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PRICE FORTY DOLLARS

WCB CASE NO. 75-401 SEPTEMBER 5, 1975

HAROLD SWAIN, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE ORDER OF THE REFEREE WHICH AFFIRMED THE DETERMINATION ORDER MAILED NOVEMBER 5, 1974, WHEREBY CLAIMANT WAS AWARDED 20 PERCENT PERMANENT PARTIAL RIGHT LEG DISABILITY.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON MAY 7, 1973, WHICH WAS DIAGNOSED AS A MEDIAL CONDYLE WITHOUT DISPLACEMENT OF THE FEMUR. CLAIMANT'S RIGHT LEG WAS IN A LONG CAST FOR APPROXIMATELY TWO MONTHS. CLAIMANT WAS OFF WORK FOR APPROXIMATELY SIX MONTHS BEFORE RETURNING TO HIS FORMER JOB WHERE HE HAS CONTINUED TO WORK A FULL 40 HOUR WEEK WITH OCCASIONAL OVERTIME. CLAIMANT APPARENTLY IS ABLE TO MAINTAIN FULL DUTIES OF HIS JOB ALTHOUGH HE HAS SOME DIFFICULTY CRAWLING UNDER THE DRYER TO CLEAN UP FOLLOWING A PLUG UP OF THE FEEDER - HE ALSO HAS DIFFICULTY CLIMBING A LADDER.

IN FEBRUARY, 1974, DR. FRY RECOMMENDED SURGICAL REMOVAL OF THE RIGHT MEDIAL MENISCUS STATING THAT WITHOUT SUCH SURGERY CLAIMANT'S KNEE WOULD DETERIORATE. CLAIMANT DECLINED TO HAVE THE RECOMMENDED SURGERY PRIMARILY BECAUSE HE WAS NEARING 65 YEARS OF AGE. HE HAS NOT NOTICED AN APPRECIABLE DETERIORATION SINCE THE SURGERY WAS RECOMMENDED ALTHOUGH IN SEPTEMBER, 1974, DR. FRY'S CLOSING EXAMINATION INDICATED SOME APPARENT ATROPHY OF THE RIGHT LEG.

IN MARCH, 1975, CLAIMANT WAS EXAMINED BY DR. BERG WHOSE FINDINGS WERE MUCH THE SAME AS THOSE OF DR. FRY. DR. BERG RATED THE PARTIAL DISABILITY AT APPROXIMATELY 30 PERCENT LOSS FUNCTION OF THE RIGHT LEG.

THE REFEREE DID NOT BELIEVE THE MEDICAL AND LAY TESTIMONY WAS SUFFICIENT TO SUPPORT A GREATER LEVEL OF IMPAIRMENT THAN THAT WHICH WAS AWARDED CLAIMANT BY THE DETERMINATION ORDER.

THE BOARD, ON DE NOVO REVIEW, BASED UPON THE FINDINGS OF DR. FRY IN SEPTEMBER, 1974, ALL OF WHICH WERE CONFIRMED BY DR. BERG, WHO RATED THE DISABILITY AT APPROXIMATELY 30 PERCENT LOSS FUNCTION OF THE LEG, FINDS THAT CLAIMANT HAS NO MORE THAN 70 PERCENT FUNCTION OF THE RIGHT LEG REMAINING, AND, THEREFORE, CONCLUDES THAT THE AWARD SHOULD BE INCREASED ACCORDINGLY.

ORDER

THE ORDER OF THE REFEREE DATED MAY 7, 1975, IS REVERSED.

CLAIMANT IS AWARDED 45 DEGREES OF A MAXIMUM OF 150 DEGREES FOR A LOSS FUNCTION OF HIS RIGHT LEG. THIS IS IN LIEU OF AND NOT IN ADDITION TO THE AWARD MADE BY THE DETERMINATION ORDER ENTERED NOVEMBER 5, 1974.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE, 25 PERCENT OF THE INCREASED COMPENSATION AWARDED TO CLAIMANT BY THIS ORDER NOT TO EXCEED 2,300 DOLLARS.

WCB CASE NO. 73-2690 SEPTEMBER 5, 1975

MARY SCHNEIDER, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS.
GEARIN, CHENEY, LANDIS, AEBI AND KELLEY, DEFENSE ATTYS.
ORDER OF REMAND

THE EMPLOYER HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER OF JANUARY 25, 1974, WHICH GRANTED CLAIMANT AN AWARD OF PERMANENT TOTAL DISABILITY.

JURISDICTION OF THIS APPEAL HAS BEEN DIRECTED BY THE ORDER OF REMAND OF JUNE 17, 1975, CIRCUIT COURT, MULTNOMAH COUNTY, OREGON, PURSUANT TO THE MANDATE OF THE OREGON COURT OF APPEALS UNDER DATE OF MAY 14, 1975 (SCHNEIDER V. EMANUEL HOSPITAL, 75 ADV SH 956, ———OR APP———).

THE ONLY ISSUE ON REVIEW IS THE EXTENT OF DISABILITY.

CLAIMANT, AGE 48, WAS EMPLOYED AT EMANUEL HOSPITAL AND ON MAY 5, 1971, BUMPED HER HEAD. AGAIN, ON MAY 26, 1974, WHILE IN A BENT-OVER POSITION, SHE WAS STRUCK IN THE LEFT HIP BY A LAUNDRY CART. SHE RECEIVED CONSERVATIVE PHYSICAL THERAPY. IN OCTOBER, 1972, SHE WAS HOSPITALIZED WITH TRACTION. SHE HAS NOT WORKED SINCE. FOLLOWING WORKUP AT THE BOARD'S DISABILITY PREVENTION DIVISION, HER CLAIM WAS CLOSED BY A DETERMINATION ORDER DATED JULY 26, 1973, WITH AN AWARD OF 16 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY AND 15 DEGREES FOR PARTIAL LOSS OF THE LEFT LEG.

AFTER A HEARING ON THE ADEQUACY OF THE DETERMINATION, THE REFEREE AWARDED CLAIMANT PERMANENT TOTAL DISABILITY.

THE BOARD, ON DE NOVO REVIEW, IS NOT WILLING AT THIS TIME TO MAKE A DETERMINATION ON THE ISSUE OF THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY BASED ON THE MEDICAL EVIDENCE OF RECORD - THE MOST RECENT REPORT IS DATED NOVEMBER 14, 1973.

FOR THIS REASON, THE BOARD REMANDS THIS MATTER TO THE HEARINGS DIVISION TO TAKE EVIDENCE RELATING TO CLAIMANT'S PRESENT PHYSICAL CONDITION AND TO DETERMINE WHAT, IF ANY, ATTEMPTS HAVE BEEN MADE TOWARD REHABILITATIVE EFFORTS EXTENDED IN CLAIMANT'S BEHALF. THE REFEREE SHALL CAUSE A TRANSCRIPT OF THE HEARING TO BE PREPARED AND SUBMITTED TO THE BOARD, TOGETHER WITH HIS FINDINGS AND RECOMMENDATIONS ON THESE ISSUES.

WCB CASE NO. 74-2810 SEPTEMBER 5, 1975

RAYMOND E. WEBSTER, CLAIMANT

BABCOCK, ACKERMAN AND HANLON, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON, MOORE AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH APPROVED THE DENIAL BY THE EMPLOYER OF CLAIMANT'S CLAIM.

CLAIMANT, A 60 YEAR OLD X-RAY TECHNICIAN, ALLEGES HE SUFFERED A COMPENSABLE INJURY ON FEBRUARY 1, 1974, WHILE LIFTING A HEAVY PATIENT ONTO THE X-RAY TABLE OR, IN THE ALTERNATIVE, THAT THE REPETITIVE LIFTING OF PATIENTS ONTO THE X-RAY TABLE OVER THE EIGHT AND ONE-HALF YEARS OF HIS EMPLOYMENT NECESSITATED THE LUMBAR LAMINECTOMY PERFORMED BY DR. PARSONS IN MAY, 1974, AND WAS COMPENSABLE AS AN OCCUPATIONAL DISEASE.

DR. PARSONS, IN HIS DEPOSITION, STATES THAT THE LIFTING INCIDENT ON FEBRUARY 1, 1974, DID NOT CONTRIBUTE SIGNIFICANTLY IN EITHER CAUSING OR AGGRAVATING THE CONDITION LEADING TO THE SURGERY. THE ONSET OF CLAIMANT'S DEGENERATIVE DISC CONDITION OCCURRED SEVERAL YEARS PREVIOUS, WAS NOT JOB RELATED AND THE LAMINECTOMY WOULD HAVE BEEN NECESSARY WHETHER OR NOT CLAIMANT HAD BEEN ENGAGED IN AN OCCUPATION INVOLVING HEAVY LIFTING. IN A COMPLEX CASE THE CAUSAL CONNECTION MUST BE SHOWN BY EXPERT MEDICAL EVIDENCE. URIS V. SCD, 247 OR 420. THE BURDEN OF PROOF IS ON THE CLAIMANT. THE REFEREE CONCLUDED THAT CLAIMANT HAD FAILED TO ESTABLISH THAT HIS WORK ACTIVITY WAS A MATERIAL CONTRIBUTING CAUSE OF THE CONDITION WHICH NECESSITATED THE SURGERY.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE AND AFFIRMS HIS ORDER. HOWEVER, THE REFEREE WAS IN ERROR IN ALLOWING FURTHER MEDICAL EVIDENCE TO BE RECEIVED FROM CLAIMANT AFTER THE TAKING OF DR. PARSONS' DEPOSITION JUST BECAUSE CLAIMANT'S ATTORNEY CLAIMED HE WAS SURPRISED BY THE TESTIMONY OF DR. PARSONS. THE BOARD IS OF THE OPINION THAT ALL PARTIES SHOULD COME TO THE HEARING FULLY PREPARED TO FACE AND REBUT, IF POSSIBLE, ALL RELEVANT TESTIMONY.

ORDER

THE ORDER OF THE REFEREE DATED MAY 15, 1975, IS AFFIRMED.

JUDGE SLOAN DISSENTS AS FOLLOWS -

I FEEL THAT DR. PARSONS' PRIOR MEDICAL REPORTS ARE SO INCONSISTENT WITH THE STATEMENTS CONTAINED IN HIS DEPOSITION THAT HIS OPINION THAT THERE WAS NO RELATIONSHIP BETWEEN CLAIMANT'S WORK ACTIVITIES AND HIS CONDITION CAN BE GIVEN VERY LITTLE CREDENCE. DR. PARSONS STATED REPEATEDLY THAT CLAIMANT HAD HAD A LONG-STANDING DEGENERATIVE DISC PROBLEM. IN JUNE 1974, HE EXPRESSED THE OPINION THAT THERE WAS A POSSIBILITY THAT CLAIMANT'S WALKING ON A

HARD FLOOR AND THE REPETITIVE LIFTING REQUIRED BY HIS JOB MIGHT HAVE SIGNIFICANTLY AGGRAVATED HIS PROBLEM. LATER HE STATED THAT THE DISC PROTRUSION COULD HAVE BEEN AGGRAVATED BY LIFTING OR WALKING ON THE HARD FLOOR, AND STILL LATER, HE STATED THAT THE WORK MAY HAVE AGGRAVATED CLAIMANT'S CONDITION. WHEN HIS DEPOSITION WAS TAKEN, (DEF. EX. 13), HE DID A COMPLETE 'ABOUT FACE' AND STATED HE COULD FIND NO EVIDENCE THAT THE WORK ACTIVITY WAS A MATERIAL CONTRIBUTING CAUSE OF CLAIMANT'S CONDITION WHICH NECESSITATED THE SURGERY.

I AM MORE PERSUADED BY THE CONCLUSION OF DR. DAVIS THAT CLAIMANT HAD DEGENERATIVE DISC DISEASE AND THAT THE HEAVY LIFTING AT WORK AGGRAVATED THE CONDITION.

THE REFEREE'S ORDER DATED MAY 15, 1975, SHOULD BE REVERSED.

- s - GORDON SLOAN, COMMISSIONER

WCB CASE NO. 74-533 SEPTEMBER 5, 1975

EMERY A. ALLEN, CLAIMANT

BERNAU AND WILSON, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER ON MOTION

ON JULY 30, 1975, THE EMPLOYER AND CARRIER FILED A MOTION REQUESTING THE WORKMEN'S COMPENSATION BOARD FOR AN ORDER REMANDING THE ABOVE ENTITLED MATTER TO THE REFEREE FOR FURTHER TESTIMONY. THE EMPLOYER AND CARRIER SUBMITTED TWO REPORTS FROM DR. SINGER, ONE DATED MARCH 25, 1974, THE OTHER DATED OCTOBER 14, 1974, AS A BASIS FOR THE MOTION.

THE BOARD, HAVING READ THE TWO REPORTS FROM DR. SINGER, AS WELL AS THE OPINION AND ORDER ENTERED JUNE 24, 1975, CONCLUDES THAT THE INFORMATION CONTAINED IN SUCH REPORTS NOT ONLY WAS AVAILABLE TO THE EMPLOYER AND THE CARRIER PRIOR TO THE HEARING BUT THAT IT SERVES NO USEFUL PURPOSE AND IS NOT, IN FACT, ADDITIONAL EVIDENCE, BUT MERELY A REPETITION OF EVIDENCE WHICH WAS PREVIOUSLY BEFORE THE REFEREE AT THE HEARING.

IT IS THEREFORE ORDERED THAT THE MOTION DATED JULY 30, 1975, BE AND THE SAME HEREBY IS DENIED.

CALVIN R. VERMEER, CLAIMANT

PETERSON, SUSAK AND PETERSON
CLAIMANT'S ATTYS.
JONES, LANG, KLEIN, WOLF AND
SMITH, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

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

AT THE TIME OF THE ALLEGED COMPENSABLE INJURY CLAIMANT WAS 49 YEARS OLD AND EMPLOYED AS A WORKMEN'S COMPENSATION CLAIM EXAMINER. CLAIMANT CONTENDS THAT THE MYOCARDIAL INFARCTION WHICH HE SUFFERED ON NOVEMBER 19, 1973, WAS MATERIALLY CONTRIBUTED TO BY THE STRESSES AND STRAINS AND WORKLOADS OF HIS EMPLOYMENT. THE CLAIMANT DID NOT TURN IN A COMPENSATION CLAIM UNTIL MAY 18, 1974, EXPLAINING THIS DELAY BY STATING THAT HE THOUGHT HE MIGHT FALL INTO DISFAVOR WITH THE EMPLOYER IF HE TURNED IN A CLAIM.

THE REFEREE FOUND CLAIMANT'S TESTIMONY TO BE UNCONVINCING WITH RESPECT TO THE DELAY. CLAIMANT'S EMPLOYMENT WAS DIRECTLY INVOLVED WITH WORKMEN'S COMPENSATION CLAIMS. THE REFEREE ALSO FOUND THAT CLAIMANT'S TESTIMONY WITH RESPECT TO AN EMOTIONAL TELEPHONE CONVERSATION WITH A CHICAGO ATTORNEY ON THE MORNING OF THE HEART ATTACK WAS FALSE. THE MEDICAL REPORTS WHICH FOUND THE MYOCARDIAL INFARCTION TO HAVE BEEN MATERIALLY CONTRIBUTED TO BY CLAIMANT'S WORK ACTIVITES WERE BASED UPON TESTIMONY RELATED TO DR. EMPEY AND DR. GRISWOLD BY THE CLAIMANT. THE REFEREE CONCLUDED THAT CLAIMANT HAD FAILED TO SUSTAIN THE BURDEN OF PROVING A COMPENSABLE INJURY. CLAIMANT CONTENDS THAT IN REACHING THIS CONCLUSION THE REFEREE IGNORED THE OPINIONS EXPRESSED BY BOTH DR. EMPEY AND DR. GRISWOLD.

THE BOARD, ON DE NOVO REVIEW, IS AWARE THAT THE MEDICAL REPORTS WERE NOT GIVEN GREAT CONSIDERATION BY THE REFEREE, HOWEVER, SAID REPORTS WERE BASED WHOLLY UPON THE HISTORY RELATED TO EACH DOCTOR BY CLAIMANT. CLAIMANT HAD SHOWN HIMSELF TO BE SOMEWHAT LESS THAN CREDIBLE IN HIS TESTIMONY, THEREFORE, IT CAN BE PRESUMED THAT THE HISTORY WHICH HE RELATED TO DR. EMPEY AND DR. GRISWOLD WAS EQUALLY UNRELIABLE. THE BOARD CONCURS IN THE CONCLUSION OF THE REFEREE THAT CLAIMANT FAILED TO SUSTAIN THE BURDEN OF PROVING HE HAD SUFFERED A COMPENSABLE INJURY ON NOVEMBER 19, 1973.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 21, 1975, IS AFFIRMED.

AVIS M. COZAD, CLAIMANT

WILLIAM E. GROSS, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF AN ORDER OF THE REFEREE WHICH AWARDED CLAIMANT 80 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY, FURTHER ORDERED CLAIMANT'S CLAIM BE REOPENED EFFECTIVE SEPTEMBER 10, 1974 AND THAT THE FUND PAY PENALTIES AND A REASONABLE ATTORNEY'S FEE.

CLAIMANT, ON NOVEMBER 18, 1971, SUSTAINED A COMPENSABLE ABDOMINAL AND LOW BACK INJURY. ON DECEMBER 20, 1971 SHE WAS EXAMINED BY DR. BACHHUBER WHO FOUND LITTLE OBJECTIVE EVIDENCE OF DISABILITY. IN AUGUST 1972, CLAIMANT WAS EXAMINED BY DR. BLAUER WHO WAS OF THE OPINION THAT CLAIMANT'S CONDITION WAS STATIONARY AND HER CLAIM COULD BE CLOSED. DR. PRICE, WHO HAD SEEN CLAIMANT ON DECEMBER 3, 1971, AGREED WITH DR. BLAUER'S OPINION AND THE CLAIM WAS CLOSED BY DETERMINATION ORDER DATED NOVEMBER 29, 1972 WHEREBY CLAIMANT WAS AWARDED TEMPORARY TOTAL DISABILITY COMPENSATION FROM NOVEMBER 18, 1971 TO DECEMBER 23, 1971 AND NO AWARD FOR PERMANENT DISABILITY.

ON DECEMBER 14, 1972 CLAIMANT REQUESTED A HEARING - THE HEARING WAS NOT HELD UNTIL APRIL 1, 1975.

AT THE HEARING CLAIMANT CONTENDED THAT HER CLAIM WAS PREMATURELY CLOSED AND SHE SHOULD BE ENTITLED TO TEMPORARY TOTAL DISABILITY FROM DECEMBER 24, 1971 UNTIL SHE IS MEDICALLY STATIONARY AND HER CLAIM IS PROPERLY CLOSED OR, IN THE ALTERNATIVE, IF HER CONDITION WAS MEDICALLY STATIONARY AT THE TIME HER CLAIM WAS CLOSED THAT SHE WAS ENTITLED TO PERMANENT DISABILITY BENEFITS.

ON SEPTEMBER 10, 1974, CLAIMANT HAD BEEN ADMITTED TO THE UNIVERSITY OF OREGON MEDICAL SCHOOL HOSPITAL FOR CHRONIC LOW BACK AND LEG PAIN AND ON OCTOBER 16, 1974 A LAMINECTOMY WAS PERFORMED TO REMOVE AN EXTRA-DURAL DEFECT AT THE L5-S1 LEVEL. CLAIMANT TESTIFIED SHE HAD NOT, AT THE TIME OF THE HEARING, BEEN RELEASED TO RETURN TO WORK.

THE REFEREE WAS NOT CONVINCED THAT CLAIMANT'S CLAIM HAD BEEN PREMATURELY CLOSED. BASED UPON THE FINDINGS REPORTED BY DR. BACHHUBER AND THE OPINIONS EXPRESSED BY DR. BLAUER AND DR. PRICE, HE CONCLUDED THAT ON THE DATE OF THE DETERMINATION ORDER CLAIMANT WAS MEDICALLY STATIONARY AND SHE WAS NOT ENTITLED TO ANY AWARD OF PERMANENT DISABILITY. HE FURTHER CONCLUDED THAT BECAUSE HER ATTEMPTS TO RETURN TO WORK WERE FRUSTRATED BY RECURRENT EXACERBATIONS OF LOW BACK PAIN WITH BILATERAL RADIATING LEG PAIN AND BASED UPON THE EVIDENCE NOW AVAILABLE THAT SHE SHOULD HAVE BEEN ENTITLED TO 25 PERCENT UNSCHEDULED DISABILITY EQUAL TO 80 DEGREES.

THE REFEREE, ADDITIONALLY FOUND, THAT CLAIMANT'S CLAIM SHOULD BE REOPENED AS OF THE DATE SHE WAS ADMITTED TO THE UNIVERSITY OF OREGON MEDICAL HOSPITAL FOR PROSPECTIVE SURGERY AND REMAIN OPEN UNTIL HER CONDITION WAS AGAIN MEDICALLY STATIONARY. HE FOUND CLAIMANT WAS ENTITLED TO TREATMENT UNDER ORS 656.245 ON A PERIODIC BASIS FROM NOVEMBER 29, 1972 TO SEPTEMBER 10, 1974.

THE BOARD, ON DE NOVO REVIEW, CANNOT AGREE WITH THE REFEREE'S CONCLUSION THAT CLAIMANT'S CLAIM WAS NOT PREMATURELY CLOSED BY DETERMINATION ORDER MAILED NOVEMBER 29, 1972. THE REFEREE DID NOT KNOW WHY THE HERNIATED DISC WAS NOT FOUND BEFORE OCTOBER 10, 1974 BUT HE DOES COMMENT THAT CLAIMANT'S INTERMITTENT COMPLAINTS HAVE BEEN THE SAME AND HAVE PERSISTED SINCE HER INJURY OF NOVEMBER 18, 1971. THIS INDICATES THAT CLAIMANT WAS NOT MEDICALLY STATIONARY DURING THAT PERIOD OF TIME.

THE BOARD CONCLUDES THAT THE CLAIM WAS PREMATURELY CLOSED.

THE BOARD CONCLUDES THAT CLAIMANT'S CLAIM SHOULD BE REOPENED AS OF DECEMBER 24, 1971 WITH PAYMENT OF TEMPORARY TOTAL DISABILITY BENEFITS TO COMMENCE ON THAT DATE AND BE PAID UNTIL CLAIMANT'S CONDITION BECOMES MEDICALLY STATIONARY AND HER CLAIM IS CLOSED UNDER THE PROVISIONS OF ORS 656.268.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 4, 1975 IS REVERSED.

THE CLAIM IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR PAYMENT OF COMPENSATION, AS PROVIDED BY LAW, COMMENCING DECEMBER 24, 1971 AND UNTIL THE CLAIM IS CLOSED UNDER THE PROVISIONS OF ORS 656.268.

WCB CASE NO. 75-1375 SEPTEMBER 5, 1975

LEO D. CARPENTER, CLAIMANT

CLARK, MARSH AND LINDAUER, CLAIMANT'S ATTYS.
OWN MOTION ORDER

ON AUGUST 3, 1965, CLAIMANT SUSTAINED A COMPENSABLE LOW BACK INJURY. FOLLOWING A LUMBAR LAMINECTOMY, CLAIMANT RECEIVED AN AWARD EQUAL TO 50 PERCENT LOSS OF AN ARM FOR HIS UNSCHEDULED DISABILITY.

IN 1971, CLAIMANT RECEIVED FURTHER MEDICAL CARE AND MORE RECENTLY, HE HAS BEEN REQUIRED TO OBTAIN MEDICAL CARE INCLUDING A MYELOGRAM. THESE PROCEDURES INDICATE TO THE BOARD THAT CLAIMANT'S CONDITION SHOULD BE REEVALUATED BY THE EVALUATION DIVISION.

IT IS THEREFORE ORDERED THAT THE STATE ACCIDENT INSURANCE FUND SUBMIT ITS ENTIRE MEDICAL FILE TO THE EVALUATION DIVISION OF THE WORKMEN'S COMPENSATION BOARD. THE EVALUATION DIVISION SHALL SUBMIT TO THE BOARD AN ADVISORY RATING OF CLAIMANT'S CURRENT DISABILITY.

