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WCB CASE NO. 73-3323
WCB CASE NO. 73-3324 NOVEMBER 7, 1974

RICHARD A. LARSSON, CLAIMANT

GREEN, GRISWOLD AND PIPPIN,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

Reviewed by Commissioners Moore and Sloan.

This matter involves a claim for aggravation of claimant's industrial heart attack claim of November 30, 1969. The State Accident Insurance Fund denied the claim of aggravation. The referee ordered the State Accident Insurance Fund to accept the claim for aggravation and the State Accident Insurance Fund requests board review.

In November 1969, claimant, a 50 year old volunteer fireman, sustained an acute myocardial infarction while on duty as a volunteer fireman. The claim was closed with an award of 128 degrees unscheduled heart disability. Claimant had another 'heart attack' or at least an episode of angina on May 14, 1973. The State Accident Insurance Fund denied claimant's claim for aggravation for the May 14, 1973 incident.

On de novo review, the board concurs with the referee that the medical opinion and evidence of Dr. Frank E. Kloster, head of the division of cardiology at the University of Oregon Medical School, is persuasive and that the aggravation claim be accepted by the State Accident Insurance Fund.

The board adopts the referee's opinion as its own.

ORDER

The order of the referee dated June 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.

NOVEMBER 6, 1974

THE BENEFICIARIES OF

DOUGLAS I. DYER, DECEASED

Power City Electric, Inc., contracted with Bonneville Power Administration to clear the right-of-way and to erect and install electrical transmission lines. Power City Electric, Inc., subcontracted with Dudley, Inc., for the erection of towers for the electric transmission lines.

On April 29, 1970, Mr. Dyer (decedent) was employed as a lineman for Dudley, Inc., Madras, Oregon, and sustained

A FATAL ACCIDENT WHILE IN THE COURSE AND SCOPE OF HIS EMPLOYMENT, RESULTING IN ELECTROCUTION.

THE PAYING AGENCY ACCEPTED THE CLAIM AND PAID BENEFITS TO THE BENEFICIARIES AS PROVIDED BY ORS 656.204. PURSUANT TO ORS 656.578, DECEDENT'S WIDOW SUED POWER CITY ELECTRIC, INC., AND THE UNITED STATES OF AMERICA IN THE U. S. DISTRICT COURT FOR THE DISTRICT OF OREGON (CIVIL CASE NO. 71-715). A SETTLEMENT IN THE AMOUNT OF 100,000 DOLLARS WAS EFFECTED AND APPROVED BY THE PAYING AGENCY SUBJECT TO THEIR LIEN OF THE AMOUNT PRESENTLY EXPENDED TOTALING 11,129 DOLLARS AND CLAIMED A LIEN FOR FUTURE ANTICIPATED EXPENDITURES IN THE AMOUNT OF 14,986 DOLLARS.

THE FUTURE ANTICIPATED EXPENDITURE DOES NOT CONTAIN A LIEN FOR THE AMOUNTS THAT MIGHT BE PAYABLE OUT OF THE RETROACTIVE RESERVE. WCB BULLETIN NO. 106, DATED MARCH 11, 1974, REQUIRES THE PAYING AGENCY TO INCLUDE IN THEIR FUTURE ANTICIPATED EXPENDITURE THE AMOUNT PAYABLE OUT OF THE RETROACTIVE RESERVE TO THE BENEFICIARIES.

THERE HAS BEEN ESTABLISHED A CONSERVATORSHIP IN THE CIRCUIT COURT OF JACKSON COUNTY FOR THE CHILDREN OF THE DECEDENT. THE ATTORNEY HAS MADE DISTRIBUTION FOR 100,000 DOLLARS AS FOLLOWS - ATTORNEY'S FEES AND COSTS, 30,015.77 DOLLARS = 58,835.23 DOLLARS TO WIDOW AND CHILDREN WITH 11,129 DOLLARS REMAINING IN TRUST PENDING DETERMINATION OF THE DISPUTE BY THE WORKMEN'S COMPENSATION BOARD.

THE PAYING AGENCY, ARGONAUT INSURANCE COMPANY, IS THE WORKMEN'S COMPENSATION INSURANCE COMPANY FOR DIDLEY, INC. AND POWER CITY ELECTRIC, INC. ARGONAUT WAS NOT THE LIABILITY CARRIER FOR POWER CITY ELECTRIC, INC. THE PAYING AGENCY DID NOT GIVE NOTICE TO THE WORKMEN'S COMPENSATION BOARD OR ANYONE ELSE PURSUANT TO THE PROVISIONS OF ORS 656.583(2).

THE WIDOW HAS AGREED WITH THE PAYING AGENCY THAT THERE SHALL BE NO BENEFITS PAID PENDING RESOLUTION BY THE BOARD OF THE VALIDITY OF THEIR LIEN.

UNDER THE BOARD'S POLICY DIRECTIVE NO. 69-4, THE BENEFICIARIES ARE PERMITTED TO WAIVE THEIR RIGHTS FOR THE PURPOSES OF INDEPENDENTLY RECEIVING PROCEEDS OF A THIRD PARTY SETTLEMENT. THIS SHE HAS DONE IN THE EVENT THE BOARD DETERMINES THAT THE PAYING AGENCY DOES HAVE A LIEN. THE 'STIPULATION OF FACT', MARKED EXHIBIT 'A', IS ATTACHED HERETO AND MADE A PART HEREOF.

ISSUE

DO THE PROVISION OF ORS 656.583(2) - '. . . IN ANY CASE WHERE AN INSURER OF A THIRD PERSON IS ALSO THE INSURER OF A DIRECT RESPONSIBILITY EMPLOYER, NOTICE OF THIS FACT MUST BE GIVEN IN WRITING BY THE INSURER TO THE INJURED WORKMAN AND TO THE BOARD WITHIN 10 DAYS AFTER THE OCCURRENCE OF ANY ACCIDENT WHICH MAY RESULT IN THE ASSERTION OF THE CLAIM AGAINST THE THIRD PERSON BY THE INJURED WORKMAN.', REQUIRE THE PAYING AGENCY, WHO IS ALSO THE WORKMEN'S COMPENSATION INSURER FOR THE THIRD PARTY TO GIVE NOTICE IN ORDER TO ASSET ITS LIEN AGAINST ANY SETTLEMENT OF A THIRD PARTY PROCEEDING?

THE CLAIMANT'S ATTORNEY CONTENDS THAT THE WIDOW AND CHILDREN ARE ENTITLED TO FULL BENEFITS UNDER THE WORKMEN'S COMPENSATION LAW AND THAT THE PAYING AGENCY DOES NOT HAVE A LIEN ON ANY OF THE THIRD PARTY PROCEEDS FOR ITS FAILURE TO GIVE THE REQUIRED NOTICE.

WE DO NOT BELIEVE ORS 656.583(2) WAS INTENDED TO APPLY UNLESS THE INSURER OF THE DIRECT RESPONSIBILITY EMPLOYER IS THE GENERAL LIABILITY CARRIER OF THE THIRD PERSON. IF THE WORKMAN ASSIGNS HIS CAUSE OF ACTION TO HIS EMPLOYER'S WORKMEN'S COMPENSATION INSURER, AND THAT INSURER IS ALSO THE GENERAL LIABILITY CARRIER OF THE NEGLIGENT THIRD PERSON, THERE WILL BE A NATURAL INCLINATION OF THE INSURER TO MINIMIZE THE THIRD PARTY RECOVERY SINCE ORS 656.593(1)(A) AND (B) MAKES IT CERTAIN THAT THE INSURER WILL LOSE A PORTION OF THE MONEY IN THE PROCESS.

IN THAT CASE THE REQUIRED NOTICE IS NECESSARY FOR THE WORKMAN TO BEWARE OF THE INSURER'S CONFLICT OF INTEREST.

SINCE ARGONAUT IS NOT THE GENERAL LIABILITY CARRIER OF POWER CITY ELECTRIC, INC., IT WAS NOT NECESSARY TO GIVE NOTICE TO THE WORKMAN'S BENEFICIARIES AND THE WORKMEN'S COMPENSATION BOARD.

ORDER

THE PAYING AGENCY HAS A VALID LIEN ON THE PROCEEDS OF THE BENEFICIARIES' THIRD PARTY SETTLEMENT AND THE PARTIES ARE ORDERED TO COMPLY WITH THE LETTER DATED FEBRUARY 12, 1974 WHICH IS ATTACHED TO EXHIBIT 'A'.

WCB CASE NO. 74-802 NOVEMBER 7, 1974

LOYD HUEY, CLAIMANT

BAILEY, DOBLIE, CENICEROS AND BRUUN, CLAIMANT'S ATTORNEYS
ROGER R. WARREN, 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 TO 45 PERCENT OF THE MAXIMUM FOR UNSCHEDULED DISABILITY AND TO 15 PERCENT OF THE MAXIMUM FOR PARTIAL LOSS OF THE RIGHT LEG, CONTENDING HE IS PERMANENTLY TOTALLY DISABLED.

ON MAY 7, 1972, CLAIMANT FELL SEVEN FEET FROM A SCAFFOLDING INJURING HIS HEAD, RIGHT ARM AND LEG. HE WAS RENDERED UNCONSICOUS AND SUSTAINED A FRACTURE OF THE FIBULA. INITIALLY, RECOVERY WAS GOOD - BUT AS TIME PASSED, IT BECAME EVIDENT HIS INJURIES WERE MORE SERIOUS THAN AT FIRST BELIEVED. LATER MEDICAL REPORTS INDICATED HE SUFFERED POST TRAUMATIC ARTHRITIS OF THE CERVICAL SPINE AND RIGHT SHOULDER, INJURY TO THE THORACIC AND LUMBAR AREAS, AND PREEXISTING LUMBOSACRAL DISC DISEASE AND SPONDYLOLISTHESIS.

STANLEY B. YOUNG, M.D., AN ORTHOPEDIST, REFERRED TO CLAIMANT AS A 'VERITABLE WALKING ORTHOPEDIC DISASTER AREA'. SORTING OUT THOSE SYMPTOMS DIRECTLY RELATED TO THE INDUSTRIAL ACCIDENT IS DIFFICULT.

THE CLAIMANT, WHO WAS 56 YEARS OLD AT THE TIME OF HEARING, HAD BEEN AN EMPLOYEE OF ROSEBURG LUMBER COMPANY FOR 11 YEARS WITH A STABLE WORK HISTORY. HE IS A MASTER WELDER WITH THIS EMPLOYER, WORKING EXCLUSIVELY AT A BENCH, PUTTING IN A FULL WEEK WITH OCCASIONAL OVERTIME.

CLAIMANT CONTENDS HIS PRESENT EMPLOYMENT AMOUNTS TO A SHELTERED WORKSHOP AND THAT HE SHOULD THEREFORE BE GRANTED AN AWARD OF PERMANENT TOTAL DISABILITY REGARDLESS OF HIS EMPLOYMENT. WHILE WE RECOGNIZE THAT THE EMPLOYER HAS MADE SPECIAL ARRANGEMENTS FOR CLAIMANT, WE CANNOT IGNORE THE FACT THAT WITH THESE SPECIAL ARRANGEMENTS, CLAIMANT IS NOW REGULARLY AND QUITE GAINFULLY EMPLOYED AT A SUITABLE OCCUPATION. THUS, HE IS NOT, BY DEFINITION, PERMANENTLY TOTALLY DISABLED.

THE BOARD, ON REVIEW, FINDS THAT THE ADDITIONAL AWARD MADE BY THE REFEREE AT HEARING, COMBINED WITH THE AWARD MADE BY THE DETERMINATION ORDER, IS A FAIR EVALUATION OF CLAIMANT'S PRESENT PERMANENT DISABILITY. ADDITIONAL DISABILITY THAT MAY ARISE IN THE FUTURE MAY BE GIVEN FURTHER CONSIDERATION PURSUANT TO ORS 656.273 AND 656.278.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 17, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 74-378 NOVEMBER 7, 1974

JAY H. BUGBEE, CLAIMANT
SAHLSTROM, LOMBARD, STARR AND VINSON, 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 REQUIRING THE FUND TO ACCEPT CLAIMANT'S CLAIM FOR COMPENSATION ON ACCOUNT OF AGGRAVATION.

CLAIMANT SUFFERED A COMPENSABLE INJURY NOVEMBER 17, 1967. A FIRST DETERMINATION ORDER ISSUED JANUARY 28, 1969. THE LANGUAGE ON THE DETERMINATION ORDER RELATING TO AGGRAVATION RIGHTS WAS MISINTERPRETED BY THE CLAIMANT TO MEAN THAT ONLY ON JANUARY 29, 1974, COULD HIS CLAIM FOR AGGRAVATION BE FILED. ON THAT DATE, THE CLAIMANT ARRIVED IN THE HEARINGS DIVISION OFFICE OF THE WORKMEN'S COMPENSATION BOARD REQUESTING HE BE ALLOWED TO SIGN A REQUEST FOR HEARING. ACCORDINGLY, HEARING OFFICER WILLIAM FOSTER PREPARED THE REQUEST, DATE STAMPED IT JANUARY 29, 1974, WITH A COPY SENT TO THE STATE ACCIDENT INSURANCE FUND. FOLLOWING THIS REQUEST FOR HEARING, DR. FREDERICK

W. DAVIS, ON FEBRUARY 2, 1974, DIRECTED A LETTER TO THE FUND SUPPORTING THE CLAIM FOR AGGRAVATION.

AT THE TIME OF HEARING ON MAY 6, 1974, THE FUND HAD NOT ACCEPTED THE CLAIM FOR AGGRAVATION AND THE REFEREE FOUND THIS TO CONSTITUTE A DE FACTO DENIAL. THE FUND ALSO RAISED THE ISSUE OF TIMELY FILING.

THE REFEREE FOUND, AND THE BOARD CONCURS, THAT CLAIMANT HONESTLY MISINTERPRETED THE STATEMENT ON THE DETERMINATION ORDER, AND HIS RIGHT TO HEARING WAS NOT BARRED AND THAT HE SHOULD NOT BE PENALIZED FOR NOT KNOWING OF RECENT PROCEDURAL CHANGES IN THE LAW.

WITH RESPECT TO THE MERITS OF THE CLAIM FOR AGGRAVATION, THE RECORD FROM THE VERY BEGINNING INDICATES CLAIMANT WOULD NEED ADDITIONAL TREATMENT AND SURGERY FOR THE HIP CONDITION. THE MOST RECENT MEDICAL REPORT INDICATED A PROGRESSIVELY DETERIORATING CONDITION OF CLAIMANT'S HIP AND THE PROBABILITY OF CORRECTIVE SURGERY.

FOR THESE REASONS THE BOARD WOULD AFFIRM AND ADOPT THE ORDER OF THE REFEREE FINDING CLAIMANT HAS SUFFERED A COMPENSABLE AGGRAVATION OF HIS INDUSTRIAL INJURY.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 7, 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. 74-185 NOVEMBER 7, 1974

GLEN COLTRANE, CLAIMANT

MOORE, WURTZ AND LOGAN,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE IN THIS CLAIM FOR AGGRAVATION IS WHETHER OR NOT CLAIMANT IS PERMANENTLY TOTALLY DISABLED. CLAIMANT HAS RECEIVED AWARDS TOTALING UNSCHEDULED PERMANENT PARTIAL DISABILITY EQUAL TO A TOTAL OF 75 PERCENT LOSS OF AN ARM BY SEPARATION AND 25 PERCENT LOSS OF USE OF THE LEFT ARM. THE REFEREE AWARDED CLAIMANT PERMANENT TOTAL DISABILITY. THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW.

CLAIMANT, NOW 64 YEARS OLD, WORKED NEARLY ALL OF HIS LIFE IN THE LUMBER INDUSTRY AND AS A LOGGER. CLAIMANT WAS INJURED AUGUST 25, 1966, WHEN THE CAR IN WHICH HE WAS RIDING WAS KNOCKED OFF THE ROAD BY A TREE AND ROLLED DOWN THE BANK WHILE HE WAS EN ROUTE AS A FIREFIGHTER ON THE OXBOW FIRE.

THE BOARD CONCURS WITH THE REFEREE THAT CLAIMANT IS PERMANENTLY TOTALLY DISABLED. THE MEDICAL OPINIONS OF DR. BROOKE AND DR. GOLDEN AS WELL AS THE OTHER EVIDENCE IN THE RECORD FULLY SUBSTANTIATE THE AWARD OF PERMANENT TOTAL DISABILITY.

ORDER

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

CLAIMANT'S COUNSEL IS ENTITLED TO 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. 73-2933 NOVEMBER 7, 1974

MARVIN W. LAWRENCE, CLAIMANT

A. C. ROLL, CLAIMANT'S ATTORNEY
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES PENALTIES AND ATTORNEY FEES IMPOSED UPON BOTH THE STATE ACCIDENT INSURANCE FUND AND EMPLOYEE BENEFITS INSURANCE COMPANY BECAUSE NEITHER CARRIER REQUESTED THE BOARD TO DESIGNATE WHO SHOULD PAY CLAIMANT'S COMPENSABLE CLAIM PURSUANT TO ORS 656.307. THE REFEREE ORDERED BOTH THE STATE ACCIDENT INSURANCE FUND AND EMPLOYEE BENEFITS INSURANCE COMPANY TO EACH PAY A 25 PERCENT PENALTY OF COMPENSATION DUE THE CLAIMANT AND EACH CARRIER TO PAY CLAIMANT'S ATTORNEY FEE. THE STATE ACCIDENT INSURANCE FUND REQUESTED BOARD REVIEW OF THE ORDER FOR THE STATE ACCIDENT INSURANCE FUND TO PAY THE PENALTY AND CLAIMANT'S ATTORNEY FEE.

THE CLAIMANT RECEIVED A BACK INJURY JANUARY 10, 1972, AND THAT CLAIM WAS PAID BY THE STATE ACCIDENT INSURANCE FUND AND THE CLAIM CLOSED. CLAIMANT HAD A SUBSEQUENT BACK INJURY JULY 19, 1973. BETWEEN THE TWO INJURIES, THE EMPLOYING ENTITY CHANGED AND THE WORKMEN'S COMPENSATION CARRIER, ON JULY 19, 1973, WAS EMPLOYEE BENEFITS INSURANCE COMPANY. ULTIMATELY EMPLOYEE BENEFITS INSURANCE COMPANY DENIED CLAIMANT'S CLAIM ON THE BASIS THAT IT WAS AN AGGRAVATION OF THE JANUARY 10, 1972 INJURY AND THE STATE ACCIDENT INSURANCE FUND DENIED CLAIMANT'S AGGRAVATION CLAIM ON THE BASIS THAT IT WAS A NEW INJURY. NEITHER THE STATE ACCIDENT INSURANCE FUND NOR EMPLOYEE BENEFITS INSURANCE COMPANY REQUESTED A DESIGNATION BY THE BOARD PURSUANT TO ORS 656.307, OF WHO SHOULD PAY THE CLAIMANT UNTIL THE FINAL DETERMINATION OF WHETHER OR NOT THIS WAS A NEW INJURY OR AN AGGRAVATION CLAIM WAS MADE. THE CLAIMANT DID NOT RECEIVE COMPENSATION FROM SEPTEMBER, 1973 UNTIL APRIL, 1974. AT THE TIME OF THE HEARING IN APRIL, 1974, THE STATE ACCIDENT INSURANCE FUND REQUESTED THE REFEREE TO DESIGNATE THE PAYING AGENCY. NEITHER CARRIER REQUESTED A '307' ORDER FROM THE BOARD.

THE REFEREE IMPOSED THE PENALTY AND ATTORNEY'S FEE ON BOTH CARRIERS PURSUANT TO THE DARRELL G. VIRELL ORDER ON REVIEW, WCB CASES NO. 73-2029, 72-2030 AND 73-2031. THE

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

ORDER

THE ORDER OF THE REFEREE DATED JUNE 5, 1974 IS AFFIRMED.

SINCE NO BRIEFS WERE FILED ON THIS BOARD REVIEW, NO ATTORNEY'S FEE FOR BOARD REVIEW IS ORDERED.

WCB CASE NO. 73-2877 NOVEMBER 7, 1974

EMERY EDDY, CLAIMANT

CHARLES R. CATER, 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. THE DETERMINATION ORDER AWARDED CLAIMANT 96 DEGREES UNSCHEDULED LOW BACK DISABILITY. THE REFEREE INCREASED THE AWARD TO A TOTAL OF 140 DEGREES UNSCHEDULED DISABILITY.

CLAIMANT, A 34 YEAR OLD CEMENT FINISHER, RECEIVED A LOW BACK INJURY AND HAS HAD A LOW BACK FUSION AND LAMINECTOMY. CLAIMANT HAS SOME CONGENITAL ANOMALIES IN THE BACK AND SUBSTANTIAL FUNCTIONAL OVERLAY MILDLY RELATED TO THE INDUSTRIAL INJURY. CLAIMANT HAS 14 YEARS ACADEMIC EDUCATION WITH VARIED WORK EXPERIENCE. BECAUSE OF CLAIMANT'S PSYCHOPATHOLOGY AND PHYSICAL LIMITATIONS, CLAIMANT IS PRECLUDED FROM CONTINUING CEMENT FINISHING WORK.

ON DE NOVO REVIEW, IT IS OBVIOUS THAT THE REFEREE TOOK INTO ACCOUNT CLAIMANT'S CREDIBILITY AND MOTIVATION TO RETURN TO WORK WHEN THE REFEREE MADE THE AWARD OF 140 DEGREES. CLAIMANT'S PSYCHOPATHOLOGY AND PHYSICAL PROBLEMS HAVE SUBSTANTIALLY AFFECTED CLAIMANT'S WAGE EARNING ABILITIES.

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. 74-219 NOVEMBER 8, 1974

GEORGE STONE, CLAIMANT

BERNARD SMITH, CLAIMANT'S ATTY.
PHILIPS, COUGHLIN, BUELL, STOLOPP AND BLACK, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS CLAIMANT WAS EMPLOYED BY PORTLAND GENERAL ELECTRIC ON SEPTEMBER 30, 1969 WHEN HE FELL OFF A ROOF SUSTAINING A FRACTURE OF PROXIMAL LEFT HUMERUS. SHORTLY THEREAFTER, CLAIMANT SUFFERED CHEST PAIN AND WAS HOSPITALIZED FOR A PULMONARY EMBOLUS. THE ONLY ISSUE ON REVIEW IS WHETHER THE CHEST AND LUNG CONDITION WAS THE RESULT OF THE INDUSTRIAL INJURY OF SEPTEMBER 30, 1969 AND IF FOUND TO BE COMPENSABLE, THE EXTENT OF PERMANENT DISABILITY.

AN UNUSUAL SEQUENCE OF CLAIMS PROCEDURE FOLLOWED RESULTING IN A DETERMINATION ORDER ALLOWING 10 PERCENT LEFT SHOULDER DISABILITY. SINCE MEDICAL REPORTS HAD BEEN SUBMITTED REGARDING THE CHEST CONDITION AND NO AWARD WAS MADE FOR THIS CONDITION, THE EMPLOYER INTERPRETED THIS TO MEAN THE CHEST CONDITION WAS NOT COMPENSABLE AND REFUSED TO PAY THE MEDICAL BILLS. A FORMAL DENIAL WAS NOT MAILED TO THE CLAIMANT.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDING OF THE REFEREE THAT CLAIMANT HAS, IN FACT, SUSTAINED HIS BURDEN OF PROVING A COMPENSABLE INJURY TO THE CHEST.

ORDER

IT IS THEREFORE ORDERED THAT THE EMPLOYER PAY ALL MEDICAL BILLS AND PAY TIME LOSS, IF ANY, DUE CLAIMANT ATTRIBUTABLE TO THE CHEST AND LUNG PROBLEM.

THE EMPLOYER IS FURTHER ORDERED TO SUBMIT THE MATTER TO THE BOARD'S EVALUATION DIVISION FOR A DETERMINATION RELATING TO THE CHEST AND LUNG CONDITION.

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. 74-362 NOVEMBER 8, 1974

DONALD H. KING, CLAIMANT

R. RANDALL TAYLOR, CLAIMANT'S ATTY.
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, A 22 YEAR OLD CHOKER SETTER WAS STRUCK ON THE HEAD, NECK AND SHOULDER BY A CABLE JULY 31, 1973. CLAIMANT RETURNED TO WORK THE LAST PART OF AUGUST AND THE CLAIM WAS CLOSED WITH NO AWARD OF PERMANENT DISABILITY. CLAIMANT WAS INVOLVED IN AN ALTERCATION OVER LABOR DAY WEEKEND WITH THE POLICE DEPARTMENT. CLAIMANT RECEIVED INJURIES TO HIS HEAD WHEN STRUCK BY A HEAVY TWO FOOT LONG NIGHT STICK.

ASSUMING THE MEDICAL REPORTS IN THE RECORD SUSTAIN THE JURISDICTIONAL REQUIREMENT FOR A HEARING ON A CLAIM FOR AGGRAVATION, THE BOARD CONCURS WITH THE FINDING OF THE REFEREE THAT ON THE MERITS, THE CLAIMANT HAS FAILED TO PROVE HIS CLAIM FOR AGGRAVATION.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 18, 1974 IS AFFIRMED.

WCB CASE NO. 74-491 NOVEMBER 8, 1974

AMELIA M. JOY, CLAIMANT
HAWKINS, GERMUNDSON AND SCALF,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A PARTIAL DENIAL BY THE STATE ACCIDENT INSURANCE FUND FOR TWO HOSPITALIZATIONS OF THE CLAIMANT. THE REFEREE AFFIRMED THE DENIAL AND THE CLAIMANT REQUESTS BOARD REVIEW.

CLAIMANT, A 51 YEAR OLD COOK, RECEIVED A BRUISE TO HER RIGHT LEG JULY 21, 1967 WHEN SHE DROPPED A KETTLE. SHE DEVELOPED AN ULCER ON HER LEG AND ULTIMATELY THROMBOPHLEBITIS. THE STATE ACCIDENT INSURANCE FUND ORIGINALLY DENIED CLAIMANT'S THROMBOPHLEBITIS CLAIM REGARDING THE RIGHT LEG. AFTER A HEARING, A REFEREE ORDERED THE STATE ACCIDENT INSURANCE FUND TO ACCEPT ALL CONDITIONS INVOLVING CLAIMANT'S RIGHT LEG AND PROBLEMS RELATED THERETO. CLAIMANT'S MEDICAL CONDITIONS ARE COMPLICATED BY DIABETES AND OBESITY IN ADDITION TO THROMBOPHLEBITIS.

CLAIMANT WAS HOSPITALIZED ON TWO OCCASIONS WHICH SHE ALLEGES ARE RELATED TO THE RIGHT LEG INDUSTRIAL INJURY. ON REVIEW OF ALL OF THE MEDICAL REPORTS AND ALL OF THE EVIDENCE IN THE RECORD, THE BOARD CONCURS WITH THE FINDINGS AND THE OPINION AND ORDER OF THE REFEREE THAT THE CLAIMANT HAS NOT SUSTAINED HER BURDEN OF PROOF BY MEDICAL EVIDENCE THAT THE TWO HOSPITALIZATIONS WERE CONNECTED TO THE INDUSTRIAL INJURY TO THE RIGHT LEG. THE MEDICAL EVIDENCE AT BEST INDICATES A POSSIBLE (NOT PROBABLE) CONNECTION OF THE CONDITIONS TREATED IN THE HOSPITALIZATION TO THE INDUSTRIAL INJURY.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 5, 1974 IS AFFIRMED.

WCB CASE NO. 73-155 NOVEMBER 8, 1974

DAVID J. HAMILTON, CLAIMANT

COONS AND COLE, CLAIMANT'S ATTYS.
MC MENAMIN, JONES, JOSEPH AND LANG, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT DISABILITY.

THE DETERMINATION ORDER WHICH WAS AFFIRMED BY THE REFEREE AWARDED CLAIMANT 5 PERCENT (16 DEGREES) UNSCHEDULED RIGHT SHOULDER DISABILITY.

CLAIMANT, A 31 YEAR OLD FOUNDRY WORKER, RECEIVED AN INDUSTRIAL INJURY AUGUST 26, 1971. A HEARING WAS HELD IN THE SUMMER OF 1973. SUBSEQUENT TO THE HEARING, CLAIMANT UNDERWENT EXTENSIVE PHYSICAL, PSYCHOLOGICAL AND VOCATIONAL REHABILITATION TESTING AT THE DISABILITY PREVENTION DIVISION CENTER.

ALL OF THE MEDICAL RECORDS FROM THE ATTENDING AND EXAMINING DOCTORS AND THE REPORTS FROM THE DISABILITY PREVENTION DIVISION REFLECT MINIMAL OBJECTIVE FINDINGS WITH ONLY SUBJECTIVE COMPLAINTS. IT IS NOTED THE SUBJECTIVE COMPLAINTS AT THE DISABILITY PREVENTION DIVISION WERE SOMEWHAT REDUCED FROM THOSE RECITED BY THE CLAIMANT AT THE TIME OF THE HEARING.

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 JULY 3, 1974 IS AFFIRMED.

WCB CASE NO. 72-1141 NOVEMBER 8, 1974

DRETTA ANN DIXON, 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.

THIS MATTER INVOLVES THE DENIED AGGRAVATION CLAIM. THE REFEREE DISMISSED THE REQUEST FOR HEARING ON THE GROUNDS THAT THE MEDICAL REPORTS DO NOT COMPLY WITH THE JURISDICTIONAL REQUIREMENTS AS REQUIRED BY ORS 656.273 AND THE OREGON SUPREME COURT AND COURT OF APPEALS CASES INTERPRETING THIS STATUTE.

THE CLAIMANT, A 22 YEAR OLD PSYCHIATRIC AIDE, INJURED HER BACK JULY 30, 1971, WHILE LIFTING A PATIENT. CLAIMANT WAS AWARDED A TOTAL OF 25 PERCENT (80 DEGREES) PERMANENT PARTIAL DISABILITY. CLAIMANT RECEIVED BACK SURGERY JANUARY 29, 1974.

THE BOARD CONCURS WITH THE FINDING OF THE REFEREE THAT THE MEDICAL REPORTS SUBMITTED ARE INSUFFICIENT TO SATISFY THE JURISDICTIONAL REQUIREMENTS FOR A HEARING ON THE CLAIM OF AGGRAVATION. THE REFEREE'S OPINION CONCISELY SUMMARIZES THE FACTS OF THIS CASE AND THE CASE LAW INVOLVED. THE BOARD AFFIRMS AND ADOPTS THE REFEREE'S OPINION AND ORDER AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED JULY 26, 1974 IS AFFIRMED.

WCB CASE NO. 73-3886
WCB CASE NO. 73-3887 NOVEMBER 15, 1974

HERBERT MACKIE, CLAIMANT

CHARLES R. CATER, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES WHETHER OR NOT CLAIMANT SHOULD BE AWARDED ANY PERMANENT PARTIAL DISABILITY OR IN THE ALTERNATIVE, ADDITIONAL TEMPORARY TOTAL DISABILITY AND ADDITIONAL MEDICAL CARE AS A RESULT OF THE INDUSTRIAL ACCIDENT OF NOVEMBER 15, 1972.

THE DETERMINATION ORDER AWARDED CLAIMANT NO PERMANENT PARTIAL DISABILITY. THE REFEREE DENIED ADDITIONAL TEMPORARY TOTAL DISABILITY OR MEDICAL CARE AND AFFIRMED THE DETERMINATION ORDER.

CLAIMANT, NOW 37 YEARS OLD, HAS RECEIVED NUMEROUS INDUSTRIAL BACK INJURIES IN RECENT YEARS. THE BACK INJURY OF OCTOBER 8, 1968 INVOLVED SURGERY. THE REFEREE CORRECTLY DISMISSED CLAIMANT'S CLAIM OF AGGRAVATION FOR THE OCTOBER 8, 1968, INDUSTRIAL INJURY IN THIS COMBINED HEARING BECAUSE THE REQUEST FOR HEARING WAS UNTIMELY FILED AND THE MEDICAL REPORTS DID NOT SUSTAIN THE CLAIM FOR AGGRAVATION.

CLAIMANT HAS RECEIVED CONSERVATIVE CARE ONLY FOR THE INDUSTRIAL INJURY OF NOVEMBER 15, 1972. CLAIMANT'S LACK OF CREDIBILITY AS REFLECTED BY BOTH THE REFEREE'S OPINION AND AN EXAMINING ORTHOPEDIST IS NOTED. THE EXAMINING ORTHOPEDIST, EVEN THOUGH DOUBTING THE CREDIBILITY OF THE CLAIMANT, DOES COMMENT THAT THE CLAIMANT HAS A FAIRLY SIGNIFICANT DISABILITY. THIS REPORT, HOWEVER, DOES NOT DISTINGUISH BETWEEN THE RESIDUAL DISABILITY FROM THE 1968 INJURY AND OTHER NUMEROUS BACK INJURIES AND THE INJURY OF NOVEMBER 15, 1972, INVOLVED IN THIS BOARD REVIEW. THE PRIOR AWARD OF 20 PERCENT UNSCHEDULED LOW BACK DISABILITY FOR THE 1968 BACK INJURY AND FUSION REFLECTS THE 'SIGNIFICANT DISABILITY' FOUND BY THE EXAMINING ORTHOPEDIST AND ADEQUATELY COMPENSATES THE CLAIMANT FOR SUCH DISABILITY.

ON DE NOVO REVIEW, THE BOARD AFFIRMS THE ORDER OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 24, 1974, IS AFFIRMED.

WCB CASE NO. 73-3896 NOVEMBER 15, 1974

RICHARD TOOLEY, CLAIMANT

BODIE, MINTURN, VAN VOORHEES
AND LARSON, CLAIMANTS 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 GRANTING PERMANENT PARTIAL DISABILITY COMPENSATION EQUAL TO 80 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY OR 256 DEGREES. CLAIMANT CONTENDS HE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT INJURED HIS LOW BACK ON JANUARY 15, 1970. HIS PAST MEDICAL HISTORY INCLUDES A LAMINECTOMY IN 1942 - INJURIES FROM AN AUTO ACCIDENT IN 1957 - BACK INJURIES IN 1960 AND 1963 - KNEE SURGERY IN 1964 - INJURED NECK IN 1964 - AND BACK INJURIES IN 1969 AND 1970. WITH SUCH PREEXISTING INSULTS, IT FOLLOWS THAT CLAIMANT IS SUBSTANTIALLY DISABLED. CLAIMANT IS NOT, HOWEVER, IN THE CATEGORY OF WORKMEN WHO HAVE NO EDUCATION, NO ABILITIES, AND NO QUALIFICATIONS FOR HOLDING JOBS OTHER THAN THOSE REQUIRING HEAVY MANUAL LABOR. THIS WORKMAN HAS EXCEPTIONAL APTITUDES AND ABILITIES WHICH CAN AND SHOULD BE CHANNELLED INTO PROGRAMS OF RETRAINING AND ENDEAVOR. THE PROBLEM APPEARS TO BE ONE OF MOTIVATING CLAIMANT TO TAKE ADVANTAGE OF REHABILITATIVE PROGRAMS. IT APPEARS CLAIMANT WOULD BENEFIT FROM PSYCHOLOGICAL ADJUSTMENT COUNSELING WHICH CAN BE PROVIDED PURSUANT TO ORS 656.245.

IN DECIDING WHETHER A WORKMAN IS PERMANENTLY AND TOTALLY DISABLED, ONE MUST LOOK FOR THE REMAINING ABILITIES POSSESSED BY THE WORKMAN AND WHETHER THESE ABILITIES CAN BE SUITABLY AND REGULARLY EMPLOYED IN SOME GAINFUL EMPLOYMENT.

ON REVIEW, THE BOARD CONCURS WITH THE FINDING OF THE REFEREE THAT, ALTHOUGH CLAIMANT IS SERIOUSLY DISABLED, HE IS NOT PERMANENTLY AND TOTALLY DISABLED.

ORDER

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

CASE NO. 73—4099 NOVEMBER 15, 1974

JOHN E. SMITH, CLAIMANT
COONS AND COLE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FORRE VIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES A DENIAL BY THE STATE ACCIDENT INSURANCE FUND FOR SURGERY TO CLAIMANT'S SHOULDER. THE REFEREE AFFIRMED THE DENIAL.

CLAIMANT, A 27 YEAR OLD LOGGER, HAS A HISTORY OF NUMEROUS SHOULDER DISLOCATIONS DURING THE PAST TEN YEARS. HE HAS UNDERGONE TWO PRIOR SURGERIES ON HIS RIGHT SHOULDER AND ONE SURGERY ON HIS LEFT SHOULDER BECAUSE OF HIS NUMEROUS DISLOCATIONS. THE ATTENDING ORTHOPEDIST STATES —

> 'IN MY OPINION, THE DISLOCATION SUSTAINED ON 9-28-73, WHEN HE THREW HIS HARD HAT REPRESENTS A MINOR CONTRIBUTING FACTOR TO THIS OVERALL PROBLEM OF BOTH-SHOULDER DIFFICULTY — HOWEVER, IT DEFINITELY DOES REPRESENT A CONTRIBUTING FACTOR . . . '

THE STATE ACCIDENT INSURANCE FUND HAS PAID TEMPORARY TOTAL DISABILITY AND MEDICAL BILLS FOR THE ACUTE PHASE ONLY OF THE SEPTEMBER 28, 1973, INCIDENT AND DENIED RESPONSIBILITY FOR THE SURGERY ON THE RIGHT SHOULDER.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE OPINION OF THE REFEREE THAT THE SURGERY WAS REQUIRED TO PREVENT FUTURE SHOULDER PROBLEMS AND NOT BECAUSE OF THE DISLOCATION SUFFERED SEPTEMBER 28, 1973. THE BOARD ADOPTS THE REFEREE'S OPINION AS ITS OWN.

ORDER

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

WCB CASE NO. 74—239 NOVEMBER 15, 1974

JEWELL MOORER, CLAIMANT
GALTON AND POPICK, 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 WHICH DISMISSED HIS REQUEST FOR HEARING CONCERNING HIS CLAIM FOR AGGRAVATION.

ON SEPTEMBER 13, 1967, CLAIMANT SUFFERED A COMPENSABLE LOW BACK STRAIN. THE FIRST (AND ONLY) DETERMINATION ORDER IN

HIS CLAIM WAS MADE ON JANUARY 14, 1969. THE STATUTORY PERIOD WITHIN WHICH CLAIMANT COULD SEEK TO ENFORCE A CLAIM FOR AGGRAVATION BENEFITS EXPIRED ON JANUARY 15, 1974.

ON JANUARY 11, 1974, CLAIMANT SENT A LETTER CLAIMING ADDITIONAL COMPENSATION ON ACCOUNT OF AGGRAVATION TO THE STATE ACCIDENT INSURANCE FUND. A CARBON COPY OF THE LETTER WAS SENT TO THE BOARD'S HEARINGS DIVISION. NO WRITTEN MEDICAL OPINION SUPPORTING THE CLAIM ACCOMPANIED EITHER LETTER.

ON JANUARY 14, 1974, CLAIMANT WROTE A LETTER TO THE WORKMEN'S COMPENSATION BOARD REQUESTING A HEARING CONCERNING HIS CLAIM OF AGGRAVATION. THE LETTER WAS NOT RECEIVED BY THE BOARD UNTIL JANUARY 16, 1974. NO SUPPORTING MEDICAL OPINION ACCOMPANIED THE REQUEST.

ALTHOUGH DR. G. P. ADLHOCK HAD EXAMINED THE CLAIMANT ON NOVEMBER 13, 1973, AND AGAIN ON FEBRUARY 19, 1974, HE DID NOT RENDER A WRITTEN REPORT ON HIS CONDITION UNTIL FEBRUARY 22, 1974. ON FEBRUARY 25, 1974, CLAIMANT'S ATTORNEY SENT A COPY OF THE REPORT TO THE STATE ACCIDENT INSURANCE FUND AND A COPY TO THE HEARINGS DIVISION.

AFTER THE HEARING HAD CONCLUDED, THE REFEREE DETERMINED HE WAS WITHOUT JURISDICTION TO HEAR THE CASE SINCE CLAIMANT'S REQUEST FOR HEARING WAS NOT FILED WITHIN 5 YEARS AFTER THE FIRST DETERMINATION ORDER AS REQUIRED BY ORS 656.319(2)(C). HE THEREUPON DISMISSED CLAIMANT'S REQUEST FOR HEARING.

THE FIRST ISSUE RAISED BY THE CLAIMANT IS WHETHER HE SHOULD HAVE BEEN PAID TEMPORARY TOTAL DISABILITY FROM THE DATE OF THE SUBMISSION OF THE SUPPORTING MEDICAL UNTIL THE CLAIM WAS DENIED.

WE BELIEVE THE RATIONALE EXPRESSED BY THE COURT IN LARSON V. SCD, 251 OR 478, (1968), JUSTIFYING THE PRESENTATION OF THE SUPPORTING MEDICAL REPORT AFTER THE REQUEST FOR HEARING IS MADE, IS APPLICABLE NOW TO THE NEW CLAIM FILING PROVISIONS OF THE LAW.

HOWEVER, WE ARE OF THE OPINION THE STATUTE DOES NOT PERMIT THE PERFECTION OF AN AGGRAVATION CLAIM BY FILING THE BARE CLAIM WITHIN 5 YEARS WITH SUBMISSION OF THE SUPPORTING MEDICAL OPINION OCCURRING AFTER THE 5 YEAR PERIOD HAS EXPIRED. WE CONCLUDE THEREFORE THAT THE FUND WAS UNDER NO DUTY TO INSTITUTE TIME LOSS PAYMENTS IN THIS CASE BECAUSE CLAIMANT FAILED TO SUBMIT BOTH THE CLAIM AND THE SUPPORTING MEDICAL REPORT TO THE FUND WITHIN THE 5 YEAR PERIOD PROVIDED BY ORS 656.273(3).

CLAIMANT NEXT ARGUES THAT THE JANUARY 11, 1974, LETTER IS SUFFICIENT TO QUALIFY AS A REQUEST FOR HEARING. THE LANGUAGE OF THE LETTER PLAINLY REVEALS IT IS NOT A REQUEST FOR HEARING. THE FIRST REAL REQUEST FOR A HEARING IS CONTAINED IN CLAIMANT'S LETTER OF JANUARY 14, 1974. CLAIMANT ARGUES THAT, PURSUANT TO ORS 656.283(2), MAILING THE REQUEST FOR HEARING BEFORE JANUARY 15, 1974, INVESTED THE REFEREE WITH JURISDICTION TO HEAR AND DECIDE THE DISPUTE PRESENTED.

LOOKING AT ORS 656.283 GENERALLY, IT IS PLAIN THAT SUBSECTION (2) ONLY DEALS WITH HOW THE REQUEST MAY BE MADE. IT SIMPLY ESTABLISHES THAT A REQUEST FOR HEARING MAY BE DELIVERED TO THE BOARD BY MEANS LESS FORMAL THAN PERSONAL SERVICE. SUBSECTION (1) OF ORS 656.283 DEALS WITH WHEN A REQUEST FOR HEARING MAY BE ENTERTAINED BY THE BOARD. IT SAYS A REQUEST FOR HEARING MAY BE MADE BY CLAIMANT AT ANY TIME, SUBJECT TO ORS 656.319.

ORS 656.319 ESTABLISHES THE OUTER TIME LIMITS FOR REQUESTING HEARINGS AND ESTABLISHES THE EVENTS WHICH ARE TO SERVE AS REFERENCE POINTS FOR MEASURING THOSE TIME LIMITS. THE REFERENCE POINT ADOPTED BY ORS 656.319(2)(C) IS THE FILING RATHER THAN THE MAILING OF THE REQUEST FOR HEARING. UNLESS THE FILING OF THE REQUEST FOR HEARING OCCURS WITHIN 5 YEARS OF THE FIRST DETERMINATION ORDER, THE REQUEST IS UNTIMELY.

FILING MEANS THAT A DOCUMENT MUST NOT ONLY BE SENT, BUT RECEIVED, IN ORDER TO BE CONSIDERED 'FILED'. IN RE WAGNER'S ESTATE, 182 OR 340 (1947). SEE ALSO - CHARCO, INC. V. COHN, 242 OR 566 (1966), BEARDSLEY V. HILL, 219 OR 440 (1959). THUS, THE REQUEST FOR HEARING WAS NOT TIMELY.

CLAIMANT ALSO CONTENDS THE REFEREE HAD 'NO JURISDICTION' TO UNILATERALLY DETERMINE THAT CLAIMANT HAD NO RIGHT TO DETERMINE THAT CLAIMANT'S HEARING RIGHTS HAD EXPIRED. WE DISAGREE. (20 AM JUR 2 D COURTS, 92). HAVING DISCOVERED HIS LACK OF JURISDICTION, THE REFEREE PROPERLY DISMISSED THE MATTER, INCLUDING THE COLLATERAL ISSUES RAISED BY CLAIMANT, SINCE NEITHER THE CLAIM NOR THE REQUEST FOR HEARING WAS PERFECTED WITHIN THE TIME PRESCRIBED BY LAW.

REGARDLESS OF THE EXPIRATION OF HIS AGGRAVATION RIGHTS, CLAIMANT HAS THE ALTERNATIVE OF SEEKING RELIEF UNDER THE PROVISIONS OF ORS 656.278. WHILE DR. ADLHOCH'S REPORT SUGGESTS A WORSENING OF CLAIMANT'S DISABILITY, IT DOES NOT PROVIDE A SUFFICIENTLY PRECISE OR COMPLETE BASIS ON WHICH TO ISSUE AN OWN MOTION ORDER. WE INVITE THE PRESENTATION OF ADDITIONAL MEDICAL INFORMATION CONCERNING CLAIMANT'S CONDITION IN AN OWN MOTION APPLICATION.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 23, 1974, IS HEREBY AFFIRMED.

CLAIM E(M) 42 CC 83602 RG NOVEMBER 15, 1974

LUTHER M. JACOBSON, SR., CLAIMANT

ON SEPTEMBER 30, 1974 CLAIMANT REQUESTED THE BOARD TO ORDER REOPENING OF HIS JULY 11, 1967 BACK INJURY CLAIM UNDER THE PROVISIONS OF ORS 656.278.

HE SUPPLIED A MEDICAL REPORT FROM HIS TREATING PHYSICIAN DATED SEPTEMBER 17, 1974 RECOMMENDING REOPENING FOR CONSERVATIVE TREATMENT OR, POSSIBLY, FURTHER SURGERY.

THE RECORDS OF HIS INJURY AND CLAIM HAVE NOW BEEN REVIEWED AND THE BOARD BEING NOW FULLY ADVISED, FINDS THAT CLAIMANT'S EMPLOYER, RAILWAY EXPRESS AGENCY, SHOULD PROVIDE TO CLAIMANT, THROUGH ITS CARRIER, AETNA CASUALTY AND SURETY COMPANY, ADDITIONAL MEDICAL CARE AND COMPENSATION FOR HIS INJURY OF JULY 11, 1967. AFTER THE CLAIMANT'S CONDITION IS AGAIN BELIEVED MEDICALLY STATIONARY, THE CARRIER SHOULD SUBMIT THE MATTER TO THE BOARD FOR AN 'OWN MOTION' CLOSURE OF CLAIMANT'S CLAIM.

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 ORDER MADE BY THE BOARD ON ITS OWN MOTION.

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

WCB CASE NO. 74-790 NOVEMBER 18, 1974

EDMOND CASCIATO, 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 SCHEDULED PERMANENT PARTIAL DISABILITY TO CLAIMANT'S LEFT FOREARM. THE DETERMINATION ORDER AWARDED CLAIMANT 5 PERCENT (7.5 DEGREES) LOSS OF LEFT FOREARM. THE REFEREE INCREASED THE AWARD TO A TOTAL OF 30 PERCENT (45 DEGREES) LOSS OF LEFT FOREARM. THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW.

CLAIMANT, A 23 YEAR OLD WELDER'S HELPER, RECEIVED SEVERE LACERATIONS ON THE LEFT HAND, LACERATIONS OF TWO TENDONS, AND FRACTURES OF SEVERAL BONES IN HIS HAND. AFTER SEVERAL SURGERIES, THE CLAIMANT HAS BEEN RETRAINED IN VOCATIONAL REHABILITATION AS A TELEVISION REPAIRMAN.

IN FINDING THE INCREASE WARRANTED, THE REFEREE TOOK INTO ACCOUNT NOT ONLY THE MEDICAL REPORTS OF LOSS OF MOTION BUT THE FACTORS OF ENDURANCE, PAIN AND STRENGTH OF CLAIMANT'S LEFT FOREARM AS WELL.

ON DE NOVO REVIEW, THE BOARD AGREES WITH THE REFEREE'S FINDINGS AND CONCLUDES THE AWARD OF SCHEDULED PERMANENT PARTIAL DISABILITY MADE BY THE REFEREE SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED JULY 19, 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.

SAIF CLAIM NO. HB 163064 NOVEMBER 18, 1974

DANNIE L. JONES, CLAIMANT

LARKIN, BRYANT AND EDMONDS,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY

THIS MATTER INVOLVES A WORKMAN WHO SUFFERED A COMPENSABLE INJURY IN 1965. A LAMINECTOMY AT L4-5 LEFT WAS PERFORMED IN 1967. THE CLAIMANT HAS BEEN GRANTED AN AWARD OF PERMANENT PARTIAL DISABILITY, TOTALLING TO DATE 75 PERCENT LOSS FUNCTION OF AN ARM FOR UNSCHEDULED DISABILITY.

PURSUANT TO THE BOARD'S OWN MOTION ORDER DATED OCTOBER 22, 1973, THE STATE ACCIDENT INSURANCE FUND WAS REQUIRED TO REOPEN CLAIMANT'S CLAIM FOR FURTHER DIAGNOSTIC PROCEDURE AND TREATMENT OF HIS INJURY RELATED CONDITION. THEREAFTER ON JANUARY 21, 1974, CLAIMANT UNDERWENT A LAMINECTOMY AT L4-5, RIGHT. HIS CONDITION IS AGAIN STATIONARY.

UPON THE ADVICE OF THE EVALUATION DIVISION, THE BOARD FINDS THAT CLAIMANT WAS TEMPORARILY TOTALLY DISABLED DURING HIS RECENT SURGERY, BUT THAT HE HAS NOT SUFFERED ANY INCREASE IN PERMANENT DISABILITY.

ORDER

IT IS THEREFORE ORDERED THAT CLAIMANT SHOULD BE, AND HE IS HEREBY, GRANTED TEMPORARY TOTAL DISABILITY COMPENSATION FOR THE PERIOD JUNE 28, 1973, THROUGH OCTOBER 9, 1974. NO ADDITIONAL PERMANENT DISABILITY COMPENSATION IS AWARDED.

WCB CASE NO. 73-3856 NOVEMBER 18, 1974

KENNETH SELLS, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED A DETERMINATION ORDER AWARDING PERMANENT PARTIAL DISABILITY OF 5 PERCENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT, A 27 YEAR OLD MILL WORKER, TRIPPED OVER AN ELECTRIC MOTOR AND INJURED HIS BACK ON JUNE 11, 1973. THE MEDICAL EVIDENCE INDICATES CLAIMANT NOW SUFFERS FROM A CHRONIC LUMBAR STRAIN, SUPERIMPOSED ON A CONGENITAL ANOMOLY OF THE SPINE WHICH IS BEING CONTINUOUSLY AGGRAVATED BY HIS MARKED OBESITY.

THE CLAIMANT DID NOT APPEAR AT THE HEARING. PARTIES HAVE PRESENTED NO BRIEFS TO THE BOARD ON REVIEW. WITH THIS RECORD, THE BOARD RELIES ON THE DECISION MADE BY THE REFEREE AND AFFIRMS AND ADOPTS HIS ORDER AS THE ORDER OF THE BOARD.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 23, 1974 IS HEREBY AFFIRMED.

WCB CASE NO. 73-4070 NOVEMBER 18, 1974

WILLIAM BOFFING, CLAIMANT

BENNETT, KAUFMAN AND JAMES,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE INVOLVED IS THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 30 PERCENT (96 DEGREES) UNSCHEDULED PERMANENT PARTIAL LOW BACK DISABILITY. THE REFEREE INCREASED THIS AWARD TO 45 PERCENT (144 DEGREES) UNSCHEDULED LOW BACK DISABILITY. THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW.

CLAIMANT, A 37 YEAR OLD CARPENTER, RECEIVED A BACK INJURY MARCH 8, 1972, FOR WHICH HE HAS HAD A FUSION OF L-4, L-5 AND S-1. APPROXIMATELY FIVE MONTHS LATER, HE AGAIN HAD SURGERY FOR REFUSION OF THE L5-S1 BODIES.

THE MEDICAL OPINION OF THE ATTENDING SURGEON RECOMMENDS CLAIMANT RESTRICT HIS ACTIVITIES SO THAT THEY WOULD NOT INVOLVE HEAVY LIFTING, BENDING, AND STOOPING. CLAIMANT'S WORK EXPERIENCE HAS BEEN ALMOST EXCLUSIVELY AS A CARPENTER. CLAIMANT HAS ATTEMPTED TO OBTAIN EMPLOYMENT AS A SUPERVISOR IN CARPENTRY WORK BUT HAS BEEN UNSUCCESSFUL IN OBTAINING A POSITION BECAUSE OF HIS BACK CONDITION. CLAIMANT HAS BEEN WORKING WITH HIS SON, IN ESSENCE, IN A 'SHELTERED' SITUATION, DOING AS MUCH WORK AS HE IS ABLE.

THE REFEREE TOOK INTO ACCOUNT THE CLAIMANT'S PHYSICAL IMPAIRMENT IN CONTEXT WITH HIS NARROW AREA OF WORK EXPERIENCE, HIS AGE, HIS MODERATELY GOOD EDUCATION, AND GOOD LEVEL OF INTELLIGENCE, AND THE FAVORABLE PROGNOSIS FOR VOCATIONAL REHABILITATION, IN ARRIVING AT CLAIMANT'S LOSS OF WAGE EARNING CAPACITY IN THE LABOR MARKET.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE AWARD OF 45 PERCENT (144 DEGREES) MADE BY THE REFEREE AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 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, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74—220 NOVEMBER 18, 1974

HAROLD MARK SWARTZ, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A DENIED CLAIM OF AGGRAVATION. THE REFEREE AFFIRMED THE DENIAL AND THE CLAIMANT REQUESTS BOARD REVIEW.

CLAIMANT, A 60 YEAR OLD LOGGER, SUSTAINED A FRACTURED PELVIS JUNE 17, 1971. THE DETERMINATION ORDER AWARDED CLAIMANT 16 DEGREES FOR UNSCHEDULED DISABILITY AND BY STIPULATION A REQUEST FOR HEARING WAS DISMISSED WITH AN INCREASE OF ANOTHER 10 DEGREES UNSCHEDULED DISABILITY. THE DETERMINATION ORDER AND THE STIPULATION CONTAIN NO REFERENCE TO CLAIMANT'S BACK CONDITION UNTIL JULY, 1973. THE CLAIMANT NOW, NEARLY TWO YEARS AFTER THE INDUSTRIAL INJURY AND AFTER A DETERMINATION ORDER AND A STIPULATION, ALL OF WHICH SPEAK ONLY OF PELVIC DISABILITY, PRESENTS A CLAIM, IN THE POSTURE OF AN AGGRAVATION CLAIM, THAT HIS BACK CONDITION IS RELATED TO THE INDUSTRIAL ACCIDENT OF JUNE 17, 1971.

IN HIS OPINION THE REFEREE POINTS UP THE IMPAIRED CREDIBILITY OF CLAIMANT—COMPARING CLAIMANT'S TESTIMONY AT THE HEARING WITH THE ENTIRE RECORD MADE BY THE ATTENDING PHYSICIANS AND WITH THE HOSPITAL REPORTS. THE EVIDENCE IN THE RECORD SUBSTANTIATES THE REFEREE'S FINDING THAT CLAIMANT'S CREDIBILITY IS IMPAIRED.

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 28, 1974, IS AFFIRMED.

WCB CASE NO. 74—758 NOVEMBER 18, 1974

W. J. MC KINNEY, CLAIMANT

BANTA, SILVEN, YOUNG AND MARLETTE,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 50 PERCENT (160 DEGREES) UNSCHEDULED LOW BACK DISABILITY. THE REFEREE AFFIRMED THIS AWARD AND THE CLAIMANT HAS REQUESTED BOARD REVIEW CONTENDING HE IS PERMANENTLY TOTALLY DISABLED.

CLAIMANT, NOW 57 YEARS OLD, RECEIVED A LOW BACK INJURY ON SEPTEMBER 29, 1970, WHILE WORKING IN A SAWMILL. HE HAS HAD A BACK FUSION WHICH PHYSICALLY PRODUCED A GOOD RESULT. THE BACK EVALUATION REPORT SHOWS THE LOSS OF BACK FUNCTION DUE TO THIS INJURY IS IN THE RANGE OF MILDLY MODERATE. IT FURTHER REFLECTS AN EXTREMELY SEVERE FUNCTIONAL OVERLAY.

THE PSYCHOLOGIST REPORT REFLECTS THE PSYCHOPATHOLOGY IS RELATED TO THE PATIENT'S ACCIDENT TO A MODERATE DEGREE. THE PATIENT PROBABLY WILL NOT SUFFER SERIOUS PERMANENT PSYCHOLOGICAL DISABILITY AS A RESULT OF HIS ACCIDENT IF HE IS ABLE TO ASSURE THE FINANCIAL SECURITY OF HIS FAMILY. THE PSYCHOLOGIST GIVES AS A PROGNOSIS 'FOR ALL INTENTS AND PURPOSES, THIS MAN HAS DECIDED TO RETIRE AND IS NOT INTERESTED IN THE ASSISTANCE OF THE DEPARTMENT OF VOCATIONAL REHABILITATION.' IN THE EXAMINATION AT THE DISABILITY PREVENTION DIVISION, THE EXAMINER STATED THAT CLAIMANT DISPLAYED GREAT DRAMATICS AND HISTRIONIC MANNERISMS. THE REFEREE'S OPINION REFLECTS SIMILAR CONDUCT BY THE CLAIMANT AT THE HEARING.

ON DE NOVO REVIEW, THE BOARD FINDS THAT THE CLAIMANT IS NOT PRIMA FACIE PERMANENTLY TOTALLY DISABLED. THE COMBINATION OF THE PSYCHOPATHOLOGY AND THE MILDLY MODERATE LOSS OF PHYSICAL FUNCTION DO NOT ADD UP TO PRIMA FACIE PERMANENT TOTAL DISABILITY.

THE CLAIMANT'S MOTIVATION TO RETURN TO GAINFUL OCCUPATION IS OBVIOUSLY NIL. THUS, THE CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED UNDER THE RATIONALE OF THE ODD LOT DOCTRINE.

THE BOARD CONCURS WITH THE OPINION AND FINDINGS OF THE REFEREE THAT AN AWARD OF 50 PERCENT UNSCHEDULED DISABILITY FOR LOW BACK CONDITION UNDER ALL OF THE FACTS OF THIS CASE ADEQUATELY COMPENSATES THE CLAIMANT.

ORDER

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

WCB CASE NO. 74-924 NOVEMBER 18, 1974

WILLIAM SCOWN, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT IN THIS MATTER ALLEGES HE IS PERMANENTLY AND TOTALLY DISABLED AND REQUESTS BOARD REVIEW OF A REFEREE'S ORDER GRANTING HIM PERMANENT PARTIAL DISABILITY FOR 50 PERCENT UNSCHEDULED BACK DISABILITY.

CLAIMANT HAS BEEN EMPLOYED AS A LONGSHOREMAN SINCE 1952. ON FEBRUARY 3, 1973 HE SLIPPED AND FELL ON THE DOCK INJURING HIS LOW BACK AND LEFT HIP. CLAIMANT RECEIVED MEDICAL CARE AND HIS

CLAIM WAS CLOSED BY DETERMINATION ORDER WHICH GRANTED NO AWARD FOR PERMANENT DISABILITY. A SECOND DETERMINATION ORDER GRANTED PERMANENT PARTIAL DISABILITY OF 20 PERCENT AND THIS WAS INCREASED TO 50 PERCENT BY THE REFEREE AT HEARING.

THERE IS AT BEST A MODERATE PHYSICAL IMPAIRMENT AND EXCEPT FOR A BRIEF PERIOD FOLLOWING THE INITIAL TREATMENT, CLAIMANT HAS NOT WORKED SINCE THE INJURY. THERE IS A DEFINITE PATTERN OF UNWILLINGNESS TO SERIOUSLY CONSIDER RE-EMPLOYMENT OR PHYSICAL OR VOCATIONAL IMPROVEMENT TOWARD RE-EMPLOYMENT. THE CLAIMANT HAS SOME MODERATE DISABILITY ATTRIBUTABLE TO THE ACCIDENT, BUT IT FALLS FAR SHORT OF PERMANENT TOTAL DISABILITY.

THE BOARD, ON REVIEW, CONSIDERING CLAIMANT'S PHYSICAL IMPAIRMENT AND IN ADDITION, HIS AGE, EDUCATION AND UNDERLYING NERVOUS TENSIONS, CONCURS WITH THE REFEREE IN FINDING CLAIMANT'S PERMANENT DISABILITY IS NOT TOTAL, BUT IS EQUAL TO 50 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED DISABILITY.

ORDER

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

WCB CASE NO. 73-1825 NOVEMBER 18, 1974

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

PURSUANT TO AN OWN MOTION ORDER DATED JULY 31, 1973, THE STATE ACCIDENT INSURANCE FUND WAS ORDERED TO REOPEN CLAIMANT'S CLAIM FOR FURTHER NECESSARY CARE AND TREATMENT FOR A CONDITION AGGRAVATED BY CLAIMANT'S OCCUPATIONAL INJURY OF MAY 10, 1965.

THE FUND REQUESTED A HEARING ON THE OWN MOTION ORDER AND BY ORDER DATED FEBRUARY 12, 1974, THE REFEREE AFFIRMED THE BOARD'S ORDER OF REMAND TO THE FUND.

IT NOW APPEARS CLAIMANT HAS RECEIVED THE REQUIRED CARE AND TREATMENT - THAT HER CONDITION IS NOW STATIONARY AND THE CLAIM IS READY FOR CLOSURE.

THE BOARD CONCLUDES CLAIMANT IS ENTITLED TO TEMPORARY TOTAL DISABILITY FOR THE PERIOD NOVEMBER 7, 1972, TO AUGUST 23, 1973, INCLUSIVE, AND TO A PERMANENT PARTIAL DISABILITY AWARD OF 35 PERCENT LOSS FUNCTION OF AN ARM FOR UNSCHEDULED LOW BACK DISABILITY.

ORDER

IT IS THEREFORE ORDERED THAT CLAIMANT RECEIVE TEMPORARY TOTAL DISABILITY COMPENSATION FOR THE PERIOD NOVEMBER 7, 1972, TO AUGUST 23, 1973, INCLUSIVE, AND AN ADDITIONAL AWARD OF PERMANENT PARTIAL DISABILITY OF 20 PERCENT LOSS FUNCTION OF ARM FOR UNSCHEDULED LOW BACK DISABILITY, MAKING A TOTAL OF 35 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A REASONABLE ATTORNEY'S FEE 25 PERCENT OF THE INCREASE IN COMPENSATION GRANTED HEREBY, BUT NOT TO EXCEED IN ANY EVENT THE SUM OF 1,500 DOLLARS.

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.

WCB CASE NO. 74-1906 NOVEMBER 19, 1974

FRED MCWILLIAMS, CLAIMANT

BETTIS AND REIF, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES WHETHER OR NOT THE STATE ACCIDENT INSURANCE FUND UNREASONABLY RESISTED REOPENING OF CLAIMANT'S CLAIM AND THE PENALTIES AND ATTORNEY'S FEES AWARDED BY THE REFEREE TO THE CLAIMANT TO BE PAID BY THE STATE ACCIDENT INSURANCE FUND.

THE REFEREE ORDER THE STATE ACCIDENT INSURANCE FUND TO PAY THE CLAIMANT ADDITIONAL TEMPORARY TOTAL DISABILITY AND A 25 PERCENT PENALTY FOR RESISTANCE TO PAYING THE TEMPORARY TOTAL DISABILITY.

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 JULY 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.

SAIF CLAIM NO. PC 3719 NOVEMBER 19, 1974

OLEN E. ZEIGLER, CLAIMANT

GARY D. ROSSI, CLAIMANT'S ATTORNEY
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

CLAIMANT, A THEN 60 YEAR OLD WORKMAN, SUSTAINED A COMPENSABLE INJURY TO HIS RIGHT SHOULDER IN FEBRUARY, 1966. PURSUANT TO A DETERMINATION ORDER, HE WAS AWARDED PERMANENT

PARTIAL DISABILITY EQUAL TO 10 PERCENT LOSS FUNCTION OF THE RIGHT ARM.

AT AGE 65 CLAIMANT RETIRED FROM THE LABOR FORCE AND HAS NOT SOUGHT EMPLOYMENT SINCE.

A REPORT TO THE STATE ACCIDENT INSURANCE FUND IN DECEMBER, 1973, FROM DR. A. J. SMITH, INDICATED CLAIMANT'S SHOULDER CONDITION HAD DETERIORATED AND A REQUEST WAS MADE FOR DETERMINATION OF ADDITIONAL PERMANENT DISABILITY COMPENSATION UNDER THE BOARD'S OWN MOTION PROVISIONS OF THE LAW.

CLAIMANT'S SHOULDER INJURY WAS TO AN 'UNSCHEDULED' AREA OF THE BODY AND THUS LOSS OF WAGE EARNING CAPACITY IS THE KEY TO DETERMINING FURTHER PERMANENT DISABILITY. SINCE CLAIMANT IS NO LONGER IN THE LABOR MARKET, ANY FURTHER AWARD OF DISABILITY BASED ON WAGE EARNING CAPACITY WOULD BE INAPPROPRIATE.

ORDER

THE BOARD CONCLUDES CLAIMANT IS NOT ENTITLED TO FURTHER PERMANENT DISABILITY COMPENSATION FOR HIS UNSCHEDULED DISABILITY.

NEITHER THE CLAIMANT NOR THE STATE ACCIDENT INSURANCE FUND HAS A RIGHT TO A HEARING, REVIEW OR APPEAL ON THIS ORDER MADE BY THE BOARD ON ITS OWN MOTION.

WCB CASE NO. 74-456 NOVEMBER 19, 1974

WALTER KLUVER, CLAIMANT

JASON LEE, CLAIMANT'S ATTY.
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 AN ADDITIONAL PERMANENT DISABILITY COMPENSATION FOR UNSCHEDULED HEAD DISABILITY MAKING A TOTAL OF 35 PERCENT OR 112 DEGREES.

CLAIMANT SUSTAINED AN INDUSTRIAL INJURY TO HIS HEAD ON MAY 2, 1973, WHILE EMPLOYED AS A HEAVY DUTY MECHANIC. HE WAS KNOCKED UNCONSCIOUS AND HOSPITALIZED FOR TREATMENT BUT CONTINUED TO SUFFER FROM SEVERE HEADACHES AND BLURRING VISION THEREAFTER. DR. JOHN RAAF, NEUROSURGEON, DIAGNOSED HIS PROBLEM AS A POST-TRAUMATIC CEREBRAL SYNDROME.

ANY JARRING ACTIVITY NOW TRIGGERS THE ONSET OF HEADACHES WHICH TEMPORARILY INCAPACITATE CLAIMANT AND PRECLUDE HIM FROM RETURNING TO EMPLOYMENT IN WHICH HE PREVIOUSLY ENGAGED. THE REFEREE FOUND CLAIMANT HAD SUSTAINED A GREATER LOSS OF EARNING CAPACITY THEN COMPENSATED BY THE DETERMINATION ORDER AND ALLOWED AN ADDITIONAL 25 PERCENT UNSCHEDULED HEAD DISABILITY. WE AGREE WITH HIS EVALUATION AND CONCLUDE HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED JULY 10, 1974, IS AFFIRMED AND ADOPTED AS THE ORDER OF THE BOARD.

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

WCB CASE NO. 73-2133 NOVEMBER 19, 1974

JACK MCMURRIAN, CLAIMANT
DWYER AND JENSEN, 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 GRANTED CLAIMANT AN ADDITIONAL AWARD OF 20 PERCENT FOR UNSCHEDULED LOW BACK AND URINARY TRACT DISABILITY, CONTENDING SUCH AN AWARD IS, AT PRESENT AT LEAST, PREMATURE.

CLAIMANT SUFFERED SEVERE INJURIES WHEN HE WAS RUN OVER BY THE REAR DUAL WHEELS OF A LOG TRUCK. HIS RECOVERY WAS GOOD, BUT CLAIMANT DOES HAVE LOW BACK AND URINARY TRACT RESIDUALS.

CLAIMANT'S PRE-INJURY EMPLOYMENT WAS THAT OF A "TRAILER MONKEY" REQUIRING GOOD PHYSICAL STRENGTH AND FROM WHICH HE IS NOW PRECLUDED. HE HAS EXPRESSED INTEREST IN BECOMING A MECHANIC. TO BE TRAINED IN A NEW FIELD OF EMPLOYMENT, THE BOARD FEELS CLAIMANT SHOULD TAKE ADVANTAGE OF GUIDANCE AND ASSISTANCE OFFERED BY A SERVICE COORDINATOR OF THE BOARD'S DISABILITY PREVENTION DIVISION. IN SPITE OF THE SERVICES AVAILABLE FOR REHABILITATION, CLAIMANT HAS BEEN PRECLUDED FROM A PORTION OF THE LABOR MARKET.

AT HEARING, THE REFEREE AWARDED ADDITIONAL UNSCHEDULED DISABILITY, MAKING A TOTAL OF 35 PERCENT AND AFFIRMED THE AWARD OF 15 PERCENT LOSS OF THE LEFT LEG MADE PURSUANT TO THE DETERMINATION ORDER. THE BOARD CONCLUDES THESE AWARDS OF PERMANENT PARTIAL DISABILITY ARE BOTH PRESENTLY NECESSARY AND FAIR AND WOULD THEREFORE AFFIRM THE REFEREE'S ORDER IN ALL RESPECTS.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 11, 1973, IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATORNEY'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—3359 NOVEMBER 19, 1974

BILLIE STEVENS, CLAIMANT

MC ALLISTER AND AGNER, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED A DETERMINATION ORDER MAKING NO AWARD FOR PERMANENT PARTIAL DISABILITY.

CLAIMANT WAS EMPLOYED AS A NURSE'S AIDE WHEN SHE SUSTAINED A COMPENSABLE INJURY TO HER BACK AND RIGHT LEG ON OCTOBER 31, 1971, WHILE LIFTING A HEAVY PATIENT. CLAIMANT IS A PETITE WORKPERSON AND HAS BEEN ADVISED SHE SHOULD NOT PERFORM ACTIVITIES REQUIRING HEAVY LEFTING.

THE BOARD, ON REVIEW, FINDS THE MEDICAL REPORTS OF THE BACK EVALUATION CLINIC AND DR. GREWE INDICATE CLAIMANT HAS SUSTAINED SOME PERMANENT DISABILITY TO THE BACK. WE CONCLUDE THIS DISABILITY HAS REDUCED CLAIMANT'S POTENTIAL EARNING CAPACITY IN AN AMOUNT EQUAL TO 10 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED BACK DISABILITY OR 32 DEGREES.

ORDER

THE ORDER OF THE REFEREE IS HEREBY MODIFIED TO AWARD CLAIMANT 32 DEGREES OR 10 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED LOW BACK DISABILITY.

COUNSEL FOR CLAIMANT IS AWARDED A REASONABLE ATTORNEY'S FEE OF 25 PERCENT OF THE COMPENSATION AWARDED BY THIS ORDER, AND PAYABLE THEREFROM, NOT TO EXCEED 1,500 DOLLARS.

WCB CASE NO. 74—1156 NOVEMBER 19, 1974

ANDREW M. POLLARD, CLAIMANT

SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE, CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S AFFIRMANCE OF THE STATE ACCIDENT INSURANCE FUND'S DENIAL OF HIS CLAIM.

CLAIMANT IS A 66 YEAR OLD WATER DISTRICT SUPERINTENDENT WHO SUFFERED A STROKE ON DECEMBER 10, 1973 WHILE OPERATING AN AUTOMOBILE ON COMPANY BUSINESS.

IN THE TWO OR THREE YEAR PERIOD PRECEDING THE STROKE, CLAIMANT'S SUPERINTENDING DUTIES HAD BECOME SO BURDENSOME THAT HE HAD DECIDED TO RETIRE TO AVOID THE INCREASED STRESS AND TENSION OF THE JOB.

CLAIMANT'S LONG TIME TREATING PHYSICIAN, DR. ROBERT CORLETT, WAS FIRMLY OF THE OPINION THAT THE TENSIONS AND STRAINS OF CLAIMANT'S EMPLOYMENT WERE A MATERIAL CONTRIBUTING FACTOR TO HIS STROKE.

DR. HERBERT GRISWOLD, A WELL KNOWN EXPERT ON CARDIOVASCULAR MEDICINE, TESTIFIED AT THE HEARING ON BEHALF OF THE STATE ACCIDENT INSURANCE FUND. BASED ON A SET OF FACTS PROPOUNDED TO HIM BY THE FUND'S ATTORNEY, DR. GRISWOLD THOUGHT CLAIMANT'S STROKE PROBABLY WAS NOT RELATED TO HIS WORK. HIS OPINION WAS NOT BASED ON A PERSONAL EXAMINATION OF THE CLAIMANT AND HE WAS ADMITTEDLY NOT THOROUGHLY CONVERSANT WITH THE DETAILS OF CLAIMANT'S MEDICAL HISTORY.

UPON CROSS-EXAMINATION, DR. GRISWOLD ADMITTED THAT IN CERTAIN INDIVIDUALS STRESS MAY BE A FACTOR IN THE OCCURRENCE OF AN OCCLUSION. HE WENT ON TO ADMIT THAT IT WAS POSSIBLE THAT CLAIMANT'S OCCLUSION AND CONSEQUENT STROKE WERE RELATED TO HIS STRESS BUT CONCLUDED BY STATING - 'I DON'T KNOW IF ONE CAN STATE YES OR NO.' (TR 95, LINES 11 AND 12).

THE REFEREE, WHILE ADMITTING THAT DR. GRISWOLD'S OPINION WAS LESS THAN SATISFYING, EMBRACED THAT OPINION, AND REJECTED DR. CORLETT'S OPINION AS 'NOT PERSUASIVE'.

DR. GRISWOLD'S RELUCTANCE TO FIND A CAUSAL CONNECTION SEEMS TO HAVE SPRUNG MORE FROM THE IMPERFECT STATE OF MEDICAL KNOWLEDGE OF THIS WORKMAN'S CASE RATHER THAN FROM A FIRM CONVICTION THAT THIS PARTICULAR WORKMAN'S STROKE WAS POSITIVELY NOT RELATED TO HIS WORK.

BECAUSE OF DR. CORLETT'S INTIMATE ACQUAINTANCE WITH CLAIMANT'S MEDICAL HISTORY AS HIS PERSONAL TREATING PHYSICIAN, WE ARE PERSUADED BY HIS OPINION.

WE CONCLUDE CLAIMANT'S STROKE AROSE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT AND THAT HE IS THEREFORE ENTITLED TO WORKMEN'S COMPENSATION BENEFITS.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 11, 1974, IS REVERSED AND THE STATE ACCIDENT INSURANCE FUND IS HEREBY ORDERED TO ACCEPT CLAIMANT'S CLAIM AND PAY TO HIM THE BENEFITS PROVIDED BY LAW.

CLAIMANT'S COUNSEL IS HEREBY AWARDED AN ATTORNEY'S FEE OF 1,100 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND FOR HIS SERVICES AT THE HEARING AND ON THIS REVIEW.

WCB CASE NO. 74-797 NOVEMBER 19, 1974

JERRY MOONEY, CLAIMANT

KEITH TICHENOR, 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 CLAIMANT, 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. 73-4097 NOVEMBER 22, 1974

JESS W. DAVENPORT, CLAIMANT

BODIE, MINTURN, VAN VOORHEES AND LARSON, CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON JUNE 14, 1974, THE STATE ACCIDENT INSURANCE FUND REQUESTED BOARD REVIEW OF A REFEREE'S ORDER IN WCB CASE NO. 73-4097, GRANTING CLAIMANT INCREASED PERMANENT DISABILITY COMPENSATION FOR AN INJURY OF MARCH 9, 1973.

ON NOVEMBER 8, 1974, PRIOR TO A BOARD DECISION ON THE CASE, THE PARTIES SUBMITTED A COMPROMISE SETTLEMENT DISPOSING OF THE ISSUES RAISED ON REVIEW AND ALSO DISPOSING OF THE ISSUES RAISED BY A SUBSEQUENT REQUEST FOR HEARING (WCB CASE NO. 74-3317). THE TERMS OF THE SETTLEMENT ARE CONTAINED IN A DOCUMENT ENTITLED 'ORDER ON REVIEW' WHICH IS ATTACHED HERETO AS EXHIBIT 'A'.

THE BOARD, BEING NOW FULLY ADVISED, FINDS THE SETTLEMENT FAIR AND EQUITABLE TO BOTH PARTIES, AND CONCLUDES IT SHOULD BE APPROVED AND EXECUTED ACCORDING TO ITS TERMS.

IT IS HEREBY ORDERED THAT, IN LIEU OF THE COMPENSATION GRANTED BY THE REFEREE IN HIS ORDER DATED JUNE 10, 1974, CLAIMANT RECEIVE THE COMPENSATION AGREED UPON IN EXHIBIT 'A', ATTACHED TO THIS ORDER.

IT IS HEREBY FURTHER ORDERED THAT THE FUND'S REQUEST FOR REVIEW PENDING IN WCB CASE NO. 73-4097, BE, AND IT IS HEREBY DISMISSED AND,

IT IS HEREBY FINALLY ORDERED THAT THE CLAIMANT'S REQUEST FOR HEARING IN WCB CASE NO. 74-3317 BE DISMISSED BY THE HEARINGS DIVISION BASED ON THE STIPULATED SETTLEMENT APPROVED BY THIS ORDER.

ORDER ON REVIEW

CLAIMANT, JESS W. DAVENPORT, SUSTAINED A COMPENSABLE INJURY ON MARCH 9, 1973, WHICH WAS ASSIGNED SAIF CLAIM NO. BC 426032. THE CLAIM WAS CLOSED BY DETERMINATION ORDER DATED OCTOBER 2, 1973, AND BY THAT DETERMINATION ORDER THE CLAIMANT WAS GRANTED AN AWARD OF PERMANENT PARTIAL DISABILITY OF 30 PERCENT OF THE LOSS OF VISION OF THE RIGHT EYE EQUAL TO 30 DEGREES AND 5 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED HEAD DISABILITY EQUAL TO 16 DEGREES. THE CLAIMANT MADE A TIMELY REQUEST FOR HEARING, THE MATTER WAS ASSIGNED WCB CASE NO. 73-4097 AND A HEARING WAS HELD IN THE MATTER. AN OPINION AND ORDER WAS ISSUED BY THE REFEREE ON JUNE 10, 1974, GRANTING THE CLAIMANT AN AWARD OF PERMANENT PARTIAL DISABILITY EQUAL TO 100 DEGREES FOR UNSCHEDULED DISABILITY TO HIS RIGHT EYE OF A MAXIMUM OF 320 DEGREES. THIS WAS IN ADDITION TO AND NOT IN LIEU OF THE AWARD GRANTED BY DETERMINATION ORDER DATED OCTOBER 2, 1973. THE DEFENDANT MADE A TIMELY REQUEST FOR BOARD REVIEW OF THAT OPINION AND ORDER AND SUBSEQUENT THERETO THE CLAIMANT, CLAIMANT'S ATTORNEY AND THE DEFENDANT HAVE AGREED AND

STIPULATED THAT THE OPINION AND ORDER OF JUNE 10, 1974, WAS IMPROPER IN THAT THE CLAIMANT WAS ENTITLED TO AN AWARD OF PERMANENT PARTIAL DISABILITY OF 53 PERCENT OF LOSS OF VISION OF THE RIGHT EYE EQUAL TO 53 DEGREES AND 15 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED HEAD DISABILITY EQUAL TO 48 DEGREES, BEING AN INCREASE OF 32 DEGREES UNSCHEDULED DISABILITY AND 23 DEGREES SCHEDULED DISABILITY FOR LOSS OF VISION IN THE RIGHT EYE.

SUBSEQUENT TO THE ISSUANCE OF THE OPINION AND ORDER OF JUNE 10, 1974, THE CLAIMANT FILED ANOTHER REQUEST FOR HEARING SEEKING PENALTIES AND ATTORNEY'S FEES FOR UNREASONABLE RESISTANCE TO THE PAYMENT OF COMPENSATION. THIS MATTER WAS ASSIGNED WCB CASE NO. 74-3317. CLAIMANT AND DEFENDANT HAVE STIPULATED THAT SINCE THE QUESTION OF THE EXTENT OF DISABILITY HAS BEEN RESOLVED, CLAIMANT DOES NOT WISH TO PURSUE THE QUESTION OF PENALTIES FURTHER AND THAT THE REQUEST FOR HEARING ON THE QUESTION OF PENALTIES AND ATTORNEY'S FEES SHOULD BE DISMISSED.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT CLAIMANT BE GRANTED AN AWARD OF PERMANENT PARTIAL DISABILITY EQUAL TO 53 PERCENT LOSS OF VISION OF THE RIGHT EYE EQUAL TO 53 DEGREES, AND 15 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED HEAD DISABILITY EQUAL TO 48 DEGREES, BEING AN INCREASE IN COMPENSATION OVER THE DETERMINATION ORDER OF OCTOBER 2, 1973, OF 23 PERCENT LOSS OF VISION OF THE RIGHT EYE EQUAL TO 23 DEGREES AND 10 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED HEAD DISABILITY EQUAL TO 32 DEGREES.

IT IS FURTHER ORDERED THAT CLAIMANT'S REQUEST FOR HEARING FOR PENALTIES AND ATTORNEY'S FEES FOR UNREASONABLE RESISTANCE TO THE PAYMENT OF COMPENSATION IS HEREBY DISMISSED.

IT IS FURTHER ORDERED THAT JAMES F. LARSON, OF THE FIRM OF BODIE, MINTURN, VAN VOORHEES AND LARSON, P. O. BOX 623, PRINEVILLE, OREGON 97754, BE GRANTED AN ATTORNEY'S FEE TO THE EXTENT OF 25 PERCENT OF THE INCREASED COMPENSATION AS REASONABLE ATTORNEY'S FEES NOT TO EXCEED THE SUM OF 1500 DOLLARS PAYABLE OUT OF SUCH INCREASED COMPENSATION AWARD AS PAID.

SAIF CLAIM NO. A 691309 NOVEMBER 25, 1974

CLARENCE CHRISTY, CLAIMANT

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 SUSTAINED A COMPENSABLE INJURY TO HIS LEFT KNEE IN 1958. A MEDICAL OPINION SUBMITTED BY DR. J. A. HOLBERT REFLECTS THAT CLAIMANT'S KNEE CONDITION HAS BECOME SIGNIFICANTLY WORSE TO THE POINT THAT HE CAN HARDLY WALK ON IT, AND THAT 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 RELATING TO HIS LEFT KNEE INJURY FOR SUCH FURTHER MEDICAL CARE AND COMPENSATION AS HIS CONDITION MAY REQUIRE. WHEN CLAIMANT'S CONVALESCENCE IS COMPLETED THE STATE ACCIDENT INSURANCE FUND SHALL RESUBMIT THE CLAIM TO THE BOARD FOR ITS OWN MOTION EVALUATION OF CLAIMANT'S CONDITION.

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.

SAIF CLAIM NO. A 654930 NOVEMBER 25, 1974

HOWARD BLAKENEY, CLAIMANT

THIS MATTER INVOLVES A WORKMAN WHO SUSTAINED A COMPENSABLE INJURY IN FEBRUARY, 1958, WHILE EMPLOYED BY THE OREGON STATE HIGHWAY DEPARTMENT. CLAIMANT HAS PETITIONED THE WORKMEN'S COMPENSATION BOARD, UNDER THE CONTINUING JURISDICTION PROVISIONS OF THE LAW IN ORS 656.278, TO REOPEN HIS CLAIM.

IT IS APPARENT TO THE BOARD THAT CLAIMANT'S PHYSICAL CONDITION HAS WORSENED, BUT MEDICAL INFORMATION AVAILABLE AT THIS TIME TO THE BOARD IS INCONCLUSIVE AS TO THE SPECIFIC NEEDS OF THE CLAIMANT.

IT IS THEREFORE ORDERED THAT THE STATE ACCIDENT INSURANCE FUND REOPEN CLAIMANT'S CLAIM, AND ARRANGE FOR AND PAY THE EXPENSE OF, A FULL AND COMPLETE EVALUATION OF CLAIMANT'S CONDITION AT THE DISABILITY PREVENTION DIVISION TO DETERMINE IF CLAIMANT IS IN NEED OF FURTHER CARE AND TREATMENT = OR IF NOT, IF CLAIMANT'S PRESENT DISABILITY IS THE RESULT OF HIS INDUSTRIAL INJURY. THE EVALUATION REPORTS SHALL THEREAFTER BE SUBMITTED TO THE BOARD FOR FURTHER CONSIDERATI ON AND FINAL DISPOSITION OF CLAIMANT'S REQUEST FOR OWN MOTION RELIEF.

IT IS FURTHER ORDERED THAT CLAIMANT RECEIVE TEMPORARY TOTAL DISABILITY COMPENSATION FROM THE DATE OF THIS ORDER UNTIL FURTHER ORDER OF THE BOARD.

WCB CASE NO. 74-1098 NOVEMBER 26, 1974

CHESTER LEPLEY, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
COLLINS, FERRIS AND VELURE,
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS CLAIMANT RECEIVED COMPENSABLE INJURIES TO HIS LEGS AND LOW BACK ON APRIL 21, 1972. THE INJURIES REQUIRED SURGICAL AMPUTATION OF THE RIGHT LEG BELOW THE KNEE AND USE OF A PROSTHESIS. PURSUANT TO A DETERMINATION ORDER, HE WAS AWARDED 135 DEGREES FOR 100 PERCENT LOSS OF THE RIGHT FOOT AND 15 DEGREES FOR 10 PERCENT LOSS OF THE LEFT LEG. THE REFEREE, AT HEARING, ALLOWED 48 DEGREES FOR 15 PERCENT UNSCHEDULED BACK DISABILITY BASED ON LOSS OF EARNING CAPACITY.

THE CLAIMANT REQUESTS BOARD REVIEW OF THIS ORDER CONTENDING HE IS ENTITLED TO A GREATER AWARD FOR THE LEFT LEG AND A GREATER AWARD FOR UNSCHEDULED DISABILITY TO HIS BACK.

WE HAVE REVIEWED THE RECORD DE NOVO AND, HAVING DONE SO, CONCUR WITH THE FINDINGS AND ANALYSIS OF THE REFEREE AND CONCLUDE HIS ORDER SHOULD BE AFFIRMED.

ORDER

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

WCB CASE NO. 74-188 NOVEMBER 26, 1974

LOLO RUSSELL, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE INVOLVED IN THIS MATTER IS THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 35 PERCENT (112 DEGREES) UNSCHEDULED NECK, RIGHT SHOULDER AND LOW BACK DISABILITY AND 5 PERCENT (7.5 DEGREES) SCHEDULED PARTIAL LOSS OF THE RIGHT LEG. THE REFEREE AWARDED CLAIMANT PERMANENT TOTAL DISABILITY.

CLAIMANT, NOW 67 YEARS OLD, WHILE WORKING AS A REGISTERED NURSE IN THE HOSPITAL, RECEIVED A BACK INJURY MARCH 3, 1972, WHILE LIFTING A PATIENT. SHE HAS RECEIVED CONSERVATIVE CARE ONLY AND INTENDED TO AT LEAST PARTIALLY RETIRE SHORTLY AFTER THE INJURY WHEN SHE WOULD BE 65 YEARS OLD.

ON DE NOVO REVIEW OF THE ENTIRE RECORD AND ESPECIALLY THE MEDICAL REPORTS, THE BOARD FINDS THAT CLAIMANT HAS NOT PROVED A PRIMA FACIE CASE FOR THE AWARD OF PERMANENT TOTAL DISABILITY. THE BOARD ALSO FINDS THAT CLAIMANT HAS FAILED TO PROVE PERMANENT TOTAL DISABILITY UNDER THE ODD-LOT DOCTRINE. THE EVIDENCE REFLECTS A LACK OF MOTIVIATION FOR RESUMING REGULAR EMPLOYMENT. THE BOARD THUS FINDS THAT CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED WITHIN THE MEANING OF THE WORKMEN'S COMPENSATION LAW.

ON DE NOVO REVIEW, THE BOARD FINDS CLAIMANT HAS SUSTAINED A TOTAL OF 50 PERCENT (160 DEGREES) UNSCHEDULED DISABILITY AND AFFIRMS THE AWARD OF 5 PERCENT (7.5 DEGREES) SCHEDULED PARTIAL LOSS OF THE RIGHT LEG.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 28, 1974, IS REVERSED.

CLAIMANT IS AWARDED A TOTAL OF 160 DEGREES UNSCHEDULED DISABILITY AFFECTING THE NECK, RIGHT SHOULDER AND LOW BACK AND 7.5 DEGREES FOR PARTIAL LOSS OF THE RIGHT LEG. THIS IS AN INCREASE OF 48 DEGREES OVER THAT WHICH WAS AWARDED BY THE DETERMINATION ORDER.

CLAIMANT'S COUNSEL IS TO RECEIVE AS A FEE 25 PERCENT OF THE INCREASE IN COMPENSATION AWARDED HEREBY, PAYABLE FROM SAID AWARD WHICH SHALL NOT EXCEED 1,500 DOLLARS.

WCB CASE NO. 74-637 NOVEMBER 26, 1974

HERBERT F. WONCH, CLAIMANT

DEZENDORF, SPEARS, LUBERSKEY AND CAMPBELL, CLAIMANT'S ATTYS.
PHILIP A. MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES THE CLAIMANT'S REQUEST TO SET ASIDE AN AGREEMENT AND STIPULATION BY WAY OF A SETTLEMENT OF A DISPUTED CLAIM. THE REFEREE VACATED AND SET ASIDE THE DISPUTED CLAIM SETTLEMENT AND ORDERED CLAIMANT'S REQUEST FOR HEARING ON THE MERITS REINSTATED. THE EMPLOYER REQUESTS BOARD REVIEW.

CLAIMANT FILED A CLAIM WITH HIS EMPLOYER FOR AN INJURY OF APRIL 1, 1972. THE EMPLOYER DENIED THE CLAIM ON THE BASIS THAT CLAIMANT DID NOT GIVE NOTICE TO THE EMPLOYER WITHIN 30 DAYS AFTER THE ACCIDENT AND THAT THE CURRENT MEDICAL CONDITION IS NOT A RESULT OF NEED FOR MEDICAL TREATMENT ARISING OUT OF THE COURSE OF EMPLOYMENT OR REASON OF AGGRAVATION OF A PREEXISTING BACK CONDITION. THE CLAIMANT REQUESTED A HEARING. APPROXIMATELY ONE MONTH AFTER THE REQUEST FOR HEARING WAS FILED, A DISPUTED CLAIM SETTLEMENT WAS EXECUTED IN CONSIDERATION OF 4,306 DOLLARS AND 36 CENTS. THE RECORD REFLECTS THIS CONSIDERATION IS THE AMOUNT OF COMPENSATION DUE THE CLAIMANT FOR TEMPORARY TOTAL DISABILITY AND MEDICAL BILLS TO THE DATE OF THE SETTLEMENT.

THE CLAIMANT WAS UNREPRESENTED BY COUNSEL AT THE TIME OF THE DISPUTED CLAIM SETTLEMENT.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE FINDINGS AND OPINION OF THE REFEREE AND ADOPTS THE REFEREE'S WELL WRITTEN OPINION AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED JULY 8, 1974, IS 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. 74-1252 NOVEMBER 26, 1974

PAULETTE MOWRY, CLAIMANT

BODIE AND MINTURN, CLAIMANT'S ATTYS.
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 WHICH ORDERED THE FUND TO REOPEN CLAIMANT'S CLAIM FOR MEDICAL CARE AND TREATMENT AND TEMPORARY TOTAL DISABILITY FROM JANUARY 19, 1974 UNTIL PROPER CLOSURE.

CLAIMANT WAS, AT THE TIME OF HEARING, A 25 YEAR OLD WAITRESS WHO SUFFERED COMPENSABLE INJURIES MAY 6, 1973, WHILE RIDING TO WORK WITH HER EMPLOYER. THEIR CAR WAS STRUCK BROADSIDE, THROWING HER FROM THE CAR TO THE GROUND. CLAIMANT RECEIVED EXTENSIVE MEDICAL TREATMENT INCLUDING AN INTERBODY FUSION AT THE C5-6 LEVEL. AFTER SURGERY, CLAIMANT WAS AGAIN HOSPITALIZED WHEN SHE SLIPPED AND FELL. A DETERMINATION ORDER OF MARCH 12, 1974 AWARDED CLAIMANT 20 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY EQUAL TO 64 DEGREES.

CLAIMANT COMPLAINED OF SEVERE DISABILITY. DR. RICHARD C. GILMORE, A PSYCHIATRIST, FELT THERE WAS SOME PHYSICAL BASIS FOR HER COMPLAINTS BUT THEY WERE AGGRAVATED BY INTENSE EMOTIONAL OVERLAY, DEPRESSIVE REACTION AND PSYCHOPHYSICAL SKELETAL MUSCLE REACTION. BASED ON MEDICAL REPORTS IN THE RECORD, IT APPEARS PSYCHIATRIC CARE AND TREATMENT IS THE ONLY CARE AND TREATMENT WHICH IS LIKELY TO RESTORE CLAIMANT TO ANY DEGREE OF NORMAL FUNCTION.

INITIALLY SHE WAS NOT RECEPTIVE TO PSYCHIATRIC TREATMENT, BUT NOW INDICATES A WILLINGNESS TO SUBMIT TO ANY TREATMENT THAT MIGHT ALLEVIATE HER PAIN. FROM PERSONAL OBSERVATION THE REFEREE WAS CONVINCED CLAIMANT WAS EXPERIENCING EXTREME PAIN, EITHER PHYSICAL OR PSYCHOLOGICAL, OR A COMBINATION OF BOTH.

THE BOARD AFFIRMS THE FINDING OF THE REFEREE THAT CLAIMANT'S CONDITION IS NOT MEDICALLY STATIONARY AND SHE IS IN NEED OF FURTHER TREATMENT. THE EXTENT OF PERMANENT DISABILITY WILL BE DETERMINED UPON CLAIM CLOSURE PURSUANT TO ORS 656.268.

ORDER

THE ORDER OF THE REFEREE DATED JULY 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.

WCB CASE NO. 73—4167

WCB CASE NO. 74—100 NOVEMBER 26, 1974

ERNEST GIBBENS, CLAIMANT
FRANKLIN, BENNETT, OFELT AND
JOLLES, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY,
WILLIAMSON AND SCHWABE,
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES THE QUESTION OF WHETHER CLAIMANT SUSTAINED A NEW COMPENSABLE INJURY SEPTEMBER 25, 1973, WHILE HIS EMPLOYER WAS COVERED BY GENERAL INSURANCE CO., OR WHETHER CLAIMANT SUFFERED AN AGGRAVATION OF A PREVIOUS COMPENSABLE INJURY SUSTAINED IN OCTOBER, 1968, WHEN HIS EMPLOYER WAS COVERED BY EMPLOYERS MUTUAL OF WAUSAU. BOTH CARRIERS DENIED RESPONSIBILITY. AT HEARING, THE REFEREE REMANDED THE MATTER TO EMPLOYERS INSURANCE OF WAUSAU FOR ACCEPTANCE ON THE BASIS OF AN AGGRAVATION CLAIM. EMPLOYERS INSURANCE OF WAUSAU, THROUGH THE EMPLOYER, HAS APPEALED FROM THIS ORDER.

CLAIMANT WAS EMPLOYED AS A MECHANIC AT FOREST HILLS GOLF COURSE WHEN HE INJURED HIS NECK AND RIGHT SHOULDER IN OCTOBER, 1968. THE CLAIM WAS CLOSED WITH NO AWARD FOR PERMANENT DISABILITY. IN AUGUST, 1973, WHILE INSTALLING A PUMP, CLAIMANT EXPERIENCED NECK, ARM AND SHOULDER PAIN.

THE BOARD, ON REVIEW, FINDS MEDICAL EVIDENCE REFLECTING CLAIMANT'S SYMPTOMS PERSISTED TO THE EXTENT THAT MEDICAL TREATMENT WAS REQUIRED FROM TIME TO TIME ON A CONTINUING BASIS FROM THE DATE OF THE INITIAL INJURY. FLAREUPS OCCURRED WHENEVER CLAIMANT WAS REQUIRED TO DO LIFTING. DR. NASH'S MEDICAL REPORT CLEARLY INDICATED AN OBVIOUS DETERIORATION OF CLAIMANT'S CONDITION.

THE BOARD FINDS, AS DID THE REFEREE, THAT THE CLAIMANT DID NOT SUSTAIN A SUBSEQUENT INTERVENING INJURY AND THAT HIS PRESENT CONDITION IS AN AGGRAVATION OF HIS ORIGINAL COMPENSABLE INJURY OF SEPTEMBER 28, 1968.

ON THIS REVIEW, CLAIMANT WAS ONLY A NOMINAL PARTY AND MADE NO RESPONSE TO THE APPELLANT'S CONTENTIONS. THEREFORE, NO ATTORNEY FEE TO CLAIMANT'S ATTORNEY WILL BE ORDERED.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 8, 1974, AND HIS SUPPLEMENTAL ORDER DATED APRIL 12, 1974, ARE HEREBY AFFIRMED.

WCB CASE NO. 73-3773 NOVEMBER 26, 1974

ALBERT MOORE, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES PENALTIES AND ATTORNEY'S FEES FOR DELAY IN PAYMENTS OF PERMANENT PARTIAL DISABILITY TO THE CLAIMANT. THE REFEREE ASSESSED A 25 PERCENT PENALTY OF THE DELAYED PERMANENT PARTIAL DISABILITY PAYMENT BUT DECLINED TO AWARD ATTORNEY'S FEES TO BE PAID BY THE EMPLOYER.

A REFEREE'S ORDER OF OCTOBER 10, 1973, AWARDED THE CLAIMANT 32 DEGREES PERMANENT PARTIAL DISABILITY. THE EMPLOYER'S CARRIER, BY ITS LETTER OF NOVEMBER 21, WROTE THE CLAIMANT ENCLOSING THE FIRST PERMANENT PARTIAL DISABILITY CHECK.

THE BOARD CONCURS WITH THE FINDING OF THE REFEREE THAT THIS DELAY WAS AN UNREASONABLE DELAY PURSUANT TO ORS 656.262(8) BUT THAT UNDER THE FACTS OF THIS CASE IT WAS NOT MISCONDUCT OR UNREASONABLE RESISTANCE INCURRING PENALTIES AND ATTORNEY'S FEES PAID BY THE EMPLOYER PURSUANT TO ORS 656.382.

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

ORDER

THE ORDER OF THE REFEREE DATED JULY 24, 1974 IS AFFIRMED.

WCB CASE NO. 73-3126 NOVEMBER 26, 1974

HOMER RHODES, CLAIMANT

EVOHL F. MALAGON, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON NOVEMBER 12, 1974, CLAIMANT MOVED THE BOARD FOR AN ORDER REMANDING THIS MATTER TO THE REFEREE IN ORDER THAT HE MIGHT PURSUE THE ISSUE OF WHETHER CLAIMANT'S ALLEGED NEW ACCIDENT MIGHT INSTEAD BE AN AGGRAVATION OF AN EARLIER INJURY.

THE STATE ACCIDENT INSURANCE FUND OBJECTED TO THE MOTION POINTING OUT THAT CLAIMANT HAD THE OPPORTUNITY TO PURSUE SUCH A COURSE EARLIER BUT HAD ELECTED NOT TO AND THEREFORE HE SHOULD NOT NOW BE GRANTED SUCH AN OPPORTUNITY.

THE BOARD BEING NOW FULLY ADVISED, FINDS THE CLAIMANT'S MOTION IS NOT WELL TAKEN AND IT IS HEREBY DENIED.

WCB CASE NO. 74-198 NOVEMBER 26, 1974

RICHARD MALLAM, CLAIMANT

THOMAS E. WURTZ, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED A DETERMINATION ORDER AWARDING CLAIMANT 48 DEGREES OR 15 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED DISABILITY.

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HIS LOW BACK WHILE EMPLOYED AS A CARPENTER. A LAMINECTOMY WAS PERFORMED AT THE L4-5 LEVEL AND CLAIMANT MADE A GOOD RECOVERY.

CLAIMANT HAS SUCCESSFULLY COMPLETED A WELDING COURSE UNDER THE DIVISION OF VOCATIONAL REHABILITATION AND IS NOW STEADILY EMPLOYED AS A WELDER. HE CONTINUES TO HAVE COMPLAINTS OF PAIN AND DISCOMFORT, BUT OVERALL APPEARS TO HAVE MADE AN EXCELLENT VOCATIONAL READJUSTMENT.

THE BOARD CONCURS WITH THE REFEREE THAT CLAIMANT'S PRESENT PHYSICAL DISABILITY DOES NOT EXCEED THAT PREVIOUSLY AWARDED. SHOULD CLAIMANT'S FUTURE CONDITION BECOME WORSENED, HIS REMEDIES UNDER ORS 656.273 OR 656.278 ARE STILL AVAILABLE TO HIM.

ORDER

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

WCB CASE NO. 73-1286 NOVEMBER 26, 1974

KENNETH KELSEY, CLAIMANT

JOHN ROSS, 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 REQUIRED THE FUND TO SUBMIT CLAIMANT'S CLAIM TO THE WORKMEN'S COMPENSATION BOARD'S EVALUATION DIVISION FOR DETERMINATION UNDER ORS 656.268.

CLAIMANT SUFFERED A COMPENSABLE INJURY DECEMBER 23, 1968, DIAGNOSED A LOW BACK STRAIN. HIS CLAIM WAS ACCEPTED, TREATMENT PROVIDED, AND THEREAFTER CLOSED AS A MEDICAL

ONLY' SINCE THERE WAS NO TIME LOSS. CLAIMANT WAS NEVER ADVISED OF THE MEDICAL ONLY CLOSURE.

THE BOARD, ON REVIEW, RATIFIES ITS POSITION AS DELINEATED IN THE BOARD'S ORDER ON REVIEW IN THE FRED O'NEALL, WCB CASE NO. 72-3201, CASE AND FINDS THE REFEREE PROPERLY REQUIRED THE FUND TO SUBMIT THE CLAIM FOR DETERMINATION.

ORDER

THE REFEREE'S ORDER DATED MAY 17, 1974, AND HIS AMENDMENT DATED MAY 20, 1974, ARE 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. 74-1047 NOVEMBER 26, 1974

ARNOLD MASON, CLAIMANT

GARY KAHN, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES A DENIAL BY THE STATE ACCIDENT INSURANCE FUND OF RESPONSIBILITY FOR CERVICAL DISC HOSPITALIZATION AND TREATMENT BECAUSE IT WAS NOT RELATED TO THE INJUSTRIAL INJURY. THE REFEREE SET ASIDE THE DENIAL AND ORDERED THE STATE ACCIDENT INSURANCE FUND TO PAY FOR THE MEDICAL CARE AND TEMPORARY TOTAL DISABILITY AND TO PAY CLAIMANT'S ATTORNEY'S FEE IN THE AMOUNT OF 500 DOLLARS ON A DENIED CASE.

CLAIMANT, A 34 YEAR OLD APPLIANCE SERVICE MAN, WAS INJURED JULY 13, 1972, WHEN A REFRIGERATOR TIPPED OVER ONTO HIM. THE CLAIM WAS ACCEPTED AND TREATED AS A 'MEDICAL ONLY' CLAIM. CLAIMANT RECEIVED MEDICAL CARE FOR WHICH THE STATE ACCIDENT INSURANCE FUND PAID FOR HIS HEAD AND NECK INJURIES. ON DECEMBER 18, 1973, CLAIMANT WAS HOSPITALIZED FOR A MYELOGRAM. THE STATE ACCIDENT INSURANCE FUND DENIED RESPONSIBILITY FOR THE CERVICAL DISC HOSPITALIZATION AND TREATMENT.

THE MEDICAL REPORTS CLEARLY SHOW THAT THE MYELOGRAM WAS DIRECTLY ATTRIBUTABLE TO THE COMPENSABLE ACCIDENT. THE BOARD AFFIRMS THE ORDER OF THE REFEREE SETTING ASIDE THE STATE ACCIDENT INSURANCE FUND'S DENIAL AND ORDERING THE STATE ACCIDENT INSURANCE FUND TO PAY FOR THE MEDICAL CARE AND TEMPORARY TOTAL DISABILITY AS APPROPRIATE.

THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM FOR WHICH COMPENSATION SHOULD HAVE BEEN PAID. THE REFEREE'S ORDER FOR THE STATE ACCIDENT INSURANCE FUND TO PAY COUNSEL FOR PAYMENT OF A REASONABLE ATTORNEY'S FEE IN THE AMOUNT OF 500 DOLLARS IS AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED JULY 16, 1974, IS 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. 74-376 NOVEMBER 26, 1974

ROSE M. WEAR, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES A DENIAL BY THE STATE ACCIDENT INSURANCE FUND ON THE GROUNDS THAT THERE IS INSUFFICIENT EVIDENCE THAT THE WORKMAN SUSTAINED AN ACCIDENTAL INJURY, THE CONDITION REQUIRING TREATMENT IS NOT A RESULT OF THE ACTIVITY DESCRIBED, THE ACCIDENTAL INJURY DID NOT ARISE OUT OF AND IN THE SCOPE AND COURSE OF EMPLOYMENT, AND THAT CLAIMANT FAILED TO NOTIFY THE EMPLOYER WITHIN 30 DAYS. THE REFEREE AFFIRMED THE DENIAL.

CLAIMANT, WHILE WORKING TAPING AIR FILTERS, SUFFERED PAIN AND NUMBNESS IN A RIGHT SHOULDER. SHE REPORTED THIS TO HER SUPERVISOR WHO TOLD HER TO IGNORE IT AND THAT THE PAIN WOULD GO AWAY. THE EMPLOYER THUS HAD KNOWLEDGE OF THE INJURY AND THERE IS INSUFFICIENT EVIDENCE TO SHOW THAT THE EMPLOYER HAS BEEN PREJUDICED BY THE ABSENCE OF A WRITTEN REPORT OF CLAIM WITHIN 30 DAYS.

THE TESTIMONY OF THE ATTENDING PHYSICIAN CONVINCES THE BOARD THAT THE CLAIMANT'S CONDITION WAS RELATED TO HER EMPLOYMENT.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 7, 1974, IS REVERSED.

THE STATE ACCIDENT INSURANCE FUND IS ORDERED TO ACCEPT CLAIMANT'S CLAIM AND PAY BENEFITS ACCORDING TO LAW.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 900 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES AT HEARING AND ON BOARD REVIEW.

WCB CASE NO. 74-76 NOVEMBER 26, 1974

IRENE J. GRISHAM, CLAIMANT
KEITH BURNS, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT
CROSS-APPEAL BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER REQUIRING THE STATE ACCIDENT INSURANCE FUND TO PROVIDE CARE FOR A BUNION CONDITION HE FOUND RELATED TO HER EMPLOYMENT, BUT DENYING HER REQUEST FOR PERMANENT DISABILITY COMPENSATION ALLEGEDLY THE RESULT OF TWO CLAIMED ACCIDENTS AT WORK.

THE STATE ACCIDENT INSURANCE FUND REQUESTED BOARD REVIEW OF THE REFEREE'S ORDER REQUIRING THE STATE ACCIDENT INSURANCE FUND TO PROVIDE CLAIMANT MEDICAL CARE FOR HER BUNIONS ON THE GROUNDS THERE WAS NO INJURY BY ACCIDENT SHOWN AND IT ALSO 'REJECTED' THE REFEREE'S ORDER TO THE EXTENT THAT IT APPEARED TO FIND CLAIMANT'S BUNION CONDITION CONSTITUTED AN OCCUPATIONAL DISEASE.

THE REFEREE DENIED CLAIMANT'S ALLEGED INJURY CLAIM BECAUSE HE DID NOT BELIEVE TESTIMONY OF HAVING FIRST DROPPED A BOTTLE, AND LATER A CASE, OF LIQUOR ON HER RIGHT FOOT.

CLAIMANT'S ATTORNEY HAS SKILLFULLY SUGGESTED A PLAUSIBLE EXPLANATION OF THE CASE IN HIS BRIEF ON APPEAL. IN SPITE OF HIS ARGUMENT, HOWEVER, WE ARE CONVINCED, HAVING REVIEWED THE RECORD DE NOVO, THAT THE REFEREE'S FINDINGS AND CONCLUSIONS ARE CORRECT AND WE ADOPT THEM AS OUR OWN.

THE REFEREE APPEARS TO HAVE CONSIDERED CLAIMANT'S BUNION AGGRAVATION AN OCCUPATIONAL DISEASE AND, IN ANY EVENT, WE CONSIDER IT AN OCCUPATIONAL DISEASE. THE MEDICAL BOARD OF REVIEW PROCEDURES PREVIOUSLY CONTAINED IN THE LAW WERE REMOVED FROM THE STATUTE ON OCTOBER 5, 1973 AND, BEING PROCEDURAL RATHER THAN SUBSTANTIVE PARTS OF THE STATUTE, ARE NOT APPLICABLE TO ANY REQUEST FOR REVIEW MADE AFTER OCTOBER 5, 1973.

THE REFEREE'S ORDER SHOULD BE AFFIRMED.

ORDER

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

WCB CASE NO. 68—1055 NOVEMBER 26, 1974

SHIRLEEN ROWLANDS, CLAIMANT

MC MENAMIN, JONES, JOSEPH AND LANG,
CLAIMANT'S ATTORNEYS

THIS CLAIMANT SUFFERED A LOW BACK INJURY ON JULY 19, 1967, WHILE EMPLOYED AS A COOK AT NORTH'S CHUCK WAGON RESTAURANT IN PORTLAND, OREGON. SHE WAS GRANTED TEMPORARY TOTAL DISABILITY COMPENSATION BUT NO PERMANENT PARTIAL DISABILITY BY DETERMINATION ORDER DATED MAY 20, 1968. HER AGGRAVATION RIGHTS HAVE SINCE EXPIRED.

IN NOVEMBER, 1973 THE EMPLOYER'S INSURANCE CARRIER VOLUNTARILY REOPENED HER CLAIM AND SHE UNDERWENT A LAMINECTOMY FOR A HERNIATED DISC. SHE RETURNED TO WORK JANUARY 3, 1974.

DR. PASQUESI'S REPORT OF OCTOBER 16, 1974, INDICATES CLAIMANT'S CONDITION IS NOW MEDICALLY STATIONARY AND THE CLAIM SHOULD BE CLOSED WITH A DISABILITY AWARD APPROPRIATE TO HER CONDITION. THE EVIDENCE REVEALS THAT CLAIMANT NOW HAS MILD RESIDUAL DISABILITY FROM HER INJURY EQUAL TO 32 DEGREES.

ORDER

IT IS THEREFORE ORDERED THAT CLAIMANT BE ALLOWED ADDITIONAL COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM OCTOBER 2, 1973 THROUGH JANUARY 3, 1974, AND BE GRANTED AN AWARD EQUAL TO 32 DEGREES OR 10 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY DUE TO HER LOW BACK PROBLEM.

NOTICE OF APPEAL

PURSUANT TO ORS 656.278 -

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

THE EMPLOYER MAY REQUEST A HEARING ON THIS ORDER.

SAIF CLAIM NO. 1A—348958 NOVEMBER 26, 1974

ARTHUR EKIN, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY

ON JUNE 25, 1974, CLAIMANT, THROUGH HIS ATTORNEY, J. DAVID KRYGER, REQUESTED THE BOARD TO ASSUME JURISDICTION OF HIS CLAIM PURSUANT TO THE PROVISIONS OF ORS 656.278 AND PURSUANT THERETO ORDER THE STATE ACCIDENT INSURANCE FUND TO PROVIDE ADDITIONAL MEDICAL CARE AND COMPENSATION.

WHILE THE MATTER WAS PENDING BEFORE THE BOARD THE STATE ACCIDENT INSURANCE FUND VOLUNTARILY AGREED TO EXTEND THE

BENEFITS WHICH THE CLAIMANT SOUGHT AND CLAIMANT'S ATTORNEY HAS NOW REQUESTED DISMISSAL OF THE CLAIMANT'S OWN MOTION REQUEST.

THE BOARD, BEING NOW FULLY ADVISED THAT THE FUND HAS VOLUNTARILY AGREED TO FURNISH ADDITIONAL COMPENSATION, HEREBY ORDERS THAT CLAIMANT'S REQUEST FOR BOARD'S OWN MOTION RELIEF BE, AND THE SAME IS HEREBY, DISMISSED.

IT IS SO ORDERED.

