS REVERSED.

THE CLAIM IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND TO BE ACCEPTED FOR PAYMENT OF COMPENSATION UNTIL TERMINATION IS AUTHORIZED PURSUANT TO ORS 656.268.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 1,000 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH THE HEARING AND BOARD REVIEW.

WCB CASE NO. 73-3723

AUGUST 14, 1974

ROLAND LONGHOFFER, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS.
RAY MIZE, DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES THE DENIAL BY THE EMPLOYER FOR CLAIMANT'S BLEEDING GASTRIC ULCER ON THE BASIS THAT THE ULCER WAS NOT COMPENSABLY RELATED TO THE INDUSTRIAL INJURY OF MARCH 12, 1971. THE REFEREE AFFIRMED THE DENIAL.

CLAIMANT, A 45 YEAR OLD TRUCK DRIVER, SLIPPED AND FELL WHILE UNLOADING HIS TRUCK, INJURING HIS BACK. HE HAD BACK SURGERY BUT CONTINUED TO HAVE SUBSTANTIAL BACK AND LEG PROBLEMS ALONG WITH SUBSTANTIAL EMOTIONAL DISTRESS OVER HIS CONTINUING PROBLEMS. CLAIMANT USED SUBSTANTIAL QUANTITIES OF EMPIRIN, ASPIRIN AND ALKA-SELTZER TO ALLEVIATE HIS PAIN AND EMOTIONAL DISTRESS AFTER HIS BACK SURGERY. THE EVIDENCE INDICATES CLAIMANT HAD NO STOMACH PROBLEMS PRIOR TO THE BACK SURGERY.

THE MEDICAL OPINIONS ARE CONTRADICTORY. TWO DOCTORS RELATED THE GASTRIC ULCER TO THE INDUSTRIAL INJURY BASED ON THE TENSION FACTOR, CLAIMANT BEING WORRIED AND UPSET, AND ON LARGE DOSES OF ASPIRIN BEING USED AFTER THE SURGERY. ONE DOCTOR DOES NOT RELATE THE GASTRIC ULCER TO THE INDUSTRIAL INJURY.

WE ARE PERSUADED THAT THE TREATMENT OF THE GASTRIC ULCER RESULTED AS A REACTION TO HIS INJURY AND ITS SEQUELAE. THE

REFEREE'S ORDER SHOULD THEREFORE BE REVERSED AND THE CLAIM REMANDED TO THE EMPLOYER. NO PENALTIES ARE WARRANTED

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 2, 1974, IS REVERSED.

CLAIMANT'S CLAIM FOR GASTRIC ULCER IS REMANDED TO THE EMPLOYER FOR PAYMENT OF COMPENSATION.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 750 DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH THE HEARING AND BOARD REVIEW.

WCB CASE NO. 73-3692

AUGUST 15, 1974

MARIVA M. LOUDEN, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 10 PERCENT (32 DEGREES) UNSCHEDULED LOW BACK DISABILITY. THE REFEREE INCREASED THIS AWARD TO A TOTAL OF 60 PERCENT (192 DEGREES) UNSCHEDULED LOW BACK DISABILITY. CLAIMANT REQUESTS BOARD REVIEW CONTENDING SHE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT, A 32 YEAR OLD WOOLEN MILL MATERIAL INSPECTOR, RECEIVED A BACK INJURY APRIL 27, 1973. SURGERY ON HER BACK WAS SUCCESSFULLY PERFORMED BUT THE NEUROSURGEON RECOMMENDED VOCATIONAL REHABILITATION BECAUSE SHE COULD NOT CONTINUE WORK INVOLVING HEAVY LIFTING.

THE MEDICAL REPORTS AND OTHER FACTORS DO NOT PLACE CLAIMANT PRIMA FACIE IN THE 'ODD-LOT' CATEGORY.

THE CLAIMANT HAS OFFERED NO EVIDENCE THAT SHE HAS SOUGHT EMPLOYMENT. CLAIMANT'S HUSBAND IS DISABLED AND THERE IS AN INCREASING NEED FOR CLAIMANT TO BE WITH HIM AS MUCH AS POSSIBLE. CLAIMANT, ALTHOUGH PLACED IN CONTACT WITH VOCATIONAL REHABILITATION SERVICES, HAS INDICATED SHE WOULD NOT DESIRE RETRAINING, AT LEAST AT THIS TIME. CLAIMANT HAS NOT DEMONSTRATED SUFFICIENT MOTIVATION TO RETURN TO GAINFUL OCCUPATION TO PROVE 'ODD-LOT' STATUS.

THE BOARD AFFIRMS THE AWARD OF 192 DEGREES UNSCHEDULED LOW BACK DISABILITY AND FINDS THAT THIS ADEQUATELY COMPENSATES THE CLAIMANT.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 25, 1974 IS AFFIRMED.

DONALD G. LEWIS, CLAIMANT
SAHLSTROM, LOMBARD, STARR AND VINSON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE IS THE EXTENT OF PERMANENT PARTIAL DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 5 PERCENT (16 DEGREES) FOR UNSCHEDULED PERMANENT NECK AND THORACIC DISABILITY AND TEMPORARY TOTAL DISABILITY FOR APPROXIMATELY THREE WEEKS OF TIME LOSS. THE REFEREE AFFIRMED THE PERMANENT PARTIAL DISABILITY AWARD, INCREASED THE TEMPORARY TOTAL DISABILITY PERIOD TO APPROXIMATELY FIVE MONTHS, AND ORDERED ONE HOSPITAL BILL PAID. THE CLAIMANT NOW REQUESTS BOARD REVIEW SEEKING MORE PERMANENT PARTIAL DISABILITY.

CLAIMANT, A 36 YEAR OLD DRIVER - SALESMAN FOR A WHOLESALE GROCERY DISTRIBUTOR, WAS INVOLVED IN AN AUTOMOBILE ACCIDENT AUGUST 31, 1971. THE ACCIDENT WAS ADMITTEDLY MINOR IN NATURE. THE ATTENDING OSTEOPATH AND A NEUROLOGIST FOUND MINOR OBJECTIVE FINDINGS AND REPORTED THAT CLAIMANT COULD AND SHOULD RETURN TO WORK WITHIN THREE WEEKS OF THE ACCIDENT.

CLAIMANT HAD AN EMOTIONAL REACTION TO THE ACCIDENT BUT THIS WAS TREATED BY A PSYCHIATRIST AND HIS EMOTIONAL CONDITION HAS NOW STABILIZED.

THE RECORD SUPPORTS THE FINDINGS OF THE REFEREE AND WE THEREFORE ADOPT HIS OPINION AS OUR OWN.

ORDER

THE ORDER OF THE REFEREE DATED JANUARY 17, 1974 IS AFFIRMED.

DONALD HERMAN, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT
CROSS-APPEAL BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S FINDING THAT CLAIMANT WAS SUFFERING FROM AN OCCUPATIONAL DISEASE BUT THAT HIS CLAIM THEREFORE WAS UNTIMELY AND THEREFORE BARRED.

THE FUND CROSS-REQUESTS REVIEW SEEKING TO OVERTURN THE REFEREE'S FINDING THAT CLAIMANT'S DISEASE WAS OCCUPATIONAL IN ORIGIN.

OUR REVIEW OF THE EVIDENCE CONVINCES US THE REFEREE CORRECTLY CONCLUDED CLAIMANT'S CARDIOVASCULAR DISEASE IS CAUSALLY CONNECTED TO HIS EMPLOYMENT.

WE DO NOT CONCUR WITH HIS CONCLUSION THAT THE COMMENTS OF DR. GARLAND PUT THE CLAIMANT ON NOTICE THAT HE HAD AN OCCUPATIONAL DISEASE. WE AGREE WITH CLAIMANT'S ARGUMENT ON REVIEW THAT HE LACKED THE MEDICAL SOPHISTICATION NECESSARY TO REALIZE WHAT DR. GARLAND WAS TELLING HIM.

WHETHER DR. GARLAND EFFECTIVELY COMMUNICATED WITH THE CLAIMANT IS NOT TO BE DETERMINED BY WHAT A REASONABLE MAN UNDER THE SAME OR SIMILAR CIRCUMSTANCES WOULD HAVE UNDERSTOOD. THE CLAIMANT'S SUBJECTIVE APPRECIATION OF THE SIGNIFICANCE OF THE INFORMATION MUST BE TAKEN INTO ACCOUNT. HERE THE EVIDENCE IS PERSUASIVE THAT CLAIMANT WAS NOT COGNIZANT OF THE JOB CONNECTION OF HIS DISABLING CONDITION UNTIL PHYSICIANS OF THE VETERAN'S ADMINISTRATION ADVISED HIM TO FILE A WORKMEN'S COMPENSATION CLAIM.

THUS, CLAIMANT'S CLAIM WAS NOT MADE MORE THAN 180 DAYS BEYOND THE TIME HE WAS INFORMED BY A PHYSICIAN THAT HE WAS SUFFERING FROM AN OCCUPATIONAL DISEASE AND THE CLAIM WAS TIMELY FILED.

THE REFEREE'S ORDER SHOULD BE REVERSED AND THE CLAIMANT'S CLAIM ALLOWED.

ORDER

THE ORDER OF THE REFEREE DATED FEBRUARY 21, 1974, AFFIRMING THE FUND'S DENIAL OF CLAIMANT'S CLAIM, IS HEREBY REVERSED AND THE CLAIM IS HEREBY REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR ACCEPTANCE AND PAYMENT OF BENEFITS AS PROVIDED BY LAW.

CLAIMANT'S ATTORNEY IS HEREBY AWARDED A REASONABLE FEE OF 1,200 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR HIS SERVICES IN CONNECTION WITH THE HEARING AND THIS BOARD REVIEW.

WCB CASE NO. 74-279

AUGUST 16, 1974

CECIL WATTS YANCEY, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH FOUND THE FUND'S DENIAL OF HIS OCCUPATIONAL DISEASE CLAIM ERRONEOUS BUT NOT UNREASONABLE.

CLAIMANT CONTENDS IT WAS UNREASONABLE TO DENY HIS CLAIM AND THAT HE IS ENTITLED TO AN AWARD OF ADDITIONAL COMPENSATION PURSUANT TO ORS 656.262(8) AS A PENALTY.

WE AGREE WITH CLAIMANT THAT THE FUND'S DENIAL WAS UNREASONABLE IN VIEW OF THE OVERWHELMING EVIDENCE OF CAUSAL CONNECTION.

CLAIMANT IS ENTITLED TO ADDITIONAL COMPENSATION EQUAL TO 25 PERCENT OF ANY AMOUNTS DUE AND OWING AT THE TIME THE REFEREE ORDERED THE FUND TO ACCEPT THE CLAIM.

ORDER

THE REFEREE'S FINDING THAT THE STATE ACCIDENT INSURANCE FUND'S CONDUCT WAS NOT UNREASONABLE IS HEREBY REVERSED AND CLAIMANT IS HEREBY AWARDED ADDITIONAL COMPENSATION PURSUANT TO ORS 656.262(8) EQUAL TO 25 PERCENT OF ANY COMPENSATION DUE AT THE TIME THE REFEREE ORDERED THE FUND TO ACCEPT THE CLAIM.

CLAIMANT'S ATTORNEY IS ENTITLED TO 25 PERCENT OF THE COMPENSATION AWARDED BY THIS ORDER, PAYABLE FROM SAID COMPENSATION, TO A MAXIMUM OF 1,500, AS A REASONABLE ATTORNEY'S FEE.

WCB CASE NO. 73-807

AUGUST 16, 1974

ROBERT A. WARREN, CLAIMANT
BURNS AND EDWARDS, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE IS THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 10 PERCENT (32 DEGREES) UNSCHEDULED LOW BACK AND LEFT SHOULDER DISABILITY. THE REFEREE AWARDED CLAIMANT PERMANENT TOTAL DISABILITY AND THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW.

CLAIMANT, A 63 YEAR OLD RETARDED, ILLITERATE MAN, HAS BEEN ON WELFARE SINCE HIS MOTHER DIED BUT HAS SUPPLEMENTED HIS WELFARE BENEFITS BY DOING YARD WORK SUCH AS RAKING LEAVES, MOWING LAWNS, AND DIGGING GARDENS.

IN THIS ACCIDENT, HE WAS RIDING IN A TRUCK WHEN IT WAS INVOLVED IN A COLLISION WITH AN AUTOMOBILE. HE SUSTAINED RIB FRACTURES, PELVIC FRACTURES AND A CONCUSSION AS WELL AS RIGHT SHOULDER AND LOW BACK INJURIES. CLAIMANT HAD A PREVIOUS RIGHT FEMUR FRACTURE WITH RESIDUAL COMPLICATIONS. CLAIMANT IS UNQUESTIONABLY PERMANENTLY AND TOTALLY DISABLED AS A RESULT OF THIS INDUSTRIAL INJURY.

THE BOARD CONCURS WITH THE FINDINGS AND OPINION AND ORDER OF THE REFEREE AND ADOPTS HIS OPINION AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED FEBRUARY 12, 1974 AND THE CORRECTING ORDER DATED MARCH 7, 1974 IS AFFIRMED.

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

WCB CASE NO. 73-3285

AUGUST 16, 1974

JAMES W. PIKE, CLAIMANT
ROLF T. OLSON, CLAIMANT'S ATTY.
KEITH SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER APPROVING THE DENIAL OF HIS CLAIM. THE REFEREE FOUND THE EVIDENCE PRESENTED TO SUPPORT CLAIMANT'S CLAIM GENERALLY UNTRUSTWORTHY.

HAVING REVIEWED THE RECORD DE NOVO, WE CONCUR WITH THE REFEREE'S ANALYSIS OF THE EVIDENCE.

CLAIMANT NOW WISHES AN OPPORTUNITY TO PRESENT ADDITIONAL EVIDENCE CONCERNING THIS DISPUTE. THE EVIDENCE COULD, AND THEREFORE SHOULD, HAVE BEEN PRESENTED AT THE HEARING ALREADY PROVIDED TO THE CLAIMANT. CLAIMANT IS NOT ENTITLED TO A REMAND OF HIS CASE. BRENNAN V. SAIF, 98 ADV SH 1189, -- OR APP -- (1974).

WE CONCLUDE THE ORDER OF THE REFEREE SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 6, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 73-2017

AUGUST 16, 1974

DONALD SMITH, CLAIMANT
ALLEN G. OWEN, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S RULING ON ONE OF THE ISSUES HE RAISED AT HEARING.

THE ISSUE PRESENTED AND THE RULING ARE TAKEN FROM THE REFEREE'S ORDER -

1. WHETHER THE RATE OF PAYMENT OF TEMPORARY TOTAL DISABILITY COMPENSATION IS FIXED BASED UPON THE INJURED WORKMAN'S FAMILY STATUS AT THE TIME OF THE INJURY? THIS QUESTION IS ANSWERED IN THE NEGATIVE - THAT IS, A WORKMAN WHOSE RATE OF COMPENSATION IS BASED UPON HIS STATUS OF MARRIED MAN AND OR FATHER OF A DEPENDENT CHILD AT THE TIME OF INJURY IS NOT ENTITLED TO HAVE BENEFITS CONTINUED AT THIS RATE WHEN HIS STATUS AS MARRIED MAN IS TERMINATED, OR WHEN HIS STATUS AS FATHER OF A DEPENDENT CHILD TERMINATES (THE LATTER SITUATION IS NOT BEFORE ME IN THIS CASE). THE QUESTION APPEARS NOT TO HAVE BEEN DIRECTLY LITIGATED, BUT THE STATUTORY SCHEME OF DEPENDENCY TOGETHER WITH THE EQUITABLE CONSIDERATION TO BE APPLIED IN INTERPRETING THE STATUTE, WOULD COMPEL THIS CONCLUSION. THE WORKMAN'S SUBSEQUENT REMARRIAGE AND ASSUMPTION OF SUPPORT FOR MINOR CHILDREN OF HIS NEW WIFE WOULD NOT OPERATE TO REINSTATE BENEFITS FOR EITHER THE WIFE OR THE CHILDREN.

THE REFEREE HAS CORRECTLY INTERPRETED AND APPLIED THE STATUTE AND HIS ORDER MUST BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 26, 1974 IS AFFIRMED.

WCB CASE NO. 73-2122

AUGUST 16, 1974

GAIL GUMBRECHT, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES THE STATE ACCIDENT INSURANCE FUND'S DENIAL OF CLAIMANT'S CLAIM AND INVOLVES A CONSIDERATION OF THE GOING AND COMING RULE, THE DUAL PURPOSE DOCTRINE, AND THE SPECIAL ERRAND RULE. THE REFEREE AFFIRMED THE DENIAL AND THE CLAIMANT REQUESTS BOARD REVIEW.

THE BOARD CONCURS WITH THE FINDINGS AND OPINION AND ORDER OF THE REFEREE THAT THE FACTS OF THIS PARTICULAR CASE DO NOT PLACE THE CLAIMANT WITHIN ONE OF THE EXCEPTIONS OF THE GOING AND COMING RULE. HIS ORDER SHOULD BE ADOPTED AND AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 16, 1974, IS AFFIRMED.

LARS A. WICKLUND, CLAIMANT
BENSON AND ARNEZ, CLAIMANT'S ATTYS.
SCHOUBOE, CAVANAUGH AND DAWSON,
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF A REFEREE'S ORDER FINDING CLAIMANT'S DENIED CLAIM COMPENSABLE AND DECLARING CERTAIN TEMPORARY TOTAL DISABILITY ENTITLEMENTS. THE FOUR ISSUES RAISED ON REVIEW ARE =

1. DOES THE EVIDENCE SUPPORT THE REFEREE'S OPINION THAT THE CLAIMANT WAS IN THE COURSE AND SCOPE OF HIS EMPLOYMENT WHILE DELIVERING THE CAMPER TO ROBERT WOOD IN ABERDEEN, WASHINGTON?

2. DID THE CLAIMANT SUSTAIN AN ACCIDENTAL INJURY ON THAT DATE?

3. DID THE REFEREE COMMIT ERROR IN REFUSING TO RE-OPEN THE HEARING TO RECEIVE ADDITIONAL TESTIMONY RELATING DIRECTLY TO ONE OF THE ISSUES BEFORE THE REFEREE, AND

4. DID THE REFEREE ERR IN DETERMINING IN THIS PROCEEDING THE PERIOD OF TEMPORARY TOTAL DISABILITY?

THE RECORD SUPPORTS THE REFEREE'S CONCLUSION THAT CLAIMANT SUFFERED AN ACCIDENTAL PERSONAL INJURY ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT ON MAY 10, 1973 AND HIS ORDER IN THAT REGARD SHOULD BE AFFIRMED.

THE REFEREE PROPERLY DENIED THE EMPLOYER'S MOTION TO REOPEN THE RECORD FOR FURTHER EVIDENCE. DUE DILIGENCE AT THE APPROPRIATE TIME WOULD HAVE PRODUCED THE PROFFERED EVIDENCE AT THE TIME AND PLACE PROVIDED FOR BOTH PARTIES TO BE HEARD. BRENNAN V. SAIF, 98 ADV SH 1189, == OR APP == (1974).

IT WAS NOT NECESSARY FOR THE REFEREE TO DECLARE CLAIMANT'S TEMPORARY TOTAL DISABILITY ENTITLEMENTS AS A CONCOMITANT TO HIS ORDER REQUIRING THE EMPLOYER TO ACCEPT THE CLAIM AND, IN ANY EVENT, THE EVIDENCE OF RECORD IS INSUFFICIENT TO SUPPORT THE TIME LOSS ORDER MADE BY THE REFEREE. HOWEVER, THE EMPLOYER HAS THE DUTY OF PROCESSING THE CLAIM AND PAYING COMPENSATION IN ACCORDANCE WITH THE FACTS WHICH ARE DEVELOPED DURING THE COURSE OF PROCESSING THE CLAIM. ULTIMATELY, THE EVALUATION DIVISION OF THE WORKMEN'S COMPENSATION BOARD WILL RULE ON THIS QUESTION AND THE REFEREE'S ORDER WAS, THEREFORE, ADMINISTRATIVELY PREMATURE. HIS ORDER SHOULD ACCORDINGLY BE MODIFIED TO DELETE THE TIME LOSS RULING BUT IT SHOULD BE AFFIRMED IN ALL OTHER RESPECTS.

ALTHOUGH THE EMPLOYER INITIATED THIS REVIEW AND SUCCEEDED IN SETTING ASIDE THE REFEREE'S ORDER DECLARING TIME LOSS PERIOD, CLAIMANT'S COMPENSATION HAS NOT NECESSARILY BEEN DISALLOWED OR REDUCED. THE EMPLOYER IS, THEREFORE, LIABLE FOR CLAIMANT'S ATTORNEY'S FEE ASSOCIATED WITH THIS REVIEW PURSUANT TO ORS 656.382(2).

ORDER

THE ORDER OF THE REFEREE DECLARING CLAIMANT ENTITLED TO TIME LOSS FROM MAY 11, 1973 TO JULY 14, 1973 AND FROM OCTOBER 14, 1973 ONWARD, IS HEREBY SET ASIDE.

HIS ORDER REMANDING THE CLAIM TO THE EMPLOYER FOR ACCEPTANCE AND PAYMENT OF BENEFITS AS PROVIDED BY LAW, TOGETHER WITH THE AWARD OF AN ATTORNEY'S FEE, IS HEREBY AFFIRMED.

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

WCB CASE NO. 73-2304

AUGUST 16, 1974

HELEN UNGER, CLAIMANT

JOHN M. ROSS, CLAIMANT'S ATTORNEY
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 REFEREE'S ORDER AWARDED CLAIMANT'S ATTORNEY A FEE PAYABLE BY THE STATE ACCIDENT INSURANCE FUND FOR HIS SERVICES IN PROVING CLAIMANT'S ENTITLEMENT TO MEDICAL SERVICES UNDER ORS 656.245.

WE HAVE EXAMINED THE RECORD AND THE BRIEFS OF THE PARTIES SUBMITTED ON REVIEW. WE AGREE WITH THE CLAIMANT'S CONTENTIONS AND CONCLUDE THE REFEREE'S ORDER SHOULD BE AFFIRMED AND ADOPTED AS THE ORDER OF THE BOARD.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 16, 1974, IS HEREBY AFFIRMED.

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

WCB CASE NO. 74-49

AUGUST 16, 1974

LORNE G. DIPASQUALE, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 30 PERCENT (96 DEGREES) UNSCHEDULED LOW BACK DISABILITY. THE REFEREE INCREASED THIS AWARD TO 45 PERCENT (144 DEGREES) FOR UNSCHEDULED LOW BACK DISABILITY AND AWARDED 30 DEGREES LEFT LEG DISABILITY. CLAIMANT REQUESTS REVIEW SEEKING ADDITIONAL PERMANENT DISABILITY.

CLAIMANT, NOW 34 YEARS OLD, INJURED HIS LOW BACK NOVEMBER 12, 1968, WHILE WORKING IN TIRE SALES AND SERVICE. HE HAS HAD SIX BACK SURGERIES, INCLUDING LAMINECTOMY, FUSIONS, AND A RHIZOTOMY. CLAIMANT HAD A CONGENITAL ANOMALY CONSISTING OF SIX LUMBAR VERTEBRAE AND A PREEXISTING SUBSTANTIAL PSYCHOGENIC DYSFUNCTION, BOTH OF WHICH WERE INCREASED BY THE INDUSTRIAL INJURY. AT THE TIME OF THE HEARING, CLAIMANT WAS RECEIVING WEEKLY PSYCHIATRIC TREATMENT TO ALLEVIATE THE EMOTIONAL REACTION TO THIS INJURY.

CLAIMANT HAS RECEIVED A GED CERTIFICATE AND HAS EXPERIENCE IN CAR SALES AND BOAT SALES. CLAIMANT CURRENTLY IS MORE OR LESS SELF-EMPLOYED AS A SALES MANAGER OF A SMALL TOWN AUTOMOBILE DEALERSHIP IN WHICH HE EVENTUALLY EXPECTS TO OWN A 1-3 INTEREST. THIS IS SOMEWHAT OF A SHELTERED WORKSHOP AREA FOR CLAIMANT INASMUCH AS HE CAN LIE DOWN FOR TWO OR THREE HOURS IN THE MIDDLE OF THE DAY.

THE BOARD FINDS THAT CLAIMANT'S LOSS OF EARNING CAPACITY IN THE GENERAL LABOR MARKET IS SUBSTANTIALLY IMPAIRED. THE BOARD FINDS CLAIMANT'S UNSCHEDULED LOW BACK DISABILITY IS A TOTAL OF 65 PERCENT (208 DEGREES) WHICH IS AN INCREASE OF 20 PERCENT (64 DEGREES) FROM THAT AWARDED BY THE REFEREE. THE BOARD CONCLUDED THE AWARD OF 30 DEGREES FOR LEFT LEG DISABILITY IS ADEQUATE.

ORDER

THE ORDER OF THE REFEREE IS MODIFIED TO INCREASE THE AWARD OF UNSCHEDULED PERMANENT PARTIAL DISABILITY TO A TOTAL OF 65 PERCENT (208 DEGREES) FOR UNSCHEDULED LOW BACK DISABILITY, BEING AN INCREASE OF 64 DEGREES FROM THAT AWARDED BY THE REFEREE.

IN ALL OTHER RESPECTS, THE ORDER OF THE REFEREE IS AFFIRMED.

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 REFEREE, SHALL NOT EXCEED 1,500 DOLLARS.

WCB CASE NO. 73-2334

AUGUST 16, 1974

BEULAH BLISS, CLAIMANT
SANFORD KOWITT, CLAIMANT'S ATTORNEY
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

THE ISSUE IS THE EXTENT OF PERMANENT PARTIAL DISABILITY. CLAIMANT RECEIVED 10 PERCENT (19.2 DEGREES) UNSCHEDULED PERMANENT PARTIAL DISABILITY BY THE FIRST DETERMINATION ORDER AND 15 PERCENT (28.8 DEGREES) UNSCHEDULED PERMANENT PARTIAL DISABILITY BY THE SECOND DETERMINATION ORDER AND NO AWARD OF PERMANENT PARTIAL DISABILITY BY THE THIRD DETERMINATION ORDER. THE REFEREE INCREASED THE AWARD 10 PERCENT (19.2 DEGREES) FOR A TOTAL OF APPROXIMATELY 35 PERCENT (67.4 DEGREES). CLAIMANT REQUESTS BOARD REVIEW REQUESTING ADDITIONAL PERMANENT PARTIAL DISABILITY.

CLAIMANT, NOW 49 YEARS OLD, WAS INJURED JANUARY 13, 1967, WHILE WORKING AS A MEAT WRAPPER FOR FRED MEYER SUPERMARKET. AFTER RECOVERY FROM A CERVICAL FUSION, CLAIMANT RETURNED TO WORK UNTIL OCTOBER 28, 1972, WHEN SHE QUIT WORK BECAUSE OF NECK AND LOW BACK PAIN AND HAS NOT WORKED SINCE.

THE BACK EVALUATION CLINIC RATES THE LOSS OF FUNCTION AS MILD. DR. CHERRY, AN ORTHOPEDIST, OPINED THAT HER PERMANENT DISABILITY WAS MORE SERIOUS. CLAIMANT'S EMOTIONAL REACTIONS TO THE INJURY ARE COMPLICATED IN THAT CLAIMANT'S HUSBAND HAD A HEART ATTACK AND HER HOME SITUATION IS VERY DIFFICULT FOR HER.

THE BOARD CONCURS WITH THE FINDINGS OF THE REFEREE THAT THE MEDICAL EVIDENCE SUPPORTS THE PROPOSITION THAT CLAIMANT CANNOT RETURN TO MEAT WRAPPING. THE BOARD DOES NOT CONCUR THAT CLAIMANT HAS NO DESIRE TO SEEK OTHER EMPLOYMENT. THE RECORD REFLECTS OTHERWISE. HOWEVER, ON DE NOVO REVIEW, THE BOARD FINDS THAT A TOTAL OF 35 PERCENT (67.4 DEGREES) ADEQUATELY COMPENSATES THE CLAIMANT. THE REFEREE'S ORDER SHOULD THEREFORE BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 5, 1974, IS AFFIRMED.

WCB CASE NO. 73-2523

AUGUST 16, 1974

ALICE GROVE, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTORNEYS
MC MENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE IS THE EXTENT OF UNSCHEDULED PERMANENT PARTIAL DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 15 PERCENT OR 48 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY AND THE REFEREE AFFIRMED THIS AWARD.

CLAIMANT, A 36 YEAR OLD NURSES AIDE, SUFFERED A LOW BACK INJURY WHILE ASSISTING IN THE...

INJURY AS MILD. CLAIMANT HAS A MODERATE DEGREE OF PSYCHO-
PATHOLOGY WHICH IS RELATED TO PREEXISTING LIFE STYLE FACTORS
RATHER THAN THE INJURY IN QUESTION.

CLAIMANT HAS A HIGH SCHOOL DIPLOMA AND HAS TAKEN A
TWO-YEAR COURSE IN COMPUTER PROGRAMMING. SHE HAS ALSO
WORKED AS A MOTEL MAID AND IN CANNERIES. HER CURRENT BACK
PROBLEMS PREVENT HER FROM SITTING FOR LONG HOURS AS A
COMPUTER PROGRAMMER WITH LITTLE OPPORTUNITY TO STAND.

THE BOARD CONCLUDES THAT, IN VIEW OF ALL OF THESE FACTORS,
THE CLAIMANT HAS SUSTAINED A 25 PERCENT OR 80 DEGREES LOSS OF
EARNING CAPACITY RATHER THAN 15 PERCENT AS ALLOWED BY THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 16, 1974, IS SET
ASIDE AND CLAIMANT IS HEREBY AWARDED A TOTAL OF 25 PERCENT
(80 DEGREES) UNSCHEDULED LOW BACK PERMANENT PARTIAL DISABILITY.
THIS IS AN INCREASE OF 10 PERCENT (32 DEGREES) OVER THAT AWARDED
BY THE DETERMINATION ORDER.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE 25 PERCENT
OF THE INCREASE IN COMPENSATION ASSOCIATED WITH THIS AWARD
WHICH SHALL NOT EXCEED 1,500 DOLLARS.

WCB CASE NO. 73-1711

AUGUST 16, 1974

WILLIAM F. GANONG, CLAIMANT
ANDERSON, RICHMOND AND OWENS,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES WHETHER OR NOT DECEDENT'S HEART
ATTACK WAS CAUSALLY CONNECTED TO HIS WORK ACTIVITY AND
WHETHER OR NOT DOROTHY LOUISE WRIGHT, AKA DOROTHY GANONG,
QUALIFIES AS A WIFE OR BENEFICIARY. THE STATE ACCIDENT
INSURANCE FUND DENIED THE CLAIM, THE REFEREE ALLOWED THE
CLAIM, AND THE STATE ACCIDENT INSURANCE FUND APPEALS.

THE WORKMAN, A 57 YEAR OLD GAS TANK TRUCK DRIVER,
DELIVERED BULK PETROLEUM PRODUCTS TO SILVER LAKE BULK PLANT,
ARRIVING AT ABOUT 5 A. M. JANUARY 24, 1973. IT WAS COLD WITH
ICE AND SNOW ON THE GROUND AND THE GROUND WAS FROZEN.
DECEDENT AND THE BULK PLANT OPERATOR CLIMBED A STORAGE TANK
TO GAUGE IT. DECEDENT, A SHORT TIME LATER WHILE SITTING IN
HIS TRUCK, BECAME ILL. A MYOCARDIAL INFARCTION WAS DIAGNOSED
FROM WHICH DECEDENT SUBSEQUENTLY DIED.

DR. GRISWOLD TESTIFIED DECEDENT'S WORK ACTIVITIES WERE
A MATERIAL CONTRIBUTING CAUSE OF THE MYOCARDIAL INFARCTION.
THE RECORD SUSTAINS THE FINDING OF THE REFEREE THAT DOROTHY
GANONG IS ENTITLED TO RECEIVE WIDOW'S BENEFITS PURSUANT TO
ORS 656.226.

ON DE NOVO REVIEW, THE BOARD AFFIRMS THE OPINION AND ORDER OF THE REFEREE AND ADOPTS HIS OPINION AND ORDER AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 25, 1974, IS AFFIRMED.

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

WCB CASE NO. 72-257

AUGUST 16, 1974

JAMES D. CARSON, CLAIMANT
PAUL J. RASK, CLAIMANT'S ATTORNEY
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

ON JANUARY 18, 1974, THIS MATTER WAS REMANDED TO THE REFEREE TO PROVIDE CLAIMANT AN OPPORTUNITY TO PRESENT MEDICAL EVIDENCE ON THE ISSUE OF WHETHER CLAIMANT'S THROMBOPHLEBITIS IS A SCHEDULED OR UNSCHEDULED DISABILITY. DR. CHURCH CONSIDERED THE PHLEBITIS A RESULT OF TRAUMA TO THE BACK AS WELL AS THE LEG. THE CONDITION IS THUS PARTLY 'SCHEDULED' AND PARTLY 'UNSCHEDULED'.

THE REFEREE'S AWARD OF 38 DEGREES PROPERLY COMPENSATES CLAIMANT FOR THE PARTIAL LOSS OF HIS RIGHT LEG BUT WE THINK THE AFFIRMANCE OF THE UNSCHEDULED DETERMINATION ORDER AWARD FAILS TO PROPERLY COMPENSATE HIM FOR THE ADDITIONAL LOSS OF EARNING CAPACITY PRODUCED BY HIS THROMBOPHLEBITIS.

CLAIMANT IS ENTITLED TO AN ADDITIONAL 32 DEGREES FOR UNSCHEDULED DISABILITY ON ACCOUNT OF HIS THROMBOPHLEBITIS BUT IN ALL OTHER RESPECTS THE REFEREE'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED AUGUST 17, 1973, AND JUNE 24, 1974, ARE HEREBY MODIFIED TO AWARD CLAIMANT AN ADDITIONAL 32 DEGREES, MAKING A TOTAL OF 96 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED DISABILITY.

CLAIMANT'S ATTORNEY IS ENTITLED TO 25 PERCENT OF THE ADDITIONAL COMPENSATION AWARDED BY THIS ORDER AS A REASONABLE ATTORNEY'S FEE BUT IN NO EVENT SHALL THE FEE GRANTED PURSUANT TO THIS ORDER, WHEN COMBINED WITH THAT ALLOWED BY THE REFEREE, EXCEED 1,500 DOLLARS.

THE REFEREE'S ORDERS ARE AFFIRMED IN ALL OTHER RESPECTS.

AUGUST 16, 1974

ARTHUR G. BOCK, CLAIMANT
HEDRICK, FELLOWS AND MC CARTHY,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS IS A DENIED HEART ATTACK CASE. THE REFEREE AFFIRMED THE STATE ACCIDENT INSURANCE FUND'S DENIAL AND THE CLAIMANT REQUESTS BOARD REVIEW.

CLAIMANT, A 54 YEAR OLD MANAGING DIRECTOR OF EASTPORT PLAZA SHOPPING CENTER, WAS, IN CONNECTION WITH HIS EMPLOYMENT, UNDER SUBSTANTIAL, CHRONIC STRAIN AND STRESS, ESPECIALLY DURING THE SIX MONTHS IMMEDIATELY PRECEDING THE MYOCARDIAN INFARCTION IN QUESTION. HE WAS HANDLING MANY PROBLEMS SUCH AS VANDALISM, MALFUNCTION OF A SEWAGE LIFT PUMP, USE OF THE PARKING LOT BY NEARBY HIGH SCHOOL STUDENTS FOR DRAG RACES, DIFFICULTIES REGARDING SECURITY POLICE, MAINTAINING ADJACENT RENTAL PROPERTY, UNDERSTAFFING, BUDGET PROBLEMS, AND PRESSURE FROM THE EMPLOYER TO STAY WITHIN THE BUDGET AMONG OTHER STRESSES AND STRAINS NORMAL TO SUCH A JOB.

DRS. GROVER AND KLOSTERMAN CONNECT CLAIMANT'S WORK ACTIVITY WITH THE MYOCARDIAN INFARCTION. DR. GRISWOLD BASES HIS OPINION THAT IT IS PROBABLY NOT CONNECTED BECAUSE OF A LACK OF A PRECIPITATING STRESS EVENT. WE THINK THE ABSENCE OF AN ACUTE PRECIPITATING EVENT IS IMMATERIAL UNDER THE FACTS OF THIS CASE. THIS UNUSUAL STRESS AND STRAIN WAS, IN THE BOARD'S OPINION, THE CAUSE OF THE HEART ATTACK AND THE CLAIMANT'S CLAIM IS THEREFORE COMPENSABLE.

THE REFEREE'S ORDER SHOULD BE REVERSED.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 14, 1974, IS REVERSED.

THE WORKMAN'S CLAIM FOR COMPENSATION BENEFITS IS HEREBY REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR ACCEPTANCE AND PAYMENT OF COMPENSATION AS PROVIDED BY LAW.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 1,250 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH THE HEARING AND THIS BOARD REVIEW.

AUGUST 16, 1974

JEAN BLUMBERG, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS.
MC MURRY AND NICHOLS, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDERS REOPENING HER CLAIM FOR FURTHER TREATMENT OF INJURIES TO HER UPPER TORSO BUT DENYING HER REQUEST FOR TREATMENT OF FOOT PROBLEMS WHICH SHE CONTENDS ARE RELATED TO THE ACCIDENT AND FURTHER DENYING HER REQUEST FOR PENALTIES AND ATTORNEY'S FEES.

CLAIMANT CONTENDS THE REFEREE ERRED IN FAILING TO FIND THE FOOT PROBLEM RELATED AND IN REFUSING TO AWARD PENALTIES AND ATTORNEY FEES.

WE HAVE EXAMINED THE RECORD DE NOVO AND CONSIDERED THE BRIEFS FILED ON REVIEW AND WE CONCUR WITH THE FINDINGS AND OPINION OF THE REFEREE IN ALL RESPECTS. WE ADOPT HIS ORDERS AS OUR OWN.

ORDER

THE ORDERS OF THE REFEREE, DATED FEBRUARY 27, 1974, AND MARCH 6, 1974, ARE HEREBY AFFIRMED.

WCB CASE NO. 73-3456 AUGUST 16, 1974

PATRICK J. ASHMORE, CLAIMANT
GEARIN, CHENEY, LANDIS, AEBI AND KELLEY,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES THE EXTENT OF SCHEDULED PERMANENT DISABILITY TO CLAIMANT'S LEFT HAND. THE DETERMINATION ORDER AWARDED CLAIMANT 20 PERCENT (30 DEGREES) LOSS OF LEFT HAND. THE REFEREE INCREASED THIS AWARD TO A TOTAL OF 50 PERCENT (75 DEGREES) FOR PARTIAL LOSS OF LEFT HAND.

CLAIMANT INJURED HIS LEFT HAND WHILE MAKING DOG COLLARS ON A PRESS WHICH WAS INADVERTENTLY OPERATED AND THE DIE ATTACHED TO IT PUNCTURED HIS LEFT HAND.

THE REFEREE BASED THE INCREASE IN PERMANENT PARTIAL DISABILITY AWARD ON FACTORS SUCH AS LOSS OF STRENGTH AND GRIP, LACK OF SENSATION, LOSS OF PINCH BETWEEN THE THUMB AND FINGERS, OF THE LEFT HAND, AND LACK OF MOTION IN MORE THAN ONE FINGER OF THE LEFT HAND. DR. NATHAN, THE ATTENDING PHYSICIAN, ARRIVED AT HIS ESTIMATE OF PHYSICAL IMPAIRMENT BY ADDING THE IMPAIRMENT OF THE INDIVIDUAL FINGERS. THE BOARD FINDS THIS RATING TO BE TOO CONSERVATIVE AND THE AWARD OF THE REFEREE TO BE TOO HIGH.

THE BOARD EVALUATES THE IMPAIRMENT OF CLAIMANT'S LEFT HAND AS EQUAL TO 30 PERCENT OR 45 DEGREES. THE REFEREE'S ORDER SHOULD BE MODIFIED ACCORDINGLY.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 29, 1974, IS MODIFIED TO AWARD CLAIMANT A TOTAL OF 30 PERCENT (45 DEGREES) FOR PARTIAL LOSS OF LEFT HAND.

IN ALL OTHER RESPECTS, THE OPINION AND ORDER OF THE REFEREE IS AFFIRMED.

WCB CASE NO. 73-1668

AUGUST 16, 1974

JEAN VIOLA FREITAG, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY. FOLLOWING THE INITIAL CLOSURE OF HER CLAIM, CLAIMANT WAS ULTIMATELY AWARDED A TOTAL OF 20 PERCENT (64 DEGREES) UNSCHEDULED PERMANENT PARTIAL DISABILITY BY CIRCUIT COURT ORDER. THE CLAIM WAS THEREAFTER REOPENED ON AGGRAVATION AND THE DETERMINATION ORDER AWARDED CLAIMANT TEMPORARY TOTAL DISABILITY ONLY AND NO ADDITIONAL PERMANENT PARTIAL DISABILITY. UPON HEARING, THE REFEREE AWARDED CLAIMANT PERMANENT TOTAL DISABILITY.

CLAIMANT, NOW 57 YEARS OLD, WAS INJURED FEBRUARY 16, 1969, WHILE DOING JANITORIAL AND CUSTODIAL WORK FOR THE CITY OF ALBANY. SHE BRUISED HER RIGHT ARM, SHOULDER, AND RIB CAGE AND WRENCHED HER LOW BACK WHEN SHE LOST CONTROL OF A POWER FLOOR BUFFER SHE WAS OPERATING.

CLAIMANT HAS BEEN EXAMINED AND TREATED EXTENSIVELY DURING THE COURSE OF THIS CASE. THE BACK EVALUATION CLINIC SHOWS A DIAGNOSIS OF STRAIN TO THE CERVICAL SPINE AND LUMBAR SPINE, THAT CLAIMANT IS NOT ABLE TO RETURN TO HER FORMER OCCUPATION BUT CAN PERFORM SOME OCCUPATIONS, THAT THE DISABILITY IS MILD, AND THAT THE PATIENT STATES SHE HAS NO INCLINATION TO BE RETRAINED AT THE PRESENT TIME. DR. TSAI STATES IN CONCUR WITH THE RECOMMENDATION OF THE BACK EVALUATION CLINIC.

THE CLAIMANT HAS A PSYCHOPATHOLOGY WHICH CAUSES HER TO REFUSE ANY EFFORT TO HELP HERSELF. THE CLAIMANT HAS AN OBLIGATION TO ASSIST IN HER REHABILITATION AND RETRAINING. THE CONSENSUS OF THE REPORTS IS THAT CLAIMANT IS NOT CONSCIOUSLY MALINGERING. HOWEVER, THERE IS A PATTERN THROUGHOUT THE MEDICAL REPORTS AND EVEN IN THE CIRCUIT COURT JUDGMENT TO THE EFFECT THAT CLAIMANT IS NOT OVERLY DESIROUS OF WORKING. CLAIMANT'S HUSBAND IS 100 PERCENT DISABLED. IN SOME RESPECTS, THE MEDICAL REPORTS AND OPINIONS APPEAR QUITE SIMILAR TO THE RECORD AT THE TIME OF THE JUDGMENT OF THE CIRCUIT COURT IN 1971.

THE BOARD ON DE NOVO REVIEW OF THE ENTIRE RECORD FINDS THAT CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED. THE BOARD FINDS CLAIMANT TO BE 75 PERCENT UNSCHEDULED PERMANENTLY PARTIALLY DISABLED.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 9, 1974, IS MODIFIED. CLAIMANT IS AWARDED 75 PERCENT (240 DEGREES) PERMANENT PARTIAL UNSCHEDULED DISABILITY.

IN ALL OTHER RESPECTS, THE ORDER OF THE REFEREE IS AFFIRMED.

WCB CASE NO. 73-2104

AUGUST 16, 1974

LEONARD BROWDER, CLAIMANT
ALLEN G. OWEN, CLAIMANT'S ATTORNEY
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF
CROSS-APPEAL BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A REFEREE'S ORDER VOIDING AN ATTEMPTED UNILATERAL RECOVERY OF AN OVERPAYMENT OF BENEFITS BUT AUTHORIZING A DIFFERENT REPAYMENT SCHEDULE AFTER PLACING THE PARTIES IN STATUS QUO ANTE. CLAIMANT HAS CROSS-APPEALED CONTENDING HIS BENEFITS ARE FIXED BY HIS MARITAL STATUS AT THE TIME OF THE INJURY AND THAT LATER ALTERATIONS OF THAT STATUS ARE NOT GROUNDS FOR REDUCING HIS BENEFITS. THE CONTENTION IS BASED ON HIS NOTION OF WHAT THE LAW OUGHT TO BE, NOT WHAT IT IS. THE STATUTE PLAINLY REVEALS THAT HE IS NOT ENTITLED TO BENEFITS AS A MARRIED MAN AFTER BECOMING DIVORCED.

THE STATE ACCIDENT INSURANCE FUND CLAIMS THE ISSUE TO DECIDE IS WHETHER THE FUND HAS AUTHORITY TO UNILATERALLY REDUCE PAYMENTS TO A CLAIMANT BASED ON A CHANGE IN ENTITLEMENT STATUS.

THAT ISSUE WAS NOT THE REAL QUESTION PRESENTED TO THE REFEREE. HE WAS DEALING WITH A UNILATERAL REDUCTION OF COMPENSATION TO RECOVER AN OVERPAYMENT NOT A TIMELY TERMINATION OF BENEFITS, THE RIGHT TO WHICH HAD BEEN EXTINGUISHED BY A CHANGE IN CIRCUMSTANCES.

THE REFEREE CORRECTLY RULED THAT THE STATE ACCIDENT INSURANCE FUND MAY NOT UNILATERALLY RECOVER AN OVERPAYMENT BY PAYING CLAIMANT LESS THAN HIS STATUTORILY ESTABLISHED ENTITLEMENT WITHOUT FIRST SECURING BOARD APPROVAL FOR THE ACT. WE THINK HIS SOLUTION OF PUTTING THE PARTIES IN THEIR PRIOR POSITION AND THEN, IN EFFECT, STARTING OVER PROPERLY, IS BOTH PRACTICAL AND JUST AND WE WOULD THEREFORE AFFIRM HIS ORDER.

WE NOTE THE ALLOWANCE OF A 1,000 DOLLAR FEE TO CLAIMANT'S ATTORNEY. THE SIZE OF THE FEE DOES NOT SEEM WARRANTED BY THE

WORK INVOLVED. CLAIMANT'S ATTORNEY IS HOWEVER, ENTITLED TO A FEE FOR HIS SERVICES ON THIS REVIEW. WE BELIEVE THE FEE ALREADY AWARDED WILL ADEQUATELY COMPENSATE CLAIMANT'S ATTORNEY FOR HIS SERVICES ON THIS REVIEW AS WELL AS THE HEARING.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 12, 1974, AS AMENDED BY HIS ORDER OF APRIL 19, 1974, IS AFFIRMED.

WCB CASE NO. 73-2418

AUGUST 16, 1974

HARRY SHERMAN, JR., CLAIMANT
HUFFMAN AND ZENGER, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A DENIED CLAIM FOR A HEART ATTACK. THE REFEREE AFFIRMED THE DENIAL ON THE BASIS THAT THE CLAIM WAS BARRED BECAUSE OF FAILURE TO FILE THE CLAIM WITHIN THE TIME REQUIRED BY STATUTE. THE REFEREE FURTHER FOUND THAT CLAIMANT FAILED TO ESTABLISH LEGAL CAUSATION BETWEEN HIS EMPLOYMENT AND THE HEART ATTACK.

CLAIMANT, A 58 YEAR OLD ACTING CITY MANAGER, HAD A HEART ATTACK OCTOBER 12, 1970, AND FILED A CLAIM MAY 3, 1973. CLAIMANT NOTIFIED THE CITY IN WRITING ON OCTOBER 22, 1970, THAT HE HAD A MILD CORONARY INFARCTION BUT DID NOT ALLEGE IT AROSE OUT OF OR IN THE COURSE OF HIS EMPLOYMENT.

ON DE NOVO REVIEW, THE BOARD CONCURS IN THE FINDINGS OF THE REFEREE. THE CLAIM WAS NOT TIMELY FILED. EVEN IF IT WERE CONSIDERED TO BE TIMELY FILED, THE EVIDENCE IN THE RECORD DOES NOT ESTABLISH CAUSAL CONNECTION. THERE IS NO EVIDENCE OF JOB STRESS SUFFICIENT TO CONNECT THE HEART ATTACK WITH HIS EMPLOYMENT. THUS, THE CLAIM FAILS ON ITS FACTS.

THE BOARD AFFIRMS THE REFEREE'S OPINION AND ORDER AND ADOPTS IT AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 25, 1974, IS AFFIRMED.

WCB CASE NO. 73-764

AUGUST 16, 1974

EUGENE E. WILLIAMS, CLAIMANT
BROWN, BURT AND SWANSON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER DENYING CLAIMANT'S AGGRAVATION CLAIM.

THE REFEREE'S DENIAL WAS PREDICATED ON THE VALIDITY OF DR. JOHN D. WHITE'S SECOND OPINION WHICH WAS IN TURN PREDICATED ON AN ASSUMPTION THAT CLAIMANT DID NOT HAVE RADIATING RIGHT LEG PAIN FOLLOWING HIS JULY 14, 1970, INJURY.

AT ONE TIME, WHEN DR. WHITE ASSUMED CLAIMANT HAD HAD RIGHT LEG PAIN FROM THE BEGINNING, HE CONCLUDED CLAIMANT HAD SUFFERED AN AGGRAVATION. HE WAS THEREAFTER LED TO BELIEVE THAT CLAIMANT'S RIGHT LEG PAINS HAD NOT OCCURRED UNTIL MUCH LATER AND AS A RESULT, CHANGED HIS OPINION.

THE EVIDENCE IS PERSUASIVE THAT CLAIMANT HAD RIGHT LEG PAIN FOLLOWING THE JULY 14, 1970 INJURY. WE THEREFORE CONCLUDE CLAIMANT HAS SUFFERED AN AGGRAVATION OF HIS JULY 14, 1970 INJURY AND THAT HIS CLAIM THEREFOR SHOULD HAVE BEEN ACCEPTED.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 18, 1974, IS HEREBY REVERSED AND THE CLAIMANT'S CLAIM OF AGGRAVATION IS HEREBY REMANDED TO THE STATE ACCIDENT INSURANCE FUND TO PROVIDE CLAIMANT THE BENEFITS PROVIDED BY LAW.

CLAIMANT'S ATTORNEY, D. KEITH SWANSON, IS HEREBY AWARDED A REASONABLE ATTORNEY'S FEE OF 1,000 DOLLARS FOR HIS SERVICES AT THE HEARING AND ON THIS REVIEW.

WCB CASE NO. 72-3272

AUGUST 16, 1974

MARGARET WEBSTER, CLAIMANT
HAROLD ADAMS, CLAIMANT'S ATTORNEY
DEPARTMENT 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 THE STATE ACCIDENT INSURANCE FUND'S DENIAL OF HER CLAIM FOR WORKMEN'S COMPENSATION BENEFITS.