WCB CASE NO. 74-1298 SEPTEMBER 5, 1975

DON FARLEY, CLAIMANT

SCHOUBOE, CAVANAUGH AND DAWSON
CLAIMANT'S ATTYS.
TOOZE, KERR, PETERSON, MARSHALL AND
SHENKER, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

ON SEPTEMBER 12, 1969, CLAIMANT SUFFERED COMPENSABLE MULTIPLE AND SEVERE INJURIES. A DETERMINATION ORDER DATED OCTOBER 7, 1971, AWARDED CLAIMANT 68 DEGREES FOR LOSS OF HIS RIGHT LEG, 68 DEGREES FOR LOSS OF HIS LEFT LEG, 58 DEGREES FOR LOSS OF HIS RIGHT ARM AND 20 DEGREES FOR LOSS OF BINAURAL HEARING. SUBSEQUENTLY, BY STIPULATION, CLAIMANT'S CLAIM WAS REOPENED AND AGAIN CLOSED BY A SECOND DETERMINATION ORDER DATED APRIL 2, 1974, WHEREIN NO ADDITIONAL PERMANENT PARTIAL DISABILITY WAS AWARDED CLAIMANT.

THE CLAIMANT REQUESTED A HEARING AND THE REFEREE INCREASED THE PREVIOUS AWARDS, TO-WIT--52 DEGREES FOR LOSS OF THE RIGHT LEG, MAKING A TOTAL OF 80 PER CENT OF THE MAXIMUM, 52 DEGREES FOR LOSS OF THE LEFT LEG, MAKING A TOTAL OF 80 PER CENT OF THE MAXIMUM, AND AFFIRMED THE REMAINDER OF THE FIRST DETERMINATION ORDER.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER, CONTENDING THAT HE IS PERMANENTLY AND TOTALLY DISABLED AND THAT A FINDING OF PERMANENT TOTAL DISABILITY BASED UPON LOSS OF USE OF ANY SCHEDULED PORTION OF THE BODY WHICH PERMANENTLY INCAPACITATES THE WORKMAN FROM REGULARLY PERFORMING ANY WORK AT A GAINFUL AND SUITABLE OCCUPATION IS PERMITTED UNDER THE PROVISIONS OF ORS 656.206 AS AMENDED BY OREGON LAWS 1975, CH 506.

THE BOARD WOULD POINT OUT TO CLAIMANT'S COUNSEL THAT OREGON LAWS 1975, CH 506 IS PERSPECTIVE IN NATURE BECAUSE THE PROVISIONS OF ORS 656.206 ARE SUBSTANTIVE RATHER THAN PROCEDURAL AND, THEREFORE, WOULD APPLY ONLY TO COMPENSABLE INJURIES SUFFERED ON AND AFTER JULY 1, 1975.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS MADE BY THE REFEREE IN HIS OPINION AND ORDER WHICH IS ATTACHED HERETO AND, BY THIS REFERENCE, MADE A PART OF THE BOARD'S ORDER.

ORDER

THE ORDER OF THE REFEREE DATED MAY 5, 1975, IS AFFIRMED.

WCB CASE NO. 74-1288 SEPTEMBER 5, 1975

ROXIE SHELL, CLAIMANT

TWING, ATHERLY AND BUTLER,
CLAIMANT'S ATTYS.
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTED BOARD REVIEW OF AN ORDER OF THE REFEREE WHICH REMANDED CLAIMANT'S CLAIM TO THE EMPLOYER TO BE REOPENED FOR THE PAYMENT OF COMPENSATION, INCLUDING TEMPORARY TOTAL DISABILITY BENEFITS, MEDICAL SERVICES AND TRAVEL EXPENSES FOR MEDICAL PURPOSES, FROM AUGUST 1, 1973 TO AUGUST 22, 1974, FOUND THAT CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED AND AWARDED PENALTIES AND ATTORNEY'S FEE PAYABLE BY THE EMPLOYER.

CLAIMANT SUFFERED A COMPENSABLE LOW BACK INJURY IN MARCH, 1973, WHILE WORKING AS A NURSES' S AIDE. BY A DETERMINATION ORDER DATED AUGUST 30, 1973, CLAIMANT WAS AWARDED 48 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. CLAIMANT'S LOW BACK SYMPTOMS PERSISTED AND, IN MAY, 1974, A CLAIM FOR REOPENING ON ACCOUNT OF AGGRAVATION WAS MADE WITH A REQUEST FOR RESUMPTION OF TEMPORARY TOTAL DISABILITY PAYMENTS. IN AUGUST, 1974, CLAIMANT WAS AGAIN DECLARED MEDICALLY STATIONARY. FROM SEPTEMBER, 1974 THROUGH NOVEMBER, 1974, DEMAND FOR PAYMENT OF MEDICAL EXPENSES INCURRED BY CLAIMANT WERE MADE - NO STATUTORY DENIAL BY THE EMPLOYER WAS EVER MADE ACCORDING TO THE RECORD.

CLAIMANT'S CONDITION WAS ORIGINALLY DIAGNOSED BY DR. CORRIGAN AS AN ACUTE LUMBOSACRAL JUNCTION. SUBSEQUENTLY CLAIMANT WAS SEEN BY ANOTHER ORTHOPEDIST (DR. WATTLEWORTH) WHO, IN DECEMBER, 1973, NOTED THE SAME SYMPTOMS PREVIOUSLY REPORTED BY CLAIMANT. A MYELOGRAM PROVED NEGATIVE AND CLAIMANT WAS GIVEN SOME BEDREST AND PHYSICAL THERAPY WHICH GAVE HER SOME IMPROVEMENT. DR. WATTLEWORTH DECLARED CLAIMANT'S CONDITION WAS STATIONARY IN AUGUST, 1974.

THE REFEREE CONCLUDED THAT ALTHOUGH MEDICAL EVIDENCE AVAILABLE TO THE EVALUATION DIVISION AT THE TIME THE DETERMINATION WAS ENTERED SUPPORTED A CLOSURE, SUBSEQUENT MEDICAL EVIDENCE INDICATED CLAIMANT'S CONDITION WAS NOT STABLE. THE REFEREE CONCLUDED THAT CLAIMANT WAS NOT FULLY 'RESTORED' AS OF AUGUST 1, 1973, AND SHE NEEDED FURTHER MEDICAL TREATMENT - THAT SHE RECEIVED SUCH TREATMENT AND WAS FULLY 'RESTORED' AS OF AUGUST 22, 1974. HE, THEREFORE, REOPENED THE CLAIM AS OF AUGUST 1, 1973 AND AWARDED CLAIMANT TEMPORARY TOTAL DISABILITY BENEFITS FROM THAT DATE TO AUGUST 22, 1974. THE REFEREE FURTHER FOUND THAT CLAIMANT'S CONDITION WAS NOW STATIONARY AND THAT IT WOULD BE PROPER FOR HIM TO MAKE A DETERMINATION OF HER PERMANENT DISABILITY.

THE REFEREE, AFTER CONSIDERING ALL OF THE MEDICAL EVIDENCE AS WELL AS THE TESTIMONY OF CLAIMANT AND WITNESSES TESTIFYING IN HER BEHALF, CONCLUDED THAT CLAIMANT WAS NOT NOW CAPABLE OF REGULARLY HOLDING GAINFUL AND SUITABLE EMPLOYMENT IN THE BROAD FIELD OF GENERAL INDUSTRIAL OCCUPATIONS AND WAS, THEREFORE, PERMANENTLY AND TOTALLY DISABLED.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE REFEREE. THE BOARD NOTES THAT IN ITS BRIEFS THE EMPLOYER STATES THAT THE ONLY ISSUE IT WISHES TO RAISE FOR CONSIDERATION BY THE BOARD IS WHETHER OR NOT THE REFEREE SHOULD HAVE GRANTED CLAIMANT AN AWARD. THE EMPLOYER STATES THAT IT WAS SURPRISED BY THIS ISSUE, THAT IT WAS AWARE OF ISSUES OF REOPENING AND MEDICAL CARE BUT WAS NOT PREPARED TO HAVE THE REFEREE MAKE AN AWARD. THERE IS ABSOLUTELY NOTHING IN THE RECORD TO SUPPORT THIS CONTENTION OF 'SURPRISE.' ONE OF THE ISSUES BEFORE THE REFEREE AT THE TIME OF THE HEARING IN DECEMBER, 1974, WAS EXTENT OF PERMANENT DISABILITY WITH CLAIMANT CONTENDING SHE WAS PERMANENTLY AND TOTALLY DISABLED.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 14, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE THE SUM OF 300 DOLLARS PAYABLE BY THE EMPLOYER FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-3928 SEPTEMBER 8, 1975

STEVEN C. PROSSER, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE CLAIMANT ALLEGES HE SUSTAINED A COMPENSABLE INJURY ON NOVEMBER 26, 1973 WHEN HE BROKE HIS WRIST WHILE PLAYING FOOTBALL AT PORTLAND STATE UNIVERSITY. CLAIMANT WAS ATTENDING PORTLAND STATE ON AN ATHLETIC SCHOLARSHIP WHICH PROVIDED THAT CLAIMANT'S TUITION FOR THE FALL AND WINTER TERMS WOULD BE PAID.

CLAIMANT FILED A CLAIM FOR INDUSTRIAL INJURY ON OCTOBER 1, 1974 - IT WAS DENIED BY THE STATE ACCIDENT INSURANCE FUND ON OCTOBER 16, 1974 ON THE BASIS THAT CLAIMANT WAS NOT AN EMPLOYEE AT PORTLAND STATE UNIVERSITY AT THE TIME OF HIS INJURY.

THE REFEREE, AFTER HEARING, CONCLUDED THAT THERE WAS NO EVIDENCE OF AN EMPLOYEE-EMPLOYER RELATIONSHIP - THAT THERE WAS NO INTENTION TO ENTER INTO SUCH A RELATIONSHIP BY THE PARTIES INVOLVED. THE EVIDENCE INDICATES THAT CLAIMANT DID NOT ACTUALLY RECEIVE ANY CHECK FOR HIS TUITION BUT THAT THE MONEY THEREFOR WENT INTO A POOL FUND. THE REFEREE SUSTAINED THE DENIAL ON THE GROUNDS THAT CLAIMANT WAS NOT AN EMPLOYEE AS CONTEMPLATED BY THE PREAMBLE OF THE OREGON WORKMEN'S COMPENSATION ACT - THAT HE WAS NOT BEING PAID TO PLAY FOOTBALL, THE ONLY SERVICE WHICH HE PERFORMED ON BEHALF OF PORTLAND STATE UNIVERSITY.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE WELL WRITTEN OPINION OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 20, 1975 IS AFFIRMED.

WCB CASE NO. 74-3452 SEPTEMBER 8, 1975

THE BENEFICIARIES OF

JOSEPH JOHN MATTUS, DECEASED

AND IN THE MATTER OF COMPLYING STATUS OF
TOM L. DUENSING AND ALMA DUENSING
GRANT AND FERGUSON, CLAIMANT'S ATTYS.
ROLF OLSON, DEFENSE ATTY.
REQUEST FOR REVIEW BY BENEFICIARIES

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT, SHIRLEY ANN MATTUS, WIDOW OF JOSEPH JOHN MATTUS, DECEASED WORKMAN, HAS REQUESTED BOARD REVIEW OF THE ORDER OF THE REFEREE WHICH UPHELD THE EMPLOYER'S DENIAL OF HER CLAIM FOR WIDOW'S BENEFITS.

THE WORKMAN WAS KILLED ON JULY 27, 1974, WHEN HIS PICKUP TRUCK WHICH HE WAS DRIVING WAS INVOLVED IN AN ACCIDENT ON I-5 SOUTH OF ROSEBURG, OREGON. THE WORKMAN WAS TOWING A TRAILER HOUSE OWNED BY TOM AND ALMA DUENSING. PRIOR TO THE FATAL ACCIDENT AN ARRANGEMENT HAD BEEN MADE BETWEEN THE WORKMAN AND THE DUENSINGS TO HAUL THE TRAILER TO CALIFORNIA - THE WORKMAN HAD A SUITABLE HITCH ON HIS TRUCK AND AGREED TO HAUL THE TRAILER. PRIOR TO THE DEPARTURE, THE DUENSINGS PRESENTED THE WORKMAN WITH A CHECK FOR 100 DOLLARS DRAWN ON THE TOM DUENSING TRUCKING ACCOUNT AND UPON WHICH IT WAS INDICATED THAT THE AMOUNT WAS FOR EQUIPMENT RENTAL.

THE REFEREE CONCLUDED THAT THE WORKMAN WAS HIRED BY THE DUENSINGS AS INDIVIDUALS TO HAUL THEIR TRAILER AND THE CONNECTION, IF ANY, OF THE TRAILER TO THE TRUCKING BUSINESS WAS VERY REMOTE. THE REFEREE FURTHER CONCLUDED THAT THE PAYMENT OF THE 100 DOLLAR CHECK INDICATED IT WAS PAYMENT FOR THE USE OF THE EQUIPMENT AND, THEREFORE, COULDN'T BE CONSIDERED AS PAYMENT FOR THE WORKMAN'S SERVICES.

THE REFEREE FURTHER CONCLUDED THAT THE WORKMAN WAS NOT AN INDEPENDENT CONTRACTOR BUT WAS AN EMPLOYEE FOR PURPOSES OF THE WORKMEN'S COMPENSATION LAW - HOWEVER, HE FOUND THAT HE WAS NOT A SUBJECT WORKMAN BUT WAS EXEMPT UNDER THE PROVISIONS OF ORS 656.207(3). THE 100 DOLLARS PAID THE WORKMAN WAS NOT A LABOR COST, THEREFORE, HIS EMPLOYMENT MUST BE CONSIDERED AS 'CASUAL' AND SUCH EMPLOYMENT WAS NOT IN THE 'COURSE OF THE TRADE, BUSINESS OR PROFESSION OF HIS EMPLOYER.' THE REFEREE, THEREFORE, FOUND THE DENIAL OF THE CLAIM FOR WIDOW'S BENEFITS TO BE PROPER.

THE BOARD, ON DE NOVO REVIEW, IS OF THE OPINION THAT THE DECEASED WORKMAN WAS MORE OF AN INDEPENDENT CONTRACTOR THAN A NONSUBJECT EMPLOYEE. HOWEVER, THE RESULTS WOULD BE THE SAME IN EITHER SITUATION, THEREFORE, THE BOARD, AFTER COMMENTING ON THE DECEASED WORKMAN'S STATUS, AFFIRMS THE ORDER OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE DATED MAY 12, 1975, IS AFFIRMED.

WCB CASE NO. 74-505 SEPTEMBER 8, 1975

DOYLE EDWARDS, CLAIMANT

GREGORY, CLYMAN AND OGILVY,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON, MOORE AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH UPHELD THE DENIAL BY THE STATE ACCIDENT INSURANCE FUND OF A CLAIM OF OCCUPATIONAL DISEASE FOR CONDITION KNOWN AS PNEUMOCONIOSIS.

ON OR ABOUT SEPTEMBER 12, 1973, AFTER BEING INFORMED BY DR. LOREY THAT HE HAD OCCUPATIONAL PNEUMOCONIOSIS, CLAIMANT FILED A CLAIM OF AN OCCUPATIONAL DISEASE. CLAIMANT CONTENDED THAT THE DUSTY ATMOSPHERE IN WHICH HE WAS WORKING CAUSED THE DISEASE. ABOUT A MONTH PREVIOUS CLAIMANT STARTED HAVING SHARP SUBSTERNAL PAIN. THE INITIAL EXAMINATION UPON HOSPITALIZATION INDICATED A POSSIBLE MYOCARDIAL INFARCTION - HOWEVER, THE DISCHARGE SUMMARY INDICATED DIAGNOSIS OF ISCHEMIC HEART DISEASE, PNEUMOCONIOSIS AND CHRONIC BRONCHITIS.

DR. GROSSMAN, WHO EXAMINED CLAIMANT ON MAY 13, 1975, WAS OF THE OPINION THAT CLAIMANT HAD CHRONIC PULMONARY DISEASE WITH SYMPTOMS, POSITIVE EVIDENCE OF PNEUMOCONIOSIS AND A POSITIVE HISTORY OF SILICA EXPOSURE WITH INADEQUATE VENTILATION ON THE JOB. HE SUMMED THIS UP AS A DIAGNOSIS OF PROBABLE SILICOISIS, SECONDARY TO INDUSTRIAL EXPOSURE.

DR. PARCHER, WHO TESTIFIED ON BEHALF OF THE FUND, STATED THAT PNEUMOCONIOSIS WAS A GENERAL CATEGORY OF PULMONARY PROBLEMS RESULTING FROM THE INHALATION OF DUST PARTICLES. HE STATED THAT CIGARETTE SMOKING WOULD NOT CAUSE PNEUMOCONIOSIS BUT IT COULD HAVE AN EFFECT ON OTHER PULMONARY DYSFUNCTIONS. DR. PARCHER THOUGHT THE FIRST MEDICAL HISTORY WHICH INDICATED SHARP PAINS IN THE CHEST AND BREATHING DIFFICULTY WITHOUT ANY EVIDENCE OF COUGHING PROBLEMS WOULD SUPPORT A CONCLUSION THAT CLAIMANT MIGHT HAVE CHRONIC BRONCHITIS. HE FELT THAT THE INFLAMMATION OF THE BRONCHI OF THE LUNGS NEXT TO THE TRACHEA WAS PROBABLY THE RESULT OF CIGARETTE SMOKING. THIS OPINION WAS SUPPORTED BY MEDICAL INFORMATION RECEIVED FROM THE UNIVERSITY OF OREGON MEDICAL SCHOOL. THE REFEREE CONCLUDED THAT CLAIMANT HAD FAILED TO MEET HIS BURDEN OF PROOF THAT HE SUSTAINED A DISABLING OCCUPATIONAL DISEASE - THAT CLAIMANT APPEARED TO HAVE HAD AN ISCHEMIC HEART PROBLEM WHICH REQUIRED HIS HOSPITALIZATION.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE CONCLUSION OF THE REFEREE THAT CLAIMANT HAS A HEART PROBLEM RATHER THAN A LUNG PROBLEM AND THAT THE LATTER IS PROBABLY THE RESULT OF HEAVY SMOKING. THE BOARD CONCLUDES THAT THE MEDICAL EVIDENCE IS SIMPLY NOT SUFFICIENT TO JUSTIFY A FINDING THAT CLAIMANT SUFFERED AN OCCUPATIONAL DISEASE. THE BOARD ALSO TAKES NOTE OF THE FACT THAT CLAIMANT RETURNED TO THIS SAME TYPE OF WORK WHICH HE WAS DOING PRIOR TO HIS HOSPITALIZATION ALTHOUGH HE HAD BEEN WARNED BY THE DOCTORS NOT TO DO SO.

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

COMMISSIONER GEORGE A. MOORE DISSENTS AS FOLLOWS -

THIS REVIEWER IS INCLINED TO DISAGREE WITH THE REFEREE'S OPINION AND ORDER IN DETERMINING COMPENSABILITY. THE EVIDENCE IS CLEAR THAT THE WORK ENVIROMENT CONTRIBUTED TO IMPLANTING OF PARTICLES IN CLAIMANT'S LUNGS. NO ONE DENIES THAT SMOKING IS CONTRAINDICATED TO THE CONDITION. FURTHER THE CLAIMANT IS NOT ENHANCING HIS OPPORTUNITY FOR RECOVERY BY RETURNING TO WORK OF METAL POLISHING. HOWEVER, I AM MORE PERSUADED BY THE OPINION OF DR. GROSSMAN, WHOSE TESTIMONY DOES NOT IMPRESS ME AS THAT OF A FLAMING LIBERAL AS IMPLIED BY THE STATE ACCIDENT INSURANCE FUND'S BRIEF, THAN THAT OF DR. PARCHER, PRINCIPALLY BECAUSE DR. GROSSMAN HAD THE ADVANTAGE OF PERSONAL EXAMINATION OF THE CLAIMANT.

THEREFORE, I RESPECTFULLY DISSENT FROM THE MAJORITY OF THE BOARD AND RECOMMEND REMANDING THE CLAIM TO THE STATE ACCIDENT INSURANCE FUND FOR PAYMENT OF BENEFITS.

- S - GEORGE A. MOORE, COMMISSIONER

WCB CASE NO. 74-3349 SEPTEMBER 8, 1975

CHARLES PENNSE, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF AN ORDER OF THE REFEREE WHICH GRANTED HIM AN AWARD OF 64 DEGREES FOR 20 PER CENT UNSCHEDULED LOW BACK DISABILITY. CLAIMANT, A 27 YEAR OLD CONSTRUCTION WORKER, SUFFERED A COMPENSABLE INJURY ON SEPTEMBER 11, 1973 -- HE MADE A GOOD RECOVERY. HIS CLAIM WAS CLOSED BY FIRST DETERMINATION ORDER DATED FEBRUARY 22, 1974, WITH NO AWARD FOR PERMANENT PARTIAL DISABILITY. THE CLAIM WAS SUBSEQUENTLY REOPENED AND CLOSED AGAIN BY A SECOND DETERMINATION ORDER DATED AUGUST 21, 1974, WHEREBY CLAIMANT RECEIVED AN AWARD OF 32 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK DISABILITY.

WHEN CLAIMANT WAS EXAMINED AT THE DISABILITY PREVENTION DIVISION OF THE BOARD, DR. MASON WAS OF THE OPINION THAT CLAIMANT'S DISABILITY RESULTING FROM THE ACCIDENT SHOULD BE CONSIDERED MILD BUT THAT A JOB CHANGE WOULD BE NECESSARY TO ALLOW AVOIDANCE OF EXCESSIVE BENDING, TWISTING AND LIFTING STRESSES. THE PELVIC FRACTURES HAD HEALED WITH MINIMAL DEFORMITY OF THE PELVIC RING, HOWEVER, PEDICLE DEFECT AT L5 AND EARLY OSTEOARTHRITIC CHANGES AT L4-S1, LEFT, WERE EVIDENT AND WOULD PREDISPOSE CLAIMANT TO RECURRENT LOW BACK STRAINS IF HE INDULGED IN THE MOVEMENTS DESCRIBED BY DR. MASON.

AT THE PRESENT TIME CLAIMANT IS ATTENDING MT. HOOD COMMUNITY COLLEGE TAKING MACHINE TECHNOLOGY -- HE HOPES TO OBTAIN A JOB AS A MECHANIC UPON COMPLETION OF ONE YEAR OF STUDY.

THE REFEREE, AFTER HEARING, FELT THAT THE NATURE AND EXTENT OF THE MEDICAL FINDINGS ON EXAMINATION, TOGETHER WITH CLAIMANT'S COMPLAINTS, INDICATED THAT CLAIMANT WOULD HAVE TO AVOID HEAVIER TYPES OF WORK AND, THEREFORE, INCREASED CLAIMANT'S AWARD TO 20 PER CENT OF THE MAXIMUM TO COMPENSATE CLAIMANT FOR HIS LOSS OF WAGE EARNING CAPACITY.

THE BOARD, ON DE NOVO REVIEW, NOTES THAT CLAIMANT IS ONLY 27 YEARS OLD AND THAT IT IS DOUBTFUL HE WILL EVER BE ABLE TO RETURN TO CONSTRUCTION WORK WHICH IS WHAT HE DESIRES TO DO AND IS THE TYPE OF WORK IN WHICH HE WAS ENGAGED UNTIL INJURED. THE BOARD CONCLUDES THAT BECAUSE CLAIMANT MUST AVOID HEAVY TYPE WORK, WHICH INCLUDES NOT ONLY CONSTRUCTION BUT OTHER SIMILAR JOBS, HE HAS SUFFERED A SUBSTANTIAL LOSS OF WAGE EARNING CAPACITY FOR WHICH HE HAS NOT BEEN ADEQUATELY COMPENSATED BY AN AWARD OF 20 PER CENT. CLAIMANT HAS LOST, IN THE BOARD'S OPINION, 30 PER CENT OF HIS WAGE EARNING CAPACITY, THE SOLE CRITERION FOR DETERMINING UNSCHEDULED DISABILITY.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 26, 1974, IS MODIFIED. CLAIMANT IS AWARDED 96 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. THIS AWARD IS IN LIEU OF AND NOT IN ADDITION TO ANY PREVIOUS AWARDS. IN ALL OTHER RESPECTS THE REFEREE'S ORDER IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED, AS A REASONABLE ATTORNEY'S FEE, 25 PER CENT OF THE ADDITIONAL COMPENSATION AWARDED BY THIS ORDER, PAYABLE THEREFROM AS PAID, NOT TO EXCEED 2,300 DOLLARS.