WCB CASE NO. 74-258 NOVEMBER 26, 1974

SUSAN L. AULT, CLAIMANT

MALAGON AND COLE, 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 REFEREE'S ORDER WHICH AFFIRMED A DETERMINATION ORDER AWARDING CLAIMANT PERMANENT PARTIAL DISABILITY OF 5 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

ON AUGUST 30, 1972, CLAIMANT, A NURSE'S AIDE, SUSTAINED A COMPENSABLE LOW BACK INJURY WHILE LIFTING A PATIENT. AFTER A PERIOD OF CONSERVATIVE TREATMENT SHE WAS FOUND TO HAVE A MINIMAL RESIDUAL PERMANENT DISABILITY DUE TO A CHRONIC LOW BACK STRAIN. THE COMPLICATING FACTOR THE BOARD IS HERE CONFRONTED WITH IS A WORK PERSON SOME FIVE FEET, SIX INCHES TALL, WEIGHING NEAR 300 POUNDS. ALL DOCTORS WHO HAVE EXAMINED CLAIMANT AGREE THAT CLAIMANT'S BACK PROBLEM WILL NOT IMPROVE WITHOUT A WEIGHT REDUCTION. ANY MEDICAL EFFORT TO IMPROVE HER SITUATION WITHOUT SUCH WEIGHT LOSS APPEARS TO BE AN EXERCISE IN FUTILITY. AT THIS POINT, THE BOARD FEELS A SUBSTANTIAL PART OF THE DISABILITY IS THE SOLE RESPONSIBILITY OF THE CLAIMANT.

ORS 656.325(2) AND (3) POINT OUT THE OBLIGATION OF CLAIMANTS TO REDUCE THEIR DISABILITY.

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

ORDER

THE ORDER OF THE REFEREE, DATED JULY 23, 1974 IS HEREBY AFFIRMED.

WCB CASE NO. 74-461 NOVEMBER 26, 1974

HOWARD SCHWANKE, CLAIMANT

RHOTEN, RHOTEN AND SPEERSTRA,
CLAIMANT'S ATTORNEYS
ROGER WARREN, 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 THAT MADE NO AWARD FOR PERMANENT DISABILITY.

ON MAY 5, 1972, CLAIMANT RECEIVED COMPENSABLE ELECTRICAL FLASH BURNS, SUFFERING FIRST AND SECOND DEGREE BURNS ON HIS FACE, HANDS AND WRISTS. FOLLOWING RECOVERY, THE CLAIM WAS CLOSED WITH NO AWARD FOR PERMANENT DISABILITY.

CLAIMANT WAS REEXAMINED BY DR. MOORE ON FEBRUARY 19, 1974, FOR COMPLAINTS OF LOSS OF GRIP AND TREMOR IN BOTH UPPER EXTREMITIES. THE ONLY PERMANENT DISABILITY NOTED BY THE DOCTOR WAS LOSS OF GRIP WHICH WAS ENTIRELY SUBJECTIVE. NEITHER HE NOR DR. NATHAN, A SPECIALIST IN HAND SURGERY, COULD RELATE THE TREMOR TO THE INDUSTRIAL INJURY.

THE REFEREE PERSONALLY SAW AND HEARD THE WITNESS AND COULD NOT FIND PERMANENT DISABILITY ATTRIBUTABLE TO THE INDUSTRIAL INJURY. THIS, COUPLED WITH THE LACK OF OBJECTIVE MEDICAL SUPPORT FOR HIS COMPLAINTS, CAUSES US TO CONCLUDE THAT CLAIMANT HAS SUFFERED NO PERMANENT DISABILITY. THE REFEREE'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED JULY 19, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 74-874 NOVEMBER 26, 1974

THOMAS WHEELER, CLAIMANT

S. E. SCOVILLE, CLAIMANT'S ATTY.
JAQUA AND WHEATLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH INCREASED CLAIMANT'S PERMANENT PARTIAL DISABILITY AWARD FROM 5 PERCENT TO 20 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR LOSS OF THE RIGHT LEG. CLAIMANT CONTENDS HIS DISABILITY EXCEEDS THAT FOR WHICH HE HAS BEEN COMPENSATED.

CLAIMANT RECEIVED A COMPENSABLE INJURY TO HIS KNEE FOR WHICH SURGERY WAS PERFORMED. EVIDENCE SUBMITTED TO THE EVALUATION DIVISION INDICATED AN AWARD OF 5 PERCENT LOSS OF THE RIGHT LEG WAS APPROPRIATE.

AT THE HEARING, CLAIMANT TESTIFIED THAT EXPERIENCE HAS REVEALED CONTINUING KNEE PROBLEMS SUCH AS SWELLING, LOCKING AND CONSTANT PAIN. THESE COMPLAINTS WERE UNCONTRADICTED AND VERIFIED BY A REPORT FROM DR. SPADY, THE TREATING ORTHOPEDIST.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDING THAT CLAIMANT'S KNEE DISABILITY IS EQUIVALENT TO 20 PERCENT LOSS OF THE RIGHT LEG.

ORDER

THE ORDER OF THE REFEREE, DATED JULY 26, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 73-1335 NOVEMBER 26, 1974

PHILLIP PATTON, CLAIMANT

GREEN, GRISWOLD AND PIPPIN,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A DENIAL BY THE STATE ACCIDENT INSURANCE FUND THAT THE INJURY DID NOT ARISE OUT OF AND IN THE SCOPE AND COURSE OF EMPLOYMENT AND THAT THE CLAIMANT FAILED TO NOTIFY THE EMPLOYER WITHIN 30 DAYS. THE DENIAL LETTER WAS NEVER RECEIVED BY THE CLAIMANT AND WAS RETURNED TO THE STATE ACCIDENT INSURANCE FUND. THE CLAIMANT HAD MOVED WITHOUT GIVING THE STATE ACCIDENT INSURANCE FUND THE NEW ADDRESS. NO COPIES OF THE DENIAL LETTER WERE FORWARDED TO CLAIMANT'S ATTORNEY.

THE REFEREE ORDERED THE STATE ACCIDENT INSURANCE FUND TO ACCEPT THE CLAIM, FINDING THAT THE HEARINGS DIVISION HAD JURISDICTION UNDER THE FACTS OF THIS CASE EVEN THOUGH NO REQUEST FOR HEARING WAS FILED WITHIN THE 60 DAY APPEAL PERIOD AND THAT THE CLAIMANT HAD PROVED A COMPENSABLE INJURY.

THE STATE ACCIDENT INSURANCE FUND HAD NOTICE THAT CLAIMANT WAS REPRESENTED BY COUNSEL BUT NEVER NOTIFIED CLAIMANT'S ATTORNEY OF THE DENIAL EVEN THOUGH THE NOTICE OF DENIAL WAS RETURNED TO THE STATE ACCIDENT INSURANCE FUND UNDELIVERED TO THE CLAIMANT. THE BOARD CONCURS THAT THE HEARINGS DIVISION HAS JURISDICTION UNDER THE FACTS OF THIS CASE.

THE REFEREE HAD THE ADVANTAGE OF SEEING AND HEARING THE WITNESSES. CREDIBILITY OF THE WITNESSES IN THIS TYPE OF CASE IS IMPORTANT. GREAT WEIGHT IS GIVEN TO THE REFEREE'S OPINION AND FINDINGS.

ON DE NOVO REVIEW, THE BOARD FINDS THAT THE CLAIMANT HAS PROVED THAT HIS INJURY IS COMPENSABLE.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 4, 1974, IS 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—1458 NOVEMBER 27, 1974

DAVID R. ALBERT, CLAIMANT

MARTIN D. SHARP, CLAIMANT'S ATTY.
MERLIN L. MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES THE EXTENT OF SCHEDULED PERMANENT PARTIAL DISABILITY TO CLAIMANT'S LEFT HAND. THE DETERMINATION ORDER AWARDED CLAIMANT 25 PERCENT (37.5 DEGREES) LOSS OF LEFT HAND. THE REFEREE INCREASED THIS AWARD TO A TOTAL OF 50 PERCENT (75 DEGREES) LEFT HAND DISABILITY.

CLAIMANT, A 48 YEAR OLD MAINTENANCE MAN, WHILE WORKING ON THE DRIVE CHAIN OF A MACHINE RECEIVED A CRUSHING INJURY TO HIS LEFT HAND WHEN THE MACHINE WAS STARTED, ENTANGLING HIS LEFT HAND IN THE DRIVE CHAIN AND SPROCKET. CLAIMANT HAS VARIOUS THUMB AND FINGER RESIDUALS AND AMPUTATION OF THE TIPS OF TWO FINGERS.

THE REFEREE HAD THE ADVANTAGE OF OBSERVING THE LEFT HAND AND HEARING THE TESTIMONY AS WELL AS THE MEDICAL REPORTS IN EVIDENCE. THE BOARD FINDS THE EVIDENCE IN THE RECORD IS ADEQUATE TO SUPPORT THE AWARD MADE BY THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED JULY 29, 1974, IS 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. 74—399 NOVEMBER 27, 1974

ALFRED C. STARK, 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 THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 80 DEGREES UNSCHEDULED LOW BACK DISABILITY. THE REFEREE AWARDED CLAIMANT PERMANENT TOTAL DISABILITY.

CLAIMANT, 53 YEARS OLD, INJURED HIS LOW BACK MAY 18, 1973, WHILE WORKING INSTALLING SEWER PIPES FOR A DITCHING CONTRACTOR. HE HAS RECEIVED CONSERVATIVE CARE. THE MEDICAL EVIDENCE IN THE RECORD TENDS TOWARD A PRIMA FACIE FINDING OF PERMANENT TOTAL DISABILITY.

EVEN IF IT WERE DETERMINED THAT CLAIMANT IS NOT PRIMA FACIE PERMANENTLY TOTALLY DISABLED, UNDER THE ODD-LOT DOCTRINE, THE BOARD FINDS THE CLAIMANT PERMANENTLY TOTALLY DISABLED. CLAIMANT HAS A THIRD GRADE EDUCATION, IS FUNCTIONALLY ILLITERATE, AND VOCATIONAL REHABILITATION HAS DECIDED THAT, CONSIDERING HIS AGE, EDUCATION, FUNCTIONAL ILLITERACY, AND LIMITED PHYSICAL ABILITIES, RETRAINING FOR GAINFUL EMPLOYMENT IS PRECLUDED.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE FINDINGS OF THE REFEREE THAT CLAIMANT IS PERMANENTLY TOTALLY DISABLED.

ORDER

THE ORDER OF THE REFEREE, DATED AUGUST 1, 1974, IS 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. 74-582 NOVEMBER 27, 1974

CHARLES R. LOUGH, CLAIMANT

HAVILAND, DESCHWEINITZ AND STARK,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A DENIAL BY THE STATE ACCIDENT INSURANCE FUND ON THE GROUNDS THE CLAIM WAS NOT COMPENSABLE. THE REFEREE ORDERED THE STATE ACCIDENT INSURANCE FUND TO ACCEPT THE CLAIM. THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW.

CLAIMANT, A 47 YEAR OLD SAWMILL WORKER, FILED A CLAIM FOR AN INJURY OF NOVEMBER 9, 1973, FOR ABDOMINAL PAIN WHILE PULLING HEAVY LUMBER FROM THE GREEN CHAIN. CLAIMANT HAD SUBSTANTIAL MEDICAL HISTORY INVOLVING HERNIA AND ULCERS. ALTHOUGH THE MEDICAL REPORTS AND THE HISTORY AS GIVEN BY THE CLAIMANT HAVE SOME INCONSISTENCIES, A READING OF THE ENTIRE RECORD AND ESPECIALLY THE MEDICAL REPORT FROM DR. HALL WHO EXAMINED THE CLAIMANT AT THE REQUEST OF THE STATE ACCIDENT INSURANCE FUND CAUSES THE BOARD TO CONCUR WITH THE FINDINGS OF THE REFEREE AND ADOPTS HIS OPINION AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED JULY 30, 1974, IS 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. 73-2738 NOVEMBER 27, 1974

EDWARD CARL WADLEY, CLAIMANT

AIL AND LEUBKE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

Reviewed by Commissioners Wilson and Sloan.

This matter involves whether or not the claimant was in the scope of his employment at the time of the injury. The State Accident Insurance Fund denied the claim. The referee ordered the fund to accept the claim and the fund now requests board review.

The claimant, a car salesman for the employer, was injured December 3, 1972, in the early morning hours while he was a pedestrian on Union Avenue in Portland, Oregon. The claimant and the claimant's witnesses testified that he had been at the Harlem Cafe to collect money from a previous car sale and to attempt to sell a car to a prospective customer. Upon leaving the cafe, he was struck by an automobile while crossing the street to return to his car.

From the record, the credibility of the testimony on both sides is subject to question. However, the testimony and evidence in the record of the claimant's employment activities appear clear. The board concurs with the finding and opinion of the referee that claimant's injuries arose out of and in the course of employment.

ORDER

The order of the referee dated June 18, 1974, is affirmed.

Claimant's counsel is awarded a reasonable attorney fee in the sum of 250 dollars, payable by the State Accident Insurance Fund, for services in connection with board review.

WCB CASE NO. 73-562 DECEMBER 3, 1974

GENE STAUBER, CLAIMANT

DYE AND OLSON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

Reviewed by Commissioners Wilson and Moore.

This matter involves whether or not claimant's present condition is causally related to the industrial injury of March 30, 1969. The first determination order awarded claimant no permanent partial disability. The claim was reopened for psychiatric care and was closed by the second determination order awarding claimant no permanent partial disability. The referee awarded the claimant permanent total diability. The claimant admittedly is permanently

AND TOTALLY DISABLED. THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW CONTENDING THAT THE MEDICAL EVIDENCE FAILS TO ESTABLISH A CAUSAL RELATIONSHIP BETWEEN CLAIMANT'S PRESENT DISABILITY AND HIS INDUSTRIAL INJURY.

CLAIMANT, A 45 YEAR OLD ELECTRICIAN, WAS HIT ON THE BACK OF THE HEAD BY A COIL OF WIRE FALLING FROM AN UPPER STORY. THE TREATMENT OF THIS HEAD INJURY AND LACK OF A DEFINITIVE DIAGNOSIS OVER THE PAST FIVE YEARS HAS RESULTED IN VARYING OPINIONS BY THE VARIOUS TREATING AND EXAMINING PHYSICIANS. HAVING REVIEWED ALL OF THE RECORD AND THE MEDICAL REPORTS AND OPINIONS, THE BOARD IS PERSUADED BY THE MEDICAL REPORTS AND ESPECIALLY THE TESTIMONY OF DR. GROSSMAN THAT THE CLAIMANT HAS PROVED A CAUSAL RELATIONSHIP OF HIS PRESENT CONDITION WITH THE INDUSTRIAL ACCIDENT OF MARCH 20, 1969.

ORDER

THE ORDER OF THE REFEREE, DATED JULY 9, 1974, IS 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. 74-1691 DECEMBER 3, 1974

PETER V. GATTO, CLAIMANT

ALLEN G. OWEN, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY

PETER V. GATTO AND HIS ATTORNEY, ALLEN G. OWEN, HAVE PRESENTED A STIPULATION TO THE BOARD CONCERNING THE PAYMENT OF MR. OWEN'S ATTORNEY FEE WHICH IS ATTACHED HERETO AS EXHIBIT 'A'. THE STATE ACCIDENT INSURANCE FUND HAS NO OBJECTION TO THE PAYMENT PLAN.

BEING NOW FULLY ADVISED, THE BOARD CONCLUDES THE STIPULATION SHOULD BE APPROVED AND EXECUTED ACCORDING TO ITS TERMS.

IT IS SO ORDERED.

STIPULATED ORDER

THIS MATTER COMING ON AT THE REQUEST OF THE CLAIMANT AND HIS ATTORNEY, ALLEN G. OWEN, AND IT APPEARING TO THE WORKMEN'S COMPENSATION BOARD THAT THE PARTIES DO HEREBY AGREE AND IT DOES APPEAR FROM THE RECORD THAT ALLEN G. OWEN REPRESENTED THE CLAIMANT IN THE ABOVE PROCEEDINGS AND THAT THE SAID REPRESENTATION RESULTED IN A SETTLEMENT WITH THE STATE ACCIDENT INSURANCE FUND FOR AN INCREASE IN CLAIMANT'S UNSCHEDULED PERMANENT DISABILITY AWARD IN THE SUM OF 96 DEGREES (PLUS RETROACTIVE RESERVE) AND THAT OUT OF SAID INCREASE ALLEN G. OWEN WAS AWARDED 25 PERCENT THEREOF OR 1679 DOLLARS AND 97 CENTS AND THAT PAYMENT THEREOF WILL COMMENCE 4 1-2 YEARS HENCE ON MAY 1, 1979 AT A MONTHLY RATE OF 63 DOLLARS AND 64 CENTS TO JULY 1, 1981 - THE CLAIMANT AND ALLEN G. OWEN ARE DESIROUS OF MUTUALLY BENEFITING ONE ANOTHER, SUBJECT TO THE

APPROVAL OF THE WORKMEN'S COMPENSATION BOARD, BY ALLEN G. OWEN COMPROMISING AND ACCEPTING THE LESSER SUM TO BE PAID OF 1200 DOLLARS IN CASH BY THE CLAIMANT IN RETURN FOR WHICH ALLEN G. OWEN SHALL WAIVE HIS LIEN UPON AND RIGHT TO PAYMENT OF CLAIMANT'S AWARD OF INCREASED COMPENSATION AND PERMITTING CLAIMANT CONTINUOUS AND UNDIMINISHED COMPENSATION THROUGH JULY 1, 1981, NOW, THEREFORE,

IT IS HEREBY ORDERED THAT THE ABOVE STIPULATION OF THE PARTIES THE ATTORNEY FEE ARRANGEMENT IS HEREBY APPROVED.

WCB CASE NO. 73—2051 DECEMBER 3, 1974

RALPH H. STARK, CLAIMANT

WILLIAM A. MANSFIELD, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES A DENIED CLAIM FOR LOSS OF HEARING AS AN OCCUPATIONAL DISEASE. THE ISSUES INVOLVED ARE WHETHER OR NOT CLAIMANT TIMELY FILED HIS CLAIM WITH THE EMPLOYER AND WHETHER OR NOT CLAIMANT HAS PROVED HIS HEARING LOSS WAS COMPENSABLE. THE REFEREE FOUND THE CLAIM WAS TIMELY FILED BUT THAT THE CLAIMANT FAILED TO PROVE THE HEARING LOSS COMPENSABLE AND AFFIRMED THE STATE ACCIDENT INSURANCE FUND'S DENIAL.

UNDER THE FACTS OF THIS CASE, THE BOARD CONCURS WITH THE FINDINGS AND OPINION OF THE REFEREE THAT THE CLAIM WAS TIMELY FILED BUT THAT THE CLAIMANT HAS FAILED TO PROVE A CAUSAL CONNECTION BETWEEN HIS HEARING LOSS AND HIS EMPLOYMENT AND THUS HAS FAILED TO PROVE THAT CLAIMANT'S HEARING LOSS WAS COMPENSABLE.

ORDER

THE ORDER ON RECONSIDERATION OF THE REFEREE DATED MAY 17, 1974 IS AFFIRMED.

WCB CASE NO. 74—822 DECEMBER 3, 1974

CALVIN DEGARMO, CLAIMANT

BAILEY, DOBLIE, CENICEROS AND BRUUN, CLAIMANT'S ATTORNEYS
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER HAS REQUESTED BOARD REVIEW OF THE REFEREE'S ORDER WHICH INCREASED CLAIMANT'S PERMANENT PARTIAL DISABILITY AWARD FROM 50 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED LOW BACK DISABILITY TO 65 PERCENT (208 DEGREES).

CLAIMANT SUSTAINED AN INJURY TO THE LOW BACK JANUARY 20, 1973, WHILE WORKING ON THE GREEN CHAIN OF A LUMBER MILL. AFTER UNSUCCESSFUL CONSERVATIVE TREATMENT, HE UNDERWENT A DOUBLE LEVEL LAMINECTOMY. CLAIMANT MADE A GOOD RECOVERY, BUT, TYPICALLY, NOW HAS A PERMANENTLY IMPAIRED BACK AND IS LIMITED IN SUCH PHYSICAL ACTIVITIES AS BENDING, LIFTING AND STOOPING.

CLAIMANT IS WELL MOTIVATED AND IS COOPERATING WITH THE DIVISION OF VOCATIONAL REHABILITATION IN A RETRAINING PROGRAM IN SMALL ENGINE REPAIR. TO COMPENSATE CLAIMANT FOR THE SIZEABLE LOSS OF EARNING CAPACITY PRODUCED BY HIS PERMANENT PHYSICAL IMPAIRMENT, THE REFEREE AWARDED CLAIMANT AN ADDITIONAL 15 PERCENT FOR UNSCHEDULED DISABILITY, MAKING A TOTAL OF 65 PERCENT.

HAVING REVIEWED THE RECORD DE NOVO, THE BOARD CONCLUDES THE REFEREE'S ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 24, 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. 74-492 DECEMBER 3, 1974

SARAH BROWER, CLAIMANT

GALBREATH AND POPE, CLAIMANT'S ATTYS.
KOTTKAMP AND O'ROURKE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE IN THIS MATTER IS WHETHER CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED AS A RESULT OF THE INDUSTRIAL INJURY SHE SUSTAINED IN 1966. HER PERMANENT PARTIAL DISABILITY AWARDS TO DATE TOTAL 50 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED LOW BACK DISABILITY AND 30 PERCENT LOSS OF THE LEFT LEG.

CLAIMANT'S ORIGINAL INJURY APPEARED TO BE RELATIVELY MINOR - HOWEVER, HER CONDITION WORSENED AND RESULTED IN TWO SURGICAL PROCEDURES PERFORMED DURING 1972. CLAIMANT ALSO SUFFERS FROM MENIERE'S SYNDROME (VERTIGO), NOT JOB-RELATED.

DESPITE DR. JOEL SERES OPINION THAT CLAIMANT'S PERMANENT DISABILITY WAS 'MODERATE' AND SHOULD IMPROVE IF SHE FOLLOWED HER PRESCRIBED PROGRAM, CLAIMANT HAS NOT RETURNED TO WORK. BY HER OWN ADMISSION SHE HAS NOT SOUGHT VOCATIONAL COUNSELING.

THE BOARD, ON REVIEW, RELIES ON AND GIVES WEIGHT TO THE OPINION OF THE REFEREE WHO SAW AND HEARD THE CLAIMANT. THE BOARD CONCURS WITH THE ORDER OF THE REFEREE AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED JULY 3, 1974 IS HEREBY AFFIRMED.

WCB CASE NO. 74-844 DECEMBER 3, 1974

MILLARD COLVIN, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES THE EXTENT OF PERMANENT DISABILITY TO CLAIMANT'S LEFT KNEE. THE FIRST DETERMINATION ORDER AWARDED CLAIMANT 20 PERCENT (30 DEGREES) SCHEDULED PERMANENT PARTIAL DISABILITY OF THE LEFT LEG. CLAIMANT APPLIED FOR ADVANCE PAYMENT IN THE LUMP SUM OF 50 PERCENT OF HIS AWARD. THE CLAIM WAS RE-OPENED FOR FURTHER MEDICAL CARE AND WAS CLOSED BY THE SECOND DETERMINATION ORDER AWARDING NO FURTHER TEMPORARY TOTAL DISABILITY OR PERMANENT PARTIAL DISABILITY. THE REFEREE AFFIRMED THE SECOND DETERMINATION ORDER.

THE MEDICAL EVIDENCE IN THE RECORD CLEARLY INDICATES THAT THE CONDITION OF CLAIMANT'S LEG IS NO DIFFERENT NOW THAN IT WAS AT THE TIME OF THE FIRST DETERMINATION ORDER. THE BOARD CONCURS WITH THE FINDINGS AND OPINION OF THE REFEREE AND ADOPTS HIS OPINION AND ORDER AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 24, 1974, IS AFFIRMED.

WCB CASE NO. 74-455 DECEMBER 6, 1974

ROBERT L. HALLMARK, CLAIMANT

FRANKLIN, BENNETT, OFELT AND JOLLES,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

THIS MATTER INVOLVES WHETHER OR NOT CLAIMANT SUSTAINED A COMPENSABLE INDUSTRIAL INJURY WHILE EMPLOYED BY MARTIN LOGGING COMPANY DURING OCTOBER, 1973.

AT HEARING, ONE OF THE ISSUES WAS WHETHER OR NOT CLAIMANT HAD SOUGHT MEDICAL ATTENTION ON THE DAY OF HIS ALLEGED INJURY. IT APPEARED THAT IT WOULD BE ADVISABLE TO OBTAIN A MEDICAL REPORT FROM DR. JANZEN. WHEN THIS MEDICAL REPORT WAS NOT FORTHCOMING, THE REFEREE CLOSED THE MATTER AND ISSUED HIS ORDER SUSTAINING THE STATE ACCIDENT INSURANCE FUND'S DENIAL AND DISMISSING THE MATTER.

DR. JANZEN, WHO WAS UNAWARE OF A DEADLINE FOR SUBMITTING SUCH MEDICAL REPORT, HAS NOW TENDERED THIS REPORT. THE BOARD IS NOT AUTHORIZED TO GO OUTSIDE THE RECORD IN ITS REVIEW PROCESS, BUT DOES HAVE AUTHORITY TO REMAND A MATTER NOT COMPLETELY HEARD.

THIS MATTER IS ACCORDINGLY REMANDED TO THE REFEREE FOR CONSIDERATION OF DR. JANZEN'S MEDICAL REPORT AND FOR SUCH FURTHER ORDER OF THE REFEREE AS APPEARS JUSTIFIED BY THE REFEREE UPON THE RECORD AS OBTAINED AT SUCH FURTHER HEARING.

IT IS SO ORDERED.

NO NOTICE OF APPEAL RIGHTS IS DEEMED APPROPRIATE.

WCB CASE NO. 74-2921 DECEMBER 9, 1974

ARNOLD C. ANDERSON, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON NOVEMBER 25, 1974, THE FUND MOVED TO DISMISS CLAIMANT'S REQUEST FOR BOARD REVIEW OF A REFEREE'S ORDER DATED OCTOBER 14, 1974, ON THE GROUND THAT IT IS NOT A FINAL APPEALABLE ORDER.

WE HAVE EXAMINED THE ORDER AND THE TRANSCRIPT OF THE PROCEEDINGS BELOW AND CONCLUDE THAT THE ORDER IS, AND WAS INTENDED TO BE, AN APPEALABLE ORDER.

THE FUND'S MOTION TO DISMISS IS THEREFORE DENIED.

THE BRIEFING SCHEDULE PROVIDED IN THE BOARD'S LETTER OF NOVEMBER 26, 1974, REMAINS IN EFFECT.

WCB CASE NO. 73-3345 DECEMBER 9, 1974

GORDON MOORE, CLAIMANT

COONS, MALAGON AND COLE,
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 REFUSING TO GRANT HIS REQUEST FOR PENALTIES AND ATTORNEY FEES FOR ALLEGED UNREASONABLE RESISTANCE OR DELAY IN PAYING CERTAIN MEDICAL BILLINGS.

THE RECORD DOES NOT DISCLOSE ANY RESISTANCE TO THE PAYMENT OF COMPENSATION AND THE CLAIMANT HAS THUS FAILED HIS BURDEN OF PROOF ON THAT ISSUE. ON THE ISSUE OF DELAY,

WE CONCUR WITH THE REFEREE'S FINDING THAT THE DELAY WAS NOT SO LONG AS TO BE UNREASONABLE.

THE REFEREE'S ORDER SHOULD BE AFFIRMED.

ORDER

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

CLAIM NO. 741C526289 DECEMBER 9, 1974

FLORENCE ANN SHINN, CLAIMANT

FROM THE FILES OF THE WORKMEN'S COMPENSATION BOARD, IT APPEARS A DISPUTE HAS ARISEN BETWEEN THE PARTIES AS TO WHETHER ANY OF THE CLAIMANT'S MEDICAL CONDITION IS OR IS NOT RELATED TO THE ON-THE-JOB ACCIDENT OF DECEMBER 11, 1973. CLAIMANT RECEIVED A DENIAL LETTER ON NOVEMBER 11, 1974, DENYING HER CLAIM. THE BOARD FINDS THAT THE PAYING AGENCY SPECIFICALLY DENIED -

> ' . . . THAT YOU SUFFERED OR SUSTAINED ANY INJURY OR AGGRAVATION ON DECEMBER 11, 1973, TO YOUR BACK, SPINE OR LEGS. WE SPECIFICALLY DENY ANY INJURY OR AGGRAVATION TO YOUR LUNGS, CARDIOVACULAR (SIC) SYSTEM OR TO YOUR LEGS RESULTING IN RECENT MEDICAL FOR A HEART CONDITION OR SURGICAL REPAIR TO YOUR VARICOSE VEINS IN BOTH LEGS RECENTLY UNDERGONE.'

THE PARTIES HAVE PRESENTED THE WORKMEN'S COMPENSATION BOARD WITH A STIPULATION OF COMPROMISE WHICH IS MARKED EXHIBIT 'A', ATTACHED HERETO AND MADE A PART HEREOF, TO DISPOSE OF THE MATTER IN ACCORDANCE WITH ORS 656.289(4).

THE BOARD BEING NOW FULLY ADVISED, FINDS -

(1) THAT A BONA FIDE DISPUTE OVER THE COMPENSABILITY OF CLAIMANT'S CLAIM EXISTS AND,

(2) THAT THE SETTLEMENT AGREEMENT IS BOTH FAIR AND EQUITABLE.

THE BOARD CONCLUDES THE AGREEMENT SHOULD BE APPROVED AND EXECUTED ACCORDING TO ITS TERMS.

IT IS SO ORDERED.

STIPULATION OF COMPROMISE

ON DECEMBER 11, 1973, AT 11:45 A.M., FLORENCE SHINN, WHILE EMPLOYED AT THE FRIENDSHIP HEALTH CENTER, 3320 SOUTHEAST HOLGATE, PORTLAND, OREGON, WAS HELPING A PATIENT INTO BED WHEN SHE NOTICED PAIN IN HER LOW BACK. SHE SOUGHT MEDICAL ATTENTION AND HER CONDITION WAS SUBSEQUENTLY DIAGNOSED AS A LUMBO SACRAL STRAIN WITH LUMBO SACRAL SPONDYLARTHRITIS. THE CLAIM WAS DEFERRED BY THE DIRECT RESPONSIBILITY CARRIER AND THEN SUBSEQUENTLY ACCEPTED AND

BENEFITS PAID IN ACCORDANCE WITH THE WORKMEN'S COMPENSATION LAW.

SUBSEQUENT TO THE TIME OF THE ORIGINAL INJURY AND MEDICAL TREATMENT, THE CLAIMANT SOUGHT MEDICAL ATTENTION FOR PULMONARY, CARDIO VASCULAR, NEUROLOGICAL, CIRCULATORY, GASTROINTESTINAL, HEARING AND VISUAL MEDICAL PROBLEMS, AS WELL AS FOR DEGENERATIVE ARTHRITIS.

A DISPUTE HAS NOW ARISEN BETWEEN THE PARTIES AS TO WHETHER ANY OF THE CLAIMANT'S MEDICAL CONDITION IS OR IS NOT RELATED TO THE ON-THE-JOB ACCIDENT OF DECEMBER 11, 1973. A DENIAL LETTER WAS SENT TO THE CLAIMANT ON NOVEMBER 11, 1974, DENYING THE CLAIM ON THE GROUNDS THAT NONE OF THE CLAIMANT'S PRESENT MEDICAL COMPLAINTS OR CONDITIONS ARE AS A RESULT OF THE DECEMBER 11, 1973 INCIDENT AT THE FRIENDSHIP HEALTH CENTER. IT HAS THEREFORE BEEN AGREED BY THE PARTIES THAT THE CLAIM WILL BE FULLY SETTLED AND COMPROMISED BY STIPULATION OF THE PARTIES FOR THE SUM OF 5,040 DOLLARS EQUALLING 72 DEGREES FOR UNSCHEDULED BACK DISABILITY. THE COMPROMISE AND SETTLEMENT IS TO INCLUDE ANY AND ALL MEDICAL CONDITIONS OF WHICH THE CLAIMANT IS PRESENTLY COMPLAINING, AS WELL AS AGGRAVATION RIGHTS THEREFROM.

SAIF CLAIM NO. C 120738 DECEMBER 9, 1974

SAMUEL D. GUDMUNDSON, CLAIMANT

THIS MATTER INVOLVES A CLAIMANT, INJURED IN 1967, WHILE EMPLOYED AS A MECHANIC FOR THE OREGON STATE HIGHWAY DEPARTMENT. HIS CLAIM WAS CLOSED IN JULY, 1968, WITH NO AWARD MADE FOR PERMANENT DISABILITY.

IN 1970, CLAIMANT SUFFERED A MINOR AGGRAVATION OF HIS CONDITION, RECEIVED SOME TIME LOSS, AND WAS AWARDED PERMANENT PARTIAL DISABILITY EQUAL TO 5 PERCENT UNSCHEDULED DISABILITY TO THE LOW BACK.

IN MARCH OF 1974, CLAIMANT CONSULTED DRS. SPADY, MELGARD, AND DUDLEY FOR A SPONTANEOUS RECURRENCE OF BACK PAIN. THE STATE ACCIDENT INSURANCE FUND VOLUNTARILY REOPENED CLAIMANT'S CLAIM FOR FURTHER TREATMENT WHICH HAS NOW BEEN CONCLUDED.

DR. SPADY'S CLOSING REPORT INDICATED CLAIMANT'S BACK MOTION TO BE 50 PERCENT OF NORMAL, MARKED FLATTENING OF THE LUMBAR LORDOSIS AND SOME INTERVERTEBRAL LIGAMENT TENDERNESS.

THE MATTER NOW HAVING BEEN SUBMITTED TO THE BOARD EVALUATION DIVISION AND PURSUANT TO THEIR ADVISORY OPINION,

IT IS HEREBY ORDERED CLAIMANT IS GRANTED AN ADDITIONAL PERMANENT PARTIAL DISABILITY AWARD OF 60 PERCENT, MAKING A TOTAL OF 65 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED LOW BACK DISABILITY.

IT IS FURTHER ORDERED THAT CLAIMANT RECEIVED ADDITIONAL TEMPORARY TOTAL DISABILITY FROM MARCH 13, 1974 TO DATE.

NOTICE OF APPEAL

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.

WCB CASE NO. 74-1446 DECEMBER 9, 1974

ALBERT WOOD, CLAIMANT

ANTHONY PELAY, JR. AND KENNETH BOURNE,
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 FINDING THAT HIS CLAIM WAS NOT PREMATURELY CLOSED.

CLAIMANT FIRST CITES ORS 656.268 WHICH PROVIDES THAT -

> '. . . CLAIMS SHALL NOT BE CLOSED NOR TEMPORARY DISABILITY COMPENSATION TERMINATED UNTIL THE WORKMAN'S CONDITION BECOMES MEDICALLY STATIONARY . . .'.

HE THEN ARGUES THAT TIME LOSS SHOULD NOT HAVE BEEN TERMINATED BECAUSE HE CONTINUES TO HAVE PHYSICAL AND VOCATIONAL PROBLEMS AND HAS CONTINUED TO SEEK MEDICAL AID. CLAIMANT HAS MISCONSTRUED THE MEANING OF THE TERM 'MEDICALLY STATIONARY'.

IN DIMITROFF V. SIAC, 209 OR 316 (1957), THE OREGON SUPREME COURT CONSIDERED THE MEANING OF THE TERM.

> '. . . BUT WE THINK IT PROBABLE THAT IN THE ADMINISTRATIVE USAGE A WORKMAN'S CONDITION IS CONSIDERED 'STATIONARY' WHEN HE REACHES THE STATE AT WHICH HIS RESTORATION TO A CONDITION OF SELF SUPPORT AND MAINTENANCE AS AN ABLE-BODIED WORKMAN IS FOUND BY THE COMMISSION ON THE BASIS OF EXPERT MEDICAL OPINION TO BE AS COMPLETE AS IT CAN BE MADE BY TREATMENT. UNDOUBTEDLY WHEN THAT STAGE IS REACHED IT WILL ORDINARILY MARK THE TIME AT WHICH THE PERIOD OF TEMPORARY TOTAL DISABILITY WILL BE DECLARED TO BE AT AN END AND AN AWARD OF PERMANENT PARTIAL DISABILITY WILL BE MADE AS A FINAL SETTLEMENT . . . WHETHER PLAINTIFF'S CONDITION REQUIRED FURTHER MEDICAL TREATMENT WAS, IN OUR OPINION, A QUESTION REQUIRING EXPERT OPINION. A LAY WITNESS WAS NOT QUALIFIED TO TESTIFY ON THAT ISSUE.'

CLAIMANT TESTIFIED THAT HE IS STILL SEEING DOCTORS FOR HIS BACK BUT THERE IS NO INDICATION WHETHER THESE MINISTRATIONS HAVE AIDED HIS RESTORATION TO A CONDITION OF SELF SUPPORT. PRESUMABLY THEY HAVE NOT.

DR. GROTH REPORTED ON MARCH 15, 1974, THAT HE HAD DONE ALL HE COULD FOR HIM MEDICALLY, THAT HIS CONDITION WAS STABLE AND READY FOR CLOSURE WITH A PERMANENT PARTIAL DISABILITY AWARD.

ON APRIL 29, 1974, DR. GROTH REPORTED TO THE FUND THAT CLAIMANT HAD RETURNED TO SEE HIM BUT HE DID NOT SUGGEST ANY FURTHER TREATMENT FOR HIM. WHAT HE DID SUGGEST WAS THAT CLAIMANT HAS PERMANENT RATHER THAN TEMPORARY DISABILITY.

DR. POST DID NOT SUGGEST ANY TREATMENT EITHER. HE SIMPLY FOUND THE MAN SUFFERING A LEVEL OF PERMANENT PARTIAL DISABILITY WHICH INDICATED VOCATIONAL RETRAINING WAS NEEDED.

THE EVIDENCE PRESENTED TO THE REFEREE FULLY SUPPORTS THE CONCLUSION THAT CLAIMANT'S CLAIM WAS NOT PREMATURELY CLOSED AND WE CONCLUDE THE REFEREE'S ORDER SHOULD BE AFFIRMED.

AT THE HEARING CLAIMANT RAISED THE ISSUE OF PERMANENT PARTIAL DISABILITY AS AN ALTERNATIVE ISSUE BUT THIS WAS NOT FULLY DEVELOPED. AS A RESULT WE CONCLUDE THE MATTER SHOULD, PURSUANT TO ORS 656.295(5), BE REMANDED TO THE HEARINGS DIVISION TO TAKE EVIDENCE ON THE QUESTION OF WHETHER CLAIMANT HAS SUFFERED ANY PERMANENT DISABILITY FROM THIS INJURY. THE MATTER REMANDED SHOULD BE CONSOLIDATED WITH THE ISSUE OF WHETHER CLAIMANT WAS PROPERLY COMPENSATED FOR HIS TEMPORARY TOTAL DISABILITY PRIOR TO THE ISSUANCE OF THE DETERMINATION ORDER IN QUESTION.

WE NOTE FROM THE TRANSCRIPT THAT CLAIMANT AND HIS WIFE HAVE BEEN UNABLE TO GET THEIR QUESTIONS CONCERNING VOCATIONAL REHABILITATION ANSWERED. FOR HELP WITH THIS PROBLEM THEY SHOULD IMMEDIATELY CONTACT MR. RALPH TODD, AT THE BOARD'S DISABILITY PREVENTION DIVISION OFFICES, ROOM 201, STATE OFFICE BUILDING, 1400 S.W. 5TH AVENUE, PORTLAND, OREGON, 97201, TELEPHONE 229-5545. BY A COPY OF THIS ORDER MR. TODD IS BEING ADVISED OF CLAIMANT'S CONCERN.

ORDER

THE ORDER OF THE REFEREE DATED SEPTEMBER 5, 1974, FINDING CLAIMANT'S CLAIM WAS NOT PREMATURELY CLOSED IS HEREBY AFFIRMED AND THE MATTER IS HEREBY REMANDED TO THE HEARINGS DIVISION TO RECEIVE EVIDENCE CONCERNING THE ISSUES OF CLAIMANT'S ENTITLEMENT TO ADDITIONAL TEMPORARY TOTAL DISABILITY AND PENALTIES FOR PERIODS PRIOR TO CLOSURE AND HIS ENTITLEMENT TO PERMANENT DISABILITY COMPENSATION FOLLOWING CLOSURE.

NOT BEING A FINAL ORDER OF THE AGENCY, THIS ORDER IS NOT APPEALABLE TO THE CIRCUIT COURT.

WCB CASE NO. 74-2708 DECEMBER 9, 1974

KENNETH KELSEY, CLAIMANT

JOHN ROSS, CLAIMANT'S ATTORNEY
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON NOVEMBER 25, 1974, A STIPULATED SETTLEMENT PROVIDING, AMONG OTHER THINGS, FOR THE FUND'S WITHDRAWAL OF A REQUEST FOR

BOARD REVIEW IN THE ABOVE-ENTITLED CASE, WAS APPROVED BY A REFEREE. PRIOR TO RECEIVING KNOWLEDGE OF THIS AGREEMENT, THE BOARD ISSUED ITS ORDER ON REVIEW, DATED NOVEMBER 26, 1974.

ON NOVEMBER 27, 1974, THE FUND WITHDREW ITS REQUEST FOR REVIEW BASED ON THE APPROVED STIPULATION WHICH IS ATTACHED HERETO AS EXHIBIT 'A'. THE BOARD, BEING NOW FULLY ADVISED,

IT IS HEREBY ORDERED THAT THE ORDER ON REVIEW IN THE ABOVE-ENTITLED CASE, DATED NOVEMBER 26, 1974, BE AND IT IS HEREBY SET ASIDE AND HELD FOR NAUGHT AND,

IT IS HEREBY FURTHER ORDERED THAT THE FUND'S REQUEST FOR REVIEW BE, AND IS HEREBY, DISMISSED.

STIPULATION TO SETTLE
DISPUTED CLAIM

IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN THE PARTIES HERETO, CLAIMANT APPEARING BY AND THROUGH HIS ATTORNEY, JOHN M. ROSS, AND THE STATE ACCIDENT INSURANCE FUND APPEARING BY AND THROUGH BRIAN L. POCOCK, ASSISTANT ATTORNEY GENERAL, ATTORNEY FOR DEFENDANT, AS FOLLOWS -

1. THAT ON OR ABOUT DECEMBER 23, 1968, CLAIMANT STRAINED HIS LOW BACK WHILE WORKING FOR BEAVER ELECTRIC AND PLUMBING AND THEREAFTER FILED A CLAIM WITH THE STATE ACCIDENT INSURANCE FUND -

2. THAT ON OR ABOUT JANUARY 21, 1969, THE CLAIM WAS ACCEPTED BY THE STATE ACCIDENT INSURANCE FUND AND CLOSED ADMINISTRATIVELY AS A MEDICAL ONLY CLOSURE BY THE WORKMEN'S COMPENSATION BOARD -

3. THAT ON OR ABOUT SEPTEMBER 24, 1971, DR. JOHN W. GILSDORF WROTE TO THE STATE ACCIDENT INSURANCE FUND INDICATING HE HAD SEEN THE CLAIMANT FOR A LOW BACK PROBLEM SINCE JUNE 30, 1971, WHICH ULTIMATELY CULMINATED IN THE PERFORMANCE OF A LAMINECTOMY BY DR. MARIO CAMPAGNA ON JULY 23, 1971.

4. THAT ON OR ABOUT JANUARY 12, 1972, THE STATE ACCIDENT INSURANCE FUND WROTE TO THE CLAIMANT AND DENIED REOPENING CLAIMANT'S CLAIM ON THE BASIS THAT THERE WAS NO EVIDENCE THAT THE LOW BACK STRAIN SUSTAINED BY CLAIMANT ON DECEMBER 23, 1968, HAD BECOME AGGRAVATED, AND THE CONDITION BEING TREATED BY DOCTOR GILSDORF WAS NOT THE RESULT OF THE INJURY FOR WHICH THE STATE ACCIDENT INSURANCE FUND WAS RESPONSIBLE. THIS LETTER INDICATED -

> 'IF YOU ARE DISSATISFIED WITH THIS DENIAL, YOU MAY REQUEST A HEARING BY THE WORKMEN'S COMPENSATION BOARD, LABOR AND INDUSTRIES BUILDING, SALEM, OREGON, 97310. THE REQUEST FOR HEARING MUST BE A SIGNED WRITING WITH RETURN ADDRESS FILED WITH THE WORKMEN'S COMPENSATION BOARD WITHIN 60 DAYS FROM THE DATE THIS NOTICE WAS MAILED. FAILURE TO FILE REQUEST FOR A HEARING WITHIN THIS TIME LIMIT WILL RESULT IN THE LOSS OF YOUR RIGHT TO OBJECT TO THIS DENIAL.'

5. THAT ON OR ABOUT APRIL 16, 1973, CLAIMANT'S ATTORNEY REQUESTED A HEARING CONCERNING CLAIMANT'S INJURY OF DECEMBER 23, 1968 -

6. THAT ON OR ABOUT MAY 17, 1974, REFEREE MULDER HELD THAT THE CLAIM HAD NEVER BEEN VALIDLY CLOSED AND SUBMITTED THE MATTER

TO THE WORKMEN'S COMPENSATION BOARD CLOSING AND EVALUATION DIVISION FOR DETERMINATION UNDER ORS 656.268 =

7. THAT ON OR ABOUT MAY 31, 1974, THE STATE ACCIDENT INSURANCE FUND REQUESTED BOARD REVIEW OF THE ORDER ENTERED BY REFEREE MULDER ON MAY 17, 1974 =

8. THAT ON OR ABOUT JULY 2, 1974, THE CLOSING AND EVALUATION DIVISION OF THE WORKMEN'S COMPENSATION BOARD ISSUED AN ORDER AWARDING THE CLAIMANT NO COMPENSATION FOR TEMPORARY OR PERMANENT DISABILITY RELATING TO HIS ACCIDENT OF DECEMBER 23, 1968. THE CLOSING AND EVALUATION DIVISION FURTHER PROVIDED THAT ITS ORDER DID NOT CONSTITUTE A BOARD DETERMINATION OF ANY CONDITIONS DENIED BY THE STATE ACCIDENT INSURANCE FUND IN THEIR LETTER OF JANUARY 12, 1972 =

9. THAT ON OR ABOUT JULY 21, 1974, THE CLAIMANT'S ATTORNEY REQUESTED A HEARING FROM THE DETERMINATION ORDER DATED JULY 2, 1974 =

10. THAT ON OR ABOUT SEPTEMBER 13, 1974, THE STATE ACCIDENT INSURANCE FUND PAID MEDICAL BILLS INCURRED BY THE CLAIMANT AS FOLLOWS =

(1) DOCTOR MCILVAINE = 761 DOLLARS AND 25 CENTS
(2) ORTHOPEDIC AND FRACTURE CLINIC = 27 DOLLARS
(3) MEDFORD LABS, INC. = 206 DOLLARS
(4) DOCTOR LUCE = 68 DOLLARS AND 50 CENTS

11. THAT THERE IS A BONA FIDE DISPUTE BETWEEN THE PARTIES. THE STATE ACCIDENT INSURANCE FUND CONTENDS AND THE CLAIMANT DENIES = (1) THAT CLAIMANT FAILED TO FILE A TIMELY REQUEST FOR HEARING FROM THE STATE ACCIDENT INSURANCE FUND'S DENIAL DATED JANUARY 12, 1972 = (2) THAT CLAIMANT'S CLAIM WAS VALIDLY CLOSED AND CLAIMANT FAILED TO FILE A VALID AGGRAVATION CLAIM WITHIN FIVE YEARS OF THE DATE OF CLOSURE = (3) THAT CLAIMANT SUFFERED NO COMPENSABLE AGGRAVATION OF HIS INDUSTRIAL ACCIDENT OF DECEMBER 23, 1968 =

12. THAT THE PARTIES HAVE AGREED THAT ALL ISSUES WHICH WERE OR COULD HAVE BEEN RAISED IN CLAIMANT'S REQUESTS FOR HEARING DATED APRIL 16, 1973, AND JULY 21, 1974, MAY BE COMPROMISED AND SETTLED AS A DISPUTED CLAIM BY PAYMENT FROM THE STATE ACCIDENT INSURANCE FUND TO CLAIMANT AND HIS ATTORNEY JOINTLY AND ACCEPTANCE BY CLAIMANT AND HIS ATTORNEY OF THE SUM OF 3000 DOLLARS, CLAIMANT'S ATTORNEY BEING AUTHORIZED TO COLLECT FROM THAT SUM 1000 DOLLARS AS A REASONABLE ATTORNEY'S FEE FOR SERVICES RENDERED TO CLAIMANT =

13. THAT CLAIMANT WITHDRAWS HIS REQUESTS FOR HEARING DATED APRIL 16, 1973, AND JULY 21, 1974, AND THE STATE ACCIDENT INSURANCE FUND WITHDRAWS ITS REQUEST FOR BOARD REVIEW DATED MAY 31, 1974 =

14. THAT THE PARTIES UNDERSTAND THAT THE DENIAL BY THE STATE ACCIDENT INSURANCE FUND DATED JANUARY 12, 1972, SHALL REMAIN IN FULL FORCE AND EFFECT FOREVER, AND THE STATE ACCIDENT INSURANCE FUND WILL NOT BE RESPONSIBLE FOR ANY MEDICAL BILLS OR ANY OTHER EXPENSES IN CONNECTION WITH THE DENIED CONDITIONS FROM JANUARY 21, 1969, EXCEPT FOR THE MEDICAL EXPENSES PAID BY THE STATE ACCIDENT INSURANCE FUND AS REFERRED TO IN PARAGRAPH 10 OF THIS STIPULATION =

15. THAT PAYMENT OF THE SUM OF 3000 DOLLARS AND THE MEDICAL EXPENSES REFERRED TO IN PARAGRAPH 10 OF THIS STIPULATION IN NO WAY IMPLIES, DIRECTLY OR INDIRECTLY, THAT THE STATE ACCIDENT INSURANCE

FUND ACCEPTS RESPONSIBILITY FOR THE DENIED CONDITIONS, OR DISABILITIES, OR EXPENSES RESULTING THEREFROM.

WCB CASE NO. 74-573 DECEMBER 9, 1974

JACK R. SHUEY, 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 HIS CLAIM FOR COMPENSATION.

THE REFEREE DISBELIEVED THE CLAIMANT'S ALLEGATION THAT WHILE WORKING AS A CATSKINNER-CHOKER SETTER ON AUGUST 26, 1973, HE SUFFERED A BACK INJURY AS THE RESULT OF AN UNWITNESSED FALL. CLAIMANT'S PROOF PROBLEMS WERE FURTHER COMPOUNDED BY THE LACK OF AN IMMEDIATE AND UNEQUIVOCAL REPORT OF INJURY TO THE EMPLOYER AND A DELAY IN THE FURNISHING OF WRITTEN MEDICAL VERIFICATION OF HIS PHYSICAL CONDITION TO THE FUND.

THE TESTIMONY OF OTHER WORKMEN (CALDWELL AND SWETE), EMPLOYED AT A DIFFERENT PART OF THE WORKSITE ON AUGUST 26, TENDED, IN SOME RESPECTS, TO SUGGEST THAT THE WORKMAN HAD NOT SUFFERED AN INJURY AS ALLEGED, WHILE IN OTHER RESPECTS THEIR TESTIMONY TENDED TO CORROBORATE CLAIMANT'S ALLEGATIONS.

AFTER CONSIDERING THE TESTIMONY OF SWETE AND CALDWELL, THE REFEREE CONCLUDED THE EVIDENCE WEIGHED AGAINST A FINDING THAT CLAIMANT HAD INJURED HIS BACK ON THE JOB. BOTH SWETE AND CALDWELL APPEAR TO HAVE RECOUNTED TO THE REFEREE THEIR BEST RECOLLECTION OF THE EVENTS IN QUESTION. THEIR RECOLLECTION, HOWEVER, IS OBVIOUSLY IMPERFECT AND UNDERSTANDABLY SO, SINCE THE EVENTS IN QUESTION WOULD NOT HAVE SEEMED IMPORTANT TO THEM AT THE TIME.

WITHOUT RELYING ON THE CLAIMANT'S TESTIMONY, THE RECORD ESTABLISHES THAT CLAIMANT DID NOT HAVE THE CHILDREN ON THE JOB ON SUNDAY, THAT CLAIMANT YARDED 10 TO 15 TURNS OF LOGS ON SUNDAY AND THEN LEFT THE JOB EARLY. WHEN HE ARRIVED HOME, HE HAD NOT, TO HIS WIFE'S KNOWLEDGE, BEEN DRINKING. HE ADVISED HER THAT HE HAD BEEN HURT ON THE JOB.

ON MONDAY, HE TOLD LESTER OSBORNE HE HAD HURT HIS BACK AND PULLED HIS TRAILER OFF THE JOB WITH THE HELP OF HIS SON. HE ALSO IMMEDIATELY SOUGHT MEDICAL ATTENTION AND, WHEN SEEN, DESCRIBED THE SOURCE OF HIS COMPLAINTS AS AN ON-THE-JOB FALL. THE MEDICAL FINDINGS WERE CONSISTENT WITH HIS DESCRIBED INJURY. THE DELAY IN FILING THE CLAIM WAS SHOWN TO BE THE FAULT OF THE DOCTOR'S OFFICE AND NOT FROM ANY TARDY DECISION BY THE CLAIMANT TO FRAUDULENTLY OBTAIN COMPENSATION.

ORS 44.370 PROVIDES THAT EVERY WITNESS IS PRESUMED TO SPEAK THE TRUTH UNLESS THE PRESUMPTION IS OVERCOME BY THE

MANNER IN WHICH HE TESTIFIES, THE CHARACTER OF HIS TESTIMONY OR BY EVIDENCE AFFECTING HIS CHARACTER OR MOTIVES, OR BY CONTRADICTORY EVIDENCE.

NOTHING IN THE RECORD CONVINCES US THAT MR. AND MRS. SHUEY WERE ATTEMPTING TO RECOUNT ANYTHING BUT THE TRUTH AS THEY KNEW AND RECALLED IT. WHILE THERE IS CONFLICT OVER THE DETAILS, THE MAIN OUTLINES OF CLAIMANT'S ALLEGATIONS ARE AGREED UPON. HAVING REVIEWED THE RECORD DE NOVO, WE CONCLUDE FROM THE EVIDENCE THAT CLAIMANT DID IN FACT SUFFER AN ON-THE-JOB INJURY AS ALLEGED AND THAT HE IS ENTITLED TO COMPENSATION.

THE REFEREE'S ORDER SHOULD BE REVERSED.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 31, 1974, IS HEREBY REVERSED.

THE CLAIMANT'S CLAIM IS HEREBY REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR ACCEPTANCE AND PAYMENT TO CLAIMANT OF THE BENEFITS PROVIDED BY LAW.

CLAIMANT'S ATTORNEY IS HEREBY AWARDED 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.

WCB CASE NO. 73-4094 DECEMBER 10, 1974

WALLACE LONG, CLAIMANT

E. R. BASHAW, CLAIMANT'S ATTY.
LUVAAS, COBB, RICHARDS AND FRASER, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES WHETHER OR NOT CLAIMANT WAS AN OREGON WORKMAN WITHIN THE MEANING OF THE OREGON WORKMEN'S COMPENSATION LAW AT THE TIME OF HIS MYOCARDIAL INFARCTION OCCURRING IN OKLAHOMA AND WHETHER OR NOT THE MYOCARDIAL INFARCTION AROSE OUT OF AND IN THE COURSE OF THE CLAIMANT'S EMPLOYMENT.

THE WORKMEN'S COMPENSATION INSURANCE CARRIER DENIED CLAIMANT'S CLAIM MADE IN OREGON, OKLAHOMA AND ILLINOIS ON THE GROUNDS THAT CLAIMANT WAS NOT A SUBJECT EMPLOYEE IN ANY OF THESE THREE STATES AND FURTHER THAT THE MYOCARDIAL INFARCTION DID NOT ARISE OUT OF AND IN THE COURSE OF THE CLAIMANT'S EMPLOYMENT.

THE REFEREE FOUND THAT CLAIMANT WAS A SUBJECT EMPLOYEE WITHIN THE MEANING OF THE OREGON WORKMEN'S COMPENSATION LAW AND THAT THE CLAIM WAS COMPENSABLE. THE EMPLOYER REQUESTS BOARD REVIEW.

THE RECORD CLEARLY SHOWS THAT THE CLAIMANT WAS AN EMPLOYEE OF THIS EMPLOYER AND THAT THE MYOCARDIAL INFARCTION WHICH

OCCURRED MARCH 9, 1973, IN OKLAHOMA CITY, OKLAHOMA, AROSE OUT OF AND IN THE COURSE OF THE EMPLOYMENT. THE PRIMARY ISSUE THEREFORE ON BOARD REVIEW IS WHETHER OR NOT CLAIMANT WAS AN OREGON WORKMAN WITHIN THE MEANING OF THE OREGON WORKMEN'S COMPENSATION LAW AT THE TIME OF HIS ATTACK.

CLAIMANT, NOW 50 YEARS OLD, IS A PROFESSIONAL LONG HAUL TRUCK DRIVER. HE HAS BEEN A RESIDENT OF OREGON FOR APPROXIMATELY 20 YEARS. HE MADE APPLICATION FOR EMPLOYMENT BY TELEPHONE TO THE HOME OFFICE OF THE EMPLOYER IN ILLINOIS. THE EMPLOYER IN ILLINOIS MAILED HIM AN APPLICATION FORM WHICH HE COMPLETED IN OREGON AND BY LETTER TO THE CLAIMANT'S OREGON HOME ADDRESS STATED -

> 'YOUR APPLICATION FOR EMPLOYMENT WITH DEALER'S TRANSIT, INC., AS AN OWNER-OPERATOR, HAS BEEN APPROVED PENDING YOUR PHYSICAL AND OTHER TESTS WHICH YOU WILL HAVE TO TAKE FOR FINAL APPROVAL.'

CLAIMANT QUIT HIS JOB, PURCHASED A TRACTOR, LICENSED THE TRACTOR IN OREGON, AND PROCEEDED ON INSTRUCTIONS FROM THE EMPLOYER TO TEXAS TO GET ANOTHER LICENSE PLATE REQUIRED BY THE EMPLOYER AND THEN ON INTO ILLINOIS FOR PROPER OUTFITTING OF THE TRUCK PER THE EMPLOYER'S SPECIFICATIONS. WHILE IN ILLINOIS, THE PHYSICAL EXAMINATIONS OF THE CLAIMANT WERE ACCOMPLISHED.

CLAIMANT, AFTER ACCOMPLISHING THE FINAL DETAILS OF HIRING AND EXECUTING THE LEASE AGREEMENT ON THE TRUCK, STARTED BACK TO OREGON. HE PICKED UP A TRAILER EN ROUTE BACK. CLAIMANT HAS SUBSEQUENTLY BEEN DISPATCHED PRIMARILY BY THE PORTLAND OFFICE OF THE EMPLOYER AND HAS RETURNED TO THE PORTLAND TERMINAL AFTER EACH TRIP. THE BOARD FINDS THAT THE PORTLAND, OREGON, OFFICE EXERCISED DIRECTION AND CONTROL OF CLAIMANT'S ACTIVITIES AS AN EMPLOYEE.

ORS 656.126(1) PROVIDES IF A WORKMAN EMPLOYED IN THIS STATE AND SUBJECT TO ORS 656.001 TO 656.794 TEMPORARILY LEAVES THE STATE AS A PART OF THAT EMPLOYMENT AND RECEIVES AN ACCIDENTAL INJURY ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT, HE, OR HIS BENEFICIARIES IF THE INJURY RESULTS IN DEATH, IS ENTITLED TO THE BENEFITS OF ORS 656.001 TO 656.794 AS THOUGH HE WERE INJURED WITHIN THIS STATE.

APPLYING THE LAW TO THE FACTS OF THIS CASE, IT IS EVIDENT FROM THE RECORD, AND THE BOARD SO FINDS, THAT THE CLAIMANT WAS A SUBJECT EMPLOYEE OF THIS EMPLOYER UNDER THE OREGON WORKMEN'S COMPENSATION ACT AT THE TIME CLAIMANT RECEIVED A COMPENSABLE INJURY WHILE TEMPORARILY IN OKLAHOMA.

IT IS NOTED THAT THE EMPLOYER, BY AND THROUGH ITS WORKMEN'S COMPENSATION INSURANCE CARRIER, HAS DENIED THE CLAIMANT'S CLAIM IN ILLINOIS, OKLAHOMA, AND OREGON. THE EMPLOYER'S BRIEF AND THE RECORD NOWHERE EVEN SUGGESTS IN WHICH STATE THE EMPLOYER OR ITS WORKMEN'S COMPENSATION INSURANCE CARRIER WOULD CONSIDER THE APPROPRIATE JURISDICTION FOR THIS WORKMEN'S COMPENSATION CLAIM. IN FACT, THE EMPLOYER HAS MERELY DENIED THE CLAIM IN THE THREE STATES INVOLVED.

ORS 656.004 SPEAKS OF THE BURDEN OF UNNECESSARY LITIGATION AND INCLUDES THE IDEA OF AVOIDING UNNECESSARY ADMINISTRATIVE

BURDEN. THE EMPLOYER, BY AND THROUGH ITS WORKMEN'S COMPENSATION INSURANCE CARRIER, BY MERELY DENYING THE CLAIM IN ALL THREE STATES HAS QUITE OBVIOUSLY OVERLOOKED THE FUNDAMENTAL RULES AND PURPOSE OF WORKMEN'S COMPENSATION INSURANCE PRINCIPLES WHICH APPLY NOT ONLY IN OREGON BUT IN OTHER STATES AS WELL.

THE BOARD FINDS THAT THE EMPLOYER IS SUBJECT TO PENALTIES FOR PAYMENT DELAYS PURSUANT TO ORS 656.262 AND PENALTIES AND ATTORNEY'S FEES PAYABLE BY THE EMPLOYER FOR MISCONDUCT AND UNREASONABLY RESISTING THE PAYMENT OF COMPENSATION PURSUANT TO ORS 656.382.

ORDER

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

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 BOARD REVIEW.

THE EMPLOYER IS ORDERED TO PAY TO THE CLAIMANT A PENALTY IN THE AMOUNT OF 15 PERCENT OF THE COMPENSATION DUE THE CLAIMANT AS OF JUNE 10, 1974.

WCB CASE NO. 73-2133 DECEMBER 10, 1974

JACK MC MURRIAN, CLAIMANT

DWYER AND JENSEN, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON DECEMBER 5, 1974, THE STATE ACCIDENT INSURANCE FUND REQUESTED RECONSIDERATION BY THE BOARD OF ITS ORDER, DATED NOVEMBER 19, 1974.

THE BOARD FULLY CONSIDERED THE QUESTION OF WHETHER THERE WAS RESIDUAL URINARY TRACT DISABILITY AT THE TIME IT REVIEWED THE RECORD AND WILL NOT, THEREFORE, RECONSIDER THAT ISSUE.

THE ORDER ON REVIEW REFERRED TO THE REFEREE'S INTERIM ORDER OF DECEMBER 11, 1973, RATHER THAN HIS FINAL ORDER OF JULY 11, 1974, IN THE ORDER OF AFFIRMANCE. THE BOARD'S ORDER ON REVIEW OBVIOUSLY RELATES TO THE REFEREE'S FINAL ORDER AND ITS INADVERTENT REFERENCE TO THE INTERIM ORDER DATE PROVIDES NO BASIS FOR RECONSIDERATION. THE ORDER ON REVIEW, DATED NOVEMBER 19, 1974, SHOULD, HOWEVER, BE AMENDED TO REFLECT AFFIRMANCE OF THE REFEREE'S ORDER OF JULY 11, 1974, RATHER THAN HIS ORDER OF DECEMBER 11, 1973.

IT IS SO ORDERED.

SAIF CLAIM NO. A 937200 DECEMBER 10, 1974

ALFRED L. KUBE, CLAIMANT

NOREEN A. SALTVEIT, CLAIMANT'S ATTY.

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

CLAIMANT WAS INJURED IN JULY, 1962, WHILE WORKING FOR OWEN'S LOGGING COMPANY. HE FELL, FRACTURING THREE RIBS AND INJURING HIS LEFT HIP AND BACK. CLAIMANT RECEIVED CONSERVATIVE CARE. CLAIMANT HAS HAD EXACERBATIONS OF HIS BACK PROBLEMS NUMEROUS TIMES OVER THE PAST 10 OR 12 YEARS. ULTIMATELY, ON OCTOBER 12, 1973, CLAIMANT UNDERWENT SURGERY FOR A VERY SMALL HERNIATION OF THE NUCLEUS PULPOSUS. CLAIMANT NOW REQUESTS BOARD OWN MOTION RELIEF FOR PAYMENT OF MEDICAL BILLS INCURRED IN THIS SURGERY.

THE BOARD FINDS THERE IS A SUFFICIENT COMPENSABLE CHAIN OF CAUSATION FROM THE INITIAL INJURY OF 1962 TO THE SURGERY PERFORMED IN 1973 AND THAT THERE WAS NO INTERVENING INCIDENT OR TRAUMA OF SUCH NATURE AS TO RELIEVE THE STATE ACCIDENT INSURANCE FUND FROM PAYMENT OF THESE MEDICAL EXPENSES.

ORDER

IT IS THEREFORE ORDERED THAT THE STATE ACCIDENT INSURANCE FUND PAY MEDICAL BILLS ARISING OUT OF THIS BACK SURGERY.

CLAIMANT'S ATTORNEY IS HEREBY AWARDED 25 PERCENT OF THE AMOUNT OF THE MEDICAL BILLS 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 ORDER MADE BY THE BOARD ON ITS OWN MOTION.

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

WCB CASE NO. 74-1341 DECEMBER 10, 1974

FERN E. BRANNAN, CLAIMANT

MORLEY, THOMAS, ORONA AND KINGSLEY,
CLAIMANT'S ATTORNEYS
ROGER R. WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH INCREASED CLAIMANT'S PERMANENT PARTIAL DISABILITY

AWARD FOR UNSCHEDULED LOW BACK DISABILITY FROM 20 PERCENT TO 35 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE.

CLAIMANT, A THEN 45 YEAR OLD FACTORY WORKER, SUSTAINED A BACK INJURY ON JUNE 27, 1972. DR. MELGARD PERFORMED A LUMBAR LAMINECTOMY WITH NERVE ROOT DECOMPRESSION IN FEBRUARY OF 1973. AT THE END OF AUGUST OF THAT YEAR, CLAIMANT RETURNED TO WORK FOR HER EMPLOYER AT AN EASIER JOB, WORKED ONLY TWO OR THREE DAYS, ATTEMPTED WORKING JUST HALF DAYS AND WAS UNABLE TO DO SO. HER SUPERVISOR TESTIFIED CLAIMANT HAD BEEN ONE OF THE BETTER WORKERS IN THE PLANT AND ALWAYS HAD A HIGH PRODUCTION RATE. CLAIMANT DID NOT APPLY FOR UNEMPLOYMENT COMPENSATION BECAUSE SHE FELT SHE WAS PHYSICALLY UNABLE TO BECOME EMPLOYED.

HAVING A PERSONAL OBSERVATION, THE REFEREE FOUND CLAIMANT TO BE A BELIEVABLE WITNESS AND NO EVIDENCE OF LACK OF MOTIVATION. THE BOARD, AT THIS POINT, WOULD LIKE TO INFORM CLAIMANT OF COUNSELING AND REHABILITATION BENEFITS AVAILABLE TO ALL CLAIMANTS UNDER THE AUSPICES OF THE BOARD'S DISABILITY PREVENTION DIVISION. THESE SERVICES WILL BE AVAILABLE TO CLAIMANT UPON REQUEST.

THE BOARD CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE AND AFFIRMS HIS ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED JULY 30, 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.

WCB CASE NO. 74-1630 DECEMBER 10, 1974

JOYCE L. MCQUAW, CLAIMANT

AIL AND LUEBKE, CLAIMANT'S ATTYS.
JAMES D. HUEGLI, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A CLAIMANT WHO WAS EMPLOYED FOR EIGHT YEARS AS A RELAY SEALER FOR ELECTRONICS SPECIALTIES COMPANY. THE HEAVY REPETITIVE WORK CAUSED HER TO DEVELOP EPICONDYLITIS, COMMONLY KNOWN AS 'TENNIS ELBOW.' A DETERMINATION ORDER AWARDED PERMANENT PARTIAL DISABILITY OF 28.8 DEGREES, EQUAL TO 15 PERCENT LOSS OF THE RIGHT ARM. THIS AWARD WAS INCREASED TO 48 DEGREES OR 25 PERCENT LOSS OF THE RIGHT ARM BY THE REFEREE AT HEARING AND CLAIMANT REQUESTS BOARD REVIEW CONTENDING HER DISABILITY IS GREATER THAN THAT FOR WHICH SHE WAS AWARDED.

AT HEARING, THE REFEREE FOUND CLAIMANT TO HAVE A FULL RANGE OF MOTION OF THE RIGHT ELBOW. CLAIMANT DID HAVE SOME PAIN IN THE ELBOW AND WEAKNESS OF GRIP. REVIEWING

THE RECORD DE NOVO AND RELYING ON THE REFEREE'S OPPORTUNITY TO OBSERVE THE CLAIMANT'S ARM AND MOTIONS, AND THE MEDICAL AND TESTIMONIAL EVIDENCE IN THE RECORD, THE BOARD FINDS THAT CLAIMANT'S SCHEDULED LOSS OF PHYSICAL FUNCTION IN THE RIGHT ARM DOES NOT EXCEED THAT FOR WHICH SHE HAS BEEN AWARDED.

ORDER

THE ORDER OF THE REFEREE DATED JULY 24, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 72-230 DECEMBER 10, 1974

ROBERT MURPHY, CLAIMANT

EDWIN A. YORK, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER'S AWARD OF 19 DEGREES PERMANENT PARTIAL DISABILITY FOR UNSCHEDULED NECK DISABILITY.

CLAIMANT, NOW 44 YEARS OLD, WHILE WORKING AS A SHEET ROCKER FELL FROM A SCAFFOLDING AUGUST 20, 1966, SUFFERING SERIOUS MULTIPLE INJURIES FOR WHICH CLAIMANT HAS BEEN AWARDED 19 DEGREES UNSCHEDULED NECK DISABILITY, 65 PERCENT LOSS OF USE OF THE LEFT LEG, AND 15 PERCENT LOSS OF USE OF THE RIGHT ARM.

A CLAIM AS TO COMPENSABILITY OF THE LOW BACK WAS DENIED AND THIS DENIAL WAS AFFIRMED BY THE COURT OF APPEALS.

CLAIMANT CONTENDS THE PRIOR LITIGATION DOES NOT PREVENT HIM FROM NOW PRESENTING PROOF OF AN AGGRAVATION TO HIS LOW BACK. WE DISAGREE. THE MATTER IS RES JUDICATA.

THE ISSUE ON THIS CLAIM OF AGGRAVATION IS THEREFORE LIMITED TO THE EXTENT OF DISABILITY TO THE CERVICAL SPINE. THE MEDICAL EVIDENCE IN THE RECORD CONFIRMS THAT THE 19 DEGREES UNSCHEDULED NECK DISABILITY AWARD IS ADEQUATE. THE ORDER OF THE REFEREE SHOULD BE AFFIRMED.

ORDER

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

WCB CASE NO. 74-699 DECEMBER 10, 1974

DOROTHY BUCKNER, CLAIMANT

FLINN, LAKE AND BROWN, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
CROSS-APPEAL BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

ON AUGUST 26, 1971, CLAIMANT, A 36 YEAR OLD NURSE'S AIDE, SLIPPED ON A WET FLOOR AND INJURED HER BACK. CLAIMANT WAS TREATED CONSERVATIVELY FOR CERVICAL, DORSAL AND LUMBO-SACRAL SPRAIN. HER CLAIM WAS CLOSED WITH NO AWARD FOR PERMANENT DISABILITY. AT HEARING, THE REFEREE AWARDED CLAIMANT PERMANENT PARTIAL DISABILITY EQUAL TO 100 DEGREES UNSCHEDULED LOW BACK DISABILITY OF A MAXIMUM OF 320 DEGREES. CLAIMANT HAS REQUESTED BOARD REVIEW CONTENDING SHE IS PERMANENTLY AND TOTALLY DISABLED. THE STATE ACCIDENT INSURANCE FUND HAS CROSS-REQUESTED BOARD REVIEW CONTENDING THE AWARD OF 100 DEGREES WAS NOT SUPPORTED BY THE EVIDENCE.

CLAIMANT HAS BEEN SEEN BY NUMEROUS QUALIFIED DOCTORS, ALL OF WHOM CONCLUDED CLAIMANT HAD MODERATE PERMANENT DISABILITY TO THE LOW BACK - THE MAJOR PORTION OF THE DISABILITY BEING IN THE EMOTIONAL SPHERE WITH THE IMPACT OF HER INJURY PLAYING A SIGNIFICANT ROLE.

THE REFEREE FOUND THERE WAS NO SUBSTANTIAL COMPETENT EVIDENCE TO ESTABLISH A MEDICAL-CAUSAL RELATIONSHIP BETWEEN HER EMPLOYMENT AND HER EMOTIONAL PROBLEMS BUT NEVERTHELESS AWARDED HER 100 DEGREES FOR UNSCHEDULED PERMANENT PARTIAL DISABILITY.

WE CONCLUDE THE AWARD OF 100 DEGREES WAS PROPER BUT DO SO BECAUSE WE DISAGREE WITH THE REFEREE'S CONCLUSION THAT HER EMOTIONAL PROBLEMS SHOULD BE IGNORED IN THE RATING OF HER DISABILITY.

OBVIOUSLY, HER PSYCHOLOGICAL PROBLEMS DID NOT START WITH THE INJURY BUT THEY ARE NOW WORSENED AND HAVE COMBINED WITH THE ACCIDENT AND ITS OBJECTIVE PHYSICAL RESIDUALS IN SUCH A WAY THAT ONE MAY EXPECT A PERMANENT LIMITATION ON HER EARNING CAPACITY.

WE DO NOT FIND CLAIMANT'S PERMANENT DISABILITY TO BE TOTAL. THE EVIDENCE INDICATES THAT HER CONTINUING UNEMPLOYMENT IS MATERIALLY RELATED TO SECONDARY GAIN FACTORS. THE REFEREE'S AWARD OF PERMANENT PARTIAL DISABILITY SHOULD BE AFFIRMED.

ORDER

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

WCB CASE NO. 73-3973 DECEMBER 11, 1974

GEORGE NELSON, CLAIMANT

ROD KIRKPATRICK, CLAIMANT'S ATTY.
GEARIN, CHENEY, LANDIS, AEBI, AND KELLEY, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY EMPLOYER
CROSS-REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER REQUESTS BOARD REVIEW OF A REFEREE'S ORDER CONTENDING THE PERMANENT PARTIAL DISABILITY AWARD OF 60 DEGREES (APPROXIMATELY 45 PERCENT) FOR LEFT FOOT GRANTED BY THE REFEREE IS EXCESSIVE. CLAIMANT HAS CROSS-APPEALED CONTENDING HIS DISABILITY IS GREATER.

THE ESSENCE OF THE EMPLOYER'S ARGUMENT ON REVIEW IS THAT, THIS BEING A 'SCHEDULED' INJURY, LOSS OF PHYSICAL FUNCTION IS THE MEASURE OF PERMANENT DISABILITY AND THAT, SINCE THE AMA 'GUIDES' HAVE AUTHORITIVELY ESTABLISHED GUIDELINES FOR THE MEASUREMENT OF FUNCTIONAL LOSS, THAT THE REFEREE ERRED IN NOT ACCEPTING DR. MC KILLOP'S AMA GUIDES BASED OPINION ON EXTENT OF PERMANENT DISABILITY.

IT IS NOT THE AMA GUIDES BUT THE OREGON WORKMEN'S COMPENSATION LAW WHICH ESTABLISHES THE METHOD OF DISABILITY EVALUATION. THE GREAT WEAKNESS OF THE AMA 'GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT - THE EXTREMITIES AND BACK' IS THAT THEY CONSIDER AND MEASURE ONLY LOSS OF MOTION AND NOT THE MANY OTHER FACTORS SUCH AS STRENGTH AND ENDURANCE THAT GO TO MAKE UP THE PHYSICAL FUNCTIONS OF THE HUMAN BODY.

THE REFEREE FOUND THE PHYSICAL IMPAIRMENT, TAKING INTO ACCOUNT THE WHOLE SPECTRUM OF NORMAL ANATOMIC FUNCTIONS, HAD PRODUCED SERIOUS FOOT DISABILITY AND COMPENSATED THE CLAIMANT ACCORDINGLY. WE CONCUR WITH THE AWARD GRANTED BY THE REFEREE AND WOULD AFFIRM HIS ORDER AS THE ORDER OF THE BOARD.

ORDER

THE ORDER OF THE REFEREE, DATED JULY 3, 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.

SAIF CLAIM NO. BC 23995 DECEMBER 11, 1974

WILLIAM PORTER, CLAIMANT

ON JUNE 22, 1966, CLAIMANT SUFFERED A HAND INJURY REQUIRING PARTIAL AMPUTATION OF THE RIGHT MIDDLE FINGER. A PERMANENT DISABILITY AWARD OF 50 PERCENT OF THE RIGHT MIDDLE FINGER WAS GRANTED ON THE CLAIM EVALUATION. THEREAFTER,

ADDITIONAL TREATMENT AND PERMANENT DISABILITY COMPENSATION WAS FURNISHED FOR THE INJURY. CLAIMANT'S FIVE YEAR AGGRAVATION EXPIRED ON OCTOBER 11, 1971.

IN APRIL, 1973, CLAIMANT SOUGHT AN ORDER FROM THE WORKMEN'S COMPENSATION BOARD GRANTING HIM FURTHER BENEFITS PURSUANT TO ITS CONTINUING JURISDICTION OF HIS CLAIM PURSUANT TO ORS 656.278. ON MAY 17, 1973, THE BOARD ISSUED AN ORDER DENYING FURTHER BENEFITS FINDING -

> "THE RECORDS INDICATE CLAIMANT HAS RECEIVED PROPER TREATMENT FOR THE INJURED AREA AND NO PHYSICAL IMPAIRMENT EXISTS OTHER THAN TO HIS FINGER, FOR WHICH CLAIMANT HAS BEEN COMPENSATED."

CLAIMANT HAS AGAIN SOUGHT BOARD'S OWN MOTION RELIEF PRESENTING TO THE BOARD A MEDICAL REPORT FROM J. F. SCHMIDT, D.C., DATED OCTOBER 9, 1974. DR. SCHMIDT REPORTED NEUROLOGICAL PATHOLOGY WHICH HE THOUGHT WAS PROBABLY COMPENSABLE BASED EITHER ON A 1971 HISTORY OF THE ACCIDENT WHICH INCLUDED A BLOW TO THE HEAD WITH INJURY TO THE CERVICAL SPINE, OR ON THE BASIS THAT THE INJURY TO THE NERVES OF THE HAND WAS SUPERIMPOSED ONA PREEXISTING WEAKNESS OF THE BRACHIAL PLEXES CAUSING COMPLICATIONS IN THE BRACHIAL PLEXES.

THE REPORT OF CLAIMANT'S INJURY DOES NOT SUGGEST ANY BLOW TO THE HEAD OCCURRED DURING THE ACCIDENT, NOR DOES THE RECORD CONTAIN ANY REFERENCE TO HEAD TRAUMA UNTIL DR. SCHMIDT'S LETTER OF OCTOBER 9, 1974.

UNDER THESE CIRCUMSTANCES, WE CONCLUDE CLAIMANT HAS BEEN FULLY COMPENSATED FOR THE EFFECTS OF THIS INJURY AND HIS REQUEST FOR BOARD'S OWN MOTION RELIEF SHOULD BE DENIED.

IT IS SO ORDERED.

CLAIM A—42 CC 72219 MR DECEMBER 11, 1974

BRUCE ROBUCK, CLAIMANT

THIS MATTER INVOLVES A WORKMAN WHO SUSTAINED A COMPENSABLE INJURY IN AUGUST OF 1966 WHEN A HEAVY BEAM FELL ON HIS LEFT SHOULDER, LEFT HAND AND LEFT SIDE OF HIS HEAD. PURSUANT TO STIPULATION, HE WAS AWARDED 10 PERCENT LOSS FUNCTION OF AN ARM BY SEPARATION.

THE MATTER IS NOW BEFORE THE BOARD ON REQUEST OF CLAIMANT TO REOPEN HIS CLAIM FOR FURTHER MEDICAL CARE AND TREATMENT UNDER THE OWN MOTION JURISDICTION GRANTED TO THE BOARD BY ORS 656.278.

THE BOARD IS NOW IN RECEIPT OF AND HAS CONSIDERED A MEDICAL REPORT FROM J. R. BECKER, M.D., DATED NOVEMBER 11, 1974. THE BOARD IS OF THE OPINION THAT MR. ROBUCK'S CLAIM SHOULD BE REOPENED ONLY IF, AND WHEN THE TREATMENT OUTLINED IN DR. BECKER'S REPORT BECOMES NECESSARY IN ORDER TO PERMIT MR. ROBUCK TO FUNCTION IN THE GENERAL LABOR MARKET, ASSUMING THAT MR. ROBUCK WILL ACCEPT THE TREATMENT AS DESCRIBED.

THEREFORE, THE OWN MOTION REQUEST NOW PENDING BEFORE THE BOARD WILL RECEIVE NO FURTHER ACTION AND THE MATTER IS HEREBY DISMISSED.

WCB CASE NO. 74-1453 DECEMBER 11, 1974

FRED FEISS, CLAIMANT

ALLEN T. MURPHY, JR.,
CLAIMANT'S ATTORNEY

ON NOVEMBER 6, 1974, CLAIMANT REQUESTED BOARD REVIEW OF A REFEREE'S ORDER DATED OCTOBER 21, 1974. ON NOVEMBER 14, 1974, THE EMPLOYER FILED A CROSS-REQUEST FOR REVIEW.

IT NOW APPEARING TO THE BOARD BASED ON THE STIPULATION OF BOTH PARTIES THAT BOTH PARTIES WISH TO WITHDRAW THEIR RESPECTIVE REQUESTS FOR REVIEW.

BOTH REQUESTS FOR BOARD REVIEW BEING NOW WITHDRAWN, THE BOARD HEREBY ORDERS THAT THE ABOVE ENTITLED MATTER NOW PENDING BEFORE THE BOARD SHOULD BE, AND IT IS HEREBY, DISMISSED.

WCB CASE NO. 74-113 DECEMBER 12, 1974

HARVEY FLIPSE, CLAIMANT

BUSS, LEICHNER, LINDSTEDT, BARKER
AND BUONO, CLAIMANT'S ATTYS.
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 INCREASING CLAIMANT'S PERMANENT DISABILITY AWARD TO PERMANENT TOTAL DISABILITY.

CLAIMANT IS A 60 YEAR OLD MAN WHO SUFFERED A RUPTURE OF THE ROTATOR CUFF OF THE RIGHT SHOULDER ON SEPTEMBER 13, 1972, WHILE WORKING AS A LOG TRUCK DRIVER. SURGICAL REPAIR PRODUCED NO SIGNIFICANT IMPROVEMENT.

ON NOVEMBER 20, 1973, A DETERMINATION ORDER ISSUED GRANTING 160 DEGREES OR 50 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED PERMANENT PARTIAL DISABILITY.

EVIDENCE PRESENTED AT THE HEARING INDICATED CLAIMANT WAS NOT CONSIDERED A SUITABLE CANDIDATE FOR VOCATIONAL REHABILITATION SERVICES. THE REFEREE, CONSIDERING CLAIMANT'S PHYSICAL DISABILITY, HIS AGE, WORK EXPERIENCE AND HIS UNSUITABILITY FOR REHABILITATION, CONCLUDED CLAIMANT WAS PRIMA FACIE IN THE 'ODD LOT' CATEGORY AND CONCLUDED, UPON THE FUND'S FAILURE TO PRODUCE EVIDENCE OF SUITABLE EMPLOYMENT, THAT CLAIMANT WAS PERMANENTLY TOTALLY DISABLED.

WE HAVE EXAMINED THE RECORD DE NOVO AND ARE SATISFIED THAT CLAIMANT IS NOT LACKING IN MOTIVATION. THE RECORD ALSO REVEALS THAT THE EVALUATION DIVISION DID NOT KNOW, AT THE TIME IT FOUND CLAIMANT PERMANENTLY PARTIALLY DISABLED, THAT THE VOCATIONAL REHABILITATION DIVISION WOULD CONSIDER CLAIMANT UNSUITABLE FOR REHABILITATION.

WE CONCLUDE THAT CLAIMANT HAS ESTABLISHED HIS STATUS AS AN ODD-LOT WORKMAN AT BEST AND THAT, THE STATE ACCIDENT INSURANCE FUND NOT HAVING PRODUCED EVIDENCE OF SUITABLE WORK AVAILABLE TO HIM, CLAIMANT IS PERMANENTLY TOTALLY DISABLED.

ORDER

THE ORDER OF THE REFEREE, DATED JULY 12, 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—2135 DECEMBER 12, 1974

CLARENCE YOST, CLAIMANT
SANFORD KOWITT, CLAIMANT'S ATTY.
MCMENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTORNEYS

ON NOVEMBER 29, 1974, THE STATE ACCIDENT INSURANCE FUND MOVED TO DISMISS THE EMPLOYER'S REQUEST FOR REVIEW MADE THROUGH ITS CARRIER, EMPLOYEE BENEFITS INDUSTRIAL SERVICE, ON THE GROUND IT HAD NO STANDING TO REQUEST REVIEW IN WCB CASE NO. 74-2135 SINCE IT WAS NOT A PARTY TO THAT DISPUTE.

THE REVIEW REQUESTED IS OF A REFEREE'S OPINION AND ORDER ISSUED FOLLOWING A CONSOLIDATED HEARING OF WCB CASE NOS. 74-2134 AND 74-2135. THE STATE ACCIDENT INSURANCE FUND MOVED TO CONSOLIDATE THE CASES FOR HEARING ORIGINALLY SINCE THERE WAS ONLY ONE EMPLOYER BUT TWO SUCCESSIVE INSURERS INVOLVED IN THE CASE. IT APPEARS THEREFORE THAT A FULL RESOLUTION OF THE ISSUES DEMANDS THAT BOTH CARRIERS REMAIN INVOLVED IN THE REVIEW.

THE MOTION OF THE STATE ACCIDENT INSURANCE FUND IS DENIED.

SAIF CLAIM NO. A 937200 DECEMBER 13, 1974

ALFRED L. KUBE, CLAIMANT
LAWRENCE B. REW, CLAIMANT'S ATTY.

THE SOLE PURPOSE OF THIS ORDER IS TO CLARIFY THAT PORTION OF THE BOARD'S OWN MOTION ORDER DATED DECEMBER 10, 1974 AS IT RELATES TO THE PAYMENT OF ATTORNEY FEES AND MAILING OF COPIES. THE LAST PARAGRAPH OF THE ORDER SHOULD READ AS FOLLOWS =

'CLAIMANT'S ATTORNEY, LAWRENCE B. REW, IS HEREBY AUTHORIZED TO COLLECT FROM THE CLAIMANT, AS A REASONABLE ATTORNEY'S FEE, 25 PERCENT OF THE AMOUNT OF THE MEDICAL BILLS OF WHICH CLAIMANT HAS BEEN RELIEVED OF PAYING.'

THE PARAGRAPH RELATING TO THE MAILING OF COPIES SHOULD APPEAR AS FOLLOWS -

'ENTERED AT SALEM, OREGON AND COPIES MAILED TO -

ALFRED KUBE, C-O RANCH MOTEL, PENDLETON, OREGON 97801
LAWRENCE B. REW, ATTORNEY, P.O. BOX 218, PENDLETON, OREGON 97801
HARRY'S AUTOMOTIVE, BOX 629, RAINIER, OREGON 97048
SAIF, ATTN - MR. FRANCIS ELY, SAIF BUILDING, SALEM, OREGON 97310

IT IS SO ORDERED.

WCB CASE NO. 73-3110 DECEMBER 13, 1974

DOUGLAS CALDER, CLAIMANT

JACKSON AND JOHNSON, CLAIMANT'S ATTYS.
MC MENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTORNEYS

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

ON MARCH 7, 1974, A REFEREE'S OPINION AND ORDER ISSUED FINDING THAT AN ON-THE-JOB INCIDENT OF MAY 22, 1973 WAS AN AGGRAVATION OF AN APRIL 4, 1972 INJURY.

CLAIMANT'S EMPLOYER AT THE TIME OF THE APRIL 4, 1972 INJURY, HUGHES, LADD AND MC CONNELL, REQUESTED BOARD REVIEW.

PENDING BOARD REVIEW, HUGHES, LADD AND MC CONNELL MOVED FOR AN ORDER REMANDING THE MATTER TO THE REFEREE FOR RECEIPT OF CERTAIN ADDITIONAL EVIDENCE. THE MOTION WAS GRANTED. THE REFEREE CONSIDERED THE ADDITIONAL EVIDENCE AND THEREUPON ENTERED AN OPINION AND ORDER ON REMAND, AGAIN FINDING THE INCIDENT WAS AN AGGRAVATION. THE EMPLOYER, HUGHES, LADD AND MC CONNELL, HAS AGAIN REQUESTED BOARD REVIEW CONTENDING THE REFEREE ERRED IN NOT FINDING CLAIMANT'S MAY 22, 1973 INCIDENT WAS A NEW ACCIDENT SUFFERED IN THE COURSE OF HIS EMPLOYMENT BY RAY KIZER CONSTRUCTION COMPANY.

WE HAVE REVIEWED THE RECORD DE NOVO AND, HAVING DONE SO, ARE SATISFIED WITH THE REFEREE'S ANALYSIS OF THE EVIDENCE.

WE CONCLUDE HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED JULY 26, 1974 IS AFFIRMED.

WCB CASE NO. 72-3499 DECEMBER 16, 1974

PAULINE KERNAN, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

ON OCTOBER 3, 1973, AFTER THE STATE ACCIDENT INSURANCE FUND HAD REQUESTED BOARD REVIEW OF A REFEREE'S AWARD OF PERMANENT TOTAL DISABILITY TO CLAIMANT, THE WORKMEN'S COMPENSATION BOARD REMANDED THIS CASE TO THE REFEREE FOR RECEIPT OF FURTHER EVIDENCE AND RECONSIDERATION OF THE ISSUE OF PERMANENT DISABILITY.

THE MATTER IS AGAIN BEFORE THE BOARD ON THE FUND'S REQUEST TO REVIEW THE REFEREE'S AWARD OF PERMANENT TOTAL DISABILITY.

THE BOARD HAS EXAMINED THE RECORD DE NOVO AND, HAVING DONE SO, CONCURS WITH THE REFEREE'S ANALYSIS OF THE EVIDENCE IN ALL RESPECTS. HIS ORDER SHOULD THEREFORE BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED JULY 8, 1974 IS 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.

SAIF CLAIM NO. FOD 16740 DECEMBER 17, 1974

LYLE G. NICHOLSON, D.V.M., CLAIMANT

CLAIMANT HAS REQUESTED THE WORKMEN'S COMPENSATION BOARD TO DETERMINE UNDER THE PROVISIONS OF ORS 656.278 HIS ENTITLEMENT TO FURTHER COMPENSATION FOR AN OCCUPATIONAL DISEASE CLAIM FILED ON DECEMBER 12, 1960.

AFTER CONSIDERING CLAIMANT'S LETTER OF NOVEMBER 7, 1974, AND HIS LETTER OF DECEMBER 4, 1974, THE BOARD HAS CONCLUDED THAT A HEARING SHOULD BE CONVENED BEFORE A REFEREE OF THE WORKMEN'S COMPENSATION BOARD TO FULLY DEVELOP THE FACTS NECESSARY TO DETERMINE WHETHER CLAIMANT SHOULD RECEIVE FURTHER BENEFITS.

AFTER THE HEARING HAS BEEN CONCLUDED, THE REFEREE SHOULD FORWARD THE RECORD OF THE PROCEEDINGS, TOGETHER WITH HIS FINDINGS AND RECOMMENDATIONS, TO THE WORKMEN'S COMPENSATION BOARD FOR FINAL ACTION.

IT IS SO ORDERED.

WCB CASE NO. 74-2921 DECEMBER 17, 1974

ARNOLD C. ANDERSON, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, FEFENSE ATTYS.

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

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. 73-963 DECEMBER 17, 1974

DAVID BAKER, 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 STATE ACCIDENT INSURANCE FUND HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER FINDING CLAIMANT'S RIGHT KNEE PATHOLOGY CONSTITUTED AN OCCUPATIONAL DISEASE. THE STATE ACCIDENT INSURANCE FUND CONTENDS THE CLAIMANT'S CONDITION WAS PRODUCED BY AN OFF-THE-JOB INJURY AND FURTHER CONTENDS THAT, EVEN ASSUMING THERE WAS NO OFF-THE-JOB ACCIDENT, THAT HIS CONDITION DOES NOT MEET THE REQUIREMENTS OF THE OCCUPATIONAL DISEASE DEFINITION. THE FUND ALSO RAISES THE QUESTION OF WHETHER THE WORKMEN'S COMPENSATION BOARD OR A MEDICAL BOARD OF REVIEW SHOULD REVIEW THE REFEREE'S DECISION.

CLAIMANT HAS CROSS REQUESTED BOARD REVIEW CONTENDING THAT A LEFT KNEE INJURY WAS A COMPENSABLE CONSEQUENCE OF THE RIGHT KNEE CONDITION AND ITS TREATMENT.

ORS 656.202 FIXES CLAIMANT'S COMPENSATION AT THE BENEFIT LEVELS STATUTORILY ESTABLISHED AT THE TIME OF HIS INJURY OR DISABLEMENT BY DISEASE BUT IT DOES NOT NECESSARILY LIMIT THE CLAIM PROCESSING PROCEDURES TO THOSE EXISTING AT THAT TIME. THE MEDICAL BOARD OF REVIEW PROVISIONS OF THE LAW, BEING PROCEDURAL, AND HAVING BEEN REPEALED ON OCTOBER 5, 1973, ARE NO LONGER APPLICABLE. BILLINGS V. CROUSE, 99 ADV SH 400, ___ OR APP___ (1974).

THE REFEREE CORRECTLY CHARACTERIZED CLAIMANT'S RIGHT KNEE PATHOLOGY AN OCCUPATIONAL DISEASE. SINCE THE DAMAGE DID NOT OCCUR SUDDENLY IT IS NOT AN ACCIDENTAL INJURY. OREGON JURY INSTRUCTION 150.03. IT DEVELOPED GRADUALLY WHICH IS THE HALLMARK OF AN OCCUPATIONAL DISEASE. LARSON'S WORKMEN'S

COMPENSATION LAW, VOL. 1A, S41.31 - OF BEAUDRY V. WINCHESTER PLYWOOD, 255 OR 503 (1970). ACCORDING TO DR. BACHHUBER, CLAIMANT'S WORK AS A HOD CARRIER WAS THE PRIMARY FACTOR IN THE DEVELOPMENT OF HIS RIGHT KNEE PROBLEM. THUS, THE ONSET OF THE CONDITION OCCURRED IN THE MANNER PRESCRIBED BY ORS 656.802(1)(A) AND THE REFEREE'S FINDING THAT CLAIMANT'S RIGHT KNEE CONDITION IS COMPENSABLE AS AN OCCUPATIONAL DISEASE SHOULD BE AFFIRMED.

CLAIMANT CONTENDS THAT MEDICAL TESTIMONY IS UNNECESSARY TO FIND A CAUSAL CONNECTION BETWEEN THE LEFT KNEE INJURY AND THE RIGHT KNEE CONDITION AND ITS TREATMENT. HE URGES THAT IT WAS A 'NATURAL CONSEQUENCE' OF WEARING A CAST ON HIS RIGHT LEG. WHETHER IT IS OR NOT SEEMS CLEARLY A QUESTION CALLING FOR EXPERT MEDICAL OPINION. SINCE IT IS LACKING, THE CLAIMANT HAS FAILED HIS BURDEN OF PROOF ON THAT ISSUE.

THE REFEREE'S ORDER SHOULD THEREFORE BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 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. 73-810 DECEMBER 19, 1974

WAYNE L. TOLLE, CLAIMANT

THE ABOVE ENTITLED MATTER WAS HERETOFORE THE SUBJECT OF A HEARING INVOLVING THE COMPENSABILITY OF A CLAIM FOR CHRONIC ASTHMATIC BRONCHITIS ALLEGEDLY ARISING OUT OF AND IN THE SCOPE OF CLAIMANT'S EMPLOYMENT FOR THE OREGON STATE HIGHWAY DEPARTMENT IN BEND, OREGON.

ON MAY 16, 1973, AN ORDER OF THE HEARING OFFICER WAS ENTERED FINDING THE CLAIM TO BE NONCOMPENSABLE.

THE CLAIMANT REJECTED THE HEARING OFFICER'S ORDER THEREBY CONSTITUTING AN APPEAL TO A MEDICAL BOARD OF REVIEW.

ON NOVEMBER 5, 1973, A MEDICAL BOARD OF REVIEW WAS DULY APPOINTED CONSISTING OF DOCTORS THOMAS W. ADAMS, JOHN E. TUHY AND JOHN D. O'HOLLAREN. DR. ADAMS RESIGNED THEREAFTER AND DR. H. HALE HENSON WAS NAMED TO SERVE IN HIS STEAD.

LENGTHY TESTS WERE CONDUCTED BY THE PANEL OF DOCTORS. AFTER STUDYING THE RESULTS, THE MEDICAL BOARD OF REVIEW SUBMITTED ITS FINDINGS ALONG WITH SUPPLEMENTAL NARRATIVE REPORTS TO THE WORKMEN'S COMPENSATION BOARD.

THE FINDINGS AND NARRATIVE REPORTS ARE ATTACHED HERETO AS EXHIBITS A, B, C AND D.

THESE FINDINGS, IN EFFECT, REVERSE THE HEARING OFFICER'S AFFIRMANCE OF THE FUND'S DENIAL AND FIND THE CLAIMANT'S CLAIM COMPENSABLE.

ORDER

IN CONFORMANCE WITH THE MEDICAL BOARD OF REVIEW'S FINDINGS, THE STATE ACCIDENT INSURANCE FUND IS HEREBY ORDERED TO ACCEPT CLAIMANT'S CLAIM FOR CHRONIC ASTHMATIC BRONCHITIS AND PROVIDE TO HIM THE COMPENSATION REQUIRED BY LAW.

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

WCB CASE NO. 73-1716 DECEMBER 19, 1974

WARREN B. WEST, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY

THE STATE ACCIDENT INSURANCE FUND HAS MOVED THE BOARD FOR AN ORDER STAYING THE ISSUANCE OF AN OPINION AND ORDER IN THE ABOVE-REFERENCED CASE UNTIL THE BOARD -

(1) ORDERS THE REFEREE TO TAKE EVIDENCE CONCERNING A COLLATERAL DISPUTE OVER DISPOSITION OF THE PROCEEDS OF A THIRD PARTY DISPUTE AND

(2) SETTLES THE DISPUTE BY ALLOWING THE STATE ACCIDENT INSURANCE FUND TO CLAIM AN APPROPRIATE PORTION OF THE THIRD PARTY PROCEEDS AS AN OFFSET AGAINST ANY PERMANENT PARTIAL DISABILITY WHICH MIGHT BE GRANTED BY THE REFEREE IN WCB CASE NO. 73-1716.

PRIOR TO THE FILING OF THIS MOTION, THE REFEREE CORRECTLY DECLINED JURISDICTION OVER THE THIRD PARTY DISPUTE WHEN THE STATE ACCIDENT INSURANCE FUND SOUGHT A RULING ON ITS THIRD PARTY CLAIMS FROM THE REFEREE.

HAVING CONSIDERED THE STATE ACCIDENT INSURANCE FUND'S MOTION WE HAVE CONCLUDED THAT NO ORDER STAYING THE ISSUANCE OF AN OPINION AND ORDER IN WCB CASE NO. 73-1716 SHOULD BE ISSUED.

WE HAVE FURTHER CONCLUDED, HOWEVER, THAT IN THIS CASE, REFEREE FINK SHOULD BE DELEGATED THE AUTHORITY TO RESOLVE THE THIRD PARTY DISPUTE PURSUANT TO ORS 656.593(3), IN ACCORDANCE WITH THE PROVISIONS OF THE OREGON WORKMEN'S COMPENSATION LAW.

IT IS SO ORDERED.

WCB CASE NO. 73-910 DECEMBER 19, 1974

WILFRED M. BENDA, CLAIMANT

BAILEY, DOBLIE, CENICEROS AND BRUUN,
CLAIMANT'S ATTORNEYS
LONG, NEUNER, DOLE AND CALEY,
DEFENSE ATTORNEYS

ON MAY 23, 1970, CLAIMANT SUFFERED A COMPENSABLE INJURY WHILE WORKING FOR DOUGLAS FIR PLYWOOD COMPANY. DOUGLAS FIR PLYWOOD COMPANY WAS THEN INSURED FOR WORKMEN'S COMPENSATION LIABILITY BY FIREMAN'S FUND INSURANCE COMPANY. ON JULY 1, 1970, DOUGLAS FIR PLYWOOD COMPANY TRANSFERRED ITS COMPENSATION INSURANCE COVERAGE TO EMPLOYERS INSURANCE OF WAUSAU. ON JULY 30, 1970, CLAIMANT SUFFERED ANOTHER COMPENSABLE INJURY.

IN 1973 CLAIMANT MADE A CLAIM FOR AGGRAVATION AGAINST DOUGLAS FIR PLYWOOD COMPANY AND EMPLOYERS INSURANCE OF WAUSAU. THAT CLAIM WAS DENIED. AT THE RESULTING HEARING, WAUSAU MOVED TO JOIN FIREMAN'S FUND AS A PARTY AND THE MOTION WAS GRANTED BY THE REFEREE. THE ISSUE BEFORE THE REFEREE WAS WHETHER CLAIMANT'S CONDITION HAD AGGRAVATED AND, IF SO, WHICH OF THE TWO INJURIES AND, THUS, WHICH OF THE TWO CARRIERS IS RESPONSIBLE?

THE REFEREE FOUND CLAIMANT'S CONDITION HAD WORSENED AND THAT THE WORSENING STEMMED FROM THE JULY 30, 1970 INJURY COVERED BY WAUSAU.

WAUSAU REQUESTED BOARD REVIEW ON BEHALF OF THE EMPLOYER, 'ROSEBURG LUMBER COMPANY', WHICH HAD, SUBSEQUENT TO THE TWO INJURIES IN QUESTION, ACQUIRED DOUGLAS FIR PLYWOOD COMPANY BY CORPORATE MERGER AND SUCCEEDED TO ITS POSITION AS THE CLAIMANT'S EMPLOYER.

FIREMAN'S FUND, OSTENSIBLY AS THE REPRESENTATIVE OF DOUGLAS FIR PLYWOOD COMPANY, MOVED TO DISMISS WAUSAU'S REQUEST FOR REVIEW ON THE GROUND THAT ROSEBURG LUMBER COMPANY WAS NOT A 'PARTY' TO THE ACTION AS DEFINED BY STATUTE.

WE ARE OF THE OPINION THAT ROSEBURG LUMBER COMPANY, HAVING ACQUIRED THE DOUGLAS FIR PLYWOOD COMPANY BY MERGER, HAS THE RIGHT TO REQUEST BOARD REVIEW AS THE EMPLOYER-PARTY TO THIS PROCEEDING AND THAT THE MOTION SHOULD THEREFORE BE DENIED.

IT IS SO ORDERED.

WCB CASE NO. 74-1332 DECEMBER 19, 1974

BETTY FARLEY, CLAIMANT

AFTER THE BOARD ACCEPTED OWN MOTION JURISDICTION OF THIS CLAIMANT'S CLAIM, IT DIRECTED THE STATE ACCIDENT INSURANCE FUND TO ARRANGE FOR AND PAY THE EXPENSE OF A MEDICAL EXAMINATION AND REPORT BY DR. FAULKNER A. SHORT.

WE ARE ADVISED BY THE STATE ACCIDENT INSURANCE FUND THAT CLAIMANT HAS REFUSED TO KEEP THE APPOINTMENT WHICH HAD BEEN ARRANGED.

CLAIMANT IS HEREBY ORDERED TO SHOW CAUSE, IF ANY THERE BE, FILED WITH THE WORKMEN'S COMPENSATION BOARD, LABOR AND INDUSTRIES BUILDING, SALEM, OREGON, 97310, WITHIN 15 DAYS OF THIS ORDER, WHY HER REQUEST FOR OWN MOTION RELIEF SHOULD NOT BE DISMISSED FOR LACK OF COOPERATION.

WCB CASE NO. 74-1017 DECEMBER 23, 1974

FRED SCHULER, CLAIMANT

ROD KIRKPATRICK, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH INCREASED CLAIMANT'S PERMANENT PARTIAL DISABILITY AWARD FROM 32 DEGREES TO 96 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT, EMPLOYED AS A LONG DISTANCE TRUCK DRIVER, SUFFERED A LUMBOSACRAL STRAIN ON FEBRUARY 25, 1973, WHEN HIS TRUCK JACKKNIFED AND WENT INTO THE DITCH.

THE CLAIMANT HAS BEEN TREATED AND EXAMINED BY NUMEROUS DOCTORS WHO HAVE FOUND LITTLE BASIS FOR THE CONTINUED SUBJECTIVE EXPRESSIONS OF CONTINUING PAIN AND DISABILITY. THE TREATMENT HAS BEEN LARGELY PALLIATIVE.

WHEN THE COMPLAINTS OF THE INJURED WORKMAN ARE LARGELY SUBJECTIVE, GREATER WEIGHT IS TO BE GIVEN FACTS SUCH AS COOPERATION AND MOTIVATION TO ARRIVE AT A REALISTIC EVALUATION OF THE EFFECT OF THE INJURY ON PERMANENT EARNING CAPACITY. IT APPEARS TO THE BOARD THAT CLAIMANT'S RETURN TO TRUCK DRIVING HAS BEEN PRECLUDED BECAUSE OF FACTORS OTHER THAN HIS PHYSICAL INABILITY TO DO SO. IN THIS INSTANCE, CLAIMANT HAS NOT BEEN COMPLETELY COOPERATIVE WITH ATTENDING DOCTORS OR SUGGESTIONS FOR HIS PARTICIPATION IN REMEDIAL PROGRAMS. HE DID TAKE A COURSE IN AUTO SALES, BUT HAS TURNED DOWN JOBS IN THAT AREA BECAUSE OF PERSONALITY CONFLICTS.

THE BOARD HAS REVIEWED THE EVIDENCE WITH RESPECT TO LOSS OF EARNING CAPACITY AND CONCLUDES CLAIMANT'S UNSCHEDULED DISABILITY DOES NOT EXCEED 15 PERCENT OF THE MAXIMUM. THE REFEREE'S ORDER SHOULD BE MODIFIED ACCORDINGLY.

ORDER

THE ORDER OF THE REFEREE IS HEREBY MODIFIED TO GRANT CLAIMANT DISABILITY COMPENSATION EQUAL TO 48 DEGREES OR 15 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

WCB CASE NO. 73-7157 DECEMBER 23, 1974

KORENE J. AKIN, CLAIMANT
WILLIAM F. THOMAS, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSONA ND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH GRANTED CLAIMANT PERMANENT PARTIAL DISABILITY EQUAL TO 30 PERCENT (96 DEGREES) OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED DISABILITY.

CLAIMANT SUSTAINED INJURY TO HER LOW BACK ON SEPTEMBER 12, 1972, WHILE EMPLOYED BY GAF CORPORATION. SHE WAS TREATED CONSERVATIVELY FOR A TEMPORARY BACK STRAIN AND UPON CLAIM CLOSURE PURSUANT TO ORS 656.268 DID NOT RECEIVE AN AWARD FOR PERMANENT DISABILITY.

IN APRIL OF 1973, CLAIMANT BEGAN EXPERIENCING BACK PAIN AGAIN. DR. RUBENDALE DIAGNOSED A PROTRUDING DISC THAT WAS RESOLVING ITSELF. HE PRESCRIBED REST AND EXERCISES. ON AUGUST 30, 1973, SHE WAS RELEASED TO RETURN TO WORK.

CLAIMANT DID NOT RETURN TO HER FORMER EMPLOYMENT AND BY HER OWN CHOOSING BEGAN WORKING PART-TIME IN A DAY CARE CENTER AT A BOWLING ALLEY - A JOB WHICH ALLOWS CLAIMANT TO MORE OR LESS SET HER OWN HOURS COMPATIBLE WITH HER DUTIES AT HOME AS A HOUSEWIFE AND MOTHER.

THE REFEREE FOUND CLAIMANT TO HAVE SUFFERED PERMANENT DISABILITY DUE TO LOSS OF EARNING CAPACITY EQUAL TO 30 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

THE BOARD HAS REVIEWED THE EVIDENCE WITH RESPECT TO LOSS OF EARNING CAPACITY AND CONCLUDES CLAIMANT'S UNSCHEDULED DISABILITY DOES NOT EXCEED 20 PERCENT OF THE MAXIMUM. THE REFEREE'S ORDER SHOULD BE MODIFIED ACCORDINGLY.

ORDER

THE ORDER OF THE REFEREE IS HEREBY MODIFIED TO GRANT CLAIMANT DISABILITY COMPENSATION EQUAL TO 64 DEGREES OR 20 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

WCB CASE NO. 73-3140 DECEMBER 23, 1974

WRAY SHIMFESSEL, CLAIMANT
RICHARD H. RENN, 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 UPHELD THE STATE ACCIDENT INSURANCE FUND'S DENIAL OF CLAIMANT'S CLAIM FOR COMPENSATION BENEFITS.

THIS CLAIM INVOLVES A WORKMAN WITH A PREEXISTING LEFT KNEE INJURY WHO WAS DISPATCHED FROM THE UNION HALL TO HELP INSTALL A SIGN FOR THE EMPLOYER. CLAIMANT ALLEGES THAT HE AND HIS CO-WORKER ARRIVED AT THE JOBSITE AND AS HE STEPPED OUT OF THE CAB OF THE TRUCK, HE SLIPPED ON THE STEP AND REINJURED HIS LEFT KNEE. A CLAIM FILED BY CLAIMANT FOR THIS INJURY WAS SUBSEQUENTLY DENIED BY THE STATE ACCIDENT INSURANCE FUND.

AT HEARING, THE REFEREE FOUND NO SHOWING THAT AN ACCIDENTAL INJURY REQUIRING MEDICAL SERVICES HAD OCCURRED. AT THE HEARING, THE EVIDENCE DISCLOSED THAT CLAIMANT WAS LIMPING ON AN UNSTABLE KNEE BEFORE THE INCIDENT OCCURRED, AND THAT THE MEDICAL SERVICES RENDERED AFTER THE STEPPING FROM THE TRUCK WERE FOR THE PRE-EXISTING KNEE CONDITION.

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

ORDER

THE ORDER OF THE REFEREE, DATED JULY 22, 1974, IS AFFIRMED.

WCB CASE NO. 73-4014 DECEMBER 23, 1974

JAMES BOATMAN, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

BASED ON THE APPROVED JOINT PETITION OF SETTLEMENT THE REQUEST FOR BOARD REVIEW FILED BY THE STATE ACCIDENT INSURANCE FUND IS HEREBY DISMISSED.

WCB CASE NO. 74-470 DECEMBER 23, 1974

EDWARD STANGL, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED A DETERMINATION ORDER GRANTING CLAIMANT 30 PERCENT LOSS OF THE RIGHT FOOT EQUAL TO 40.5 DEGREES. CLAIMANT CONTENDS THE DISABILITY EXTENDS TO THE LEG, HIP AND BACK.

CLAIMANT SUSTAINED A COMPENSABLE INJURY MAY 26, 1971, WHEN A LOG ROLLED OVER HIS RIGHT FOOT CAUSING SEVERE FRACTURES OF THE BONES IN THE FOOT.

THE REFEREE, IN HIS ORDER, HAS SET FORTH AT LENGTH AND IN DETAIL HIS OBSERVATIONS WITH RESPECT TO THE NATURE AND EXTENT OF CLAIMANT'S INJURY. HE CLOSELY EXAMINED BOTH OF CLAIMANT'S FEET AND LEGS. BASED ON HIS OBSERVATIONS AND THE LACK OF ANY MEDICAL EVIDENCE, THE BOARD CONCURS WITH THE FINDINGS MADE BY THE REFEREE THAT THE CLAIMANT IS NOT ENTITLED TO AN AWARD FOR UNSCHEDULED DISABILITY TO THE HIP AND BACK.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 28, 1974, IS AFFIRMED.

WCB CASE NO. 72-3570 DECEMBER 23, 1974

EVA AUSTIN, CLAIMANT

WILLIAM A. BABCOCK, CLAIMANT'S ATTY.
LAWRENCE M. DEAN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON, MOORE AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER CONCERNING HER CLAIM OF AGGRAVATION WHICH REFUSED TO GRANT HER TEMPORARY TOTAL DISABILITY FOR THE PERIOD OF MAY 18, 1970, TO JULY 15, 1973, AND ALSO REFUSED TO AWARD PENALTIES OR ATTORNEY'S FEES.