WE HAVE CONSIDERED THE BRIEFS OF THE PARTIES SUBMITTED ON REVIEW AND EXAMINED THE RECORD DE NOVO. HAVING DONE SO, WE CONCUR WITH THE REFEREE'S FINDINGS AND HIS CONCLUSION THAT CLAIMANT'S PSYCHOLOGICAL STATE WAS PRODUCED BY HER OWN POOR EMOTIONAL HEALTH AND THAT THE STATE ACCIDENT INSURANCE FUND IS NOT LIABLE TO HER FOR BENEFITS SIMPLY BECAUSE HER WORK SITUATION FAILED TO MEET HER EXPECTATIONS.

ORDER

THE ORDER OF THE REFEREE DATED FEBRUARY 25, 1974 IS AFFIRMED.

AUGUST 16, 1974

GERALD HOWARD, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES AN ASSESSMENT OF PENALTIES AND ATTORNEY'S FEES BECAUSE OF THE FUND'S UNREASONABLE DELAY FOR REFUSAL TO PAY COMPENSATION TO THE CLAIMANT. THE REFEREE AWARDED CLAIMANT 25 PERCENT PENALTY AND AWARDED CLAIMANT'S COUNSEL A 500 DOLLAR ATTORNEY'S FEE TO BE PAID BY THE STATE ACCIDENT INSURANCE FUND. THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW.

CLAIMANT SUFFERED TWO COMPENSABLE INJURIES - ONE AUGUST 18, 1970, AND ONE DECEMBER 8, 1970. THE STATE ACCIDENT INSURANCE FUND DENIED THE INJURY OF DECEMBER 8, 1970, AND MAINTAINED THIS DENIAL UNTIL THE DAY BEFORE THE HEARING EVEN THOUGH THE STATE ACCIDENT INSURANCE FUND HAD MEDICAL REPORTS SEVERAL MONTHS PRIOR TO THAT TIME INDICATING THE CLAIM SHOULD HAVE BEEN ACCEPTED.

THE STATE ACCIDENT INSURANCE FUND'S ARGUMENT THAT CLAIMANT WAS RECEIVING TEMPORARY TOTAL DISABILITY ON THE FIRST INJURY IN SOME MANNER EXCUSED THE STATE ACCIDENT INSURANCE FUND FROM PENALTIES FOR NOT PROPERLY HANDLING THE SECOND INJURY IS NOT WELL TAKEN.

THE BOARD FINDS CLAIMANT'S ATTORNEY'S FEE IN THE AMOUNT OF 500 DOLLARS TO BE REASONABLE UNDER THE FACTS OF THIS CASE. THE BOARD ALSO FINDS THAT THE PENALTY OF 25 PERCENT OF THE COMPENSATION DUE THE CLAIMANT FOR A PERIOD FROM AUGUST 21, 1973, TO DECEMBER 17, 1973, TO BE APPROPRIATE.

THE BOARD AFFIRMS THE OPINION AND ORDER AND THE ORDER ON MOTION TO RECONSIDER AND ADOPTS THESE OPINIONS AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 9, 1974, AND THE ORDER ON MOTION TO RECONSIDER, DATED MAY 8, 1974, IS AFFIRMED.

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

ARTHUR MAREK, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
COSGRAVE AND KESTER,
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 10 PERCENT UNSCHEDULED LOW BACK PERMANENT PARTIAL DISABILITY. THE REFEREE INCREASED THE AWARD TO 35 PERCENT (112 DEGREES) UNSCHEDULED LOW BACK DISABILITY. CLAIMANT REQUESTS BOARD REVIEW CONTENDING HE IS PERMANENTLY TOTALLY DISABLED.

CLAIMANT, A 56 YEAR OLD AUTO MECHANIC AND SUPERVISOR, RECEIVED INJURY TO HIS THORACIC SPINE. CLAIMANT HAS A HISTORY OF NUMEROUS PREVIOUS INJURIES FROM AUTOMOBILE ACCIDENTS AND INDUSTRIAL ACCIDENTS. EVIDENCE IN THE RECORD IN THIS CASE INDICATES THE DISABILITY AS A RESULT OF THIS INDUSTRIAL ACCIDENT WAS MODERATE. CLAIMANT HAS A GROSS FUNCTIONAL OVERLAY WHICH IS CONNECTED TO THIS ACCIDENT TO A MODERATE DEGREE.

ON DE NOVO REVIEW, THE BOARD AFFIRMS THE FINDINGS OF THE REFEREE AND ADOPTS HIS OPINION AND ORDER AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 19, 1974, IS AFFIRMED.

JOSEPH C. BISHOP, CLAIMANT
BEMIS, BREATHOUWER AND JOSEPH,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH GRANTED PERMANENT PARTIAL DISABILITY OF 25 PERCENT LOSS OF THE RIGHT LEG.

ON APRIL 14, 1972, CLAIMANT, A 46 YEAR OLD SHOP FOREMAN, SLIPPED ON THE STEP OF A BUS SUFFERING A TORN MEDIAL MENISCUS IN HIS RIGHT KNEE WHICH ULTIMATELY RESULTED IN SURGERY.

CLAIMANT IS PRESENTLY ABLE TO WORK IN GENERAL MAINTENANCE WORK FOR THE PARKS DEPARTMENT, BUT IS PRECLUDED SOMEWHAT

FROM ENGAGING IN SOME OF THE STRENUOUS ACTIVITIES CONNECTED WITH HORSE SHOWS.

ON REVIEW, CLAIMANT URGES CONSIDERATION BE GIVEN TO THE EARNING LOSS PRODUCED BY THIS INJURY. UNSCHEDULED DISABILITY CAN BE MEASURED IN TERMS OF LOST EARNING CAPACITY, BUT CLAIMANT'S SCHEDULED DISABILITY CAN ONLY BE MEASURED BY THE EXTENT OF PHYSICAL IMPAIRMENT. THE BOARD, ON REVIEW, FINDS THAT THE AWARD OF 25 PERCENT LOSS OF THE RIGHT LEG GRANTED BY THE REFEREE CORRECTLY EVALUATES CLAIMANT'S IMPAIRMENT.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 22, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 73-2496 AUGUST 23, 1974

WAYNE L. REYNOLDS, CLAIMANT
GARON COMPANY

DON G. SWINK, CLAIMANT'S ATTORNEY
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS IS A NONCOMPLYING EMPLOYER CASE. THE EMPLOYER DENIED HE WAS AN EMPLOYER IN THE STATE OF OREGON AND DENIED CLAIMANT SUSTAINED A COMPENSABLE INJURY. THE REFEREE FOUND THE EMPLOYER TO BE A NONCOMPLYING EMPLOYER IN OREGON AND THAT CLAIMANT SUFFERED A COMPENSABLE INJURY WHILE IN THE EMPLOYMENT OF GARON COMPANY.

GARON COMPANY, A ROOFING BUSINESS IN VANCOUVER, WASHINGTON, CALLED THE UNION HALL IN PORTLAND, OREGON, WHO DISPATCHED THE CLAIMANT TO A JOB IN RAINIER, OREGON, AT THE TROJAN NUCLEAR PLANT, WHERE CLAIMANT WORKED FOR GARON COMPANY. CLAIMANT NEVER DID WORK IN THE STATE OF WASHINGTON.

CLAIMANT WORKED INTERMITTENTLY FOR TEN OR TWELVE DAYS WHEN WEATHER PERMITTED AT RAINIER, OREGON. THERE IS A DISPUTE WHETHER OR NOT CLAIMANT REPORTED HIS BACK INJURY TO THE FOREMAN OR NOT. CLAIMANT DID REPORT THE FACTS OF THE ACCIDENT TO THE ATTENDING PHYSICIAN.

ON DE NOVO REVIEW, THE BOARD AFFIRMS THE FINDINGS OF THE REFEREE THAT THE EMPLOYER IS A NONCOMPLYING EMPLOYER IN THE STATE OF OREGON FOR THE PERIOD FROM MARCH 28, 1973, THROUGH APRIL 11, 1973, AND THAT THE CLAIMANT SUFFERED A COMPENSABLE INJURY WHILE IN THE EMPLOYMENT OF GARON COMPANY. THE BOARD ADOPTS THE OPINION AND ORDER OF THE REFEREE AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 5, 1974, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 250 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND AND RECOVERABLE FROM THE EMPLOYER PURSUANT TO ORS 656.054.

WCB CASE NO. 73-2809

AUGUST 23, 1974

MARY ALLEN, CLAIMANT
AIL AND LUEBKE, CLAIMANT'S ATTY.
TOOZE, KERR, PETERSON, MARSHALL
AND SHENKER, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS IS A DENIED HEART ATTACK CASE. THE EMPLOYER DENIED CLAIMANT'S CLAIM FOR A MYOCARDIAL INFARCTION SUFFERED BY THE CLAIMANT ON APRIL 3, 1973, AND THE REFEREE AFFIRMED THE DENIAL.

CLAIMANT, A 61 YEAR OLD MAID AT A MOTEL, WHILE IN THE COURSE OF HER ROUTINE CLEANING DUTIES, FELT CHEST PAINS WHICH WERE ULTIMATELY DIAGNOSED AS A MYOCARDIAL INFARCTION. SHE HAD PUSHED THE CLEANING CART UP A SLIGHT RAISE OR INCLINE IN THE HALLWAY ALONG THE COURSE OF HER CLEANING ROUTE SHORTLY BEFORE THIS.

ONE CARDIOLOGIST FINDS NO CONNECTION OF CLAIMANT'S WORK ACTIVITY TO HER HEART ATTACK. ANOTHER CARDIOLOGIST STATED HE DID NOT BELIEVE IT POSSIBLE TO SAY THAT CLAIMANT'S WORK ACTIVITY PROBABLY DID OR PROBABLY DID NOT REPRESENT A MATERIAL FACTOR IN THE HEART ATTACK. AN ATTENDING GENERAL PRACTITIONER STATED 'DUE TO THIS PERSON HAVING BEEN AT WORK DURING THE ONSET OF THIS, WE CERTAINLY HAVE TO SAY THAT THIS WAS ONE OF THE PRECIPITATING CAUSES IN THIS PATIENT.'

THE WEIGHT OF THE MEDICAL EVIDENCE DOES NOT ESTABLISH MEDICAL CAUSATION. THE WEIGHT OF ALL OF THE EVIDENCE SHOWS NO CONNECTION OF CLAIMANT'S HEART ATTACK WITH HER EMPLOYMENT - THEREFORE, THE OPINION AND ORDER OF THE REFEREE SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 19, 1974, IS AFFIRMED.

WCB CASE NO. 73-3610

AUGUST 23, 1974

MICHAEL MANOUSOS, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE,

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH REQUIRED THE FUND TO ACCEPT CLAIMANT'S CLAIM AND PAY BENEFITS ACCORDINGLY.

CLAIMANT, A 30 YEAR OLD IMMIGRANT FROM GREECE, WAS EMPLOYED BY NORTHWEST PIPE AND CASING COMPANY IN JULY, 1973. HE BEGAN EXPERIENCING BACK PAIN IN SEPTEMBER, 1973, AND WAS FORCED TO LEAVE THE JOB. HE WAS ADMITTED TO THE HOSPITAL SEPTEMBER 17, 1973, WITH ACUTE BACK STRAIN.

THERE WAS NO TRAUMATIC INJURY TO CLAIMANT. THERE WAS NO TESTIMONY FROM A FELLOW EMPLOYEE THAT CLAIMANT HAD SUFFERED INJURY. HOWEVER, IT WAS DR. COUROGEN'S PROFESSIONAL OPINION THAT CLAIMANT'S WORK ACTIVITY WAS A MATERIAL CONTRIBUTING FACTOR TO CLAIMANT'S CONDITION. THE REFEREE FOUND THE MEDICAL OPINION SUFFICIENT TO ESTABLISH THAT CLAIMANT HAD SUSTAINED A COMPENSABLE INDUSTRIAL INJURY. THE BOARD, ON REVIEW, CONCURS WITH THE FINDINGS MADE BY THE REFEREE AND AFFIRMS HIS ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 29, 1974, IS HEREBY AFFIRMED.

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

WCB CASE NO. 73-3626

AUGUST 27, 1974

WILLIAM J. TERIBURY, CLAIMANT
ARTHUR R. BARROWS, CLAIMANT'S ATTY.
KOTTKAMP AND O'Rourke, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH ORDERED PAYMENT OF CERTAIN MEDICAL COSTS, BUT FOUND CLAIMANT'S AWARD OF 48 DEGREES UNSCHEDULED NECK DISABILITY AND LEFT SHOULD DISABILITY WAS ADEQUATE.

THE RECORD BEFORE THE BOARD ON REVIEW IS EXTENSIVE, DETAILED AND COMPLETE IN SETTING FORTH THE FACTS IN THIS CASE. THERE APPEARS TO BE LITTLE IN THE WAY OF CONCLUSIVE MEDICAL EVIDENCE THAT CLAIMANT'S DISABILITY ATTRIBUTABLE TO HIS INDUSTRIAL INJURY, EXCEEDS THE AWARD OF 48 DEGREES UNSCHEDULED DISABILITY.

THE BOARD CONCURS WITH THE FINDINGS MADE BY THE REFEREE AND HIS ORDER IS AFFIRMED AND ADOPTED AS THE ORDER OF THE BOARD.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 13, 1974 IS HEREBY AFFIRMED.

WCB CASE NO. 73-357

AUGUST 28, 1974

JERRY FRAZIER, CLAIMANT

BROWN, SCHLEGEL, MILBANK, WHEELER
AND JARMAN, CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS THE EXTENT OF SCHEDULED AND UNSCHEDULED DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 5 PERCENT (16 DEGREES) UNSCHEDULED DISABILITY AND 15 PERCENT (22.5 DEGREES) LOSS OF LEFT LEG. THE REFEREE AFFIRMED THE 5 PERCENT UNSCHEDULED DISABILITY AND INCREASED THE LEFT LEG DISABILITY TO A TOTAL OF 60 DEGREES.

CLAIMANT, A 40 YEAR OLD POLICE OFFICER, WAS SHOT IN THE ABDOMEN WHILE IN THE LINE OF DUTY. CLAIMANT WAS OFF WORK ABOUT 6 MONTHS AND NOW HAS RETURNED TO HIS FORMER POSITION. HE DEVELOPED A PEPTIC ULCER, SOME SEXUAL DYSFUNCTION, AND THERE IS SOME ATROPHY TO THE LEFT LEG.

THE BOARD CONCURS WITH THE FINDING OF THE REFEREE THAT THE PEPTIC ULCER AND THE SEXUAL DYSFUNCTION ARE RELATED TO THE INDUSTRIAL INJURY. FURTHER PSYCHIATRIC CARE IS RECOMMENDED AND SHOULD BE OBTAINED BY THE CLAIMANT AND PAID FOR UNDER ORS 656.245.

THE REFEREE'S AWARD OF A TOTAL OF 60 DEGREES FOR LOSS USE OF LEFT LEG IS AFFIRMED.

THE UNSCHEDULED DISABILITY IS MEASURED BY THE IMPAIRMENT OF CLAIMANT'S EARNING CAPACITY IN THE BROAD FIELD OF GENERAL INDUSTRIAL OCCUPATIONS. CLAIMANT IS WELL MOTIVATED AND HAS RETURNED TO HIS FORMER POSITION. THERE IS SOME TESTIMONY THAT CLAIMANT'S PROMOTION MAY HAVE BEEN IMPEDED BY THE INDUSTRIAL INJURY. THE BOARD FINDS CLAIMANT'S UNSCHEDULED DISABILITY TO BE A TOTAL OF 20 PERCENT (64 DEGREES).

ORDER

THE ORDER OF THE REFEREE DATED APRIL 18, 1974 IS MODIFIED. CLAIMANT IS AWARDED A TOTAL OF 20 PERCENT (64 DEGREES) UNSCHEDULED DISABILITY. THIS IS AN INCREASE OF 15 PERCENT (48 DEGREES).

IN ALL OTHER RESPECTS, THE ORDER OF THE REFEREE IS AFFIRMED.

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 THAT WERE ATTRIBUTABLE TO THE ORDER OF THE REFEREE, SHALL NOT EXCEED 1,500 DOLLARS.

LARRY ARRANCE, CLAIMANT
COONS, MALAGON AND COLE,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED A PERMANENT PARTIAL DISABILITY AWARD MADE BY THE CLOSING AND EVALUATION DIVISION OF 20 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED BACK DISABILITY EQUIVALENT TO 64 DEGREES.

CLAIMANT WAS INJURED JUNE 4, 1973 WHEN HE ATTEMPTED TO PHYSICALLY MOVE A LOG BACK INTO POSITION ON A TRUCK. DR. STEPHEN J. SCHACHNER FOUND CLAIMANT HAD EXACERBATED A PREEXISTING DEGENERATIVE DISEASE AND RECOMMENDED CONSERVATIVE TREATMENT. THE DOCTOR ADVISED CLAIMANT SHOULD NOT RETURN TO HEAVY STRENUOUS LABOR AND RECOMMENDED VOCATIONAL REHABILITATION. CLAIMANT WAS COOPERATIVE WITH THE COUNSELORS, AND ON HIS OWN, FOUND AND WORKED AT TWO DIFFERENT JOBS. HIS EMPLOYMENT WAS TERMINATED ON THESE JOBS FOR REASONS OTHER THAN THE INABILITY TO PERFORM THEM.

THE BOARD, ON REVIEW, NOTES THE DETERMINATION OF DISABILITY INITIALLY MADE BY CLOSING AND EVALUATION WAS BASED ON A PERSONAL INTERVIEW WITH THE CLAIMANT. THIS DETERMINATION WAS REAFFIRMED BY THE REFEREE WHO PERSONALLY SAW AND HEARD THE CLAIMANT. THE BOARD FINDS THE AWARD WHICH CLAIMANT HAS RECEIVED ADEQUATELY COMPENSATES HIM FOR HIS RESIDUAL DISABILITY.

ORDER

THE ORDER OF THE REFEREE DATED MAY 8, 1974 IS HEREBY AFFIRMED.

CHRISTIAN C. HEITZ, JR., CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT DISABILITY. THE FIRST DETERMINATION ORDER AWARDED CLAIMANT 112 DEGREES WHICH WAS REDUCED TO 64 DEGREES BY THE WORKMEN'S COMPENSATION BOARD AND THE CASE WAS REOPENED BY ORDER OF THE CIRCUIT COURT. THE REFEREE AWARDED CLAIMANT PERMANENT TOTAL DISABILITY.

CLAIMANT, NOW 48 YEARS OLD, RECEIVED A BACK INJURY OCTOBER 24, 1969. HE HAS DEVELOPED A SUBSTANTIAL PSYCHOPATHOLOGY RELATED TO THE INDUSTRIAL ACCIDENT. CLAIMANT HAS REFUSED PSYCHIATRIC TREATMENT WHICH WAS RECOMMENDED. CLAIMANT'S CREDIBILITY WAS FOUND TO BE VERY POOR BY THE REFEREE.

ON DE NOVO REVIEW, THE BOARD FINDS THE CLAIMANT NOT PRIMA FACIE PERMANENTLY TOTALLY DISABLED. THE BOARD FINDS THE DOCUMENTARY EVIDENCE IN THE FILE DOES NOT ESTABLISH THAT CLAIMANT IS PERMANENTLY TOTALLY DISABLED. CLAIMANT'S MOTIVATION TO RETURN TO EMPLOYMENT IS POOR.

ORDER

THE ORDER OF THE REFEREE DATED FEBRUARY 22, 1974 IS REVERSED.

CLAIMANT IS AWARDED AN ADDITIONAL 48 DEGREES UNSCHEDULED PERMANENT PARTIAL DISABILITY WHICH INCREASES THE 64 DEGREES AWARDED PREVIOUSLY BY THE WORKMEN'S COMPENSATION BOARD TO A TOTAL OF 112 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 1,500 DOLLARS.

WCB CASE NO. 73-2567

AUGUST 28, 1974

RUSSELL CRAMER, CLAIMANT
YTURRI, O'KIEF, ROSE AND BURNHAM,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED A DETERMINATION ORDER GRANTING A PERMANENT PARTIAL DISABILITY AWARD OF 5 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED LOW BACK DISABILITY EQUAL TO 16 DEGREES.

CLAIMANT WAS EMPLOYED BY MALHEUR SCHOOL DISTRICT 8-C AND WAS INJURED JUNE 6, 1972, WHILE PUSHING A HEAVY DESK LOADED WITH BOOKS. CLAIMANT RECEIVED CONSERVATIVE TREATMENT FOR BACK STRAIN - HOWEVER, HE DID UNDERGO TWO MYELOGRAMS (BOTH NEGATIVE), MANIPULATIONS UNDER ANESTHETIC AND HOSPITALIZATION FOR TRACTION. A PSYCHOLOGICAL EXAMINATION WAS DONE BY DR. JOSEPH BURDIC WHO FOUND FUNCTIONAL OVERLAY INTERFERING WITH CLAIMANT'S ABILITY TO RETURN TO EMPLOYMENT. THIS PROBLEM WAS VERIFIED BY DR. HALFERTY OF THE DISABILITY PREVENTION DIVISION AND BY DR. HICKMAN.

DESPITE PSYCHOLOGICAL FACTORS, CLAIMANT HAS AN EXCELLENT WORK RECORD. IN ADDITION TO A REGULAR JOB, HE HAS BUILT AND MANAGED 41 APARTMENT UNITS, AT ONE TIME OWNED AND OPERATED A GROCERY STORE, AND DROVE A SCHOOL BUS. BEING DESPERATE TO SECURE EMPLOYMENT, CLAIMANT DID NOT DISCLOSE HIS BACK PROBLEM TO HIS PROSPECTIVE EMPLOYER AND BEGAN WORK IN A MOTOR HOME MANUFACTURING COMPANY.

IRRESPECTIVE OF WHETHER CLAIMANT'S CONDITION IS DUE TO AN ANATOMICAL LOSS OR A PSYCHOLOGICAL DISABILITY, THE BOARD FINDS ON DE NOVO REVIEW THAT CLAIMANT HAS UNSCHEDULED DISABILITY AND THAT A TOTAL AWARD OF 15 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED LOW BACK DISABILITY MORE REALISTICALLY COMPENSATES CLAIMANT FOR THIS DISABILITY.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 31, 1974, IS MODIFIED. CLAIMANT IS AWARDED AN INCREASE OF 10 PERCENT (32 DEGREES) UNSCHEDULED LOW BACK DISABILITY. THIS AWARD, COMBINED WITH THE PREVIOUS 5 PERCENT (16 DEGREES) MAKES A TOTAL AWARD OF 15 PERCENT (48 DEGREES).

CLAIMANT'S ATTORNEY IS ENTITLED TO RECEIVE 25 PERCENT OF THE INCREASED COMPENSATION AWARDED BY THIS ORDER ON REVIEW, BUT IN NO EVENT SHALL THE FEE RECEIVED PURSUANT TO THIS ORDER EXCEED 1,500 DOLLARS.

WCB CASE NO. 74-72

AUGUST 28, 1974

SHARON BILYEU WALLIS, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
SCHOUBOE, CAVANAUGH AND DAWSON,
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A CLAIMANT WHO CONTENDS HER PRESENT BACK CONDITION IS RELATED TO AN INDUSTRIAL INJURY SUSTAINED OCTOBER 25, 1973, FOR WHICH CLAIM FOR AN EYE INJURY WAS FILED. THE REFEREE ORDERED ACCEPTANCE AND PAYMENT OF COMPENSATION FOR CLAIMANT'S RIGHT EYE INJURY ONLY AND THE PSYCHOLOGICAL SEQUELAE THEREOF. CLAIMANT APPEALS FROM THIS ORDER OF THE REFEREE.

CLAIMANT WAS EMPLOYED DURING EVENING HOURS AT A CIRCLE K STORE. ON THE DATE OF THE INCIDENT, A CUSTOMER ENTERED THE STORE SEVERAL TIMES TRYING TO MAKE A DATE. THE THIRD TIME A SCUFFLE ENSUED RESULTING IN A WINE BOTTLE BEING BROKEN ON A COUNTER WITH GLASS FLYING INTO CLAIMANT'S FACE AND EYE. SHE UNDERWENT MEDICAL CARE AND TREATMENT FOR FACIAL CUTS, REMOVAL OF GLASS FROM HER EYES, CERVICAL STRAIN AND PSYCHOLOGICAL REACTIONS.

INFORMATION SUPPLIED BY THE EMPLOYER, THE INVESTIGATING OFFICER, THE EMERGENCY ROOM PHYSICIAN, THE OPHTHALMOLOGIST AND THE EMPLOYER'S SECURITY MAN INDICATED CLAIMANT HAS SUSTAINED ONLY AN EYE INJURY, FOR WHICH THE EMPLOYER HAS ACCEPTED RESPONSIBILITY. OTHER SYMPTOMS APPEARING SOME MONTHS LATER WERE NOT ATTRIBUTED TO THE INCIDENT AND THEREBY NOT COMPENSABLE.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDINGS OF THE REFEREE, AND AFFIRMS AND ADOPTS HIS ORDER AS THE ORDER OF THE BOARD.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 3, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 74-75

SEPTEMBER 3, 1974

MONA MITCHELL, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A CLAIM FOR INCREASED COMPENSATION ON ACCOUNT OF AGGRAVATION FILED BY THE CLAIMANT AND DENIED BY THE STATE ACCIDENT INSURANCE FUND. UPON HEARING, A REFEREE ORDERED THE FUND TO ACCEPT THE AGGRAVATION CLAIM AND FROM THIS ORDER THE FUND HAS APPEALED TO THE BOARD FOR REVIEW.

CLAIMANT WAS INJURED JANUARY 3, 1969. HER CLAIM WAS ACCEPTED AND PURSUANT TO DETERMINATION ORDER WAS GRANTED AN AWARD OF PERMANENT PARTIAL DISABILITY OF 32 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY.

ON NOVEMBER 19, 1973, DR. COUROGEN OF THE PERMANENTE CLINIC SUBMITTED A WRITTEN OPINION TO THE STATE ACCIDENT INSURANCE FUND STATING THAT CLAIMANT'S HERNIATED LUMBAR DISC WHICH HAD REQUIRED SURGERY WAS, IN HIS OPINION, CAUSALLY RELATED TO HER INDUSTRIAL INJURY OF 1969. THE FUND WOULD NOT ACCEPT THIS OPINION AS SUPPORTING MEDICAL TO SUSTAIN A CLAIM FOR AGGRAVATION. ON FEBRUARY 28, 1974, DR. COUROGEN AGAIN CONTACTED THE FUND AND CLARIFIED HIS PREVIOUS LETTER AND AFFIRMED HIS POSITION IN THE MATTER.

IN LIGHT OF DR. COUROGEN'S TWO OPINIONS AND WITH NO MEDICAL OPINION TO THE CONTRARY BY THE FUND, THE BOARD ON REVIEW CONCURS WITH THE FINDINGS MADE BY THE REFEREE THAT CLAIMANT HAS SUSTAINED HER BURDEN OF PROOF THAT SHE HAS SUFFERED A COMPENSABLE AGGRAVATION OF HER INDUSTRIAL ACCIDENTAL INJURY OF 1969.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 24, 1974, IS HEREBY AFFIRMED.

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

KATE PARKER, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES WHETHER OR NOT THE CLAIMANT IS PERMANENTLY TOTALLY DISABLED AND IF NOT, THE EXTENT OF DISABILITY. A FIRST DETERMINATION ORDER, DATED NOVEMBER 9, 1970, AWARDED CLAIMANT 16 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. THE REQUEST FOR HEARING FROM THIS DETERMINATION ORDER WAS SETTLED BY STIPULATION WITH AN INCREASE OF 18.2 DEGREES, MAKING A TOTAL OF 34.2 DEGREES UNSCHEDULED DISABILITY AWARD. THE CLAIM WAS REOPENED AND THE DETERMINATION ORDER OF DECEMBER 13, 1973, AWARDED CLAIMANT NO ADDITIONAL PERMANENT PARTIAL DISABILITY. CLAIMANT REQUESTED A HEARING AND THE REFEREE AWARDED CLAIMANT PERMANENT TOTAL DISABILITY.

CLAIMANT, A 51 YEAR OLD SALESLADY, WAS INJURED SEPTEMBER 15, 1969, WHEN SHE WAS STRUCK BY A FALLING SHELF AT THE BAKERY AND HEALTH FOOD STORE WHERE SHE WORKED. AFTER CONSERVATIVE TREATMENT, SHE WENT BACK TO WORK NOVEMBER 3, 1969, AND CONTINUED WORKING AT THE BAKERY AND HEALTH FOOD STORE UNTIL JULY 21, 1973. CLAIMANT HAS NOT WORKED SINCE JULY, 1973.

CLAIMANT HAS HAD CHIROPRACTIC TREATMENTS FOR THE PAST THREE AND A HALF YEARS. THE BACK EVALUATION CLINIC STATES SHE IS PHYSICALLY ABLE TO RETURN TO WORK WITH RESTRICTIONS ON LIFTING AND BENDING - AND FURTHER, THAT IT IS CLEAR THAT THE PATIENT IS PHYSICALLY ABLE TO WORK BUT THERE IS SOME DOUBTS AS TO HER MENTAL MOTIVATION TO RETURN TO WORK. THEY RATE THE LOSS OF FUNCTION OF BACK AT NONE AND THE LOSS OF FUNCTION OF NECK AT MILD.

CLAIMANT'S PSYCHOPATHOLOGY IS CHRONIC IN NATURE AND REFLECTIVE OF A GENERAL LIFE STYLE ACCORDING TO DR. PERKINS. SHE FURTHER REPORTS THAT THE PSYCHOPATHOLOGY ATTRIBUTABLE TO THE INDUSTRIAL INJURY WILL PROBABLY NOT BE PERMANENT IN NATURE. SHE FURTHER REPORTS THAT IT IS QUESTIONABLE WHETHER THIS PATIENT IS MOTIVATED TO RETURN TO GAINFUL EMPLOYMENT. ANOTHER PSYCHOLOGIST, DR. ACKERMAN, BASED HIS REPORT ON THE HISTORY AS RECITED BY THE CLAIMANT. CLAIMANT'S DISAGREEMENT WITH THE FINDINGS OF THE DISABILITY PREVENTION DIVISIONS' EVALUATIONS ARE NOT WELL TAKEN. WHEN THE CLAIMANT IS READY AND DESIRES THE SERVICES OF THE DISABILITY PREVENTION DIVISION AND THE VOCATIONAL REHABILITATION CENTER, THE DISABILITY PREVENTION DIVISION AND THE VOCATIONAL REHABILITATION CENTER ARE URGED TO RENDER EVERY ASSISTANCE POSSIBLE TO THE CLAIMANT.

CLAIMANT IS NOW STUDYING FOR HER GED EXAMS AND EXPRESSES AN INTEREST IN CONTINUING HER EDUCATION FOR ANOTHER TWO YEARS AT THE COMMUNITY COLLEGE LEVEL.

THE BOARD FINDS THAT CLAIMANT IS NOT PRIMA FACIE PERMANENTLY TOTALLY DISABLED AND HER LACK OF MOTIVATION TO RETURN TO GAINFUL EMPLOYMENT PRECLUDES AN AWARD OF PERMANENT TOTAL DISABILITY UNDER THE ODD-LOT DOCTRINE.

THE BOARD FINDS CLAIMANT'S PERMANENT PARTIAL DISABILITY IS EQUAL TO A TOTAL OF 75 PERCENT (240 DEGREES) UNSCHEDULED PERMANENT PARTIAL DISABILITY.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 16, 1974, IS REVERSED.

CLAIMANT IS AWARDED A TOTAL OF 75 PERCENT (240 DEGREES) UNSCHEDULED PERMANENT PARTIAL DISABILITY. THIS IS AN INCREASE OF 205.8 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 1,500 DOLLARS.

WCB CASE NO. 74-293

SEPTEMBER 3, 1974

DARREL PERRY, CLAIMANT
BRICE L. SMITH, CLAIMANT'S ATTY.
MCMENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES WHETHER OR NOT CLAIMANT, AT THE TIME OF THE ACCIDENT, WAS AN EMPLOYEE OR AN INDEPENDANT CONTRACTOR. THE EMPLOYER DENIED THE CLAIM AND THE REFEREE AFFIRMED THE DENIAL.

CLAIMANT AND - OR HIS WIFE AGREED TO WASH THE WINDOWS IN AN APARTMENT BUILDING FOR LUMP SUM OF 100 DOLLARS. THE APARTMENT HOUSE OWNER FURNISHED THE EQUIPMENT AND THE CLAIMANT WASHED THE WINDOWS AT A TIME AND MANNER SELECTED BY HIM.

THE TEST AS TO WHETHER OR NOT THE WORKMAN IS AN INDEPENDANT CONTRACTOR OR AN EMPLOYEE IS WHETHER OR NOT THE RIGHT TO DIRECT OR CONTROL THE WORKMAN -- NOT THE EXERCISE OF THE RIGHT -- IS RETAINED.

UNDER THE FACTS IN THE RECORD IN THIS CASE, THE BOARD AFFIRMS THE OPINION AND ORDER OF THE REFEREE HOLDING THAT THE CLAIMANT WAS AN INDEPENDANT CONTRACTOR AND NOT AN EMPLOYEE AND ADOPTS THE REFEREE'S OPINION AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 8, 1974, IS AFFIRMED.

MAYBELLE A. MYERS, CLAIMANT
FRANKLIN, BENNETT, OFELT AND JOLLES,
CLAIMANT'S ATTORNEYS
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 REFEREE'S ORDER WHICH FOUND CLAIMANT TO BE PERMANENTLY AND TOTALLY DISABLED AS A RESULT OF HER INDUSTRIAL INJURY OF JUNE 6, 1972. THE FIRST DETERMINATION ORDER AWARDED CLAIMANT 15 PERCENT UNSCHEDULED DISABILITY. A HEARING FOLLOWING THE FIRST DETERMINATION ORDER RESULTED IN AN ORDER REOPENING CLAIMANT'S CLAIM. THE SECOND DETERMINATION ORDER DID NOT AWARD CLAIMANT ANY ADDITIONAL PERMANENT PARTIAL DISABILITY. THE REFEREE AWARDED CLAIMANT PERMANENT TOTAL DISABILITY.

CLAIMANT, NOW 65 YEARS OLD, SLIPPED AND FELL WHILE WORKING AS A PANTRY GIRL AT A HOTEL. CLAIMANT RECEIVED CONSERVATIVE CARE AND HER CLAIM WAS CLOSED.

THE CLAIM WAS REOPENED FOR PSYCHIATRIC EVALUATION AND TREATMENT. CLAIMANT ATTENDED TWO PSYCHIATRIC COUNSELING SERVICES AND THEN DISCONTINUED FURTHER COUNSELING BY THE PSYCHIATRIST. THE PSYCHIATRIST'S REPORT IS INCONCLUSIVE BECAUSE OF CLAIMANT'S EVASIVENESS AND CLAIMANT'S FEELING THAT SHE DID NOT NEED PSYCHIATRIC TREATMENT.

DR. JULIA PERKINS, PSYCHOLOGIST, CONCLUDED CLAIMANT WOULD PROBABLY NOT WORK AGAIN PRIMARILY DUE TO HER AGE AND CONNECTED CLAIMANT'S INCREASE IN PSYCHOPATHOLOGY TO THE INDUSTRIAL INJURY ONLY TO A MILD DEGREE. SHE FURTHER STATED CLAIMANT'S PSYCHOPATHOLOGY IS MOSTLY ATTRIBUTABLE TO PERSONALITY CHARACTERISTICS RELATING TO AGING AND TO LIFE STYLE.

THE BACK EVALUATION CLINIC RATES HER LOSS OF PHYSICAL FUNCTION AS MILD.

THE BOARD FINDS THE CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED. THE EVIDENCE IN THE RECORD DOES NOT SUSTAIN A PRIMA FACIE CASE OF PERMANENT TOTAL DISABILITY. CLAIMANT IS NOT PHYSICALLY PERMANENTLY TOTALLY DISABLED AND HAS REJECTED MEDICAL CARE FOR TREATMENT OF HER PSYCHOPATHOLOGY. CLAIMANT'S AGE AND APPARENT LACK OF MOTIVATION TO RETURN TO WORK PRECLUDES AN AWARD OF PERMANENT TOTAL DISABILITY UNDER THE ODD-LOT DOCTRINE.

THE BOARD FINDS AND CONCLUDES THAT CLAIMANT'S DISABILITY, ATTRIBUTABLE TO HER COMPENSABLE INDUSTRIAL INJURY, IS EQUIVALENT TO A TOTAL OF PERMANENT PARTIAL DISABILITY OF 80 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 10, 1974, IS REVERSED.

CLAIMANT IS AWARDED A TOTAL OF 80 PERCENT (256 DEGREES) UNSCHEDULED DISABILITY. THIS IS AN INCREASE OF 65 PERCENT (208 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 1,500 DOLLARS.

WCB CASE NO. 74-1466 SEPTEMBER 3, 1974

PENNY L BLANK, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS.
MERLIN L. MILLER, DEFENSE ATTY.

CLAIMANT HAS MOVED THE BOARD TO DISMISS THE EMPLOYER'S REQUEST FOR REVIEW FOR ITS FAILURE TO COMPLY WITH THE JURISDICTIONAL SERVICE REQUIREMENTS FOR BOARD REVIEW.

IT APPEARS THE CLAIMANT'S MOTION IS WELL TAKEN AND THE EMPLOYER'S REQUEST FOR REVIEW IS HEREBY DISMISSED.

SAIF CLAIM NO. NC 79531 SEPTEMBER 3, 1974

ADRIAN CAVE, CLAIMANT
COONS AND COLE, CLAIMANT'S ATTYS.

ON JULY 29, 1974, COUNSEL FOR CLAIMANT PETITIONED THE WORKMEN'S COMPENSATION BOARD, PURSUANT TO OWN MOTION JURISDICTION GRANTED UNDER ORS 656.278, TO ALLOW FURTHER CARE AND TREATMENT TO CLAIMANT FOR HIS PRESENT CONDITION, WHICH IN THE OPINION OF DR. POULSON WAS DIRECTLY RELATED TO THE INDUSTRIAL INJURY HE SUSTAINED MAY 15, 1967.

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 CLAIMANT IS IN NEED OF FURTHER MEDICAL CARE AND TREATMENT AS A RESULT OF HIS INDUSTRIAL INJURY. WHEN THE REFEREE HAS CONDUCTED THE HEARING, HE SHALL CERTIFY THE RECORD, ALONG WITH A RECOMMENDED FINDING OF FACT AND OPINION TO THE BOARD FOR ITS DECISION IN THE MATTER.

WCB CASE NO. 73-3347

SEPTEMBER 3, 1974

BENJAMIN G. HAAS, CLAIMANT
ROBERT A. BENNETT, CLAIMANT'S ATTY.
JAMES D. HUEGLI, DEFENSE ATTORNEY

THE EMPLOYER HAS MOVED FOR AN ORDER DISMISSING CLAIMANT'S REQUEST FOR REVIEW FOR ITS FAILURE TO COMPLY WITH THE JURISDICTIONAL SERVICE REQUIREMENTS OR ORS 656.295.

IT APPEARS THE EMPLOYER'S MOTION IS WELL TAKEN AND THE CLAIMANT'S REQUEST FOR REVIEW IS HEREBY DISMISSED.

CONTINENTAL CASUALTY
CLAIM NO. 48-910006

SEPTEMBER 3, 1974

CARL E. JOHNSON, CLAIMANT
BAILEY, DOBLIE AND BRUUN,
CLAIMANT'S ATTORNEYS

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

CLAIMANT SUSTAINED A COMPENSABLE INJURY IN 1967. CLAIMANT IS NOW UNABLE TO WORK AND THE OPINION OF DR. JAMES BROOKE IS THAT THIS CONDITION IS DEFINITELY RELATED TO THIS INJURY.

THE BOARD HAS NOW BEEN ADVISED THAT THE EMPLOYER'S CARRIER, CONTINENTAL CASUALTY INSURANCE COMPANY, IS VOLUNTARILY REOPENING CLAIMANT'S CLAIM.

THEREFORE, THE OWN MOTION REQUEST NOW PENDING BEFORE THE BOARD WILL RECEIVE NO FURTHER ACTION AND THE MATTER IS HEREBY DISMISSED.

WCB CASE NO. 73-1064

SEPTEMBER 3, 1974

DALE R. JOHNSON, DECEASED
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY BENEFICIARIES

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE BENEFICIARIES OF THE DECEDENT REQUEST BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED THE DENIAL FOR BENEFITS ISSUED BY THE STATE ACCIDENT INSURANCE FUND.

ON JANUARY 15, 1973, DECEDENT SUFFERED A FATAL CORONARY INFARCTION WHILE ON A BUSINESS TRIP TO RENO, NEVADA, IN CONNECTION WITH HIS JOB AS A SALESMAN OF TIRE CHAINS.

ON REVIEW BY THE BOARD, THE RECORD DOES NOT CONTAIN SUBSTANTIVE EVIDENCE TO A DEGREE THAT THE REFEREE'S ORDER SHOULD BE MODIFIED.

THE BOARD AFFIRMS AND ADOPTS THE REFEREE'S ORDER AS THE ORDER OF THE BOARD.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 6, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 73-3841

SEPTEMBER 3, 1974

LEMUEL H. SILVEY, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES THE STATE ACCIDENT INSURANCE FUND'S DENIAL OF CLAIMANT'S CLAIM FOR A BACK INJURY. THE REFEREE ORDERED THE STATE ACCIDENT INSURANCE FUND TO ACCEPT THE CLAIM.

CLAIMANT, A 57 YEAR OLD LOG TRUCK DRIVER, HAS WORKED FOR THIS EMPLOYER FOR APPROXIMATELY 35 YEARS DRIVING LOG TRUCKS. TWO MEDICAL SPECIALISTS, DR. HOWARD L. CHERRY, ORTHOPEDIST, AND DR. JOHN R. FLANNERY, BOTH CONNECT THE CLAIMANT'S BACK CONDITION WITH HIS OCCUPATION. THE QUIBBLE WHETHER OR NOT CLAIMANT'S BACK CONDITION IS DEGENERATIVE ARTHRITIS OR RHEUMATOID ARTHRITIS IS IRRELEVANT. BOTH SPECIALISTS CONCUR IN THE FINDING THAT CLAIMANT'S BACK CONDITION WAS AT THE VERY LEAST AGGRAVATED IF NOT CAUSED BY HIS OCCUPATION.

THE BOARD AFFIRMS THE REFEREE'S FINDINGS AND ORDER AND ADOPTS HIS OPINION AND ORDER AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 2, 1974, IS AFFIRMED.

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

FRED DALTON, CLAIMANT
CRANE AND BAILEY, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

THIS MATTER INVOLVES AN ISSUE OF WHETHER THE SURGERY PERFORMED ON CLAIMANT ON NOVEMBER 1, 1972 BY DR. MARIO J. CAMPAGNA WAS NECESSITATED BY CLAIMANT'S INDUSTRIAL INJURY OF 1965 AND THE RESPONSIBILITY OF THE STATE ACCIDENT INSURANCE FUND.

PURSUANT TO OWN MOTION JURISDICTION GRANTED BY ORS 656.278, THE WORKMEN'S COMPENSATION BOARD, BY ITS OWN MOTION ORDER OF MAY 11, 1973, DIRECTED THE HEARINGS DIVISION TO HOLD A HEARING TO OBTAIN EVIDENCE UPON THE MERITS OF THE ISSUE TO SERVE AS THE BASIS FOR FURTHER BOARD ORDER UNDER THE OWN MOTION PROCEEDING.

A HEARING WAS HELD MAY 21, 1974, AND THE TRANSCRIPT OF THE PROCEEDING HAS NOW BEEN REVIEWED BY THE BOARD. THE BOARD CONCURS WITH THE REFEREE'S FINDING THAT THERE IS A COMPENSABLE CHAIN OF CAUSATION FROM THE INITIAL INJURY OF APRIL 1, 1965 TO THE SURGERY PERFORMED IN NOVEMBER, 1972 AND CONCLUDES THAT HIS FINDINGS AND RECOMMENDATIONS SHOULD BE ADOPTED.

IT IS THEREFORE ORDERED THAT THE STATE ACCIDENT INSURANCE FUND ASSUME THE COST OF THE SURGERY PERFORMED NOVEMBER 1, 1972 BY DR. CAMPAGNA AND PROVIDE CLAIMANT TEMPORARY TOTAL DISABILITY FOR THE PERIOD NOVEMBER 1, 1972 TO MARCH 1, 1973 INCLUSIVE. CLAIMANT'S COUNSEL, DONALD R. CRANE, IS ENTITLED TO A REASONABLE ATTORNEY'S FEE OF 600 DOLLARS RECOVERABLE FROM THE TEMPORARY TOTAL DISABILITY PAYABLE TO CLAIMANT.

GARY ELLIS, CLAIMANT
GALBREATH AND POPE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

THIS MATTER INVOLVES AN ISSUE OF WHETHER CLAIMANT'S CURRENT KNEE DISABILITY IS CAUSALLY RELATED TO AN ACCIDENTAL INJURY TO HIS KNEE ON MAY 31, 1961.

PURSUANT TO ORS 656.278 WHICH DELEGATES CONTINUING JURISDICTION TO THE BOARD, THE MATTER WAS REMANDED BY ORDER DATED APRIL 4, 1974, TO THE HEARINGS DIVISION TO HOLD A HEARING, PREPARE A RECORD TO BE SUBMITTED TO THE BOARD FOR CONSIDERATION, ALONG WITH AN ADVISORY OPINION AND RECOMMENDATION.

A HEARING WAS SUBSEQUENTLY HELD ON JUNE 12, 1974, AND THE RECORD HAS NOW BEEN EXAMINED BY THE BOARD. THE BOARD CONCURS WITH THE FINDING MADE BY THE REFEREE AND CONCLUDES THAT THE STATE ACCIDENT INSURANCE FUND SHOULD ASSUME THE COST OF CLAIMANT'S SURGICAL PROCEDURE OF MAY 12, 1973.

IT IS THEREFORE ORDERED THAT THE STATE ACCIDENT INSURANCE FUND ASSUME LIABILITY FOR THE COST OF CLAIMANT'S KNEE SURGERY AND HOLD CLAIMANT HARMLESS ON ACCOUNT THEREOF.

CLAIMANT'S COUNSEL IS AUTHORIZED TO RECOVER THE SUM OF 475 DOLLARS FROM CLAIMANT AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN THIS PROCEEDING.

WCB CASE NO. 73-3222

SEPTEMBER 4, 1974

VIOLET M. HUBER, CLAIMANT
FRANKLIN, BENNETT, OFELT, DES BRISDAY
AND JOLLES, CLAIMANT'S ATTORNEYS
DEPARTMENT 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 AWARDING HER 9.6 DEGREES FOR UNSCHEDULED DISABILITY (5 PERCENT) CONTENDING SHE IS ENTITLED TO PERMANENT DISABILITY COMPENSATION AND TO FURTHER MEDICAL TREATMENT.

CLAIMANT SUFFERED AN INJURY IN 1967 WHILE WORKING AS A SCHOOL LIBRARIAN WHICH PRODUCED PAIN AND SPASM OF THE MUSCLES OF THE RIGHT HIP AND LOW BACK. SHE RECEIVED CONSERVATIVE TREATMENT BUT WAS PLAGUED BY PERSISTENT PAIN WHICH WAS NOT IMPROVED UNTIL SHE BEGAN TREATMENT FROM DR. R. E. RINEHART ON JULY 24, 1972. HE TREATED HER CONSERVATIVELY FOR A NEUROPATHY OF THE RIGHT SCIATIC NERVE.

CLAIMANT REPORTS HER CONTINUING TREATMENTS HAVE BEEN VERY HELPFUL AND SHE HAS REMAINED ESSENTIALLY FULLY EMPLOYED OTHER THAN AN OCCASIONAL DAY OFF DUE TO TRANSIENT EPISODES OF PAIN. SHE STILL RECEIVES TREATMENT FROM DR. RINEHART WHO REPORTS THAT HE ULTIMATELY EXPECTS A COMPLETE REMISSION OF HER PAIN.

CLAIMANT HAS BEEN GRANTED A SMALL PERMANENT DISABILITY WHICH HER COUNSEL VIGOROUSLY ARGUES ACTUALLY PENALIZES HER FOR HER SUCCESSFUL EFFORT TO REMAIN EMPLOYED IN SPITE OF THE PAIN INVOLVED.

THE ONLY FUNCTION OF AN UNSCHEDULED DISABILITY AWARD IS TO COMPENSATE A CLAIMANT FOR THE ACTUAL LOSS OF WAGE EARNING CAPACITY. THE 5 PERCENT AWARDED BY THE DETERMINATION ORDER AND AFFIRMED BY THE REFEREE FAIRLY DOES THIS AND, THEREFORE, WE CONCLUDE THE REFEREE'S ORDER SHOULD BE AFFIRMED.

ORS 656.245 OBLIGATES THE STATE ACCIDENT INSURANCE FUND TO PROVIDE SUCH MEDICAL SERVICES AS THE NATURE OF THE INJURY OR THE PROCESS OF RECOVERY REQUIRE, EVEN AFTER A DETERMINATION OF PERMANENT DISABILITY HAS BEEN MADE. WE THINK DR. RINEHART'S SERVICES ARE REQUIRED BY THE NATURE OF THE INJURY AND THAT THE STATE ACCIDENT INSURANCE FUND IS OBLIGATED TO ASSUME THE COST OF THESE TREATMENTS. CLAIMANT IS ENTITLED TO SUCH AN ORDER.

ORDER

THE ORDER OF THE REFEREE AFFIRMING CLAIMANT'S PERMANENT DISABILITY AWARD OF 9.6 DEGREES FOR UNSCHEDULED DISABILITY IS HEREBY AFFIRMED.

PURSUANT TO ORS 656.245, THE STATE ACCIDENT INSURANCE FUND IS HEREBY ORDERED TO ASSUME LIABILITY FOR THE COST OF DR. RINEHART'S TREATMENTS OF CLAIMANT FOR SUCH PERIOD AS THE NATURE OF THE INJURY OR THE PROCESS OF RECOVERY REQUIRES AND TO HOLD CLAIMANT HARMLESS ON ACCOUNT OF ANY SERVICES DR. RINEHART HAS HERETOFORE PROVIDED FOR THIS INJURY.

CLAIMANT'S ATTORNEY IS HEREBY AWARDED A REASONABLE ATTORNEY'S FEE EQUAL TO 25 PERCENT OF THE MEDICAL EXPENSES WHICH CLAIMANT IS HEREBY RELIEVED OF PAYING, TO A MAXIMUM OF 1,500 DOLLARS, TO BE RECOVERED DIRECTLY FROM THE CLAIMANT.

WCB CASE NO. 73-3126

SEPTEMBER 4, 1974

HOMER RHODES, CLAIMANT
EVOHL F. MALAGON, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

THE STATE ACCIDENT INSURANCE FUND HAS MOVED THE BOARD FOR AN ORDER DISMISSING CLAIMANT'S REQUEST FOR REVIEW ALLEGING CLAIMANT FAILED TO COMPLY WITH THE SERVICE PROVISIONS OF ORS 656.263 AND 656.295.