WCB CASE NO. 74-4169 SEPTEMBER 8, 1975

CRAIG LUCAS, CLAIMANT

EVOHL F. MALAGON, CLAIMANT'S ATTY.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT.

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE ORDER OF THE REFEREE WHICH AFFIRMED THE DETERMINATION ORDER ISSUED NOVEMBER 1, 1974, WHEREBY CLAIMANT WAS GRANTED 67.5 DEGREES FOR 45 PER CENT LOSS OF THE RIGHT LEG.

THE BASIC ISSUE IS WHETHER CLAIMANT SUFFERED AN UNSCHEDULED INJURY OR A SCHEDULED INJURY.

CLAIMANT SUFFERED A COMPENSABLE INJURY WHEN HE FELL APPROXIMATELY 20 FEET AND SUFFERED A FRACTURE OF THE NECK OF THE RIGHT FEMUR, CONTUSION OF THE LEFT FOREARM WITH MILD CONTUSION OF THE ULNAR NERVE AND LACERATION OF THE RIGHT ELBOW. HE MADE A GOOD RECOVERY FROM ALL OF HIS INJURIES WITH THE EXCEPTION OF THE HIP INJURY.

DR. PHIFER, CLAIMANT'S TREATING PHYSICIAN, INDICATED IN HIS LATEST REPORT THAT CLAIMANT HAD DISABILITY WHICH RESIDED IN THE HIP JOINT BUT HE REFUSED TO STATE WHETHER HE CLASSIFIED THIS DISABILITY AS SCHEDULED OR UNSCHEDULED. THE MEDICAL REPORTS

INDICATE THAT, AS A RESULT OF THE INJURY, CLAIMANT HAS RESIDUAL TRAUMATIC ARTHRITIS OF HIS RIGHT HIP AND A PARTIALLY REVASCULARIZED AREA OF AVASCULAR NECROSIS OF THE SUPERIOR PORTION OF THE FEMORAL HEAD. ULTIMATELY, CLAIMANT MAY BECOME A CANDIDATE FOR AN ARTHROPLASTY OF THE HIP, BUT THIS IS WELL INTO THE FUTURE.

THE REFEREE FOUND THAT THE EVIDENCE INDICATED THAT THE INJURY WAS TO THE FEMUR OF THE LEG AND THAT ARTHRITIS HAD SET INTO THE HIP JOINT BUT NOT INTO THE PELVIC AREA WHICH WOULD BE NECESSARY TO ENABLE HIM TO CONSIDER THIS AS AN UNSCHEDULED INJURY. HE, THEREFORE, RULED THAT, ALTHOUGH MOST OF CLAIMANT'S TROUBLES WERE IN THE HIP JOINT, THE INJURY CAUSED A SCHEDULED DISABILITY TO THE RIGHT LEG.

THE BOARD, ON DE NOVO REVIEW, NOTES THAT THE REPORTS OF DR. PHIFER RELATE TO THE HIP SOCKET, AND THERE IS NO MENTION OF ANY INJURY BEYOND THE HEAD OF THE FEMUR. THE REFEREE HAS VERY CLEARLY DISTINGUISHED BETWEEN A SHOULDER DISABILITY WHICH IS CONSIDERED AN INJURY TO THE UNSCHEDULED AREA OF THE BODY AND A HIP INJURY WHICH MAY OR MAY NOT BE CONSIDERED AS AN INJURY TO THE UNSCHEDULED AREA DEPENDING UPON THE SITUS OF THE INJURY.

THE BOARD CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE REFEREE AND AFFIRMS AND ADOPTS THEM AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 10, 1975, AS AMENDED BY THE ORDER DATED MAY 14, 1975, IS AFFIRMED.

WCB CASE NO. 74-234 SEPTEMBER 8, 1975

LOUISE FARNHAM, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
RAY MIZE, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER
CROSS REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER REQUESTS BOARD REVIEW OF AN ORDER OF THE REFEREE WHICH REMANDED TO IT CLAIMANT'S CLAIM FOR AGGRAVATION. THE CLAIMANT CROSS REQUESTS BOARD REVIEW CONTENDING SHE IS ENTITLED TO PENALTIES ON TEMPORARY TOTAL DISABILITY PAYABLE TO HER PRECEDING THE DENIAL REGARDLESS OF WHETHER SHE SUSTAINED AN AGGRAVATION OR NEW INJURY AND THAT THE REFEREE WAS IN ERROR IN GRANTING A MOTION FOR MODIFICATION OF HIS JANUARY 31, 1975 ORDER WHICH TERMINATED THE TEMPORARY TOTAL DISABILITY GRANTED AS OF MARCH 6, 1974.

CLAIMANT, A 33 YEAR OLD NURSE'S AIDE, SUFFERED A COMPENSABLE INJURY IN NOVEMBER, 1969, AS A RESULT OF A LIFTING INCIDENT WHILE WORKING FOR THE EMPLOYER. IN JULY, 1970, HER CLAIM WAS ADMINISTRATIVELY CLOSED AS A 'MEDICAL ONLY' CLAIM. IN 1972 SHE FILED A CLAIM FOR AGGRAVATION WHICH WAS DENIED -- CLAIMANT DID NOT APPEAL FROM THIS DENIAL.

CLAIMANT CONTINUED WORKING FOR THE EMPLOYER ON A PART TIME BASIS UNTIL JANUARY, 1971, AND LOST NO TIME FROM WORK AS A

RESULT OF HER PRECEDING INDUSTRIAL INJURY. IN THE EARLY FALL OF 1973, CLAIMANT WENT TO WORK FOR GOOD SAMARITAN HOSPITAL FOR APPROXIMATELY A MONTH AND THEN RETURNED TO WORK FOR THE EMPLOYER ON NOVEMBER 19, 1973.

ON NOVEMBER 27, 1973, CLAIMANT TESTIFIED THAT WHILE SHE WAS ASSISTING AN ELDERLY WOMAN PATIENT BETWEEN THE BED AND A WHEELCHAIR, THE PATIENT FELL INTO HER ARMS AND CLAIMANT FELT A 'PULLING' IN THE MIDDLE OF HER BACK NEAR HER SHOULDER. CLAIMANT WORKED THE BALANCE OF HER SHIFT AND ALSO THE FOLLOWING DAY. ON NOVEMBER 29, 1973, CLAIMANT SAW HER FAMILY DOCTOR, DR. ALAN FISHER, WHOSE REPORT INDICATED A DIAGNOSIS OF RECURRENT PAIN UPPER THORACIC AREA. DR. FISHER PRESCRIBED MEDICATION AND TOLD CLAIMANT NOT TO RETURN TO WORK. APPPARENTLY CLAIMANT DID NOT MENTION THE INCIDENT OF NOVEMBER 27 TO DR. FISHER, BUT SHE DID SIGN A STATEMENT ON THE DOCTOR'S REPORT TO THE EFFECT THAT THE CONDITION SHE THEN SUFFERED WAS DUE TO THE 1969 INDUSTRIAL INJURY. THE EVIDENCE INDICATES SHE DID NOT TELL HER EMPLOYER OF ANY SUCH INCIDENT. ON DECEMBER 5, 1973, DR. FISHER SUBMITTED A REPORT TO THE CARRIER THAT CLAIMANT WAS INJURED ON NOVEMBER 27, 1973, AS A RESULT OF AN INDUSTRIAL INJURY, THAT SHE WAS NOT MEDICALLY STATIONARY AND WAS IN NEED OF FURTHER MEDICAL TREATMENT.

CLAIMANT CONTENDS THAT SHE HAD EITHER AGGRAVATED THE 1969 INJURY OR SUFFERED A NEW INJURY. ON JANUARY 28, 1974, THE EMPLOYER DENIED LIABILITY FOR BOTH THE AGGRAVATION CLAIM AND THE NEW INJURY CLAIM. ON JANUARY 18, 1974, CLAIMANT HAD REQUESTED A HEARING, SUBSEQUENT TO THE DENIAL BY THE CARRIER, SHE FILED AN AMENDED REQUEST FOR HEARING.

AFTER THE HEARING THE REFEREE FOUND THAT CLAIMANT HAD FAILED TO MEET THE BURDEN OF PROOF WITH RESPECT TO HER CLAIM FOR A NEW INJURY. WITH RESPECT TO THE CLAIM FOR AGGRAVATION, DR. FISHER, ON FEBRUARY 19, 1974, WROTE A LETTER TO THE CARRIER STATING THAT HE FELT CLAIMANT'S CONDITION WAS AN AGGRAVATION AND, BASED UPON THIS LETTER, THE REFEREE CONCLUDED THAT A PROPER CLAIM OF AGGRAVATION WAS MADE, AT LEAST, TO GIVE HIM JURISDICTION AND, THEREAFTER, BASED UPON CLAIMANT'S TESTIMONY, DR. PARSONS' REPORT OF JANUARY 18, 1974, AND THE TESTIMONY OF DR. FISHER, THE REFEREE CONCLUDED THAT CLAIMANT HAD MET HER BURDEN OF PROOF IN ESTABLISHING A CLAIM OF AGGRAVATION.

CLAIMANT HAS REQUESTED PENALTIES AND ATTORNEY'S FEES CONTENDING THAT PAYMENT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY HAD NOT BEEN COMMENCED WITHIN 14 DAYS AFTER THE PRESENTMENT OF HER CLAIM -- HOWEVER, IT WAS NOT UNTIL THE CARRIER RECEIVED THE LETTER FROM DR. FISHER DATED FEBRUARY 19, 1974, THAT CLAIMANT ACTUALLY FILED A CLAIM OF AGGRAVATION. THE EARLIER REPORT OF DR. FISHER TO WHICH CLAIMANT HAD APPENDED A NOTATION THAT HER CONDITION WHICH SHE WAS THEN SUFFERING WAS DUE TO HER 1969 INJURY WAS NOT A SUFFICIENT CLAIM FOR AGGRAVATION TO PLACE ANY OBLIGATION ON THE PART OF THE EMPLOYER TO DO ANYTHING AT THE TIME. WHEN THE EMPLOYER WAS PRESENTED WITH THE REPORT OF FEBRUARY 19, 1974, THEN IT DID HAVE AN OBLIGATION TO ACCEPT OR DENY THE CLAIM AND, UNDER THE WORKMEN'S COMPENSATION ACT, TO COMMENCE PAYMENT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY WITHIN 14 DAYS THEREAFTER. THE REFEREE CONCLUDED THAT THE CARRIER'S ACTION AFTER THE RECEIPT OF THE FEBRUARY 19, 1974, REPORT MUST BE CONSTRUED AS A DE FACTO DENIAL OF CLAIMANT'S CLAIM FOR AGGRAVATION AND, THEREFORE, HE ORDERED THE EMPLOYER TO PAY CLAIMANT'S ATTORNEY A REASONABLE ATTORNEY'S FEE.

BY AN AMENDED ORDER THE REFEREE MODIFIED HIS ORIGINAL ORDER WHICH REMANDED THE CLAIM FOR AGGRAVATION TO THE CARRIER FOR ACCEPTANCE AND PAYMENT OF TEMPORARY TOTAL DISABILITY FROM NOVEMBER 29, 1973, UNTIL TERMINATION WAS AUTHORIZED UNDER THE PROVISIONS OF ORS 656.268. BASED UPON MEDICAL EVIDENCE, HE CONCLUDED THAT THE PAYMENT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY SHOULD TERMINATE AS OF MARCH 6, 1974. IN ALL OTHER RESPECTS HIS ORIGINAL OPINION AND ORDER WAS TO REMAIN AS ISSUED.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE REFEREE IN BOTH THE ORDER AND THE AMENDED ORDER.

ORDER

THE ORDER OF THE REFEREE DATED JANUARY 31, 1975, AS AMENDED BY THE ORDER DATED FEBRUARY 20, 1975, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE THE SUM OF 300 DOLLARS, PAYABLE BY THE EMPLOYER, BESS KAISER HOSPITAL, FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-2607 SEPTEMBER 8, 1975

JAMES HOPPER, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
ROGER WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER SEEKS BOARD REVIEW OF AN ORDER OF THE REFEREE WHICH AWARDED CLAIMANT 192 DEGREES FOR 60 PER CENT UNSCHEDULED DISABILITY. THE AWARD OF THE REFEREE REPRESENTED AN INCREASE OF 64 DEGREES OVER THE AWARDS PREVIOUSLY RECEIVED BY CLAIMANT BY THREE DETERMINATION ORDERS AND A STIPULATION WHICH GAVE CLAIMANT AN AGGREGATE OF 40 PER CENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED DISABILITY EQUAL TO 128 DEGREES.

CLAIMANT SUSTAINED A COMPENSABLE INJURY ON OCTOBER 14, 1970, WHILE EMPLOYED AS A DEBARKER OPERATOR. HE SAW A CHIROPRACTOR THE FOLLOWING DAY AND WAS LATER REFERRED TO DR. JAMES, AN ORTHOPEDIST WHO DIAGNOSED AN ACUTE LOW BACK STRAIN. SUBSEQUENTLY ON DECEMBER 21, 1970, DR. JAMES PERFORMED A LUMBAR LAMINECTOMY L5-S1.

CLAIMANT'S CLAIM WAS REOPENED AND CLOSED SEVERAL TIMES AFTER THIS SURGERY. IT WOULD SERVE NO PURPOSE TO NARRATE THE SUBSEQUENT MEDICAL FINDINGS. SUFFICE IT TO SAY, THE BACK EVALUATION CLINIC FELT THAT CLAIMANT WAS UNABLE TO RETURN TO HIS FORMER OCCUPATION AND THAT A JOB CHANGE WAS INDICATED AND DR. JAMES CONCURRED. IN FEBRUARY, 1972, CLAIMANT'S CLAIM WAS CLOSED AND BY STIPULATION, CLAIMANT'S AWARD WAS INCREASED TO 128 DEGREES.

CLAIMANT WAS UNEMPLOYED FOR APPROXIMATELY A YEAR -- IN FEBRUARY, 1973, HE COMMENCED WORK AT A SERVICE STATION AND WORKED FOR ABOUT SEVEN MONTHS BUT AGAIN HAD LOW BACK PAIN. CLAIMANT WAS HOSPITALIZED AND EXAMINED BY DR. ROCKEY AND BY DR. HOCKEY. BOTH DIAGNOSED A POSSIBLE RECURRENT LUMBAR DISC AND RECOMMENDED A MYELOGRAPHY.

CLAIMANT'S CLAIM FOR AGGRAVATION WAS ACCEPTED BY STIPULATION APPROVED FEBRUARY 27, 1974. THE MYELOGRAM PERFORMED BY DR. HOCKEY WAS NEGATIVE AND CLAIMANT WAS REFERRED TO THE DISABILITY PREVENTION DIVISION. THE BACK EVALUATION CLINIC DIAGNOSED MILD CHRONIC LOW BACK STRAIN AND FELT THAT CLAIMANT'S PERMANENT LOSS OF FUNCTION WAS MILD. CLAIMANT SHOULD NOT RETURN TO HIS FORMER OCCUPATION BUT COULD RETURN TO SOME TYPE OF WORK. FINAL CLOSURE WAS ON JULY 11, 1974.

ON OCTOBER 9, 1974, CLAIMANT WAS FOUND INELIGIBLE FOR VOCATIONAL REHABILITATION -- HIS PROGNOSIS FOR RETURNING TO SUITABLE GAINFUL EMPLOYMENT WAS NIL BASED UPON CLAIMANT S FAILURE TO TAKE HIS GED TESTS AND TO EAGERLY PURSUE VOCATIONAL REHABILITATION SERVICES. IN ADDITION, CLAIMANT REFUSED TO LEAVE HIS HOME IN SWEET HOME AND LOOK FOR ANY TYPE OF WORK.

THE REFEREE CONCLUDED, BASED UPON THE MEDICAL EVIDENCE, THAT CLAIMANT COULD NOT RETURN TO HIS FORMER TYPE OF WORK AND WOULD HAVE TO FIND WORK WHICH DID NOT REQUIRE HEAVY MANUAL LABOR. CLAIMANT TESTIFIED HE HAD LOOKED FOR WORK IN SERVICE STATIONS IN SWEET HOME, ALBANY AND LEBANON, INQUIRING AT FROM FIVE TO FIFTEEN GAS STATIONS PER WEEK WITH NO SUCCESS -- HOWEVER, CLAIMANT HAS NOT LOOKED FOR ANY OTHER TYPE OF WORK NOR HAS HE LOOKED FOR WORK IN ANY OTHER LOCATIONS. THE REFEREE FOUND CLAIMANT TO BE A CREDIBLE WITNESS, DID NOT QUESTION HIS MOTIVATION TO SEEK EMPLOYMENT AND ACCEPTED HIS EXPLANATION FOR NOT TAKING HIS GED EXAMINATION AS REASONABLE. THE REFEREE CONCLUDED THAT, WITH OR WITHOUT A GED, CLAIMANT HAD SUSTAINED A SUBSTANTIAL LOSS OF WAGE EARNING CAPACITY DUE TO HIS INJURY AND THAT THE LIMITATIONS OF HIS EMPLOYMENT IN THE GENERAL LABOR MARKET WERE SUBSTANTIAL, THEREFORE, HE WAS ENTITLED TO AN AWARD OF 60 PER CENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED DISABILITY.

THE BOARD, ON DE NOVO REVIEW, CANNOT AGREE WITH THE REFEREE ON THE ISSUE OF CLAIMANT'S MOTIVATION TO SEEK EMPLOYMENT. THE ONLY TYPE OF WORK CLAIMANT HAS SOUGHT HAS BEEN IN SERVICE STATIONS IN THE VICINITY OF SWEET HOME -- HIS TESTIMONY THAT HE HAD INQUIRED AT FROM FIVE TO FIFTEEN GAS STATIONS PER WEEK WITH NO SUCCESS IS NOT ENTIRELY CONVINCING. THE BOARD IS NOT SATISFIED WITH CLAIMANT'S EXPLANATION THAT THE REASON HE DID NOT TAKE THE TEST TO OBTAIN HIS GED WAS BECAUSE HE DID NOT HAVE THE 7 DOLLARS REQUIRED TO PAY FOR THE EXAMINATION FEE. THE MEDICAL EVIDENCE, WHILE UNANIMOUS IN THE CONCLUSION THAT CLAIMANT COULD NOT RETURN TO HIS FORMER TYPE OF WORK, INDICATES THAT THERE ARE OTHER OCCUPATIONS TO WHICH CLAIMANT COULD RETURN AND THE BOARD CONCLUDES THAT CLAIMANT HAS RETAINED AT LEAST 60 PER CENT OF HIS WAGE EARNING CAPACITY AND, THEREFORE, THE AWARD OF THE REFEREE SHOULD BE MODIFIED ACCORDINGLY.

ORDER

THE ORDER OF THE REFEREE DATED MAY 23, 1975, IS MODIFIED TO THE EXTENT THAT CLAIMANT IS AWARDED 128 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED DISABILITY. IN ALL OTHER RESPECTS THE REFEREE'S ORDER IS AFFIRMED.

DENISE MAGNUSON, CLAIMANT

COONS, COLE AND ANDERSON, CLAIMANT'S ATTYS.
REQUEST FOR REVIEW BY CLAIMANT
CROSS REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE CLAIMANT SEEKS BOARD REVIEW OF A REFEREE'S ORDER ONLY INSOFAR AS IT DIRECTS THAT CLAIMANT'S COUNSEL SHALL BE PAID OUT OF THE COMPENSATION AWARDED CLAIMANT BY SAID ORDER.

THE EMPLOYER CROSS APPEALS THE REFEREE'S ORDER, CONTENDING THAT THE MEDICAL REPORTS WERE NOT SUFFICIENT TO CONFER JURISDICTION IN ORDER TO HOLD A HEARING ON THE QUESTION OF AGGRAVATION, THAT THE MEDICALS DID NOT SUPPORT CLAIM REOPENING ON ACCOUNT OF AGGRAVATION, THAT THE REFEREE ERRED IN FINDING THAT CLAIMANT HAD PREVIOUSLY BEEN AWARDED MORE THAN TEMPORARY TOTAL DISABILITY FOR THE CONDITION WHICH CLAIMANT CLAIMS HAS WORSENED AND THAT ANY CLAIM WORSENING HAD OCCURRED SUBSEQUENT TO THE ISSUANCE OF THE SECOND DETERMINATION ORDER.

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HER LEFT LEG ON JUNE 5, 1969, FOR WHICH SHE WAS AWARDED 15 DEGREES. BY STIPULATION THE MATTER WAS REOPENED AND SUBSEQUENTLY CLOSED BY A SECOND DETERMINATION ORDER WHICH AWARDED CLAIMANT AN ADDITIONAL 7.5 DEGREES. ON AUGUST 23, 1974, AN AGGRAVATION APPLICATION WAS FILED WITH THE BOARD WHICH WAS DENIED BY THE INSURANCE CARRIER ON SEPTEMBER 11, 1974, ON THE GROUNDS THAT THE MEDICAL INFORMATION DID NOT ESTABLISH A RELATIONSHIP BETWEEN THE ORIGINAL KNEE INJURY AND THE PHLEBITIC CONDITION TREATED BY DR. HOOVER IN 1973.

CLAIMANT REQUESTED A HEARING AND THE REFEREE FOUND THAT THE MEDICAL CORROBORATION OF THE AGGRAVATION CLAIM WAS SUFFICIENT TO CONFER JURISDICTION. THE REFEREE ALSO FOUND THAT BY CONSIDERING THE REPORT OF DR. HOOVER DATED NOVEMBER 7, 1974, IN CONTEXT WITH DR. JAMES' CLOSING EVALUATION REPORT OF JUNE 6, 1972, WHICH IMMEDIATELY PRECEDED THE SECOND DETERMINATION ORDER, THAT IT WAS APPARENT THAT THE WORSENED CONDITION WHICH DR. HOOVER NOTED IN JULY, 1973, HAD ITS INCEPTION NOT AFTER MARCH, 1972, BUT AFTER JUNE, 1972, AND HE CONCLUDED THAT THE REPORT WAS SUFFICIENT EVIDENCE OF A WORSENING OF CLAIMANT'S CONDITION SUBSEQUENT TO THE LAST ARRANGEMENT OF COMPENSATION.

THE REFEREE CONCLUDED THAT PAYMENT OF ATTORNEY'S FEE BY THE EMPLOYER WOULD BE INAPPROPRIATE INASMUCH AS THE SUPPORTING MEDICAL REPORTS SUBMITTED BY CLAIMANT DID NOT STATE REASONABLE GROUNDS FOR THE CLAIM AND THEREFORE DID NOT IMPOSE ANY OBLIGATION ON IT TO ACCEPT THE CLAIM.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN ALL OF THE FINDINGS AND CONCLUSIONS OF THE REFEREE CLEARLY SET FORTH AND THOROUGHLY DISCUSSED IN HIS OPINION AND ORDER WITH THE EXCEPTION OF HIS RULING THAT CLAIMANT'S COUNSEL BE PAID HIS ATTORNEY'S FEE FROM THE COMPENSATION AWARDED CLAIMANT. THE AGGRAVATION APPLICATION DATED AUGUST 23, 1974, WAS ACCOMPANIED BY DR. HOOVER'S REPORT JULY 31, 1973 -- THERE IS NO EVIDENCE AS TO WHAT CLAIM PROCESSING, IF ANY, THE EMPLOYER AND ITS INSURER DID FOLLOWING THE SUBMISSION OF THAT APPLICATION. THE DENIAL WAS ENTERED WITHIN A COUPLE OF WEEKS

AFTER THE APPLICATION WAS RECEIVED AND THERE WAS NO EVIDENCE THAT, IN THE INTERIM, EITHER THE EMPLOYER OR ITS INSURER HAD ATTEMPTED TO CONTACT ANY OF THE TREATING PHYSICIANS, A VERY SHORT TIME AFTER THE DENIAL, ON SEPTEMBER 19, 1974, CLAIMANT REQUESTED A HEARING SUPPORTED BY THE JULY, 1973 REPORT OF DR. HOOVER AND AUGMENTED IT WITH A FURTHER CLARIFYING REPORT DATED NOVEMBER 7, 1974, WHICH WAS SUBMITTED TO THE EMPLOYER'S INSURER ON NOVEMBER 12, 1974, APPROXIMATELY THREE MONTHS PRIOR TO THE HEARING. THIS GAVE THE EMPLOYER AND ITS INSURER SUBSTANTIAL TIME TO REEVALUATE THEIR POSITION BASED UPON DR. HOOVER'S NOVEMBER REPORT YET THEY CHOSE TO CONTINUE TO DENY THE CLAIM. THE BOARD CONCLUDES THAT, UNDER SUCH CIRCUMSTANCES, CLAIMANT'S ATTORNEY'S FEE SHOULD BE PAID BY THE EMPLOYER RATHER THAN FROM THE COMPENSATION AWARDED CLAIMANT.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 12, 1975 IS MODIFIED TO THE EXTENT THAT CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE THE SUM OF 1000 DOLLARS TO BE PAID BY THE EMPLOYER, F. W. WOOLWORTH CO. IN ALL OTHER RESPECTS THE ORDER OF THE REFEREE IS AFFIRMED.