ON FEBRUARY 25, 1970, CLAIMANT SUFFERED AN INJURY TO HER LOW BACK WHILE WORKING FOR BUMBLE BEE SEAFOODS, INC., IN ASTORIA, OREGON. FOLLOWING A PERIOD OF CONSERVATIVE TREATMENT, SHE RETURNED TO WORK AT BUMBLE BEE ON MAY 18, 1970. SHE WAS FOUND MEDICALLY STATIONARY WITHOUT PERMANENT DISABILITY BY DETERMINATION ORDER DATED JUNE 1, 1970.

IN EARLY 1972, CLAIMANT SOUGHT TO REACTIVATE HER CLAIM CONTENDING THAT HER CONDITION HAD BECOME AGGRAVATED. SHE PRESENTED A REPORT TO THE EMPLOYER FROM DR. EDWARD KLOOS WHOSE FINDINGS SUGGESTED THE POSSIBILITY OF A HERNIATED DISC. HE RECOMMENDED A MYELOGRAM WHICH THE CLAIMANT REFUSED. OTHER PHYSICIANS WHO HAD EXAMINED HER DID NOT BELIEVE HER CONDITION HAD TRULY WORSENED.

CLAIMANT REQUESTED A HEARING ON NOVEMBER 16, 1972. AS A PRELUDE TO THE HEARING, CLAIMANT WAS EXAMINED BY THE BOARD'S DISABILITY PREVENTION DIVISION STAFF. THEIR REPORTS INDICATED SHE HAD NOT AGGRAVATED. AT THE HEARING ON JULY 10, 1973, THESE REPORTS WERE INTRODUCED INTO EVIDENCE.

ON JULY 16, 1973, CLAIMANT WAS EXAMINED BY DR. HOWARD CHERRY. THIS TIME SHE CONSENTED TO A MYELOGRAM WHICH REVEALED A PROBABLE HERNIATED DISC. THIS WAS IMMEDIATELY TREATED BY PERFORMING A DECOMPRESSION LAMINECTOMY. DR. CHERRY ATTRIBUTED THE DISC TO HER ON-THE-JOB ACCIDENT. UPON RECEIPT OF THIS INFORMATION, THE EMPLOYER REOPENED HER CLAIM, PAYING TIME LOSS FROM JULY 15, 1973, ONWARD AND ALL MEDICAL EXPENSES INVOLVED.

THAT ACCEPTANCE RESOLVED ALL ISSUES BEFORE THE REFEREE EXCEPT = (1) WHETHER CLAIMANT WAS ENTITLED TO PENALTIES AND ATTORNEY'S FEES BASED ON ALLEGATIONS OF UNREASONABLE DELAY IN THE PAYMENT OF MEDICAL COSTS AND UNREASONABLE DELAY AND=OR REFUSAL TO ACCEPT CLAIMANT'S AGGRAVATION CLAIM = AND (2) WHETHER CLAIMANT WAS ENTITLED TO TEMPORARY TOTAL DISABILITY BENEFITS PRIOR TO THE VOLUNTARY REOPENING OF THE CLAIM ON JULY 15, 1973. CLAIMANT CONTENDED SHE WAS ENTITLED TO TEMPORARY TOTAL DISABILITY BETWEEN MAY 18, 1970, AND JULY 15, 1973.

THE REFEREE CONCLUDED THAT CLAIMANT WAS NOT ENTITLED TO ADDITIONAL TEMPORARY TOTAL DISABILITY NOR TO PENALTIES AND ATTORNEY'S FEES. A MAJORITY OF THE BOARD CONCURS WITH THE REFEREE'S RESULT.

CLAIMANT ARGUES STRENUOUSLY THAT THE MEDICAL REPORTS UNFAVORABLE TO HER CLAIM ARE THE PRODUCT OF EMPLOYER BIASED PHYSICIANS WHO HAVE, IN TURN, SUBTLY INDOCTRINATED SUBSEQUENT EXAMINERS BY THEIR COMMENTS. THE ARGUMENT IS WITHOUT BASIS OR MERIT.

WE ALSO CONCLUDE THAT IN VIEW OF CLAIMANT'S CONDUCT AND THE MEDICAL EVIDENCE EXTANT AT THE TIME OF THE HEARING, THE EMPLOYER DID NOT ACT UNREASONABLY IN REFUSING TO ACCEPT OR DENY THE CLAIM. FURTHERMORE, A PREPONDERANCE OF THE EVIDENCE PRODUCED AT THE HEARING CONCERNING THE ISSUE OF AGGRAVATION WOULD HAVE REQUIRED AFFIRMANCE OF THE EMPLOYER'S DE FACTO DENIAL.

ON THE ISSUE OF CLAIMANT'S TEMPORARY TOTAL DISABILITY ENTITLEMENT, A MAJORITY OF THE BOARD ALSO CONCURS WITH THE OPINION OF THE REFEREE. THE REFEREE'S ORDER SHOULD THEREFORE BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED JULY 24, 1974, IS AFFIRMED.

COMMISSIONER GORDON SLOAN DISSENTS AS FOLLOWS -

THIS CASE PRESENTS A RATHER CLASSICAL EXAMPLE OF THE CONFUSION THAT CAN BE CREATED IN AN AGGRAVATION CLAIM BY THE INABILITY OF THE LEGAL AND MEDICAL PROFESSIONS TO UNDERSTAND THE PRESENT HYPER=TECHNICAL REQUIREMENTS. IN THIS INSTANCE, THE FAILURE WAS COMPOUNDED BY AN APPARENT LACK OF UNDERSTANDABLE COMMUNICATION BETWEEN THE PARTIES.

IN ANY EVENT, THE REPORTS FINALLY RECEIVED FROM DR. KLOOS PRIOR TO THE DATE OF THE ACTUAL HEARING (JULY 10, 1973) PROVIDED AN AMPLE BASIS, AS OF THAT DATE, TO HAVE ALLOWED THE CLAIM FOR AGGRAVATION. THIS WAS SO WITHOUT THE LATER VERIFICATION BY DR. CHERRY. ACCORDINGLY, I WOULD HOLD THAT THE AGGRAVATION CLAIM SHOULD HAVE BEEN ALLOWED AS OF THAT DATE, PLUS ATTORNEY'S FEES, BECAUSE OF THE EMPLOYER'S DENIAL.

THE EXTENT OF TIME LOSS BENEFITS SHOULD NOT NOW BE DECIDED. THAT ITEM, ALONG WITH ANY LATER PERMANENT PARTIAL AWARD, SHOULD BE LEFT FOR A DETERMINATION BY THE EVALUATION DIVISION.

. S. GORDON SLOAN, COMMISSIONER

WCB CASE NO. 74—545 DECEMBER 23, 1974

LUMM F. CARRELL, 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 Moore.

Claimant has requested board review of a referee's order denying his request for penalties and attorney's fees.

We have examined the record and the briefs of the parties presented on review. We concur with the findings and conclusions of the referee and conclude his order should be adopted and affirmed as the order of the board.

It is so ordered.

WCB CASE NO. 74—1427 DECEMBER 23, 1974

ANNA ZEIGLER, CLAIMANT
MAURICE V. ENGELGAU,
CLAIMANT'S ATTORNEY
JAMES H. GIDLEY, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

Reviewed by Commissioners Wilson and Sloan.

This matter involves the extent of permanent disability of a claimant who sustained a compensable injury on September 16, 1967. Pursuant to three determination orders and the referee's order issued subsequent to hearing, she has received a total permanent partial disability award of 192 degrees equal to 60 percent of the maximum allowable for unscheduled disability, and 10 percent loss of the right foot. Claimant requests board review contending her disability exceeds that for which she has been awarded.

It was necessary to perform several surgeries on claimant's back and she has not worked since the first surgery. She has attended night school to receive her GED, and at the time of hearing was preparing to become a distributor for Amway products. The referee found that despite extensive back surgery and resultant impairment, claimant was adapting to her situation and the prognosis for her successful self-employment appeared to be good.

The board on reivew, relies on the findings and conclusions made by the referee and affirms and adopts his order.

ORDER

The referee's order dated July 1, 1974 is affirmed.

WCB CASE NO. 74—967 DECEMBER 23, 1974

HEYWARD SANDERS, CLAIMANT

EMMONS, KYLE, KROPP AND
KRYGER, CLAIMANT'S ATTYS.
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 WHICH AWARDED ADDITIONAL COMPENSATION EQUAL TO 64 DEGREES FOR A TOTAL UNSCHEDULED AWARD OF 122 DEGREES (35 PERCENT), CONTENDING HE IS ENTITLED TO AN AWARD OF PERMANENT TOTAL DISABILITY.

CLAIMANT IS A 59 YEAR OLD CANNERY WORKER WHO SUSTAINED A COMPENSABLE LOW BACK INJURY ON OCTOBER 20, 1973. BY DETERMINATION ORDER, HE WAS AWARDED 15 PERCENT UNSCHEDULED PERMANENT PARTIAL DISABILITY.

WHEN DR. BECK INITIALLY SAW CLAIMANT, HE DIAGNOSED A LUMBOSACRAL STRAIN BUT NO EVIDENCE OF A HERNIATED DISC. THE BOARD'S BACK EVALUATION CLINIC EXAMINED CLAIMANT AND ADVISED SUPPORTIVE TREATMENT SUCH AS PHYSICAL THERAPY AND MUSCLE RELAXANTS. THE LOSS FUNCTION DUE TO THE INJURY WAS FELT TO BE MILD.

MOST OF CLAIMANT'S WORKING LIFE HAS BEEN SPENT AT VARIOUS KINDS OF MANUAL LABOR INCLUDING CANNERIES, TO WHICH HE HAS EMPHATICALLY STATED HE WILL NOT RETURN. HE HAS MADE NO VISIBLE EFFORT TO SEEK GAINFUL EMPLOYMENT OF ANY KIND. BY NOT SEEKING SOME TYPE OF RETRAINING, HE HAS SHOWN HIMSELF NOT TO BE UNRETRAINABLE BUT MERELY UNMOTIVATED.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDINGS OF THE REFEREE THAT CLAIMANT'S DISABILITY, ATTRIBUTABLE TO HIS INDUSTRIAL INJURY, IS EQUAL TO 35 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED DISABILITY.

OFDER

THE ORDER OF THE REFEREE, DATED JULY 23, 1974, IS HEREBY AFFIRMED.

WCB CASE NO. 72—886 DECEMBER 23, 1974

ALLAN BENNETT, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTORNEYS
KEITH SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER AFFIRMING A DETERMINATION ORDER THAT HE HAS SUFFERED NO PERMANENT DISABILITY FROM OCCUPATIONAL TRAUMA TO HIS HEARING.

CLAIMANT SEEKS A PERMANENT DISABILITY AWARD BASED ON EITHER AN UNSCHEDULED OR SCHEDULED DISABILITY THEORY. THESE THEORIES WERE PRESENTED TO THE REFEREE WHO CONCLUDED THAT CLAIMANT WAS NOT ENTITLED TO PERMANENT DISABILITY COMPENSATION UNDER EITHER THEORY.

COMPUTING THE HEARING LOSS IN ACCORDANCE WITH THE POST PRIVETTE METHOD REVEALS THAT CLAIMANT IS NOT ELIGIBLE FOR A SCHEDULED DISABILITY AWARD. ON THIS BASIS, AS WELL AS THE RATIONALE EXPRESSED BY THE REFEREE CONCERNING CLAIMANT'S UNSCHEDULED DISABILITY CONTENTIONS, WE CONCLUDE THE DETERMINATION ORDER OF JANUARY 7, 1972, SHOULD BEAFFIRMED.

ORDER

THE DETERMINATION ORDER DATED JANUARY 7, 1972 IS AFFIRMED.

WCB CASE NO. 74-997 DECEMBER 24, 1974

LAJUNE VINCENT, CLAIMANT

CLARK, MARSH AND LINDAUER,
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 SCHEDULED DISABILITY TO CLAIMANT'S FOREARMS FOR LOSS OF FUNCTION OF HER FOREARMS CAUSED BY PAIN IN THIS OCCUPATIONAL DISEASE CASE. THE DETERMINATION ORDER AWARDED NO PERMANENT SCHEDULED DISABILITY. THE REFEREE AWARDED CLAIMANT 75 PERCENT (112.5 DEGREES) SCHEDULED DISABILITY FOR THE RIGHT FOREARM AND 75 PERCENT (112.5 DEGREES) SCHEDULED DISABILITY FOR THE LEFT FOREARM.

CLAIMANT IS MARRIED AND 33 YEARS OLD. SHE HAS BEEN EMPLOYED FOR 15 YEARS IN THE MARION COUNTY RECORDER'S OFFICE WHERE SHE LIFTED AND MOVED HEAVY INDEX BOOKS WHICH WERE KEPT IN FLOOR TO CEILING FILES. SHE DEVELOPED CHRONIC TENOSYNOVITIS IN BOTH WRISTS AND BOTH FOREARMS. THE MEDICAL EVIDENCE SHOWS THAT SHE HAS FULL RANGE OF MOTION IN HERWRISTSAND FOREARMS BUT THAT SHE DOES HAVE SUBSTANTIAL PAIN WHEN SHE USES HER ARMS AND WRISTS FOR ANY APPRECIABLE TIME. SHE CAN TYPE FIVE MINUTES AND IRON FOR FIVE MINUTES BEFORE THE PAIN FORCES HER TO QUIT.

LOSS OF FUNCTION CAUSED BY PAIN IS COMPENSABLE. THE REFEREE HAD THE BENEFIT OF HEARING THE WITNESSES AND FOUND THE CLAIMANT TO BE SEVERELY LIMITED. THE LAY TESTIMONY IN THE RECORD SUSTAINS THE AWARD MADE BY THE REFEREE. THE BOARD CONCURS WITH THE FINDINGS OF THE REFEREE.

ORDER

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

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

WCB CASE NO. 73-3248 DECEMBER 24, 1974

HARRY J. SHUBIN, CLAIMANT

ROBERT BENNETT, CLAIMANT'S ATTY.
JACK MATTISON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 35 PERCENT (112 DEGREES) UNSCHEDULED LOW BACK DISABILITY AND 5 PERCENT (7.5 DEGREES) SCHEDULED LEFT LEG DISABILITY. THE REFEREE INCREASED THE UNSCHEDULED LOW BACK DISABILITY TO A TOTAL OF 50 PERCENT (160 DEGREES) AND AFFIRMED THE 5 PERCENT (7.5 DEGREES) LEFT LEG DISABILITY. THE CLAIMANT REQUESTS BOARD REVIEW CONTENDING HE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT, NOW 52 YEARS OLD, WHILE WORKING AS A CLEANUP MAN AT GEORGIA-PACIFIC MILL, SUSTAINED A COMPENSABLE INJURY ON MARCH 17, 1972. CLAIMANT HAS HAD SURGERY ON HIS BACK AND HAS EXPERIENCED SOME EPISODES OF 'BLACKING OUT'.

CLAIMANT SHOULD NOT RETURN TO MILL WORK BUT HAS TAKEN SPECIAL TRAINING LEARNING PRINTING. HE HAS A HIGH SCHOOL EDUCATION AND SOME TRAINING IN AUTO WELDING AND MACHINE WORK. CLAIMANT HAS NOW STARTED HIS OWN PRINTING BUSINESS IN HIS HOME.

THE BOARD CONCURS WITH THE FINDING AND ORDER OF THE REFEREE THAT THE CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED. THE BOARD AFFIRMS THE FINDINGS AND OPINION OF THE REFEREE.

ORDER

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

WCB CASE NO. 74-1640 DECEMBER 24, 1974

CHARLOTTE MAINE, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 10 PERCENT (32 DEGREES) UNSCHEDULED RIGHT AND LEFT SHOULDER AND NECK DISABILITY AND 5 PERCENT SCHEDULED PERMANENT RIGHT ARM DISABILITY. THE REFEREE INCREASED THE AWARD TO A TOTAL OF 40 PERCENT (128 DEGREES) UNSCHEDULED NECK AND RIGHT AND LEFT SHOULDER DISABILITY, 5 PERCENT LEFT ARM DISABILITY, AND AFFIRMED THE 5 PERCENT RIGHT ARM DISABILITY.

CLAIMANT, NOW 45 YEARS OLD, RECEIVED HER COMPENSABLE INJURY DECEMBER 26, 1972, WHILE MILKING COWS IN A DAIRY. HER CONDITION WAS ULTIMATELY DIAGNOSED AS THORACIC OUTLET SYNDROME ON THE RIGHT AND A DECOMPRESSION OF THE RIGHT BRACHIAL PLEXUS WAS PERFORMED. THE SURGEON REPORTED HER DISABILITY TO BE MODERATE.

CLAIMANT IS UNABLE TO DO DAIRY FARM WORK AND HAS CHANGED TO RAISING BEEF CATTLE. THE REFEREE WAS FAVORABLY IMPRESSED WITH CLAIMANT'S HONESTY AND CREDIBILITY AND DESCRIBED HER AS HAVING HAD AN ENORMOUS ABILITY TO DO A GREAT DEAL OF WORK BUT BECAUSE OF THE RESIDUAL DISABILITY WAS NOW LIMITED IN HER WORK EFFORTS.

THE BOARD ON REVIEW CONCURS WITH THE FINDINGS OF THE REFEREE AND AFFIRMS AND ADOPTS HIS ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED JULY 24, 1974, IS 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. 73-3164
WCB CASE NO. 73-3165 DECEMBER 24, 1974

LARRY W. BENSON, CLAIMANT

RHOTEN, RHOTEN AND SPEERSTRA,
CLAIMANT'S ATTORNEYS
RAY MIZE, DEFENSE ATTORNEY
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A DENIAL BY ONE EMPLOYER OF CLAIMANT'S AGGRAVATION CLAIM AND A DENIAL BY SUBSEQUENT EMPLOYER OF CLAIMANT'S NEW INJURY CLAIM. THE REFEREE SUSTAINED THE DENIAL OF THE AGGRAVATION CLAIM ON THE GROUNDS THAT THE MEDICAL OPINIONS DID NOT SHOW REASONABLE GROUNDS FOR THE CLAIM FOR AGGRAVATION. THE REFEREE FOUND FOR THE CLAIMANT ON THE NEW INJURY CLAIM AND ORDERED THAT EMPLOYER TO ACCEPT THE CLAIM.

CLAIMANT, A 21 YEAR OLD WAREHOUSEMAN, INJURED HIS BACK APRIL 14, 1972, WHILE WORKING FOR NORTHWEST MOBILE PRODUCTS. THE CLAIM WAS CLOSED BY DETERMINATION ORDER DATED JUNE 21, 1972, AWARDING NO PERMANENT PARTIAL DISABILITY. THE CLAIMANT WENT TO WORK FOR CARMICHAEL OLDS, INC., AND IN FEBRUARY, 1973, HAD TO QUIT BECAUSE OF HIS BACK CONDITION.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE FINDINGS AND ORDER OF THE REFEREE THAT THE CLAIMANT HAS SUSTAINED HIS BURDEN OF PROOF THAT HE SUSTAINED A NEW INJURY WHILE WORKING FOR CARMICHAEL OLDS, INC., IN FEBRUARY OF 1973. CLAIMANT HAS SHOWN GOOD CAUSE FOR LATE REPORTING OF THE INJURY TO CARMICNAEL OLDS, INC., AND CARMICHAEL OLDS, INC., HAS SHOWN NO PREJUDICE BECAUSE OF THE LATE REPORTING.

THE BOARD AFFIRMS AND ADOPTS THE OPINION AND ORDER OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 20, 1974 IS 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. 74—1486 DECEMBER 27, 1974

ARLON SANDERS, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY

ON SEPTEMBER 12, 1974, THE STATE ACCIDENT INSURANCE FUND REQUESTED BOARD REVIEW OF A REFEREE'S ORDER DATED SEPTEMBER 5, 1974, WHICH ORDERED THE STATE ACCIDENT INSURANCE FUND TO ACCEPT CLAIMANT'S AGGRAVATION CLAIM AND PAY HIS ATTORNEY A FEE OF 650 DOLLARS FOR HIS SERVICES AT THE HEARING.

THE PARTIES HAVE NOW PRESENTED A STIPULATED SETTLEMENT PROVIDING THAT IN RETURN FOR CLAIMANT'S AGREEMENT THAT HIS AGGRAVATED CONDITION IS NOW STATIONARY AND THAT HE SHOULD RECEIVE UNSCHEDULED PERMANENT DISABILITY COMPENSATION EQUAL TO 86 DEGREES FOR ADDITIONAL PERMANENT DISABILITY FROM THE AGGRAVATION, FROM WHICH CLAIMANT'S ATTORNEY IS TO RECEIVE 1,375 DOLLARS FOR COSTS AND FEES, THE STATE ACCIDENT INSURANCE FUND WILL PAY THE PERMANENT DISABILITY COMPENSATION IN A LUMP

SUM AND WITHDRAW ITS REQUEST FOR BOARD REVIEW OF THE REFEREE'S ORDER, FULFILLING COMPLIANCE WITH IT BY PAYING CLAIMANT'S ATTORNEY THE 650 DOLLARS FEE AWARDED THEREIN.

THE STIPULATION IS ATTACHED HERETO AS EXHIBIT "A".

ORDER

THE STIPULATIONS ARE HEREBY APPROVED AND THE PARTIES ARE ORDERED TO EXECUTE THE AGREEMENT ACCORDING TO ITS TERMS.

THE REQUEST FOR REVIEW IS HEREBY DISMISSED.

WCB CASE NO. 73-4223 DECEMBER 30, 1974

ELVERN KRAUSE, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER INCREASING HIS PERMANENT DISABILITY AWARD FROM 5 PERCENT TO 40 PERCENT OF THE MAXIMUM OF UNSCHEDULED DISABILITY, CONTENDING HIS DISABILITY EQUALS 75 PERCENT.

ON OCTOBER 20, 1972, CLAIMANT, A THEN 27 YEAR OLD HEAVY DUTY MECHANIC, SUFFERED A COMPENSABLE INJURY TO HIS LOW BACK. THE INJURY WAS SUPERIMPOSED UPON A SPINE ALREADY STRESSED BY A CONGENITALLY SHORTENED LEFT LEG. MYELOGRAPHY REVEALED NO DISC HERNIATION AND HE WAS TREATED CONSERVATIVELY.

FOLLOWING HIS CONVALESCENCE, HE WAS LEFT WITH A MILD BUT CHRONIC LUMBOSACRAL STRAIN WHICH PREVENTED HIS RETURNING TO HIS FORMER OCCUPATION BECAUSE OF THE HEAVY LIFTING INVOLVED.

CLAIMANT IS NOW SELF EMPLOYED AS A SMALL ENGINE REPAIRMAN - WORK WHICH HE FORMERLY DID AS A SIDELINE TO HIS HEAVY DUTY MECHANIC'S JOB.

THE REFEREE ASSESSED CLAIMANT'S UNSCHEDULED PERMANENT DISABILITY AS EQUAL TO 40 PERCENT OF THE MAXIMUM, BASED ON THE PERMANENT LOSS OF EARNING CAPACITY. THE CLAIMANT CONTENDS THE INCREASE IS INADEQUATE.

WE CONCLUDE THE AWARD OF 40 PERCENT VERY ADEQUATELY COMPENSATES THE CLAIMANT FOR THE RESIDUALS OF THIS INJURY AND WOULD AFFIRM THEREFORE, THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED JULY 18, 1974, IS AFFIRMED.

WCB CASE NO. 73-2145 DECEMBER 30, 1974

LEROY E. PLANE, JR., CLAIMANT

RHOTEN, RHOTEN AND SPEERSTRA,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT
CROSS-APPEAL BY SAIF

Reviewed by Commissioners Wilson and Moore.

This matter involves a partial denial for claimant's psychological condition. Also involved is the extent of permanent partial disability. Claimant's backclaim of January 11, 1971, was closed by determination order awarding 10 percent (32 degrees) unscheduled low back disability. The referee awarded claimant an additional 10 percent (32 degrees) making a total of 20 percent (64 degrees) unscheduled low back disability, reversed the State Accident Insurance Fund's partial denial for care of claimant's psychological condition and found that there was no justification for further medical or temporary total disability.

Claimant, a 43 year old mechanic, sustained a back injury in January, 1969, for which he was awarded 10 percent (32 degrees) unscheduled low back disability. The January, 1971, back injury was treated by surgery and claimant developed a psychopathology which was moderately related to the industrial injury. The industrial injury aggravated a preexisting latent psychopathology.

On de novo review, 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 July 3, 1974, is affirmed.

WCB CASE NO. 72-1128 DECEMBER 30, 1974

HAROLD LACY, CLAIMANT

MIKE DYE, CLAIMANT'S ATTORNEY
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF

Reviewed by Commissioners Wilson and Moore.

This matter involves the extent of permanent disability. The determination order awarded claimant 20 percent (64 degrees) unscheduled low back disability. The referee awarded claimant permanent total disability.

Claimant, now 63 years old, was working as a baker at the Oregon State Hospital when he injured his back April 23, 1971,

LIFTING A HEAVY BOWL OF DOUGH ONTO A WORKBENCH. A DIAGNOSIS OF A COMPRESSION FRACTURE OF L5-S1 LEVEL WAS MADE. THE CLAIMANT WORKED SOME FOUR MONTHS WITH HIS BACK SUPPORTED BY A BACK SUPPORT BUT COULD NOT CONTINUE THE WORK WHICH ENTAILED LIFTING BAKING MATERIALS FROM 50 TO 175 POUNDS.

MEDICAL REPORTS INDICATE CLAIMANT'S ABILITY TO LIFT IS SEVERELY LIMITED. THE PSYCHIATRIC REPORTS, ALTHOUGH IN CONFLICT IN SOME RESPECTS, CONCLUDE THAT CLAIMANT IS NOT MALINGERING OR EXAGGERATING. DR. RENNEBOHM DIAGNOSED A SUBSTANTIAL CLINICAL DEPRESSION CAUSING THE CLAIMANT TO BE FULLY DISABLED AS FAR AS SEEKING AND RETURNING TO CUSTOMARY EMPLOYMENT.

THE BOARD CONCURS WITH THE FINDING OF THE REFEREE THAT THE CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED. THE COMBINATION OF THE PHYSICAL DISABILITY AND PSYCHOPATHOLOGY BOTH RELATED TO THIS INDUSTRIAL INJURY COMBINED WITH THE AGE, EDUCATIONAL LEVEL, AND WORK EXPERIENCE OF THIS CLAIMANT PLACES CLAIMANT IN THE PERMANENT TOTAL DISABILITY CATEGORY.

ORDER

THE ORDER OF THE REFEREE, DATED JULY 12, 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. 73-2609 DECEMBER 30, 1974

VERLEAN CARTER, CLAIMANT

AIL AND LUEBKE, CLAIMANT'S ATTYS.
GEARIN, CHENEY, LANDIS, AEBI AND KELLEY, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF A REFEREE'S ORDER FINDING THE CLAIMANT WAS A SUBJECT WORKER AT THE TIME OF HER INJURY AND THUS, THAT CLAIMANT HAD SUFFERED A COMPENSABLE INJURY.

THE FACTS ARE FULLY SET OUT IN THE REFEREE'S OPINION AND WILL ONLY BE SUMMARIZED HERE.

IN SEPTEMBER, 1972, CLAIMANT ENROLLED IN A PUBLICLY FINANCED EDUCATION AND WORK EXPERIENCE PROGRAM (CONCENTRATED EMPLOYMENT PROGRAM) TO DEVELOP HER LATENT ABILITIES INTO MARKETABLE JOB SKILLS. THIS PROGRAM WAS ADMINISTERED BY THE PORTLAND METROPOLITAN STEERING COMMITTEE.

FOLLOWING HER ENROLLMENT SHE RECEIVED SEVERAL DIFFERENT TYPES OF TRAINING AND WAS, AT THE TIME OF THE INJURY IN QUESTION, A FULL TIME STUDENT EARNING A G.E.D. CERTIFICATE. SHE RECEIVED A SUPPORT STIPEND OF 2 DOLLARS PER HOUR WHILE ENROLLED AS A STUDENT.

ON MAY 29, 1973, AS CLAIMANT WAS RETURNING TO THE CONCENTRATED EMPLOYMENT PROGRAM BUILDING TO CHECK IN AFTER LUNCH, SHE FELL IN THE C.E.P. PARKING LOT SUFFERING MULTIPLE CONTUSIONS, ABRASIONS AND A STRAIN OF LUMBOSACRAL SPINE.

THE REFEREE CONCLUDED CLAIMANT WAS A SUBJECT WORKER BECAUSE SHE CONSIDERED HERSELF AN EMPLOYEE, SHE WAS RECEIVING MONEY FROM THE PORTLAND METROPOLITAN STEERING COMMITTEE, WAS UNDER THEIR 'CONTROL' AND HER SCHOOLING WAS FOR THE BENEFIT OF BOTH THE EMPLOYEE AND THE PORTLAND METROPOLITAN STEERING COMMITTEE.

WE HAVE REACHED THE OPPOSITE CONCLUSION AFTER STUDYING THE BRIEFS FILED ON REVIEW. WE DO NOT BELIEVE THAT CLAIMANT'S ATTENDANCE AT CLASSES CONSTITUTED A SERVICE TO THE PORTLAND METROPOLITAN STEERING COMMITTEE IN RETURN FOR A REMUNERATION WITHIN THE MEANING OF ORS 656.002(22).

THE REFEREE'S ORDER SHOULD BE REVERSED AND THE LETTER OF DENIAL APPROVED.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 27, 1974, IS REVERSED AND THE LETTER OF DENIAL DATED JULY 16, 1973, IS HEREBY APPROVED.

WCB CASE NO. 74-341 DECEMBER 30, 1974

WILLIAM F. GANONG, DECEASED

BENNETT, KAUFMAN AND JAMES,
CLAIMANT'S ATTORNEYS
DEPARTMENT OF JUSTICE,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER. IT CONTENDS THE REFEREE ERRED IN FINDING THE BENEFICIARIES OF THE DECEDENT HAD STANDING TO LITIGATE THE LIABILITY OF THE FUND FOR MEDICAL EXPENSES INCURRED BY THE DECEDENT SUBSEQUENT TO HIS COMPENSABLE MYOCARDIAL INFARCTION ON JANUARY 24, 1973 UNTIL HIS DEATH ON FEBRUARY 26, 1973.

THE REFEREE CONCLUDED IN A WELL REASONED OPINION AND ORDER THAT THE BENEFICIARIES COULD MAINTAIN SUCH AN ACTION. WE CONCUR WITH HIS OPINION AND ADOPT HIS ORDER AS OUR OWN.

ORDER

THE ORDER OF THE REFEREE DATED JULY 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, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-1019
WCB CASE NO. 74-2692 DECEMBER 30, 1974

MARGARET F. O' NEAL, CLAIMANT

MERTEN AND SALTVEIT, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A DENIED OCCUPATIONAL DISEASE CLAIM FOR CLAIMANT'S VARICOSE VEINS AND MUSCLE SPASMS AND PAIN IN HER LEGS. CLAIMANT'S CLAIM FOR OCCUPATIONAL DISEASE FOR STRAINED MUSCLES IN HER LEGS WAS ACCEPTED SEPTEMBER, 1971, AND HER CLAIM INVOLVING VARICOSE VEINS WAS DENIED. THIS CLAIM WAS CLOSED BY AN UNAPPEALED DETERMINATION ORDER AWARDING NO PERMANENT PARTIAL DISABILITY. CLAIMANT REQUESTS BOARD REVIEW CONTENDING THAT SHE IS ENTITLED TO COMPENSATION BENEFITS EITHER AS AN AGGRAVATION OF THE 1971 INDUSTRIAL CLAIM OR AS A NEW OCCUPATIONAL DISEASE CLAIM. THE REFEREE AFFIRMED THE DENIAL.

CLAIMANT, A 51 YEAR OLD MAID AT ST. VINCENT'S HOSPITAL, FILED HER OCCUPATIONAL DISEASE CLAIM IN 1971 FOR STRAINED MUSCLES IN HER LEGS BECAUSE OF PUSHING AND PULLING A HEAVY MAID'S CART OVER CARPETING. CLAIMANT RETURNED TO WORK FULL TIME AFTER THE 1971 INCIDENT UNTIL LATE IN 1973 HER LEGS AGAIN CAUSED HER TO MISS WORK MORE AND MORE. HER ATTENDING DOCTOR ORDERED HER TO STOP WORKING IN FEBRUARY OF 1974 BECAUSE OF FATIGUE-SPASM OF THE LEG MUSCLES.

SINCE THE CLAIMANT WORKED STEADILY FOR APPROXIMATELY TWO YEARS AFTER THE 1971 LEG PROBLEMS, THE BOARD FINDS THAT THE FEBRUARY, 1974 MUSCLE PROBLEMS IN HER LEGS IS A NEW CLAIM. THE VARICOSE VEINS PROBLEMS IN HER LEGS WERE DENIED IN THE 1971 INDUSTRIAL CLAIM AND THE 1974 CLAIM AND THE BOARD AFFIRMS THE DENIAL OF THE VARICOSE VEINS PROBLEMS IN BOTH CLAIMS.

ORDER

THE ORDER OF THE REFEREE, DATED SEPTEMBER 11, 1974, IS REVERSED. THE EMPLOYER IS ORDER TO ACCEPT CLAIMANT'S OCCUPATIONAL DISEASE CLAIM FOR MUSCLE STRAINS IN BOTH HER LEGS AS A NEW INJURY FEBRUARY, 1974.

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.

SAIF CLAIM NO. DC 17596 DECEMBER 30, 1974

LEO A. HALL, CLAIMANT

THIS MATTER INVOLVES A HIGHWAY CONSTRUCTION WORKER WHO SUFFERED A DISLOCATION OF THE LEFT HIP IN AN INDUSTRIAL INJURY

MAY 12, 1966. DR. HAFNER, AT THAT TIME, WAS OF THE OPINION THAT HIP SURGERY WAS CONTRAINDICATED. BY DETERMINATION ORDER ENTERED NOVEMBER 27, 1967, CLAIMANT WAS GRANTED 50 PERCENT LOSS USE OF THE LEFT LEG AND 10 PERCENT LOSS OF AN ARM BY SEPARATION FOR UNSCHEDULED DISABILITY.

CLAIMANT WAS ABLE TO CONTINUE WORKING UNTIL DECEMBER, 1973, WHEN SYMPTOMS HAD INCREASED TO THE POINT WHERE A PROSTHETIC HIP REPLACEMENT WAS FELT NECESSARY. THE STATE ACCIDENT INSURANCE FUND VOLUNTARILY REOPENED HIS CLAIM AND THE SURGERY WAS PERFOMRED FEBRUARY 15, 1974.

ALTHOUGH FUTURE SURGERY MAY BE NECESSARY, CLAIMANT'S CONDITION NOW APPEARS MEDICALLY STATIONARY. PAIN AND STIFFNESS REMAIN AND THE PROSTHESIS MAKES THE LEG ONE INCH LONGER THAN PREVIOUSLY.

PURSUANT TO THE ADVISORY RECOMMENDATION OF THE EVALUATION DIVISION, THE BOARD CONCLUDES CLAIMANT WAS ENTITLED TO TEMPORARY TOTAL DISABILITY FROM FEBRUARY 15, 1974 THROUGH JULY 29, 1974 = TEMPORARY PARTIAL DISABILITY FROM JULY 30, 1974, THROUGH NOVEMBER 21, 1974 = AND TO AN ADDITIONAL AWARD OF PERMANENT PARTIAL DISABILITY EQUAL TO 10 PERCENT LOSS USE OF THE LEFT LEG, AND AN ADDITIONAL 10 PERCENT LOSS OF AN ARM BY SEPARATION FOR LOW BACK DISABILITY.

ORDER

IT IS HEREBY ORDERED THAT CLAIMANT RECEIVE TEMPORARY TOTAL DISABILITY FROM FEBRUARY 15, 1974, THROUGH JULY 29, 1974 = TEMPORARY PARTIAL DISABILITY FROM JULY 30, 1974, THROUGH NOVEMBER 21, 1974 = AND AN ADDITIONAL AWARD OF PERMANENT PARTIAL DISABILITY EQUAL TO 10 PERCENT LOSS USE OF THE LEFT LEG = AN ADDITIONAL 10 PERCENT LOSS OF AN ARM BY SEPARATION FOR UNSCHEDULED LOW BACK DISABILITY.

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.

SAIF CLAIM NO. A 967415 DECEMBER 30, 1974

ROBERT R. PETTENGILL, CLAIMANT

PURSUANT TO THE BOARD'S OWN MOTION ORDER DATED MARCH 14, 1974, THE STATE ACCIDENT INSURANCE FUND REOPENED THIS CLAIM FOR FURTHER NECESSARY CARE AND TREATMENT OF CLAIMANT'S CONDITION RESULTING FROM AN INDUSTRIAL INJURY SUSTAINED DECEMBER 14, 1962.

THE ADDITIONAL TREATMENT HAS NOW BEEN COMPLETED AND A COMPREHENSIVE CLOSING REPORT RENDERED BY DR. THEODORE J. PASQUESI. HE FOUND THE CLAIMANT MEDICALLY STATIONARY ON

SEPTEMBER 26, 1974 AND SUFFERING UNSCHEDULED PERMANENT DISABILITY EQUAL TO 10 PERCENT OF THE LEFT SHOULDER AND SCHEDULED DISABILITY EQUAL TO 30 PERCENT OF THE LEFT ARM INCLUDING THE PREEXISTING DISABILITY ALREADY COMPENSATED. THE COMPLETE RECORD OF THE ORIGINAL INJURY WAS DESTROYED SEVERAL YEARS AGO AND THE REMAINING RECORD REVEALS ONLY THAT A PERMANENT DISABILITY AWARD OF UNKNOWN AMOUNT WAS MADE.

BASED ON THE NATURE OF THE ORIGINAL INJURY AND THE CLAIMANT'S STATEMENT OF APRIL 11, 1974, THAT, 'MY WRIST HAS ALWAYS BOTHERED ME SINCE THE ACCIDENT, BUT I CONTINUED TO WORK', IT IS REASONABLE TO CONCLUDE THAT THE ORIGINAL AWARD WAS EQUAL TO AT LEAST 10 PERCENT OF THE LEFT ARM.

WE CONCLUDE THAT CLAIMANT'S CONDITION WAS STATIONARY ON SEPTEMBER 26, 1974, AND THAT HE SHOULD RECEIVE AN ADDITIONAL AWARD OF SCHEDULED DISABILITY EQUAL TO 20 PERCENT LOSS USE OF THE LEFT ARM AND AN AWARD OF PERMANENT DISABILITY EQUAL TO 10 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY ON ACCOUNT OF LEFT SHOULDER DISABILITY.

THE STATE ACCIDENT INSURANCE FUND SHOULD BE AUTHORIZED TO TREAT ANY TEMPORARY TOTAL DISABILITY PAYMENTS MADE AFTER SEPTEMBER 26, 1974 AS ADVANCE PAYMENT OF CLAIMANT'S PERMANENT DISABILITY AWARD.

IT IS SO ORDERED.

NOTICE OF APPEAL

PURSUANT TO ORS 656.268 -

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

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

WCB CASE NO. 74-675 JANUARY 2, 1975

CHARLES A. REYNOLDS, CLAIMANT

CHARLES PAULSON, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER FINDING CLAIMANT HAD SUFFERED AN AGGRAVATION OF AN INJURY SUSTAINED WHILE IT WAS SELF-INSURED RATHER THAN AN AGGRAVATION OF AN INJURY SUFFERED WHILE IT WAS CONTRIBUTING TO THE STATE ACCIDENT INSURANCE FUND. THE EMPLOYER CONTENDS THE LATTER IS THE CASE.

ON JANUARY 12, 1971, CLAIMANT FELL AND INJURED HIS LOW BACK WHILE WORKING AS A MAINTENANCE MECHANIC FOR OWENS-ILLINOIS, INC., IN PORTLAND, OREGON. THE EMPLOYER DID NOT REPORT THE INJURY TO THE STATE ACCIDENT INSURANCE FUND SINCE CLAIMANT WAS TREATED AT THE PLANT INFORMARY AND CONTINUED WORKING

STEADILY. DUE TO CONTINUING DISTRESS, HOWEVER, CLAIMANT SAW DR. RALPH L. OLSEN, THE PLANT PHYSICIAN, AT HIS PRIVATE OFFICE ON FEBRUARY 16, 1971. DR. OLSEN PRESCRIBED TREATMENT AND CLAIMANT OCCASIONALLY WAS SEEN AT THE PLANT INFIRMARY FOR INTERMITTENT EPISODES OF LOW BACK PAIN.

WHEN TREATMENT BY DR. OLSEN FOR A JULY, 1972, EPISODE PROVED INEFFECTIVE, HE WAS REFERRED TO DR. THOMAS BACHHUBER WHO PRESCRIBED FURTHER CONSERVATIVE TREATMENT. NOT UNTIL AFTER DR. BACHHUBER ROUTINELY SENT BILLINGS TO THE STATE ACCIDENT INSURANCE FUND FOR X-RAY AND PHYSICAL EXAM COSTS DID THE EMPLOYER REPORT THE INJURY TO THE STATE ACCIDENT INSURANCE FUND. THE STATE ACCIDENT INSURANCE FUND ACCEPTED THE CLAIM ON OCTOBER 12, 1972, AND PAID DR. BACHHUBER'S BILLINGS.

CLAIMANT CONTINUED WORKING AT OWENS-ILLINOIS, INC., BUT ON SEPTEMBER 19, 1973, CLAIMANT VISITED A DR. P. J. ALLEMAN FOR RECURRENT BACK PAIN. DR. ALLEMAN'S SEPTEMBER 19, 1973, CHART NOTES CONTAIN A HISTORY AND FINDINGS WHICH SUGGEST AN AGGRAVATION OF THE JANUARY 12, 1971, INJURY. HE TREATED CLAIMANT FOR A SHORT PERIOD WITH NORGESIC AND INDOCIN BEFORE REFERRING HIM TO DR. ROBERT BERSELLI, AN ORTHOPEDIC SPECIALIST WHO SAW HIM ON OCTOBER 4, 1973.

DR. BERSELLI DIAGNOSED A HERNIATED INTERVERTEBRAL DISC AND HOSPITALIZED CLAIMANT AT EMMANUEL HOSPITAL FOR BED REST AND TRACTION WHICH PROVIDED GOOD RELIEF.

ON FEBRUARY 6, 1974, THE STATE ACCIDENT INSURANCE FUND SENT A LETTER TO THE CLAIMANT, THE EMPLOYER, EMMANUEL HOSPITAL AND VARIOUS PHYSICIANS, FORMALLY DENYING ANY RELATIONSHIP BETWEN THE JANUARY 12, 1971, INJURY AND THE OCTOBER, 1973, HOSPITALIZATION AND REFUSING TO REOPEN THE CLAIM ON THE BASIS OF AGGRAVATION. THE LETTER SUGGESTED THAT HIS PROBLEM WAS RELATED TO A MAY 31, 1972, WORK INJURY WHICH HAD OCCURRED AFTER THE EMPLOYER HAD CEASED TO BE A CONTRIBUTING EMPLOYER.

CLAIMANT REQUESTED A HEARING ON THE FUND'S DENIAL AND THE EMPLOYER WAS ALSO JOINED (AS A DRE) TO DETERMINE IF THE SECOND INJURY REFERRED TO BY THE STATE ACCIDENT INSURANCE FUND WAS THE CAUSE OF HIS PROBLEM.

THE EVIDENCE AT THE HEARING REVEALED THAT THE MAY 31, 1972, INJURY OCCURRED WHEN HIS FOOT SLIPPED AND HE FELL AGAINST A METAL BRACE CAUSING A SMALL LACERATION ABOUT TWO INCHES BELOW THE LEFT SHOULDER BLADE WHICH THE PLANT NURSE CLEANED AND BANDAGED. IT HAD NO EFFECT ON HIS LOW BACK. HE LOST NO TIME FROM WORK AND IT WAS NOT REPORTED TO THE WORKMEN'S COMPENSATION BOARD AS A COMPENSABLE INJURY SINCE NO COMPENSATION WAS PAID.

DR. BERSELLI TESTIFIED, BASED ON THE CLAIMANT'S HISTORY OF A FALL ON JANUARY 12, 1971, AND EPISODES OF BACK PAIN OF VARYING DURATION AND INTENSITY FROM THEN ON, THAT IT WAS HIS OPINION THAT THE EPISODES OF BACK PAIN WHICH HE AND DR. ALLEMAN TREATED IN SEPTEMBER AND OCTOBER, 1973, WAS MOST PROBABLY CAUSED BY THE JANUARY 12, 1971, FALL.

IN OUR OPINION, THE MEDICAL REPORTS OF DR. ALLEMAN AND DR. BERSELLI WERE SUFFICIENT TO INVEST THE REFEREE WITH JURISDICTION TO HEAR THE CLAIM. THE CLAIM, HAVING BEEN TREATED

AS A 'MEDICAL ONLY' HAD NEVER BEEN CLOSED BY A DETERMINATION ORDER. THUS, THE MEDICAL REPORTS DID NOT NEED TO ESTABLISH THAT CLAIMANT'S CONDITION HAD WORSENED SINCE THE 'LAST AWARD OR ARRANGEMENT OF COMPENSATION' BUT MERELY SINCE THE INJURY. ORS 656.273(3)(B).

THE REFEREE'S CONCLUSION THAT CLAIMANT'S MAY 31, 1972, INJURY IS THE CAUSE OF HIS PRESENT BACK PROBLEM IS TOTALLY UNSUPPORTED BY THE EVIDENCE. THE MAY 31, 1972, INJURY WAS ESSENTIALLY A LACERATION. THE LOW BACK SIMPLY WAS NOT INVOLVED.

WE ARE FULLY PERSUADED THAT CLAIMANT HAS SUFFERED AN AGGRAVATION OF HIS JANUARY 12, 1971, INJURY AND THAT THE STATE ACCIDENT INSURANCE FUND IS THEREFORE LIABLE FOR THE COMPENSATION INVOLVED. THE ORDER OF THE REFEREE SHOULD BE REVERSED.

ORDER

IT IS HEREBY ORDERED THAT THE ORDER OF THE REFEREE, DATED JUNE 27, 1974, REMANDING CLAIMANT'S CLAIM TO THE EMPLOYER AND AWARDING CLAIMANT'S ATTORNEY A 650 DOLLAR FEE, PAYABLE BY THE EMPLOYER, IS HEREBY REVERSED.

IT IS HEREBY FURTHER ORDERED THAT THE STATE ACCIDENT INSURANCE FUND ACCEPT CLAIMANT'S CLAIM FOR AGGRAVATION AND FURNISH TO HIM THE BENEFITS PROVIDED BY LAW.

IT IS HEREBY FURTHER ORDERED THAT THE STATE ACCIDENT INSURANCE FUND, RATHER THAN THE EMPLOYER, IS LIABLE FOR THE ATTORNEY'S FEE IN THE SUM OF 650 DOLLARS GRANTED BY THE REFEREE TO CLAIMANT'S ATTORNEY FOR HIS SERVICES AT THE HEARING.

IT IS HEREBY FINALLY ORDERED THAT THE STATE ACCIDENT INSURANCE FUND REIMBURSE THE EMPLOYER FOR ALL SUMS IT PAID IN COMPLIANCE WITH THE REFEREE'S ORDER.

WCB CASE NO. 74-3646 JANUARY 2, 1975

ARNOLD C. ANDERSON, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER DISMISSING HIS REQUEST FOR HEARING CONCERNING AN AGGRAVATION CLAIM ON THE GROUNDS THAT THE MEDICAL REPORTS FURNISHED IN SUPPORT OF THE CLAIM WERE INSUFFICIENT TO INVEST HIM WITH JURISDICTION TO HEAR THE CLAIM.

THE COURT OF APPEALS, IN HAMILTON V. SAIF, 11 OR APP 344 (1972), POINTED OUT THAT THE INTENT OF THE LEGISLATURE IN ENACTING THE MEDICAL OPINION REQUIREMENT FOR AGGRAVATION CLAIMS WAS TO FORESTALL THE FILING OF FRIVOLOUS AND UNSUPPORTABLE CLAIMS FOR ADDITIONAL COMPENSATION.

ALSO, IN HAMILTON, AFTER NOTING THE WORKMEN'S COMPENSATION LAW IS TO BE LIBERALLY CONSTRUED IN FAVOR OF THE WORKMAN, THE COURT FOUND THE LANGUAGE OF THE MEDICAL REPORT IN 'SUBSTANTIAL COMPLIANCE' WITH THE SUPPORTING MEDICAL OPINION REQUIREMENT

AND CONCLUDED THE REFEREE HAD JURISDICTION TO HEAR THE CLAIM.

RECENT CASES HAVE REQUIRED A MORE PRECISE SHOWING OF 'AGGRAVATION', BUT THE FUNDAMENTAL PURPOSE OF THE MEDICAL OPINION REQUIREMENT REMAINS THE SAME - TO SEPARATE THE OBVIOUSLY FRIVOLOUS FROM THE POSSIBLY MERITORIOUS CLAIMS.

THE REFEREE FELT DR. BERSELLI'S LETTER ONLY CONJECTURALLY MADE OUT AN OPINION THAT THE CLAIMANT'S COMPENSABLE CONDITION HAD WORSENED BECAUSE HE DID NOT ACTUALLY USE THE PHRASE 'COMPENSABLE CONDITION' OR WORDS TO THAT EFFECT. WE THINK THERE IS NOTHING CONJECTURAL ABOUT HIS OPINION. THE PHRASE 'MR. ANDERSON'S CONDITION' APPEARED IN THE CONTEXT OF A LETTER ADDRESSED TO THE ATTORNEY HANDLING CLAIMANT'S AGGRAVATION CLAIM. IT WAS REFERENCED TO THE CLAIMANT'S STATE ACCIDENT INSURANCE FUND CLAIM NUMBER AND SPOKE OF THE CLAIMANT'S COMPENSATION AWARD. GIVEN THIS CONTEXT, NO CONJECTURE IS INVOLVED. THE ONLY REASONABLE INFERENCE TO BE DRAWN FROM DR. BERSELLI'S LETTER IS THAT, IN HIS OPINION, CLAIMANT'S COMPENSABLE CONDITION HAS WORSENED SINCE THE LAST AWARD OR ARRANGEMENT OF COMPENSATION.

THE REFEREE'S ORDER SHOULD BE REVERSED AND THE MATTER SHOULD BE REMANDED FOR A HEARING ON THE MERITS.

IT IS SO ORDERED.

WCB CASE NO. 74-2373 JANUARY 3, 1975

BETTY L. GERHARD, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
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 BY THE CLAIMANT, 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. 74-1154 JANUARY 3, 1975

FLOYD C. REDDING, CLAIMANT

KEITH TICHENOR, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT IS A 51 YEAR OLD HEAVY EQUIPMENT OPERATOR WHO INJURED HIS RIGHT KNEE ON JUNE 4, 1973. THE INJURY RESULTED IN SURGERY FOR REMOVAL OF THE TORN MEDIAL AND

LATERAL CARTILAGES IN THE KNEE. CLAIMANT RETURNED TO HIS FORMER EMPLOYMENT ON OCTOBER 1, 1973.

AT HEARING, THE REFEREEE AFFIRMED A DETERMINATION ORDER WHICH HAD AWARDED CLAIMANT PERMANENT PARTIAL DISABILITY OF 25 PER CENT OF THE RIGHT LEG.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDING MADE BY THE REFEREE AND AFFIRMS AND ADOPTS HIS ORDER AS THE ORDER OF THE BOARD.

ORDER

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

WCB CASE NO. 73-1720 JANUARY 3, 1975

DARELL C. THOMPSON, CLAIMANT

THOMAS F. YOUNG, CLAIMANT'S ATTY.
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 AWARDED 40 PER CENT PERMANENT PARTIAL DISABILITY FOR LOSS OF THE RIGHT FOOT AND 80 PER CENT PERMANENT PARTIAL DISABILITY FOR LOSS OF THE LEFT FOOT. CLAIMANT CONTENDS HE IS ENTITLED TO AN AWARD OF PERMANENT TOTAL DISABILITY.

CLAIMANT SUFFERED FRACTURES TO BOTH FEET MARCH 23, 1971, WHEN THE FREIGHT ELEVATOR IN WHICH HE WAS RIDING DROPPED 10 TO 12 FEET, THERE IS LITTLE DOUBT CLAIMANT HAS SUFFERED SEVERE DISABILITY. HOWEVER, THE EXTENT OF THIS DISABILITY MUST BE MEASURED BY THE IMPAIRMENT OF PHYSICAL FUNCTION RATHER THAN WITH REGARD TO THE RESULTING LOSS OF WAGE EARNING CAPACITY. THIS IMPAIRMENT WAS OBSERVED AND EVALUATED BY THE REFEREE AT HEARING, AND THE BOARD ON REVIEW RELIES ON HIS FINDINGS OF THE EXTENT OF DISABILITY. HIS ORDER SHOULD BE AFFIRMED.

ORDER

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

WCB CASE NO. 74-914 JANUARY 6, 1975

THEODORE PITT, CLAIMANT

STULTS, MURPHY AND ANDERSON,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A DENIED CLAIM. THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM ON THE BASIS THAT CLAIMANT'S CONDITION DID NOT ARISE OUT OF OR IN THE SCOPE OF HIS EMPLOYMENT. THE REFEREE ORDERED THE STATE ACCIDENT INSURANCE FUND TO ACCEPT THE CLAIM.

CLAIMANT, A 37 YEAR OLD CHOKER SETTER, STATED HE HURT HIS BACK ON FEBRUARY 13, 1974. HE WORKED THE REST OF THE DAY AND CONSULTED A DOCTOR THE NEXT DAY. THE DISCREPANCIES AND THE DISPUTE IN THE EVIDENCE TURNED PRIMARILY ON THE CREDIBILITY OF THE WITNESSES. THE REFEREE HAD THE ADVANTAGE OF SEEING AND HEARING THE WITNESSES.

IT IS NOTED THAT THE HISTORY GIVEN TO THE ATTENDING DOCTOR SUPPORTS THE COMPENSABILITY OF THIS CLAIM.

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 SEPTEMBER 20, 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. 73-3757 JANUARY 6, 1975

DONALD R. MCPHAIL, CLAIMANT

HARDY, BUTLER, MCEWEN, WEISS AND NEWMAN, CLAIMANT'S ATTORNEYS
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 10 PERCENT (32 DEGREES) UNSCHEDULED LOW BACK DISABILITY. THE REFEREE INCREASED THIS AWARD TO A TOTAL OF 25 PERCENT (80 DEGREES) UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT, A 31 YEAR OLD LABORER, INJURED HIS BACK WHILE LIFTING A 100 POUND BAG WHILE WORKING FOR A ROOFING COMPANY. AFTER A LAMINECTOMY HE ATTEMPTED RETRAINING AS A WELDER BUT DID NOT COMPLETE THE COURSE.

ON DE NOVO REVIEW, 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 AUGUST 23, 1974 IS AFFIRMED.

WCB CASE NO. 74-1472 JANUARY 6, 1975

CONRAD E. WESTERHOFF, CLAIMANT

BURTON J. FALLGREN, 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 IN WHICH CLAIMANT'S AWARD OF PERMANENT PARTIAL DISABILITY WAS INCREASED FROM 5 PERCENT TO 45 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED MID-BACK DISABILITY.

ON JANUARY 10, 1972, CLAIMANT FELL EIGHT TO TEN FEET WHILE WORKING AS A CARPENTER. HE SUFFERED A SCALP LACERATION, COMPRESSION FRACTURE OF THE FOURTH THORACIC VERTEBRA AND LESSER INJURIES TO HIS LEFT HAND, LEGS AND FEET. CLAIMANT FULLY RECOVERED FROM ALL INJURIES EXCEPT THOSE TO THE BACK. BY A DETERMINATION ORDER, HE WAS AWARDED PERMANENT PARTIAL DISABILITY OF 5 PERCENT UNSCHEDULED MID-BACK DISABILITY.

CLAIMANT RETURNED TO CARPENTRY WORK, BUT IN AUGUST OF 1973 HE SOUGHT FURTHER MEDICAL ATTENTION. THERAPY AND INJECTIONS WERE NOT SUCCESSFUL. IT BECAME APPARENT THAT THE LIMITATIONS PLACED UPON CLAIMANT BY HIS INDUSTRIAL INJURY WOULD PRECLUDE HIM FROM PERFORMING A JOB REQUIRING ANY LIFTING OR ANY PROLONGED STANDING, AND THAT HE SHOULD SEEK VOCATIONAL RETRAINING. DR. HICKMAN, CLINICAL PSYCHOLOGIST, REPORTED CLAIMANT HAD EXCELLENT APTITUDES AND THE INTELLECTUAL RESOURCES TO SUPPORT SUCH AN EFFORT.

AT THE HEARING, CLAIMANT TESTIFIED HE WAS ATTENDING SCHOOL FULL-TIME TO COMPLETE A COURSE IN BUSINESS ADMINISTRATION AND MIDDLE MANAGEMENT TRAINING, MAINTAINING A 4.0 GRADE POINT. IF CLAIMANT SUCCESSFULLY APPLIES HIMSELF AND FOLLOWS THROUGH IN ESTABLISHING HIMSELF IN THE BUSINESS WORLD, HIS PERMANENT LOSS OF EARNINGS MAY NOT BE SUBSTANTIAL. HOWEVER, HE HAS BEEN PERMANENTLY PRECLUDED FROM A SIGNIFICANT PORTION OF THE FORMER SPECTRUM OF JOB OPPORTUNITIES AVAILABLE TO HIM.

IN ADDITION, AS THE REFEREE MENTIONED, ONE PURPOSE OF THE PERMANENT DISABILITY AWARD IS TO PROVIDE FINANCIAL AID W HILE THE TRANSITION FROM ONE OCCUPATION TO ANOTHER IS BEING MADE. GREEN V. SIAC, 197 OR 160 (1953). THE REFEREE'S AWARD AMPLY COMPENSATES THE CLAIMANT FOR THESE FACTORS BUT, TAKING ALL THE FACTORS INTO CONSIDERATION THE BOARD CONCLUDES THE REFEREE'S ORDER SHOULD BE AFFIRMED.

IN HIS BRIEF ON REVIEW, CLAIMANT SOUGHT TO QUESTION CARRIER ACTIONS WHICH APPARENTLY OCCURRED AFTER THE HEARING AND PENDING BOARD REVIEW. THE ISSUE RAISED HAS NEVER BEEN TRIED BEFORE A REFEREE. THE PROPER AVENUE FOR RESOLUTION OF THIS DISPUTE IS TO MAKE A NEW REQUEST FOR HEARING RATHER THAN BRINGING IT UP IN THIS REVIEW.

ORDER

THE ORDER OF THE REFEREE DATED AUGUST 21, 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. 74-430 JANUARY 6, 1975

FRANK H. ROHAY, CLAIMANT

PETERSON AND PETERSON,
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 A PERMANENT DISABILITY AWARD OF 25 PERCENT UNSCHEDULED DISABILITY, CONTENDING THAT, DUE TO THE HAPPENING OF A SUBSEQUENT INJURY, BEFORE HE BECAME MEDICALLY STATIONARY FROM THE FIRST, THE ASSESSMENT OF A PERMANENT DISABILITY AWARD WAS NECESSARILY SPECULATIVE AND THEREFORE SHOULD BE SET ASIDE AND THE MATTER REMANDED FOR A HEARING ON THE EXTENT OF PERMANENT DISABILITY FROM THE SUBSEQUENT INJURY.

ON NOVEMBER 12, 1970, CLAIMANT SUFFERED A LOW BACK INJURY WHILE WORKING AS A CARPENTER-SAWYER FOR TODD CONSTRUCTION COMPANY. AFTER RETURNING TO WORK AT TODD, CLAIMANT TWICE MORE INJURED HIS BACK BUT THE FURTHER INCIDENTS WERE TREATED AS AGGRAVATIONS OF THE NOVEMBER 12, 1970 INJURY.

AFTER THE THIRD INCIDENT CLAIMANT UNDERWENT BACK SURGERY. FOLLOWING HIS CONVALESCENCE HE FOUND A LIGHTER CARPENTRY JOB WITH H. A. ANDERSON CONSTRUCTION COMPANY WHERE HE WORKED UNTIL MARCH 21, 1972, WHEN HE FELL AND REINJURED HIS BACK, NECESSITATING FURTHER SURGERY.

NEITHER CLAIM WAS CLOSED UNTIL JANUARY 21, 1974. CLAIMANT RECEIVED NO PERMANENT DISABILITY AWARD FOR THE NOVEMBER 12 INJURY BUT WAS GRANTED 50 PERCENT UNSCHEDULED DISABILITY FOR THE MARCH 21, 1972 INJURY.

IN ORDER TO SEGREGATE THE PERMANENT EFFECTS OF THE FIRST INJURY FROM THOSE OF THE SECOND, WHICH WERE NOT THEN BEING QUESTIONED BY THE CLAIMANT, THE REFEREE CONSIDERED THE EVIDENCE AS THOUGH HE HAD HEARD THE CASE OF MARCH 20, 1972 INSTEAD OF JUNE 25, 1974.

THE FUND ARGUES THAT IT IS IMPOSSIBLE TO APPORTION THE DISABILITY IN THIS MANNER AND THAT THE REFEREE WAS SIMPLY GUESSING THE AMOUNT OF CLAIMANT'S PERMANENT DISABILITY IN THE ABSENCE OF EVIDENCE CONCERNING HIS LATER INJURY. WE DISAGREE.

ALTHOUGH WE DO NOT APPROVE OF THE METHOD DEVISED BY THE REFEREE FOR SEGREGATING THE DISABILITY, WE ARE PERSUADED THE PERMANENT DISABILITY FROM THE ORIGINAL INJURY CAN BE DISCERNED WITH REASONABLE CLARITY FROM THE FACTS PRESENTED.

HIS TESTIMONY REVEALS THE KINDS OF PROBLEMS HE WAS HAVING AFTER THE FIRST INCIDENTS. THE MEDICAL REPORTS DESCRIBE THE BACK SURGERY IN NOVEMBER, 1971 AND THE RESULTING SENSORY DISTURBANCES AND PERSISTENT LOW BACK PAIN.

THIS EVIDENCE SUPPORTS THE REFEREE'S CONCLUSION THAT CLAIMANT'S DISABILITY EQUALS 25 PERCENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY AND HIS ORDER SHOULD THEREFORE BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED JULY 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.

WCB CASE NO. 74-1332 JANUARY 6, 1975

BETTY FARLEY, CLAIMANT

ON DECEMBER 19, 1974 THE BOARD ORDERED CLAIMANT TO SHOW CAUSE WHY SHE HAD FAILED TO KEEP AN APPOINTMENT FOR MEDICAL EXAMINATION ARRANGED FOR HER AT THE BOARD'S REQUEST.

BY LETTER DATED DECEMBER 23, 1974, CLAIMANT ADVISED THAT SHE WAS NOW IN ARIZONA AND THUS UNABLE TO KEEP THE APPOINTMENT. SHE FURTHER ADVISED THAT WHEN SHE RETURNS IN THE SPRING SHE WILL ARRANGE HER OWN APPOINTMENT WITH DR. SHORT.

BEING NOW FULLY ADVISED WE CONCLUDE THAT GOOD CAUSE HAS BEEN SHOWN FOR FAILING TO KEEP THE APPOINTMENT AND THE MATTER WILL NOT BE DISMISSED FOR LACK OF COOPERATION.

HOWEVER, SINCE THE CLAIMANT'S OWN MOTION REQUEST NOW CANNOT BE DEALT WITH FOR SEVERAL MONTHS WE CONCLUDE CLAIMANT'S REQUEST FOR OWN MOTION SHOULD BE DISMISSED UNTIL THE CLAIMANT RETURNS AND AGAIN REQUESTS BOARD'S OWN MOTION CONSIDERATION OF HER CLAIM.

IT IS SO ORDERED.

WCB CASE NO. 73-2110 JANUARY 6, 1975

CAMILLE ROWLAND, CLAIMANT

BABCOCK, ACKERMAND AND HANLON,
CLAIMANT'S ATTORNEYS
BENSON, ARENZ, LUCAS AND DAVIS,
DEFENSE ATTORNEY
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE INVOLVED IS THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER WHICH WAS AFFIRMED BY THE REFEREE, AWARDED CLAIMANT 15 PERCENT (48 DEGREES) UNSCHEDULED PERMANENT PARTIAL DISABILITY. THE CLAIMANT REQUESTS BOARD REVIEW CONTENDING SHE IS PERMANENTLY TOTALLY DISABLED.

CLAIMANT, A 29 YEAR OLD NURSES AIDE, RECEIVED A BACK INJURY MARCH 7, 1972 WHILE LIFTING A PATIENT. NUMEROUS DOCTORS HAVE TREATED AND EXAMINED THE CLAIMANT. A MYELOGRAM WAS NORMAL. THE MEDICAL EVIDENCE CLEARLY SHOWS VERY MINIMAL PHYSICAL BACK IMPAIRMENT.

CLAIMANT HAS SUBSTANTIAL PREEXISTING PSYCHOPATHOLOGY. CLAIMANT HAD RECEIVED PSYCHOTHERAPY PRIOR TO THE INDUSTRIAL ACCIDENT. THE BOARD CONCURS WITH THE FINDING OF THE REFEREE THAT THE MEDICAL EVIDENCE DOES NOT ESTABLISH THE NECESSARY CAUSAL CONNECTION BETWEEN THE INDUSTRIAL INJURY AND THE CLAIMANT'S DISABLING PSYCHO-EMOTIONAL PROBLEMS.

ORDER

THE ORDER OF THE REFEREE, DATED JULY 23, 1974, IS AFFIRMED.

WCB CASE NO. 74-263 JANUARY 6, 1975

MYRTLE SHEPHERD, CLAIMANT

MYATT, BOLLIGER AND HAMPTON,
CLAIMANT'S ATTORNEYS
G. HOWARD CLIFF, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER REQUESTS BOARD REVIEW OF A REFEREE'S ORDER REQUIRING IT TO IGNORE CLAIMANT'S POST INJURY EARNINGS AT HER SECOND JOB IN COMPUTING TEMPORARY PARTIAL DISABILITY SINCE THEY HAD NOT BEEN TAKEN INTO ACCOUNT IN COMPUTING HER TEMPORARY TOTAL DISABILITY ENTITLEMENT.

THE OPERATIVE FACTS WERE STIPULATED AND ARE SET FORTH IN THE REFEREE'S OPINION AND ORDER. IN SPITE OF THE EXCELLENT ARGUMENT PRESENTED BY CLAIMANT'S ATTORNEY, WE AGREE WITH THE EMPLOYER'S ARGUMENT ON REVIEW THAT THE REFEREE MISAPPLIED THE BOARD'S BROWN RULING. CLAIMANT'S TEMPORARY PARTIAL DISABILITY PAYMENTS FROM NOVEMBER 26, 1973 ON, SHOULD BE PAID AT THE RATE OF 39 PERCENT OF HER TEMPORARY TOTAL DISABILITY BENEFIT.

IT IS SO ORDERED.

WCB CASE NOS. 73-146
AND 73-1437 JANUARY 8, 1975

WILLIAM VAN WINKLE, 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 HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER FINDING CLAIMANT'S AGGRAVATION CLAIM COMPENSABLE. IT CONTENDS THAT CLAIMANT'S REQUEST FOR HEARING WAS UNTIMELY AND THAT THE MEDICAL REPORTS SUBMITTED IN SUPPORT OF THE CLAIM FOR AGGRAVATION ARE INSUFFICIENT TO INVEST THE WORKMEN'S COMPENSATION BOARD WITH JURISDICTION TO HEAR THE CLAIM ON ITS MERITS.

THESE ISSUES HAVE ALREADY BEEN DECIDED BY THE CIRCUIT COURT OF LANE COUNTY AND ARE THEREFORE NOT PROPERLY BEFORE THE BOARD.

THE ONLY ISSUE PROPERLY BEFORE THE BOARD IS WHETHER CLAIMANT ESTABLISHED A COMPENSABLE AGGRAVATION ON THE MERITS. THE REFEREE, FINDING THE CLAIMANT AND HIS WITNESSES CREDIBLE, RULED THAT HE DID.

WE HAVE EXAMINED THE RECORD DE NOVO AND CONSIDERED THE BRIEFS SUBMITTED ON REVIEW. 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 JUNE 14, 1974, IS AFFIRMED.

COUNSEL FOR CLAIMANT IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 400 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-530 JANUARY 8, 1975

DOROTHY M. MONSON, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTORNEYS
RHOTEN, RHOTEN AND SPEERSTRA,
DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF A REFEREE'S ORDER FINDING THE CLAIMANT'S CLAIM COMPENSABLE AND AWARDING PENALTIES AND ATTORNEY FEES FOR THE UNREASONABLE DENIAL OF THE CLAIM.

A COLLATERAL ISSUE CONCERNS WHETHER THE MATTER SHOULD BE REMANDED TO THE REFEREE FOR THE ADMISSION OF TWO MEDICAL REPORTS WHICH THE EMPLOYER ALLEGES WERE NOT AVAILABLE AT THE TIME OF HEARING.

BY ORDER DATED SEPTEMBER 6, 1974, THE BOARD DENIED THE EMPLOYER'S REQUEST TO SUPPLEMENT THE RECORD BY ADMISSION OF THE OFFERED MEDICAL REPORTS BUT RULED THAT IF, UPON REVIEW, IT APPEARED THE CASE HAD BEEN INCOMPLETELY DEVELOPED BY THE REFEREE IT WOULD REMAND THE MATTER FOR FURTHER EVIDENCE TAKING.

WE HAVE NOW FULLY REVIEWED THE RECORD AND CONCLUDE THAT IT PROVIDES A SUFFICIENT BASIS TO DECIDE THE RIGHTS OF THE PARTIES WITHOUT ADMISSION OF FURTHER MEDICAL EVIDENCE.

THE EMPLOYER BECAME AWARE THAT CLAIMANT HAD SEEN OTHER PHYSICIANS AT THE TIME OF THE HEARING BUT DID NOT SEEK A CONTINUANCE OF THE HEARING AT THAT TIME. RATHER IT ALLOWED THE REFEREE TO DECIDE THE CASE ON THE EVIDENCE SUBMITTED. ONLY AFTER THE EMPLOYER RECEIVED AN ADVERSE RULING FROM THE REFEREE DID IT SEEK TO DEFEND ITSELF WITH ADDITIONAL EVIDENCE WHICH IT SHOULD HAVE OBTAINED AND PRESENTED TO THE REFEREE. THE ATTEMPTED PRESENTATION OF EVIDENCE COMES TOO LATE.

WE HAVE EXAMINED THE RECORD PRESENTED TO THE REFEREE DE NOVO AND, HAVING DONE SO, WOULD AFFIRM HIS ORDER IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE DATED JULY 25, 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. 73-4124 JANUARY 8, 1975

CATHERINE SHAW, 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 A 52 YEAR OLD KITCHEN HELPER WHO SUSTAINED CONTUSION AND SPRAIN OF THE RIGHT KNEE AND THE LOW BACK ON MARCH 14, 1973. DETERMINATION ORDERS GRANTED HER 10 PERCENT UNSCHEDULED LOW BACK DISABILITY AND 10 PERCENT LOSS OF THE RIGHT LEG. AT HEARING, THE REFEREE AFFIRMED THE AWARD FOR UNSCHEDULED LOW BACK DISABILITY BUT GRANTED AN ADDITIONAL 25 PERCENT LOSS OF THE RIGHT LEG FOR A TOTAL OF 35 PERCENT LOSS OF THE RIGHT LEG. CLAIMANT SEEKS BOARD REVIEW OF THIS ORDER CONTENDING SHE IS PERMANENTLY AND TOTALLY DISABLED.

ON REVIEW, THE BOARD CONCURS WITH THE REFEREE'S FINDING WITH RESPECT TO THE AWARD FOR CLAIMANT'S RIGHT LEG DISABILITY.

WITH RESPECT TO THE AWARD FOR UNSCHEDULED DISABILITY, THE BOARD IS OF THE OPINION THAT THE INJURY TO THE LOW BACK, SUPERIMPOSED UPON A SPINE ALREADY WEAKENED BY SEVERE DEGENERATIVE CHANGE IN THE THORACIC AREA, HAS PRODUCED A LOSS OF WAGE EARNING CAPACITY EQUAL TO 25 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED DISABILITY.

ORDER

THE ORDER OF THE REFEREE, DATED AUGUST 22, 1974, IS AFFIRMED WITH RESPECT TO THE AWARD FOR CLAIMANT'S RIGHT LEG DISABILITY.

CLAIMANT IS GRANTED AN ADDITIONAL 48 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY, MAKING A TOTAL OF 25 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 WHICH WHEN COMBINED WITH FEES ATTRIBUTABLE TO THE ORDER OF THE REFEREE SHALL NOT EXCEED 1,500 DOLLARS.

WCB CASE NO. 74-823 JANUARY 8, 1975

GERTRUDE H. DALTHORP, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEL, WILLIAMSON AND SCHWABE, DEFENSE ATTORNEYS
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE PRIMARY ISSUE INVOLVED IS WHETHER OR NOT CLAIMANT'S CLAIM IS AN UNSCHEDULED CLAIM OR A HERNIA CLAIM. THE REFEREE FOUND THAT THIS WAS AN UNSCHEDULED ABDOMEN DISABILITY AND AWARDED THE CLAIMANT PENALTIES AND ATTORNEY'S FEES FOR UNREASONABLE RESISTANCE TO THE PAYMENT OF COMPENSATION. THE EMPLOYER NOW REQUESTS BOARD REVIEW.

THE UNAPPEALED CIRCUIT COURT OPINION ORDERED THE CLAIM TO BE ACCEPTED AS ONE FOR 'UNSCHEDULED ABDOMEN DISABILITY'. THE EMPLOYER HAS CONTINUED TO TREAT THIS CLAIM AS A HERNIA CLAIM.

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

ORDER

THE ORDER OF THE REFEREE DATED JUNE 24, 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. 73-3906 JANUARY 8, 1975

JERRY E. MERCER, CLAIMANT
COLLINS, FERRIS AND VELURE,
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 10 PERCENT (32 DEGREES) UNSCHEDULED LEFT SHOULDER DISABILITY. THE REFEREE INCREASED THIS AWARD TO A TOTAL OF 25 PERCENT (80 DEGREES) UNSCHEDULED LEFT SHOULDER DISABILITY. THE CLAIMANT REQUESTS BOARD REVIEW CONTENDING THE AWARD SHOULD BE 50 PERCENT (160 DEGREES) UNSCHEDULED DISABILITY.

CLAIMANT, 41 YEARS OLD, WHILE WORKING AS A MILLWRIGHT, SUFFERED A COMPENSABLE INCOMPLETE ROTATOR TEAT TO HIS LEFT SHOULDER ON JANUARY 29, 1972. CLAIMANT HAS A GED EQUIVALENCY AND HAS DONE JOURNEYMAN CARPENTRY WORK, MACHINE SHOP WORK, AND SAWMILL WORK. CLAIMANT HAS DONE TEACHING PART-TIME AT MACHINE SHOP COURSES AT A COMMUNITY COLLEGE AND HAS BEEN TRAINED IN THE INSURANCE SALES FIELD.

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

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 6, 1974, IS AFFIRMED.

WCB CASE NO. 73-2251 JANUARY 8, 1975

INGRID VIVIAN ROBINSON, DECEASED
FREDA L. FELTS, DBA NU-CAFE, EMPLOYER
JOHN D. RYAN, CLAIMANT'S ATTORNEY
REQUEST FOR REVIEW BY BENEFICIARIES

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER DENIED THE BENEFICIARIES' CLAIM ON THE GROUND THAT THE DECEDENT'S FATAL INJURY WAS 'NOT RELATED TO THE DUTIES OF HER EMPLOYMENT'. THE REFEREE AFFIRMED THE DENIAL AND THE BENEFICIARIES REQUEST BOARD REVIEW.

THE DECEDENT, A 29 YEAR OLD WAITRESS, WAS AN ADMITTEDLY SUBJECT EMPLOYEE OF A SUBJECT NONCOMPLYING EMPLOYER, FREDA L. FELTS, DBA NU-CAFE, WHEN THE DECEDENT WAS MURDERED BY ONE ROBERT SYMES WHO IMMEDIATELY THEREAFTER COMMITTED SUICIDE. THE DEATHS OCCURRED ON THE EMPLOYER'S PREMISES WHILE THE DECEDENT WAS ADMITTEDLY ON DUTY AS A WAITRESS. THE ISSUE IS WHETHER OR NOT THE DECEDENT'S DEATH AROSE OUT OF HER EMPLOYMENT.

THE BOARD CONCURS WITH THE OPINION OF THE REFEREE THAT THE UNDERLYING MOTIVE OR REASON FOR THE ASSAULT WAS PURELY PERSONAL TO THE TWO DECEDENTS AND THAT THE SITE OF HIS FATAL ASSAULT WAS IRRELEVANT TO THE MURDER.

UNDER THE FACTS OF THIS CASE, THE BOARD FINDS THAT THE DEATH DID NOT RESULT FROM EMPLOYMENT ACTIVITY AND THEREFORE DID NOT ARISE OUT OF THE DECEDENT'S EMPLOYMENT BUT RATHER AROSE OUT OF A PRIVATE PERSONAL RELATIONSHIP WHICH SHE BROUGHT TO HER PLACE OF EMPLOYMENT FROM HER PRIVATE LIFE.

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

ORDER

THE ORDER OF THE REFEREE, DATED MAY 31, 1974, IS AFFIRMED.

WCB CASE NO. 74-4303 JANUARY 9, 1975

JESSE R. LA DELLE, CLAIMANT

ALLAN H. COONS, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

THIS MATTER INVOLVES THE CLAIM(S) OF A NOW 46 YEAR OLD SAWMILL WORKER WHO INJURED HIS LOW BACK OCTOBER 8, 1968, WHILE WORKING FOR GEORGIA-PACIFIC. THE CLAIM WAS CLOSED AFTER SURGERY AND CLAIMANT'S AGGRAVATION RIGHTS EXPIRED APRIL 2, 1974. IN NOVEMBER, 1974 CLAIMANT WAS WORKING ON THE GREEN CHAIN FOR STAR WOOD PRODUCTS, INC., INSURED BY THE STATE ACCIDENT INSURANCE FUND, WHEN HIS BACK AGAIN DISABLED HIM.

THE STATE ACCIDENT INSURANCE FUND HAS DENIED CLAIMANT'S NOVEMBER 4, 1974 CLAIM ALLEGING THIS WAS AN AGGRAVATION OF THE 1968 CLAIM AND NOT A NEW INJURY. GEORGIA-PACIFIC HAS REJECTED CLAIMANT'S REQUEST TO REOPEN THE 1968 CLAIM ON THE GROUNDS THAT THE CLAIMANT'S AGGRAVATION RIGHTS HAVE EXPIRED.

CLAIMANT HAS -

(1) REQUESTED A HEARING ON SAIF'S DENIAL OF HIS NOVEMBER, 1974 CLAIM -

(2) REQUESTED THE BOARD, IN THE ALTERNATIVE, TO ORDER A REFEREE TO TAKE EVIDENCE AND EXPRESS AN ADVISORY OPINION ON WHETHER CLAIMANT'S 1968 CLAIM SHOULD BE REOPENED UNDER THE BOARD'S OWN MOTION AUTHORITY GRANTED BY ORS 656.278.

(3) REQUESTED THE BOARD TO DESIGNATE A PAYING AGENCY TO PROVIDE HIM BENEFITS DURING THE PENDENCY OF THE HEARING AND DECISION ON THESE ISSUES.

THE BOARD'S REVIEW OF THE INFORMATION PRESENTED CAUSES IT TO CONCLUDE THAT CLAIMANT IS PRESENTLY IN NEED OF FURTHER MEDICAL CARE AND TREATMENT AND COMPENSATION AND SUCH NEEDED MEDICAL CARE AND TREATMENT AND COMPENSATION THAT IS CAUSALLY RELATED EITHER TO THE OCTOBER 8, 1968 INJURY OR THE NOVEMBER 4, 1974 CLAIM.

ORDER

IT IS THEREFORE ORDERED THAT GEORGIA-PACIFIC, PURSUANT TO ORS 656.307 AND BOARD'S OWN MOTION AUTHORITY PURSUANT TO ORS 656.278, COMMENCE PAYMENT OF BENEFITS AS OF NOVEMBER 4, 1974 TO CLAIMANT AS A RESULT OF THE OCTOBER 8, 1968 INJURY IN ACCORDANCE WITH ORS CHAPTER 656, AND CONTINUE PAYMENT OF BENEFITS DUE UNTIL SUCH TIME AS THE RESPONSIBLE PARTY HAS BEEN DETERMINED BY HEARINGS OPINION AND ORDER AND-OR BOARD'S OWN MOTION ORDER.

IT IS FURTHER ORDERED THAT THE REQUEST FOR BOARD'S OWN MOTION IS REMANDED TO THE HEARINGS DIVISION OF THE WORKMEN'S COMPENSATION BOARD FOR RECEIPT OF EVIDENCE BEFORE A REFEREE IN A CONSOLIDATED HEARING WITH WCB CASE NO. 74-4303 TO DETERMINE WHETHER CLAIMANT'S PRESENT CONDITION IS AN AGGRAVATION OF THE OCTOBER 8, 1968 INJURY OR A NEW INJURY OF NOVEMBER 4, 1974. WHEN THE REFEREE HAS CONDUCTED THE HEARING, HE SHALL CERTIFY THE RECORD MADE TO THE BOARD FOR ITS DECISION ALONG WITH AN ADVISORY FINDING OF FACT AND OPINION.

WCB CASE NO. 74-2373 JANUARY 9, 1975

BETTY L. GERHARD, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE, DEFENSE ATTORNEYS

ON JANUARY 3, 1975 THE BOARD ISSUED AN ORDER DISMISSING THIS MATTER FROM BOARD REVIEW UPON THE CLAIMANT'S WITHDRAWAL OF HER REQUEST FOR REVIEW AND HOLDING THE REFEREE'S ORDER FINAL BY OPERATION OF LAW.

IN ISSUING THE ORDER THE BOARD INADVERTENTLY FAILED TO NOTE THAT THE EMPLOYER HAD ALSO REQUESTED BOARD REVIEW. THE EMPLOYER'S REQUEST REMAINS PENDING.

THEREFORE, THE BOARD'S ORDER OF JANUARY 3, 1975 SHOULD BE SET ASIDE AND IN LIEU THEREOF THE FOLLOWING ORDER SHOULD BE ISSUED -

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

THE REQUEST FOR REVIEW MADE BY THE EMPLOYER REMAINS PENDING AND THE BOARD WILL REVIEW THE MATTER ON THE ISSUES RAISED BY THE EMPLOYER.

IT IS SO ORDERED.

WCB CASE NO. 74-150 JANUARY 10, 1975

RUSSELL ANDERSON, CLAIMANT

LYNN MOORE, CLAIMANT'S ATTORNEY
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 25 PER CENT (80 DEGREES) UNSCHEDULED LOW BACK DISABILITY. THE REFEREE AWARDED CLAIMANT PERMANENT TOTAL DISABILITY.

CLAIMANT, NOW 51 YEARS OLD, WITH A STABLE WORK RECORD AS A FREIGHT TRUCK DRIVER, CARPENTER'S HELPER AND CITY UTILITY WORKER, RECEIVED AN INDUSTRIAL INJURY OCTOBER 19, 1971, WHEN HE WAS CLIMBING OUT OF A MANHOLE WHEN A CAR HIT HIM IN THE BACK AND RAN OVER HIM. CLAIMANT SUSTAINED A BACK INJURY SUPERIMPOSED ON MODERATELY SEVERE DEGENERATIVE DISC DISEASE. CLAIMANT RECEIVED A CONCUSSION FROM THE INDUSTRIAL INJURY WHICH AGGRAVATED HEADACHES AND DIZZY SPELLS. CLAIMANT'S PSYCHOPATHOLOGY HAS BEEN AGGRAVATED BY THE INDUSTRIAL INJURY.

ON DE NOVO REVIEW OF THE LAY TESTIMONY AND THE MEDICAL REPORTS IN THE RECORD, 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 SEPTEMBER 16, 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. 73-4196 JANUARY 10, 1975

LEON EARL LINCOLN, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES A DENIAL OF CLAIMANT'S CLAIM BY THE STATE ACCIDENT INSURANCE FUND ON THE GROUNDS THAT THE INJURY DID NOT ARISE OUT OF AND IN THE SCOPE AND COURSE OF EMPLOYMENT. THE REFEREE AFFIRMED THE DENIAL.

CLAIMANT, A 28 YEAR OLD TEACHER IN A HIGH SCHOOL, ASSIGNED TO A FEDERALLY FUNDED PROGRAM ASSISTING STUDENTS

HAVING DIFFICULTY WITH THE REGULAR HIGH SCHOOL CURRICULUM, SUSTAINED AN INJURY ON OCTOBER 16, 1973. PART OF THE TEACHER'S DUTIES WERE TO MAKE HOME CONTACT WITH THE STUDENTS AND THEIR PARENTS. WHILE MAKING ONE SUCH HOME CONTACT WITH A STUDENT, CLAIMANT LEFT THE STUDENT'S HOME TO LOOK OVER A CAR OF A SIMILAR MAKE TO THE ONE HE WAS INTERESTED IN BUYING. THE ACCELERATOR STUCK AND CLAIMANT JUMPED OUT OF THE MOVING VEHICLE SUSTAINING INJURIES. THE STUDENT WAS NOT DRIVING NOR IN THE CAR AT THE TIME OF THE INCIDENT.

THE BOARD CONCURS WITH THE OPINION AND FINDING OF THE REFEREE THAT CLAIMANT HAS NOT MET HIS BURDEN OF PROOF TO SHOW THAT THE INJURY AROSE OUT OF AND IN THE SCOPE OF HIS EMPLOYMENT. CLAIMANT WAS ON A FROLIC OF HIS OWN AT THE TIME OF HIS INJURY.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 28, 1974 IS AFFIRMED.

WCB CASE NO. 74-1394 JANUARY 10, 1975

ROY DANIEL SEARS, CLAIMANT

ERLANDSON AND REISBICK, CLAIMANT'S ATTYS.
MC MENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTYS.

THE EMPLOYER HAS REQUESTED DISMISSAL OF CLAIMANT'S REQUEST FOR REVIEW CONTENDING IT WAS UNTIMELY.

IN SUPPORT OF THE MOTION, THE EMPLOYER RELIES ON NORTON V. SCD, 252 OR 75 (1968). NORTON IS NOT IN POINT SINCE IT DEALS WITH THE INTERPRETATION OF ORS 656.319 AND THE LIMITATIONS ON REQUESTS FOR HEARINGS. THE STATUTE OF LIMITATIONS ON HEARING REQUESTS IS TOLLED BY FILING (UNDERSCORED) WHEREAS ORS 656.289(3) AND 656.295(2) PROVIDE THAT MAILING (UNDERSCORED) A REQUEST FOR REVIEW WILL TOLL THE RUNNING OF THE STATUTE.

COMPUTING THE TIME WITHIN WHICH THE REQUEST FOR REVIEW MUST BE MAILED IN ACCORDANCE WITH ORS 174.120, ORS 187.010 AND THE RULING OF BEARDSLEY V. HILL, 219 OR 440 (1959), IT IS APPARENT THAT CLAIMANT'S REQUEST FOR REVIEW WAS TIMELY MADE. THE EMPLOYER'S MOTION FOR DISMISSAL SHOULD THEREFORE BE DENIED.

IT IS SO ORDERED.

WCB CASE NO. 73-1154 JANUARY 14, 1975

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES THE ISSUE OF RESIDUAL PERMANENT DISABILITY SUSTAINED BY A 60 YEAR OLD BODY AND FENDER MAN AS THE RESULT OF A COMPENSABLE INDUSTRIAL INJURY ON JUNE 2, 1972.

TREATMENT FOR THE LOW BACK INJURY INCLUDED SURGICAL INTERVENTION CONSISTING OF A LAMINECTOMY AND DISC REMOVAL AT L 4-5. THE CLAIMANT WAS NOT ABLE TO CONTINUE WORKING AND HAS, IN EFFECT, RETIRED AND IS DRAWING SOCIAL SECURITY BENEFITS.

PURSUANT TO ORS 656.268, A DETERMINATION ISSUED FINDING CLAIMANT TO HAVE DISABILITY OF 15 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED LOW BACK DISABILITY AND 10 PER CENT LOSS OF THE RIGHT LEG. AT HEARING, THE REFEREE GRANTED AN ADDITIONAL AWARD OF 30 PER CENT, MAKING A TOTAL OF 45 PER CENT LOSS OF THE WORKMAN FOR UNSCHEDULED DISABILITY. CLAIMANT CONTENDS HE IS ENTITLED TO AN AWARD FOR PERMANENT TOTAL DISABILITY.

AFTER AN UNSUCCESSFUL ATTEMPT TO RETURN TO WORK, CLAIMANT WAS REFERRED TO THE DISABILITY PREVENTION DIVISION FOR COUNSELING AND EVALUATION. IT WAS THEIR OPINION CLAIMANT'S CONDITION WARRANTED CONSIDERATION OF A FURTHER MYELOGRAM. THIS MYELOGRAM, PERFORMED ON SEPTEMBER 17, 1973, REVEALED CONSIDERABLE SCAR TISSUE AND ARACHNOIDITIS, BUT NO TREATMENT WAS RECOMMENDED.

IT IS CLEAR IN CLAIMANT'S CASE, THE PHYSICAL LIMITATIONS PRECLUDE A RETURN TO THE ONLY OCCUPATION FOR WHICH HE IS TRAINED. TESTING, HOWEVER, INDICATED CLAIMANT HAS MANY RESOURCES WHICH WOULD BENEFIT HIM IN FUNCTIONING IN LIGHTER WORK, BUT BECAUSE OF HIS MENTAL ATTITUDE TOWARD SELF-PITY AND CONSIDERATION OF RETIREMENT, THE LIKELIHOOD OF HIS RETURNING TO SUCH ACTIVITY IS REMOTE.

THE BOARD, ON REVIEW, FINDS INSUFFICIENT EVIDENCE TO AWARD CLAIMANT PERMANENT TOTAL DISABILITY. WE CONCUR WITH THE FINDINGS OF THE REFEREE AND CONCLUDE HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED AUGUST 5, 1974, IS AFFIRMED.

WCB CASE NO. 72-2335
AND 73-2735
AND 74-2804

JANUARY 14, 1975

CLIFFORD L. NOLLEN, CLAIMANT

J. DAVID KRYGER, CLAIMANT'S ATTY.
LYLE C. VELURE, DEFENSE ATTY.

ON JANUARY 7, 1975, ALBANY FROZEN FOODS MOVED TO QUASH THE STATE ACCIDENT INSURANCE FUND'S REQUEST FOR REVIEW, AS TO ALBANY FROZEN FOODS, ON THE GROUND THAT THE STATE ACCIDENT INSURANCE FUND HAD FAILED TO MAIL A COPY OF THE REQUEST FOR REVIEW TO IT AS REQUIRED BY LAW.

ON JANUARY 8, 1975, THE STATE ACCIDENT INSURANCE FUND RESPONDED OPPOSING THE MOTION AND THE BOARD BEING NOW FULLY ADVISED CONCLUDES IT IS WITHOUT JURISDICTION TO REVIEW THE MATTER. THE REQUEST FOR REVIEW SHOULD BE DISMISSED AND THE REFEREE'S OPINION AND ORDER DECLARED FINAL BY OPERATION OF LAW.

CLAIMANT'S ATTORNEY SHOULD DIRECT HIS REQUEST FOR AN ALLOWANCE OF AN ADDITIONAL ATTORNEY FEE TO THE REFEREE OR TO THE CIRCUIT COURT FOR ISSUANCE OF A SUPPLEMENTAL ORDER.

IT IS SO ORDERED.

WCB CASE NO. 73-3954

JANUARY 14, 1975

CATHRYN E. ALEXANDER, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER AFFIRMING A DETERMINATION ORDER AWARD OF 64 DEGREES FOR UNSCHEDULED DISABILITY (20 PER CENT OF THE MAXIMUM ALLOWABLE) CONTENDING HER DISABILITY EXCEEDS THAT AWARDED.

CLAIMANT'S ATTORNEY ARGUES THAT THE REFEREE MISCONSTRUED THE EVIDENCE IN FINDING CLAIMANT POORLY MOTIVATED AND LACKING CREDIBILTY AS A WITNESS. HE URGES THAT, DUE TO HER AGE AND OTHER PERSONAL FACTORS SUPERIMPOSED UPON THE INJURY, THAT CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED.

OUR REVIEW OF THE TRANSCRIPT AND THE DOCUMENTARY EVIDENCE INCLUDING THE IMPEACHING EVIDENCE (DEFENDANT'S EXHIBIT 1) WHICH WE FIND ADMISSIBLE, LEADS US TO CONCLUDE THAT THE REFEREE'S ASSESSMENT OF THE CASE WAS CORRECT AND THAT HIS ORDER OUGHT TO BE AFFIRMED.

ORDER

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

WCB CASE NO. 74-1777 JANUARY 14, 1975

CLINT L. MOSHOFSKY, CLAIMANT

GARRY KAHN, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES AN AGGRAVATION CLAIM. CLAIMANT FILED AN AGGRAVATION CLAIM MAY 6, 1974, WHICH WAS NEITHER DENIED NOR ACCEPTED. THE REFEREE ORDERED THE STATE ACCIDENT INSURANCE FUND TO ACCEPT THE CLAIM AND ASSESSED A 25 PER CENT PENALTY FOR UNREASONABLE DELAY IN ACCEPTANCE OR DENIAL OF AN AGGRAVATION CLAIM.

ON DE NOVO REVIEW, THE BOARD AFFIRMS AND ADOPTS THE REFEREE'S OPINION AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED AUGUST 26, 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. 74-854 JANUARY 14, 1975

ANDREW TRAMMELL, CLAIMANT

DAN O'LEARY, CLAIMANT'S ATTY.
KENNETH L. KLEINSMITH, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF
CROSS-APPEAL BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES AN AGGRAVATION CLAIM. THE REFEREE AWARDED THE CLAIMANT AN ADDITIONAL 32 DEGREES UNSCHEDULED DISABILITY ON THE AGGRAVATION CLAIM AND REFERRED THE CLAIMANT TO DISABILITY PREVENTION DIVISION FOR FURTHER ASSISTANCE.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE FINDINGS OF THE REFEREE AND ADOPTS HIS OPINION AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 28, 1974, IS AFFIRMED.

COUNSEL FOR CLAIMANT 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.

SAIF CLAIM NO. A 849946 JANUARY 15, 1975

CHARLES A. WILLIAMS, CLAIMANT

JOHN BASSETT, CLAIMANT'S ATTY.

THE ABOVE ENTITLED MATTER INVOLVES AN ISSUE WITH RESPECT TO WHETHER A COMPENSABLE BACK INJURY INCURRED IN 1961 IS MATERIALLY RESPONSIBLE FOR THE CLAIMANT'S PRESENT PROBLEMS SO AS TO WARRANT THE EXERCISE BY THE WORKMEN'S COMPENSATION BOARD OF THE OWN MOTION JURISDICTION VESTED IN THE BOARD PURSUANT TO ORS 656.278.

THE BOARD REFERRED THE MATTER TO A REFEREE FOR THE PURPOSE OF TAKING EVIDENCE WITH RESPECT TO WHETHER CLAIMANT HAS INCURRED AN AGGRAVATION OF HIS INJURY. THE BOARD HAS NOW RECEIVED AND REVIEWED THE RECORD MADE AT THE HEARING AND HAS CONSIDERED THE RECOMMENDATIONS OF THE REFEREE.

THE RECORD INDICATES CLAIMANT WAS HOSPITALIZED IN MAY, 1973, WITH DR. NOALL AND DR. GREWE PERFORMING SURGERY CONSISTING OF A LAMINECTOMY, REMOVAL OF OVERGROWTH OF BONE, AND REMOVAL OF COMPLETELY HERNIATED DISC AT L-3,4. DR. NOALL TESTIFIED CLAIMANT'S SURGERY WAS DIRECTLY RELATED TO THE INDUSTRIAL INJURY OF FEBRUARY, 1961. HE TESTIFIED AN ORDINARY SNEEZE COULD NOT CAUSE SUCH A DISC PROBLEM, BUT IF THE DISC HAD ALREADY SUSTAINED INJURY, A SNEEZE COULD BRING ON CLAIMANT'S SYMPTOMS.

SINCE ALL LEVELS BELOW THE HERNIATED DISC WERE STIFFENED WITH THE ORIGINAL FUSION, THAT DISC WAS SUBJECTED TO EXTRAORDINARY WEAR AND TEAR. THE DOCTOR FURTHER TESTIFIED THE 1973 SURGERY WAS BROUGHT ABOUT IN ADDITION BECAUSE OF NEUROLOGICAL CHANGES IN BOTH OF CLAIMANT'S LEGS. THE LIFTING OF AN AUTOMATIC TRANSMISSION BROUGHT ON SOME MINOR PAIN, BUT THE SNEEZE WAS THE INCAPACITATING FACTOR.

THE BOARD THEREFORE FINDS CLAIMANT HAS SUSTAINED A RELATED AGGRAVATION OF HIS 1961 INDUSTRIAL INJURY AND CONCLUDES HIS CLAIM FOR BENEFITS SHOULD BE REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR PAYMENT OF COMPENSATION.

ORDER

PURSUANT TO ORS 656.278, THE WORKMEN'S COMPENSATION BOARD HEREBY ORDERS THE STATE ACCIDENT INSURANCE FUND TO FURNISH TO CLAIMANT THE MEDICAL CARE AND COMPENSATION BENEFITS PROVIDED BY LAW FOR THE AGGRAVATION OF HIS FEBRUARY 22, 1961, COMPENSABLE INJURY FROM MAY 30, 1973, ONWARD.

WHEN THE FUND BELIEVES THE CLAIMANT'S CONDITION FROM THIS AGGRAVATION HAS AGAIN BECOME MEDICALLY STATIONARY, IT SHALL SUBMIT THE CLAIM TO THE WORKMEN'S COMPENSATION BOARD FOR AN OWN MOTION EVALUATION OF PERMANENT DISABILITY.

CLAIMANT'S ATTORNEY, JOHN BASSETT, IS HEREBY AWARDED AS A REASONABLE ATTORNEY'S FEE 25 PER CENT OF THE COMPENSATION GRANTED TO CLAIMANT, PAYABLE FROM HIS TEMPORARY TOTAL DISABILITY BENEFITS, TO A MAXIMUM OF 500 DOLLARS AND THE BALANCE, TO A TOTAL MAXIMUM OF 2,000 DOLLARS.

WCB CASE NO. 71-2881 JANUARY 15, 1975

ROBERT BILLINGS, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
ALLEN G. OWEN, DEFENSE ATTY.

THE ABOVE-ENTITLED MATTER WAS HERETOFORE THE SUBJECT OF A HEARING INVOLVING THE COMPENSABILITY OF A CLAIM FOR AGGRAVATION OF PREEXISTING MUSCULAR DYSTROPHY ALLEGEDLY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT BY CARL CROUSE.

ON AUGUST 29, 1972, AN ORDER OF THE HEARING OFFICER WAS ENTERED FINDING THE CLAIM TO NONCOMPENSABLE.

UPON REJECTION OF THE HEARING OFFICER'S ORDER BY THE CLAIMANT, THE MATTER THEN PROCEEDED TO THE WORKMEN'S COMPENSATION BOARD FOR JUDICIAL REVIEW, WAS APPEALED TO MULTNOMAH COUNTY CIRCUIT COURT, AND THENCE TO THE OREGON COURT OF APPEALS. THE COURT OF APPEALS, BY THEIR DECISION ENTERED JUNE 11, 1974, REMANDED THE MATTER TO THE WORKMEN'S COMPENSATION BOARD FOR APPOINTMENT OF A MEDICAL BOARD OF REVIEW PURSUANT TO ORS 656.810, THE STATUTE IN EFFECT AT THE TIME CLAIMANT APPEALED THE HEARING OFFICER'S ORDER.

ON OCTOBER 8, 1974, A MEDICAL BOARD OF REVIEW WAS DULY EMPANELED CONSISTING OF DRS. J. H. KENNEDY, C. CONRAD CARTER, AND JOHN BENSON. THE MEDICAL BOARD OF REVIEW HAS NOW SUBMITTED ITS FINDINGS ALONG WITH TWO SUPPLEMENTAL NARRATIVE REPORTS TO THE WORKMEN'S COMPENSATION BOARD, ATTACHED HERETO AND MARKED AS EXHIBITS "A" AND "B".

THESE FINDINGS, IN EFFECT, REVERSE THE HEARING OFFICER'S DENIAL OF CLAIMANT'S CLAIM AND CONCLUDE CLAIMANT HAS SUSTAINED A COMPENSABLE EXACERBATION OF A PREEXISTING CONDITION.

ORDER

IN ACCORDANCE WITH ORS 656.054 AND IN CONFORMANCE WITH THE FINDINGS OF THE MEDICAL BOARD OF REVIEW, WHICH ARE FINAL AND BINDING AS A MATTER OF LAW, THE STATE ACCIDENT INSURANCE FUND IS HEREBY ORDERED TO ACCEPT CLAIMANT'S CLAIM FOR LIMB-GIRDLE MUSCULAR DYSTROPHY AND PROVIDE TO HIM THE COMPENSATION REQUIRED BY LAW.

THE STATE ACCIDENT INSURANCE FUND SHALL ALSO PAY TO CLAIMANT'S ATTORNEY FOR HIS SERVICES IN ESTABLISHING CLAIMANT'S RIGHT TO COMPENSATION THE SUM OF 2,000 DOLLARS AS A REASONABLE ATTORNEY'S FEE.

WCB CASE NO. 74—40 JANUARY 15, 1975

JEFFREY PEARSON, CLAIMANT

RINGO, WALTON, MCCLAIN AND EVES, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A DENIAL BY THE EMPLOYER OF THE CLAIMANT'S INJURY CLAIM ON THE GROUNDS THAT THE INJURY DID NOT ARISE OUT OF OR IN THE COURSE OF CLAIMANT'S EMPLOYMENT. THE HEARING WAS HELD AND EVIDENCE RECEIVED AS TO THIS CLAIM AND THREE OTHER CASES - ROBERT REEL, WCB CASE NO. 74-93, CHARLES JENSEN, WCB CASE NO. 74-437, AND ROBERT PARKER, WCB CASE NO. 74-438. ALL FOUR OF THESE CLAIMANTS WERE SUBSTANTIALLY SIMILARLY SITUATED AS TO THEIR CLAIMS. THE REFEREE AFFIRMED THE DENIAL ON THE BASIS THAT THE INJURY DID NOT ARISE OUT OF OR IN THE COURSE OF CLAIMANT'S EMPLOYMENT.

CLAIMANT AND THREE OTHER WORKMEN ATTEMPTED TO ""INITIATE"" A FELLOW WORKMAN WHO WAS TO BE MARRIED ON THE EVENING OF THE INJURIES, BY POURING A FREON-ACETONE LIQUID ON THE FELLOW WORKMAN TO CAUSE A FREEZING SENSATION WHEN THE VOLATILE LIQUID EVAPORATED. DURING THE INCIDENT PART OF THE LIQUID WAS SPILLED. PART OF THE SPILLED LIQUID FOUND ITS WAY TO AN IGNITION SOURCE AND THE SUBSTANCE CAUGHT FIRE SERIOUSLY BURNING THE VICTIM. THE FOUR CO-WORKERS PERPETRATING THIS INCIDENT ALSO RECEIVED BURNS. THE EMPLOYER ACCEPTED THE CLAIM OF THE INJURIES RECEIVED BY THE VICTIM AND DENIED THE FOUR CLAIMS, ONE OF WHICH IS INVOLVED IN THIS REQUEST FOR BOARD REVIEW.

ON DE NOVO REVIEW THE BOARD NOTES CERTAIN DISCREPANCIES IN THE RECORD AND THE OPINION AND ORDER. THE RECORD REFLECTS THAT SOME OF THESE WORKMEN DID OCCASIONALLY USE THE FREON-ACETONE SUBSTANCE IN THEIR WORK ACTIVITIES. THE BOARD ALSO CONCURS WITH THE PROPOSITION THAT SUCH INCIDENTS SHOULD NOT BE VIEWED FROM "HINDSIGHT" AS TO THE SERIOUSNESS OF THE END RESULT OF THE ACTIVITY SINCE THE FUNDAMENTAL ISSUE IS WHETHER OR NOT THE INJURIES AROSE OUT OF AND IN THE COURSE OF THE EMPLOYMENT OR WHETHER THERE IS A COMPLETE DEVIATION FROM THE WORK ACTIVITIES.

LARSON APPLIES THE FOLLOWING FOUR TESTS AS TO WHETHER OR NOT THE ACCIDENT "AROSE OUT OF AND IN THE COURSE OF EMPLOYMENT" -

1. EXTENT AND SERIOUSNESS OF DEVIATION.

2. THE COMPLETENESS OF THE DEVIATION (I.E., WHETHER IT WAS CO-MINGLED WITH THE PERFORMANCE OF DUTY OR INVOLVED AN ABANDONMENT OF DUTY).

3. THE EXTENT TO WH CH THEIR PRACTICE OF HORSEPLAY HAD BECOME AN ACCEPTED PART OF THE EMPLOYMENT.

4. THE EXTENT TO WHICH THE NATURE OF THE EMPLOYMENT MAY BE EXPECTED TO INCLUDE SUCH HORSEPLAY. (LARSON WORKMEN COMPENSATION LAW, 23.00)

APPLYING THESE FOUR TESTS TO THE FACTS IN THE RECORD, THE BOARD CONCURS WITH THE ORDER OF THE REFEREE THAT CLAIMANT'S INJURY DID NOT ARISE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT.

ORDER

THE ORDER OF THE REFEREE DATED AUGUST 26, 1974, IS AFFIRMED.

WCB CASE NO. 74—93 JANUARY 15, 1975

ROBERT REEL, CLAIMANT

RINGO, WALTON AND EVES, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A DENIAL BY THE EMPLOYER OF THE CLAIMANT'S INJURY CLAIM ON THE GROUNDS THAT THE INJURY DID NOT ARISE OUT OF OR IN THE COURSE OF CLAIMANT'S EMPLOYMENT. THE HEARING WAS HELD AND EVIDENCE RECEIVED AS TO THIS CLAIM AND THREE OTHER CASES — JEFFREY PEARSON, WCB CASE NO. 74-40, CHARLES JENSEN, WCB CASE NO. 74-437 AND ROBERT PARKER, WCB CASE NO. 74-438. ALL FOUR OF THESE CLAIMANTS WERE SUBSTANTIALLY SIMILARLY SITUATED AS TO THEIR CLAIMS. THE REFEREE AFFIRMED THE DENIAL ON THE BASIS THAT THE INJURY DID NOT ARISE OUT OF OR IN THE COURSE OF CLAIMANT'S EMPLOYMENT.

CLAIMANT AND THREE OTHER WORKMEN ATTEMPTED TO "INITIATE" A FELLOW WORKMAN WHO WAS TO BE MARRIED ON THE EVENING OF THE INJURIES, BY POURING A FREON-ACETONE LIQUID ON THE FELLOW WORKMAN TO CAUSE A FREEZING SENSATION WHEN THE VOLATILE LIQUID EVAPORATED. DURING THE INCIDENT PART OF THE LIQUID WAS SPILLED. PART OF THE SPILLED LIQUID FOUND ITS WAY TO AN IGNITION SOURCE AND THE SUBSTANCE CAUGHT FIRE SERIOUSLY BURNING THE VICTIM. THE FOUR CO-WORKERS PERPETRATING THIS INCIDENT ALSO RECEIVED BURNS. THE EMPLOYER ACCEPTED THE CLAIM OF THE INJURIES RECEIVED BY THE VICTIM AND DENIED THE FOUR CLAIMS, ONE OF WHICH IS INVOLVED IN THIS REQUEST FOR BOARD REVIEW.

ON DE NOVO REVIEW THE BOARD NOTES CERTAIN DISCREPANCIES IN THE RECORD AND THE OPINION AND ORDER. THE RECORD REFLECTS THAT SOME OF THESE WORKMEN DID OCCASIONALLY USE THE FREON-ACETONE SUBSTANCE IN THEIR WORK ACTIVITIES. THE BOARD ALSO CONCURS WITH THE PROPOSITION THAT SUCH INCIDENTS SHOULD NOT BE VIEWED FROM "HINDSIGHT" AS TO THE SERIOUSNESS OF THE END RESULT OF THE ACTIVITY SINCE THE FUNDAMENTAL ISSUE IS WHETHER OR NOT THE INJURIES AROSE OUT OF AND IN THE COURSE OF THE EMPLOYMENT OR WHETHER THERE IS A COMPLETE DEVIATION FROM THE WORK ACTIVITIES.

LARSON APPLIES THE FOLLOWING FOUR TESTS AS TO WHETHER OR NOT THE ACCIDENT "AROSE OUT OF AND IN THE COURSE OF EMPLOYMENT" =

1. EXTENT AND SERIOUSNESS OF DEVIATION.

2. THE COMPLETENESS OF THE DEVIATION (I.E., WHETHER IT WAS CO-MINGLED WITH THE PERFORMANCE OF DUTY OR INVOLVED AN ABANDONMENT OF DUTY).

3. THE EXTENT TO WHICH THEIR PRACTICE OF HORSEPLAY HAD BECOME AN ACCEPTED PART OF THE EMPLOYMENT.

4. THE EXTENT TO WHICH THE NATURE OF THE EMPLOYMENT MAY BE EXPECTED TO INCLUDE SOME SUCH HORSEPLAY. (LARSON WORKMEN'S COMPENSATION LAW, 23.00).

APPLYING THESE FOUR TESTS TO THE FACTS IN THE RECORD, THE BOARD CONCURS WITH THE ORDER OF THE REFEREE THAT CLAIMANT'S INJURY DID NOT ARISE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT.

ORDER

THE ORDER OF THE REFEREE DATED AUGUST 26, 1974 IS AFFIRMED.

WCB CASE NO. 72-1559 JANUARY 17, 1975

JESS MCCULLOM, CLAIMANT

J. DAVID KRYGER, CLAIMANT'S ATTY.
JACK MATTISON, DEFENSE ATTY.

STIPULATION

COMES NOW THE CLAIMANT, JESS MCCULLOM, INDIVIDUALLY AND BY AND THROUGH HIS ATTORNEY, J. DAVID KRYGER, AND THE EMPLOYER, FOREST INDUSTRIES AND ITS INSURER, CHUBB PACIFIC INDEMNITY GROUP, ACTING BY AND THROUGH THEIR ATTORNEY, JACK MATTISON, AND HEREBY STIPULATE AND AGREE AS FOLLOWS -

I

THAT A BONA FIDE DISPUTE CONCERNING THE COMPENSABILITY OF THE CLAIM NOW PENDING BY REASON OF THE REQUEST FOR HEARING DATED JUNE 5, 1972 AND FILED BY THE CLAIMANT WITH THE WORKMEN'S COMPENSATION BOARD EXISTS BETWEEN THE CLAIMANT AND THE EMPLOYER, IT BEING THE CONTENTION OF THE CLAIMANT THAT HE RECEIVED AN INJURY TO HIS LOW BACK AND RIGHT SHOULDER AND ARM WHILE IN THE EMPLOY OF THE EMPLOYER AND IN THE COURSE AND SCOPE OF SAID EMPLOYMENT ON OR AROUND OCTOBER 19, 1970, WHILE WORKING ON A SANDER - AND IT BEING THE CONTENTION OF THE EMPLOYER THAT - (1) NO SUCH INJURY OCCURRED, (2) IF SUCH AN INJURY OCCURRED, THE CLAIMANT DID NOT GIVE NOTICE TO THE EMPLOYER IN ACCORDANCE WITH THE REQUIREMENTS OF THE WORKMEN'S COMPENSATION LAW, AND (3) THE CLAIM IS BARRED BY REASON OF THE CLAIMANT'S FAILURE TO REQUEST A HEARING WITHIN ONE YEAR OF THE ALLEGED INJURY.

THAT BOTH PARTIES HAVE EVIDENCE TO SUBSTANTIATE THEIR RESPECTIVE POSITIONS.

II

THAT IT IS THE DESIRE OF THE PARTIES TO SETTLE ALL ISSUES RAISED BY THE REQUEST FOR HEARING ON A DISPUTED CLAIM BASIS AS HEREINAFTER SET FORTH -

(A) THE EMPLOYER SHALL PAY TO THE CLAIMANT THE SUM OF 7,500 DOLLARS, SAID SUM TO BE PAYABLE IN A LUMP SUM,

(B) THE CLAIMANT'S ATTORNEY SHALL BE ENTITLED TO 25 PER CENT OF SAID PAYMENT AS AND FOR HIS ATTORNEY FEE, THIS FEE TO BE PAYABLE OUT OF AND NOT IN ADDITION TO SAID SUM,

(C) THE CLAIMANT HEREBY WITHDRAWS HIS REQUEST FOR HEARING DATED JUNE 5, 1972, AND REQUESTS THAT HIS CLAIM BE DISMISSED.