ORS 656.295 REQUIRES COPIES OF THE NOTICE TO BE MAILED TO ALL OTHER 'PARTIES'. ORS 656.002(17) DEFINES THE STATE ACCIDENT INSURANCE FUND AS THE 'PARTY' FOR THE PURPOSES OF ADMINISTRATIVE HEARING AND REVIEW. ORS 656.263 IS A GENERAL PROVISION REGARDING NOTICES OF ALL TYPES WHILE ORS 656.295 IS A SPECIFIC PROVISION RELATING ONLY TO REQUESTS FOR REVIEW. CLAIMANT HAS COMPLIED WITH THE SPECIFIC PROVISION OF THE LAW CONCERNING REQUESTS FOR BOARD REVIEW.

THE BOARD, BEING NOW FULLY ADVISED, FINDS THE FUND'S MOTION NOT WELL TAKEN AND IT IS HEREBY DENIED.

WCB CASE NO. 73-1550

SEPTEMBER 5, 1974

SETH A. NELSON, CLAIMANT
MARMADUKE, ASCHENBRENNER, MERTEN
AND SALTVEIT, CLAIMANT'S ATTORNEY
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON SEPTEMBER 3, 1974, THE STATE ACCIDENT INSURANCE FUND MOVED THE BOARD FOR RECONSIDERATION OF ITS ORDER AWARDING AN ATTORNEY'S FEE TO CLAIMANT'S ATTORNEY, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR HER SERVICES IN SECURING ADDITIONAL TREATMENT FOR CLAIMANT PURSUANT TO ORS 656.245.

WE HAVE CONSIDERED THE AUTHORITY CITED BY THE FUND IN SUPPORT OF ITS POSITION AND FIND THE MOTION WELL TAKEN. THAT PARAGRAPH OF THE ORDER WHICH READS =

IN ADDITION TO THE CLAIMANT'S ATTORNEY FEE ALLOWED BY THE REFEREE IN CONNECTION WITH THE ADDITIONAL PERMANENT DISABILITY, CLAIMANT'S ATTORNEY IS HEREBY AWARDED A REASONABLE FEE OF 550 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR HIS SERVICES AT THE HEARING AND ON THIS REVIEW, IN CONNECTION WITH SECURING CLAIMANT ADDITIONAL MEDICAL TREATMENT.

SHOULD BE VACATED AND THE FOLLOWING ORDER INSERTED IN LIEU THEREOF =

CLAIMANT'S ATTORNEY IS HEREBY AWARDED A REASONABLE FEE EQUAL TO 25 PERCENT OF THE MEDICAL EXPENSES CLAIMANT IS RELIEVED OF PAYING BY THIS ORDER, TO A MAXIMUM OF 1,500 DOLLARS, TO BE RECOVERED DIRECTLY FROM THE CLAIMANT.

THE ORDER SHOULD REMAIN THE SAME IN ALL OTHER RESPECTS.

IT IS SO ORDERED.

WCB CASE NO. 73-3912

SEPTEMBER 6, 1974

JOE STOGSDILL, CLAIMANT

RICHARD H. RENN, CLAIMANT'S ATTORNEY
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH REMANDED CLAIMANT'S AGGRAVATION CLAIM TO THE STATE ACCIDENT INSURANCE FUND FOR PAYMENT OF COMPENSATION BENEFITS PURSUANT TO THE PROVISIONS OF ORS 656.268.

THE ISSUE BEFORE THE REFEREE, AND NOW BEFORE THE BOARD, IS WHETHER CLAIMANT'S PRESENT CONDITION IS THE RESULT OF HIS NEW INJURIES OR WHETHER IT RELATES TO HIS PREVIOUS COMPENSABLE INJURY OF APRIL 19, 1972.

THE BOARD HAS REVIEWED THE RECORD AND CONCLUDES THE REFEREE CORRECTLY FOUND CLAIMANT'S CONDITION CONSTITUTES A COMPENSABLE AGGRAVATION OF HIS INDUSTRIAL INJURY OF 1972 AND ADOPTS HIS ORDER AS ITS OWN. HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 23, 1974, IS HEREBY AFFIRMED.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A REASONABLE ATTORNEY'S FEE 250 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 73-3260

SEPTEMBER 6, 1974

LESTER BACHMANN, CLAIMANT
SAHLSTROM, LOMBARD, STARR AND VINSON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES THE ISSUE OF WHETHER OR NOT CLAIMANT, A MECHANIC, SUSTAINED A COMPENSABLE INJURY WHILE EMPLOYED BY GLENN'S TIRE AND HONDA, INC. THE CARRIER DENIED THE CLAIM AND THIS DENIAL WAS UPHeld BY THE REFEREE.

CLAIMANT'S INJURY OCCURRED WHILE HE WAS HELPING LOAD AN OIL DRUM FOR A CUSTOMER OF A SERVICE STATION ACROSS THE STREET FROM HIS PLACE OF EMPLOYMENT. CLAIMANT WAS NOT HELPING A CUSTOMER OF HIS EMPLOYER NOR DID HE HAVE ANY AUTHORITY OR CONSENT FROM HIS EMPLOYER TO ASSIST CUSTOMERS OF THE SERVICE STATION.

WE CONCUR WITH THE REFEREE IN THAT THE CLAIMANT DID NOT SUSTAIN A COMPENSABLE INJURY ARISING OUT OF AND IN THE SCOPE OF HIS EMPLOYMENT AS ALLEGED AND WOULD ADOPT HIS ORDER AS OUR OWN.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 17, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 73-3501

SEPTEMBER 6, 1974

DONALD GONSER, CLAIMANT
BODIE AND MINTURN, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH INCREASED HIS PERMANENT PARTIAL DISABILITY AWARD FROM 15 PERCENT TO 35 PERCENT CONTENDING HIS DISABILITY EXCEEDS THAT AWARDED.

CLAIMANT, A THEN 48 YEAR OLD CARPENTER, SUSTAINED A COMPENSABLE INJURY TO HIS LOW BACK ON MAY 11, 1972. HE WAS SEEN BY SEVERAL PHYSICIANS AND RECEIVED CONSERVATIVE TREATMENT.

PHYSICAL LIMITATIONS ON LIFTING AND BENDING HAVE CREATED A POTENTIAL LOSS OF WAGE EARNING CAPACITY FOR THE CLAIMANT. HE HAS, HOWEVER, DEMONSTRATED THAT HE IS CAPABLE OF SOME TYPES OF SUPERVISORY JOBS AND THIS REDUCES THE DISABLING IMPACT OF THESE IMPAIRMENTS.

THE BOARD IS OF THE OPINION THAT, AS OF NOW, THE COMPENSATION AWARDED BY THE REFEREE IS ADEQUATE. HOWEVER, IN THE EVENT CLAIMANT'S DISABILITY STATUS REQUIRES FUTURE ATTENTION, THE BOARD CAN, PURSUANT TO ORS 656,273 OR ORS 656,278, GIVE CONSIDERATION TO CLAIMANT'S NEED FOR COMPENSATION. BOWSER V. EVANS PRODUCTS CO., 99 OAS 361, -- OR APP -- (1974). 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 APRIL 22, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 73-3155

SEPTEMBER 6, 1974

KENNETH CHURCH, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH FOUND CLAIMANT PERMANENTLY AND TOTALLY DISABLED.

ON DECEMBER 1, 1966, CLAIMANT, A 60 YEAR OLD CARPENTER, SUFFERED A COMPENSABLE INJURY TO HIS BACK WHICH AGGRAVATED DEGENERATIVE LOW BACK CHANGES.

WE HAVE EXAMINED THE RECORD DE NOVO. THE EVIDENCE SUPPORTS THE REFEREE'S FINDINGS AND OPINION THAT CLAIMANT IS PERMANENTLY TOTALLY DISABLED. THE BOARD THEREFORE ADOPTS HIS ORDER AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 25, 1974, IS HEREBY AFFIRMED.

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

GREGORY P. MCMAHON, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTORNEYS

ON JULY 3, 1974, THE WORKMEN'S COMPENSATION BOARD DISMISSED THE EMPLOYER'S REQUEST FOR BOARD REVIEW IN THE ABOVE ENTITLED CASE WHICH LEFT PENDING THE CLAIMANT'S CROSS REQUEST FOR REVIEW. CLAIMANT HAS NOW REQUESTED DISMISSAL OF HIS CROSS REQUEST FOR REVIEW.

ORDER

THE CLAIMANT'S CROSS REQUEST FOR REVIEW ENTERED IN THE ABOVE ENTITLED CASE ON APRIL 18, 1974, IS HEREBY DISMISSED AND THE REFEREE'S ORDER, DATED MARCH 26, 1974, IS FINAL BY OPERATION OF LAW.

SAIF CLAIM NO. AC 77112 SEPTEMBER 6, 1974

BETTY V. REVES, CLAIMANT

ON JUNE 6, 1974, AFTER CLAIMANT'S AGGRAVATION RIGHT HAD EXPIRED, THE STATE ACCIDENT INSURANCE FUND VOLUNTARILY REOPENED CLAIMANT'S CLAIM TO PROVIDE HER ADDITIONAL MEDICAL CARE AND COMPENSATION FOR AN INJURY OF JUNE 7, 1967. HER TREATING PHYSICIAN HAS REPORTED HER CONDITION IS AGAIN STATIONARY AND THE STATE ACCIDENT INSURANCE FUND HAS SUBMITTED HER CLAIM TO THE BOARD FOR CLOSURE PURSUANT TO ITS CONTINUING JURISDICTION OVER CLAIMS PROVIDED BY ORS 656.278.

IT APPEARS CLAIMANT WAS TEMPORARILY TOTALLY DISABLED DURING HER RECENT EXACERBATION BUT THAT SHE HAS NOT SUFFERED ANY INCREASES IN PERMANENT DISABILITY. THEREFORE, CLAIMANT SHOULD BE, AND SHE IS HEREBY, GRANTED TEMPORARY TOTAL DISABILITY COMPENSATION FOR THE PERIOD OF FEBRUARY 7, 1974 THROUGH AUGUST 6, 1974, INCLUSIVE. NO ADDITIONAL PERMANENT DISABILITY COMPENSATION IS AWARDED.

NO NOTICE OF APPEAL IS DEEMED APPLICABLE.

INSURANCE CO. OF NORTH
AMERICAN NO. 541 CR 29469 SEPTEMBER 6, 1974

IRETHA K. EGAN, CLAIMANT

ON FEBRUARY 13, 1974, AFTER CLAIMANT'S AGGRAVATION RIGHT HAD EXPIRED, THE EMPLOYER'S INSURANCE CARRIER

VOLUNTARILY REOPENED CLAIMANT'S CLAIM TO PROVIDE HER ADDITIONAL MEDICAL CARE AND COMPENSATION FOR AN INJURY OF SEPTEMBER 7, 1967. HER TREATING PHYSICIAN HAS REPORTED HER CONDITION IS AGAIN STATIONARY AND THE CARRIER HAS SUBMITTED HER CLAIM TO THE BOARD FOR CLOSURE PURSUANT TO ITS CONTINUING JURISDICTION OVER CLAIMS PROVIDED BY ORS 656.278.

IT APPEARS CLAIMANT WAS TEMPORARILY TOTALLY DISABLED DURING HER RECENT TREATMENT BUT THAT SHE HAS NOT SUFFERED ANY INCREASES IN PERMANENT DISABILITY. THEREFORE, CLAIMANT SHOULD BE, AND SHE IS HEREBY, GRANTED TEMPORARY TOTAL DISABILITY COMPENSATION FOR THE PERIOD OF JANUARY 21, 1974 THROUGH MARCH 3, 1974, INCLUSIVE. NO ADDITIONAL PERMANENT DISABILITY COMPENSATION IS AWARDED.

NO NOTICE OF APPEAL IS DEEMED APPLICABLE.

WCB CASE NO. 74-2500 SEPTEMBER 6, 1974

JEWELL TAYLOR, CLAIMANT
PANNER, JOHNSON, MARCEAU AND
KARNOPP, CLAIMANT'S ATTORNEYS
GRAY, FANCHER, HOLMES AND
HURLEY, DEFENSE ATTORNEYS

THIS MATTER IS BEFORE THE BOARD FOR CONSIDERATION PURSUANT TO ORS 656.278 WHICH GRANTS IT CONTINUING JURISDICTION OVER COMPENSATION CLAIMS.

CLAIMANT IS A NOW 63 YEAR OLD MAN WHO SUFFERED AN INJURY TO HIS LOW BACK ON FEBRUARY 1, 1966, WHILE WORKING AS A MILLWRIGHT AT THE GILCHRIST TIMBER COMPANY IN GILCHRIST, OREGON.

A HEARING CONCERNING A CLAIMED AGGRAVATION OF HIS CONDITION WAS HELD ON MAY 9, 1972. EVIDENCE PRESENTED AT THAT TIME CONVINCED THE HEARING OFFICER THAT CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED AND HE ENTERED AN ORDER ACCORDINGLY. FOLLOWING THE HEARING, HOWEVER, THE CLAIMANT HAD, UNBEKNOWNST TO THE HEARING OFFICER, RETURNED TO WORK IN SPITE OF HIS DISABILITIES.

WHEN THE HEARING OFFICER WAS PRESENTED WITH THIS EVIDENCE, HE MODIFIED HIS ORDER TO GRANT CLAIMANT A PERMANENT PARTIAL DISABILITY AWARD. SINCE THEN, CLAIMANT HAS TERMINATED HIS EMPLOYMENT DUE TO EPIGASTRIC COMPLICATIONS ASSOCIATED WITH THE USE OF HIS LUMBOSACRAL SUPPORT.

IN JUNE, 1974, DR. JOHN P. CARROLL EXAMINED CLAIMANT THOROUGHLY AND REPORTED HIS FINDINGS. IN HIS OPINION, CLAIMANT IS DEFINITELY PERMANENTLY AND TOTALLY DISABLED FROM THE RESIDUALS OF THE INJURY IN QUESTION.

WE CONCLUDE THAT CLAIMANT'S FORMER AWARD OF PERMANENT TOTAL DISABILITY SHOULD BE RESTORED AS OF THE DATE OF THIS ORDER PURSUANT TO THE PROVISIONS OF ORS 656.278 AND THAT CLAIMANT'S ATTORNEY, LYMAN C. JOHNSON, SHOULD BE AWARDED 25 PERCENT OF THE COMPENSATION HEREBY ALLOWED, TO A MAXIMUM OF 250 DOLLARS, AS A REASONABLE ATTORNEY'S FEE.

IT IS SO ORDERED.

WCB CASE NO. 73-2350

SEPTEMBER 6, 1974

EVERETT COX, CLAIMANT

ROBERT GRANT, CLAIMANT'S ATTORNEY
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 REFEREE'S ORDER WHICH FOUND CLAIMANT PERMANENTLY AND TOTALLY DISABLED CONTENDING CLAIMANT FAILED TO MEET THE BURDEN OF PROOF THAT HE FALLS WITHIN THE ODD-LOT CATEGORY AND THAT HE HAS FAILED TO ESTABLISH THAT HE IS, IN FACT, PERMANENTLY AND TOTALLY DISABLED.

THE REFEREE DEALT PROPERLY WITH THE CONTENTIONS RAISED AND CORRECTLY CONCLUDED CLAIMANT HAS MET THE BURDEN OF PROOF SHOWING THAT HE FALLS WITHIN THE ODD-LOT CATEGORY WHICH RENDERS HIM PERMANENTLY AND TOTALLY DISABLED.

THE BOARD, HAVING REVIEWED THE RECORD AND HAVING CONSIDERED THE BRIEFS OF THE PARTIES SUBMITTED ON APPEAL, ADOPTS THE OPINION AND ORDER OF THE REFEREE AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 29, 1974, IS HEREBY AFFIRMED.

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

WCB CASE NO. 73-1552

SEPTEMBER 6, 1974

JEAN A. BLUMBERG, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
MC MURRY AND NICHOLS, DEFENSE ATTY.

CLAIMANT HAS REQUESTED RECONSIDERATION OF THE BOARD'S ORDER ON REVIEW DATED AUGUST 16, 1974. AMONG OTHER THINGS, THAT ORDER AFFIRMED THE REFEREE'S FINDING THAT CLAIMANT'S CLAIM HAD BEEN PREMATURELY CLOSED BUT FAILED TO RULE THAT CLAIMANT'S AGGRAVATION PERIOD DID NOT BEGIN ON THE MAILING DATE OF THE PREMATURELY ISSUED DETERMINATION ORDER.

UNDER THE FACTS OF THIS CASE, CLAIMANT IS ENTITLED TO SUCH A RULING FOR REASONS WHICH WERE EXPLAINED IN THE CASE OF LORA DALTON, WCB CASE NO. 73-1344 (MAY 24, 1974).

THE ORDER ON REVIEW SHOULD BE SUPPLEMENTED BY AN ORDER PROVIDING THAT THE DETERMINATION ORDER DATED APRIL 23, 1973, DOES NOT CONSTITUTE THE FIRST DETERMINATION REFERRED TO IN ORS 656.273(3).

THE ORDER SHOULD REMAIN THE SAME IN ALL OTHER RESPECTS.

IT IS SO ORDERED.

WCB CASE NO. 74-530

SEPTEMBER 6, 1974

DOROTHY M. MONSON, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTORNEYS
RHOTEN, RHOTEN AND SPEERSTRA,
DEFENSE ATTORNEYS

THE EMPLOYER HAS REQUESTED THE BOARD'S PERMISSION TO SUPPLEMENT THE RECORD BEING OFFERED FOR REVIEW WITH TWO MEDICAL REPORTS CONCERNING CLAIMANT'S CONDITION. CLAIMANT HAS OBJECTED TO ADMISSION OF THESE DOCUMENTS, POINTING OUT THAT BY THE EXERCISE OF REASONABLE DILIGENCE, THEY COULD HAVE BEEN OBTAINED AND SUBMITTED AT THE TIME OF HEARING.

THE BOARD CONCLUDED THAT THE DOCUMENTS SHOULD NOT BE ADMITTED AT THIS TIME. IF, UPON REVIEW, THE BOARD CONCLUDES THAT THE CASE WAS INCOMPLETELY OR OTHERWISE INSUFFICIENTLY DEVELOPED OR HEARD BY THE REFEREE, IT WILL CONSIDER REMANDING THE CASE TO THE REFEREE FOR FURTHER EVIDENCE TAKING.

THE EMPLOYER'S REQUEST TO SUPPLEMENT THE RECORD IS HEREBY DENIED.

WCB CASE NO. 74-1179

SEPTEMBER 9, 1974

WALTER G. WOOD, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY

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,

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

WCB CASE NO. 73-3449

SEPTEMBER 9, 1974

ETHEL L. WEAVER, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER DENYING HER CLAIM OF AGGRAVATION.

AFTER REVIEWING THE RECORD DE NOVO, WE HAVE ARRIVED AT THE SAME RESULT AS THE REFEREE AND FOR THE SAME REASONS. WE ADOPT HIS ORDER AS OUR OWN.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 5, 1974 IS AFFIRMED.

WCB CASE NO. 74-1369

SEPTEMBER 10, 1974

GENEVA LUNSFORD, CLAIMANT
JAMES POWERS, CLAIMANT'S ATTORNEY
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

A REQUEST FOR REVIEW, HAVING BEEN DULY FILED WITH THE WORKMEN'S COMPENSATION BOARD IN THE ABOVE-ENTITLED MATTER, AND SAID REQUEST FOR REVIEW NOW HAVING BEEN WITHDRAWN BY CLAIMANT'S COUNSEL,

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

WCB CASE NO. 73-2408

SEPTEMBER 10, 1974

DOTTIE SUE DAVIS, CLAIMANT
MYRON L. ENFIELD, CLAIMANT'S ATTORNEY
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 REFEREE'S ORDER WHICH FOUND CLAIMANT'S CLAIM COMPENSABLE CONTENDING THAT SHE DID NOT SUSTAIN HER BURDEN OF PROOF IN ESTABLISHING THAT SHE SUFFERED AN ON-THE-JOB INJURY.

HAVING REVIEWED THE RECORD DE NOVO, WE FULLY CONCUR WITH THE FINDINGS AND OPINION OF THE REFEREE IN THIS CASE AND THEREFORE ADOPT HIS OPINION AND ORDER AS OUR OWN.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 2, 1974, IS HEREBY AFFIRMED.

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

WCB CASE NO. 73-3600

SEPTEMBER 10, 1974

ROBERT COX, CLAIMANT
BRYANT, EDMONDS AND ERICKSON,
CLAIMANT'S ATTORNEYS
MC MENAMIN, JONES, JOSEPH AND
LANG, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER CONTENDING THAT HE IS ENTITLED TO AN AWARD OF PERMANENT PARTIAL DISABILITY IN ADDITION TO THE TEMPORARY TOTAL DISABILITY COMPENSATION GRANTED HIM.

THIS 47 YEAR OLD CLAIMANT SUFFERED A COMPENSABLE INJURY ON JUNE 16, 1972, WHEN HE FELL FROM A LADDER. HIS TREATING DOCTOR AND A DOCTOR FOR THE EMPLOYER AGREED ON A DIAGNOSIS OF CHRONIC CERVICAL SPRAIN. CLAIMANT HAS SINCE RETURNED TO HIS FORMER MILLWRIGHT JOB AND CONTINUES IT WITH NO RESTRICTIONS.

MEDICAL REPORTS REFLECT MINIMAL PHYSICAL RESIDUALS AND THERE IS NO EFFECT ON CLAIMANT'S PRESENT EARNINGS. SHOULD THERE BE ANY POSSIBLE FUTURE EFFECT ON HIS EARNIG CAPACITY IN THE EVENT HIS CONDITION WORSENS, THE CLAIMANT MAY FILE FOR AGGRAVATION PURSUANT TO ORS 656.273.

THE REFEREE'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 13, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 74-18

SEPTEMBER 10, 1974

NELSON L. MUIR, CLAIMANT
GRANT AND FERGUSON, 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 REFEREE'S ORDER WHICH GRANTED CLAIMANT AN ADDITIONAL AWARD OF UNSCHEDULED PERMANENT PARTIAL DISABILITY EQUAL TO 80 DEGREES FOR A TOTAL AWARD OF 128 DEGREES (40 PERCENT).

THIS 37 YEAR OLD TAXI DRIVER WAS INJURED DECEMBER 2, 1970, WHEN HE SLIPPED AND FELL HURTING HIS BACK AND LEG WHILE WORKING IN A LUMBER MILL. LIKE THE REFEREE, THE BOARD IS CONVINCED CLAIMANT'S REMAINING ABILITIES AND APTITUDES ARE SUCH THAT HE IS ENTITLED TO THIS ADDITIONAL AWARD.

HIS EARNING CAPACITY HAS BEEN SIGNIFICANTLY IMPAIRED AND CONSIDERING HIS RESIDUAL PHYSICAL DISABILITIES, THE BOARD CONCLUDES THE ALLOWANCE OF THE ADDITIONAL UNSCHEDULED PERMANENT PARTIAL DISABILITY AWARD BY THE REFEREE ADEQUATELY COMPENSATES CLAIMANT AND HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 2, 1974, IS HEREBY AFFIRMED.

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

WCB CASE NO. 73-1472

SEPTEMBER 11, 1974

ERICH WALTER, CLAIMANT
VAN DYKE, DUBAY, ROBERTSON AND
PAULSON, CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A DENIED AGGRAVATION CLAIM. THE REFEREE AFFIRMED THE DENIAL AND THE CLAIMANT REQUESTS BOARD REVIEW.

CLAIMANT INJURED HIS LEFT SHOULDER SEPTEMBER 10, 1971. AFTER A CERVICAL LAMINECTOMY, THE CLAIM WAS CLOSED BY A DETERMINATION ORDER AWARDING CLAIMANT 64 DEGREES UNSCHEDULED NECK AND LEFT SHOULDER DISABILITY.

CLAIMANT SUBSEQUENTLY WORKED AS A RANCH HAND AND FUNCTIONED QUITE WELL UNTIL HE HAD ABOUT TWO WEEKS DUTY LIFTING BALES OF HAY. AFTER THE HAY BALE LIFTING DUTY, HIS PAIN PROGRESSIVELY INCREASED AND HE QUIT WORK AND RECEIVED MEDICAL CARE. DR. LUCE, THE TREATING NEUROSURGEON, TESTIFIED EXTENSIVELY ON WHETHER CLAIMANT HAD SUFFERED AN AGGRAVATION OR A NEW INJURY. WE INTERPRET HIS TESTIMONY TO SUPPORT A FINDING THAT THERE WAS NO NEW INJURY AND THAT CLAIMANT'S PRESENT CONDITION RELATES BACK TO THE INDUSTRIAL INJURY OF SEPTEMBER 10, 1971. DR. LUCE'S TESTIMONY ALSO SUSTAINS CLAIMANT'S CONTENTION THAT HIS CONDITION WAS WORSENERD.

ON DE NOVO REVIEW, THE BOARD FINDS THAT CLAIMANT HAS PROVED A CLAIM FOR AGGRAVATION OF THE COMPENSABLE INJURY OF SEPTEMBER 10, 1971.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 14, 1974, IS HEREBY REVERSED AND THE CLAIMANT'S CLAIM FOR AGGRAVATION IS HEREBY REMANDED TO THE STATE ACCIDENT INSURANCE FUND TO PROVIDE CLAIMANT THE BENEFITS PROVIDED BY LAW.

CLAIMANT'S ATTORNEY IS HEREBY AWARDED THE SUM OF 850 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES AT THE HEARING AND ON THIS REVIEW.

WCB CASE NO. 74-1466

SEPTEMBER 11, 1974

PENNY BLANK, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS
MERLIN L. MILLER, DEFENSE ATTY.

ON SEPTEMBER 3, 1974, THE BOARD ISSUED AN ORDER GRANTING A MOTION FOR DISMISSAL OF THE EMPLOYER'S REQUEST FOR REVIEW. THE ORDER OVERLOOKED AWARDED AN ATTORNEY'S FEE TO CLAIMANT'S ATTORNEY AS PROVIDED BY ORS 656.382 (2).

CLAIMANT'S ATTORNEY IS ENTITLED TO A REASONABLE FEE FOR HIS SERVICES IN CONNECTION WITH THE EMPLOYER'S REQUEST FOR REVIEW.

ORDER

CLAIMANT'S ATTORNEYS, GALTON AND POPICK, ARE HEREBY AWARDED A REASONABLE FEE OF 125 DOLLARS, PAYABLE BY THE EMPLOYER.

SAIF CLAIM NO. SB 117944

SEPTEMBER 11, 1974

FRED DALTON, CLAIMANT
CRANE AND BAILEY, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON SEPTEMBER 4, 1974 THE BOARD ISSUED ITS OWN MOTION ORDER IN THE ABOVE-REFERENCED CASE WHICH, AMONG OTHER THINGS, GRANTED CLAIMANT'S ATTORNEY A FEE PAYABLE BY THE CLAIMANT.

ON SEPTEMBER 6, 1974 CLAIMANT'S ATTORNEY ADVISED THE BOARD THAT SPECIAL CIRCUMSTANCES HAD ARISEN DURING THE HEARING OF THE CASE WHICH CAUSED THE STATE ACCIDENT INSURANCE FUND TO AGREE TO THE PAYMENT OF A REASONABLE ATTORNEY'S FEE FOR CERTAIN ADDITIONAL WORK PERFORMED BY CLAIMANT'S ATTORNEY.

IN ACCORDANCE WITH THAT AGREEMENT, MR. CRANE, CLAIMANT'S ATTORNEY, HAS REQUESTED A SUPPLEMENTAL ORDER AWARDING HIM THE ADDITIONAL SUM OF 200 DOLLARS AS AN ATTORNEY'S FEE AND THE SUM OF 75 DOLLARS AND 76 CENTS FOR EXPENSES.

THE BOARD, BEING NOW FULLY ADVISED, FINDS THE REQUEST FOR THE SUPPLEMENTAL ORDER WELL TAKEN AND CLAIMANT'S ATTORNEY IS, IN ADDITION TO THE FEE AWARDED BY THE OWN MOTION ORDER, HEREBY AWARDED THE SUM OF 275 DOLLARS AND 76 CENTS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, AS A REASONABLE FEE FOR HIS SERVICES AND REIMBURSEMENT OF HIS NECESSARY ADDITIONAL COSTS CONCERNING THIS MATTER.

WCB CASE NO. 73-4170

SEPTEMBER 11, 1974

DONALD L. SCOVILLE, CLAIMANT
CUSICK AND POLING, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES THE STATE ACCIDENT INSURANCE FUND'S DENIAL OF CLAIMANT'S AGGRAVATION CLAIM. THE REFEREE ORDERED THE STATE ACCIDENT INSURANCE FUND TO ACCEPT CLAIMANT'S AGGRAVATION CLAIM AND THE STATE ACCIDENT INSURANCE FUND HAS REQUESTED BOARD REVIEW.

CLAIMANT, A 32 YEAR OLD COOK, SLIPPED AND FELL JUNE 20, 1972, RECEIVING A STRAIN AND SPRAIN TO HIS UPPER BACK. CLAIMANT HAD A PREEXISTING SEVERE ANXIETY TENSION STATE. THE STATE ACCIDENT INSURANCE FUND ACCEPTED THE CLAIM FOR SPRAIN AND CONTUSION TO HIS BACK AND DENIED RESPONSIBILITY FOR TREATMENT OF THE SEVERE ANXIETY TENSION STATE. NO REQUEST FOR HEARING ON THIS DENIAL WAS MADE.

THE CLAIM FOR THE BACK CONDITION WAS CLOSED BY A DETERMINATION ORDER AWARDING NO PERMANENT PARTIAL DISABILITY. CLAIMANT'S REQUEST FOR HEARING ON THAT DETERMINATION ORDER WAS SETTLED BY STIPULATION AWARDING CLAIMANT 10 PERCENT UNSCHEDULED STABILITY FOR MID-DORSAL BACK INJURY. CLAIMANT SUBSEQUENTLY FILED A CLAIM FOR AGGRAVATION ALLEGING A WORSENING OF HIS CONDITION.

THE MEDICAL OPINION FROM THE PSYCHIATRIST, INTERPRETED MOST FAVORABLY TO THE CLAIMANT TO ESTABLISH A WORSENING, IN ESSENCE ASSERTS THAT CLAIMANT'S ANXIETY TENSION STATE, NOT HIS PHYSICAL CONDITION, HAS WORSENERED. SINCE THE ANXIETY

TENSION STATE WAS DENIED AND NO TIMELY REQUEST WAS MADE FOR HEARING ON THIS DENIAL. THE ANXIETY TENSION STATE IS NOT, AS A MATTER OF LAW, A COMPENSABLE CONSEQUENCE OF THE INDUSTRIAL ACCIDENT. IT LOGICALLY FOLLOWS THAT CLAIMANT CANNOT HAVE AN AGGRAVATION CLAIM FOR A NONCOMPENSABLE CONDITION. THEREFORE, THIS CLAIM FOR AGGRAVATION MUST BE DENIED. THE REFEREE'S ORDER SHOULD BE REVERSED.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 17, 1974, IS REVERSED AND THE FUND'S DENIAL OF CLAIMANT'S CLAIM FOR AGGRAVATION OF THE JUNE 20, 1972, INDUSTRIAL INJURY IS HEREBY AFFIRMED.

WCB CASE NO. 73-723

SEPTEMBER 11, 1974

EDMUND GRACE, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER DISMISSING HIS CLAIM OF AGGRAVATION ON JURISDICTIONAL GROUNDS.

THE AGGRAVATION CLAIM SUBMITTED BY CLAIMANT WAS SUPPORTED BY WRITTEN OPINION OF PSYCHOLOGIST, NORMAN W. HICKMAN, PH. D. THE REFEREE RULED THAT THE REPORT OF A PSYCHOLOGIST DID NOT FULFILL THE LEGAL REQUIREMENT THAT THE CLAIM OF AGGRAVATION BE SUPPORTED BY THE WRITTEN OPINION OF A 'PHYSICIAN' THAT THERE ARE REASONABLE GROUNDS FOR THE CLAIM.

WE HAVE CONSIDERED THE PARTIES ARGUMENTS SUBMITTED ON REVIEW AND HAVE EXAMINED THE RECORD DE NOVO AND WE CONCUR WITH THE REFEREE'S ANALYSIS OF THE FACTS AND THE LAW AND CONCLUDE HIS ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 29, 1974 IS HEREBY AFFIRMED.

WCB CASE NO. 73-3351

SEPTEMBER 13, 1974

RICHARD J. GAMMELL, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT
CROSS APPEAL BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER INCREASING HIS UNSCHEDULED PERMANENT DISABILITY AWARD FROM 45 PERCENT TO 60 PERCENT OF THE MAXIMUM, CONTENDING THAT A COMBINATION OF PERMANENT PHYSICAL AND PSYCHOLOGICAL DISABILITY HAS FORCED HIM FROM THE LABOR MARKET THUS RENDERING HIM PERMANENTLY TOTALLY DISABLED. THE STATE ACCIDENT INSURANCE FUND HAS CROSS APPEALED THE REFEREE'S INCREASE OF PERMANENT DISABILITY CONTENDING THE INCREASE IS UNJUSTIFIED.

CLAIMANT HAS BEEN OFFERED PSYCHOLOGICAL COUNSELING BUT HAS REFUSED IT WITHOUT REASONABLE EXCUSE. CLAIMANT IS THUS NOT ENTITLED TO A PERMANENT TOTAL DISABILITY AWARD PREDICATED IN PART ON PSYCHOLOGICAL DISABILITY.

HAVING REVIEWED THE EVIDENCE DE NOVO, WE CONCUR WITH THE REFEREE'S OPINION THAT CLAIMANT IS ENTITLED TO AN INCREASE IN UNSCHEDULED DISABILITY. THE ORDER OF THE REFEREE SHOULD THEREFORE BE AFFIRMED. IF THE CLAIMANT DECIDES TO ACCEPT PSYCHOLOGICAL COUNSELING, THE STATE ACCIDENT INSURANCE FUND SHOULD PROVIDE IT PURSUANT TO ORS 656.245.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 25, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 73-4218

SEPTEMBER 13, 1974

GENE D. POIRIER, CLAIMANT
LACHMAN AND HENNINGER, 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 REFEREE'S ORDER WHICH SUSTAINED THE DENIAL OF THE STATE ACCIDENT INSURANCE FUND FOR CLAIMANT'S FAILURE TO MEET HIS BURDEN OF PROOF IN ESTABLISHING HIS ALLEGED COMPENSABLE INJURY.

THE BOARD WAS REVIEWED THE RECORD DE NOVO AND CONSIDERED THE BRIEFS 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 APRIL 22, 1974, IS HEREBY AFFIRMED.

SEPTEMBER 13, 1974

ALBERT E. DAGGETT, CLAIMANT
A. C. ROLL, CLAIMANT'S ATTORNEY
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER FINDING CLAIMANT'S PERMANENT DISABILITY WAS ONLY PARTIALLY, RATHER THAN TOTALLY, DISABLING. THE BASIC ISSUE TO RESOLVE IS WHETHER OR NOT CERTAIN CHEST PAINS OF WHICH CLAIMANT NOW COMPLAINS ARE CAUSALLY RELATED TO HIS COMPENSABLE HEART ATTACK OF JULY 12, 1971.

THE MEDICAL EXPERTS HAVE BEEN UNABLE TO DISCOVER THE CAUSE OF THESE CHEST PAINS AND SO HAVE BEEN UNABLE TO RELATE THEM TO CLAIMANT'S HEART ATTACK. WE ARE THEREFORE UNABLE TO CONSIDER THEIR DISABLING EFFECT IN THE EVALUATION OF CLAIMANT'S PERMANENT DISABILITY.

THAT DISABILITY WHICH IS RELATED TO THE HEART ATTACK HAS BEEN PROPERLY RATED BY THE REFEREE AND HIS ORDER SHOULD THEREFORE BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 25, 1974, IS AFFIRMED.

SEPTEMBER 13, 1974

MAX J. ROSS, CLAIMANT
BURNS, EDWARDS AND KENIN,
CLAIMANT'S ATTORNEYS
SOUTHER, SPAULDING, KINSEY,
WILLIAMSON AND SCHWABE,
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH INCREASED CLAIMANT'S RIGHT LEG AWARD 14.5 DEGREES BUT AFFIRMED HIS UNSCHEDULED DISABILITY AWARD OF 32 DEGREES.

CLAIMANT CONTENDS THE REFEREE FAILED TO ADEQUATELY CONSIDER CLAIMANT'S SUBSTANTIAL REDUCTION IN EARNING CAPACITY IN DETERMINING CLAIMANT'S UNSCHEDULED LOW BACK DISABILITY AFTER FINDING THAT CLAIMANT WAS INCAPABLE OF RETURNING TO GENERAL ELECTRICAL CONTRACT WORK.

THE COMPLAINTS CLAIMANT PRESENTED ON THE RECORD RELATE PRIMARILY TO THE LEG AND FOOT AND ARE THUS 'SCHEDULED' DISABILITIES. THE REDUCTION OF CLAIMANT'S EARNING CAPACITY

APPEARS TO RELATE PRIMARILY TO HIS SCHEDULED DISABILITIES WHICH THE LEGISLATURE HAS CONCLUSIVELY PRESUMED ARE PROPERLY COMPENSATED BY AN AWARD BASED ON LOSS OF PHYSICAL FUNCTION.

CLAIMANT'S LOW BACK IMPAIRMENT HAS CONTRIBUTED RELATIVELY LITTLE TO HIS LOSS OF EARNING CAPACITY AND THE REFEREE'S AFFIRMANCE OF THE AWARD OF 32 DEGREES FOR UNSCHEDULED DISABILITY WAS PROPER. WE CONCLUDE THE REFEREE'S ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 21, 1974, IS AFFIRMED.

WCB CASE NO. 73-805

SEPTEMBER 13, 1974

HARRY BURTON DAVIS, CLAIMANT
Dwyer and Jensen, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH REMANDED THE CLAIM TO THE STATE ACCIDENT INSURANCE FUND FOR ACCEPTANCE AND PAYMENT OF BENEFITS.

THIS 61 YEAR OLD RETIRED FIREMAN SUFFERED AN ACUTE MYOCARDIAN INFARCTION NOVEMBER 20, 1972. HE FILED AN OCCUPATIONAL DISEASE CLAIM WHICH WAS DENIED BY THE STATE ACCIDENT INSURANCE FUND.

THE REFEREE APPLIED THE DISPUTABLE PRESUMPTION, FOUND IN ORS 656.802(2), TO FIND COMPENSABILITY IN THIS CASE.

WE HAVE EXAMINED THE RECORD DE NOVO AND HAVE CONSIDERED THE BRIEFS SUBMITTED ON APPEAL AND CONCUR WITH THE WELL REASONED OPINION OF THE REFEREE WHICH IS HEREBY ADOPTED AS THE OPINION OF THE BOARD.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 12, 1974, IS HEREBY AFFIRMED.

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

JOHN HUBBARD, CLAIMANT
BENNETT, KAUFMAN AND FISCHER,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE IS THE EXTENT OF DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 15 PERCENT FOR UNSCHEDULED NECK AND LOW BACK DISABILITY EQUAL TO 48 DEGREES. THE REFEREE AFFIRMED THIS AWARD.

CLAIMANT, A 44 YEAR OLD BUS DRIVER, WAS INJURED WHEN A BAGGAGE DOOR FELL, STRIKING HIM IN THE BACK. HE RECEIVED CONSERVATIVE CARE. THE LOSS OF PHYSICAL FUNCTION IS CLASSIFIED BY MEDICAL EXAMINERS AS MINIMAL BUT SUBJECTIVELY, HE CONSIDERS HIMSELF SEVERELY DISABLED. THE EVIDENCE ESTABLISHES CLAIMANT'S PERCEPTION OF HIS DISABILITY IS THE RESULT OF A SEVERE ANXIETY-TENSION REACTION.

THERE ARE CONFLICTING MEDICAL OPINIONS FROM PSYCHIATRISTS IN THE RECORD CONCERNING WHETHER THE INJURY AGGRAVATED THIS REACTION. THE CONFLICT IN THE OPINIONS MAY WELL BE THAT THE HISTORY WHICH EACH PSYCHIATRIST RECEIVED DIFFERED. THE REFEREE CONCLUDED THAT CLAIMANT'S EMPLOYER WAS NOT LIABLE FOR HIS EMOTIONAL PROBLEMS.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE FINDINGS AND OPINION OF THE REFEREE THAT THE PREPONDERANCE OF THE EVIDENCE WILL NOT SUPPORT A FINDING THAT CLAIMANT HAS SUFFERED PERMANENT PARTIAL DISABILITY GREATER THAN AWARDED AND HIS ORDER SHOULD THEREFORE BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED MAY 2, 1974 IS AFFIRMED.

ALMA VAUGHAN, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES WHETHER OR NOT CLAIMANT HAS PROVED A CLAIM OF AGGRAVATION OF A 1969 INDUSTRIAL INJURY OR A NEW CLAIM FOR A NEW INJURY WHILE WORKING FOR A NEW EMPLOYER.

THE REFEREE AFFIRMED THE DENIAL OF THE AGGRAVATION CLAIM AND AFFIRMED THE DENIAL OF THE NEW INJURY CLAIM.

CLAIMANT, A 46 YEAR OLD SALESLADY, RECEIVED A COMPENSABLE INJURY JULY 17, 1969, TO HER NECK WHILE SORTING BEANS. THIS CLAIM WAS CLOSED BY DETERMINATION ORDER DATED JUNE 2, 1971, AWARDING CLAIMANT 32 DEGREES UNSCHEDULED CERVICAL DISABILITY AND 19 DEGREES FOR PARTIAL LOSS OF LEFT ARM. CLAIMANT RECEIVED VOCATIONAL REHABILITATION DIVISION ON-THE-JOB SALES CLERK TRAINING AND WAS WORKING AS A SALESCLERK FOR APPROXIMATELY ONE YEAR WHEN SHE QUIT BECAUSE HER PAIN BECAME 'TERRIBLY BAD'. CLAIMANT FILED A CLAIM OF AGGRAVATION OF THE 1969 INJURY WHICH WAS DENIED AND A NEW CLAIM AGAINST THE STORE WHICH WAS DENIED.

THE BOARD CONCURS WITH THE FINDING OF THE REFEREE THAT THE CLAIMANT FAILED TO MAKE OUT A PRIMA FACIE CASE OF A CLAIM FOR AGGRAVATION OR A CLAIM FOR NEW INJURY. THE MEDICAL EVIDENCE SUSTAINS THE DENIAL OF THE CLAIM FOR AGGRAVATION AND THE CLAIM FOR A NEW INJURY.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 7, 1974, IS AFFIRMED.

WCB CASE NO. 73-3357

SEPTEMBER 16, 1974

PRISCILLA EDWARDS, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH INCREASED HER PERMANENT DISABILITY AWARD TO 35 PERCENT OF THE LEFT FOOT BUT DID NOT ORDER THE CARRIER TO PAY FOR CERTAIN TREATMENT PROVIDED FOR HER INJURY. CLAIMANT SEEKS ADDITIONAL PERMANENT DISABILITY COMPENSATION AS WELL AS PAYMENT OF THE ABOVE MENTIONED MEDICAL EXPENSE.

CLAIMANT INJURED HER LEFT FOOT ON APRIL 12, 1972, AND THEREAFTER WAS EXAMINED AND TREATED BY A NUMBER OF PHYSICIANS. THE TREATMENTS INCLUDING SURGERY, FAILED TO RELIEVE THE PAIN. HER PHYSICIANS EVENTUALLY CONSIDERED ADDITIONAL TREATMENT USELESS AND HER CLAIM WAS THEN CLOSED ON SEPTEMBER 21, 1973, WITH A SMALL PERMANENT DISABILITY AWARD.

ON DECEMBER 21, 1973, SHE CONSULTED DR. ROBERT H. POST, AN ORTHOPEDIC SURGEON. HE EXAMINED HER, TOOK X-RAYS AND ADMINISTERED CORTISONE INJECTIONS WHICH ALSO PROVED UNSUCCESSFUL IN RELIEVING HER PAIN. THE FUND CONTENTS IT IS NOT LIABLE FOR HIS SERVICES SINCE HER CONSULTATION WAS PROMPTED BY A DESIRE TO SECURE EVIDENCE FOR HER UPCOMING HEARING.

ALTHOUGH CLAIMANT'S ATTORNEY SUGGESTED DR. POST'S NAME, THE RECORD REVEALS DR. POST WAS SOUGHT OUT FOR TREATMENT OF HER CONTINUING COMPLAINTS. WE THEREFORE CONCLUDE CLAIMANT IS ENTITLED TO REIMBURSEMENT FROM THE FUND FOR THE COST OF DR. POST'S SERVICES OF DECEMBER 21, 1973, PURSUANT TO ORS 656,245.

THE RECORD SUPPORTS THE REFEREE'S EVALUATION OF CLAIMANT'S COMPENSABLE PERMANENT DISABILITY IN THE LEFT FOOT AND HIS ORDER IN THAT REGARD SHOULD BE AFFIRMED.

ORDER

THE REFEREE'S ORDER, DATED MAY 17, 1974, AS AMENDED MAY 24, 1974, IS AFFIRMED AS TO THE AWARD OF PERMANENT DISABILITY. THE STATE ACCIDENT INSURANCE FUND IS HEREBY ORDERED TO HOLD CLAIMANT HARMLESS ON ACCOUNT OF HER TREATMENT BY DR. POST ON DECEMBER 21, 1973.

CLAIMANT'S ATTORNEY IS HEREBY AWARDED 25 PERCENT OF THE MEDICAL EXPENSE WHICH CLAIMANT IS RELIEVED OF PAYING BY THIS ORDER AS A REASONABLE ATTORNEY'S FEE = SAID FEE TO BE PAID FROM CLAIMANT'S AWARD OF PERMANENT DISABILITY COMPENSATION.

WCB CASE NO. 73-3030

SEPTEMBER 16, 1974

JOHN FRANKOVICH, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

A REQUEST FOR REVIEW, HAVING BEEN DULY FILED WITH THE WORKMEN'S COMPENSATION BOARD IN THE ABOVE ENTITLED MATTER BY THE STATE ACCIDENT INSURANCE FUND, 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 AND THE ORDER OF THE REFEREE IS FINAL BY OPERATION OF LAW.

SAIF CLAIM NO. A 737344

SEPTEMBER 16, 1974

WALLACE PUZIO, CLAIMANT
COONS, MALAGON AND COLE,
CLAIMANT'S ATTORNEYS

ON JUNE 10, 1974, THE BOARD, PURSUANT TO ITS OWN MOTION AUTHORITY, ISSUED ITS OWN MOTION ORDER ORDERING THE STATE ACCIDENT INSURANCE FUND TO REOPEN CLAIMANT'S CLAIM AND PROVIDE HIM ADDITIONAL MEDICAL CARE AND COMPENSATION FOR AN INJURY OF JUNE 22, 1959. CLAIMANT'S TREATING PHYSICIAN HAS REPORTED HIS CONDITION IS AGAIN STATIONARY AND THE STATE ACCIDENT INSURANCE FUND HAS SUBMITTED CLAIMANT'S CLAIM TO THE BOARD FOR CLOSURE PURSUANT TO ITS CONTINUING JURISDICTION OVER CLAIMS PROVIDED BY ORS 656,278.

IT APPEARS CLAIMANT WAS TEMPORARILY TOTALLY DISABLED DURING HIS RECENT TREATMENT BUT THAT HE HAS NOT SUFFERED ANY INCREASES IN PERMANENT DISABILITY.

ORDER

IT IS THEREFORE ACCORDINGLY ORDERED THAT CLAIMANT BE, AND HE IS HEREBY, GRANTED TEMPORARY TOTAL DISABILITY COMPENSATION FOR THE PERIOD FEBRUARY 16, 1974, THROUGH JUNE 2, 1974, INCLUSIVE. NO ADDITIONAL PERMANENT DISABILITY COMPENSATION IS AWARDED.

NO NOTICE OF APPEAL IS DEEMED APPLICABLE.

WCB CASE NO. 73-3769

SEPTEMBER 16, 1974

E. EARL HERRMANN, DECEASED
ROBERT P. COBLENS, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH REMANDED THE CLAIM TO THE STATE ACCIDENT INSURANCE FUND FOR ACCEPTANCE AND PAYMENT OF BENEFITS IN ACCORDANCE WITH ORS 656.204.

DECEDENT, AN EMPLOYEE OF THE OREGON STATE HIGHWAY DEPARTMENT, DIED NOVEMBER 1, 1971 OF A MYOCARDIAN INFARCTION, WHILE INSTALLING TIRE CHAINS ON A SNOW PLOW. THE CLAIM WAS DENIED BY THE STATE ACCIDENT INSURANCE FUND ALLEGING IT WAS NOT TIMELY FILED AND THAT DECEDENT'S INJURY DID NOT ARISE OUT OF AND IN THE SCOPE OF HIS EMPLOYMENT. THE REFEREE REVERSED THIS DENIAL AND THE STATE ACCIDENT INSURANCE FUND APPEALS.

HAVING REVIEWED THE RECORD DE NOVO, THE BOARD CONCURS IN THE REFEREE'S FINDINGS AND OPINION AND ADOPTS HIS ORDER AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 25, 1974 IS HEREBY AFFIRMED.

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

SEPTEMBER 16, 1974

WALTER LAMB, CLAIMANT

EDWARD FADELEY, CLAIMANT'S ATTORNEY
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW REQUESTING REVERSAL OF THE REFEREE'S AWARD OF PERMANENT TOTAL DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 20 PERCENT UNSCHEDULED LOW BACK DISABILITY. THE STATE ACCIDENT INSURANCE FUND CONTENDS THE EVIDENCE CONCERNING HIS INJURY CAUSED DISABILITY AND HIS MOTIVATION DOES NOT JUSTIFY A PERMANENT TOTAL DISABILITY AWARD.

CLAIMANT, A 52 YEAR OLD SAWMILL WORKER, RECEIVED A LOW BACK INJURY DECEMBER 27, 1972. CLAIMANT HAD A FUSION OF HIS LUMBAR SPINE IN THE 1950'S. THE INDUSTRIAL INJURY AGGRAVATED THIS PREEXISTING BACK CONDITION. CLAIMANT HAS A CLASS II HEART CONDITION WITH ARTERIAL SCLEROTIC AND HYPERTENSIVE CARDIOVASCULAR DISEASE WHICH WAS NOT AGGRAVATED BY THE INDUSTRIAL INJURY. CLAIMANT'S PSYCHOPATHOLOGY IS GIVEN A CLASSIFICATION IV BY CLINICAL PSYCHOLOGIST, NORMAN W. HICKMAN, WHO COMMENTS THE PSYCHOPATHOLOGY APPEARS TO BE RATHER CHRONIC IN NATURE BUT HAS BEEN AGGRAVATED TO A MODERATE DEGREE BY THE INDUSTRIAL INJURY. THE BACK EVALUATION ORTHOPEDIST RATES THE LOSS OF PHYSICAL FUNCTION AS MILDLY MODERATE.