WCB CASE NO. 74-1484 SEPTEMBER 15, 1975

JAMES TUBB, CLAIMANT

EVOHL MALAGON, 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 THAT PART OF A REFEREE'S ORDER WHICH FOUND HIS PSYCHIATRIC AND LOW BACK CONDITIONS NONCOMPENSABLE, CONTENDING THE REFEREE HAD NO JURISDICTION TO MAKE SUCH A RULING SINCE THERE HAD NEVER BEEN A DISPUTE BETWEEN CLAIMANT AND THE STATE ACCIDENT INSURANCE FUND CONCERNING THESE MATTERS AND IT WAS NEVER PRESENTED AS AN ISSUE AT THE HEARING.

THE REFEREE DID ORDER THE STATE ACCIDENT INSURANCE FUND TO PROVIDE MEDICAL CARE AND TIME LOSS FROM APRIL 29, 1974 FOR CLAIMANT'S NECK AND UPPER EXTREMITY PROBLEMS WHICH HE FOUND RELATED TO THE INJURY AND THE STATE ACCIDENT INSURANCE FUND HAS CROSS REQUESTED BOARD REVIEW CONTENDING THE REFEREE ERRED IN FINDING CLAIMANT NEEDED FURTHER MEDICAL CARE AND COMPENSATION. THE STATE ACCIDENT INSURANCE FUND ALSO OBJECTS TO THE REFEREE'S ASSESSMENT OF AN ATTORNEY'S FEE PAYABLE BY THE FUND.

CLAIMANT, A 53 YEAR OLD TRUCK DRIVER AGGRAVATED A PRE-EXISTING DEGENERATIVE ARTHRITIS CONDITION IN HIS NECK AND RIGHT SHOULDER ON JULY 21, 1972 WHEN THE TRUCK HE WAS DRIVING RAN OFF THE ROAD. HE WAS TREATED CONSERVATIVELY FOR THE INJURY.

PRIOR TO AND AFTER THE INJURY, HE HAD ALSO BEEN SEEN ON A NUMBER OF OCCASIONS FOR UNRELATED GASTROINTESTINAL AND UROLOGICAL PROBLEMS.

ON FEBRUARY 8, 1973, HE WAS FOUND MEDICALLY STATIONARY BUT CLAIMANT EXTABLISHED AT A HEARING THAT HE NEEDED FURTHER TREATMENT

AND THE CLAIM WAS REACTIVATED AS OF MARCH 12, 1973. CLAIMANT WAS THEN LIVING IN CALIFORNIA. IN JUNE, 1973, HE BEGAN TREATING WITH DR. ROBERT F. BLUM, A VALLEJO NEUROSURGEON. SEVERAL MONTHS OF CONSERVATIVE TREATMENT FOR BOTH PHYSICAL AND FUNCTIONAL PROBLEMS ENSUED BEFORE DR. BLUM REPORTED ON MARCH 19, 1974, THAT CLAIMANT WAS MUCH IMPROVED AND THAT HIS CONDITION HAD REMAINED STABLE FOR THE PAST TWO MONTHS.

HE REPORTED CLAIMANT'S ONLY DISABILITY WAS LIMITATION IN THE RIGHT UPPER EXTREMITIES, NECK AND BACK, DUE TO PAIN ASSOCIATED WITH EXTENSIVE OR EXCESSIVE STRENUOUS PHYSICAL ACTIVITY.

ON APRIL 17, 1974 A SECOND DETERMINATION ORDER ISSUED GRANTING COMPENSATION EQUAL TO 10 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY DUE TO THE INJURY TO THE RIGHT SHOULDER AND NECK.

ON APRIL 19, 1974, CLAIMANT, THROUGH HIS ATTORNEY, REQUESTED A HEARING AGAIN CONTENDING HIS CLAIM HAD BEEN PREMATURELY CLOSED.

SHORTLY THEREAFTER DR. BLUM REPORTED TO CLAIMANT'S ATTORNEY THAT HE WAS CONTINUING TO TREAT CLAIMANT FOR HIS INDUSTRIAL CONDITION. PHYSICAL THERAPY RECORDS SHOW THAT HE CONTINUED TO REGULARLY RECEIVE THERAPY AFTER THE SECOND CLOSURE OF HIS CLAIM.

ON MAY 23, 1974, CLAIMANT'S ATTORNEY DEMANDED OF THE STATE ACCIDENT INSURANCE FUND THAT IT REOPEN CLAIMANT'S CLAIM FOR MEDICAL CARE WHICH HAD BEEN INCURRED SINCE THE APRIL 17, 1974 CLOSURE. THE STATE ACCIDENT INSURANCE FUND REFUSED AND THE MATTER WENT TO HEARING.

AT THE HEARING, CLAIMANT INTRODUCED REPORTS FROM DR. BLUM INDICATING THAT HE WAS TREATING CLAIMANT FOR ARM AND NECK PAIN FROM THE INJURY AND FOR BACK PAIN AND DEPRESSION WHICH HE CONSIDERED INDIRECTLY RELATED TO THE INJURY. IT APPEARS THAT DR. BLUM WAS NOT AWARE THAT CLAIMANT HAD PREVIOUSLY GIVEN HISTORY OF AN ONSET OF LOW BACK PAIN ON JANUARY 25, 1973 AND OF HAVING SUFFERED A SLIPPED DISC SEVEN YEARS EARLIER WHICH HAD BEEN TREATED BY A CHIROPRACTOR. DEFENDANT'S EXHIBIT A-19.

THE STATE ACCIDENT INSURANCE FUND INTRODUCED INTO EVIDENCE THE PSYCHOLOGICAL EVALUATION AND REPORT OF DR. FRANKLIN H. ERNST, A PSYCHIATRIST. DR. ERNST FOUND CLAIMANT TO BE A PASSIVE-AGGRESSIVE PERSONALITY OF THE PASSIVE TYPE WITH A LIFE LONG PERSONALITY DISTURBANCE WHICH HE FOUND TO BE THE REAL CAUSE OF CLAIMANT'S CONTINUING UNEMPLOYMENT AND COMPLAINTS OF DISABILITY. THE RECORD REVEALS THAT FOLLOWING AN ATTEMPTED SUICIDE IN 1960, CLAIMANT WAS ALSO FOUND TO EXHIBIT PASSIVE-AGGRESSIVE AND PARANOID PERSONALITY PATTERNS WHICH WERE EXPECTED TO CONTINUE.

THE REFEREE, ALTHOUGH EXPRESSING RESERVATIONS, FELT THE WORKMAN OUGHT TO BE GIVEN THE BENEFIT OF THE DOUBT AND THEREFORE ORDERED THE STATE ACCIDENT INSURANCE FUND TO REINSTATE CLAIMANT TO TIME LOSS AND PROVIDE ADDITIONAL MEDICAL CARE FOR CLAIMANT'S NECK AND ARM PAIN BUT NOT FOR HIS LOW BACK AND PSYCHOLOGICAL PROBLEMS.

CLAIMANT OBJECTS TO THE REFEREE LIMITING HIS COMPENSABLE TREATMENT TO THE NECK AND ARM RATHER THAN INCLUDING TREATMENT OF HIS BACK AND PSYCHOPATHOLOGY AS WELL. HE CONTENDS THAT SINCE THE FUND HAD NOT DENIED RESPONSIBILITY FOR THE BACK AND

PSYCHOPATHOLOGY THE REFEREE HAD NO JURISDICTION TO RESTRICT HIS RIGHT TO TREATMENT. WE DISAGREE.

THE RECORD REVEALS THAT CLAIMANT'S INJURIES WERE ORIGINALLY FOUND TO INVOLVE THE NECK AND THE RIGHT SHOULDER AND ARM. FOR ALMOST TWO YEARS THEREAFTER, TREATMENT WAS DIRECTED ESSENTIALLY TO THAT AREA. ONLY AFTER INITIATING A CONTEST OF THE SECOND CLOSURE DID THE CLAIMANT SEEK TO CONNECT HIS LOW BACK CONDITION AND PSYCHOPATHOLOGY IN ORDER TO JUSTIFY ADDITIONAL TIME LOSS COMPENSATION.

IN REACHING A DECISION ON WHETHER A CLAIMANT NEEDS FURTHER TREATMENT AND COMPENSATION FOR A CONDITION NOT ORIGINALLY IDENTIFIED AS A PART OF THE COMPENSABLE INJURY, ONE MUST NECESSARILY DECIDE WHETHER OR NOT THE PRESENT COMPLAINTS ARE RELATED TO THE ORIGINAL INJURY.

COMMON SENSE DICTATES THAT THE REFEREE SHOULD NOT, AS THE CLAIMANT WOULD HAVE HIM DO, BLINDLY ASSUME IN A PREMATURE CLOSURE CASE, THAT ALL MALADIES ARE RELATED UNLESS THE EMPLOYER OR THE STATE ACCIDENT INSURANCE FUND HAS ISSUED A SPECIFIC FORMAL DENIAL. THE STATE ACCIDENT INSURANCE FUND'S RESPONSE TO THE REQUEST FOR HEARING DENIED THAT CLAIMANT WAS ENTITLED TO FURTHER CARE AND COMPENSATION AND WE THINK THAT PUT IN ISSUE THE CONNECTION OF CLAIMANT'S COMPLAINTS TO THE INJURY OF JULY 21, 1972.

AFTER CONSIDERING DR. BLUM'S AND DR. ERNST'S OPINION AND CLAIMANT'S HISTORY OF BACK PAIN AND EMOTIONAL PROBLEMS, WE ARE NOT PERSUADED CLAIMANT'S PRESENT BACK COMPLAINTS AND DEPRESSION ARE CONNECTED TO HIS JULY 21, 1972 COMPENSABLE ACCIDENT. HOWEVER, BASED ON THE FACT THAT DR. BLUM FELT IT NECESSARY TO CONTINUE CLAIMANT IN A PHYSICAL THERAPY PROGRAM WHICH INCLUDED THERAPY TO CLAIMANT'S SHOULDER FOLLOWING THE LAST CLOSURE, WE CONCLUDE THAT THE COST OF SUCH TREATMENT SHOULD CONTINUE TO BE BORNE BY THE STATE ACCIDENT INSURANCE FUND IN ACCORDANCE WITH THE PROVISIONS OF ORS 656.245.

WE DO NOT THINK, HOWEVER, THAT CLAIMANT IS ENTITLED TO HAVE HIS CLAIM REOPENED FOR TEMPORARY TOTAL DISABILITY COMPENSATION SINCE HIS RIGHT SHOULDER AND NECK CONDITION APPEARS ESSENTIALLY STATIC. THE REFEREE'S ORDER SHOULD BE REVERSED IN THAT REGARD AND THE CLAIM NEED NOT BE AGAIN 'CLOSED.'

AT THE TIME THAT THE STATE ACCIDENT INSURANCE FUND FILED IT'S REQUEST FOR REVIEW, THE CASE LAW DID NOT PROVIDE FOR AN ATTORNEY'S FEE PAYABLE BY THE EMPLOYER OR THE STATE ACCIDENT INSURANCE FUND WHEN '.245 BENEFITS' WERE IMPROPERLY DENIED. WAIT V. MONTGOMERY WARD INC., 10 OR APP 333 (1972). HOWEVER THE RECENT CASE OF CAVINS V. SAIF, 75 OAS 1963 ——— OR ———, (MAY 30, 1975) HOLDS THAT THE EMPLOYER OR THE STATE ACCIDENT INSURANCE FUND IS OBLIGED TO PAY CLAIMANT'S ATTORNEY'S FEE WHEN IT ERRONEOUSLY REFUSED TO EXTNED SUCH BENEFITS.

ORDER

THAT PART OF THE REFEREE'S ORDER DATED JANUARY 6, 1975, AWARDING CLAIMANT TEMPORARY TOTAL DISABILITY FROM APRIL 29, 1974, UNTIL THE CLAIM IS AGAIN CLOSED IS HEREBY REVERSED. THE REFEREE'S ORDER IS AFFIRMED IN ALL OTHER RESPECTS.

WCB CASE NO. 74-3022 SEPTEMBER 16, 1975

WILLIAM E. PATTERSON, 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 DISMISSING HIS REQUEST FOR HEARING UPON A FINDING THAT HE HAD NO JURISDICTION OVER THE MATTER IN DISPUTE.

THE CASE INVOLVES AN APRIL 6, 1962 INJURY WHICH WAS INITIALLY CLOSED BY THE STATE INDUSTRIAL ACCIDENT COMMISSION IN EARLY 1965.

LITIGATION OVER THE EXTENT OF PERMANENT DISABILITY WAS SETTLED BY STIPULATION ON JUNE 25, 1965.

ON APRIL 17, 1973, THE STATE ACCIDENT INSURANCE FUND VOLUNTARILY REOPENED CLAIMANT'S CLAIM FOR ADDITIONAL TREATMENT, RECLOSING IT ON JUNE 3, 1974. WHEN CLAIMANT SOUGHT TO HAVE HIS TREATMENT CONTINUED, THE STATE ACCIDENT INSURANCE FUND BY LETTER DATED AUGUST 13, 1974, DENIED CLAIMANT'S REQUEST. CLAIMANT THEREUPON REQUESTED A HEARING BEFORE A REFEREE OF THE WORKMEN'S COMPENSATION BOARD. THE STATE ACCIDENT INSURANCE FUND MOVED TO DISMISS THE REQUEST AND, AS EARLIER MENTIONED, THE MOTION WAS GRANTED.

CLAIMANT CONTENDS THAT HIS REQUEST FOR HEARING ON AUGUST 15, 1974 CONSTITUTED THE ELECTION OF PROCEDURES WHICH SECTION 43 OF CHAPTER 285 O. L. (1965) PERMITTED IN CASES WHERE THE 'DEPARTMENT MAKES AN ORDER DECISION OR AWARD UNDER ORS 656.282 PERTAINING TO ANY CLAIM BASED ON AN INJURY THAT OCCURRED BEFORE... (JANUARY 1, 1966).'

WHILE THE PROVISIONS OF THAT SECTION DO NOT SPECIFICALLY SO STATE, IT HAS BEEN HELD THAT THE '...LEGISLATIVE INTENT WAS TO GIVE ALL CLAIMANTS WHO HAD CASES WHICH AROSE, BUT HAD NOT BEEN CONCLUDED, BEFORE THE EFFECTIVE DATE OF THE 1965 AMENDMENTS, THE OPTION TO COME UNDER THE NEW ACT.' PETTY V. SAIF 6 OR APP 636 (1971).

CLAIMANT'S CLAIM HAD ALREADY BEEN CONCLUDED BY HIS STIPULATED SETTLEMENT OF JUNE 25, 1965, NOT ONLY BEFORE THE FULLY OPERATIVE DATE OF THE NEW ACT, (JANUARY 1, 1966), BUT EVEN BEFORE THE ACT BECAME LAW ON AUGUST 13, 1965.

THE LAW IN FORCE AT THE TIME OF THE CLAIMANT'S INJURY GAVE HIM A TWO YEAR PERIOD WITHIN WHICH HE COULD DEMAND ADDITIONAL BENEFITS AS A MATTER OF RIGHT IF HIS CONDITION AGGRAVATED, ORS 656.276(2). THAT PERIOD HAD LONG EXPIRED WHEN THE STATE ACCIDENT INSURANCE FUND, ON AUGUST 13, 1974, DENIED CLAIMANT'S REQUEST FOR ADDITIONAL BENEFITS. IT SHOULD BE CAREFULLY NOTED THAT THE ORDERS ON WHICH CLAIMANTS WERE GIVEN A RIGHT OF ELECTION BY SECTION 43 WERE THOSE MADE UNDER ORS 656.282. ORDERS MADE UNDER THAT SECTION WERE THOSE ON WHICH THE CLAIMANT HAD THE RIGHT OF APPEAL. ORS 656.282(3). SINCE CLAIMANT HAD NO RIGHT TO APPEAL THE STATE ACCIDENT INSURANCE FUND'S LETTER OF DENIAL WE CONCLUDE IT WAS NOT AN ORDER UNDER ORS 656.282 WITHIN THE

MEANING OF SECTION 43(3) OF CHAPTER 285 O. L. (1965). THUS, THE REFEREE CORRECTLY CONCLUDED THAT HE LACKED JURISDICTION TO HEAR THE DISPUTE.

CLAIMANT ALSO SEEKS TO ESTABLISH JURISDICTION URGING A SORT OF WAIVER AND ESTOPPEL THEORY. IT IS WELL ESTABLISHED THAT JURISDICTION OVER SUBJECT MATTER CANNOT BE ACQUIRED BY THIS MEANS. AM JUR 2ND ESTOPPEL V. WAIVER § 73.

RELYING ON ORS 656.278(2) OF THE OLD ACT 656.245(1) AND 656.278(3) OF THE NEW ACT, CLAIMANT ALSO URGES THAT HE IS ENTITLED TO A HEARING BECAUSE THE STATE ACCIDENT INSURANCE FUND'S DENIAL AMOUNTS TO A DIMINUTION, REDUCTION AND TERMINATION OF BENEFITS FOR WHICH CLAIMANT HAS AN ABSOLUTE RIGHT TO HEARING. SECTION 43(2) OF CHAPTER 285 O. L. OF 1965 TRANSFERRED THE STATE INDUSTRIAL ACCIDENT COMMISSION'S 'OWN MOTION' AUTHORITY TO THE WORKMEN'S COMPENSATION BOARD ON JANUARY 1, 1966. THUS THE STATE ACCIDENT INSURANCE FUND'S LETTER OF DENIAL WAS NOT AN EXERCISE OF OWN MOTION JURISDICTION.

THE LAW IN FORCE AT THE TIME OF CLAIMANT'S INJURY DID NOT INCLUDE ORS 656.245 AND ITS INDEPENDENT RIGHT TO MEDICAL. THE HERBAGE CASE WHICH CLAIMANT CITES AS CONTROLLING, IS DISTINGUISHABLE IN THAT HERBAGE WAS FOUND TO HAVE MADE A VALID ELECTION. ABSENT THE RIGHT OF ELECTION AND A VALID EXERCISE THEREOF, PROCEDURES OF THE NEW ACT ARE NOT AVAILABLE TO CLAIMANT.

CLAIMANT DOES HAVE AN AVENUE OF RELIEF AVAILABLE TO HIM. THE CONTINUING JURISDICTION OVER HIS CLAIM WHICH ORIGINALLY REPOSED IN THE STATE INDUSTRIAL ACCIDENT COMMISSION IS NOW VESTED IN THE WORKMEN'S COMPENSATION BOARD. CLAIMANT HAS REQUESTED A BOARD'S OWN MOTION ORDER GRANTING TIME LOSS AND MEDICAL TREATMENT FROM MAY 22, 1974 UNTIL HE BECOMES MEDICALLY STATIONARY, PLUS AN ATTORNEY'S FEE.

THE RECORD MADE AT THE HEARING DEALT BASICALLY WITH THE ISSUE OF JURISDICTION. IT DOES NOT CONTAIN SUFFICIENT EVIDENCE FOR THE BOARD TO DECIDE WHETHER HE IS OR IS NOT ENTITLED TO THE OWN MOTION RELIEF WHICH HE SEEKS. WE CONCLUDE THE REFEREE'S OPINION AND ORDER FINDING A LACK OF JURISDICTION AND DISMISSING CLAIMANT'S REQUEST FOR HEARING SHOULD BE AFFIRMED. WE FURTHER CONCLUDE HOWEVER, THAT PURSUANT TO THE CONTINUING JURISDICTION VESTED IN THE BOARD BY VIRTUE OF SECTION 43(2) OF CHAPTER 285 O. L. 1965 AND ORS 656.278, THIS MATTER SHOULD BE REFERRED TO A REFEREE TO RECEIVE EVIDENCE ON WHETHER, FOLLOWING THE STATE ACCIDENT INSURANCE FUND'S CLOSURE OF CLAIMANT'S CLAIM ON JUNE 3, 1974, CLAIMANT REMAINED TEMPORARILY DISABLED AND IN NEED OF FURTHER MEDICAL CARE ON ACCOUNT OF THE INJURY OF APRIL 6, 1962. FOLLOWING RECEIPT OF THAT EVIDENCE THE REFEREE SHOULD SUBMIT TO THE BOARD, THE EVIDENCE RECEIVED TOGETHER WITH A RECOMMENDED FINDING OF FACT AND OPINION.

IT IS SO ORDERED.

WCB CASE NO. 75—119 SEPTEMBER 16, 1975

KENNETH R. LEONARD, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPARTMENT OF JUSTICE, DEFENSE ATTY.
ORDER OF REMAND

A HEARING IN THE ABOVE-ENTITLED MATTER WAS HELD AT PORTLAND, OREGON ON MAY 29, 1975, BEFORE REFEREE PAGE PFERDNER -- AN OPINION AND ORDER WAS ENTERED ON JUNE 9, 1975. ON JUNE 18, 1975, A REQUEST FOR REVIEW BY THE CLAIMANT WAS RECEIVED BY THE WORKMEN'S COMPENSATION BOARD.

BY LETTER, DATED SEPTEMBER 9, 1975, THE BOARD WAS REQUESTED BY THE CLAIMANT'S ATTORNEY TO REMAND THE MATTER TO THE REFEREE FOR THE LIMITED PURPOSE OF RECEIVING IN THE RECORD FOR HIS CONSIDERATION A MEDICAL REPORT FROM DR. ROBERT H. POST DATED OCTOBER 17, 1974. THE STATE ACCIDENT INSURANCE FUND CONCURS IN THIS REQUEST.

IT IS HEREBY ORDERED THAT THIS MATTER IS REMANDED TO REFEREE PAGE PFERDNER FOR THE SOLE PURPOSE OF INCLUDING, AS AN 'EXHIBIT' FOR HIS CONSIDERATION, THE MEDICAL REPORT OF DR. ROBERT H. POST -- SAID REPORT CONSISTS OF A HANDWRITTEN ANSWER TO A QUESTION PROPOUNDED TO HIM BY AN EXAMINER OF THE STATE ACCIDENT INSURANCE FUND IN A LETTER DATED OCTOBER 17, 1974.

WCB CASE NO. 74—1703 SEPTEMBER 16, 1975

JAMES A. POELWIJK, CLAIMANT

HEDRICK, FELLOWS, MC CARTHY, ZIKES AND DAHN, 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 THE ORDER OF THE REFEREE WHICH REMANDED CLAIMANT'S CLAIM TO IT FOR PAYMENT OF TEMPORARY TOTAL DISABILITY COMPENSATION AND DIRECTED THAT IT PAY FOR THE COST OF THE DEPOSITION OF DR. FAGAN TAKEN ON OCTOBER 24, 1974.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON AUGUST 7, 1973 -- HIS CLAIM WAS CLOSED BY A DETERMINATION ORDER DATED FEBRUARY 21, 1974, WHICH AWARDED CLAIMANT TEMPORARY TOTAL DISABILITY FROM AUGUST 8, 1973 THROUGH DECEMBER 26, 1973, LESS TIME WORKED. A SECOND DETERMINATION ORDER, DATED FEBRUARY 28, 1974, GRANTED CLAIMANT, IN ADDITION TO THE AFORESAID TEMPORARY TOTAL DISABILITY, AN AWARD EQUAL TO 32 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT UNDERWENT A SPINAL FUSION ON OR ABOUT DECEMBER 3, 1974, AND AT THE TIME OF THE HEARING WAS RECEIVING TEMPORARY TOTAL DISABILITY PAYMENTS. CLAIMANT CONTENDS HE IS ENTITLED TO PAYMENT OF SUCH BENEFITS FROM DECEMBER 26, 1973 TO DECEMBER 3, 1974 -- THAT HIS CLAIM WAS PREMATURELY CLOSED BECAUSE HE WAS NOT

MEDICALLY STATIONARY ON DECEMBER 26, 1973, NOR AT ANY TIME THEREAFTER. THE REFEREE, RELYING UPON THE TESTIMONY OF DR. FAGAN, WHO SAID, AMONG OTHER THINGS, THAT HE NEVER FELT CLAIMANT WAS STATIONARY OR STABILIZED MEDICALLY, CONCLUDED THAT THE CLAIM HAD BEEN PREMATURELY CLOSED AND, THEREFORE, CLAIMANT WAS ENTITLED TO PAYMENT OF TEMPORARY TOTAL DISABILITY BENEFITS FROM DECEMBER 26, 1973 TO DECEMBER 3, 1974.