III

THE PARTIES UNDERSTAND AND AGREE THAT THIS STIPULATION FOR SETTLEMENT IS BEING FILED PURSUANT TO ORS 656.289(4), WHICH STATUTE AUTHORIZED THE REASONABLE DISPOSITION OF DISPUTED CLAIMS, AND THE PARTIES FURTHER UNDERSTAND THAT IF THIS SETTLEMENT IS APPROVED BY THE WORKMEN'S COMPENSATION BOARD AND PAYMENT IS MADE TO CLAIMANT IN ACCORDANCE WITH THE TERMS HEREOF, SAID PAYMENT IS IN FULL, FINAL AND COMPLETE SETTLEMENT OF ALL CLAIMS WHICH CLAIMANT HAS OR MAY HAVE AGAINST THE EMPLOYER FOR INJURIES CLAIMED OR THEIR RESULTS, INCLUDING ATTORNEY'S FEES, AND ALL BENEFITS UNDER THE WORKMEN'S COMPENSATION LAW OF THIS STATE, AND CLAIMANT AGREES THAT HE WILL CONSIDER SAID PAYMENT AS BEING FINAL.

IV

IT IS EXPRESSLY UNDERSTOOD AND AGREED BY BOTH PARTIES TO THE AGREEMENT THAT THIS IS A SETTLEMENT OF A DOUBTFUL AND DISPUTED CLAIM AND IS NOT AN ADMISSION OF LIABILITY ON THE PART OF THE EMPLOYER, AND EXCEPT FOR ITS RESPONSIBILITIES UNDER THIS SETTLEMENT AGREEMENT, THE EMPLOYER DENIES ALL LIABILITY TO THE CLAIMANT. IT IS FURTHER UNDERSTOOD AND AGREED BY THE PARTIES THAT SETTLEMENT HEREUNDER IS A SETTLEMENT OF ANY AND ALL CLAIMS, WHETHER SPECIFICALLY MENTIONED HEREIN OR NOT, WHICH CLAIMANT MAY HAVE AGAINST THE EMPLOYER UNDER THE WORKMEN'S COMPENSATION LAW OF THE STATE OF OREGON.

WHEREFORE, THE PARTIES HEREBY JOIN IN THIS STIPULATION AND REQUEST APPROVAL OF THE WORKMEN'S COMPENSATION BOARD OF THE FOREGOING TERMS AND AUTHORIZATION OF THE PAYMENT OF THE SUM SET FORTH ABOVE PURSUANT TO ORS 656.289(4) IN THE FULL AND FINAL SETTLEMENT BETWEEN THE PARTIES, AND AN ORDER APPROVING THIS COMPRISED SETTLEMENT AND WITHDRAWING THE CLAIMANT'S PENDING REQUEST FOR HEARING.

WCB CASE NO. 74-934 JANUARY 17, 1975

JOHNACA T. DAVIS, CLAIMANT.

BAILEY, DOBLIE, CENICEROS AND BRUUN,
CLAIMANT'S ATTYS.
COSGRAVE AND KESTER, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES A 56 YEAR OLD GROCERY CHECKER WHO ALLEGED SHE SUSTAINED A BACK INJURY ON JANUARY 11, 1974, WHEN SHE SUDDENLY SNEEZED WHILE IN A POSTURE OF STRESS. HER EMPLOYER INITIALLY ACCEPTED, THEN DENIED, THE CLAIM FOR COMPENSATION. AT HEARING, THE REFEREE FOUND CLAIMANT'S CLAIM COMPENSABLE AND REMANDED IT TO THE EMPLOYER FOR ACCEPTANCE. THE EMPLOYER HAS REQUESTED BOARD REVIEW OF THIS ORDER.

THE UNEXPECTED SNEEZE, TRIGGERED BY AN ATTACK OF HAY FEVER, CAUSED IMMEDIATE, EXCRUCIATING PAIN WHICH LASTED APPROXIMATELY ONE MINUTE. THE NEXT RECURRENCE OF PAIN MANIFESTED ITSELF THE FOLLOWING MORNING AS CLAIMANT OPENED A DRAWER, HAD A SEVERE PAIN AND COULDN'T STRAIGHTEN UP. WHEN SHE SAW DR. MATTHEWS ON JANUARY 16, THE PAIN WAS SO INTENSE SHE NEEDED ASSISTANCE IN WALKING AND WAS UNABLE TO STRAIGHTEN UP.

THE CLAIM WAS INITIALLY ACCEPTED BY THE EMPLOYER'S INSURANCE CARRIER. HOWEVER, WHEN THE CARRIER RECEIVED DR. MATTHEW'S REPORT, A DENIAL ISSUED FEBRUARY 21, 1974, STATING THE DENIAL WAS DUE TO THE FACT THE ATTENDING PHYSICIAN INDICATED CLAIMANT'S BACK WAS BOTHERING BECAUSE OF A COLD, NOT AN INJURY. SUBSEQUENTLY ON MARCH 4, 1974, DR. MATTHEWS ADVISED THE HISTORY TAKEN JANUARY 16 FROM CLAIMANT WAS APPARENTLY A MISUNDERSTANDING AND FORWARDED A REVISED HISTORY. CLAIMANT TESTIFIED, IN FACT, WHEN SHE FIRST REPORTED TO DR. MATTHEW'S OFFICE, HER HISTORY WAS TAKEN BY HIS NURSE AND THE DOCTOR HIMSELF ASKED NOTHING ABOUT THE PRECIPITATING CAUSE OF HER DIFFICULTY.

IT IS THE EMPLOYER'S CONTENTION THAT CLAIMANT'S INJURY WAS SUSTAINED IN HER OWN KITCHEN WHILE PREPARING BREAKFAST THE DAY AFTER THE SNEEZING INCIDENT AT THE EMPLOYER'S PLACE OF BUSINESS. THE REFEREE, IN HIS OPINION AND ORDER, STATED -

> '...OFTEN THERE IS A HIATUS BETWEEN THE OCCURRENCE OF A TRAUMATIC EVENT AND THE ONSET OF SYMPTOMS.
>
> IN LIGHT OF THESE CONSIDERATIONS, I CONCLUDE THE INFERENCE IS SO STRONG THAT THE SNEEZING INCIDENT WAS A MATERIAL CONTRIBUTING CAUSE OF CLAIMANT'S SUBSEQUENT DISABILITY THAT NO ADDITIONAL MEDICAL OPINION EVIDENCE IN SUPPORT OF THAT CONCLUSION IS REQUIRED. I ACCORDINGLY HOLD THE CLAIM COMPENSABLE.'

THE BOARD, ON REVIEW, FINDS CLAIMANT'S TESTIMONY AS BEING CREDIBLE AND ALSO FINDS THE SECOND, RATHER THAN THE FIRST, HISTORY RECITED BY DR. MATTHEWS TO BE THE CORRECT PORTRAYAL OF THE FACTS. THE BOARD CONCURS WITH THE FINDINGS MADE BY THE REFEREE AND AFFIRMS HIS ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED AUGUST 2, 1974, IS 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. 74-142 JANUARY 17, 1975

ERNEST E. CAMPBELL, CLAIMANT

STEPHEN A. MOEN, 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. THE DETERMINATION ORDERS GRANTED CLAIMANT NO PERMANENT DISABILITY. THE REFEREE AWARDED CLAIMANT 10 PER CENT (32 DEGREES) UNSCHEDULED PERMANENT PARTIAL DISABILITY.

CLAIMANT, A 43 YEAR OLD HIGHWAY MAINTENANCE WORKER, SUFFERED FROM INHALATION OF FUMES FROM SOLVENT HE WAS USING TO CLEAN A TANK OF A PAINT TRUCK. CLAIMANT HAS SUFFERED FROM HEADACHES AND EYE PROBLEMS. AFTER THE CLAIMANT WAS FITTED WITH NEW GLASSES HIS VISION PROBLEMS WERE CORRECTED AND THUS, CLAIMANT HAS NO SCHEDULED PERMANENT PARTIAL DISABILITY TO HIS VISION.

AS TO THE UNSCHEDULED PERMANENT DISABILITY FOR HEADACHES, THE HEADACHES ARE PREVENTED BY WEARING HIS GLASSES AND THE BOARD FINDS, THEREFORE, THAT CLAIMANT HAS SUSTAINED NO UNSCHEDULED PERMANENT PARTIAL DISABILITY.

ORDER

THE ORDER OF THE REFEREE DATED AUGUST 26, 1974 IS REVERSED AND THE DETERMINATION ORDER OF MARCH 22, 1973 IS AFFIRMED.

WCB CASE NO. 74-717 JANUARY 17, 1975

IRA O. WILLIAMS, CLAIMANT

KEITH E. TICHENOR, CLAIMANT'S ATTY.
KENNETH L. KLEINSMITH, 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 STATE ACCIDENT INSURANCE FUND'S DENIAL OF HIS CLAIM FOR OCCUPATIONAL HEARING LOSS.

ON REVIEW, THE BOARD CAN FIND NO SUFFICIENT EVIDENCE OR MEDICAL PROOF OF CAUSAL RELATIONSHIP BETWEEN CLAIMANT'S HEARING LOSS AND HIS EMPLOYMENT. THE BOARD THEREFORE CONCURS WITH THE FINDINGS OF THE REFEREE AND CONCLUDES HIS ORDER SHOULD BE AFFIRMED AS THE ORDER OF THE BOARD.

IT IS SO ORDERED.

WCB CASE BO. 72-1344 JANUARY 17, 1975

WALTER E. SMITH, CLAIMANT

SCHUOBOE, CAVANAUGH AND DAWSON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

THIS MATTER COMES BEFORE THE WORKMEN'S COMPENSATION BOARD BASED ON A LETTER DATED DECEMBER 13, 1974, FROM LARRY DAWSON AND A MEDICAL REPORT DATED JANUARY 6, 1975, FROM MCGREGOR L. CHURCH, M.D. THE DOCUMENTS ARE ATTACHED HERETO, MARKED AS EXHIBITS A AND B, AND MADE A PART OF THIS ORDER. THE ISSUE FOR CONSIDERATION IS WHETHER OR NOT THE BOARD SHOULD REQUIRE THE STATE ACCIDENT INSURANCE FUND TO PROVIDE CLAIMANT BENEFITS PURSUANT TO ORS 656.245.

THE BOARD FINDS THAT THE STATE ACCIDENT INSURANCE FUND SHOULD, UNDER THE PROVISIONS OF ORS 656.245(1), PROVIDE MEDICAL SERVICES AS OUTLINED IN EXHIBIT A.

IT IS THEREFORE ORDERED THAT THE STATE ACCIDENT INSURANCE FUND SEND THE CLAIMANT TO THE PAIN CLINIC FOR EVALUATION AND APPROPRIATE MEDICAL SERVICES AT ITS EXPENSE AND PAY DR. CHURCH FOR HIS SERVICES IN THIS MATTER.

SAIF CLAIM NO. C 53239 JANUARY 17, 1975

PAUL W. BERG, CLAIMANT

THIS MATTER INVOLVES A WORKMAN WHO CUT HIS RIGHT HAND IN A TABLE SAW IN DECEMBER OF 1966. THE FIRST DETERMINATION ORDER, BASED ON REPORTS OF DR. SPADY, GRANTED CLAIMANT PERMANENT PARTIAL DISABILITY OF 35 PER CENT LOSS FUNCTION OF THE RIGHT MIDDLE FINGER AND 25 PERCENT LOSS FUNCTION OF THE RIGHT RING FINGER.

AT THE CLAIMANT'S REQUEST FOR A REAPPRAISAL OF HIS PERMANENT DISABILITY, THE STATE ACCIDENT INSURANCE FUND ARRANGED FOR CLAIMANT TO BE EXAMINED BY NATHAN SHLIM, M.D. DR. SHLIM'S REPORT OF OCTOBER 23, 1974, HAS NOW BEEN SUBMITTED AND INDICATES THE DISABILITY IN THE FINGERS OF CLAIMANT'S RIGHT HAND IS IN FACT NO GREATER THAN AT THE TIME OF THE FIRST DETERMINATION ORDER.

ORDER

IT IS THEREFORE ORDERED THAT CLAIMANT'S CLAIM BE CLOSED WITH NO FURTHER AWARD FOR PERMANENT PARTIAL DISABILITY.

WCB CASE NO. 74-2373 JANUARY 20, 1975

BETTY L. GERHARD, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE, DEFENSE ATTYS.

ON JANUARY 9, 1975, THE BOARD ISSUED AN AMENDED ORDER DISMISSING, AT THE CLAIMANT'S REQUEST, HER REQUEST FOR REVIEW OF A REFEREE'S ORDER ISSUED IN THE ABOVE-REFERENCED MATTER.

ON JANUARY 13, 1975, THE BOARD RECEIVED A LETTER FROM THE EMPLOYER'S COUNSEL ADVISING THAT THE EMPLOYER, IN RESPONSE TO CLAIMANT'S WITHDRAWAL OF HER REQUEST FOR REVIEW, WISHED TO WITHDRAW ITS CROSS REQUEST FOR REVIEW.

BEING NOW FULLY ADVISED, THE BOARD HEREBY ORDERS THAT THE EMPLOYER'S CROSS REQUEST FOR REVIEW IS HEREBY DISMISSED AND THE REFEREE'S ORDER DATED OCTOBER 7, 1974 IS FINAL BY OPERATION OF LAW.

SAIF CLAIM NO. A 849946 JANUARY 21, 1975

CHARLES A. WILLIAMS, CLAIMANT

JOHN BASSETT, CLAIMANT'S ATTY.

ON JANUARY 15, 1975, THE BOARD ISSUED AN ORDER GRANTING CLAIMANT ADDITIONAL BENEFITS PURSUANT TO THE AUTHORITY VESTED IN IT BY ORS 656.278. THE ORDER ERRONEOUSLY CONTAINED ON APPEAL A PARAGRAPH GRANTING APPEAL RIGHTS TO THE CIRCUIT COURT PURSUANT TO ORS 656.298 WHICH ARE THOSE FOR ORDINARY ORDER ON REVIEWS.

THE ORDER SHOULD BE AMENDED TO CARRY THE FOLLOWING APPEAL RIGHTS -

NOTICE OF APPEAL

PURSUANT TO ORS 656.278 -

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

THE EMPLOYER MAY REQUEST A HEARING ON THIS ORDER.

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

IT IS SO ORDERED.

WCB CASE NO. 74-1984 AND 74-628 — JANUARY 21, 1975

OLAF ROSETH, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

IN WCB CASE NO. 74-628, PURSUANT TO DETERMINATION, CLAIMANT RECEIVED AN AWARD OF 32 DEGREES UNSCHEDULED DISABILITY. THE REFEREE, AT HEARING, AFFIRMED THIS DETERMINATION.

IN WCB CASE NO. 74-1984, PURSUANT TO DETERMINATION, CLAIMANT RECEIVED NO AWARD FOR PERMANENT PARTIAL DISABILITY. THE REFEREE, AT HEARING, AWARDED 80 DEGREES FOR UNSCHEDULED DISABILITY TO THE CHEST.

CLAIMANT HAS REQUESTED BOARD REVIEW OF THE REFEREE'S ORDER IN THESE TWO CASES CONTENDING HE HAS BEEN RENDERED PERMANENTLY AND TOTALLY DISABLED, OR IN THE ALTERNATIVE IS ENTITLED TO FURTHER MEDICAL CARE AND TREATMENT AND TIME LOSS BENEFITS.

THE REFEREE HAS ANALYTICALLY COMPREHENSIVELY DEALT WITH THE ISSUES IN HIS WELL WRITTEN ORDER. WE CONCUR WITH HIS ORDER AND CONCLUDE IT SHOULD BE AFFIRMED AND ADOPTED AS THE ORDER OF THE BOARD.

ORDER

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

WCB CASE NO. 73-2167 — JANUARY 22, 1975

ALDIN V. WHITTLE, CLAIMANT

ROBERT E. JONES, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT.

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER INCREASING CLAIMANT'S PERMANENT DISABILITY AWARD FROM 5 PER CENT TO 30 PER CENT FOR UNSCHEDULED LOW BACK DISABILITY, CONTENDING HIS DISABILITY EXCEEDS THAT AWARDED BASED ON HIS LOSS OF EARNINGS.

LOSS OF EARNING CAPACITY IS NOT CALCULATED BY A MECHANISTIC COMPARISON OF THE WAGES EARNED IMMEDIATELY BEFORE AND IMMEDIATELY AFTER THE INJURY. UNSCHEDULED DISABILITY IS DETERMINED BY COMPARING THE WORKMAN'S EARNING CAPACITY BEFORE THE INJURY WITH THE EARNING CAPACITY AFTER THE INJURY MAKING THE BEST POSSIBLE ESTIMATE OF THE FUTURE ABILITY TO EARN BASED UPON ALL AVAILABLE EVIDENCE.

IN MAKING AN INDEPENDENT APPRAISAL OF THE COMPLETE RECORD ON A CASE BY CASE BASIS, AS INVITED BY COUNSEL, THE BOARD, ON REVIEW, CONCURS WITH THE REFEREE THAT CLAIMANT IS ENTITLED TO PERMANENT PARTIAL DISABILITY EQUAL TO 30 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 6, 1974 IS AFFIRMED.

WCB CASE NO. 73-3141 JANUARY 22, 1975

DESSIE RUSSELL, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
RAY MIZE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES A CLAIMANT, WHO, PURSUANT TO TWO DETERMINATIONS AND A REFEREE'S ORDER, HAS RECEIVED PERMANENT PARTIAL DISABILITY OF 25 PER CENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED DISABILITY EQUAL TO 80 DEGREES. CLAIMANT HAS REQUESTED BOARD REVIEW CONTENDING SHE IS ENTITLED TO AN AWARD OF PERMANENT TOTAL DISABILITY OR, ALTERNATIVELY, A GREATER AWARD OF PERMANENT PARTIAL DISABILITY THAN ALLOWED BY THE REFEREE.

ON NOVEMBER 22, 1971, CLAIMANT SUFFERED A COMPENSABLE INDUSTRIAL INJURY WHEN SHE SUSTAINED A LUMBOSACRAL STRAIN SUPERIMPOSED UPON A CONGENITAL DEFECT OF THE LOW BACK WHILE WORKING AS A NURSE'S AIDE AT EMMANUEL HOSPITAL. DR. KIEST, ON FEBRUARY 26, 1973, PERFORMED A BILATERAL TRANSVERSE SPINAL FUSION. THE FIRST POSTOPERATIVE REPORT INDICATED EARLY BONE FORMATION OF A SATISFACTORY FUSION. IN MAY, 1974, DR. KIEST REPORTED -

> '... SHE HAS NORMAL MOTION OF HER BACK. THE MUSCLES ARE NOT IN SPASM AND THERE IS NO GUARDING. SHE HAS NORMAL REFLEXES IN HER LOWER EXTREMITIES, NO ATROPHY OF HER CALVES TO MEASUREMENT, NO HYPESTHESIAS.
>
> I BELIEVE THIS PATIENT'S CONDITION IS MEDICALLY STATIONARY AND ADDITIONAL MEDICAL TREATMENT IS NOT INDICATED.'

THE MEDICAL REPORTS SUBMITTED BY THE TREATING PHYSICIAN, DR. KIEST, SIMPLY DO NOT REFLECT CLAIMANT TO HAVE A LARGE DEGREE OF PHYSICAL DISABILITY. THE BOARD AGREES THAT CLAIMANT SHOULD NOT RETURN TO EMPLOYMENT AS A NURSE'S AIDE, WHICH IS DEMANDING WORK EVEN FOR SOMEONE WITH A PERFECT BACK.

WHEN THE CLAIMANT WAS EVALUATED AT THE BOARD'S DISABILITY PREVENTION DIVISION, SHE WAS FOUND BY THE INTERVIEWERS, INCLUDING A CLINICAL PSYCHOLOGIST, TO BE VERY PERSONABLE, VERY COMMUNICATIVE, AND WELL MOTIVATED TO RETURN TO EMPLOYMENT. SHE APPEARED TO RELATE WELL TO PEOPLE. WITH ALL THESE ATTRIBUTES, THE BOARD IS OF THE

OPINION THAT THE BEST THING TO DO FOR THIS LADY IS TO GET SOME TYPE OF PROGRAM OF RETRAINING GOING FOR HER. AT ONE POINT, SHE INDICATED INTEREST IN MOTEL MANAGEMENT. HAVING PREVIOUSLY HAD 12 YEARS EXPERIENCE IN THIS FIELD, IT WOULD LOGICALLY APPEAR THIS WOULD BE A REASONABLE COURSE TO FOLLOW.

FOR THE REASONS STATED, THE BOARD FINDS THAT CLAIMANT HAS BEEN ADEQUATELY COMPENSATED FOR THE RESIDUAL DISABILITY SHE HAS SUSTAINED.

ORDER

THE ORDER OF THE REFEREE, DATED AUGUST 2, 1974, IS AFFIRMED.

WCB CASE NO 74-1016 JANUARY 23, 1975

LAWRENCE E. FISH, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MCMENAMIN, JONES, JOSEPH AND LANG, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON, MOORE AND SLOAN.

THIS MATTER INVOLVES A DENIED CLAIM. THE REFEREE ORDERED THE EMPLOYER TO ACCEPT THE CLAIM AND PAY THE BENEFICIARIES THE BENEFITS PROVIDED BY THE WORKMEN'S COMPENSATION LAW. THE EMPLOYER REQUESTS BOARD REVIEW.

CLAIMANT, NOW DECEASED, WAS A 47 YEAR OLD TRUCK DRIVER ON OCTOBER 1, 1971, WHEN HE RECEIVED A COMPENSABLE STOMACH INJURY. THE INJURY OCCURRED WHEN A HEAVY TRUCK TIRE FELL AGAINST HIS ABDOMEN RENDERING HIM UNCONSCIOUS AND TRAUMATIZING THE DUODENUM AND PANCREAS AS WELL AS CAUSING SOME BLEEDING FROM THE NAVEL. AFTER MEDICAL TREATMENT AND A FEW DAYS TIME LOSS, HE RETURNED TO WORK AND THE CLAIM WAS CLOSED WITHOUT PERMANENT DISABILITY.

APPROXIMATELY TWO MONTHS AFTER THE INDUSTRIAL INJURY, CLAIMANT BEGAN DEVELOPING NAUSEA AND, OVER THE NEXT YEAR, LOST SUBSTANTIAL WEIGHT. FINALLY, IN MARCH, 1973, HE WAS HOSPITALIZED AND OLD HEMATOMA IN THE DUODENUM WAS FOUND AND DRAINED. WHEN HIS GASTROINTESTINAL COMPLAINTS CONTINUED THEREAFTER, AN EMOTIONAL BASIS WAS SUSPECTED. THIS PROVED TO BE UNFOUNDED AND HIS CONDITION CONTINUED TO GROW WORSE.

FINALLY, IN OCTOBER OF 1973, A SECOND SURGERY WAS PERFORMED DURING WHICH IT WAS DISCOVERED THAT CLAIMANT'S CONTINUING DISABILITY WAS CAUSED BY CANCER OF THE PANCREAS WHICH HAD SO METASTACIZED AS TO BE INOPERABLE. THE EMPLOYER DENIED THAT THE CLAIMANT'S PANCREATIC CANCER WAS EITHER CAUSED OR AGGRAVATED BY THE INDUSTRIAL INJURY.

THE MEDICAL EVIDENCE AS TO WHETHER OR NOT THE INDUSTRIAL INJURY CAUSED THE SPREADING OF A PREEXISTING CANCER IN THE PANCREAS IS IN CONFLICT. THE ATTENDING DOCTOR RELATED EITHER THE INITIATION OR AGGRAVATION OF A PREEXISTING CANCER TO THE INDUSTRIAL INJURY. THE EMPLOYER'S MEDICAL EXPERTS WHO EXAMINED ALL OF THE MEDICAL RECORDS DID NOT RELATE THE INITIATION OR SPREAD OF THE CANCER TO THE INDUSTRIAL INJURY.

THE REFEREE CONCLUDED THAT THE BLOW TO CLAIMANT'S ABDOMEN DID NOT PRECIPITATE THE FORMATION OF THE CANCER BUT HE WAS PERSUADED THAT THE INJURY PROBABLY HASTENED AND AGGRAVATED ITS SPREAD TO OTHER PARTS OF THE CLAIMANT'S BODY. ON THIS BASIS, HE RULED THE BENEFICIARIES WERE ENTITLED TO COMPENSATION.

A MAJORITY OF THE BOARD CONCUR WITH THE REFEREE'S FINDING THAT THE BLOW HASTENED THE SPREAD OF THE CANCER. IN ADDITION, IT APPEARS THAT THE INDUSTRIAL INJURY SO MASKED THE CAUSE OF CLAIMANT'S CONTINUING DISTRESS AND CONFUSED THE PHYSICIAN'S INTERPRETATION OF THE SIGNS EXHIBITED THAT THEY FAILED TO TIMELY PERCEIVE THAT CLAIMANT WAS SUFFERING FROM CANCER UNTIL IT WAS TOO LATE. FOR THESE REASONS, THE REFEREE'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED AUGUST 30, 1974, IS 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.

COMMISSIONER WILSON DISSENTS AS FOLLOWS -

ALL OF THE MEDICAL EVIDENCE IN THIS CASE IS IN AGREEMENT ON THREE IMPORTANT POINTS -

(1) THERE IS NO DATA INDICATING THAT CARCINOMA DID OR DID NOT EXIST AT THE TIME OF THE ACCIDENT,

(2) THAT MEDICAL SCIENCE DOES NO KNOW WHAT CAUSES CARCINOMA OF THE PANCREAS, AND

(3) THERE IS NO MEDICAL EVIDENCE TO EXTABLISH THAT TRAUMA CAUSES CARCINOMA.

SINCE WE DO NOT (UNDERSCORED) KNOW THAT CARCINOMA EXISTED AT THE TIME OF INJURY, IT IS IMPOSSIBLE FOR ME TO AGREE THAT THE INJURY EXACERBATED OR SPREAD THE CANCEROUS CONDITION.

DRS. GOLDMAN AND MELNYK ARE SPECIALISTS IN THE FIELD OF GASTROENTEROLOGY AND THEIR OPINIONS ARE ENTITLED TO GREATER WEIGHT IN THIS CASE. I AM CONSTRAINED TO AGREE WITH THE OPINION OF DR. GOLDMAN ON PAGE 10, LINE 6, OF HIS TESTIMONY IN WHICH HE CONCLUDES -

> 'THE EXPECTED COURSE OF CARCINOMA OF THE PANCREAS WOULD BE EXACTLY AS OCCURRED IN MR. FISH WITHOUT THE TRAUMA.'

I CAN AGREE WITH THE REFEREE'S STATEMENT THAT -

> 'THE SEQUENCE OF EVENTS STRONGLY SUGGESTS TO THE LAY MIND AN UNBROKEN CAUSAL CHAIN,' AND THAT 'THE PROBABILITIES OF AN INJURY OF THIS SEVERITY AGGRAVATING THE SPREAD OF THE PANCREASTIC CARCINOMA WOULD, TO THE LAY MIND, APPEAR OVERWHELMING.'

THE DECISION IN THIS MATTER CANNOT BE BASED ON WHAT IS 'STRONGLY SUGGESTED,' OR WHAT 'APPEARS OVERWHELMING' TO A LAY MIND, WHEN THE MEDICAL EXPERTS SAY TO THE LAY PERSON, AS THEY HAVE IN THIS CASE, THAT THEIR IMPRESSIONS OR APPEARANCES RUN COUNTER TO ALL OF THE RESEARCH AND KNOWLEDGE OF THE MEDICAL PROFESSION.

-S- M. KEITH WILSON,
CHAIRMAN

WCB CASE NO. 74-1457 JANUARY 23, 1975

WALTER EVANS, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH GRANTED CLAIMANT PERMANENT PARTIAL DISABILITY OF 20 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY, CONTENDING HE IS ENTITLED TO A GREATER AWARD FOR PERMANENT DISABILITY.

CLAIMANT, A 58 YEAR OLD SAWYER, WAS INJURED ON OCTOBER 19, 1973, WHEN HE SLIPPED AND FELL ABOUT EIGHT FEET WHILE STRAIGHTENING LUMBER ON A CHAIN. HE SUFFERED HEADACHES AND SHOULDER, NECK AND BACK PAIN. CLAIMANT UNDERWENT A LONG SERIES OF CHIROPRACTIC TREATMENTS THAT GAVE HIM LITTLE PHYSICAL BENEFIT. EXAMINATION BY DR. NATHAN SHLIM ON FEBRUARY 19, 1974, INDICATED THERE WERE MANY SUBJECTIVE, BUT FEW OBJECTIVE FINDINGS.

FOLLOWING HIS INJURY, CLAIMANT RETURNED TO A LIGHTER JOB AND PROGRESSED TO HIGHER EARNINGS THAN ON HIS PREVIOUS JOB. ANY LOSS OF EARNINGS CLAIMANT HAS SUBSEQUENTLY SUSTAINED APPEARS DUE TO ECONOMIC CONDITIONS RATHER THAN TO HIS PHYSICAL DISABILITY.

THE BOARD, ON REVIEW, FINDS CLAIMANT HAS NOT SUSTAINED PERMANENT RESIDUAL DISABILITY IN EXCESS OF THAT AWARDED BY THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED SEPTEMBER 17, 1974, IS AFFIRMED.

WCB CASE NO. 73-2681 JANUARY 23, 1975

JAMES LANGEHENNIG, CLAIMANT
FRED P. EASON, CLAIMANT'S ATTY.
ROBERT COWLING, 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 WHICH AWARDED HIM 32 DEGREES OR 10 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY, CONTENDING HIS DISABILITY EXCEEDS THAT AWARDED.

CLAIMANT, A 39 YEAR OLD WORKMAN WITH PREEXISTING PERMANENT LOW BACK DISABILITY FOR WHICH HE WAS GRANTED 20 PER CENT UNSCHEDULED DISABILITY, SUFFERED A SECOND LOW BACK INJURY ON DECEMBER 7, 1971, WHILE WORKING AS A NURSERYMAN FOR OREGON PROPAGATING CO. FOLLOWING A PERIOD OF CHIROPRACTIC TREATMENT, HE WAS RELEASED FOR WORK ON DECEMBER 28, 1971, AND HE RETURNED TO WORK AS A NURSERYMAN WHERE HE REMAINED UNTIL HE QUIT ON JULY 24, 1972, FOLLOWING CRITICISM OF HIS SLOWNESS ON THE JOB.

HE FOUND WORK AS A JANITOR BUT WAS LAID OFF FOR A TIME WHEN THE JANITORIAL SERVICE LOST A CONTRACT. WHILE HE WAS LAID OFF, HE WAS SEEN FOR CLAIM CLOSURE EXAMINATION BY DR. ANTHONY J. SMITH, THE ORTHOPEDIST WHO HAD TREATED HIM FOR HIS PRIOR INJURY.

DR. SMITH NOTED HIS THEN LOW LEVEL OF SYMPTOMS WAS PROBABLY DUE TO NOT HAVING WORKED FOR A MONTH. HE CONCLUDED THAT CLAIMANT HAD CHRONIC LUMBOSACRAL PAIN DUE TO DEGENERATIVE CHANGES AGGRAVATED BY THE INDUSTRIAL INJURIES AND THAT HE WAS MORE LIMITED IN MOTION AND HAD MORE PAIN THAN FOLLOWING THE FIRST INJURY.

THE EVALUATION DIVISION GRANTED CLAIMANT 10 PER CENT UNSCHEDULED DISABILITY AND THE REFEREE AFFIRMED. OUR DE NOVO REVIEW OF THE EVIDENCE LEADS US TO CONCLUDE THAT CLAIMANT'S UNSCHEDULED PERMANENT DISABILITY HAS BEEN INCREASED MORE THAN 10 PER CENT DUE TO THE MOST RECENT INJURY. ALTHOUGH HE IS CAPABLE OF MORE STRENUOUS WORK THAN HIS PRESENT EMPLOYMENT, HE IS LIMITED TO RELATIVELY LIGHT WORK. DR. SMITH'S REPORT ALSO SUPPORTS THE CONCLUSION THAT HE IS SIGNIFICANTLY MORE DISABLED NOW THAN FOLLOWING HIS FIRST BACK INJURY.

WE CONCLUDE CLAIMANT SHOULD RECEIVE AN ADDITIONAL 32 DEGREES FOR UNSCHEDULED DISABILITY MAKING A TOTAL OF 64 DEGREES FOR THE INJURY OF DECEMBER 7, 1971.

ORDER

THE ORDER OF THE REFEREE IS MODIFIED TO GRANT CLAIMANT AN ADDITIONAL 32 DEGREES FOR PERMANENT DISABILITY MAKING A TOTAL AWARD OF 64 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED DISABILITY RESULTING FROM THE INJURY OF DECEMBER 7, 1971.

CLAIMANT'S COUNSEL IS TO RECEIVE AS A FEE 25 PER CENT OF THE INCREASE IN COMPENSATION GRANTED BY THIS ORDER BUT IN NO EVENT SHALL THE FEE EXCEED 2,000 DOLLARS.

WCB CASE NO. 73-3245 JANUARY 23, 1975

LELAND C. ZIEBARTH, CLAIMANT

A. C. ROLL, CLAIMANT'S ATTY.
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER HAS REQUESTED BOARD REVIEW OF A REFEREE'S OPINION AND ORDER WHICH FOUND CLAIMANT HAD SUSTAINED A COMPENSABLE INDUSTRIAL INJURY AND ORDERED THE ACCEPTANCE OF THE CLAIM BY THE EMPLOYER.

THE WORKMAN IN THIS MATTER SUSTAINED AN INJURY TO HIS LEFT SHOULDER ON AUGUST 29, 1973, WHILE TURNING SHEETS OF PLYWOOD. A CO-WORKER VERIFIED CLAIMANT HAD INFORMED HIM OF THE INJURY IMMEDIATELY AFTER IT HAPPENED. CLAIMANT SAW DR. HANFORD THE NEXT DAY, AUGUST 30TH.

THE EMPLOYER DENIED THE CLAIM BASED ON A SUSPICION THAT CLAIMANT HAD SUSTAINED HIS INJURY IN AN AUTOMOBILE ACCIDENT IN WHICH HE WAS INVOLVED ON THE PRIOR WEEKEND. CLAIMANT TESTIFIED HE HAD NOT INJURED HIS SHOULDER IN THE AUTOMOBILE ACCIDENT AND THIS TESTIMONY IS SUPPORTED BY RECORDS OF THE HOSPITAL WHERE HE WAS EXAMINED AFTER THE ACCIDENT AND BY DR. HANFORD'S REPORT.

AT THE HEARING, CLAIMANT RECITED ERRONEOUS DATES AND SEQUENCE OF OCCURRENCES, HOWEVER, THIS IS LIKELY DUE TO THE DIMMING OF MEMORY BY THE PASSAGE OF TIME AND THERE APPEARS NO REASON TO QUESTION CLAIMANT'S HONESTY. WITH A MEDICAL OPINION THAT CLAIMANT'S CONDITION WAS CAUSED BY WORK RELATED ACTIVITY RATHER THAN BY A TRAUMATIC IMPACT, AND NO CONTRARY MEDICAL OPINION, THE BOARD CONCURS WITH THE REFEREE AND FINDS CLAIMANT HAS SUSTAINED A COMPENSABLE INDUSTRIAL INJURY.

ORDER

THE ORDER OF THE REFEREE, DATED SEPTEMBER 10, 1974, AND HIS AMENDED ORDER, DATED SEPTEMBER 18, 1974, ARE AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 100 DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 73-2947 JANUARY 24, 1975

JOHN R. MCCREARY, CLAIMANT
COONS, MALAGON AND COLE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
CROSS-APPEAL BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 80 PER CENT (153.6 DEGREES) SCHEDULED LOSS OF LEFT ARM AND NO UNSCHEDULED DISABILITY. THE REFEREE AFFIRMED THE SCHEDULED LEFT ARM AWARD BUT AWARDED CLAIMANT 30 PER CENT (96 DEGREES) UNSCHEDULED LEFT SHOULDER DISABILITY. THE CLAIMANT REQUESTS BOARD REVIEW CONTENDING HE IS PERMANENTLY TOTALLY DISABLED AND THE STATE ACCIDENT INSURANCE FUND CROSS-APPEALS CONTENDING CLAIMANT SHOULD NOT RECEIVE THE UNSCHEDULED DISABILITY AWARD.

CLAIMANT, A 54 YEAR OLD TRUCK DRIVER, RECEIVED A CRUSHING INJURY TO HIS LEFT HAND, MAY 30, 1972, AND SUBSEQUENTLY DEVELOPED A SEVERE SHOULDER-ARM-HAND SYNDROME. CLAIMANT HAD A PREVIOUS INDUSTRIAL INJURY IN 1955 FOR WHICH HE WAS AWARDED 80 PER CENT LOSS OF AN ARM BY SEPARATION FOR UNSCHEDULED DISABILITY TO THE NECK AND LOW BACK.

CLAIMANT HAD OBVIOUSLY SUBSTANTIALLY RECOVERED FROM THE 1955 INDUSTRIAL INJURY INASMUCH AS HE WORKED AS A TRUCK DRIVER FOR SEVERAL YEARS PRIOR TO THE CURRENT INDUSTRIAL INJURY.

THE BOARD CONCURS WITH THE OPINION AND FINDING OF THE REFEREE THAT THE CLAIMANT IS NOT PRIMA FACIE PERMANENTLY TOTALLY DISABLED PHYSICALLY. THE BOARD ALSO CONCURS WITH THE FINDING OF THE REFEREE THAT CLAIMANT HAS FAILED TO PROVE MOTIVATION TO RETURN TO GAINFUL OCCUPATION AND THUS, CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED UNDER THE 'ODD-LOT' DOCTRINE.

THE BOARD DOES, HOWEVER, CONCLUDE THAT THE CLAIMANT'S PERMANENT UNSCHEDULED DISABILITY IS EQUAL TO 50 PER CENT (160 DEGREES) WHICH IS AN INCREASE OF 20 PER CENT (64 DEGREES) OVER THAT AWARDED BY THE REFEREE. THE REFEREE'S ORDER SHOULD BE MODIFIED ACCORDINGLY.

ORDER

THE ORDER OF THE REFEREE IS MODIFIED TO GRANT CLAIMANT 20 PER CENT (64 DEGREES), MAKING A TOTAL OF 50 PER CENT OR 160 DEGREES FOR UNSCHEDULED LEFT SHOULDER DISABILITY.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE 25 PER CENT OF THE INCREASE IN COMPENSATION ASSOCIATED WITH THIS AWARD WHICH COMBINED WITH FEES ATTRIBUTABLE TO THE ORDER OF THE REFEREE SHALL NOT EXCEED 2,000 DOLLARS.

WCB CASE NO. 74-2060 JANUARY 24, 1975

DONALD KOSANKE, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF A REFEREE'S ORDER WHICH INCREASED HIS PERMANENT PARTIAL DISABILITY AWARD FROM 25 PER CENT TO 50 PER CENT UNSCHEDULED LOW BACK DISABILITY, CONTENDING HE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT IS A 50 YEAR OLD MAN WHO SPENT HIS WORKING LIFE AS A TRUCK DRIVER PRIOR TO SUSTAINING A COMPENSABLE LOW BACK INJURY IN MAY, 1973. THERE WAS NO EVIDENCE OF DISC HERNIATION AND CLAIMANT WAS TREATED CONSERVATIVELY. HIS DOCTOR HAS RECOMMENDED A JOB CHANGE TO LIGHTER EMPLOYMENT.

CLAIMANT HAS NOT FOUND LIGHTER WORK AND HIS ATTORNEY HAS EMPHASIZED THOSE FACTORS WHICH MAKE IT DIFFICULT TO RETURN TO GAINFUL AND SUITABLE EMPLOYMENT. HE DID NOT, HOWEVER, EMPHASIZE WHAT APPEARS TO BE THE KEY FACTOR IN CLAIMANT'S CONTINUING UNEMPLOYMENT.

THE BOARD, ON REVIEW, CONCLUDES CLAIMANT IS NOT PHYSICALLY DISABLED ENOUGH TO BE CONSIDERED PRIMA FACIE AS 'ODD-LOT' WORKMAN AND HIS MOTIVATION MUST BE CONSIDERED. WHEN CLAIMANT STATES HE WOULD NOT TAKE A JOB PAYING 2 DOLLARS PER HOUR, BUT WOULD HAVE TO EARN AT LEAST 3.50 TO 4 DOLLARS PER HOUR, THE BOARD CANNOT IGNORE THE ROLE PLAYED BY POOR MOTIVATION. THE BOARD IS OF THE OPINION CLAIMANT DOES NOT HAVE DISABILITY IN EXCESS OF 50 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY. THE REFEREE'S ORDER SHOULD THEREFORE BE AFFIRMED.

ORDER

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

WCB CASE NO. 73-3885 JANUARY 24, 1975

FRED ESTABROOK, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER HAS REQUESTED BOARD REVIEW OF A REFEREE'S OPINION AND ORDER WHICH FOUND CLAIMANT'S THORACIC OUTLET SYNDROME TO BE CAUSALLY RELATED TO HIS COMPENSABLE INDUSTRIAL INJURY OF OCTOBER 1, 1968, IN WHICH A FALLING STACK OF PLYWOOD STRUCK HIM ON THE RIGHT SHOULDER AND RIGHT SIDE OF THE BODY GENERALLY.

DR. PHIL GERSTNER, A GENERAL SURGEON, WHO FOLLOWING CONSERVATIVE TREATMENT PERFORMED SURGERY TO RELIEVE THE DISTRESS ON THE RIGHT FROM THAT CONDITION, EXPRESSED AS HIS EXPERT MEDICAL OPINION THAT CLAIMANT'S CONDITION WAS COMPENSABLY RELATED, WITHIN REASONABLE MEDICAL PROBABILITY, TO THE INJURY SUSTAINED OCTOBER 1, 1968. THERE IS NO EXPERT OPINION CONTROVERTING THIS OPINION. THE MEDICAL OPINION IS CONSISTENT WITH THE EVIDENCE OF CLAIMANT'S PERSISTENT SYMPTOMS AND IS NOT INCONSISTENT WITH ANY OTHER EVIDENCE CONTAINED IN THE RECORD.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDINGS MADE BY THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED AUGUST 19, 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. 74-1812 JANUARY 24, 1975

ANN M. TEWALT, CLAIMANT
DONALD R. WILSON, CLAIMANT'S ATTY.
DARYLL E. KLEIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IN THIS CASE IS THE EXTENT OF DISABILITY. PURSUANT TO A DETERMINATION ORDER, CLAIMANT RECEIVED PERMANENT PARTIAL DISABILITY OF 64 DEGREES FOR UNSCHEDULED BACK DISABILITY. THE REFEREE FOUND CLAIMANT TO BE ENTITLED TO AN AWARD OF PERMANENT TOTAL DISABILITY AND THE EMPLOYER HAS APPEALED THAT DECISION.

WE HAVE EXAMINED THE RECORD AND CONSIDERED THE BRIEFS OF THE PARTIES SUBMITTED ON REVIEW. HAVING DONE SO, WE ARE PERSUADED THAT CLAIMANT IS, AS A PRACTICAL MATTER, NO LONGER EMPLOYABLE AND THAT THE RESIDUALS OF HER COMPENSABLE INJURY HAVE MATERIALLY CONTRIBUTED TO HER STATUS.

THE REFEREE'S ORDER SHOULD BE ADOPTED AND AFFIRMED AND THE CLAIMANT'S ATTORNEY SHOULD RECEIVE A FEE IN THE SUM OF 350 DOLLARS, PAYABLE BY THE EMPLOYER, FOR HIS SERVICES ON THIS REVIEW.

IT IS SO ORDERED.

WCB CASE NO. 74-794 JANUARY 24, 1975

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE INVOLVED IS WHETHER OR NOT CLAIMANT WAS AN EMPLOYEE OF THE WELFARE DIVISION AND WHETHER OR NOT ORS 656.027(1) WHICH EXEMPTS 'DOMESTIC SERVANTS' FROM COVERAGE UNDER THE WORKMEN'S COMPENSATION ACT IS APPLICABLE UNDER THE FACTS OF THIS CASE. THE STATE ACCIDENT INSURANCE FUND DENIED CLAIMANT'S CLAIM. THE REFEREE ORDERED THE STATE ACCIDENT INSURANCE FUND TO ACCEPT THE CLAIM AND THE STATE ACCIDENT INSURANCE FUND NOW REQUESTS BOARD REVIEW.

A COLLATERAL ISSUE CONCERNS THE ADMISSABILITY OF CERTAIN ALLEGEDLY HEARSAY TESTIMONY BY THE CLAIMANT. FOR THE REASONS EXPRESSED IN THE RESPONDENT'S BRIEF, WE CONCLUDE THE TESTIMONY IS ADMISSABLE.

CLAIMANT, A 60 YEAR OLD NURSES AIDE, WAS HIRED BY THE PUBLIC WELFARE DIVISION TO TAKE CARE OF WELFARE RECIPIENTS IN THEIR HOME. THE WELFARE CASE WORKER DESIGNATED THE HOURS OF WORK, DAY OFF, THE RATE OF PAY, AND THE DUTIES CLAIMANT WAS TO PERFORM. THE STATE OF OREGON FILED W-2 FORMS WITH THE INTERNAL REVENUE SERVICE AND HER PAY CAME FROM THE PUBLIC WELFARE DIVISION. THESE FACTS LEAD THE BOARD TO CONCUR WITH THE FINDING OF THE REFEREE THAT CLAIMANT WAS AN EMPLOYEE OF THE WELFARE DIVISION.

THE BOARD ALSO CONCURS WITH THE OPINION OF THE REFEREE THAT THE STATE OF OREGON WAS NOT INTENDED TO BE EXEMPT FROM THE WORKMEN'S COMPENSATION LAW UNDER ORS 656.027(1), UNDER THE 'DOMESTIC SERVANT' EXCEPTION, UNDER THE FACTS OF THIS CASE.

ORDER

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

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 400 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO 74—2776 JANUARY 24, 1975

KEITH W. FLORA, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH REQUIRED THE EMPLOYER TO ACCEPT CLAIMANT'S CLAIM FOR INCREASED COMPENSATION ON ACCOUNT OF AGGRAVATION.

CLAIMANT SUSTAINED A COMPENSABLE BACK INJURY JULY 31, 1973. HIS CLAIM WAS ACCEPTED AND HE RECEIVED PROLONGED CONSERVATIVE TREATMENT BY HERBERT FREEMAN, D.C. A DETERMINATION ORDER ISSUED JUNE 25, 1974, ALLOWED 32 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY.

ON JULY 13, 1974, CLAIMANT AGAIN SAW DR. FREEMAN COMPLAINING OF SEVERE BACK PAIN AND HEADACHES. DR. FREEMAN UNEQUIVOCALLY INDICATED CLAIMANT'S CONDITION HAD BECOME AGGRAVATED SINCE THE LAST AWARD OF COMPENSATION. THE EMPLOYER'S INSURANCE CARRIER DENIED CLAIMANT'S CLAIM FOR BENEFITS ON ACCOUNT OF AGGRAVATION.

AT HEARING, THE REFEREE FOUND THAT THE MEDICAL REPORTS SUBMITTED BY DR. FREEMAN CONSTITUTED SUFFICIENT EVIDENCE TO COMPLY WITH THE REQUIREMENTS OF ORS 656.271 AND THE BOARD CONCURS. THE BOARD ALSO FINDS THE FILMS ATTEMPTED TO BE INTRODUCED WERE NOT RELEVANT SINCE THEY WERE TAKEN SUBSEQUENT TO THE FURTHER TREATMENT ADMINISTERED TO CLAIMANT BY DR. FREEMAN. ALSO IRRELEVANT WAS THE FACT THAT CLAIMANT HAD ACCEPTED A LUMP SUM PAYMENT. THE INFERENCE SUGGESTED BY THE EMPLOYER OF FAVOR GIVEN TO CLAIMANT'S CASE BY THE REFEREE IS NOT SUPPORTED BY ANY EVIDENCE. WE CONCLUDE THE REFEREE'S ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

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

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 300 DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74—3770 JANUARY 24, 1975

WILMA E. LARSON, CLAIMANT

ORDER OF DISMISSAL

It appearing to the Board from the stipulation of counsel hereafter endorsed that the parties have settled their differences raised by the request for review, said settlement in part being based on performance by State Accident Insurance Fund and in part upon claimant's counsel's agreement to pay the sum of 375 dollars in full and final payment of the 750 dollars attorney fee awarded by referee Page Pferdner's order of November 5, 1974, now therefore

It is ordered that this case and cause be and the same hereby is dismissed.

WCB CASE NO. 73—1857 JANUARY 24, 1975

DAVID MACKEY, CLAIMANT

Peterson, Chaivoe and Peterson, claimant's attys.
Department of Justice, defense atty.
Request for review by claimant

Reviewed by Commissioners Wilson and Moore.

This matter involves the issue of whether a now 44 year old logger, who was compensably injured November 5, 1969, has incurred a compensable aggravation of that injury since March 24, 1972. His claim for increased compensation on account of aggravation was denied by the State Accident Insurance Fund and the denial was affirmed by the referee. Although his order did authorize payment of medical bills under ORS 656.245, claimant has requested Board review of the referee's order.

Claimant has been receiving treatment and-or therapy three times a week from Dr. Rinehart since December, 1972. Dr. Rinehart is the only doctor who specifically states the claimant's condition has become aggravated and this is based largely on what claimant has related to him.

A host of other doctors who have evaluated claimant's multiplicity of complaints are unable to relate his symptoms to the injury, nor do they find his condition to be worsened since claim closure. The Board, on review, is persuaded by the opinions expressed by Drs. Davis and Kimberly that there has been no worsening of his condition. We conclude the referee's solution is just and would affirm and adopt his order as the order of the Board.

ORDER

The order of the referee, denying claimant's claim of aggravation, but allowing medical services pursuant to ORS 656.245, dated June 18, 1974, is affirmed.

WCB CASE NO 73—4047 JANUARY 27, 1975

EUGENE GUINN, CLAIMANT
WILLIAM CARTER, CLAIMANT'S ATTY.
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 HELD CLAIMANT'S RHEUMATOID ARTHRITIS CONDITION WAS COMPENSABLY RELATED TO HIS INDUSTRIAL INJURY OF JANUARY 29, 1972. THE FUND ALSO CONTESTS THE REFEREE'S AWARDS FOR PERMANENT DISABILITY EQUALLING 20 PER CENT OF THE RIGHT LEG, 20 PER CENT OF THE LEFT LEG, AND AN ADDITIONAL AWARD OF 35 PER CENT LOSS OF THE WORKMAN, MAKING A TOTAL OF 60 PER CENT FOR UNSCHEDULED DISABILITY.

WE HAVE EXAMINED THE RECORD DE NOVO AND HAVE CONSIDERED THE BRIEFS SUBMITTED ON REVIEW. HAVING DONE SO, WE NOW CONCUR WITH THE REFEREE'S OPINION THAT CLAIMANT'S RHEUMATOID ARTHRITIS CONDITION IS COMPENSABLY RELATED TO HIS INDUSTRIAL INJURY.

WITH RESPECT TO THE REFEREE'S FINDING OF THE EXTENT OF PERMANENT DISABILITY, THE BOARD IS OF THE OPINION THE AWARD IS AMPLE CONSIDERING THE LEVEL OF CLAIMANT'S MOTIVATION. IF THE FUND HAD BEEN MORE PROMPT AND AGGRESSIVE IN INITIATING THE VOCATIONAL COUNSELING AND RESTRAINING RECOMMENDED BY DR. HICKMAN, PERHAPS CLAIMANT'S VOCATIONAL ADJUSTMENT PROBLEMS COULD HAVE BEEN MINIMIZED AND HIS RESIDUAL PERMANENT DISABILITY REDUCED. WE THINK THAT UNDER THESE CIRCUMSTANCES THE REFEREE'S ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

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

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 300 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

SAIF CLAIM NO. WC 711272 JANUARY 29, 1975

ROY M. GARRETT, CLAIMANT
DON WILSON, CLAIMANT'S ATTY.
RICHARD L. LANG, DEFENSE ATTY.

ON JANUARY 9, 1975, A REFEREE SUBMITTED TO THE BOARD THE RECORD MADE AND HIS RECOMMENDED SOLUTION TO A DISPUTE BETWEEN CLAIMANT AND HIS EMPLOYER'S WORKMEN'S COMPENSATION CARRIER OVER THE DISTRIBUTION OF THE PROCEEDS OF A THIRD PARTY ACTION.

THE BOARD HAS CONSIDERED HIS RECOMMENDATIONS AND THE POSITIONS OF THE PARTIES AND NOW CONCLUDES THE REFEREE'S FINDINGS

AND RECOMMENDATIONS SHOULD BE ADOPTED AND THE PARTIES SHOULD COMPLY FORTHWITH WITH SAID RECOMMENDATIONS AS THE ORDER OF THE BOARD.

IT IS SO ORDERED.

WCB CASE NO. 74-235 AND 74-418 — JANUARY 30, 1975

DONALD C. SMITH, CLAIMANT

ALLEN G. OWEN, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

BOTH THE STATE ACCIDENT INSURANCE FUND AND THE CLAIMANT HAVE WITHDRAWN THEIR RESPECTIVE REQUESTS FOR BOARD REVIEW OF A REFEREE'S ORDER DATED OCTOBER 22, 1974. THE REQUESTS FOR REVIEW SHOULD THEREFORE BE DISMISSED AND THE REFEREE'S ORDER SHOULD BE DECLARED FINAL BY OPERATION OF LAW.

IT IS SO ORDERED.

SAIF CLAIM NO. FB 81210 — JANUARY 30, 1975

JEANETTE FARAH, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.

THIS MATTER INVOLVES A CLAIMANT WHO RECEIVED A COMPENSABLE BACK INJURY JUNE 8, 1964 RECEIVING A PERMANENT PARTIAL DISABILITY AWARD OF 30 PER CENT LOSS FUNCTION OF AN ARM FOR UNSCHEDULED DISABILITY.

THE CLAIMANT NOW SEEKS THE EXERCISE OF THE BOARD'S OWN MOTION JURISDICTION PURSUANT TO ORS 656.278, CLAIMING SHE HAS SUFFERED AN AGGRAVATION OF THIS INJURY AND IS ENTITLED TO FURTHER MEDICAL CARE, TREATMENT AND DISABILITY BENEFITS.

THE EVIDENCE BEFORE THE BOARD IS NOT SUFFICIENT TO DETERMINE THE MERITS OF THE ISSUE. THE MATTER IS THEREFORE REFERRED TO THE HEARINGS DIVISION WITH INSTRUCTIONS TO SET A HEARING AND TO TAKE EVIDENCE UPON THE ISSUE OF THE EXTENT OF THE CLAIMANT'S DISABILITY ATTRIBUTABLE TO THE 1964 INJURY. UPON CONCLUSION OF THE HEARING, THE REFEREE SHALL CAUSE A TRANSCRIPT OF THE PROCEEDINGS TO BE PREPARED AND SUBMITTED TO THE BOARD, TOGETHER WITH HIS RECOMMENDATION AS TO THE ISSUES.

NO NOTICE OF APPEAL IS DEEMED APPLICABLE.

SAIF CLAIM NO. B 101901 JANUARY 30, 1975

WILLIAM H. ZUNCK, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER, CLAIMANT'S ATTYS.

THIS MATTER INVOLVES A COMPENSABLE INJURY SUSTAINED BY CLAIMANT JANUARY 9, 1965. PURSUANT TO THE OWN MOTION JURISDICTION GRANTED TO THE WORKMEN'S COMPENSATION BOARD UNDER ORS 656.278, THE MATTER IS BEFORE THE BOARD WITH REFERENCE TO WHETHER CERTAIN SURGICAL PROCEDURES PERFORMED, NAMELY A CERVICAL LAMINECTOMY AND FUSION, WERE REQUIRED AS A RESULT OF THE INDUSTRIAL INJURY.

THE INFORMATION AVAILABLE TO THE BOARD IS NOT ADEQUATE TO DETERMINE WHETHER THERE IS A PRESENT FURTHER OBLIGATION OF THE STATE ACCIDENT INSURANCE FUND TO PROVIDE ADDITIONAL COMPENSATION OR MEDICAL CARE.

THE MATTER IS, THEREFORE, REFERRED TO THE HEARINGS DIVISION WITH INSTRUCTIONS TO HOLD A HEARING, TAKE EVIDENCE, PREPARE A TRANSCRIPT OF THE PROCEEDINGS AND SUBMIT A RECOMMENDATION FROM THE REFEREE AS TO THE DISPOSITION OF THE ISSUES.

WCB CASE NO. 73-4171 JANUARY 30, 1975

LOUIS BAIER, CLAIMANT

RINGO, WALTON AND EVES, CLAIMANT'S ATTYS.
MCMENAMIN, JONES, JOSEPH AND LANG, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

A REFEREE'S OPINION AND ORDER DATED OCTOBER 25, 1974 INCREASED CLAIMANT'S PERMANENT PARTIAL DISABILITY AWARD TO A TOTAL OF 192 DEGREES FOR UNSCHEDULED BACK DISABILITY, AND A TOTAL OF 45 DEGREES FOR PARTIAL LOSS OF THE LEFT LEG FOR RESIDUAL DISABILITY FROM A JUNE 1, 1969 INJURY. CLAIMANT REQUESTS BOARD REVIEW CONTENDING HE IS PERMANENTLY AND TOTALLY DISABLED ON AN 'ODD-LOT' BASIS.

THE ODD-LOT DOCTRINE IS A RULE WHICH PERMITS A FINDING OF PERMANENT TOTAL DISABILITY IN A SITUATION WHERE CLAIMANT IS NOT ALTOGETHER INCAPACITATED FOR ANY KIND OF WORK, BUT IS NONETHELESS SO HANDICAPPED THAT HE WILL NOT BE ABLE TO OBTAIN REGULAR EMPLOYMENT IN ANY WELL-KNOWN BRANCH OF THE COMPETITIVE LABOR MARKET--ABSENT SUPERHUMAN EFFORTS, SYMPATHETIC FRIENDS OR EMPLOYERS, A BUSINESS BOOM, OR TEMPORARY GOOD LUCK. HOUSE V. SAIF, --ADV SH--, --OR APP--, (1-20-75).

THIS CASE PRESENTS THE FOLLOWING PROFILE OF CLAIMANT -

HE IS 59 YEARS OLD. MEDICAL OPINION AFFIRMS THE FINDING THAT CLAIMANT CANNOT RETURN TO WORK AS A MILLWRIGHT, HEAVY EQUIPMENT OPERATOR, CARPENTER OR WELDER. CLAIMANT HAS AN 8TH GRADE EDUCATION, --HE HAS COMPLETED A ONE TERM COURSE IN AUTO TUNE-UP. HE CANNOT LIFT OR PERFORM ANY JOB REQUIRING PROLONGED STANDING, BENDING, STOOPING OR TWISTING. CLAIMANT HAS MADE REASONABLE EFFORT TO SECURE

EMPLOYMENT IN FACE OF CONSISTENT REJECTION DUE TO HIS BACK.

FOR THE REASONS STATED, THE BOARD FINDS, ON DE NOVO REVIEW, THAT CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED.

ORDER

THE ORDER OF THE REFEREE DATED OCTOBER 25, 1974 IS HEREBY SET ASIDE AND CLAIMANT IS GRANTED AN AWARD OF PERMANENT DISABILITY AS OF THE DATE OF THIS ORDER.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE, 25 PER CENT OF THE INCREASE IN COMPENSATION MADE PAYABLE BY THIS ORDER, NOT TO EXCEED 2,300 DOLLARS.

WCB CASE NO. 74-1189 JANUARY 30, 1975

ALLEN COLLIER, CLAIMANT

GILDEA AND ACGAVIC, 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 30 DEGREES FOR 20 PER CENT LOSS OF THE LEFT LEG TO 50 DEGREES FOR 33 PER CENT LOSS OF THE LEFT LEG.

CLAIMANT, A 24 YEAR OLD TIMBER CUTTER, ACCIDENTALLY CUT HIS LEFT KNEE ON JULY 25, 1973 WITH HIS POWER SAW. THE LACERATION COMPLETELY SEVERED THE INFRAPATELLAR LIGAMENT. IN SPITE OF EXCELLENT MEDICAL CARE HE HAS BEEN LEFT WITH RESIDUAL PHYSICAL IMPAIRMENT.

IN ADDITION TO CONSIDERATION OF THE MEDICAL EVIDENCE THE REFEREE PERSONALLY OBSERVED THE CLAIMANT'S LIMITATIONS AND WAS LED THEREBY TO INCREASE THE AWARD.

THE BOARD, ON REVIEW, RELIED ON THE ACTUAL OBSERVATION OF CLAIMANT'S KNEE BY THE REFEREE AT HEARING AND CONCLUDES HIS ASSESSMENT OF PERMANENT DISABILITY SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED AUGUST 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—3242 JANUARY 31, 1975

ROBERT H. GLOBE, CLAIMANT

JOHN D. RYAN, CLAIMANT'S ATTY.
MCMENAMIN, JONES, JOSEPH AND LANG, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER AFFIRMING THE DETERMINATION ORDER, CONTENDING THAT HE HAS ESTABLISHED THE EXISTENCE OF UNSCHEDULED DISABILITY IN HIS SHOULDER AND IS THEREFORE ENTITLED TO AN AWARD OF UNSCHEDULED DISABILITY AS WELL AS ADDITIONAL SCHEDULED PERMANENT PARTIAL DISABILITY.

WE HAVE EXAMINED THE RECORD DE NOVO AND CONCUR WITH THE FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE REFEREE AND CONCLUDE HIS ORDER SHOULD BE AFFIRMED.

ORDER

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

WCB CASE NO. 73—3955 FEBRUARY 5, 1975

OCIE L. WEBSTER, CLAIMANT

KEITH BURNS, CLAIMANT'S ATTY.
ALAN J. GARDNER, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON, MOORE AND SLOAN.

THIS MATTER INVOLVES THE EXTENT OF PERMANENT PARTIAL DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT NO PERMANENT PARTIAL DISABILITY. THE REFEREE AWARDED CLAIMANT 15 PER CENT (48 DEGREES) UNSCHEDULED DISABILITY. THE EMPLOYER REQUESTS BOARD REVIEW CONTENDING THAT CLAIMANT'S OBESITY WAS THE CAUSE OF THE DISABILITY RATHER THAN THE INDUSTRIAL INJURY.

CLAIMANT, A 28 YEAR OLD TELEPHONE INSTALLER REPAIRMAN, RECEIVED A BACK INJURY JANUARY 3, 1973. CLAIMANT HAD BEEN SEVERELY OBESE FOR SOME TIME PRIOR TO THE BACK INJURY. WHILE HE WAS OFF WORK FROM THE BACK INJURY, HE GAINED FROM 280 POUNDS TO 296 POUNDS. AT THE TIME OF THE HEARING, HIS WEIGHT WAS ESTIMATED AT 279 POUNDS. THE MEDICAL REPORTS AND THE BACK EVALUATION CLINIC REPORTS REFLECT SOME LOSS OF FUNCTION OF THE BACK FROM THE INDUSTRIAL INJURY.

CLAIMANT'S SEVERE OBESITY PREEXISTED THE INDUSTRIAL ACCIDENT FOR A SUBSTANTIAL PERIOD OF TIME. CLAIMANT'S PRESENT WAGES AS COMPARED TO HIS WAGES PRIOR TO THE INDUSTRIAL INJURY ARE ONLY ONE FACTOR IN DETERMINING LOSS OF WAGE EARNING CAPACITY FROM AN INDUSTRIAL INJURY.

ON DE NOVO REVIEW, A MAJORITY OF THE BOARD WOULD AFFIRM THE ORDER OF THE REFEREE. THE BOARD NOTES THAT ALL OF THE MEDICAL EVIDENCE CONFIRMS THAT CLAIMANT'S PRINCIPAL PROBLEM IS SEVERE OBESITY AND THE CLAIMANT CERTAINLY HAS A DUTY TO LOSE WEIGHT AND MINIMIZE HIS PROBLEM.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 25, 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.

COMMISSIONER MOORE DISSENTS AS FOLLOWS -

THE RECORD IS REPLETE WITH EVIDENCE THAT THE CLAIMANT'S DISABILITY RESULTS FROM HIS APPARENT REFUSAL TO COME TO GRIPS WITH HIS OBESITY. ORS 656.325(2) PROVIDES -

> 'FOR ANY PERIOD OF TIME DURING WHICH ANY WORKMAN COMMITS UNSANITARY OR INJURIOUS PRACTICES WHICH TEND TO EITHER IMPERIL OR RETARD HIS RECOVERY, OR REFUSES TO SUBMIT TO SUCH MEDICAL OR SURGICAL TREATMENT AS IS REASONABLY ESSENTIAL TO PROMOTE HIS RECOVERY, HIS RIGHT TO COMPENSATION SHALL BE SUSPENDED...'

IN THE MATTER OF THE COMPENSATION OF SANDRA HUSSEY, (UNDERSCORED), WCB CASE NO. 73-1390, THE BOARD SAID -

> 'CLAIMANT CANNOT VOLUNTARILY REMAIN OBESE AND DEMAND PERMANENT DISABILITY COMPENSATION FOR THE ADVERSE ECONOMIC CONSEQUENCES WHICH NATURALLY RESULT FROM THE OBESITY SIMPLY BECAUSE SHE HAS SUFFERED COMPENSABLE INJURY.'

FURTHER, THE CLAIMANT FAILED TO SHOW LOSS OF PERMANENT WAGE EARNING CAPACITY, WHICH IS THE ACCEPTED MEASURE OF UNSCHEDULED DISABILITY, WHEN THE EMPLOYER AGREED IN WRITING TO RETURN THE WORKMAN TO HIS PRIOR POSITION, UPON WEIGHT REDUCTION, AT THE RATE OF PAY OF HIS FORMER CLASSIFICATION INCLUDING WHATEVER RAISES MIGHT HAVE OCCURRED IN THE INTERIM. IN ADDITION, WHEN CLAIMANT RETURNED TO WORK FROM HIS PERIOD OF TEMPORARY DISABILITY AND WHILE HIS WEIGHT PRECLUDED RETURN TO HIS REGULAR JOB, CLAIMANT WAS EMPLOYED AT A HIGHER WAGE RATE THAN HE WAS RECEIVING AT THE TIME OF HIS INJURY.

TO MAKE A PERMANENT DISABILITY AWARD, ONE MUST RESORT TO PURE SPECULATION AND THEREFORE THIS REVIEWER RESPECTFULLY DISSENTS FROM THE MAJORITY'S RULING AND RECOMMENDS REVERSING THE REFEREE'S ORDER AND REINSTATING THE DETERMINATION ORDER OF OCTOBER 8, 1973.

-S- GEORGE A. MOORE,
COMMISSIONER

WCB CASE NO. 73-4139 FEBRUARY 10, 1975

THE BENEFICIARIES OF

LEON P. MORTENSEN, DECEASED

MARTIN, ROBERTSON AND NEIL, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY BENEFICIARIES

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES THE ISSUE OF THE COMPENSABILITY OF A FATAL HEART ATTACK SUSTAINED BY A 61 YEAR OLD CONSTRUCTION FOREMAN ON OCTOBER 19, 1973. THE REFEREE, AT HEARING, DENIED THE CLAIM AND THE BENEFICIARIES HAVE REQUESTED BOARD REVIEW OF THAT ORDER.

THE DECEASED, AS THE JOBSITE FOREMAN, DID CONSIDERABLE WALKING FROM ONE AREA TO ANOTHER IN RAINY WEATHER WHICH MADE THE TERRAIN EXTREMELY MUDDY AND DIFFICULT TO TRAVERSE. ON THE DAY IN QUESTION, DECEDENT HAD WALKED THROUGH DEEP MUD AND ENGAGED IN HARD PHYSICAL LABOR IN ATTACHING A TIMBER PAD TO THE OUTRIGGER OF A CRANE. WITHIN 10 TO 20 MINUTES OF THIS EXERTION, CLAIMANT COLLAPSED AND DIED OF A MYOCARDIAL INFARCTION.

W. K. NIECE, M. D., THE DECEDENT'S FAMILY DOCTOR, WAS OF THE OPINION THAT THE DECEASED WORKMAN'S WORK ACTIVITY ON THAT DAY WAS A MATERIAL CONTRIBUTING CAUSE TO HIS FATAL HEART ATTACK.

DR. GRISWOLD, A CARDIOLOGIST AT THE UNIVERSITY OF OREGON MEDICAL SCHOOL, ALTHOUGH NOT HAVING TREATED OR EXAMINED DECEDENT, TESTIFIED AT THE HEARING THAT IN HIS OPINION THE WORK ACTIVITY DID NOT CONTRIBUTE TO THE WORKMAN'S DEATH. THE REFEREE, NOTING THAT IT WAS A CLOSE CASE NEVERTHELESS ACCEPTED DR. GRISWOLD'S OPINION PRIMARILY ON THE BASIS OF HIS SUPERIOR EXPERTISE.

THE BOARD HAS ON MANY OCCASIONS BEEN PERSUADED BY THE EXPERT ANALYSIS OF A CARDIOLOGIST IN DECIDING A DISPUTED ISSUE OF CAUSAL CONNECTION. HOWEVER, THE BOARD CONSIDERS THESE MATTERS ON A CASE BY CASE BASIS AND IN THIS CASE THE BOARD IS PERSUADED FROM THE EVIDENCE THAT THE OVERALL WORK EFFORT OF THE DECEDENT IN THIS PARTICULAR CASE PROBABLY DID MATERIALLY CONTRIBUTE TO THE FATAL MYOCARDIAL INFARCTION. THE EFFORT INVOLVED IN REPLACING THE HEAVY WOODEN PAD WAS CONSIDERABLE AND THE LAPSE OF TIME FROM THE EFFORT TO HIS COLLAPSE WAS NOT UNDULY LONG. WE DO NOT FIND DR. GRISWOLD'S OPINION PERSUASIVE IN VIEW OF THE BACKGROUND FACTS.

WE THINK IT MORE PROBABLE THAN NOT THAT HIS HEART ATTACK AND CONSEQUENT DEATH WAS MATERIALLY CONNECTED TO THE WORK EFFORT IN QUESTION. THE REFEREE'S ORDER SHOULD THEREFORE BE REVERSED.

ORDER

THE ORDER OF THE REFEREE, DATED AUGUST 15, 1974, IS REVERSED AND THE STATE ACCIDENT INSURANCE FUND IS ORDERED TO ACCEPT THE CLAIM AND PAY SUCH BENEFITS AS THE LAW PROVIDES TO THE BENEFICIARIES.

COUNSEL FOR THE CLAIMANT IS ALLOWED A REASONABLE ATTORNEY'S FEE IN THE AMOUNT OF 1,000 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES UPON HEARING AND REVIEW.

WCB CASE NO. 74-1608 FEBRUARY 11, 1975

RICHARD T. GEENTY, CLAIMANT

BURL L. GREEN, CLAIMANT'S ATTY.
JAMES D. HUEGLI, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES A DENIED OCCUPATIONAL DISEASE CLAIM. THE REFEREE AFFIRMED THE DENIAL.

CLAIMANT, A 34 YEAR OLD FORK LIFT TRUCK OPERATOR, HAD A DEGENERATIVE CONDITION OF THE CERVICAL SPINE PRIMARILY LOCATED AT TWO LEVELS, C5-6. DR. DONALD T. SMITH, A SPECIALIST IN NEUROLOGICAL SURGERY, TESTIFIED THAT CLAIMANT'S ACTIVITIES AS A FORK LIFT DRIVER WILL NOT CAUSE THE DEGENERATIVE DISC DISEASE BUT THAT IN HIS OPINION THE CLAIMANT'S JOB WAS A SUBSTANTIAL CONTRIBUTING FACTOR AND A CONSTANT SOURCE OF AGGRAVATION AND ACCELERATION OF THE DEGENERATIVE PROCESS AND CAUSED THE CONDITION TO BECOME SYMPTOMATIC.

AS STATED IN 1A LARSEN, WORKMEN'S COMPENSATION LAW, SECTION 41.62 -

> 'THE RARITY OF THE CONDITION OR THE ALLERGY DOES NOT DETRACT FROM ITS COMPENSABILITY.'

THE DRIVING OF THE FORK LIFT TRUCK ENTAILS UNUSUAL TWISTING AND TURNING OF THE NECK WHICH AGGRAVATED, EXACERBATED, MADE SYMPTOMATIC, AND LIGHTED UP CLAIMANT'S PREEXISTING CONDITION. THE FACT THAT THE CLAIMANT HAD A PREEXISTING CONDITION MAKING THIS CLAIMANT HYPERSENSITIVE TO THE WORK ACTIVITY IS IMMATERIAL. THE EMPLOYER TAKES THE WORKMAN AS HE FINDS HIM.

ON DE NOVO REVIEW, THE BOARD FINDS CLAIMANT HAS SUSTAINED AN OCCUPATIONAL DISEASE AND THE CLAIM IS ACCEPTED.

ORDER

THE ORDER OF THE REFEREE, DATED AUGUST 13, 1974, IS REVERSED.

THE EMPLOYER IS ORDERED TO ACCEPT CLAIMANT'S CLAIM AND PROVIDE CLAIMANT BENEFITS TO WHICH HE IS ENTITLED TO 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 BOARD REVIEW.

WCB CASE NO. 74-2720 FEBRUARY 11, 1975

DAVID W. CLYDE, CLAIMANT

SANFORD KOWITT, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

CLAIMANT HAS REQUESTED THAT THE BOARD AWARD HIM ADDITIONAL COMPENSATION PURSUANT TO ITS AUTHORITY UNDER ORS 656.278 IN THE EVENT HE IS UNABLE TO ESTABLISH, AT AN UPCOMING HEARING, THAT HIS REQUEST TO THE STATE ACCIDENT INSURANCE FUND FOR ADDITIONAL COMPENSATION WAS TIMELY MADE.

BECAUSE A HEARING IS ALREADY PRESENTLY SCHEDULED FOR FEBRUARY 20, 1975 ON THE BASIC ISSUE OF AGGRAVATION, THE BOARD CONCLUDES THAT, IF THE REFEREE FINDS THE CLAIMANT'S CLAIM OF AGGRAVATION WAS UNTIMELY MADE, HE SHOULD PROCEED TO TAKE EVIDENCE FOR THE BOARD'S USE IN DECIDING WHETHER CLAIMANT SHOULD BE GRANTED ADDITIONAL COMPENSATION PURSUANT TO ORS 656.278 AND SUBMIT IT TO THE BOARD, ALONG WITH A RECOMMENDED DISPOSITION OF THE REQUEST.

IT IS SO ORDERED.

WCB CASE NO. 72-2335
AND 73-2735
AND 74-2804 FEBRUARY 11, 1975

CLIFFORD L. NOLLEN, CLAIMANT

J. DAVID KRYGER, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON JANUARY 24, 1975, THE STATE ACCIDENT INSURANCE FUND MOVED FOR RECONSIDERATION OF AN ORDER DISMISSING ITS REQUEST FOR BOARD REVIEW DATED JANUARY 14, 1975. RESPONSES TO THAT MOTION WERE REQUESTED AND RECEIVED FROM THE OTHER PARTIES TO THE PROCEEDING.

IN ADDITION, ON JANUARY 13, 1975, A MOTION TO DISMISS THE STATE ACCIDENT INSURANCE FUND'S REQUEST FOR REVIEW WAS ALSO MADE BY CLAIMANT, BUT THE BOARD DID NOT RULE ON IT AT THE TIME IT DISMISSED THE STATE ACCIDENT INSURANCE FUND'S REQUEST FOR REVIEW. THE PARTIES ARE ENTITLED TO A RULING ON THAT MOTION AND THE BOARD CONCLUDES IT SHOULD SET ASIDE ITS ORDER OF JANUARY 14, 1975, AND NOT ONLY RECONSIDER THE MATTER RAISED BY THE MOTION FOR RECONSIDERATION BUT RULE ON THE CLAIMANT'S MOTION AS WELL.

IT IS SO ORDERED.

WCB CASE NO. 73-3178 FEBRUARY 11, 1975

GENEVIEVE CALHOUN, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
RAY MIZE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES WHETHER OR NOT CLAIMANT'S ATTORNEY IS ENTITLED TO ATTORNEY'S FEES PAYABLE BY THE EMPLOYER PURSUANT TO ORS 656.262(8) AND ORS 656.382(1). THE REFEREE AWARDED CLAIMANT 10 PER CENT OF THE TEMPORARY TOTAL DISABILITY OWED TO THE CLAIMANT FOR 19 DAYS AND DENIED ATTORNEY'S FEES TO BE PAID BY THE EMPLOYER FOR THIS DELAY. THE ISSUE OF PERMANENT DISABILITY RAISED BEFORE THE REFEREE IS NOT RAISED ON REVIEW.

CLAIMANT WAS INJURED SEPTEMBER 6, 1973. THE CLAIMANT RECEIVED HER FIRST CHECK FOR TEMPORARY TOTAL DISABILITY ON SEPTEMBER 26, 1973. THERE WAS AN OBVIOUS DELAY OF FIVE OR SIX DAYS IN PAYMENT OF TEMPORARY TOTAL DISABILITY TO THE CLAIMANT.

THE REFEREE AWARDED THE CLAIMANT AN AMOUNT EQUAL TO 10 PER CENT OF THE TOTAL TIME LOSS OWED THE CLAIMANT FROM SEPTEMBER 6, 1973, TO SEPTEMBER 25, 1973, FOR THIS DELAY. HIS ORDER MADE NO PROVISION FOR COMPENSATING CLAIMANT'S ATTORNEY. CLAIMANT SEEKS A FEE FOR HER ATTORNEY, PAYABLE BY THE EMPLOYER. THE RECORD REFLECTS THAT CLAIMANT'S ATTORNEY HAS SUBMITTED AN AFFIDAVIT TO SUPPORT A REASONABLE ATTORNEY'S FEE OF 1,200 DOLLARS FOR HIS SERVICES AT HEARING AND BOARD REVIEW.

UNDER THE FACTS OF THIS CASE, THE BOARD FINDS THERE WAS CLEARLY NO REFUSAL TO PAY COMPENSATION NOR WAS THERE ANY UNREASONABLE RESISTANCE TO THE PAYMENT OF COMPENSATION BY THE EMPLOYER AS CONTEMPLATED BY ORS 656.382(1) IN ORDER TO REQUIRE THE EMPLOYER TO PAY CLAIMANT'S ATTORNEY'S FEE. NO FEE PAYABLE BY THE EMPLOYER IS THEREFORE ALLOWABLE.

THE REFEREE'S ORDER SHOULD HAVE PROVIDED THAT CLAIMANT'S COUNSEL IS TO RECEIVE AS A FEE 25 PER CENT OF THE INCREASE IN COMPENSATION WHICH SHALL NOT EXCEED 2,000 DOLLARS THIS ORDER ON REVIEW WILL SO PROVIDE.

IN THE EVENT THAT THE EMPLOYER HAS ALREADY PAID THE INCREASE TOTALLING 10 PER CENT OF THE TEMPORARY TOTAL DISABILITY FROM THE PERIOD OF SEPTEMBER 6, 1973, TO SEPTEMBER 25, 1973, TO THE CLAIMANT, CLAIMANT'S ATTORNEY IS AUTHORIZED TO COLLECT THE REASONABLE ATTORNEY'S FEES TO THAT EXTENT FROM THE CLAIMANT.

ORDER

THE ORDER OF THE REFEREE, DATED AUGUST 9, 1974, IS MODIFIED AS FOLLOWS -

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE 25 PER CENT OF THE INCREASE IN COMPENSATION WHICH SHALL NOT EXCEED 2,000 DOLLARS.

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

WCB CASE NO. 72-3362 FEBRUARY 11, 1975

DON A. CONGER, CLAIMANT

MYRICK, COULTER, SEAGRAVES AND NEALY, CLAIMANT'S ATTYS.
MCMENAMIN, JONES, JOSEPH AND LANG, DEFENSE ATTYS.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES AN OCCUPATIONAL DISEASE CLAIM FOR LOSS OF HEARING. THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM AND THE REFEREE ORDERED THE STATE ACCIDENT INSURANCE FUND TO ACCEPT THE CLAIM.

THIS IS A COMPANION CASE TO RONALD C. CALLERMAN, WCB CASE NO. 72-3313. BOTH CONGER AND CALLERMAN WORKED FOR THE EMPLOYER FOR NUMEROUS YEARS IN THE SAWMILL. ATTEMPTS BY THE EMPLOYER AND EMPLOYEES TO PREVENT DAMAGE OF HEARING TO EMPLOYEES IN THE SAWMILL EXTENDED OVER A PERIOD OF ABOUT TEN YEARS AND WERE NOT EFFECTIVE UNTIL 1972 WHEN SOME SPECIAL EARPLUGS WERE USED.

THE PRIMARY ISSUE AT HEARING AND ON BOARD REVIEW IS WHETHER OR NOT THE CLAIMANT IN THIS CASE MADE A TIMELY FILING OF HIS CLAIM.

ORS 656.807(1), APPLICABLE JULY 19, 1974, PROVIDED -

> "EXCEPT AS OTHERWISE LIMITED FOR SILICOSIS, ALL OCCUPATIONAL DISEASE CLAIMS SHALL BE VOID UNLESS A CLAIM IS FILED WITH THE STATE ACCIDENT INSURANCE FUND OR DIRECT RESPONSIBILITY EMPLOYER WITHIN FIVE YEARS AFTER THE LAST EXPOSURE IN EMPLOYMENT SUBJECT TO THE WORKMEN'S COMPENSATION LAW AND WITHIN 180 DAYS FROM THE DATE THE CLAIMANT BECOMES DISABLED OR IS INFORMED BY A PHYSICIAN THAT HE IS SUFFERING FROM AN OCCUPATIONAL DISEASE WHICHEVER IS LATER."

THE BOARD CONCURS WITH THE FINDING OF THE REFEREE THAT THE 180 DAY LIMITATION ON FILING A CLAIM NEVER STARTED TO RUN UNDER THE FACTS OF THIS CASE. EVEN THOUGH THE CLAIMANT FILED OUTSIDE OF THE 180 DAYS FROM THE DATE THE DOCTOR ADVISED HIM HE WAS SUFFERING FROM AN OCCUPATIONAL DISEASE, THE CLAIMANT HAD NOT BECOME DISABLED WITHIN THE MEANING OF ORS 656.807(1) AT THAT TIME - AND SINCE THE STATUTE PROVIDES THAT THE LATER DATE OF BECOMING DISABLED OR BEING INFORMED BY A PHYSICIAN THAT HE IS SUFFERING FROM AN OCCUPATIONAL DISEASE CONTROLS, THE 180 DAY LIMITATION NEVER STARTED TO RUN. THE CLAIM WAS TIMELY FILED.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 3, 1974, IS 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. 72-3313 FEBRUARY 11, 1975

RONALD C. CALLERMAN, CLAIMANT

MYRICK, COULTER, SEAGRAVES AND NEALY, CLAIMANT'S ATTYS.
MCMENAMIN, JONES, JOSEPH AND LANG, DEFENSE ATTYS.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES AN OCCUPATIONAL DISEASE CLAIM FOR LOSS OF HEARING. THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM AND THE REFEREE ORDERED THE STATE ACCIDENT INSURANCE FUND TO ACCEPT THE CLAIM.

THIS IS A COMPANION CASE TO DON A. CONGER, WCB CASE NO. 72-3362. BOTH CALLERMAN AND CONGER WORKED FOR THE EMPLOYER FOR NUMEROUS YEARS IN THE SAWMILL. ATTEMPTS BY THE EMPLOYER AND EMPLOYEES TO PREVENT DAMAGE OF HEARING TO EMPLOYEES IN THE SAWMILL EXTENDED OVER A PERIOD OF ABOUT TEN YEARS AND WERE NOT EFFECTIVE UNTIL 1972 WHEN SOME SPECIAL EARPLUGS WERE USED.

THE PRIMARY ISSUE AT HEARING AND ON BOARD REVIEW IS WHETHER OR NOT THE CLAIMANT IN THIS CASE MADE A TIMELY FILING OF HIS CLAIM.

ORS 656.807(1), APPLICABLE JULY 19, 1974, PROVIDED -

> "EXCEPT AS OTHERWISE LIMITED FOR SILICOSIS, ALL OCCUPATIONAL DISEASE CLAIMS SHALL BE VOID UNLESS A CLAIM IS FILED WITH THE STATE ACCIDENT INSURANCE FUND OR DIRECT RESPONSIBILITY EMPLOYER WITHIN FIVE YEARS AFTER THE LAST EXPOSURE IN EMPLOYMENT SUBJECT TO THE WORKMEN'S COMPENSATION LAW AND WITHIN 180 DAYS FROM THE DATE THE CLAIMANT BECOMES DISABLED OR IS INFORMED BY A PHYSICIAN THAT HE IS SUFFERING FROM AN OCCUPATIONAL DISEASE, WHICHEVER IS LATER."

THE BOARD CONCURS WITH THE FINDING OF THE REFEREE THAT THE 180 DAY LIMITATION FOR FILING THE CLAIM NEVER STARTED TO RUN IN THIS CASE. THE CLAIMANT DID NOT LOSE ANY TIME FROM WORK OR SUFFER ANY WORK CAPACITY IMPAIRMENT. IN THIS CASE, THE CLAIMANT WAS NOT ADVISED BY A PHYSICIAN THAT HE WAS SUFFERING FROM AN OCCUPATIONAL DISEASE UNTIL TWO WEEKS BEFORE THE CLAIM WAS FILED. THE CLAIM WAS TIMELY FILED.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 3, 1974, IS 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. 74-1241 FEBRUARY 11, 1975

WANDA WINNER, CLAIMANT
CHARLES PAULSON, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON NOVEMBER 8, 1974 CLAIMANT REQUESTED BOARD REVIEW OF A REFEREE'S ORDER DATED OCTOBER 11, 1974 WHICH AFFIRMED THE DENIAL OF HER CLAIM FOR WORKMEN'S COMPENSATION BENEFITS.

ON FEBRUARY 4, 1975, THE CLAIMANT, THROUGH HER ATTORNEY, ASKED THAT HER REQUEST FOR REVIEW BE WITHDRAWN.

BASED ON THAT REQUEST THE BOARD CONCLUDES THE MATTER SHOULD BE DISMISSED AND THE REFEREE'S ORDER DECLARED FINAL BY OPERATION OF LAW.

IT IS SO ORDERED.

WCB CASE NO. 74-239 FEBRUARY 11, 1975

JEWELL MOORER, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

THIS MATTER INVOLVES A CLAIMANT WHO SUSTAINED A COMPENSABLE INDUSTRIAL INJURY ON SEPTEMBER 13, 1967. THE FIRST DETERMINATION PURSUANT TO ORS 656.268 WAS MADE JANUARY 14, 1969, AND THE CLAIMANT HAD UNTIL JANUARY 15, 1974, WITHIN WHICH TO FILE A CLAIM FOR AGGRAVATION. CLAIMANT DID NOT PERFECT HIS AGGRAVATION CLAIM WITHIN THE ABOVE TIME PERIOD. WHEN CLAIMANT REQUESTED A HEARING, THE REFEREE FOUND CLAIMANT HAD NOT COMPLIED WITH THE STATUTORY REQUIREMENT AND DISMISSED THE REQUEST FOR HEARING. THIS ORDER WAS AFFIRMED BY THE BOARD AND THE CIRCUIT COURT.

CLAIMANT HAS NOW REQUESTED THE BOARD TO CONSIDER HIS CLAIM UNDER THE OWN MOTION JURISDICTION GRANTED TO IT PURSUANT TO ORS 656.278. IN ADDITION TO THE RECORD MADE AT THE EARLIER HEARING, CLAIMANT HAS PRESENTED A LETTER FROM HOWARD L. CHERRY, M.D., INDICATING THE CLAIMANT'S CONDITION HAS WORSENED AS A RESULT OF HIS INDUSTRIAL INJURY OF 1967. IT IS DR. CHERRY'S RECOMMENDATION THAT CLAIMANT BE GIVEN FURTHER MEDICAL CARE AND TREATMENT AND POSSIBLY VOCATIONAL RETRAINING IN A LIGHTER WORK WITHIN HIS PHYSICAL CAPABILITIES.

WE CONCLUDE THAT CLAIMANT IS ENTITLED TO FURTHER COMPENSATION AND AN EVALUATION OF HIS NEED AND POTENTIAL FOR VOCATIONAL REHABILITATION.

IT IS HEREBY ORDERED THAT THE STATE ACCIDENT INSURANCE FUND REOPEN CLAIMANT'S CLAIM FOR PAYMENT OF TEMPORARY TOTAL DISABILITY FROM NOVEMBER 5, 1973, AND FOR FURTHER MEDICAL CARE AND TREATMENT AS RECOMMENDED BY DR. HOWARD CHERRY, THE COST OF DR. CHERRY'S EXAMINATION AND REPORT TO BE PAID BY THE STATE ACCIDENT INSURANCE

FUND. WHEN CLAIMANT AGAIN APPEARS MEDICALLY STATIONARY, HIS CLAIM SHALL BE RESUBMITTED TO THE BOARD FOR ITS OWN MOTION CLOSURE OF THE CLAIM.

IT IS HEREBY FURTHER ORDERED THAT CLAIMANT BE EVALUATED AT THE BOARD'S DISABILITY PREVENTION DIVISION TO DETERMINE WHETHER VOCATIONAL REHABILITATION IS NEEDED AND, IF SO, THAT CLAIMANT BE REFERRED FOR VOCATIONAL REHABILITATION UNDER THE AUSPICES OF THE WORKMEN'S COMPENSATION BOARD.

IT IS HEREBY FINALLY ORDERED THAT CLAIMANT'S ATTORNEYS RECEIVE A REASONABLE FEE EQUAL TO 25 PER CENT OF THE TEMPORARY TOTAL DISABILITY MADE PAYABLE BY THIS ORDER NOT TO EXCEED THE SUM OF 500 DOLLARS. IN ADDITION, CLAIMANT'S ATTORNEYS SHALL RECEIVE 25 PER CENT OF ANY ADDITIONAL PERMANENT DISABILITY SUBSEQUENTLY AWARDED CLAIMANT BY THE BOARD. IN NO EVENT, HOWEVER, SHALL THE TOTAL OF SAID FEES EXCEED 2,000 DOLLARS.

WCB CASE NO. 74-473 FEBRUARY 11, 1975

CARL A. VAN BUSKIRK, CLAIMANT

COLLINS, FERRIS AND VELURE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A CLAIM OF AGGRAVATION. THE REFEREE DENIED THE CLAIM ON THE BASIS THAT THE MEDICAL REPORTS WERE INSUFFICIENT TO CONFER JURISDICTION FOR THE HEARING FOR AGGRAVATION CLAIM PURSUANT TO ORS 656.275(4).

ON DE NOVO REVIEW, THE BOARD FINDS THAT THE MEDICAL REPORTS IN THE RECORD DO STATE THAT THERE HAS BEEN AN AGGRAVATION AND FACTS WHICH WOULD CONSTITUTE REASONABLE GROUNDS FOR THE CLAIM. THE MEDICAL REPORTS ALSO SHOW WITH REASONABLE CERTAINTY THAT THERE IS A CAUSAL CONNECTION BETWEEN THE INDUSTRIAL ACCIDENT AND THE INJURY.

THE BOARD THEREFORE REMANDS THE CASE TO THE HEARINGS DIVISION TO HEAR THE CLAIM OF AGGRAVATION ON ITS MERITS.

ORDER

THE ORDER OF THE REFEREE DATED SEPTEMBER 17, 1974, IS REVERSED AND THE CLAIMANT'S CLAIM FOR AGGRAVATION IS REMANDED TO THE HEARINGS DIVISION TO HEAR THE CLAIMANT'S CLAIM FOR AGGRAVATION ON ITS MERITS.

WCB CASE NO. 74-1331 FEBRUARY 11, 1975

KENNETH W. FRISCHMAN, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEZENDORF, SPEARS, LUBERSKY AND CAMPBELL, DEFENSE ATTYS.

ON NOVEMBER 25, 1974 CLAIMANT REQUESTED BOARD REVIEW OF A REFEREE'S ORDER DATED NOVEMBER 20, 1974.

ON NOVEMBER 26, 1974 THE EMPLOYER-RESPONDENT ALSO REQUESTED BOARD REVIEW OF THE REFEREE'S ORDER.

ON JANUARY 31, 1975 THE EMPLOYER-RESPONDENT WITHDREW ITS REQUEST FOR BOARD REVIEW.

THE EMPLOYER-RESPONDENT'S REQUEST FOR REVIEW SHOULD BE DISMISSED AND THE MATTER SHOULD BE REVIEWED ONLY ON THE ISSUES RAISED BY THE CLAIMANT.

IT IS SO ORDERED.

WCB CASE NO. 74-623 FEBRUARY 11, 1975

JAMES ANNA, CLAIMANT

JOHN FULLER, CLAIMANT'S ATTY.
SAMUEL R. BLAIR, DEFENSE ATTY.

ON SEPTEMBER 27, 1974, A WORKMEN'S COMPENSATION BOARD REFEREE GRANTED CLAIMANT ADDITIONAL UNSCHEDULED PERMANENT PARTIAL DISABILITY EQUAL TO 48 DEGREES OR 15 PER CENT OF THE MAXIMUM, BRINGING HIS TOTAL AWARD TO 64 DEGREES OR 20 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

THE EMPLOYER REQUESTED BOARD REVIEW AND WHILE THAT REVIEW WAS PENDING, THE PARTIES STIPULATED A SETTLEMENT OF THEIR DISPUTE AND HAVE NOW PRESENTED IT TO THE BOARD FOR ITS APPROVAL.

THE AGREEMENT IS ATTACHED HERETO AS EXHIBIT 'A'. THE BOARD BELIEVES THE AGREEMENT IS FAIR AND EQUITABLE AND THAT IT OUGHT TO BE APPROVED AND EXECUTED ACCORDING TO ITS TERMS AND THAT THE PENDING REQUEST FOR REVIEW SHOULD BE DISMISSED.

IT IS SO ORDERED.

STIPULATION AND ORDER

JAMES ANNA SUSTAINED A COMPENSABLE INJURY FROM AN ACCIDENT OF DECEMBER 27TH, 1972, WHILE EMPLOYED BY SKYLINE CORPORATION OF MCMINNVILLE, OREGON. THE CLAIM WAS ACCEPTED BY THE EMPLOYER, A DIRECT RESPONSIBILITY EMPLOYER, AND ASSIGNED EMPLOYER'S COMMERCIAL UNION CLAIM NO. F6-1005. THE CLAIM WAS CLOSED BY DETERMINATION ORDER OF JANUARY 29TH, 1974, GRANTING TEMPORARY TOTAL DISABILITY TO DECEMBER 6TH, 1973, AND GRANTING A PERMANENT PARTIAL DISABILITY AWARD OF 5 PER CENT OF THE MAXIMUM ALLOWABLE BY A STATUTE FOR UNSCHEDULED LOW BACK DISABILITY EQUAL TO 16 DEGREES.

A REQUEST FOR HEARING WAS FILED AND A HEARING WAS HELD IN MCMINNVILLE, OREGON, ON AUGUST 16TH, 1974. THE CLAIMANT WAS PRESENT AND WAS REPRESENTED BY JOHN FULLER, HIS ATTORNEY. THE EMPLOYER WAS PRESENT AND REPRESENTED BY SAMUEL R. BLAIR, THEIR ATTORNEY.

THE REFEREE'S DECISION WAS ENTERED SEPTEMBER 27TH, 1974, AWARDING CLAIMANT ADDITIONAL COMPENSATION EQUAL TO 48 DEGREES (15 PER CENT) OF AN UNSCHEDULED LOW BACK DISABILITY FOR A TOTAL AWARD OF 64 DEGREES (20 PER CENT) WITH CLAIMANT'S ATTORNEY'S FEE OF 25 PER CENT OF AND FROM THE ABOVE ADDITIONAL AMOUNT, NOT TO EXCEED 1,500 DOLLARS. SUBSEQUENT TO THE HEARING EMPLOYER APPEALED TO THE WORKMEN'S COMPENSATION BOARD, AND EMPLOYER'S BRIEF WAS SUBMITTED. PRIOR TO REVIEW BY THE WORKMEN'S COMPENSATION BOARD, THE PARTIES HAVE AGREED AND STIPULATED THAT THE CLAIMANT IS ENTITLED TO ADDITIONAL COMPENSATION EQUAL TO 9 PER CENT BEING EQUAL TO 35.7 DEGREES, AN INCREASE IN COMPENSATION OF 35.7 DEGREES IN LIEU OF THE AWARD MADE BY THE REFEREE.

CLAIMANT IS GRANTED AN AWARD OF PERMANENT PARTIAL DISABILITY OF AN ADDITIONAL 9.1 PER CENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED LOW BACK DISABILITY EQUAL TO 35.7 DEGREES IN LIEU OF THE AWARD MADE BY THE REFEREE.

CLAIMANT'S AGREEMENT WITH JOHN FULLER, HIS ATTORNEY, FOR PAYMENT OF AN ATTORNEY FEE IS APPROVED TO THE EXTENT OF 25 PER CENT OF THE INCREASED COMPENSATION AS A REASONABLE ATTORNEY FEE, NOT TO EXCEED THE SUM OF 1,500 DOLLARS, PAYABLE OF AND FROM SAID INCREASED COMPENSATION AWARD IN LIEU OF THE ATTORNEY'S FEE ALLOWED BY THE REFEREE.

WCB CASE NO. 74-1353 FEBRUARY 12, 1975

HENRY C. DEATON, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH FOUND CLAIMANT HAD FAILED TO MEET THE JURISDICTIONAL REQUIREMENTS OF A CLAIM FOR AGGRAVATION AND DISMISSED THE REQUEST FOR HEARING.

DR. SMITH NOTED SOME SLIGHT DIFFERENCE, BOTH PLUS AND MINUS, IN CLAIMANT'S CONDITION AT THE TIME OF HIS 1974 EXAMINATION. THE BOARD IS OF THE OPINION THAT A 'DE MINIMUS' WORSENING EXHIBITED BY CLAIMANT DOES NOT CONSTITUTE REASONABLE OR SUFFICIENT GROUNDS FOR THE SUPPORT OF A CLAIM FOR INCREASED COMPENSATION ON ACCOUNT OF AGGRAVATION, AND AFFIRMS THE REFEREE'S ORDER DISMISSING CLAIMANT'S CLAIM FOR LACK OF JURISDICTION.

ORDER

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

WCB CASE NO. 74-71 FEBRUARY 12, 1975

GREG W. CHRISTIAN, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH REQUIRED THE FUND TO ACCEPT CLAIMANT'S RIGHT KNEE AND RHEUMATOID ARTHRITIS CONDITION AND PAY ENTITLED BENEFITS.

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HIS LEFT KNEE OCTOBER 4, 1972. HE RECEIVED A PERMANENT PARTIAL DISABILITY AWARD OF 30 DEGREES FOR 20 PER CENT LOSS OF THE LEFT LEG. THE FUND DENIED RESPONSIBILITY FOR THE RIGHT KNEE AND RHEUMATOID ARTHRITIS CONDITIONS.

WHEN CLAIMANT'S SYMPTOMS CONTINUED, HE WAS REFERRED TO DR. DONAHOO WHO PERFORMED SURGERY. POSTOPERATIVELY, CLAIMANT EXPERIENCED SYMPTOMS OF SEVERE STRESS, TENSION, WORRY, DEPRESSION AND FATIGUE BROUGHT ON BY HIS CONTINUING DISABILITY AND COMPOUNDED BY SERIOUS PERSONAL FAMILY PROBLEMS. WHEN CLAIMANT DEVELOPED PAIN AND STIFFNESS IN THE RIGHT KNEE AND OTHER JOINTS, HE WAS REFERRED TO DR. RICHARD A. ANDERSON WHO DIAGNOSED ACTIVE RHEUMATOID ARTHRITIS.

JAMES W. BROOKE, M.D., ORTHOPEDIST AND RHEUMATOLOGIST, EXPRESSED THE OPINION THAT TRAUMA TO THE LEFT KNEE DID NOT PRECIPITATE THE RIGHT KNEE SYMPTOMS AND THE RHEUMATOID ARTHRITIS. DR. ROSENBAUM, INTERNIST AND RHEUMATOLOGIST, INDICATED THERE WAS A CAUSAL RELATIONSHIP BETWEEN THE INJURY AND THE PROGRESSION OF THE DISEASE AND IT WAS AGGRAVATED BY STRESS, STRAIN, FATIGUE, WORRY AND TENSION CLAIMANT HAD UNDERGONE.

THE BOARD, ON REVIEW, FINDS DR. ROSENBAUM'S OPINION TO BE PERSUASIVE AND CONCURS WITH THE REFEREE IN FINDING THAT CLAIMANT HAS SUSTAINED A COMPENSABLE INJURY.

ORDER

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

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 300 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 73-3162 FEBRUARY 12, 1975

THOMAS STORY, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS CLAIMANT HAS RECEIVED, PURSUANT TO A DETERMINATION ORDER, SCHEDULED PERMANENT PARTIAL DISABILITY OF 13.5 DEGREES LOSS OF THE LEFT FOOT. AT HEARING, THE REFEREE AWARDED AN INCREASE OF 20.5 DEGREES, MAKING A TOTAL OF 34 DEGREES SCHEDULED AWARD. CLAIMANT HAS REQUESTED BOARD REVIEW CONTENDING THIS AWARD IS INADEQUATE REQUESTING AN AWARD FOR UNSCHEDULED PERMANENT PARTIAL DISABILITY.

CLAIMANT, WHO WAS AGE 61 AT THE TIME OF HEARING, WAS EMPLOYED AS A BODY SHOP MANAGER WHEN HE SUSTAINED A COMPENSABLE INJURY TO HIS LEFT FOOT ON FEBRUARY 10, 1972. HE COMPLAINS OF CONTINUED PAIN IN THE FOOT. THE MEDICAL EVIDENCE IN THE RECORD DOES NOT SHOW A CAUSAL RELATIONSHIP BETWEEN THE INDUSTRIAL INJURY AND CLAIMANT'S MANY COMPLAINTS IN THE UNSCHEDULED AREA.

PAIN, PER SE, IS NOT COMPENSABLE UNLESS IT BECOMES DISABLING. THE MEDICAL EVIDENCE INDICATES CLAIMANT'S PAIN IS NOT OF THE DEGREE TO BE DISABLING. A RELUCTANCE TO RETURN TO THE LABOR MARKET MIGHT WELL HINGE ON ANTICIPATION OF EARLY RETIREMENT.

THE BOARD, ON DE NOVO REVIEW, FINDS CLAIMANT HAS BEEN ADEQUATELY COMPENSATED FOR HIS INDUSTRIAL INJURY.

ORDER

THE ORDER OF THE REFEREE DATED AUGUST 13, 1974 IS AFFIRMED.

WCB CASE NO. 74-1465 FEBRUARY 12, 1975

MAURICE LEWIS, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER, CLAIMANT'S ATTYS.
JAQUA AND WHEATLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH HELD CLAIMANT TO BE PERMANENTLY AND TOTALLY DISABLED.

FOLLOWING THE JANUARY, 1969 INJURY, CLAIMANT HAS HAD CONTINUOUS MEDICAL CARE AND TREATMENT AND UNDERGONE TWO SURGERIES. DESPITE THE ATTEMPTS OF THE EMPLOYER, GEORGIA-PACIFIC, TO ASSIST CLAIMANT IN RETURNING TO EMPLOYMENT, THE RECORD INDICATES THAT THESE EFFORTS, AS WELL AS MEDICAL TREATMENT AND EXTENSIVE PSYCHOLOGICAL COUNSELING, HAVE NOT BEEN SUCCESSFUL TO THE EXTENT

THAT CLAIMANT CAN RETURN TO A GAINFUL AND SUITABLE OCCUPATION. THE REFEREE FOUND CLAIMANT TO BE ENTITLED TO AN AWARD OF PERMANENT TOTAL DISABILITY.

THE BOARD, ON REVIEW, CONCURS WITH THIS FINDING AND AFFIRMS AND ADOPTS THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE DATED SEPTEMBER 10, 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. 73-2248 FEBRUARY 13, 1975

RICHARD EDGAR, CLAIMANT

MCCAFFREY, SMITH AND FURRER, CLAIMANT'S ATTYS.
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 NO PERMANENT PARTIAL DISABILITY.

CLAIMANT, AGE 39, RECEIVED A COMPENSABLE INJURY JANUARY 25, 1973, WHILE EMPLOYED AT A GREENHOUSE. ALL OF THE MEDICAL EVIDENCE IN THE RECORD REFLECT NO PERMANENT DISABILITY RELATED TO THE INDUSTRIAL INJURY. CLAIMANT HAS A NON-INDUSTRIAL FUNCTIONAL OVERLAY NOT AGGRAVATED BY OR RELATED TO THE INDUSTRIAL INJURY.

THE REFEREE FOUND CLAIMANT'S CREDIBILITY OPEN TO SERIOUS QUESTION.

THE REFEREE FOUND, AND THE BOARD CONCURS, THAT CLAIMANT'S DISABILITY DOES NOT STEM FROM HIS INDUSTRIAL INJURY AND THE DETERMINATION ORDER AWARDING NO PERMANENT DISABILITY SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED AUGUST 12, 1974, IS AFFIRMED.

WCB CASE NO. 73-4210 FEBRUARY 13, 1975

ZETA GREGG, CLAIMANT

MISKO, NJUST AND HINGSON, CLAIMANT'S ATTYS.
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 A REFEREE'S ORDER WHICH INCREASED CLAIMANT'S PERMANENT PARTIAL DISABILITY FROM 64 DEGREES TO 112 DEGREES.

CLAIMANT IS A 23 YEAR OLD STUDENT WHO TOOK A SUMMER JOB AS A NURSE'S AIDE AT PORTLAND ADVENTIST HOSPITAL AND SUSTAINED A COMPENSABLE INJURY ON AUGUST 22, 1969. SHE WAS SEEN BY DR. SCHULER WHO FOUND A LOW BACK INJURY SUPERIMPOSED ON A PREEXISTING SPONDYLOLISTHESIS. CLAIMANT DID NOT RESPOND TO CONSERVATIVE TREATMENT AND IN OCTOBER, 1971, DR. SCHULER PERFORMED A MYELOGRAM AND FUSION. APPROXIMATELY FIVE YEARS AFTER THE INJURY CLAIMANT STILL HAS PROBLEMS WITH HER BACK.

IT IS EVIDENT THAT CLAIMANT IS NOW PRECLUDED FROM A NURSING CAREER. ALTHOUGH PHYSICALLY ACTIVE, CLAIMANT CANNOT SIT FOR ANY PERIOD OF TIME DUE TO THE UNSTABLE BACK CONDITION. THE PARTICULAR JOB CLAIMANT NOW HOLDS AT EVANS PRODUCTS DOES PERMIT CLAIMANT TO MOVE AROUND AT WILL EXCEPT WHEN RELIEVING THE RECEPTIONIST AND TELETYPE OPERATOR.

THE REFEREE FOUND, AND THE BOARD CONCURS, THAT CLAIMANT'S PERMANENT PARTIAL DISABILITY BASED ON LOSS OF EARNING CAPACITY IS EQUAL TO 112 DEGREES UNSCHEDULED LOW BACK DISABILITY.

ORDER

THE ORDER OF THE REFEREE DATED AUGUST 14, 1974 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 300 DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-1144 FEBRUARY 14, 1975

ALLAN MATTHEWS, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES THE DENIED CLAIM. THE REFEREE ORDERED THE EMPLOYER TO ACCEPT THE CLAIM.

CLAIMANT, A 52 YEAR OLD PLANT ENGINEER AT PROVIDENCE HOSPITAL, WAS REQUIRED AS A CONDITION OF EMPLOYMENT TO HAVE CHEST X-RAYS ONCE PER YEAR TO EXCLUDE COMMUNICABLE DISEASES. THE ANNUAL SCREENING CHEST X-RAYS WERE DONE BY THE STAFF RADIOLOGIST AT THE HOSPITAL. CLAIMANT'S LUNG CANCER WAS DIAGNOSED IN 1972. CLAIMANT ALLEGES THAT HIS LUNG ABNORMALITY SHOULD HAVE BEEN DISCOVERED AND HE SHOULD HAVE BEEN ALERTED BY HIS EMPLOYER FROM THE PREVIOUS YEARS ANNUAL X-RAYS.

THE ANNUAL SCREENING CHEST X-RAYS IN NO WAY CAUSED OR EXACERBATED THE LUNG CANCER CONDITION. THERE IS NO INDICATION THAT THE LUNG CANCER WAS IN ANY WAY ASSOCIATED WITH HIS EMPLOYMENT. THE BOARD FINDS THAT CLAIMANT'S CONDITION DID NOT ARISE OUT OF HIS EMPLOYMENT.

THE EVIDENCE IN THE RECORD AS TO THE 1969, 1970 AND 1971 SCREENING X-RAYS AS INTERPRETED BY THE MOST CREDIBLE EXPERTS PREPONDERATES THAT THE X-RAYS WERE NOT ABNORMAL. THERE IS SOME EVIDENCE BY LESS EXPERT WITNESSES VIEWING THE PRIOR YEARS X-RAYS RETROSPECTIVELY THAT FURTHER INQUIRY MIGHT HAVE BEEN WARRANTED.

THE DENIAL BY THE EMPLOYER SHOULD BE REINSTATED.

ORDER

THE ORDER OF THE REFEREE DATED SEPTEMBER 4, 1974 IS REVERSED.

CLAIMANT'S CLAIM IS DENIED.

WCB CASE NO. 74-101 FEBRUARY 14, 1975

ROY SELANDER, CLAIMANT

COONS AND COLE, 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 FOUND CLAIMANT TO BE PERMANENTLY AND TOTALLY DISABLED.

AFTER PROCEEDING THROUGH A LENGTHY COURSE OF LITIGATION INCLUDING TWO HEARINGS AND TWO BOARD REVIEWS, THE BOARD FINDS THAT CLAIMANT HAS A MAJOR PSYCHIATRIC PROBLEM OF A CHARACTER DISORDER WHICH PRECEDED BUT WAS AGGRAVATED BY HIS INDUSTRIAL INJURY. THE EVIDENCE OF CLAIMANT'S UNSUCCESSFUL ATTEMPTS TO PERFORM A NUMBER OF JOBS, TOGETHER WITH DISABILITY ATTRIBUTABLE TO THE ABOVE-MENTIONED DISORDER, CONVINCE THE BOARD THAT CLAIMANT IS, IN FACT, PERMANENTLY AND TOTALLY DISABLED.

ORDER

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

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A REASONABLE ATTORNEY'S FEE THE SUM OF 300 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-1559 FEBRUARY 14, 1975

ROBERT F. SHAUER, CLAIMANT

RINGLE AND HERNDON, 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 HELD CLAIMANT'S CLAIM HAD BEEN PREMATURELY CLOSED AND REQUIRED THE FUND TO RESTORE CLAIMANT'S TEMPORARY TOTAL DISABILITY EFFECTIVE JANUARY 30, 1974, UNTIL CLOSURE PURSUANT TO ORS 656.268.

CLAIMANT WAS EMPLOYED AS A FOUNDRY WORKER AND SUSTAINED A COMPENSABLE LOW BACK INJURY JULY 13, 1973. HE RECEIVED CONSERVATIVE TREATMENT AND THERAPY AND UNDERWENT A MYELOGRAM.

CLAIMANT WAS SEEN IN NOVEMBER, 1973, AT THE DISABILITY PREVENTION DIVISION. DR. JAMES MASON CONCLUDED CLAIMANT HAD A LUMBAR STRAIN AND RECOMMENDED TESTING TO RULE OUT A LEFT KIDNEY DISEASE. THIS TESTING WAS NOT DONE UNTIL THREE MONTHS AFTER THE CLAIM WAS CLOSED. CLOSURE WAS MADE BY A DETERMINATION ORDER ON MARCH 28, 1974, AWARDING CLAIMANT 20 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED LOW BACK DISABILITY.

AT HEARING ON AUGUST 7, 1974, THE REFEREE FOUND THAT CLAIMANT'S CLAIM HAD BEEN PREMATURELY CLOSED SINCE HIS CONDITION HAD NOT BEEN STATIONARY, THAT CERTAIN TESTS HAD NOT BEEN PERFORMED AND THAT CLAIMANT HAD NOT RECEIVED APPROPRIATE OR EFFECTIVE ASSISTANCE FROM REHABILITATION EFFORTS.

THE BOARD ON REVIEW, CONCURS WITH THE FINDINGS OF THE REFEREE AND WOULD ADMONISH THE PAYING AGENCY THAT CLAIMS MANAGEMENT WOULD BE BETTER SERVED IF THE AGENCY WOULD MONITOR A TREATMENT PROGRAM INSTEAD OF DIVESTING ITSELF OF CLAIM RESPONSIBILITY.

ORDER

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

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 300 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

CLAIM NO. 133 CB 1890603 FEBRUARY 14, 1975

ROBERT R. PATTISON, DECEASED

MARTIN, ROBERTSON AND NEILL, CLAIMANT'S ATTYS.

THE ADMINISTRATRIX OF DECEDENT'S ESTATE SEEKS A BOARD'S OWN MOTION ORDER REQUIRING DECEDENT'S EMPLOYER TO PAY COMPENSATION WHICH SHE ALLEGES IS DUE ON ACCOUNT OF AN AGGRAVATION OF DECEDENT'S ORIGINAL COMPENSABLE INJURY WHICH ULTIMATELY PRODUCED HIS DEATH.

FROM THE FILES AND RECORDS OF THE WORKMEN'S COMPENSATION BOARD AND THE INFORMATION SUBMITTED BY THE PARTIES, IT APPEARS THAT ROBERT R. PATTISON, A THEN 56 YEAR OLD TRUCK DRIVER EMPLOYED BY SAFEWAY STORES, SUFFERED A COMPENSABLE MYOCARDIAL INFARCTION ON DECEMBER 14, 1967.