THE STATE ACCIDENT INSURANCE FUND HAS OVERLOOKED THE FACT THAT DR. EDWARD D. MALEY, ORTHOPEDIST, STATES CLAIMANT IS COMPLETELY DISABLED INSOFAR AS RETURNING TO HIS USUAL OCCUPATIONAL DUTIES AND THAT HIS PRESENT CONDITION PROHIBITS LONG SITTING, LIFTING, BENDING OR STOOPING, OR PROLONGED WALKING. WE ARE PERSUADED BY THE MEDICAL EVIDENCE THAT THE CLAIMANT IS, PRIMA FACIE, PERMANENTLY AND TOTALLY DISABLED. THE BOARD THEREFORE WOULD AFFIRM THE OPINION AND ORDER OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE DATED FEBRUARY 15, 1974 IS AFFIRMED.

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

SEPTEMBER 16, 1974

MYRNA POINTER, CLAIMANT

STAGER AND VICK, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW SEEKING FURTHER MEDICAL TREATMENT OR, IN THE ALTERNATIVE, A DEFINITIVE EVALUATION OF HER PRESENT CONDITION AS A PREREQUISITE TO CONSIDERATION OF THE EXTENT OF HER PERMANENT DISABILITY.

IN HIS BRIEF, CLAIMANT'S ATTORNEY POINTED OUT -

' CLAIMANT'S SYMPTOMS HAVE PERSISTED FOR WELL OVER TWO YEARS; THE MEDICAL REPORTS SUSTAIN THE PERSISTENCE OF THE SYMPTOMS, BUT FIND LITTLE IN THE WAY OF OBJECTIVE FINDINGS; (CLAIMANT'S EX. 3). THERE IS NO RECOMMENDATION FOR SURGERY, BUT ONLY FOR FURTHER EXERCISE AND MORE PAIN PILLS. WE URGE THAT THIS WOMAN SHOULD HAVE A THOROUGH EVALUATION OF HER LOW BACK PROBLEM. SHE IS MOTIVATED AND DOES WORK; BUT NO PERSON SHOULD BE FORCED TO CUT HER PAY SCALE FROM 650 DOLLARS TO 700 DOLLARS PER MONTH AT ILLAHEE TO 300 DOLLARS PER MONTH AT RANDALL'S, IF THERE IS SOME MEDICAL PROGRAM WHICH COULD CONCEIVABLY GIVE HER SOME AID. THERE IS REALLY NO DISPUTE ABOUT THE PERSISTENCE OF HER DIFFICULTIES. WHAT IS MISSING IN THE MEDICAL REPORTS IS A SERIOUS ATTEMPT TO FIND THE PROBLEM. THIS IS WHAT WE ARE ASKING AT THIS TIME. THE OPINION AND ORDER DID FIND THAT THE MEDICAL SERVICES UNDER ORS 656.245 SHOULD BE PAID TO THE TIME OF THE HEARING, BUT NOT AFTERWARD. CERTAINLY CLAIMANT'S CONDITION THE DAY PRIOR TO THE HEARING WAS NO DIFFERENT THAN IT WAS THE DAY FOLLOWING. SHE STILL NEEDS TREATMENT, AND THIS TREATMENT SHOULD BE PAID FOR BY THE FUND. MYRNA POINTER HAS NOT HAD ADEQUATE MEDICAL CARE AND SHE SHOULD HAVE THE BENEFIT OF FACILITIES OPEN TO HER.'

CLAIMANT'S POINT IS WELL TAKEN; ORS 656.245 REQUIRES THE EMPLOYER OR THE STATE ACCIDENT INSURANCE FUND TO PROVIDE ALL THE MEDICAL SERVICE NECESSARY TO RESTORE THE CLAIMANT AS NEAR AS POSSIBLE AND AS SOON AS POSSIBLE TO HER FORMER STATE OF HEALTH.

WE ARE PERSUADED THAT SHE IS ENTITLED TO A THOROUGH DIAGNOSTIC EVALUATION TO DEFINE, IF POSSIBLE, PRECISELY WHAT IS CAUSING HER PROBLEM SO THAT IT MAY BE TREATED. IF IT CAN'T BE TREATED, AT LEAST CLAIMANT WILL HAVE AN UNDERSTANDING OF HER PROBLEM AND THE BOARD WILL HAVE THE INFORMATION NECESSARY TO MAKE AN INFORMED JUDGMENT AS TO THE REAL DISABLING EFFECT OF HER INJURY.

AT THE EXPENSE OF THE STATE ACCIDENT INSURANCE FUND, CLAIMANT SHOULD BE REFERRED TO THE BOARD'S DISABILITY PREVENTION DIVISION FOR COMPLETE EVALUATION OF HER PHYSICAL OR EMOTIONAL STATUS AS IT RELATES TO HER INJURY. REPORTS OF THE DIVISION'S FINDINGS SHOULD THEN BE SUBMITTED TO THE BOARD.

IF EITHER PARTY DESIRES TO CROSS EXAMINE THE AUTHORS OF THE REPORTS, THE MATTER WILL BE REMANDED TO THE HEARINGS DIVISION FOR FURTHER PROCEEDINGS. IF NEITHER PARTY DESIRES TO EXPLORE THE REPORTS OFFERED, THE BOARD WILL THEN CONSIDER THEM IN CONJUNCTION WITH THE RECORD ALREADY MADE AND ENTER A FINAL ORDER CONCERNING CLAIMANT'S NEED FOR FURTHER TREATMENT OR THE EXTENT OF HER PERMANENT DISABILITY.

IN THE MEANTIME, CLAIMANT SHOULD CONTINUE TO RECEIVE PAYMENT OF THE PERMANENT DISABILITY AWARD GRANTED BY THE REFEREE. IF ANY ADJUSTMENT IS ULTIMATELY NECESSARY, IT WILL BE MADE BY THE FINAL ORDER.

IT IS SO ORDERED.

SAIF CLAIM NO. A 973381
SAIF CLAIM NO. B 135689 SEPTEMBER 16, 1974

FREDERICK RADIE, CLAIMANT
EMMONS, KYLE, K.ROPP AND KRYGER,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY

THIS MATTER INVOLVES A CLAIMANT INJURED JANUARY 24, 1963, AND AGAIN ON JULY 21, 1965, WHILE EMPLOYED BY WESTAB. BOTH CLAIMS WERE ACCEPTED AND BENEFITS PAID BY WESTAB'S CARRIER, THE STATE ACCIDENT INSURANCE FUND.

CLAIMANT ALLEGEDLY SUSTAINED A THIRD INDUSTRIAL INJURY TO HIS BACK ON JUNE 8, 1971 AT WESTAB. THIS CLAIM WAS DENIED BY LIBERTY MUTUAL INSURANCE COMPANY WHO HAD THEN BECOME WESTAB'S WORKMEN'S COMPENSATION INSURANCE CARRIER. CLAIMANT REQUESTED A HEARING ON THAT DENIAL WHICH IS PRESENTLY PENDING.

CLAIMANT'S COUNSEL HAS ALSO PETITIONED THE WORKMEN'S COMPENSATION BOARD, PURSUANT TO OWN MOTION JURISDICTION GRANTED THE BOARD UNDER ORS 656.278, FOR FURTHER MEDICAL CARE AND TREATMENT AND BENEFITS TO WHICH HE MAY BE ENTITLED.

WITH ISSUES INVOLVING THREE CLAIMS, ONE OF WHICH HAS BEEN DENIED, AND TWO INSURANCE CARRIERS, THE BOARD IS UNABLE TO MAKE A DECISION ON THE MERITS AT THIS TIME. THE MATTER IS ACCORDINGLY REFERRED TO THE HEARINGS DIVISION FOR THE PURPOSE OF TAKING EVIDENCE CONCERNING CLAIMANT'S ALLEGATIONS.

AFTER THE REFEREE HAS RULED ON THE COMPENSABILITY OF CLAIMANT'S 1971 INJURY CLAIM, THE PROCEEDINGS SHOULD BE TRANSCRIBED AND THE COMPLETE RECORD, INCLUDING THE REFEREE'S RECOMMENDATION CONCERNING CLAIMANT'S 1963 AND 1965 CLAIMS, SHOULD BE FORWARDED TO THE BOARD.

IT IS SO ORDERED.

DONALD F. NELSON, CLAIMANT
 RICHARDSON AND MURPHY,
 CLAIMANT'S ATTORNEYS
 DEPARTMENT OF JUSTICE,
 DEFENSE ATTORNEY
 REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES A DENIED CLAIM. THE REFEREE AFFIRMED THE STATE ACCIDENT INSURANCE FUND'S DENIAL.

CLAIMANT, A 55 YEAR OLD TRUCK DRIVER, INJURED HIS LEFT HIP IN HIS YOUTH. IN 1962 HE DEVELOPED PROBLEMS IN HIS HIP WHICH HE RECOGNIZED WERE A RESULT OF HIS WORK. HE DID NOT, HOWEVER, FILE A WORKMEN'S COMPENSATION CLAIM AT THAT TIME.

IN 1967 HIS CONDITION BEGAN CAUSING HIM INCREASING DIFFICULTY ON HIS JOB BUT HE WAS NOT EXAMINED BY A DOCTOR UNTIL 1972. CLAIM WAS NOT FILED WITH THE STATE ACCIDENT INSURANCE FUND UNTIL 1973. THE CLAIM WAS DENIED BY THE FUND ON THE GROUND, AMONG OTHERS, THAT THE CLAIM WAS NOT TIMELY FILED.

AS THE REFEREE STATED IN HIS OPINION AND ORDER, 'IF CLAIMANT EVER BECAME 'DISABLED' BY EITHER OCCUPATIONAL DISEASE OR ACCIDENTAL INJURY, HE WAS DISABLED NO LATER THAN JUNE 2, 1972 WHEN IT WAS DECIDED AN OPERATION WAS NECESSARY.' CLAIMANT CHOSE TO IGNORE THE DOCTOR'S ADVICE REGARDING SURGERY AND MANAGED TO KEEP WORKING UNTIL MARCH 29, 1973 BEFORE SUBMITTING TO SURGERY.

THE BOARD CONCLUDES THAT THE REFEREE REACHED THE CORRECT RESULT AS TO HIS FINDINGS AND OPINION AND THAT HIS ORDER SHOULD THEREFORE BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 22, 1974 IS HEREBY AFFIRMED.

GILBERT ALLDRITT, CLAIMANT
 GREEN, GRISWOLD AND PIPPIN,
 CLAIMANT'S ATTORNEYS
 SOUTHER, SPAULDING, KINSEY, WILLIAMSON
 AND SCHWABE, DEFENSE ATTORNEYS
 REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER INCREASING HIS DISABILITY AWARD CONTENDING HIS DISABILITY EXCEEDS THAT AWARDED.

CLAIMANT IS A 32 YEAR OLD MAN WHO SUFFERED SERIOUS MULTIPLE INJURIES ON MARCH 2, 1970, WHEN HE FELL WHILE WORKING AS AN IRONWORKER. IN SPITE OF EXCELLENT MEDICAL TREATMENT, THE CLAIMANT WAS LEFT WITH RESIDUAL IMPAIRMENTS IN THE SCHEDULED AREA WHICH, IN THE REFEREE'S OPINION, JUSTIFIED AWARDS OF 38.4 DEGREES FOR PARTIAL LOSS OF THE LEFT ARM AND 52.5 DEGREES EACH FOR THE LEFT AND RIGHT LEGS.

CONCERNING CLAIMANT'S UNSCHEDULED DISABILITY, THE REFEREE CONCLUDED CLAIMANT'S BOWEL DYSFUNCTION WAS NOT DISABLING AND THAT HIS BLADDER DYSFUNCTION WAS ONLY 'CONCEIVABLY' DISABLING. FINDING THE CLAIMANT'S AGE, INTELLIGENCE, MOTIVATION AND ADAPTABILITY HAD MINIMIZED THE DISABLING IMPACT OF CLAIMANT'S UNSCHEDULED INJURIES, THE REFEREE AFFIRMED THE EVALUATION DIVISION'S AWARD OF 64 DEGREES FOR UNSCHEDULED DISABILITY.

IN OUR OPINION, CLAIMANT'S BOWEL AND BLADDER PROBLEMS DO INHIBIT HIS ABILITY TO SECURE OR FUNCTION ADEQUATELY IN CERTAIN TYPES OF EMPLOYMENT. THEY SHOULD THEREFORE HAVE BEEN CONSIDERED IN EVALUATING HIS PERMANENT LOSS OF EARNING CAPACITY. ADDITIONALLY, WE BELIEVE THE REFEREE WAS TOO OPTIMISTIC IN HIS ASSESSMENT OF CLAIMANT'S REMAINING EARNING CAPACITY BASED ON THE FACTORS HE DID CONSIDER.

WE CONCLUDE CLAIMANT'S UNSCHEDULED DISABILITIES NECESSITATE AN UNSCHEDULED PERMANENT DISABILITY AWARD OF 40 PERCENT OF THE MAXIMUM ALLOWABLE OR 128 DEGREES.

BECAUSE OF THE NATURE AND SEVERITY OF CLAIMANT'S PERMANENT DISABILITIES, THE BOARD WISHES TO SPECIALLY EMPHASIZE TO CLAIMANT THE EXISTENCE OF HIS STATUTORY AGGRAVATION PERIOD AND THE BOARD'S CONTINUING AUTHORITY OVER HIS CLAIM BEYOND THAT IN THE EVENT HIS DISABILITY FROM THIS WORSENS IN THE FUTURE.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 10, 1974, IS MODIFIED TO AWARD CLAIMANT AN ADDITIONAL 64 DEGREES, MAKING A TOTAL AWARD OF 128 DEGREES OR 40 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY. THE REFEREE'S AWARD OF ADDITIONAL COMPENSATION FOR CLAIMANT'S SCHEDULED DISABILITIES ARE HEREBY 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 REFEREE SHALL NOT EXCEED 1,500 DOLLARS.

WCB CASE NO. 74-410

SEPTEMBER 23, 1974

RICHARD VAN IMPE, CLAIMANT
MC MENAMIN, JONES, JOSEPH AND LANG,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A REFEREE'S ORDER IN WHICH THE REFEREE AFFIRMED A PERMANENT PARTIAL DISABILITY AWARD OF 25 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED DISABILITY.

THIS CLAIM INVOLVES A 37 YEAR OLD PROFESSIONAL HOCKEY PLAYER NOW PRECLUDED FROM PLAYING HOCKEY AS A RESULT OF A SERIOUS SHOULDER INJURY RECEIVED NOVEMBER 15, 1972, WHILE COMPETING.

ALTHOUGH CLAIMANT HAS A RATHER LIMITED EDUCATION, HE DOES HAVE THE PERSONALTY AND APTITUDE TO BE SUCCESSFUL IN A BREWER SALES PROMOTION JOB, WITH A STARTING SALARY OF 10,000 DOLLARS PER YEAR, WHICH HE HAS BEEN OFFERED.

SINCE UNSCHEDULED DISABILITY IS MEASURED BY A LOSS OF WAGE EARNING CAPACITY AS OPPOSED TO PHYSICAL IMPAIRMENT, THE BOARD ON REVIEW IS OF THE OPINION THAT 25 PERCENT OF THE MAXIMUM ALLOWABLE ADEQUATELY COMPENSATES CLAIMANT FOR HIS RESIDUAL DISABILITY.

SHOULD CLAIMANT NOT BE SUCCESSFUL IN THIS SALES JOB, HE SHOULD BE INFORMED THAT RETRAINING AND RESTORATIVE SERVICES ARE AVAILABLE FROM THE BOARD'S DISABILITY PREVENTION DIVISION. THESE SERVICES, AS WELL AS COUNSELING, CAN BE PROVIDED UPON REQUEST.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 28, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 73-1043

FLOYD L. HUNTLEY, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A REFEREE'S ORDER FINDING CLAIMANT PERMANENTLY AND TOTALLY DISABLED.

THE STATE ACCIDENT INSURANCE FUND CONTENDS THIS WORKMAN'S DISABILITY IS NO MORE SEVERE THAN THAT OF OTHERS WHO HAVE NOT RECEIVED PERMANENT TOTAL DISABILITY AWARDS AND THAT, FURTHERMORE, MUCH OF HIS PRESENT DISABILITY RELATES TO THE RESIDUALS OF A PREEXISTING OSTEOPOROSIS.

WE ARE PERSUADED UPON DE NOVO REVIEW OF THE EVIDENCE THAT THE REFEREE'S ANALYSIS AND CONCLUSIONS ARE CORRECT. THE CLAIMANT IS PRIMA FACIE PERMANENTLY AND TOTALLY DISABLED. THE STATE ACCIDENT INSURANCE FUND FAILED TO PRESENT REBUTTING

EVIDENCE OR TO DISCREDIT THE EVIDENCE PRESENTED BY THE CLAIMANT AS A PART OF HIS PRIMA FACIE CASE.

WE THEREFORE CONCLUDE THE ORDER OF THE REFEREE GRANTING PERMANENT TOTAL DISABILITY SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 19, 1974, AS AMENDED BY ORDER DATED MAY 6, 1974, IS AFFIRMED.

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

WCB CASE NO. 73-3849

SEPTEMBER 23, 1974

KENNETH F. ECKLEY, CLAIMANT
A. C. ROLL, CLAIMANT'S ATTORNEY
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A REFEREE'S ORDER ALLOWING A CLAIM OF AGGRAVATION, OBJECTING TO THE ADEQUACY AND FORM OF THE LETTERS OFFERED IN SUPPORT OF THE CLAIM AND QUESTIONING THE PERSUASIVE EFFECT OF CLAIMANT'S EVIDENCE GENERALLY.

WE AGREE THAT THERE ARE QUESTIONS WHICH REMAIN BUT THEY ARE QUESTIONS WHICH WERE APPARENT AT THE TIME AND WHICH COULD HAVE BEEN PURSUED BY THE STATE ACCIDENT INSURANCE FUND AT THE TIME OF THE HEARING. THE CLAIMANT HAS MADE A PRIMA FACIE CASE OF AGGRAVATION WHICH THE FUND HAS FAILED TO REBUT. THE REFEREE'S ORDER SHOULD THEREFORE BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 9, 1974, IS HEREBY AFFIRMED.

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

WCB CASE NO. 71-2777

SEPTEMBER 23, 1974

JOE ANN FRANK, CLAIMANT
PHILIP HAYTOR, 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 REFEREE'S ORDER INCREASING CLAIMANT'S UNSCHEDULED PERMANENT DISABILITY AWARD FROM 32 DEGREES TO 96 DEGREES CONTENDING THAT THE REFEREE ERRED IN CONCLUDING HER DISABILITY WAS SEVERE AND IN APPARENTLY RELATING ALL HER ACTUAL DISABILITY TO HER ON-THE-JOB ACCIDENT.

WE HAVE EXAMINED THE RECORD OF CLAIMANT'S INJURY, TREATMENT AND CONTINUING COMPLAINTS. WHILE WE AGREE WITH THE FUND THAT CLAIMANT'S DISABILITY IS NOT 'SEVERE', WE NOTE THE AWARD ALLOWED BY THE REFEREE IS NOT COMMENSURATE WITH A SEVERE DISABILITY.

CLAIMANT'S COMPLAINTS ARE PRIMARILY SUBJECTIVE, BUT THE REFEREE DID FIND CLAIMANT IS EXPERIENCING, IN SPITE OF GOOD MOTIVATION, CONSIDERABLE DIFFICULTY IN BECOMING REEMPLOYED. IT APPEARS THE INJURY RESIDUALS, SUPERIMPOSED ON HER CONGENITAL ANOMALIES, ARE MATERIALLY CONTRIBUTING TO THIS DIFFICULTY. AN AWARD OF 30 PERCENT OF THE MAXIMUM IS THEREFORE JUSTIFIED. THE ORDER OF THE REFEREE SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 23, 1974, IS AFFIRMED.

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

WCB CASE NO. 73-3784

SEPTEMBER 23, 1974

RONALD S. MC CANDLESS, CLAIMANT

JOHN RYAN, CLAIMANT'S ATTORNEY
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH INCREASED CLAIMANT'S PERMANENT DISABILITY FROM 20 PERCENT TO 50 PERCENT OF THE RIGHT ARM, CONTENDING THE AWARD WAS EXCESSIVE. THE STATE ACCIDENT INSURANCE FUND ALSO CONTENDS THAT THE REFEREE ERRED IN REFUSING TO ADMIT DEFENDANT'S EXHIBIT 30 INTO THE RECORD.

REGARDING THE EXCLUSION OF DEFENDANT'S EXHIBIT 30, WE FIND IT ADMISSIBLE AND HAVE THEREFORE CONSIDERED IT.

THE REFEREE BASED THE INCREASE IN CLAIMANT'S PERMANENT DISABILITY AWARD ON A FINDING THAT CLAIMANT'S RESIDUAL PAIN WAS SERIOUSLY LIMITING THE USE OF THE ARM. PAIN IS A SUBJECTIVE PHENOMENON WHICH MAKES A PRECISE EVALUATION OF ITS FUNCTIONALLY LIMITING EFFECTS DIFFICULT.

IN OUR OPINION, CLAIMANT'S RESIDUAL PAIN IS NOT SO FUNCTIONALLY LIMITING, PARTICULARLY WHEN THE REMAINING

USEFULNESS IS CONSIDERED, THAT AN AWARD OF 50 PERCENT IS JUSTIFIED. WE EVALUATE CLAIMANT'S PERMANENT DISABILITY AS EQUAL TO 40 PERCENT PARTIAL LOSS OF THE RIGHT ARM. THE REFEREE'S ORDER SHOULD BE MODIFIED ACCORDINGLY.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 2, 1974, IS HEREBY MODIFIED TO REDUCE CLAIMANT'S PERMANENT DISABILITY AWARD FOR PARTIAL LOSS OF THE RIGHT ARM FROM 50 PERCENT TO 40 PERCENT OF THE MAXIMUM ALLOWABLE.

WCB CASE NO. 73-3632

SEPTEMBER 23, 1974

LILA HICKMAN, CLAIMANT
GERALD R. PULLEN, CLAIMANT'S ATTY.
GEARIN, CHENEY, LANDIS, AEBI AND
KELLEY, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT
AND BY THE EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF THAT PART OF A REFEREE'S ORDER DENYING THE COMPENSABILITY OF HER CLAIM FOR WORKMEN'S COMPENSATION BENEFITS CONTENDING THE EVIDENCE PRESENTED ADEQUATELY PROVES HER RIGHT TO BENEFITS.

THE EMPLOYER REQUESTS BOARD REVIEW OF THAT PART OF THE REFEREE'S ORDER ALLOWING CLAIMANT TIME LOSS, PENALTIES, AND ATTORNEY'S FEES ON HIS FINDING OF EMPLOYER MISFEASANCE IN THE PROCESSING OF CLAIMANT'S CLAIM.

THE ISSUE OF CREDIBILITY IS OBVIOUSLY BASIC TO THE RESOLUTION OF THIS MATTER AND WE CANNOT FAULT THE REFEREE'S FINDINGS AND CONCLUSIONS AFTER HAVING CAREFULLY EXAMINED THE RECORD AND THE BRIEFS FILED ON REVIEW.

WE CONCLUDE THE REFEREE'S ORDER SHOULD BE ADOPTED IN ALL RESPECTS AS THE ORDER OF THE BOARD AND AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 20, 1974, IS AFFIRMED.

WCB CASE NO. 73-3940

SEPTEMBER 23, 1974

JACOB SOLESBEE, CLAIMANT
COONS, MALAGON AND COLE,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
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 FOUND CLAIMANT NOW PERMANENTLY AND TOTALLY DISABLED DUE TO AN AGGRAVATION OF HIS INJURY RELATED PSYCHOLOGICAL CONDITION.

CLAIMANT SUFFERED A MINOR INJURY TO HIS FOOT ON AUGUST 5, 1968. A PSYCHOLOGICAL REACTION TO THE INJURY ALSO OCCURRED. THE MEDICAL EVIDENCE ESTABLISHES, TO OUR SATISFACTION, THAT CLAIMANT'S PSYCHOLOGICAL STATUS HAS WORSENERED TO THE POINT THAT, CONSIDERING THE PREEXISTING NEGATIVE FACTORS MENTIONED BY THE REFEREE, CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED.

THE ORDER OF THE REFEREE SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 9, 1974, IS AFFIRMED.

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

WCB CASE NO. 73-4093

SEPTEMBER 23, 1974

BENEDICT LOERZEL, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT
CROSS-REQUEST BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER CONTENDING HIS TEMPORARY TOTAL DISABILITY COMPENSATION SHOULD BE BASED ON HIS FULL-TIME AS WELL AS HIS PART-TIME EMPLOYMENT EARNINGS (WHICH IS THE JOB ON WHICH HE WAS HURT) = AND THAT HIS DISABILITY EXCEEDS THAT AWARDED. THE FUND HAS CROSS=APPEALED ARGUING THAT CLAIMANT'S PERMANENT DISABILITY IS NOT AS GREAT AS THAT AWARDED BY THE REFEREE AND SHOULD THEREFORE BE REDUCED.

THE REFEREE INCREASED A DETERMINATION ORDER AWARD BY ALLOWING AN ADDITIONAL 15 DEGREES FOR PARTIAL LOSS OF THE LEFT LEG AND 7.5 DEGREES FOR PARTIAL LOSS OF THE RIGHT LEG BUT LIMITED CLAIMANT'S TEMPORARY TOTAL DISABILITY ONLY TO A PERCENTAGE OF HIS EARNINGS FROM THE JOB ON WHICH HE WAS INJURED RATHER THAN CONSIDERING THE EARNINGS FROM BOTH JOBS. THE REFEREE HAS CORRECTLY INTERPRETED AND APPLIED ORS 636,210 AND HAS CORRECTLY EVALUATED THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY. HIS ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 29, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 73-4090

SEPTEMBER 23, 1974

CHEQUITTA LEGGETT, CLAIMANT

KEITH BURNS, CLAIMANT'S ATTY.
BENSON, ARENZ, LUCAS AND DAVIS,
DEFENSE ATTORNEYS

ON SEPTEMBER 16, 1974, THE EMPLOYER FILED A REQUEST FOR BOARD REVIEW OF A REFEREE'S OPINION AND ORDER WHICH WAS MAILED TO THE PARTIES ON AUGUST 14, 1974.

ORS 656.289(3) PROVIDES THAT THE REFEREE'S ORDER IS FINAL UNLESS BOARD REVIEW IS REQUESTED IN ACCORDANCE WITH ORS 656.295(2), WITHIN 30 DAYS OF THE MAILING DATE OF THE REFEREE'S ORDER. THE EMPLOYER'S REQUEST FOR BOARD REVIEW WAS UNTIMELY. ORS 174.120, BEARDSLEY V. HILL, 219 OR 440 (1959).

IT ALSO APPEARS THAT NO COPY OF THE REQUEST FOR REVIEW WAS MAILED TO, OR SERVED UPON, THE CLAIMANT. ONLY CLAIMANT'S ATTORNEY WAS SERVED. ORS 656.295(2) REQUIRES THAT A COPY BE MAILED TO ALL OTHER 'PARTIES' TO THE PROCEEDING. ORS 656.002(17) DEFINES 'PARTY' TO MEAN, IN THIS INSTANCE, THE CLAIMANT.

WE CONCLUDE THE EMPLOYER'S REQUEST IS DEFICIENT IN TWO PARTICULARS NECESSARY TO INVEST THE BOARD WITH JURISDICTION TO REVIEW THE REFEREE'S ORDER AND THE REQUEST FOR BOARD REVIEW MUST THEREFORE BE DENIED.

ORDER

THE EMPLOYER'S REQUEST FOR BOARD REVIEW IS HEREBY DENIED AND THE REFEREE'S ORDER, DATED AUGUST 14, 1974, IS HEREBY DECLARED FINAL BY OPERATION OF LAW.

WCB CASE NO. 73-3522

SEPTEMBER 23, 1974

JERALD ELLISON, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
ROGER R. WARRENT, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A CLAIMANT WHO SUSTAINED A CRUSHING INJURY TO HIS LEFT LEG WHILE EMPLOYED BY ROSEBURG LUMBER COMPANY ON NOVEMBER 8, 1971. THE EVALUATION DIVISION AWARDED 20 PERCENT LOSS USE OF THE LEG. THE REFEREE, AT HEARING,

ORDERED AN ADDITIONAL AWARD OF 20 PERCENT OF THE MAXIMUM, MAKING A TOTAL OF 40 PERCENT OR 60 DEGREES LOSS OF THE LEFT LEG. CLAIMANT CONTENDS HIS DISABILITY IS GREATER AND HAS REQUESTED BOARD REVIEW.

CLAIMANT HAS SUFFERED A SERIOUS INJURY AND HAS MADE A FAIR RECOVERY. DR. HOLBERT'S SUMMARIZATION OF CLAIMANT'S DISABILITY APPEARS TO THE BOARD TO JUSTIFY THE INCREASE GRANTED BY THE REFEREE'S ORDER.

THE BOARD DESIRES TO INFORM THE CLAIMANT OF THE RESTORATIVE AND REHABILITATIVE SERVICES WHICH ARE AVAILABLE TO INJURED WORKMEN WHO DESIRE COUNSELING AND ASSISTANCE IN PREPARING THEMSELVES FOR REENTRY INTO THE LABOR MARKET. THE BOARD'S DISABILITY PREVENTION DIVISION IS MAINTAINED FOR THIS PURPOSE AND CLAIMANT IS URGED TO TAKE ADVANTAGE OF ITS SERVICES.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 3, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 73-3922

SEPTEMBER 23, 1974

TERRY TOUREEN, CLAIMANT
MARMADUKE, ASCHENBRENNER, MERTEN AND
SALTVEIT, CLAIMANT'S ATTORNEYS
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 REFEREE'S ORDER ALLOWING CLAIMANT'S CLAIM FOR AGGRAVATION, CONTENDING THE MEDICAL REPORTS SUPPLIED BY THE CLAIMANT FAILED TO INVEST THE REFEREE WITH JURISDICTION TO HEAR THE CLAIM.

WE HAVE EXAMINED THE REPORTS IN DISPUTE AND CONCLUDE THAT THEY ARE SUFFICIENT FOR JURISDICTIONAL PURPOSES. OUR EXAMINATION OF THE RECORD AS A WHOLE ESTABLISHES THAT CLAIMANT HAS SUFFERED AN AGGRAVATION OF HIS CLAIM.

THE REFEREE ERRONEOUSLY DECLINED TO EVALUATE CLAIMANT'S PERMANENT DISABILITY BECAUSE HE CONCLUDED THE PROVISIONS OF ORS 656.268, AS AMENDED BY CHAPTER 634, O.L. 1973, WERE APPLICABLE TO CLAIMANT'S CLAIM. THE AMENDING ACT SPECIFICALLY LIMITS ITS APPLICABILITY TO INJURIES OCCURRING ON AND AFTER JANUARY 1, 1974. THE CLAIMANT'S PERMANENT DISABILITY SHOULD HAVE BEEN RATED BY THE REFEREE. THE ERROR IS HARMLESS SINCE THE SAME TASK CAN BE EFFECTIVELY AND EFFICIENTLY ACCOMPLISHED BY NOW REFERRING IT TO THE BOARD'S EVALUATION DIVISION FOR CLOSURE PURSUANT TO THE TERMS OF THE STATUTE APPLICABLE TO CLAIMANT'S CLAIM.

ORDER

THE ORDER OF THE REFEREE DATED MAY 9, 1974 AND HIS ORDER ON MOTION TO RECONSIDER DATED MAY 30, 1974 ARE AFFIRMED.

IT IS HEREBY FURTHER ORDERED THAT THE STATE ACCIDENT INSURANCE FUND FORTHWITH SUBMIT THE CLAIMANT'S CLAIM TO THE EVALUATION DIVISION FOR REEVALUATION AS PROVIDED BY LAW.

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

WCB CASE NO. 73-3187

SEPTEMBER 23, 1974

RUSKIN FOUT, CLAIMANT

COONS, MALAGON AND COLE,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A REFEREE'S ORDER FINDING CLAIMANT'S CLAIM OF AGGRAVATION COMPENSABLE.

THE TESTIMONY OF DR. LUCE CLEARLY ESTABLISHES THAT CLAIMANT HAS SUFFERED AN AGGRAVATION. WE THINK THE HISTORY WHICH DR. LUCE ASSUMED IN REACHING THIS CONCLUSION WAS SUFFICIENTLY COMPLETE AND CORRECT TO PROVIDE AN ADEQUATE BASIS FOR HIS OPINION.

WE THEREFORE CONCLUDE THE REFEREE CORRECTLY ORDERED ACCEPTANCE OF CLAIMANT'S AGGRAVATION CLAIM AND HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 24, 1974, IS AFFIRMED.

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

WCB CASE NO. 73-4173
WCB CASE NO. 74-646

SEPTEMBER 23, 1974

RAY J. KYLMANEN, CLAIMANT

FRANKLIN, BENNETT, OFELT AND JOLLES,
CLAIMANT'S ATTORNEYS
DAVIES, BIGGS, STRAYER, STOEL AND
BOLEY, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH FOUND THE MEDICAL REPORTS SUPPLIED IN SUPPORT OF HIS CLAIM FOR AGGRAVATION INSUFFICIENT TO VEST HIM WITH JURISDICTION TO HEAR THE CLAIM.

WE HAVE EXAMINED THE RECORD AND THE BRIEFS OF THE PARTIES SUBMITTED ON REVIEW AND, HAVING DONE SO, CONCUR WITH THE OPINION AND ORDER OF THE REFEREE. WE ADOPT HIS OPINION AS THE OPINION OF THE BOARD.

ORDER

THE OPINION AND ORDER OF THE REFEREE DATED MAY 17, 1974 IS HEREBY AFFIRMED.

WCB CASE NO. 73-4091

SEPTEMBER 23, 1974

LOUISE RIDER, CLAIMANT

MC ARTHUR AND HORNER, 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 REFEREE'S ORDER AFFIRMING A SECOND DETERMINATION ORDER WHICH GRANTED CLAIMANT NO ADDITIONAL PERMANENT PARTIAL DISABILITY COMPENSATION THAN PREVIOUSLY AWARDED.

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

ORDER

THE ORDER OF THE REFEREE, DATED MAY 3, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 74-853

SEPTEMBER 24, 1974

PAULINE MORGAN, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY

ON SEPTEMBER 17, 1974, CLAIMANT MOVED THE BOARD FOR AN ORDER ALLOWING CLAIMANT TO SUPPLEMENT THE RECORD ON REVIEW WITH AN ADDITIONAL MEDICAL REPORT CONCERNING CLAIMANT'S ALLEGED AGGRAVATION WHICH WAS SECURED FOLLOWING THE HEARING.

THE STATE ACCIDENT INSURANCE FUND OBJECTS TO CLAIMANT'S REQUEST NOTING THAT, AMONG OTHER THINGS, TO GRANT THE CLAIMANT'S REQUEST WOULD . . . DEPRIVE THE STATE ACCIDENT INSURANCE FUND OF THE RIGHT IN THE FIRST INSTANCE TO PASS UPON WHETHER

OR NOT A MEDICAL REPORT IS SUFFICIENT IN LAW TO CONFER JURISDICTION OVER AN AGGRAVATION CLAIM

WE AGREE THAT THE STATE ACCIDENT INSURANCE FUND SHOULD INITIALLY BE GIVEN AN OPPORTUNITY TO ACCEPT OR DENY AN AGGRAVATION CLAIM RATHER THAN USING THE HEARING AND REVIEW PROCESS AS AN INTEGRAL PART OF THE CLAIMS PROCESSING MACHINERY.

WE THEREFORE CONCLUDE THE CLAIMANT'S MOTION SHOULD BE DENIED.

IT IS SO ORDERED.

WCB CASE NO. 74-1876

SEPTEMBER 24, 1974

ELYGE KINCHELOE, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY

ON JUNE 19, 1974 A REFEREE ORDERED THE STATE ACCIDENT INSURANCE FUND JOINED AS AN ADDITIONAL PARTY DEFENDANT ON MOTION OF THE CLAIMANT'S PRESENT EMPLOYER WHO IS CONSENTING THAT CLAIMANT'S RECENT INJURY WAS A CONSEQUENCE OF AN EARLIER STATE ACCIDENT INSURANCE FUND COVERED CLAIM.

ON AUGUST 15, 1974, THE STATE ACCIDENT INSURANCE FUND MOVED THE BOARD FOR AN ORDER DISMISSING IT AS A PARTY TO A HEARING PRESENTLY PENDING BEFORE THE HEARINGS DIVISION.

FOR THE REASONS EXPRESSED IN OUR ORDER ENTERED IN THE MATTER OF THE COMPENSATION OF JACK BARRATT, WCB 73-527, 72-1406 AND 72-1407, (SEE VAN NATTA'S VOL. 11, P 115) WHICH IS ATTACHED HERETO, WE CONCLUDE THAT THE FUND'S MOTION SHOULD NOT BE ENTERTAINED BY THE BOARD.

THE FUND'S MOTION TO THE BOARD SHOULD BE DENIED BY THE BOARD AND REFERRED TO THE REFEREE TO BE TREATED AS A MOTION FOR RECONSIDERATION OF THE ORDER OF JOINDER.

IT IS SO ORDERED.

WCB CASE NO. 73-4176

SEPTEMBER 24, 1974

GERTRUDE DALTHORP, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER SEEKING AN AWARD OF PENALTIES AND A LARGER ATTORNEY'S FEE.

WE HAVE EXAMINED THE RECORD AND CONSIDERED THE BRIEFS SUBMITTED ON REVIEW AND CONCLUDE THE REFEREE'S DECISION IS BOTH LEGALLY AND EQUITABLY CORRECT. HIS DECISION SHOULD THEREFORE BE AFFIRMED AS THE ORDER OF THE BOARD.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 13, 1974, IS AFFIRMED.

WCB CASE NO. 73-3733

SEPTEMBER 24, 1974

DOROTHY J. SZABO, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
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 DENIED AGGRAVATION CLAIM CONTENDING THE MEDICAL REPORTS SUBMITTED TO SUPPORT THE CLAIM WERE INADEQUATE TO INVEST THE REFEREE WITH JURISDICTION TO HEAR THE CASE.

NEITHER OF DR. PETERSON'S LETTERS RELATE HER PRESENT CLAIM FOR BENEFITS TO ANY CONDITION WHICH HAS ARISEN SINCE THE LAST AWARD OR ARRANGEMENT OF COMPENSATION, ORS 656.273. THE LETTERS ARE THEREFORE JURISDICTIONALLY INADEQUATE AND THE REFEREE ERRED IN ASSUMING JURISDICTION OF THIS MATTER. DINNOCENZO V. SAIF, 99 OR ADV SH 648, -- OR APP -- (1974).

HIS ORDER SHOULD BE REVERSED AND THE FUND'S DENIAL OF CLAIMANT'S CLAIM AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 15, 1974, IS REVERSED AND THE FUND'S LETTER OF DENIAL, DATED OCTOBER 29, 1973, IS AFFIRMED.

WCB CASE NO. 73-1460

SEPTEMBER 24, 1974

ROBERT THOMA, CLAIMANT
RICHARD KROPP, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND APPEALS A REFEREE'S ORDER GRANTING CLAIMANT AN AWARD OF PERMANENT TOTAL DISABILITY

CONTENDING THE EVIDENCE DOES NOT SUPPORT SUCH A FINDING AND THAT THE REFEREE MISAPPLIED THE RULE CONCERNING BURDEN OF PROOF IN HOLDING THAT THE EMPLOYER HAD THE BURDEN OF PROVING AVAILABILITY OF WORK.

THE AMENDMENT TO ORS 656.206 MADE BY THE 1973 LEGISLATURE (C. 614, S2, O. L. 1973) DID NOT IN ANY WAY ABROGATE THE EMPLOYER'S RESPONSIBILITY TO REBUT A WORKMAN'S PRIMA FACIE CASE OF 'ODD-LOT' STATUS. WE HAVE REVIEWED THE RECORD DE NOVO AND CONCUR WITH THE REFEREE'S FINDING THAT THE WORKMAN HAS BEEN PERMANENTLY PRECLUDED FROM REGULARLY WORKING AT A GAINFUL AND SUITABLE EMPLOYMENT.

THE OPINION AND ORDER OF THE REFEREE SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 18, 1974, IS HEREBY AFFIRMED.

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

WCB CASE NO. 73-2548

SEPTEMBER 26, 1974

FRANK P. SMITH, CLAIMANT
YTURRI, O'KIEF, ROSE AND BURNHAM,
CLAIMANT'S ATTORNEYS
HAL HENIGSON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF A REFEREE'S ORDER CONTENDING THAT IT SHOULD NOT BE HELD LIABLE FOR TIME LOSS CAUSED BY THE CLAIMANT'S FAILURE TO PROMPTLY SEEK NEEDED MEDICAL ATTENTION.

THE EMPLOYER ALSO OBJECTS TO THE IMPOSITION OF PENALTIES FOR FAILURE TO REINSTITUTE TIME LOSS AFTER THE NEED FOR ADDITIONAL TREATMENT WAS REPORTED, CONTENDING THAT, UNDER THE FACTS OF THIS CASE, THE DELAY WAS NOT UNREASONABLE. THE FACTS SURROUNDING THIS DISPUTE ARE PRESENTED IN THE REFEREE'S FINDINGS WITH WHICH WE CONCUR.

REGARDING THE ISSUE OF TIME LOSS, THE EVIDENCE OF RECORD DISCLOSES NO JUSTIFICATION OR EXCUSE FOR THE ALMOST TWO AND TWO-THIRDS MONTHS DELAY IN SEEKING MEDICAL TREATMENT. IN VIEW OF THE DEGREE OF DISTRESS WHICH WAS IMMEDIATELY PRODUCED BY CLAIMANT'S ATTEMPT TO RETURN TO WORK, WE THINK A REASONABLY PRUDENT WORKMAN SIMILARLY SITUATED WOULD HAVE IMMEDIATELY SOUGHT FURTHER MEDICAL ADVICE OR TREATMENT. THE CONDUCT OF CLAIMANT WAS UNREASONABLE. CLAIMANT IS THEREFORE NOT ENTITLED TO TEMPORARY TOTAL DISABILITY COMPENSATION FOR THE PERIOD PRIOR TO AUGUST 21, 1973. TO CONCLUDE OTHERWISE WOULD PERMIT CLAIMANTS TO ENHANCE THE LIABILITY OF EMPLOYERS FOR WORKMEN'S

COMPENSATION BENEFITS WITHOUT THE EMPLOYERS KNOWLEDGE, CONSENT OR CONTROL, THE REFEREE'S ORDER MUST BE MODIFIED ACCORDINGLY.

THE EMPLOYER CONTENDS THAT THE CLAIMANT'S DELAY IN SEEKING TREATMENT JUSTIFIED ITS SKEPTICISM OF DR. THRASHER'S REPORT AND ITS WITHHOLDING OF BENEFITS UNTIL A CONSULTING MEDICAL OPINION WAS OBTAINED. WE DISAGREE.

SUGGESTED TREATMENT MAY BE DELAYED PENDING CONSULTATION WHERE THE DELAY WILL NOT ADVERSELY AFFECT THE CLAIMANT'S HEALTH AND WHERE THE EMPLOYER PAYS TIME LOSS COMPENSATION IN THE INTERVAL. SEE RULE 10 OF THE RULES AND REGULATIONS GOVERNING MEDICAL AND SURGICAL SERVICES TO WORKMEN INJURED UNDER THE PROVISIONS OF THE COMPENSATION LAW.

ORS 656.262 (4) REQUIRES PAYMENT OF COMPENSATION WITHIN 14 DAYS OF NOTICE OR KNOWLEDGE OF THE CLAIM IN CASES OF CLAIMS IN THE FIRST INSTANCE. IN SUCH CASES, THE EMPLOYER IS REQUIRED TO MAKE TIME LOSS PAYMENTS PRIOR TO (IN MANY CASES) HAVING DETERMINED WHETHER OR NOT THE CLAIMANT'S CLAIM IS EVEN COMPENSABLE.

WHERE A CLAIMANT SUBMITS A MEDICAL REPORT WHICH CLEARLY AND UNEQUIVOCALLY REPORTS THE PRESENCE OF DISABILITY AND THE NEED FOR FURTHER TREATMENT IN AN ALREADY ESTABLISHED CLAIM, WE BELIEVE IT WAS THE LEGISLATURE'S INTENT TO REQUIRE THE PAYMENT OF TIME LOSS WHILE THE CONSULTING OPINION IS BEING SECURED.

FOR THESE REASONS, WE CONCLUDE THE REFEREE WAS JUSTIFIED IN IMPOSING THE PENALTY IN CONNECTION WITH COMPENSATION FOR THE PERIOD OF AUGUST 21, 1973, TO THE DATE OF HIS ORDER. HIS ORDER SHOULD BE AFFIRMED IN THAT RESPECT.

ORDER

THE ORDER OF THE REFEREE IS MODIFIED TO PROVIDE THAT CLAIMANT'S CLAIM IS REOPENED AS OF AUGUST 21, 1973, RATHER THAN MAY 1, 1973.

THE EMPLOYER IS HEREBY AUTHORIZED TO RECOVER ANY OVERPAYMENT OF TEMPORARY DISABILITY PRODUCED BY ITS COMPLIANCE WITH THE REFEREE'S ORDER FROM THE CLAIMANT'S ULTIMATE PERMANENT DISABILITY AWARD.

THE REFEREE'S ORDER IS AFFIRMED IN ALL OTHER RESPECTS.

WCB CASE NO. 70-1976-E SEPTEMBER 26, 1974

SYLVAN HAMMOND, CLAIMANT

REVIEWED BY COMMISSIONERS WILSON, MOORE AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF A REFEREE'S ORDER FINDING CLAIMANT PERMANENTLY AND TOTALLY DISABLED. ENVIRONMENTAL HEALTH FACTORS AT ALBINA ENGINE AND MACHINE WORKS IN PORTLAND ADMITTEDLY AGGRAVATED CLAIMANT'S UNDERLYING CHRONIC ASTHMATIC BRONCHITIS. THE EMPLOYER CONTENDS BASICALLY THAT

CLAIMANT'S CONDITION WAS ONLY TEMPORARILY RATHER THAN PERMANENTLY AGGRAVATED.

THE MEDICAL EXPERTS ARE IN DISAGREEMENT ON THIS ISSUE AS IS THE BOARD. A MAJORITY OF THE BOARD ARE PERSUADED BY THE TESTIMONY OF DR. GEORGE ROBBINS, CLAIMANT'S TREATING PHYSICIAN, THAT CLAIMANT'S WORK EXPOSURE PRODUCED A PERMANENT WORSENING OF CLAIMANT'S UNDERLYING DISEASE WHICH HAS LEFT THE CLAIMANT PERMANENTLY AND TOTALLY DISABLED.

WE CONCUR IN THE REFEREE'S ANALYSIS OF THE EVIDENCE AND WOULD AFFIRM THE REFEREE'S ORDER AS THE ORDER OF THE BOARD.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 28, 1974, IS HEREBY AFFIRMED.

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

MR. KEITH WILSON DISSENTS AS FOLLOWS -

THE RECORD IN THIS MATTER HAS BEEN EXCEPTIONALLY WELL DEVELOPED BY THE PARTIES, BOTH FROM MEDICAL AND LEGAL STANDPOINTS. PERSUASIVE MEDICAL ANALYSIS AND CONCLUSIONS HAVE BEEN SUBMITTED AND IN SUCH CASES, THE DECISION OF THE REVIEWER BECOMES VERY DIFFICULT.

IN MY ANALYSIS OF THE CASE, I CONCLUDE THAT THE WEIGHT OF THE MEDICAL EVIDENCE REQUIRES THE REVERSAL OF THE REFEREE'S OPINION AND ORDER AND A FINDING THAT WHILE THE CLAIMANT IS VERY LIKELY PERMANENTLY AND TOTALLY DISABLED, THE DISABILITY HAS BEEN CAUSED BY LONG STANDING CHRONIC LUNG DISEASE AND THAT THE SUBJECT WORK WAS RESPONSIBLE FOR ONLY A TEMPORARY EXACERBATION OF THE CLAIMANT'S CONDITION. THE STATE OF THE RECORD DOES NOT PROVIDE A BASIS FOR ATTRIBUTING GREATER WEIGHT TO DR. ROBBIN'S CONCLUSIONS, AS THE TREATING DOCTOR, SINCE IT APPEARS THAT DR. TUHY AND DR. HINSHAW BOTH HAD FULL AND COMPLETE INFORMATION UPON WHICH TO RENDER THEIR HIGHLY PROFESSIONAL AND QUALIFIED OPINIONS.

AN IMPORTANT MEDICAL DISTINCTION WAS MADE BY DR. TUHY BETWEEN THE CARBON PARTICULATES ENCOUNTERED AT ALBINA AND SILICA OR ASBESTOS PARTICULATES IN OTHER ENVIRONMENTS. DR. TUHY EXPLAINED THAT CARBON PARTICULATES, EVEN IF RETAINED, DO NOT CAUSE PERMANENT DAMAGE TO THE LUNGS. TO ME, THIS DISTINCTION IS DETERMINATIVE OF THE CASE.

-S- M. KEITH WILSON, CHAIRMAN

SAIF CLAIM NO. A 265862 SEPTEMBER 27, 1974

KENNETH MURRELL, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTORNEYS

ON SEPTEMBER 9, 1974, CLAIMANT, THROUGH HIS ATTORNEY, RICHARD KROPP, REQUESTED THAT THE BOARD REVIEW CLAIMANT'S CASE UNDER ITS OWN MOTION JURISDICTION PROVIDED BY ORS 656.278.

THE INFORMATION SUPPLIED WITH THE REQUEST FOR REVIEW PROVIDES AN INADEQUATE BASIS TO DETERMINE WHETHER CLAIMANT HAS SUFFERED ADDITIONAL DISABILITY OR, IF SO, THE AMOUNT THEREOF.

THE CLAIMANT'S REQUEST FOR REVIEW IS THEREFORE DENIED.

SAIF CLAIM NO. A 737344 SEPTEMBER 27, 1974

WALLACE PUZIO, CLAIMANT
COONS AND COLE, CLAIMANT'S ATTYS.

ON SEPTEMBER 16, 1974, THE WORKMEN'S COMPENSATION BOARD ISSUED AN OWN MOTION ORDER WHICH RECITED THAT CLAIMANT HAD NOT SUFFERED ANY INCREASE IN PERMANENT DISABILITY AS A RESULT OF THE RECENT EXACERBATION OF HIS CONDITION.