THE EMPLOYER'S CONTENTION THAT IT SHOULD NOT BE BURDENED WITH THE EXPENSE OF THE DEPOSITION TAKEN FROM DR. FAGAN WAS BASED UPON ITS ASSERTION THAT THE DEPOSITION WAS TAKEN TO PERPETUATE THE TESTIMONY OF DR. FAGAN RATHER THAN TO CROSS EXAMINE HIM AND WAS DONE AT THE CLAIMANT'S REQUEST. AT THE TIME THE DEPOSITION WAS TO BE TAKEN THE HEARING WAS SCHEDULED FOR NOVEMBER 4, 1974 -- HOWEVER, THE HEARING WAS RESCHEDULED AND DR. FAGAN WAS AVAILABLE TO TESTIFY AT THAT HEARING. THE REFEREE CONCLUDED THIS CONTENTION WAS NOT WELL TAKEN.

THE REFEREE CONCLUDED THAT THE PREPONDERANCE OF THE MEDICAL EVIDENCE INDICATED THAT CLAIMANT WAS NOT MEDICALLY STATIONARY ON DECEMBER 26, 1973, HOWEVER, THE EMPLOYER'S DECISION TO TERMINATE TEMPORARY TOTAL DISABILITY PAYMENTS WAS BASED UPON AN OPINION EXPRESSED BY DR. GANTENBEIN THAT CLAIMANT'S CONDITION WAS MEDICALLY STATIONARY AND, THEREFORE, SUCH DECISION DID NOT JUSTIFY THE IMPOSITION OF PENALTIES OR ATTORNEY'S FEES.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT THE ASSESSMENT OF THE COST OF DR. FAGAN'S DEPOSITION TO THE EMPLOYER WAS PROPER. IT FURTHER FINDS THAT THE REFUSAL TO LEVY PENALTIES OR ATTORNEY FEES WAS CORRECT. THE BOARD DOES NOT FIND THAT THE PREPONDERANCE OF MEDICAL EVIDENCE SUPPORTS CLAIMANT'S CLAIM THAT HE WAS NOT MEDICALLY STATIONARY ON DECEMBER 26, 1973, NOR AT ANY TIME THEREAFTER. DR. FAGAN TENDS TO VACILLATE IN HIS TESTIMONY WITH RESPECT TO CLAIMANT'S MEDICAL CONDITION AT VARIOUS PERIODS OF TIME. HE SOUGHT AN ORTHOPEDIC CONSULTATION WITH DR. DAVIS IN OCTOBER, 1973. DR. DAVIS CONCLUDED THAT CLAIMANT'S CONDITION WOULD BE STATIONARY WITHIN TWO MONTHS AND RECOMMENDED A CHANGE OF OCCUPATION. FOLLOWING A SUBSEQUENT EXAMINATION IN MAY, 1974, DR. DAVIS UNEQUIVOCALLY AFFIRMED HIS PRIOR DIAGNOSIS AND CONCLUSIONS AND REASSERTED HIS VIEW THAT THERE WAS NO NEED OF ADDITIONAL MEDICAL MANAGEMENT. CLAIMANT WAS REFERRED TO THE DISABILITY PREVENTION DIVISION AND EXAMINED BY DR. GANTENBEIN IN DECEMBER 1973, HIS OPINION WAS THAT CLAIMANT'S CONDITION WAS STATIONARY AND THAT HE WAS IN NO NEED OF FURTHER TREATMENT, BUT THAT A CHANGE OF OCCUPATION WAS DESIRABLE.

THE BOARD CONCLUDES THAT CLAIMANT WAS MEDICALLY STATIONARY AS OF DECEMBER 26, 1973, AND REMAINED SO UNTIL DECEMBER 3, 1974, THEREFORE, HE WAS NOT ENTITLED TO TEMPORARY TOTAL DISABILITY BENEFITS BETWEEN DCCEMBER 26, 1973 AND DECEMBER 3, 1974. THERE IS NO CONTENTION THAT THE EMPLOYER HAS FAILED TO PAY TEMPORARY TOTAL DISABILITY BENEFITS TO CLAIMANT FROM THE DATE OF HIS HOSPITALIZATION FOR THE SPINAL FUSION.

ORDER

THE ORDER OF THE REFEREE DATED FEBRUARY 7, 1975, IS MODIFIED TO THE EXTENT THAT CLAIMANT IS NOT ENTITLED TO RECEIVE TEMPORARY TOTAL DISABILITY BENEFITS FOR THE PERIOD FROM DECEMBER 26, 1973 TO DECEMBER 3, 1974.

PENALTIES AND ATTORNEY'S FEES PURSUANT TO ORS 656.262(8) AND 656.382(1) SHALL NOT BE ASSESSED AGAINST THE EMPLOYER BUT THE COST OF DR. FAGAN'S DEPOSITION TAKEN ON OCTOBER 24, 1974, SHALL BE ITS RESPONSIBILITY.

WCB CASE NO. 74-176 SEPTEMBER 17, 1975

HAROLD VICARS, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF AN ORDER OF THE REFEREE WHICH DISMISSED CLAIMANT'S TWO REQUESTS FOR HEARING AND AFFIRMED THE STATE ACCIDENT INSURANCE FUND'S DENIAL OF DECEMBER 26, 1973.

THE SOLE ISSUE IS DETERMINATION OF THE DATE FOR COMMENCEMENT OF PAYMENT OF PERMANENT TOTAL DISABILITY BENEFITS.

CLAIMANT HAD SUFFERED A COMPENSABLE INJURY FOR WHICH HE SUBSEQUENTLY FILED A CLAIM FOR AGGRAVATION. THE REFEREE'S ORDER, DATED JUNE 22, 1972, WHICH UPHELD THE DENIAL OF THE CLAIM, WAS REVERSED BY THE WORKMEN'S COMPENSATION BOARD BY ITS ORDER, ENTERED NOVEMBER 28, 1972.

ON MARCH 9, 1973, A DETERMINATION ORDER AWARDED CLAIMANT SOME TIME LOSS BUT NO ADDITIONAL PERMANENT PARTIAL DISABILITY. THIS AWARD WAS AFFIRMED BY THE REFEREE'S ORDER, DATED JUNE 21, 1973, HOWEVER, THE BOARD BY ITS ORDER, DATED OCTOBER 23, 1973, FOUND CLAIMANT TO BE PERMANENTLY AND TOTALLY DISABLED. BOTH THE CIRCUIT COURT AND THE COURT OF APPEALS AFFIRMED THE BOARD'S ORDER, HOWEVER, NONE OF THE ORDERS ENTERED AT THESE THREE APPELLATE LEVELS MENTION WHEN PAYMENT OF THE PERMANENT TOTAL DISABILITY COMPENSATION SHOULD COMMENCE.

THE FUND CONTENDS THAT THE COMMENCEMENT OF SUCH PAYMENTS SHOULD START ON MARCH 9, 1973, THE DATE OF THE DETERMINATION ORDER. THE CLAIMANT CONTENDS THAT THE PROPER DATE IS FEBRUARY 2, 1972, THE DATE CLAIMANT BECAME MEDICALLY STATIONARY.

UNFORTUNATELY, THE ISSUE WAS NOT BROUGHT FORTH AT ANY OF THE APPELLATE LEVELS AND THE REFEREE FELT THAT HE DID NOT HAVE AUTHORITY TO INTERPRET WHAT THE BOARD HAD IN MIND WHEN IT FOUND CLAIMANT TO BE PERMANENTLY AND TOTALLY DISABLED BUT OMITTED SPECIFICALLY STATING THE DATE OF COMMENCEMENT OF PAYMENT OF SUCH BENEFITS. HE, THEREFORE, AGREED WITH THE CONTENTION OF THE FUND AND DISMISSED CLAIMANT'S TWO REQUESTS FOR HEARING AND SUSTAINED THE FUND'S DENIAL OF ANY RESPONSIBILITY FOR PAYMENT OF SUCH COMPENSATION PRIOR TO MARCH 9, 1973.

THE BOARD, ON DE NOVO REVIEW, DISAGREES WITH THE CONCLUSIONS OF THE REFEREE. THE COURT OF APPEALS IN ITS DECISION OF AUGUST 26, 1974, WHEREIN THE BOARD'S AWARD OF PERMANENT TOTAL DISABILITY WAS AFFIRMED, INDICATES THAT THE DATE FOR COMMENCEMENT OF PAYMENT OF PERMANENT AND TOTAL DISABILITY BENEFITS IS THE DATE THE CLAIM FOR AGGRAVATION WAS FILED. THE SUPPORTING REPORT FROM DR. ABELE

WAS DATED FEBRUARY 2, 1972, HOWEVER, THE CLAIM FOR AGGRAVATION WAS NOT RECEIVED BY THE FUND UNTIL FEBRUARY 8, 1972, AND IT IS THE BOARD'S OPINION THAT THIS IS THE PROPER DATE TO COMMENCE PAYMENT OF PERMANENT TOTAL DISABILITY BENEFITS.

THE BOARD DOES NOT AGREE WITH THE REFEREE'S OPINION THAT THE AUTHORITY CITED BY CLAIMANT FOR THE PROPOSITION THAT A REFEREE CAN CLARIFY AN ORDER ON REVIEW WAS NOT SUFFICIENT TO ALLOW HIM TO MAKE SUCH A DETERMINATION.

THE IMPOSITION OF PENALTIES IS NOT JUSTIFIED AS THE FUND DID NOT ACT UNREASONABLY IN COMMENCING PAYMENT OF PERMANENT TOTAL DISABILITY RETROACTIVELY TO MARCH 9, 1973, BUT CLAIMANT'S COUNSEL IS ENTITLED TO AN ATTORNEY'S FEE TO BE PAID BY THE FUND.

THE ORDER OF THE REFEREE DATED MARCH 17, 1975 IS REVERSED.

ORDER

CLAIMANT HAS PREVIOUSLY BEEN DETERMINED TO BE PERMANENTLY AND TOTALLY DISABLED AS DEFINED BY THE PROVISIONS OF ORS 656.206 AND THE STATE ACCIDENT INSURANCE FUND IS HEREBY DIRECTED TO RETROACTIVELY MAKE PAYMENTS OF PERMANENT TOTAL DISABILITY BENEFITS AS OF FEBRUARY 8, 1972.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE THE SUM OF 500 DOLLARS FOR HIS SERVICES IN CONNECTION WITH THE HEARING ON FEBRUARY 13, 1975.

CLAIMANT'S COUNSEL IS ALSO AWARDED AS A REASONABLE ATTORNEY'S FEE THE SUM OF 500 DOLLARS FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW.

WCB CASE NO. 74-3759-E SEPTEMBER 17, 1975

ROY GANGLER, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH FOUND CLAIMANT DID NOT SUSTAIN A COMPENSABLE INJURY AND DIRECTED THE STATE ACCIDENT INSURANCE FUND TO ISSUE A LETTER OF DENIAL TO THE CLAIMANT.

CLAIMANT WAS HIRED TO OPERATE A CATERPILLAR TRACTOR BY A SELF-EMPLOYED PERSON. ONLY THE ISSUE OF COMPENSABILITY WAS BEFORE THE REFEREE.

THE REFEREE FOUND THAT NEITHER CLAIMANT NOR EMPLOYER WERE VERY CREDIBLE IN THEIR TESTIMONY, HOWEVER, OF THE TWO, THE EMPLOYER APPEARED MORE CREDIBLE. AT THE TIME OF THE ALLEGED INJURY, THE EMPLOYER AND CLAIMANT WERE WORKING IN CLOSE PROXIMITY TO EACH OTHER AND THE REFEREE FOUND IT EXTREMELY DIFFICULT TO BELIEVE THAT CLAIMANT COULD HAVE SUSTAINED WHAT WOULD QUALIFY AS 'A NEW INJURY' WITHOUT THE EMPLOYER BEING AWARE OF IT. FURTHERMORE, IT WAS SIX DAYS AFTER THE ALLEGED INCIDENT BEFORE CLAIMANT

CONSULTED A PHYSICIAN AND THE OBJECTIVE FINDINGS MADE THE PHYSICIANS WHO EXAMINED AND TREATED CLAIMANT INDICATE ALL PREEXISTING PROBLEMS, PRIMARILY DEGENERATIVE ARTHRITIC CHANGES IN THE LUMBAR SPINE. THE REFEREE CONCLUDED THAT CLAIMANT DID NOT SUFFER A NEW INJURY ARISING OUT OF HIS EMPLOYMENT BETWEEN MAY 13, 1974 AND MAY 16, 1974.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE. THE REFEREE, WHO IS THE BEST JUDGE OF CREDIBILITY OF A WITNESS, FOUND THAT CLAIMANT WAS NOT A CREDIBLE WITNESS AND, ADDITIONALLY, THAT THE MEDICAL REPORTS SIMPLY DID NOT SUPPORT A FINDING THAT CLAIMANT HAD SUFFERED A NEW INJURY.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 26, 1975, IS AFFIRMED.

WCB CASE NO. 74-1851 SEPTEMBER 17, 1975

LOWELL P. KOLAKS, CLAIMANT

NOREEN K. SALTVEIT, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH UPHELD THE DENIAL OF CLAIMANT'S CLAIM FOR AGGRAVATION BY THE STATE ACCIDENT INSURANCE FUND.

CLAIMANT HAD SUSTAINED A COMPENSABLE INJURY ON SEPTEMBER 28, 1968, WHILE WORKING AS AN INSPECTOR FOR THE CITY OF PORTLAND. HIS CLAIM WAS CLOSED WITH AN AWARD OF 80 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY BY DETERMINATION ORDER MAILED MARCH 17, 1972. ON JULY 24, 1972, A STIPULATION WAS APPROVED WHEREBY THE AWARD WAS INCREASED TO A TOTAL OF 128 DEGREES, THIS WAS THE DATE OF THE LAST ARRANGEMENT OF COMPENSATION.

CLAIMANT SUBSEQUENTLY ALLEGED THAT HIS CONDITION HAD WORSENED AND HE FILED A CLAIM FOR AGGRAVATION WHICH WAS DENIED, AFTER A HEARING, BY THE REFEREE. THE RULING OF THE REFEREE WAS ULTIMATELY AFFIRMED BY A CIRCUIT COURT JUDGMENT ORDER DATED NOVEMBER 13, 1974.

CLAIMANT RETIRED FROM THE AIR FORCE IN 1962. SINCE HIS MILITARY RETIREMENT, CLAIMANT HAS BEEN COLLECTING DISABILITY AND RETIREMENT PENSIONS AND AWARDS WHICH TOTAL A LEVEL OF INCOME IN EXCESS OF THAT WHICH CLAIMANT HAD EVER EARNED THROUGH GAINFUL EMPLOYMENT. CLAIMANT HAS NOT BEEN GAINFULLY EMPLOYED SINCE AUGUST 1969.

THE REFEREE, BASED UPON THE MEDICAL EVIDENCE, CONCLUDED THAT CLAIMANT HAD NOT MET HIS BURDEN OF PROOF OF SHOWING BY A PREPONDERANCE OF SATISFACTORY EVIDENCE THAT HIS CONDITION HAD WORSENED SINCE JULY 24, 1972, AND THEREFORE, UPHELD THE FUND'S DENIAL.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSION OF THE REFEREE. THE BOARD CONCLUDES THAT CLAIMANT'S POTENTIAL WAGE EARNING CAPACITY HAS NOT CHANGED SINCE HE VOLUNTARILY REMOVED HIMSELF FROM THE LABOR MARKET IN AUGUST 1969. EVEN IF CLAIMANT HAD, MEDICALLY, AGGRAVATED HIS CONDITION, HE HAD NO WAGE EARNING CAPACITY BEFORE THE LAST ARRANGEMENT OF COMPENSATION, THEREFORE HE HAD NOTHING WHICH COULD BE DIMINISHED BECAUSE OF HIS PRESENT CONDITION.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 3, 1975, IS AFFIRMED.

WCB CASE NO. 74-3676 SEPTEMBER 17, 1975

JACK WAYNE, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE CLAIMANT SEEKS BOARD REVIEW OF AN ORDER OF THE REFEREE WHICH AFFIRMED THE DETERMINATION ORDER MAILED AUGUST 16, 1974.

CLAIMANT HAD SUFFERED A COMPENSABLE INJURY ON MAY 16, 1969, FOR WHICH HE WAS GIVEN AN AWARD ON MAY 22, 1970, OF 16 DEGREES FOR 5 PERCENT UNSCHEDULED DISABILITY AND 15 DEGREES FOR 10 PERCENT SCHEDULED DISABILITY TO THE LEFT ARM. CLAIMANT WAS REINJURED DURING MAY 1970. HIS CLAIM WAS REOPENED AND CLOSED BY A SECOND DETERMINATION ORDER DATED AUGUST 16, 1974, WHEREIN CLAIMANT WAS AWARDED AN ADDITIONAL 32 DEGREES FOR 10 PERCENT UNSCHEDULED DISABILITY.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS AND ADOPTS AS ITS OWN THE FINDINGS, CONCLUSION AND ORDER OF THE REFEREE AND SAID ORDER IS ATTACHED HERETO AND, BY THIS REFERENCE, MADE A PART OF THE BOARD'S ORDER.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 25, 1975, IS AFFIRMED.

MILDRED WAY, CLAIMANT

SOLOMON, WARREN, KILLEEN AND KIRKMAN,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND SEEKS BOARD REVIEW OF A REFEREE'S ORDER WHICH FOUND CLAIMANT TO BE PERMANENTLY AND TOTALLY DISABLED FROM AND AFTER MARCH 6, 1974, AND ALLOWED THE FUND TO TAKE CREDIT AS AN OFFSET PERMANENT PARTIAL DISABILITY ALREADY PAID PURSUANT TO A DETERMINATION ORDER MAILED MAY 8, 1974, WHEREBY CLAIMANT WAS GRANTED AN AWARD OF 112 DEGREES FOR 75 PERCENT LOSS OF THE LEFT LEG.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON DECEMBER 1, 1971, WHEN SHE FELL AND SUFFERED A FRACTURED RIGHT FEMORAL NECK. ON THE SAME DAY, DR. BOYDEN PINNED THE RIGHT HIP, LATER A NON-UNION DEVELOPED AND ON JANUARY 4, 1973, DR. BOYDEN DID A CHARNLEY-MEULLER RIGHT HIP ANTHROPLASTY. CLAIMANT HAS NOT RETURNED TO WORK SINCE THE DATE OF HER ACCIDENT.

THE QUESTION IS WHETHER THE MEDICAL EVIDENCE IS SUFFICIENT TO ALLOW THE REFEREE TO MAKE AN AWARD OF PERMANENT TOTAL DISABILITY BASED UPON AN UNSCHEDULED INJURY.

ON MARCH 5, 1975, DR. BOYDEN FOUND CLAIMANT MEDICALLY STATIONARY WITH SIGNIFICANT DISABILITY CONSISTING OF PAIN IN THE REGION OF THE GROIN ON WALKING AND SOME TENDERNESS IN THIS AREA. HE EXPRESSED THE OPINION THAT CLAIMANT WOULD NEED TO USE A CANE PERMANENTLY TO GET ABOUT AND THAT BECAUSE OF THE PAIN, SHE WOULD NOT BE ABLE TO RETURN TO WORK OF ANY TYPE. THE FUND CONTENDED THAT THE BOARD'S RULING IN RONALD A. LUNDQUIST, CLAIMANT, WCB CASE NO. 73-1347, 11 VAN NATTA 140, WAS CONTROLLING.

THE REFEREE FELT, BASED UPON DR. BOYDEN'S REPORTS WHICH INCLUDED THE GROIN COMPLAINTS IN HIS ASSESSMENT OF CLAIMANT'S CONDITION, THAT HE WAS JUSTIFIED IN FINDING CLAIMANT'S DISABILITY TO BE UNSCHEDULED AS WELL AS SCHEDULED BECAUSE OF THE DISABLING PAIN IN THE GROIN.

THE BOARD, ON DE NOVO REVIEW, DISTINGUISHES THIS CASE FROM ITS PREVIOUS RULING IN LUNDQUIST. IN THE LATTER CASE, THE INJURY WAS ACTUALLY CONFINED TO THE RIGHT FEMUR, NO INVOLVEMENT OF THE UNSCHEDULED AREA HAD BEEN DEMONSTRATED, WHILE IN THIS CASE, THE CHARNLEY-MEULLER RIGHT HIP ARTHROPLASTY REQUIRED INVASION INTO THE PELVIC SIDE OF THE HIP JOINT TO ENABLE THE SURGEON TO ATTACH AN ARTIFICIAL BALL TO THE HIP SOCKET. THE SURGERY INCLUDED THE PELVIC SIDE -- THIS IS SUFFICIENT TO SUPPORT CLAIMANT'S COMPLAINTS OF GROIN PAIN.

THE BOARD CONCLUDES THAT CLAIMANT HAS SUFFERED AN INJURY NOT ONLY TO HER RIGHT HIP BUT ALSO TO THE PELVIC SIDE OF THE FEMUR-PELVIS STRUCTURE AND ASSOCIATED MUSCLE SYSTEMS AND, THEREFORE, IS ENTITLED TO UNSCHEDULED DISABILITY AS WELL AS SCHEDULED AND CONCURS IN THE CONCLUSION OF THE REFEREE THAT CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED FROM AND AFTER MARCH 6, 1974.

ORDER

THE ORDER OF THE REFEREE DATED MAY 27, 1975, 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 HIS SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-3942 SEPTEMBER 17, 1975

WILLIAM PHILLIP, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
JAQUA AND WHEATLEY, DEFENSE ATTYS.
ORDER ON MOTION FOR RECONSIDERATION

THE EMPLOYER HAS FILED A REQUEST FOR RECONSIDERATION OF THE WORKMEN'S COMPENSATION BOARD'S ORDER ON REVIEW DATED AUGUST 19, 1975, AND ITS AMENDED ORDER ON REVIEW DATED AUGUST 26, 1975.

CLAIMANT HAS FILED A RESPONSE TO SAID REQUEST AND THE BOARD, NOW BEING FULLY ADVISED, CONCLUDES THE REQUEST FOR RECONSIDERATION IS NOT WELL TAKEN.

IT IS HEREBY ORDERED THAT THE EMPLOYER'S REQUEST FOR RECONSIDERATION IS HEREBY DENIED.

WCB CASE NO. 75-1172 SEPTEMBER 17, 1975

STEPHEN P. CLAIBORNE, CLAIMANT

JONES, LANG, KLEIN, WOLF AND SMITH,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER OF DISMISSAL

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

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

SAIF CLAIM NO. FC 71301 SEPTEMBER 17, 1975

HOWARD C. NELSON, CLAIMANT
OWN MOTION DETERMINATION

THIS CLAIMANT SUSTAINED AN INJURY TO HIS RIGHT KNEE IN 1951 RESULTING IN A MEDIAL MENISCECTOMY. HE RECEIVED AN AWARD OF 25 PERCENT OF THE RIGHT LEG.

ON JANUARY 30, 1967, CLAIMANT SLIPPED AND TWISTED HIS KNEE AGGRAVATING THE 1951 INJURY. THIS CLAIM WAS CLOSED ON APRIL 3, 1968, WITH AN AWARD OF 10 PERCENT OF THE RIGHT LEG.

SUBSEQUENTLY, THERE WERE TWO REOPENINGS FOR NECESSARY SURGERIES WITH TWO CLOSURES AND DETERMINATIONS AWARDING A TOTAL 20 PERCENT ADDITIONAL FOR RIGHT LEG DISABILITY.