HE WAS CARED FOR BY DR. PAUL O. KRETSCHMAR DURING HIS INITIAL CONVALESCENCE. HE RETURNED TO WORK AND HIS CLAIM WAS THEREAFTER CLOSED ON APRIL 14, 1969 WITHOUT A PERMANENT DISABILITY AWARD. WITH THE AID OF AN ATTORNEY, HOWEVER, HE SECURED AN AWARD OF 64 DEGREES FOR UNSCHEDULED PERMANENT PARTIAL DISABILITY.

FOLLOWING CLOSURE HE WAS SEEN FROM TIME TO TIME BY DR. EDMUND W. CAMPBELL WHO PRESCRIBED VARIOUS DRUGS TO IMPROVE HIS CARDIOVASCULAR FUNCTION. EVENTUALLY THESE DRUGS WERE DISCONTINUED.

ON MARCH 24, 1974, MR. PATTISON SUFFERED ANOTHER MYOCARDIAL INFARCTION FOR WHICH HE WAS AGAIN HOSPITALIZED, THIS TIME UNDER THE CARE OF DR. ROY PAYNE SINCE DR. CAMPBELL WAS NOT AVAILABLE. AFTER HIS CONDITION STABILIZED AND HE BECAME COMFORTABLE, HE DECIDED TO LEAVE THE HOSPITAL AND LEFT ON MARCH 31, 1974, AGAINST THE ADVICE OF DR. PAYNE.

ON APRIL 4, 1974, HE WAS REHOSPITALIZED FOR EPISODES OF VENTRICULAR TACHYCARDIA DUE TO CORONARY ARTERY DISEASE AND MYOCARDIAL ISCHEMIA. NO FURTHER INFARCTION HAD OCCURRED AND HE WAS RELEASED IMPROVED ON APRIL 12, 1974, AFTER TREATMENT BY DR. CAMERON BANGS.

ON MAY 1, 1974, MR. PATTISON INFORMED HIS EMPLOYER'S WORKMEN'S COMPENSATION INSURER, THE TRAVELERS INSURANCE COMPANY, THAT HE HAD SUFFERED A RECURRENCE OF HIS ORIGINAL INJURY ON MARCH 24, 1974 AND APRIL 7, 1974. TRAVELERS REFUSED TO PROVIDE HIM WORKMEN'S COMPENSATION BENEFITS ON THE GROUNDS THAT HIS REQUEST WAS UNTIMELY AND THAT THERE WAS NO CAUSAL CONNECTION BETWEEN HIS CURRENT COMPLAINTS AND HIS ORIGINAL INJURY.

ON JUNE 14, 1974, HE WAS ADMITTED TO ST. VINCENT HOSPITAL UNDER THE CARE OF DR. CAMPBELL FOR TREATMENT OF ACUTE CONGESTIVE HEART FAILURE AND PULMONARY EDEMA. WITH TREATMENT, HE IMPROVED REMARKABLY AND WAS DISCHARGED ON JUNE 20, 1974, ON A CAREFULLY CONTROLLED REGIMEN OF SPECIAL DIET AND MEDICATION PRESCRIBED BY DR. CAMPBELL.

ON JULY 9, 1974, MR. PATTISON WAS AGAIN HOSPITALIZED FOR AN ACUTE EPISODE OF SEVERE ANGINA PECTORIS AND WAS DISCHARGED ON JULY 12. ON AUGUST 26, 1974, WHILE DR. CAMPBELL WAS AGAIN UNAVAILABLE, HE SUFFERED A SEVERE MYOCARDIAL INFARCTION AND WAS HOSPITALIZED UNDER THE CARE OF DRS. BLICKLE AND SUTHERLAND.

ON SEPTEMBER 7, 1974, MR. PATTISON DIED AND AN AUTOPSY REVEALED HIS DEATH WAS CAUSED BY CORONARY ARTERY DISEASE WITH ACUTE MYOCARDIAL INFARCTION AND BY A PULMONARY EMBOLISM.

BOTH DR. SUTHERLAND AND DR. CAMPBELL HAVE REPORTED THAT IN THEIR OPINION THE DECEDENT'S ORIGINAL MYOCARDIAL INFARCTION AND HIS SUBSEQUENT WORSENING AND ULTIMATE DEATH WERE RELATED. NO MEDICAL OPINION PRESENTED SUGGESTS OTHERWISE.

THE RULING OF THE OREGON SUPREME COURT IN HEUCHERT V. SIAC, (UNDERSCORED) 168 OR 74, 121 P2D 453 (1942), PERMITS MRS. PATTISON AS THE ADMINISTRATRIX OF DECEDENT'S ESTATE, TO SEEK ANY BENEFITS WHICH THE DECEDENT COULD HAVE RECEIVED HAD HE LIVED TO PURSUE THEM PERSONALLY.

BY VIRTUE OF ORS 656.271 (NOW ORS 656.273) DECEDENT HAD A PERIOD OF 5 YEARS FROM APRIL 14, 1969 IN WHICH TO DEMAND, AS A MATTER OF RIGHT, ADDITIONAL COMPENSATION FOR AN AGGRAVATION OF HIS ORIGINAL INJURY. IT APPEARS THAT NO CLAIM WAS MADE WITHIN THE TIME PROVIDED AND THUS THE ONLY REMEDY REMAINING IS RELIEF UNDER ORS 656.278.

WE CONCLUDE FROM THE INFORMATION SUPPLIED TO US THAT THE WORSENING OF DECEDENT'S CONDITION, BEGINNING WITH HIS HOSPITALIZATION ON MARCH 24, 1974, AND HIS ULTIMATE DEATH, WERE RELATED TO HIS ORIGINAL COMPENSABLE HEART ATTACK.

THE DECEDENT'S ESTATE IS THEREFORE ENTITLED TO THE COMPENSATION BENEFITS DECEDENT WOULD HAVE OTHERWISE RECEIVED. THE EMPLOYER, THROUGH ITS INSURER, THE TRAVELERS INSURANCE COMPANY, SHOULD BE ORDERED TO PAY THE ACCRUED TIME LOSS COMPENSATION, MEDICAL EXPENSE AND BURIAL BENEFIT TO GLADYS E. PATTISON, ADMINISTRATRIX OF THE ESTATE OF ROBERT R. PATTISON, DECEASED, AND IT SHOULD BE FURTHER ORDERED THAT HER ATTORNEY, DOUGLAS R. JONES, SHALL RECEIVE 25 PER CENT OF SAID BENEFITS, PAYABLE FROM THE TIME LOSS AND BURIAL BENEFIT ONLY, TO A MAXIMUM OF 500 DOLLARS, AS A REASONABLE FEE FOR HIS SERVICES IN THIS MATTER.

IT IS SO ORDERED.

WCB CASE NO. 73-3681 FEBRUARY 19, 1975

JAMES E. HUMPHREY, CLAIMANT

DEL PARKS, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE SOLE ISSUE TO BE DETERMINED IN THIS REVIEW IS WHETHER OR NOT CLAIMANT IS ENTITLED TO RECEIVE, IN ADDITION TO THE DELAYED PAYMENTS AND THE PENALTIES THAT WERE AWARDED BY THE REFEREE, A REASONABLE SUM AS ATTORNEY'S FEES.

AT HEARING, THE REFEREE HELD THAT WHILE A PENALTY WAS PAYABLE FOR UNREASONABLE REFUSAL TO PAY COMPENSATION, THE CARRIER'S CONDUCT DID NOT REACH "THE LEVEL OF UNREASONABLE RESISTANCE"

AND HE THEREFORE DENIED ATTORNEY'S FEES. ON APPEAL CLAIMANT'S POSITION IS THAT EVERY CASE OF UNREASONABLE REFUSAL ENTITLES CLAIMANTS NOT ONLY TO PENALTIES, BUT ALSO TO ATTORNEY'S FEES.

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

ORDER

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

WCB CASE NO. 74-872 FEBRUARY 19, 1975

HERMAN YIELDING, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH FOUND CLAIMANT TO BE ENTITLED TO AN AWARD OF PERMANENT AND TOTAL DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 15 PER CENT (48 DEGREES) UNSCHEDULED PERMANENT PARTIAL DISABILITY.

CLAIMANT, A 57 YEAR OLD MECHANIC, SUSTAINED AN INJURY TO HIS BACK ON SEPTEMBER 20, 1973. NO MEDICAL TREATMENT WAS SOUGHT UNTIL NOVEMBER 1, AND AT THAT TIME DR. ENOS REPORTED NO OBJECTIVE FINDINGS, MINIMAL OSTEOARTHRITIC CHANGES OF THE LUMBOSACRAL SPINE AND NORMAL SACROILIAC JOINTS. DR. ENOS STATED CLAIMANT COULD RETURN TO WORK NOVEMBER 19, 1973. ON DECEMBER 12, CLAIMANT RETURNED TO DR. ENOS STATING HE WAS UNABLE TO CONTINUE WITH HIS WORK AND HAD QUIT HIS JOB. HE HAS NOT WORKED SINCE.

CLAIMANT WAS SEEN BY DR. VAN OSDEL AT THE DISABILITY PREVENTION DIVISION WHO REPORTED NOTHING ADDITIONAL IN THE WAY OF OBJECTIVE FINDINGS. HE RECOMMENDED CLAIM CLOSURE NOTING CLAIMANT'S LOWER BACK RESIDUALS OF THE INDUSTRIAL INJURY WERE MILD.

UPON EFFORTS TO ASSIST CLAIMANT IN REHABILITATION, HE WAS UNWILLING TO COMMIT HIMSELF TO ANY PROGRAM. CLAIMANT IS NOT LIMITED TO A SMALL AREA OF THE JOB MARKET, HAVING WORKED AS A TRUCK DRIVER, FARMER, WELDER, HEAVY EQUIPMENT OPERATOR, CONSTRUCTION WORKER AND MECHANIC.

WITH THIS EVIDENCE BEFORE IT, THE BOARD ON DE NOVO REVIEW, CANNOT FIND THAT CLAIMANT IS SO INCAPACITATED THAT HE IS UNABLE TO WORK AT SOME TYPE OF WORK AND CONTINUING THE PAYMENT OF PERMANENT TOTAL BENEFITS WILL ONLY PERPETUATE CLAIMANT'S RELUCTANCE TO RETURN TO REMUNERATIVE EMPLOYMENT.

THE BOARD FINDS THAT CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED AND THAT HIS DISABILITY IS EQUAL TO A TOTAL OF 30 PER CENT (96 DEGREES) OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY. THE BOARD EXTENDS TO THE CLAIMANT THE REHABILITATIVE AND RESTORATIVE SERVICES OF THE DISABILITY PREVENTION DIVISION.

ORDER

THE ORDER OF THE REFEREE, DATED SEPTEMBER 13, 1974, IS REVERSED.

CLAIMANT IS AWARDED A TOTAL OF 30 PER CENT (96 DEGREES) UNSCHEDULED DISABILITY WHICH IS AN INCREASE OF 15 PER CENT (48 DEGREES) OVER THAT AWARDED BY THE DETERMINATION ORDER.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE 25 PER CENT OF THE INCREASE IN COMPENSATION ASSOCIATED WITH THIS AWARD WHICH SHALL NOT EXCEED 2,000 DOLLARS.

WCB CASE NO. 73-3514
AND 73-3574

FEBRUARY 20, 1975

BEN J. PALMER, CLAIMANT
EDWIN A. YORK, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON, MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH FOUND THAT HE HAD NEITHER SUFFERED AN AGGRAVATION OF AN OLD INJURY NOR SUFFERED A NEW INJURY ON JUNE 21, 1973.

A MAJORITY OF THE BOARD CONCLUDES THE FOLLOWING FINDINGS ARE THE MATERIAL FACTS OF THE CASE.

CLAIMANT IS NOW A 54 YEAR OLD MAN WHOSE PRINCIPAL OCCUPATION DURING THE PERIOD IN QUESTION WAS FARM LABOR.

ON MARCH 21, 1968, WHILE WORKING ON THE FARM OF JACK OUCHIDA OF GRESHAM, OREGON, CLAIMANT SUFFERED AN INJURY TO HIS LOW BACK. A CLAIM WAS FILED WITH THE HARTFORD INSURANCE COMPANY, OUCHIDA'S WORKMEN'S COMPENSATION CARRIER. THE CLAIM WAS ACCEPTED AND HE WAS TREATED BY G. A. STERNBERG, D. C. FOR A SHORT TIME FOR STRAIN OF THE RIGHT LUMBAR AND GLUTEAL MUSCLES WITH EXTENSION NEURALGIA OF THE RIGHT SCIATIC NERVE SUPERIMPOSED UPON A GRADE I SPONDYLOLISTHESIS AT THE L5-S1 INTERSPACE. LATER HE WAS SEEN AND TREATED BY DR. JOHN HARDER, AN ORTHOPEDIST. DR. HARDER'S CLOSING REPORT NOTED THAT CLAIMANT CONTINUED TO HAVE PAIN INTERMITTENTLY WITH HEAVY ACTIVITY. HIS CLAIM WAS CLOSED ON APRIL 22, 1969 WITH A 10 PER CENT UNSCHEDULED DISABILITY AWARD.

FROM TIME TO TIME THEREAFTER CLAIMANT SOUGHT MEDICAL TREATMENT FOR BACK PAIN BUT HIS CLAIM WAS NOT REOPENED.

ON JUNE 21, 1973 CLAIMANT WAS WORKING AS A FARM LABORER ON THE VICTOR THOMPSON FARM IN GRESHAM. ON THE AFTERNOON OF JUNE 21, CLAIMANT DEVELOPED A 'CATCH' IN HIS BACK WHILE COLLECTING BERRY FLATS FROM THE FIELD. ALTHOUGH HE WAS WORKING WITH MRS. THOMPSON AT THE TIME, HE MADE NO MENTION OF BACK PAIN. THAT EVENING HOWEVER, HE COMPLAINED TO FRIENDS OF HAVING HURT HIS BACK ON THE JOB AND THE NEXT MORNING VISITED DR. STERNBERG AGAIN, REPORTING THE ONSET OF

PAIN WHILE LIFTING BERRY CRATES AND COMPLAINED OF SHARP PAINS AND STIFFNESS IN THE LOW BACK WITH BENDING AND STRAIGHTENING AND OCCASIONAL NUMBNESS IN THE RIGHT LEG. DR. STERNBERG FOUND LUMBAR MUSCLE SPASM AND DIAGNOSED A LEFT PSOAS MUSCLE STRAIN. HE CONCLUDED THE LEG NUMBNESS WAS THE RESIDUAL OF THE OLD INJURY AND CONSIDERED THE PSOAS STRAIN THE RESULT OF THE DESCRIBED ACTIVITY OF THE PREVIOUS DAY.

CLAIMANT FILED A CLAIM FOR WORKMEN'S COMPENSATION BENEFITS WITH THE STATE ACCIDENT INSURANCE FUND, MR. THOMPSON'S WORKMEN'S COMPENSATION CARRIER. ON SEPTEMBER 5, 1973 THE FUND DENIED THAT HE HAD SUFFERED ANY INJURY AS A RESULT OF HIS WORK.

CLAIMANT APPARENTLY THEN REQUESTED BENEFITS FROM THE HARTFORD INSURANCE COMPANY ON THE BASIS OF AN AGGRAVATION OF THE MARCH 21, 1968 INJURY. ON OCTOBER 8, 1973, THEY DENIED HIS AGGRAVATION CLAIM ON THE GROUND THAT HE HAD INSTEAD SUFFERED A NEW COMPENSABLE INJURY ON JUNE 21, 1973 AND ON THE GROUND THAT THERE WAS NO MEDICAL VERIFICATION SUPPORTING HIS CLAIM.

HEARINGS WERE REQUESTED ON BOTH DENIALS. CLAIMANT'S ATTORNEY SUPPLIED (PRESUMABLY) A COPY OF DR. HARDER'S MARCH 14, 1974 REPORT TO JURISDICTIONALLY SUPPORT THE AGGRAVATION HEARING REQUEST.

ALTHOUGH THE COUNSEL FOR THE FUND OBSERVED AT THE HEARING THAT THE TWO CARRIERS AGREED CLAIMANT HAD HAD EITHER AN AGGRAVATION OR A NEW ACCIDENT, THE REFEREE RULED THAT HE HAD SUFFERED NEITHER AND AFFIRMED BOTH DENIALS.

A MAJORITY OF THE BOARD IS CONVINCED THAT CLAIMANT DID INDEED REINJURE HIS BACK ON JUNE 21, 1973. DR. STERNBERG'S FINDINGS THE NEXT DAY TOGETHER WITH THE TESTIMONY OF CLAIMANT ARE SUFFICIENT TO ESTABLISH THAT CLAIMANT DID HURT HIS BACK IN THE COURSE OF HIS EMPLOYMENT AT THE THOMPSON FARM.

NO MEDICAL EVIDENCE HAS BEEN PRESENTED BY THE FUND TO ESTABLISH THAT THIS INJURY REPRESENTS AN AGGRAVATION OF THE 1968 INJURY AND THUS WE CONCLUDE CLAIMANT IS ENTITLED TO COMPENSATION FOR THE JUNE 21, 1973 INJURY AS A NEW COMPENSABLE INJURY.

ORDER

THE REFEREE'S AFFIRMANCE OF THE DENIAL ISSUED BY THE HARTFORD INSURANCE COMPANY IS HEREBY AFFIRMED AND HIS AFFIRMANCE OF THE STATE ACCIDENT INSURANCE FUND'S DENIAL IS HEREBY REVERSED. THE STATE ACCIDENT INSURANCE FUND IS HEREBY ORDERED TO ACCEPT CLAIMANT'S CLAIM FOR HIS ACCIDENTAL INJURY OF JUNE 21, 1973 AND PAY TO HIM THE BENEFITS PROVIDED BY LAW.

CLAIMANT'S ATTORNEY, EDWIN YORK, IS HEREBY GRANTED A REASONABLE ATTORNEY'S FEE OF 600 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR HIS SERVICES AT THE HEARING AND ON THIS REVIEW.

COMMISSIONER MOORE DISSENTS AS FOLLOWS -

THIS REVIEWER RESPECTFULLY DISSENTS FROM THE MAJORITY OF THE BOARD AND WOULD RECOMMEND AFFIRMING THE OPINION AND ORDER OF THE REFEREE.

WITH RESPECT TO LAY TESTIMONY, I LEAN ON THE ABILITY OF THE REFEREE TO JUDGE CREDIBILITY BY PERSONAL EXPOSURE TO THE WITNESSES

AND HE WAS PERSUADED CLAIMANT FAILED IN HIS BURDEN OF PROOF.

TURNING TO THE MEDICAL EVIDENCE, DR. STERNBERG'S REPORT OF MARCH 28, 1973 (EX. 1-10) RELATING CLAIMANT'S CONDITION TO A NEW INCIDENT RELIES ON THE HISTORY WHICH WAS GIVEN TO THE DOCTOR BY THE CLAIMANT WHICH IS PRESUMABLY THE SAME STORY WHICH THE REFEREE CHOSE NOT TO BELIEVE.

THEREFORE THIS REVIEWER WOULD JOIN THE MAJORITY OF THE BOARD IN AFFIRMING THE DENIAL OF THE HARTFORD INSURANCE COMPANY CONCERNING THE MATTER IN WCB CASE NO. 73-3514 AND WOULD JOIN THE REFEREE IN AFFIRMING THE DENIAL OF THE STATE ACCIDENT INSURANCE FUND CONCERNING THE MATTER IN WCB CASE NO. 73-3574.

-S- GEORGE A. MOORE,
COMMISSIONER

WCB CASE NO. 74-1331 FEBRUARY 21, 1975

KENNETH W. FRISCHMAN, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEZENDORF, SPEARS, LUBERSKY AND CAMPBELL,
DEFENSE ATTYS.

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

AND THE EMPLOYER'S CROSS-REQUEST FOR REVIEW HAVING BEEN DISMISSED BY THE BOARD'S ORDER OF FEBRUARY 11, 1975 =

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. 74-1938 FEBRUARY 21, 1975

ANNA E. BROWN, CLAIMANT

GEORGE WALDUM, 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 AWARDING CLAIMANT PERMANENT PARTIAL DISABILITY EQUAL TO 48 DEGREES FOR 15 PER CENT UNSCHEDULED NECK DISABILITY.

CLAIMANT, A 54 YEAR OLD PSYCHIATRIC AIDE, WAS INJURED MARCH 8, 1973 WHILE TRYING TO SUBDUE A PATIENT. SHE HAS BEEN TREATED CONSERVATIVELY. IN THIS INSTANCE THE CLAIMANT HAS NOT SOUGHT RE-EMPLOYMENT OR RETRAINING. THE MEDICAL EVIDENCE IN THE RECORD

REVEALS SUBSTANTIAL SUBJECTIVE COMPLAINTS BUT ONLY MINIMAL OBJECTIVE PHYSICAL RESIDUALS FROM THE INDUSTRIAL INJURY.

THE BOARD RELIES ON THE CONCLUSIONS REACHED BY THE REFEREE UPON HIS PERSONAL OBSERVATIONS OF THE CLAIMANT AT THE TIME OF HEARING AND ADOPTS HIS OPINION AND ORDER AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED SEPTEMBER 26, 1974 IS AFFIRMED.

WCB CASE NO. 74-1883 FEBRUARY 21, 1975

LOYD ROBINSON, CLAIMANT

KEITH BURNS, CLAIMANT'S ATTY.
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 AFFIRMED A DETERMINATION ORDER AWARDING 10 PER CENT (15 DEGREES) LOSS OF THE RIGHT LEG.

THE BOARD, ON REVIEW, CANNOT CONCUR WITH THE REFEREE WHO DECLINED TO INCREASE THE PERMANENT PARTIAL DISABILITY AWARD BECAUSE CLAIMANT HAD NOT SUBMITTED TO KNEE SURGERY, NOR HAD HE UNDERGONE TREATMENT FOR A BAD DENTAL PROBLEM. THE ISSUE BEFORE THE REFEREE WAS TO DETERMINE THE EXTENT TO WHICH CLAIMANT'S RIGHT LEG WAS FUNCTIONALLY IMPAIRED.

ALTHOUGH DR. BERG SUGGESTED SURGERY, WHEN AN ARTHROGRAM WAS LATER PERFORMED BY DR. WARNOCK AT THE REQUEST OF DR. GROTH, IT WAS THEN RECOMMENDED NOT TO PERFORM SURGERY AT THAT TIME. CLAIMANT CAN HARDLY BE PENALIZED FOR REFUSING SURGERY WHICH HAD NOT BEEN DETERMINED NECESSARY. WITH RESPECT TO CLAIMANT'S NEEDED DENTAL WORK, THE DOCTOR SAW THE PROBLEM AS THREATENING TO CLAIMANT'S GENERAL HEALTH, BUT NOWHERE DID THE DOCTOR INDICATE A CAUSAL RELATIONSHIP BETWEEN CLAIMANT'S INFECTED TEETH AND HIS KNEE CONDITION.

THE BOARD, ON REVIEW, IS OF THE OPINION THAT CLAIMANT IS ENTITLED TO A PERMANENT PARTIAL DISABILITY AWARD OF 25 PER CENT LOSS OF THE RIGHT LEG.

ORDER

THE ORDER OF THE REFEREE IS MODIFIED TO REFLECT THAT CLAIMANT IS ENTITLED TO A TOTAL OF 25 PER CENT (37.5 DEGREES) LOSS OF THE RIGHT LEG. THIS IS AN INCREASE OF 15 PER CENT (22.5 DEGREES).

CLAIMANT'S COUNSEL IS TO RECEIVE AS A REASONABLE ATTORNEY'S FEE, 25 PER CENT OF THE INCREASE IN COMPENSATION MADE PAYABLE BY THIS ORDER, NOT TO EXCEED 1,500 DOLLARS.

WCB CASE NO. 74-927 FEBRUARY 21, 1975

WILLIAM HAMPTON, CLAIMANT

CLARK, MARSH AND LINDAUER, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
CROSS-APPEAL BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES A DAIRY FARM WORKER WHO SUSTAINED A COMPENSABLE INJURY ON SEPTEMBER 11, 1972. A DETERMINATION ORDER GRANTED CLAIMANT COMPENSATION EQUAL TO 160 DEGREES FOR 50 PER CENT UNSCHEDULED DISABILITY TO THE LOW BACK AND 9.6 DEGREES FOR 5 PER CENT LOSS OF USE OF THE RIGHT ARM. AT HEARING THE REFEREE INCREASED THE AWARD FOR UNSCHEDULED DISABILITY TO 256 DEGREES AND AFFIRMED THE AWARD FOR RIGHT ARM DISABILITY. CLAIMANT HAS REQUESTED BOARD REVIEW CONTENDING HE IS PERMANENTLY AND TOTALLY DISABLED AND THE STATE ACCIDENT INSURANCE FUND HAS FILED A CROSS-APPEAL.

AT THE TIME OF HEARING, CLAIMANT WAS 57 YEARS OLD AND HAD WORKED 45 YEARS AS A FARM HAND AND DAIRY MILKER. CLAIMANT NOW OWNS A 20 ACRE FARM WHERE HE KEEPS A SMALL NUMBER OF CATTLE. HE IS PHYSICALLY LIMITED TO THE EXTENT THAT HE CANNOT HANDLE THE CATTLE AND MUST HIRE HELP TO CLEAN THE BARNS AND PUT UP THE HAY.

CLAIMANT WAS COOPERATIVE WITH VOCATIONAL REHABILITATION COUNSELORS AND EXPRESSED A DESIRE TO RETURN TO EMPLOYMENT. THEIR PLAN FOR TRAINING THE CLAIMANT IN A BUYING AND SELLING CATTLE PROGRAM APPEARS TO BE RATHER UNREALISTIC TO THE EXTENT THAT IT COULD EVER BECOME AN ENTERPRISING AND PROFIT MAKING OCCUPATION FOR THE CLAIMANT.

THE BOARD, ON REVIEW, CONCLUDES THAT THE CLAIMANT IS NOW PRECLUDED FROM REGULARLY WORKING AT ANY SUITABLE AND GAINFUL OCCUPATION COUPLED WITH THE PHYSICAL LIMITATIONS IMPOSED BY THE ACCIDENT.

ORDER

THE ORDER OF THE REFEREE DATED SEPTEMBER 6, 1974 IS HEREBY REVERSED AND CLAIMANT IS GRANTED AN AWARD OF PERMANENT TOTAL DISABILITY.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE, 25 PER CENT OF THE INCREASE IN COMPENSATION ASSOCIATED WITH THIS AWARD WHICH, WHEN COMBINED WITH FEES ATTRIBUTABLE TO THE ORDER OF THE REFEREE, SHALL NOT EXCEED 2,000 DOLLARS.

WCB CASE NO. 74—208 FEBRUARY 21, 1975

CHRIS CARL PETERSON, CLAIMANT
SETTLEMENT STIPULATION

WHEREAS, THE CLAIMANT'S CLAIM WAS CLOSED BY A DETERMINATION ORDER OF THE WORKMEN'S COMPENSATION BOARD OF THE STATE OF OREGON UNDER MAILING DATE OF JANUARY 16, 1974 AND THAT SAID DETERMINATION ORDER AWARDED CLAIMANT NO PERMANENT PARTIAL DISABILITY, AND

WHEREAS, THE CLAIMANT REQUESTED A HEARING BY LETTER DATED JANUARY 21, 1974 AND A HEARING WAS HAD BEFORE RAYMOND S. DANNER, HEARING REFEREE, ON SEPTEMBER 25, 1974, AND

WHEREAS, HEARING REFEREE DANNER, BY ORDER AND OPINION DATED OCTOBER 23, 1974 ORDERED THAT THE DETERMINATION ORDER SHOULD BE AFFIRMED AND CLAIMANT SHOULD BE AWARDED NO PERMANENT PARTIAL DISABILITY, AND

WHEREAS, THE CLAIMANT APPEALED TO THE WORKMEN'S COMPENSATION BOARD BY A REQUEST FOR REVIEW DATED NOVEMBER 6, 1974, AND

WHEREAS, NEW EVIDENCE HAS ARISEN OF WHICH NEITHER OF THE PARTIES WERE PREVIOUSLY AWARE —

THEREFORE, IT IS HEREBY STIPULATED AND AGREED THAT SAID REQUEST FOR REVIEW SHALL BE COMPROMISED AND SETTLED BY CLAIMANT ACCEPTING AND THE INSURANCE COMPANY OF NORTH AMERICA PAYING UNTO THE CLAIMANT AN AWARD OF UNSCHEDULED PERMANENT PARTIAL DISABILITY EQUAL TO 10 PER CENT. THAT SAID UNSCHEDULED PERMANENT PARTIAL DISABILITY PURSUANT TO THIS SETTLEMENT STIPULATION IS EQUAL TO 2,240 DOLLARS.

IT IS FURTHER HEREBY STIPULATED AND AGREED THAT CLAIMANT'S ATTORNEY, J. DAVID KRYGER, SHALL RECEIVE AS AND FOR A REASONABLE ATTORNEY FEE IN THIS MATTER, A SUM EQUAL TO 25 PER CENT OF THE COMPENSATION GRANTED BY THIS SETTLEMENT STIPULATION — THE SAME TO BE A LIEN UPON AND PAYABLE OUT OF SUCH COMPENSATION PAID BY THE INSURANCE COMPANY OF NORTH AMERICA, AND

IT IS FURTHER HEREBY STIPULATED AND AGREED THAT CLAIMANT'S REQUEST FOR REVIEW BEFORE THE WORKMEN'S COMPENSATION BOARD OF THE STATE OF OREGON BE WITHDRAWN AND DISMISSED.

WCB CASE NO. 73—742 FEBRUARY 21, 1974

ALEX ZOUVELOS, CLAIMANT
J. B. SMITH, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS IS A DENIED HEART ATTACK CASE. THE REFEREE AFFIRMED THE DENIAL. CLAIMANT REQUESTS BOARD REVIEW CONTENDING THE CLAIM SHOULD BE ACCEPTED AND THAT THE STATE ACCIDENT INSURANCE FUND'S REJECTION

OF TEMPORARY TOTAL DISABILITY PAYMENTS UNTIL THE CLAIM WAS DENIED ENTITLED THE CLAIMANT TO PENALTIES AND ATTORNEY'S FEES.

CLAIMANT, A 63 YEAR OLD HEAD CUSTODIAN, SUFFERED A MYOCARDIAL INFARCTION WHILE STARTING TO CLIMB STAIRS CARRYING TWO EMPTY GARBAGE CANS.

THE MEDICAL EVIDENCE IN THE RECORD IS CONFLICTING WITH DR. GRISWOLD TESTIFYING THAT CLAIMANT'S WORK ACTIVITY WAS NOT THE CAUSE OF THE MYOCARDIAL INFARCTION. DR. FOX, IN HIS REPORT, EXPRESSED AN OPINION THAT CLAIMANT'S WORK AGGRAVATED A PREEXISTING DISEASE AND PRODUCED OR CONTRIBUTED TO THE MYOCARDIAL INFARCTION.

UNDER THE FACTS OF THIS CASE AND THE EVIDENCE IN THE RECORD, THE BOARD IS PERSUADED BY DR. GRISWOLD'S TESTIMONY AND FINDS THAT CLAIMANT'S HEART ATTACK DID NOT ARISE OUT OF HIS EMPLOYMENT.

CLAIMANT'S HEART ATTACK OCCURRED JANUARY 3, 1973. THE EMPLOYER KNEW OF THE INCIDENT IMMEDIATELY AND THE CLAIM WAS PROMPTLY REPORTED TO THE STATE ACCIDENT INSURANCE FUND. THE STATE ACCIDENT INSURANCE FUND'S DENIAL WAS RECEIVED BY THE CLAIMANT MARCH 3, 1973. THE STATE ACCIDENT INSURANCE FUND MADE NO PAYMENTS OF TEMPORARY TOTAL DISABILITY AND CONTINUES TO REJECT THE CLAIM FOR TEMPORARY TOTAL DISABILITY FROM JANUARY 3, 1973 TO MARCH 3, 1973.

ORS 656.262(4) SPECIFICALLY PROVIDES THAT THE FIRST INSTALLMENT OF COMPENSATION SHALL BE PAID NO LATER THAN THE 14TH DAY AFTER THE SUBJECT EMPLOYER HAS NOTICE OR KNOWLEDGE OF THE CLAIM.

ORS 656.262(5) PROVIDES THAT WRITTEN NOTICE OF ACCEPTANCE OR DENIAL OF A CLAIM SHALL BE FURNISHED TO THE CLAIMANT BY THE FUND OR DIRECT RESPONSIBILITY EMPLOYER WITHIN 60 DAYS AFTER THE EMPLOYER HAS NOTICE OR KNOWLEDGE OF THE CLAIM.

ORS 656.262(8) PROVIDES PENALTIES FOR UNREASONABLE DELAY OR UNREASONABLE REFUSAL TO PAY COMPENSATION.

ORS 656.386(1) PROVIDES THAT CLAIMANT'S ATTORNEY'S FEES ARE TO BE PAID ON REJECTED CASES WHERE THE CLAIMANT PREVAILS.

THE STATE ACCIDENT INSURANCE FUND, THEREFORE, SHOULD HAVE PAID TEMPORARY TOTAL DISABILITY FROM JANUARY 3, 1973 TO MARCH 3, 1973. IN ADDITION, THE STATE ACCIDENT INSURANCE FUND'S UNREASONABLE DELAY AND CONTINUED RESISTANCE TO PAYING THIS TEMPORARY TOTAL DISABILITY REQUIRES THAT THE STATE ACCIDENT INSURANCE FUND BE LIABLE FOR AN ADDITIONAL AMOUNT EQUAL TO 25 PER CENT OF THE TEMPORARY TOTAL DISABILITY PAYMENTS.

CLAIMANT'S ATTORNEY WILL BE PAID A REASONABLE ATTORNEY'S FEE IN THE AMOUNT OF 750 DOLLARS FOR SERVICES AT HEARING AND ON BOARD REVIEW IN PREVAILING ON THE REJECTION BY THE STATE ACCIDENT INSURANCE FUND TO PAY THE TEMPORARY TOTAL DISABILITY.

ORDER

THE ORDER OF THE REFEREE DATED SEPTEMBER 12, 1974, IS AFFIRMED.

THE STATE ACCIDENT INSURANCE FUND IS TO PAY THE CLAIMANT TEMPORARY TOTAL DISABILITY FROM JANUARY 3, 1973 TO MARCH 3, 1973. IN ADDITION, THE STATE ACCIDENT INSURANCE FUND IS TO PAY THE CLAIMANT AN ADDITIONAL AMOUNT OF 25 PER CENT OF THE TEMPORARY TOTAL DISABILITY PAYMENTS.

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. 73-2569 FEBRUARY 21, 1975

GERALD BIGGERS, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES A CLAIMANT WHO RECEIVED A COMPENSABLE INJURY AUGUST 29, 1966, WHEN HE FELL FROM A SCAFFOLDING. HE HAS RECEIVED A TOTAL AWARD OF 60 PER CENT UNSCHEDULED DISABILITY OR 115 DEGREES OF A MAXIMUM OF 192 DEGREES. THIS AWARD HAS BEEN AFFIRMED BY THE BOARD AND THE CIRCUIT COURT.

THEREAFTER, CLAIMANT FILED A CLAIM FOR INCREASED COMPENSATION ON ACCOUNT OF AGGRAVATION WHICH WAS ULTIMATELY ACCEPTED BY THE STATE ACCIDENT INSURANCE FUND. UPON CLAIM CLOSURE, A DETERMINATION ORDER AWARDED TIME LOSS BUT NO FURTHER AWARD FOR PERMANENT PARTIAL DISABILITY. UPON CLAIMANT'S REQUEST FOR HEARING ON THIS DETERMINATION, THE REFEREE GRANTED AN AWARD OF PERMANENT TOTAL DISABILITY AND THE STATE ACCIDENT INSURANCE FUND HAS APPEALED FROM THIS ORDER.

THE RECORD CONTAINS A LENGTHY AND COMPLETE HISTORY AND ANALYSIS OF CLAIMANT'S CONDITION. IT ALSO CONTAINS THE OPINIONS OF TWO HIGHLY QUALIFIED PSYCHIATRISTS WHICH ARE DIAMETRICALLY OPPOSED IN THEORY. DR. PARVARESH WAS OF THE OPINION THAT CLAIMANT HAD ALWAYS HAD A PASSIVE DEPENDENT PERSONALITY.

ON THE OTHER HAND, DR. DOYLE EXPRESSED A CONVINCING OPINION THAT, PRE-INJURY, CLAIMANT HAD BEEN A WELL FUNCTIONING INDIVIDUAL WITH A GOOD WORK RECORD, A GOOD MILITARY RECORD, AND THAT HIS PROBLEM WAS MORE ONE OF SEVERE DEPRESSION REACTION WITH A SOMATOPSYCHIC PHENOMENEN IN WHICH DEPRESSION IS PRODUCED BY PAIN AND LOSS OF STATUS. DR. DOYLE WAS OF THE OPINION THAT THE ACCIDENT WAS A MATERIAL CONTRIBUTING CAUSE TO THE CLAIMANT'S DEPRESSIVE REACTION AND HE SHOULD BE CONSIDERED TOTALLY DISABLED FROM ANY TYPE OF EMPLOYMENT.

THE BOARD, ON DE NOVO REVIEW, RELIES ON THE OPINION OF DR. DOYLE AND ON THE PERSONAL OBSERVATIONS MADE BY THE REFEREE AND CONCLUDES CLAIMANT IS, IN FACT, PERMANENTLY AND TOTALLY DISABLED.

ORDER

THE ORDER OF THE REFEREE DATED JULY 31, 1974 IS AFFIRMED.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A REASONABLE ATTORNEY'S FEE THE SUM OF 300 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-124 FEBRUARY 21, 1975

JOHN H. BARNES, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
PHILIP A. MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A CLAIMANT WHO WAS INJURED IN 1955 AND SUBSEQUENTLY HAD THREE BACK SURGERIES AND TWO FUSIONS. HE WORKED CONTINUOUSLY UNTIL AUGUST 15, 1965 WHEN HE WAS SERIOUSLY INJURED IN AN AUTOMOBILE ACCIDENT. HE AGAIN RETURNED TO WORK UNTIL NOVEMBER 2, 1966 WHEN HE FELL 20 OR 30 FEET DOWNHILL AGAIN REINJURING HIS BACK.

DEFENDANT-EMPLOYER CONCEDES THIS INJURY AGGRAVATED A PREEXISTING PHYSICAL AND EMOTIONAL CONDITION, BUT ARGUES THAT EVEN SO, AT THE TIME OF HEARING CLAIMANT WOULD HAVE BEEN PERMANENTLY AND TOTALLY DISABLED ABSENT THE INDUSTRIAL INJURY.

DR. HICKMAN, CLINICAL PSYCHOLOGIST, STATED CLAIMANT SHOULD NOT HAVE WORKED AFTER THE 1965 AUTO ACCIDENT, HOWEVER, THE RECORD INDICATES CLAIMANT DID WORK FOR 10 MONTHS AFTER THE AUTO ACCIDENT. THE BOARD CONCURS WITH THE REFEREE'S STATEMENT WHERE HE SAID -

> 'THE RECORD INDICATES THAT PRIOR TO THE 1966 INJURY, CLAIMANT WAS CAPABLE OF AND DID IN FACT GAIN AND HOLD SUITABLE INDUSTRIAL EMPLOYMENT. TO IGNORE THIS AND SAY NEVERTHELESS HE SHOULD NOT HAVE BEEN WORKING, WOULD BE ON THE ONE HAND COMMENDING CLAIMANT FOR HIS INITIATIVE IN REMAINING IN THE LABOR MARKET BUT ON THE OTHER, DEPRIVING HIM OF THE PROTECTION AFFORDED OTHER SIMILARLY SITUATED WORKMEN.'

THE BOARD, ON REVIEW, CONCURS WITH THE REFEREE'S FINDINGS AND CONCURS CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED AS THE RESULT OF HIS INDUSTRIAL INJURY SUSTAINED NOVEMBER 2, 1966.

ORDER

THE ORDER OF THE REFEREE DATED AUGUST 22, 1974 IS AFFIRMED.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A REASONABLE ATTORNEY'S FEE THE SUM OF 300 DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 73-2711 FEBRUARY 21, 1975

FERN M. SANDSTROM, CLAIMANT

GALTON AND POPICK, 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 permanent disability. The determination order awarded claimant 15 per cent (22.5 degrees) loss of left forearm and 48 degrees for unscheduled left shoulder disability.

Claimant, now 75 years old, was a yard goods saleswoman at Fred Meyer. Claimant fell on September 7, 1972, fracturing her left wrist. At the first hearing, the elements of the unscheduled shoulder disability were revealed and a subsequent hearing was held.

On de novo review, the Board concurs with the findings and the opinion and order of the referee. The award of a total of 52.5 degrees for partial loss of the left arm and 48 degrees for unscheduled left shoulder disability adequately compensates the claimant.

ORDER

The order of the referee, dated July 15, 1974, is affirmed.

WCB CASE NO. 73-1207 FEBRUARY 21, 1975

JOSEPH G. SELLS, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY RICHARD C. HEISLER
CROSS-REQUEST FOR REVIEW BY JOSEPH G. SELLS

Reviewed by Commissioners Wilson and Sloan.

Richard C. Heisler has requested Board review of a referee's order which found (1) that he, together with the claimant, Joseph G. Sells, was engaged in a joint business venture, (2) that the joint venturers had contracted with Sells in his individual capacity for the furnishing of his services to the joint venture as a laborer, (3) that Sells suffered a compensable on-the-job injury while so employed, and (4) that Heisler and Sells were noncomplying employers at the time of Sells' injury.

Heisler contends Sells was not a 'subject employee' as defined by the Oregon Workmen's Compensation Law and thus not entitled to benefits.

SELLS HAS CROSS-REQUESTED BOARD REVIEW CONTENDING HE WAS A SUBJECT EMPLOYEE BUT ONLY OF HEISLER, DOING BUSINESS AS HEISLER CONSTRUCTION CO.

HEISLER IS A BUSINESSMAN WHO OWNED AND OPERATED SEVERAL BUSINESS ENTERPRISES, AMONG THEM A REALTY OFFICE FORMERLY KNOWN AS HEISLER REALTY AND NOW KNOWN AS RED CARPET REALTY. IN COMPANY WITH CARL HEISLER, HE ALSO OPERATED A CONSTRUCTION BUSINESS KNOWN AS HEISLER CONSTRUCTION CO. IN ADDITION TO THESE VENTURES, IN 1972, HEISLER AND SELLS ENTERED INTO AN ORAL AGREEMENT TO JOINTLY BUILD A HOUSE ON SEGHERS ROAD, KNOWN AS THE RODRIGUEZ HOUSE, WITH A 50 - 50 DISTRIBUTION OF THE PROFITS OR LOSSES.

IN SEPTEMBER, SELLS OBTAINED THE VARIOUS BUILDING PERMITS (ISSUED TO HEISLER AND SELLS JOINTLY), ORDERED MATERIALS AND BEGAN SUPERVISING THE CONSTRUCTION.

BEING IN NEED OF FUNDS, SELLS ARRANGED WITH HEISLER TO WORK AS A CARPENTER ON THE PROJECT AND DRAW 5.00 DOLLARS AN HOUR FOR THE TIME HE WORKED AS A CARPENTER IN ADDITION TO SHARING 50 - 50 IN THE ANTICIPATED PROFITS.

ON SEPTEMBER 30, 1972, SELLS SUFFERED AN INJURY TO HIS CERVICAL AND DORSAL SPINE WHILE LIFTING AND PLACING FOUNDATION STRINGERS AT THE RODRIGUEZ BUILDING SITE. HE CONTINUED TO WORK BUT SOUGHT TREATMENT AND ON OCTOBER 31, 1972, FILED A CLAIM FOR WORKMEN'S COMPENSATION BENEFITS EVEN THOUGH HE HAD EARLIER ELECTED, AS A PARTNER, NOT TO BE COVERED UNDER WORKMEN'S COMPENSATION INSURANCE.

AFTER THE OCCURRENCE OF THE INJURY, AND AFTER SELLS HAD RECEIVED DRAWS FROM THE PARTNERSHIP ACCOUNT, HE REQUESTED THAT PAYROLL DEDUCTIONS BE MADE FROM THEM SEEKING TO ESTABLISH THAT HE WAS ELIGIBLE FOR BENEFITS AS AN ORDINARY EMPLOYEE.

ON SEPTEMBER 16, 1972, HEISLER HAD SECURED A WORKMEN'S COMPENSATION POLICY WITH AETNA CASUALTY AND SURETY COMPANY WHICH NAMED 'HEISLER REALTY' AS THE PRINCIPAL IN THE GUARANTY CONTRACT BUT THE DOCUMENT ELSEWHERE NOTED THE EMPLOYER WAS RICHARD C. HEISLER, DOING BUSINESS AS (DBA) HEISLER REALTY. AFTER LEARNING SELLS HAD BEEN INJURED, HEISLER ATTEMPTED TO OBTAIN A BINDER FOR WORKMEN'S COMPENSATION COVERAGE WITH AETNA FOR THE CONSTRUCTION ACTIVITY BUT THE COVERAGE WAS REJECTED ON JANUARY 18, 1973.

WHEN A COPY OF SELLS' CLAIM WAS RECEIVED BY THE BOARD, AN INVESTIGATION WAS CONDUCTED WHICH LED TO THE ISSUANCE OF A PROPOSED ORDER DECLARING HEISLER, DBA HEISLER CONSTRUCTION COMPANY A NON-COMPLYING EMPLOYER. LATER, THE AGENCY WITHDREW ITS PROPOSED ORDER WHEN IT CONCLUDED THAT HEISLER WAS IN COMPLIANCE WITH THE WORKMEN'S COMPENSATION LAW BY VIRTUE OF THE EXISTENCE OF THE AETNA POLICY ISSUED ON SEPTEMBER 16, 1972 AND THE GUARANTY CONTRACT FILED WITH THE BOARD. THE AGENCY THEN FORWARDED THE CLAIM TO AETNA FOR PROCESSING.

ON APRIL 2, 1973, AETNA DENIED SELLS' CLAIM ON THE GROUNDS THAT HE WAS A PARTNER WHO HAD NOT ELECTED COVERAGE FOR HIMSELF. SELLS THEREUPON REQUESTED A HEARING AND THE REFEREE ISSUED THE ORDER EARLIER MENTIONED.

LARSON'S WORKMEN'S COMPENSATION LAW (UNDERSCORED), VOLUME 1A, 54.30 STATES -

> 'WITH THE EXCEPTION OF OKLAHOMA AND LOUISIANA, EVERY STATE THAT HAS DEALT JUDICIALLY WITH THE STATUS OF 'WORKING PARTNERS' OR JOINT VENTURES HAS HELD THAT THEY CANNOT BE EMPLOYEES.'

IT IS OBVIOUS FROM THE RECORD THAT SELLS WAS A JOINT VENTURER WITH HEISLER AND THAT SELLS WAS THE SUPERVISOR AND SUPERINTENDENT OF THE CONSTRUCTION PROJECT ON WHICH HE RECEIVED THE INJURY. SELLS HAD SPECIFICALLY EXPRESSED THE DESIRE NOT TO ELECT TO BE COVERED UNDER WORKMEN'S COMPENSATION INSURANCE AS A PARTNER AND THUS, PURSUANT TO ORS 656.128, WAS NOT A SUBJECT EMPLOYEE. SELLS, AS AN EMPLOYER WITH THE RIGHT OF DIRECTION AND CONTROL, IN FACT, EXERCISING THE RIGHT OF DIRECTION AND CONTROL, COULD NOT BE AND WAS NOT, A SUBJECT EMPLOYEE. THE PAYMENT OF 5.00 DOLLARS PER HOUR WHILE HE WAS DOING CARPENTRY WORK WAS A MODIFICATION OF THE JOINT VENTURE DISTRIBUTION AGREEMENT AND DID NOT MAKE SELLS AN EMPLOYEE.

AS TO THE ISSUE OF WHETHER OR NOT HEISLER AND SELLS WERE, AS JOINT VENTURERS, NONCOMPLYING EMPLOYERS, THE RECORD REFLECTS COMPLETE CONFUSION AS TO FUNDAMENTAL CONCEPTS OF LEGAL ENTITY, INSURANCE COVERAGE AND INSURANCE UNDERWRITING.

IT IS FUNDAMENTAL THAT THE NAMED INSURED ON A WORKMEN'S COMPENSATION POLICY AND LIKEWISE THE PRINCIPAL ON A GUARANTY CONTRACT MUST BE A LEGAL ENTITY, I.E., A NATURAL PERSON OR A CORPORATION. THIS IS SO BECAUSE ONLY SUCH AN ENTITY CAN BECOME ULTIMATELY LIABLE FOR WORKMEN'S COMPENSATION BENEFITS. A 'DBA' IS NOT A LEGAL ENTITY. IN THE EVENT THE 'DBA' INCORRECTLY APPEARS AS THE NAMED INSURED OR PRINCIPAL THEN THE REAL PARTY IN INTEREST MUST BE CONSIDERED TO BE THE LEGAL ENTITY WHOSE LIABILITY IS INSURED.

BECAUSE THE COVERAGE PROTECTS THE LEGAL ENTITY FOR ALL COMPENSATION AND OTHER BENEFITS REQUIRED OF THE INSURED (UNDERSCORED) BY THE WORKMEN'S COMPENSATION LAW, ATTEMPTS TO SUBSTITUTE 'DBA'S' AS THE INSURED OR LIMIT COVERAGE TO ONLY SUBJECT WORKMEN IN THAT PARTICULAR 'DBA' ARE INVALID SINCE THE 'DBA' IS NOT A LEGAL ENTITY AND THUS CANNOT BE AN INSURED.

THERE IS ALSO ANOTHER REASON THAT AN ATTEMPT TO LIMIT COVERAGE ONLY TO THE EMPLOYEES LISTED FOR A PARTICULAR DBA IS INVALID. IT IS FOUNDED IN THE 'FULL COVERAGE' CONCEPT DISCUSSED IN SECTIONS 93.00 ET SEQ. OF 3 LARSON, WORKMEN'S COMPENSATION LAW =

> '93.00 = MANY STATUTES EXPRESSLY PROVIDE THAT COMPENSATION INSURANCE CONTRACTS SHALL BE CONSTRUED TO COVER THE ENTIRE LIABILITY OF THE ASSURED, SOME PROVIDE THAT COVERAGE SHALL BE COMPLETE AS TO THE NAMED BUSINESS OR NAMED LOCATION, INCLUDING ALL ACTIVITIES INCIDENT TO THAT BUSINESS = AND SOME CONTAIN NO SPECIFIC TREATMENT OF THE SUBJECT. UNDER THE 'FULL-COVERAGE' STATUTES, WHILE THE MAJORITY RULE APPEARS TO CONSTRUE THEM TO REQUIRE COVERAGE OF ALL EMPLOYEES IN ALL A GIVEN EMPLOYER'S BUSINESSES, THERE IS SOME AUTHORITY FOR LIMITING THESE STATUTES TO FULL COVERAGE OF A PARTICULAR BUSINESS, LOCATION, OR EMPLOYMENT CATEGORY. AT THE OPPOSITE EXTREME, UNDER STATUTES HAVING NO EXPRESS PROVISION, SOME JURISDICTIONS HAVE BY CASE LAW REACHED PRACTICALLY THE SAME RESULT-- THE POLICY MUST BE INTERPRETED TO COVER THE ENTIRE

LIABILITY OF THE EMPLOYER IN THE INSURED BUSINESS - THERE IS ALSO SOME AUTHORITY PERMITTING PARTIAL INSURANCE UNDER SUCH STATUTES.'

WHILE OREGON DOES NOT HAVE AN EXPRESS STATUTE REGARDING CONSTRUCTION OF THE POLICY COVERAGE, IT DOES REQUIRE EACH EMPLOYER TO ASSURE THAT HIS SUBJECT WORKMEN WILL RECEIVE COMPENSATION (ORS 656.016). (OREGON IS NOT AN 'ELECTIVE' COVERAGE STATE). THE STATUTE ALSO PROVIDES THAT, FOR DRE'S, THE GUARANTY CONTRACT SECURED TO ASSURE PAYMENT OF SUCH COMPENSATION MUST PROVIDE THAT THE INSURER AGREES TO ASSUME, WITHOUT MONETARY LIMIT, THE LIABILITY OF THE EMPLOYER TO HIS SUBJECT WORKMEN FOR COMPENSATION (ORS 656.405).

CONTRIBUTING EMPLOYERS AND THE STATE ACCIDENT INSURANCE FUND HAVE THE SAME RELATIONSHIP. -ORS 656.752(1)- IN ADDITION, THE PROVISIONS OF ORS 656.504(2) SUGGEST THAT THE LEGISLATURE RECOGNIZED THAT ONE POLICY WOULD COVER AN EMPLOYER WITH MORE THAN ONE OCCUPATION. IN PRACTICE, THE BOARD'S COMPLIANCE DIVISION CONSIDERS ONE POLICY AS PROTECTING ALL THE SUBJECT EMPLOYEES OF THE INSURED SINCE THE POLICIES ARE WRITTEN ON A 'PAYROLL AUDIT PREMIUM' BASIS. UNDERWRITING WILL PICK UP ANY ADDITIONAL PREMIUMS OWED ON PAYROLL NOT LISTED IN THE ORIGINAL APPLICATION.

FOR THESE REASONS, WE CONCLUDE THAT OREGON IS A "FULL COVERAGE' STATE AND THAT THEREFORE ANY INSURANCE COMPANY, INCLUDING THE STATE ACCIDENT INSURANCE FUND, WHICH ATTEMPTS TO DENY COVERAGE TO A NAMED INSURED ON THE BASIS THAT IT INTENDED ONLY THOSE EMPLOYED IN A LISTED BUSINESS, IS VIOLATING NOT ONLY THE GUARANTY CONTRACT BUT THE WORKMEN'S COMPENSATION LAW AND POLICIES OF THE WORKMEN'S COMPENSATION BOARD AS WELL.

IN THIS CASE, AETNA CASUALTY AND SURETY COMPANY INSURED RICHARD C. HEISLER, DBA HEISLER REALTY. NEITHER HEISLER REALTY NOR THE HEISLER-SELLS JOINT VENTURE WAS A LEGAL ENTITY. THUS, HEISLER'S WORKMEN'S COMPENSATION LIABILITY WAS INSURED BY THIS POLICY AND ALL SUBJECT EMPLOYEES OF RICHARD C. HEISLER WERE COVERED REGARDLESS OF WHETHER THEY WORKED FOR HEISLER REALTY, HEISLER CONSTRUCTION CO., OR SOME OTHER BUSINESS VENTURE WHICH HEISLER WAS PURSUING.

WE THEREFORE CONCLUDE THAT RICHARD C. HEISLER WAS IN COMPLIANCE WITH THE OREGON WORKMEN'S COMPENSATION LAW DURING THE PERIOD IN QUESTION.

WE HAVE ALREADY CONCLUDED THAT SELLS WAS NOT A SUBJECT EMPLOYEE OF ANYONE AT THE TIME OF HIS INJURY NOR HAD HE ELECTED COVERAGE UNDER ORS 656.128. THUS, HE IS NOT ENTITLED TO WORKMEN'S COMPENSATION BENEFITS FOR HIS INJURY OF SEPTEMBER 30, 1872 AND AETNA'S DENIAL MUST BE AFFIRMED.

AS A RESULT OF THE REFEREE'S ORDER THE STATE ACCIDENT INSURANCE FUND HAS PAID COMPENSATION TO SELLS. SINCE HEISLER WAS A COMPLYING EMPLOYER AND THE CLAIMANT'S CLAIM WAS MADE AGAINST HIM, AETNA WILL BE ORDERED TO PAY TO THE STATE ACCIDENT INSURANCE FUND ALL THE SUMS THE STATE ACCIDENT INSURANCE FUND PAID TO JOSEPH SELLS BECAUSE OF THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 11, 1974, IS HEREBY REVERSED.

THE LETTER OF DENIAL ISSUED BY THE AETNA CASUALTY AND SURETY COMPANY ON APRIL 2, 1973, IS HEREBY APPROVED.

RICHARD C. HEISLER WAS A COMPLYING EMPLOYER UNDER THE OREGON WORKMEN'S COMPENSATION LAW ON SEPTEMBER 30, 1972.

AETNA CASUALTY AND SURETY COMPANY IS HEREBY ORDERED TO PAY TO THE STATE ACCIDENT INSURANCE FUND ALL SUMS WHICH THE STATE ACCIDENT INSURANCE FUND PAID TO CLAIMANT, JOSEPH G. SELLS, IN COMPLIANCE WITH THE REFEREE'S ORDER.

WCB CASE NO. 73-3426 FEBRUARY 24, 1975

JAMES W. WEAVER, CLAIMANT

EVOHL MALAGON, CLAIMANT'S ATTY.
ROGER WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A CLAIMANT WHO RECEIVED A COMPENSABLE INJURY APRIL 21, 1969, ORIGINALLY DIAGNOSED AS AN ACUTE LUMBOSACRAL STRAIN. CLAIMANT HAS RECEIVED A TOTAL AWARD OF PERMANENT PARTIAL UNSCHEDULED DISABILITY OF 60 PER CENT LOSS OF THE WORKMAN OR 192 DEGREES OF A MAXIMUM OF 320 DEGREES. THE REFEREE, AT HEARING, AFFIRMED THIS DETERMINATION AND THE CLAIMANT HAS REQUESTED BOARD REVIEW CONTENDING HE IS PERMANENTLY AND TOTALLY DISABLED.

THE RECORD INDICATES CLAIMANT, NOW 54 YEARS OLD, HAS RECEIVED EXTENSIVE MEDICAL CARE, TREATMENT AND EXAMINATIONS AS WELL AS VOCATIONAL COUNSELING AND ASSISTANCE, EVALUATION AT THE BOARD'S DISABILITY PREVENTION DIVISION, AND A SESSION AT THE PAIN CLINIC.

AT THE HEARING, THE REFEREE OBVIOUSLY FELT CLAIMANT WAS CAPABLE OF GREATER PHYSICAL FUNCTION THAN DEMONSTRATED BY HIS TESTIMONY. THE BOARD, ON REVIEW, HAS GIVEN WEIGHT TO THE REFEREE'S CONCLUSIONS REGARDING CREDIBILITY. THE BOARD, ALSO, DOES NOT FIND A GREAT WEIGHT OF EVIDENCE TO ESTABLISH THAT CLAIMANT IS MOTIVATED TO ACTIVELY SEEK AND OBTAIN WORK. THE BOARD CANNOT IGNORE THE COURT OF APPEALS DECISION IN DEATON V. SAIF, (UNDERSCORED) 13 OR APP 298, STATING -

> '...(2) EVIDENCE OF MOTIVATION TO SEEK AND WORK AT GAINFUL EMPLOYMENT IS NECESSARY TO ESTABLISH A PRIMA FACIE CASE OF ODD-LOT STATUS IF THE INJURIES, EVEN THOUGH SEVERE, ARE NOT SUCH THAT THE TRIER OF FACT CAN SAY THAT REGARDLESS OF MOTIVATION THIS MAN IS NOT LIKELY TO BE ABLE TO ENGAGE IN GAINFUL AND SUITABLE EMPLOYMENT. THE BURDEN OF PROVING ODD-LOT STATUS RESTS UPON THE CLAIMANT.'

FOR THE REASONS PREVIOUSLY STATED, THE BOARD CONCLUDES CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED AND AFFIRMS AND ADOPTS THE REFEREE'S ORDER.

ORDER

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

WCB CASE NO. 74-1083 FEBRUARY 24, 1975

HORACE WIDEMAN, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MCKEOWN, NEWHOUSE, FOSS AND WHITTY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS CLAIMANT RECEIVED A PERMANENT PARTIAL DISABILITY AWARD OF 50 PER CENT LOSS OF THE WORKMAN FOR UNSCHEDULED DISABILITY BY THE DETERMINATION ORDER. AT HEARING, THE REFEREE AFFIRMED THIS AWARD AND THE CLAIMANT HAS REQUESTED BOARD REVIEW.

CLAIMANT BEGAN WORK AT WEYERHAEUSER IN 1962. HE WAS INJURED IN THE WOODS ON MAY 28, 1968 WHEN A LOG KICKED LOOSE, STRUCK HIM IN THE HIPS AND ROLLED OVER HIM. A FOURTH FUSION WAS PERFORMED ON JUNE 24, 1970. CLAIMANT RETURNED TO LIGHT DUTY AT WEYERHAEUSER IN JANUARY, 1971 AND RETURNED TO THE WOODS IN MAY, 1971. HE WORKED CONTINUOUSLY UNTIL OCTOBER, 1973 WHEN HE BROKE HIS LEG AND HAS NOT WORKED SINCE. THE LEG INCIDENT IS NOT AT ISSUE IN THIS PROCEEDING.

CLAIMANT'S CONDITION MAY ULTIMATELY WORSEN TO THE EXTENT THAT HE WILL BE PRECLUDED FROM WORKING IN THE WOODS. HOWEVER, THIS MATTER WOULD, AT THAT TIME, BE RECONSIDERED BY MEANS OF AN AGGRAVATION CLAIM PROPERLY SUPPORTED BY MEDICAL EVIDENCE.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDING MADE BY THE REFEREE THAT CLAIMANT'S PRESENT DISABILITY ATTRIBUTABLE TO THE BACK INJURY AT ISSUE IS EQUAL TO 50 PER CENT LOSS OF THE WORKMAN FOR UNSCHEDULED DISABILITY.

THE BOARD FEELS THAT CLAIMANT COULD BE GREATLY BENEFITED BY THE SERVICES OF THE BOARD'S DISABILITY PREVENTION DIVISION, A NEWLY CREATED DIVISION GEARED TO QUICKLY AND SUCCESSFULLY RESTORE INJURED WORKMEN TO A REMUNERATIVE LIVELIHOOD. THE BOARD WOULD LIKE TO SEE A SERVICE COORDINATOR CONTACT THIS CLAIMANT AS SOON AS POSSIBLE TO DISCUSS AND EXPLORE SOME POSSIBILITIES WITH RESPECT TO SOME TYPE OF SCHOOLING, RETRAINING, AND JOB PLACEMENT IN SOME TYPE OF EMPLOYMENT WITHIN THE WORKMAN'S CAPABILITIES. CLAIMANT HAS SHOWN MOTIVATION AND DETERMINATION TO CONTINUE SUPPORTING HIS FAMILY AND IS TO BE COMMENDED. ASSISTANCE IN DOING SO IS EXTENDED TO CLAIMANT BY THIS ORDER.

ORDER

THE ORDER OF THE REFEREE DATED OCTOBER 24, 1974 IS AFFIRMED.

WCB CASE NO. 74-1290 FEBRUARY 24, 1975

RICK K. JENSEN, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS.
GEARIN, CHENEY, LANDIS, AEBI AND KELLEY,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE REFEREE AWARDED A TOTAL PENALTY OF 41.37 DOLLARS TO THE CLAIMANT AND A FEE OF 100 DOLLARS TO CLAIMANT'S ATTORNEY TO BE PAID BY THE CARRIER AS REASONABLE ATTORNEY FEE.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE FINDINGS AND OPINION OF THE REFEREE AND ADOPTS HIS OPINION AND ORDER AS ITS OWN.

ORDER

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

WCB CASE NO. 72-2335 AND 73-2735 AND 74-2804 FEBRUARY 24, 1975

CLIFFORD L. NOLLEN, CLAIMANT
J. DAVID KRYGER, EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON JANUARY 14, 1975, THE BOARD ISSUED AN ORDER ON MOTION OF ALBANY FROZEN FOODS DISMISSING THE STATE ACCIDENT INSURANCE FUND'S APPEAL OF A REFEREE'S ORDER ON THE GROUND THAT IT HAD FAILED TO PERFECT ITS REQUEST FOR REVIEW BY SERVING COPIES OF THE REQUEST ON ALL OTHER PARTIES WITHIN THE TIME PROVIDED BY LAW. ALTHOUGH CLAIMANT HAD ALSO MOVED TO DISMISS THE STATE ACCIDENT INSURANCE FUND'S APPEAL FOR THESE REASONS, THE BOARD'S ORDER OF JANUARY 14, 1975, FAILED TO RULE ON THAT MOTION IN THE ORDER.

THEREAFTER, AT THE STATE ACCIDENT INSURANCE FUND'S REQUEST, THE BOARD AGREED TO RECONSIDER ITS ORDER ENTERED ON THE EMPLOYER'S MOTION AND ALSO TO RULE ON CLAIMANT'S MOTION. ADDITIONAL INFORMATION AND ARGUMENT WAS SUBMITTED BY THE STATE ACCIDENT INSURANCE FUND AND THE CLAIMANT AND EMPLOYER HAVE RESPONDED.

THE BOARD BEING NOW FULLY ADVISED FINDS THE MOTIONS OF BOTH EMPLOYER AND CLAIMANT WELL TAKEN.

THE ORDER OF DISMISSAL ENTERED ON THE EMPLOYER'S MOTION, DATED JANUARY 14, 1975, SHOULD BE RATIFIED AND REPUBLISHED NOT ONLY AS THE BOARD'S ORDER ON RECONSIDERATION OF THE EMPLOYER'S MOTION BUT AS ITS ORDER ON THE CLAIMANT'S MOTION AS WELL. THE STATE ACCIDENT INSURANCE FUND'S REQUEST FOR REVIEW MUST BE DISMISSED.

IT IS SO ORDERED.

WCB CASE NO. 74-748 FEBRUARY 24, 1975

ELLA MAE HARRISON, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
GEARIN, CHENEY, LANDIS, AEBI AND KELLEY,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES CLAIMANT'S REQUEST FOR PENALTIES AND ATTORNEY'S FEES FOR ALLEGED IRREGULARITIES IN PAYMENT OF TEMPORARY TOTAL DISABILITY AND FOR ALLEGED FAILURE OF THE EMPLOYER TO PROPERLY PROCESS THE CLAIM AND FAILURE TO ACCEPT OR DENY A CLAIM WITHIN 60 DAYS.

THE REFEREE ORDERED THE CARRIER TO PAY THE CLAIMANT 25 PER CENT OF THE TEMPORARY TOTAL DISABILITY BENEFITS OWED TO CLAIMANT FOR A PERIOD OF TIME FROM JANUARY 29, 1974, TO FEBRUARY 20, 1974, AND ALLOWED REASONABLE ATTORNEY'S FEES IN THE AMOUNT EQUAL TO 25 PER CENT OF THE INCREASED AWARD.

ON DE NOVO REVIEW, 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 AUGUST 19, 1974, IS AFFIRMED.

WCB CASE NO. 74-1307 FEBRUARY 24, 1975

NILES A. THOMAS, CLAIMANT

ROBERT DICKEY, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES A SCHEDULED OCCUPATIONAL DISEASE, HEARING LOSS IN THE HIGH FREQUENCIES. THE DETERMINATION ORDER AWARDED CLAIMANT NO PERMANENT DISABILITY. THE REFEREE AWARDED CLAIMANT 24 DEGREES FOR BINAURAL HEARING LOSS IN THE HIGHER FREQUENCIES BETWEEN 2,000 AND 6,000 CYCLES PER SECOND.

BASED ON THE RATIONALE OF IN THE MATTER OF THE COMPENSATION OF OSCAR PRIVETTE, CLAIMANT, (UNDERSCORED) WCB CASE NO 73-1563, 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 JULY 24, 1974, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 300 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 73-697 FEBRUARY 26, 1975

MYRNA POINTER, CLAIMANT

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

Reviewed by Commissioners Moore and Sloan.

After an initial review of this claim on September 16, 1974, the Board ordered a complete evaluation and report on claimant's physical and emotional status as it related to her injury, from the Board's Disability Prevention Division, prior to its final decision on the extent of her permanent disability.

Reports of that evaluation consisting of an initial examination report, dated October 15, 1974, by Dr. Lewis A. Van Osdel - a psychological evaluation, dated October 28, 1974, by Julius E. Perkins, Ph. D. - and a back consultation clinic report, dated November 15, 1974, by Drs. Henry E. Storino, C. Elmer Carlson and Elmer Specht, are admitted into the record as Board Exhibits 1, 2, and 3, respectively.

The Board has also considered the additional written comments supplied by counsel for the parties. Having reviewed the record made before the referee and the additional evidence submitted, we conclude that claimant is not in need of further medical treatment. We further conclude that she suffers from a chronic lumbar strain. The effects of this injury have also permanently aggravated a pre-existing psychopathology to a sufficient degree that vocational rehabilitation is needed to fully restore claimant to a condition of self support as contemplated by ORS 656.268.

Because claimant's injury occurred prior to the amendment of ORS 656.268 by Chapter 634 O.L. of 1973, claimant is not entitled to temporary total disability compensation while enrolled in a vocational rehabilitation program. She is, however, eligible for a maintenance stipend from the Board's rehabilitation reserve while enrolled in a program.

We conclude the referee's order dated April 24, 1974, should be affirmed on the issues of further medical care and the extent of claimant's disability but that the Board's Disability Prevention Division should be directed to assist claimant in a vocational rehabilitation program including the furnishing of a maintenance allowance if she enrolls and cooperates in such a program.

It is so ordered.

SAIF CLAIM NO. AC 386 FEBRUARY 26, 1975

RALPH E. SCHWAB, CLAIMANT

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

PURSUANT TO ITS AUTHORITY UNDER ORS 656.278, THE BOARD ON AUGUST 13, 1973, ORDERED REOPENING OF CLAIMANT'S CLAIM FOR ADDITIONAL MEDICAL CARE AND COMPENSATION.

ON SEPTEMBER 24, 1973, DENNIS K. COLLIS, M.D., PERFORMED A HIGH TIBIAL OSTEOTOMY ON THE RIGHT KNEE. FOLLOWING SURGERY, CLAIMANT WAS SEEN BY HIS TREATING DOCTOR, DR. JAMES, AND WAS REFERRED TO DR. SCHEINBERG. DR. SCHEINBERG FOUND MARKED MEDICAL COLLATERAL INSTABILITY AND BOTH DOCTORS FELT THAT CLAIMANT WOULD ULTIMATELY NEED A TOTAL KNEE REPLACEMENT BUT, FOR THE TIME BEING, CLAIM CLOSURE WAS RECOMMENDED.

THE MATTER IS NOW BEFORE THE BOARD FOR ANOTHER DETERMINATION OF RESIDUAL DISABILITY. TO AID THE BOARD IN MAKING A DETERMINATION WITH RESPECT TO CLAIMANT'S PERMANENT DISABILITY, CLAIMANT WAS INTERVIEWED BY PERSONNEL OF THE BOARD'S EVALUATION DIVISION.

BASED ON THEIR RECOMMENDATION AND THE MEDICAL REPORTS AVAILABLE, THE BOARD FINDS THAT CLAIMANT SHOULD BE GRANTED A PERMANENT PARTIAL DISABILITY AWARD OF 45 PER CENT LOSS OF THE RIGHT LEG IN ADDITION TO TEMPORARY TOTAL DISABILITY FROM SEPTEMBER 23, 1973, THROUGH DECEMBER 27, 1974.

ORDER

IT IS THEREFORE ORDERED THAT CLAIMANT RECEIVE TEMPORARY TOTAL DISABILITY FOR THE PERIOD FROM SEPTEMBER 23, 1973, THROUGH DECEMBER 27, 1974.

IT IS HEREBY FURTHER ORDERED THAT CLAIMANT RECEIVE AN AWARD OF PERMANENT PARTIAL DISABILITY OF 45 PER CENT LOSS OF THE RIGHT LEG.

WCB CASE NO. 74-388 FEBRUARY 26, 1975

MICHELE D. BOEHMER, CLAIMANT

RHOTEN, RHOTEN AND SPEERSTRA, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES WHETHER OR NOT CLAIMANT TIMELY FILED HER CLAIM FOR COMPENSATION AND WHETHER OR NOT CLAIMANT PROVED THAT HER CLAIM IS COMPENSABLE. THE STATE ACCIDENT INSURANCE FUND HAD DENIED THE CLAIM AND THE REFEREE ORDERED THE STATE ACCIDENT INSURANCE FUND TO ACCEPT THE CLAIM AND ASSESSED A PENALTY OF 25 PER CENT FOR DELAYS IN PROCESSING THE CLAIM.

CLAIMANT, A 19 YEAR OLD NURSES AIDE IN A NURSING HOME, CLAIMS SHE TWISTED HER KNEE AT WORK. SHE DID NOT REPORT THIS INCIDENT TO HER EMPLOYER AT THAT TIME AND, IN FACT, DID NOT FILE A CLAIM FOR APPROXIMATELY THREE MONTHS AFTER THE INCIDENT WHEN THE TREATING ORTHOPEDIST ADVISED HER TO DO SO.

ALTHOUGH THERE ARE SOME INCONSISTENCIES AND CONTRADICTIONS IN THE RECORD, THE REFEREE FOUND THE CLAIM TO BE COMPENSABLE AND FOUND THAT THE CLAIM WAS TIMELY FILED UNDER THE FACTS OF THIS CASE AND THAT THE STATE ACCIDENT INSURANCE FUND WAS NOT PREJUDICED BY THE DELAY IN FILING THE CLAIM. THE REFEREE HAD THE ADVANTAGE OF SEEING AND HEARING THE WITNESSES AND WEIGHT IS GIVEN TO THE FINDING OF THE REFEREE REGARDING THE WITNESSES' CREDIBILITY.

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 AUGUST 20, 1974, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 300 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-182 FEBRUARY 26, 1975

IDA MAE MC CLEARY, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES CLAIMANT'S REQUEST FOR PENALTIES AND ATTORNEY'S FEES TO BE PAID BY THE CARRIER. THE REFEREE ASSESSED A PENALTY AGAINST THE EMPLOYER OF 25 PER CENT OF THE TEMPORARY TOTAL DISABILITY DUE THE CLAIMANT FOR A PERIOD OF ONE MONTH.

ON DE NOVO REVIEW, 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 SEPTEMBER 23, 1974, IS AFFIRMED.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE 25 PER CENT OF THE INCREASE IN COMPENSATION ASSOCIATED WITH THE REFEREE'S ORDER WHICH SHALL NOT EXCEED 1,500 DOLLARS.

WCB CASE NO. 73-1236 FEBRUARY 26, 1975

RUSSELL A. SCHREECK, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES A PARTIAL DENIAL BY THE STATE ACCIDENT INSURANCE FUND IN WHICH THE STATE ACCIDENT INSURANCE FUND DENIED THAT NEITHER OF CLAIMANT'S EYES WERE INJURED IN THE INDUSTRIAL ACCIDENT AND THAT CLAIMANT'S LOSS OF VISION WAS NOT CAUSED BY THE INDUSTRIAL ACCIDENT. THE REFEREE ORDERED THE FUND TO ACCEPT RESPONSIBILITY FOR CLAIMANT'S HEADACHES AND LOSS OF LEFT EYE VISUAL ACUITY.

CLAIMANT, NOW 58 YEARS OLD, WAS WORKING INSIDE A BUILDING WHEN A THREE QUARTER INCH BOLT WAS THROWN FROM A ROTARY LAWN-MOWER THROUGH AN OPEN WINDOW, STRIKING HIM IN THE FOREHEAD AND LEFT EYEBROW. CLAIMANT WAS UNCONSCIOUS FOR A SHORT PERIOD OF TIME AND RECEIVED CARE AT THE EMERGENCY DEPARTMENT OF A HOSPITAL.

CLAIMANT COMPLAINS OF SPASMS IN THE LEFT EYE, THROBBING HEADACHES AND DULLED AND FOGGY VISION. TREATING AND EXAMINING PHYSICIANS WERE UNABLE TO SPECIFICALLY DETERMINE THE RELATIONSHIP BETWEEN THE ACCIDENT AND DECREASED VISUAL ACUITY ALTHOUGH DR. REEH STATED THERE WAS A PROBABILITY THAT THE INJURY CAUSED SOME CHANGE IN THE VISION OF THE LEFT EYE AND SET OFF A CHAIN OF EVENTS CAUSING THE CONDITION.

IN VIEW OF EXISTING PRINCIPAL OF A BROAD AND LIBERAL CONSTRUCTION OF THE REMEDIAL AND HUMANITARIAN PURPOSE OF THE WORKMEN'S COMPENSATION LAW, THE BOARD, ON REVIEW , CONCURS WITH THE FINDINGS OF THE REFEREE AND AFFIRMS AND ADOPTS HIS ORDER.

ORDER

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

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 300 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-120 FEBRUARY 28, 1975

JAMES PHILLIPS, CLAIMANT

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

Reviewed by Commissioners Wilson and Moore.

The employer requests Board review of a referee's order which increased claimant's award of permanent partial disability from 10 per cent (32 degrees) of the maximum allowable for unscheduled disability to 35 per cent (112 degrees).

Claimant, a 42 year old lumber mill worker, sustained a compensable injury April 28, 1973, diagnosed by Dr. Jerry Becker as an acute lumbosacral strain. He was treated conservatively by Dr. Becker. Upon evaluation at the Disability Prevention Division and the Back Evaluation Clinic, it was determined claimant's disability was in the range of mild but that he should not return to heavy type employment. Dr. Becker considered claimant's condition stationary and the claim was closed awarding permanent partial disability of 10 per cent of the maximum allowable for unscheduled disability with a recommendation that claimant be given vocational rehabilitation and counseling.

Although rehabilitation efforts on claimant's behalf were terminated, he has been attending Chemeketa Community College to improve his reading and writing and to ultimately secure his GED.

The referee considered claimant's physical disabilities and other factors, and awarded permanent partial disability of 35 per cent of the maximum allowable by statute for unscheduled disability. The Board, on review, concurs and affirms the order of the referee.

Counsel for the employer, in his brief, alleges that the Board in their de novo review, has automatically affirmed the order of the referees to build up the credibility of the referees. The Board, at this point, and for the record, wishes to point out that each review is done on a case by case basis by two of the Board members, individually, with a final decision made jointly. The Board does give weight to the referees who personally see and hear the claimant and witnesses, however, the ultimate decision, whether it affirms or reverses, is made on the entire record before the Board.

ORDER

The order of the referee dated August 30, 1974 is affirmed.

Claimant's counsel is awarded a reasonable attorney's fee in the sum of 300 dollars, payable by the employer, for services in connection with Board review.

WCB CASE NO. 74-1021 FEBRUARY 28, 1975

JOSEPH MOSTHAF, CLAIMANT

COONS AND COLE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
CROSS APPEAL BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES A CLAIMANT WHO HAD RECEIVED 25 PER CENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED DISABILITY EQUAL TO 80 DEGREES. THE REFEREE, AT HEARING, AWARDED AN ADDITIONAL 128 DEGREES, MAKING A TOTAL PERMANENT PARTIAL DISABILITY AWARD OF 208 DEGREES. THE CLAIMANT HAS REQUESTED BOARD REVIEW CONTENDING HE IS PERMANENTLY AND TOTALLY DISABLED. THE STATE ACCIDENT INSURANCE FUND HAS CROSS APPEALED CONTENDING THE REFEREE'S ADDITIONAL AWARD WAS TOO HIGH.

CLAIMANT, A 58 YEAR OLD TRUCK DRIVER, SUFFERED A COMPENSABLE INJURY JULY 23, 1970. HIS INJURY WAS DIAGNOSED AS MULTIPLE CONTUSIONS AND ABRASIONS, LACERATIONS OF THE BODY WITH CHRONIC LOW LUMBAR BACK STRAIN SUPERIMPOSED UPON SEVERE DEGENERATIVE DISC DISEASE AND A SPONDYLOLISTHESIS. CLAIMANT ALSO HAD PREEXISTING CHRONIC VASCULAR DISEASE. CLAIMANT HAS NOT WORKED SINCE AUGUST, 1972.

ALTHOUGH MEDICAL EVIDENCE INDICATES CLAIMANT SHOULD NOT RETURN TO TRUCK DRIVING, EVIDENCE DOES NOT INDICATE CLAIMANT IS SO LACKING IN VOCATIONAL SKILLS, INTELLIGENCE AND TRAIN-ABILITY THAT HE COULD NOT ENGAGE IN SOME TYPE OF EMPLOYMENT. THE OBSTACLE PRECLUDING HIM FROM DOING SO APPEARS TO BE A LACK OF MOTIVATION. CLAIMANT'S OWN APPRAISAL OF HIS SITUATION IS EXPRESSED AS SEEING HIMSELF TOO DISABLED TO RETURN TO EMPLOYMENT AT A COMPARABLE SALARY WHICH HE WAS MAKING WHEN INJURED, AND DOESN'T SEE ANY SENSE IN WORKING UNLESS HE CAN.

THE BOARD, ON REVIEW, FINDS CLAIMANT IS NOT ENTITLED TO A GREATER AWARD FOR PERMANENT DISABILITY AND AFFIRMS THE ORDER OF THE REFEREE.

ORDER

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

WCB CASE NO. 73-3477 FEBRUARY 28, 1975

GLADYS L. WOLF, CLAIMANT
COONS AND COLE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND HAS REQUESTED BOARD REVIEW OF A REFEREE'S OPINION AND ORDER WHICH ORDERED THE CLAIM BE REMANDED TO THE FUND TO BE ACCEPTED FOR PAYMENT OF SUCH MEDICAL CARE AND TREATMENT AS CLAIMANT MIGHT REQUIRE AND PAYMENT OF COMPENSATION COMMENCING APRIL 16, 1974.

THE CLAIMANT IN THIS PROCEEDING HAD SUSTAINED A CERVICAL INJURY IN A CAR ACCIDENT IN JUNE OF 1965. SHE REMAINED ASYMPTOMATIC UNTIL MAY, 1971, WHEN SHE AGAIN INJURED THE CERVICAL AREA IN A COMPENSABLE INDUSTRIAL INJURY WHILE EMPLOYED AS A WAITRESS. ON DECEMBER 6, 1972, DECOMPRESSION OF THE RIGHT SUBCLAVIAN ARTERY AND BRACHIAL PLEXUS WAS CARRIED OUT BY DR. LUCE. ON JANUARY 10, 1973 AFTER LEAVING DR. LUCE'S OFFICE, CLAIMANT AND HER HUSBAND WERE INVOLVED IN AN AUTOMOBILE ACCIDENT WITH CLAIMANT RECEIVING AN INJURY TO HER RIBS DESCRIBED AS A 'SEATBELT TYPE' INJURY AND INTERMITTENT DIZZINESS. CLAIMANT'S RIB PROBLEM RESOLVED ITSELF AND DR. SAMUELS DEFINED THE DIZZINESS AND FLOATING SENSATION AS NEUROVASCULAR SYNDROME UNRELATED TO THE AUTOMOBILE ACCIDENT.

BOTH DR. LUCE AND DR. POST AGREED THAT CAREFUL VASCULAR STUDIES SHOULD BE DONE AND THAT IT WAS NOT POSSIBLE, MEDICALLY, 1971 INURY FROM THOSE WHICH FOLLOWED THE AUTOMOBILE INJURY IN JANUARY, 1973.

THE FUND'S POSITION IS THAT CLAIMANT'S PRESENT CONDITION IS THE RESULT OF THE AUTO ACCIDENT OF JANUARY, 1973 AND THIS INTERVENING TRAUMA TERMINATES THEIR RESPONSIBILITY FOR CLAIMANT'S CONDITION RESULTING FROM THE INDUSTRIAL INJURY IN 1971.

THE REFEREE FOUND CLAIMANT'S CONDITION WAS NOT STATIONARY, WITH MEDICAL EVIDENCE INDICATING THAT FURTHER VASCULAR STUDIES BE MADE AND REMANDED THE MATTER TO THE STATE ACCIDENT INSURANCE FUND AS THEIR RESPONSIBILITY. THE BOARD, ON REVIEW, CONCURS WITH THE CONCLUSIONS REACHED BY THE REFEREE AND AFFIRMS HIS ORDER.

ORDER

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

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 300 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

FREDERICK RADIE, CLAIMANT

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

ON CLAIMANT'S PETITION FOR OWN MOTION RELIEF, THE BOARD, ON SEPTEMBER 16, 1974, ORDERED ITS HEARINGS DIVISION TO TAKE EVIDENCE ON WHETHER OR NOT CLAIMANT'S PRESENT CONDITION REPRESENTED AN AGGRAVATION OF A 1963 OR 1965 STATE INDUSTRIAL ACCIDENT COMMISSION COVERED INJURY AT THE SAME TIME IT TOOK EVIDENCE ON WHETHER CLAIMANT'S PRESENT CONDITION REPRESENTED A NEW INJURY. THE ORDER OF REMAND REFERRED TO AN INJURY DATE OF JUNE 8, 1971, ALTHOUGH THE CLAIMANT'S PETITION REFERRED TO AN INJURY IN 1973.

IN ADDITION TO THE BOARD'S ORDER OF REMAND, THE EMPLOYER HAD, ON JULY 29, 1974, MOVED THE REFEREE TO JOIN THE STATE ACCIDENT INSURANCE FUND AS A PARTY ON THE GROUND THAT CLAIMANT'S 1973 DISABILITY RESULTED FROM THE 1963 AND 1965 INJURIES. THE MOTION TO JOIN THE STATE ACCIDENT INSURANCE FUND WAS ALLOWED ON AUGUST 5, 1974.

ON JANUARY 8, 1975, A HEARING WAS CONVENED WITH CLAIMANT AND HIS ATTORNEY J. DAVID KRYGER, KEITH D. SKELTON REPRESENTING WESTAB, INC., AND LIBERTY MUTUAL INSURANCE COMPANY, AND MARCUS K. WARD REPRESENTING THE STATE ACCIDENT INSURANCE FUND, IN ATTENDANCE.

AT THE HEARING, IN ADDITION TO VARIOUS OTHER DOCUMENTS, A PHYSICIAN'S FIRST REPORT OF WORK INJURY, SIGNED BY CLAIMANT AND THUS CONSTITUTING A CLAIM UNDER THE WORKMEN'S COMPENSATION LAW, WAS INTRODUCED INTO THE RECORD. ALSO INTRODUCED WAS A LETTER REPORT FROM L. W. NICKILA, D. C., WHICH SUGGESTED CLAIMANT'S CURRENT COMPLAINTS WERE AN AGGRAVATION OF CLAIMANT'S 1963 INJURY. THE LETTER WAS, HOWEVER, REFERENCED TO LIBERTY MUTUAL CLAIM NO. C 604-12489 - THE CLAIM NUMBER ASSIGNED TO THE JUNE 8, 1971, MID-BACK INJURY.

THE RECORD ALSO REVEALS THAT BY LETTER DATED NOVEMBER 20, 1973, LIBERTY MUTUAL REFUSED TO "REOPEN (CLAIMANT'S) CASE FOR AGGRAVATION" (DEFENDANT'S EXHIBIT B). THIS DENIAL LETTER WAS ALSO REFERENCED TO CLAIM NO. C 604-12489.

CLAIMANT THEREUPON REQUESTED A HEARING AND HIS REQUEST FOR HEARING WAS ALSO REFERENCED TO LIBERTY MUTUAL CLAIM NO. C 604-12489, ALTHOUGH IT ALSO REFERRED TO AN ACCIDENT OF JANUARY 24, 1963.

IN SPITE OF ALL THESE REFERENCES TO THE 1971 INJURY IN THE DOCUMENTS, IT WAS AGREED AMONGST THE PARTIES AT THE HEARING THAT THE REFERENCE IN THE BOARD'S ORDER OF SEPTEMBER 16, 1974, TO A JUNE 8, 1971, INJURY WAS IN ERROR AND THAT IT SHOULD READ 1973 INSTEAD.

THE PARTIES TRIED THE MATTER ON THE ASSUMPTION THAT THE 1971 INJURY WAS NOT RELEVANT AND THAT THE ISSUE INSTEAD WAS WHETHER CLAIMANT'S 1973 DISABILITY AND SURGERY WERE THE RESULT OF AN AGGRAVATION OF HIS 1963 OR 1965 INJURY OR WHETHER IT WAS, INSTEAD, THE RESULT OF A NEW INJURY IN 1973.

THE REFEREE RULED THAT CLAIMANT HAD SUFFERED A NEW INJURY

IN 1973 AND HE THEREFORE RECOMMENDED TO THE BOARD THAT NO 'OWN MOTION' RELIEF BE GRANTED.

BY LETTER DATED JANUARY 28, 1975, THE EMPLOYER MOVED THE BOARD TO VACATE THE REFEREE'S ORDER BECAUSE HE HAD FAILED TO RESPOND TO THE ISSUES THAT WERE RAISED PRIOR TO THE HEARING. HE ALSO CONTENDED THAT THE REFEREE WAS JURISDICTIONALLY POWERLESS TO ORDER THE EMPLOYER TO ACCEPT A CLAIM FOR A 1973 INJURY SINCE NO CLAIM HAD BEEN FILED WITHIN A YEAR.

BECAUSE, (1) THE BOARD HAS NO POWER TO VACATE A REFEREE'S ORDER ABSENT A REQUEST FOR REVIEW, (2) THE RECORD REVEALS A CLAIM WAS MADE, AND (3) THE PARTIES AGREED ON THE ISSUES TO BE DISCUSSED AT THE HEARING, WE CONCLUDE THE MOTION TO VACATE IS NOT WELL TAKEN AND SHOULD BE DENIED. WE FURTHER CONCLUDE THAT THE REFEREE'S RECOMMENDATION THAT NO OWN MOTION RELIEF BE GRANTED CONCERNING CLAIMANT'S 1963 AND 1965 INJURIES IS WELL TAKEN AND THAT CLAIMANT'S PETITION FOR OWN MOTION RELIEF SHOULD THEREFORE BE DENIED.

IT IS SO ORDERED.

WCB CASE NO. 72-1220 MARCH 3, 1975

THE BENEFICIARIES OF
ROBERT TELFER, DECEASED
MYRON ENFIELD, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES A DENIED CLAIM FOR BENEFITS BY THE BENEFICIARIES OF A WORKMAN INVOLVED IN A FATAL CAR ACCIDENT ON THE NIGHT OF FEBRUARY 23, 1972. THE REFEREE FOUND THAT DECEDENT'S DEATH AROSE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT, AND REMANDED THE CLAIM TO THE STATE ACCIDENT INSURANCE FUND FOR PAYMENT OF BENEFITS. THE FUND HAS REQUESTED REVIEW OF THIS ORDER.

THE DECEDENT RESIDED IN WOODBURN WHERE HE WAS PASTOR OF A SMALL CHURCH. HE ALSO HAD A CAPITAL JOURNAL PAPER ROUTE, WORKED FOR WEST COAST BUILDING MAINTENANCE, A JANITORIAL SERVICE, AND WORKED AS AN ORDERLY AT SALEM MEMORIAL HOSPITAL FROM 11 P.M. TO 7.30 A.M. FIVE NIGHTS A WEEK. THE JANITORIAL SERVICES WERE PROVIDED BEFORE CLAIMANT CHECKED INTO THE HOSPITAL JOB.

ON THE NIGHT IN QUESTION, DECEDENT HAD HELD A CHURCH MEETING, HAD, WITH THE ASSISTANCE OF OTHERS, PERFORMED HIS USUAL CLEANING AT THE BANK OF OREGON IN WOODBURN, AND HAD PROCEEDED TO DRIVE TOWARD SALEM WHERE HE WAS TO CHECK ON THE CLEANING PERFORMANCE OF OTHER WORKMEN AT THREE OTHER OFFICES AS AN EMPLOYEE OF WEST COAST BUILDING MAINTENANCE, BEFORE REPORTING TO SALEM MEMORIAL HOSPITAL. FOR THE LATTER WORK HE WAS PAID TRAVEL TIME FROM WOODBURN. DECEDENT WAS KNOWN AS A FAST DRIVER AND HE WAS FOUND IN HIS WRECKED CAR SOME TIME BEFORE 11 P.M. APPROXIMATELY FOUR-TENTHS OF A MILE NORTH OF THE SALEM CITY LIMITS.

THOUGH COMPLETE RECORDS WERE NOT MAINTAINED BY WEST COAST

BUILDING MAINTENANCE, THEY WERE SUFFICIENT TO ESTABLISH THAT DECEDENT WAS CARRIED ON THEIR PAYROLL AS AN EMPLOYEE AND THAT HE WAS NOT WORKING ON A CONTRACTUAL BASIS AS AN INDEPENDENT CONTRACTOR.

THE QUESTION OF WHETHER THE FATAL INJURY AROSE OUT OF AND IN THE COURSE OF DECEDENT'S EMPLOYMENT WAS ANSWERED BY THE EVIDENCE THAT DECEDENT WAS PAID AN HOURLY BASIS BY WEST COAST BUILDING MAINTENANCE FROM THE TIME HE LEFT WOODBURN UNTIL HE ARRIVED AT SALEM MEMORIAL HOSPITAL.

WE CONCLUDE, ON DE NOVO REVIEW, THAT UNTIL COMPLETION OF THE INSPECTIONS HE WAS TO HAVE MADE, DECEDENT REMAINED A WORKMAN OF WEST COAST BUILDING MAINTENANCE. WE CONCUR WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE AND WOULD AFFIRM THE ORDER OF THE REFEREE IN ITS ENTIRETY.

ORDER

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

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 650 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

SAIF CLAIM NO. BC 191848 MARCH 3, 1975

LUCY FORESTER, CLAIMANT

RICHARD T. KROPP, CLAIMANT'S ATTY.

ON DECEMBER 26, 1974, CLAIMANT, THROUGH HER ATTORNEY, RICHARD T. KROPP, PETITIONED THE BOARD FOR AN OWN MOTION ORDER REQUIRING THE STATE ACCIDENT INSURANCE FUND TO PROVIDE HER FURTHER MEDICAL CARE AND COMPENSATION FOR AN INJURY OF JUNE 1, 1969. THE FUND VOLUNTEERED TO AUTHORIZE A MYELOGRAM TO DETERMINE WHETHER OR NOT FURTHER TREATMENT WAS INDICATED.

THE FUND ADVISED THE BOARD BY LETTER DATED FEBRUARY 6, 1975, THAT THE MYELOGRAM CONFIRMED THE NEED FOR FURTHER TREATMENT AND THAT IT HAD VOLUNTARILY REOPENED CLAIMANT'S CLAIM AND EXTENDED FURTHER MEDICAL CARE TO HER WITH TIME LOSS COMPENSATION COMMENCING ON JANUARY 24, 1975.

BEING NOW FULLY ADVISED, THE BOARD CONCLUDES THAT CLAIMANT IS ENTITLED TO THE FURTHER CARE AND COMPENSATION BEING PROVIDED BY THE STATE ACCIDENT INSURANCE FUND AND THAT CLAIMANT'S ATTORNEY SHOULD BE AUTHORIZED TO RECEIVE 20 PER CENT OF CLAIMANT'S TEMPORARY TOTAL DISABILITY COMPENSATION TO A MAXIMUM OF 250 DOLLARS, THE SAME TO BE A LIEN UPON AND PAYABLE OUT OF SUCH COMPENSATION AS A REASONABLE FEE FOR HIS SERVICES IN THIS MATTER.

IT IS SO ORDERED.

WCB CASE NO. 72-1344 MARCH 3, 1975

WALTER E. SMITH, CLAIMANT

SCHOUBOE, VAVANAUGH AND DAWSON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON JANUARY 24, 1975, THE FUND MOVED THE BOARD TO VACATE ITS ORDER DATED JANUARY 17, 1975, ENTERED IN THE ABOVE-REFERENCED MATTER.

THE PARTIES HAVE PRESENTED ADDITIONAL ARGUMENT ON THE MOTION AND THE BOARD, BEING NOW FULLY ADVISED, FINDS THE MOTION NOT WELL TAKEN AND IT IS HEREBY DENIED.

NO NOTICE OF APPEAL IS DEEMED APPLICABLE.

WCB CASE NO. 74-1573 MARCH 6, 1975

ERNEST R. GENTRY, CLAIMANT

BAILEY, DOBLIE AND BRUUN, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A CLAIMANT WHO REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH GRANTED PERMANENT PARTIAL DISABILITY OF 50 PER CENT OF THE MAXIMUM FOR UNSCHEDULED LOW BACK DISABILITY AND AFFIRMED AN AWARD OF 5 PER CENT LOSS OF THE LEFT LEG. CLAIMANT CONTENDS HE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT, 63 YEARS OLD, WAS INJURED JULY 26, 1973 WHILE WORKING AS A CARPENTER, HIS LIFELONG OCCUPATION. DR. LISAC TREATED CLAIMANT FOR A CONTUSION AND LOW BACK STRAIN. UPON REFERRAL TO THE DISABILITY PREVENTION DIVISION AND THE BACK EVALUATION CLINIC, IT WAS FOUND CLAIMANT'S TOTAL LOSS OF FUNCTION DUE TO THE INJURY WAS MILD.

AT THE HEARING, CLAIMANT TESTIFIED HE NOW LIVES AT WHEELER, HAS TAKEN HIS UNION RETIREMENT AND SOCIAL SECURITY. IT THUS BECOMES OBVIOUS CLAIMANT IS MORE MOTIVATED TOWARD RETIREMENT THAN TO UTILIZE HIS REMAINING CAPABILITIES IN THE OPEN JOB MARKET.

THE BOARD, ON REVIEW, FINDS CLAIMANT HAS BEEN ADEQUATELY COMPENSATED FOR HIS DISABILITY RESULTING FROM THE INDUSTRIAL INJURY.

ORDER

THE ORDER OF THE REFEREE DATED OCTOBER 24, 1974 IS AFFIRMED.

LLOYD JOHNSON, CLAIMANT

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

Reviewed by Commissioners Wilson and Moore.

On March 15, 1973 claimant, 33 years old, was involved in a truck accident in Wyoming sustaining significant injury to the cervical spine, C5-6 with radicular symptoms of nerve root injury. By determination order, claimant was granted an award of permanent partial disability of 10 per cent (32 degrees) unscheduled neck and back disability and 5 per cent (7.5 degrees) loss of the right hand. The referee, at hearing, increased the unscheduled disability award to 20 per cent (64 degrees) for the neck and back, and increased the scheduled right arm disability to 20 degrees. Claimant has appealed from this order contending he is entitled to a greater award of permanent disability.

Claimant presently suffers pain and weakness in his right arm and swelling and numbness in his right hand. There is atrophy in the upper arm.

As a result of the injury, claimant is now substantially physically handicapped with respect to heavy manual labor and is academically handicapped with respect to retraining for other type of employment.

Reviewed the evidence in the record, the board finds claimant is entitled to an increase in the unscheduled area.

ORDER

Claimant is hereby granted an additional 10 per cent, making a total of 30 per cent of the maximum allowable for unscheduled disability. The board affirms the award of 20 degrees loss of the right arm. In all other respects, the order of the referee dated August 23, 1974 is affirmed.

Counsel for claimant is to receive as a fee, 25 per cent of the increase in compensation associated with this award which, combined with fees attributable to the order of the referee, shall not exceed 2,000 dollars.

WCB CASE NO. 74—1574 MARCH 6, 1975

THOMAS BARLOW, CLAIMANT

WILLNER, BENNETT, MEYERS, RIGGS AND SKARSTAD, CLAIMANT'S ATTYS.
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH INCREASED CLAIMANT'S PERMANENT PARTIAL DISABILITY AWARDS FROM 32 DEGREES TO 80 DEGREES FOR UNSCHEDULED BACK DISABILITY AND THE SCHEDULED AWARD FOR LEFT LEG DISABILITY FROM 15 DEGREES TO 35 DEGREES.

CLAIMANT SUSTAINED A COMPENSABLE INJURY OCTOBER 21, 1973 WHILE EMPLOYED AS A CRANE OPERATOR AT REYNOLDS METALS. A LUMBAR LAMINECTOMY WAS PERFORMED BY DR. CHURCH ON NOVEMBER 1, 1973.

CLAIMANT HAS RETURNED TO THE CRANE JOB HE HAS PERFORMED FOR APPROXIMATELY 27 YEARS. IT REQUIRES LITTLE PHYSICAL EFFORT. THE REFEREE INCREASED BOTH AWARDS OF DISABILITY, BASING HIS REASONING ON THE DISTINCTION BETWEEN EARNINGS AND EARNING CAPACITY.

THE BOARD, ON REVIEW, AGREES THAT CLAIMANT IS ABLE TO FUNCTION WELL AT HIS PRESENT EMPLOYMENT, BUT IF PLACED IN THE OPEN JOB MARKET WOULD BE SERIOUSLY HANDICAPPED AND LIMITED. FOR THESE REASONS, THE ORDER OF THE REFEREE IS AFFIRMED.

ORDER

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

CLAIMANT'S COUNSEL IS TO RECEIVE AS A FEE THE SUM OF 300 DOLLARS, PAYABLE BY THE EMPLOYER FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 73—1047 MARCH 7, 1975

FRED LEE, CLAIMANT

BAILEY, DOBLIE AND BRUUN, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

IN THIS MATTER CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER AWARDING CLAIMANT PERMANENT PARTIAL DISABILITY EQUAL TO 20 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

CLAIMANT INJURED HIS LOWER BACK ON SEPTEMBER 7, 1972, WHILE LOADING LUMBER. THE BACK EVALUATION CLINIC REPORTED CLAIMANT'S

LOSS OF FUNCTION TO THE BACK DUE TO THE INJURY AS MODERATE. PSYCHOLOGICAL TESTING RESULTS WERE ABOVE AVERAGE.

CLAIMANT HAS RETURNED TO HIS FORMER EMPLOYMENT AT A DIFFERENT JOB REQUIRING NOT AS MUCH HEAVY LIFTING. THE EMPLOYER IS SATISFIED WITH CLAIMANT'S PERFORMANCE AND CLAIMANT IS WORKING AT A BETTER JOB AT A BETTER RATE OF PAY THAN HE HAD BEFORE THE INJURY.

SHOULD CLAIMANT'S CONDITION WORSEN IN THE FUTURE, AGGRAVATION RIGHTS ARE AVAILABLE TO HIM AS WELL AS ASSISTANCE FROM THE BOARD'S DISABILITY PREVENTION DIVISION IN SOME TYPE OF RETRAINING PROGRAM.

THE BOARD, ON REVIEW, CONCURS WITH THE DETERMINATION MADE PURSUANT TO ORS 656.268 AND AFFIRMED BY THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED OCTOBER 31, 1974, IS AFFIRMED.

WCB CASE NO. 74-1176 MARCH 7, 1975

RONALD RENFRO, CLAIMANT

FROHNMAYER AND DEATHERAGE, CLAIMANT'S ATTYS.
PHILIP MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES A CLAIMANT EMPLOYED AS AN OPERATOR OF HEAVY EQUIPMENT WHO SUSTAINED A BACK INJURY ON AUGUST 17, 1972. PURSUANT TO A DETERMINATION ORDER, HE WAS AWARDED 15 PER CENT UNSCHEDULED DISABILITY EQUAL TO 48 DEGREES. AT HEARING, THE REFEREE INCREASED CLAIMANT'S AWARD TO 25 PER CENT OF 80 DEGREES OF A MAXIMUM OF 320 DEGREES. THE EMPLOYER HAS REQUESTED REVIEW OF THIS ORDER.

IT IS UNDISPUTED THAT CLAIMANT HAS SUSTAINED INJURY TO HIS BACK. HE HAS RETURNED TO HIS FORMER OCCUPATION IN HEAVY EQUIPMENT AND NOW OPERATES A SCRAPER WHICH HAS HYDRAULIC CUSHIONS ALLOWING HIM TO FUNCTION DESPITE THE PRESENCE OF PAIN AND DISCOMFORT. HE HAS APPARENTLY LEARNED TO LIVE WITH HIS DISABILITY.

SINCE THE BOARD HAS NOT BEEN PRESENTED WITH REASON OR JUSTIFICATION FROM THE EMPLOYER TO REVERSE OR MODIFY THE AWARD MADE BY THE REFEREE AT HEARING, THE AWARD MADE BY THE REFEREE AT HEARING IS AFFIRMED.

ORDER

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

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEYS FEE IN THE SUM OF 200 DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-2290 MARCH 7, 1975

RICHARD PITTS, CLAIMANT

FRED ALLEN, 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 AWARD OF PERMANENT TOTAL DISABILITY.

THIS CLAIM INVOLVES A SELF-EMPLOYED SHIPWRIGHT, NOW 59 YEARS OLD, WHO SUSTAINED A COMPENSABLE INJURY IN OCTOBER, 1969, AND WHO HAS SUFFERED SUBSEQUENT EPISODES OF DISTRESS SUPERIMPOSED ON A PREEXISTING STRUCTURAL BACK PROBLEM. PURSUANT TO DETERMINATION ORDER, CLAIMANT HAD RECEIVED AN AWARD OF PERMANENT PARTIAL DISABILITY EQUAL TO 208 DEGREES FOR 65 PER CENT UNSCHEDULED BACK DISABILITY.

MEDICAL OPINION IN THE RECORD FROM NUMEROUS EXAMINING AND TREATING DOCTORS INDICATE CLAIMANT IS PHYSICALLY NOW PRECLUDED FROM ANY REGULAR WORK ACTIVITY REQUIRING MORE THAN VERY SHORT PERIODS OF EXERTION. THE CAREFUL VOCATIONAL COUNSELING DEEMED NECESSARY TO REINSTATE CLAIMANT INTO THE WORK FORCE WAS NOT ACCOMPLISHED AND CONSEQUENTLY CLAIMANT'S PSYCHOLOGICAL FRUSTRATIONS PRESENT A BARRIER TO CLAIMANT'S RETURN TO THE JOB MARKET.

THE REFEREE FOUND CLAIMANT TO BE UNABLE TO WORK AT A GAINFUL AND SUITABLE OCCUPATION AND AWARDED CLAIMANT COMPENSATION AS PERMANENTLY AND TOTALLY DISABLED. THE BOARD, ON REVIEW, CONCURS WITH THE FINDING MADE BY THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED NOVEMBER 5, 1974, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 400 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-789 AND 74-1063 MARCH 7, 1975

EARL LARSON, CLAIMANT

GALTON AND POPICK, 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 THE REFEREE'S CONSOLIDATED OPINION AND ORDER ISSUED IN WCB CASE NO. 74-789 AND WCB CASE NO. 74-1063. THE PERMANENT PARTIAL

DISABILITY AWARDS MADE PURSUANT TO DETERMINATION AND INCREASED BY THE REFEREE ARE SHOWN BELOW =

CASE NO. 74-789

BY DETERMINATION = 96 DEGREES (30 PER CENT) UNSCHEDULED RIGHT SHOULDER

BY THE REFEREE = 160 DEGREES (50 PER CENT) UNSCHEDULED RIGHT SHOULDER

CASE NO. 74-1063

BY DETERMINATION = 64 DEGREES (20 PER CENT) UNSCHEDULED BACK DISABILITY

BY DETERMINATION = 27 DEGREES (20 PER CENT) LOSS OF RIGHT FOOT

BY THE REFEREE - 112 DEGREES (35 PER CENT) UNSCHEDULED LOW BACK DISABILITY

BY THE REFEREE - 54 DEGREES (40 PER CENT) LOSS OF RIGHT FOOT

CLAIMANT HAS BEEN A PAINTER ALL HIS LIFE AND IS NOW 61 YEARS OLD. HE SUSTAINED HIS FIRST INJURY TO HIS RIGHT ARM AND SHOULDER MAY 21, 1971, WHEN HE FELL FROM A LADDER. THE CLAIM WAS CLOSED AS A MEDICAL ONLY.

LATER IN NOVEMBER OF 1971, CLAIMANT WAS READMITTED TO THE HOSPITAL AND UNDERWENT AN ACROMIONECTOMY AND REPAIR OF THE RIGHT SHOULDER ROTATOR CUFF. CLAIMANT CONTINUED TO HAVE MARKED WEAKNESS, LIMITATION OF MOTION AND ATROPHY OF THE RIGHT SHOULDER MUSCLES.

CLAIMANT SUSTAINED THE SECOND INJURY TO HIS BACK ON FEBRUARY 13, 1973, WHILE LIFTING BUCKETS OF PAINT. THERE WERE TWO LAMINECTOMIES PERFORMED FOLLOWING THIS INJURY. ALTHOUGH FAIRLY STABLE IN JANUARY OF 1974, DR. MCGRAW FOUND CLAIMANT HAD PERSISTENT PAIN, RESTRICTED MOTION OF THE SPINE AND WEAKNESS OF THE LEG.

THE BOARD, ON REVIEW, IS OF THE OPINION THAT ABSENT CLAIMANT'S MOTIVATION TO WORK AND A COMPASSIONATE EMPLOYER, THIS CLAIMANT'S LOSS OF EARNING CAPACITY COULD WELL BE MORE THAN THAT AWARDED. THE BOARD FINDS THAT CLAIMANT HAS NOT BEEN OVERCOMPENSATED FOR HIS DISABILITY AND CONCURS WITH THE FINDINGS MADE BY THE REFEREE.

ORDER

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

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 100 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

MARNEY H.C. THOMPSON, CLAIMANT

FRANKLIN, BENNETT, OFELT, DESBRISAY AND JOLLES,
CLAIMANT'S ATTYS.
ROGER R. WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES A 59 YEAR OLD FACTORY WORKER WHO SUSTAINED A COMPENSABLE INJURY WHEN SHE STEPPED IN A HOLE IN THE PARKING LOT ON MAY 5, 1971. PURSUANT TO A DETERMINATION ORDER, SHE WAS GRANTED 14 DEGREES PARTIAL LOSS OF THE RIGHT FOOT. AT HEARING, THE REFEREE FOUND BECAUSE OF THE EFFECT OF THE ANKLE ON THE KNEE, THE AWARD SHOULD BE OF THE LEG RATHER THAN THE FOOT AND HE GRANTED ADDITIONAL COMPENSATION EQUAL TO 24 DEGREES FOR A TOTAL AWARD OF 38 DEGREES OR 25 PER CENT LOSS OF THE RIGHT LEG.

DR. RUBENDALE'S DIAGNOSIS WAS A CHRONIC SPRAIN WITH POSSIBLE SUDEK'S ATROPHY. ALTHOUGH SHE EXPERIENCED CONTINUING PAIN, CLAIMANT RETURNED TO WORK NOVEMBER 22, 1971.

ON APRIL 7, 1972, CLAIMANT TURNED HER RIGHT ANKLE AND SUSTAINED A COMPENSABLE RIGHT KNEE STRAIN. IN ADDITION, CLAIMANT WAS THE VICTIM OF TWO ASSAULTS. DR. PASQUESI FELT CLAIMANT'S KNEE SYMPTOMS HAD BEEN AGGRAVATED BY THE INSTABILITY OF HER RIGHT ANKLE AND THAT SHE COULD NOT TOLERATE ANY TYPE OF WORK REQUIRING HER TO BE ON HER FEET. DR. CHERRY FIT CLAIMANT WITH A LEG BRACE, WITHOUT WHICH THE RIGHT ANKLE CONTINUOUSLY, AND OCCASIONALLY THE RIGHT KNEE GIVES WAY. IT APPEARS THAT SEDENTARY WORK WILL BE APPROPRIATE IF CLAIMANT CONTINUES TO BE EMPLOYED.

THE REFEREE FOUND CLAIMANT'S CONDITION TO BE STATIONARY AND THEREFORE MADE NO PROVISIONS FOR ADDITIONAL TEMPORARY TOTAL DISABILITY. HE DID FIND CLAIMANT ENTITLED TO ADDITIONAL PERMANENT DISABILITY AND GRANTED AN AWARD EQUAL TO 38 DEGREES FOR 25 PER CENT LOSS OF THE RIGHT LEG. THE BOARD, ON REVIEW, CONCURS AND AFFIRMS THE ORDER OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE DATED SEPTEMBER 9, 1974 IS AFFIRMED.

WCB CASE NO. 74-1808 MARCH 7, 1975

MARY A. PARKERSON, CLAIMANT

KEITH BURNS, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES A CLAIMANT WHO SUSTAINED A COMPENSABLE INJURY JUNE 6, 1970. WHEN A CLAIM FOR INCREASED COMPENSATION ON ACCOUNT OF AGGRAVATION WAS FILED, IT WAS DENIED BY THE EMPLOYER. AT HEARING, THE REFEREE AFFIRMED THE DENIAL FINDING LACK OF JURISDICTION ON THE GROUNDS CLAIMANT HAD FAILED TO MEET THE MEDICAL REQUIREMENTS OF ORS 656.273. ALTHOUGH MEDICAL OPINIONS WERE SUBMITTED, THEY WERE INDIVIDUALLY OR COLLECTIVELY NOT SUFFICIENT TO ESTABLISH THAT CLAIMANT'S CONDITION HAD WORSENED SINCE THE LAST ARRANGEMENT OF COMPENSATION.

THE BOARD CONCURS WITH THE FINDING OF THE REFEREE THAT CLAIMANT HAS NOT SUSTAINED THE REQUIREMENTS FOR FILING AN AGGRAVATION CLAIM.

ORDER

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

SAIF CLAIM NO. C 40082 MARCH 12, 1975

BILLY MCCUTCHEN, CLAIMANT

THIS MATTER INVOLVES A WORKMAN WHO, ON SEPTEMBER 28, 1966, SUFFERED SERIOUS AND EXTENSIVE BURNS, PLUS A FRACTURED LEFT FOOT WHEN HIS CLOTHING CAUGHT FIRE FORCING HIM TO JUMP APPROXIMATELY 40 FEET DOWNWARD.