THE CONCLUDING MEDICAL REPORT OF DR. SCHACHNER DATED JULY 23, 1974, WHICH WAS SUPPLIED TO THE BOARD, REVEALS THAT CLAIMANT HAS SUFFERED FURTHER PERMANENT DISABILITY IN SPITE OF THE EXCELLENT MEDICAL TREATMENT PROVIDED. WE HAVE NOT DISCOVERED HOW OR WHY THE ERROR OCCURRED BUT, IN ANY EVENT, WE CONCLUDE THAT THE ORDER DATED SEPTEMBER 16, 1974, SHOULD BE SET ASIDE AND THAT IN LIEU THEREOF THE FOLLOWING ORDER SHOULD BE ENTERED -

IT IS THEREFORE ACCORDINGLY ORDERED THAT CLAIMANT BE, AND HE IS HEREBY GRANTED TEMPORARY TOTAL DISABILITY FOR THE PERIOD OF FEBRUARY 16, 1974, TO JUNE 2, 1974, INCLUSIVE. CLAIMANT IS HEREBY FURTHER AWARDED AN ADDITIONAL 20 PERCENT LOSS USE OF AN ARM WHICH, WHEN COMBINED WITH PRIOR AWARDS, RESULTS IN AN AWARD EQUAL TO 60 PERCENT LOSS USE OF AN ARM 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 50 DOLLARS.

IT IS SO ORDERED.

WCB CASE NO. 73-3430 OCTOBER 1, 1974

ANN TREVER, CLAIMANT
CHARLES PAULSON, CLAIMANT'S ATTY.
MARMADUKE, MERTEN AND SALTVEIT,
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER AFFIRMING A DETERMINATION ORDER AWARD OF 5 PERCENT OR 16 DEGREES UNSCHEDULED NECK AND LEFT SHOULDER DISABILITY. CLAIMANT CONTENDS HER LOSS OF EARNING CAPACITY HAS BEEN SUBSTANTIALLY IMPAIRED AND THAT THE REFEREE ERRED IN NOT AWARDING ANY ADDITIONAL PERMANENT DISABILITY COMPENSATION OR FURTHER MEDICAL CARE AND TREATMENT.

THE REFEREE DEALT PROPERLY WITH THE ISSUES RAISED AND CORRECTLY CONCLUDED THAT CLAIMANT FAILED TO ESTABLISH THAT SHE WOULD NOT BE ABLE TO ENGAGE IN ANY GAINFUL AND SUITABLE EMPLOYMENT. SHE HAS EXPRESSED THE DESIRE TO RETURN TO WORK BUT HAS MADE NO ATTEMPT TO DO SO, IN SPITE OF DOCTORS ADVICE TO INCREASE HER ACTIVITIES.

THE BOARD, ON DE NOVO REVIEW, FINDS NO JUSTIFICATION IN THE RECORD TO INDICATE CLAIMANT'S DISABILITY EXCEEDS THAT AWARDED. HER LACK OF MOTIVATION TO RETURN TO THE WORK FORCE RATHER THAN ANY PHYSICAL DISABILITIES RESULTING FROM HER INDUSTRIAL INJURY IS THE KEY TO CLAIMANT'S CONTINUING UNEMPLOYMENT.

IT APPEARS TO THE BOARD THAT CLAIMANT'S DISABILITY HAS BEEN CORRECTLY EVALUATED. THE BOARD CONCLUDES THAT THE AWARD ESTABLISHED BY THE DETERMINATION ORDER AND AFFIRMED BY THE REFEREE IS ADEQUATE. HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 20, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 73-4052 OCTOBER 1, 1974

SHIRLEY RICHARDS, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH INCREASED THE DETERMINATION ORDER AWARD GRANTING HER 25 PERCENT PERMANENT PARTIAL DISABILITY FOR PARTIAL LOSS OF THE RIGHT LEG. CLAIMANT CONTENDS SHE IS ENTITLED TO CONTINUED TEMPORARY TOTAL DISABILITY AND FURTHER MEDICAL CARE AND TREATMENT.

ON SEPTEMBER 29, 1972, CLAIMANT, A SCHOOL BUS DRIVER, SUFFERED A COMPENSABLE INJURY TO HER RIGHT KNEE WHEN SHE FELL WHILE LEAVING THE SCHOOL BUS. SURGERY HAS BEEN RECOMMENDED BUT THE DOCTORS ARE RELUCTANT TO PROCEED DUE TO CLAIMANT'S OBESITY. SHE WAS OVERWEIGHT AT THE TIME OF THE INJURY AND HAS GAINED MORE WEIGHT SINCE THEN.

CLAIMANT NOW SUGGESTS THAT SHE SHOULD BE AWARDED ADDITIONAL PERMANENT PARTIAL DISABILITY DUE TO THE COMPOUNDING EFFECT WHICH THE UNREPAIRED KNEE INJURY AND HER OBESITY HAS HAD ON THE FUNCTIONS OF HER LEG. CLAIMANT'S INABILITY TO EXERCISE SELF-CONTROL CANNOT BE A BASIS FOR COMPENSATION PAYMENTS.

THE BOARD CONCURS WITH THE REFEREE AND CONCLUDES THAT THE CLAIMANT'S DISABILITY DOES NOT EXCEED THE 38 DEGREES (25 PERCENT) AWARDED BY THE REFEREE FOR PARTIAL LOSS OF THE RIGHT LEG. HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 29, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 73-3823

OCTOBER 1, 1974

WILLIAM LAWRENCE, CLAIMANT
BYRON GLADE BIRCH, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED A DETERMINATION ORDER AWARD OF 5 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED LOW BACK DISABILITY, CONTENDING HIS PERMANENT PARTIAL DISABILITY IS GREATER THAN THAT AWARDED.

THIS 51 YEAR OLD BOAT BUILDER AND SALESMAN SUSTAINED A LOW BACK INJURY ON DECEMBER 30, 1972, WHEN A STACK OF PLYWOOD STRUCK HIM AND KNOCKED HIM DOWN.

THE BACK EVALUATION CLINIC EVALUATED CLAIMANT'S DISABILITY AS MINIMAL AND THAT CLAIMANT WAS PHYSICALLY ABLE TO RETURN TO HIS FORMER OCCUPATION.

THE REFEREE CONCLUDED THAT CLAIMANT FAILED TO SUSTAIN HIS BURDEN OF PROVING HE WAS ENTITLED TO A GREATER AWARD OR THAT HIS EARNING CAPACITY HAD BEEN IMPAIRED.

THE BOARD, HAVING REVIEWED THE RECORD AND HAVING CONSIDERED THE BRIEFS OF THE PARTIES SUBMITTED ON APPEAL, ADOPTS THE OPINION AND ORDER OF THE REFEREE AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 12, 1974, IS HEREBY AFFIRMED.

OCTOBER 1, 1974

CHARLES BURNAM, CLAIMANT
CHARLES PORTER, 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 REFEREE'S ORDER WHICH FOUND CLAIMANT HAD SUFFERED A COMPENSABLE AGGRAVATION AND WHICH ORDERED THE FUND TO PAY FOR DR. CARTER'S MEDICAL OPINION.

THE BOARD, HAVING REVIEWED THE RECORD DE NOVO, AND THE BRIEFS OF THE PARTIES SUBMITTED ON APPEAL, FULLY CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE AND WOULD ADOPT AND AFFIRM HIS ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 25, 1974, IS HEREBY AFFIRMED.

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

OCTOBER 4, 1974

ALBERT E. DAGGETT, CLAIMANT
A. C. ROLL, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON SEPTEMBER 13, 1974, THE BOARD ISSUED AN ORDER ON REVIEW IN THE ABOVE ENTITLED CASE. ON SEPTEMBER 27, 1974, CLAIMANT MOVED THE BOARD FOR RECONSIDERATION OF ITS ORDER AND THE ENTRY OF A NEW ORDER GRANTING CLAIMANT PERMANENT TOTAL DISABILITY.

CLAIMANT CONTENDS THE ISSUE ON WHICH THE BOARD DECIDED THE CASE WAS NOT THE DISPOSITIVE ISSUE. HE EMPHASIZES THAT THE RECORD REVEALS HIS ADMITTEDLY COMPENSABLE HEART RESIDUALS ARE PERMANENTLY AND TOTALLY DISABLING WITHOUT HEART SURGERY AND THAT SINCE HE IS UNABLE TO UNDERGO SUCH SURGERY, HE SHOULD BE RATED ON HIS PRESENT RATHER THAN HIS POTENTIAL RESIDUALS. THE FUND DESIRES TO STAND ON ITS PREVIOUSLY EXPRESSED ARGUMENTS OF FACT AND LAW.

THE BOARD HAS CONCLUDED RECONSIDERATION IS WARRANTED AND NOW, AFTER HAVING FULLY RECONSIDERED THE EVIDENCE AND THE ARGUMENTS OF BOTH PARTIES, CONCLUDES THAT CLAIMANT'S COMPENSABLE DISABILITY IS INDEED TOTALLY DISABLING.

ORDER

THE ORDER ON REVIEW ENTERED ON SEPTEMBER 13, 1974, IS HEREBY SET ASIDE AND IN LIEU THEREOF, CLAIMANT IS HEREBY GRANTED AN AWARD OF PERMANENT TOTAL DISABILITY EFFECTIVE THE DATE OF THIS ORDER.

CLAIMANT'S ATTORNEY IS HEREBY AWARDED 25 PERCENT OF THE COMPENSATION MADE PAYABLE HEREBY. IN NO EVENT HOWEVER SHALL THE FEE RECEIVED PURSUANT TO THIS ORDER, WHEN COMBINED WITH ANY FEE RECEIVED BY VIRTUE OF THE REFEREE'S ORDER, EXCEED A TOTAL OF 1,500 DOLLARS.

WCB CASE NO. 74-1857

OCTOBER 4, 1974

BILLIE JOE THOMPSON, CLAIMANT
CECIL B. HOOD, DBA
HOOD AND SON BACKHOE SERVICE, EMPLOYER
R. RANDALL TAYLOR, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

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,

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

WCB CASE NO. 74-709

OCTOBER 4, 1974

RAYMOND L. HORWEDEL, CLAIMANT
SIDNEY A. GALTON, CLAIMANT'S ATTORNEY
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
CROSS-APPEAL BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A REFEREE'S ORDER REQUESTING REVERSAL OF THE REFEREE'S SETOFF OF UNEMPLOYMENT COMPENSATION BENEFITS AGAINST THE TEMPORARY TOTAL DISABILITY TO WHICH CLAIMANT WAS ENTITLED AND REQUESTING THE MAXIMUM PENALTIES ON THE DELAYED AND UNPAID TEMPORARY TOTAL DISABILITY, TOGETHER WITH AN ADDITIONAL ATTORNEY'S FEE.

A CROSS-APPEAL FOR BOARD REVIEW WAS FILED BY THE STATE ACCIDENT INSURANCE FUND CONTESTING THE ALLOWANCE OF PENALTIES AND ATTORNEY FEES BY THE REFEREE.

WE DO NOT FIND EITHER REFEREE ST. MARTIN'S ORDER OR ORS 656.313 TOO DIFFICULT FOR THE FUND TO PROPERLY INTERPRET AND OBEY. THE REFEREE PROPERLY IMPOSED PENALTIES AND AN ATTORNEY'S FEE PAYABLE BY THE FUND.

THE REFEREE ERRED IN SUSPENDING CLAIMANT'S TEMPORARY TOTAL DISABILITY ENTITLEMENT WHILE CLAIMANT WAS RECEIVING UNEMPLOYMENT BENEFITS. THE RECORD ESTABLISHES HIS RIGHT TO RECEIVE TEMPORARY TOTAL DISABILITY FOR THE PERIOD IN QUESTION. THE REFEREE IGNORED THIS FACT IN RESOLVING THE PARTIES RIGHTS. HE SHOULD HAVE GRANTED CLAIMANT TEMPORARY TOTAL DISABILITY FOR THE FULL PERIOD IN QUESTION AND LET THE EMPLOYMENT DIVISION PURSUE RECOVERY OF ITS UNEMPLOYMENT BENEFITS RATHER THAN, IN EFFECT, ASSIGNING THEIR FUNDS TO THE BENEFIT OF THE STATE ACCIDENT INSURANCE FUND. HIS ORDER SHOULD THEREFORE BE MODIFIED IN THAT REGARD BUT AFFIRMED IN ALL OTHER RESPECTS.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 9, 1974, IS HEREBY MODIFIED TO PROVIDE THAT CLAIMANT RECEIVE ADDITIONAL TEMPORARY TOTAL DISABILITY COMMENCING APRIL 30, 1973, INSTEAD OF FROM OCTOBER 27, 1973, TOGETHER WITH AN ADDITIONAL SUM EQUAL TO 15 PERCENT OF THE ADDITIONAL COMPENSATION MADE PAYABLE BY THIS ORDER AS A PENALTY FOR ITS UNREASONABLE DELAY AND RESISTANCE TO THE PAYMENT OF COMPENSATION.

HIS ORDER IS AFFIRMED IN ALL OTHER RESPECTS.

CLAIMANT'S ATTORNEYS ARE HEREBY AWARDED AN ADDITIONAL ATTORNEY'S FEE OF 600 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR THEIR ADDITIONAL SERVICES IN SECURING CLAIMANT'S UNREASONABLY DELAYED COMPENSATION.

WCB CASE NO. 73-3788

OCTOBER 7, 1974

DALE A. PETERSON, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEY
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF
CROSS-APPEAL BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 5 PERCENT (16 DEGREES) FOR UNSCHEDULED LOW BACK DISABILITY. THE REFEREE INCREASED THIS AWARD TO A TOTAL OF 25 PERCENT (80 DEGREES) UNSCHEDULED LOW BACK DISABILITY. THE STATE ACCIDENT INSURANCE FUND SEEKS A REVERSAL OF THE INCREASE AND CLAIMANT SEEKS FURTHER COMPENSATION.

CLAIMANT, A 22 YEAR OLD LABORER AT CROWN ZELLERBACH CORPORATION, RECEIVED A LOW BACK STRAIN WHEN MOVING A ROLL OF PAPER. CLAIMANT RECEIVED CONSERVATIVE CARE. ALTHOUGH THERE IS A CONFLICT OF MEDICAL OPINION, CLAIMANT SHOULD PROBABLY NOT RETURN TO HEAVY MANUAL LABOR.

THERE IS SOME EVIDENCE OF CONGENITAL DEFORMITY OF THE LOWER SPINE AND CLAIMANT HAS OTHER PROBLEMS NOT RELATED TO THE INDUSTRIAL INJURY.

CLAIMANT IS NOW IN A VOCATIONAL RETRAINING PROGRAM WHICH APPEARS CERTAIN TO SUCCEED, HOWEVER, CLAIMANT'S BACK INJURY WILL PERMANENTLY AFFECT HIS WAGE EARNING CAPACITY IN THE GENERAL LABOR MARKET, THE REFEREE'S EVALUATION OF CLAIMANT'S UNSCHEDULED DISABILITY APPEARS PROPER AND THE BOARD CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 10, 1974, IS AFFIRMED.

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

WCB CASE NO. 74-23

OCTOBER 7, 1974

ARTHUR MATHERLY, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF
CROSS-REQUEST FOR REVIEW
BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A REFEREE'S ORDER FINDING CLAIMANT HAD SUFFERED AN AGGRAVATION OF HIS RIGHT KNEE INJURY CONTENDING THAT THE WORSENING OF HIS CONDITION DID NOT SPRING FROM HIS KNEE INJURY BUT FROM UNRELATED CAUSES INSTEAD.

IN ADDITION, IT ALSO OBJECTS TO THE REFEREE'S ORDER IMPOSING LIABILITY ON THE FUND FOR ANY TREATMENT THE CLAIMANT'S TREATING DOCTOR DETERMINES IS MEDICALLY CAUSED OR AGGRAVATED BY THE INDUSTRIAL INJURY. THE FUND ARGUES THE REFEREE HAS, IN EFFECT, GIVEN THE DOCTOR A 'BLANK CHECK'.

CLAIMANT CROSS-REQUESTED REVIEW OF THE REFEREE'S ORDER THAT THE CLAIM SHOULD BE REOPENED AS OF OCTOBER 9, 1973, CONTENDING IT SHOULD HAVE BEEN REOPENED EARLIER.

CLAIMANT, NOW 57 YEARS OF AGE, TWISTED AND INJURED HIS RIGHT LEG ON FEBRUARY 4, 1970, WHILE WORKING AS A SAFETY INSPECTOR. TO DATE, HE HAS RECEIVED PERMANENT DISABILITY COMPENSATION EQUAL TO 40 PERCENT LOSS OF THE RIGHT LEG FOR RESIDUAL DISABILITY.

CLAIMANT DEVELOPED A SEVERE, GENERALIZED RHEUMATOID ARTHRITIS IN 1973. THE CLAIMANT'S INJURY HAD NOTHING TO DO WITH ITS OUTSET BUT THE ARTHRITIS HAD A MUCH MORE DISABLING EFFECT IN HIS RIGHT KNEE BECAUSE OF THE TRAUMA PREVIOUSLY SUFFERED. WE AGREE WITH THE REFEREE THAT THE FUND IS LIABLE FOR TREATMENT OF THE WORSENERD RIGHT KNEE CONDITION.

THE STATE ACCIDENT INSURANCE FUND'S CRITICISM OF THE REFEREE'S 'BLANK CHECK' APPROACH IS VALID, MAKING THE STATE ACCIDENT INSURANCE FUND LIABLE FOR ANY EXPENSE THAT DR. RINEHART DETERMINES IS MEDICALLY CAUSED OR AGGRAVATED BY THE INDUSTRIAL INJURY SUBJECTS THEM TO THE POSSIBILITY OF UNLIMITED LIABILITY WITHOUT RECOURSE. THE ORDER SHOULD HAVE REQUIRED THE FUND TO ASSUME LIABILITY ONLY FOR THE TREATMENT AND COMPENSATION WHICH IS RELATED TO THE WORSENERD RIGHT KNEE CONDITION.

REGARDING THE INCEPTION DATE OF THE REOPENING, THE CLAIMANT HAS FAILED TO PRODUCE SATISFACTORY EVIDENCE ON THIS ISSUE. IF HE WANTED IT OPENED ON AN EARLIER DATE, HE SHOULD HAVE PRODUCED SPECIFIC EVIDENCE OF THE DATE ON WHICH REOPENING WOULD HAVE BEEN JUSTIFIED. HAVING FAILED IN THAT, THE REFEREE'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE IS HEREBY MODIFIED TO LIMIT THE STATE ACCIDENT INSURANCE FUND'S LIABILITY ON REMAND TO COMPENSATION AND TREATMENT WHICH IS NECESSITATED BY REASON OF THE COMPENSABLE AGGRAVATION OF CLAIMANT'S RIGHT KNEE INJURY OF FEBRUARY 4, 1970.

THE REFEREE'S ORDER AND AMENDED ORDER ARE AFFIRMED IN ALL OTHER RESPECTS.

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

WCB CASE NO. 73-1623

OCTOBER 7, 1974

RAMON D. MATA, CLAIMANT
WILLIAM PURDY, 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 DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 15 PERCENT (48 DEGREES) UNSCHEDULED LOW BACK DISABILITY. THE REFEREE INCREASED THIS AWARD TO A TOTAL OF 75 PERCENT (240 DEGREES) UNSCHEDULED DISABILITY. THE CLAIMANT REQUESTS BOARD REVIEW CONTENDING HE IS PERMANENTLY TOTALLY DISABLED.

CLAIMANT, NOW 55 YEARS OLD, RECEIVED A LOW BACK INJURY MARCH 25, 1971, WHILE WORKING IN A SAWMILL AS A WORKING SUPERVISOR. HE WAS OFF WORK SOME THREE WEEKS AND RETURNED TO WORK AND WORKED STEADILY FOR ELEVEN MONTHS WHEN HE QUIT AFTER RECEIVING A REPRIMAND.

HIS TREATING PHYSICIAN AND THE BACK EVALUATION CLINIC CONSIDERS HIM FIT FOR LIGHT WORK. AN EXAMINING PSYCHIATRIST IS SKEPTICAL OF THE VALIDITY OF CLAIMANT'S SUBJECTIVE COMPLAINTS BUT HE DOES NOT BELIEVE CLAIMANT HAS SUSTAINED

ANY SIGNIFICANT EMOTIONAL DISABILITY AS A RESULT OF THE INDUSTRIAL INJURY.

THE BOARD FINDS CLAIMANT IS NOT PRIMA FACIE PERMANENTLY TOTALLY DISABLED. CLAIMANT HAS NOT COOPERATED OR SOUGHT REHABILITATION. CLAIMANT'S DEMONSTRATED LACK OF MOTIVATION TO RETURN TO GAINFUL EMPLOYMENT PRECLUDES AN AWARD OF PERMANENT TOTAL DISABILITY UNDER THE ODD-LOT DOCTRINE.

ON DE NOVO REVIEW, THE BOARD FINDS THAT THE AWARD OF A TOTAL OF 75 PERCENT (240 DEGREES) UNSCHEDULED DISABILITY VERY ADEQUATELY COMPENSATES THE CLAIMANT.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 12, 1974, IS AFFIRMED.

WCB CASE NO. 74-232

OCTOBER 7, 1974

FRANK D. KINNEY, CLAIMANT
WILLIAM G. CARTER, CLAIMANT'S ATTY.
FORD AND COWLING, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES THE EXTENT OF SCHEDULED DISABILITY TO CLAIMANT'S RIGHT HAND. THE DETERMINATION ORDER AWARDED CLAIMANT 5 PERCENT PERMANENT PARTIAL DISABILITY TO THE RIGHT HAND. THE REFEREE INCREASED THIS AWARD TO 15 PERCENT (22.5 DEGREES) LOSS OF RIGHT HAND.

CLAIMANT, A 30 YEAR OLD CONSTRUCTION LABORER, RECEIVED LACERATIONS TO AND COMPOUND FRACTURES OF THE SECOND AND THIRD FINGERS OF HIS RIGHT HAND WHEN HIS HAND WAS PULLED INTO THE HOUSING OF A CIRCULAR SKILLSAW. THE REFEREE HAD BENEFIT OF PERSONAL OBSERVATION OF THE HAND AND OBSERVING THE CLAIMANT IN HIS TESTIMONY - BUT, BEYOND THAT, THE MEDICAL REPORTS AND THE TESTIMONY OF THE CLAIMANT SUPPORT THE AWARD OF 15 PERCENT LOSS OF USE OF THE RIGHT HAND.

ORS 656.214(4) DIRECTS THAT 'A PROPORTIONATE LOSS OF HAND MAY BE ALLOWED WHERE DISABILITY EXTENDS TO MORE THAN ONE DIGIT IN LIEU OF RATINGS ON THE INDIVIDUAL DIGITS'. THE RECORD SUPPORTS THE RATING AS A PROPORTIONATE LOSS OF THE HAND AS OPPOSED TO INDIVIDUALLY RATING THE LOSS OF EACH FINGER. THE REFEREE'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 24, 1974, IS AFFIRMED.

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

WCB CASE NO. 73-1051

OCTOBER 7, 1974

JEFF IVEY, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT DISABILITY. THE ORIGINAL DETERMINATION ORDER AWARDED CLAIMANT NO PERMANENT DISABILITY. IN 1970, A HEARING OFFICER AWARDED CLAIMANT 128 DEGREES UNSCHEDULED PERMANENT DISABILITY. THE CLAIM HAS SUBSEQUENTLY BEEN REOPENED TWICE AND THE THIRD DETERMINATION ORDER AWARDED CLAIMANT NO ADDITIONAL PERMANENT DISABILITY WAS AFFIRMED BY THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 3, 1974, IS AFFIRMED.

WCB CASE NO. 73-3179

OCTOBER 7, 1974

HAROLD E. BROWN, DECEDENT

WILLIAM F. THOMAS, CLAIMANT'S ATTY.
MC MENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY
THE BENEFICIARIES

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A DENIED FATAL HEART ATTACK CLAIM. THE EMPLOYER DENIED THE CLAIM AND THE REFEREE AFFIRMED THE DENIAL.

DECEDENT, A 59 YEAR OLD MECHANIC, COLLAPSED AND DIED WHILE WORKING AT EMPLOYER'S SERVICE STATION. NO AUTOPSY WAS PERFORMED, AND THERE IS CONFLICTING MEDICAL OPINION ON WHETHER DECEDENT'S WORK CAUSED OR CONTRIBUTED TO HIS DEATH.

THE BOARD CONCURS WITH THE FINDING OF THE REFEREE THAT ALTHOUGH THERE IS SUFFICIENT EVIDENCE TO ESTABLISH LEGAL CAUSATION, THERE IS INSUFFICIENT EVIDENCE TO ESTABLISH MEDICAL CAUSATION.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE OPINION AND FINDINGS OF THE REFEREE AND ADOPTS THE REFEREE'S OPINION AND ORDER AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 22, 1974, IS AFFIRMED.

WCB CASE NO. 73-4076

OCTOBER 8, 1974

RONALD STILLWELL, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
GEARIN, CHENEY, LANDIS, AEBI AND KELLEY,
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT NO PERMANENT DISABILITY AND THE REFEREE AFFIRMED THIS ORDER. CLAIMANT REQUESTS BOARD REVIEW.

A DE NOVO REVIEW OF THE RECORD, INCLUDING VIEWING THE FILMS, LEADS THE BOARD TO CONCLUDE THAT CLAIMANT'S REAL DISABILITY IS INCONSEQUENTIAL. HIS MOTIVATION TO RETURN TO WORK IS QUESTIONABLE. THE BOARD CONCURS WITH THE FINDINGS AND OPINION OF THE REFEREE AND ADOPTS HIS OPINION AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 16, 1974, IS AFFIRMED.

WCB CASE NO. 73-3146

OCTOBER 8, 1974

EVELYN MYERS, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES THE EXTENT OF CLAIMANT'S SCHEDULED DISABILITY. CLAIMANT, THEN 47 YEARS OLD, FRACTURED HER LEFT ANKLE ON AUGUST 10, 1970. THE FIRST DETERMINATION ORDER AWARDED CLAIMANT NO PERMANENT PARTIAL DISABILITY. THE LAST DETERMINATION ORDER AWARDED CLAIMANT 30 PERCENT (40.5 DEGREES) SCHEDULED LEFT FOOT PERMANENT PARTIAL DISABILITY. THE REFEREE AFFIRMED THIS AWARD.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE OPINION AND FINDINGS OF THE REFEREE AND ADOPTS HIS OPINION AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 20, 1974, IS AFFIRMED.

OCTOBER 8, 1974

ORVILLE LEE MIDDLETON, CLAIMANT
RODRIGUEZ AND ALBRIGHT, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF
CROSS-APPEAL BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 55 PERCENT (82.5 DEGREES) LOSS OF THE LEFT LEG. THE REFEREE INCREASED THIS AWARD TO A TOTAL OF 85 PERCENT (127.5 DEGREES) SCHEDULED LOSS OF THE LEFT LEG. THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW CONTENDING THE REFEREE'S INCREASE IN THE AWARD SHOULD BE REVERSED. THE CLAIMANT CROSS-APPEALS CONTENDING CLAIMANT SHOULD BE AWARDED 100 PERCENT LOSS OF LEFT LEG OR PERMANENT TOTAL DISABILITY.

CLAIMANT, A 45 YEAR OLD LABORER, RECEIVED A LEFT KNEE INJURY OCTOBER 3, 1967, WHILE EMPLOYED AT JEFFERSON POTATO COMPANY NEAR MADRAS. AFTER EXTENSIVE MEDICAL CARE DURING THE NEXT SIX YEARS, THE LEFT KNEE JOINT WAS SURGICALLY FUSED.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE FINDING OF THE REFEREE THAT THIS IS A SCHEDULED DISABILITY AND THAT THE LOSS OF FUNCTION OF THE LEG IS THE CORRECT CRITERIA FOR AN AWARD OF PERMANENT DISABILITY UNDER THE FACTS OF THIS CASE. THE BOARD ALSO CONCURS WITH THE FINDING OF THE REFEREE THAT THE LOSS OF FUNCTION OF CLAIMANT'S LEFT LEG IS A TOTAL OF 85 PERCENT (127.5 DEGREES).

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 23, 1974 IS AFFIRMED.

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

OCTOBER 8, 1974

PATRICIA DERRAH, CLAIMANT
EMMONS, KYLE, KROPP AND
KRYGER, CLAIMANT'S ATTORNEYS
COLLINS, FERRIS AND VELURE,
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 15 PERCENT UNSCHEDULED LOW BACK DISABILITY. THE REFEREE AFFIRMED THIS AWARD. THE CLAIMANT NOW REQUESTS BOARD REVIEW.

CLAIMANT, A 34 YEAR OLD GROCERY CHECKER RECEIVED A LOW BACK INJURY ON AUGUST 21, 1971. SHE HAS HAD REPEATED HOSPITALIZATION FOR CONSERVATIVE CARE AND EVENTUALLY HAD A LAMINECTOMY AND A DISCOIDECTOMY. AN EXAMINING ORTHOPEDIST AND THE BACK EVALUATION CLINIC GAVE THE OPINION THAT HER LOSS OF FUNCTION WAS MILD.

CLAIMANT'S MOTIVATION TO RETURN TO GAINFUL OCCUPATION IS POOR. CLAIMANT'S OBESITY MAY WELL BE THE SUBSTANTIAL CAUSE OF HER PRESENT BACK DISCOMFORT.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE OPINION AND FINDINGS OF THE REFEREE AND ADOPTS HIS OPINION AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 3, 1974, IS AFFIRMED.

WCB CASE NO. 73-1686

OCTOBER 8, 1974

OMER B. BURSTER, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF
CROSS-APPEAL BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS IS A DENIED HEART ATTACK CASE. THE STATE ACCIDENT INSURANCE FUND DENIED CLAIMANT'S CLAIM FOR MYOCARDIAL INFARCTION OCCURRING JANUARY 22, 1973. THE REFEREE ORDERED THE STATE ACCIDENT INSURANCE FUND TO ACCEPT THE CLAIM BUT DENIED CLAIMANT'S REQUEST FOR PENALTIES FOR UNREASONABLE DELAY IN ACCEPTING THE CLAIM FOR COMPENSATION.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW CONTENDING THAT CLAIMANT HAS FAILED TO ESTABLISH THE CAUSAL RELATIONSHIP BETWEEN HIS DISABILITY AND HIS EMPLOYMENT. THE CLAIMANT CROSS-APPEALS CLAIMING THAT THE STATE ACCIDENT INSURANCE FUND'S CONTINUED DENIAL AFTER DR. GRISWOLD'S REPORT OF JANUARY 30, 1974, WAS UNREASONABLE AND THE CLAIMANT IS THEREFORE ENTITLED TO AN AWARD OF PENALTIES.

CLAIMANT, A 52 YEAR OLD TRUCK DRIVER FOR PACIFIC POWER AND LIGHT COMPANY, SUFFERED A MYOCARDIAL INFARCTION JANUARY 22, 1973, WHILE HE WAS LIFTING HEAVY ALUMINUM TUBING. FROM THE EVIDENCE, IT IS OBVIOUS THAT CLAIMANT'S MYOCARDIAL INFARCTION IS COMPENSABLE.

THE STATE ACCIDENT INSURANCE FUND'S DENIAL, DATED MARCH 27, 1973, WAS REASONABLE BASED ON THE EVIDENCE AND MEDICAL OPINIONS AT HAND AT THAT TIME. HOWEVER, AFTER DR. GRISWOLD'S OPINION AND REPORT, DATED JANUARY 30, 1974, DEFINITELY STATED THAT CLAIMANT'S EMPLOYMENT WAS A MATERIAL CONTRIBUTING FACTOR TO HIS MYOCARDIAL INFARCTION, THE STATE ACCIDENT INSURANCE FUND'S CONTINUED DENIAL OF THE CLAIM WAS UNREASONABLE. PENALTIES ARE IN ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 20, 1974, IS AFFIRMED.

WCB CASE NO. 73-2922

OCTOBER 8, 1974

**JOSEPH BOWLING, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTORNEYS.
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT**

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 50 PERCENT (75 DEGREES) LOSS OF LEFT FOREARM, 5 PERCENT (7.5 DEGREES) LOSS OF LEFT LEG, AND 25 PERCENT (80 DEGREES) UNSCHEDULED LOW BACK HEAD AND LEFT SHOULDER DISABILITY. THE REFEREE INCREASED THE LEFT FOREARM AWARD BY AN AWARD OF AN ADDITIONAL 37.5 DEGREES AND INCREASED THE UNSCHEDULED DISABILITY FOR LOW BACK, HEAD AND LEFT SHOULDER INJURIES BY AN ADDITIONAL 48 DEGREES. CLAIMANT REQUESTS BOARD REVIEW CONTENDING HE IS PERMANENTLY TOTALLY DISABLED.

CLAIMANT, A 50 YEAR OLD CARPENTER, FELL FROM A ROOF JANUARY 19, 1972, SUSTAINING MULTIPLE SERIOUS INJURIES WHICH HAVE LEFT SUBSTANTIAL DISABILITIES.

THE BOARD CONCURS WITH THE FINDING OF THE REFEREE THAT THE CLAIMANT IS NOT PRIMA FACIE PERMANENTLY TOTALLY DISABLED. THE DISABILITY PREVENTION DIVISION AND THE VOCATIONAL REHABILITATION CENTER HAVE BEEN UNABLE TO ASSIST THE CLAIMANT. HIS PHYSICAL DISABILITIES AND HIS PRESENT ATTITUDE AND MOTIVATION TO RETURN TO GAINFUL EMPLOYMENT IMPEDES THEIR EFFORTS FOR VOCATIONAL REHABILITATION.

REGARDLESS OF THE REPORT FROM VOCATIONAL REHABILITATION, THE BOARD FINDS THE CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED WITHIN THE MEANING OF THE WORKMEN'S COMPENSATION LAW.

SINCE THE CLAIMANT IS NOT PRIMA FACIE PERMANENTLY TOTALLY DISABLED AND SINCE HIS MOTIVATION TO RETURN TO GAINFUL EMPLOYMENT IS QUESTIONABLE, THE CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED UNDER THE ODD-LOT DOCTRINE. THE BOARD THEREFORE AFFIRMS THE REFEREE'S ORDER IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 17, 1974, IS AFFIRMED.

OCTOBER 8, 1974

ROBERT BOAZ, JR., CLAIMANT
LAFKY AND MC DONALD, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SUSTAINED A COMPENSABLE BACK INJURY MARCH 26, 1971, FOR WHICH HE RECEIVED CONSERVATIVE TREATMENT. HE HAS RECEIVED NO AWARD FOR PERMANENT DISABILITY PURSUANT TO ORS 656.268, NOR DID THE REFEREE AT HEARING FIND ANY PERMANENT DISABILITY.

CLAIMANT HAS CONTINUED TO WORK BUT EXPERIENCES MUCH PAIN IN THE LEFT SCAPULAR AREA. DURING THE TIME HE WAS NOT EMPLOYED IN LUMBER MILLS OR CONSTRUCTION WORK, CLAIMANT WAS ATTENDING SCHOOL WHERE HE RECEIVED A BACHELOR OF SCIENCE DEGREE IN BIOLOGY. WHEN THE PAIN DID NOT SUBSIDE, DR. HAROLD C. ROCKEY, AN ORTHOPEDIST, RECOMMENDED EXPLORATORY SURGERY OF A RUBBERY TENDER MASS ON THE VERTEBRAL BORDER ALONG THE LOWER HALF OF THE SCAPULA. AFTER CONSULTING A GENERAL AND THORACIC SURGEON, DR. GLENN GORDON, WHO ADVISED AGAINST THIS PROCEDURE, CLAIMANT ADAMANTLY REFUSED DR. ROCKEY'S RECOMMENDATION FOR SURGERY. CLAIMANT HAS CONTINUED TO ENGAGE IN HEAVY CONCRETE WORK DESPITE CONTINUING COMPLAINTS OF PAIN.

SINCE THE BASIS OF AN AWARD FOR PERMANENT DISABILITY IN THE UNSCHEDULED AREA IS MADE ON LOSS OF EARNINGS, THE CLAIMANT IN THIS CASE IS NOT ENTITLED TO SUCH AN AWARD. THE PAIN DOES NOT REACH THE LEVEL OF DISABLING PAIN. FOR THESE REASONS, THE BOARD CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE.

AT THIS POINT, THE BOARD NOTES THAT SHOULD CLAIMANT'S CONDITION WORSEN OR IF HE SIMPLY DESIRES TO FOLLOW DR. ROCKEY'S RECOMMENDATION FOR EXPLORATORY SURGERY, THIS RIGHT IS STILL AVAILABLE TO HIM.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 30, 1974 IS HEREBY AFFIRMED.

OCTOBER 8, 1974

A. LOUISE BABB, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 5 PERCENT (16 DEGREES) UNSCHEDULED LOW BACK DISABILITY. THE REFEREE AWARDED CLAIMANT PERMANENT TOTAL DISABILITY.

CLAIMANT, A 48 YEAR OLD RETAIL CLERK, INJURED HER LOW BACK WHILE LIFTING SOME PAPER SACKS IN THE STORE. SHE HAS BEEN EXAMINED BY NUMEROUS ORTHOPEDISTS, NEUROLOGISTS, AND THE BACK EVALUATION CLINIC. ALL OF THE MYELOGRAMS WERE NORMAL. SHE HAS RECEIVED SUBSTANTIAL CONSERVATIVE CARE. THE MEDICAL RECORDS REFLECT CLAIMANT HAS A CHRONIC LUMBO-SACRAL STRAIN WITH MODERATELY SEVERE FUNCTIONAL OVERLAY AND THAT THE LOSS OF FUNCTION OF THE INJURED PART IS MINIMAL.

ON DE NOVO REVIEW, THE BOARD FINDS THAT THE CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED AND THAT THE AWARD OF 5 PERCENT (16 DEGREES) AWARDED BY THE DETERMINATION ORDER ADEQUATELY COMPENSATES THE CLAIMANT.

ORDER

THE ORDER OF THE REFEREE DATED MAY 30, 1974 IS REVERSED AND THE AWARD GRANTED BY THE DETERMINATION ORDER DATED AUGUST 3, 1973 IS AFFIRMED.

WCB CASE NO. 72-3291

OCTOBER 9, 1974

MERCIELL BELL, CLAIMANT
VANDENBERG AND BRANDSNESS,
CLAIMANT'S ATTORNEY
MERLIN MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW CONTENDING HER DISABILITY IS GREATER THAN THAT FOR WHICH SHE HAS BEEN COMPENSATED. SHE HAS RECEIVED THE FOLLOWING AWARDS FOR PERMANENT PARTIAL DISABILITY -

BY EVALUATION	BY REFEREE AT HEARING	TOTAL
40 PERCENT UNSCHEDULED LOW BACK DISABILITY	20 PERCENT UNSCHEDULED BACK DISABILITY	60 PERCENT
20 PERCENT LEFT LEG	10 PERCENT LEFT LEG	30 PERCENT
5 PERCENT RIGHT LEG	5 PERCENT RIGHT LEG	10 PERCENT

AS THE REFEREE HAS SO APTLY STATED, THIS LONG AND TORTUOUS CLAIM BEGAN IN OCTOBER, 1970, WHEN CLAIMANT, WHO WAS THEN 45 YEARS OF AGE, INJURED HER BACK. SHE HAS NOT WORKED SINCE THAT TIME.

THE COURSE OF THE CLAIM EMBRACES FOUR MYELOGRAMS AND THREE SURGERIES. CLAIMANT HAS RECEIVED EXTENSIVE TREATMENT, COUNSELING AND CONSULTATIONS. BY HER OWN TESTIMONY, CLAIMANT HAS MADE NO EFFORT TO RETURN TO WORK AND CONSIDERS HERSELF PERMANENTLY AND TOTALLY DISABLED.

ALTHOUGH CLAIMANT INDICATED HER TREATING PHYSICIAN AS JOYCELIN ROBERTSON ON THE FORM 801, THE RECORD DOES NOT CONTAIN ANY MEDICAL OPINION, REPORT OR EVALUATION FROM THIS DOCTOR OTHER THAN HIS ULTIMATE ASSERTION THAT CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED. THE NUMEROUS OTHER DOCTORS, WHO TREATED CLAIMANT EXTENSIVELY, AGREED THAT CLAIMANT HAS SIGNIFICANT DISABILITY COMBINED WITH A TREMENDOUS FUNCTIONAL OVERLAY BUT THAT SHE HAS LEARNED TO MANIPULATE THE WORLD THROUGH HER COMPLAINTS OF PAIN.

ON REVIEW, THE BOARD FINDS THE LACK OF OBJECTIVE MEDICAL OPINION, THE LACK OF MOTIVATION DEMONSTRATED BY THE CLAIMANT, AND THE REFEREE'S FINDING WITH RESPECT TO CLAIMANT'S CREDIBILITY NECESSITATES THE AFFIRMATION AND ADOPTION OF THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 14, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 73-930

OCTOBER 9, 1974

PAUL WILSON, CLAIMANT
GLENN D. RAMIREY, RAMIREY AND
HOOTS, CLAIMANT'S ATTORNEY
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT NO PERMANENT PARTIAL DISABILITY AND THE REFEREE AFFIRMED THE DETERMINATION ORDER.

CLAIMANT, A 43 YEAR OLD HEAVY EQUIPMENT OPERATOR, RECEIVED AN INJURY TO HIS CHEST WHEN THE MACHINE HE WAS OPERATING STOPPED SUDDENLY AND HE WAS THROWN FORWARD INTO THE STEERING WHEEL.

ON DE NOVO REVIEW, THE MEDICAL EVIDENCE STRONGLY SUPPORTS THE FINDING OF THE REFEREE THAT THERE IS NO PRESENT CONDITION CAUSING DISABILITY FROM THE INDUSTRIAL ACCIDENT. THE BOARD AFFIRMS THE OPINION AND ORDER OF THE REFEREE AND ADOPTS HIS OPINION AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 16, 1974, IS AFFIRMED.

OCTOBER 9, 1974

CLARENCE MOORE, CLAIMANT

FRANKLIN, BENNETT, OFELT AND JOLLES,
CLAIMANT'S ATTORNEYS
MC MENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER MADE NO AWARD FOR PERMANENT DISABILITY. THE REFEREE AWARDED CLAIMANT 10 PERCENT (32 DEGREES) UNSCHEDULED PERMANENT PARTIAL DISABILITY.

CLAIMANT, A 22 YEAR OLD PRODUCTION WORKER, RECEIVED A LOW BACK INJURY. THE MEDICAL EVIDENCE IS THAT THERE IS MILD PERSISTING SYMPTOMS FOLLOWING A LUMBOSACRAL STRAIN WITH NO MEASURABLE IMPAIRMENT.

BASED ON THE MEDICAL EVIDENCE RATHER THAN ON WHETHER OR NOT THE CREDIBILITY OF CLAIMANT WAS IMPAIRED BY CALLOUSES ON HIS HANDS, THE BOARD FINDS THAT THE AWARD OF 10 PERCENT (32 DEGREES) ADEQUATELY COMPENSATES THE CLAIMANT.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 13, 1974, IS AFFIRMED.

OCTOBER 9, 1974

JUAN HERNANDEZ, CLAIMANT

EDWIN A. YORK, CLAIMANT'S ATTY,
MERLIN MILLER, DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT DISABILITY. CLAIMANT RECEIVED A LOW BACK INJURY AUGUST 19, 1969. AFTER A HEARING, CLAIMANT WAS AWARDED 60 PERCENT (192 DEGREES) UNSCHEDULED DISABILITY. THE CLAIM WAS THEREAFTER REOPENED AND CLAIMANT UNDERWENT SURGERY ON HIS LOW BACK. THE SECOND DETERMINATION ORDER AWARDED CLAIMANT NO ADDITIONAL PERMANENT PARTIAL DISABILITY AND THE REFEREE AFFIRMED THIS EVALUATION.

CLAIMANT, NOW 49 YEARS OLD, WAS RAISED IN TEXAS AND MOST OF HIS LIFE FOLLOWED THE FRUIT HARVESTS. CLAIMANT'S LEVEL OF READING AND WRITING IN BOTH SPANISH AND ENGLISH IS VERY POOR. CLAIMANT ALSO HAS PSYCHOPATHOLOGY RELATED TO THE INJURY WHICH IS ENHANCING ITS DISABLING EFFECTS.

CLAIMANT'S BACK CONDITION LIMITS HIS LIFTING CAPACITY AND ELIMINATES STOOP LABOR EMPLOYMENT. CLAIMANT HAS DEMONSTRATED THAT HE CAN DO RETAIL CLERKING DUTIES ESPECIALLY IN

LOCALITIES WHERE THERE ARE SPANISH SPEAKING CUSTOMERS, THERE IS EVIDENCE IN THE RECORD WHICH COULD BE INTERPRETED THAT THE CLAIMANT HAS NOT FULLY COOPERATED WITH HIS DOCTORS IN THEIR TREATMENT RECOMMENDATIONS.

THE BOARD CONCURS WITH THE FINDING OF THE HEARING OFFICER THAT THE CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED, BUT WE CONCLUDE HIS DISABILITY EXCEEDS THE COMPENSATION GRANTED TO DATE. ON DE NOVO REVIEW, THE BOARD FINDS THAT CLAIMANT'S PRESENT PERMANENT PARTIAL DISABILITY IS 80 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE AND HE SHOULD BE COMPENSATED ACCORDINGLY.

ORDER

CLAIMANT IS HEREBY AWARDED A TOTAL OF 80 PERCENT (256 DEGREES) UNSCHEDULED LOW BACK PERMANENT PARTIAL DISABILITY. THIS IS AN INCREASE OF 20 PERCENT OR 64 DEGREES OVER THAT PREVIOUSLY AWARDED THE CLAIMANT.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE 25 PERCENT OF THE INCREASE IN AWARD WHICH SHALL NOT EXCEED 1,500 DOLLARS.

SAIF CLAIM NO. RB 80865 OCTOBER 9, 1974

VON L. BONNER, CLAIMANT

THIS MATTER INVOLVES A WORKMAN WHO SUSTAINED A COMPENSABLE INDUSTRIAL INJURY AUGUST 7, 1964. WITH PASSAGE OF TIME, CLAIMANT'S PHYSICAL CONDITION HAS WORSENERED TO THE EXTENT THAT DR. CAMPAGNA, ON AUGUST 5, 1974, REPORTED TO THE STATE ACCIDENT INSURANCE FUND THAT CLAIMANT'S CONDITION WAS STATIONARY AND DECLARED CLAIMANT TO BE PERMANENTLY AND TOTALLY DISABLED.

THE BOARD FINDS FROM THE RECORD OF THE STATE ACCIDENT INSURANCE FUND THAT THE MEDICAL EVIDENCE OF THE WORKMAN'S PHYSICAL IMPAIRMENT ESTABLISHES PRIMA FACIE THE WORKMAN TO BE PERMANENTLY AND TOTALLY DISABLED.

ORDER

IT IS THEREFORE ORDERED THAT BENEFITS BE PAID TO CLAIMANT ON THE BASIS OF PERMANENT TOTAL DISABILITY AS OF SEPTEMBER 5, 1974.

IT IS FURTHER ORDERED CLAIMANT RECEIVE ADDITIONAL TEMPORARY TOTAL DISABILITY FROM JUNE 14, 1971 THROUGH SEPTEMBER 4, 1974.

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. 73-3389

OCTOBER 9, 1974

FANNIE LOUISE SMITH, CLAIMANT
DUNCAN AND WALTER, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 5 PERCENT (16 DEGREES) UNSCHEDULED LOW BACK DISABILITY. THE REFEREE INCREASED THE AWARD TO A TOTAL OF 20 PERCENT (64 DEGREES) UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT, A 30 YEAR OLD PRODUCTION LINE WORKER, TRIPPED ON A CORD AND FELL SUSTAINING A COMPENSABLE INJURY TO HIS BACK. THE BACK EVALUATION CLINIC AND THE OTHER MEDICAL REPORTS IN THE RECORD REFLECT THAT THE LOSS OF FUNCTION TO THE BACK DUE TO THE INJURY IS MINIMAL AND THAT THE CLAIMANT IS PHYSICALLY ABLE TO RETURN TO THE SAME OCCUPATION SHE HAD WHEN THE INDUSTRIAL INJURY OCCURRED.

ALTHOUGH THERE IS CONFLICTING EVIDENCE, WE CONCLUDE CLAIMANT'S PSYCHOPATHOLOGY IS RELATED TO THE INDUSTRIAL INJURY AND ON DE NOVO REVIEW, WE CONCUR WITH THE FINDINGS OF THE REFEREE AND ADOPT HIS OPINION AS OUR OWN.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 16, 1974, IS AFFIRMED.

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

WCB CASE NO. 73-3399

JULY 3, 1974

HARRY M. GOULDIN, CLAIMANT
ROY KILPATRICK, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT.

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER APPROVING A PARTIAL DENIAL OF HIS CLAIM.

CLAIMANT SUFFERED A COMPENSABLE INGUINAL HERNIA ON APRIL 6, 1970. ON APRIL 15, 1970, HE WAS HOSPITALIZED FOR SURGICAL REPAIR OF THE HERNIA. THE REPAIR HAD TO BE DELAYED, HOWEVER, DUE TO HEALTH PROBLEMS CAUSED BY, AMONG OTHER THINGS, LIVER DISEASE. AFTER THE OTHER PROBLEMS WERE TREATED AND IMPROVED, CLAIMANT UNDERWENT SURGERY ON APRIL 28, 1970.

THE SURGERY MARKEDLY AFFECTED HIS LIVER FUNCTION AND ON APRIL 29, 1970, HIS CONDITION WAS VERY GRAVE DUE TO HEPATIC FAILURE. CAREFUL AND INTENSIVE MEDICAL CARE IMPROVED HIS CONDITION AND HE WAS RELEASED FROM THE HOSPITAL ON MAY 18, 1970, BUT HIS PHYSICAL CONDITION HAS REMAINED POOR EVER SINCE DUE BASICALLY, TO THE LIVER CONDITION.

THE REFEREE AFFIRMED THE DENIAL BECAUSE THE LIVER PROBLEM PREEXISTED THE SURGERY AND HE CONCLUDED THE CONDITION WAS NOT 'MAGNIFIED' BY THE HERNIA SURGERY.

WE DISAGREE. TAKEN AS A WHOLE, THE TESTIMONY OF CLAIMANT'S TREATING PHYSICIAN, DR. FRANK S. WHITE, FAIRLY ESTABLISHES THAT THE HERNIA SURGERY HASTENED AND MATERIALLY CONTRIBUTED TO THE ONSET OF DISABILITY FROM CLAIMANT'S LIVER PROBLEM. THIS KIND OF CAUSATION IS SUFFICIENT TO IMPOSE FULL LIABILITY ON THE FUND. ARMSTRONG V. SIAC, 146 OR 569 (1934). THE TESTIMONY OF DR. WHITE ALSO ESTABLISHES THAT THE LIVER FLAREUP WHICH ALMOST KILLED THE CLAIMANT FOLLOWING SURGERY WAS A 'COMPLICATION' OF THE HERNIA AS DEFINED BY TUCKER V. SIAC, 216 OR 74 (1959).

THE REFEREE'S ORDER SHOULD THEREFORE BE REVERSED.

ORDER

THE ORDER OF THE REFEREE DATED FEBRUARY 5, 1974, IS HEREBY REVERSED AND THE STATE ACCIDENT INSURANCE FUND IS HEREBY ORDERED TO ACCEPT LIABILITY FOR CLAIMANT'S LIVER CONDITION AND PROVIDE TO HIM ALL BENEFITS DUE UNDER THE WORKMEN'S COMPENSATION LAW.