ON JANUARY 31, 1974, PURSUANT TO A STIPULATED ORDER OF DISMISSAL AND DETERMINATION, CLAIMANT WAS GRANTED AN ADDITIONAL 22.5 PERCENT MAKING A TOTAL AWARD OF 52.5 PERCENT FOR THE 1967 CLAIM, PLUS 25 PERCENT FOR THE 1951 CLAIM FOR AN AGGREGATE OF 77.5 PERCENT FOR SCHEDULED RIGHT LEG DISABILITY.

IN AUGUST, 1974, DR. ZIMMERMAN DIAGNOSED SEVERE DEGENERATIVE ARTHRITIS. IN MAY OF 1975, CLAIMANT WAS EXAMINED BY DR. BERG AND IN JULY OF 1975 BY THE ORTHOPEDIC CONSULTANTS, WHO DISCUSSED VARIOUS SURGICAL PROCEDURES WITH CLAIMANT -- HOWEVER, CLAIMANT DID NOT DESIRE FURTHER SURGERY AT THAT TIME.

THE MATTER HAS NOW BEEN SUBMITTED TO THE BOARD'S EVALUATION DIVISION AND, BASED ON THEIR RECOMMENDATION, THE BOARD FINDS THAT CLAIMANT IS NOT ENTITLED TO ADDITIONAL COMPENSATION FOR HIS SCHEDULES DISABILITY, NOR IS HE ENTITLED TO ANY ADDITIONAL TIME LOSS.

IT IS SO ORDERED.

SAIF CLAIM NO. AC 110906 SEPTEMBER 17, 1975

AUGUST M. JENSON, CLAIMANT
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

THIS WORKMAN SUSTAINED INJURY TO HIS BACK AND RIGHT LEG ON JANUARY 14, 1968. HIS CLAIM WAS CLOSED, AFTER SURGERY, BY A DETERMINATION ORDER ISSUED JULY 24, 1969, WHICH GRANTED AWARDS OF 15 PERCENT UNSCHEDULED LOW BACK DISABILITY AND 25 PERCENT RIGHT LEG DISABILITY.

THE CLAIM WAS VOLUNTARILY REOPENED BY THE STATE ACCIDENT INSURANCE FUND, AND A MEDIAL AND LATERAL MENISCECTOMY, RIGHT KNEE, WAS PERFORMED ON MARCH 18, 1975.

CLAIMANT'S CONDITION IS NOW STATIONARY AND THE MATTER WAS SUBMITTED TO THE BOARD'S EVALUATION DIVISION WHICH DETERMINED THAT CLAIMANT HAS SUSTAINED ADDITIONAL PERMANENT DISABILITY EQUAL TO 25 PERCENT OF THE RIGHT LEG.

ORDER

IT IS THEREFORE ORDERED THAT CLAIMANT BE AWARDED TEMPORARY TOTAL DISABILITY FROM MARCH 18, 1975 THROUGH AUGUST 4, 1975, LESS TIME WORKED, AND AN AWARD OF PERMANENT PARTIAL DISABILITY EQUAL TO 25 PERCENT LOSS OF RIGHT LEG. THIS IS IN addition TO THE AWARD GRANTED ON JULY 24, 1969.

CLAIM NO. 133 CB 1890652 SEPTEMBER 17, 1975

ADA WARR, CLAIMANT

OWN MOTION ORDER

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

CLAIMANT ORIGINALLY SUSTAINED A COMPENSABLE INJURY ON DECEMBER 24, 1967, WHILE EMPLOYED AS A GROCERY CHECKER. IN 1970, HER SYMPTOMS INCREASED AND SHE WAS HOSPITALIZED FOR TRACTION. AGAIN ON APRIL 25, 1975, SHE SUFFERED A FLAREUP OF BACK PAIN AND WAS HOSPITALIZED BY HER TREATING PHYSICIAN, DR. MEINCKE.

AT THE CARRIER'S REQUEST, CLAIMANT WAS EXAMINED BY DR. HAROLD C. ROCKEY, ORTHOPEDIST, AND THE BOARD IS NOW IN RECEIPT OF HIS REPORT IN WHICH HE RELATES CLAIMANT'S PRESENT WORSENED CONDITION TO HER 1967 INJURY.

ORDER

THE EMPLOYER IS ORDERED TO REOPEN CLAIMANT'S CLAIM FOR SUCH MEDICAL CARE AND TREATMENT AS SHE MAY REQUIRE AND TO PAY CLAIMANT COMPENSATION, AS PROVIDED BY LAW, COMMENCING APRIL 25, 1975, AND UNTIL HER CLAIM IS CLOSED PURSUANT TO ORS 656.278.

WCB CASE NO. 74-4091 SEPTEMBER 17, 1975

THE BENEFICIARIES OF JOHN E. VOGL, DECEASED

POZZI, WILSON AND ATCHISON,
BENEFICIARIES' ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER OF DISMISSAL

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

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

WCB CASE NO. 74-3022 SEPTEMBER 18, 1975

WILLIAM E. PATTERSON, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
SUPPLEMENTAL ORDER

ON SEPTEMBER 16, 1975, THE BOARD ISSUED ITS ORDER ON REVIEW IN THE ABOVE-ENTITLED MATTER.

THE ORDER INADVERTENTLY NEGLECTED TO CONTAIN A STATEMENT EXPLAINING TO THE PARTIES APPEAL RIGHTS AS REQUIRED BY ORS 656.295(8).

IN ORDER TO COMPLY WITH THAT PROVISION OF THE STATUTE, THE FOLLOWING EXPLANATION OF APPEAL RIGHTS SHOULD BE PUBLISHED AS A SUPPLEMENT TO AND PART OF THE ORDER ON REVIEW DATED SEPTEMBER 16, 1975 --

> NOTICE TO ALL PARTIES -- THIS ORDER IS FINAL WITHIN 30 DAYS AFTER THE DATE OF MAILING COPIES OF THIS ORDER TO THE PARTIES, ONE OF THE PARTIES APPEALS TO THE CIRCUIT COURT, AS PROVIDED BY ORS 656.298.

IT IS SO ORDERED.

WCB CASE NO. 73-3090-E SEPTEMBER 18, 1975

HARRY L. CUTLER, CLAIMANT

MC MENAMIN, JONES, JOSEPH AND LANG,
CLAIMANT'S ATTYS.
GEARIN, CHENEY, LANDIS, AEBI AND KELLEY,
DEFENSE ATTYS.

REVIEWED BY COMMISSIONERS WILSON, MOORE AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH MODIFIED A SECOND DETERMINATION ORDER GRANTING HIM PERMANENT TOTAL DISABILITY, ALLOWING INSTEAD, COMPENSATION EQUAL TO 75 PERCENT OF THE MAXIMUM PROVIDED FOR UNSCHEDULED PERMANENT DISABILITY.

ON APRIL 21, 1970, CLAIMANT, A THEN 49 YEAR OLD HOD CARRIER, SUFFERED AN INJURY TO HIS LOW BACK. IN AUGUST, 1970, A TWO LEVEL LAMINECTOMY AND DISCECTOMY WAS PERFORMED. IT WAS REPEATED IN DECEMBER AND FOLLOWED BY A FUSION OF THE SPINE FROM L4 TO THE SACRUM. THE PROCEDURE WAS NOT COMPLETELY SUCCESSFUL AND HE WAS LEFT WITH A PSEUDOARTHROSIS SUPERIMPOSED UPON EXTENSIVE DEGENERATIVE ARTHRITIS OF THE SPINE. HIS PHYSICAL CONDITION WAS EVALUATED AS MODERATELY IMPAIRED BY THE STAFF OF THE DISABILITY PREVENTION DIVISION AND HIS CLAIM WAS EVENTUALLY CLOSED WITH A PERMANENT PARTIAL DISABILITY AWARD. IT WAS REOPENED SHORTLY FOR MORE TREATMENT BY DR. ROBERT BERSELLI. PHYSICAL THERAPY WAS UNPRODUCTIVE AND CLAIMANT DECLINED THE OFFER OF FURTHER SURGERY. THE CLAIM WAS THEN SUBMITTED FOR REEVALUATION AND CLAIMANT WAS FOUND PERMANENTLY TOTALLY DISABLED.

AT THE HEARING REQUESTED BY THE EMPLOYER, SEVERAL PHYSICIANS EXPRESSED OPINIONS ON THE WISDOM OF FURTHER SURGERY AND UPON THE DISABLING EFFECT OF CLAIMANT'S INJURY. DR. BERSELLI ESTIMATED THAT THERE WAS A 70 PERCENT CHANCE THAT CLAIMANT WOULD BENEFIT FROM THE SURGERY, BUT OTHER PHYSICIANS WHO TESTIFIED FELT FURTHER SURGERY WOULD BE UNPRODUCTIVE AND UNWISE. WITH THE EXCEPTION OF DR. JOEL SERES, THEY ALL FELT HIS PHYSICAL IMPAIRMENT, WHEN COUPLED WITH HIS AGE AND WORK BACKGROUND, HAD RENDERED HIM PERMANENTLY AND TOTALLY DISABLED.

AFTER THE HEARING, CLAIMANT WAS ENROLLED AT DR. SERES' PAIN CENTER. ALTHOUGH HIS PAIN LEVEL AND RANGE OF MOTION IMPROVED, A PAIN CENTER STAFF PHYSICIAN, ALAN RUSSAKOV, CONSIDERED CLAIMANT PHYSICALLY CAPABLE OF SEDENTARY TO LIGHT WORK. HE FELT THAT THE CHANCES OF CLAIMANT EVER RETURNING TO WORK WERE EXTREMELY SMALL AS A PRACTICAL MATTER DUE TO HIS PHYSICAL CONDITION AND WORK EXPERIENCE BACKGROUND.

SINCE THE INJURY, CLAIMANT HAS NEVER ATTEMPTED TO LOOK FOR WORK. HE IS NOT EMOTIONALLY DEPRESSED BY THE PROSPECT OF PERMANENT TOTAL DISABILITY. HIS INCOME FROM VARIOUS DISABILITY PROGRAMS EXCEEDS WHAT HE WAS EARNING AT THE TIME OF INJURY. THESE FACTORS LED THE REFEREE TO CONCLUDE THAT CLAIMANT'S CONTINUING UNEMPLOYMENT WAS DUE TO LACK OF MOTIVATION RATHER THAN PERMANENT DISABILITY, AND HE THEREFORE MODIFIED THE AWARD TO PERMANENT PARTIAL DISABILITY RATHER THAN PERMANENT TOTAL DISABILITY.

THE MEDICAL EVIDENCE CLEARLY ESTABLISHES THAT CLAIMANT HAS VERY SERIOUS PHYSICAL LIMITATIONS. CONSIDERING THE SERIOUSNESS OF CLAIMANT'S PHYSICAL IMPAIRMENT, ALONG WITH HIS AGE, EDUCATION AND WORK EXPERIENCE, A MAJORITY OF THE BOARD CONCLUDES THAT REGARDLESS OF MOTIVATION, CLAIMANT CANNOT REASONABLY BE EXPECTED TO SUCCESSFULLY GAIN AND HOLD SUITABLE EMPLOYMENT.

WE CONCLUDE THE REFEREE'S ORDER SHOULD BE REVERSED AND THAT THE AWARD OF PERMANENT TOTAL DISABILITY GRANTED BY THE DETERMINATION ORDER DATED JULY 5, 1973, AS AMENDED JULY 20, 1973, SHOULD BE REINSTATED.

WE FURTHER CONCLUDE THAT CLAIMANT'S ATTORNEY, DARYLL E. KLEIN, SHOULD RECEIVE A REASONABLE ATTORNEY'S FEE OF 1,100 DOLLARS PAYABLE BY THE EMPLOYER FOR HIS SERVICES IN ACCORDANCE WITH ORS 656.382(2).

IT IS SO ORDERED.

CHAIRMAN M. KEITH WILSON DISSENTS AS FOLLOWS --

MR. CUTLER IS MODERATELY DISABLED IN THE VIEW OF THE BACK EVALUATION CLINIC AND THE PORTLAND PAIN REHABILITATION CENTER. THE DECISION TO REMOVE HIMSELF FROM THE LABOR MARKET HAS BEEN MADE BY MR. CUTLER AND NO MEANINGFUL EFFORT HAS BEEN EXTENDED TOWARD ANY FORM OF REHABILITATION OR WORK PLACEMENT.

I CANNOT AGREE THAT THE EXTENT OF DISABILITY QUALIFIES MR. CUTLER AS AN ODD-LOT PERMANENTLY AND TOTALLY DISABLED WORKER AND AM UNWILLING TO CONCEDE THAT MOTIVATION IS NOT A STRONG FACTOR TO BE CONSIDERED IN THIS CASE.

IN ESSENCE, THE OPTIONS HAVE BEEN EXERCISED BY MR. CUTLER AND NO POSITIVE CONTROL OR DIRECTION HAS BEEN EXERCISED BY THE OREGON SYSTEM TOWARD INSISTING THAT THE RESOURCES AVAILABLE ARE BROUGHT TO BEAR TOWARD REHABILITATION OR JOB PLACEMENT.

THE AWARD OF THE REFEREE, IF ANYTHING, WAS GENEROUS, BUT I WOULD AFFIRM.

-S- M. KEITH WILSON, CHAIRMAN

WCB CASE NO. 74-4330 SEPTEMBER 18, 1975

PEGGY MAYES, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH INCREASED CLAIMANT'S AWARD FOR UNSCHEDULED DISABILITY FROM 20 PERCENT TO 30 PERCENT.

CLAIMANT WAS EMPLOYED AS A NURSE'S AIDE WHEN SHE SUSTAINED A COMPENSABLE LOW BACK INJURY ON FEBRUARY 21, 1973. DR. GREWE PERFORMED A LAMINECTOMY FROM L3 TO S1 AND A DISKECTOMY AT L5, S1. CLAIMANT NOW HAS PAIN MOST OF THE TIME AND LIMITED AS FAR AS PHYSICAL ACTIVITIES ARE CONCERNED. SHE WAS REPORTEDLY DOING VERY WELL AT NORTHWESTERN COLLEGE OF BUSINESS, TAKING A COURSE TO PREPARE HER TO BECOME A MEDICAL RECEPTIONIST.

SINCE CLAIMANT IS NOT ABLE TO SIT OR STAND FOR PROLONGED PERIODS OF TIME, CANNOT LIFT OR BEND EASILY, SHE WILL BE PRECLUDED FROM EMPLOYMENT REQUIRING SUCH ACTIVITY. THE REFEREE FOUND CLAIMANT'S EARNING CAPACITY HAD BEEN REDUCED, AND SHE WAS ENTITLED TO AN AWARD OF 96 DEGREES OF A POSSIBLE 320 DEGREES FOR UNSCHEDULED DISABILITY.

THE BOARD, ON DE NOVO REVIEW, HAS REVIEWED THE RECORD WITHOUT THE BENEFIT OF BRIEFS FROM THE PARTIES, AND CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 14, 1975 IS AFFIRMED.

WCB CASE NO. 74-4632 SEPTEMBER 18, 1975

MARY OLNEY, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED THE EMPLOYER'S DENIAL OF CLAIMANT'S CLAIM FOR COMPENSATION.

CLAIMANT WAS EMPLOYED BY FRANCIS INTERIORS, INC. ON OCTOBER 31, 1974, SHE ALLEGED THAT SHE WAS WALKING ACROSS THE ROOM WITH A DRAPE WHEN IT CAUGHT ON SOMETHING, CAUSING HER TO TURN AND SNAP SOMETHING IN HER BACK. NOT BEING ABLE TO COMPLETE HER WORK, SHE CALLED TO HER FOREMAN AND TOLD HIM SHE HAD HURT HER BACK AND WAS NAUSEATED. HE AUTHORIZED HER TO GO HOME.

CLAIMANT TESTIFIED SHE REQUESTED HER DAUGHTER TO CALL THE FOREMAN THE NEXT DAY TO REPORT SHE COULD NOT WORK. THE FOREMAN TESTIFIED HE RECEIVED NO CALL OR MESSAGE TO THAT EFFECT. CLAIMANT DID NOT PERSONALLY CALL HER EMPLOYER FOR MORE THAN A WEEK. ALTHOUGH THE ALLEGED INJURY OCCURRED ON A THURSDAY, CLAIMANT DID NOT SEEK MEDICAL ATTENTION UNTIL THE FOLLOWING MONDAY AT 9-30 P.M. AT THE UNIVERSITY OF OREGON MEDICAL SCHOOL EMERGENCY ROOM. TWO SCHEDULED APPOINTMENTS WITH AN ORTHOPEDIST WERE NOT KEPT, AND FINALLY ON NOVEMBER 25, 1974, DR. BYRON SKUBI DIAGNOSED A LUMBOSACRAL STRAIN.

BECAUSE OF NUMEROUS CONFLICTS BETWEEN THE CLAIMANT'S TESTIMONY AND THAT OF OTHER WITNESSES, THE INCONSISTENCIES OF CLAIMANT'S OWN TESTIMONY, AND THE UNEXPLAINED PECULARITIES IN CLAIMANT'S ACTIONS FOLLOWING THE ALLEGED INJURY, THE REFEREE CONCLUDED THAT CLAIMANT HAD FAILED TO SUSTAIN HER BURDEN OF PROVING SHE INCURRED A COMPENSABLE INJURY. THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE REFEREE.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 7, 1975 IS AFFIRMED.

WCB CASE NO. 74-4241 SEPTEMBER 18, 1975

ARTURO ARANDA, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS IS A DENIED AGGRAVATION CLAIM INVOLVING A 52 YEAR OLD MEXICAN-AMERICAN WHO HAS WORKED PRINCIPALLY IN FIELDS AS A FARM HAND. CLAIMANT INJURED HIS LOW BACK WHILE HE WAS PICKING TOMATOES IN THE SACRAMENTO AREA.

THE ISSUE ON REVIEW IS WHETHER CLAIMANT'S PRESENT CONDITION IS THE RESULT OF AN AGGRAVATION OF THE BACK INJURY HE SUFFERED ON JUNE 24, 1970, WHILE PICKING STRAWBERRIES IN OREGON, OR IF CLAIMANT'S SYMPTOMATOLOGY WORSENED AFTER A LIFTING INCIDENT WHICH OCCURRED AUGUST 24, 1970, WHEN CLAIMANT HAD STARTED PICKING GRAPES IN CALIFORNIA AND WAS LIFTING PANS OF GRAPES WEIGHING 50 POUNDS.

CLAIMANT SAW NUMEROUS DOCTORS AND UNDERWENT DIAGNOSTIC PROCEDURES. A MYELOGRAM DID NOT ESTABLISH THE PRESENCE OF A DISC. THE MEDICAL OPINION WAS THAT CLAIMANT'S PRESENT SYMPTOMATOLOGY IS THE RESULT OF A LUMBOSACRAL INSTABILITY AND A NATURAL DEGENERATION DATING BACK TO THE 1968 AND 1969 INJURIES AND IS NOT THE RESULT OF ANY SPECIFIC INJURY.

THE REFEREE, AFTER A HEARING, SUSTAINED THE DENIAL -- HE QUESTIONED GRAVELY CLAIMANT'S CREDIBILITY.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE REFEREE'S FINDINGS AND CONCLUSIONS AND AFFIRMS AND ADOPTS HIS ORDER.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 10, 1975 IS AFFIRMED.

WCB CASE NO. 74-1650 SEPTEMBER 18, 1975

GILBERT HUNT, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH FOUND CLAIMANT TO BE PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT IS 53 YEARS OLD, HIS PRINCIPAL OCCUPATION FOR APPROXIMATELY 28 YEARS HAS BEEN THE CONSTRUCTION OF BILLBOARDS. HE SUFFERED A COMPENSABLE INJURY IN JUNE 1967, FALLING ABOUT 30 FEET FROM A BILLBOARD TO THE GROUND AND FRACTURING FIVE RIBS ON HIS RIGHT SIDE. WHILE CLAIMANT WAS HOSPITALIZED, PARALYTIC ILEUS DEVELOPED WHICH RESULTED IN A BOWEL OBSTRUCTION. ON JUNE 13, 1967, DR. MC CARTNEY PERFORMED A CECOSTOMY -- CLAIMANT WAS OFF WORK APPROXIMATELY SIX MONTHS ALTHOUGH HE CONTINUED TO HAVE MARKED ABDOMINAL PAIN. THE CLAIM WAS CLOSED BY DETERMINATION ORDER DATED MAY 5, 1969, WHICH AWARDED CLAIMANT NO PERMANENT DISABILITY. CLAIMANT REQUESTED A HEARING AND, ON SEPTEMBER 16, 1969, THE REFEREE AWARDED CLAIMANT 96 DEGREES FOR 30 PERCENT UNSCHEDULED DISABILITY AFFECTING HIS ABDOMINAL WALL.

AFTER CLAIMANT HAD BEEN RELEASED TO RETURN TO WORK BY DR. MEIHOFF ON DECEMBER 1, 1967, HE CONTINUED TO WORK UNTIL FEBRUARY 1974, WITH SOME TIME OFF PERIODICALLY FOR SUBSEQUENT SURGERIES CONSISTING OF REMOVING METAL STITCHES AND REPAIRING INCISIONAL HERNIAS. CLAIMANT'S LAST SURGERY WAS IN FEBRUARY 1974. HIS CLAIM WAS AGAIN CLOSED ON MAY 3, 1974, BY DETERMINATION ORDER WHICH AWARDED NO ADDITIONAL PERMANENT DISABILITY.

CLAIMANT HAS HAD A MULTITUDE OF MEDICAL TREATMENT -- HE HAS GONE THROUGH THE PORTLAND PAIN CLINIC. ACCORDING TO THE PHYSICIAN'S REPORT, CLAIMANT, IN THE SUMMER 1974, EXPERIENCED ABDOMINAL PAIN ABOUT 75 PERCENT OF THE TIME -- BY FEBRUARY 1975, THE PAIN WAS ALMOST CONSTANT AND WAS INCREASED BY ANY ACTIVITY ON THE PART OF CLAIMANT.

THE REFEREE FOUND THAT THE MEDICAL CONSENSUS WAS CLEAR THAT CLAIMANT SHOULD NO LONGER ENGAGE IN HEAVY TYPE WORK -- HE NOTED THAT DR. SERES STATED THAT IF CLAIMANT DID NOT STRESS THE AREA OF SCARRING IN HIS STOMACH THERE WAS LITTLE INCREASE IN HIS DISTRESS. THIS INDICATES CLAIMANT WOULD HAVE TO HAVE AN EXTREMELY SEDENTARY TYPE JOB AND WITH HIS LIMITED EDUCATION AND WORK EXPERIENCE, CLAIMANT WAS NOT TRAINED FOR THAT TYPE OF WORK.

THE REFEREE CONCLUDED THAT ALTHOUGH PAIN, IN AND OF ITSELF, WAS NOT COMPENSABLE UNDER THE PROVISIONS OF THE WORKMEN'S COMPENSATION ACT, WHENEVER SUCH PAIN ADVERSELY AFFECTS A WORKMAN'S ABILITY TO WORK OR PRECLUDES HIM FROM WORKING, THAT PAIN IS COMPENSABLE. HE FURTHER CONCLUDED THAT HE WAS UNAWARE OF ANY WORK WHICH CLAIMANT COULD PRESENTLY DO AND THAT CLAIMANT HAD TO BE CONSIDERED AS PERMANENTLY AND TOTALLY DISABLED AS DEFINED BY ORS 656.206(1) (A).

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE CONCLUSIONS OF THE REFEREE AND AFFIRMS HIS ORDER.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 4, 1975, IS AFFIRMED, AND CLAIMANT SHALL BE CONSIDERED AS PERMANENTLY AND TOTALLY DISABLED FROM THE DATE OF SAID ORDER.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE THE SUM OF 300 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW.

WCB CASE NO. 74-4194 SEPTEMBER 18, 1975

SHELIA A. VEERKAMP, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER, AND THE CLAIMANT CROSS REQUESTS BOARD REVIEW, CONTENDING THAT HER CLAIM WAS NEVER CLOSED PURSUANT TO ORS 656.268, THEREFORE, SHE WAS ENTITLED TO RECEIVE TEMPORARY TOTAL DISABILITY BENEFITS FROM THE DATE OF DR. FAGAN'S RECOMMENDATION UNTIL HER CLAIM WAS CLOSED UNDER THE PROVISIONS OF ORS 656.268.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON DECEMBER 15, 1972 -- HER CLAIM WAS CLOSED ON A 'MEDICAL ONLY' BASIS AS THERE WAS NO EVIDENCE THAT CLAIMANT HAD SUFFERED ANY COMPENSABLE TIME LOSS OR ANY PERMANENT PARTIAL DISABILITY.