CLAIMANT RECEIVED TREATMENT FOR BURNS AND LATER UNDERWENT SURGERY ON THE RIGHT HAND AND TRIPLE ARTHRODESIS OF HIS LEFT FOOT. ONE DETERMINATION ORDER ISSUED MAY 27, 1968, AWARDED 45 PER CENT LOSS USE OF THE LEFT FOOT, 25 PER CENT LOSS USE OF THE RIGHT FOREARM AND 5 PER CENT LOSS USE OF THE LEFT FOREARM.

THE STATE ACCIDENT INSURANCE FUND, ON APRIL 17, 1972, VOLUNTARILY REOPENED CLAIMANT'S CLAIM TO PERMIT DR. CORRIGAN TO PERFORM SURGERY TO CORRECT A DEFORMITY OF THE TOES AND REDUCE THE DISCOMFORT IN THE FOOT. DR. CORRIGAN REPORTED SUCCESSFUL SURGERY AND THE CLAIM HAS NOW BEEN SUBMITTED FOR A DETERMINATION OF FURTHER DISABILITY.

THE RECORD INDICATES THAT NO FURTHER DISABILITY HAS OCCURRED AND THEREFORE THE AWARD PREVIOUSLY GRANTED TO CLAIMANT IS ADEQUATE.

ORDER

IT IS THEREFORE ORDERED THAT CLAIMANT IS ENTITLED TO TEMPORARY TOTAL DISABILITY FROM JUNE 12, 1974, THROUGH SEPTEMBER 22, 1974, INCLUSIVE AND THAT NO FURTHER PERMANENT DISABILITY COMPENSATION IS DUE.

NO NOTICE OF APPEAL IS DEEMED APPLICABLE.

WCB CASE NO. 74-1943 MARCH 12, 1975

ROBERT YARBROUGH, CLAIMANT

COONS AND COLE, CLAIMANT'S ATTYS.
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT IN THIS MATTER HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED THE EMPLOYER'S DENIAL OF CLAIMANT'S CLAIM.

ON APRIL 19, 1974, THIS 50 YEAR OLD PLYWOOD WORKER SUFFERED AN INJURY WHEN STRUCK BY ANOTHER EMPLOYEE, ONE WALTER DAVIS. THE INCIDENT AROSE WHEN CLAIMANT ARRIVED AT WORK WITH A BOTTLE OF WHISKEY WHICH HE AND A WOMAN CO-WORKER, LOU NEAL, PROCEEDED TO CONSUME WHILE ON THE JOB. IN AN ATTEMPT TO SOBER HER UP SOMEWHAT AND AT HER REQUEST, CLAIMANT SLAPPED THE WOMAN CO-WORKER. WHEN EMPLOYEE DAVIS HEARD OF THE SLAPPING INCIDENT, HE RUSHED OVER TO CLAIMANT AND THE ASSAULT OCCURRED. CLAIMANT WAS HOSPITALIZED FOR 14 DAYS AND HIS CLAIM FOR WORKMEN'S COMPENSATION WAS DENIED.

THE REFEREE FOUND AS A PREREQUISITE OF ARISING 'OUT OF' THE EMPLOYMENT, THERE MUST BE SOME CAUSAL CONNECTION BETWEEN THE EMPLOYMENT AND THE INJURY AND THE CAUSE OF DANGER MUST BE PECULIAR TO THE WORK. HE ALSO FOUND ASSAULTS BY CO-WORKERS ARE COMPENSABLE ONLY SO LONG AS THEY ARE NOT MOTIVATED BY PERSONAL VENGEANCE STEMMING FROM CONTACTS MADE BY EMPLOYEES OUTSIDE OF EMPLOYMENT.

THE BOARD, ON REVIEW, CONCURS WITH THE PRINCIPLES APPLIED BY THE REFEREE AND AFFIRMS AND ADOPTS HIS ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED SEPTEMBER 6, 1974, IS AFFIRMED.

WCB CASE NO. 74-2720 MARCH 12, 1975

DAVID W. CLYDE, CLAIMANT
SANFORD KOWITT, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON FEBRUARY 11, 1975, THE BOARD DIRECTED THAT CLAIMANT'S REQUEST FOR OWN MOTION RELIEF SHOULD BE CONSOLIDATED WITH A PREVIOUSLY SCHEDULED HEARING ON THE ISSUE OF AGGRAVATION FOR THE REFEREE TO TAKE EVIDENCE ON THE OWN MOTION ISSUES TO PRESENT A RECOMMENDED DISPOSITION TO THE BOARD.

THAT HEARING HAS NOW BEEN HELD AND THE REFEREE HAS PRESENTED AS HIS RECOMMENDATION THAT (1) CLAIMANT'S CLAIM IS REOPENED FOR ALL REASONABLE AND NECESSARY MEDICAL COSTS INCURRED BY CLAIMANT FOR SURGERY AND TREATMENT OF HIS SHOULDER, (2) CLAIMANT BE AWARDED TEMPORARY TOTAL DISABILITY FOR THE PERIOD THAT HE WAS HOSPITALIZED AND UNTIL SUCH TIME AS HIS CONDITION BECAME MEDICALLY STATIONARY AND THAT, (3) WHEN STATIONARY HIS CLAIM SHOULD BE SUBMITTED TO THE BOARD FOR EVALUATION OF PERMANENT DISABILITY IF ANY.

HE ALSO RECOMMENDED THAT CLAIMANT'S ATTORNEY SHOULD BE COMPENSATED FOR HIS SERVICES.

WE CONCUR WITH THE RECOMMENDATION OF THE REFEREE AND CONCLUDE THAT CLAIMANT'S ATTORNEY SHOULD RECEIVE AS A REASONABLE ATTORNEY'S FEE 25 PER CENT OF THE TEMPORARY TOTAL DISABILITY COMPENSATION RECEIVED BY CLAIMANT TO A MAXIMUM OF 500 DOLLARS AND, IN ADDITION, 25 PER CENT OF ANY ADDITIONAL PERMANENT DISABILITY AWARDED CLAIMANT AS A RESULT OF THE SUBSEQUENT EVALUATION OF CLAIMANT'S PERMANENT DISABILITY. THE TOTAL FEE ALLOWED, HOWEVER, SHALL NOT IN ANY EVENT EXCEED 2,000 DOLLARS.

IT IS SO ORDERED.

SAIF CLAIM NO. A 988863 MARCH 13, 1975

HAZEL G. KASPAR, CLAIMANT
J. DAVID KRYGER, CLAIMANT'S ATTY.

THE WORKMEN'S COMPENSATION BOARD HAS RECEIVED A PETITION FROM CLAIMANT'S COUNSEL REQUESTING THE BOARD TO REOPEN THIS CLAIM PURSUANT TO THE OWN MOTION JURISDICTION GRANTED THE BOARD BY ORS 656.278.

THE CLAIMANT SUSTAINED A COMPENSABLE INJURY APRIL 10, 1963, AND ULTIMATELY UNDERWNET A SPINAL FUSION. A MEDICAL OPINION SUBMITTED BY RICHARD D. HEWS, D.C., INDICATES CLAIMANT'S CONDITION HAS WORSENED AND HER PRESENT SYMPTOMS ARE THE RESULT OF THE INJURY SUSTAINED IN 1963. DR. HEWS HAS RECOMMENDED CHIROPRACTIC ADJUSTMENTS AND THE USE OF AN ORTHOPEDIC LIFT. THE BOARD CONCLUDES 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 RELATING TO HER BACK INJURY FOR PROVISION OF SUCH FURTHER MEDICAL CARE AND TREATMENT AS HER CONDITION MAY REQUIRE UNTIL HER CONDITION AGAIN BECOMES MEDICALLY STATIONARY.

WHEN TREATMENT IS COMPLETED, THE STATE ACCIDENT INSURANCE FUND SHALL RESUBMIT THE CLAIM TO THE BOARD FOR ITS OWN MOTION EVALUATION OF CLAIMANT'S CONDITION.

WCB CASE NO. 72-45 MARCH 13, 1975

WILLIAM R. BOWSER, CLAIMANT

ALLAN H. COONS, CLAIMANT'S ATTY.
RICHARD W. BUTLER, DEFENSE ATTY.

ON FEBRUARY 4, 1975, CLAIMANT PETITIONED THE BOARD FOR OWN MOTION RELIEF CONCERNING AN INJURY OF MARCH 9, 1966. BEFORE THE PETITION WAS ACTED UPON, CLAIMANT, THROUGH HIS ATTORNEY, ALLAN H. COONS, AND THE EMPLOYER, THROUGH ITS ATTORNEY, RICHARD W. BUTLER, PRESENTED A JOINT PETITION AND STIPULATION FOR AUTHORITY TO SETTLE DISPUTED CLAIM AND ORDER APPROVING SETTLEMENT WHICH THE BOARD SIGNED AND ENTERED ON MARCH 12, 1975. THE STIPULATED SETTLEMENT DISPOSED OF ALL THE ISSUES RAISED BY THE CLAIMANT'S PETITION FOR OWN MOTION RELIEF.

BEING NOW FULLY ADVISED, THE BOARD CONCLUDES THAT THE CLAIMANT'S OWN MOTION PETITION, DATED FEBRUARY 5, 1975, SHOULD BE DENIED.

IT IS SO ORDERED.

NO APPEAL RIGHTS ARE DEEMED APPLICABLE.

JOINT PETITION AND STIPULATION

THIS MATTER COMES BEFORE THE WORKMEN'S COMPENSATION BOARD UPON A JOINT PETITION AND STIPULATION FOR AUTHORITY TO SETTLE A DISPUTED CLAIM, THE PARTIES REPRESENTING AS FOLLOWS -

1. THAT ON OR ABOUT MARCH 9, 1966, CLAIMANT DID SUSTAIN AN ON-THE-JOB INJURY, WHICH REQUIRED MEDICAL SERVICES ONLY. SUBSEQUENT TO THE ORIGINAL CLOSURE OF THE CLAIM, CLAIMANT REQUESTED A HEARING ON EXTENT OF DISABILITY CONTENDING THAT HE HAD SUSTAINED A CONTUSION OF THE BRAIN AND OTHER BRAIN DAMAGE AND OTHER DISABILITIES AND IMPLIED THAT HE HAD SUSTAINED A SHOULDER INJURY. SUBSEQUENT TO SAID HEARING, IT WAS RULED BY THE THEN REFEREE THAT THE CLAIMANT HAD FAILED TO SUSTAIN HIS BURDEN OF PROOF AND THAT HE HAD NOT SUSTAINED ANY PERMANENT DISABILITY. THE WORKMEN'S COMPENSATION BOARD AFFIRMED THE HEARING OFFICER AND THEN CLAIMANT APPEALED TO LANE COUNTY CIRCUIT COURT AND SAID APPEAL WAS DISMISSED ON JURISDICTIONAL GROUNDS.

2. SUBSEQUENT TO THE DISMISSAL OF THE APPEAL TO THE LANE

COUNTY CIRCUIT COURT AS ABOVE MENTIONED, CLAIMANT FILED A REQUEST FOR HEARING BASED UPON AN ALLEGED AGGRAVATION. THE HEARING WAS HELD ON SAID CLAIM, DURING WHICH EMPLOYER, THROUGH ITS COUNSEL, RICHARD W. BUTLER, CONTENDED THAT ALL ISSUES CONCERNING THE NATURE OF THE INJURIES AND EXTENT OF DISABILITY HAD ALREADY BEEN DETERMINED AT THE FIRST HEARING BEFORE THE HEARINGS DIVISION AND THAT IN ANY EVENT THERE WAS NO AGGRAVATION. THE REFEREE IN THIS PARTICULAR HEARING HELD IN FAVOR OF CLAIMANT, AS DID THE WORKMEN'S COMPENSATION BOARD. SUBSEQUENT TO THE BOARD'S ORDER, EMPLOYER APPEALED TO THE LANE COUNTY CIRCUIT COURT WHO REVERSED THE ORDER OF THE WORKMEN'S COMPENSATION BOARD AND RULED THAT CLAIMANT WAS NOT ENTITLED TO ANY BENEFITS BY REASON OF AGGRAVATION OR BY REASON OF THE NEED FOR FURTHER MEDICAL CARE AND TREATMENT.

3. SUBSEQUENT THERETO AN APPEAL WAS TAKEN BY CLAIMANT TO THE COURT OF APPEALS WHICH COURT AFFIRMED THE CIRCUIT COURT. ON REVIEW BEFORE THE SUPREME COURT, THE SUPREME COURT AFFIRMED IN ALL PARTICULARS EXCEPT THE SUPREME COURT RULED THAT EVEN THOUGH CLAIMANT DID NOT SUSTAIN A PERMANENT PARTIAL DISABILITY, HE NEVERTHELESS WOULD BE ENTITLED TO FURTHER MEDICAL CARE AND TREATMENT PURSUANT TO ORS 656.245 (1). THE JUDGEMENT ON MANDATE HAS BEEN ENTERED IN THE LANE COUNTY CIRCUIT COURT WHICH IS CONSISTENT WITH THE OPINION OF THE OREGON SUPREME COURT.

4. CLAIMANT CONTENDS THAT HE IS ENTITLED TO, AND HAS FILED A PETITION FOR, OWN MOTION JURISDICTION AND HE HAS ALSO FILED AN AGGRAVATION APPLICATION CONTENDING THAT HIS ALLEGED INDUSTRIAL-RELATED CONDITION HAS BECOME AGGRAVATED, THAT THE NATURE OF HIS INJURY AND PROCESS OF RECOVERY REQUIRES FURTHER MEDICAL SERVICES, THAT HE IS ENTITLED TO FURTHER MEDICAL CARE AND TREATMENT AND TIME LOSS AND THAT HE IS ENTITLED TO AN AWARD OF EITHER PARTIAL OR TOTAL PERMANENT DISABILITY, AND THAT HIS SHOULDER CONDITION IS IN NEED OF FURTHER TREATMENT AND HAS RESULTED IN PERMANENT DISABILITY AND THAT A PSYCHIATRIC CONDITION IS IN NEED OF FURTHER TREATMENT. EMPLOYER CONTENDS THAT THE INJURIES AND CONDITIONS ABOUT WHICH CLAIMANT COMPLAINS ARE NOT RELATED TO THE ON-THE-JOB INJURY OF MARCH 9, 1966, AND THAT EVEN IF SAID PSYCHOLOGICAL CONDITION WAS RELATED TO SAID ON-THE-JOB ACCIDENT, IT IS NO LONGER IN NEED OF TREATMENT AND THAT ANY NEED FOR ANY FUTURE PSYCHOLOGICAL TREATMENT WOULD BE UNRELATED TO THE ON-THE-JOB ACCIDENT.

NOW, THEREFORE, BASED UPON A BONA FIDE DISPUTE OVER THE COMPENSABILITY OF THE CLAIMANT'S PRESENT CONTENTIONS AND THE DISPUTE OVER THE COMPENSABILITY OF MEDICAL SERVICES DEMANDED, THE PARTIES AGREE TO SETTLE ALL CLAIMS OF CLAIMANT FOR THE SUM OF 4,000 DOLLARS, TO BE PAID IN A LUMP SUM.

CLAIMANT AND HIS ATTORNEY REPRESENT AND AGREE THAT THERE IS A BONA FIDE DISPUTE OVER THE ISSUES RECITED HEREIN AND THAT IT IS IN THE BEST INTEREST OF CLAIMANT TO SETTLE AS HEREIN PROVIDED. CLAIMANT FURTHER REPRESENTS THAT IT HAS BEEN EXPLAINED TO HIM THAT BY SIGNING THIS JOINT PETITION HE IS AGREEING TO FOREGO ANY AND ALL CLAIMS ARISING FROM THE CONTENTIONS HE MAKES HEREIN AND THE SETTLEMENT CONTEMPLATED WILL COVER ALL CLAIMS WHICH HE MAY NOW HAVE AGAINST EMPLOYER UNDER THE WORKMEN'S COMPENSATION LAW ARISING FROM THE ACCIDENT OF MARCH 9, 1966.

NOW THEREFORE, IT APPEARING TO THE BOARD THAT THE CLAIMANT AND EMPLOYER AND ITS INSURER REQUEST AN ORDER ALLOWING THIS DISPUTED CLAIM TO BE SETTLED AND COMPROMISED AS HEREINABOVE SET FORTH AND THE BOARD NOW BEING FULLY ADVISED,

IT IS NOW THEREFORE, ORDERED, ABJUDGED AND CONSIDERED THAT THE PARTIES BE AND THEY ARE HEREBY, AUTHORIZED TO ENTER INTO THE SETTLEMENT AND COMPROMISE AS HEREIN PETITIONED FOR, AND

IT IS FURTHER ORDERED, ABJUDGED AND CONSIDERED THAT UPON THE EXECUTION OF THIS DOCUMENT BY THE PARTIES IT SHALL CONSTITUTE A FULL AND FINAL RELEASE OF ALL CLAIMS AS ALLUDED TO IN THIS PETITION, AND

IT IS FURTHER ORDERED, ABJUDGED AND CONSIDERED THAT THE PETITION FOR OWN MOTION JURISDICTION AND THE REQUEST FOR HEARING BE, AND THE SAME ARE, HEREBY DISMISSED, UPON PAYMENT OF THE SETTLEMENT PROCEEDS AS AGREED TO BY THE PARTIES.

IT IS SO STIPULATED.

WCB CASE NO. 74-201 MARCH 14, 1975

ROBERT BARRETT, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER, CLAIMANT'S ATTYS.
COLLINS, FERRIS AND VELURE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE EMPLOYER HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH AWARDED CLAIMANT 80 DEGREES EQUAL TO 25 PER CENT OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED DISABILITY. THE DETERMINATION ORDER HAD AWARDED NO PERMANENT DISABILITY.

ON MAY 9, 1973, CLAIMANT, WHO WAS THEN A 50 YEAR OLD TANK TRUCK DRIVER, WAS INJURED WHEN HE FELL THROUGH SOME ROTTEN BOARDS OF A WAREHOUSE FLOOR. HIS RIGHT LEG EXTENDED THROUGH THE FLOOR TO THE POINT HE IMPOUNDED THE GROIN AREA SUSTAINING INJURY TO THE TESTICLES. HE FELL FORWARD, BREAKING HIS DENTURES, WAS DAZED AND SUBSEQUENTLY HAD PAIN IN THE ABDOMEN, BACK AND NECK.

THE BOARD, ON REVIEW, NOTES CLAIMANT'S STABLE, 24 YEAR WORK RECORD AS AN OIL TRUCK DRIVER AND WHO NOW FINDS HIMSELF UNABLE TO RETURN TO THIS EMPLOYMENT. WITH NO STRONG APTITUDES OR RESOURCES, HE IS HINDERED IN REESTABLISHING HIMSELF IN THE ACTIVE WORK MARKET. THIS FACT, TOGETHER WITH THE MEDICAL OPINION OF DR. BERG, AND THE PERSONAL OBSERVATIONS BY THE REFEREE, PERSUADE THE BOARD THAT THE AWARD MADE BY THE REFEREE IS CORRECT.

ORDER

THE ORDER OF THE REFEREE, DATED SEPTEMBER 18, 1974, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 300 DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74—2475 MARCH 14, 1975

LORENE M. JANZ, CLAIMANT

B. RUPERT KOBLEGARDE, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON FEBRUARY 19, 1975, COUNSEL FOR CLAIMANT PETITIONED THE WORKMEN'S COMPENSATION BOARD, PURSUANT TO OWN MOTION JURISDICTION GRANTED UNDER ORS 656.278, FOR CONSIDERATION BY THE BOARD FOR ADDITIONAL BENEFITS FOR CLAIMANT.

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 OR TREATMENT AS A RESULT OF THE INDUSTRIAL INJURY OR IF CLAIMANT HAS SUFFERED AN AGGRAVATION AND WHETHER HER PRESENT CONDITION IS THE RESULT OF THE 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. 72—2874 MARCH 14, 1975

MARTHA BOYD, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES A CLAIMANT WHO SUFFERED A COMPENSABLE INJURY SEPTEMBER 18, 1971. PURSUANT TO DETERMINATION ORDER, SHE RECEIVED 25 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY. AT HEARING, THE AWARD WAS INCREASED TO 40 PER CENT UNSCHEDULED DISABILITY AND CLAIMANT HAS REQUESTED BOARD REVIEW CONTENDING SHE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT WAS A 50 YEAR OLD LADY, EMPLOYED AS A COOK, WHEN SHE INJURED HER BACK. HER CONDITION WAS DIAGNOSED AS LOW BACK STRAIN SUPERIMPOSED ON SPONDYLOLISTHESIS OF L5 WITH MULTIPLE MEDICAL COMPLAINTS. EVALUATION OF THE DEGREE OF RESIDUAL DISABILITY ATTRIBUTABLE TO THE INDUSTRIAL INJURY HAS BEEN DIFFICULT BECAUSE OF SO MANY NONINDUSTRIAL RELATED MEDICAL PROBLEMS. CLAIMANT HAS BEEN TREATED AND EVALUATED EXTENSIVELY AND SUPPLIED ABUNDANTLY WITH PRESCRIBED MEDICATION.

THE DOCTORS HAVE DESCRIBED HER CONDITION AS BEING A MINIMAL DISABILITY SECONDARY TO THE INJURY, HOWEVER, THEY EXPRESSED RESERVATIONS ABOUT HER ABILITY TO RETURN TO WORK AS A FRY COOK.

THE BOARD, ON REVIEW, CONCURS WITH THE REFEREE IN THE FINDING THAT CLAIMANT HAS SUSTAINED PERMANENT DISABILITY ATTRIBUTABLE TO THIS INDUSTRIAL INJURY THAT EQUALS 40 PER CENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED DISABILITY. THE BOARD ADOPTS THE REFEREE'S OPINION AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 6, 1974, IS AFFIRMED.

WCB CASE NO. 74-319 MARCH 17, 1975

ROBERT CRENSHAW, CLAIMANT

BROWN, BURT AND SWANSON, CLAIMANT'S ATTYS.
G. HOWARD CLIFF, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED A DETERMINATION ORDER FINDING CLAIMANT HAD SUSTAINED NO PERMANENT DISABILITY AS A RESULT OF AN INDUSTRIAL INJURY INVOLVING HIS LEFT LEG ON AUGUST 21, 1972. ALSO AT ISSUE IS THE NOTICE OF DENIAL FROM INDUSTRIAL INDEMNITY COMPANY DATED APRIL 15, 1974 WHICH DENIED BENEFITS FOR ANY ALLEGED BACK CONDITION.

ON AUGUST 21, 1972, CLAIMANT CAUGHT HIS PANT LEG ON A SCREW EXTENDING FROM A DRIVE SHAFT AND SUSTAINED MULTIPLE ABRASIONS AND CONTUSIONS OF THE LEFT LEG AND KNEE. CLAIMANT RETURNED TO WORK SEPTEMBER 11, 1972, BUT TERMINATED VOLUNTARILY ON NOVEMBER 20, 1972 FOR REASONS OTHER THAN INABILITY TO PERFORM THE WORK.

THE RECORD INDICATES THAT WHEN DR. VIGELAND INITIALLY TREATED CLAIMANT, THERE WAS NO RECORD MADE OF AN ALLEGED BACK INJURY. HIS CLAIM WAS CLOSED WITH NO AWARD FOR PERMANENT DISABILITY. CLAIMANT CONTENDS DR. ROBERT ANDERSON'S LETTER OF MARCH 20, 1973 AND DR. POULSON'S REPORT OF MARCH 3, 1974, SUPPORTS HIS CONTENTION THAT HE SUFFERED A BACK INJURY ON AUGUST 21, 1972. THE CARRIER HAD DENIED ANY RESPONSIBLITY FOR THE ALLEGED BACK CONDITION.

THE REFEREE AT HEARING FOUND CLAIMANT'S TESTIMONY REGARDING HIS BACK INJURY DID NOT CONFORM TO THE MEDICAL REPORTS, WHICH WERE COMPLETELY SILENT ON ANY BACK COMPLAINT UNTIL MARCH, 1974. CLAIMANT'S CREDIBILITY WAS IMPEACHED BY TESTIMONY OF THE CLAIMANT'S FOREMAN AND BY MOVIES SHOWING CLAIMANT ABLY WORKING AS A CARPENTER.

THE BOARD, ON REVIEW, GIVES WEIGHT TO THE OBSERVATIONS AND CONSEQUENT CONCLUSIONS REACHED BY THE REFEREE AND CONCURS WITH HIS FINDING THAT CLAIMANT HAS NOT SUSTAINED INJURY TO HIS BACK, NOR IS HE ENTITLED TO AN AWARD FOR PERMANENT DISABILITY WITH RESPECT TO INJURY TO HIS LEFT LEG.

ORDER

THE ORDER OF THE REFEREE, DATED AUGUST 14, 1974 IS AFFIRMED.

WCB CASE NO. 73-3922 MARCH 19, 1975

TERRY L. TOUREEN, CLAIMANT

MERTEN AND SALTVEIT, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON FEBRUARY 19, 1975, CLAIMANT, THROUGH HIS ATTORNEY PETER C. DAVIS, SOUGHT ADDITIONAL COMPENSATION PURSUANT TO ORS 656.278 FOR AN OCTOBER 14, 1971, INJURY CLAIM WHICH WAS FIRST CLOSED BY A DETERMINATION ORDER DATED FEBRUARY 11, 1972.

WE HAVE CONSIDERED CLAIMANT'S APPLICATION AND CONCLUDE THAT OWN MOTION RELIEF SHOULD BE DENIED. THE CLAIMANT'S FIVE YEAR AGGRAVATION PERIOD HAS NOT YET EXPIRED. ADDITIONALLY, THE COURT OF APPEALS RULING IN BOWSER V. EVANS PRODUCTS (UNDERSCORED) REFERRED TO IN THE APPLICATION HAS NOW BEEN REVERSED BY THE OREGON SUPREME COURT - BOWSER V. EVANS PRODUCTS COMPANY, 99 ADV SH 3288 (12-3-74) - AND CLAIMANT MAY SEEK ADDITIONAL TREATMENT REGARDLESS OF THE ABSENCE OF A PERMANENT DISABILITY AWARD.

ORDER

THE CLAIMANT'S APPLICATION FOR OWN MOTION BENEFITS DATED FEBRUARY 19, 1975, IS HEREBY DENIED.

WCB CASE NO. 74-784 MARCH 20, 1975

MARIE DEWALD, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES A CLAIMANT WHO APPEALED A SECOND DETERMINATION ORDER WHICH AWARDED A TOTAL OF 30 PER CENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED DISABILITY TO THE RIGHT SHOULDER EQUAL TO 96 DEGREES. AT HEARING, THE REFEREE MADE AN ADDITIONAL AWARD FOR SCHEDULED RIGHT ARM DISABILITY OF 60 DEGREES. CLAIMANT HAS REQUESTED BOARD REVIEW CONTENDING SHE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT IS A 55 YEAR OLD COOK, WHO SUSTAINED INJURY TO HER RIGHT SHOULDER ON MARCH 7, 1970. SHE HAS NOT WORKED SINCE. SURGERY WAS PERFORMED IN JULY, 1970 FOR ROTATOR CUFF REPAIR. THE RIGHT SHOULDER PAIN PERSISTED AND DR. HOLBERT PERFORMED A TOTAL ACROMIONECTOMY AND RELEASE OF THE LONG HEAD OF THE BICEPS. IN A FINAL REPORT, DR. HOLBERT INDICATED CLAIMANT COULD NOT WORK AT SHOULDER HEIGHT OR ABOVE, BUT SEE COULD WORK AT WAIST LEVEL WITH HER SHOULDER CONDITION.

WITH RESPECT TO CLAIMANT'S GENERAL PHYSICAL CONDITION, SHE APPEARED REASONABLY HEALTHY EXCEPT FOR THE RIGHT SHOULDER DISABILITY. THE REFEREE FOUND THAT CLAIMANT, ALTHOUGH NOT A GOOD CANDIDATE FOR RETRAINING, WAS NOT MOTIVATED TO TRY LEARNING NEW SKILLS OR ALTERNATIVE EMPLOYMENT. THESE WERE THE FACTS WHICH

CONVINCED THE REFEREE THAT CLAIMANT'S UNSCHEDULED DISABILITY, WHICH IS MEASURED BY LOSS OF EARNING CAPACITY, DID NOT EXCEED THE AWARD OF 30 PER CENT (96 DEGREES) AWARDED PURSUANT TO THE DETERMINATION ORDER.

THE REFEREE DID, HOWEVER, FIND THAT CLAIMANT HAS SUSTAINED A SCHEDULED DISABILITY FOR WHICH SHE HAD NOT BEEN COMPENSATED. WHILE SHE STILL HAD SOME USE OF THE ARM THERE WAS NUMBNESS, PAIN AND LOSS OF STRENGTH IN THE ARM. THE REFEREE AWARDED AN ADDITIONAL 60 DEGREES FOR PARTIAL LOSS OF THE RIGHT ARM.

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

ORDER

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

WCB CASE NO. 73-2711 MARCH 20, 1975

FERN M. SANDSTROM, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON FEBRUARY 21, 1975, THE BOARD ENTERED AN ORDER ON REVIEW AFFIRMING AN AWARD OF PERMANENT PARTIAL DISABILITY TO A 75 YEAR OLD YARD GOODS SALESLADY FOR AN INJURY SHE SUFFERED WHILE EMPLOYED AT FRED MEYER, INC.

THE CLAIMANT THEREAFTER MOVED FOR RECONSIDERATION OF THE ORDER URGING THE BOARD'S RECONSIDERATION OF THE CLAIMANT'S CASE IN LIGHT OF THE LANGUAGE EXPRESSED IN THE RECENT CASE OF KRUGEN V. BEALL PIPE AND TANK CORP. (UNDERSCORED), 99 ADV SH 3264, = OR APP = (1974).

BOTH PARTIES HAVE PRESENTED FURTHER ARGUMENT TO THE BOARD AND WE HAVE RECONSIDERED THE CASE. WE NOW CONCLUDE THAT CLAIMANT IS, WITHIN THE MEANING OF THE OREGON WORKMEN'S COMPENSATION LAW, PERMANENTLY AND TOTALLY DISABLED.

IN SPITE OF HER ADVANCED AGE, CLAIMANT WAS A PART OF THE REGULAR WORK FORCE. AFTER HER INJURY, SHE WAS HIGHLY MOTIVATED TO RETRAIN AND BECOME A PART OF THE WORK FORCE. WE CONCLUDE UPON REEXAMINATION OF THE RECORD THAT THE PERMANENT RESIDUALS OF THE INJURY, COUPLED WITH HER AGE AND OTHER RELEVANT FACTORS, PLAYED A MATERIAL PART IN PRODUCING HER PRESENT INABILITY TO GAIN EMPLOYMENT.

OUR ORDER OF FEBRUARY 21, 1975, SHOULD BE SET ASIDE AND THE REFEREE'S ORDER SHOULD BE MODIFIED TO GRANT CLAIMANT AN AWARD OF PERMANENT TOTAL DISABILITY AS OF THE DATE OF THE REFEREE'S ORDER.

ORDER

THE BOARD'S ORDER ON REVIEW, DATED FEBRUARY 21, 1975, IS HEREBY SET ASIDE AND IN LIEU THEREOF, IT IS HEREBY ORDERED THAT THE

REFEREE'S ORDER DATED JULY 15, 1974, IS MODIFIED TO GRANT CLAIMANT AN AWARD OF PERMANENT TOTAL DISABILITY BEGINNING ON JULY 15, 1974.

CLAIMANT'S ATTORNEYS ARE HEREBY GRANTED 25 PER CENT OF THE INCREASED COMPENSATION MADE PAYABLE HEREBY, BUT IN NO EVENT SHALL THE FEE, WHEN COMBINED WITH THE FEE AWARDED PURSUANT TO THE REFEREE'S ORDER, EXCEED 1,500 DOLLARS.

WCB CASE NO. 73-3616 MARCH 20, 1975

FRIEDA HOSELEY, CLAIMANT

RINGO, WALTON, MCCLAIN AND EVES,
CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER REQUIRING IT TO PAY CERTAIN MEDICAL EXPENSES INCURRED BEFORE CLAIMANT'S DEATH, CONTENDING THAT HE ERRED IN FAILING TO GRANT THE EMPLOYER'S MOTION TO DISMISS THE ADMINISTRATIVE HEARING PROCEEDING BEING PROSECUTED BY AN UNRELATED PERSONAL REPRESENTATIVE OF THE DECEDENT'S ESTATE. IT ALSO CONTENDS THAT THE PERSONAL REPRESENTATIVE FAILED HER BURDEN OF PROVING THE COMPENSABILITY OF THE MEDICAL AND HOSPITAL CARE IN QUESTION.

ON THE FIRST ISSUE, THE EMPLOYER CITES MAJORS V. SAIF (UNDERSCORED), 3 OR APP 505 (1970) AS DISPOSITIVE OF THIS CASE.

THE EMPLOYER HAS ERRED IN ITS ANALYSIS OF THE FACTS OF THAT CASE.

IT IS TRUE THAT THE CASE STATES THAT "(T)HE ADMINISTRATRIX OF HIS ESTATE THEN MOVED TO BE SUBSTITUTED AS A PART ! TO RECOVER BENEFITS TO WHICH THE DECEASED MAY HAVE BEEN ENTITLED PRIOR TO HIS DEATH'." MAJORS (UNDERSCORED) SUPRA. THE 'BENEFITS' REFERRED TO HOWEVER, WERE NOT ACCRUED MEDICAL EXPENSES (UNDERSCORED) BUT WERE PERMANENT TOTAL OR PERMANENT PARTIAL (UNDERSCORED) DISABILITY BENEFITS. THAT IS A CRUCIAL DISTINCTION AND ONE WHICH THE EMPLOYER HAS FAILED TO PERCEIVE.

HUECHERT V SIAC (UNDERSCORED), 168 OR 74 (1942) ESTABLISHES CLEARLY, WITHOUT QUALIFICATION, THAT THE PERSONAL REPRESENTATIVE OF THE ESTATE OF A DECEASED WORKMAN MAY RECOVER UNPAID COMPENSATION ACCRUING BEFORE THE DEATH OF THE EMPLOYEE.

WITH RESPECT TO THE ISSUE OF COMPENSABILITY, WE ARE CONVINCED FROM OUR DE NOVO REVIEW OF THE RECORD THAT THE REFEREE CORRECTLY ANALYZED THE EVIDENCE AND WE CONCUR WITH HIS FINDING THAT THERE WAS A CAUSAL CONNECTION BETWEEN DECEDENT'S COMPENSABLE INJURY AND THE NEED FOR THE MEDICAL AND HOSPITAL CARE IN QUESTION.

THE REFEREE'S ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE DATED SEPTEMBER 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. 72-1344 MARCH 20, 1975

WALTER E. SMITH, CLAIMANT

SCHUOBOE, CAVANAUGH AND DAWSON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON MARCH 12, 1975, CLAIMANT'S ATTORNEY SOUGHT AN ATTORNEY'S FEE OF 100 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND FOR HIS SERVICES IN RESPONDING TO A MOTION TO VACATE FILED BY THE STATE ACCIDENT INSURANCE FUND.

CLAIMANT INITIALLY SOUGHT RELIEF UNDER THE BOARD'S OWN MOTION AUTHORITY. OAR 436-82-150(2) PROVIDES FOR AN ATTORNEY'S FEE PAYABLE OUT OF CLAIMANT'S COMPENSATION IN SUCH CASES. WE DO NOT CONSTRUE THE FUND'S MOTION AS A REQUEST FOR HEARING AND THEREFORE CONCLUDE THAT CLAIMANT'S ATTORNEY IS LIMITED TO A FEE PAYABLE FROM CLAIMANT'S COMPENSATION.

ORDER

CLAIMANT'S ATTORNEY IS HEREBY AUTHORIZED TO RECOVER A FEE EQUAL TO 25 PER CENT OF THE COMPENSATION PAYABLE TO CLAIMANT'S ATTORNEY, PAYABLE FROM THE COMPENSATION AS PAID TO A MAXIMUM OF 100 DOLLARS FOR HIS SERVICES REGARDING THE MOTION.

NO NOTICE OF APPEAL IS DEEMED APPLICABLE.

WCB CASE NO. 74-1960 MARCH 20, 1975

BEATRICE ESPY, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES THE EXTENT OF PERMANENT PARTIAL DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 5 PER CENT (16 DEGREES) PERMANENT PARTIAL UNSCHEDULED DISABILITY TO THE LOW BACK. AT HEARING, THE REFEREE GRANTED AN ADDITIONAL AWARD OF 32 DEGREES, MAKING A TOTAL OF 48 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED DISABILITY. CLAIMANT HAS REQUESTED BOARD REVIEW OF THE REFEREE'S ORDER CONTENDING SHE IS ENTITLED TO A GREATER AWARD.

CLAIMANT, 37 YEARS OLD, INJURED HER BACK APRIL 27, 1973, WHILE EMPLOYED AS A LICENSED PRACTICAL NURSE IN A NURSING HOME. IN SEPTEMBER, 1973, A LUMBAR LAMINECTOMY WAS PERFORMED AND A GOOD RECOVERY FOLLOWED. SHE WAS RELEASED FOR FULL TIME WORK MAY 20, 1974 AND RETURNED AS A 'CHARGE NURSE' PRINCIPALLY DOING LIGHT WORK SUCH AS PASSING MEDICATION AND CHARTING.

INDICATIONS ARE THAT CLAIMANT IS NOW PRECLUDED FROM HEAVY WORK IN OR OUTSIDE OF NURSING. HOWEVER, CLAIMANT'S AGE, INTELLIGENCE, EDUCATION AND TRAINABILITY ARE CERTAINLY ATTRIBUTES IN CLAIMANT'S FAVOR IF AND WHEN ALTERNATIVE EMPLOYMENT MAY BECOME NECESSARY OR ADVISABLE.

THE REFEREE DETERMINED CLAIMANT HAD SUSTAINED LOSS OF EARNING CAPACITY AND AWARDED AN ADDITIONAL 32 DEGREES. THE BOARD, ON REVIEW, CONCURS WITH THIS FINDING AND ADOPTS THE REFEREE'S OPINION AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED SEPTEMBER 12, 1974 IS AFFIRMED.

WCB CASE NO. 74-1236 MARCH 21, 1975

WALLACE R. ACKER, CLAIMANT

FRANK SUSAK, 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 AFFIRMING THE DENIAL OF HIS CLAIM OF AGGRAVATION.

THE REFEREE'S CONCLUSION THAT CLAIMANT'S PRESENT DISABILITIES WERE 'PROBABLY IN EXISTENCE IN 1970' IGNORES THE SPECIFIC CONCLUSIONS OF DR. SCHULER, CLAIMANT'S TREATING PHYSICIAN, THAT THERE HAS BEEN '... CONSIDERABLE INCREASE IN THE CHANGES AT THE VARIOUS LEVELS...' WHICH ARE RELATED TO THE INDUSTRIAL INJURY. (JOINT EX. 27)

WE CONCLUDE THE REFEREE'S ORDER MUST BE REVERSED AND THE CLAIM REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR ACCEPTANCE AND PAYMENT OF COMPENSATION AS PROVIDED BY LAW AND THAT CLAIMANT'S ATTORNEY, FRANK SUSAK, SHOULD BE GRANTED A FEE OF 750 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR HIS SERVICES IN ESTABLISHING CLAIMANT'S RIGHT TO COMPENSATION.

IT IS SO ORDERED.

WCB CASE NO. 74-2338 MARCH 25, 1975

WAYNE HAMILTON, CLAIMANT

BENSON, ARENZ, LUCAS AND DAVIS, CLAIMANT'S ATTYS.
GEARIN, CHENEY, LANDIS, AEBI AND KELLEY,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE IN THIS MATTER IS WHETHER THE MEDICAL REPORTS SUB MITTED BY THE CLAIMANT IN SUPPORT OF HIS AGGRAVATION CLAIM ARE SUFFICIENT TO CONFER JURISDICTION BEFORE THE WORKMEN'S COMPENSATION BOARD.

CLAIMANT SUSTAINED A COMPENSABLE INJURY MAY 27, 1969. BY A DETERMINATION ORDER DATED APRIL 21, 1970, HE RECEIVED A PERMANENT PARTIAL DISABILITY AWARD OF 16 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. CLAIMANT'S NEXT MEDICAL CONSULTATION WAS ON DECEMBER 31, 1973, IN OKLAHOMA, WHERE HE HAD MOVED. AFTER THE CARRIER ISSUED A DENIAL ON CLAIMANT'S REQUEST FOR INCREASED COMPENSATION ON ACCOUNT OF AGGRAVATION, THE CLAIMANT REQUESTED A HEARING BEFORE THE REFEREE.

THE REFEREE FOUND THAT CLAIMANT HAD FAILED TO MEET THE STATUTORY PREREQUISITES TO GRANT JURISDICTION TO THE BOARD UNDER ORS 656.273. THE BOARD, ON REVIEW, CONCURS AND AFFIRMS AND ADOPTS THE ORDER OF THE REFEREE.

ORDER

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

WCB CASE NO. 67-1011 MARCH 25, 1975

WILLIAM R. BOWSER, CLAIMANT

ALLAN H. COONS, CLAIMANT'S ATTY.

ON MARCH 6, 1975, THE BOARD RECEIVED FROM CLAIMANT, WILLIAM R. BOWSER AND HIS ATTORNEY, ALLAN H. COONS, A JOINT PETITION FOR APPROVAL OF AN ATTORNEY'S FEE OF 2,000 DOLLARS, PAYABLE FROM THE PROCEEDS OF A 4,000 LUMP SUM DISPUTED CLAIM SETTLEMENT SECURED BY CLAIMANT'S ATTORNEY FROM CLAIMANT'S EMPLOYER AND INSURER.

THE PETITION MAKES CLEAR THAT CLAIMANT IS AWARE THAT THE NORMAL ATTORNEY'S FEE PERMITTED IS 25 PER CENT OF THE RECOVERY SECURED BY THE ATTORNEY BUT THAT CLAIMANT HAS, NEVERTHELESS, APPROVED THE PAYMENT OF AN EXTRAORDINARY FEE TO MR. COONS.

OAR 436-82-005(2), THE BOARD'S RULES ESTABLISHING A SCHEDULE OF MAXIMUM FEES FOR COMPENSATION CASES, RECOGNIZES THAT A FEE IN EXCESS OF THE MAXIMUM FIXED IN THE RULES MAY BE ALLOWED UPON A SHOWING OF EXCEPTIONAL CIRCUMSTANCES.

OFFICIAL NOTICE OF THE RECORDS OF THE AGENCY SUPPORTS THE ALLEGATIONS OF EXTRAORDINARY CIRCUMSTANCES IN THIS CASE AND THE BOARD IS PERSUADED THAT THE REASONABLE VALUE OF MR. COON'S SERVICES EQUALS, IF NOT EXCEEDS, 2,000 DOLLARS. THEREFORE, THE JOINT PETITION ATTACHED HERETO AS EXHIBIT "A" SHOULD BE APPROVED AND EXECUTED ACCORDING TO ITS TERMS.

IT IS SO ORDERED.

JOINT PETITION AND ORDER ON OWN MOTION APPROVING ATTORNEY'S FEE

CLAIMANT, WILLIAM R. BOWSER, AND CLAIMANT'S ATTORNEY, ALLAN H. COONS, HEREBY JOINTLY PETITION THE WORKMEN'S COMPENSATION BOARD, IN THE EXERCISE OF ITS OWN MOTION AUTHORITY TO AUTHORIZE CLAIMANT'S ATTORNEY TO CHARGE AN ATTORNEY'S FEE OF 2,000.00 DOLLARS TO BE WITHHELD FROM THE 4,000.00 DOLLAR LUMP SUM DISPUTED CLAIM SETTLEMENT ENTERED INTO BETWEEN CLAIMANT PERSONALLY, AND THROUGH HIS ATTORNEY, AND EVANS PRODUCTS COMPANY AND ITS INSURER, AETNA CASUALTY AND SURETY COMPANY.

BOTH OF THE CO-PETITIONERS HERETO UNDERSTAND THAT THE ATTORNEY'S FEE ON A WORKMEN'S COMPENSATION CASE IS NORMALLY WITHHELD AT THE RATE OF TWENTY-FIVE PER CENT (25 PER CENT) THEREOF. HOWEVER, IN VIEW OF THE EXTRAORDINARY CIRCUMSTANCES OF THIS CASE, BOTH OF THE CO-PETITIONERS REQUEST THAT A FEE OF FIFTY PER CENT (50 PER CENT) OF THE LUMP SUM SETTLEMENT BE APPROVED.

THE RECORD REFLECTS SOME OF THE LONG HISTORY OF THIS CASE. THE ATTORNEY-CLIENT RELATIONSHIP WAS FORMED IN JULY, 1971. CLAIMANT'S CLAIM HAD PREVIOUSLY BEEN UNSUCCESSFULLY LITIGATED THROUGH THE ADMINISTRATIVE LEVELS BY ANOTHER ATTORNEY. AT THE TIME THE ATTORNEY-CLIENT RELATIONSHIP WAS FORMED, CLAIMANT HAD RECEIVED NO WORKMEN'S COMPENSATION BENEFITS FOR APPROXIMATELY FOUR YEARS.

CLAIMANT'S ATTORNEY MADE ARRANGEMENTS FOR A FURTHER MEDICAL EXAMINATION, AND THE REQUEST FOR HEARING WAS SUBMITTED JANUARY 4, 1972, TOGETHER WITH THE SUPPORTING MEDICAL REPORTS. CLAIMANT'S CASE WAS SUCCESSFULLY PROSECUTED BEFORE THE HEARING DIVISION AND BEFORE THE WORKMEN'S COMPENSATION BOARD. HAVING PREVAILED ON THE MERITS ON THESE LEVELS, CLAIMANT BEGAN TO RECEIVE TEMPORARY TOTAL DISABILITY BENEFITS AND THE MEDICAL TREATMENT RECOMMENDED BY DR. CARTER. THE APPEAL CONTINUED TO THE CIRCUIT COURT WHERE THE FAVORABLE DECISIONS BELOW WERE REVERSED. CLAIMANT'S ATTORNEY APPEALED TO THE COURT OF APPEALS WHICH SUSTAINED THE CIRCUIT JUDGE. THE APPEAL WAS CARRIED TO THE SUPREME COURT WHICH AFFIRMED THE COURT OF APPEALS IN PART, AND REVERSED IN PART.

CLAIMANT'S ATTORNEY PREPARED OPENING AND REPLY BRIEFS BEFORE THE COURT OF APPEALS AND A BRIEF PETITIONING FOR REVIEW BEFORE THE SUPREME COURT. ORAL ARGUMENTS WERE MADE IN SALEM BEFORE BOTH THE COURT OF APPEALS AND SUPREME COURT.

ALTHOUGH THE COURT OF APPEALS' DECISION WAS GENERALLY UNFAVORABLE, A FOOTNOTE SUGGESTED CLAIMANT MAY BE ENTITLED TO OWN MOTION RELIEF, THE SUPREME COURT DECISION WAS FAVORABLE ON THE QUESTION OF CLAIMANT'S ENTITLEMENT TO FURTHER MEDICAL TREATMENT. TAKEN TOGETHER, THESE TWO DECISIONS OPENED THE DOOR FOR CLAIMANT'S CLAIM OF ENTITLEMENT TO FURTHER RELIEF UNDER ORS 656.278 AND 656.245. THESE DECISIONS GAVE CLAIMANT'S APPLICATION OF FEBRUARY 4,

1975, SUFFICIENT SETTLEMENT VALUE TO PROMPT THE JOINT PETITION AND ORDER APPROVING SETTLEMENT HERETOFORE SUBMITTED TO THE BOARD.

CLAIMANT'S ATTORNEY HAS RECEIVED NO COMPENSATION TO DATE FOR HIS SERVICES BEFORE THE WORKEMEN'S COMPENSATION BOARD ON REVIEW, BEFORE THE CIRCUT COURT, BEFORE THE COURT OF APPEALS, OR BEFORE THE SUPREME COURT. BECAUSE THESE EFFORTS HAVE MADE THE PRESENT SETTLEMENT POSSIBLE, THE CO-PETITIONERS BELIEVE THAT THIS CASE JUSTIFIES A DEPARTURE FROM THE USUAL PROVISION REGARDING ATTORNEY'S FEES TO BE PAID AT THE RATE OF TWENTY-FIVE PER CENT (25 PER CENT).

CLAIMANT REPRESENTS THAT, IN HIS OPINION, HE IS NOT PRESENTLY IN NEED OF FURTHER MEDICAL TREATMENT. DURING THE TREATMENT BY DR. CARTER CLAIMANT BECAME INVOLVED WITH VOCATIONAL REHABILITATION. DR. CARTER ULTIMATELY RELEASED CLAIMANT FROM TREATMENT. CLAIMANT NOW RECEIVES APPROXIMATELY 498.00 DOLLARS MONTHLY IN G.I. BENEFITS TO ATTEND LANE COMMUNITY COLLEGE PLUS AN ADDITIONAL 180.00 DOLLARS MONTHLY FOR A NON-SERVICE CONNECTED DISABILITY. CLAIMANT'S WIFE IS SELF-EMPLOYED, AND SHE AVERAGES 400.00 DOLLARS MONTHLY. CLAIMANT IS STUDYING PSYCHOLOGY AT LCC, AND HE IS OBTAINING PASSING GRADES.

CLAIMANT HAS CONTACTED THE OWNER OF A SERVICE STATION NEAR HIS HOME IN BLUE RIVER. THE SUM OF 2,000.00 DOLLARS WILL ENABLE CLAIMANT TO LEASE THIS SERVICE STATION AND PROVIDE THE NECESSARY INITIAL OF FUEL. CLAIMANT ATTENDS LCC TWO FULL DAYS EACH WEEK, AND WITH THE HELP OF HIS LARGE FAMILY, HE EXPECTS TO MANAGE ADEQUATELY.

WCB CASE NO. 74-1843 MARCH 25, 1975

VERNON MICHAEL, CLAIMANT

EVOHL MALAGON, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON JANUARY 28, 1975, A REFEREE ISSUED AND MAILED TO THE PARTIES HIS OPINION AND ORDER IN THE ABOVE ENTITLED CASE.

ON FEBRUARY 28, 1975, THE STATE ACCIDENT INSURANCE FUND REQUESTED BOARD REVIEW OF THE REFEREE'S OPINION AND ORDER.

ORS 656.289(3) PROVIDES THAT THE REFEREE'S -

> "...ORDER IS FINAL UNLESS WITHIN 30 DAYS AFTER THE DATE ON WHICH A COPY OF THE ORDER IS MAILED TO THE PARTIES, ONE OF THE PARTIES REQUESTS A REVIEW BY THE BOARD UNDER ORS 656.295."

THE 30 DAY PERIOD, COMPUTED IN ACCORDANCE WITH ORS 174.120 AND BEARDSLEY V. HILL (UNDERSCORED), 219 OR 440 (1959), EXPIRED ON FEBRUARY 27, 1975. THE STATE ACCIDENT INSURANCE FUND'S REQUEST FOR REVIEW IS THUS UNTIMELY AND MUST BE DISMISSED.

ORDER

THE REQUEST FOR REVIEW FILED BY THE STATE ACCIDENT INSURANCE FUND IS HEREBY DISMISSED.

WCB CASE NO. 73-3850 MARCH 25, 1975

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A CLAIMANT WHO INJURED HIS LOW BACK AND TAILBONE FOR WHICH HE UNDERWENT A SPINAL FUSION AT L-5, S-1. TEN MONTHS LATER, DR. KIMBERLEY PERFORMED A COCCYGECTOMY. PURSUANT TO TWO DETERMINATION ORDERS, CLAIMANT RECEIVED 25 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

WHEN CLAIMANT REQUESTED A HEARING ON THE SECOND DETERMINATION ORDER, THE REFEREE AFFIRMED THE DETERMINATION AND THE CLAIMANT HAS REQUESTED BOARD REVIEW OF THAT ORDER.

CLAIMANT URGES THAT HE IS ENTITLED TO A GREATER AWARD FOR UNSCHEDULED DISABILITY BECAUSE HIS PERMANENT DISABILITY NOW PREVENTS HIM FROM ENTERING AND COMPETING IN THE GENERAL LABOR MARKET. CLAIMANT WAS INJURED AT AGE 22 AND THEN HAD ONLY SPASMODIC WORK HISTORY BACK AND FORTH BETWEEN VIRGINIA AND OREGON. HIS BEST AND LONGEST JOB HAS BEEN HIS PRESENT JOB WHICH IS MANAGING A 96 UNIT COMPLEX IN MEDFORD, AND FOR WHICH HE RECEIVES 600 DOLLARS PER MONTH PLUS AN APARTMENT VALUED AT 165 DOLLARS. HE HAS NO APPARENT DIFFICULTY IN GOING UP AND DOWN STAIRS, PAINTING, SHAMPOOING CARPETS AND CLEANING THE POOL.

THE BOARD, ON REVIEW, AGREES WITH THE FINDINGS OF THE REFEREE THAT CLAIMANT IS NOT ENTITLED TO A LARGER AWARD FOR PERMANENT DISABILITY AS A RESULT OF HIS INDUSTRIAL INJURY.

ORDER

THE ORDER OF THE REFEREE, DATED NOVEMBER 5, 1974, IS AFFIRMED.

WCB CASE NO. 74-3416 AND 74-3417 MARCH 25, 1975

FRANCIS TUCKER, CLAIMANT
JEROME BISCHOFF, 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. 74-1469 MARCH 26, 1975

WENDELL C. BAILEY, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT IN THIS PROCEEDING, AS A RESULT OF AN INDUSTRIAL INJURY, RECEIVED NO AWARD FOR PERMANENT DISABILITY PURSUANT TO CLOSURE UNDER ORS 656.268. AFTER REOPENING, A SECOND DETERMINATION ORDER AWARDED PERMANENT PARTIAL DISABILITY EQUAL TO 16 DEGREES FOR 5 PER CENT UNSCHEDULED DISABILITY FOR NECK AND BACK DISABILITY. THE REFEREE, AT HEARING, AFFIRMED THIS AWARD AND THE CLAIMANT HAS REQUESTED BOARD REVIEW CONTENDING HE IS ENTITLED TO A GREATER AWARD.

CLAIMANT, A THEN 50 YEAR OLD LOG TRUCK DRIVER, WAS INJURED COMPENSABLY ON OCTOBER 30, 1972, WHEN HIS LOG TRUCK OVERTURNED THROWING HIM ABOUT THE CAB UNTIL HE JUMPED FROM THE TRUCK. CLAIMANT'S FRACTURED RIBS RESOLVED WITHOUT CONSEQUENCE. ASIDE FROM QUESTIONABLE COMPLAINTS OF DIZZINESS, THE DOCTORS AT THE BACK EVALUATION CLINIC FOUND CLAIMANT'S MULTIPLE INJURIES HAD RESOLVED TO MILD LUMBAR, DORSAL AND CERVICAL STRAIN.

THE CLAIMANT DID EXPERIENCE A RATHER DRAMATIC TRAUMA AND COULD HAVE BEEN SERIOUSLY INJURED. HIS EXPECTATIONS OF COMPENSATION APPEAR TO BE CLOSELY RELATED TO THE NATURE OF THE TRAUMA RATHER THAN BY THE RESIDUAL DISABILITIES THEREOF.

WITH THE MEDICAL EVIDENCE REFLECTING ONLY MINIMAL RESIDUAL DISABILITY, IT APPEARS THAT CLAIMANT'S MENTAL ATTITUDE, NOT CAUSALLY RELATED TO THE INJURY BUT STEMMING FROM HIS PREOCCUPATION WITH PHYSICAL COMPLAINTS, NOW HINDERS CLAIMANT FROM RETURNING TO THE LABOR MARKET.

THE BOARD, ON REVIEW, CONCURS WITH THE REFEREE THAT CLAIMANT HAS NOT SUSTAINED HIS BURDEN TO ESTABLISH THAT HE HAS SUFFERED GREATER LOSS OF EARNING CAPACITY THAN DETERMINED BY THE SECOND DETERMINATION ORDER. THE BOARD ADOPTS THE REFEREE'S OPINION AND ORDER AS ITS OWN.

ORDER

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

WCB CASE NO 74—1269 MARCH 26, 1975

LISETT HAGLUND, CLAIMANT

HAYES PATRICK LAVIS, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

THE STATE ACCIDENT INSURANCE FUND, THROUGH ASSISTANT ATTORNEY GENERAL, QUINTIN B. ESTELL, MOVED THE BOARD FOR AN ORDER DISMISSING CLAIMANT'S REQUEST FOR BOARD REVIEW ON THE GROUND THAT A COPY OF THE REQUEST FOR REVIEW WAS NEVER SERVED UPON THE STATE ACCIDENT INSURANCE FUND OR ITS ATTORNEYS.

CLAIMANT'S ATTORNEY, HAYES PATRICK LAVIS, RESPONDED THAT WHILE NO COPY WAS SENT AS PROVIDED BY LAW, THE FUND'S ATTORNEYS WERE PUT ON NOTICE THAT A REVIEW HAD BEEN REQUESTED BY VIRTUE OF RECEIPT OF A CARBON COPY OF THE BOARD'S LETTER ACKNOWLEDGING RECEIPT OF THE REQUEST FOR REVIEW AND THAT NO PREJUDICE HAD RESULTED SINCE THE REQUEST DID NOT ALLEGE SPECIFIC ERROR BUT SOUGHT A GENERAL DE NOVO REVIEW.

THE RECENT CASE OF MARY SCHNIEDER V. EMANUEL HOSPITAL (UNDERSCORED). = ADV SH —, = OR APP =, (MARCH 17, 1975) STANDS FOR THE PROPOSITION THAT A LIBERAL INTERPRETATION SHOULD BE APPLIED TO PROCEDURAL REQUIREMENTS YET, AS STATED IN STROH V. SAIF (UNDERSCORED), 261 OR 117 (1972), THE STATUTORY REQUIREMENT OF 'LEGAL NOTICE' MAY NOT BE DISPENSED WITH TO FIND JURISDICTION.

WE CONCLUDE THAT CLAIMANT HAS FAILED TO PERFECT HER REQUEST FOR REVIEW IN THE MANNER PROVIDED BY ORS 656.289(3) AND ORS 656.295(2) AND THE REQUEST MUST THEREFORE BE DISMISSED.

IT IS SO ORDERED.

WCB CASE NO 74—2439 MARCH 27, 1975

CAROLLE A. CLARK, CLAIMANT

HAYES PATRICK LAVIS, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

THE STATE ACCIDENT INSURANCE FUND, THROUGH ASSISTANT ATTORNEY GENERAL, QUINTIN B. ESTELL, MOVED THE BOARD FOR AN ORDER DISMISSING CLAIMANT'S REQUEST FOR BOARD REVIEW ON THE GROUND THAT A COPY OF THE REQUEST FOR REVIEW WAS NEVER SERVED UPON THE STATE ACCIDENT INSURANCE FUND OR ITS ATTORNEYS.

CLAIMANT'S ATTORNEY, HAYES PATRICK LAVIS, RESPONDED THAT WHILE NO COPY WAS SENT AS PROVIDED BY LAW, THE FUND'S ATTORNEYS WERE PUT ON NOTICE THAT A REVIEW HAD BEEN REQUESTED BY VIRTUE OF RECEIPT OF A CARBON COPY OF THE BOARD'S LETTER ACKNOWLEDGING RECEIPT OF THE REQUEST FOR REVIEW AND THAT NO PREJUDICE HAD RESULTED SINCE THE REQUEST DID NOT ALLEGE SPECIFIC ERROR BUT SOUGHT A GENERAL DE NOVO REVIEW.

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PROPOSITION THAT A LIBERAL INTERPRETATION SHOULD BE APPLIED TO PROCEDURAL REQUIREMENTS YET, AS STATED IN STROH V. SAIF (UNDERSCORED), 261 OR 117 (1972), THE STATUTORY REQUIREMENT OF 'LEGAL NOTICE' MAY NOT BE DISPENSED WITH TO FIND JURISDICTION.

WE CONCLUDE THAT CLAIMANT HAS FAILED TO PERFECT HER REQUEST FOR REVIEW IN THE MANNER PROVIDED BY ORS 656.289(3) AND ORS 656.295(2) AND THE REQUEST MUST THEREFORE BE DISMISSED.

IT IS SO ORDERED.

WCB CASE NO. 73-3088 AND 73-4142 MARCH 27, 1975

DONALD B. LANE, CLAIMANT

MYRICK, COULTER, SEAGRAVES AND NEALY,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S FINDING THAT HIS EPISODE OF BACK PAIN BEGINNING ON MARCH 6, 1973, WAS NEITHER AN AGGRAVATION OF A PRIOR COMPENSABLE INJURY OR A NEW ACCIDENT. CLAIMANT CONTENDS, ON REVIEW, THAT THE EVIDENCE PRODUCED AT HEARING PROVED THAT HIS CONDITION CONSTITUTED AN AGGRAVATION.

ON OCTOBER 20, 1970, CLAIMANT, A THEN 36 YEAR OLD SAWMILL LABORER EMPLOYED AT S H AND W LUMBER COMPANY IN GRANTS PASS, OREGON, SUFFERED AN ACUTE ONSET OF LOW BACK PAIN ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WHICH WAS DIAGNOSED BY DR. R. L. HAWLEY AS AN ACUTE LUMBAR STRAIN.

A CLAIM FOR COMPENSATION WAS ACCEPTED BY THE STATE ACCIDENT INSURANCE FUND TO WHICH THE EMPLOYER WAS THEN CONTRIBUTING. THE CLAIM WAS APPARENTLY PROCESSED AS A 'MEDICAL ONLY' CLAIM. NO PERMANENT DISABILITY WAS AWARDED. HE CONTINUED HIS EMPLOYMENT AT THE MILL, OCCASIONALLY EXPERIENCING EPISODES OF BACK PAIN WITH RADIATION INTO THE LEFT HIP.

IN AUGUST, 1972, CLAIMANT WAS TREATED CONSERVATIVELY BY DR. JOHN BOE FOR MUSCLE STRAIN AND SPASM. CLAIMANT'S CLAIM FOR THIS EPISODE WAS ACCEPTED BY THE EMPLOYER AND BENEFITS WERE PAID BY EBI COMPANY WHICH WAS THEN INSURING THE EMPLOYER'S WORKMEN'S COMPENSATION LIABILITY.

THEREAFTER, WHILE WORKING AT THE MILL ON MARCH 6, 1973, CLAIMANT EXPERIENCED, WITHOUT A TRAUMATIC PRECIPITATING EVENT, A RECURRENCE OF LOW BACK PAIN WITH RADIATION DOWN THE LEFT LEG. AFTER AN INITIAL PERIOD OF CONSERVATIVE TREATMENT BY DR. BOE, CLAIMANT WAS REFERRED TO DR. EUGENE H. TENNYSON, A NEUROSURGEON, WHO DIAGNOSED A HERNIATED DISC. A LUMBAR LAMINECTOMY WAS PERFORMED ON JUNE 11, 1973.

EBI DENIED WORKMEN'S COMPENSATION BENEFITS TO CLAIMANT, SUGGESTING THAT IT WAS THE STATE ACCIDENT INSURANCE FUND'S

RESPONSIBILITY TO FURNISH THEM. A HEARING WAS REQUESTED ON EBI'S DENIAL AND LATER ON THE ISSUE OF WHETHER CLAIMANT HAS SUFFERED AN AGGRAVATION OF HIS STATE ACCIDENT INSURANCE FUND COVERED INJURY.

WHILE THE HEARING WAS PENDING, THIS AGENCY ISSUED AN ORDER DESIGNATING PAYING AGENT PURSUANT TO ORS 656.307 REQUIRING THE EBI TO PAY BENEFITS UNTIL SUCH TIME AS THE RESPONSIBLE PARTY WAS DETERMINED BY THE REFEREE'S ORDER.

THE REFEREE'S CONCLUSION THAT CLAIMANT HAD SUFFERED NEITHER AN AGGRAVATION NOR A NEW COMPENSABLE INJURY WAS BASED ON A FINDING THAT CLAIMANT HAD NOT SUFFERED RADIATING PAIN FOLLOWING THE 1970 INJURY. THE RECORD CLEARLY ESTABLISHES THAT HE DID.

DR. TENNYSON'S EQUIVOCATION, EXPRESSED UNDER CROSS-EXAMINATION BY THE STATE ACCIDENT INSURANCE FUND'S ATTORNEY, WAS FOUNDED UPON A SET OF FACTS PROPOUNDED BY THE ATTORNEY FOR THE STATE ACCIDENT INSURANCE FUND WHICH MATERIALLY DIFFERED FROM THE FACTS ESTABLISHED BY THE RECORD. THUS, THAT OPINION IS NOT DETERMINATIVE. WE BELIEVE THAT DR. TENNYSON'S ORIGINAL OPINION, THAT CLAIMANT'S MARCH 6, 1973, EXACERBATION REPRESENTS AN AGGRAVATION OF THE OCTOBER 20, 1970, INCIDENT, IS CORRECT.

WE CONCLUDE THAT THE REFEREE'S DENIAL OF CLAIMANT'S CLAIM FOR AGGRAVATION SHOULD BE REVERSED.

ORDER

THE ORDER OF THE REFEREE ENTERED IN WCB CASE NO 73-3088, AFFIRMING THE DENIAL OF CLAIMANT'S MARCH 6, 1973 INCIDENT AS A NEW INJURY, IS AFFIRMED.

THE ORDER OF THE REFEREE ENTERED IN WCB CASE NO. 73-4142 IS REVERSED AND THE CLAIMANT'S CLAIM OF AGGRAVATION IS HEREBY REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR ACCEPTANCE AND PAYMENT OF THE BENEFITS PROVIDED BY LAW.

THE STATE ACCIDENT INSURANCE FUND IS HEREBY FURTHER ORDERED, IN ACCORDANCE WITH THE PROVISIONS OF ORS 656.307 AND THE WCB ORDER ENTERED PURSUANT THERETO ON MARCH 4, 1974, TO REIMBURSE EBI FOR ALL SUMS PAID IN ACCORDANCE THEREWITH.

IT IS HEREBY FINALLY ORDERED THAT CLAIMANT'S ATTORNEY, C. H. SEAGRAVES, JR., RECEIVE 950 DOLLARS, PAYBLE BY THE STATE ACCIDENT INSURANCE FUND, FOR HIS SERVICES AT THE HEARING AND ON THIS REVIEW IN ESTABLISHING CLAIMANT'S RIGHT TO COMPENSATION.

WCB CASE NO. 73-2712 MARCH 27, 1975

WILLIAM SARGENT, CLAIMANT

GALBREATH AND POPE, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON JANUARY 13, 1975, CLAIMANT REQUESTED BOARD REVIEW OF A REFEREE'S ORDER DATED JANUARY 10, 1975.

ON JANUARY 17, 1975, THE STATE ACCIDENT INSURANCE FUND ALSO REQUESTED REVIEW OF THE REFEREE'S ORDER.

ON MARCH 20, 1975, THE PARTIES WITHDREW THEIR RESPECTIVE REQUESTS FOR REVIEW STIPULATING THAT THE REFEREE'S ORDER SHOULD REMAIN IN FORCE. THE STIPULATION IS ATTACHED HERETO AS EXHIBIT 'A'.

BEING NOW FULLY ADVISED, THE BOARD HEREBY ORDERS THAT THE REQUESTS FOR REVIEW FILED BY THE PARTIES HEREIN ARE HEREBY DISMISSED AND THE REFEREE'S ORDER DATED JANUARY 10, 1975, IS FINAL BY OPERATION OF LAW.

STIPULATION

BOTH PARTIES HAVING REQUESTED REVIEW OF THE OPINION AND ORDER OF THE REFEREE ENTERED JANUARY 10, 1975, THE CLAIMANT DOING SO ON JANUARY 13, 1975, AND THE EMPLOYER HAVING FILED A CROSS REQUEST FOR REVIEW ON JANUARY 17, 1975, AND THE PARTIES HAVING MUTUALLY AGREED THAT BOTH REQUESTS FOR REVIEW MAY NOW BE WITHDRAWN, IT IS

STIPULATED AND AGREED THAT THE CLAIMANT'S REQUEST FOR REVIEW AND THE EMPLOYER'S CROSS REQUEST FOR REVIEW ARE WITHDRAWN AND THE OPINION AND ORDER OF JANUARY 10, 1975, SHALL REMAIN IN FORCE AND EFFECT.

WCB CASE NO. 74-2275 MARCH 27, 1975

EDWARD PRUITT, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

AT ISSUE IN THIS MATTER IS THE EXTENT OF PERMANENT DISABILITY SUSTAINED BY CLAIMANT ARISING FROM A COMPENSABLE INDUSTRIAL INJURY OF JUNE 3, 1973.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED A DETERMINATION ORDER GRANTING CLAIMANT 15 PER CENT (48 DEGREES) UNSCHEDULED DISABILITY FOR INJURY TO THE LOW BACK.

CLAIMANT'S INJURY WAS THE RESULT OF A SLIP AND FALL WHILE EMPLOYED AT A SERVICE STATION. THE MEDICAL EVIDENCE INDICATES THAT CLAIMANT'S ACCIDENT PROBABLY PRODUCED A SPINAL DISC INJURY WHICH IS NOW CAUSING MILD TO MODERATE DISABILITY BUT THAT A LAMINECTOMY MIGHT ALLEVIATE THE CONDITION. THIS RECOMMENDED SURGICAL PROCEDURE HAS BEEN REFUSED BY THE CLAIMANT ON THE BASIS THAT HE HAS MORE OR LESS LEARNED TO LIVE WITH HIS PAIN. HE HAS NOT WORKED SINCE THE INJURY, BUT IS NOW ATTENDING BUSINESS COLLEGE UNDER DVR SPONSORSHIP AND WILL COMPLETE A COURSE OF STUDY IN DRAFTING SOMETIME DURING THE SUMMER OF 1975.

THE REFEREE REFUSED TO MODIFY THE 15 PER CENT UNSCHEDULED DISABILITY AWARD ON THE BASIS THAT CLAIMANT HAD UNREASONABLY REFUSED TO REDUCE HIS DISABILITY AS REQUIRED BY ORS 656.325. WE CONCUR WITH THE REFEREE. BY REASON OF HIS UNREASONABLE REFUSAL TO UNDERGO SURGERY, CLAIMANT HAS FORFEITED ANY RIGHT TO ADDITIONAL COMPENSATION FOR EITHER FURTHER VOCATIONAL EFFORTS OR INDEMNIFICATION FOR PERMANENT LOSS OF WAGE EARNING CAPACITY BEYOND THAT

WHICH COULD REASONABLY BE EXPECTED TO REMAIN HAD SURGERY BEEN PERFORMED.

WE CONCLUDE THE REFEREE'S ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

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

WCB CASE NO 74-1855 APRIL 4, 1975

PATRICIA BLAKELY, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IN THIS PROCEEDING IS THE EXTENT OF PERMANENT DISABILITY SUFFERED BY CLAIMANT AS A RESULT OF A COMPENSABLE INDUSTRIAL INJURY. PURSUANT TO TWO DETERMINATION ORDERS, CLAIMANT RECEIVED AN AWARD OF 25 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY. AT HEARING, THE REFEREE AWARDED AN ADDITIONAL 25 PER CENT, MAKING A TOTAL PERMANENT DISABILITY AWARD OF 50 PER CENT UNSCHEDULED DISABILITY. THE EMPLOYER HAS REQUESTED BOARD REVIEW OF THE REFEREE'S ORDER.

CLAIMANT FELL BACKWARDS OVER A WHEELCHAIR ON JULY 20, 1969 WHILE EMPLOYED AS AN LPN AT PROVIDENCE HOSPITAL, SUSTAINING INJURY TO HER CERVICAL SPINE. DR. ED DAVIS PERFORMED A CERVICAL LAMINECTOMY ON MAY 26, 1972. FOLLOWING A CONVALESCENCE CLAIMANT RETURNED TO HER NURSING DUTIES, BUT BY JULY 5, 1973 INCREASING NECK AND SHOULDER PAIN, RADIATING INTO BOTH ARMS FORCED HER TO QUIT WORK. IT WAS THE OPINION OF DRS. DAVIS AND KIMBERLEY THAT SHE SHOULD NOT RETURN TO WORK REQUIRING HEAVY LIFTING SUCH AS NURSING.

THE LAST 14 YEARS OF CLAIMANT'S WORK EXPERIENCE HAS BEEN IN THE CAPACITY OF A NURSE'S AIDE. ALTHOUGH SHE HAD SOME CLERICAL TRAINING AND EXPERIENCE PRIOR TO THAT TIME, HER EMPLOYER FELT SHE WAS NOT SUFFICIENTLY QUALIFIED IN THAT FIELD TO BE CONSIDERED FOR TWO JOB OPENINGS AT THE HOSPITAL. MOST RECENTLY, CLAIMANT'S ATTEMPT AT HOME TO KEEP PAYROLL RECORDS AND TYPE LETTERS FOR HER HUSBAND INDICATES SHE CAN TOLERATE THIS ACTIVITY FOR ONLY SHORT PERIODS OF TIME.

AFTER DE NOVO REVIEW OF THE RECORD, THE BOARD FINDS AND CONCLUDES THAT THE PERMANENT PARTIAL DISABILITY AWARD OF 50 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY ADEQUATELY COMPENSATES CLAIMANT FOR THE PERMANENT DISABILITY SHE HAS SUSTAINED AS THE RESULT OF HER INDUSTRIAL INJURY.

ORDER

THE ORDER OF THE REFEREE DATED OCTOBER 15, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 350 DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 73-1777 APRIL 4, 1975

DWAYNE LISONBEE, 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 INVOLVES THE EXTENT OF PERMANENT DISABILITY CLAIMANT HAS SUSTAINED AS A RESULT OF A COMPENSABLE INDUSTRIAL INJURY SUSTAINED DECEMBER 6, 1968. AT HEARING, THE REFEREE INCREASED CLAIMANT'S PERMANENT PARTIAL DISABILITY AWARD FOR UNSCHEDULED BACK DISABILITY FROM 80 DEGREES TO 192 DEGREES, THE LOSS OF THE RIGHT LEG FROM 15 DEGREES TO 52.5 DEGREES, AND AWARDED 15 DEGREES FOR LOSS OF LEFT LEG. CLAIMANT HAS REQUESTED BOARD REVIEW CONTENDING HE IS ENTITLED TO AN AWARD OF PERMANENT TOTAL DISABILITY.

CLAIMANT WAS A 42 YEAR OLD CARPENTER WHEN A SCAFFOLDING BROKE CAUSING HIM TO FALL APPROXIMATELY THREE FEET AND INJURING HIS KNEES, NECK AND BACK. THE LONG AND COMPLICATED HISTORY INVOLVING MULTIPLE COMPLAINTS HAS BEEN SET FORTH IN THE REFEREE'S ORDER AND BRIEFS SUBMITTED ON REVIEW.

THE BOARD NOTES THERE IS MEDICAL EVIDENCE BY DR. KNOX THAT ALTHOUGH THE INJURY EXACERBATED A PREEXISTING BUT LATENT MULTIPLE SCLEROSIS, DIAGNOSED POST-INJURY, THAT THIS CONDITION IS IMPROVING AND DOES NOT CONTRIBUTE TO HIS PRESENT INCAPACITY.

CLAIMANT CONCEDED HE HAS NOT SOUGHT WORK SINCE THE INJURY AND TWICE DECLINED PARTICIPATION IN A DISABILITY PREVENTION DIVISION PROGRAM. IT APPEARS THAT CLAIMANT HIMSELF HAS DECLARED HE IS PERMANENTLY AND TOTALLY DISABLED, BUT THIS EVALUATION CANNOT BE SUBSTANTIATED BY MEDICAL OPINIONS.

IN CONSIDERING THE CLAIMANT'S PHYSICAL IMPAIRMENTS, HIS ABILITIES AND HIS MOTIVATION, THE BOARD, ON REVIEW, FINDS CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED. THE AWARD GRANTED BY THE REFEREE IS APPROPRIATE TO HIS DISABILITY AND THE BOARD CONCLUDES HIS ORDER SHOULD BE AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE, DATED SEPTEMBER 17, 1974, IS AFFIRMED.

MARILYN RANDALL, CLAIMANT

BAILEY, DOBLIE AND BRUUN, CLAIMANT'S ATTYS.
ROGER R. WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER
CROSS APPEAL BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IN THIS PROCEEDING IS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY RESULTING FROM HER COMPENSABLE INDUSTRIAL INJURY. BY DETERMINATION ORDER SHE RECEIVED 5 PER CENT UNSCHEDULED DISABILITY. UPON HEARING, IN ADDITION TO GRANTING CERTAIN ADDITIONAL TIME LOSS COMPENSATION, THE REFEREE GRANTED CLAIMANT AN ADDITIONAL 32 DEGREES MAKING A TOTAL AWARD OF 15 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

THE EMPLOYER HAS REQUESTED BOARD REVIEW CONTENDING THE REFEREE'S INCREASE WAS BASED ON ADMITTED SPECULATION AS TO THE EXTENT OF CLAIMANT'S DISABILITY. CLAIMANT FILED A CROSS REQUEST FOR REVIEW CONTENDING THAT THE REFEREE'S OPINION IS CONTRARY TO THE APPLICABLE LAW AND EVIDENCE PRODUCED AT THE HEARING.

ON JANUARY 23, 1973, CLAIMANT SLIPPED AND FELL ON A METAL STAIRWAY AT ROSEBURG LUMBER CO., STRIKING HER HEAD AND NECK. SHE RECEIVED CONSERVATIVE TREATMENT FROM DR. RANDALL N. OCHS FOR A STRAIN OF THE CERVICAL SPINE. WHEN RELEASED FOR WORK, SHE WAS NOT ABLE TO RETURN TO EMPLOYMENT AT THE MILL. DR. OCHS WAS OF THE OPINION THAT CLAIMANT SHOULD NOT RETURN TO MILL WORK.

THROUGH THE AUSPICES OF THE DIVISION OF VOCATIONAL REHABILITATION, CLAIMANT HAS ENROLLED AT UMPQUA COMMUNITY COLLEGE HOPING TO COMPLETE TRAINING ENABLING HER TO PERFORM CLERICAL WORK.

THE EMPLOYER OBJECTS TO THE REFEREE'S "SPECULATION" IN DETERMINING CLAIMANT'S PERMANENT DISABILITY AWARD. HIS USE OF THE TERM IN THE ORDER IMPLIES SPECULATION WAS RESORTED TO, BUT CAREFUL READING OF THE OPINION REVEALS THAT ANALYSIS OF THE EVIDENCE RATHER THAN SPECULATION PROMPTED THE INCREASE.

WE CONCUR WITH THE REFEREE'S ACCEPTANCE OF DR. OCHS' FINDINGS. THIS EVIDENCE CLEARLY ESTABLISHES THAT CLAIMANT HAS SUFFERED A LOSS OF EARNING CAPACITY. THE PRECISE AMOUNT CANNOT BE DETERMINED WITH MATHEMATICAL CERTAINTY BECAUSE THE EVALUATION OF PERMANENT DISABILITY IS NOT AN EXACT SCIENCE. THIS LACK OF PRECISION WILL NOT, HOWEVER, DEFEAT AN AWARD. ONLY SPECULATION AS TO THE RIGHT TO PERMANENT DISABILITY COMPENSATION RATHER THAN THE EXTENT THEREOF WILL PRECLUDE THE GRANTING OF AN AWARD. AM JUR 2D (UNDERSCORED). DAMAGES 25.

THE OREGON SUPREME COURT HAS RULED THAT AWARDS OF COMPENSATION FOR UNSCHEDULED PERMANENT DISABILITY ARE FOUNDED UPON LOSS OF EARNING CAPACITY. SURRATT V. GUNDERSON BROS. ENGINEERING CORP. (UNDERSCORED), 259 OR 65 (1971), RYF V HOFFMAN CONSTRUCTION CO. (UNDERSCORED), 254 OR 624 (1969), LINDEMAN V. SIAC (UNDERSCORED), 183 OR 245 (1948). IT HAS ALSO BEEN POINTED OUT, IN GREEN V. SIAC (UNDERSCORED), 197 OR 160 (1953), THAT =

'...COMPENSATION FOR PERMANENT PARTIAL DISABILITY IS AWARDED NOT ONLY FOR THE PURPOSE OF COMPENSATING IN A MEASURE FOR THE INJURY SUFFERED BY A WORKMAN, BUT ALSO TO ASSIST HIM IN READJUSTING HIMSELF SO AS TO BE ABLE TO AGAIN FOLLOW A GAINFUL OCCUPATION.'

THE REFEREE, DESPITE HIS UNFORTUNATE CHOICE OF TERMINOLOGY, CORRECTLY EVALUATED CLAIMANT'S ENTITLEMENT TO COMPENSATION. WE CONCLUDE THEREFORE THAT HIS ORDER SHOULD BE AFFIRMED.

ORDER

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

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 100 DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-2415 APRIL 4, 1975

REX D. KEEP, DECEASED

DAVID LENTZ, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY BENEFICIARIES

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE BENEFICIARIES HAVE REQUESTED BOARD REVIEW OF A REFEREE'S RULING THAT CERTAIN ACTS OF THE 1973 OREGON LEGISLATURE AMENDING ORS 656.204 AND 656.636 DID NOT OPERATE TO EXTEND BENEFITS TO SCOTTY REX KEEP BEYOND HIS 18TH BIRTHDAY.

AFTER HAVING EXAMINED THE RECORD AND CONSIDERED THE ARGUMENTS SUBMITTED ON REVIEW, WE CONCUR WITH THE REFEREE'S ANALYSIS OF THE LAW THAT IT IS CORRECT AND THAT HIS ORDER SHOULD BE ADOPTED AND AFFIRMED AS THE ORDER OF THE BOARD.

IT IS SO ORDERED.

WCB CASE NO. 73-142 APRIL 7, 1975

CLARENCE W. NEWTON, CLAIMANT

S. DAVID EVES, CLAIMANT'S ATTY.
RICHARD LANG, DEFENSE ATTY.

ON FEBRUARY 4, 1975, CLAIMANT, THROUGH HIS ATTORNEY, S. DAVID EVES, REQUESTED BOARD REVIEW OF A REFEREE'S OPINION AND ORDER DATED JANUARY 30, 1975.

THE PARTIES HAVE NOW PRESENTED A STIPULATION TO THE BOARD

AMICABLY DISPOSING OF THE ISSUES IN DISPUTE. THE STIPULATION OF COMPROMISE IS ATTACHED HERETO AS EXHIBIT 'A'.

THE BOARD NOW FULLY ADVISED FINDS THE STIPULATION FAIR AND EQUITABLE TO BOTH PARTIES AND IT CONCLUDES -

(1) THAT THE AGREEMENT SHOULD BE EXECUTED ACCORDING TO ITS TERMS, AND,

(2) THAT THE REQUEST FOR BOARD REVIEW BE DISMISSED.

IT IS SO ORDERED.

STIPULATION OF COMPROMISE

THE CLAIMANT, CLARENCE NEWTON, WHILE IN THE COURSE AND SCOPE OF HIS EMPLOYMENT AT WAH CHANG INJURED HIS LOW BACK ON NOVEMBER 9, 1970.

THE CLAIM WAS ACCEPTED BY THE DIRECT RESPONSIBILITY CARRIER, ARGONAUT INSURANCE COMPANIES, AND BENEFITS WERE PAID IN ACCORDANCE WITH THE WORKMEN'S COMPENSATION LAW AND CERTAIN DETERMINATION ORDERS HAVE BEEN ISSUED AWARDING TEMPORARY TOTAL DISABILITY BENEFITS AND PERMANENT PARTIAL DISABILITY BENEFITS FOR UNSCHEDULED LOW BACK DISABILITY.

ON OCTOBER 15, 1974 A HEARING WAS HELD IN SALEM BEFORE REFEREE HAROLD DARON ON THE ISSUE OF PERMANENT PARTIAL DISABILITY AND - OR PERMANENT TOTAL DISABILITY. BY OPINION AND ORDER DATED JANUARY 30, 1975, THE CLAIMANT WAS AWARDED ADDITIONAL PERMANENT PARTIAL DISABILITY BRINGING HIS AWARD TO 80 PER CENT LOSS OF THE WORKMAN EQUAL TO 256 DEGREES OF A MAXIMUM 320 DEGREES.

THE CLAIMANT SUBSEQUENTLY REQUESTED REVIEW OF THE OPINION AND ORDER ALLEGING THAT THE CLAIMANT WAS ENTITLED TO AN AWARD OF PERMANENT TOTAL DISABILITY. IT HAS NOW BEEN AGREED BY THE PARTIES TO FULLY SETTLE AND COMPROMISE THE CLAIM IN LIEU OF PURSUING THE APPEAL. THE COMPROMISE IS AS FOLLOWS -

THE EMPLOYER AND DIRECT RESPONSIBILITY CARRIER WILL PAY THE CLAIMANT AN ADDITIONAL 64 DEGREES (3,520 DOLLARS) FOR PERMANENT PARTIAL DISABILITY UNSCHEDULED TO THE LOW BACK AND WILL PAY THE CLAIMANT AN ADDITIONAL 3,980 DOLLARS, THAT AMOUNT TO BE OFFSET FOR FUTURE MEDICAL EXPENSES IF THEY ARE INCURRED OR A TOTAL STIPULATED SETTLEMENT OF 7,500 DOLLARS.

IN THE EVENT THAT FUTURE MEDICAL EXPENSES RELATED TO THE INDUSTRIAL INJURY EXCEEDS 3,980 DOLLARS, THE DIRECT RESPONSIBILITY CARRIER WILL REOPEN THE CLAIM AND PAY FUTURE MEDICAL EXPENSES AS LONG AS THEY ARE COMPENSABLE UNDER THE OREGON WORKMEN'S COMPENSATION LAW. THE CLAIMANT HAS AN OBLIGATION TO VERIFY AND ACCOUNT FOR ALL FUTURE MEDICAL EXPENSE. THIS STIPULATION, SETTLEMENT AND COMPROMISE HAS NOT EFFECT ON THE CLAIMANT'S RIGHTS OF AGGRAVATION THAT EXIST UNDER THE WORKMEN'S COMPENSATION LAW.

IN ADDITION, THE CLAIMANT'S ATTORNEY, S. DAVID EVES, IS AWARDED ATTORNEY'S FEES OF 25 PER CENT OF THE INCREASED COMPENSATION, THAT AMOUNT NOT TO EXCEED 2,000 DOLLARS.

WCB CASE NO. 73-2711 APRIL 7, 1975

FERN M. SANDSTROM, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON MARCH 24, 1975 CLAIMANT'S ATTORNEY MOVED FOR THE ALLOWANCE OF EXTRAORDINARY FEES FOR HIS SERVICES IN SECURING CLAIMANT'S AWARD OF PERMANENT TOTAL DISABILITY.

WE HAVE CONSIDERED THE REQUEST AND CONCLUDE CLAIMANT'S ATTORNEY IS ENTITLED TO AN ADDITIONAL 250 DOLLARS FOR HIS EXTRAORDINARY SERVICES RELATING TO THE ISSUANCE OF THE BOARD'S ORDER ON RECONSIDERATION.

THE FEE SHOULD BE RECOVERED FROM THE CLAIMANT'S COMPENSATION IN THE MANNER PROVIDED IN THE ORDER ON RECONSIDERATION, BUT IN NO EVENT SHALL THE MAXIMUM EXCEED 1,750 DOLLARS.

IT IS SO ORDERED.

SAIF CLAIM NO. A 654930 APRIL 7, 1975

HOWARD BLAKENEY, CLAIMANT

THIS MATTER WAS PREVIOUSLY BEFORE THE WORKMEN'S COMPENSATION BOARD AT THE REQUEST OF CLAIMANT WHO PETITIONED THE BOARD TO EXERCISE OWN MOTION JURISDICTION GRANTED BY ORS 656.278.

CLAIMANT SUSTAINED A COMPENSABLE INJURY IN 1958 WHILE WORKING FOR THE STATE HIGHWAY DEPARTMENT WHEN HE WAS STRUCK BY ANOTHER VEHICLE. HE HAS RECEIVED AWARDS TOTALLING 40 PER CENT LOSS FUNCTION OF THE LEFT ARM, 10 PER CENT LOSS FUNCTION OF THE RIGHT FOREARM, AND 5 PER CENT LOSS OF AN ARM FOR UNSCHEDULED DISABILITY.

BY AN OWN MOTION ORDER DATED NOVEMBER 25, 1974, THE STATE ACCIDENT INSURANCE FUND WAS ORDERED TO REOPEN CLAIMANT'S CLAIM AND ARRANGE FOR EXAMINATION AND EVALUATION AT THE BOARD'S DISABILITY PREVENTION DIVISION.

THE RESULTS OF THIS EVALUATION HAVING BEEN RECEIVED, AND CONSIDERED WITH THE MEDICAL REPORTS SUBMITTED BY CLAIMANT'S DOCTORS, THE BOARD FINDS THAT CLAIMANT'S CONDITION IS NOW MEDICALLY STATIONARY AND THAT HE HAS SUSTAINED ADDITIONAL PERMANENT DISABILITY ATTRIBUTABLE TO HIS INDUSTRIAL INJURY.

ORDER

IT IS THEREFORE ORDERED THAT CLAIMANT RECEIVE TEMPORARY TOTAL DISABILITY FOR THE PERIOD FROM NOVEMBER 25, 1974, THROUGH FEBRUARY 27, 1975.

IT IS FURTHER ORDERED THAT CLAIMANT RECEIVE AN ADDITIONAL AWARD OF PERMANENT PARTIAL DISABILITY EQUAL TO 60 PER CENT OF THE

MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY, MAKING A TOTAL OF 65 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

IT IS HEREBY FINALLY ORDERED THAT ANY OVERPAYMENT OF TIME LOSS MAY BE DEDUCTED FROM THE PERMANENT PARTIAL DISABILITY AWARD HEREBY GRANTED.

WCB CASE NO. 74-1818 APRIL 7, 1975

DAVID HILL, CLAIMANT

ALLAN DESCHWEINITZ, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

ON JANUARY 23, 1974, CLAIMANT, THEN EMPLOYED AS AN ADVERTISING SALESMAN WORKING ON AN ASSIGNMENT IN EVERETT, WASHINGTON, STRUCK HIS SHOULDER ON HIS CAR DOOR AS HE WAS ENTERING THE VEHICLE. THE EMPLOYER REFUSED TO PAY HIM ANY TEMPORARY TOTAL DISABILITY COMPENSATION AND A REFEREE, FOLLOWING A HEARING IN WHICH THE CLAIMANT WAS UNREPRESENTED BY COUNSEL, DENIED CLAIMANT'S CLAIM FOR TEMPORARY TOTAL DISABILITY COMPENSATION FOR THE PERIOD BETWEEN JANUARY 23, 1974, AND MARCH 1, 1974.

CLAIMANT RETAINED COUNSEL AND REQUESTED BOARD REVIEW CONTENDING THAT THE REFEREE ERRED IN CONCLUDING THAT CLAIMANT WAS PHYSICALLY ABLE TO PERFORM THE DUTIES OF HIS JOB DURING THE PERIOD IN QUESTION. HE URGES THAT THE REFEREE'S ORDER SHOULD BE REVERSED AND TIME LOSS AWARDED OR AT LEAST THAT HE BE ALLOWED TO CROSS-EXAMINE DR. HILDRETH, WHOSE REPORTS DO NOT SUPPORT HIS CLAIM.

THE RECORD REVEALS THAT CLAIMANT IS AN INTELLIGENT, EDUCATED ADULT. THE RECORD REVEALS HE WAS ADMITTEDLY IGNORANT OF HIS PROCEDURAL RIGHTS, NOTWITHSTANDING THIS KNOWLEDGE, HE APPARENTLY DELIBERATELY CHOSE NOT TO USE THE SERVICES OF AN ATTORNEY. UNDER THESE CIRCUMSTANCES, WE THINK CLAIMANT SHOULD NOT BE PERMITTED TO REOPEN THE RECORD. IN ADDITION, WE DOUBT ANYTHING SIGNIFICANT WOULD BE LEARNED.

WE HAVE REVIEWED THE EXISTING RECORD DE NOVO AND CONCLUDE THAT CLAIMANT WAS NOT ENTITLED TO TEMPORARY TOTAL DISABILITY DURING THE PERIOD IN QUESTION. THE REFEREE'S ORDER SHOULD BE AFFIRMED AS THE ORDER OF THE BOARD.

ORDER

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

WCB CASE NO. 74-2596 APRIL 8, 1975

JOSEPH DOYLE, CLAIMANT
M. JOHN SPICER, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

THIS MATTER INVOLVES A CLAIMANT WHO SUSTAINED A COMPENSABLE INJURY TO HIS BACK ON SEPTEMBER 14, 1973. HE HAS RECEIVED A PERMANENT PARTIAL DISABILITY AWARD OF 20 PER CENT LOW BACK DISABILITY PURSUANT TO DETERMINATION ORDER. CLAIMANT REQUESTED A HEARING ON THIS DETERMINATION.

THE REFEREE, AT HEARING, DISALLOWED CLAIMANT FURTHER AWARD FOR PERMANENT DISABILITY BECAUSE OF THE UNREASONABLE REFUSAL BY CLAIMANT TO PROCEED WITH A MYELOGRAM RECOMMENDED BY HIS DOCTOR. THE CLAIMANT REQUESTED BOARD REVIEW OF THE REFEREE'S ORDER.

THE BOARD HAS NOW RECEIVED FROM CLAIMANT'S COUNSEL A MOTION FOR REMAND INDICATING THAT CLAIMANT HAS NOW DECIDED TO PROCEED WITH A MYELOGRAM.

IN ORDER TO PROPERLY COMPLETE THE RECORD, THIS MATTER SHOULD BE REMANDED TO THE HEARINGS DIVISION OF THE WORKMEN'S COMPENSATION BOARD FOR FURTHER PROCEEDINGS, PARTICULARLY THE RECEIPT OF THE RESULTS OF THE DIAGNOSTIC MYELOGRAM WHICH CLAIMANT WILL UNDERGO. FURTHER ORDER OF THE REFEREE SHALL BE BASED UPON THE RECORD SO IMPLEMENTED. THE REQUEST FOR REVIEW PENDING BEFORE THE BOARD SHOULD BE DISMISSED.

IT IS SO ORDERED.

WCB CASE NO. 73-2941 APRIL 8, 1975

HARRY C. REED, CLAIMANT
LAFKY AND MCDONALD, 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 FINDING A LOW BACK CONDITION COMPENSABLE AND, AS A RESULT, THAT CLAIMANT WAS PERMANENTLY TOTALLY DISABLED.

WE CONCUR WITH THE REFEREE'S CONCLUSION THAT CLAIMANT'S LOW BACK COMPLAINTS ARE RELATED TO THE MAY 2, 1973, INJURY. WE THINK THE HISTORY RELIED ON BY DR. CAMPBELL IS SUFFICIENTLY ACCURATE TO SUPPORT HIS OPINION. THE REFEREE'S ORDER IN THAT REGARD SHOULD BE AFFIRMED.

WE ARE NOT PERSUADED, HOWEVER, THAT CLAIMANT'S INJURIES HAVE RENDERED HIM PERMANENTLY TOTALLY DISABLED. WHILE HIS RESIDUAL DISABILITY IS SERIOUS, IT IS NOT SO SEVERE THAT THE ELEMENT OF MOTIVATION CAN BE DISREGARDED. THE RECORD REVEALS CLAIMANT'S MOTIVATION IS POOR. HE HAS THUS FAILED TO BRING HIMSELF WITHIN THE

ODD-LOT CATEGORY. THE REFEREE'S AWARD OF PERMANENT TOTAL DISABILITY SHOULD THEREFORE BE REVERSED. CLAIMANT SHOULD BE GRANTED, IN ACCORDANCE WITH ORS 656.214(5), AN AWARD OF PERMANENT PARTIAL DISABILITY EQUAL TO 50 PER CENT UNSCHEDULED DISABILITY WHICH IS, IN OUR OPINION, THE AMOUNT OF PERMANENT PARTIAL DISABILITY PRODUCED BY THIS INJURY.

ORDER

THE ORDER OF THE REFEREE, DATED OCTOBER 23, 1974, IS HEREBY MODIFIED TO SET ASIDE CLAIMANT'S AWARD OF PERMANENT TOTAL DISABILITY AND TO GRANT CLAIMANT, IN LIEU THEREOF, AN AWARD OF COMPENSATION EQUAL TO 50 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY OR 160 DEGREES OF PERMANENT PARTIAL DISABILITY.

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

WCB CASE NO. 74-689 APRIL 8, 1975

JOHN F. WOODCOCK, CLAIMANT

BRUCE K. BLACK, CLAIMANT'S ATTY.
ROGER A. WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER AFFIRMING THE DENIAL OF HIS CLAIM. CLAIMANT CONTENDS THE EMPLOYER HAD TIMELY ACTUAL KNOWLEDGE OF HIS INJURY THUS EXCUSING A 15 MONTH DELAY IN GIVING WRITTEN NOTICE AND THAT THE CLAIMANT'S TESTIMONY OF INJURY, BEING CLEAR AND UNEQUIVOCAL, SHOULD BE ACCEPTED AS VALID.

THE REFEREE CONCLUDED THAT CLAIMANT HAD FAILED HIS BURDEN OF PROOF, I.E. BURDEN OF PERSUASION, AND WE AGREE.

WHEN A WORKMAN DELAYS A LONG TIME IN GIVING NOTICE AND FELLOW WORKMEN DO NOT CORROBORATE WHAT THEY ARE ALLEGED TO HAVE WITNESSED, THE TRIER OF THE FACTS SHOULD BE CAUTIOUS IN ACCEPTING EVEN UNEQUIVOCAL TESTIMONY.

WHERE A STALE CLAIM IS PRESSED, IT SHOULD BE ACCOMPANIED BY INDEPENDENT CORROBORATING EVIDENCE OR THE LACK THEREOF SHOULD BE CLEARLY JUSTIFIED. LACKING SUCH CORROBORATION, THE CLAIMANT IN THIS CASE HAS FAILED HIS BURDEN OF PROOF AND THE REFEREE'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED NOVEMBER 13, 1974, IS AFFIRMED.

MILFORD O. BARACKMAN, CLAIMANT

J. MICHAEL GLEESON, CLAIMANT'S ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER AFFIRMING THE DENIAL OF HIS CLAIM THAT A SURGICAL PROCEDURE PERFORMED IN NOVEMBER, 1973, WAS THE RESULT OF NEW INJURY OR AN OCCUPATIONAL DISEASE OCCURRING WHILE HE WAS EMPLOYED BY THE GENERAL TELEPHONE COMPANY OF THE NORTHWEST.

PURSUANT TO AN ORDER OF THE WORKMEN'S COMPENSATION BOARD DATED MAY 1, 1974, THE REFEREE ALSO RECEIVED EVIDENCE CONCERNING WHETHER HIS SURGERY WAS NECESSITATED BY THE AGGRAVATION OF A COMPENSABLE INJURY SUFFERED IN 1937 WHILE HE WAS EMPLOYED AS AN AUTO MECHANIC.

THE REFEREE DID NOT RULE ON TECHNICAL PROCEDURAL DEFENSES RAISED BY THE GENERAL TELEPHONE COMPANY BASING HIS AFFIRMANCE OF THE DENIAL ON A FINDING THAT CLAIMANT HAS SUFFERED NEITHER A NEW INJURY NOR AN OCCUPATIONAL DISEASE BUT HAD INSTEAD SUFFERED AN AGGRAVATION OF HIS 1937 INJURY.

WE HAVE REVIEWED THE RECORD DE NOVO AND CONCUR WITH THE REFEREE'S ANALYSIS OF THE EVIDENCE. HIS ORDER AFFIRMING THE DENIAL BY GENERAL TELEPHONE COMPANY OF THE NORTHWEST DATED FEBRUARY 25, 1974, SHOULD BE AFFIRMED.

WITH RESPECT TO THE CLAIMANT'S PETITION FOR ADDITIONAL BENEFITS UNDER BOARD'S OWN MOTION AUTHORITY, WE ALSO AGREE WITH THE REFEREE'S OBSERVATION THAT THE CONSENSUS OF MEDICAL OPINION ATTRIBUTES CLAIMANT'S PRESENT PROBLEMS TO THE 1937 ACCIDENT. WE CONCLUDE THAT THE EVIDENCE JUSTIFIES THE ENTRY OF AN ORDER PURSUANT TO THE AUTHORITY GRANTED BY ORS 656.278, EXTENDING BENEFITS TO CLAIMANT.

ORDER

THE ORDERS OF THE REFEREE, DATED SEPTEMBER 3, 1974, AND SEPTEMBER 27, 1974, ARE HEREBY AFFIRMED.

PURSUANT TO ORS 656.278, THE STATE ACCIDENT INSURANCE FUND IS HEREBY ORDERED TO PROVIDE COMPENSATION FOR TEMPORARY TOTAL DISABILITY AND MEDICAL CARE RELATED TO HIS LUMBAR SURGERY OF NOVEMBER 7, 1973. TEMPORARY TOTAL DISABILITY BENEFITS SHALL BE PAID FROM NOVEMBER 2, 1973, UNTIL TERMINATION IS AUTHORIZED BY LAW.

WHEN CLAIMANT'S CONDITION HAS BECOME MEDICALLY STATIONARY, THE MATTER SHALL BE RESUBMITTED TO THE WORKMEN'S COMPENSATION BOARD FOR AN OWN MOTION EVALUATION OF CLAIMANT'S DISABILITY.

CLAIMANT'S ATTORNEY, J. MICHAEL GLEESON, IS HEREBY AWARDED A REASONABLE ATTORNEY'S FEE EQUAL TO 25 PER CENT OF THE COMPENSATION AND MEDICAL CARE MADE PAYABLE BY THIS ORDER, PAYABLE FROM THE TEMPORARY TOTAL DISABILITY COMPENSATION AS PAID, BUT IN NO EVENT TO EXCEED A MAXIMUM OF 1,000 DOLLARS.

LESTER R. ADAMS, CLAIMANT

GALBREATH AND POPE, CLAIMANT'S ATTYS.
KOTTKAMP AND O'ROURKE, DEFENSE ATTYS.

ON APRIL 3, 1974, THE WORKMEN'S COMPENSATION BOARD ISSUED AN ORDER UPON THE AUTHORITY GRANTED IT BY ORS 656.278, REOPENING CLAIMANT'S CLAIM FOR FURTHER MEDICAL CARE AND PAYMENT OF COMPENSATION. THE ORDER PROVIDED, AMONG OTHER THINGS, THAT THE MATTER SHOULD AGAIN BE PRESENTED TO THE BOARD UNDER ORS 656.278 FOR REEVALUATION OF PERMANENT DISABILITY WHEN THE CLAIMANT'S CONDITION AGAIN BECAME MEDICALLY STATIONARY.

THE EMPLOYER INADVERTENTLY REQUESTED A ROUTINE CLOSURE UNDER ORS 656.268 AND A DETERMINATION ORDER ISSUED GRANTING CLAIMANT ADDITIONAL BENEFITS. SINCE OWN MOTION JURISDICTION IS RESERVED TO THE BOARD PROPER AND THE EVALUATION DIVISION HAVING NO AUTHORITY IN THE CLAIM, THE DETERMINATION ORDER WAS SET ASIDE.

THE BOARD HAS NOW EVALUATED THE CLAIMANT'S CONDITION AND CONCLUDES THAT CLAIMANT IS ENTITLED TO ADDITIONAL PERMANENT DISABILITY COMPENSATION.

MR. KOTTKAMP, IN A FOLLOW-UP LETTER TO HIS REQUEST FOR HEARING ON THE NOW WITHDRAWN DETERMINATION ORDER, ARGUED THAT THE SURGERY WAS DONE TO IMPRROVE CLAIMANT'S CONDITION, THAT THE DOCTOR REPORTED IMPROVEMENT HAD RESULTED, AND, THEREFORE, THAT CLAIMANT WAS NOT ENTITLED TO ADDITIONAL PERMANENT DISABILITY COMPENSATION.

MR. KOTTKAMP HAS OVERLOOKED THE FACT THAT THE ORIGINAL PERMANENT DISABILITY AWARD WAS TO COMPENSATE CLAIMANT FOR THE DISABILITY RESULTING FROM THE RUPTURE OF BOTH THE LONG AND SHORT HEAD OF THE LEFT BICEPS MUSCLE WHICH COULD NOT BE REPAIRED. THIS IS A SCHEDULED INJURY IN THE LEFT ARM AND THE LOSS WAS RATED IN TERMS OF PHYSICAL IMPAIRMENT AS EQUALLING 29 DEGREES.

DR. SHORT, IN HIS LETTER OF FEBRUARY 5, 1974, REPORTED A WORSENING OF CLAIMANT'S CONDITION INVOLVING THE SHOULDER (A ROTATOR CUFF TEAR), RATHER THAN THE ARM, WHICH HE FOUND HAD WORSENED SINCE MARCH, 1972 (THE DETERMINATION ORDER GRANTING 29 DEGREES FOR THE ARM HAD ISSUED ON MARCH 15, 1972).

WE FIND NO INCONSISTENCY IN NOW ALLOWING ADDITIONAL PERMANENT DISABILITY. THE 29 DEGREES AWARD WAS GRANTED FOR PERMANENT PARTIAL DISABILITY IN THE LEFT ARM WHICH REMAINS DISABLING TO THAT EXTENT. THE ESSENTIAL FACTS OF THE CLAIM ARE -

FOLLOWING CLOSURE OF HIS CLAIM, ANOTHER ELEMENT OF HIS ORIGINAL INJURY WORSENED. DR. SHORT REPORTED THAT HE FELT HE COULD REDUCE THAT NEW ELEMENT OF DISABILITY BY SURGERY. THE SURGERY DID IMPROVE THE NEWLY WORSENED SHOULDER CONDITION, BUT IT DID NOT, OF COURSE, AFFECT THE DISABILITY IN THE ARM, CAUSED BY THE BICEPS FAILURE.

HAD DR. SHORT NOT PERFORMED THE ROTATOR CUFF REPAIR, CLAIMANT'S PERMANENT SHOULDER DISABILITY WOULD BE GREATER THAN IT NOW IS. WE THINK THAT CLAIMANT'S PERMANENT UNSCHEDULED

SHOULDER DISABILITY, RATED IN TERMS OF LOST EARNING CAPACITY, EQUALS 10 PER CENT OF THE MAXIMUM ALLOWABLE OR 32 DEGREES. THIS IS ADDITIONAL DISABILITY REMAINING AFTER THE CORRECTIVE SURGERY.

ORDER

CLAIMANT IS HEREBY AWARDED TEMPORARY TOTAL DISABILITY FROM THE PERIOD JULY 30, 1974, THROUGH JANUARY 29, 1975, INCLUSIVE, LESS TIME WORKED.

CLAIMANT IS HEREBY FURTHER AWARDED 32 DEGREES FOR UNSCHEDULED LEFT SHOULDER DISABILITY OR 10 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

THIS AWARD IS IN ADDITION TO, AND NOT IN LIEU OF, THE PERMANENT DISABILITY AWARD GRANTED BY THE DETERMINATION ORDER DATED MARCH 15, 1972.

WCB CASE NO. 74-853 APRIL 10, 1975

PAULINE MORGAN, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

ON AUGUST 8, 1974, A REFEREE ENTERED AN ORDER IN THE ABOVE ENTITLED CAUSE WHICH DISMISSED CLAIMANT'S REQUEST FOR HEARING ON AGGRAVATION FOR LACK OF JURISDICTION BUT NEVERTHELESS ORDERED THE STATE ACCIDENT INSURANCE FUND TO PAY CERTAIN TEMPORARY TOTAL DISABILITY COMPENSATION, TOGETHER WITH PENALTIES AND ATTORNEY'S FEES FOR ITS UNREASONABLE DELAY AND FAILURE TO PROCESS CLAIMANT'S CLAIM.

THE STATE ACCIDENT INSURANCE FUND REQUESTED BOARD REVIEW AND THE CLAIMANT CROSS-REQUESTED REVIEW.

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. THAT MOTION WAS DENIED AND THE BOARD PROCEEDED TO REVIEW THE RECORD.

HAVING DONE SO, WE CONCUR WITH THE REFEREE'S RULING THAT THE TWO MEDICAL REPORTS FROM DR. RAY RUSCH, DATED MARCH 4, 1974, DO NOT SATISFY THE JURISDICTIONAL PREREQUISITES. HIS ORDER IN THAT REGARD SHOULD BE AFFIRMED.

THE REFEREE WENT ON TO AWARD TIME LOSS, PENALTIES AND ATTORNEY'S FEES FINDING THAT A CLAIM OF AGGRAVATION, EVEN THOUGH NOT SUPPORTED BY A JURISDICTIONALLY ADEQUATE MEDICAL REPORT, HAD BEEN MADE PURSUANT TO BOARD RULES AND THUS, THAT THE FUND HAD A DUTY TO PROCESS THE CLAIM IN THE MANNER PROVIDED FOR CLAIMS IN THE FIRST INSTANCE.

SECTION 7.02 OF WCB ADMINISTRATIVE ORDER 4-1970 REQUIRES THE PROCESSING OF THOSE CLAIMS 'PRESENTED TO THE EMPLOYER (OR SAIF) WITH THE REQUIRED SUPPORTING MEDICAL REPORT...' THE 'REQUIRED SUPPORTING MEDICAL REPORT' MEANS A JURISDICTIONALLY ADEQUATE MEDICAL REPORT. SINCE DR. RUSCH'S REPORTS ARE NOT JURISDICTIONALLY ADEQUATE, THE REFEREE ERRED IN ORDERING TIME LOSS, PENALTIES AND ATTORNEY'S FEES. IN THAT REGARD, HIS ORDER SHOULD BE REVERSED.

ORDER

THE ORDER OF THE REFEREE, DATED AUGUST 8, 1974, ALLOWING THE FUND'S MOTION TO DISMISS IS HEREBY AFFIRMED.

IN ALL OTHER RESPECTS, THE ORDER IS REVERSED.

WCB CASE NO. 74-1196 APRIL 10, 1975

CALVIN HARTLEY, CLAIMANT

EVOHL F. MALAGON, CLAIMANT'S ATTY.
JAQUA AND WHEATLEY, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

AT THE FIRST HEARING IN THIS MATTER, THE REFEREE AFFIRMED A DETERMINATION ORDER WHICH GRANTED CLAIMANT A PERMANENT PARTIAL DISABILITY AWARD OF 30 PER CENT LOSS OF THE LEFT FOREARM AS THE RESULT OF HIS COMPENSABLE INDUSTRIAL INJURY. PURSUANT TO STIPULATION, CLAIMANT RECEIVED AN ADDITIONAL 10 PER CENT LOSS OF THE LEFT FOREARM, MAKING A TOTAL OF 40 PER CENT.

A CLAIM FOR AGGRAVATION WAS FILED AND ACCEPTED AND ON MAY 1, 1974, A SECOND DETERMINATION FOUND CLAIMANT HAD NOT SUSTAINED ANY FURTHER PERMANENT DISABILITY. CLAIMANT HAS REQUESTED BOARD REVIEW FROM THIS DETERMINATION.

CLAIMANT NOW RESIDES IN CALIFORNIA AND WAS NOT PRESENT AT THE HEARING. DOCUMENTARY EVIDENCE PREVIOUSLY SUBMITTED TO AND CONSIDERED BY THE EVALUATION DIVISION WAS SUBMITTED TO THE REFEREE WHO FOUND THIS EVIDENCE WAS NOT SUFFICIENT TO WARRANT A FINDING THAT CLAIMANT HAD SUSTAINED ADDITIONAL PERMANENT DISABILITY.

THE BOARD, ON REVIEW, CONCURS WITH THE FINDINGS OF THE REFEREE AND AFFIRMS AND ADOPTS HIS ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED OCTOBER 28, 1974, IS AFFIRMED.

CLAIM NO. D53—116569 APRIL 10, 1975

CHARLES T. FLYNN, CLAIMANT
EDWARD N. MURPHY, CLAIMANT'S ATTY.

ON MARCH 16, 1967, CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS LOW BACK WHILE WORKING AS A TRUCK DRIVER FOR WIMER LOGGING COMPANY OF ALBANY, OREGON. HIS CLAIM WAS FIRST CLOSED ON DECEMBER 8, 1967, AND HIS AGGRAVATION RIGHTS LAPSED ON DECEMBER 9, 1972.

ON JANUARY 29, 1975, CLAIMANT, THROUGH HIS ATTORNEY, EDWARD N. MURPHY, REQUESTED THE BOARD, PURSUANT TO ORS 656.278, TO ISSUE AN ORDER REQUIRING THE EMPLOYER TO PROVIDE HIM ADDITIONAL MEDICAL CARE AND COMPENSATION FOR A WORSENING OF HIS MARCH 16, 1967 INJURY. THE REQUEST WAS SUPPORTED BY A REPORT FROM DR. MARIO J. CAMPAGNA INDICATING THAT CLAIMANT SHOULD BE HOSPITALIZED FOR PANTOPAQUE MYELOGRAPHY.

WE CONCLUDE CLAIMANT IS ENTITLED TO FURTHER BENEFITS AND THAT AN ORDER GRANTING THEM PURSUANT TO ORS 656.278 SHOULD BE ENTERED.