CLAIMANT'S ATTORNEYS, GALBREATH AND POPE AND ROY KILPATRICK, ARE HEREBY AWARDED A REASONABLE FEE OF 850 DOLLARS - 600 DOLLARS FOR SERVICES IN CONNECTION WITH THE HEARING AND 250 DOLLARS FOR SERVICES IN CONNECTION WITH BOARD REVIEW, SAID FEES TO BE PAID BY THE STATE ACCIDENT INSURANCE FUND IN ADDITION TO AND NOT OUT OF THE BENEFITS AWARDED HEREIN.

WCB CASE NO. 73-1563 JULY 18, 1974

OSCAR PRIVETTE, CLAIMANT
HOLMES, JAMES AND CLINKINBEARD,
CLAIMANT'S ATTORNEYS
ROBERT JOSEPH, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

THE EMPLOYER REQUESTS BOARD REVIEW OF A REFEREE'S ORDER FINDING CLAIMANT SUFFERED NO MATERIAL LOSS OF HEARING IN THE SPEECH FREQUENCIES BUT ALLOWING PERMANENT PARTIAL DISABILITY FOR HIGH TONE HEARING LOSS CONCLUDING THAT SUCH LOSS WAS A LOSS OF 'NORMAL' HEARING WITHIN THE MEANING OF ORS 656.214 (F) AND (G).

EMPLOYER CONTENDS THAT HIGH TONE LOSSES ARE NOT LOSSES OF 'NORMAL' HEARING AND THAT THE REFEREE'S ORDER MUST BE REVERSED.

THE EMPLOYER ARGUES THAT 'NORMAL' HEARING MEANS THE ABILITY TO PERCEIVE THE SOUNDS OF SPEECH AT ORDINARY SOUND PRESSURE LEVELS BECAUSE THAT IS WHAT HUMANS 'NORMALLY' USE THEIR SENSE OF HEARING FOR AND BECAUSE THE MEDICAL PROFESSION DOES NOT CONSIDER THEM IMPAIRED AS INDIVIDUALS UNTIL SPEECH PERCEPTION IS AFFECTED. IN ESSENCE, THAT 'NORMAL' HEARING IS THAT WHICH IS 'USEFUL' FOR HEARING SPEECH.

WE PRESUME THE LEGISLATURE INTENDED THE WORD NORMAL TO HAVE THE SIGNIFICANCE AND MEANING COMMONLY ATTRIBUTED TO IT. WEBSTERS NEW WORLD DICTIONARY DEFINES 'NORMAL' AS 'CONFORMING WITH OR CONSTITUTING AN ACCEPTED STANDARD, MODEL, OR PATTERN = ESPECIALLY CORRESPONDING TO THE MEDIAN OR AVERAGE OF A LARGE GROUP IN TYPE, APPEARANCE, ACHIEVEMENT, FUNCTION, DEVELOPMENT, ETC. = NATURAL = STANDARD = REGULAR.'

NORMAL ORGANS OF HEARING ARE NOT NECESSARILY PERFECT ORGANS BUT ARE THOSE TYPICALLY POSSESSED BY A LARGE PORTION OF THE POPULATION. THE TYPICAL OR NORMAL PERSON CAN PERCEIVE FREQUENCY RANGES WELL IN EXCESS OF THE SPEECH RANGES. AS ONE AGES, HOWEVER, A GRADUAL PROGRESSIVE, BILATERALLY SYMMETRICAL PERCEPTIVE HEARING LOSS OCCURS. THIS NATURAL LOSS OF AURAL ACUITY IS KNOWN AS PRESBYCUSIS. ONE'S 'NORMAL' HEARING IS THUS RELATED TO ONE'S AGE. THOSE WHO HAVE LOST MORE OF THEIR HEARING ABILITY THAN EXPECTED, KEEPING IN MIND THE EFFECTS OF PRESBYCUSIS, DO NOT HAVE 'NORMAL' HEARING.

THE LEGISLATURE HAS PROVIDED A FORMULA FOR MEASURING OCCUPATIONALLY INDUCED LOSSES OF NORMAL HEARING AND HAS PROVIDED A CORRESPONDING SCHEDULE OF COMPENSATION. IN WORKMEN'S COMPENSATION PARLANCE, THIS IS A 'SCHEDULED' LOSS IN WHICH ACTUAL EMPLOYMENT IMPACT ON THE PARTICULAR WORKMAN IS NOT TO BE CONSIDERED. THE EMPLOYER'S ARGUMENT THAT CLAIMANT HAS NOT DEMONSTRATED ANY ADVERSE EMPLOYMENT EFFECT FROM HIS HEARING LOSS IS, THEREFORE, LEGALLY IRRELEVANT.

WE CONCLUDE OUR OPINION, EXPRESSED IN THE CASE OF ROYCE JIMISON, WCB CASE NO. 69-1986, MISCONSTRUED THE LEGISLATIVE INTENTION IN INTERPRETING THE TERM 'NORMAL' HEARING TO MEAN 'USEFUL NORMAL HEARING'. TO DO SO IMPORTS UNSCHEDULED DISABILITY RATING CONCEPTS INTO THE RATING OF SCHEDULED LOSSES WHICH ARE BASED, THE COURTS HAVE REPEATEDLY RULED, ON THE LOSS PHYSICAL FUNCTION. THE CLAIMANT ESTABLISHES THAT HE HAS LOST AURAL ACUITY BEYOND THAT NORMALLY POSSESSED BY A MAN OF HIS AGE.

HAVING CAREFULLY CONSIDERED THIS MATTER, WE NOW CONCUR WITH THE OPINION AND ORDER OF THE REFEREE AND CONCLUDE THAT HIS ORDER SHOULD BE ADOPTED AND AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 11, 1974, IS AFFIRMED.

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

WCB CASE NO. 74-130

JULY 23, 1974

WILLIAM HARRIS, CLAIMANT
GOSHEN TRANSPORT, INC., EMPLOYER
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS

ON JULY 1, 1974, THE WORKMEN'S COMPENSATION BOARD RECEIVED A REQUEST FOR REVIEW OF A REFEREE'S ORDER ENTERED IN THE ABOVE ENTITLED CASE ON MAY 24, 1974, FROM GOSHEN TRANSPORT, INC.

THE POSTMARK REVEALS IT WAS MAILED ON JUNE 28, 1974, WHICH IS BEYOND THE TIME PROVIDED BY LAW FOR REQUESTING BOARD REVIEW, BUT THE EMPLOYER'S ATTORNEY INFORMS US CLAIMANT HAS AGREED TO WAIVE OBJECTION TO THE UNTIMELY FILING.

WE ARE OF THE OPINION THAT THE MAILING OF A REQUEST OF BOARD REVIEW WITHIN THE TIME PROVIDED BY ORS 656.289(3) IS JURISDICTIONAL AND THAT WHEN THE APPEAL IS NOT TAKEN WITHIN THE TIME FIXED BY THE STATUTE, JURISDICTION CANNOT BE CONFERRED UPON THE BOARD BY CONSENT OF THE PARTIES OR BY WAIVER. AM JUR 2 D, APPEALS AND ERROR, SECTION 292.

WE ARE WITHOUT JURISDICTION TO REVIEW THE REFEREE'S ORDER AND, THEREFORE, THE REQUEST FOR REVIEW MUST BE DISMISSED.

IT IS SO ORDERED.

WCB CASES NO. 73-2960,
74-709, 74-1934

AUGUST 1, 1974

RAYMOND L. HORWEDEL, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON JULY 26, 1974, THE STATE ACCIDENT INSURANCE FUND FILED A MOTION FOR CONSOLIDATION OF THREE CASES FOR PURPOSES OF REVIEW BY THE WORKMEN'S COMPENSATION BOARD. THE CLAIMANT'S COUNSEL HAS RESPONDED OBJECTING TO THE MOTION.

THE BOARD NOW BEING FULLY ADVISED, CONCLUDES THE MOTION IS NOT WELL TAKEN AND IT IS, HEREBY DENIED.

CLAIM NO. C604-8759REG OCTOBER 10, 1974

DARRELL D. FULTON, CLAIMANT

THIS MATTER INVOLVES A CLAIMANT WHO RECEIVED A COMPENSABLE INDUSTRIAL INJURY NOVEMBER 14, 1968. IT NOW APPEARS, BASED ON INFORMATION FROM JOHN M. COLETTI, JR., M.D., THAT CLAIMANT IS IN NEED OF FURTHER MEDICAL CARE AND TREATMENT AND THIS NEED IS CAUSALLY RELATED TO HIS INDUSTRIAL INJURY.

THE BOARD, PURSUANT TO OWN MOTION JURISDICTION DELEGATED BY ORS 656,278, HEREBY ORDERS LIBERTY MUTUAL INSURANCE COMPANY, AS WORKMEN'S COMPENSATION CARRIER FOR THE EMPLOYER, TO REOPEN CLAIMANT'S CLAIM AND EXTEND SUCH MEDICAL CARE AND COMPENSATION AS HIS PRESENT NEED FOR MEDICAL CARE OF HIS INJURED BACK MAY REQUIRE.

APPEAL

PURSUANT TO ORS 656,278 -

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

LIBERTY MUTUAL INSURANCE COMPANY MAY REQUEST A HEARING ON THIS ORDER.

THIS ORDER IS FINAL UNLESS WITHIN 30 DAYS FROM THE DATE HEREOF, LIBERTY MUTUAL INSURANCE COMPANY APPEALS THIS ORDER BY REQUESTING A HEARING.

WCB CASE NO. 73-3437

OCTOBER 11, 1974

GARY ELLIS, CLAIMANT
GALBREATH AND POPE,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY

ON SEPTEMBER 4, 1974, THE BOARD ISSUED AN OWN MOTION ORDER REQUIRING THE FUND TO ASSUME THE COST OF CLAIMANT'S KNEE SURGERY WHICH WAS DONE ON MAY 12, 1973. THE ORDER DID NOT GRANT CLAIMANT ANY TEMPORARY TOTAL DISABILITY.

CLAIMANT NOW REQUESTS A SUPPLEMENTAL ORDER GRANTING TEMPORARY TOTAL DISABILITY NOTING THAT THE REFEREE RECOMMENDED SUCH AN AWARD.

WE HAVE REEXAMINED THE MATTER AND CONCLUDE CLAIMANT SHOULD RECEIVE TEMPORARY DISABILITY FROM MAY 12, 1973, UNTIL THE DATE HIS TREATING PHYSICIAN AUTHORIZED HIS RETURN TO HIS REGULAR WORK OR FOUND HIM MEDICALLY STATIONARY, WHICHEVER IS EARLIER.

WHEN THE STATE ACCIDENT INSURANCE FUND BELIEVES CLAIMANT'S CONDITION IS AGAIN MEDICALLY STATIONARY, IT SHOULD REQUEST THE BOARD TO REEVALUATE CLAIMANT'S CLAIM PURSUANT TO ITS OWN MOTION AUTHORITY.

IT IS SO ORDERED.

NOTICE OF APPEAL

PURSUANT TO ORS 656,278 -

THE CLAIMANT HAS NO RIGHT TO A HEARING, REVIEW OR APPEAL ON THIS AWARD 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. 73-2868

OCTOBER 11, 1974

STANLEY BANAT, CLAIMANT
BAILEY, HOFFMAN, MORRIS AND
VAN RYSELBERGHE, 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 REFEREE'S ORDER WHICH INCREASED CLAIMANT'S PERMANENT PARTIAL DISABILITY AWARD FROM 25 PERCENT LOSS OF THE LEFT FOOT TO 35 PERCENT LOSS OF THE LEFT LEG ON A FINDING THAT CLAIMANT'S KNEE PROBLEMS ARE TRACEABLE TO THE INJURY IN QUESTION.

CLAIMANT WAS WORKING IN THE WOODS AS A CHOKER SETTER WHEN HE SUFFERED A FRACTURE OF THE LEFT FIBULA ON DECEMBER 2, 1971. HE WAS PLACED IN A SHORT LEG CASE BY DR. STEVEN J. SCHACHNER, M.D., ORTHOPEDIST, UNTIL FEBRUARY 3, 1972.

SUBSEQUENTLY, DURING MAY OF 1973, CLAIMANT RETURNED TO DR. SCHACHNER WITH COMPLAINTS OF THE LEFT KNEE BUCKLING AFTER PROLONGED STANDING OR WALKING, AND ACHING WITH KNEELING OR SQUATTING. THE REFEREE FOUND NO REASON TO QUESTION CLAIMANT'S CREDIBILITY OR MOTIVATION AND FOUND THE MEDICAL EVIDENCE WAS SUFFICIENT TO ESTABLISH A CAUSAL RELATIONSHIP OF THE KNEE COMPLAINTS TO THE ORIGINAL ANKLE INJURY. THE REFEREE THEREFORE CONCLUDED CLAIMANT WAS ENTITLED TO A DISABILITY AWARD BASED ON THE LEG AND THAT THIS EQUALLED 35 PERCENT LOSS USE OF THE LEG. THE FUND ARGUES AT LENGTH THAT THE EVIDENCE DOES NOT ESTABLISH A CONNECTION BETWEEN THE ANKLE INJURY AND THE KNEE COMPLAINTS.

THE BOARD, ON REVIEW OF THE WHOLE RECORD, CONCURS WITH THE REFEREE'S FINDINGS AND WOULD THEREFORE AFFIRM AND ADOPT HIS ORDER AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 5, 1974, IS HEREBY AFFIRMED.

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

RUTH BIGELOW, CLAIMANT

RICHARD R. FRAZIER, CLAIMANT'S ATTY.
 MARMADUKE, MERTEN AND SALTVEIT,
 DEFENSE ATTORNEYS
 REQUEST FOR REVIEW BY CLAIMANT
 CROSS-APPEAL BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER FINDING HER CONDITION MEDICALLY STATIONARY AND GRANTING AN AWARD FOR PERMANENT PARTIAL DISABILITY EQUAL TO 10 PERCENT UNSCHEDULED LOW BACK DISABILITY. ON REVIEW, CLAIMANT CONTENDS HER CONDITION HAS NEVER BEEN STATIONARY, THAT SHE WAS SEEKING MEDICAL TREATMENT, AND THAT THE CLAIM WAS PREMATURELY CLOSED AND SHOULD BE REOPENED FOR TEMPORARY TOTAL DISABILITY AND FURTHER MEDICAL CARE. THE EMPLOYER, BY WAY OF CROSS-APPEAL, CONTESTS THE AWARD OF PERMANENT DISABILITY GRANTED BY THE REFEREE.

CLAIMANT WAS EMPLOYED AS A CANNERY WORKER WHEN SHE SUSTAINED A COMPENSABLE INJURY ON AUGUST 24, 1973. DR. PAUL ASPER DIAGNOSED AN ACUTE LUMBOSACRAL SPRAIN AND TREATED HER CONSERVATIVELY. SHE WAS THEREAFTER REFERRED TO DR. PALUSKA AND THENCE TO DR. PASQUESI UPON WHOSE REPORT CLAIM CLOSURE WAS MADE BY THE EVALUATION DIVISION. DR. PASQUESI'S REPORT WAS NEVER SUBMITTED TO CLAIMANT'S TREATING DOCTOR FOR HIS CONCURRENCE PRIOR TO CLOSURE.

THE BOARD, ON REVIEW, FINDS THE RECORD DOES NOT REFLECT TESTIMONY BY THE CLAIMANT THAT SHE FELT HER CONDITION HAD BECOME STABLE, NOR IS THE MEDICAL RECORD PERSUASIVE THAT CLAIMANT'S CONDITION WAS STATIONARY. UNDER THESE CIRCUMSTANCES, IT APPEARS THAT CLAIM CLOSURE AND THE AWARD FOR PERMANENT DISABILITY WAS PREMATURE.

IT IS THEREFORE ACCORDINGLY ORDERED THAT THE DETERMINATION ORDER DATED DECEMBER 26, 1973, IS HEREBY SET ASIDE AND HELD FOR NAUGHT - AND, THAT THE ORDER OF THE REFEREE IS HEREBY REVERSED AND CLAIMANT'S CLAIM IS ORDERED REOPENED FOR FURTHER MEDICAL CARE AND TREATMENT AND TEMPORARY TOTAL DISABILITY FROM NOVEMBER 7, 1973, UNTIL SUCH TIME AS TERMINATION IS AUTHORIZED PURSUANT TO ORS 656.268.

ALL BENEFITS PAID AS PERMANENT PARTIAL DISABILITY PURSUANT TO THE REFEREE'S ORDER MAY BE CREDITED AGAINST THE ADDITIONAL TEMPORARY DISABILITY GRANTED BY THIS ORDER.

PURSUANT TO OAR 436-82-040, CLAIMANT'S ATTORNEY IS ENTITLED TO 25 PERCENT OF THE TEMPORARY DISABILITY COMPENSATION MADE PAYABLE BY THIS ORDER AND 25 PERCENT OF ANY PERMANENT DISABILITY AWARDED CLAIMANT AS A RESULT OF SUBSEQUENT ACTION BY THE EVALUATION DIVISION. IN NO EVENT, HOWEVER, SHALL THE FEE RECEIVED PURSUANT TO THIS ORDER, WHEN COMBINED WITH THE FEES HERETOFORE RECEIVED PURSUANT TO THE REFEREE'S ORDER, EXCEED THE SUM OF 500 DOLLARS, PAYABLE FROM CLAIMANT'S TEMPORARY DISABILITY NOR THE SUM OF 2,000 DOLLARS IN THE AGGREGATE.

OCTOBER 11, 1974

BEN HOWARD, CLAIMANT

HAROLD W. ADAMS, CLAIMANT'S ATTY.
MILLER, BECK AND PARKS,
DEFENSE ATTORNEYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

AT ISSUE IN THIS REVIEW IS THE COMPENSABILITY, UNDER THE OREGON WORKMEN'S COMPENSATION LAW, OF AN INJURY SUSTAINED BY CLAIMANT NOVEMBER 30, 1973, WHILE WORKING IN THE STATE OF WASHINGTON. THE REFEREE SUSTAINED THE DENIAL FOR BENEFITS MADE BY THE STATE ACCIDENT INSURANCE FUND, AND CLAIMANT HAS REQUESTED BOARD REVIEW OF THIS ORDER.

CLAIMANT, AT THE TIME OF INJURY, WAS A 25 YEAR OLD TREE PLANTER WHO WAS HIRED BY AN OREGON EMPLOYER TO DO REFORESTATION WORK IN THE STATE OF WASHINGTON. CLAIMANT SLIPPED ON A STEEP BANK, INJURING HIS KNEE AND REQUIRING SURGERY FOR CORRECTION OF INTERNAL DERANGEMENT OF THE KNEE. HIS CLAIM FOR INJURY WAS MADE TO, AND PAYMENT OF BENEFITS WAS MADE BY, THE STATE OF WASHINGTON.

THE REFEREE FOUND CLAIMANT HAD NEVER WORKED FOR THE EMPLOYER IN OREGON AND HAD BEEN HIRED IN PORTLAND FOR THE SOLE AND ONLY PURPOSE OF PLANTING TREES IN THE STATE OF WASHINGTON. THE BOARD CONCURS THAT CLAIMANT WAS NOT A SUBJECT OREGON WORKMAN AND CONCLUDES THE ORDER OF THE REFEREE SHOULD BEAFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 11, 1974, IS HEREBY AFFIRMED.

OCTOBER 11, 1974

HARVEY T. KELLEY, CLAIMANT

THOMAS O. CARTER, CLAIMANT'S ATTY.
DARYLL E. KLEIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES THE ISSUE OF WHETHER CLAIMANT ALSO INJURED HIS BACK ON AUGUST 8, 1973, IN ADDITION TO INJURING HIS RIGHT KNEE. THE EMPLOYER ACCEPTED RESPONSIBILITY FOR THE KNEE INJURY BUT DENIED BENEFITS FOR THE BACK CONDITION. THE REFEREE SUSTAINED THE DENIAL AND CLAIMANT HAS REQUESTED BOARD REVIEW OF THIS ORDER.

CLAIMANT WAS TREATED AT THE HOSPITAL EMERGENCY ROOM WHERE ONLY A DIAGNOSIS OF TRAUMATIC EFFUSION OF THE RIGHT KNEE WAS MADE. HE WAS SUBSEQUENTLY TREATED BY DR. MUELLER.

NO COMPLAINT OF BACK INJURY WAS MADE PRIOR TO SEPTEMBER 6, 1973.

THE REFEREE'S PERSONAL OBSERVATION AND HIS ASSESSMENT OF THE CLAIMANT'S CREDIBILITY PERSUADES THE BOARD THAT CLAIMANT'S BACK PROBLEM IS NOT ATTRIBUTABLE TO THE INCIDENT OF AUGUST 8, AND THE REFEREE'S ORDER AFFIRMING THE EMPLOYER'S DENIAL SHOULD BE AFFIRMED AND ADOPTED AS THE ORDER OF THE BOARD.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 17, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 73-3972

OCTOBER 11, 1974

GEORGE BRAUGHTON, CLAIMANT
RICHARDSON AND MURPHY, 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 REFEREE'S ORDER INCREASING HIS PERMANENT DISABILITY AWARD FROM 48 DEGREES TO 120 DEGREES FOR UNSCHEDULED DISABILITY CONTENDING THAT THE AWARD IS EXCESSIVE AND THAT THE REFEREE ERRED IN ADMITTING CERTAIN TESTIMONY BY CLAIMANT'S WIFE INTO THE RECORD.

THE FUND CONTENDS MRS. BRAUGHTON'S TESTIMONY DEALS WITH THE CAUSATION OF CLAIMANT'S EMOTIONAL PROBLEM. IT DOES NOT, HER TESTIMONY DEALS, IN ESSENCE, WITH HER FIRSTHAND OBSERVATION OF CLAIMANT'S EMOTIONAL STATE AS MANIFESTED BY HIS WORDS AND ACTIONS FOLLOWING THE INJURY IN QUESTION RATHER THAN WITH CAUSATION. THE TESTIMONY WAS NOT OBJECTIONABLE ON THAT GROUND AND ITS RECEIPT BY THE REFEREE WAS PROPER.

WE AGREE WITH THE FUND THAT PREEXISTING BACK DISABILITY NEED NOT BE 'INJURY' CAUSED TO BE SIGNIFICANT. HOWEVER, IT APPEARS THAT CLAIMANT DID NOT HAVE A SIGNIFICANT PREEXISTING DISABILITY. HE HAD PREEXISTING CONGENITAL ANOMALIES WHICH HAD CAUSED SOME SORENESS OF HIS BACK, INTERMITTENTLY, SINCE ABOUT 1970 - BUT THEY HAD NOT CAUSED HIM ANY GREAT DEAL OF DIFFICULTY OR LOSS OF TIME FROM WORK.

NOW CLAIMANT'S CHRONIC BACK STRAIN SUPERIMPOSED ON HIS CONGENITAL ANOMALIES DICTATE THAT HE NOT RETURN TO ANY OF THE HEAVY WORK OF WHICH HE WAS PREVIOUSLY CAPABLE.

WE THEREFORE CONCUR WITH THE REFEREE'S ASSESSMENT OF CLAIMANT'S DISABILITY AND WOULD AFFIRM HIS ORDER IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 17, 1974, IS HEREBY AFFIRMED.

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

WCB CASE NO. 71-2327

OCTOBER 11, 1974

LOUIE COLE, CLAIMANT

WESLEY A. FRANKLIN,
CLAIMANT'S ATTORNEY
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A REFEREE'S ORDER FINDING CLAIMANT'S HEART ATTACK COMPENSABLE. THE REFEREE'S OPINION AND ORDER ADEQUATELY DESCRIBES THE RELATIONSHIP BETWEEN CLAIMANT AND THE CHIEF OF POLICE AND THE EVENTS SURROUNDING AND LEADING UP TO THE ATTACK OF AUGUST 6, 1971.

WE HAVE CONSIDERED THE OPINIONS OF THE PHYSICIAN CONCERNING THESE EVENTS AND CONCUR WITH THE REFEREE THAT DR. GRISWOLD'S OPINION IS MORE LIKELY CORRECT.

WE CONCLUDE THE CLAIMANT'S MYOCARDIAL INFARCTION AROSE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT AND THE REFEREE'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 10, 1974, IS HEREBY AFFIRMED.

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

WCB CASE NO. 74-15
WCB CASE NO. 74-3528

OCTOBER 14, 1974

WALTER YOUNGER, CLAIMANT

RUTHERFORD AND DRABKIN,
CLAIMANT'S ATTORNEYS

ON AUGUST 13, 1974, A REFEREE ORDERED THE EMPLOYER, IN WCB CASE NO. 74-15, TO ACCEPT CLAIMANT'S WORKMEN'S

COMPENSATION CLAIM AND PROVIDE HIM BENEFITS. THE EMPLOYER THEREUPON REQUESTED BOARD REVIEW OF WCB CASE NO. 74-15 AND THAT REQUEST FOR REVIEW IS NOW PENDING.

ON SEPTEMBER 24, 1974, CLAIMANT REQUESTED ANOTHER HEARING ALLEGING THE EMPLOYER HAD REFUSED TO COMPLY WITH THE REFEREE'S ORDER TO PAY BENEFITS IN WCB CASE NO. 74-15 PENDING THE REVIEW. THAT REQUEST FOR HEARING IS NOW PENDING.

ON OCTOBER 10, 1974, THE PARTIES SUBMITTED AN AGREEMENT COMPROMISING AND SETTLING THE DISPUTES BETWEEN THEM. A COPY OF THE AGREEMENT IS ATTACHED HERETO AS EXHIBIT 'A'. THE BOARD FINDS THERE IS A BONA FIDE DISPUTE OVER THE COMPENSABILITY OF CLAIMANT'S CLAIM (WCB CASE NO. 74-15), AND HIS ENTITLEMENT TO PENALTIES AND ATTORNEY'S FEES (WCB CASE NO. 74-3528).

THE BOARD FURTHER FINDS THE COMPROMISE SETTLEMENT AGREED TO BY THE PARTIES IS FAIR AND EQUITABLE TO BOTH PARTIES AND CONCLUDES IT SHOULD BE EXECUTED ACCORDING TO ITS TERMS WITH THE FURTHER PROVISION THAT CLAIMANT'S ATTORNEY BE AUTHORIZED TO RETAIN 955 DOLLARS FROM THE SETTLEMENT AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN BOTH MATTERS AND THAT THE REQUEST FOR BOARD REVIEW OF WCB CASE NO. 74-15 AND THE REQUEST FOR HEARING IN WCB CASE NO. 74-3528 BE DISMISSED.

IT IS SO ORDERED.

STIPULATED ORDER

COMES NOW THE EMPLOYER-CARRIER ACTING BY AND THROUGH ITS ATTORNEYS, HERSHISER, MITCHELL AND WARREN (WILLIAM M. BEERS) AND THE CLAIMANT PERSONALLY ACTING BY AND THROUGH HIS ATTORNEY, WILLIAM RUTHERFORD AND MOVES THE HEARING REFEREE FOR AN ORDER APPROVING SETTLEMENT OF THE ABOVE-CAPTIONED CLAIMS AND REQUESTS FOR HEARING, UPON A DISPUTED CLAIM BASIS, AS FOLLOWS -

THE EMPLOYER-CARRIER CONTENTS THAT THE CLAIMANT DID NOT SUSTAIN ANY INJURIES ARISING OUT OR IN THE COURSE OF HIS EMPLOYMENT ON NOVEMBER 23, 1973 OR AT ANY OTHER TIME WHILE IN THE EMPLOY OF MRS. SMITH'S PIE COMPANY - THE CLAIMANT CONTENTS THAT HE SUSTAINED AN INJURY TO HIS LOW-BACK AREA WHILE HE WAS IN THE EMPLOY OF MRS. SMITH'S PIE COMPANY ON OR ABOUT NOVEMBER 23, 1973. IN ORDER TO FULLY RESOLVE, COMPROMISE, AND SETTLE THE ENTITLED CLAIM, AND A SUBSEQUENT REQUEST FOR HEARING FILED BY THE CLAIMANT REQUESTING ATTORNEY'S FEES AND PENALTIES FOR ALLEGED FAILURE TO PAY COMPENSATION PENDING REVIEW OF THE HEARING OFFICER'S OPINION AND ORDER IN THE UNDERLYING CLAIM, THE PARTIES HEREBY AGREED TO SETTLE THE CLAIM AS FOLLOWS - THE EMPLOYER-CARRIER WILL PAY TO THE CLAIMANT THE SUM OF 5,470 DOLLARS, WHICH SUM INCLUDES ALL PAYMENTS TO WHICH THE CLAIMANT MAY BE ENTITLED, OR MAY HAVE EXPECTED TO BECOME ENTITLED INCLUDING ANY CLAIM OF ATTORNEY'S FEES FOR CLAIMANT'S ATTORNEY, IN RETURN FOR WHICH THE CLAIMANT WITH-DRAWS BOTH REQUESTS FOR HEARING AND ALL CLAIMS WITH PREJUDICE. IT IS AGREED THAT THE PAYMENT ABOVE SET FORTH IS INTENDED TO COVER AND DOES COVER ALL CLAIMS OR POTENTIAL CLAIMS OF ANY SORT, NATURE OR DESCRIPTION WHICH THE CLAIMANT OR HIS ATTORNEY MAY HAVE AGAINST MRS. SMITH'S PIE COMPANY.

IT IS SO STIPULATED.

OCTOBER 15, 1974

JACK DAWSON, CLAIMANT
WILLIAM H. WISSWALL, CLAIMANT'S ATTY.
COLLINS, FERRIS AND VELURE,
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF A REFEREE'S ORDER IN WHICH CLAIMANT'S PERMANENT PARTIAL DISABILITY AWARD WAS INCREASED FROM 5 PERCENT UNSCHEDULED LOW BACK DISABILITY TO 25 PERCENT UNSCHEDULED LOW BACK DISABILITY.

THE CLAIMANT, AN APPRENTICE LINEMAN, WAS INJURED OCTOBER 31, 1972, SUSTAINING A PELVIC FRACTURE. DR. SCHACHNER REPORTED IN FEBRUARY 1973 THAT X-RAYS SHOWED COMPLETE HEALING OF THE FRACTURE AND HE DID NOT ANTICIPATE ANY FORM OF DISABILITY AS A RESULT OF THE INJURY, ALTHOUGH CLAIMANT WOULD HAVE DISCOMFORT IN THE LEFT SACROILIAC JOINT. IN MAY, 1973, DR. SCHACHNER REPORTED CLAIMANT WAS ABLE TO RETURN TO WORK.

A DETERMINATION ORDER WAS ISSUED JULY 20, 1973, WHEREBY CLAIMANT WAS AWARDED 5 PERCENT UNSCHEDULED LOW BACK DISABILITY.

AFTER BEING RELEASED BY THE DOCTORS, CLAIMANT RETURNED TO WORK FOR VARIOUS EMPLOYERS. AT THE PRESENT TIME, HOWEVER, HE IS ATTENDING LANE COMMUNITY COLLEGE UNDER THE AUSPICES OF VOCATIONAL REHABILITATION DIVISION IN A BUSINESS MANAGEMENT COURSE OF SEVEN TERMS.

THE REFEREE ACCEPTED CLAIMANT'S TESTIMONY AND DR. STAINSBY'S REPORT THAT HE WAS UNABLE TO RETURN TO HEAVY WORK IN CONCLUDING THAT CLAIMANT HAD UNSCHEDULED DISABILITY EQUAL TO 25 PERCENT OF THE MAXIMUM ALLOWABLE.

WE NOTE ON REVIEW THAT THE BOARD'S DISABILITY PREVENTION DIVISION DID NOT CONSIDER CLAIMANT'S DISABILITY SUFFICIENT TO PREVENT HIM FROM RETURNING TO HIS FORMER OCCUPATION (REFEREE'S EXHIBIT 2). IT IS ALSO NOTEWORTHY THAT DR. STAINSBY FELT THAT CLAIMANT'S SYMPTOMS WOULD EVENTUALLY SUBSIDE AFTER WHICH HE COULD RETURN TO HEAVY WORK. SINCE THE CLAIMANT IS STILL YOUNG, THIS INJURY WILL HAVE ONLY A LIMITED IMPACT ON HIS PERMANENT LOSS OF EARNING CAPACITY.

WE CONCLUDE 15 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED DISABILITY MORE ACCURATELY REFLECTS CLAIMANT'S RESIDUAL PERMANENT DISABILITY THAN THE 25 PERCENT AWARDED BY THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED JULY 1, 1974, IS HEREBY MODIFIED TO REDUCE CLAIMANT'S PERMANENT DISABILITY AWARD TO 15 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED DISABILITY.

STEPHEN R. LIND, CLAIMANT
NICK CHAIVOE, CLAIMANT'S ATTORNEY
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER ALLOWING CLAIMANT'S CLAIM OF AGGRAVATION CONTENDING -

- (A) HE HAS FAILED TO COMPLY WITH THE JURISDICTIONAL REQUIREMENTS OF ORS 656.273 AND ORS 656.319(2) (C) =
- (B) HE HAS FAILED TO ESTABLISH SUFFICIENT MEDICAL EVIDENCE THAT HIS CURRENT MEDICAL SYMPTOMS ARE RELATED TO THIS INDUSTRIAL INCIDENT =
- (C) HIS EVIDENCE CLEARLY INDICATES THAT HIS PRESENT SYMPTOMS ARE THE RESULT OF SUPERSEDING AND INTERVENING CAUSES AND ARE CONSEQUENTLY NOT COMPENSABLE UNDER THIS CLAIM.

WE HAVE EXAMINED THE RECORD DE NOVO AND THE BRIEFS OF THE PARTIES SUBMITTED ON APPEAL AND CONCLUDE THAT THE REFEREE'S ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE DATED MAY 16, 1974 IS HEREBY AFFIRMED.

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

MERLE LASH, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH GRANTED HIM COMPENSATION EQUAL TO 25 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY, CONTENDING HIS DISABILITY EXCEEDS THAT AWARDED.

WE HAVE EXAMINED THE RECORD DE NOVO AND THE BRIEFS OF THE PARTIES SUBMITTED ON APPEAL AND CONCLUDE THAT THE REFEREE'S ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE DATED MAY 24, 1974 IS HEREBY AFFIRMED.

WCB CASE NO. 74-771

OCTOBER 15, 1974

**KENNETH SHANAFELT, CLAIMANT
MARSH, MARSH, DASHNEY AND CUSHING,
CLAIMANT'S ATTORNEYS
MC MENAMIN, JONES, JOSEPH AND
LANG, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT**

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED A PERMANENT PARTIAL DISABILITY AWARD OF 20 PERCENT LOSS OF THE RIGHT FOOT MADE BY A DETERMINATION ORDER.

CLAIMANT WAS A 38 YEAR OLD LONG HAUL TRUCK DRIVER AND WHILE DRIVING A TRUCK NEAR TURLOCK, CALIFORNIA, WAS INVOLVED IN AN ACCIDENT AND SUSTAINED MULTIPLE FRACTURES TO HIS RIGHT FOOT.

DR. MC KILLOP, THE TREATING ORTHOPEDIST, REPORTED ON JUNE 26, 1973, THAT CLAIMANT WAS WORKING REGULARLY AT HIS REGULAR JOB BUT WITH CONSTANT DISCOMFORT. THE DOCTOR NOTED CLAIMANT WALKED WITH A MILD LIMP, HAD SOME SWELLING, AND HAD LIMITED INVERSION AND EVERSION. HE FORESAW SOME TRAUMATIC ARTHRITIS IN THE FUTURE AT THE FRACTURE SITES.

THE BOARD, ON REVIEW, CONCURS WITH THE REFEREE'S FINDING THAT CLAIMANT'S PERMANENT DISABILITY IS EQUAL TO 20 PERCENT LOSS OF THE RIGHT FOOT.

THE BOARD NOTES THAT SHOULD CLAIMANT'S CONDITION BECOME WORSENERED AT SOME FUTURE DATE, HE IS ENTITLED TO ADDITIONAL COMPENSATION, INCLUDING MEDICAL SERVICES FOR WORSENERED CONDITIONS RESULTING FROM THE ORIGINAL INJURY BY FILING A CLAIM FOR AGGRAVATION WITHIN FIVE YEARS OF THE LAST AWARD OF COMPENSATION PURSUANT TO ORS 656,273.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 28, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 73-931

OCTOBER 16, 1974

**JOHN LARRAMIE, CLAIMANT
ELTON LAFKY, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT**

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED A DETERMINATION ORDER AWARDING CLAIMANT 20 PERCENT UNSCHEDULED LOW BACK DISABILITY AND 5 PERCENT LOSS OF THE RIGHT LEG.

CLAIMANT, A 57 YEAR OLD MILL WORKER AND TRUCK DRIVER, SUFFERED A COMPENSABLE INJURY JUNE 13, 1972, WHEN A CHAIN SAW KICKED BACK KNOCKING CLAIMANT OFF A PLATFORM. CLAIMANT WAS TREATED BY DR. HAROLD C. ROCKEY, AN ORTHOPEDIST, AND BY DR. SERBU, NEUROLOGIST. HE WAS REFERRED ALSO TO THE BOARD'S DISABILITY PREVENTION DIVISION, THE ELKS REHABILITATION CENTER IN BOISE, IDAHO, AND THE DIVISION OF VOCATIONAL REHABILITATION.

IN LIGHT OF THE EXTENSIVE MEDICAL SERVICES AND CONSULTATIONS EXTENDED TO CLAIMANT WHICH HAVE PRODUCED LITTLE IN THE WAY OF OBJECTIVE FINDINGS AND A GREAT DEAL OF INCONSISTENCIES, THE BOARD, ON REVIEW, CONCURS WITH THE FINDINGS OF THE REFEREE AND AFFIRMS AND ADOPTS HIS ORDER AS THE ORDER OF THE BOARD.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 26, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 73-817

OCTOBER 16, 1974

CHARLES R. MACK, CLAIMANT

THIS MATTER INVOLVES A 65 YEAR OLD MILL WORKER WHO FILED A CLAIM FOR HEARING LOSS FOR THE PERIOD 1967 TO 1972. THE CLAIM WAS DENIED BY THE STATE ACCIDENT INSURANCE FUND ON FEBRUARY 26, 1973. THE CLAIMANT REQUESTED A HEARING AND ON SEPTEMBER 26, 1973, THE REFEREE UPHOLD THE FUND'S DENIAL.

COUNSEL FOR CLAIMANT SUBSEQUENTLY REJECTED THE REFEREE'S ORDER THEREBY CONSTITUTING AN APPEAL TO A MEDICAL BOARD OF REVIEW. A MEDICAL BOARD OF REVIEW CONSISTING OF LORANCE B. EVERS, M.D., GORDON SUMMERS, M.D., AND ALEXANDER SCHLEUNING II, M.D., WAS DULY APPOINTED. THEIR FINDINGS, DETERMINING THAT CLAIMANT HAS SUFFERED A COMPENSABLE NEUROSENSORY HEARING LOSS, ARE ATTACHED HERETO, MARKED EXHIBIT 'A' AND MADE A PART OF THIS ORDER.

THE FINDINGS, WHICH ARE FINAL PURSUANT TO ORS 656.814, ARE DECLARED FILED AS TO THE DATE OF THIS ORDER.

IT IS THEREFORE ORDERED THAT THE STATE ACCIDENT INSURANCE FUND ACCEPT THIS CLAIM AND PROCESS IT IN ACCORDANCE WITH THE WORKMEN'S COMPENSATION LAW.

IT IS FURTHER ORDERED THAT THE STATE ACCIDENT INSURANCE FUND PAY CLAIMANT'S COUNSEL A REASONABLE ATTORNEY'S FEE IN THE SUM OF 800 DOLLARS FOR SERVICES IN CONNECTION WITH THE HEARING AND THE MEDICAL BOARD OF REVIEW PROCEEDING.

DEAR SIRs -

MR. MACK WAS EXAMINED BY DR. SUMMERS AND DR. SCHLEUNING ON THE 22ND OF MAY, 1974, AND THE MEMBERS OF THE BOARD INCLUDING DR. LAURENCE EVERS HAVE ANSWERED THE REQUESTED QUESTIONS FROM THE WORKMEN'S COMPENSATION BOARD. FOLLOWING IS A RESUME OF THE RECORD OF MR. MACK.

HE IS A 66 YEAR OLD MAN WHO HAD FIRST NOTED A HEARING LOSS AT THE AGE OF 28 IN 1935. AT THAT TIME HE WAS WORKING IN A PLANT ON A TRIM SAW. HE WORKED THERE FOR THE FOLLOWING SEVEN YEARS. HE NOTED HEARING LOSS AND RINGING IN THE EARS AT THAT TIME. HE ALSO HAD JOBS WITH LOUD NOISE EXPOSURE BETWEEN 1942 AND 1945 AND FROM 1957 AND 1959 AND AGAIN IN 1965 TO 1967 WHEN HE STARTED WORKING FOR THE WARM SPRINGS FOREST PRODUCTS COMPANY. HE STATED THAT HE NOTED SOME PROGRESSIVE LOSS OF HEARING DURING THE TIME HE WORKED IN WARM SPRINGS. HE STATES THAT HE DID NOT WEAR HIS PLUGS BECAUSE THEY DIDN'T FIT HIM WELL DESPITE THE FACT THAT THE COMPANY PROVIDED THE PLUGS FOR HIM AND HE DENIES EVER WEARING EAR MUFFS. HE SAID HE HAD NO HEARING TESTS WHILE HE WAS AT THE PLANT.

AN AUDIOGRAM IN 1966 DEMONSTRATED MODERATELY SEVERE SENSORINEURAL HEARING LOSS AND IN 1973 SHOWED SOME PROGRESSION OF THE LOSS. HE HAS NOT HAD EXCESSIVE LOUD NOISE EXPOSURE RELATED TO WEAPON FIRING.

EXAMINATION WAS ENTIRELY NORMAL WITH THE EXCEPTION OF THE SEVERE NEUROSENSORY HEARING LOSS. THE HEARING LOSS CALCULATED OUT TO A LEVEL OF 52 1-2 PERCENT BINAURAL HEARING LOSS. ON REVIEW OF HIS AUDIOGRAM IN 1966 WHICH WAS PRIOR TO HIS EMPLOYMENT THERE WAS A SIGNIFICANT PROGRESSION OF HIS LOSS, PARTICULARLY IN THE LOWER FREQUENCIES CONSTITUTING A 20 PERCENT INCREASE IN PERCENTAGE OF LOSS. WE REQUESTED THAT THE STATE OBTAIN RECORDS OF THE SEVERITY OF THE NOISE EXPOSURE AT PLANT. UNFORTUNATELY THE PREFAB SHOP AT WARM SPRINGS HAS A NOISE LEVEL WHICH IS INTERMITTENT AND IT WAS DIFFICULT TO EVALUATE WITH THE NOISE LEVELS BEING SLIGHTLY BELOW TO SLIGHTLY ABOVE LEVELS AT WHICH THE HEARING COULD BE AFFECTED.

IF I CAN BE OF ANY FURTHER ASSISTANCE TO YOU, PLEASE DO NOT HESITATE TO GET IN CONTACT WITH ME.

SINCERELY,

-S- ALEXANDER J. SCHLEUNING II, M. D.

WCB CASE NO. 73-15
WCB CASE NO. 73-63

OCTOBER 16, 1974

DONALD K. JOHNSON, CLAIMANT
ALLEN OWEN, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON
AND SCHWABE, DEFENSE ATTORNEYS

THIS MATTER INVOLVES A CLAIMANT WHO ALLEGED AN OCCUPATIONAL DISEASE IN THE NATURE OF AN OCCUPATIONAL AGGRAVATION OF A NON-INDUSTRIAL CONDITION OF DIABETES WHICH RESULTED IN AMPUTATION OF HIS LEFT LEG. THE CLAIM WAS DENIED BY TWO CARRIERS, FIREMAN'S FUND AMERICAN INSURANCE COMPANY AND EMPLOYERS MUTUAL OF WAUSAU. AT HEARING, THE REFEREE SUSTAINED BOTH DENIALS.

COUNSEL FOR CLAIMANT THEREUPON FILED A REJECTION OF THE REFEREE'S ORDER REQUESTING EMPANELMENT OF A MEDICAL BOARD OF REVIEW AND A CERTIFICATION OF RECORD TO MULTNOMAH COUNTY CIRCUIT COURT FOR DETERMINATION OF CERTAIN LEGAL ISSUES.

ON JUNE 10, 1974, THE MULTNOMAH COUNTY CIRCUIT COURT RULED THAT CLAIMANT'S CONDITION BROUGHT HIM WITHIN THE PROVISIONS OF THE OCCUPATIONAL DISEASE LAW AND REMANDED THE MATTER TO THE WORKMEN'S COMPENSATION BOARD FOR CONVENING A MEDICAL BOARD OF REVIEW.

A MEDICAL BOARD OF REVIEW CONSISTING OF HULDRICK KAMMER, M.D. - SABIN BELKNAP, M.D. - AND RUDOLPH CROMMALIN, M.D., WAS DULY EMPANELED AND INSTRUCTED. THE MEDICAL BOARD OF REVIEW HAS NOW MADE ITS FINDINGS CONCLUDING THAT THE CLAIMANT, DONALD K. JOHNSON, DOES NOT SUFFER FROM AN OCCUPATIONAL DISEASE. THE FINDINGS ARE ATTACHED HERETO, MARKED EXHIBIT A, AND MADE A PART OF THIS ORDER.

THE FINDINGS, FILED AS OF THE DATE OF THIS ORDER, ARE HEREBY DECLARED FINAL AND BINDING PURSUANT TO ORS 656.814.

WCB CASE NO. 73-2167

OCTOBER 16, 1974

ALDIN V. WHITTLE, CLAIMANT

ROBERT E. JONES, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON SEPTEMBER 27, 1974, THE FUND MOVED FOR DISMISSAL OF THE CLAIMANT'S REQUEST FOR REVIEW CONTENDING IT HAD BEEN UNTIMELY FILED. ORS 656.289(3) AND 656.295(2) REQUIRE ONLY THAT THE REQUEST FOR REVIEW BE MAILED WITHIN 30 DAYS, NOT THAT IT BE FILED WITHIN THAT TIME. THUS, THE DAY OF ITS RECEIPT IS IMMATERIAL. THE QUESTION IS - WHEN WAS IT MAILED?

THE CLAIMANT'S REQUEST FOR REVIEW IS DATED JULY 8, 1974, WHICH IS THE LAST DAY ON WHICH IT COULD HAVE BEEN MAILED. NO AFFIDAVIT OF MAILING WAS ATTACHED TO THE REQUEST AND THE ENVELOPE IN WHICH IT WAS MAILED IS NOT IN THE RECORD. HOWEVER, THE LAW PRESUMES A WRITING IS TRULY DATED AND THAT THE ORDINARY COURSE OF BUSINESS HAS BEEN FOLLOWED.

GIVING CREDENCE TO THESE PRESUMPTIONS, WE CONCLUDE THE CLAIMANT'S REQUEST FOR REVIEW WAS TIMELY AND THE FUND'S MOTION TO DISMISS SHOULD THEREFORE BE DENIED.

IT IS SO ORDERED.

WCB CASE NO. 73-211

OCTOBER 18, 1974

FERN M. SANDSTROM, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON SEPTEMBER 4, 1974, CLAIMANT'S ATTORNEY MOVED THE BOARD FOR AN ORDER DISMISSING THE FUND'S CROSS REQUEST FOR BOARD REVIEW ON THE GROUND THAT THE FUND'S FAILURE TO SERVE A COPY OF THE REQUEST ON THE CLAIMANT PERSONALLY WAS JURISDICTIONALLY FATAL. THE FUND SENT A COPY OF THE CROSS REQUEST TO CLAIMANT'S ATTORNEY DEEMING THAT SUFFICIENT COMPLIANCE WITH ORS 656.295(2).

ON SEPTEMBER 23, 1974, THE FUND MOVED TO DISMISS CLAIMANT'S REQUEST FOR REVIEW FOR LACK OF JURISDICTION ON THE GROUND THAT CLAIMANT HAD NOT PERSONALLY REQUESTED BOARD REVIEW.

CLAIMANT CONTENDS THAT ACTUAL RATHER THAN CONSTRUCTIVE SERVICE OF A COPY OF THE REQUEST FOR REVIEW ON THE DEFINED PARTY REFERRED TO IN ORS 656.295(2) IS A JURISDICTIONAL PREREQUISITE TO BOARD REVIEW. WE HAVE AGREED WITH THAT POSITION IN THE CASE OF MARY SCHNIEDER, WCB CASE NO. 73-2690.

THE FUND ASSERTS THAT IF ITS REQUEST FOR REVIEW IS JURISDICTIONALLY DEFECTIVE FOR FAILURE TO SERVE A PARTY, THEN THE CLAIMANT'S REQUEST FOR REVIEW IS LIKEWISE FATALLY DEFECTIVE UNDER ORS 656.289(3) IN THAT CLAIMANT'S ATTORNEY, RATHER THAN THE CLAIMANT HERSELF, REQUESTED THE REVIEW.

CLAIMANT AND HER ATTORNEY, MR. GALTON, ENTERED INTO AN AGREEMENT GIVING MR. GALTON FULL AUTHORITY TO FILE APPEAL OF HER CLAIM ON HER BEHALF, BUT THE AGREEMENT DID NOT INTEND TO, NOR DID IT INVEST HIM WITH, PARTY STATUS.

THEREFORE, WHILE THE REQUEST FOR REVIEW FILED BY MR. GALTON IS THE REQUEST OF HIS PRINCIPAL, MRS. SANDSTROM, SERVICE OF THE FUND'S CROSS REQUEST ON MR. GALTON IS NOT SERVICE ON THE OPPOSING PARTY WHICH IS REQUIRED BY ORS 656.295(2). IT FOLLOWS THAT THE CLAIMANT'S MOTION SHOULD BE GRANTED AND THE FUND'S MOTION SHOULD BE DENIED.

CLAIMANT'S ATTORNEY HAS ALSO REQUESTED A FEE FOR HIS SERVICES IN CONNECTION WITH THIS MOTION. CLAIMANT INITIATED THIS REQUEST FOR BOARD REVIEW RATHER THAN THE FUND. WE INTERPRET EGGER V. GATEWAY CARE CENTER, 99 ADV SH 530, OR APP (1974) AS NOT PERMITTING THE ASSESSMENT OF A FEE PAYABLE BY THE FUND IN THIS CASE. THEREFORE, NO FEE WILL BE ALLOWED.

ORDER

THE MOTION OF THE STATE ACCIDENT INSURANCE FUND IS DENIED.

THE STATE ACCIDENT INSURANCE FUND'S CROSS REQUEST FOR BOARD REVIEW, FILED WITH THE BOARD ON JULY 25, 1974, IS HEREBY DISMISSED.

THE REQUEST FOR REVIEW FILED BY THE CLAIMANT REMAINS PENDING AND THE MATTER WILL BE REVIEWED BY THE WORKMEN'S COMPENSATION BOARD AS PROVIDED BY LAW.

NO NOTICE OF APPEAL IS DEEMED APPLICABLE.

OCTOBER 21, 1974

RUSSELL L. MARTIN, CLAIMANT
TOOZE, KERR, PETERSON, MARSHALL AND
SHENKER, CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN,

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH SUSTAINED A DENIAL OF CLAIMANT'S CLAIM BY THE STATE ACCIDENT INSURANCE FUND.