ON MARCH 20, 1973, CLAIMANT SAW DR. FAGAN, AN ORTHOPEDIST, WHO STATED IN HIS REPORT DATED AUGUST 14, 1974 --

"I THINK AT THIS POINT SHE SHOULD BE SEEN AT THE DISABILITY PREVENTION DIVISION FOR PHYSICAL AND PSYCHOLOGICAL EVALUATIONS. I CERTAINLY HAVE NO MEANS OF TREATING HER AT THIS TIME."

ON SEPTEMBER 27, 1974, THE FUND WROTE DR. FAGAN, WITH A COPY TO THE DISABILITY PREVENTION DIVISION, STATING THAT IT WOULD NOT REOPEN THE CLAIM FOR MEDICAL CARE. THE FUND DID NOT SEND A STATUTORY NOTICE OF DENIAL TO CLAIMANT -- THE LETTER TO DR. FAGAN WAS CONSTRUED AS A PARTIAL DENIAL AND CLAIMANT REQUESTED A HEARING.

THE REFEREE FOUND THAT THE FUND'S LETTER TO DR. FAGAN AMOUNTED TO A BLANKET REFUSAL TO FURNISH FURTHER MEDICAL CARE TO THE CLAIMANT AND THAT SAID REFUSAL IGNORED OR REJECTED DR. FAGAN'S SPECIFIC RECOMMENDATIONS FOR FURTHER DIAGNOSTIC PROCEDURES. THE REFEREE FURTHER FOUND THAT THERE WAS NO EVIDENCE IN THE RECORD THAT THE FUND HAD HAD ANY MEDICAL INFORMATION JUSTIFYING ITS ACTION AND, THEREFORE, THAT IT MUST BE CONSIDERED AS HAVING ACTED ARBITRARILY AND UNREASONABLY THEREBY SUBJECTING IT TO PENALTIES AND ATTORNEY'S FEES.

THE REFEREE CONCLUDED THAT THE EVIDENCE IN THE RECORD DID NOT SUPPORT A CLAIM FOR AGGRAVATION OR ANY DISABILITY NECESSITATING A REFERRAL TO THE EVALUATION DIVISION FOR A DETERMINATION ORDER PURSUANT TO ORS 656.268.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE REFEREE AND AFFIRMS HIS ORDER.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 19, 1975 IS AFFIRMED.

COUNSEL FOR CLAIMANT IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 300 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-3479 SEPTEMBER 19, 1975

THE BENEFICIARIES OF HERMAN MACKEY, DECEASED

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE DECEASED WORKMAN'S SURVIVING SPOUSE, HEREINAFTER REFERRED TO AS CLAIMANT, SEEKS BOARD REVIEW OF AN ORDER OF THE REFEREE WHICH DENIED HER REQUEST FOR RELIEF. AT THE HEARING ON MARCH 18, 1975, THE ISSUES WERE --

(1) WHAT WAS THE EXTENT OF THE WORKMAN'S PERMANENT PARTIAL DISABILITY AT THE TIME OF DEATH, AND COULD THE SURVIVING SPOUSE PURSUE THE MATTER TO FINAL DETERMINATION?

(2) WAS THE CAUSE OF DEATH CAUSALLY RELATED TO THE INDUSTRIAL INJURY SO AS TO ENTITLE THE WIDOW TO BENEFITS?

(3) IF NOT CAUSALLY RELATED, WAS THE SYMPTOMATOLOGY ARISING FROM THE INDUSTRIAL INJURY SUCH THAT IT MASKED THE CONDITION WHICH RESULTED IN THE WORKMAN'S DEATH TO THE EXTENT THAT THE WIDOW WOULD BE ENTITLED TO BENEFITS?

THE WORKMAN WAS 51 YEARS OLD WHEN HE DIED ON JULY 28, 1974. THE CAUSE OF DEATH WAS LISTED AS 'ACUTE BACTERIAL MENINGITIS AND VENTRICULITIS WITH CEREBRAL EDEMA.' THE CLAIM FOR BENEFITS FILED UNDER THE PROVISIONS OF ORS 656.204 WAS DENIED BY THE CARRIER.

THE WORKMAN HAD SUSTAINED A COMPENSABLE LOW BACK INJURY ON FEBRUARY 10, 1971, AND HE WAS GIVEN SURGICAL RELIEF FOR RADICULITIS IN THE LOW LUMBAR AREA ON MARCH 19, 1971. HIS POST OPERATIVE PROGRESS WAS COMPLICATED BY WOUND INFECTION WHICH REQUIRED SUBSEQUENT HOSPITALIZATIONS AND A SERIES OF SURGERIES, THE LAST BEING PERFORMED IN FEBRUARY 1973, FOR TREATMENT OF THE STAPH INFECTION IN THE WOUND. THE WORKMAN HAD NO FURTHER APPARENT PROBLEMS WITH HIS SURGICAL WOUND, HOWEVER, HIS BACK STARTED BOTHERING HIM MORE IN JUNE OF 1974. HE HAD WORKED DURING 1973 AND UNTIL JULY 1, 1974, DURING WHICH TIME HE WAS TREATED FOR HIGH BLOOD PRESSURE.

ON JULY 27, 1974, HIS SYMPTOMATOLOGY CHANGED, AND, IN ADDITION TO HIS LOW BACK AND RIGHT LOWER EXTREMITY PAIN WHICH HAD INCREASED IN JUNE 1974, THE WORKMAN SUDDENLY DEVELOPED A WEAKNESS IN THE RIGHT LOWER EXTREMITY WITH NUMBNESS AND AN INABILITY TO MOVE THE LEG. HIS OUTWARD APPEARANCE WAS SOMEWHAT CONFUSED AND DROWSY AND HE HAD A FEVER. HE WAS ADMITTED TO THE HOSPITAL AT 7-30 ON JULY 27 AND DIED SEVEN HOURS LATER.

THE REFEREE DISPOSED OF THE FIRST ISSUE BE HOLDING THAT THE PROVISIONS OF ORS 656.218 ENACTED IN 1973 WERE NOT INTENDED TO BE APPLIED RETROSPECTIVELY. THE WORKMAN'S INJURY HAD OCCURRED IN 1971. THE STATUS OF PERMANENT PARTIAL DISABILITY CLAIMS BECOMES FIXED AS IT IS AT THE TIME OF CLAIMANT'S DEATH. MARSHALL V. SAIF, 9 OR APP 278. THE REFEREE CONCLUDED THAT THE RIGHT TO DETERMINE THE WORKMAN'S ELIGIBILITY FOR BENEFITS EXPIRED WITH HIM.

WITH RESPECT TO THE SECOND ISSUE, THE REFEREE CONCLUDED THAT THE BACTERIAL MENINGITIS WAS NOT CAUSALLY RELATED TO THE INDUSTRIAL INJURY, FOUNDING THIS UPON THE EXPLANATION BY DR. KLOOS WHO ADOPTED A PATHOGENENTIC HYPOTHESIS PROPOUNDED BY DR. FUCHS THAT THE MENINGITIS INFECTION AROSE FROM AN INFECTION IN THE PARANASAL SINUSES AND, THEREFORE, WOULD PRECLUDE A FINDING OF CAUSAL RELATIONSHIP.

ON THE THIRD ISSUE, THE REFEREE CONCLUDED THAT THE EVIDENCE DID NOT INDICATE THAT THE MENINGITIS CONDITION WAS MASKED BY THE SYMPTOMATOLOGY RESULTING FROM THE WORKMAN'S INDUSTRIAL INJURY INASMUCH AS THE WORKMAN WAS ONLY IN THE HOSPITAL EIGHT OR TEN HOURS BEFORE HE EXPIRED AND THE ADMITTING SYMPTOMATOLOGY WAS CERTAINLY INDICATIVE OF SOMETHING MORE THAN AN INDUSTRIAL BACK INJURY.

THE BOARD, ON DE NOVO REVIEW, AGREES THAT BECAUSE THE 1973 AMENDMENT TO ORS 656.218 IS SILENT AS TO WHETHER IT SHOULD BE APPLIED RETROSPECTIVELY OR PROSPECTIVELY AND BECAUSE ORS 656.202 WAS A PART OF THE LAW PRIOR TO 1973, ORS 656.218 SHOULD NOT BE

APPLIED RETROSPECTIVELY AND THE RIGHT TO DETERMINE THE WORKMAN'S ELIGIBILITY FOR BENEFITS TERMINATED WITH HIS DEATH.

HOWEVER, THE BOARD DOES NOT AGREE WITH THE CONCLUSION REACHED BY THE REFEREE WITH RESPECT TO WHETHER OR NOT THE BACTERIAL MENINGITIS WAS CAUSALLY RELATED TO THE INDUSTRIAL INJURY OF FEBRUARY 10, 1971. DR. FUCHS ADVANCED TWO POSSIBLE PATHOGENETIC HYPOTHESES -- THE FIRST HAS ALREADY BEEN DISCUSSED IN CONNECTION WITH DR. KOOS' OPINION. DR. FUCHS, HIMSELF, FAVORED THE SECOND HYPOTHESIS, I.E., THAT THE IMMEDIATE CAUSE OF THE WORKMAN'S DEATH WAS ACUTE MENINGITIS. HE STATES THAT THIS WAS A TYPICAL STAPHYLOCOCCAL MENINGITIS ARISING FROM ANOTHER FOCUS OF INFECTION -- THE QUESTION IS WHERE IS THE SITUS OF THAT INFECTION? DR. FUCHS FEELS THAT A POSSIBLE SITE WOULD BE THE PARANASAL SINUSES. THIS IS POSSIBLE BECAUSE OF CLAIMANT'S HISTORY OF HEADACHES AND THE STAPHYLOCOCCI COULD REACH THE MENINGES FROM THIS SITE EITHER THROUGH THE BLOOD STREAM OR BY DIRECT INVASION THROUGH THE ETHNOID SINUSES. THE LATTER WAS UNLIKELY BECAUSE THE MENINGES AT THE BASE OF THE BRAIN WERE MINIMALLY INVOLVED BY THE IMFLAMMATORY PROCESS COMPARED TO THE OTHER AREAS. THE MAJOR FAULT THAT DR. FUCHS FINDS WITH THIS HYPOTHESIS IS THAT IN THIS CASE (THE PRESENCE OF EXTENSIVE CHRONIC INFLAMMATION OF THE DURA MATER OF THE SPINAL CORD IS NOTICEABLE.) (UNDERSCORED -- EMPHASIS OURS).

THEREFORE, HE PROPOUNDS THE SECOND HYPOTHETICAL IN WHICH HE STATES THAT THE ACUTE MENINGITIS IS A DELAYED RESULT OF THE WOUND INFECTION FOLLOWING THE BACK SURGERY. THE ORIGINAL WOUND INFECTION WAS STAPHYLOCOCCUS ARUEUS, HOWEVER, AFTER REPEATED ANTIBIOTIC THERAPY AND TWO SURGICAL INCISIONS OF SINUS TRACTS, IT WAS SUPPLANTED BY STAPHYLOCOCCUS EPIDERMIDIS, YET AT THE TIME OF HIS DEATH, 17 MONTHS AFTER HIS LAST SINUS EXCISION, THERE WAS NO EVIDENCE OF INFECTION AT THE WOUND SITE -- IT WAS WELL HEALED. DR. FUCHS FEELS THAT DURING THE PROLONGED COURSE OF THE WOUND INFECTION IT WAS POSSIBLE THAT THE LUMBAR SPINE MENINGES BECAME INVOLVED BY THE INFECTIVE PROCESSES AND THAT THESE PROCESSES REMAINED DORMANT AS A LOW GRADE, SUBCLINICAL, CHRONIC PACHYMENINGITIS UNTIL JULY 27, 1974, WHEN IT FLARED INTO ACUTE MENINGITIS WHICH CAUSED THE DEATH. HE NOTES THAT THERE ARE A NUMBER OF REPORTED INSTANCES WHERE SMOULDERING STAPHYLOCOCCUS EPIDERMIDIS INFECTION BECAME CLINICALLY MANIFEST MANY MONTHS OR EVEN YEARS FOLLOWING SURGERY IN THE FIELDS OF ORTHOPEDICS AND CARDIOVASCULAR SURGERY.

AS WE UNDERSTAND IT, THIS IS BASICALLY WHAT DR. FUCHS IS TELLING US -- THAT SINCE STAPH EPIDERMIDIS WAS THE INFECTION ISOLATED FROM HIS WOUND SINCE JANUARY 1972, IT WOULD APPEAR PROBABLE THAT THIS INFECTION ORIGINALLY AT THE WOUND SITE AFTER A PERIOD OF TIME BECAME INVOLVED WITH THE LUMBAR SPINAL MENINGES AND WAS DORMANT IN NATURE UNTIL JULY 27, 1974, WHEN IT FLARED UP AND CAUSED THE DEMISE.

THE BOARD IS MORE PERSUADED BY THE EXPLANATION ADVANCED BY DR. FUCHS, AN EXPLANATION WHICH, IN THE OPINION OF DR. TINKER, THE WORKMAN'S TREATING PHYSICIAN, WAS A REASONABLE, IF CONJECTURAL, HYPOTHESIS.

THE BOARD CONCLUDES THAT THE BACTERIAL MENINGITIS WAS CAUSALLY RELATED TO THE INDUSTRIAL INJURY OF FEBRUARY 10, 1971, AND, THEREFORE, THE WIDOW IS ENTITLED TO BENEFITS PURSUANT TO THE PROVISIONS OF ORS 656.204.

THE BOARD FURTHER CONCLUDES THAT BECAUSE OF ITS IMMEDIATE PREVIOUS CONCLUSION THE ISSUE OF WHETHER THE MENINGITIS CONDITION WAS MASKED BY THE SYMPTOMATOLOGY RESULTING FROM THE INDUSTRIAL INJURY IS MOOT.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 14, 1975 IS REVERSED.

THE CLAIM FOR BENEFITS FILED BY THE SURVIVING SPOUSE OF THE DECEASED WORKMAN UNDER THE PROVISIONS OF ORS 656.204 IS REMANDED TO THE EMPLOYER FOR PAYMENT OF COMPENSATION AS PROVIDED BY LAW.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES AT HEARING ON MARCH 18, 1975, THE SUM OF 850 DOLLARS, TO BE PAID BY THE EMPLOYER.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE THE SUM OF 500 DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 73-4219 SEPTEMBER 19, 1975

MURIEL PAULSON, CLAIMANT

DEZENDORF, SPEARS, LUBERSKY AND CAMPBELL,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER AFFIRMING A DETERMINATION ORDER, DATED JANUARY 18, 1974, WHEREIN CLAIMANT WAS AWARDED COMPENSATION FOR TEMPORARY TOTAL DISABILITY BUT RECEIVED NO AWARD FOR PERMANENT PARTIAL DISABILITY, AND THE DENIAL OF THE STATE ACCIDENT INSURANCE FUND OF RESPONSIBILITY FOR CLAIMANT'S EPISODES SUFFERED ON NOVEMBER 21, 1972, AND MAY 14, 1973.

CLAIMANT IS A 55 YEAR OLD NURSE'S AIDE -- ON OCTOBER 4, 1972, WHILE HELPING A PATIENT TO MOVE IN BED, SHE BENT OVER AND HAD AN ATTACK OF SYNCOPE TOGETHER WITH SOME PAIN IN HER CHEST. CLAIMANT WAS HOSPITALIZED OCTOBER 4, THROUGH OCTOBER 8, 1972.

CLAIMANT HAS NOT WORKED SINCE OCTOBER 4, 1972. ON NOVEMBER 21, 1972, SHE WAS READMITTED TO THE HOSPITAL WITH A FINAL DIAGNOSIS OF MYOCARDIAL INFARCTION, ANTEROSEPTAL AND HYPERTENSIVE CARDIOVASCULAR DISEASE, REMITTED. AGAIN, ON MAY 14, 1973, CLAIMANT WAS ADMITTED TO THE HOSPITAL, THIS TIME BECAUSE OF ACUTE EMOTIONAL UPSET AND FAINTNESS. CLAIMANT CONTENDS THAT THE TWO EPISODES RESULTING IN HER HOSPITALIZATION ON NOVEMBER 21, 1972, AND MAY 14, 1973, WERE CAUSALLY RELATED TO THE INDUSTRIAL EPISODE OF OCTOBER 4, 1972, AND THEREFORE COMPENSABLE.

HER CLAIM WAS DENIED BY THE FUND. CLAIMANT REQUESTED A HEARING AND, IN AN OPINION AND ORDER DATED DECEMBER 10, 1973, REFEREE GEORGE W. RODE DIRECTED THE EMPLOYER TO ACCEPT THE CLAIM. ALL PARTIES AGREED AT THE HEARING ON SEPTEMBER 18, 1973,

(UPON WHICH REFEREE RODE'S ORDER WAS BASED) THAT THE SOLE ISSUE AT THAT TIME BEFORE THE REFEREE WOULD BE WHETHER OR NOT THE OCTOBER 4, 1972, INCIDENT WAS COMPENSABLE AND, IF IT WERE HELD TO BE SO, THE FUND WOULD THEN DECIDE WHETHER OR NOT TO ACCEPT THE MYOCARDIAL INFARCTION OF NOVEMBER 21, 1972. IT DECIDED NOT TO ACCEPT IT. THERE WAS NO SPECIFIC WRITTEN DENIAL WITH RESPECT TO THE HOSPITALIZATION OF MAY 14, 1973, HOWEVER, THE REFEREE INDICATED THAT THE PARTIES AT THE HEARING ON MATCH 27, 1975, UNDERSTOOD THAT THAT EPISODE HAD LIKEWISE BEEN DENIED BY THE FUND.

ON JANUARY 18, 1974, THE CLAIM WAS CLOSED WITH AN AWARD OF TEMPORARY TOTAL DISABILITY FROM OCTOBER 4, 1972, TO OCTOBER 8, 1972, INCLUSIVE AND NO AWARD OF PERMANENT PARTIAL DISABILITY.

BASED UPON THE EVIDENCE OF DR. RUSSELL PARCHER, WHO TESTIFIED ON BEHALF OF THE FUND BUT PREVIOUSLY HAD BEEN THE CLAIMANT'S TREATING PHYSICIAN WHILE IN PRIVATE PRACTICE IN SEASIDE, THE REFEREE CONCLUDED THAT CLAIMANT HAD NOT MET HER BURDEN OF PROOF IN ESTABLISHING ELIGIBILITY FOR AN AWARD OF PERMANENT PARTIAL DISABILITY, NOR HAD SHE ESTABLISHED CAUSAL RELATIONSHIP BETWEEN THE INDUSTRIAL INJURY OF OCTOBER 4, 1972, AND THE SUBSEQUENT EPISODES OF OCTOBER 21, 1972, AND MAY 14, 1973. THE REFEREE AFFIRMED THE DETERMINATION ORDER MAILED JANUARY 18, 1974, AND THE DENIAL OF THE RESPONSIBILITY FOR THE EPISODES OF NOVEMBER 21, 1972, AND MAY 14, 1974.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE AFFIRMATION OF THE DETERMINATION ORDER MAILED JANUARY 18, 1974, AND THE DENIAL BY THE FUND OF ANY RESPONSIBILITY FOR THE TWO SUBSEQUENT EPISODES, HOWEVER, THE EVIDENCE INDICATES THAT CLAIMANT HAS RECEIVED ONLY 25 DOLLARS AS TEMPORARY TOTAL DISABILITY. OBVIOUSLY, THIS IS NOT SUFFICIENT TO COVER THE PERIOD OCTOBER 4, 1972, THROUGH OCTOBER 8, 1972, AS ALLOWED BY THE DETERMINATION ORDER OF JANUARY 18, 1974. FURTHERMORE, THE EVIDENCE INDICATES THAT CLAIMANT'S HOSPITAL AND DOCTOR BILLS RELATED TO HER HOSPITALIZATION IN OCTOBER 1974 HAVE NOT BEEN PAID BY THE FUND.

THE BOARD CONCLUDES THAT CLAIMANT IS ENTITLED TO TEMPORARY TOTAL DISABILITY BENEFITS FOR THE FIVE DAYS SHE WAS HOSPITALIZED AND THAT THE HOSPITAL AND DOCTOR BILLS RELATED TO SUCH HOSPITALIZATION SHOULD BE PAID BY THE FUND. THE BOARD FURTHER CONCLUDES THAT THESE TIME LOSS BENEFITS AND MEDICAL COSTS WERE DIRECTLY RELATED TO THE CLAIM FOR THE INJURY OF OCTOBER 4, 1972, WHICH THE FUND WAS DIRECTED TO ACCEPT, THEREFORE, ITS REFUSAL SUBJECTS THE FUND TO PAYMENT OF A REASONABLE FEE UNDER THE PROVISIONS OF ORS 656.382(1). THE BOARD DOES NOT BELIEVE THAT THE IMPOSITION OF PENALTIES IS JUSTIFIED BY THE CIRCUMSTANCES OF THIS PARTICULAR CASE.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 14, 1975, IS MODIFIED TO THE EXTENT THAT THE STATE ACCIDENT INSURANCE FUND IS HEREBY ORDERED TO PAY TO CLAIMANT TEMPORARY TOTAL DISABILITY COMPENSATION FOR THE PERIOD OCTOBER 4, 1972, TO AND INCLUDING OCTOBER 8, 1972, AND TO PAY CLAIMANT'S HOSPITAL AND DOCTOR BILLS RELATED TO HER HOSPITALIZATION DURING THAT PERIOD OF TIME.

THE STATE ACCIDENT INSURANCE FUND, PURSUANT TO ORS 656.382(1), SHALL PAY CLAIMANT'S COUNSEL AN ATTORNEY'S FEE IN THE SUM OF 500 DOLLARS FOR HIS SERVICES IN CONNECTION WITH THE HEARING HELD ON MARCH 27, 1975.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE THE SUM OF 300 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-4481 SEPTEMBER 19, 1975

ROY LINGENFELTER, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH SUSTAINED THE FUND'S DENIAL OF HIS CLAIM OF AGGRAVATION OF AN INJURY ON DECEMBER 6, 1971.

CLAIMANT, A PSYCHIATRIC AIDE, SUFFERED A COMPENSABLE INDUSTRIAL INJURY WHEN HE JUMPED FROM A RAISED ROOF APPROXIMATELY THREE FEET HIGH AND SEVERLY TWISTED HIS LEFT FOOT. THERE WERE NO FRACTURES BUT HE DID SUFFER A STRAINED ANKLE AND MID-TARSAL JOINT, LEFT. ABOUT SIX MONTHS AFTER THIS INJURY, CLAIMANT BEGAN COMPLAINING OF LEFT HIP PAIN AND, SOME TIME LATER, LOW BACK PAIN. THE FUND DENIED RESPONSIBILITY FOR CONDITIONS ASSOCIATED WITH THE LEFT HIP AND LOW BACK AREAS.

WHEN CLAIMANT FIRST COMPLAINED OF LEFT HIP PAIN IN JUNE 1972, HE CONSULTED DR. CHUINARD, WHO TREATED WITH NOVOCAIN INJECTIONS. THESE PROVIDED ONLY TEMPORARY RELIEF. THE PAIN THEN BECAME LOCALIZED IN THE LOW BACK AREA AND CLAIMANT ENTERED THE HOSPITAL, UNDERWENT NEUROLOGICAL EXAMINATION AND, ULTIMATELY, A LAMINECTOMY WAS PERFORMED BY DR. BUZA. A NON-MALIGNANT TUMOR AT THE BOTTOM OF THE SPINE WAS REMOVED WITHOUT COMPLICATIONS. DR. BUZA BELIEVED THE MECHANICAL STRESS OF TWISTING AND BENDING CAUSED CLAIMANT'S TUMOR TO BECOME SYMPTOMATIC. HE DIDN'T BELIEVE THE INJURY CAUSED THE SPREAD OF THE TUMOR. HE COULD NOT, OR, AT LEAST, DID NOT GIVE HIS REASONS FOR THESE CONCLUSIONS.