ORDER

THE EMPLOYER, THROUGH ITS WORKMEN'S COMPENSATION INSURANCE CARRIER, EMPLOYER'S INSURANCE OF WAUSAU, IS HEREBY ORDERED TO REOPEN CLAIMANT'S CLAIM AS OF DECEMBER 29, 1974, AND PROVIDE TO HIM MEDICAL CARE AND COMPENSATION FOR HIS WORSENED CONDITION.

CLAIMANT'S ATTORNEY IS HEREBY AWARDED 25 PER CENT OF CLAIMANT'S TEMPORARY TOTAL DISABILITY COMPENSATION, PAYABLE FROM THE COMPENSATION AS PAID, TO A MAXIMUM OF 100 DOLLARS, FOR HIS SERVICES IN SECURING THE REOPENING OF CLAIMANT'S CLAIM.

WCB CASE NO. 73—2029 AND 73—2030 AND 73—2031 APRIL 10, 1975

DARRELL G. VIRELL, CLAIMANT
POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY SAIF
CROSS-APPEAL BY EMPLOYER
CROSS-APPEAL BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUES INVOLVED ARE WHETHER CLAIMANT'S MULTIPLE RIGHT LEG INFECTIONS ARE NEW INJURIES OR AGGRAVATION OF AN ORIGINAL RIGHT LEG INJURY AND WHETHER THE ASSESSMENT OF PENALTIES AND CLAIMANT'S ATTORNEY'S FEE ON BOTH THE STATE ACCIDENT INSURANCE FUND AND INSURANCE COMPANY OF NORTH AMERICA IS WARRANTED.

CLAIMANT WORKED FOR THE SAME EMPLOYER SINCE 1955. ON

NOVEMBER 21, 1969 CLAIMANT CUT HIS RIGHT LEG OVER THE SHIN AREA AND A CELLULITIS AND INFECTION DEVELOPED WHICH FAILED TO HEAL NORMALLY. HOWEVER, AFTER SEVERAL MONTHS, THE CLAIM WAS CLOSED WITH NO PERMANENT PARTIAL DISABILITY. SINCE THEN, ANY SIGNIFICANT TRAUMA TO THIS AREA OF THE RIGHT LEG CAUSES REACTIVATION OF THE CELLULITIS.

AFTER THE 1969 INJURY THE EMPLOYER CHANGED ITS WORKMEN'S COMPENSATION COVERAGE FROM THE STATE ACCIDENT INSURANCE FUND (SAIF) TO THE INSURANCE COMPANY OF NORTH AMERICA (INA).

CLAIMANT HAD ANOTHER CLAIM ON THE RIGHT LEG OCTOBER 27, 1972 WHICH WAS PAID (36 DOLLARS) AND CLOSED AS A 'MEDICAL ONLY' BY INA.

CLAIMANT AGAIN BUMPED HIS SHIN FEBRUARY 16, 1973. CLAIMANT CLAIMED THIS WAS AN AGGRAVATION OF THE 1969 INJURY. THE FUND DENIED HIS CLAIM. CLAIMANT THEN FILED A CLAIM WITH INA WHICH DENIED HE HAD SUFFERED A NEW INJURY. EVENTUALLY INA PAID THE CLAIMANT'S MEDICAL BILLS SUBJECT TO REIMBURSEMENT BY THE FUND IF SAIF WERE FOUND TO BE THE RESPONSIBLE PARTY, BUT NO TEMPORARY TOTAL DISABILITY PAYMENTS WERE EVER MADE TO CLAIMANT.

THE EMPLOYER, SAIF AND INA AGREE THAT ALL THREE INCIDENTS ARE COMPENSABLE (UNDERSCORED) YET THE INJURED WORKMAN'S BENEFITS WERE DELAYED MERELY BECAUSE THE EMPLOYER CHANGED COMPENSATION CARRIERS. BOTH THE FUND, ADVOCATING THE NEW INJURY THEORY, AND INA, ADVOCATING THE AGGRAVATION THEORY, RATIONALIZE AND JUSTIFY THEIR DENIAL IN A LOGICAL MANNER. EACH, HOWEVER, HAS IGNORED THE FACT THAT THIS IS AN OBVIOUSLY AND ADMITTEDLY COMPENSABLE INCIDENT AND THAT THE CLAIMANT'S RIGHTS ARE SUBSTANTIALLY AFFECTED BY THE UNCONSCIONABLE DELAY IN PROVIDING COMPENSATION TO THE CLAIMANT. NEITHER CARRIER SUBMITTED THE MATTER TO THE WORKMEN'S COMPENSATION BOARD, AS PROVIDED IN ORS 656.307(1) WHICH PROVIDES -

'WHERE THERE IS AN ISSUE REGARDING -

(A) WHICH OF SEVERAL SUBJECT EMPLOYERS IS THE TRUE EMPLOYER OF A CLAIMANT WORKMAN,

(B) WHICH OF MORE THAN ONE INSURER OF A CERTAIN EMPLOYER IS RESPONSIBLE FOR PAYMENT OF COMPENSATION TO A WORKMAN,

(C) RESPONSIBILITY BETWEEN TWO OR MORE EMPLOYERS OR THEIR INSURERS INVOLVING PAYMENT OF COMPENSATION FOR TWO OR MORE ACCIDENTAL INJURIES, OR

(D) JOINT EMPLOYMENT BY TWO OR MORE EMPLOYERS,

THE BOARD SHALL, BY ORDER, DESIGNATE WHO SHALL PAY THE CLAIM, IF THE CLAIM IS OTHERWISE COMPENSABLE. PAYMENTS SHALL BEGIN IN ANY EVENT AS PROVIDED BY SUBSECTION (4) OF ORS 656.262. WHEN A DETERMINATION OF THE RESPONSIBLE PAYING PARTY HAS BEEN MADE, THE BOARD SHALL DIRECT ANY NECESSARY MONETARY ADJUSTMENT BETWEEN THE PARTIES INVOLVED. ANY FAILURE TO OBTAIN REIMBURSEMENT FROM A DIRECT RESPONSIBILITY EMPLOYER OR ITS INSURER SHALL BE RECOVERED FROM THE DIRECT RESPONSIBILITY EMPLOYERS ADJUSTMENT RESERVE.'

THERE IS NO VALID REASON WHY SAIF OR INA COULD NOT HAVE REQUESTED BOARD INTERVENTION UNDER ORS 656.307 OR HAVE IMMEDIATELY AGREED BETWEEN THEMSELVES THAT ONE OR THE OTHER WOULD UNDERTAKE

THE PAYMENT OF COMPENSATION IN FULL TO A CLAIMANT ON AN ADMITTEDLY COMPENSABLE CLAIM, WITH AN AGREEMENT OF REIMBURSEMENT FROM THE OTHER CARRIER ULTIMATELY FOUND LIABLE.

CARRIERS WOULD BE WELL ADVISED, IN ORDER TO AVOID THE MAXIMUM PENALTY ON EACH (UNDERSCORED) CARRIER AND ATTORNEY'S FEES TO BE PAID BY EACH (UNDERSCORED) CARRIER, TO FACE UP TO THEIR JOINT DUTY TO THE EMPLOYER AND THE INJURED WORKMAN BY INITIATING PROCEEDINGS TO RESOLVE THE CONFLICT IMMEDIATELY, RATHER THAN FOR EACH CARRIER TO DENY THE INJURED WORKMAN'S CLAIM, IN EFFECT 'WASHING THEIR HANDS' OF THE MATTER, AND IN THE PROCESS LEAVING THE CLAIMANT WITHOUT COMPENSATION AND DAMAGING THE EMPLOYER WHO PAID BOTH OF THEM A PREMIUM FOR THEIR SERVICES. THE PRACTICE OF EACH CARRIER DENYING THE CLAIM IN THESE SITUATIONS INVITES THE MAXIMUM PENALTY ON BOTH(UNDERSCORED) OF THE CARRIERS AND CLAIMANT'S ATTORNEYS FEES TO BE PAID BY BOTH (UNDERSCORED) CARRIERS.

ON DE NOVO REVIEW THE BOARD CONCURS WITH THE FINDINGS OF THE REFEREE THAT ALL OF THE INCIDENTS INVOLVING CLAIMANT'S LEG CONDITION ARE AGGRAVATIONS OF THE 1969 LEG INJURY.

THE BOARD FURTHER CONCURS THAT THE FUND SHOULD PAY A 25 PER CENT PENALTY FOR UNREASONABLE DELAY IN PAYMENT OF COMPENSATION TO THE CLAIMANT AND INA SHOULD PAY A 25 PER CENT PENALTY FOR UNREASONABLE DELAY IN PAYMENT OF COMPENSATION AND THAT EACH SHOULD PAY CLAIMANT'S REASONABLE ATTORNEY'S FEES IN THE AMOUNT OF 300 DOLLARS EACH, FOR HIS SERVICES AT THE HEARING.

ORDER

THE ORDER OF THE REFEREE DATED NOVEMBER 21, 1973 IS HEREBY AFFIRMED.

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

THE STATE ACCIDENT INSURANCE FUND SHALL REIMBURSE INSURANCE COMPANY OF NORTH AMERICA ONLY FOR THE AMOUNT PAID BY INSURANCE COMPANY OF NORTH AMERICA FOR ONLY THE MEDICAL AND COMPENSATION OF CLAIMANT ARISING OUT OF THE OCTOBER 16, 1972 AND FEBRUARY 16, 1973 AGGRAVATIONS. THE STATE ACCIDENT INSURANCE FUND SHALL NOT REIMBURSE INSURANCE COMPANY OF NORTH AMERICA FOR ANY PENALTIES OR ATTORNEY'S FEES ASSESSED AGAINST INSURANCE COMPANY OF NORTH AMERICA.

WCB CASE NO. 73-2965 APRIL 10, 1975

MARTIN ZANDBERGEN, CLAIMANT
AND IN THE MATTER OF THE COMPLYING STATUS OF
JON DAVID AND JOANNA MARIE JOHNSON
DBA CLACKAMAS STEEL FABRICATING
LOCK AND BURNS, CLAIMANT'S ATTYS.
SANTOS AND SCHNEIDER, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER FINDING THAT HIS EMPLOYMENT WAS CASUAL, THAT HE WAS NOT A SUBJECT EMPLOYEE AND, THEREFORE, NOT ENTITLED TO WORKMEN'S COMPENSATION BENEFITS FOR HIS ON-THE-JOB INJURY. THE REFEREE ALSO FOUND THE CLAIM BARRED BY THE CLAIMANT'S FAILURE TO GIVE TIMELY WRITTEN NOTICE OF HIS CLAIM. CLAIMANT CONTENDS THE REFEREE ERRED IN BOTH RULINGS. WE AGREE.

ORS 656.265(1) REQUIRES WRITTEN NOTICE OF AN ACCIDENT BE GIVEN TO THE EMPLOYER WITHIN 30 DAYS. SUBSECTION (2) REQUIRES THE NOTICE MUST APPRISE THE EMPLOYER OF WHEN AND WHERE AND HOW THE INJURY OCCURRED. SUBSECTION (4) AND (4)(A) PROVIDES THAT FAILURE TO GIVE TIMELY WRITTEN NOTICE BARS THE CLAIM UNLESS THE EMPLOYER HAD KNOWLEDGE OF THE INJURY.

THE INJURY TO CLAIMANT OCCURRED IN THE PRESENCE OF THE EMPLOYER AND HE WAS FULLY AWARE OF WHEN AND WHERE AND HOW THE ACCIDENT OCCURRED. THUS, A 'CLAIM' HAD BEEN PERFECTED. -ORS 656.002(6)-

WHETHER CLAIMANT WAS A SUBJECT WORKMAN ENTITLED TO BENEFITS IS GOVERNED BY ORS 656.027. TO DENY CLAIMANT BENEFITS, HIS EMPLOYMENT MUST HAVE BEEN CASUAL AND NOT IN THE COURSE OF THE TRADE BUSINESS OR PROFESSION OF THE EMPLOYER. BOTH (UNDERSCORED) ELEMENTS MUST COEXIST TO EXCEPT CLAIMANT FROM THE PROTECTION OF THE ACT.

REGARDLESS OF THE AMOUNT OF MONEY CLAIMANT WOULD HAVE EARNED IN A 30 DAY PERIOD, CLAIMANT WAS A SUBJECT WORKMAN BECAUSE THE SERVICE HE WAS EMPLOYED TO PERFORM WAS A NECESSARY INCIDENT OF THE USUAL COURSE OF THE EMPLOYER'S TRADE OR BUSINESS.

CLAIMANT IS THUS ENTITLED TO THE BENEFITS OF THE COMPENSATION ACT. BECAUSE THE CLAIMANT WAS A SUBJECT WORKMAN, THE EMPLOYER WAS SUBJECT TO THE ACT ON JUNE 26, 1972, BUT NOT COMPLYING WITH ITS REQUIREMENTS IN THAT NEITHER JON DAVID JOHNSON NOR JOANNA MARIE JOHNSON HAD COMPLIED WITH ORS 656.016.

THE REFEREE'S ORDER SHOULD THEREFORE BE REVERSED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE, DATED AUGUST 2, 1974, IS REVERSED.

IT IS HEREBY ORDERED THAT JON DAVID JOHNSON AND JOANNA MARIE JOHNSON WERE SUBJECT, NONCOMPLYING EMPLOYERS ON JUNE 26, 1972.

IT IS HEREBY FURTHER ORDERED THAT CLAIMANT, MARTIN ZANDBERGEN, SUFFERED A COMPENSABLE OCCUPATIONAL INJURY ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT BY JON DAVID JOHNSON AND JOANNA MARIE JOHNSON.

IT IS HEREBY FURTHER ORDERED, PURSUANT TO ORS 656.054(1), THAT CLAIMANT'S CLAIM BE REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR PROCESSING IN ACCORDANCE WITH SAID STATUTE.

IT IS HEREBY FINALLY ORDERED THAT THE STATE ACCIDENT INSURANCE FUND PAY CLAIMANT'S ATTORNEY, JAMES LOCK, A REASONABLE ATTORNEY'S FEE OF 1,000 DOLLARS FOR HIS SERVICES AT THE HEARING AND ON THIS REVIEW, SAID FEE TO BE PAID BY THE STATE ACCIDENT INSURANCE FUND AND INCLUDED IN THE EMPLOYER'S LIABILITY AS PROVIDED BY ORS 656.054(3).

WCB CASE NO. 72-1433 APRIL 10, 1975

K.W. LANGE, CLAIMANT

CHARLES PAULSON, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

THIS CLAIMANT WAS INJURED ON JULY 29, 1964, AND ELECTED TO PROCEED WITH AN APPEAL UNDER THE PRE-1966 LAW. HE WAS THUS PRECLUDED FROM PURSUING A HEARING BEFORE THE WORKMEN'S COMPENSATION BOARD. HIS REQUEST FOR HEARING WAS DISMISSED BY THE HEARING OFFICER AND THIS DISMISSAL WAS AFFIRMED BY THE BOARD ON REVIEW.

CLAIMANT'S COUNSEL HAS NOW PETITIONED THE WORKMEN'S COMPENSATION BOARD TO EXERCISE ITS OWN MOTION JURISDICTION GRANTED TO THE BOARD PURSUANT TO ORS 656.278.

CLAIMANT CONTENDS HE IS PERMANENTLY AND TOTALLY DISABLED AS THE RESULT OF HIS INDUSTRIAL ACCIDENT, THAT DUE TO THE NEGLIGENCE OF HIS ATTORNEY, AN APPEAL WAS NOT FILED WITHIN THE STATUTORY TIME LIMIT AND THAT HIS ATTORNEY IS NOW DECEASED, LEAVING NO PROFESSIONAL LIABILITY. CLAIMANT THEREFORE REQUESTS RELIEF UNDER THE PROVISION OF THE OWN MOTION JURISDICTION OF THE BOARD.

IT APPEARS TO THE BOARD THAT CLAIMANT HAS SUFFERED SUBSTANTIAL PERMANENT DISABILITY, HAVING PREVIOUSLY BEEN AWARDED 95 PER CENT LOSS FUNCTION OF THE LEFT LEG, 15 PER CENT LOSS FUNCTION OF THE LEFT ARM, AND 40 PER CENT LOSS USE OF AN ARM FOR UNSCHEDULED DISABILITY. BEFORE DETERMINING IF CLAIMANT IS ENTITLED TO A FURTHER AWARD OF PERMANENT DISABILITY, THE BOARD DESIRES TO HAVE A FULL AND CURRENT RECORD BEFORE IT UPON WHICH TO ISSUE A FINDING OF DISABILITY.

ORDER

IT IS HEREBY ORDERED THAT THIS MATTER BE REFERRED TO THE HEARINGS DIVISION OF THE WORKMEN'S COMPENSATION BOARD FOR THE PURPOSE OF HOLDING A HEARING TO OBTAIN EVIDENCE WITH RESPECT TO THE EXTENT OF CLAIMANT'S DISABILITY ATTRIBUTABLE TO THE ACCIDENTAL INJURY.

UPON CONCLUSION OF THE HEARING, A TRANSCRIPT OF THE PROCEEDINGS SHALL BE MADE AND CERTIFIED TO THE BOARD BY THE REFEREE TOGETHER

WITH A SUMMARY OF THE EVIDENCE AND INCLUDING THE OBSERVATIONS AND THE RECOMMENDATIONS OF THE REFEREE IN THE MATTER.

WCB CASE NO. 74—853 APRIL 11, 1975

PAULINE MORGAN, CLAIMANT

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

ON APRIL 9, 1975, CLAIMANT, THROUGH HER ATTORNEYS, AGAIN MOVED THE BOARD TO SUPPLEMENT THE RECORD OR IN THE ALTERNATIVE TO REMAND FOR FURTHER HEARING CONCERNING THE DENIAL OF HER CLAIM FOR AGGRAVATION.

THE BOARD, PRIOR TO THE RECEIPT OF THIS MOTION, ISSUED ITS ORDER ON REVIEW FINDING IT HAS NO JURISDICTION TO PROCEED FURTHER IN THE MATTER BECAUSE THE MEDICAL REPORTS SUBMITTED WITH THE CLAIM FOR AGGRAVATION WERE JURISDICTIONALLY INADEQUATE. BECAUSE OF THEIR INADEQUACY, THE BOARD HAS NO JURISDICTION TO GRANT THE RELIEF REQUESTED.

THE MOTION SHOULD BE AND IT IS HEREBY DENIED.

IT IS SO ORDERED.

WCB CASE NO. 74—791 APRIL 11, 1975

JAMES GRAY, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH AWARDED CLAIMANT A TOTAL OF 60 PER CENT UNSCHEDULED LOW BACK DISABILITY EQUAL TO 192 DEGREES, AN INCREASE OF 45 PER CENT UNSCHEDULED DISABILITY ABOVE THE DETERMINATION ORDER AWARD, CONTENDING HE IS PERMANENTLY TOTALLY DISABLED. THE FUND HAS FILED A CROSS REQUEST FOR REVIEW SEEKING REVERSAL OF THE INCREASE.

CLAIMANT IN THIS MATTER HAS A HISTORY OF INDUSTRIAL INJURIES. THE MOST SERIOUS, WHICH OCCURRED IN 1960, INVOLVED HIS BACK AND RESULTED IN TWO SURGICAL PROCEDURES WHICH CAUSED CLAIMANT TO BE OFF WORK FOR FIVE YEARS. CLAIMANT THEN WORKED STEADILY FOR SIX YEARS BEFORE SUSTAINING THE ACCIDENT AT ISSUE ON JUNE 26, 1973, WHEN HE SLIPPED ON A CONVEYOR BELT WHILE WORKING AT GREEN VENEER, INC.

AFTER A MYELOGRAM REVEALED NO DISC INJURY, DR. MELGARD, WHO HAD DONE PRIOR SURGERY ON CLAIMANT, PRESCRIBED CONSERVATIVE TREATMENT RATHER THAN ADDITIONAL SURGERY.

AFTER EVALUATION AT THE BOARD'S DISABILITY PREVENTION DIVISION, IT WAS FOUND CLAIMANT'S TOTAL LOSS OF FUNCTION AT THAT TIME WAS MODERATELY SEVERE, AND THE LOSS OF FUNCTION DUE TO THE INJURY AT ISSUE WAS MILDLY MODERATE.

THE DETERMINATION ORDER ISSUED FEBRUARY 28, 1974, AWARDED 15 PER CENT FOR UNSCHEDULED BACK DISABILITY.

ALTHOUGH THE JOB AT GREEN VENEER INVOLVED A PUSH BUTTON OPERATION, THE VIBRATION IN THE PLANT HAS FORECLOSED CLAIMANT'S RETURN TO WORK THERE. IT IS APPARENT THAT HE IS PRECLUDED FROM HEAVY PHYSICAL LABOR. HOWEVER, AT AGE 45, WITH THE INTELLECT TO SUCCEED AT RETRAINING AND APTITUDES IN MECHANICS AND BENCH WORK, THE BOARD IS OF THE OPINION THAT CLAIMANT SHOULD EXERCISE SOME INITIATIVE TO SECURE SOME KIND OF LIGHTER EMPLOYMENT WITHIN THESE CAPABILITIES.

THE STATE ACCIDENT INSURANCE FUND CONTENDS THAT THE REFEREE IGNORED ORS 656.222 IN INCREASING THE AWARD. WE DISAGREE. IN COMPENSATING UNSCHEDULED DISABILITIES, GREEN V. SIAC (UNDERSCORED), 197 OR 160 (1953), UNLIKE NESSELRODT V SIAC (UNDERSCORED), 248 OR 452 (1967) WHICH APPLIES TO SCHEDULED DISABILITIES, PERMITS, BUT DOES NOT NECESSARILY REQUIRE, THE GRANTING OF AN AWARD FOR SUBSEQUENT PERMANENT PARTIAL DISABILITY WITHOUT DEDUCTION FOR PRIOR PERMANENT PARTIAL DISABILITY AWARD IN UNSCHEDULED INJURIES EVEN THOUGH THE SUBSEQUENT INJURY IS TO THE SAME UNSCHEDULED AREA.

HERE CLAIMANT HAD WORKED FOR SIX YEARS SINCE THE EARLIER INJURY AND AS GREEN (UNDERSCORED) ALSO DISCUSSES, NEEDS A SUBSTANTIAL AWARD OF PERMANENT PARTIAL DISABILITY TO PROVIDE ASSISTANCE WHILE HE MAKES A RATHER MAJOR ADJUSTMENT SO AS TO BE ABLE TO AGAIN FOLLOW A GAINFUL OCCUPATION.

THE BOARD, ON REVIEW, FINDS THE TOTAL PERMANENT PARTIAL DISABILITY AWARD OF 60 PER CENT UNSCHEDULED DISABILITY THIS CLAIMANT HAS RECEIVED REPRESENTS AN APPROPRIATE AWARD. THE REFEREE'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED SEPTEMBER 13, 1974, IS AFFIRMED.

WCB CASE NO. 73-3492 APRIL 16, 1975

LEE NOBLE, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
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 REQUIRING THE FUND TO ACCEPT CLAIMANT'S CLAIM FOR BENEFITS AND PAY COMPENSATION ACCORDINGLY.

CLAIMANT WAS EMPLOYED AS A HEAVY EQUIPMENT OPERATOR AND ON AUGUST 27, 1973, WHILE ASSISTING A CO-WORKER IN LOADING HEAVY SKIDS

ONTO A TRAILER, SUFFERED AN EPISODE OF DIZZINESS, DISTORTED VISION, AND BEGAN HAVING HEADACHES INCREASING IN INTENSITY. DR. KNOX'S DIAGNOSIS WAS 'RETINAL ARTERY THROMBOSIS WITH OCCLUSION ANTERIOR BRANCH, RIGHT RETINAL ARTERY, PROBABLY RELATED TO INDUSTRIAL FACTORS.'

ALTHOUGH THERE WAS CONFLICTING MEDICAL TESTIMONY, THE BOARD FINDS THE TESTIMONY GIVEN AT THE HEARING BY DR. GEORGE W. KNOX, NEUROLOGIST, TO BE COMPELLING. DR. KNOX, IN CONSULTATION WITH TWO OTHER DOCTORS, RAN COMPLETE AND THOROUGH DIAGNOSTIC TESTS WHICH NEGATED OTHER CAUSES THAT MIGHT HAVE PRECIPITATED CLAIMANT'S SYMPTOMS.

THE REFEREE FOUND AND CONCLUDED THAT BOTH MEDICAL AND LEGAL CAUSATION FULFILLING THE REQUIREMENTS OF THE STATUTE WERE ESTABLISHED AND THAT CLAIMANT'S CLAIM FOR COMPENSATION SHOULD BE ACCEPTED. THE BOARD, ON REVIEW, CONCURS WITH THIS FINDING AND CONCLUDES THE REFEREE'S ORDER SHOULD BE AFFIRMED.

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 300 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-1334 APRIL 16, 1975

DOYLE SHOULTS, CLAIMANT

RAY BABB, CLAIMANT'S ATTY.
GRAY, FANCHER, HOLMES AND HURLEY, DEFENSE ATTYS.

THE EMPLOYER FILED A MOTION SEEKING TO HAVE THIS MATTER REMANDED TO THE REFEREE FOR RECONSIDERATION OF THE QUESTION OF PERMANENT DISABILITY ON THE GROUND THAT IT HAD DISCOVERED 'NEW AND MATERIAL EVIDENCE CONCERNING THE CLAIMANT'S PHYSICAL CONDITION' RELATING TO HIS ACTIVITIES IN A BOWLING LEAGUE WHICH HAD OCCURRED BEFORE, DURING AND AFTER THE HEARING.

CLAIMANT OPPOSES THE MOTION ON THE GROUND THAT THE EMPLOYER MADE NO SHOWING WHY SUCH EVIDENCE COULD NOT HAVE BEEN REASONABLY DISCOVERED AND PRODUCED AT THE HEARING ALREADY HELD. HE ALSO CONTENDS THAT THE RECORD HAS IN FACT BEEN ALREADY SUFFICIENTLY DEVELOPED ON THAT SUBJECT.

WE AGREE WITH THE CLAIMANT'S CONTENTIONS AND CONCLUDE THE MOTION SHOULD BE, AND IT IS HEREBY, DENIED. A NEW BRIEFING SCHEDULE WILL BE FURNISHED TO THE PARTIES FOR COMPLETION OF THE REVIEW.

CLAIM NO. 541 C 294973 APRIL 16, 1975

IRETHA K. EGAN, CLAIMANT
BURL L. GREEN, CLAIMANT'S ATTY.

AFTER CLAIMANT'S AGGRAVATION RIGHTS HAD EXPIRED IN THIS MATTER, THE EMPLOYER'S INSURANCE CARRIER VOLUNTARILY REOPENED THE CLAIM TO PROVIDE FURTHER MEDICAL CARE AND COMPENSATION. WHEN CLAIMANT'S CONDITION WAS DEEMED STATIONARY, THE MATTER WAS SUBMITTED TO THE BOARD FOR CLOSURE AND BY OWN MOTION ORDER DATED SEPTEMBER 6, 1974, CLAIMANT WAS ALLOWED TEMPORARY TOTAL DISABILITY DURING TREATMENT, BUT NO AWARD WAS MADE FOR PERMANENT DISABILITY.

COUNSEL FOR CLAIMANT NOW CONTENDS CLAIMANT HAS SUSTAINED SOME PERMANENT PARTIAL DISABILITY. TO ASSIST THE BOARD IN EVALUATING SUCH DISABILITY, THE EMPLOYER'S CARRIER IS HEREBY ORDERED TO ENROLL CLAIMANT AT THE BOARD'S DISABILITY PREVENTION DIVISION FOR A PHYSICAL EXAMINATION AND WORKUP. UPON RECEIPT OF THIS REPORT, A FURTHER ORDER OF THE BOARD WILL ISSUE WITH RESPECT TO PERMANENT DISABILITY SUSTAINED BY CLAIMANT.

WCB CASE NO. 74-1843 APRIL 16, 1975

VERNON MICHAEL, CLAIMANT
EVOHL F. MALAGON, CLAIMANT'S ATTY.
JOHN SVOBODA, DEFENSE ATTY.

ON APRIL 9, 1975, CLAIMANT'S ATTORNEY MOVED TO STRIKE THE FUND'S RESPONSE TO HIS MOTION SEEKING THE DISMISSAL OF THE D. R. JOHNSON LUMBER COMPANY'S REQUEST FOR BOARD REVIEW.

THE BOARD RECOGNIZES THAT THE FUND'S REQUEST FOR REVIEW HAS BEEN DISMISSED BUT NEVERTHELESS BELIEVES ITS CONTINUING INTEREST IN THIS MATTER PERMITS (IF NOT REQUIRES) RECEIPT OF ITS ARGUMENT ON THE MOTION.

BEING NOW FULLY ADVISED, THE BOARD CONCLUDES THE CLAIMANT'S MOTION TO STRIKE THE FUND'S LETTER OF APRIL 7, 1975, SHOULD BE AND IT IS HEREBY DENIED.

WCB CASE NO. 74-2550 APRIL 16, 1975

SAM SARACENO, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MCMENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER DISMISSING CLAIMANT'S REQUEST FOR HEARING ON THE GROUND THAT HIS REQUEST FOR HEARING ON THE EMPLOYER'S DENIAL WAS UNTIMELY.

CLAIMANT ATTEMPTS TO APPLY CASES RELATING TO DELAY IN CLAIM FILING (UNDERSCORED) TO DELAY IN REQUESTING A HEARING (UNDERSCORED). THE CASES ARE OBVIOUSLY NOT APPLICABLE.

THE REFEREE'S ORDER IS CORRECT AND SHOULD BE ADOPTED AND AFFIRMED AS THE ORDER OF THE BOARD.

ORDER

THE ORDER OF THE REFEREE, DATED NOVEMBER 5, 1974, IS AFFIRMED.

WCB CASE NO. 74-1157 APRIL 16, 1975

JO ANN MCCARTNEY, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT IN THIS MATTER RECEIVED A PERMANENT PARTIAL DISABILITY AWARD OF 30 PER CENT OF THE MAXIMUM FOR UNSCHEDULED BACK DISABILITY BY DETERMINATION ORDER. AT HEARING, THE REFEREE AWARDED AN ADDITIONAL 30 PER CENT MAKING A TOTAL OF 60 PER CENT UNSCHEDULED DISABILITY. CLAIMANT HAS REQUESTED BOARD REVIEW CONTENDING SHE IS ENTITLED TO AN AWARD OF PERMANENT AND TOTAL DISABILITY.

AFTER WORKING MANY YEARS AS A PLATOON LEADER, CLAIMANT BEGAN WORKING AS A MOTEL MAID IN FEBRUARY, 1969. ON FEBRUARY 5, 1973, WHILE MAKING UP BEDS, SHE FELT HER BACK SNAP, EXPERIENCED PAIN, AND HAS NOT BEEN EMPLOYED SINCE.

AT AGE 58, CLAIMANT'S SITUATION IS ONE THAT INVOLVES A PRE-EXISTING, BUT BASICALLY ASYMPTOMATIC, DEGENERATIVE BACK PRIOR TO INJURY. WITH A RELATIVELY MINOR INCIDENT, CLAIMANT IS NOW PRECLUDED FROM DOING MANY OF THE THINGS SHE DID IN THE NORMAL COURSE OF LIVING. KNOWING PERSONS WHO HAVE HAD UNSUCCESSFUL BACK SURGERY, CLAIMANT HAS REFUSED SURGERY, DOES NOT TAKE ANY PRESCRIBED MEDICATION FOR PAIN, AND USES A BACK BRACE FOR SHORT PERIODS OF TIME DURING THE DAY.

WHEN CLAIMANT WAS SEEN AT THE BOARD'S DISABILITY PREVENTION DIVISION, THEIR EVALUATION INDICATED THE PERMANENT PARTIAL DISABILITY, WHEN CONSIDERED IN LIGHT OF THE PREEXISTING DEGENERATIVE DISC DISEASE, WAS MILDLY MODERATE. IT WAS FELT CLAIMANT SHOULD TRY TO RETURN TO SOME KIND OF LIGHT WORK AS SOON AS POSSIBLE BUT SHE HAS NOT DONE THAT BECAUSE OF SECONDARY GAIN FACTORS AND HAS INSTEAD WITHDRAWN INTO A HOME SITUATION.

SINCE CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED BASED ON PHYSICAL FACTORS ALONE, HER LACK OF MOTIVATION CANNOT BE DISCOUNTED.

THE BOARD, ON REVIEW, CONCLUDES THAT AN AWARD IN EXCESS OF 60 PER CENT OF THE MAXIMUM FOR UNSCHEDULED DISABILITY IS NOT WARRANTED. THE REFEREE'S ORDER SHOULD BE AFFIRMED.

ORDER

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

WCB CASE NO. 73-1812 APRIL 16, 1975

CHARLES L. GONCE, CLAIMANT

LEO R. PROBST, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS CLAIMANT RECEIVED A PERMANENT PARTIAL DISABILITY AWARD OF 32 DEGREES FOR UNSCHEDULED DISABILITY PURSUANT TO DETERMINATION UNDER ORS 656.268. AT HEARING, THE REFEREE AFFIRMED THIS DETERMINATION AND THE CLAIMANT REQUESTED BOARD REVIEW. CLAIMANT WAS NOT REPRESENTED BY COUNSEL ON BOARD REVIEW, NOR WERE BRIEFS SUBMITTED. WE HAVE, NEVERTHELESS, REVIEWED THE RECORD DE NOVO.

CLAIMANT, AT AGE 38, SUFFERED A LOW BACK STRAIN WHILE EMPLOYED AS A LABORER. HE UNDERWENT CONSERVATIVE TREATMENT, PELVIC TRACTION AND BED REST. TWO ORTHOPEDIC SURGEONS, DRS. CHERRY AND RILEY, AGREED BASICALLY THAT THE DEGREE OF IMPAIRMENT CLAIMANT SUSTAINED WAS QUITE MINIMAL AND ON THAT BASIS HE SHOULD HAVE RECOVERED QUITE RAPIDLY.

GUY A. PARVARESH, M.D., CHARACTERIZED CLAIMANT AS FOLLOWS -

> 'I SEE HIM, BASICALLY, AS HAVING A BASIC LIFE STYLE OR PERSONALITY DISORDER THAT MAKES HIM EXTREMELY PASSIVE, DEPENDENT, THAT IF SOMETHING CAN NURTURE HIS DEPENDENCY, WELL THEN, HE HANGS ONTO IT.'
>
> 'I SEE HIM, BASICALLY, AS HAVING A PERSONALITY DISORDER AND THAT PERSONALITY DISORDER FEEDS ON NURTURENCE THAT SOMEONE ELSE CAN BE RESPONSIBLE FOR. YOU SEE A LOT OF THAT IN COMPENSATION CASES.'

THE BOARD, ON REVIEW, CONCURS WITH THE FINDINGS OF THE REFEREE THAT CLAIMANT IS NOT IN NEED OF FURTHER TREATMENT AND THAT HE HAS SUSTAINED ONLY MINIMAL PERMANENT DISABILITY FOR WHICH HE HAS BEEN ADEQUATELY COMPENSATED.

ORDER

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

WCB CASE NO. 74-1998 APRIL 16, 1975

BELEN AREVALO, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES THE EXTENT OF DISABILITY CLAIMANT HAS SUSTAINED AS A RESULT OF HER INDUSTRIAL INJURY. AT HEARING, THE REFEREE INCREASED THE PERMANENT DISABILITY AWARD FROM 20 PER CENT (64 DEGREES) TO 80 PER CENT (256 DEGREES) OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY. THE CLAIMANT HAS REQUESTED BOARD REVIEW CONTENDING SHE IS PERMANENTLY AND TOTALLY DISABLED. THE STATE ACCIDENT INSURANCE FUND HAS CROSS REQUESTED A REVIEW OF THE INCREASE.

CLAIMANT IS A 50 YEAR OLD FEMALE, MEXICAN FARM LABORER WHO, IN JUNE, 1973, SUSTAINED AN ACUTE LUMBOSACRAL STRAIN SUPERIMPOSED ON DEGENERATIVE DISC DISEASE.

CLAIMANT UNSUCCESSFULLY ATTEMPTED TO RETURN TO CANNERY WORK IN THE SUMMER OF 1973 AND COULD ONLY TOLERATE THREE DAYS BEAN PICKING IN 1974. THE BULK OF CLAIMANT'S EMPLOYMENT HAS BEEN AS A MIGRANT WORKER AND SHE IS NOW INCAPABLE OF DOING THE ONLY TYPE OF WORK SHE HAS EVER DONE. ANY ADAPTATION TO ALTERNATIVE EMPLOYMENT APPEARS UNREALISTIC.

THE FUND POINTS OUT THAT CLAIMANT IS DISINTERESTED IN REHABILITATION BECAUSE SHE IS NEEDED AT HOME TO CARE FOR HER SICK HUSBAND AND THAT SHE IS AFRAID TO DRIVE. HOWEVER, NO ONE HAS POINTED OUT WHAT REHABILITATIVE SERVICES ARE APPROPRIATE FOR A NOW 50 YEAR OLD CLAIMANT WITH A BAD BACK, LIMITED WORK EXPERIENCE, AND WHO CAN NEITHER READ, WRITE, UNDERSTAND OR SPEAK ENGLISH.

THE BOARD, ON REVIEW, IS OF THE OPINION THAT CLAIMANT HAS ESTABLISHED A PRIMA FACIE CASE OF ODD-LOT STATUS AND IS ENTITLED TO AN AWARD OF PERMANENT TOTAL DISABILITY.

ORDER

THE ORDER OF THE REFEREE IS MODIFIED TO REFLECT CLAIMANT IS TO BE COMPENSATED AS A WORKMAN PERMANENTLY AND TOTALLY DISABLED.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE 25 PER CENT OF THE INCREASE IN COMPENSATION ASSOCIATED WITH THIS AWARD WHICH COMBINED WITH FEES ATTRIBUTABLE TO THE ORDER OF THE REFEREE SHALL NOT EXCEED 2,000 DOLLARS.

WCB CASE NO. 73—2685 APRIL 17, 1975

ANDREW F. TRIVETT, CLAIMANT

MAURICE V. ENGELGAU, CLAIMANT'S ATTY.
DEPARTMENT 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 25 PER CENT (80 DEGREES) UNSCHEDULED NECK DISABILITY AND 25 PER CENT (48 DEGREES) SCHEDULED LOSS OF RIGHT ARM. THE REFEREE INCREASED THE UNSCHEDULED AWARD TO A TOTAL OF 50 PER CENT (160 DEGREES) UNSCHEDULED NECK DISABILITY. CLAIMANT REQUESTS BOARD REVIEW CONTENDING HE IS PERMANENTLY TOTALLY DISABLED.

CLAIMANT, A 59 YEAR OLD LOGGER, WAS INJURED MAY 14, 1971, WHEN STRUCK BY A SNAG INJURING HIS HEAD, BACK AND SHOULDERS. CLAIMANT HAD A PRIOR HAND INJURY.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE FINDINGS OF THE REFEREE AND ADOPTS HIS WELL WRITTEN AND WELL REASONED OPINION AS ITS OWN.

ORDER

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

WCB CASE NO. 74—287 APRIL 17, 1975

RICHARD BARSTAD, CLAIMANT

ROLF OLSON, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, ET. AL., DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT 15 PER CENT (48 DEGREES) UNSCHEDULED LOW BACK DISABILITY. THE REFEREE INCREASED THIS AWARD TO A TOTAL OF 25 PER CENT (80 DEGREES) UNSCHEDULED LOW BACK DISABILITY. CLAIMANT REQUESTS BOARD REVIEW CONTENDING HE IS PERMANENTLY TOTALLY DISABLED.

CLAIMANT, A 38 YEAR OLD PLUMBER, RECEIVED A COMPENSABLE BACK INJURY JANUARY 29, 1973. THE CONDITION WAS DIAGNOSED AS A LUMBAR STRAIN SUPERIMPOSED ON SPONDYLOLISTHESIS. CLAIMANT HAS RECEIVED CONSERVATIVE CARE. HIS ATTEMPTS TO RETURN TO WORK HAVE

BEEN UNSUCCESSFUL. THE BACK EVALUATION CLINIC RATED THE LOSS OF FUNCTION OF BACK AS MILD.

CLAIMANT HAS AN 8TH GRADE EDUCATION AND WORK EXPERIENCE IN PLUMBING, DIESEL MECHANIC WORK AND TRUCK DRIVING.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE FINDINGS OF THE REFEREE THAT THE CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED. CLAIMANT IS A YOUNG MAN WITH GOOD POTENTIAL FOR RETRAINING IF IN FACT THAT BECOMES NECESSARY.

ORDER

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

WCB CASE NO. 73-246 APRIL 17, 1975

LOYD B. SMITH, CLAIMANT

BRIAN L. WELCH, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES AN AGGRAVATION CLAIM. THE REFEREE ORDERED THE STATE ACCIDENT INSURANCE FUND TO ACCEPT THE CLAIM AND AWARDED COUNSEL FOR CLAIMANT ATTORNEY'S FEES IN THE AMOUNT OF 500 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES AT THE HEARING.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE FINDINGS OF THE REFEREE AND ADOPTS THE REFEREE'S OPINION AND ORDER AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED SEPTEMBER 25, 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.

SAIF CLAIM NO. FOD 16740 APRIL 17, 1975

LYLE G. NICHOLSON, D.V.M., CLAIMANT

PURSUANT TO AN OWN MOTION ORDER DATED DECEMBER 17, 1974, THIS MATTER WAS REMANDED TO THE HEARINGS DIVISION OF THE WORKMEN'S COMPENSATION BOARD TO CONVENE A HEARING AND DEVELOP A RECORD NECESSARY TO DETERMINE WHETHER CLAIMANT SHOULD RECEIVE FURTHER BENEFITS.

THIS MATTER INVOLVES A 59 YEAR OLD VETERINARIAN WHO FILED A WORKMEN'S COMPENSATION CLAIM DECEMBER 20, 1960, WITH THE THEN STATE INDUSTRIAL ACCIDENT COMMISSION FOR DISABILITY RESULTING FROM ALLERGIES CAUSED BY HIS CONTACT WITH ANIMALS IN THE COURSE OF HIS EMPLOYMENT.

HIS CLAIM, INITIALLY REJECTED AS AN ACCIDENT, WAS ACCEPTED JULY 25, 1961, AS AN OCCUPATIONAL DISEASE CLAIM AND CLOSED AS A 'MEDICAL ONLY' ON MARCH 3, 1961. THAT CLOSURE WAS INFORMAL AND WAS NEVER COMMUNICATED TO CLAIMANT.

THEREAFTER, THE STATE INDUSTRIAL ACCIDENT COMMISSION AND ITS SUCCESSORS, THE STATE COMPENSATION DEPARTMENT AND THE STATE ACCIDENT INSURANCE FUND, CONTINUED TO PAY FOR FURTHER MEDICAL CARE UNTIL APRIL 1, 1972, WHEN THE FUND ALSO STARTED PAYING CLAIMANT TEMPORARY TOTAL DISABILITY. THEY THEN AGAIN 'CLOSED' THE CLAIM BY LETTER ON OCTOBER 25, 1974, WITHOUT NOTICE OF HEARING RIGHTS.

IT APPEARS THAT CLAIMANT'S CLAIM IS READY FOR CLOSURE. THE FUND SHOULD ISSUE AN ORDER CLOSING THE CLAIM WITH NOTICE OF REHEARING RIGHTS AND ELECTION RIGHTS AS PROVIDED BY CHAPTER 285, SECTION 43 OF THE OREGON LAWS OF 1965.

ORDER

IT IS THEREFORE ORDERED THAT THIS CLAIM BE REMANDED TO THE STATE ACCIDENT INSURANCE FUND TO PROCESS UNDER THE OLD LAW BY ISSUING AN ORDER SETTING FORTH CLAIMANT'S ENTITLEMENT TO TEMPORARY TOTAL DISABILITY AND PERMANENT PARTIAL DISABILITY AND GIVING PROPER NOTICE OF CLAIMANT'S RIGHTS TO A REHEARING (UNDER THE OLD LAW) OR HIS RIGHT TO ELECT TO COME UNDER THE PRESENT LAW BY REQUESTING A HEARING BY THE WORKMEN'S COMPENSATION BOARD.

WCB CASE NO. 74-2074 APRIL 17, 1975

PATSY E. CARPENTER, CLAIMANT

WILLIAM PURDY, CLAIMANT'S ATTY.
PHILIP A. MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE IS THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDERS AWARDED CLAIMANT A TOTAL OF 30 PER CENT (96 DEGREES) UNSCHEDULED LOW BACK DISABILITY. THE REFEREE AFFIRMED THIS AWARD. THE CLAIMANT REQUESTS BOARD REVIEW CONTENDING SHE IS PERMANENTLY TOTALLY DISABLED.

CLAIMANT, A 32 YEAR OLD GROCERY CHECKER, INJURED HER LOW BACK JULY 7, 1968, WHILE LIFTING WATERMELONS. SHE HAS RECEIVED CONSERVATIVE CARE AND HAD ENROLLED IN SCHOOLING TO BECOME A COURT REPORTER.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE FINDINGS AND OPINION OF THE REFEREE AND ADOPTS THE REFEREE'S OPINION AS ITS OWN.

ORDER

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

WCB CASE NO. 74-574 APRIL 17, 1975

MYRNA LEE REED, CLAIMANT

JERRY GASTINEAU, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES A DENIAL OF CLAIMANT'S CLAIM AND WHETHER OR NOT CLAIMANT MADE A TIMELY REQUEST FOR HEARING.

CLAIMANT, A 37 YEAR OLD LONG HAUL TRUCK DRIVER, FILED AN 801 CLAIM INJURY ON DECEMBER 13, 1972. THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM AND CLAIMANT DID NOT REQUEST A HEARING UNTIL OVER FIVE MONTHS AFTER THE DENIAL.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE OPINION AND ORDER OF THE REFEREE THAT THE CLAIMANT HAS NO SHOWN GOOD CAUSE WHICH WOULD ALLOW CLAIMANT TO FILE A REQUEST FOR HEARING LATER THAN THE 60TH DAY AFTER THE DENIAL. THE BOARD ADOPTS THE REFEREE'S OPINION AS ITS OWN.

ORDER

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

WCB CASE NO. 74-2722 APRIL 17, 1975

RICHARD DAVENPORT, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A DENIED CLAIM. THE REFEREE ORDERED THE STATE ACCIDENT INSURANCE FUND TO ACCEPT THE CLAIM AND THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW.

CLAIMANT, A 19 YEAR OLD MILL WORKER, DID REPETITIOUS WORK AT A SAW OFTENTIMES HANDLED BY WOMEN. CLAIMANT STATED THERE WAS NO PARTICULAR INCIDENT OR SUDDEN UNUSUAL EVENT AT WORK BUT AFTER WORK ONE FRIDAY NIGHT, HIS LEFT ARM AND SHOULDER DEVELOPED PAIN FOR WHICH HE SECURED MEDICAL CARE.

THE REFEREE FOUND THE CLAIMANT TO BE CREDIBLE AND THE RECORDS AFFIRM THAT CLAIMANT WAS CREDIBLE AND FORTHRIGHT. HOWEVER, IN

REVIEWING THE TRANSCRIPT, THE BOARD FINDS THAT THE EVIDENCE IS INSUFFICIENT TO PREPONDERATE IN FAVOR OF THE CLAIMANT AS TO THE CAUSAL CONNECTION BETWEEN THE WORK AND THE INJURY.

ORDER

THE ORDER OF THE REFEREE, DATED NOVEMBER 27, 1974, IS REVERSED.

THE DENIAL OF CLAIMANT'S CLAIM OF MAY 24, 1974, BY THE STATE ACCIDENT INSURANCE FUND IS AFFIRMED.

WCB CASE NO. 74-9 APRIL 17, 1975

HUGH FARMER, CLAIMANT

KEITH D. SKELTON, CLAIMANT'S ATTY.
DAVIES, BIGGS, STRAYER, STOEL AND BOLEY,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A DENIAL OF CLAIMANT'S CLAIM. THE REFEREE AFFIRMED THE DENIAL.

CLAIMANT, A 31 YEAR OLD PLANT WORKER AT OWENS ILLINOIS GLASS COMPANY, CLAIMED A BACK INJURY ON MARCH 20, 1973, WHILE CHANGING MOLDS ON A CERTAIN GLASS BOTTLE MACHINE. CLAIMANT, EVEN THOUGH HE IS A SHOP STEWARD WHO INSTRUCTED OTHER EMPLOYEES REGARDING THE IMPORTANCE OF REPORTING ALL INJURIES AND COMPLETING CLAIM FORMS, IMMEDIATELY UPON HAVING AN ACCIDENT, FAILED TO COMPLETE AND SUBMIT AN 801 REPORT TO THE EMPLOYER UNTIL APPROXIMATELY THREE WEEKS AFTER THE ALLEGED INCIDENT.

THE EMPLOYER SUBMITTED EVIDENCE THAT THE PARTICULAR MACHINE ON WHICH THE CLAIMANT ALLEGES HE WAS WORKING WHEN HE HURT HIS BACK HAD NOT HAD THE MOLDS CHANGED FOR ABOUT FIVE DAYS PRIOR TO THE ALLEGED DATE OF INJURY BY THE CLAIMANT NOR FOR SEVEN DAYS AFTER THE DATE OF THE ALLEGED INJURY.

THE REFEREE REOPENED THE HEARING AND GAVE THE CLAIMANT AMPLE OPPORTUNITY TO REBUT THE EMPLOYER'S EVIDENCE OR SUBMIT OTHER EVIDENCE EXPLAINING THE SUBSTANTIAL DISCREPANCIES INVOLVED.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE FINDING OF THE REFEREE THAT THE CLAIMANT HAS FAILED TO PROVE THAT CLAIMANT'S BACK STRAIN OCCURRED DURING AND AROSE OUT OF HIS EMPLOYMENT.

ORDER

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

WCB CASE NO. 74-921 APRIL 18, 1975

ALEXANDER HAMMOND, CLAIMANT

BURL L. GREEN, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER AFFIRMING A DETERMINATION ORDER GRANTING CLAIMANT 50 PER CENT LOSS OF THE LEFT LEG. CLAIMANT CONTENDS THAT THE REFEREE ERRED IN FINDING PART OF HIS PRESENT DISABILITY NONCOMPENSABLE BECAUSE IT STEMMED FROM A LATENT PREEXISTING WEAKNESS.

HE FURTHER CONTENDS THAT HE IS ENTITLED TO AN AWARD EQUAL TO 100 PER CENT LOSS OF THE LEFT LEG SINCE THE EXTREMITY, ALTHOUGH NOT TOTALLY USELESS, IS SO DISABLED THAT HE IS NOW PREVENTED FROM ENGAGING IN GAINFUL EMPLOYMENT.

PRIOR TO THE ACCIDENT IN QUESTION, CLAIMANT HAD UNDERGONE VASCULAR BYPASS GRAFT SURGERIES AND REFLEX SYMPATHECTOMIES TO CORRECT SEVERE CIRCULATORY IMPAIRMENTS IN BOTH LEGS. HE WAS THEN ABLE TO PURSUE HIS VOCATION OF TILE SETTER AND AVOCATION OF GOLFER WITHOUT LIMITATION.

ON NOVEMBER 3, 1972, HE STRUCK HIS LEFT KNEE AT WORK AND DEVELOPED AN ACUTE THROMBOSIS IN THE LEFT FEMORAL POPLITEAL VEIN BYPASS GRAFT. ON NOVEMBER 5, 1972, A VEIN GRAFT TO THE POSTERIOR TIBIAL ARTERY FROM THE EARLIER PLACED FEMORAL TO POPLITEAL VEIN GRAFT WAS DONE BUT IN FEBRUARY, 1973, IT BECAME OCCLUDED. CLAIMANT NOW HAS NO MAJOR VESSELS OPEN BELOW THE KNEE FOR FURTHER SURGERY.

ALTHOUGH HE IS ABLE TO AMBULATE, HE SUFFERS FROM MARKED CLAUDICATION WHICH PREVENTS HIM WALKING MORE THAN 150 YARDS AT A TIME. AS A RESULT, CLAIMANT IS NO LONGER ABLE TO WORK.

CLAIMANT CONTENDS, THEREFORE, THAT HE HAS NO 'USEFUL' FUNCTION IN THE LEFT LEG AND IS THUS ENTITLED TO AN AWARD OF 100 PER CENT LOSS OF THE LEFT LEG. CLAIMANT CITES WILSON V. SIAC (UNDERSCORED), 189 OR 114 (1950), A CASE DEALING WITH LOSS OF VISION, AS SUPPORT FOR HIS CONTENTION.

IN BOORMAN V. SCD (UNDERSCORED), 1 OR APP 136 (1969), THE COURT RECOGNIZED A DISTINCTION BETWEEN LOSS OF VISION AND LOSS OF LIMBS AND REFUSED TO IMPORT THE 'USEFUL VISION' CONCEPT INTO THE RATING OF DISABILITY IN THE EXTREMITIES.

TO GIVE THE TERM 'USEFUL' SPECIFIC MEANING, ONE MUST ASK, USEFUL FOR WHAT? WE INFER FROM CLAIMANT'S ARGUMENT THAT HE MEANS USEFUL FOR EMPLOYMENT OR THE EARNING OF WAGES. SURRATT V. GUNDERSON BROS. ENGINEERING CORP. (UNDERSCORED), 259 OR 65 (1971) HOLDS THAT SCHEDULED AWARDS ARE BASED STRICTLY ON THE MEDICAL CONDITION AND WAGE LOSS IS IGNORED ENTIRELY.

WE CONCLUDE THAT SINCE SOME FUNCTION REMAINS IN THE EXTREMITY, CLAIMANT IS NOT ENTITLED TO AN AWARD FOR TOTAL LOSS OF THE LEFT LEG.

HOWEVER, WE DO AGREE WITH CLAIMANT THAT THE REFEREE ERRED IN RELATING 40 PER CENT OF CLAIMANT'S PRESENT DISABILITY TO 'PRE-EXISTING DISABILITY.'

THE RECORD DEMONSTRATES THAT CLAIMANT HAD A PREEXISTING WEAKNESS BUT NOT A PREEXISTING DISABILITY. CLAIMANT WAS NOT RESTRICTED IN HIS ACTIVITIES AFTER HIS SURGERIES IN DECEMBER, 1971, AND JANUARY, 1972. THE RECORD IS CLEAR THAT HE HAD NO SIGNIFICANT RESTRICTION OF FUNCTION IN THE LEFT LOWER EXTREMITY UNTIL THE ACCIDENT OF NOVEMBER 2, 1972.

ON NOVEMBER 2, 1972, INJURY WAS THE PROXIMATE CAUSE OF ALL THE DISABILITY HE NOW SUFFERS. OREGON LAW DOES NOT PROVIDE FOR APPORTIONMENT OF LIABILITY HAVING PROVIDED INSTEAD A SECOND INJURY FUND TO PROVIDE RELIEF IN APPROPRIATE CASES.

WE CONCLUDE CLAIMANT IS ENTITLED TO AN AWARD OF 90 PER CENT LOSS USE OF THE LEFT LEG.

ORDER

THE ORDER OF THE REFEREE IS HEREBY REVERSED AND CLAIMANT IS HEREBY GRANTED AN ADDITIONAL 60 DEGREES, MAKING A TOTAL OF 135 DEGREES FOR PERMANENT DISABILITY EQUAL TO 90 PER CENT LOSS OF THE LEFT LEG.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE 25 PER CENT OF THE INCREASED COMPENSATION GRANTED BY THIS ORDER, PAYABLE FROM SAID AWARD, BUT IN NO CASE SHALL THE TOTAL FEE EXCEED 2,000 DOLLARS.

WCB CASE NO. 72-2807 APRIL 18, 1975

DERRILL CHIDESTER, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER AFFIRMING THE PARTIAL DENIAL OF HIS CLAIM THAT A MAY 11, 1972, ACCIDENT INJURED HIS CERVICAL SPINE.

CLAIMANT HAD SUFFERED A LOW BACK INJURY IN NOVEMBER 1971, WHILE WORKING FOR THE SAME EMPLOYER. FOLLOWING THE MAY, 1972, INJURY, A MYELOGRAM REVEALED A SIGNIFICANT COMPRESSION OF THE SPINAL CORD IN THE CERVICAL AREA WHICH WAS CAUSING WEAKNESS AND MALFUNCTION OF THE LOW EXTREMETIES.

THE STATE ACCIDENT INSURANCE FUND DENIED RESPONSIBILITY FOR THE CERVICAL CONDITION WHICH WAS TREATED BY A CERVICAL FUSION ON JULY 14, 1972.

CLAIMANT CONTENDS THAT IF THE MAY, 1972, INJURY WAS NOT THE CAUSE OF HIS PROBLEM, THEN IT MUST HAVE COME FROM THE NOVEMBER, 1971, INJURY. THAT IS NOT NECESSARILY SO, OF COURSE. HIS CERVICAL PROBLEMS COULD HAVE RESULTED FROM SOMETHING COMPLETELY NON-

OCCUPATIONAL. WE, LIKE THE REFEREE, ARE NOT FAVORABLY IMPRESSED WITH CLAIMANT'S CREDIBILITY. IT IS OBVIOUS THE REFEREE CAREFULLY REVIEWED THE RECORD. OUR REVIEW CONVINCES US THAT HIS OPINION IS CORRECT AND THAT HIS ORDER SHOULD BE AFFIRMED.

ORDER

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

WCB CASE NO. 74-2954 APRIL 18, 1975

MICHAEL FLANAGAN, CLAIMANT

FLAXEL, TODD AND FLAXEL, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
CROSS-APPEAL BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDERS AWARDED CLAIMANT A TOTAL OF 25 PER CENT (80 DEGREES) UNSCHEDULED LOW BACK DISABILITY AND 5 PER CENT (9.6 DEGREES) SCHEDULED LOSS OF THE LEFT ARM. THE REFEREE INCREASED THE AWARD TO A TOTAL OF 40 PER CENT (120 DEGREES) UNSCHEDULED DISABILITY FOR LOW BACK AND 15 PER CENT (28.8 DEGREES) LOSS OF THE LEFT ARM.

CLAIMANT REQUESTS BOARD REVIEW CONTENDING THAT BOTH THE SCHEDULED AND UNSCHEDULED DISABILITY IS TOO SMALL. THE STATE ACCIDENT INSURANCE FUND CROSS-APPEALS CONTENDING THAT THE INCREASE IN THE AWARD BY THE REFEREE IS TOO LARGE.

CLAIMANT, A 31 YEAR OLD SURVEYOR, SLIPPED AND FELL OCTOBER 19, 1972, INJURING HIS LOW BACK AND LEFT ARM. CLAIMANT HAS HAD SURGERY CONSISTING OF A LUMBAR LAMINECTOMY AND A LEFT ULNAR NERVE TRANSPLANT. CLAIMANT'S PSYCHOPATHOLOGY WAS AGGRAVATED TO A MILD DEGREE BY THE INDUSTRIAL INJURY. THE BACK EVALUATION CLINIC FOUND THAT THE LOSS OF FUNCTION DUE TO THE INJURY WAS CONSIDERED MILD. THE ATTENDING NEUROSURGEON REPORTED A MODERATE PERMANENT PARTIAL DISABILITY.

CLAIMANT HAS WORK EXPERIENCE IN CARPENTRY, SURVEYING AND LOGGING. CLAIMANT HAS COMPLETED ONE YEAR OF COMMUNITY COLLEGE IN LIBERAL ARTS. CLAIMANT IS ENROLLED AT A COMMUNITY COLLEGE IN A BUSINESS COURSE.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE FINDINGS OF THE REFEREE AND ADOPTS HIS OPINION AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED NOVEMBER 26, 1974, IS AFFIRMED.

WCB CASE NO. 74—708 APRIL 18, 1975

MYRTLE OXENDINE, CLAIMANT

EVOHL MALAGON, CLAIMANT'S ATTY.
RANDOLPH SLOCUM, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE IS THE EXTENT OF PERMANENT DISABILITY. THE DETERMINATION ORDERS AWARDED CLAIMANT A TOTAL OF 10 PER CENT (15 DEGREES) LOSS OF LEFT LEG AND 50 PER CENT (160 DEGREES) UNSCHEDULED LOW BACK DISABILITY. THE REFEREE AFFIRMED THIS AWARD. THE CLAIMANT REQUESTS BOARD REVIEW CONTENDING SHE IS PERMANENTLY TOTALLY DISABLED OR, IN THE ALTERNATIVE, ENTITLED TO A SUBSTANTIAL INCREASE IN THE PERMANENT PARTIAL DISABILITY AWARD.

CLAIMANT, A 33 YEAR OLD MILLWORKER, RECEIVED A LOW BACK INJURY APRIL 10, 1968. CLAIMANT WAS ENROLLED UNDER THE AUSPICES OF THE VOCATIONAL REHABILITATION DIVISION IN A GENERAL CLERICAL EDUCATION COURSE AT A COMMUNITY COLLEGE. SHE DISCONTINUED THIS EDUCATIONAL COURSE BECAUSE OF DISTRESS IN HER UPPER BACK.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE FINDINGS OF THE REFEREE THAT THE CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED. THE MEDICAL EVIDENCE IN THE RECORD, COUPLED WITH OTHER FACTORS OF AGE, TRAINING AND EXPERIENCE, IS NOT SUFFICIENT TO ESTABLISH A PRIMA FACIE CASE OF PERMANENT TOTAL DISABILITY.

CLAIMANT'S MOTIVATION TO RETURN TO EMPLOYMENT APPEARS POOR FROM THE RECORD, AND CLAIMANT'S CREDIBILITY IS NOT FAVORABLY REVEALED IN THE RECORD. THE PSYCHOLOGICAL REPORT REFLECTS THAT CLAIMANT HAS MANY TALENTS AVAILABLE TO HER IF SHE DESIRES TO USE THEM. THE BACK EVALUATION CLINIC RATES THE TOTAL LOSS OF FUNCTION OF THE BACK AS MODERATE AND THE LOSS OF FUNCTION OF THE BACK DUE TO THIS INDUSTRIAL INJURY AS MODERATE.

ORDER

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

WCB CASE NO. 73—3556 AND 73—3156 APRIL 21, 1975

JOHN D. BARCHECK, CLAIMANT

GARRY KAHN, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES TWO CLAIMS, BOTH OF WHICH WERE DENIED BY THE STATE ACCIDENT INSURANCE FUND. THE REFEREE ORDERED THE STATE ACCIDENT INSURANCE FUND TO ACCEPT CLAIMANT'S HERNIA CLAIM OF

SEPTEMBER 27, 1972. THE REFEREE AFFIRMED THE STATE ACCIDENT INSURANCE FUND'S DENIAL OF CLAIMANT'S BACK CLAIM OF JUNE 6, 1973. THE CLAIMANT REQUESTS BOARD REVIEW CONTENDING THE BACK CLAIM OF JUNE 6, 1973, IS ATTRIBUTABLE TO HIS EMPLOYMENT AND THAT CLAIMANT IS ENTITLED TO ATTORNEY'S FEES AND PENALTIES ON BOTH CLAIMS. CLAIMANT WAS ALLOWED ATTORNEY'S FEES PAID BY THE STATE ACCIDENT INSURANCE FUND FOR PREVAILING ON THE DENIED HERNIA CLAIM.

CLAIMANT BECAME 65 YEARS OLD IN NOVEMBER OF 1973 AND HAS BEEN RETIRED SINCE JUNE, 1973. CLAIMANT HAD A HISTORY OF A PRIOR HERNIA OPERATION AND PRIOR BACK PROBLEMS. CLAIMANT CONTINUED WORKING AFTER THE HERNIA INCIDENT OF SEPTEMBER 27, 1972, AND THE BACK INCIDENT OF JUNE 6, 1973, UNTIL THE CONSTRUCTION JOB WAS FINISHED BY THE END OF JUNE, 1973. CLAIMANT CONSULTED A DOCTOR FOR BOTH CONDITIONS ON JULY 16, 1973, AND SIGNED AN 801 FORM FOR THE HERNIA ON JULY 16, 1973, AND AN 801 FORM FOR THE BACK ON SEPTEMBER 25, 1973.

CLAIMANT WAS ADMITTED TO THE HOSPITAL JULY 16, 1973, GIVING A HISTORY AT THE HOSPITAL TO THE EFFECT THAT HE HAD HAD SEVERE PAIN IN HIS BACK FOR THE LAST TWO OR THREE DAYS AND THAT THE PAIN STARTED WITH BENDING OVER AT WORK AND HAD BECOME PROGRESSIVELY MORE SEVERE, ALSO THAT THE EXACERBATION HAD ONLY BEEN FOR THE PAST TWO OR THREE DAYS.

THERE IS A DISPUTE IN THE EVIDENCE OVER CLAIMANT'S REPORTING OF THE HERNIA TO HIS EMPLOYER. THE REFEREE ADMITTED A LETTER FROM AN EX-EMPLOYEE OVER THE OBJECTION OF THE STATE ACCIDENT INSURANCE FUND REGARDING CLAIMANT'S REPORTING OF THE INJURIES TO THE EMPLOYER. THIS LETTER IS NOT ADMISSABLE BUT ITS ADMISSION IS NOT REVERSIBLE ERROR.

THE REFEREE HAD THE ADVANTAGE OF HEARING AND SEEING THE WITNESSES AND WEIGHT IS GIVEN TO HIS FINDINGS. THE BOARD CONCURS WITH THE FINDINGS OF THE REFEREE THAT THE HERNIA CLAIM BE ACCEPTED BY THE STATE ACCIDENT INSURANCE FUND AND THAT THE STATE ACCIDENT INSURANCE FUND'S DENIAL OF CLAIMANT'S BACK INJURY BE AFFIRMED. NO PENALTIES ARE APPROPRIATE UNDER THE FACTS OF THIS CASE.

ORDER

THE ORDER OF THE REFEREE, DATED SEPTEMBER 6, 1974, IS AFFIRMED.

WCB CASE NO. 74-1227 APRIL 21, 1975

LAWRENCE ANGELL, CLAIMANT

PAUL J. RASK, CLAIMANT'S ATTY.
MCMENAMIN, JONES, JOSEPH AND LANG, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A DENIED CLAIM. THE REFEREE AFFIRMED THE DENIAL.

CLAIMANT, A 30 YEAR OLD WORKER AT A ROCK PIT OPERATION

OPERATED BY HIS FATHER AND UNCLE, WORKED FOR A HALF DAY ON DECEMBER 21, 1973. HE LEFT THE ROCK PIT OPERATION AND WENT TO PICK UP HIS BROTHER. CLAIMANT ALLEGES THAT HE WAS THEN ENROUTE TO CONTACT A POSSIBLE BUYER OF ROCK WHEN HIS CAR WAS REAR ENDED BY ANOTHER VEHICLE.

CLAIMANT CONTENDS HE WAS ACTING IN THE COURSE AND SCOPE OF HIS EMPLOYMENT AT THE TIME OF THE MOTOR VEHICLE ACCIDENT.

CLAIMANT TESTIFIED THAT ON OCCASION HE HAD TAKEN ORDERS FOR ROCK FROM THE QUARRY. CLAIMANT'S FATHER AND UNCLE, EMPLOYERS IN THIS MATTER, BOTH TESTIFIED COMPLETELY REFUTING THE CLAIMANT'S ENTIRE STORY.

THE REFEREE HAD THE ADVANTAGE OF HEARING AND SEEING ALL OF THE WITNESSES. THIS CASE TURNS PRIMARILY ON THE CREDIBILITY OF THE PARTIES AND THE WITNESSES.

ORDER

THE ORDER OF THE REFEREE, DATED OCTOBER 9, 1974, IS AFFIRMED.

WCB CASE NO. 74-850 APRIL 21, 1975

JAMES C. CONAWAY, CLAIMANT

COLUMBO, DANNER AND BOSTON, 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. THE ISSUE IS WHETHER OR NOT CLAIMANT MADE A TIMELY REQUEST FOR HEARING. THE REFEREE FOUND THAT THE CLAIMANT HAD NOT MADE A TIMELY REQUEST FOR HEARING AND AFFIRMED THE STATE ACCIDENT INSURANCE FUND'S DENIAL.

CLAIMANT, A 29 YEAR OLD LABORER, CLAIMED AN INDUSTRIAL INJURY OCTOBER 11, 1972. THE STATE ACCIDENT INSURANCE FUND'S DENIAL OF HIS CLAIM WAS RECEIVED BY THE CLAIMANT FEBRUARY 2, 1973. CLAIMANT'S LETTER OF JANUARY 29, 1974, REQUESTED OWN MOTION RELIEF ON THE DENIED CLAIM ON THE BASIS THAT HE DID NOT UNDERSTAND THE REASON FOR THE DENIAL OR WHAT TO DO. THE OWN MOTION ORDER, DATED JANUARY 29, 1974, DENIED OWN MOTION RELIEF.

IN REVIEWING ALL OF THE REASONS AND EXCUSES OF THE CLAIMANT IN THE RECORD FOR NOT REQUESTING A HEARING TO CONTEST THE STATE ACCIDENT INSURANCE FUND'S DENIAL, THE BOARD CONCURS WITH THE FINDING OF THE REFEREE THAT CLAIMANT HAS NOT MADE A TIMELY REQUEST FOR HEARING AND THAT THE DENIAL OF CLAIMANT'S CLAIM BY THE STATE ACCIDENT INSURANCE FUND MUST BE APPROVED.

ORDER

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

WCB CASE NO. 75—772 APRIL 21, 1975

HELEN VAN DOLAH, CLAIMANT

JAY W. WHIPPLE, CLAIMANT'S ATTY.
NOREEN K. SALTVEIT, DEFENSE ATTY.

THE WORKMEN'S COMPENSATION BOARD HAS BEEN PETITIONED BY CLAIMANT TO EXERCISE ITS OWN MOTION JURISDICTION GRANTED THE BOARD PURSUANT TO ORS 656.278.

IT IS CLAIMANT'S CONTENTION THAT HER CONDITION HAS BECOME AGGRAVATED AND THAT THIS WORSENING HAS OCCURRED AS THE RESULT OF HER INDUSTRIAL INJURY SUSTAINED IN 1968.

THE EVIDENCE BEFORE THE BOARD IS NOT SUFFICIENT TO DETERMINE THE MERITS OF THE ISSUE. THE MATTER SHOULD BE REFERRED TO THE HEARINGS DIVISION TO CONVENE A HEARING AND TO TAKE EVIDENCE UPON THE ISSUE OF WHETHER CLAIMANT IS IN NEED OF FURTHER MEDICAL CARE AND TREATMENT FOR CONDITIONS RELATED TO HER INDUSTRIAL INJURY AND TO RECEIVE EVIDENCE CONCERNING THE EXTENT OF PERMANENT DISABILITY ATTRIBUTABLE TO THE 1968 INJURY.

UPON CONCLUSION OF THE HEARING, THE REFEREE SHOULD FORTHWITH CAUSE A TRANSCRIPT OF THE PROCEEDINGS TO BE PREPARED AND SUBMITTED TO THE WORKMEN'S COMPENSATION BOARD TOGETHER WITH A RECOMMENDATION FROM THE REFEREE AS TO AN APPROPRIATE DISPOSITION OF THE CASE.

IT IS SO ORDERED.

WCB CASE NO. 74—2228 APRIL 21, 1975

STANLEY R. KILBURN, DECEASED

L. M. GIOVANINI, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY BENEFICIARIES

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES WHETHER OR NOT THE DECEDENT WAS PERMANENTLY TOTALLY DISABLED AT THE TIME OF HIS DEATH ON DECEMBER 31, 1973. THE REFEREE CONCLUDED THE WORKMAN WAS NOT PERMANENTLY TOTALLY DISABLED AND AFFIRMED THE STATE ACCIDENT INSURANCE FUND'S DENIAL OF THE BENEFICIARIES' CLAIM.

CLAIMANT, A THEN 48 YEAR OLD BODY AND FENDER MAN, RECEIVED A LUMBOSACRAL STRAIN FEBRUARY 25, 1967 WHICH WAS ORIGINALLY CLOSED AS AN INJURY REQUIRING MEDICAL TREATMENT ONLY WITH NO LOSS OF WORK TIME. THE CLAIM WAS AGAIN ULTIMATELY CLOSED AFTER A HEARING ON AUGUST 3, 1972, IN WHICH THE REFEREE AWARDED CLAIMANT A TOTAL OF 67 DEGREES PERMANENT PARTIAL DISABILITY. AFTER THE HEARING AND PRIOR TO BOARD REVIEW, THE UNRELATED LUNG CANCER WAS DISCOVERED. THE BOARD DENIED CLAIMANT'S REQUEST FOR REMAND TO THE REFEREE AND AFFIRMED THE AWARD OF PERMANENT PARTIAL DISABILITY OF 67 DEGREES MADE BY THE REFEREE.

CLAIMANT APPEALED TO THE CIRCUIT COURT WHICH REMANDED THE CASE TO THE REFEREE FOR THE SOLE AND LIMITED PURPOSE OF DETERMINING WHAT EFFECT, IF ANY, THE LUNG CANCER CONDITION HAD ON CLAIMANT'S MOTIVATION AND THE EFFECT, IF ANY, THIS WOULD HAVE ON CLAIMANT'S WORKMEN'S COMPENSATION AWARD. THE CLAIMANT DIED THREE DAYS AFTER THIS ORDER OF THE CIRCUIT COURT. THE CIRCUIT COURT VACATED AND SET ASIDE THE ORDER OF REMAND AND DISMISSED THE CLAIMANT'S APPEAL FROM THE ORDER ON REVIEW. NO APPEAL WAS TAKEN FROM THIS CIRCUIT COURT ORDER.

THE BENEFICIARIES NOW CONTEND THAT THE DECEDENT WAS PERMANENTLY TOTALLY DISABLED AT THE TIME OF THE HEARING OF AUGUST 3, 1972, UNDER THE ODD-LOT DOCTRINE ON THE BASIS THAT THE UNDIAGNOSED LUNG CANCER CONDITION AT THAT TIME WOULD SUBSTANTIALLY AFFECT CLAIMANT'S LACK OF MOTIVATION TO GAINFUL OCCUPATION.

THE BOARD CONCURS WITH THE FINDINGS OF THE REFEREE THAT IT CANNOT BE DETERMINED WHETHER OR NOT THE LUNG CANCER WAS PRESENT AT THE TIME OF THE HEARING IN AUGUST, 1972, IF THE CANCER DID EXIST, THAT IT DID NOT AFFECT THE WORKMAN IN A PAINFUL OR DEBILITATING WAY AND THUS HAD NO EFFECT ON HIS MOTIVATION, AND THAT THERE IS NO CONVINCING EVIDENCE THAT ANY ADMINISTRATIVE OR JUDICIAL TRIBUNAL WOULD HAVE JUDGED THE WORKMAN A PERMANENT TOTAL HAD THEY KNOWN OF THE CANCER.

ORDER

THE ORDER OF THE REFEREE, DATED NOVEMBER 4, 1974, IS AFFIRMED.

WCB CASE NO. 74-78 APRIL 21, 1975

ALEX LOPEZ, CLAIMANT

GRANT AND FERGUSON, CLAIMANT'S ATTYS.
PHILIP MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES THE ASSESSMENT OF PENALTIES AND ALLOWANCE OF ATTORNEY'S FEES FOR UNREASONABLE DELAY OR FAILURE TO PAY COMPENSATION. THE REFEREE ORDERED THE EMPLOYER TO PAY AN ADDITIONAL 25 PERCENT OF THE AMOUNT PAYABLE IN RESPECT TO THE FIRST EIGHT WEEKS OF PERMANENT PARTIAL BENEFITS AND TO PAY CLAIMANT'S COUNSEL AN ATTORNEY'S FEE FOR HIS SERVICES AT HEARING FOR UNREASONABLE DELAY IN SUBMITTING THE CLAIM TO EVALUATION FOR CLOSURE.

CLAIMANT, A 54 YEAR OLD SAWMILL WORKER, RECEIVED AN INDUSTRIAL INJURY SEPTEMBER 18, 1972. AFTER A LAMINECTOMY, THE ATTENDING NEUROSURGEON ADVISED THE CLAIMANT TO TRY LIGHT WORK EFFECTIVE OCTOBER 15, 1973. THE CLAIMANT ATTEMPTED TO GO BACK TO LIGHT WORK BUT COULD NOT DO IT FOR MORE THAN ONE WEEK AND THE ATTENDING PHYSICIAN AGAIN VERIFIED THIS.

THE CLAIMANT WAS FINALLY RELEASED FOR WORK JANUARY 5, 1974. CLAIMANT REPORTED FOR WORK BUT THERE HAD BEEN A LAYOFF AT THE MILL AND CLAIMANT FELL WITHIN THE GROUP OF EMPLOYEES WHO WERE LAID OFF BECAUSE OF THEIR STANDING ON THE SENIORITY LIST.

THE EMPLOYER, BY AND THROUGH ITS CARRIER, TERMINATED THE TEMPORARY TOTAL DISABILITY BECAUSE THE CLAIMANT WAS RELEASED TO WORK. THE CARRIER TOOK NO ACTION FOR SEVERAL MONTHS AND MADE NO REQUEST FOR CLOSURE OF THE CLAIM FOR SIX MONTHS FROM THE TIME THE TEMPORARY TOTAL DISABILITY PAYMENTS CEASED EVEN THOUGH THE MEDICAL REPORTS INDICATED THERE WOULD BE SOME PERMANENT PARTIAL DISABILITY AWARD MADE ON CLOSING.

THE BOARD CONCURS WITH THE FINDINGS AND ORDER OF THE REFEREE THAT THIS WAS AN UNREASONABLE DELAY BY THE CARRIER PURSUANT TO ORS 656.262(8) AND THAT THE CLAIMANT WAS ENTITLED TO THE ADDITIONAL 25 PER CENT OF THE AMOUNT PAYABLE IN RESPECT TO THE FIRST EIGHT WEEKS OF THE PERMANENT PARTIAL BENEFIT PERIOD. THE BOARD ALSO CONCURS WITH THE FINDING OF THE REFEREE THAT THE EMPLOYER MUST PAY CLAIMANT'S ATTORNEY'S FEES FOR HIS SERVICES AT HEARING PURSUANT TO ORS 656.382.

ORDER

THE ORDER OF THE REFEREE, DATED SEPTEMBER 13, 1974, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 100 DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVI ES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-1665 APRIL 21, 1975

SUSAN B. ARMSTRONG, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES A PARTIAL DENIAL BY THE STATE ACCIDENT INSURANCE FUND FOR ANY FURTHER TREATMENT OF THE CLAIMANT FOLLOWING AN INTERVENING AUTOMOBILE ACCIDENT. THE REFEREE APPORTIONED THE MEDICAL BILLS AFTER THE AUTOMOBILE ACCIDENT AND AWARDED CLAIMANT ATTORNEY'S FEES TO BE PAYABLE BY THE STATE ACCIDENT INSURANCE FUND. THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW.

CLAIMANT, A 21 YEAR OLD DANCER, RECEIVED A BACK INJURY JULY 26, 1973, WHILE DANCING. THIS CLAIM WAS ACCEPTED. THE ATTENDING ORTHOPEDIST STATED SHE HAD SIGNS AND SYMPTOMS OF A RUPTURED NUCLEUS PULPOSUS AT L-5, S-1 ON THE LEFT. THE CLAIMANT CONTINUED CONSERVATIVE TREATMENT AND WAS DOING QUITE WELL UNTIL DECEMBER 11, 1973, WHEN SHE WAS STRUCK BY A CAR WHILE CROSSING A STREET AS A PEDESTRIAN.

THE ORTHOPEDISTS REPORT THEY ARE UNABLE TO DETERMINE WHETHER THE INDUSTRIAL INJURY OF JULY 26, 1973, OR THE AUTOMOBILE ACCIDENT OF DECEMBER 11, 1973, CAUSED THE SLIPPED DISC WHICH WAS DEFINITIVELY DIAGNOSED BY THE MYELOGRAM OF FEBRUARY 7, 1974.

IT IS NOTED THAT THE ATTENDING ORTHOPEDIST, PRIOR TO THE AUTOMOBILE ACCIDENT, REPORTED SYMPTOMS AND SIGNS ON THE SLIPPED

DISC. THE MEDICAL REPORTS INDICATE AN OPINION THAT, BUT FOR THE AUTOMOBILE ACCIDENT, THE CLAIMANT COULD WELL HAVE BEEN MEDICALLY STATIONARY ON FEBRUARY 27, 1974.

THE STATE ACCIDENT INSURANCE FUND ISSUED ITS PARTIAL DENIAL FOR ANY MEDICAL BILLS OR TREATMENT AFTER DECEMBER 11, 1973, THE DATE OF THE AUTO ACCIDENT.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE FINDINGS AND OPINION AND ORDER OF THE REFEREE WHEREIN HE ORDERED THE STATE ACCIDENT INSURANCE FUND TO PAY 35 PER CENT OF THE COST OF ALL MEDICAL COST AND SERVICES PROVIDED TO THE CLAIMANT AFTER DECEMBER 11, 1973, AND TO PAY COMPENSATION DUE THE CLAIMANT UP TO AND INCLUDING FEBRUARY 27, 1974. THE AWARD OF ATTORNEY'S FEES TO CLAIMANT'S ATTORNEY, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR HIS SERVICES AT THE HEARING ARE APPROPRIATE AS IN ANY OTHER DENIED CASE.

ORDER

THE ORDER OF THE REFEREE, DATED SEPTEMBER 18, 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. 74-2026 APRIL 21, 1975

DANNIE FROSTY, CLAIMANT

EVOHL F. MALAGON, 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 UPHELD THE STATE ACCIDENT INSURANCE FUND'S DENIAL OF CLAIMANT'S CLAIM FOR COMPENSATION.

CLAIMANT, A BUS DRIVER FOR GREYHOUND, DROVE A BUS, CHARTERED BY A GROUP OF SKIERS, TO MT. BACHELOR FOR A WEEKEND OF SKIING. ON APRIL 7, 1974, WHILE SKIING, HE BROKE HIS LEG.

THE STATE ACCIDENT INSURANCE FUND'S DENIAL WAS BASED ON THE ASSERTION THAT THE ACCIDENTAL INJURY DID NOT ARISE OUT OF AND IN THE SCOPE AND COURSE OF EMPLOYMENT.

THE REFEREE FOUND THAT ALTHOUGH CLAIMANT WAS PAID DURING THE TIME IN QUESTION, HE WAS THEN ON A FROLIC OF HIS OWN AND THAT THE INJURY DID NOT ARISE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT.

AFTER CONSIDERING THE EXCELLENT BRIEFS SUBMITTED BY COUNSEL FOR BOTH PARTIES, THE BOARD CONCURS WITH THE FINDINGS MADE BY THE REFEREE AND WOULD AFFIRM AND ADOPT HIS ORDER AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED SEPTEMBER 20, 1974, IS AFFIRMED.

WCB CASE NO. 74-861 APRIL 21, 1975

FRANK CLEMENS, CLAIMANT

EDWIN A. YORK, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH DID NOT ALLOW FURTHER MEDICAL CARE AND TREATMENT OR FURTHER AWARD FOR PERMANENT PARTIAL DISABILITY.

CLAIMANT, A 42 YEAR OLD MECHANIC, SUFFERED A COMPENSABLE INJURY APRIL 26, 1973, WHEN HE FELL AND CAUGHT HIMSELF WITH HIS RIGHT HAND. DR. BROWNING TREATED CLAIMANT FOR A STRAIN OF THE LUMBOSACRAL DORSAL SPINE. HE WAS RELEASED 10 DAYS LATER, RETURNED TO WORK, AND WORKED FOR EIGHT MONTHS PERFORMING HIS REGULAR WORK WITHOUT ANY PROBLEMS. ABOUT JANUARY 11, 1974, CLAIMANT SUFFERED A FLAREUP OF PAIN AND SOUGHT MEDICAL ATTENTION.

THREE DOCTORS WHO SAW CLAIMANT AT THIS TIME, COULD NOT CAUSALLY RELATE CLAIMANT'S COMPLAINTS TO THE INDUSTRIAL INJURY HE HAD SUSTAINED EARLIER.

THE MEDICAL RECORDS INDICATE THAT IN 1968, 1971 AND 1972 CLAIMANT HAD HAD ONSETS OF NECK AND BACK PAIN WHICH WERE CLEARED UP WITH A COUPLE OF MANIPULATIVE TREATMENTS. DR. ROBINSON COMPARED THE INCIDENT AT ISSUE WITH THESE PREVIOUS EPISODES AND CONCLUDED IT WAS DUE TO A BASIC INSTABILITY OF THE BACK AND DEGENERATIVE DISC DISEASE.

THE BOARD CONCURS WITH THE REFEREE THAT CLAIMANT HAS NOT SHOWN THAT THE CONDITION FOR WHICH TREATMENT WAS SOUGHT WAS THE RESULT OF HIS INDUSTRIAL INJURY, NOR THAT HE WAS ENTITLED TO AN AWARD OF PERMANENT DISABILITY FOR SUCH.

ORDER

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

GEORGE MOLLERS, CLAIMANT

BEDINGFIELD AND JOELSON, CLAIMANT'S ATTYS.
COSGRAVE AND KESTER, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES A DENIED CLAIM AND WHETHER OR NOT CLAIMANT'S INJURY WAS A NEW INJURY FOR THE PRESENT EMPLOYER OR AN AGGRAVATION OF A 1969 CALIFORNIA INJURY. THE REFEREE FOUND THIS TO BE A NEW INJURY AND ORDERED THE PRESENT EMPLOYER TO PAY WORKMEN'S COMPENSATION BENEFITS TO THE CLAIMANT.

CLAIMANT, A 60 YEAR OLD WORKMAN FOR FARR'S TRUE VALUE HARDWARE, DID A VARIETY OF JOBS INCLUDING INSTALLING FURNACES, SERVICE WORK, CLERICAL WORK AND INSTALLING PUMPS, ALL OF WHICH REQUIRED HANDLING HEAVY MATERIALS. HE ALSO WORKED APPROXIMATELY ONCE A MONTH UNLOADING BOX CARS. CLAIMANT WORKED CONTINUOUSLY AT THIS STRENUOUS JOB FOR ABOUT 20 MONTHS.

ON DECEMBER 22-23, 1972, AFTER UNLOADING GRAIN SACKS FROM A BOX CAR WEIGHING UP TO 80 POUNDS ON THOSE DATES, HE EXPERIENCED SUBSTANTIAL BACK PROBLEMS MORE THAN HE NORMALLY EXPERIENCED.

CLAIMANT HAD ADVISED THE PRESENT EMPLOYER THAT HE HAD BACK PROBLEMS AT THE TIME HE WAS EMPLOYED. EVIDENCE IN THE RECORD INDICATES CLAIMANT WAS A GOOD WORKER AND PERFORMED ALL HIS WORK ASSIGNMENTS.

CLAIMANT HAD A PREVIOUS BACK INJURY IN 1969 WHILE WORKING IN CALIFORNIA. HE RECEIVED CONSERVATIVE CARE ONLY FOR THAT INCIDENT.

CLAIMANT RELATED TO THE INITIAL ATTENDING DOCTOR THE INCIDENT OF UNLOADING THE BOX CAR WITH FEED BAGS FROM 25 TO 80 POUNDS AND THE SUBSTANTIAL PAINS IN HIS SHOULDER, NECK AND BACK IMMEDIATELY THEREAFTER. CLAIMANT ALSO RELATED THE LOW BACK INJURY OCCURRING IN 1969. THE ATTENDING NEUROLOGIST REPORTS DO NOT PICK UP THE PRIOR DOCTOR'S HISTORY INVOLVING THE DECEMBER 22-23, 1972 UNLOADING OF A BOX CAR INCIDENT BUT DID PICK UP THE 1969 LOW BACK INJURY AND STATES THAT THE PATIENT'S PRESENT PROBLEM WAS RELATED TO THE ACCIDENT OF 1969. THE NEUROLOGIST'S REPORT DOES NOT SPEAK TO THE ISSUE OF WHETHER OR NOT THE DECEMBER 22-23, 1972 INCIDENT CAUSED AN EXACERBATION OF CLAIMANT'S PRIOR BACK CONDITION.

THE EMPLOYER TAKES THE WORKMAN AS HE FINDS HIM. THE CLAIMANT WORKED FOR NEARLY 20 MONTHS DOING HEAVY AND VIGOROUS WORK BEFORE THE UNLOADING OF THE BOX CAR INCIDENT.

THE BOARD CONCURS WITH THE FINDING OF THE REFEREE THAT THE EVIDENCE PREPONDERATES TO THE CONCLUSION THAT THE CAR UNLOADING INCIDENT WAS A MATERIAL CONTRIBUTING FACTOR TO CLAIMANT'S DISABILITY.

ORDER

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

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 400 DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-1830 APRIL 21, 1975

WILBUR POST, CLAIMANT

BAILEY, DOBLIE AND BRUUN, CLAIMANT'S ATTYS.
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THIS MATTER INVOLVES A DENIED OCCUPATIONAL DISEASE CLAIM FOR AN EAR INFECTION AND LOSS OF HEARING. THE REFEREE ORDERED THE EMPLOYER TO ACCEPT THIS OCCUPATIONAL DISEASE CLAIM BOTH FOR THE EAR INFECTION AND THE HEARING LOSS.

CLAIMANT, A 54 YEAR OLD PLYWOOD WORKER, HAS WORKED IN THE EMPLOYER'S PLYWOOD PLANT FOR THE PAST 28 YEARS. HE DEVELOPED AN EAR INFECTION APPARENTLY FROM DUST AND USE OF EARPLUGS.

THE ATTENDING DOCTOR FOUND THE HEARING LOSS RESULTING FROM THE NOISE EXPOSURE. THE CLAIMANT TESTIFIED THAT HE IS WORKING AROUND EXCESSIVELY NOISY MACHINES IN HIS WORK. THIS EVIDENCE MAKES A PRIMA FACIE CASE FOR THE CLAIMANT REGARDING CAUSE OF CLAIMANT'S HEARING LOSS. THE EMPLOYER PRESENTED NO EVIDENCE TO REBUT THIS EVIDENCE.

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

ORDER

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

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

WCB CASE NO. 73-910 APRIL 22, 1975

WILFRED M. BENDA, CLAIMANT

BAILEY, DOBLIE, CENICEROS AND BRUUN, CLAIMANT'S ATTYS.
LONG, NEUNER, DOLE AND CALEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES AN AGGRAVATION CLAIM. THE CLAIMANT, A 63 YEAR OLD LOGGER, RECEIVED AN INDUSTRIAL INJURY IN MAY, 1970, AND ANOTHER INDUSTRIAL INJURY IN JULY, 1970.

THE EMPLOYER, DOUGLAS FIR PLYWOOD COMPANY, WAS INSURED BY

FIREMAN'S FUND INSURANCE COMPANY IN MAY, 1970. PRIOR TO THE JULY, 1970, INDUSTRIAL INJURY, ROSEBURG LUMBER COMPANY ACQUIRED THE DOUGLAS FIR PLYWOOD COMPANY BY MERGER AND AS OF JULY, 1970, THE COMPENSATION CARRIER WAS EMPLOYERS INSURANCE OF WAUSAU. THE RECORD DISCLOSES QUITE CONCLUSIVELY THAT THE CLAIMANT HAS ESTABLISHED HIS CLAIM FOR AGGRAVATION. EACH OF THE CARRIERS DO NOT CONTEST THIS BUT RATHER CONTEND THAT THE AGGRAVATION IS OF THE INJURY COVERED BY THE OTHER CARRIER.

THE REFEREE FOUND THAT CLAIMANT'S AGGRAVATION CLAIM IS FOR THE INDUSTRIAL INJURY OF JULY 30, 1970, COVERED BY EMPLOYERS OF WAUSAU INASMUCH AS OREGON LAW DOES NOT HAVE AN APPORTIONMENT STATUTE. EMPLOYERS OF WAUSAU REQUEST BOARD REVIEW CONTENDING THAT THE AGGRAVATION CLAIM RESULTED FROM THE MAY, 1970, INJURY AND THUS WOULD BE THE OBLIGATION OF FIREMAN'S FUND, OR IN THE ALTERNATIVE, THAT THE AGGRAVATION OF THE JULY 30, 1970, INDUSTRIAL INJURY COVERED BY EMPLOYERS OF WAUSAU SHOULD BE LIMITED TO CLAIMANT'S LOW BACK ONLY, AND THAT AN AGGRAVATION OF THE MAY 23, 1970 INJURY COVERED BY FIREMAN'S FUND SHOULD BE ALLOWED FOR CLAIMANT'S SHOULDER, NECK AND UPPER EXTREMITY DIFFICULTIES.

NEITHER CARRIER CONTESTS THAT A CLAIM OF AGGRAVATION HAS NOT BEEN ESTABLISHED AND NEITHER CARRIER REQUESTED A DESIGNATION OF A PAYING AGENCY PURSUANT TO ORS 656.370. BOTH CARRIERS SEEM TO ARGUE THAT IT IS AN AGGRAVATION OF THE INJURY COVERED BY THE OTHER CARRIER. SEE DARRELL G. VIRELL, ORDER ON REVIEW, WCB CASE NOS. 73-2029 AND 73-2030, A COPY OF WHICH IS ATTACHED HERETO.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE FINDING OF THE REFEREE THAT THE PREPONDERANCE OF THE EVIDENCE IS THAT CLAIMANT'S PRESENT CLAIM OF AGGRAVATION RESULTED FROM THE JULY 30, 1970, INDUSTRIAL INJURY AND THAT EMPLOYERS INSURANCE OF WAUSAU, THE CARRIER FOR THE JULY 30, 1970, INDUSTRIAL INJURY, ACCEPT THE CLAIM.

ORDER

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

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 500 DOLLARS, PAYABLE BY THE EMPLOYER AND THROUGH ITS CARRIER, EMPLOYERS INSURANCE OF WAUSAU, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-1317 APRIL 22, 1975

WILLIAM P. SLANE, CLAIMANT

ROY KILPATRICK, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED A DETERMINATION ORDER AWARDING CLAIMANT PERMANENT PARTIAL DISABILITY EQUAL TO 10 PER CENT OF THE MAXIMUM FOR UNSCHEDULED NECK DISABILITY.

CLAIMANT, A 49 YEAR OLD TRUCK DRIVER, WAS COMPENSABLY INJURED SEPTEMBER 28, 1972, WHEN HIS TRUCK WENT OFF THE ROAD. X-RAYS REVEALED A FRACTURE OF THE ODONTOID PROCESS OF HIS CERVICAL SPINE. HE WORE A CAST FOR THREE MONTHS, WAS THEN PLACED IN A BRACE, AND FINALLY WAS RELEASED FOR WORK MARCH 8, 1973.

CLAIMANT RETURNED TO TRUCK DRIVING FOR BOISE CASCADE. BECUASE OF MARKED LIMITATION OF MOTION OF THE NECK, CLAIMANT COULD NOT SUCCESSFULLY DRIVE AND AFTER AN ACCIDENT, WAS TERMINATED BY THE EMPLOYER. A LETTER SIGNED BY CLAIMANT'S PHYSICIAN, DR. FRED B. MOOR, JR., INDICATES HE HAD RESERVATIONS ABOUT CLAIMANT BEING A LICENSED COMMERCIAL DRIVER AND THOUGHT IT ADVISABLE HE SHOULD BE RETRAINED IN SOME OTHER OCCUPATION.

CLAIMANT IS NOW ATTENDING BLUE MOUNTAIN COLLEGE TAKING DRAFTING COURSES TO BE COMPLETED IN TWO YEARS.

THE BOARD, ON REVIEW, CONCLUDES THIS EVIDENCE REVEALS CLAIMANT HAS LOST MORE THAN 10 PER CENT OF HIS EARNING CAPACITY. CLAIMANT IS ENTITLED TO AN ADDITIONAL AWARD OF PERMANENT PARTIAL DISABILITY EQUAL TO 10 PER CENT, MAKING A TOTAL AWARD OF 20 PER CENT FOR UNSCHEDULED NECK DISABILITY.

ORDER

THE ORDER OF THE REFEREE IS MODIFIED TO REFLECT CLAIMANT HAS SUSTAINED PERMANENT PARTIAL DISABILITY EQUAL TO 20 PER CENT OF THE MAXIMUM FOR UNSCHEDULED NECK DISABILITY.

WCB CASE NO. 74-1089 APRIL 23, 1975

JOHN LOWE, CLAIMANT

MCMENAMIN, JONES, JOSEPH AND LANG, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE REFEREE, IN HIS ORDER DATED OCTOBER 23, 1974, DISMISSED CLAIMANT'S REQUEST FOR HEARING ON THE GROUNDS HE HAD NO JURISDICTION SINCE MORE THAN FIVE YEARS HAD ELAPSED SINCE THE CLAIM HAD BEEN CLOSED BY DETERMINATION ORDER.

CLAIMANT HAS NOW REQUESTED BOARD REVIEW OF THE REFEREE'S ORDER.

THE BOARD NOTES THAT ALTHOUGH THE LAW IS GENERALLY CONSTRUED LIBERALLY IN FAVOR OF THE WORKMAN, A MORE STRICT CONSTRUCTION OF THE LAW HAS BEEN APPLIED WITH REFERENCE TO PROCEDURE. PROCEDURE WITH RESPECT TO TIMELINESS OF FILING CLAIMS IS STATED IN ORS 656.319 (2) (C) AS FOLLOWS -

> 'WITH RESPECT TO ANY DISPUTE ON INCREASED COMPENSATION BY REASON OF AGGRAVATION UNDER ORS 656.273, A HEARING ON SUCH DISPUTE SHALL NOT BE GRANTED UNLESS A REQUEST FOR HEARING IS FILED WITHIN FIVE YEARS AFTER THE FIRST DETERMINATION MADE UNDER SUBSECTION (3) OR ORS 656.268.'

THE FIRST DETERMINATION ORDER ISSUED IN CLAIMANT'S CLAIM WAS DATED JUNE 27, 1968, AND HIS REQUEST FOR INCREASED COMPENSATION WAS RECEIVED BY THE BOARD ON OR ABOUT MARCH 15, 1974. THE BOARD HAS NO ALTERNATIVE OTHER THAN TO DENY CLAIMANT'S REQUEST BECAUSE IT HAS NOT BEEN TIMELY FILED AS REQUIRED BY THE STATUTE.

ORDER

THE ORDER OF THE REFEREE DATED OCTOBER 23, 1974 IS AFFIRMED.

WCB CASE NO. 73-4041 APRIL 23, 1975

ELWIN E. GLENN, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT IN THIS MATTER HAS RECEIVED A TOTAL OF 50 PER CENT OF THE MAXIMUM ALLOWABLE UNDER THE 1967 STATUTORY SCHEDULES FOR HIS INJURY WHICH HE SUSTAINED IN FEBRUARY OF 1967.

CLAIMANT HAS UNDERGONE TWO LAMINECTOMIES IN 1967 AND 1971. HE UNDOUBTEDLY HAS SOME PERMANENT PARTIAL DISABILITY. HOWEVER, AFTER VIEWING A GREAT LENGTH OF FILM WHICH SERIOUSLY DAMAGES CLAIMANT'S CREDIBILITY, AND RELYING ON THE FINDINGS MADE BY DR. PASQUESI AND THE BACK EVALUATION CLINIC, THE BOARD CANNOT FIND THAT CLAIMANT IS ENTITLED TO A GREATER AWARD OF PERMANENT PARTIAL DISABILITY THAN THAT HERETOFORE GRANTED.

ORDER

THE ORDER OF THE REFEREE DATED SEPTEMBER 20, 1974 IS AFFIRMED.

WCB CASE NO. 74-2274 APRIL 23, 1975

DENNIS WILLIAMS, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
JAQUA AND WHEATLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE ISSUE IN THIS MATTER INVOLVES THE EXTENT OF PERMANENT DISABILITY SUSTAINED BY CLAIMANT AS THE RESULT OF HIS INDUSTRIAL INJURY OF JULY 20, 1972. AT HEARING, THE REFEREE AFFIRMED THE DETERMINATION ORDER WHICH GRANTED 20 PER CENT LOSS OF THE RIGHT LEG EQUAL TO 30 DEGREES. THE CLAIMANT HAS REQUESTED REVIEW BY THE BOARD.

CLAIMANT SUFFERED INJURY TO HIS KNEE WHILE PULLING PLYWOOD

FROM THE GREEN CHAIN. DR. SLOCUM PERFORMED A LATERAL MENISCECTOMY IN AUGUST, 1972, AND BECAUSE OF CONTINUING DIFFICULTY PERFORMED A MEDIAL MENISCECTOMY IN JANUARY, 1973. IN HIS FINAL CLOSING REPORT, DR. SLOCUM FELT CLAIMANT HAD 'MODERATE' PERMANENT DISABILITY.

THE BOARD, ON REVIEW, DOES NOT ACCEPT THE REFEREE'S STATEMENT THAT THE DOCTOR'S REPORT AND CLAIMANT'S OWN TESTIMONY DESCRIBE A 'MILD' DISABILITY. DR. SLOCUM'S OPINION THAT CLAIMANT HAD SUSTAINED 'MODERATE' DISABILITY IS BASED ON HIS RECOGNITION THAT THE RESIDUALS OF THE TWO OPERATIVE PROCEDURES HAVE PRODUCED SIGNIFICANT LIMITATIONS OF FUNCTION. THE TESTIMONY OF CLAIMANT SET FORTH IN CLAIMANT'S BRIEF ILLUSTRATES THE DEGREE OF ULTIMATE DISABILITY DR. SLOCUM APPARENTLY WAS REFERRING TO WHEN HE USED THE ADJECTIVE TERM 'MODERATE DISABILITY'.

WE CONCLUDE CLAIMANT'S DISABILITY EQUALS 40 PER CENT LOSS OF THE RIGHT LEG AND HE SHOULD BE COMPENSATED ACCORDINGLY.

ORDER

CLAIMANT IS HEREBY GRANTED AN ADDITIONAL 30 DEGREES MAKING A TOTAL OF 60 DEGREES OF A MAXIMUM OF 150 DEGREES OR 40 PER CENT LOSS OF THE RIGHT LEG.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE, 25 PER CENT OF THE INCREASED COMPENSATION AWARDED HEREBY, PAYABLE FROM SAID AWARD, BUT IN NO EVENT SHALL SAID FEE EXCEED 2,000 DOLLARS.

WCB CASE NO. 74-346 APRIL 23, 1975

GEORGE H. BENDER, CLAIMANT

CHARLES PORTER, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
CROSS-APPEAL BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH INCREASED CLAIMANT'S AWARD FOR PERMANENT DISABILITY IN THE LEFT LEG BUT DENIED COMPENSATION FOR A RHEUMATOID ARTHRITIS CONDITION.

CLAIMANT ARGUES THE STRESS ASSOCIATED WITH HIS COMPLICATED RECOVERY FROM THE LEFT LEG INJURY TRIGGERED THE ONSET OF A GENERALIZED RHEUMATOID ARTHRITIS WHICH HAD NOT PREVIOUSLY BEEN DISABLING.

THE STATE ACCIDENT INSURANCE FUND FILED A CROSS-REQUEST FOR BOARD REVIEW SEEKING REINSTATEMENT OF THE PERMANENT DISABILITY AWARD ALLOWED BY THE DETERMINATION ORDER BUT NEVER PRESENTED ANY ARGUMENT IN ITS CONTENTION.

THE CRUCIAL ISSUE IN THIS CASE IS WHETHER THERE IS ENOUGH EVIDENCE SHOWING STRESS AS A MATERIAL CAUSATIVE FACTOR IN THE ONSET OF THE ARTHRITIS. THE REFEREE CONCLUDED THERE WAS NOT AND, HAVING REVIEWED THE RECORD DE NOVO, WE AGREE.

THE LEFT LEG DISABILITY ALLOWED BY THE REFEREE IS APPROPRIATE AND SHOULD BE AFFIRMED.

WE CONCLUDE THE REFEREE'S ORDER SHOULD BE ADOPTED AND AFFIRMED IN ITS ENTIRETY.

IT IS SO ORDERED.

WCB CASE NO. 73-2221 AND 73-2521 — APRIL 23, 1975

OSCAR SAULS, CLAIMANT

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

ON APRIL 8, 1975, CLAIMANT MOVED THE BOARD FOR AN ORDER REMANDING THIS MATTER TO THE REFEREE FOR THE PURPOSE OF TAKING ADDITIONAL EVIDENCE WITH RESPECT TO THE PERMANENT DISABILITY IN CLAIMANT'S LEFT EYE.

THE STATE ACCIDENT INSURANCE FUND OBJECTED ON THE BASIS THAT THE MATTER UNDER REVIEW DOES NOT INCLUDE THE EXTENT OF DISABILITY IN THE LEFT EYE. THE FUND SUGGESTS THAT CLAIMANT'S REMEDY IS BY WAY OF FILING A CLAIM OF AGGRAVATION.

WHILE WE AGREE WITH THE FUND THAT AN ORDER OF REMAND IS INAPPROPRIATE, WE DO NOT BELIEVE THAT A CLAIM OF AGGRAVATION LIES SINCE IT DOES NOT APPEAR THAT THERE HAS BEEN A WORSENING OF THE DISABILITY SINCE THE LAST AWARD OR ARRANGEMENT OF COMPENSATION.

WE CONCLUDE THAT THE FACTS JUSTIFY THE BOARD'S MODIFICATION OF ITS FORMER DETERMINATION ORDER RESPECTING THE LEFT EYE, PURSUANT TO THE AUTHORITY GRANTED IT UNDER ORS 656.278(1). IN THIS CONNECTION, SEE 3 LARSON'S WORKMEN'S COMPENSATION LAW (UNDERSCORED), 81.52 AND 81.53.

SINCE THE ORDER IS BEING ISSUED DURING THE TIME WITHIN WHICH THE CLAIMANT COULD PRESENT A CLAIM FOR AGGRAVATION, THE SPECIAL APPEAL RIGHTS PROVIDED BY ORS 656.278(3) DO NOT APPLY. THE ORDINARY APPEAL RIGHTS RELATING TO DETERMINATIONS ISSUED UNDER ORS 656.268 ARE APPLICABLE.

ORDER

IT IS HEREBY ORDERED THAT THE CLAIMANT'S MOTION TO REMAND IS DENIED.

IT IS HEREBY FURTHER ORDERED THAT THE BOARD'S EVALUATION DIVISION FORTHWITH REEVALUATE THE EXTENT OF CLAIMANT'S LEFT EYE DISABILITY AND ISSUE A SECOND DETERMINATION ORDER GRANTING APPEAL RIGHTS TO THE PARTIES AS PROVIDED IN ORS 656.268(4).

WCB CASE NO. 74—211 APRIL 23, 1975

DAN HENDRIX, CLAIMANT

BABCOCK, ACKERMAN AND HANLON, CLAIMANT'S ATTYS.
ROGER R. WARREN, 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 THE CARRIER'S DENIAL OF HIS CLAIM.

THIS MATTER INVOLVES A 64 YEAR OLD WORKMAN OF OCHOCO LUMBER COMPANY, WHO ALLEGES HE SUSTAINED AN INJURY TO HIS BACK ON JUNE 13, 1973. THE INCIDENT WAS UNWITNESSED, AND CLAIMANT FINISHED WORKING HIS SHIFT AND REPORTED IT THE NEXT DAY. EXAMINING DOCTORS FOUND LOW BACK PAIN CONSISTENT WITH DEGENERATIVE CHANGES IN THE LUMBAR SPINE ASSOCIATED WITH THE USUAL AGING PROCESS. CLAIMANT CONTENDS, AND HIS FAMILY AGREES, THAT HE IS NOW PHYSICALLY UNABLE TO WORK OR CARRY ON ANY ACTIVITY.

A LENGTHY RECORD IS BEFORE THE BOARD ON REVIEW. MUCH OF THE ARGUMENT AND DISCUSSION REVOLVES AROUND THE SURVEILLANCE PLACED AROUND THE CLAIMANT BY HIS EMPLOYER, AND THE ISSUE OF WHETHER A PERSON SEEN ON FILM, ENGAGING IN STRENUOUS ACTIVITIES, IS IN FACT THE CLAIMANT.

AFTER PERSONALLY SEEING AND HEARING THE CLAIMANT AND THE WITNESSES, THE REFEREE CONCLUDED THAT THE EMPLOYER'S CARRIER HAD MADE A VALID DENIAL OF CLAIMANT'S CLAIM FOR BENEFITS AND AFFIRMED THAT DENIAL.

THE BOARD, ON REVIEW, WILL RELY IN THE FINDINGS OF THE REFEREE AND AFFIRMS AND ADOPTS HIS ORDER.

ORDER

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

WCB CASE NO. 73—4244 AND 74—964 APRIL 24, 1975

WILBURN NEAL, CLAIMANT

HAROLD W. ADAMS, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE,
DEFENSE ATTYS

ON APRIL 9, 1975 THE EMPLOYER, THROUGH HIS ATTORNEY, MICHAEL D. HOFFMAN, REQUESTED BOARD REVIEW OF A REFEREE'S OPINION AND ORDER DATED MARCH 14, 1975.

THE PARTIES HAVE NOW PRESENTED A STIPULATION TO THE BOARD AMICABLY DISPOSING OF THE ISSUES IN DISPUTE. THE STIPULATION REGARDING SETTLEMENT ORDER OF DISMISSAL IS ATTACHED HERETO AS EXHIBIT 'A'.

THE BOARD BEING NOW FULLY ADVISED FINDS THE STIPULATION FAIR AND EQUITABLE TO BOTH PARTIES AND IT CONCLUDES =

(1) THAT THE AGREEMENT SHOULD BE EXECUTED ACCORDING TO ITS TERMS AND,

(2) THAT THE REQUEST FOR BOARD REVIEW BE DISMISSED.

IT IS SO ORDERED.

STIPULATION REGARDING SETTLEMENT ORDER OF DISMISSAL

CLAIMANT, NAMED ABOVE RECEIVED COMPENSABLE INJURIES ON 11-2-71 AND 9-5-72. THE HEARINGS REFEREE, ON OR ABOUT MARCH 14, 1975, ENTERED AN ORDER FINDING PERMANENT PARTIAL UNSCHEDULED DISABILITY RESULTING FROM SUCH INJURIES TO THE AMOUNT OF SEVENTY (70) PER CENT.

THE INSURER HAS APPEALED FROM THAT ORDER AND ISSUE THEREBY BEING DRAWN, THE PARTIES HAVE REACHED A

SETTLEMENT AND COMPROMISE

THE PARTIES HAVE AGREED TO THIS STIPULATION IN ALL MATTERS SET FORTH IN IT AND TO THE ORDER OF DISMISSAL REQUESTED PURSUANT HERETO. SUCH AGREEMENT HAS BEEN MADE PURSUANT TO THE WISHES OF THE CLAIMANT INDEPENDENTLY AND BY THE INSURER INDEPENDENTLY, BASED UPON FACTS AND MEDICAL ADVICE FURNISHED. THE PARTIES REPRESENT THAT THIS SETTLEMENT AND COMPROMISE IS FAIR AND REASONABLE. CLAIMANT IS AND HAS BEEN REPRESENTED BY THE UNDERSIGNED ATTORNEY AND THE INSURER BY THE INDIVIDUAL IDENTIFIED BELOW.

IT IS THEREFORE STIPULATED AND AGREED BY THE CLAIMANT INDIVIDUALLY AND BY AND THROUGH COUNSEL AND BY THE INSURER THAT =

(1) TAKING INTO CONSIDERATION ALL FACTORS INVOLVED AND IN PURSUANCE OF THE OBJECTIVE OF DISPOSING OF THIS MATTER WITHOUT EXTENSIVE REVIEW PROCESSES, THE PARTIES AGREE THAT THE LEVEL OF DISABILITY PROPERLY ESTABLISHED IS ONE HUNDRED FIFTY (150) DEGREES.

(2) THE AMOUNT OF MONEY REPRESENTED BY SAID ONE HUNDRED FIFTY (150) DEGREES IS TO BE PAID DIRECTLY IN LUMP SUM TO THE CLAIMANT AFTER DEDUCTIONS THEREFROM OF AN AMOUNT REPRESENTING TWENTY-FIVE (25) PER CENT OF SUCH SUM, WHICH LATTER AMOUNT IS TO BE PAID DIRECTLY TO ATTORNEY FOR CLAIMANT, NOT TO EXCEED 1,500.00 DOLLARS.

(3) AGGRAVATION RIGHTS OF THE CLAIMANT PURSUANT TO THIS AWARD AS PREVIOUSLY ESTABLISHED ARE SPECIFICALLY RESERVED.

(4) THE PARTIES REQUEST THE WORKMEN'S COMPENSATION BOARD TO ENTER ITS ORDER APPROVING THE STIPULATION AND DISMISSING CLAIMANT'S REQUEST FOR HEARING.

I HAVE READ THE ABOVE STIPULATION, CONTENTIONS OF PARTIES AND SETTLEMENT AGREEMENT AND AGREE TO IT FREELY AND VOLUNTARILY AND STATE THAT THE FOREGOING AGREEMENT IS ENTIRELY SATISFACTORY.

SAIF CLAIM NO. FC 75184 APRIL 24, 1975

ROY A. PHILLIPS, CLAIMANT

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

ON MARCH 31, 1975 CLAIMANT PETITIONED THE BOARD TO CONVENE A HEARING FOR THE PRESENTATION OF EVIDENCE SHOWING THAT HE IS ENTITLED TO AN ORDER PURSUANT TO ORS 656.278 GRANTING HIM FURTHER BENEFITS FOR AN INJURY OF AUGUST 28, 1967. WE CONCLUDE THAT A HEARING SHOULD BE CONVENED.