CLAIMANT ALLEGES THAT WHILE REMODELING AN APARTMENT BUILDING, HE INJURED HIS BACK ON AUGUST 28, 1973, WHEN HE JUMPED ABOUT 3 FEET FROM A WINDOW SILL TO THE GROUND CAUSING A SUDDEN ONSET OF PAIN. ALTHOUGH SURROUNDED BY FELLOW WORKERS, NO ONE WAS AWARE HE HAD INCURRED AN INJURY. TWO DAYS AFTER THE INCIDENT, CLAIMANT WAS TREATED BY DR. MUELLER WHO DIAGNOSED A LUMBOSACRAL STRAIN.

THE RECORD INDICATES CLAIMANT HAS HAD BACK PROBLEMS SINCE 1961. THE QUESTION OF ATTRIBUTING ANY CURRENT PROBLEMS TO THE INCIDENT OF AUGUST 28, 1973, IS COMPLICATED BY A PREVIOUS NON-INDUSTRIAL ACCIDENT IN 1972. THE LATTER WAS OF SUFFICIENT SEVERITY TO REQUIRE TREATMENT EXTENDING OVER A YEAR. THE CLAIMANT'S CREDIBILITY BECOMES SUBJECT TO QUESTION WHEN HE DENIED ANY PREEXISTING PROBLEMS WITH HIS BACK.

THE REFEREE CONCLUDED, BASING HIS OPINION ON THE REPORTS OF DR. MUELLER AND THE Demeanor OF THE CLAIMANT, THAT CLAIMANT HAD NOT SUSTAINED A COMPENSABLE INJURY AND AFFIRMED THE DENIAL MADE BY THE STATE ACCIDENT INSURANCE FUND. THE BOARD, ON REVIEW, CONCURS WITH THIS FINDING AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 12, 1974, IS HEREBY AFFIRMED.

OCTOBER 21, 1974

ELWYN C. FINDLEY, CLAIMANT
HAROLD W. ADAMS, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN,

THE STATE ACCIDENT INSURANCE FUND HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER GRANTING CLAIMANT INCREASED PERMANENT DISABILITY AFTER RULING THAT HIS REQUEST FOR HEARING WAS NOT BARRED BY AN EARLIER DISMISSAL OF HIS REQUEST UNDER ORS 137.240 WHICH HAS SINCE BEEN RULED UNCONSTITUTIONAL.

THE FUND CONTESTS BOTH THE ALLOWANCE OF THE HEARING AND THE AMOUNT OF THE DISABILITY COMPENSATION AWARDED.

ORS 137.240 WAS HELD UNCONSTITUTIONAL AS AGAINST INJURED WORKMEN ON JANUARY 18, 1973, IN DELORME V. PIERCE FREIGHLINES CO., 353 FSUPP 258. THE OREGON LEGISLATURE THEREUPON ENACTED CHAPTER 56 OF OREGON LAWS OF 1973 TO EXEMPT INJURED WORKMEN FROM THE PROVISIONS OF ORS 137.240(2). THIS HISTORY OF JUDICIAL AND LEGISLATIVE ACTION SUPPORTS THE REFEREE'S HOLDING THAT CLAIMANT IS ENTITLED TO A HEARING ON THE ADEQUACY OF HIS PERMANENT DISABILITY AWARD.

THE REFEREE, AFTER SUMMARIZING CLAIMANT'S POST INJURY WORK HISTORY AND LIMITATIONS, CONCLUDED CLAIMANT HAD LOST 50 PERCENT OF HIS EARNING CAPACITY.

WE AGREE WITH THE REFEREE'S FINDINGS BUT NOT WITH HIS CONCLUSION CONCERNING THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY. CLAIMANT HAS, IN OUR OPINION, LOST NOT MORE THAN 30 PERCENT OF HIS EARNING CAPACITY. THE REFEREE'S ORDER SHOULD THEREFORE BE REVERSED.

THE FUND HAS RESISTED CLAIMANT'S RIGHT TO A HEARING FROM THE BEGINNING. IT FAILED TO PREVAIL ON THIS ISSUE AT THE HEARING LEVEL AND ON THIS REVIEW CLAIMANT'S ATTORNEY IS THEREFORE ENTITLED TO A FEE PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

ORDER

THE REFEREE'S ORDER DATED MAY 14, 1974, IS HEREBY REVERSED AND THE DETERMINATION ORDER DATED AUGUST 21, 1970, IS AFFIRMED.

THE STATE ACCIDENT INSURANCE FUND IS HEREBY ORDERED TO PAY CLAIMANT'S ATTORNEY THE SUM OF 500 DOLLARS AS A REASONABLE FEE FOR HIS SERVICES IN ESTABLISHING CLAIMANT'S RIGHT TO A HEARING ON HIS CLAIM.

PURSUANT TO ORS 656.313, NO COMPENSATION PAID IN COMPLIANCE WITH THE REFEREE'S ORDER MAY BE RECOVERED FROM THE CLAIMANT.

WCB CASE NO. 74-1060

OCTOBER 2, 1974

HARRY STRONG, CLAIMANT
NOREEN A. SALTVEIT, CLAIMANT'S ATTY.

THIS MATTER INVOLVES A CLAIMANT WHO RECEIVED A COMPENSABLE INDUSTRIAL INJURY SEPTEMBER 17, 1968, WHICH RESULTED IN SURGICAL REPAIR OF THE MUSCULOTENDONOUS CUFF OF THE RIGHT SHOULDER.

IT NOW APPEARS, BASED ON INFORMATION FROM RICHARD M. REYNOLDS, M.D., THAT CLAIMANT IS IN NEED OF FURTHER MEDICAL CARE, POSSIBLY PHYSIOTHERAPY, FOR HIS SHOULDER CONDITION AND THIS NEED IS CAUSALLY RELATED TO HIS INDUSTRIAL INJURY.

THE BOARD, PURSUANT TO OWN MOTION JURISDICTION DELEGATED BY ORS 656.278, HEREBY ORDERS THE STATE ACCIDENT INSURANCE FUND TO REOPEN CLAIMANT'S CLAIM AND EXTEND SUCH MEDICAL CARE AND COMPENSATION AS HIS PRESENT SHOULDER CONDITION MAY REQUIRE.

NOTICE OF APPEAL

PURSUANT TO ORS 656.278 -

THE CLAIMANT HAS NO RIGHT TO A HEARING, REVIEW OR APPEAL ON THIS ORDER 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.

COUNSEL FOR CLAIMANT IS ENTITLED TO RECEIVE AS AN ATTORNEY'S FEE 25 PERCENT OF THE TEMPORARY DISABILITY AWARDED HEREBY, NOT TO EXCEED 100 DOLLARS.

WCB CASE NO. 74-1094

OCTOBER 22, 1974

BRUCE MILLER, CLAIMANT
WILLIAM HINTON

STANLEY A. CLARK, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

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,

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

SAIF CLAIM NO. EB 151103

OCTOBER 22, 1974

WESLEY A. WILSON, CLAIMANT
BETTIS AND REIF, CLAIMANT'S ATTYS.

COUNSEL FOR CLAIMANT HAS PETITIONED THE WORKMEN'S COMPENSATION BOARD TO REOPEN THIS CLAIM PURSUANT TO THE OWN MOTION JURISDICTION GRANTED THE BOARD BY ORS 656.278.

CLAIMANT WAS INJURED IN SEPTEMBER OF 1965, MEDICAL OPINIONS SUBMITTED NOW REFLECT CLAIMANT'S CONDITION HAS BECOME WORSE AND THE WORSENING IS DUE TO HIS INDUSTRIAL INJURY. WE CONCLUDE THAT REOPENING OF CLAIMANT'S CLAIM UNDER ORS 656.278 IS JUSTIFIED.

ORDER

IT IS THEREFORE ORDERED THAT THE STATE ACCIDENT INSURANCE FUND REOPEN CLAIMANT'S CLAIM FOR SUCH FURTHER MEDICAL CARE AND TREATMENT AS HIS CONDITION MAY REQUIRE.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS AN ATTORNEY'S FEE 25 PERCENT OF THE TEMPORARY DISABILITY, NOT TO EXCEED 100 DOLLARS.

NOTICE OF APPEAL

PUSUANT TO ORS 656.278 -

THE CLAIMANT HAS NO RIGHT TO A HEARING, REVIEW OR APPEAL ON THIS ORDER 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. 74-405

OCTOBER 24, 1974

ED BEA, CLAIMANT

ALLEN G. OWEN, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON SEPTEMBER 30, 1974, THE CLAIMANT FILED A REQUEST FOR BOARD REVIEW OF A REFEREE'S OPINION AND ORDER ISSUED IN THE ABOVE ENTITLED MATTER.

ON OCTOBER 11, 1974, CLAIMANT FORMALLY WITHDREW HIS REQUEST FOR BOARD REVIEW. THEREAFTER, ON OCTOBER 14, THE STATE ACCIDENT INSURANCE FUND FILED A REQUEST FOR BOARD REVIEW DENOMINATED A 'CROSS-REQUEST'.

BASED ON THE CLAIMANT'S WITHDRAWAL OF HIS REQUEST FOR REVIEW, THE CLAIMANT'S REQUEST SHOULD BE, AND IT IS HEREBY, DISMISSED. THE 'CROSS-REQUEST' FOR REVIEW FILED BY THE STATE ACCIDENT INSURANCE FUND REMAINS PENDING AS AN INITIAL REQUEST FOR BOARD REVIEW.

WCB CASE NO. 73-3171

OCTOBER 28, 1974

KENNETH M. WOLCOTT, CLAIMANT

MYRICK, COULTER, SEAGRAVES AND NEALY,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH REVERSED THE FUND'S PARTIAL DENIAL AND ORDERED IT TO ACCEPT LIABILITY FOR COMPENSATION ASSOCIATED WITH SURGERY TO THE RIGHT SHOULDER.

PRIOR TO THE INJURY IN QUESTION, CLAIMANT HAD WORKED FOR ABOUT NINE YEARS AS A CORE FEEDER IN VARIOUS PLYWOOD MILLS. FOR ABOUT THREE YEARS PRIOR TO FEBRUARY 1, 1972, HE SUFFERED OCCASIONAL EPISODES OF PAIN IN THE RIGHT SHOULDER FOR WHICH HE SOUGHT MEDICAL TREATMENT FROM TIME TO TIME.

ON FEBRUARY 1, 1972, CLAIMANT DEVELOPED AN ACUTE TRAUMATIC BURSITIS OF THE RIGHT SHOULDER. HIS WORKMEN'S COMPENSATION CLAIM WAS ACCEPTED BY THE STATE ACCIDENT INSURANCE FUND AND CONSERVATIVE TREATMENT EXTENDED. AFTER CLAIMANT UNDERWENT SURGERY IN AUGUST OF 1973 FOR RELIEF OF A RIGHT SUPRASPINUS IMPINGEMENT SYNDROME WITH REMOVAL OF THE BURSA, THE FUND ISSUED A PARTIAL DENIAL ALLEGING THE CONDITION REQUIRING THE SURGERY WAS NOT THE RESULT OF OR RELATED TO THE INDUSTRIAL INJURY OF FEBRUARY 1, 1972.

THE REFEREE AT HEARING, AND THE BOARD ON REVIEW, RELY ON THE OPINION OF JOHN S. CORSON, M.D., ORTHOPEDIST WHICH STATED -

IT IS MY FEELING THAT ONCE A ROTATOR CUFF TENDINITIS OR SHOULDER IMPINGEMENT SYNDROME DEVELOPS, THAT IT IS A MORE OR LESS CHRONIC CONDITION, AND THOUGH IT MAY BE CONTROLLED BY CONSERVATIVE MEASURES, USUALLY IN A YOUNG INDIVIDUAL WHO IS ENGAGED IN MANUAL LABOR, EVENTUAL SURGICAL INTERVENTION IS FREQUENTLY THE CASE.

. . . I WOULD FEEL THAT MR. WOLCOTT'S PRESENT SHOULDER PROBLEM IS RELATED TO THE ORIGINAL INJURY AND THAT THE PRESENT SYMPTOMS WOULD HAVE TO BE CONSIDERED AS BEING PRECIPITATED BY HIS CONTINUING WORK ACTIVITY AS A PLYWOOD CORE FEEDER IN THE ABSENCE OF A HISTORY OF ANY OTHER SHOULDER INJURY. †

THE BOARD NOTES THE OPINION OF DR. CORSON WAS NOT IMPEACHED EITHER BY OTHER MEDICAL TESTIMONY OR BY ANY CROSS-EXAMINATION OF DR. CORSON.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 13, 1974, IS HEREBY AFFIRMED.

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

OCTOBER 28, 1974

WALTER SHORT, CLAIMANT
DON TODOROVICH, CLAIMANT'S ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH INCREASED CLAIMANT'S PERMANENT PARTIAL DISABILITY AWARD FROM 10 PERCENT PREVIOUSLY GRANTED TO 35 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

THE ISSUES BEFORE THE BOARD ON REVIEW ARE WHETHER CLAIMANT'S PRESENT PERMANENT DISABILITY RESULTS FROM A COMPENSABLE INJURY SUSTAINED IN JANUARY, 1970, WHILE EMPLOYED BY CORVALLIS DISPOSAL COMPANY, OR IF IT RESULTS FROM AN INJURY OF FEBRUARY 26, 1973, WHILE CLAIMANT WAS EMPLOYED BY ALSEA LUMBER COMPANY. ALSO AT ISSUE IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY.

BASED ON TWO EXAMINATIONS BY THE SAME DOCTOR, DR. TSAI, THE INJURY OF FEBRUARY, 1973, APPEARED NOTHING MORE THAN A MUSCLE SPASM AND AN EXACERBATION OF CLAIMANT'S 1970 INJURY AND, THEREFORE, THE RESPONSIBILITY OF CORVALLIS GARBAGE COMPANY AND ITS CARRIER, INDUSTRIAL INDEMNITY.

THE REFEREE RELIED ON MEDICAL EVIDENCE OF DR. VAN OLST AND DR. TSAI IN DETERMINING CLAIMANT'S PERMANENT DISABILITY TO BE 35 PERCENT UNSCHEDULED LOW BACK DISABILITY OR 112 DEGREES.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDINGS OF THE REFEREE AND AFFIRMS AND ADOPTS HIS ORDER AS THE ORDER OF THE BOARD.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 31, 1974, IS HEREBY AFFIRMED.

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

WCB CASE NO. 73-3021
WCB CASE NO. 74-735

OCTOBER 28, 1974

LOWELL J. TERRELL, CLAIMANT
DWYER, JENSEN AND NASLUND,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A CLAIM MADE JULY 20, 1973, TO THE STATE ACCIDENT INSURANCE FUND ALLEGING AN INJURY TO, OR OCCUPATIONAL DISEASE OF, THE FEET. THIS CLAIM WAS DENIED BY THE FUND.

CLAIMANT THEN FILED AN AGGRAVATION CLAIM ON DECEMBER 27, 1973, WITH THE STATE ACCIDENT INSURANCE FUND ALLEGING HIS FOOT CONDITION WAS AN AGGRAVATION OF A COMPENSABLE BACK INJURY HE HAD SUSTAINED JANUARY 8, 1973. THIS CLAIM FOR AGGRAVATION WAS ALSO DENIED BY THE FUND.

AT HEARING, THE REFEREE AFFIRMED BOTH DENIALS MADE BY THE STATE ACCIDENT INSURANCE FUND, AND CLAIMANT HAS REQUESTED BOARD REVIEW.

CLAIMANT'S FOOT PROBLEM HAS BEEN DIAGNOSED AS PLANTAR FASCIITIS, AN INFLAMMATION IN THE HEEL PRODUCED BY WORKING OR WALKING ON HARD SURFACES FOR PROLONGED PERIODS OF TIME.

THE BOARD, ON REVIEW, FINDS THE MEDICAL EVIDENCE IS INADEQUATE TO SUPPORT A FINDING OF CAUSAL CONNECTION BETWEEN THE FOOT CONDITION EITHER AS AN ORIGINAL INJURY OR DISEASE OR AS AN AGGRAVATION OF THE BACK INJURY. THE BOARD AFFIRMS AND ADOPTS THE REFEREE'S ORDER WHICH SUSTAINS THE FUND'S DENIAL OF BOTH CLAIMS.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 21, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 74-53

OCTOBER 28, 1974

BOB PERRY, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER INCREASING CLAIMANT'S UNSCHEDULED PERMANENT DISABILITY FROM 48 DEGREES TO 160 DEGREES. PENDING THE REVIEW, THE EMPLOYER MOVED TO SUPPLEMENT THE RECORD. WE DO NOT BELIEVE IT IS NECESSARY TO CONSIDER ADDITIONAL EVIDENCE AND THE MOTION IS HEREBY DENIED.

AT THE TIME OF THE INJURY IN QUESTION, CLAIMANT WAS WORKING AT TWO JOBS. HIS PRIMARY JOB WAS HAULING JUNK TIRES AS A SELF-EMPLOYED TEAMSTER - BUT HE ALSO PUMPED GAS AT A SERVICE STATION PART-TIME.

ON OCTOBER 3, 1972, CLAIMANT INJURED HIS LOW BACK WHILE WORKING AT THE SERVICE STATION. CLAIMANT'S PHYSICIAN RECOMMENDED LOW BACK SURGERY BUT CONSIDERED THE CHANCE OF IMPROVEMENT ABOUT 50-50. CLAIMANT REFUSED THE SURGERY. THE REFEREE FOUND THE CIRCUMSTANCES CAUSING THE REFUSAL REASONABLE AND WE AGREE.

CLAIMANT HAS RESIDUAL PERMANENT DISABILITY WHICH PREVENTS HIS RETURN TO TRUCK DRIVING ALTHOUGH HE RETAINS THE ABILITY TO WORK AS A GAS STATION ATTENDANT ALTHOUGH WITH SOME LIMITATIONS. RELEVANT BACKGROUND FACTORS WHICH MUST BE CONSIDERED IN DETERMINING HIS LOSS OF EARNING CAPACITY INCLUDE HIS AGE OF 33 YEARS, INTELLECTUAL AND EDUCATIONAL DEFICIENCIES, AND PAST WORK EXPERIENCE INVOLVING ONLY UNSKILLED LABOR. HOWEVER, CLAIMANT IS SUCCESSFULLY ENGAGED IN RETRAINING AS AN UPHOLSTERER WHICH WILL PROVIDE HIM A JOB SKILL TO PARTIALLY REPLACE HIS TRUCK DRIVING EARNINGS.

THE REPORTS OF THE DISABILITY PREVENTION DIVISION STAFF INDICATE CLAIMANT'S OBJECTIVE PHYSICAL DISABILITY IS MILD ALTHOUGH FUNCTIONALLY, HIS COMPLAINTS ARE MUCH MORE SEVERE.

THE REFEREE EVALUATED CLAIMANT'S UNSCHEDULED DISABILITY AS EQUAL TO 160 DEGREES. OUR DE NOVO REVIEW OF THE EVIDENCE LEADS US TO CONCLUDE CLAIMANT IS NOT THAT DISABLED. WE FIND HIS DISABILITY EQUALS 96 DEGREES OR 30 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY. THE REFEREE'S ORDER SHOULD BE MODIFIED ACCORDINGLY.

ORDER

THE ORDER OF THE REFEREE IS HEREBY MODIFIED TO GRANT CLAIMANT A TOTAL OF 96 DEGREES OR 30 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

WCB CASE NO. 72-3159

OCTOBER 29, 1974

JOHN SPERRY, CLAIMANT
GILDEA, SPEER AND MC GAVIC,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH GRANTED CLAIMANT ADDITIONAL COMPENSATION EQUAL TO 22.5 DEGREES PARTIAL LOSS OF THE RIGHT LEG AND ADDITIONAL COMPENSATION EQUAL TO 80 DEGREES PERMANENT PARTIAL DISABILITY FOR UNSCHEDULED PELVIS, BACK AND URINARY SYSTEM DISABILITIES.

CLAIMANT WAS A 20 YEAR OLD CHOKER SETTER WHO SUFFERED INJURIES TO HIS BACK, PELVIS, RIGHT HIP AND RIGHT KNEE WHEN A LOG ROLLED OVER ON HIM ON SEPTEMBER 24, 1970. ON APRIL 15, 1971, DR. PHIFER PERFORMED AN ARTHROTOMY AND MEDIAL MENISCECTOMY OF THE RIGHT KNEE. EARLY IN 1973, CLAIMANT WAS REFERRED TO DR. LITIN, A UROLOGIST, BECAUSE OF URINARY FREQUENCY. DR. LITIN FELT IT WAS LIKELY THIS PROBLEM WAS CAUSALLY RELATED TO THE ACCIDENT.

AT THE HEARING CLAIMANT TESTIFIED TO RESIDUAL WEAKNESS, SORENESS AND INSTABILITY OF HIS RIGHT KNEE AND BACK PAIN WHEN STANDING, SITTING OR LIFTING AS WELL AS CONTINUED

URINARY PROBLEMS. CLAIMANT'S EMPLOYER TESTIFIED AT THE HEARING THAT CLAIMANT WAS A GOOD HARD WORKER, FAST AND AGGRESSIVE. HE WAS BEING GROOMED TO LEARN THE ENTIRE LOGGING BUSINESS WHICH WOULD ULTIMATELY RESULT IN A WELL PAYING LIVELIHOOD FOR HIM. CLAIMANT'S PHYSICAL DISABILITY NOW PRECLUDES HIM FROM THIS OPPORTUNITY.

CLAIMANT IS NOW EMPLOYED AS A GRAVEL TRUCK DRIVER ON SHORT HAULS WHICH ENABLE HIM TO STOP OFTEN, MOVE AROUND AND URINATE FREQUENTLY.

THE FUND SUGGESTS CLAIMANT'S CREDIBILITY IS NOT ENTITLED TO FULL CREDIT. THE REFEREE SPECIFICALLY FOUND CLAIMANT CREDIBLE AND OUR REVIEW GIVES US NO SUBSTANTIAL REASON TO QUESTION HIS ASSESSMENT. WE ALSO CONCUR WITH THE FINDING OF THE REFEREE THAT CLAIMANT IS ENTITLED TO AN ADDITIONAL AWARD OF 22.5 DEGREES, MAKING A TOTAL OF 37.5 DEGREES FOR PARTIAL LOSS OF THE RIGHT LEG, AND AN ADDITIONAL AWARD OF 80 DEGREES FOR A TOTAL OF 160 DEGREES FOR UNSCHEDULED DISABILITY. THE REFEREE'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 6, 1974 IS HEREBY AFFIRMED.

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

WCB CASE NO. 73-2804

OCTOBER 29, 1974

DAVID LENTZ, CLAIMANT
PETER KELSAY, CLAIMANT'S ATTY.
DEPARTMENT 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 SUSTAINED THE STATE ACCIDENT INSURANCE FUND'S DENIAL OF HIS CLAIM FOR COMPENSATION.

CLAIMANT, AN ATTORNEY, ALLEGES HE SUSTAINED A COMPENSABLE INJURY JUNE 1, 1973, WHILE CLEANING OUT A COPY MACHINE WHICH HAD BECOME PLUGGED WITH PAPERS. DR. ROGER HALLIN, WHO SPECIALIZED IN THORACIC AND CARDIOVASCULAR SURGERY, DIAGNOSED THROMBOPHLEBITIS. DR. HALLIN NOTED CLAIMANT WAS AT WORK WHEN THE EPISODE OCCURRED, BUT DID NOT RELATE THE EPISODE TO THE WORK ACTIVITY. DR. HALLIN ALSO NOTED, BY HISTORY, CLAIMANT HAD AN INITIAL ONSET OF THROMBOPHLEBITIS IN DECEMBER, 1972.

THERE IS NO MEDICAL EVIDENCE THAT CLAIMANT'S THROMBOPHLEBITIS WAS CAUSED BY WORK ACTIVITY, NOR WAS THERE EVIDENCE OF AGGRAVATION OF A PREEXISTING CONDITION. THE REFEREE FOUND THE ACCIDENT MIGHT BE CONSTRUED AS ARISING DURING THE COURSE OF CLAIMANT'S EMPLOYMENT, BUT DID NOT ARISE OUT OF THE EMPLOYMENT. FOR THAT REASON, THE REFEREE CONCLUDED

THE STATE ACCIDENT INSURANCE FUND'S DENIAL WAS PROPER, AND THE BOARD, ON REVIEW, CONCURS WITH THIS FINDING.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 10, 1974, IS AFFIRMED.

WCB CASE NO. 74-1934 OCTOBER 29, 1974

RAYMOND L. HORWEDEL, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER DATED JULY 17, 1974, ORDERING THE FUND TO PAY CLAIMANT ADDITIONAL COMPENSATION PLUS CERTAIN PENALTIES AND ATTORNEY'S FEES BASED ON HIS FINDING THAT THE FUND UNREASONABLY FAILED TO FULFILL ITS STATUTORY OBLIGATIONS TO THE CLAIMANT.

WE HAVE REVIEWED THE RECORD AND THE BRIEFS OF THE PARTIES SUBMITTED ON APPEAL AND, HAVING DONE SO, CONCLUDE THE REFEREE'S ORDER SHOULD BE ADOPTED AND AFFIRMED AS THE ORDER OF THE BOARD.

ORDER

THE ORDER OF THE REFEREE DATED JULY 17, 1974 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 350 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-720 OCTOBER 29, 1974

PATRICK MANDELL, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
KEITH D. SKELTON, 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 A DETERMINATION ORDER AWARDED CLAIMANT NO PERMANENT PARTIAL DISABILITY AWARD FOR HIS INDUSTRIAL INJURY OF MARCH 10, 1972.

CLAIMANT WAS EMPLOYED AT BURKLAND LUMBER COMPANY AND ON THAT DATE SUSTAINED A SPRAIN OF THE RIGHT SHOULDER. HE RECEIVED MEDICAL TREATMENT INCLUDING THERAPY AND SHOTS. HOWEVER, ANY DEGREE OF IMPROVEMENT HAS BEEN MINIMAL BECAUSE

OF POSTURAL PROBLEMS WHICH ARE THE RESULT OF OBESITY AND THE NORMAL AGING PROCESSES. CLAIMANT HAS WORKED ONLY A FEW DAYS IN THE PAST TWO YEARS DUE PRIMARILY TO A LACK OF MOTIVATION RATHER THAN PHYSICAL INABILITY.

GIVING CREDENCE TO THE REFEREE'S PERSONAL OBSERVATION OF THE CLAIMANT, THE BOARD WOULD ADOPT HIS ORDER AS THE ORDER OF THE BOARD.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 20, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 73-3595

OCTOBER 30, 1974

MIKE PALODICHUK, CLAIMANT
NIKOLAUS ALBRECHT, 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 REFEREE'S ORDER WHICH INCREASED CLAIMANT'S AWARD FOR PERMANENT PARTIAL DISABILITY FOR UNSCHEDULED NECK DISABILITY FROM 80 DEGREES TO 240 DEGREES.

CLAIMANT WAS A 46 YEAR OLD PRINTER WHEN HE INJURED HIS NECK JANUARY 23, 1970. HIS CLAIM WAS ACCEPTED, CLOSED AND LATER REOPENED FOR MEDICAL TREATMENT OF A HERNIATED CERVICAL DISC. CLAIMANT RECEIVED A TOTAL AWARD OF 80 DEGREES UNSCHEDULED NECK DISABILITY PURSUANT TO ORS 656.268.

THE REFEREE FOUND THE COMBINED EFFECTS OF CLAIMANT'S PHYSICAL AND PSYCHOLOGICAL DISABILITIES, CONSIDERED IN LIGHT OF HIS AGE, EDUCATION, INTELLECT, WORK EXPERIENCE AND ADAPTABILITY, HAD PRODUCED UNSCHEDULED DISABILITY EQUAL TO 240 DEGREES AND INCREASED CLAIMANT'S AWARD ACCORDINGLY.

ALTHOUGH THE STATE ACCIDENT INSURANCE FUND REQUESTED REVIEW, THE BOARD HAS BEFORE IT ONLY THE OPINION AND ORDER OF THE REFEREE AND THE RECORD MADE AT THE HEARING, SINCE NEITHER PARTY HAS SUBMITTED A BRIEF. THOUGH THE LAW DOES NOT REQUIRE A BRIEF, A PARTY WHO SIMPLY REQUESTS A REVIEW WITHOUT SOME INDICATION OF HIS BASIS FOR DISSATISFACTION DOES A DISSERVICE TO HIMSELF AS WELL AS CREATING AN IMPOSITION UPON THE REVIEWING AGENCY.

WE HAVE NEVERTHELESS REVIEWED THE RECORD DE NOVO. OUR REVIEW LEADS US TO CONCLUDE THAT CLAIMANT IS ENTITLED TO THE AWARD OF 240 DEGREES UNSCHEDULED DISABILITY. THE REFEREE'S ORDER WILL THEREFORE BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 18, 1974 IS HEREBY AFFIRMED.

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

WCB CASE NO. 73-3690

OCTOBER 30, 1974

ESTHER DIAMOND, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF
CROSS-APPEAL BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH GRANTED THE CLAIMANT A PERMANENT PARTIAL DISABILITY AWARD OF 192 DEGREES OR 60 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY. CLAIMANT HAS CROSS-APPEALED CONTENDING SHE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT, WHO WAS 50 YEARS OF AGE AT THE TIME OF HEARING, HAS BEEN EMPLOYED AS A SECRETARY OR BOOKKEEPER SINCE HIGH SCHOOL - THE PAST EIGHT YEARS AT THE OREGON MEDICAL SCHOOL. DURING 1967 CLAIMANT BEGAN HAVING RECURRENT LOW BACK PAIN, DIAGNOSED AS DEGENERATIVE DISC DISEASE. BY A SECOND DETERMINATION ORDER, SHE WAS AWARDED PERMANENT PARTIAL DISABILITY OF 5 PERCENT OF THE MAXIMUM ALLOWABLE EQUAL TO 16 DEGREES.

CLAIMANT STOPPED WORKING DURING DECEMBER, 1970. SHE TESTIFIED SHE HAS NOT GIVEN UP HOPE AND DOES NOT LIKE TO THINK SHE IS RETIRED. IT APPEARS CLAIMANT WOULD RETURN TO WORK WERE IT NOT FOR THE SEVERE PAIN ASSOCIATED WITH DEGENERATIVE ARTHRITIS FOR WHICH THERE IS NO KNOWN TREATMENT.

THE BOARD AGREES WITH THE REFEREE THAT CLAIMANT HAS PERMANENT DISABILITY AND THAT THAT DISABILITY IS IN EXCESS OF THE 5 PERCENT (16 DEGREES) INITIALLY AWARDED. A CAREFUL CONSIDERATION OF THE MEDICAL EVIDENCE, HOWEVER, PERSUADES THE BOARD THE CLAIMANT'S PERMANENT DISABILITY ATTRIBUTABLE TO HER INJURY DOES NOT EXCEED 64 DEGREES OR 20 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

ORDER

THE ORDER OF THE REFEREE IS MODIFIED TO LIMIT THE CLAIMANT'S AWARD OF UNSCHEDULED DISABILITY TO 64 DEGREES OR 20 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

BENJAMIN SORENSON, CLAIMANT
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

PURSUANT TO TWO DETERMINATION ORDERS, THE CLAIMANT IN THIS MATTER HAS RECEIVED A PERMANENT PARTIAL DISABILITY AWARD OF 35 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY. CLAIMANT HAS REQUESTED BOARD REVIEW CONTENDING HE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HIS LOW BACK ON FEBRUARY 18, 1969, WHILE EMPLOYED AT PENDLETON WOOLEN MILLS. HE LOST NO WORK UNTIL MARCH, 1970, WHEN HE WAS HOSPITALIZED AND TREATED CONSERVATIVELY. A MYELOGRAM PERFORMED IN JUNE, 1971, WAS NORMAL.

A DENTAL LAB TECHNICIAN TRAINING PROGRAM WAS COMMENCED IN OCTOBER, 1972. CLAIMANT TERMINATED THE PROGRAM IN MAY, 1973, COMPLAINING HE COULD NOT SIT FOR THE LONG PERIODS OF TIME REQUIRED. CLAIMANT ALSO STATED HE COULD NOT WALK VERY FAR, COULD NOT STAND OR SIT VERY LONG, AND WAS UNABLE TO BEND OR DO ANY LIFTING. HE ALSO TESTIFIED TO RIGHT LEG NUMBNESS, SHAKY HANDS, AND PAIN UNABATED EVEN WITH THE USE OF PAIN MEDICATION.

DR. SMITH AND DR. COTTRELL, BOTH RESPECTED ORTHOPEDISTS, HAVE TESTIFIED THAT CLAIMANT HAS OVERREACTED AND EXAGGERATED HIS SYMPTOMS. THE CLAIMANT'S PROTESTATIONS WITH RESPECT TO LIMITATION OF CAPABILITIES ARE ALSO SOMEWHAT IMPEACHED BY MOTION PICTURE FILMS SHOWING CLAIMANT CAPABLE OF ACTIVITIES BEYOND THE LEVEL HE WOULD HAVE ONE BELIEVE BY HIS TESTIMONY AND HIS HISTORY TO EXAMINING DOCTORS.

THE BOARD CONCURS WITH THE REFEREE THAT THE GREAT WEIGHT OF THE EVIDENCE ESTABLISHES THAT CLAIMANT IS ONLY PARTIALLY DISABLED. THE AWARD OF 35 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY ADEQUATELY COMPENSATES CLAIMANT.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 12, 1974, IS AFFIRMED.

DOUGLAS JANSEN, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER GRANTING CLAIMANT AN INCREASE FROM 10 PERCENT TO 40 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED DISABILITY.

CLAIMANT HAS WORKED PRIMARILY AS A LINOLEUM MECHANIC WHEN, IN APRIL OF 1973, HE BEGAN HAVING PROBLEMS WITH HIS RIGHT ARM OR SHOULDER. DR. BERG DIAGNOSED A CAPSULITIS AND SUBACROMIAL BURSTITIS OF THE RIGHT SHOULDER. THE DETERMINATION ORDER OF JANUARY 8, 1974, GRANTED PERMANENT PARTIAL DISABILITY OF 10 PERCENT (32 DEGREES) FOR UNSCHEDULED DISABILITY.

CLAIMANT'S SYMPTOMS HAVE CONTINUED AND PAIN NOW EXTENDS DOWN THE UNDER SIDE OF THE ARM AND INTO THE CHEST WALL. CLAIMANT IS PRECLUDED FROM ENGAGING IN ALL ACTIVITIES REQUIRING STRENUOUS USE OF HIS RIGHT ARM.

OUR REVIEW OF THE EVIDENCE LEADS US TO CONCUR WITH THE REFEREE'S FINDING THAT CLAIMANT HAS SUSTAINED PERMANENT DISABILITY TO HIS RIGHT SHOULDER EQUAL TO 40 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED DISABILITY.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 10, 1974 IS HEREBY AFFIRMED.

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

WCB CASE NO. 73-4101

OCTOBER 30, 1974

THOMAS W. KERR, CLAIMANT
WILLNER, BENNETT, MEYERS, RIGGS
AND SKARSTAD, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A DENIAL BY THE STATE ACCIDENT INSURANCE FUND OF A CLAIM OF OCCUPATIONAL DISEASE FOR HEARING LOSS. AT HEARING, THE REFEREE AFFIRMED THE FUND'S DENIAL AND CLAIMANT HAS REQUESTED BOARD REVIEW.

CLAIMANT IS A 60 YEAR OLD WORKMAN EMPLOYED AT THE WEST LINN CROWN ZELLERBACH PAPER MILL FOR APPROXIMATELY 21 YEARS. THE MILL HAS ALWAYS BEEN RELATIVELY NOISY BUT A RECENT SURVEY INDICATED NO READINGS OVER 90 DECIBELS. THIS NOISE LEVEL HAS APPARENTLY BEEN RELATIVELY CONSTANT OVER THE YEARS.

CLAIMANT FIRST NOTICED THE ONSET OF HEARING PROBLEMS APPROXIMATELY 15 YEARS AGO BUT DID NOT CONSULT A HEARING SPECIALIST UNTIL JANUARY, 1966, WHEN HE SAW DR. LEWIS JORDAN.

AUDIOMETRIC TESTS REVEALED NEARLY NORMAL HEARING IN THE RIGHT EAR BUT A MODERATE SENSORI-NEURAL LOSS ON THE LEFT WHICH DR. JORDAN FELT 'COULD VERY WELL BE DUE TO OCCUPATIONAL NOISE EXPOSURE.' (JOINT EXHIBIT 13)

AFTER CLAIMANT FILED HIS WORKMEN'S COMPENSATION CLAIM IN APRIL, 1973, HE WAS SEEN BY DR. DAVID DE WEESE WHO ALSO NOTED THE DIFFERENCE IN LOSS BETWEEN THE LEFT EAR AND THE RIGHT.

ON AUGUST 23, 1973, DR. DE WEESE RENDERED A WRITTEN REPORT TO THE STATE ACCIDENT INSURANCE FUND INDICATING THAT, AFTER BALANCING CLAIMANT'S HEARING LOSS FACTORS CHARACTERISTIC OF ACOUSTIC TRAUMA WITH THOSE UNCHARACTERISTIC, HE FELT CLAIMANT'S HEARING PROBLEM WAS, ON BALANCE, PROBABLY JOB-CONNECTED.

AFTER DR. DE WEESE WAS SUPPLIED EVIDENCE THAT CLAIMANT WAS NOT EXPOSED TO MORE THAN 90 DECIBELS ON THE JOB HE REITERATED HIS PREVIOUS COMMENTS SUGGESTING CAUSAL CONNECTION BUT WENT ON TO ADMIT THAT HE COULD NOT PROVE IT ONE WAY OR THE OTHER. OTHER COMMENT INDICATED HE WAS UNDER THE IMPRESSION THAT UNLESS A 90 DECIBEL PLUS NOISE LEVEL WAS DEMONSTRATED, CLAIMANT'S CLAIM WAS PROBABLY NOT COMPENSABLE. SUTH IS NOT THE LAW. AS CLAIMANT'S COUNSEL STATED IN HIS BRIEF, OSHA STANDARDS ADOPTED BY OREGON, DO NOT PURPORT TO ESTABLISH A MEDICAL STANDARD FROM WHICH IT CAN AUTOMATICALLY BE SAID THAT NO ACOUSTIC TRAUMA OCCURS WHEN THE NOISE LEVEL IS LESS THAN 90 DECIBELS.

IT APPEARS TO THE BOARD THAT THE REFEREE MISCONSTRUED THE REAL MEANING OF DR. DE WEESE'S LAST LETTER TO THE FUND. WE DISAGREE WITH THE REFEREE'S CONCLUSION THAT CLAIMANT HAS FAILED TO SHOW BY A PREPONDERANCE OF THE EVIDENCE THAT THE HEARING LOSS AROSE FROM HIS EMPLOYMENT.

ON REVIEW, WE CONCUR WITH THE FINDING OF THE REFEREE WITH RESPECT TO THE ISSUE OF TIMELINESS, BUT WOULD REVERSE THE REFEREE'S ORDER CONCERNING COMPENSABILITY. THE BOARD CONCLUDES CLAIMANT HAS SUSTAINED HIS BURDEN OF PROOF OF CAUSATION BETWEEN THE HEARING LOSS AND HIS EMPLOYMENT.

ORDER

THE STATE ACCIDENT INSURANCE FUND IS HEREBY ORDERED TO ACCEPT CLAIMANT'S CLAIM FOR HEARING LOSS AND PAY BENEFITS ACCORDING TO LAW.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 900 DOLLARS FOR SERVICES AT HEARING AND ON BOARD REVIEW.

WCB CASE NO. 73-3806

OCTOBER 31, 1974

MELVIN OLSEN, CLAIMANT
DON TODOROVICH, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF.

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH INCREASED CLAIMANT'S PERMANENT PARTIAL DISABILITY FROM 15 PERCENT (48 DEGREES) MADE BY DETERMINATION ORDER TO 40 PERCENT (128 DEGREES) OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT SUFFERED A COMPENSABLE INJURY FEBRUARY 7, 1972, WHEN HE WRENCHED HIS BACK AND LEFT HIP TRYING TO RELEASE HIS LEFT LEG FROM BENEATH A LOG. DR. CHEN TSAI PERFORMED A LEFT L4-5 LAMINOTOMY AND DISCOIDECTOMY AND DECOMPRESSION OF THE S-1 NERVE ROOT. DR. TSAI ADVISED CLAIMANT NOT TO RETURN TO HIS FORMER OCCUPATION OF BUCKING LOGS.

THE RECORD INDICATES CLAIMANT HAS TRIED VARIOUS JOBS AND THE ONLY JOB WITHIN HIS PHYSICAL CAPABILITIES APPEARS TO BE A CLEANUP TYPE JOB. THIS FACTOR HAS RESULTED IN CLAIMANT'S EARNINGS DIMINISHING FROM 70 DOLLARS PER DAY FOR BUCKING TO 4 DOLLARS 10 CENTS PER HOUR FOR A CLEANUP JOB.

CLAIMANT APPEARED TO THE REFEREE TO BE A HIGHLY MOTIVATED INDIVIDUAL AND SAW NO PROBABLE IMPROVEMENT IN HIS FUTURE EARNING CAPACITY. BASED ON THESE FACTS, THE REFEREE GRANTED CLAIMANT AN ADDITIONAL PERMANENT PARTIAL DISABILITY AWARD OF 25 PERCENT, MAKING A TOTAL OF 40 PERCENT (128 DEGREES) OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED DISABILITY.

THE BOARD, ON REVIEW, AFFIRMS AND ADOPTS THE ORDER OF THE REFEREE AS THE ORDER OF THE BOARD.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 28, 1974 IS HEREBY AFFIRMED.

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

WCB CASE NO. 73-2924

OCTOBER 31, 1974

WILLARD M. CHARLES, CLAIMANT
GILDEA AND MC GAVIC, CLAIMANT'S ATTY.S.
DEPARTMENT 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 A DETERMINATION ORDER AWARDING 10 PERCENT UNSCHEDULED DISABILITY EQUAL TO 32 DEGREES.

CLAIMANT SUSTAINED A COMPENSABLE INJURY FROM AN EXPOSURE TO NOXIOUS RESPIRATORY IRRITANTS ON JANUARY 31, 1973. THIS EXPOSURE PRODUCED A TEMPORARY EXACERBATION OF A PREEXISTING BRONCHIAL CONDITION. THE CASE RESTS ON THE EXPERT MEDICAL OPINION OF V. C. VITUMS, M.D., A RESPIRATORY DISEASE SPECIALIST, WHO FOUND THERE WAS NO PERMANENT DISABILITY TO CLAIMANT'S LUNGS AS A RESULT OF THE EXPOSURE.

THE REFEREE FOUND THE AWARD MADE BY THE DETERMINATION ORDER CORRECTLY COMPENSATED CLAIMANT FOR THE INDUSTRIAL INJURY AND THE BOARD, ON REVIEW, CONCURS WITH THIS FINDING. THE BOARD AFFIRMS AND ADOPTS THE REFEREE'S ORDER AS THE ORDER OF THE BOARD.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 10, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 73-3507

OCTOBER 31, 1974

JAMES D. MORLEY, CLAIMANT
CLARK, MARSH AND LINDAUER,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
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 REQUIRED THE FUND TO ACCEPT CLAIMANT'S CLAIM FOR COMPENSATION FOR AN EPISODE OF PAROXYSMAL ATRIAL TACHYCARDIA.

CLAIMANT CONTENDS THAT WORK-RELATED STRESS PRODUCED OR MATERIALLY CONTRIBUTED TO HIS SEPTEMBER 10, 1973 ATTACK OF TACHYCARDIA, WHILE HE WAS EMPLOYED AS A CONSTRUCTION MANAGER FOR BATTLECREEK COMMONS.

CLAIMANT HAD A HISTORY OF PAROXYSMAL ATRIAL TACHYCARDIA AND HAS BEEN TREATED FOR IT BY HIS FAMILY PHYSICIAN, DR. CASTERLINE BEFORE THE EPISODE IN QUESTION. THE ONSET OF SYMPTOMS OF SEPTEMBER 10 AND 11 WERE BELIEVED BY THAT DOCTOR TO BE RELATED TO THE EMOTIONAL STRESS UNDER WHICH CLAIMANT WAS WORKING AT THAT TIME. WHEN CLAIMANT SUFFERED ANOTHER ATTACK IN JUNE, 1974, DURING DR. CASTERLINE'S ABSENCE, CLAIMANT WAS SEEN BY DR. DUANE F. TAYLOR, WHO CONCURRED WITH THIS OPINION. THE OPINION OF THESE TWO PHYSICIANS WAS IN DIRECT OPPOSITION TO THE OPINION OF DR. CHARLES S. CAMPBELL, WHO TESTIFIED THAT AT NO TIME WOULD STRESS CAUSE ANY PAROXYSMAL ATRIAL TACHYCARDIA.

THE BOARD DOES NOT CONCUR WITH THE REFEREE'S APPLICATION OF THE COURT'S HOLDING IN CLAYTON V. SCD, 253 OR 397 (1969), TO THIS CASE. THE CLAYTON CASE INVOLVED A MYOCARDIAL INFARCTION. THE COURT'S STATEMENT - 'WE HAVE CHOSEN TO REJECT THE VIEW THAT EXERTION OR STRESS CAN NEVER BE A CAUSATIVE FACTOR IN THESE CASES,' IS A MISAPPLICATION TO THE CASE AT HAND SINCE MR. MORLEY DID NOT SUFFER A MYOCARDIAL INFARCTION. (EMPHASIS SUPPLIED)

ALTHOUGH DRs. CASTERLINE AND TAYLOR ARE EXCELLENT PHYSICIANS WE ARE MORE PERSUADED BY DR. CHARLES S. CAMPBELL'S OPINION THAT THERE WAS NO CONNECTION BETWEEN CLAIMANT'S JOB STRESS AND TACHYCARDIA AND HIS REASONS FOR THE OPINION.

FOR THE REASONS STATED, THE BOARD FINDS THAT CLAIMANT HAS NOT SUSTAINED THE BURDEN OF PROVING COMPENSABILITY OF HIS CLAIM.

ORDER

THE ORDER OF THE REFEREE DATED JULY 9, 1974, IS HEREBY REVERSED.

WCB CASE NO. 74-36

OCTOBER 9, 1974

MARJORIE JONES, CLAIMANT
GRANT AND FERGUSON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES THE EXTENT OF PERMANENT DISABILITY. CLAIMANT RECEIVED A BACK INJURY OCTOBER 6, 1971. THE DETERMINATION ORDER DATED APRIL 18, 1973 AWARDED CLAIMANT TEMPORARY TOTAL DISABILITY TO MARCH 24, 1973, PLUS 10 PERCENT (32 DEGREES) UNSCHEDULED PERMANENT PARTIAL DISABILITY. A DETERMINATION ORDER DATED DECEMBER 21, 1973 AWARDED CLAIMANT TEMPORARY TOTAL DISABILITY FROM JUNE 20, 1973 TO NOVEMBER 11, 1973, PLUS AN ADDITIONAL 10 PERCENT (32 DEGREES) PERMANENT PARTIAL DISABILITY. THE REFEREE AWARDED CLAIMANT PERMANENT TOTAL DISABILITY. THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW CONTENDING CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED.

CLAIMANT, A 55 YEAR OLD MARRIED SALESLADY, RECEIVED CONSERVATIVE CARE FOR THE LUMBOSACRAL SPRAIN FROM OCTOBER, 1971 TO JULY, 1973. AFTER BACK SURGERY IN JULY, 1973, MEDICAL REPORTS IN THE RECORD INDICATE CLAIMANT'S LOSS OF FUNCTION OF THE LOW BACK WAS MILD TO MODERATE. CLAIMANT'S PSYCHOPATHOLOGY IS MODERATELY RELATED TO THE INDUSTRIAL INJURY. CLAIMANT'S PSYCHOLOGICAL PROGNOSIS FOR RESTORATION TO GAINFUL EMPLOYMENT IS GOOD.

ON DE NOVO REVIEW, THE BOARD FINDS THAT CLAIMANT IS NOT PRIMA FACIE PERMANENTLY TOTALLY DISABLED. REVIEW OF THE ENTIRE RECORD CONVINCES THE BOARD THAT CLAIMANT'S MOTIVATION TO RETURN TO GAINFUL EMPLOYMENT IS QUESTIONABLE.

THE BOARD CONCLUDES THAT AN AWARD OF 160 DEGREES OR 50 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED PERMANENT PARTIAL DISABILITY WILL APPROPRIATELY COMPENSATE THE CLAIMANT CONSIDERING ALL OF THE FACTORS INVOLVED.

ORDER

THE ORDER OF THE REFEREE DATED MAY 9, 1974 IS HEREBY REVERSED AND CLAIMANT IS AWARDED A TOTAL OF 50 PERCENT (160 DEGREES)

UNSCHEDULED PERMANENT PARTIAL DISABILITY, THIS IS AN INCREASE OF 30 PERCENT (96 DEGREES) OVER THE PREVIOUS PERMANENT PARTIAL DISABILITY AWARD.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE 25 PERCENT OF THE INCREASE IN COMPENSATION ASSOCIATED WITH THIS AWARD WHICH SHALL NOT EXCEED 1,500 DOLLARS.

WCB CASE NO. 73-2957

OCTOBER 9, 1974

ARNOLD G. BARTLEY, CLAIMANT
COONS AND COLE, CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A DENIED AGGRAVATION CLAIM AND FURTHER MEDICAL CARE UNDER ORS 656.245. THE DETERMINATION ORDER OF OCTOBER 18, 1972, AWARDED CLAIMANT 20 PERCENT (64 DEGREES) LOW BACK DISABILITY. THIS WAS LATER INCREASED BY WAY OF A STIPULATION TO A TOTAL OF 30 PERCENT (96 DEGREES) FOR LOW BACK DISABILITY. CLAIMANT THEREAFTER CLAIMED AN AGGRAVATION OF HIS CONDITION. THE STATE ACCIDENT INSURANCE FUND DENIED CLAIMANT'S CLAIM FOR AGGRAVATION OR FOR FURTHER MEDICAL CARE UNDER ORS 656.245 AND THE REFEREE AFFIRMED THE DENIAL.

CLAIMANT, A 34 YEAR OLD TRUCK DRIVER, RECEIVED A BACK INJURY OCTOBER 12, 1971. AFTER SURGERY AND RECUPERATION HE WENT BACK TO TRUCK DRIVING. CLAIMANT'S BRIEF AGREES THAT CLAIMANT'S CONDITION DID NOT ORTHOPEDICALLY, NEUROLOGICALLY, OR SURGICALLY BECOME AGGRAVATED. THE CLAIM IS BASE ON AN ALLEGED AGGRAVATION OF HIS EMOTIONAL HEALTH. THE MEDICAL EVIDENCE AS TO WHETHER OR NOT CLAIMANT'S PRESENT PSYCHOGENIC PROBLEMS ARE CONNECTED WITH THE INDUSTRIAL INJURY IS CONFLICTING.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE FINDING AND OPINION OF THE REFEREE THAT THE CLAIM FOR AGGRAVATION HAD NOT BEEN PROVED AND CONCLUDES THE DENIAL OF THE CLAIM FOR AGGRAVATION SHOULD BE AFFIRMED.