THIS MATTER IS HEREBY REMANDED TO THE HEARINGS DIVISION OF THE WORKMEN'S COMPENSATION BOARD FOR RECEIPT OF EVIDENCE ON THE ISSUES RAISED BY THE CLAIMANT. FOLLOWING THE HEARING THE REFEREE SHALL CAUSE THE RECORD TO BE FORWARDED TO THE BOARD TOGETHER WITH A RECOMMENDED DISPOSITION OF THE MATTER.

NO NOTICE OF APPEAL IS DEEMED APPLICABLE.

WCB CASE NO. 74-2936 APRIL 24, 1975

RUSKIN FOUT, CLAIMANT

COONS, COLE AND ANDERSON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON FEBRUARY 10, 1975, ON BEHALF OF THE EMPLOYER, THE STATE ACCIDENT INSURANCE FUND REQUESTED BOARD REVIEW 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 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. 74-528 APRIL 24, 1975

JOE B. GRIJALVA, CLAIMANT

CHARLES R. CATER, CLAIMANT'S ATTY.
HAROLD HENIGSON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES THE EXTENT OF PERMANENT DISABILITY CLAIMANT HAS SUSTAINED AS THE RESULT OF A LOW BACK INJURY HE SUSTAINED DECEMBER 30, 1972. BY CLOSURE PURSUANT TO ORS 656.268, HE RECEIVED 15 PER CENT OF THE MAXIMUM FOR UNSCHEDULED DISABILITY. AT HEARING, THE REFEREE INCREASED THE AWARD TO THAT OF PERMANENT TOTAL DISABILITY. THE EMPLOYER HAS REQUESTED BOARD REVIEW.

CLAIMANT IS OF MEXICAN DESCENT AND WAS 59 AT THE TIME OF INJURY. HE HAD RESIDED IN THE NYSSA AREA FOR MANY YEARS DOING STOOP LABOR FIELD WORK DURING THE GROWING SEASON AND HARVEST SEASONS AND WORKING DURING WINTER MONTHS AT AMALGAMATED SUGAR LOADING 50 TO 100 POUND SACKS INTO CARS. CLAIMANT IS NOW PRECLUDED FROM ENGAGING IN THIS TYPE OF HEAVY MANUAL LABOR.

TWO ORTHOPEDIC SPECIALISTS HAVE DIAGNOSED CLAIMANT'S CONDITION AS A STRAIN SUPERIMPOSED UPON DEGENERATIVE ARTHRITIS AGGRAVATED BY YEARS OF BENDING, LIFTING AND VIGOROUS PHYSICAL ACTIVITY AND COMPATIBLE WITH THE INEVITABLE AGING PROCESSES. DR. THRASHER STATED IN JOINT EXHIBIT 11 -

> '... I DO NOT FIND OBJECTIVE FINDINGS SUFFICIENT TO JUSTIFY PERMANENT AND TOTAL DISABILITY, OTHER THAN THE SUBJECTIVE FINDING AND MILD RESTRICTION OF RANGE OF MOTION IN THE BACK AND DEGENERATIVE ARTHRITIS NORMAL FOR A PATIENT AGE 60.'

THE BOARD, ON REVIEW, CONCLUDES THAT IN AWARDING PERMANENT TOTAL DISABILITY TO CLAIMANT, THE REFEREE CHOSE TO ACCEPT THE LAY TESTIMONY OFFERED BY CLAIMANT'S WITNESSES AND FRIENDS AND CHOSE TO IGNORE THE MEDICAL TESTIMONY OFFERED BY REPUTABLE ORTHOPEDIC PHYSICIANS. THE BOARD IS CONVINCED THAT CLAIMANT'S INDUSTRIAL INJURY HAS NOT RENDERED HIM PERMANENTLY AND TOTALLY DISABLED. THE BOARD FINDS THAT CLAIMANT'S RESIDUAL PERMANENT DISABILITY IS EQUAL TO 50 PER CENT OF THE MAXIMUM FOR UNSCHEDULED DISABILITY.

ORDER

THE ORDER OF THE REFEREE DATED SEPTEMBER 24, 1974 IS HEREBY MODIFIED TO REFLECT CLAIMANT IS ENTITLED TO PERMANENT PARTIAL DISABILITY EQUAL TO 50 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

WCB CASE NO. 74-1629 APRIL 24, 1975

CRAIG LOW, CLAIMANT

BUSS, LEICHNER, LINDSTEDT, BARKER AND BUONO,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

THIS MATTER INVOLVES A DENIED CLAIM. THE REFEREE AFFIRMED THE STATE ACCIDENT INSURANCE FUND'S DENIAL EITHER AS AN OCCUPATIONAL DISEASE OR AS AN ACCIDENTAL INJURY.

CLAIMANT, A 31 YEAR OLD BARBER, HAD AN ADVANCED CASE OF VARICOSE VEINS ON WHICH PREVIOUS SURGERY HAD BEEN PERFORMED. ON MARCH 18, 1971, WHILE BARBERING, HE CAUGHT THE HEEL OF HIS SHOE ON A RUBBER MAT AND TESTIFIED THAT HE REALLY DIDN'T REMEMBER WHETHER OR NOT HE HIT HIS LEFT ANKLE OR NOT. SHORTLY THEREAFTER A BARBER CUSTOMER CALLED HIS ATTENTION TO SUBSTANTIAL BLOOD ON THE FLOOR. CLAIMANT WAS TAKEN TO THE EMERGENCY ROOM WHERE THE INITIAL ATTENDING DOCTOR, IN HIS NOTES, STATES - 'SMALL ABRASION IN VARICOSE VEIN SURGICAL AREA.'

THIS IS EVIDENCE THAT A TRAUMATIC INCIDENT OCCURRED CAUSING THE RUPTURE OF THE VEIN. THE BOARD THEREFORE FINDS THAT CLAIMANT HAS SUSTAINED A COMPENSABLE INJURY.

THE EMPLOYER HAD KNOWLEDGE AND WITNESSED THE INJURY TO THE CLAIMANT. THE BOARD FINDS THAT THE CLAIM WAS TIMELY MADE UNDER THE RATIONALE OF THE FLOYD MENDENHALL (UNDERSCORED) ORDER ON REVIEW, WCB CASE NO. 72-1080.

ORDER

THE ORDER OF THE REFEREE DATED SEPTEMBER 18, 1974 IS REVERSED.

THE CLAIM IS 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 1,000 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH THE HEARING AND BOARD REVIEW.

WCB CASE NO. 74-1057 APRIL 24, 1975

BETTY NEWTON, CLAIMANT

RICHARDSON AND MURPHY, CLAIMANT'S ATTYS.
TOOZE, KERR, PETERSON, MARSHALL AND SHENKER,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

THIS MATTER INVOLVES A DENIAL OF CLAIMANT'S AGGRAVATION CLAIM FOR TEMPORARY TOTAL DISABILITY FOR APPROXIMATELY FIVE WEEKS. THE REFEREE AFFIRMED THE DENIAL.

CLAIMANT, A 19 YEAR OLD FACTORY WORKER, SUSTAINED AN ACCEPTED COMPENSABLE INJURY SEPTEMBER 6, 1973, WHEN HER RIGHT ARM AND CHEST MUSCLES BECAME SORE. SHE WAS CONSERVATIVELY TREATED UNTIL SEPTEMBER 25, 1973, WHEN SHE RETURNED TO WORK. THE CLAIM WAS CLOSED WITH TEMPORARY TOTAL DISABILITY FROM SEPTEMBER 6, 1973, TO SEPTEMBER 25, 1973, ONLY.

CLAIMANT HAD BEEN ATTENDING A BEAUTY SCHOOL FIVE HOURS A DAY, FIVE DAYS PER WEEK UNTIL JANUARY 7, 1974, AT WHICH TIME CLAIMANT REQUESTED PART-TIME WORK AT THE FACTORY OF 20 HOURS A WEEK SO THAT SHE COULD GO TO BEAUTY SCHOOL FULL-TIME 40 HOURS PER WEEK.

FOUR DAYS LATER, JANUARY 11, 1974, CLAIMANT COMPLAINED OF AGGRAVATION OF THE SEPTEMBER 6, 1973, INDUSTRIAL INJURY AND REMAINED OFF WORK FROM JANUARY 14, 1974, TO FEBRUARY 18, 1974, A TOTAL OF FIVE WEEKS FOR WHICH SHE REQUESTED TEMPORARY TOTAL DISABILITY PAYMENTS WHICH WERE DENIED.

IT IS NOTED CLAIMANT CONTINUED ACTIVELY AT THE BEAUTY SCHOOL 40 HOURS PER WEEK DURING THE FIVE WEEK PERIOD IN QUESTION HERE.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE FINDINGS OF THE REFEREE THAT CLAIMANT HAS FAILED TO SUSTAIN THE BURDEN OF

PROVING THE FIVE WEEK PERIOD OF TEMPORARY TOTAL DISABILITY. THE ATTENDING DOCTOR'S OPINION IS FOUNDED ON THE CLAIMANT'S HISTORY OF SUBJECTIVE COMPLAINTS.

ORDER

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

WCB CASE NO. 74-2551 APRIL 24, 1975

DELBERT SMITH, CLAIMANT

SAHLSTROM, LOMBARD, STARR AND VINSON,
CLAIMANT'S ATTYS.
MERLIN MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

THIS MATTER INVOLVES THE EXTENT OF PERMANENT PARTIAL DISABILITY. THE DETERMINATION ORDERS AWARDED CLAIMANT A TOTAL OF 30 PER CENT (96 DEGREES) UNSCHEDULED LOW BACK DISABILITY AND 5 PER CENT (7.5 DEGREES) SCHEDULED LOSS OF THE RIGHT LEG. THE REFEREE AFFIRMED THE TOTAL OF 30 PER CENT (96 DEGREES) UNSCHEDULED LOW BACK DISABILITY AND RAISED THE AWARD FOR LOSS OF THE RIGHT LEG TO A TOTAL OF 15 PER CENT (22.5 DEGREES).

CLAIMANT, A 33 YEAR OLD GROCERY STORE MANAGER, HAS HAD TWO ACCEPTED INDUSTRIAL INJURIES TO HIS BACK OCCURRING AUGUST 21, 1968 AND MAY 3, 1971. THE CARRIER AND DETERMINATION ORDERS HAVE HANDLED BOTH OF THESE CLAIMS UNDER THE SAME CLAIM NUMBER AND UNDER THE DATE OF INJURY OF AUGUST 21, 1968.

CLAIMANT HAS HAD TWO SPINAL FUSIONS. AN INTERVENING AUTOMOBILE ACCIDENT HAD NO SIGNIFICANT RESIDUALS AFFECTING HIS BACK CONDITION. CLAIMANT HAS RESIDUALS WHICH PREVENT HIM FROM REPETITIVE STOOPING, BENDING, OR LIFTING.

CLAIMANT HAS RETURNED TO HIS POSITION AS GROCERY STORE MANAGER BUT IS LIMITED IN PERFORMING HIS TASKS. HE IS REQUIRED TO EXCEED THE LIMITATIONS PLACED UPON HIM BY HIS DOCTOR.

ON DE NOVO REVIEW THE BOARD FINDS THAT CLAIMANT'S LOSS OF EARNING CAPACITY IN THE BROAD LABOR MARKET IS GREATER THAN THAT AWARDED BY DETERMINATION ORDERS AND AFFIRMED BY THE REFEREE. THE BOARD FINDS CLAIMANT'S UNSCHEDULED DISABILITY IS A TOTAL OF 45 PER CENT (144 DEGREES). THE BOARD AFFIRMS THE AWARD OF 15 PER CENT (22.5 DEGREES) SCHEDULED LOSS OF THE RIGHT LEG.

ORDER

THE ORDER OF THE REFEREE IS MODIFIED TO THE EXTENT THAT CLAIMANT IS AWARDED A TOTAL OF 45 PER CENT (144 DEGREES) UNSCHEDULED DISABILITY FOR THE LOW BACK WHICH IS AN INCREASE OF 15 PER CENT (48 DEGREES) OVER THAT AWARDED BY THE DETERMINATION ORDERS AND AFFIRMED BY THE REFEREE.

IN ALL OTHER RESPECTS THE REFEREE'S ORDER DATED NOVEMBER 29, 1974 IS AFFIRMED.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE, 25 PER CENT OF THE INCREASE IN COMPENSATION ASSOCIATED WITH THIS AWARD, WHICH, WHEN COMBINED WITH THE FEES ATTRIBUTABLE TO THE ORDER OF THE REFEREE, SHALL NOT EXCEED 2,000 DOLLARS.

WCB CASE NO. 74-1103 APRIL 24, 1975

SHARON BARKER, CLAIMANT

MC CARTY AND SWINDELLS, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
CROSS-APPEAL BY SAIF

CLAIMANT SEEKS BOARD REVIEW CONTENDING SHE IS ENTITLED TO CERTAIN TEMPORARY TOTAL DISABILITY PAYMENTS, PENALTIES AND ATTORNEY FEES, AND A GREATER AWARD FOR PERMANENT PARTIAL DISABILITY RESULTING FROM AN INJURY SUSTAINED OVER FIVE YEARS AGO INVOLVING THE UPPER CERVICAL AREA.

THE FUND SEEKS REVIEW OF THAT PART OF THE REFEREE'S ORDER GRANTING CLAIMANT'S ATTORNEY A FEE FOR HIS SERVICES IN SECURING PAYMENT OF CERTAIN MEDICAL TREATMENT AND TRANSPORTATION EXPENSE.

THE LONG HISTORY OF THIS CLAIM INCLUDES EXAMINATION OR TREATMENT BY 17 DOCTORS, A CLINICAL PSYCHOLOGIST AND AN ACUPUNCTURIST. SELDOM DOES ONE SEE A GREATER PROFUSION OF PHYSICAL COMPLAINTS, ACCOMPANIED BY SUCH AN APPLICATION OF THE RESOURCES OF THE MEDICAL PROFESSION, WITH SUCH MINIMAL OBJECTIVE INDICATION OF ANY INJURY ATTRIBUTABLE TO THE ACCIDENT.

CLAIMANT HAS HAD FAMILY AND SOCIAL AS WELL AS OTHER PHYSICAL PROBLEMS UNRELATED TO THE INCIDENT.

THE REFEREE, AT HEARING, FOUND CLAIMANT WAS NOT ENTITLED TO CERTAIN TEMPORARY TOTAL DISABILITY NOR ADDITIONAL AWARD OF PERMANENT PARTIAL DISABILITY. PENALTIES WERE NOT ALLOWED. HE DID, HOWEVER, ORDER ACUPUNCTURE BILLS AND TRANSPORTATION COSTS RELATED TO THIS TREATMENT TO BE PAID UNDER ORS 656.245.

THE BOARD, ON REVIEW, IS OF THE OPINION THE EMPLOYER HAS ACTED REASONABLY, IF NOT GENEROUSLY, IN THE ADMINISTRATION OF THIS CLAIM.

THE REFEREE ALLOWED CLAIMANT AN ATTORNEY'S FEE PAYABLE BY THE STATE ACCIDENT INSURANCE FUND FOR HIS SERVICE IN ESTABLISHING THE STATE ACCIDENT INSURANCE FUND'S LIABILITY FOR '.245' BENEFITS.

AS THE STATE ACCIDENT INSURANCE FUND CORRECTLY POINTS OUT IN ITS BRIEF ON REVIEW, WAIT V. MONTGOMERY WARD, INC. (UNDERSCORED), 10 OR APP 333 (1972), SPECIFICALLY HOLDS THAT AN ATTORNEY FEE PAYABLE BY THE EMPLOYER (OR SAIF) IS NOT AUTHORIZED IN SUCH CASE. THE REFEREE'S ALLOWANCE OF SUCH FEE MUST BE REVERSED.

ORDER

THAT PART OF THE ORDER OF THE REFEREE, DATED OCTOBER 16, 1974 GRANTING CLAIMANT'S ATTORNEY 550 DOLLARS AS A REASONABLE

ATTORNEY'S FEE PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, IS HEREBY REVERSED AND IN LIEU THEREOF CLAIMANT'S ATTORNEY IS HEREBY AWARDED A FEE EQUAL TO 25 PER CENT OF THE MEDICAL AND TRANSPORTATION EXPENSE WHICH THE CLAIMANT IS RELIEVED OF PAYING BY VIRTUE OF THE REFEREE'S ORDER, SAID FEE TO BE RECOVERED DIRECTLY FROM THE CLAIMANT. IN NO EVENT SHALL THE TOTAL RECOVERED EXCEED 2,000 DOLLARS.

IN ALL OTHER RESPECTS HIS ORDER IS AFFIRMED.

WCB CASE NO. 74-669 APRIL 25, 1975

ROOSEVELT HARRISON, CLAIMANT

BUSS, LEICHNER, LINDSTEDT, BARKER AND BUONO,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

THIS MATTER INVOLVES THE EXTENT OF PERMANENT DISABILITY. THE REFEREE GRANTED AN AWARD OF PERMANENT TOTAL DISABILITY.

CLAIMANT, A 41 YEAR OLD PARK ATTENDANT, WAS INJURED MAY 7, 1973 WHEN A TRACTOR ROLLED OVER ON TOP OF HIM. THE ULTIMATE DIAGNOSIS WAS TRAUMATIC PERFORATION OF THE AORTIC VALVE. CLAIMANT HAD A WORK HISTORY SUBSTANTIALLY AS A LABORER AND HAD BEEN HIGHLY ACTIVE AND ATHLETICALLY INCLINED. CLAIMANT NOW GETS TIRED VERY EASILY AND IS UNABLE TO LIFT ANYTHING AND IS UNABLE TO DO ANY TYPE OF MANUAL WORK. THE REFEREE FOUND CLAIMANT TO BE CREDIBLE.

THE BOARD CONCURS WITH THE FINDING OF THE REFEREE THAT CLAIMANT IS PERMANENTLY TOTALLY DISABLED.

THE BOARD OBSERVES THIS APPEARS TO BE A CLASSIC EXAMPLE OF PERMANENT TOTAL DISABILITY. THE RECORD REFLECTS A LACK OF ASSISTANCE TO THE CLAIMANT BY THE CARRIER AND OTHER AGENCIES THAT THE CLAIMANT CONTACTED TOWARD REHABILITATION. THE BOARD EXTENDS THE SERVICES OF THE DISABILITY PREVENTION DIVISION IF THE CLAIMANT REQUESTS SUCH SERVICES.

ORDER

THE ORDER OF THE REFEREE DATED NOVEMBER 15, 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. 74-1379 AND 74-1380 APRIL 25, 1975

JUDY MCKENZIE, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF TWO ORDERS BY A REFEREE - ONE, WCB CASE NO. 74-1380, DENYING HER COMPENSATION ON THE BASIS OF AGGRAVATION OF A DECEMBER, 1971 INJURY AND THE OTHER, WCB CASE NO. 74-1379, DENYING HER COMPENSATION ON THE BASIS OF A NEW CLAIM FOR ACCIDENTAL INJURY OR OCCUPATIONAL DISEASE.

CLAIMANT IS A 33 YEAR OLD WOMAN WHO, DURING THE PERIOD IN QUESTION, WAS EMPLOYED AT RESER'S FINE FOODS.

ON DECEMBER 2, 1971 A SAUSAGE STUFFING MACHINE MALFUNCTIONED AND CLAIMANT WAS STRUCK ON THE ARM BY SOME OF THE CONTENTS. SHE REACTED HYSTERICALLY AND WAS TREATED AT ST. VINCENT'S EMERGENCY ROOM FOR AN 'ACUTE SITUATIONAL REACTION' AND RELEASED. A COMPENSATION CLAIM WAS FILED AND ACCEPTED AS A 'MEDICAL ONLY' CLAIM SINCE NO COMPENSABLE TIME LOSS WAS INVOLVED.

IN MAY, 1973 CLAIMANT WAS HOSPITALIZED FOR EVALUATION AND TREATMENT OF ABDOMINAL AND BACK PAIN. HER ABDOMINAL COMPLAINTS WERE FOUND TO BE PRODUCED BY A HIATUS HERNIA AND FUNCTIONAL G. I. DISTRESS AND HER BACK PAIN WAS DEEMED TO BE RESULTING FROM A CHRONIC LUMBOSACRAL STRAIN.

CLAIMANT FILED NO CLAIM WITH HER EMPLOYER FOR THE LOW BACK STRAIN ALTHOUGH SHE DID MENTION TO HER SUPERVISOR, JOHN KITZMILLER, JUST BEFORE SHE QUIT THE JOB, THAT SHE WAS HAVING BACK TROUBLE. SHE DID NOT DESCRIBE ANY WORK ACCIDENT NOR RELATE BACK PAIN TO HER EMPLOYMENT.

CLAIMANT THEREAFTER SOUGHT THE SERVICES OF THE DIVISION OF VOCATIONAL REHABILITATION. WHEN SHE WAS INTERVIEWED ON JUNE 14, 1973 SHE MENTIONED HER BACK COMPLAINTS SUGGESTING THAT THEY MIGHT SOMEHOW RELATE TO LIFTING ON THE JOB AT RESER'S BUT SHE COULD NOT RELATE IT TO ANY SPECIFIC INJURY. SHE DID NOT, HOWEVER, MAKE A CLAIM FOR COMPENSATION. ALTHOUGH LATER ENTRIES IN THE DIVISION OF VOCATIONAL REHABILITATION'S RECORD REVEAL THE COUNSELOR WAS CONSIDERING THE WORKMEN'S COMPENSATION IMPLICATIONS OF HER COMPLAINTS, IT IS NOT CLEAR WHETHER HE DISCUSSED THIS MATTER WITH HER.

THE FIRST NOTICE TO THE EMPLOYER WAS GIVEN BY CLAIMANT'S REQUEST FOR HEARING DATED APRIL 8, 1974 IN WHICH SHE SOUGHT TEMPORARY TOTAL DISABILITY FROM MAY 1, 1973 ONWARD AS WELL AS PERMANENT PARTIAL DISABILITY.

CLAIMANT NOW CONTENDS HER BACK DISTRESS IS RELATED TO GENERAL HEAVY LIFTING ON HER JOB AT RESER'S BUT THE MEDICAL DOES NOT SUPPORT THIS CONTENTION IN ANY POSITIVE WAY. A PSYCHIATRIC EVALUATION SUGGESTS STRONGLY THAT EMOTIONAL FACTORS ARE MATERIALLY CONTRIBUTING TO HER PHYSICAL COMPLAINTS.

THERE IS NO MEDICAL EVIDENCE SHOWING THAT HER WORK SITUATION CAUSED ANY WORSENING OF HER EMOTIONAL STATE. WHEN SHE WAS HOSPITALIZED IN MAY, 1973, DR. DONALD RAMSTHEL OBSERVED THAT SHE HAD A 'KIND OF CHRONIC, NERVOUS ANXIETY STATE REGARDING HER WORK, HER FAMILY AND GENERALLY HER HEALTH TOO.' WCB CASE NO. 74-1380, CLAIMANT'S EXHIBIT 5C (UNDERSCORED).

THE REFEREE RULED AT THE HEARING THAT CLAIMANT HAD FAILED TO SHOW ANY AGGRAVATION OF HER DECEMBER 2, 1971 INJURY. DR. RAMSTHEL'S REMARK QUOTED ABOVE REVEALS THAT HER WORK IS NOT THE CAUSE BUT IS THE SUBJECT OF HER ANXIETY AND THERE IS NO SHOWING THAT THE DECEMBER 2, 1971 INSTANCE OF HYSTERIA HAD ANY LASTING EFFECT, LET ALONE THAT IT IS THE CAUSE OF HER CURRENT EMOTIONAL OR PHYSICAL STATUS. WITHOUT REGARD TO THE PROCEDURAL ASPECTS OF THIS MATTER, CLAIMANT'S AGGRAVATION CLAIM WAS PROPERLY DENIED.

WITH RESPECT TO THE QUESTION OF WHETHER CLAIMANT'S LOW BACK COMPLAINTS CONSTITUTE A NEW INJURY OR OCCUPATIONAL DISEASE, WE ALSO CONCLUDE THE REFEREE'S ORDER SHOULD BE AFFIRMED.

IN HIS OPINION THE REFEREE NOTES THAT NO CLAIM WAS FILED WITHIN 30 DAYS INDICATING THAT ORS 656.265(1) HAD THUS NOT BEEN COMPLIED WITH. IT SHOULD BE CAREFULLY NOTED, HOWEVER, THAT ORS 656.265(1) REQUIRES NOTICE OF AN ACCIDENT (UNDERSCORED) WITHIN 30 DAYS BUT NOT NECESSARILY THE MAKING OF A CLAIM (UNDERSCORED) WITHIN 30 DAYS.

THE REFEREE ALSO CONCLUDED THAT CLAIMANT WAS BARRED FROM OCCUPATIONAL DISEASE BENEFITS SINCE NO CLAIM THEREFORE WAS FILED WITHIN 180 DAYS OF HER BECOMING DISABLED ON MAY 1, 1973.

AS THE REFEREE RECITED, THE STATUTE PROVIDED A 180 DAY PERIOD FROM THE DATE OF DISABILITY OR (UNDERSCORED) FROM BEING INFORMED BY A PHYSICIAN THAT SHE IS SUFFERING AN OCCUPATIONAL DISEASE, WHICHEVER IS LATER (UNDERSCORED). SINCE THE RECORD DOES NOT SHOW THAT CLAIMANT HAS EVER BEEN ADVISED BY A PHYSICIAN THAT SHE HAS AN OCCUPATIONAL DISEASE, HER CLAIM COULD NOT YET HAVE BEEN BARRED.

THIS ERROR IS HARMLESS HOWEVER, SINCE THE REFEREE CORRECTLY CONCLUDED THAT THERE WAS NO MEDICAL CAUSAL CONNECTION SHOWN BETWEEN HER OCCUPATIONAL ACTIVITIES AND HER DISABILITY. LACKING THIS FUNDAMENTAL ELEMENT OF COMPENSABILITY, THE DENIAL OF CLAIMANT'S CLAIM MUST BE AFFIRMED IN THIS CASE AS WELL.

ORDER

THE ORDER OF THE REFEREE IN WCB CASE NO. 74-1379, DATED SEPTEMBER 26, 1974, IS HEREBY AFFIRMED.

THE ORDER OF THE REFEREE IN WCB CASE NO. 74-1380 IS HEREBY AFFIRMED.

WCB CASE NO. 73-3751 APRIL 28, 1975

S. WAYNE RATTY, CLAIMANT

JOEL B. REEDER, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

THIS IS A DENIED HEART ATTACK CASE. THE REFEREE AFFIRMED THE DENIAL.

CLAIMANT, A 44 YEAR OLD BEER AND WINE DRIVER SALESMAN, SUFFERED A HEART ATTACK AT 8 A.M., MAY 16, 1973, WHILE MAKING A WINE ORDER AND LOADING A BEER TRUCK. THE LOADING OF THE TRUCK WAS ROUTINE WORK. A GENERAL PRACTITIONER RELATED THE HEART ATTACK TO HIS WORK. AN INTERNIST DID NOT RELATE THE HEART ATTACK TO CLAIMANT'S WORK.

A DEPOSITION BY THE ATTENDING GENERAL PRACTITIONER WAS ADMITTED AFTER THE HEARING AS CLAIMANT'S EXHIBIT AND THE TWO PAGE ARTICLE ON HEART DISEASE WAS ADMITTED AS DEFENDENT'S EXHIBIT. NO OBJECTIONS WERE MADE TO THE ADMISSION OF THE TWO PAGE ARTICLE INTRODUCED BY THE STATE ACCIDENT INSURANCE FUND. ADMISSION OF THE TWO PAGE ARTICLE IS NOT REVERSIBLE ERROR.

ON DE NOVO REVIEW THE BOARD CONCURS WITH THE FINDINGS OF THE REFEREE THAT CLAIMANT'S WORK AND HEART ATTACK ARE NOT CAUSALLY CONNECTED.

ORDER

THE ORDER OF THE REFEREE DATED OCTOBER 4, 1974 IS AFFIRMED.

WCB CASE NO. 73-232 APRIL 28, 1975

BETTY JANE STEVENS, CLAIMANT

NICK CHAIVOE, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

THE STATE ACCIDENT INSURANCE FUND HAS MOVED THE BOARD TO REMAND THIS MATTER TO THE REFEREE FOR RECONSIDERATION OF HIS ORDER WHICH ALLOWED CLAIMANT 208 DEGREES FOR UNSCHEDULED DISABILITY RESULTING FROM A 1965 INJURY WHEN THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY WAS 192 DEGREES.

SINCE THE CLAIMANT HAS REQUESTED BOARD REVIEW WE SEE NO NECESSITY OF REMANDING THE CASE TO THE REFEREE. THE BOARD HAS THE AUTHORITY TO CURE SUCH DEFECT IN ITS REVIEW AND ORDER.

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

WCB CASE NO. 74-2198 APRIL 28, 1975

ERNEST FIELDS, CLAIMANT

DEL PARKS, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

THIS MATTER INVOLVES THE EXTENT OF PERMANENT PARTIAL DISABILITY ARISING OUT OF CLAIMANT'S COMPENSABLE HEART ATTACK. THE DETERMINATION ORDER AWARDED CLAIMANT 20 PER CENT (64 DEGREES) UNSCHEDULED DISABILITY WHICH WAS AFFIRMED BY THE REFEREE.

CLAIMANT, NOW 65 YEARS OLD, WAS A BUCKER AND FALLER WHEN HE SUFFERED A HEART ATTACK JULY 7, 1972. THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM AND AFTER A HEARING, THE CLAIM WAS HELD TO BE COMPENSABLE.

CLAIMANT HAS MADE A GOOD RECOVERY. THE MEDICAL EVIDENCE REVEALS THE DOCTOR'S OPINION THAT CLAIMANT WAS ESSENTIALLY NORMAL CONSIDERING THE CLAIMANT'S AGE AND CONDITION PRIOR TO THE HEART ATTACK AND THAT PRESENTLY HE IS CLASSIFIED AS A CLASS I ON THE AMERICAN HEART ASSOCIATION DISABILITY SCALE.

IT IS APPARENT THAT CLAIMANT'S EARNING CAPACITY IN THE GENERAL LABOR FIELD AND ESPECIALLY IN HIS OCCUPATION AS A LOGGER IS IMPAIRED FROM THE INDUSTRIAL HEART ATTACK.

ORDER

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

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 400 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-1025 APRIL 29, 1975

ERVIN J. BUERKE, CLAIMANT

JAMES K. GARDNER, CLAIMANT'S ATTY.
JAMES P. CRONAN, JR., DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE ISSUE IS WHETHER OR NOT CLAIMANT'S CARDIAL VASCULAR ACCIDENT (STROKE) AND DEATH WAS AGGRAVATED OR CAUSED BY HIS WORK ACTIVITY. THE STATE ACCIDENT INSURANCE FUND DENIED BOTH CLAIMANT'S CLAIM AND THE BENEFICIARIES' CLAIM. THE REFEREE ORDERED THE STATE ACCIDENT INSURANCE FUND TO ACCEPT BOTH.

CLAIMANT, A 48 YEAR OLD SELF-EMPLOYED FURNACE AND SHEET METAL BUSINESSMAN, WHO HAD ELECTED WORKMEN'S COMPENSATION COVERAGE, WENT ON A SERVICE CALL ARRIVING AT THE CUSTOMER'S HOUSE AT ABOUT 1.30 P.M., NOVEMBER 26, 1973. HE WAS OBSERVED

WORKING STRENUOUSLY ON A MALFUNCTIONING GAS HEATER FOR ABOUT ONE-HALF HOUR, AT WHICH TIME HE LEFT THE HOUSE WITH A FLASHLIGHT IN HIS HAND. HE WAS FOUND AT ABOUT 7:30 P.M. ABOUT HALFWAY BETWEEN THE BACKDOOR AND THE OPENING OF A CRAWL SPACE UNDER THE HOUSE AND WAS TAKEN TO THE HOSPITAL WHERE THE STROKE WAS DIAGNOSED. CLAIMANT DIED JANUARY 30, 1974.

CONFLICTING MEDICAL EVIDENCE AND OPINIONS ARE IN THE RECORD. CLAIMANT'S ATTENDING INTERNIST AND AN ATTENDING CARDIOLOGIST WERE OF THE OPINION, WHICH THEY STATED WAS CONFIRMED BY THE AUTOPSY, THAT CLAIMANT'S STROKE WAS CAUSED BY A BLOOD CLOT DISLODGED FROM THE HEART WHICH HAD BEEN DAMAGED BY A MYOCARDIAL INFARCTION, AND THAT CLAIMANT'S STRENUOUS WORK ACTIVITY WAS RESPONSIBLE FOR DISLODGING THE CLOT CAUSING THE STROKE AND ULTIMATELY THE DEATH. THE BOARD FINDS THESE OPINIONS PERSUASIVE.

THE BOARD CONCURS WITH THE FINDINGS OF THE REFEREE THAT CLAIMANT'S STROKE AND DEATH AROSE OUT OF AND WERE CAUSED BY HIS WORK ACTIVITY.

ORDER

THE ORDER OF THE REFEREE, DATED JULY 24, 1974, IS AFFIRMED.

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

WCB CASE NO. 74-405 APRIL 29, 1975

ED BEA, CLAIMANT

ALLEN G. OWEN, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
CROSS APPEAL BY SAIF

A REFEREE'S ORDER IN THIS MATTER ISSUED AUGUST 29, 1974. HIS AMENDED ORDER ISSUED SEPTEMBER 27, 1974. TWO DAYS PRIOR, ON SEPTEMBER 25 AND UNAWARE OF THE AMENDED ORDER, CLAIMANT'S REQUESTED BOARD REVIEW OF THE REFEREE'S FIRST ORDER. WHEN THE STATE ACCIDENT INSURANCE FUND PAID THE MEDICAL BILLS IN QUESTION, THE CLAIMANT WITHDREW HIS REQUEST FOR REVIEW BUT A CROSS APPEAL FILED BY THE STATE ACCIDENT INSURANCE FUND WAS LEFT PENDING.

THE ISSUE PRESENTED TO THE BOARD ON REVIEW IS WHETHER THE REFEREE HAD LOST JURISDICTION BY VIRTUE OF FILING OF A REQUEST FOR REVIEW AND THUS, WHETHER THE REFEREE'S AMENDED ORDER OF SEPTEMBER 27, 1974, IS VALID.

THE BOARD FINDS THE QUESTIONS ON REVIEW ARE NOW MOOT SINCE THE BILLS HAVE BEEN PAID BY THE STATE ACCIDENT INSURANCE FUND AND CONCLUDES THAT THE FUND'S CROSS-REQUEST FOR REVIEW SHOULD THEREFORE BE DISMISSED.

ORDER

THIS MATTER IS HEREBY DISMISSED.

WCB CASE NO. 74-1244 APRIL 29, 1975

CAROL A. DENNY, CLAIMANT

GREEN, GRISWOLD, AND PIPPIN, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH INCREASED CLAIMANT'S AWARD OF PERMANENT PARTIAL DISABILITY FROM 10 PER CENT UNSCHEDULED LOW BACK DISABILITY TO 25 PER CENT OF THE MAXIMUM FOR UNSCHEDULED DISABILITY.

CLAIMANT WAS EMPLOYED AS A NURSE'S AIDE AT ST. VINCENT'S HOSPITAL, WHERE IN OCTOBER OF 1972, SHE SUSTAINED A COMPENSABLE LOW BACK INJURY DIAGNOSED AS A LOW BACK STRAIN WITH SCIATICA, SUPERIMPOSED ON A CONGENITAL ANOMALY OF THE SPINE. MEDICAL TESTIMONY INDICATES THAT CLAIMANT SHOULD NOT RETURN TO A NURSING CAREER OR TO ANY JOB REQUIRING HEAVY LIFTING, BENDING, STOOPING OR TWISTING.

ONE CANNOT DISASSOCIATE ABILITIES IN DISCUSSING DISABILITIES. CLAIMANT'S ABILITIES, INCLUDING HER AGE, INTELLIGENCE AND TRAINABILITY, SUGGEST THERE IS LITTLE REASON SHE CANNOT RESUME WORK IN ONE OF THE MANY FIELDS OF CLERICAL AND SEDENTARY EMPLOYMENT NOW AVAILABLE TO WOMEN.

SHE MUST, OF COURSE, MAKE THE ADJUSTMENT AND EVEN IF SHE WERE MORE MOTIVATED TO RETURN TO WORK THAN SHE APPEARS TO BE, THIS WILL TAKE TIME. WE THEREFORE CONCLUDE THAT THE AWARD ALLOWED BY THE REFEREE SHOULD BE AFFIRMED. GREEN V. SIAC (UNDERSCORED), 197 OR 160 (1953).

ORDER

THE ORDER OF THE REFEREE, DATED OCTOBER 25, 1974, IS 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—4017 APRIL 29, 1975

BRINGFRIED RATTAY, CLAIMANT

SCHOUBE, CAVANAUGH AND DAWSON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

THE ISSUES ARE THE EXTENT OF SCHEDULED PERMANENT DISABILITY TO HIS RIGHT LEG AND WHETHER OR NOT CLAIMANT'S BACK DISABILITY WAS CAUSED BY THE INDUSTRIAL INJURY. THE DETERMINATION ORDER AWARDED CLAIMANT 5 PER CENT (7.5 DEGREES) SCHEDULED LOSS OF THE RIGHT LEG. THE REFEREE INCREASED THE AWARD TO A TOTAL OF 15 PER CENT (22.5 DEGREES) SCHEDULED LOSS OF THE RIGHT LEG AND DENIED CLAIMANT'S ALLEGED BACK PROBLEMS ARE CONNECTED WITH THE INDUSTRIAL ACCIDENT.

CLAIMANT, A 44 YEAR OLD WELDER, RECEIVED AN INDUSTRIAL INJURY NOVEMBER 22, 1971, TO HIS RIGHT THIGH WHEN A LARGE METAL PANEL FELL AGAINST HIM. THE MEDICAL EVIDENCE IN THE RECORD SHOWS THAT THE AWARD OF 15 PER CENT SCHEDULED LOSS OF FUNCTION OF THE RIGHT LEG ADEQUATELY COMPENSATES THE CLAIMANT.

THE BOARD ALSO CONCURS WITH THE FINDING OF THE REFEREE THAT CLAIMANT HAS NOT MET HIS BURDEN OF PROOF THAT HIS ALLEGED BACK PROBLEMS WERE PRECIPITATED BY THE INDUSTRIAL ACCIDENT.

ORDER

THE ORDER OF THE REFEREE, DATED OCTOBER 9, 1974, IS AFFIRMED.

WCB CASE NO. 74—1875 APRIL 29, 1975

MORRIS A. WORK, CLAIMANT

ANDERSON, FULTON, LAVIS AND VAN THIEL, CLAIMANT'S ATTYS.
DARYL L. NELSON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

THIS MATTER INVOLVES A DENIED CLAIM OF AGGRAVATION. THE REFEREE HELD THAT THE MEDICAL REPORTS COULD NOT BE CONSTRUED AS A WRITTEN OPINION FROM A PHYSICIAN THAT THERE ARE REASONABLE GROUNDS FOR A CLAIM.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THIS FINDING.

ORDER

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

WCB CASE NO. 74—574 APRIL 29, 1975

MYRNA LEE REED, CLAIMANT

JERRY GASTINEAU, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON OR ABOUT APRIL 17, 1975, THE BOARD ISSUED AN ORDER ON REVIEW IN THE ABOVE-ENTITLED MATTER.

THE ORDER INADVERTENTLY NEGLECTED TO INFORM THE PARTIES OF THE DATE OF ITS ISSUANCE. IN ORDER TO GIVE ALL PARTIES THE BENEFIT OF NOTICE OF THE DATE THE ORDER WAS ENTERED, FOR THE PURPOSES OF STATUTORY APPEAL RIGHTS, THE ORDER REFERRED TO IS HEREBY RATIFIED AND REPUBLISHED AS THE ORDER OF THE BOARD ENTERED ON THE DATE SET FORTH BELOW.

WCB CASE NO. 73—4018 AND 73—4019 AND 73—4020 APRIL 29, 1975

DAVID VERNE LEWIS, CLAIMANT

DYE AND OLSON, CLAIMANT'S ATTYS.
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

THIS MATTER INVOLVES WHETHER OR NOT CLAIMANT HAS SUSTAINED A NEW INJURY OR A CLAIM FOR AGGRAVATION. THE REFEREE FOUND THAT THE CLAIMANT HAD SUSTAINED A NEW INJURY IN NOVEMBER, 1973, AND ORDERED THE EMPLOYER AT THAT TIME, FISCHER AND PORTER, TO ACCEPT THE CLAIM AND ASSESSED A 20 PER CENT PENALTY ON THE EMPLOYER FOR COMPENSATION DUE CLAIMANT FROM THE DATE OF INJURY TO THE DATE OF DENIAL BY THIS EMPLOYER.

CLAIMANT RECEIVED HIS FIRST INDUSTRIAL BACK INJURY ON JUNE 3, 1969, WHEN HE WAS 19 YEARS OLD. HE HAD TWO SUBSEQUENT BACK INJURIES, ONE ON MARCH 30, 1972, AND ANOTHER SEPTEMBER 18, 1972. HE UNDERWENT A LAMINECTOMY AND HIS CLAIM WAS CLOSED WITH AN AWARD OF 32 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. ALL OF THESE THREE CLAIMS WERE COVERED BY THE STATE ACCIDENT INSURANCE FUND.

IN OCTOBER, 1973, CLAIMANT BEGAN WORK FOR FISCHER AND PORTER AS AN APPRENTICE STEAMFITTER. CLAIMANT'S JOB INVOLVED DRILLING ONE-HALF INCH HOLES IN CEMENT FLOORS, WALLS AND CEILINGS USING AN ELECTRIC HAMMER WEIGHING 28 POUNDS.

THE BOARD CONCURS WITH THE FINDING OF THE REFEREE THAT CLAIMANT HAS SUSTAINED A NEW INJURY AND NOT AN AGGRAVATION OF HIS PREVIOUS INDUSTRIAL INJURIES.

THE REFEREE'S OPINION AND ORDER STATES ON PAGE 1 THAT WCB CASE NO. 73-4018 OCCURRED OCTOBER 30, 1972. THE CORRECT DATE OF THIS INDUSTRIAL INJURY WAS MARCH 30, 1972.

ORDER

THE ORDER OF THE REFEREE, DATED SEPTEMBER 24, 1974, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 100 DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74—9 APRIL 30, 1975

HUGH FARMER, CLAIMANT

KEITH D. SKELTON, CLAIMANT'S ATTY.
DAVIES, BIGGS, STRAYER, STOEL AND BOLEY,
DEFENSE ATTYS.

ON OR ABOUT APRIL 17, 1975, THE BOARD ISSUED AN ORDER ON REVIEW IN THE ABOVE-ENTITLED MATTER.

THE ORDER INADVERTENTLY NEGLECTED TO INFORM THE PARTIES OF THE DATE OF ITS ISSUANCE. SUBSEQUENTLY ON APRIL 28, 1975, COPIES OF THE ORDER WERE POST DATED APRIL 17, 1975 AND MAILED TO THE PARTIES.

IN ORDER TO GIVE ALL PARTIES THE BENEFIT OF NOTICE OF THE DATE THE ORDER WAS ENTERED, FOR THE PURPOSES OF STATUTORY APPEAL RIGHTS, THE ORDER REFERRED TO IS HEREBY RATIFIED AND REPUBLISHED AS THE ORDER OF THE BOARD ENTERED ON THE DATE SET FORTH BELOW.

WCB CASE NO. 74—2722 APRIL 30, 1975

RICHARD DAVENPORT, CLAIMANT

JAMES W. POWERS, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON OR ABOUT APRIL 17, 1975, THE BOARD ISSUED AN ORDER ON REVIEW IN THE ABOVE-ENTITLED MATTER.

THE ORDER INADVERTENTLY NEGLECTED TO INFORM THE PARTIES OF THE DATE OF ITS ISSUANCE. IN ORDER TO GIVE ALL PARTIES THE BENEFIT OF NOTICE OF THE DATE THE ORDER WAS ENTERED, FOR THE PURPOSES OF STATUTORY APPEAL RIGHTS, THE ORDER REFERRED TO IS HEREBY RATIFIED AND REPUBLISHED AS THE ORDER OF THE BOARD ENTERED ON THE DATE SET FORTH BELOW.

SAIF CLAIM NO. BC 38117 MAY 1, 1975

CALVIN SUTTON, CLAIMANT

SAHLSTROM, LOMBARD, STARR AND VINSON,
CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

ON FEBRUARY 11, 1975 THE ABOVE-NAMED CLAIMANT PETITIONED THE BOARD FOR AN ORDER, PURSUANT TO THE AUTHORITY VESTED IN IT BY ORS 656.278, AWARDING HIM COMPENSATION FOR PERMANENT TOTAL DISABILITY.

CLAIMANT WAS COMPENSABLY INJURED IN 1966 AND HIS CLAIM WAS FIRST CLOSED ON SEPTEMBER 18, 1967 WITH AN AWARD OF PERMANENT PARTIAL DISABILITY. AFTER VARIOUS ADMINISTRATIVE AND CIRCUIT COURT PROCEEDINGS THE EXTENT OF THAT DISABILITY WAS FIXED AT 25 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

ON SEPTEMBER 14, 1972 CLAIMANT FILED A CLAIM OF AGGRAVATION. A REFEREE FOUND THAT THE SUPPORTING MEDICAL REPORT WAS DEFICIENT BUT CONTINUED THE HEARING TO ALLOW CLAIMANT TO SUBMIT PROPER MEDICAL VERIFICATION. THEREAFTER THE AGGRAVATION CLAIM WAS MADE OUT AND THE REFEREE CONCLUDED FROM THE EVIDENCE PRESENTED THAT CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED AND ENTERED HIS ORDER ACCORDINGLY. THE AWARD WAS AFFIRMED BY THE BOARD ON REVIEW BUT ON APPEAL TO THE CIRCUIT COURT BY THE FUND, THE COURT FOUND THE CONTINUANCE ALLOWED BY THE FUND THE CONTINUANCE ALLOWED BY THE REFEREE TO SUBMIT A FURTHER MEDICAL VERIFICATION WAS IMPROPER AND THEREUPON REVERSED THE ORDERS OF THE REFEREE AND BOARD ON THE GROUNDS THAT NO JURISDICTION HAD BEEN ACQUIRED TO ENTER SUCH ORDERS.

THE FIVE YEAR AGGRAVATION PERIOD EXPIRED IN THE MEANTIME LEAVING CLAIMANT ONLY OWN MOTION RELIEF WHICH HE HAS REQUESTED AS PREVIOUSLY MENTIONED.

ON MARCH 14, 1975 THE BOARD ADVISED CLAIMANT'S ATTORNEY AND THE STATE ACCIDENT INSURANCE FUND THAT IT WOULD REEVALUATE THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY AND GRANT TO HIM AN AWARD OF COMPENSATION COMMENSURATE WITH HIS PERMANENT DISABILITY. IT CONCLUDED HOWEVER, THAT THE PARTIES OUGHT TO BE GIVEN AN OPPORTUNITY TO ARGUE THE MERITS OF THAT ISSUE SINCE THEIR ARGUMENTS TO THE REFEREE, BOARD AND THE CIRCUIT COURT WERE PRIMARILY ADDRESSED TO THE PROCEDURAL ISSUE FINALLY RESOLVED AT THE CIRCUIT COURT.

CLAIMANT, THROUGH HIS ATTORNEY, DAVID A. VINSON, SUBMITTED A MEMORANDUM AS REQUESTED. THE STATE ACCIDENT INSURANCE FUND DID NOT RESPOND.

WE HAVE REEXAMINED THE RECORD IN LIGHT OF THE ARGUMENTS PRESENTED AND AGAIN CONCLUDE THAT THE FACTS ESTABLISH THAT CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED AND THAT HE SHOULD BE COMPENSATED ACCORDINGLY.

ORDER

CLAIMANT IS HEREBY GRANTED AN AWARD OF COMPENSATION FOR PERMANENT TOTAL DISABILITY, SAID BENEFITS TO BEGIN ON, AND RUN FROM, AUGUST 29, 1972.

CLAIMANT'S ATTORNEY, DAVID VINSON, IS HEREBY AWARDED 25 PER CENT OF THE COMPENSATION GRANTED HEREBY, PAYABLE FROM SAID COMPENSATION, BUT IN NO EVENT SHALL THE FEE GRANTED HEREUNDER, WHEN COMBINED WITH FEES ALREADY RECEIVED PURSUANT TO THE ORDER OF THE REFEREE, WILLIAM J. FOSTER, DATED AUGUST 30, 1973, EXCEED THE SUM OF 2,000 DOLLARS.

WCB CASE NO. 74-2072 MAY 1, 1975

THE BENEFICIARIES OF
LOIS M. CARSON, DECEASED

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

THIS MATTER INVOLVES WHETHER OR NOT DECEDENT'S DEATH AROSE OUT OF AND IN THE COURSE OF HER EMPLOYMENT. THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM AND THE REFEREE AFFIRMED THE DENIAL.

DECEDENT, A 25 YEAR OLD MASSEUSE, DIED ON FEBRUARY 18, 1974, OF SEVERE BURNS RECEIVED AS A RESULT OF A FIRE BOMBING WHILE SHE WAS SLEEPING AT A PORTLAND MASSAGE PARLOR AT ABOUT 6.30 A.M. THE DECEDENT DIED AS A RESULT OF THE BURNS. THE REFEREE'S ORDER RELATES THE FACTS IN DETAIL AND THEY NEED NOT BE FURTHER REPEATED.

THE BOARD CONCURS WITH THE FINDING OF THE REFEREE THAT THE DECEDENT'S DEATH DID NOT ARISE OUT OF OR OCCUR IN THE COURSE OF HER EMPLOYMENT.

ORDER

THE ORDER OF THE REFEREE, DATED NOVEMBER 6, 1974, IS AFFIRMED.

CLAIM NO. D-53-155963 MAY 1, 1975

JAMES NIELSEN, CLAIMANT

THIS MATTER INVOLVES A WORKMAN WHO WAS INJURED JUNE 30, 1967. ALTHOUGH NEITHER THE BOARD NOR THE CARRIER HAD RECORD OF THE CLAIM, UPON REQUEST MADE BY THE WORKMAN, THE CARRIER VOLUNTARILY REOPENED THE CLAIM ON MAY 22, 1974.

CLAIMANT UNDERWENT SURGERY ON JUNE 25, 1974 FOR A RUPTURED MEDIAL MENISCUS. CLAIMANT'S CONDITION IS NOW STATIONARY AND IT HAS BEEN DETERMINED CLAIMANT HAS SUSTAINED PERMANENT PARTIAL DISABILITY EQUAL TO 15 PER CENT OF THE LEFT LEG.

ORDER

THE BOARD FINDS AND ORDERS THAT CLAIMANT IS ENTITLED TO COMPENSATION FOR TEMPORARY TOTAL DISABILITY INCLUSIVELY FROM JUNE 22, 1974 THROUGH AUGUST 20, 1974 AND THE BOARD ORDERS THE NAMED INSURANCE COMPANY TO PAY THE CLAIMANT AN AWARD OF COMPENSATION EQUAL TO 16.5 DEGREES FOR 15 PER CENT LOSS OF THE LEFT LEG.

WCB CASE NO. 74-1280 MAY 1, 1975

EVANGELINA FERCHO, CLAIMANT

GARY PETERSON, CLAIMANT'S ATTY.
SCOTT KELLEY, DEFENSE ATTY.

ON APRIL 1, 1975, THE ABOVE NAMED CLAIMANT REQUESTED BOARD REVIEW OF A REFEREE'S ORDER DATED MARCH 12, 1975.

THE CLAIMANT AND THE EMPLOYER'S WORKMEN'S COMPENSATION CARRIER HAVE NOW AGREED TO SETTLE AND COMPROMISE THEIR DISPUTE IN ACCORDANCE WITH THE TERMS OF THE STIPULATED SETTLEMENT ATTACHED HERETO, MARKED EXHIBIT A, WHEREBY CLAIMANT IS TO RECEIVE AN ADDITIONAL 30 DEGREES OF THE MAXIMUM ALLOWABLE FOR LOSS OF THE RIGHT HAND, OVER AND ABOVE ALL PREVIOUS AWARDS OF PERMANENT PARTIAL DISABILITY HERETOFORE GRANTED CLAIMANT, BRINGING HER TOTAL AWARD FOR PERMANENT PARTIAL DISABILITY TO 75 DEGREES FOR PERMANENT PARTIAL LOSS OF THE RIGHT HAND.

CLAIMANT'S COUNSEL IS TO BE AWARDED AS AN ATTORNEY FEE, A SUM EQUAL TO 25 PER CENT OF THE AMOUNT MADE PAYABLE BY THIS ORDER, NOT TO EXCEED 2,000 DOLLARS.

THE BOARD BEING NOW FULLY ADVISED, CONCLUDES THE AGREEMENT IS FAIR AND EQUITABLE TO BOTH PARTIES AND HEREBY APPROVES THE STIPULATION SETTLEMENT AND ORDERS IT EXECUTED ACCORDING TO ITS TERMS.

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

WCB CASE NO. 74-2134 AND 74-2135 MAY 1, 1975

CLARENCE YOST, CLAIMANT

SANFORD KOWITT, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

THIS MATTER INVOLVES AN OCCUPATIONAL DISEASE CLAIM FOR SILICOSIS. THE STATE ACCIDENT INSURANCE FUND WAS THE CARRIER FOR THIS EMPLOYER UNTIL JUNE 30, 1970. THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM AND ITS DENIAL WAS AFFIRMED BY THE REFEREE. EMPLOYEE BENEFITS INSURANCE WAS THE CARRIER AFTER JUNE 30, 1970. EMPLOYEE BENEFITS INSURANCE DENIED THE CLAIM - HOWEVER, THE REFEREE ORDERED EMPLOYEE BENEFITS INSURANCE TO ACCEPT THE CLAIM.

CLAIMANT WORKED FOR ESCO CORPORATION FROM 1946 TO NOVEMBER 7, 1973. ON NOVEMBER 15, 1973, A BIOPSY OF HIS LUNGS REVEALED THAT HE HAD SILICOSIS WHICH WAS OCCUPATIONALLY RELATED. CLAIMANT DIED JANUARY 7, 1975, AT THE AGE OF 59.

CLAIMANT WORKED IN VARIOUS FOUNDRY OPERATIONS UNTIL DECEMBER OF 1969 INVOLVING EXTENSIVE EXPOSURE TO SILICA DUST. HE WAS EMPLOYED IN THE TOOL ROOM FROM DECEMBER, 1969, INTO JULY OF

1970 AND FOR THE LAST THREE YEARS HE WORKED IN A WAREHOUSE WHERE THERE WAS THE LESSENED EXPOSURE TO THE SILICA DUST. CLAIMANT DID HAVE SOME EXPOSURE TO THE SILICA DUST IN HIS WORK DURING THE LAST THREE YEARS.

ALTHOUGH THE CLAIMANT WORKED FOR THE SAME EMPLOYER FOR 27 YEARS, THE WORKMEN'S COMPENSATION CARRIERS CHANGED FROM THE STATE ACCIDENT INSURANCE FUND TO EMPLOYEE BENEFITS INSURANCE ON JULY 1, 1970. AS TO THE CARRIER, EMPLOYEE BENEFITS INSURANCE, IT TOOK THE CLAIMANT AS IT FOUND HIM. AS OF JULY 1, 1970, CLAIMANT'S LUNGS HAD BEEN AFFECTED BY THE SILICA DUST. THE CONTINUED EXPOSURE OF THE CLAIMANT TO SILICA DUST AFTER JULY 1, 1970, AGGRAVATED THE PREEXISTING CONDITION.

ON DE NOVO REVIEW, THE BOARD FINDS THAT THE CLAIMANT HAD SOME EXPOSURE TO THE SILICA DUST AFTER JUNE 30, 1970, AND THAT EXPOSURE AGGRAVATED THE CLAIMANT'S PREEXISTING LUNG CONDITION. THUS, EMPLOYEE BENEFITS INSURANCE, THE CARRIER FOR THIS EMPLOYER AFTER JUNE 30, 1970, WAS THE CARRIER WHO WAS ON THE RISK WHEN THE DISEASE RESULTED IN THE DISABILITY.

ORDER

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

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 500 DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 73-3926 MAY 1, 1975

M. JEAN SWEETEN, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND 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 FOR A CONDITION DIAGNOSED AS A LUMBAR FACET SYNDROME.

THE CLAIMANT HAS CROSS APPEALED CONTENDING SHE IS ENTITLED TO PENALTIES AND ATTORNEY FEES AS A RESULT OF THE FUND'S UNREASONABLE DENIAL OF HER CLAIM FOR AGGRAVATION.

WE HAVE EXAMINED THE RECORD AND CONCUR WITH THE REFEREE'S FINDINGS AND OPINION RESPECTING BOTH ISSUES. HIS OPINION AND ORDER SHOULD BE AFFIRMED AS THE ORDER OF THE BOARD.

ORDER

THE ORDER OF THE REFEREE, DATED OCTOBER 17, 1974, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 150 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 73-2915 MAY 1, 1975

CLARENCE QUICK, CLAIMANT

FRANKLIN, BENNETT, OFELT AND JOLLES,
CLAIMANT'S ATTYS.
DAVIES, BIGGS, STRAYER, STOEL, AND BOLEY,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT
CROSS-APPEAL BY EMPLOYER

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH INCREASED HIS UNSCHEDULED PERMANENT DISABILITY AWARD FROM 20 TO 60 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

THE EMPLOYER HAS ALSO REQUESTED BOARD REVIEW SEEKING REINSTATEMENT OF THE DETERMINATION ORDER.

CLAIMANT IS A NOW 58 YEAR OLD MAN WHO SUFFERED AN INJURY ON MAY 18, 1972 WHILE EMPLOYED AS A RIGGER AT THE TROJAN PLANT CONSTRUCTION SITE IN RAINIER, OREGON. THE INJURY OCCURRED WHEN A BEAM BEING LIFTED BY A CRANE SWUNG AND CAUGHT HIM AT THE LEVEL OF THE PELVIS AGAINST A CRANE BRACKET.

INITIAL X-RAYS WERE NEGATIVE FOR BONY INJURY AND THE INITIAL DIAGNOSIS WAS A HEMOTOMA OF THE SACRAL AREA. PAIN PERSISTED IN THE RIGHT SACRUM HOWEVER, AND AN ATTEMPT TO RETURN TO LIGHT WORK WAS UNSUCCESSFUL AND HE HAS NOT WORKED SINCE JUNE 13, 1972.

HE WAS PHYSICALLY AND PSYCHOLOGICALLY EVALUATED AT THE BOARD'S DISABILITY PREVENTION DIVISION. HE WAS FOUND TO HAVE PSYCHOPATHOLOGY RELATED TO HIS FEAR OF AN INABILITY TO RETURN TO HIS LIFETIME OCCUPATION. PHYSICALLY, EXPLORATORY SURGERY WAS SUGGESTED TO FIND AND HOPEFULLY CORRECT THE CAUSE OF A PERIPHERAL NEUROPATHY INVOLVING THE SCIATIC NERVE.

ON JANUARY 18, 1973, A LAMINECTOMY AT L4-5 AND L5-S1 WAS PERFORMED AT WHICH TIME SIGNIFICANT ADHESIONS OF THE DURAL SHEATH ON THE RIGHT SIDE WERE EXCISED AND THE NERVE ROOTS FREED. THE PROCEDURE PRODUCED SIGNIFICANT IMPROVEMENT AND HE CONVALESCED UNEVENTFULLY. HE WAS CONSIDERED MEDICALLY STATIONARY ON JUNE 21, 1973 BY HIS TREATING SURGEON AND THE CLAIM WAS CLOSED ON JULY 5, 1973 WITH AN AWARD OF 20 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED LOW BACK DISABILITY.

AT THE HEARING HELD ON JANUARY 30, 1974, CLAIMANT INDICATED THE JANUARY, 1973 SURGERY HAD NOT ULTIMATELY BEEN AS SUCCESSFUL AS THE INITIAL RESULTS HAD INDICATED. THE REFEREE CONCLUDED CLAIMANT SHOULD BE REEVALUATED AT THE DISABILITY PREVENTION DIVISION TO PROVIDE TIMELY INFORMATION CONCERNING CLAIMANT'S LOW BACK CONDITION AND ALSO FOR A MEDICAL REPORT CONCERNING COMPLAINTS OF DIZZINESS MADE BY THE CLAIMANT.

IN MARCH, 1974, CLAIMANT WAS REEXAMINED AT THE CENTER. THE

BACK EVALUATION CLINIC CONSIDERED THE LOSS FUNCTION OF CLAIMANT'S BACK DUE TO THE INJURY AS 'MILDLY MODERATE' BUT CONCLUDED HE WOULD BE UNABLE TO RETURN TO HIS FORMER EMPLOYMENT. THE DIZZY SPELLS WERE FOUND UNRELATED TO THE INJURY IN QUESTION AND CLAIMANT WAS EXAMINED PSYCHIATRICALLY BY DR. IRA PAVLY OF THE UNIVERSITY OF OREGON MEDICAL SCHOOL. HE FOUND THE CLAIMANT SO POORLY ADJUSTED TO THE INJURY EMOTIONALLY, THAT HE WAS TOTALLY UNABLE TO BE REGULARLY AND GAINFULLY EMPLOYED.

IN CLAIMANT'S BRIEF TO THE BOARD ON REVIEW, HE INFORMS THE BOARD THAT CLAIMANT HAS SINCE THE CLOSURE OF THE HEARING ON THIS MATTER, UNDERGONE FURTHER SURGERY AND HE SUGGESTS THAT THE BOARD OUGHT TO REMAND THE MATTER TO THE REFEREE FOR THE TAKING OF EVIDENCE CONCERNING THE OUTCOME OR THE EFFECT ON THE CLAIMANT'S CONDITION IF THE BOARD HAS ANY QUESTION AS TO THE CLAIMANT'S PRESENT PHYSICAL STATUS.

BECAUSE OF THE IMPORTANCE OF KNOWING THE REAL STATUS OF CLAIMANT'S PRESENT PHYSICAL IMPAIRMENTS, WE CONCLUDE THE REFEREE SHOULD CONSIDER THE IMPACT, IF ANY, THAT THIS SUBSEQUENT SURGERY HAS HAD ON CLAIMANT'S PHYSICAL AND EMOTIONAL CONDITION.

ORDER

IT IS HEREBY ORDERED THAT THIS MATTER BE, AND IT IS HEREBY, REMANDED TO THE REFEREE FOR RECEIPT OF EVIDENCE CONCERNING CLAIMANT'S SUBSEQUENT SURGERY AND FOR RECEIPT OF SUCH FURTHER EVIDENCE THAT THE PARTIES MAY WISH TO PRESENT. FOLLOWING RECEIPT OF SUCH EVIDENCE THE REFEREE SHALL CONSIDER THE EVIDENCE AND ENTER AN ORDER IN ACCORDANCE WITH HIS FINDINGS.

IT IS HEREBY FURTHER ORDERED THAT THIS MATTER SHOULD BE, AND IT IS HEREBY, DISMISSED.

SAIF CLAIM NO. FOD 16740 MAY 1, 1975

LYLE G. NICHOLSON, CLAIMANT

ON APRIL 17, 1975, THE BOARD ISSUED AN OWN MOTION ORDER CONCERNING THE ABOVE-NAMED CLAIMANT.

BEFORE THE ENTRY OF AN ORDER, THE MATTER HAD BEEN SUBJECTED TO AN OWN MOTION HEARING AT WHICH THE CLAIMANT WAS REPRESENTED BY DONALD WILSON OF POZZI, WILSON AND ATCHISON, ATTORNEYS AT LAW. THE ORDER OF APRIL 17 NEGLECTED TO AWARD AN ATTORNEY'S FEE TO CLAIMANT'S ATTORNEY FOR HIS SERVICES AND A SUPPLEMENTAL ORDER SHOULD BE ISSUED GRANTING MR. WILSON 25 PER CENT OF ANY TEMPORARY DISABILITY BENEFITS WHICH MAY BE AWARDED BY THE ORDER OF THE STATE ACCIDENT INSURANCE FUND NOT TO EXCEED 500 DOLLARS, AND IN ADDITION, 25 PER CENT OF ANY PERMANENT DISABILITY AWARDED BY THE ORDER OF THE STATE ACCIDENT INSURANCE FUND. THE TOTAL FEE TO BE ALLOWED FOR THE CLAIMANT'S SERVICES IN THIS MATTER SHALL NOT, HOWEVER, EXCEED 2,000 DOLLARS.

IT IS SO ORDERED.

WCB CASE NO. 74-1441 MAY 5, 1975

CLARENCE BRISBIN, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT 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 SCHEDULED PERMANENT PARTIAL DISABILITY OF 40 PER CENT (60 DEGREES) LOSS OF LEFT LEG. THE REFEREE AFFIRMED THIS SCHEDULED DISABILITY AWARD AND AWARDED CLAIMANT AN ADDITIONAL AWARD OF 20 PER CENT (64 DEGREES) UNSCHEDULED LOW BACK DISABILITY. CLAIMANT REQUESTS BOARD REVIEW CONTENDING THAT HE IS PERMANENTLY TOTALLY DISABLED.

CLAIMANT, THEN A 61 YEAR OLD CARPENTER, RECEIVED AN INDUSTRIAL INJURY TO HIS LEFT LEG ON JUNE 4, 1973. AFTER SURGERY TO THE LEFT KNEE AND AS A RESULT OF BEING ON CRUTCHES, CLAIMANT'S LOW BACK SYMPTOMS APPEARED WHICH WERE ULTIMATELY RATED AS MILD. CLAIMANT HAS RETIRED AND IS NOT SEEKING GAINFUL EMPLOYMENT.

THE BOARD CONCURS WITH THE FINDING OF THE REFEREE THAT THE CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED. THE BOARD ADOPTS THE REFEREE'S OPINION AND ORDER AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE, DATED OCTOBER 23, 1974, IS AFFIRMED.

WCB CASE NO. 74-731 MAY 5, 1975

GENE NICHOLAS, CLAIMANT

DYE AND OLSON, CLAIMANT'S ATTYS.
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
CROSS-APPEAL BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES THE EXTENT OF PERMANENT DISABILITY. CLAIMANT HAS BEEN AWARDED A TOTAL OF 80 PER CENT (256 DEGREES) UNSCHEDULED PERMANENT PARTIAL DISABILITY. CLAIMANT REQUESTS BOARD REVIEW CONTENDING HE IS PERMANENTLY TOTALLY DISABLED.

CLAIMANT WAS A 48 YEAR OLD MILLWRIGHT ON APRIL 7, 1969, WHEN HE RECEIVED AN INDUSTRIAL INJURY TO HIS BACK. THE RECORD IS WELL DOCUMENTED WITH MEDICAL REPORTS AND MEDICAL OPINIONS.

THE BOARD CONCURS THAT CLAIMANT HAS NOT ESTABLISHED A PRIMA FACIE CASE OF PERMANENT TOTAL DISABILITY. THE BOARD ALSO CONCURS THAT CLAIMANT'S MOTIVATION TO RETURN TO GAINFUL EMPLOYMENT PRECLUDES AN AWARD OF PERMANENT TOTAL DISABILITY.

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

ORDER

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

SAIF CLAIM NO. AC 118551 MAY 5, 1975

MARGARET ANDERSON, CLAIMANT

THIS MATTER INVOLVES AN INJURY SUSTAINED BY CLAIMANT MARCH 22, 1968, WHEN SHE SLIPPED AND FELL ON STAIRS AT HER PLACE OF EMPLOYMENT. THE CLAIM WAS CLOSED BY DETERMINATION ORDER DATED NOVEMBER 20, 1969, WITH APPROPRIATE TIME LOSS BUT NO AWARD FOR PERMANENT PARTIAL DISABILITY.

ALTHOUGH CLAIMANT RETURNED TO WORK, SHE CONTINUED TO HAVE PROBLEMS REQUIRING FREQUENT MEDICAL TREATMENT. THE STATE ACCIDENT INSURANCE FUND HAS NOW REQUESTED DETERMINATION ON THE QUESTION OF PERMANENT IMPAIRMENT. MEDICAL REPORTS SUBMITTED DIAGNOSE DEGENERATIVE DISC DISEASE, ROTARY SCOLIOSIS AND RIGHT SCIATIC NEUROPATHY. THE BOARD IS OF THE OPINION THAT CLAIMANT HAS SUSTAINED PERMANENT DISABILITY.

ORDER

THE BOARD THEREFORE ORDERS THE NAMED INSURANCE COMPANY TO PAY THE CLAIMANT AN AWARD OF COMPENSATION EQUAL TO 32 DEGREES FOR 10 PER CENT UNSCHEDULED DISABILITY RESULTING FROM THIS INJURY TO THE LOW BACK AND AN AWARD OF COMPENSATION EQUAL TO 15 DEGREES FOR 10 PER CENT LOSS OF THE RIGHT LEG.

SAIF CLAIM NO. AC 160725 MAY 5, 1975

MARGARET ANDERSON, CLAIMANT

THIS MATTER INVOLVES A LADY WHO WAS INJURED WHILE ENTERING AN ELEVATOR AS THE DOORS CLOSED CATCHING BOTH HER ARMS. THE INJURY OCCURRED DECEMBER 13, 1968. DR. GORDON TREATED CLAIMANT INITIALLY AND INDICATED THERE WOULD NOT BE PERMANENT IMPAIRMENT.

A REPORT DATED FEBRUARY 25, 1975, FROM ORTHOPEDIC SURGEONS INDICATE CLAIMANT STILL HAS PAIN AND SOME SWELLING. THE MATTER HAS NOW BEEN SUBMITTED TO THE EVALUATION DIVISION OF THE WORKMEN'S COMPENSATION BOARD. IT HAS BEEN DETERMINED THAT CLAIMANT HAS SUSTAINED NO PERMANENT PARTIAL DISABILITY AS A RESULT OF THIS INJURY.

ORDER

IT IS THEREFORE ORDERED THAT CLAIMANT'S CLAIM BE CLOSED WITH NO AWARD FOR PERMANENT PARTIAL DISABILITY.

WCB CASE NO. 74-3933-E MAY 5, 1975

PETER BUYAS, CLAIMANT

DAN O'LEARY, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.

THE STATE ACCIDENT INSURANCE FUND HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER FINDING IT, RATHER THAN EMPLOYEE BENEFITS INSURANCE, THE INSURER RESPONSIBLE FOR CLAIMANT'S PERMANENT TOTAL DISABILITY AWARD AND OTHER WORKMEN'S COMPENSATION BENEFITS.

IT HAS ALSO MOVED THE BOARD FOR AN ORDER RELIEVING IT OF THE NECESSITY OF OBEYING THE REFEREE'S ORDER PENDING REVIEW, CONTENDING IT WILL BE IRREPARABLY DAMAGED BY COMPLIANCE.

ORS 656.313 PROVIDES THAT FILING OF A REQUEST FOR REVIEW 'SHALL NOT STAY PAYMENT OF COMPENSATION TO A CLAIMANT (UNDERSCORED)' (EMPHASIS SUPPLIED). WITH THE EXCEPTIONS OF CLAIMANT'S FUTURE PERMANENT TOTAL DISABILITY BENEFITS, THE ITEMS WHICH THE STATE ACCIDENT INSURANCE FUND OBJECTS TO PAYING APPEAR TO BE COSTS WHICH THE STATE ACCIDENT INSURANCE FUND HAS BEEN ORDERED TO REIMBURSE TO EMPLOYEE BENEFITS INSURANCE. THESE ITEMS, NOT CONSTITUTING PAYMENTS TO THE CLAIMANT, NEED NOT BE PAID PENDING REVIEW.

THE PERMANENT TOTAL DISABILITY PAYMENTS ORDERED MUST BE PAID BUT NO IRREPARABLE DAMAGE WILL RESULT FROM PAYMENT SINCE THE BOARD CAN ORDER REIMBURSEMENT OF THE FUND BY EMPLOYEE BENEFITS INSURANCE IF, UPON REVIEW, THE REFEREE IS FOUND TO BE IN ERROR.

FOR THESE REASONS, WE CONCLUDE THE FUND'S MOTION SHOULD BE DENIED.

IT IS SO ORDERED.

WCB CASE NO. 72-1007 AND 74-144 MAY 5, 1975

ORVILLE PARKER, CLAIMANT

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

CLAIMANT HAS REQUESTED THIS REVIEW FOR THE DETERMINATION OF WHETHER OR NOT THE STATE ACCIDENT INSURANCE FUND SHOULD PAY FOR CLAIMANT'S TRANSPORTATION FROM OREGON TO ST. LOUIS, MISSOURI, AND RETURN FOR CONSULTATION AND POSSIBLE TREATMENT BY DR. JACOB.

CLAIMANT, A 43 YEAR OLD MALE TRUCK DRIVER, SUFFERED A COMPENSABLE INJURY OF ACUTE CERVICAL STRAIN ON AUGUST 8, 1972, WHEN HE JUMPED FROM A TRUCK. CLAIMANT'S CONDITION WAS DIAGNOSED BY DR. PATRICK GOLDEN, M.D., NEUROLOGICAL SURGEON, AS -

'1. CHRONIC NECK STRAIN WITH PSYCHO-SOMATIC STRESS REACTION, CEPHALGIA.

2. PERSONALITY DISORDER WITH HYSTERICAL TRAIT.

3. CONDUCTIVE HEARING LOSS, TYMPANIC MEMBRANE DISEASE, BILATERAL.'

CLAIMANT COMPLAINS OF HEADACHES, CHRONIC CERVICAL DISCOMFORT AND LAPSE OF CONSCIOUSNESS.

CLAIMANT WAS REINJURED FEBRUARY 1, 1973, WHEN HE FELL FROM HIS TRUCK. CLAIMANT WAS REFERRED TO THE DISABILITY PREVENTION DIVISION IN MAY, 1973, WHERE THE DIAGNOSIS INCLUDED MODERATE CHRONIC CERVICAL STRAIN, SEVERE CONVERSION HYSTERIA, POST-CERVICAL FUSION STATUS, AND MODERATE FUNCTIONAL OVERLAY.

CLAIMANT WAS SEEN BY THE BACK EVALUATION CLINIC WHICH FOUND POST-FUSION WITH RESIDUAL NEUROPATHY AND A STRAIN OF THE CERVICAL SPINE. IT WAS FELT THAT HE SHOULD NOT RETURN TO HIS FORMER OCCUPATION BECAUSE OF HIS BLACKOUT SPELLS.

CLAIMANT WAS SEEN FOR PSYCHOLOGICAL EVALUATION BY DR. HICKMAN IN JULY, 1974.

CLAIMANT HAS CONSULTED WITH AND HAS BEEN EXAMINED AND TREATED BY A NUMBER OF OTHER DOCTORS SINCE 1967 ON PROBLEMS RELATING TO HIS NECK AND BACK.

AT THE HEARING, CLAIMANT COMPLAINED OF NECK, HEAD AND RIGHT ARM PAIN, WITH THE HEADACHES BEING SEVERE WITH ACTIVITY. HE COMPLAINED OF A DULL ACHE IN HIS NECK WHICH IS CONSTANT AND WHICH BECOMES WORSE WITH ACTIVITY. HE COMPLAINED OF LIMITED CAPACITY TO TURN HIS HEAD TO THE LEFT AND THAT EXTENDED SITTING AND DRIVING ACCELERATES THE SYMPTOMS. HE COMPLAINED OF NECK AND UPPER BACK MUSCLE SPASMS AND OF THE NECESSITY TO TAKE MEDICATION CONTINUALLY. HE COMPLAINED OF 'BLACKOUTS', HOWEVER, HE INDICATED THAT THEY WERE NOT AS FREQUENT AS PREVIOUSLY. HE COMPLAINED OF DIFFICULTY IN SLEEPING AND THAT IT IS NECESSARY FOR HIM TO LIE DOWN FREQUENTLY.

CLAIMANT WAS REFERRED BY AN ASTORIA DOCTOR TO A DOCTOR IN ST. LOUIS, MISSOURI, WHO PROVIDED HIM WITH TREATMENT. THAT TREATMENT WAS PAID FOR BY THE STATE ACCIDENT INSURANCE FUND. HOWEVER, THE FUND DENIED PAYMENT FOR TRANSPORTATION TO AND FROM ST. LOUIS AND THAT DENIAL IS THE SOLE REASON FOR CLAIMANT'S REQUEST FOR THIS REVIEW.

THE REFERRING DOCTOR FROM ASTORIA, DR. BOELLING, IN A LETTER TO CLAIMANT'S FORMER ATTORNEY, WRITTEN IN JULY OF 1972, REPORTED THE FOLLOWING -

'...HE APPARENTLY HAD HAD SURGERY ON HIS LOWER BACK WITH EXCELLENT RESULTS BY DR. CARL JACOB IN ST. LOUIS IN SEPTEMBER OF 1970. HE REQUESTED TO BE REFERRED BACK (UNDERSCORED) TO DR. JACOB TO HAVE AN EVALUATION OF HIS NECK PAIN, SO THIS WAS DONE IN MAY OF THIS YEAR...' (EMPHASIS SUPPLIED)

PREVIOUSLY, ON SEPTEMBER 7, 1970, CLAIMANT WAS ATTEMPTING TO REPAIR A REFRIGERATION UNIT ON A TRUCK WHEN HIS RIGHT ARM GAVE WAY AND HE FELL ACROSS THE FRAME OF THE TRUCK RESULTING IN SEVERE INJURY TO CLAIMANT'S LOW BACK. THIS ACCIDENT OCCURRED IN EBONSVILLE, INDIANA. CLAIMANT WAS HOSPITALIZED IN ST. LOUIS, MISSOURI, WHERE DR. CARL JACOB PERFORMED A LUMBAR LAMINECTOMY.

IT WAS CLAIMANT'S CHOICE TO SEEK MEDICAL TREATMENT OUTSIDE OF THE STATE OF OREGON. NO EVIDENCE WAS PRODUCED AT THE HEARING THAT CLAIMANT COULD NOT HAVE RECEIVED THE SAME TYPE OF TREATMENT WITHIN THE STATE OF OREGON.

ORS 656.245 PROVIDES THAT MEDICAL SERVICES SHALL BE PROVIDED A CLAIMANT. SUBSECTION (2) OF THAT STATUTE PROVIDES THAT THE CLAIMANT SHALL HAVE THE DISCRETION TO CHOOSE HIS OWN DOCTOR '...WITHIN THE STATE OF OREGON.'

THE BOARD FINDS THAT THE CLAIMANT HAS CHOSEN TO SEEK MEDICAL HELP OUTSIDE THE STATE OF OREGON AND CONSEQUENTLY HAS INCURRED EXPENSES FOR TRAVEL ABOVE THAT NORMALLY INCURRED FOR WORKMEN'S COMPENSATION CLAIMS. THE CLAIMANT HAS THE BURDEN OF PROOF TO SHOW THE NECESSITY AND REASONABLENESS OF EXTRA EXPENSES ABOVE THAT ORDINARILY INCURRED.

THERE HAS BEEN NO SHOWING BY THE CLAIMANT THAT DR. BOELLING HAD ANY PROFESSIONAL BASIS FOR REFERRRING THE CLAIMANT TO DR. JACOB IN MISSOURI RATHER THAN AN OREGON DOCTOR. CLAIMANT HAD ASKED FOR THE REFERRAL BECAUSE OF PREVIOUS SUCCESSFUL TREATMENT BY DR. JACOB. NOR HAS CLAIMANT SHOWN THAT COMPETENT MEDICAL TREATMENT WAS NOT AVAILABLE IN OREGON. WE HOLD THAT CLAIMANT HAS FAILED TO MEET HIS BURDEN OF PROOF TO SHOW THE NECESSITY AND REASONABLENESS FOR INCURRING THE EXTRA-ORDINARY TRAVEL EXPENSES AND CONCLUDE THAT THE REFEREE'S ORDER SHOULD BE AFFIRMED.

ORDER

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

WCB CASE NO. 73-4027 MAY 5, 1975

ORVILLE MOREFIELD, CLAIMANT

DWYER AND JENSEN, P.C., CLAIMANT'S ATTYS.
JAQUA AND WHEATLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER
CROSS-APPEAL BY CLAIMANT

THIS MATTER INVOLVES THE EXTENT OF SCHEDULED PERMANENT DISABILITY TO CLAIMANT'S RIGHT LEG AND PENALTIES AND ATTORNEY'S FEES FOR UNREASONABLE DELAY BY THE EMPLOYER IN SUBMITTING THE CLAIM TO EVALUATION FOR DETERMINATION.

THE DETERMINATION ORDER AWARDED CLAIMANT 20 PER CENT (30 DEGREES) SCHEDULED LOSS OF THE RIGHT LEG. THE REFEREE INCREASED THIS AWARD TO A TOTAL OF 30 PER CENT (45 DEGREES) SCHEDULED LOSS OF THE RIGHT LEG AND REFUSED TO AWARD PENALTIES OR ATTORNEY'S FEES TO BE PAID BY THE EMPLOYER FOR THE DELAY. THE EMPLOYER REQUESTS BOARD REVIEW CONTENDING THAT THE INCREASE OF 10 PER CENT (15 DEGREES) MADE BY THE REFEREE SHOULD BE REVERSED. THE CLAIMANT

CROSS-APPEALS CONTENDING THAT CLAIMANT IS ENTITLED TO A LARGER AWARD FOR HIS PERMANENT PARTIAL DISABILITIES AND THAT THE EMPLOYER SHOULD BE ORDERED TO PAY PENALTIES AND ATTORNEY'S FEES FOR UNREASONABLE DELAY BY THE EMPLOYER IN SUBMITTING THE MATTER TO EVALUATION.

CLAIMANT, A THEN 61 YEAR OLD CLEAN-UP MAN AT GEORGIA-PACIFIC SPRINGFIELD PLANT, RECEIVED INJURY TO HIS RIGHT LEG WHEN A PRESS MACHINE WAS ACCIDENTLY TURNED ON AND THE LEG WAS CAUGHT IN IT RESULTING IN CRUSHING AND PUNCTURE TYPE WOUNDS ON APRIL 8, 1972. CLAIMANT RETURNED TO WORK JUNE 24, 1972. CLAIMANT HAD RIGHT KNEE SURGERY JANUARY 19, 1973 AND RETURNED TO LIGHT DUTY WORK MARCH 25, 1973. THE ATTENDING PHYSICIAN, IN HIS MEDICAL REPORT DATED JUNE 12, 1973, STATED THAT CLAIMANT'S CONDITION WAS BASICALLY MEDICALLY STATIONARY AND THAT THE CLAIM IS NOW READY FOR CLOSURE. HE STATED THE PATIENT WAS TO RETURN IN SIX MONTHS FOR FINAL RECHECK. THE EMPLOYER TOOK NO ACTION EXCEPT FOR A LETTER TO THE CLAIMANT DATED AUGUST 2, 1973, STATING THE EMPLOYER WAS REQUESTING THE WORKMEN'S COMPENSATION BOARD TO MAKE A DETERMINATION OF CLAIMANT'S INDUSTRIAL CLAIM AND THAT NO ACTION BY THE CLAIMANT WAS REQUIRED.

CLAIMANT'S ATTORNEY FINALLY SOLICITED AND RECEIVED A LETTER FROM THE ATTENDING PHYSICIAN DATED NOVEMBER 26, 1973 WHICH AGAIN STATED CLAIMANT'S CONDITION WAS STATIONARY. THE DETERMINATION ORDER FINALLY ISSUED APRIL 11, 1974.

THE BOARD FINDS THIS TO BE UNREASONABLE DELAY BY THE EMPLOYER IN SUBMITTING THE MATTER TO EVALUATION FOR DETERMINATION. THE TEMPORARY TOTAL DISABILITY PAYMENTS TO THE CLAIMANT TERMINATED MARCH 25, 1973 AND THE FIRST PAYMENT OF THE PERMANENT PARTIAL DISABILITY AWARD WOULD NOT TAKE PLACE UNTIL AFTER THE DATE OF THE DETERMINATION ORDER OF APRIL 11, 1974. THE BOARD ASSESSES AS A PENALTY FOR SUCH UNREASONABLE DELAY BY THE EMPLOYER TO BE PAID TO THE CLAIMANT AN ADDITIONAL 25 PER CENT OF THE AMOUNT DUE THE CLAIMANT FOR EIGHT MONTHS OF THE PERMANENT PARTIAL DISABILITY AWARD.

THE BOARD ALSO ORDERS THE EMPLOYER TO PAY CLAIMANT'S ATTORNEY'S FEES BOTH FOR HIS SERVICES AT HEARING AND BOARD REVIEW AND TO REIMBURSE THE CLAIMANT ANY SUMS HELD FROM HIS AWARD PAYMENTS AND PAID TO CLAIMANT'S ATTORNEY RESULTING FROM THE REFEREE'S ORDER.

THE BOARD AFFIRMS THE AWARD OF A TOTAL OF 30 PER CENT (45 DEGREES) SCHEDULED PERMANENT PARTIAL LOSS OF THE RIGHT LEG. THE EVALUATION DIVISION NORMALLY REVIEWS MEDICAL REPORTS AND INFORMATION SUBMITTED BY THE WORKMEN'S COMPENSATION CARRIER AND ON OCCASION CONDUCTS A SHORT INTERVIEW WITH THE CLAIMANT. THE REFEREE USUALLY HAS THE ADVANTAGE OF ADDITIONAL MEDICAL REPORTS AND ADDITIONAL WITNESSES AND EVIDENCE WITH ALL WITNESSES SUBJECT TO CROSS EXAMINATION.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 11, 1974, TO THE EXTENT OF AWARDING CLAIMANT A TOTAL OF 30 PER CENT (45 DEGREES) SCHEDULED PERMANENT PARTIAL DISABILITY FOR LOSS OF THE RIGHT LEG IS AFFIRMED.

IN ALL OTHER RESPECTS, THE ORDER OF THE REFEREE IS REVERSED.

THE EMPLOYER WILL PAY THE CLAIMANT, IN ADDITION TO THE PERMANENT PARTIAL DISABILITY AWARD, 25 PER CENT OF THE AMOUNT EQUAL TO EIGHT MONTHS PERMANENT PARTIAL DISABILITY PAYMENTS.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 1,200 DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES AT HEARING AND BOARD REVIEW, LESS ANY AMOUNT ALREADY PAID TO CLAIMANT'S ATTORNEY WHICH WAS WITHHELD FROM CLAIMANT'S AWARD. THE EMPLOYER IS TO REIMBURSE THE CLAIMANT ANY SUMS WITHHELD FROM THE CLAIMANT AND PAID TO CLAIMANT'S ATTORNEY ARISING OUT OF THE REFEREE'S ORDER.

WCB CASE NO. 74-1979 MAY 5, 1975

WILLIAM ALLEN, CLAIMANT

S. DAVID EVES, CLAIMANT'S ATTY.
LYLE VELURE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES THE EXTENT OF PERMANENT PARTIAL DISABILITY. THE REFEREE AFFIRMED THE DETERMINATION ORDER WHICH AWARDED CLAIMANT 20 PER CENT (64 DEGREES) FOR UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT, THEN 30 YEARS OLD, ON JANUARY 10, 1973, RECEIVED AN INDUSTRIAL INJURY WHILE WORKING AT A PLANT MANUFACTURING MOBILE HOMES. AFTER A LAMINECTOMY AND FUSION, THE BACK EVALUATION CLINIC GAVE THE OPINION THAT CLAIMANT'S LOSS OF FUNCTION OF THE BACK WAS MILD AND THE CLAIMANT HAS A MODERATE FUNCTIONAL DISTURBANCE.

CLAIMANT HAD A PRIOR INDUSTRIAL ACCIDENT INVOLVING A BACK INJURY IN 1969 FOR WHICH HE WAS AWARDED 80 DEGREES PERMANENT PARTIAL DISABILITY. CLAIMANT'S DEMONSTRATED LACK OF MOTIVATION TO RETURN TO GAINFUL OCCUPATION AS REFLECTED IN THE RECORD IS RELEVANT AS TO CLAIMANT'S BURDEN OF PROOF TO PROVE A LOSS OF EARNING CAPACITY.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE OPINION AND ORDER OF THE REFEREE AND ADOPTS THE OPINION AS ITS OWN.

ORDER

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

WCB CASE NO. 74-3047 MAY 5, 1975

GEORGE YOUNG, CLAIMANT

CHARLES PAULSON, CLAIMANT'S ATTY.
MC MENAMIN, JONES, JOSEPH AND LANG,
DEFENSE ATTYS.

ON APRIL 16, 1975, CLAIMANT'S ATTORNEY MOVED THE BOARD FOR AN ORDER REMANDING THIS MATTER TO THE REFEREE FOR RECEIPT OF ADDITIONAL EVIDENCE ON CLAIMANT'S ELIGIBILITY FOR TEMPORARY TOTAL DISABILITY DURING VOCATIONAL REHABILITATION.

THE EMPLOYER HAS NOT OBJECTED TO A REMAND.

WE CONCLUDE THE MATTER SHOULD BE REMANDED FOR RECEIPT OF FURTHER EVIDENCE. THIS MATTER SHOULD BE CONSOLIDATED AND HEARD WITH ANOTHER HEARING REQUESTED BY CLAIMANT WHICH IS PRESENTLY PENDING.

IT IS SO ORDERED.

WCB CASE NO. 74-1494 MAY 6, 1975

THOMAS W. SPRINGGAY, CLAIMANT

VINCENT G. IERULLI, CLAIMANT'S ATTY.
KENNETH D. RENNER, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES THE EXTENT OF PERMANENT PARTIAL DISABILITY. THE DETERMINATION ORDER AWARDED CLAIMANT NO PERMANENT PARTIAL DISABILITY. THE REFEREE AWARDED CLAIMANT 25 PER CENT (80 DEGREES) UNSCHEDULED LOW BACK DISABILITY. CLAIMANT SEEKS A HIGHER AWARD OF PERMANENT DISABILITY.

CLAIMANT, A 46 YEAR OLD WELDER, RECEIVED A LOW BACK INJURY JUNE 20, 1973. HE RETURNED TO WORK JUNE 26, 1973, AND WORKED CONTINUOUSLY UNTIL DECEMBER 17, 1973, WHEN HE RECEIVED A KNEE INJURY. THE HEARING AND BOARD REVIEW INVOLVED ONLY THE PERMANENT DISABILITY TO CLAIMANT'S BACK.

CLAIMANT'S ATTENDING PHYSICIAN DESCRIBED CLAIMANT'S PATHOLOGIC FINDINGS AS TO HIS BACK TO BE MINIMAL. THE REPORTS FROM THE DISABILITY PREVENTION DIVISION REFLECT THAT HIS PHYSICAL DISABILITY FOR BOTH THE KNEE AND BACK CONDITION IS MILDLY MODERATE.

ON DE NOVO REVIEW, THE BOARD FINDS THAT THE AWARD OF 25 PER CENT (80 DEGREES) FOR UNSCHEDULED LOW BACK DISABILITY ADEQUATELY COMPENSATES THE CLAIMANT.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 26, 1974, IS AFFIRMED.

WCB CASE NO. 73—2666 MAY 6, 1975

RUSSELL M. MAXFIELD, CLAIMANT

DON G. SWINK, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES THE EXTENT OF SCHEDULED PERMANENT PARTIAL DISABILITY. CLAIMANT HAD BEEN AWARDED 5 DEGREES FOR PERMANENT PARTIAL DISABILITY IN THE RIGHT LEG AND 10 DEGREES FOR PERMANENT PARTIAL DISABILITY IN THE LEFT LEG. THE REFEREE AFFIRMED THIS AWARD. CLAIMANT REQUESTS BOARD REVIEW REQUESTING ADDITIONAL SCHEDULED PERMANENT PARTIAL DISABILITY AWARD.

IN 1968 AND 1969, CLAIMANT, A 57 YEAR OLD TRUCK DRIVER, RECEIVED CHEMICAL BURNS TO HIS LEGS. HE HAS HAD PROBLEMS INVOLVING LEG ULCERS AND HAS HAD SKIN GRAFTS.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE OPINION AND FINDINGS OF THE REFEREE AND ADOPTS HIS OPINION AND ORDER AS ITS OWN.

ORDER

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

WCB CASE NO. 74—1332 MAY 6, 1975

BETTY FARLEY, CLAIMANT

THIS MATTER HAS COME PREVIOUSLY BEFORE THE WORKMEN'S COMPENSATION BOARD BASED ON A REFEREE'S ORDER OF DISMISSAL OF MAY 23, 1974, ON THE GROUNDS THAT THE LEGAL REMEDIES OF CLAIMANT HAD EXPIRED. THE MATTER WAS THEN REFERRED TO THE WORKMEN'S COMPENSATION FOR OWN MOTION CONSIDERATION.

ON MAY 8, 1974, THE BOARD REQUESTED THE FUND TO PROVIDE THE APPROPRIATE MEDICAL REPORTS FOR CONSIDERATION BY THE BOARD IN ACCORDANCE WITH ORS 656.278. THEREAFTER THE STATE ACCIDENT INSURANCE FUND AGREED TO ARRANGE FOR AN EXAMINATION BY DR. SHORT.

THE BOARD, ON JANUARY 6, 1975, ISSUED ITS OWN MOTION ORDER TO THE CLAIMANT TO SHOW CAUSE WHY SHE FAILED TO KEEP AN APPOINTMENT FOR A MEDICAL EXAMINATION ARRANGED FOR HER AT THE STATE ACCIDENT INSURANCE FUND'S EXPENSE. ON APRIL 14, 1975, THE CLAIMANT WAS EXAMINED BY DR. SHORT.

THE BOARD FINDS THE RECORDS INDICATE NO FURTHER DISABILITY HAS OCCURRED AND THEREFORE THE AWARD PREVIOUSLY GRANTED TO CLAIMANT IS ADEQUATE.

ORDER

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

NO NOTICE OF APPEAL IS DEEMED APPLICABLE.

WCB CASE NO. 74-832 MAY 6, 1975

DON HOLCOMB, CLAIMANT

POZZI, WILSON AND ATCHISON, 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 scheduled permanent disability to claimant's left leg. The first and second determination orders awarded claimant a total of 53 degrees scheduled partial loss of the left leg. The third determination order awarded claimant no further permanent partial disability. The referee increased the award to a total of 75 per cent (112.5 degrees) scheduled loss of the left leg.

Claimant, a 26 year old logger, injured his left ankle and left knee on January 22, 1969. Surgeries to the ankle and knee were performed. Claimant's excessive weight of 250 to 275 pounds complicates claimant's recovery.

Scheduled disability awards are determined on the loss of function. The Board finds that the medical evidence and the evidence of claimant's activities as they reflect on loss of function of the leg show that the loss of function of claimant's left leg resulting from this industrial injury totals 53 degrees.

ORDER

The order of the referee, dated October 11, 1974, is reversed.

The third determination order, dated May 5, 1974, awarding claimant no further permanent partial disability is affirmed.

WCB CASE NO. 73-1022 MAY 6, 1975

ALVY F. OSBORNE, CLAIMANT

SANTOS AND SCHNEIDER, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

The State Accident Insurance Fund has requested Board review of a referee's order finding claimant's condition had aggravated, that claimant ought to be enrolled at the Board's Disability Prevention Division at the Fund's expense for evaluation of disability and eligibility for vocational rehabilitation and that the State Accident Insurance Fund is liable for various medical bills.

Claimant is a now 41 year old man who suffered electrical shock injuries on March 8, 1968, while working as a lineman for the City of Canby.

At a hearing held in 1969 a referee denied claimant compensation for complaints of hearing loss ruling that they had not been

SHOWN TO BE RELATED. HE RULED FURTHER HOWEVER, THAT IF, IN FACT, THEY WERE RELATED, THEY WERE NOT DISABLING. HE DID FIND DISABILITIES FOR WHICH CLAIMANT WAS ULTIMATELY GRANTED PERMANENT PARTIAL DISABILITY COMPENSATION EQUAL TO 100 PER CENT LOSS VISION OF THE RIGHT EYE, 30 PER CENT LOSS OF THE LEFT FOREARM AND 10 PER CENT LOSS OF THE LEFT THUMB.

IN SEPTEMBER, 1973, CLAIMANT SOUGHT REOPENING OF HIS CLAIM ALLEGING THE INJURY HAD PRODUCED NEW DISABILITIES NOT PREVIOUSLY COMPENSATED.

CLAIMANT PRODUCED EVIDENCE OF LEFT EYE, HEARING, UPPER SPINE AND CENTRAL NERVOUS SYSTEM DISABILITIES. THE REFEREE FOUND THEM ALL RELATED AND WORSENED AND THEREFORE ALLOWED THE CLAIM OF AGGRAVATION.

THE STATE ACCIDENT INSURANCE FUND FIRST CONTENDS ON REVIEW THAT THE MEDICAL REPORTS SUBMITTED WERE JURISDICTIONALLY INSUFFICIENT. THE FUND'S COUNSEL AT THE HEARING CONCEDED THEIR JURISDICTIONAL SUFFICIENCY.

THE STATE ACCIDENT INSURANCE FUND NEXT CONTENDS THAT, BY VIRTUE OF THE DOCTRINE OF RES JUDICATA, CLAIMANT IS BARRED FROM ASSERTING A CLAIM OF AGGRAVATION FOR HEARING LOSS. SINCE IT IS THE SAME CONDITION, NOT SHOWN TO BE DIFFERENT IN KIND OR DEGREE FROM THAT PREVIOUSLY LITIGATED, THE DOCTRINE OF RES JUDICATA APPLIES.

THE STATE ACCIDENT INSURANCE FUND ALSO CONTENDS THAT CLAIMANT HAS FAILED TO PROVE A CONNECTION BETWEEN HIS NECK AND BACK COMPLAINTS AND THE ORIGINAL ACCIDENT. WE ARE NOT PERSUADED THAT THESE PROBLEMS ARE RECENT OR RELATED. THEY APPEAR TO BE NOTHING MORE THAN DEGENERATIVE CHANGES WHICH HAVE, THROUGH THE YEARS, GRADUALLY BECOME ASYMPTOMATIC. THESE CONDITIONS DO NOT CONSTITUTE A COMPENSABLE AGGRAVATION.

WE ARE PERSUADED HOWEVER, THAT CLAIMANT'S LEFT EYE PROBLEM IS RELATED TO THE ACCIDENT AND THAT ITS WORSENING AND TREATMENT JUSTIFY REOPENING HIS CLAIM FOR TREATMENT, PAYMENT OF TEMPORARY TOTAL DISABILITY, IF INDICATED, AND UPON COMPLETION THEREOF, THE EVALUATION OF PERMANENT DISABILITY, IF ANY.

ORDER

THAT PART OF THE REFEREE'S ORDER FINDING THAT CLAIMANT'S LEFT EYE CONDITION CONSTITUTES AN AGGRAVATION AND ALLOWING CLAIMANT'S ATTORNEY, FRANK SANTOS, AN ATTORNEY'S FEE OF 750 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, IS HEREBY AFFIRMED. THE STATE ACCIDENT INSURANCE FUND, IS HEREBY ORDERED TO REOPEN CLAIMANT'S CLAIM ON ACCOUNT OF SAID LEFT EYE CONDITION AND PROVIDE TO CLAIMANT ALL WORKMEN'S COMPENSATION BENEFITS TO WHICH HE IS ENTITLED THEREFORE UNTIL TERMINATION IS AUTHORIZED PURSUANT TO ORS 656.268.

THE REFEREE'S ORDER DATED SEPTEMBER 30, 1974, IS, IN ALL OTHER RESPECTS, HEREBY REVERSED.

PAMELA DREW, CLAIMANT

QUENTIN D. STEELE, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS IS A DENIED CLAIM FOR AGGRAVATION. THE REFEREE ORDERED THE STATE ACCIDENT INSURANCE FUND TO ACCEPT THE CLAIM, ORDERED THE STATE ACCIDENT INSURANCE FUND TO PAY TEMPORARY TOTAL DISABILITY FROM JULY 13, 1973 TO FEBRUARY 27, 1974, PLUS A 25 PER CENT PENALTY OF COMPENSATION PAYABLE DURING THAT PERIOD, AWARDED CLAIMANT'S ATTORNEY'S FEES TO BE PAID BY THE STATE ACCIDENT INSURANCE FUND, AND AWARDED CLAIMANT 10 PER CENT (32 DEGREES) UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT, A THEN 23 YEAR OLD NURSES AIDE, RECEIVED A BACK INJURY WHILE LIFTING A PATIENT JULY 16, 1971. THE CLAIM WAS CLOSED WITH NO AWARD OF PERMANENT PARTIAL DISABILITY AND CLAIMANT WAS ESSENTIALLY ASYMPTOMATIC UNTIL JULY OF 1973. CLAIMANT FILED A CLAIM OF AGGRAVATION AND HER ATTENDING DOCTOR, IN HIS LETTER OF JULY 13, 1973, STATED CLAIMANT WAS IN THE HOSPITAL FOR A LUMBAR SACRAL STRAIN WHICH WAS RELATED TO THE INDUSTRIAL INJURY OF 1971. THE MEDICAL REPORT FURTHER REVEALS 50 PER CENT NORMAL RANGE OF MOTION OF HER BACK, MILD TENDERNESS, AND MODERATE SPASM OF THE BACK MUSCLES.

THE STATE ACCIDENT INSURANCE FUND DENIED THE CLAIM IN THEIR LETTER OF AUGUST 10, 1973.

THE REFEREE FOUND THAT CLAIMANT'S CONDITION HAD WORSENED SINCE THE DETERMINATION ORDER WAS ISSUED. THE STATE ACCIDENT INSURANCE FUND CONTINUED TO RESIST PAYMENT OF MEDICAL BILLS UNTIL FEBRUARY 27, 1974, WHEN THEY AGREED TO PAY THEM BUT, IN FACT, DID NOT PAY THEM.

ON DE NOVO REVIEW, THE BOARD CONCURS WITH THE FINDINGS AND OPINION OF THE REFEREE EXCEPT THAT SINCE THE DATE OF THE OPINION AND ORDER OF THE REFEREE, THE CASE OF BOWSER V. EVANS PRODUCTS CO. (UNDERSCORED), 99 ADV SH 361, HAS NOW BEEN REVERSED BY THE SUPREME COURT AND THE CLAIMANT WOULD NOW BE ENTITLED TO MEDICAL SERVICES EVEN THOUGH THERE WAS NO PERMANENT PARTIAL DISABILITY AWARD GRANTED IN THE PRIOR DETERMINATION ORDER.

IN ALL OTHER RESPECTS, THE BOARD ADOPTS THE OPINION OF THE REFEREE AS ITS OWN.

ORDER

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

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 400 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-589 MAY 6, 1975

JAMES SECOR, CLAIMANT

BAILEY, DOBLIE, CENICEROS AND BRUUN, CLAIMANT'S ATTYS.
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 the fund's denial of the claimant's claim that he suffered an industrial injury to his right ear on October 15, 1973.

We have reviewed the record de novo and considered the briefs of counsel submitted on review. Having done so we would affirm the referee's order, dated September 17, 1974, as our own.

It is so ordered.

WCB CASE NO. 74-1585 MAY 6, 1975

ARTHUR W. MILLER, CLAIMANT

ROBERT E. NELSON, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF
CROSS-APPEAL BY CLAIMANT

The state accident insurance fund has requested board review of a referee's order finding that as the result of an aggravation of his original injury, claimant has suffered unscheduled disability equal to 40 per cent of the maximum. Claimant has cross-requested board review seeking an award of permanent total disability.

The state accident insurance fund contends claimant's present disability is caused by his preexisting gait disturbance rather than his occupational injury.

The state accident insurance fund reasons that since the original injury resolved without permanent disability, then regardless of the stipulated reopening of his claim for aggravation, there necessarily cannot be a connection between his present disability and the original injury.

It is apparently dr. gambee's opinion that while the industrial injury originally resolved without permanent disability, that the happening of trauma hastened the inevitable 'decompensation' of claimant's back.

It is hornbook law that to hasten a condition is to cause it in the legal sense and thus, claimant's present disability is the result of claimant's industrial injury. Armstrong v. SIAC (underscored), 146 OR 569 (1934).

We conclude that the referee's assessment of permanent disability, keeping in mind claimant's poor motivation, is correct

AND THAT HIS ORDER SHOULD BE AFFIRMED IN ALL RESPECTS WITH THE EXCEPTION OF THE REFEREE'S COMMENT THAT MEDICAL BENEFITS CANNOT BE AWARDED UNLESS CLAIMANT HAS PREVIOUSLY RECEIVED AN AWARD OF PERMANENT DISABILITY. THE BOWSER (UNDERSCORED) CASE ON WHICH THE REFEREE RELIED HAS, SINCE THE ENTRY OF THE REFEREE'S ORDER, BEEN REVERSED BY THE OREGON SUPREME COURT. = BOWSER V. EVANS PRODUCTS CO. (UNDERSCORED), 99 ADV SH 3288, = OR = (JANUARY 24, 1975) - .

ORDER

THE ORDER OF THE REFEREE DATED SEPTEMBER 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. 73-4062 MAY 6, 1975

DWIGHT NICHOLSON, CLAIMANT

HILL AND SCHULTZ, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, ET. AL., DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

THIS MATTER INVOLVES THE EXTENT OF PERMANENT DISABILITY. THE FIRST DETERMINATION ORDER AWARDED CLAIMANT 20 PER CENT (64 DEGREES) UNSCHEDULED LOW BACK DISABILITY. AFTER THE FIRST HEARING, THE AWARD WAS INCREASED TO A TOTAL OF 30 PER CENT (96 DEGREES). THE SECOND DETERMINATION ORDER AWARDED CLAIMANT AN ADDITIONAL 10 PER CENT TO A TOTAL OF 40 PER CENT (128 DEGREES). THE REFEREE INCREASED THIS AWARD TO A TOTAL OF 65 PER CENT (208 DEGREES). THE CLAIMANT REQUESTS BOARD REVIEW CONTENDING HE IS PERMANENTLY TOTALLY DISABLED.

CLAIMANT, A 35 YEAR OLD FOREMAN AND SHIPPING CLERK, RECEIVED A LOW BACK INJURY JANUARY 29, 1970. THE EVIDENCE IN THE RECORD REVEALS THAT CLAIMANT'S SUBJECTIVE COMPLAINTS EXCEEDS THE OBJECTIVE FINDINGS OF THE VARIOUS TREATING AND EXAMINING PHYSICIANS.

CLAIMANT IS ABOVE AVERAGE IN INTELLIGENCE AND COMPLETED ALL BUT THE LAST TERM OF A REHABILITATION COURSE IN ACCOUNTING AND BOOKKEEPING.

THE REFEREE HAD THE ADVANTAGE OF HEARING AND SEEING THE CLAIMANT AND THE OTHER WITNESSES. THE BOARD FINDS CLAIMANT IS NOT PERMANENTLY TOTALLY DISABLED AND THAT A TOTAL AWARD OF 208 DEGREES ADEQUATELY COMPENSATES THE CLAIMANT.

ORDER

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

WCB CASE NO. 74-1142 MAY 6, 1975

SHIRLEY FLANSBERG, CLAIMANT

FRANK J. SUSAK, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

THIS MATTER INVOLVES THE EXTENT OF PERMANENT DISABILITY AND WHETHER OR NOT THE CLAIM WAS PREMATURELY CLOSED. THE DETERMINATION ORDER AWARDED CLAIMANT 5 PER CENT UNSCHEDULED BACK DISABILITY AND TEMPORARY TOTAL DISABILITY TO APRIL 13, 1973. THE REFEREE SET ASIDE THE DETERMINATION ORDER ON THE GROUNDS THAT THE CLAIM WAS PREMATURELY CLOSED.

CLAIMANT, A 34 YEAR OLD OBESE JANITRESS, RECEIVED A LOW BACK INJURY ON AUGUST 29, 1971, WHILE CARRYING A VACUUM CLEANER ON A STAIRWAY. SHE HAS BEEN CONSERVATIVELY TREATED AND EXAMINED SINCE THEN. THE BACK EVALUATION CLINIC, IN THEIR REPORT OF JULY 14, 1972, FOUND CLAIMANT'S CONDITION STATIONARY WITH A MILD DEGREE OF PERMANENT PARTIAL DISABILITY FOR HER BACK INJURY. SHORTLY THEREAFTER, THE ATTENDING DOCTOR REPORTED, IN ESSENCE, THAT HE RELUCTANTLY ADMITTED THE PATIENT TO THE HOSPITAL BECAUSE OF HER COMPLAINTS.

A MEDICAL REPORT FROM THE STATE ACCIDENT INSURANCE FUND'S EXAMINING DOCTOR OF FEBRUARY 28, 1972, REFLECTS HIS OPINION THAT CLAIMANT'S CONDITION WAS STATIONARY. CLAIMANT REFUSED TO BE EXAMINED BY AN ORTHOPEDIC SPECIALIST ON APRIL 12, 1973.

BASED ON ALL THE EVIDENCE IN THE RECORD, THE BOARD FINDS THAT THE CLAIM WAS NOT PREMATURELY CLOSED. THE BOARD FURTHER FINDS THAT THE APPROPRIATE AWARD FOR PERMANENT PARTIAL DISABILITY IS A TOTAL OF 15 PER CENT (48 DEGREES) UNSCHEDULED LOW BACK DISABILITY. THIS IS AN INCREASE OF 10 PER CENT (32 DEGREES) FROM THAT AWARDED BY THE DETERMINATION ORDER.

ORDER

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

WCB CASE NO. 74-578 MAY 6, 1975

GARY MARCHIORO, CLAIMANT

ROLF OLSON, CLAIMANT'S ATTY.
KEITH SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER DENYING HIS REQUEST FOR PENALTIES AND AN ATTORNEY'S FEE FOR THE EMPLOYER'S ALLEGEDLY UNREASONABLE FAILURE TO PAY COMPENSATION FROM JANUARY 21, 1974 WHEN THE EMPLOYER TERMINATED TIME LOSS COMPENSATION ON THE ADVICE OF AN EXAMINING PHYSICIAN, UNTIL APRIL 1, 1974 WHEN CLAIMANT WAS RELEASED FOR WORK BY HIS TREATING PHYSICIAN.

HE ALSO SEEKS REVERSAL OF THE REFEREE'S RULING THAT THE EMPLOYER WAS NOT LIABLE FOR THE SERVICES OF THE TREATING PHYSICIAN.

HE CONTENDS THAT, REGARDLESS OF WHETHER ALL THE MEDICAL CONDITIONS FOUND WERE RELATED, THEIR DIAGNOSIS AND TREATMENT WAS PART OF THE 'RULING OUT' PROCESS BY WHICH THE TRUE NATURE OF HIS COMPENSABLE INJURY WAS DEFINED AND THUS ARE PART OF THE MEDICAL SERVICE REQUIRED TO BE PROVIDED BY THE EMPLOYER FOR A COMPENSABLE INJURY.

WE AGREE WITH BOTH OF CLAIMANT'S CONTENTIONS. ORS 656.268(2) REQUIRES CONTINUATION OF TIME LOSS PAYMENTS UNTIL THE WORKMAN'S ATTENDING PHYSICIAN RELEASES THE WORKMAN. TERMINATION OF TEMPORARY TOTAL DISABILITY IN RELIANCE ON DR. ANDERSON'S OPINION, IN VIEW OF THE CLEAR STATUTORY ADMONITION, WAS UNREASONABLE. WE CONCLUDE THAT CLAIMANT IS ENTITLED TO ADDITIONAL TIME LOSS COMPENSATION FROM JANUARY 21 TO APRIL 1, 1974, INCLUSIVE, TOGETHER WITH AN AMOUNT EQUAL TO 25 PER CENT THEREOF AS A PENALTY.

FOR THE REASONS EXPRESSED BY CLAIMANT IN HIS BRIEF, WE ALSO CONCLUDE THE EMPLOYER IS LIABLE FOR THE COST OF DR. SANDERS' BILLINGS.

ORDER

THE ORDER OF THE REFEREE, DATED AUGUST 28, 1974, IS HEREBY REVERSED.

THE EMPLOYER IS HEREBY ORDERED TO PAY CLAIMANT ADDITIONAL TEMPORARY TOTAL DISABILITY COMPENSATION FROM JANUARY 21 TO APRIL 1, 1974, INCLUSIVE, TOGETHER WITH A SUM EQUAL TO 25 PER CENT THEREOF AS A PENALTY FOR UNREASONABLE REFUSAL TO PAY COMPENSATION.

THE EMPLOYER IS HEREBY FURTHER ORDERED TO ACCEPT LIABILITY FOR THE COST OF DR. SANDERS' DIAGNOSIS AND TREATMENT AS SET FORTH IN CLAIMANT'S EXHIBIT 2.

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

WCB CASE NO. 73-6184 MAY 2, 1975

LOLA L. SUTFIN, CLAIMANT

JOHN D. RYAN, CLAIMANT'S ATTY.
LAWRENCE M. DEAN, DEFENSE ATTY.

ON MAY 1, 1975, THE BOARD ISSUED AN ORDER OF REMAND WHICH ORDER PROVIDED THAT THE APPEAL AND REVIEW TO THE BOARD WAS STAYED. THE ORDER SHOULD BE AMENDED TO PROVIDE '... THAT THE APPEAL AND REVIEW TO THE BOARD IS HEREBY DISMISSED.'

THE REFEREE SHOULD, AFTER RECEIPT OF THE ADDITIONAL EVIDENCE, RECONSIDER THE MATTER AND ISSUE A NEW FINAL APPEALABLE ORDER.

IT IS SO ORDERED.

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