CLAIMANT IS, HOWEVER, IN NEED OF COUNSELING AND THE STATE ACCIDENT INSURANCE FUND SHOULD BE ORDERED TO PAY FOR PSYCHIATRIC COUNSELING UNDER ORS 656.245

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 21, 1974, IS AFFIRMED TO THE EXTENT THAT IT AFFIRMED THE DENIAL OF CLAIMANT'S CLAIM FOR AGGRAVATION.

THE STATE ACCIDENT INSURANCE FUND IS ORDERED TO PAY FOR PSYCHIATRIC COUNSELING UNDER ORS 656.245.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE 25 PERCENT OF THE COST OF SUCH PSYCHIATRIC COUNSELING TO BE COLLECTED DIRECTLY FROM THE CLAIMANT.

WCB CASE NO. 73—1588 JULY 1 1974

JOSEPH REINARZ, CLAIMANT

BAILEY, DOBLIE, CENICEROS AND BRUUN, CALIMANTS ATTN,
DEPARTMENT OF JUSTICE, DEFENSE ATTY,
ORDER ON MOTION

THE STATE ACCIDENT INSURANCE FUND HAS PRESENTED TO THE WORKMEN'S COMPENSATION BOARD A MOTION FOR RECONSIDERATION OF THE BOARD'S ORDER ISSUED JUNE 25, 1974.

THE MATTERS SET FORTH IN THIS REQUEST WERE DULY CONSIDERED BY THE BOARD ON THEIR DE NOVO REVIEW AND, THEREFORE, THE MOTION FOR RECONSIDERATION IS HEREBY DENIED.

WCB CASE NO. 73—1726 AUGUST 6, 1974

CLARA JEAN SCHWERT

COONS, MALAGON AND COLE, ATTORNEY FOR CLAIMANT
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 REFEREE'S ORDER WHICH REQUIRED THE FUND TO ACCEPT CLAIMANT'S CLAIM OF OCCUPATIONAL DISEASE AND PAY COMPENSATION AS PROVIDED BY LAW.

CLAIMANT WAS A 44 YEAR OLD FEMALE WHO HAD WORKED IN THE WOODS FOR MANY YEARS ENGAGED IN LOGGING AND TREE PLANTING. CLAIMANT CONTENDED THAT AS A RESULT OF CONSTANT EXPOSURE TO COLD, WET WEATHER, AND RESTRICTED OPPORTUNITY FOR URINATION, SHE SUFFERED AN AGGRAVATION OF PREEXISTING PYELONEPHRITIS.

SHE FILED A CLAIM FOR OCCUPATIONAL DISEASE ON APRIL 10, 1973 INDICATING HER EXPOSURE HAD BEEN SINCE JUNE 1, 1972. ON MAY 3, 1973 THE FUND DENIED THE CLAIM FOR THE REASON IT WAS NOT AN OCCUPATIONAL DISEASE ARISING OUT OF AND IN THE SCOPE OF EMPLOYMENT.

THE REFEREE'S ORDER AND BRIEFS OF THE PARTIES CLEARLY RECITE THE MEDICAL HISTORY OF THE CLAIM. THE BOARD, ON REVIEW, FINDS THAT THE TESTIMONY OF H. F. ANDERSON, M. D., THE INITIAL TREATING PHYSICIAN, AND THAT OF PERRY KOHAN, M. D., UROLOGIST, SUSTAINS A FINDING OF MEDICAL-CAUSAL RELATIONSHIP BETWEEN CLAIMANT'S OCCUPATION AND THE CONDITION WHICH DEVELOPED.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 8, 1974, IS HEREBY AFFIRMED.

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

TABLE OF CASES

SUBJECT INDEX

VOL. 12

ADMINISTRATIVE RULES

OAR 436-61----- 150

AGGRAVATION

Allowance affirmed: J. Stogsdill-----	194
Allowance affirmed: C. Burnam-----	236
Allowance affirmed: S. Lind-----	264
Ankle denial affirm - said new injury: H. Cavins----	137
Attorney's fees fail where tardy medical information:	
G. Nelson-----	137
Back claim allowed: T. Ranson-----	14
Back flareup: J. Sojka-----	126
Chest pains: C. Pedigo-----	70
Claim denied: N. Roth-----	22
Credibility given the nod: J. Yantis-----	140
Denial affirmed: L. Haynes-----	45
Denial affirmed: E. Weaver-----	201
Denied for second time: M. Campbell-----	19
Dry claim: C. Long-----	30
Finding of premature closing may include ruling re-	
garding commencement of aggravation period:	
J. Blumberg-----	199
Knee claim where arthritis: A. Matherly-----	239
Laminectomy on own motion: B. Fremersdorf-----	102
Leg paid claim: E. Williams-----	173
Limitation period readjusted: H. Briggs-----	152
Medical no good: L. Kolaks-----	141
Medical okay: H. Liggett-----	143
Medical adequate: K. Eckley-----	220
Medical sufficient: T. Toureen-----	225
Medical sufficient: R. Fout-----	226
Medicals ruled inadequate: C. Long-----	30
Medicals no good: A. Rosenstiel-----	34
Medicals no good: R. Kylmanen-----	226
Medicals defective for want of key words: D. Szabo-	229
Neck: 15% increase where can be watchman: C. Baker--	87
New injury: R. Blair-----	80
New injury or: F. Radie-----	216
No more medicals after close of hearing: P. Morgan---	227
Own motion on 1942 knee injury: L. Kellogg-----	35
Own motion back claim: F. Dalton-----	191
Partial denial killed aggravation: D. Scoville-----	205
Premature closing may not start 5 years: L. Dalton---	3
Psychiatric counseling allowed: A. Bartley-----	288
Psychologist's report is not physician's report:	
E. Grace-----	206

Recurring neck pain: E. Walter-----	203
Reopening may not extend aggravation rights: T. Cody---	104
Reversed for deficient handling: M. Harness-----	88
Ruptured disc: M. Mitchell-----	184
Second laminectomy: W. Huston-----	12
Sore foot after kicking cat new injury: F. Sampley----	36
Sore neck not either aggravation or new injury:	
A. Vaughan-----	210
Time period: Read this case: T. Cody-----	104
Time period: Commencement of running is justifiable	
issue: M. Gibson-----	108

AOE/COE

Allowance affirmed: D. Davis-----	201
Alzheimer's Pick's disease: H. Connaughy -----	58
Aneurysm, abdominal where back claim: R. Vester-----	135
Arthritis claim successful: G. Downey-----	150
Attorney has claim for phlebitis: D. Lentz-----	278
Auto accident: L. Wicklund-----	163
Back claim where gradual onset: O. Fitzgibbons-----	23
Back claim allowance affirmed: C. Davis-----	68
Back claim where six recent auto accidents: E. Mosley--	68
Back and hernia claim allowance affirmed where	
credibility is issue: R. Horwedel-----	114
Back denial overturned: M. Kane-----	146
Back claim where no traumatic injury: M. Manousos-----	178
Back claim not related to eye injury: S. Wallis-----	183
Back claim to log truck driver: L. Silvey-----	190
Back claim fails: L. Bachmann-----	195
Back claimant disbelieved: R. Martin-----	270
Bad leg caused fall which hurt back: M. Lapin-----	118
Cardiovascular disease: D. Herman-----	158
Chest pains related: C. Pedigo-----	70
Chiropractic treatments: S. Nelson-----	128
Consequential fall hurt head and neck: R. Davis-----	132
Corroboration not necessary: V. Harris-----	85
Credibility main issue: H. Casey-----	92
Credibility left to hearing officer: L. George-----	120
Denial unreasonable: C. Yancey-----	159
Denial affirmed: J. Pike-----	161
Denial unreasonable: G. Howard-----	175
Denial affirmed: G. Poirier-----	207
Eleven year delay in filing claim excessive: D. Nelson-	217
Employee or independent contractor: D. Perry-----	186
Fainting spells: R. Russell-----	57
Fall at home: R. Crandall-----	85
Foot denial affirmed: J. Blumberg-----	169
Ganglion cyst on wrist: J. Nelson-----	95
Going and coming: G. Gumbrecht-----	162
Greek painter: N. Seriganis-----	44
Headache not related to arm: D. Gore-----	116
Hearing loss where successive employers: R. Flick-----	107

Hearing loss claim fails: R. Wright-----	134
Hearing claim wins: C. Mack-----	266
Hearing loss claim for 21 years in paper mill: T. Kerr-----	283
Heart seizures: A. Davis-----	46
Heart/lung condition to fireman: R. Wirkkunen -----	65
Heart attack at city council meeting: H. Karns-----	133
Heart attack to truck driver: W. Ganong-----	167
Heart claim allowed: A. Bock-----	169
Heart claim: M. Allen-----	178
Heart claim of traveling salesman: D. Johnson-----	189
Heart claim to fireman: H. Davis-----	209
Heart attack while installing tire chains: E. Herrmann-----	213
Heart claim where died on job: H. Brown-----	242
Heart denial unreasonable: O. Burster-----	245
Heart allowance affirmed: L. Cole-----	261
Hernia claim allowed: G. Rogers -----	103
Incidental back complaint appearing 30 days later:	
H. Kelley-----	259
Liver trouble associated to hernia: H. Gouldin-----	252
Logger's heart attack: E. Fields-----	8
Lung disease by dirt and smoke: W. Prideaux-----	96
Medical testimony of positive nature not required:	
J. Nelson-----	95
Mononucleosis claim to deputy sheriff: G. Muncy-----	9
Neck & Head: 48° for headache: C. Burress-----	134
Osteoporosis claim: J. Reinarz-----	66
Own motion on 1959 back claim: W. Lish-----	127
Paroxysmal Atrial Tachycardia not stress related:	
J. Morley-----	286
Parking lot fall: B. Rivera-----	144
Partial denial affirmed: O. Johnston-----	91
Partial denial of surgery overturned: K. Wolcott-----	273
Progressive back disease: J. Lundberg-----	138
Psychological problems not related: M. Webster-----	174
Pyelonephritis: C. Schwert-----	289
Recurring back injuries over many years: F. Radie-----	216
Six versions of dermatitis claim are too many: L. Elkin-----	53
Sore knees on ex-athlete: K. Eisenlohr-----	40
Sore testicle: M. Desmond-----	49
Sore feet: L. Terrell-----	275
Stroke seven hours after excitement: E. Mackey-----	155
Suicide: G. Puckett-----	20
Tennis elbow: T. Warren-----	18
Thrombophlebitis of left knee: H. Zearing-----	24
Ulcer after back injury: R. Longhofer-----	156
Washington work exempt: B. Howard-----	259

COMPLIANCE

Application in the mail: N. Reiling-----	139
Painting contractor stuck: N. Seriganis-----	44
Washington employer at Trojan: W. Reynolds-----	177
Washington workman: B. Howard-----	259
Written subcontract stood up: J.Houston-----	33

EMPLOYEE OR INDEPENDENT CONTRACTOR

Written agreement providing contractor status upheld:
R. Ward----- 11

HEART ATTACK

City council meeting: H. Karns----- 133
Logger age 64: E. Fields----- 8

INSURANCE, WHICH CARRIER

Interlocutory decision sought: J. Barrett----- 112

JURISDICTION

Back claim reopened on own motion: D. Fulton----- 255
Own motion denied on 1959 injury: E. Tincknell----- 20
Own motion termination of total disability: G. Roth---- 26
Own motion denied: F. Smith----- 90
Own motion back claim: F. Dalton----- 191
Own motion refused: K. Murrell----- 232
Own motion reopening: H. Strong----- 271
Reconsideration of own motion: W. Puzio----- 233
Shoulder injury of 1959: W. Puzio----- 42
Surgery for 1961 knee injury: G. Ellis----- 191

MEDICAL REPORTS

Aggravation claim: H. Liggett----- 143
Day of hearing report admitted where employer knew it
was coming and had agreed to pay for it: G. Downey 150
Mail order medical from California doctor should not have
been admitted: G. Downey----- 150
Not necessary for consequential injury: R. Davis----- 132
Psychologist is not physician: E. Grace----- 206

MEDICAL SERVICES

Chiropractic treatments: S. Nelson----- 128
Fee for ORS 656.245 medical: H. Unger----- 164
Treatment or evidence creating: P. Edwards----- 211

NOTICE OF INJURY

Claim filed two years late by doctor's employee:
B. Rivera----- 144
Hearing claim: R. Flick----- 107
Late filing allowed: R. Horwedel----- 114
Notice of heart attack but not claim: H. Sherman----- 173
Occupational disease claim: W. Hurst----- 147
Occupational disease claim timely: D. Herman----- 158
Thirty-four day claim: G. Rogers----- 103

OCCUPATIONAL DISEASE

Amputation because of diabetes: D. Johnson-----	267
Hearing loss: Read this one: O. Privette-----	253
Hearing claim wins: C. Mack-----	266
Heart disease: D. Herman-----	158
Lung problem of heavy smoker: Buchanan-----	55
Lungs in plywood worker: C. Morgan-----	117
Medical Board misinstructed: P. Brauer-----	109
Mononucleosis: G. Muncy-----	9
Thrombophlebitis of left knee: H. Zearing-----	24
Penalty allowed: J. Lundberg-----	138
Progressive back condition: J. Lundberg-----	138
Pyelonephritis: C. Schwert-----	289
Vertebral Epiphysitis: R. Williams-----	73

PENALTIES AND FEES

Affirmed where credibility is issue: L. Hickman-----	222
Aggravation fee denied where medicals not given to fund until nearly time of hearing: G. Nelson-----	137
Allowed for illegal offset: R. Hindman-----	23
Continued denial of heart claim was unreasonable: O. Burster-----	245
Delay permissible in medical procedure pending consulta- tion but not in time loss: F. Smith-----	230
Denial unreasonable: C. Yancey-----	159
Denial until day of hearing when knew for months that should accept claim: G. Howard-----	175
Denied where workman unreasonable also: F. Smith-----	230
Employer wins appeal but still must pay attorney fee: L. Wicklund-----	163
Extra \$275.76 allowed by stipulation: F. Dalton-----	204
Fees of \$500 excessive: V. Johnson-----	51
Fee disallowed where cross claim on same issue: L. Doane	72
Fee allowed in disputed case: M. Corbett-----	79
Fee not "compensation" so appeal by fund which only gets fee knocked out will get additional fee imposed: V. Johnson-----	90
Fee of \$500 for appeal defense: P. Kernan-----	112
Fee denied on successful appeal on procedural issue only: H. Liggett-----	143
Fee of \$1,000 excessive for hearing: L. Browder-----	172
Fee on reconsideration: C. Greenlee-----	43
Fee for establishing ORS 656.245 medical: H. Unger----	164
Fee deleted on reconsideration: S. Nelson-----	193
Fee of \$125 where employer withdraws appeal: P. Blank-	204
Fee source when medical is only win: P. Edwards-----	211
Fee even though SAIF had a small technical victory: A. Matherly-----	239
Fee even though compensation reduced: E. Findley-----	270
Offset against unemployment prohibited: R. Horwedel---	237
Penalty and no fee correct for late time loss benefits: J. Walter-----	100

Penalties and fees affirmed: R. Horwedel-----	279
Penalty of 10% for six weeks of slowness: J. Lundberg--	138
Pending appeal payments: V. Johnson-----	51
Spear blunted: G. Dalthorp-----	228

PERMANENT PARTIAL DISABILITY

- (1) Arm and Shoulder
- (2) Back - Lumbar and Dorsal
- (3) Fingers
- (4) Foot
- (5) Forearm
- (6) Leg
- (7) Neck and Head
- (8) Unclassified

(1) ARM AND SHOULDER

Shoulder: none where won't work: P. Mandell-----	279
Arm: 19.2° and 80° for shoulder: O. Hinojosa-----	121
Arm: 30° additional on own motion: W. Puzio-----	233
Arm: 48° for tennis elbow: D. Gore-----	116
Arm: 76.8° for pain: R. McCandless-----	221
Shoulder: 80° unscheduled: E. Smith-----	129
Arm: 96° affirmed for lost function: W. Starkey-----	58
Arm: 96° for tennis elbow: W. Collins-----	67
Arm: 96° after increase: T. Young-----	87
Arm & Shoulder: 115.2° & 160° allowed: L. Doane-----	72
Shoulder: 128° where treuous use of arm precluded by pain: D. Jansen-----	282

(2) BACK

Back: none where doing lighter work: M. Johnson-----	31
Back: none where doctors can't find anything: V. Slaughter-----	148
Back: none on own motion claim: I. Egan-----	197
Back: none on own motion: B. Reves-----	197
Back: none on own motion: W. Puzio-----	212
Back: none where don't want to work: R. Stillwell-----	243
Back: none for thoracic pain: R. Boaz, Jr.-----	247
Back: 9.6° for sore back: V. Huber-----	192
Back: 16° where can go back to work: W. Lawrence-----	235
Back: 16° for moderately severe functional overlay: A. Babb-----	247
Back: 32° where retrain as typist: V. Schmidt-----	6
Back: 32° affirmed where should avoid heavy work: D. Roby-----	54
Back: 32° where don't want to work: E. Terry-----	74
Back: 32° for minimal and mild problems: D. Colfax-----	110
Back: 32° where back to same job: E. Shaw-----	124
Back: 32° where excessive subjective complaints: D. Weaver-----	127
Back: 32° to fruit picker: L. Samson-----	149

Back:	32° for strain: C. Moore-----	250
Back:	45° for functional overlay: R. Cramer-----	182
Back:	48° after fall: B. Hurd-----	32
Back:	48° after rehearing: B. Vance-----	47
Back:	48° increase from nothing: R. Hukill-----	78
Back:	48° where movies: F. Siller-----	82
Back:	48° even though need continuing chiropractic treatments: S. Nelson-----	128
Back:	48° for severe anxiety-tension factor: J. Hubbard-----	210
Back:	48° affirmed for mild: P. Derrah-----	244
Back:	64° where can still work (reduction): S. Holden---	7
Back:	64° for minimal objective findings: J. Clark----	28
Back:	64° where no light work available: R. Jobe-----	37
Back:	64° for phobia: N. Kolling-----	80
Back:	64° minimal injury and psychopathology: J. Carpenter-----	115
Back & Leg:	64° & 67.5° for trick knee which hurt back: M. Lapin-----	118
Back:	64° affirmed: L. Arrance-----	181
Back:	64° where can return to same work: F. Smith----	252
Back & Leg:	64° & 15° affirmed: J. Larramie-----	265
Back:	64° on reduction from 192° where mostly pain: E. Diamond-----	281
Back:	80° where light work only: W. Phillippi-----	36
Back:	80° after surgery: L. Nash-----	39
Back:	80° for obesity, etc.: N. Farmer-----	77
Back & Leg:	80° & 13.5° affirmed: R. Ten Eyck-----	110
Back:	80° on reduction: C. Fowler-----	130
Back:	80° where C&E allowed none: J. Gonzales-----	145
Back:	80° to nurse who can't lift patients but has mild disability: A. Grove-----	166
Back:	80° to professional hockey player: P. Van Impe--	218
Back:	80° where should avoid heavy labor: D. Peterson--	238
Back:	80° affirmed: M. Lash-----	264
Back:	96° where want total: F. Baker-----	13
Back:	96° where most psychopathology: B. Williams----	18
Back:	96° on own motion reduction from total: G. Roth---	26
Back:	96° where prior awards: C. Greenlee-----	29
Back:	96° where laminectomy: G. Sallee-----	29
Back:	96° to old janitor: D. Smart-----	43
Back:	96° where C&E was 32° and hearing officer found 176°: G. Jenkins-----	119
Back & Forearm:	96° & 15° termed liberal: V. Ferguson-----	122
Back:	96° affirmed on SAIF appeal: J. Frank-----	220
Back:	96° on reduction where can't truck drive: B. Perry-----	276
Back:	100° where can't longshore: H. Womack-----	154
Back:	112° for poor motivation: H. French-----	50
Back & Foot:	112° & 5% to trucker: P. Stedman-----	114
Back:	112° affirmed: A. Marek-----	176
Back:	112° where lifting limited: D. Gonser-----	195
Back:	112° affirmed: W. Short-----	275

Back: 112° where want total: B. Sorenson-----	282
Back: 120° for chronic strain bars heavy work: G. Braughton-----	260
Back: 128° allowed: K. Knapp-----	21
Back: 128° to old nurse's aid: J. Brown-----	83
Back, Arm & Leg: 128°, 19.2° & 15° in long opinion: R. Vester-----	135
Back: 128° after fall: N. Muir-----	203
Back: 128° affirmed: J. Ivey-----	242
Back: 128° where can't log after surgery: M. Olsen----	284
Back: 150° where want total: L. Depiero-----	152
Back: 160° after total reversed: F. House-----	15
Shoulder: 160° for wild symptoms after slap on back: J. Kennedy-----	86
Back: 160° where must retrain for two years for sedentary job: R. Owens-----	122
Back: 160° after two fusions and four determinations: H. Short-----	124
Back & Leg: 160° & 37.5° to choker setter after log smash: J. Sperry-----	277
Back: 160° after total reversed: M. Jones-----	287
Back & Leg: 192° & 75° to roofer: M. Notz-----	10
Back: 192° affirmed: M. Louden-----	157
Back: 192° where refuse head examination: R. Gammell--	206
Back & Legs: 196°, 45° & 15°: M. Bell-----	248
Back: 208° after six surgeries where can still sell cars part time: L. Dipasquale-----	164
Back: 240° where want total: W. Buckley-----	21
Back & Legs: 240°, 45° & 112° affirmed: J. Rauschert--	113
Back: 240° after reconsideration on remand: L. Wilson--	130
Back: 240° on aggravation: J. Freitag-----	171
Back: 240° where want total: K. Parker-----	185
Back: 240° from 48° where want total: R. Mata-----	240
Back: 256° in lieu of total: M. Myers-----	187
Back: 256° to fruit picker: J. Hernandez-----	250

(3) FINGERS

Finger: 1° for contusion: W. Shrock-----	125
Finger: 10° to index finger: R. Brewer-----	1

(4) FOOT

Foot: 22.4° for mild limp: K. Shanafelt-----	265
Foot: 40.5° for fracture: E. Myers-----	243
Foot: 135° for amputation on own motion: G. Holsheimer	75

(5) FOREARM

Forearm: 15° for fracture: G. Wolanski-----	33
Forearm, Leg, Back, Head & Shoulder: Various, but not total: J. Bowling-----	246
Hand: 22.5° for saw injury: F. Kinney-----	241

Hand: 30° affirmed: D. Hanneman----- 154
 Hand: 45° for puncture wound: P. Ashmore----- 170

(6) LEG

Leg: None where nothing wrong: G. Johnson----- 71
 Leg: 7.5° where knee is recovered: E. Spani----- 140
 Leg: 14.5° increase: M. Ross----- 208
 Leg: 15° for knee to rodeo rider: W. Sylvester----- 64
 Leg: 30° for broken kneecap: R. Raines----- 116
 Leg: 33° on aggravation: A. Denton----- 17
 Leg: 37.5° for torn knee ligament: J. Bishop----- 176
 Leg: 38° where too fat to operate: S. Richards----- 234
 Leg: 48° for back after broken leg: Z. Woody----- 14
 Legs: 52.5° affirmed for each: G. Alldritt----- 217
 Leg: 52.5° for fracture: S. Banat----- 257
 Leg: 60° where police officer shot: J. Frazier----- 180
 Leg: 60° to smashed leg: J. Ellison----- 224
 Legs: 5° for each: R. Rafferty----- 49
 Leg: 127.5° for fused knee: O. Middleton----- 244
 Leg: Fracture of hip is scheduled: N. Crane----- 98

(7) NECK AND HEAD

Neck: 16° affirmed for minimal: D. Lewis----- 158
 Neck and Shoulder: 16° affirmed where won't work:
 A. Trever----- 233
 32° for blow by steel beam: N. Ross----- 6
 Head: 48° for broken face: D. Blue----- 41
 Neck: 48° affirmed: W. Teribury----- 179
 Neck: 64° after reduction: S. Titus----- 74
 Neck: 64° where want total: M. Chichester----- 142
 Neck: 67.4° for neck fusion: B. Bliss----- 165
 Neck: 240° affirmed on SAIF review where no briefs:
 M. Palodichuk----- 280

(8) UNCLASSIFIED

Bladder, etc.: 128°: G. Alldritt----- 217
 Bullet wound to belly: 64°: J. Frazier----- 180
 Burns: None for discoloration: B. Coleman----- 76
 Burns: 80° where must retrain: J. Claiborne----- 16
 Burns: Severe results in various awards including
 disfigurement: T. Cody----- 104
 Contact Dermatitis: None to millwright: H. James----- 99
 Contact Dermatitis: 60° affirmed: H. Deister----- 93
 Ear: 25° for hot slag: E. Henry----- 101
 Eye: 100° where can't tolerate glasses strong enough
 to correct problem: R. Sears----- 146
 Hearing loss: Prior case reversed, new method of
 computation: O. Privette----- 253
 Heart condition: Affirmed: A. Daggett----- 208
 Lung condition: 32° affirmed: W. Charles----- 285
 Lungs: 160° where could work away from dust: C. Morgan----- 117

Pelvic fracture: 48° on reduction where retraining:	
J. Dawson-----	263
Phlebitis: To both back and leg: J. Carson-----	168
Psychological disability: 160° affirmed: R. Babcock---	91

PROCEDURE

Acid comments for not filing briefs: M. Palodichuk-----	280
Agency expertise: P. Osborn-----	89
Aggravation time limit (READ): M. Gibson-----	108
Appeal not allowed from own motion reduction of benefits: G. Hanks-----	61
Back claim sold for \$5,470: W. Younger-----	261
Board considered issue abandoned if not briefed: V. Smith-----	52
Board approval necessary for reduction of benefits due to divorce: L. Browder-----	172
Cross-request becomes request where original request first withdrawn: E. Bea-----	273
Date of mailing, not receipt, controls even if slight evidence as to what that is: A. Whittle-----	268
Decision didn't follow administrative practice: O. Privette-----	131
Dismissal of cross-request leaves original request intact: N. Meyer-----	52
Dismissed on stipulation: N. Meyer-----	97
Evaluation of hearing losses changed: O. Privette-----	131
Further evidence denied if available at first hearing with due diligence: L. Wicklund-----	163
Hearing allowed after statute found unconstitutional: E. Findley-----	270
Jurisdictional mess: K. Mull-----	48
Knee problem should have been considered: F. Ashby-----	84
Malpractice: B. Haas-----	189
Mass consolidation for appeal denied: R. Horwedel-----	255
Medical addition improper after hearing: P. Morgan-----	227
Mess up notice of appeal: P. Blank-----	188
Motion charging misjoinder irregular: E. Kincheloe-----	228
Muffed appeal: C. Leggett-----	224
Multiple carriers and injuries: F. Radie-----	216
Overpayments because of divorce: L. Browder-----	172
Own motion matter dismissed: V. Cullings-----	101
Own motion remanded for hearing: A. Cave-----	188
Pending right order: J. Barrett-----	112
Prior case overruled: N. Gibson-----	108
Prior injuries no excuse for not processing subsequent claim: G. Howard-----	175
Rebuttal required by SAIF if to defeat aggravation claim: K. Eckley-----	220
Reconsideration denied: S. Holden-----	35
Reconsideration granted: H. Briggs-----	63
Reconsideration denied: G. McMahon-----	97
Reconsideration denied: J. Reinartz-----	289
Referred for further examination on review: M. Pointer-----	214
Remand denied: J. Pike-----	161

Reopening may not extend aggravation rights.	
READ THIS ONE: T. Cody-----	104
Request for reconsideration denied: J. Reed-----	62
Second determination affirmed: L. Rider-----	227
Settlement: L. Hanset-----	111
Supplementation of record not allowed: D. Monson-----	200
Technical defect in order corrected: C. Brown-----	84
Thirteen issues: J. Reed-----	39
Time loss not required until formal closing: H. Thurston	81
Time loss hearing may not preclude Partial Disability	
hearing: H. Briggs-----	152
Time loss not properly ordered as part of direction	
to accept claim: L. Wicklund-----	163
Unemployment claimed also: R. Horwedel-----	237
Voluntary reopening: C. Johnson-----	189
Waiver of late appeal not allowed: W. Harris-----	255

REQUEST FOR HEARING

Not timely: D. Tadlock-----	25
-----------------------------	----

REQUEST FOR REVIEW

Claimant not served: N. Meyer-----	44
Cross-request must also be served on claimant, not	
just attorney: F. Sandstrom-----	268
Date on request will control absent better evidence:	
A. Whittle-----	268
Muffed appeal: C. Leggett-----	224
Procedural mess: K. Mull-----	48
Procedure: H. Rhodes-----	193
Waiver of late appeal not allowed: W. Harris-----	255
Withdrawn: F. Bratton-----	23
Withdrawn: W. Mattison-----	55
Withdrawn: G. Smith-----	63
Withdrawn: S. Sommers-----	64
Withdrawn: W. Mitchell-----	83
Withdrawn: C. McCarty-----	92
Withdrawn: N. Fountain-----	119
Withdrawn: H. Cox-----	142
Withdrawn: G. McMahon-----	197
Withdrawn: W. Wood-----	200
Withdrawn: G. Lunsford-----	201
Withdrawn: J. Frankovich-----	212
Withdrawn: B. Thompson-----	237
Withdrawn: B. Miller-----	272

SECONDARY INJURY

New injury here: D. Story-----	2
--------------------------------	---

TEMPORARY TOTAL DISABILITY

Closing said premature: R. Bigelow-----	258
Computation to moonlighter: B. Loerzel-----	223

Divorce will affect benefits: D. Smith-----	161
Divorce after accident: L. Browder-----	172
1973 amendment not retroactive: T. Thompkins-----	149
No effect for overpayment: R. Hindman-----	23
Partial Disability not proper: T. Kelly-----	10
Reopened but not retroactively to closing: P. Brusco---	144
Requirements pending formal closing: H. Thurston-----	81
Terminated where in prison and not having medical treatment: G. Hanks-----	1
Unemployment receipt not proper offset: R. Horwedel----	237
Unequivocal medical report requires payment of time loss even if don't believe it: F. Smith-----	230

THIRD PARTY CLAIM

Uninsured motorist coverage: S. Holden-----	7
---	---

TOTAL DISABILITY

Affirmed: V. Smith-----	52
Affirmed in good opinion: W. Lamb-----	214
Asthmatic bronchitis: S. Hammond-----	231
Award reversed: C. Heitz-----	181
Award reversed: M. Myers-----	187
Award reinstated after work return unsuccessful: J. Taylor-----	198
Back is seriously injured: G. Bowman-----	70
Both legs hurt, but not badly enough: R. Rafferty-----	49
Denied where refuse head examination: R. Gammell-----	206
Denied after four myelograms and three surgeries: M. Bell-----	248
Emotional cripple: A. Brinkley-----	78
Heart condition: L. Hilliker-----	123
Heart condition allowed on reconsideration: A. Daggett-	236
Odd Lot total: F. Goska-----	38
Odd Lot total: E. Cox-----	199
Odd Lot total: R. Thoma-----	229
Old logger with double fusion: I. Wilson-----	27
Prima-facie total: F. Huntley-----	219
Psychological aggravation of foot injury: J. Solesbee--	222
Reduction to 96° on own motion: G. Roth-----	26
Retarded illiterate who could only rake leaves before: R. Warren-----	160
Reversed and 160° allowed: F. House-----	15
Reversed and 160° allowed: M. Jones-----	287
Roofer won't retrain himself: M. Notz-----	10
Total affirmed over Fund appeal: K. Church-----	196
Total on 1964 injury: V. Bonner-----	251

ALPHABETICAL INDEX

Name	WCB Case Number	Page
Alldrift, Gilbert	74-200	217
Allen, Mary	73-2809	178
Arrance, Larry	73-4071	181
Ashby, Fred	73-2326	84
Ashmore, Patrick J.	73-3456	170
Babb, A. Louise	73-2587	247
Babcock, Roy	73-920	91
Bachmann, Lester	73-3260	195
Baker, Chester	73-1210	87
Baker, Freeda	73-1994	13
Banat, Stanley	73-2868	257
Barrett, Jack E.	73-527, 72-1406 & 72-1407	112
Barrett, Jack E.	73-527, 72-1406 & 72-1407	228
Bartley, Arnold G.	73-2957	288
Bea, Ed	74-405	273
Bell, Merciehl	72-3291	248
Bigelow, Ruth	74-169	258
Bishop, Joseph C.	73-3521	176
Blair, Robert D.	73-3311 & 73-3312	80
Blank, Penny L.	74-1466	188
Blank, Penny	74-1466	204
Bliss, Beulah	73-2334	165
Blue, Donald R.	73-1359	41
Blumberg, Jean	73-1552	169
Blumberg, Jean A.	73-1552	199
Boaz, Robert, Jr.	71-2002	247
Bock, Arthur G.	73-3004	169
Bonner, Von L.	SAIF Claim No. RB 80865	251
Bowling, Joseph	73-2922	246
Bowman, George H., Jr.	73-3688	70
Bratton, Ferrin	73-2693	23
Brauer, Paul F.	73-637	109
Broughton, George	73-3972	260
Brewer, Robert L.	73-2818	1
Briggs, Hazel M.	73-1751	63
Briggs, Hazel M.	73-1751	152
Brinkley, Allen	73-2022	78
Browder, Leonard	73-2104	172
Brown, Carl E.	72-2410	84
Brown, Harold E.	73-3179	242
Brown, Julia	72-1623	83

Name	WCB Case Number	Page
Brusco, Palma W.	73-2362	144
Buchanan, Jessie	73-2169	55
Buckley, Walter	73-819	21
Burnam, Charles	73-1041	236
Burress, Claud C.	71-2455 & 73-2071	134
Burster, Omer B.	73-1686	245
Campbell, Mary (Sibley)	73-2493	19
Carpenter, Jean	73-2874	115
Carson, James D.	72-257	168
Casey, Howard B.	73-1170	92
Cave, Adrian	SAIF Claim No. NC 79531	188
Cavins, Harold	73-2701	137
Charles, Willard M.	73-2924	285
Chichester, Martha	73-1343	142
Church, Kenneth	73-3155	196
Claiborne, Jack	73-1523	16
Clark, Jo A.	73-2270	28
Cody, Thomas, Jr.	73-3093	104
Cole, Louie	71-2327	261
Coleman, Bruce	73-2814	76
Colfax, Douglas	73-2575	110
Collins, William L.	73-3166	67
Connaughy, Howard	73-1605	58
Corbett, Max E.	73-1018	79
Cox, Everett	73-2350	199
Cox, Howard	73-3037	142
Cox, Robert	73-3600	202
Cramer, Russell	73-2567	182
Crandall, Robert E.	73-1619	85
Crane, Nell	73-3782	98
Cullings, Vernon C.	SAIF Claim No. A 986699	101
Daggett, Albert E.	74-358	208
Daggett, Albert E.	74-358	236
Dalthorp, Gertrude	73-4176	228
Dalton, Fred	SAIF Claim No. SB 117944	191
Dalton, Fred	SAIF Claim No. SB 117944	204
Dalton, Lora	73-1344	3
Davis, Albert	73-1533 & 73-1772	46
Davis, Cecil	73-1495	68
Davis, Dottie Sue	73-2408	201
Davis, Harry Burton	73-805	209
Davis, Roberta	73-2529	132
Dawson, Jack	73-2879	263
Deister, Henry	73-3470-E	93
Denton, Alfred L.	73-1632	17
Depiero, Louis	73-3397	152
Derrah, Patricia	73-1282	244
Desmond, Michael	73-25	49
Diamond, Esther	73-3690	281

Name	WCB Case Number	Page
Dipasquale, Lorne G.	74-49	164
Doane, Leo	73-2276	72
Downey, George	72-2738	150
Eckley, Kenneth F.	73-3849	220
Edwards, Priscilla	73-3357	211
Egan, Iretha K.	Insurance of North America Co. #541 CR 29469	197
Eisenlohr, Kermit	73-1661	40
Elkin, Leonard	73-2044	53
Ellis, Gary	73-3437	191
Ellis, Gary	73-3437	256
Ellison, Jerald	73-3522	224
Farmer, Nellien	73-3354	77
Ferguson, Verna	73-256	122
Fields, Ernest	72-2962	8
Findley, Elwyn C.	73-3657	270
Fitzgibbons, Ollie	73-228	23
Fleming, William T.	73-1858	44
Flick, Robert M.	72-3316	107
Fountain, Norman	73-3927	119
Fout, Ruskin	73-3187	226
Fowler, Carl	73-2655	130
Frank, Joe Ann	71-2777	220
Frankovich, John	73-3030	212
Frazier, Jerry	73-357	180
Freeman, Roberta Davis	73-2529	132
Freitag, Jean Viola	73-1668	171
Fremersdorf, Bessie M.	SAIF Claim No. SC 50801	102
French, Helen M.	73-3297	50
Fulton, Darrell D.	Claim No. C 604-8759 REG	255
Gammell, Richard J.	73-3351	206
Ganong, William F.	73-1711	167
George, Lloyd A.	73-2746	120
Gibson, Monte	73-2296	108
Gonser, Donald	73-3501	195
Gonzales, John	73-3225	145
Gore, Della E.	74-73	116
Goska, Fred	73-2733	38
Gouldin, Harry M.	73-3399	252
Grace, Edmund	73-723	206
Greenlee, C. M. Lee	73-1172	29
Greenlee, C. M. Lee	73-1172	43
Grove, Alice	73-2523	166
Gumbrecht, Gail	73-2122	162
Haas, Benjamin G.	73-3347	189
Hammond, Sylvan	70-1976-E	231
Hanks, George	Claim No. E 42 CC 68191 RG	1
Hanks, George	72-1195	61
Hanneman, Duane	73-2438	154
Hanset, Lewis	72-2961	111

Name	WCB Case Number	Page
Harness, Mary Corma	72-1819	88
Harris, Vernon	73-135	85
Harris, William	74-130	255
Haynes, Lawrence W.	73-3012	45
Heitz, Christian C., Jr.	73-2986	181
Henry, Earl R.	72-3492	101
Herman, Donald	73-1048	158
Hernandez, Juan	73-4143	250
Herrmann, E. Earl	73-3769	213
Hickman, Lila	73-3632	222
Hilliker, Lloyd	73-4243	123
Hindman, Robert Wayne	73-1638	23
Hinojosa, Osvaldo	73-1228	121
Hinton, William	74-1094	272
Holden, Sarah	72-2004	7
Holden, Sarah	72-2004	35
Holsheimer, George	SAIF Claim No. B 48612	75
Hood, Cecil B.	74-1857	237
Horwedel, Raymond	73-2960	114
Horwedel, Raymond L.	74-709	237
Horwedel, Raymond L.	73-2960, 74-790 & 74-1934	255
Horwedel, Raymond L.	74-1934	279
House, Frank B.	73-2367	15
Houston, James D.	73-2250	33
Howard, Ben	74-267	259
Howard, Gerald	73-2507	175
Hubbard, John	73-1565	210
Huber, Violet M.	73-3222	192
Hukill, Roy	73-2911	78
Hunter, Alice L.	73-1459	25
Huntley, Floyd L.	73-1043	219
Hurd, Barry	73-2397	32
Hurst, Walter F.	73-3121	147
Huston, Walter R.	73-243	12
Ivey, Jeff	73-1051	242
James, Henry	72-2166	99
Jansen, Douglas	74-667	282
Jenkins, Garland	72-2721	119
Jobe, Roger	72-1201	37
Johnson, Carl E.	Continental Casualty Claim No. 48-910006	189
Johnson, Dale R.	73-1064	189
Johnson, Donald K.	73-15 & 73-63	267
Johnson, George	73-2475	71
Johnson, Mary Ann	73-2233	31
Johnson, Vivian	73-2578	51
Johnson, Vivian	73-2578	90
Johnston, Othel M.	73-1508	91
Jones, Marjorie	74-36	287
Kane, Mary M.	73-3658	146
Karns, Harry	73-1822	133

Name	WCB Case Number	Page
Kelley, Harvey T.	74-979	259
Kellogg, Lawrence	SAIF Claim No. N 817499	35
Kelly, Thomas	73-2120	10
Kennedy, Jessie I.	73-2718	86
Kernan, Pauline	72-3499	112
Kerr, Thomas W.	73-4101	283
Kincheloe, Elyge	74-1876	228
Kinney, Frank D.	74-232	241
Knapp, Kenneth V.	73-2448	21
Kolaks, Lowell	73-1290	141
Kolling, Norman L.	73-2637	80
Kylmanen, Ray J.	73-4173 & 74-646	226
Lamb, Walter	73-2280	214
Lapin, Martha	73-2600	118
Larramie, John	73-931	265
Lash, Merle	73-3081	264
Lawrence, William	73-3823	235
Leggett, Chequitta	73-4090	224
Lentz, David	73-2804	278
Lewis, Donald G.	71-2154	158
Liggett, Herbert	73-2686	143
Lind, Stephen R.	73-4239	264
Lish, William J.	SAIF Claim No. FA 735446	127
Loerzel, Benedict	73-4093	223
Long, Cecil	73-2705	30
Longhofer, Roland	73-3723	156
Louden, Mariva M.	73-3692	157
Lundberg, John	73-3536	138
Lunsford, Geneva	74-1369	201
Mack, Charles R.	73-817	266
Mackey, Estelle	73-1558	155
Mandel, Patrick	74-720	279
Manousos, Michael	73-3610	178
Martin, Russell L.	73-4048	270
Marek, Arthur	73-4083	176
Mata, Ramon D.	73-1623	240
Matherly, Arthur	74-23	239
Mattison, William	73-2117	55
McCandless, Ronald S.	73-3784	221
McCarty, Cecil	68-931	92
McFarland, Jerry	73-2520	139
McMahon, Gregory P.	73-2638	88
McMahon, Gregory P.	73-2638	97
McMahon, Gregory P.	73-2638	197
Meyer, Nancy L.	73-3240	44
Meyer, Nancy L.	73-3240	52
Meyer, Nancy L.	73-3240	97

Name	WCB Case Number	Page
Middleton, Orville Lee	73-3385	244
Miller, Bruce	74-1094	272
Mitchell, Mona	74-75	184
Mitchell, Thurman	73-2488	56
Mitchell, Warren R.	73-2890	83
Monson, Dorothy M.	74-530	200
Moore, Clarence	74-632	250
Morgan, Charles A.	73-3665	117
Morgan, Pauline	74-853	227
Morley, James D.	73-3507	286
Mosley, Edward	71-709	68
Muir, Nelson L.	74-18	203
Mull, Kenneth P.	74-753	48
Muncy, Gary James	73-2181	9
Murrell, Kenneth	SAIF Claim No. A 265862	232
Myers, Evelyn	73-3146	243
Myers, Maybelle A.	74-83	187
Nash, Leonard L.	70-2348	39
Negless, Dixie Lee	73-1485	102
Nelson, Donald F.	73-1925	217
Nelson, George R.	72-3476	137
Nelson, Joyce A.	73-2290	95
Nelson, Seth A.	73-1550	128
Nelson, Seth A.	73-1550	193
Notz, Morris M.	72-2990	10
Olsen, Melvin	73-3806	284
Osborn, Philip A.	73-2997	89
Owens, Robert D.	73-3048	122
Palodichuk, Mike	73-3595	280
Parker, Kate	73-4180	185
Pedigo, Charles	73-2710	70
Perry, Bob	74-53	276
Perry, Darrel	74-293	186
Peterson, Dale A.	73-3788	238
Philippi, Wesley	73-2682	36
Pike, James W.	73-3285	161
Pointer, Myrna	73-697	214
Poirier, Gene D.	73-4218	207
Prideaux, Wilbur C.	73-2327	96
Privette, Oscar	73-1563	131
Privette, Oscar	73-1563	253
Puckett, Gerald	73-1959	20
Puzio, Wallace B.	SAIF Claim No. A 737344	42
Puzio, Wallace	SAIF Claim No. A 737344	212
Puzio, Wallace	SAIF Claim No. A 737344	233
Radie, Frederick	SAIF Claim No. A 973381 & SC No. B 135689	216
Rafferty, Raymond L.	73-2642	49
Raines, Ruth	73-2394	116

Name	WCB Case Number	Page
Ranson, Thomas G.	73-2176	14
Rauschert, John	73-444	113
Reed, John M.	73-2216	39
Reed, John M.	73-2216	62
Reiling, Norman	73-2520	139
Reinarz, Joseph	73-1588	66
Reinarz, Joseph	73-1588	289
Reves, Betty V.	SAIF Claim No. AC 77112	197
Reynolds, Wayne L.	73-2496	177
Rhodes, Homer	73-3126	193
Richards, Shirley	73-4052	234
Rider, Louise	73-4091	227
Rivera, Betty	73-2539	144
Roby, Donald	73-3635	54
Rogers, George H.	73-2377	103
Rogoway, Ted	73-2250	33
Rosenstiel, Albert	73-3961	34
Ross, Max J.	73-3148	208
Ross, Norman	73-2278	6
Roth, Gary	72-2994	26
Roth, Nathan	72-2005	22
Russell, Rosvin	73-2892	57
Sallee, Glen	73-3287	29
Sampley, Farris	73-463	36
Samson, Leona	73-4063	149
Sandstrom, Fern M.	73-211	268
Schmidt, Virginia	73-2598	6
Schwert, Clara Jean	73-1726	289
Scoville, Donald L.	73-4170	205
Sears, Richard E.	73-1243	146
Seriganis, Nicholas	73-1858	44
Shanafelt, Kenneth	74-771	265
Shaw, Edwin	73-3041	124
Sherman, Harry, Jr.	73-2418	173
Short, Harley	73-2665	124
Short, Walter	73-3810	275
Shrock, Walter W.	73-3236	125
Siller, Fernando G.	73-4149	82
Silvey, Lemuel H.	73-3841	190
Slaughter, Virgil L.	73-4104	148
Smart, Donald	73-2612	43
Smith, Donald	73-2017	161
Smith, Edward F.	73-2559	129
Smith, Fannie Louise	73-3389	252
Smith, Frank D.	74-892	90
Smith, Frank P.	73-2548	230
Smith, Gregory B.	74-741	63
Smith, Vance	73-1378	52
Sojka, Joseph	73-1987	126
Solesbee, Jacob	73-3940	222

Name	WCB Case Number	Page
Sommers, Shawn	73-3852	64
Sorenson, Benjamin	73-1863	282
Spani, Eugene	73-3880	140
Sperry, John	72-3159	277
Starkey, William B.	73-3034	58
Stedman, Robert	73-3252	114
Stillwell, Ronald	73-4076	243
Stogsdill, Joe	73-3912	194
Story, Donald	73-2163 & 73-2164	2
Strong, Harry	74-1060	271
Sylvester, William	73-2759	64
Szabo, Dorothy J.	73-3733	229
Tadlock, Doris D.	73-189 & 73-997	25
Taylor, Jewell	74-2500	198
TenEyck, Robert A.	73-2758	110
Teribury, William J.	73-3626	179
Terrell, Lowell J.	73-3021 & 74-735	275
Terry, Elmer L.	73-2708	74
Thoma, Robert	73-1460	229
Thompson, Billie Joe	74-1857	237
Thurston, Heber	73-2136	81
Tincknell, Ella	69-1864	20
Titus, Shirley I.	73-1969	74
Tompkins, Thomas	73-4131	149
Toureen, Terry	73-3922	225
Trever, Ann	73-3430	233
Unger, Helen	73-2304	164
Vance, Bonnie	72-1212	47
VanImpe, Richard	74-410	218
Vaughan, Alma	73-1960 & 73-3858	210
Vester, Robert	73-3843	135
Wallis, Sharon Bilyeu	74-72	183
Walter, Erich	73-1472	203
Walter, James G.	73-3360	100
Ward, Robert H.	73-2038	11
Warren, Robert A.	73-807	160
Warren, Thomas	73-1105	18
Weaver, Delmer	73-2929	127
Weaver, Ethel L.	73-3449	201
Webster, Margaret	72-3272	174
Whittle, Aldin V.	73-2167	268
Wicklund, Lars A.	73-2410	163
Williams, Barbara	73-1527	18
Williams, Eugene E.	73-764	173
Williams, Ronald D.	73-494	73

Name	WCB Case Number	Page
Wilson, Ivan L.	73-2840	27
Wilson, L. D.	71-2385	130
Wilson, Paul	73-930	249
Wilson, Wesley A.	SAIF Claim No. EB 151103	272
Winter, Theodore Joe	73-1607	31
Wirkkunen, Ruben	72-3096	65
Wolanski, Gary G.	73-460	33
Wolcott, Kenneth M.	73-3171	273
Womack, Hebron	74-322	154
Wood, Walter G.	74-1179	200
Woody, Zeb	72-2706	14
Wright, Robert	#2614, 73-3705, 73-3706 & 73-3707	134
Yancey, Cecil Watts	74-279	159
Yantis, Jeanette	73-3125	140
Young, Thomas O.	73-2347	87
Younger, Walter	74-15 & 74-3528	261
Zearing, Harry	73-3038	24

ORS CITATIONS

ORS 137.240-----	270
ORS 137.240 (2)-----	271
ORS 174.120-----	224
ORS 565.593-----	35
ORS 656.002 (17)-----	193
ORS 656.002 (17)-----	224
ORS 656.054-----	178
ORS 656.156-----	20
ORS 656.204-----	213
ORS 656.206-----	13
ORS 656.206-----	229
ORS 656.210-----	223
ORS 656.214 (4)-----	241
ORS 656.214 (f)-----	253
ORS 656.215 (g)-----	253
ORS 656.222-----	152
ORS 656.245-----	78
ORS 656.245-----	128
ORS 656.245-----	180
ORS 656.245-----	192
ORS 656.262 (4)-----	231
ORS 656.262 (8)-----	90
ORS 656.262 (8)-----	159
ORS 656.263-----	193
ORS 656.268 (1)-----	3
ORS 656.271 (1)-----	3
ORS 656.271 (1) T. Mitchell-----	56
ORS 656.271 (2)-----	3
ORS 656.273-----	141
ORS 656.273-----	143
ORS 656.273-----	153
ORS 656.273-----	229
ORS 656.273 (3)-----	200
ORS 656.278 (3)-----	62
ORS 656.289 (3)-----	224
ORS 656.283-----	4
ORS 656.295-----	113
ORS 656.295-----	189
ORS 656.295-----	193
ORS 656.295 (2)-----	88
ORS 656.295 (2)-----	269
ORS 656.295 (2)-----	224
ORS 656.310-----	66
ORS 656.310 (2)-----	151
ORS 656.313-----	51
ORS 656.313-----	237
ORS 656.382 (2)-----	72
ORS 656.382 (2)-----	204
ORS 656.383 (2)-----	90
ORS 656.442 (1)-----	139
ORS 656.593-----	8
ORS 656.802-----	65
ORS 656.802 (2)-----	209
ORS 656.807-----	148
ORS 656.807 (1)-----	107
ORS 656.814-----	73
ORS 743.792 (4) (c)-----	7