DR. PAXTON, CHIEF OF NEUROSURGERY AT THE UNIVERSITY OF OREGON MEDICAL SCHOOL, FELT THE MECHANICS OF THE INDUSTRIAL ACCIDENT COULD NOT HAVE MADE THE TUMOR SYMPTOMATIC. THE TUMOR WAS INSIDE THE DURA MATTER, ONE OF THE TOUGHEST BODY MEMBRANES, AND NOT SUSCEPTIBLE TO TRAUMA.

THE BOARD, ON DE NOVO REVIEW, ACCEPTS THE MORE PERSUASIVE OPINION OF DR. PAXTON, RELIES ON THE REFEREE'S COMPREHENSIVE FINDINGS AND CONCLUSIONS, AND CONCURS IN THE AFFIRMANCE OF THE DENIAL OF CLAIMANT'S CLAIM.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 5, 1975, IS AFFIRMED.

WCB CASE NO. 74-3962 SEPTEMBER 19, 1975

GERALD DIERINGER, CLAIMANT

FRANKLIN, BENNETT, OFELT AND JOLLES,
CLAIMANT'S ATTYS.
MERLIN MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH INCREASED HIS PERMANENT PARTIAL DISABILITY AWARD FROM 48 DEGREES TO 80 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT, AGE 51, HAS BEEN A BOILERMAKER FOR 25 YEARS. HIS FIRST INDUSTRIAL INJURY OCCURRED MARCH 23, 1973, AND REQUIRED ONLY CONSERVATIVE CARE. THE CLAIM WAS CLOSED WITH NO AWARD OF PERMANENT PARTIAL DISABILITY. HE RETURNED TO HIS JOB. ON DECEMBER 12, 1973, HE SUFFERED ANOTHER INJURY WHICH RESULTED IN A LUMBAR LAMINECTOMY AT L4-5 WITH REMOVAL OF EXTRUDED DISC MATERIAL.

ON JUNE 11, 1974, CLAIMANT WAS RELEASED TO RETURN TO HIS REGULAR EMPLOYMENT. HE RETURNED TO WORK AND WORKED CONTINUOUSLY UP THE DATE OF HEARING. AT THAT TIME, HE HAD QUIT HIS JOB IN LONGVIEW STATING THE DAILY ROUND TRIP OF 114 MILES WAS TOO MUCH FOR HIM. CLAIMANT HAS SIGNED UP AT HIS UNION HALL FOR MORE OF THE SAME TYPE OF WORK.

CLAIMANT HAS NOT SOUGHT MEDICAL CARE OR TREATMENT AND THE BOARD, ON DE NOVO REVIEW, CONCLUDES THAT ALTHOUGH CLAIMANT HAS SOME RESIDUAL DISABILITY, NEITHER THE MEDICAL EVIDENCE NOR CLAIMANT'S TESTIMONY INDICATES THIS DISABILITY IS GREATER THAN THE 25 PERCENT AWARD HE HAS RECEIVED.

THE BOARD AFFIRMS AND ADOPTS THE ORDER OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 4, 1975, IS AFFIRMED.

WCB CASE NO. 74-2840 SEPTEMBER 19, 1975

W. C. HUNTER, CLAIMANT

BAILEY, DOBLIE AND BRUNN,
CLAIMANT'S ATTYS.
ROGER R. WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER REQUESTS BOARD REVIEW OF THE ORDER OF THE REFEREE WHICH ASSESSED PENALTIES AND ATTORNEY'S FEES AGAINST IT FOR ITS UNREASONABLE FAILURE TO PAY COMPENSATION IN THE FORM OF TEMPORARY TOTAL DISABILITY BENEFITS FROM MAY 11, 1974, THROUGH SEPTEMBER 12, 1974, AND REMANDED THE CLAIMANT'S CLAIM TO THE EMPLOYER FOR THE PAYMENT OF COMPENSATION FROM NOVEMBER 15, 1974, UNTIL TERMINATION PURSUANT TO ORS 656.268.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS AND ADOPTS AS ITS OWN THE FINDINGS AND CONCLUSIONS SET FORTH WITH GREAT CLARITY AND PERSUASION IN THE REFEREE'S ORDER ATTACHED HERETO AND, BY THIS REFERENCE, MADE A PART HEREOF.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 24, 1975, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE THE SUM OF 300 DOLLARS, PAYABLE BY THE EMPLOYER, FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-4149 SEPTEMBER 22, 1975

EDITH F. BARR, 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.

THE CLAIMANT REQUESTS BOARD REVIEW OF AN ORDER OF THE REFEREE WHICH APPROVED A DE FACTO DENIAL BY THE EMPLOYER OF A CLAIM FOR AGGRAVATION AND ALSO HELD THAT THE EMPLOYER WAS NOT REQUIRED TO PAY TEMPORARY TOTAL DISABILITY WITHIN 14 DAYS AFTER NOTICE OR KNOWLEDGE OF THE CLAIM FOR AGGRAVATION.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON JANUARY 28, 1973. HER CLAIM WAS CLOSED BY DETERMINATION ORDER MAILED JANUARY 8, 1974, WHEREBY CLAIMANT RECEIVED AN AWARD OF 32 DEGREES FOR 10 PERCENT UNSCHEDULED NECK AND LOW BACK DISABILITY. AFTER A HEARING, CLAIMANT WAS GRANTED AN ADDITIONAL AWARD OF 32 DEGREES.

CLAIMANT CONTINUED TO HAVE NECK PROBLEMS AND NUMBNESS OF HER EXTREMITIES AND RETURNED TO DR. MYERS, HER TREATING PHYSICIAN, ON JULY 1, 1974, FOR ADDITIONAL MEDICAL CARE AND TREATMENT.

ON OCTOBER 15, 1974, CLAIMANT FILED A CLAIM FOR AGGRAVATION AND A REQUEST FOR HEARING. ON NOVEMBER 26, 1974, CLAIMANT FILED AN AMENDED REQUEST FOR HEARING SEEKING PENALTIES AND ATTORNEY'S FEES FOR UNREASONABLE DELAY OR UNREASONABLE RESISTANCE TO THE PAYMENT OF COMPENSATION DUE TO THE EMPLOYER'S FAILURE AND REFUSAL TO PAY TEMPORARY TOTAL DISABILITY BENEFITS WITHIN 14 DAYS AFTER NOTICE OR KNOWLEDGE OF THE CLAIM AND AT 14 DAY INTERVALS DURING THE DEFERRED PERIOD. AFTER A HEARING ON DECEMBER 12, 1974, REFEREE FORREST T. JAMES RULED THAT THE MEDICAL REPORTS WERE SUFFICIENT TO CONFER JURISDICTION AND, ADDITIONALLY, THAT BY THE DATE OF THE ISSUANCE OF HIS ORDER, A 'DE FACTO' DENIAL WOULD HAVE OCCURRED AND CLAIMANT WAS ENTITLED TO LITIGATE THAT ISSUE AS WELL AS THE ISSUE OF ALLEGED FAILURE AND REFUSAL TO PAY TIME LOSS WITHIN 14 DAYS OF NOTICE OR KNOWLEDGE OF THE CLAIM AND AT 14 DAY INTERVALS THEREAFTER. AFTER SAID RULING, THE MATTER WAS CONTINUED TO FEBRUARY 14, 1975, FOR HEARING ON THE MERITS.

WITH RESPECT TO THE MERITS OF CLAIMANT'S CLAIM OF AGGRAVATION, THE REFEREE CONCLUDED THAT THE MEDICAL EVIDENCE DID NOT SUPPORT SAID CLAIM. DR. MYERS, A GENERAL PRACTITIONER, EXPRESSLY DISCLAIMED ANY EXPERTISE ON CARPAL TUNNEL SYNDROME, ONE OF CLAIMANT'S MAJOR COMPLAINTS, AND HIS TESTIMONY WITH RESPECT TO CHANGES IN CLAIMANT'S NECK AND BACK CONDITIONS INDICATED SUCH CHANGES WERE MINIMAL AND DID NOT AMOUNT TO AN AGGRAVATION THEREOF. DR. MYERS REFERRED CLAIMANT TO DR. MISKO, A NEUROLOGIST, WHO FOUND NO CAUSAL RELATIONSHIP BETWEEN THE CARPAL TUNNEL SYNDROME, WHICH IS LOCATED IN THE WRIST, AND THE INITIAL NECK INJURY.

BECAUSE DR. MYERS COULD NOT EXPRESS AN OPINION THAT THE CONDITION HAD BECOME WORSE BECAUSE OF FAILURE TO DIAGNOSE EARLIER, THE REFEREE FURTHER CONCLUDED THAT THERE WAS NO 'MASKING' OF THE CARPAL TUNNEL SYNDROME BY CLAIMANT'S OTHER CONDITION WHICH DELAYED TREATMENT FOR IT AND THEREBY WORSENED IT.

ON THE ISSUE OF THE EMPLOYER'S ALLEGED FAILURE AND REFUSAL TO PAY TEMPORARY TOTAL DISABILITY, THE REFEREE MADE A DISTINCTION BETWEEN DENIED COMPENSATION CLAIMS AND DENIED AGGRAVATION CLAIMS AND CONCLUDED THAT, UNLIKE A DENIED COMPENSATION CLAIM, THE WORKMAN IN A DENIED AGGRAVATION CLAIM IS NOT SUBJECTED TO THE SUDDEN ECONOMIC PRESSURES AND THE RATIONALE FOR REQUIRING THE EMPLOYER TO PAY COMPENSATION BENEFITS BEFORE THE CLAIM HAS BEEN ESTABLISHED DOES NOT EXIST IN THE AGGRAVATION CLAIM. HE, THEREFORE, FOUND THAT THE EMPLOYER WAS NOT REQUIRED TO MAKE SUCH PAYMENTS WITHIN 14 DAYS AND AT 14 DAY INTERVALS THEREAFTER.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE CONCLUSIONS REACHED BY THE REFEREE WITH RESPECT TO THE MERITS OF CLAIMANT'S CLAIM OF AGRRAVATION. HOWEVER, IT CANNOT AGREE WITH THE DISTINCTION MADE BY THE REFEREE BETWEEN A DENIED COMPENSATION CLAIM AND A DENIED AGGRAVATION CLAIM.

RULE 7.02, WCB NO. 4-1970, AS AMENDED, PROVIDES --

> 'A CLAIM FOR AGGRAVATION HAS THE DIGNITY OF A CLAIM IN THE FIRST INSTANCE. WHEN THE CLAIM IS PRESENTED TO THE EMPLOYER WITH THE REQUIRED SUPPORTING MEDICAL REPORT, THE CLAIM SHALL BE PROCESSED AS PROVIDED FOR THE ORIGINAL CLAIM BY RULES 2.02 TO 6.06 INCLUSIVE. DENIALS OF CLAIMS FOR AGGRAVATION DULY SUPPORTED BY THE WRITTEN OPINION OF A PHYSICIAN WILL BE CONSIDERED AS DENIALS OF CLAIM FOR COMPENSATION.'

RULE 2.02, WCB NO. 4-1970, AS AMENDED, PROVIDES --

'THE EMPLOYER IS REQUIRED TO FORTHWITH ACKNOWLEDGE RECEIPT OF NOTICE OR KNOWLEDGE OF THE ACCIDENT (ORS 656.265). UNTIL THE CLAIM IS DENIED (SEE ARTICLE 3 HEREAFTER) COMPENSATION IS PAYABLE AT LEAST EVERY TWO WEEKS STARTING NO LATER THAN THE 14TH DAY AFTER THE EMPLOYER HAS NOTICE OR KNOWLEDGE OF THE INJURY (ORS 656.262).

OBVIOUSLY, THE REFEREE CHOSE TO IGNORE THE FACT THAT, BY ITS ADMINISTRATIVE RULES, THE BOARD HAS ELIMINATED ANY DISTINCTION BETWEEN A CLAIM FOR AGGRAVATION AND AN ORIGINAL CLAIM FOR COMPENSATION. THE BOARD CONCLUDES THAT CLAIMANT IS ENTITLED TO RECEIVE TEMPORARY TOTAL DISABILITY BENEFITS COMMENCING OCTOBER 15, 1974, THE DATE THE CLAIM FOR AGGRAVATION WAS FILED, TO FEBRUARY 10, 1975, THE DATE THE FORMAL NOTICE OF DENIAL WAS MAILED BY THE EMPLOYER'S CARRIER TO THE CLAIMANT. THE BOARD DOES NOT FEEL THE IMPOSITION OF PENALTIES IS JUSTIFIED UNDER THE CIRCUMSTANCES OF THIS CASE.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 18, 1975, IS REVERSED.

THE DENIAL DATED FEBRUARY 10, 1975, IS APPROVED, HOWEVER, THE EMPLOYER, EMANUEL HOSPITAL, IS DIRECTED TO PAY CLAIMANT TEMPORARY TOTAL DISABILITY COMPENSATION FROM OCTOBER 15, 1974, THROUGH FEBRUARY 10, 1975.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE IN CONNECTION WITH HIS SERVICES AT THE HEARING ON FEBRUARY 14, 1975, THE SUM OF 500 DOLLARS, PAYABLE BY THE EMPLOYER.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW, THE SUM OF 300 DOLLARS, PAYABLE BY THE EMPLOYER.

WCB CASE NO. 74-3355 SEPTEMBER 22, 1975

ROBERT HOLDEN, CLAIMANT

M. M. ORONA, CLAIMANT'S ATTY.
PHILIP MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS MATTER INVOLVES THE DENIED HEARING LOSS CLAIM. THE REFEREE AFFIRMED THE DENIAL.

ON DE NOVO REVIEW, THE BOARD AFFIRMS THE ORDER OF THE REFEREE AND ADOPTS THE OPINION AND ORDER AS ITS OWN. A COPY OF THE OPINION AND ORDER IS ATTACHED AND BY THIS REFERENCE INCORPORATED HEREIN.

ORDER

THE ORDER OF THE REFEREE DATED MAY 7, 1975, IS AFFIRMED.

WCB CASE NO. 74-3681 SEPTEMBER 22, 1975

ALEXANDER HARGON, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON,
AND SCHWABE, DEFENSE ATTYS.
ORDER OF DISMISSAL

A REQUEST FOR REVIEW, HAVING BEEN DULY FILED WITH THE WORKMEN'S COMPENSATION BOARD IN THE ABOVE-ENTITLED MATTER 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.

SAIF CLAIM NO. BB 141617 SEPTEMBER 22, 1975

LEO CARPENTER, CLAIMANT

CLARK, MARSH AND LINDAUER,
CLAIMANT'S ATTYS.
OWN MOTION ORDER

BY THE BOARD'S OWN MOTION ORDER DATED SEPTEMBER 5, 1975, THE STATE ACCIDENT INSURANCE FUND WAS REQUESTED TO SUBMIT ITS ENTIRE FILE TO THE EVALUATION DIVISION OF THE BOARD TO REEVALUATE CLAIMANT'S CONDITION FOLLOWING A MYELOGRAM WHICH WAS AUTHORIZED BY THE FUND, AND TO DETERMINE IF CLAIMANT IS ENTITLED TO ADDITIONAL PERMANENT PARTIAL DISABILITY.

THE BOARD HAS NOW BEEN ADVISED THAT THE MYELOGRAM COMPLETED ON JUNE 6, 1975, FAILED TO DEMONSTRATE FINDINGS SIGNIFICANT ENOUGH TO WARRANT A SURGICAL APPROACH. THE BOARD CONCLUDES THAT CLAIMANT'S PRESENT PHYSICAL CONDITION DOES NOT WARRANT A CHANGE IN HIS AWARD FOR PERMANENT DISABILITY.

WCB CASE NO. 73-4035 SEPTEMBER 22, 1975

CLARENCE DENNIS, CLAIMANT

ALLEN G. OWEN, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT SEEKS BOARD REVIEW OF THE REFEREE'S ORDER OF DISMISSAL IN THE ABOVE-ENTITLED PROCEEDING DATED MARCH 7, 1975, AND REQUESTS THAT THE MATTER BE REMANDED TO THE HEARINGS DIVISION FOR FURTHER PROCEEDINGS.

AT THE TIME THE ORDER OF DISMISSAL WAS ENTERED, CLAIMANT WAS NOT REPRESENTED BY COUNSEL. AT A PREVIOUS HEARING HELD ON

JUNE 5, 1974, CLAIMANT ALLEGED A NEED FOR A REOPENING OF HIS CASE WHICH HAD BEEN CLOSED BY DETERMINATION ORDER MAILED NOVEMBER 19, 1973, WHEREBY CLAIMANT WAS AWARDED SOME COMPENSATION FOR TIME LOSS BUT NO PERMANENT PARTIAL DISABILITY AS A RESULT OF A COMPENSABLE INJURY SUFFERED ON MAY 5, 1972. THE SOLE ISSUE WAS CLAIMANT'S WILLINGNESS TO ACCEPT PSYCHIATRIC TREATMENT OR, IN THE ABSENCE THEREOF, EVALUATION OF HIS PERMANENT PARTIAL DISABILITY, HOWEVER, THE MERITS WERE NOT DISCUSSED AT THAT HEARING.

CLAIMANT IS NOW REPRESENTED BY COUNSEL AND THE BOARD BELIEVES THAT THE MATTER NOW CAN BE FULLY HEARD AND DETERMINED ON ALL RELEVANT ISSUES IF IT IS REMANDED TO THE HEARINGS DIVISION AND, MORE PARTICULARLY, TO REFEREE FORREST T. JAMES, BEFORE WHOM A REQUEST FOR HEARING BY CLAIMANT BASED UPON HIS CLAIM FOR AGGRAVATION (WCB CASE NO. 75-2082) IS PENDING.

THE BOARD WISHES TO STRESS THE FACT THAT AT THE TIME THE ORDER OF DISMISSAL WAS ENTERED IT WAS AN APPROPRIATE ORDER AND WELL SUPPORTED BY THE FACTS RECITED THEREIN.

ORDER

IT IS HEREBY ORDERED THAT THE ABOVE-ENTITLED MATTER BE REMANDED TO REFEREE FORREST JAMES, WHO IS DIRECTED TO CONSOLIDATE FOR HEARING, WCB CASE NO. 73-4035 AND WCB CASE NO. 75-2082 AND TO RECEIVE EVIDENCE WITH RESPECT TO BOTH, AND UPON CONCLUSION OF SAID HEARING TO ENTER A FINAL AND APPEALABLE ORDER THEREON.

THIS IS NOT AN APPEALABLE ORDER.

WCB CASE NO. 72-3425 SEPTEMBER 24, 1975

AVIS COZAD, CLAIMANT

FULOP AND GROSS, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER ON MOTION

ON SEPTEMBER 18, 1975, A MOTION FOR RECONSIDERATION OF AN ORDER ON REVIEW ENTERED ON SEPTEMBER 5, 1975, IN THE ABOVE-ENTITLED MATTER WAS RECEIVED FROM THE STATE ACCIDENT INSURANCE FUND.

THE FUND REQUESTED, IN ADDITION TO RECONSIDERATION OF THE ORDER, CLARIFICATION OF THE ISSUE OF THE REFEREE'S AWARD OF 25 PERCENT PERMANENT PARTIAL DISABILITY IN HIS OPINION AND ORDER DATED APRIL 4, 1975.

THE BOARD DOES NOT BELIEVE THE CONTENTION OF THE FUND THAT CLAIMANT'S CLAIM SHOULD BE REOPENED AS OF THE DATE SHE WAS ADMITTED TO THE HOSPITAL FOR BACK SURGERY RATHER THAN DECEMBER 24, 1971, THE DATE HER CLAIM WAS CLOSED (PREMATURELY IN THE OPINION OF THE BOARD) IS WELL TAKEN AND, THEREFORE, WILL NOT RECONSIDER ITS ORDER.

WITH RESPECT TO THE REFEREE'S AWARD OF 25 PERCENT PERMANENT PARTIAL DISABILITY, THE ORDER ON REVIEW REVERSED THE REFEREE'S ORDER. OBVIOUSLY, THE AWARD OF 25 PERCENT HAS BEEN VACATED BY SUCH REVERSAL. ANY PERMANENT PARTIAL DISABILITY COMPENSATION

WHICH THE FUND MAY HAVE PAID TO CLAIMANT PURSUANT TO THE REFEREE'S ORDER OF APRIL 4, 1975, SHALL BE CONSIDERED AS PAYMENT OF TEMPORARY TOTAL DISABILITY COMPENSATION ORDERED PAYABLE BY THE ORDER ON REVIEW DATED SEPTEMBER 5, 1975.

THIS IS NOT AN APPEALABLE ORDER.

WCB CASE NO. 71-1752 SEPTEMBER 24, 1975

HOLLIS H. COURT, CLAIMANT

JOHN RYAN, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

ON OR ABOUT JUNE 14, 1968, CLAIMANT SUFFERED A PHYSICAL CONDITION DIAGNOSED AS LEAD INTOXICATION. HIS CLAIM WAS CLOSED BY DETERMINATION ORDER DATED MARCH 12, 1971, WHEREBY HE RECEIVED 48 DEGREES FOR HIS UNSCHEDULED DISABILITY.

CLAIMANT REQUESTED A HEARING ON THE EXTENT OF DISABILITY RELATING TO LEAD INTOXICATION. AFTER A HEARING, THE REFEREE INCREASED CLAIMANT'S AWARD TO 96 DEGREES EQUAL TO 30 PERCENT OF THE MAXIMUM ALLOWED FOR UNSCHEDULED DISABILITY.

PRIOR TO THE HEARING, HOWEVER, A STIPULATION BASED ON A BONA FIDE DISPUTE WAS APPROVED, PURSUANT TO ORS 656.289(4), ON AUGUST 13, 1971. THE PARTIES STIPULATED THAT THE FUND HAD MAILED CLAIMANT A PARTIAL DENIAL LIMITING ITS RESPONSIBILITY FOR COMPENSATION TO CONDITIONS DIRECTLY ATTRIBUTABLE TO LEAD POISONING AND SPECIFICALLY DENIED RESPONSIBILITY FOR TREATMENT OF LONGSTANDING OSTEOARTHRITIS, BOWEL OBSTRUCTION, ADHESIONS AND OTHER CONDITIONS NOT DIRECTLY ATTRIBUTABLE TO LEAD POISONING -- THAT CLAIMANT HAD MADE DEMAND UPON THE FUND FOR PAYMENT OF MEDICAL CARE AND TREATMENT NECESSITATED BY THESE CONDITIONS AND MADE A TIMELY REQUEST FOR HEARING ON THE ISSUE OF RESPONSIBILITY FOR PAYMENT OF SAME. THE PARTIES COMPROMISED AND SETTLED THESE ISSUES THROUGH PAYMENT BY THE FUND TO CLAIMANT THE SUM OF 500 DOLLARS IN FULL AND FINAL SETTLEMENT OF THE DISPUTED ISSUES AND AN AGREEMENT THAT THE PARTIAL DENIAL SHOULD REMAIN IN FULL FORCE AND EFFECT.

THE BOARD, ON DE NOVO REVIEW, CONCLUDES THAT THE ONLY ISSUE BEFORE IT AT THE PRESENT TIME IS THAT OF EXTENT OF PERMANENT PARTIAL DISABILITY -- THE PARTIES ARE BOUND BY THE PROVISIONS OF THEIR BONA FIDE DISPUTE STIPULATION.

THE BOARD FURTHER CONCLUDES THAT THERE IS NOTHING IN THE RECORD WHICH WAS NOT BEFORE THE REFEREE AND IT CONCURS IN HIS FINDINGS AND CONCLUSIONS AND AFFIRMS HIS ORDER OF NOVEMBER 19, 1971.

ORDER

THE ORDER OF THE REFEREE DATED NOVEMBER 19, 1971 IS AFFIRMED.

WCB CASE NO. 74-1143 SEPTEMBER 24, 1975

LORETTA M. BINGHAM KNOX, CLAIMANT

COLOMBO, DANNER AND BOSTON, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

PURSUANT TO A REFEREE'S OPINION AND ORDER DATED JULY 15, 1974, THE STATE ACCIDENT INSURANCE FUND WAS REQUIRED TO PAY CURATIVE SERVICES PROVIDED TO CLAIMANT BY DR. RINEHART FOR THE PERIOD OF ONE YEAR FROM THE DATE OF HIS ORDER.

THE SERIES OF TREATMENTS HAS NOW BEEN COMPLETED AND CLAIMANT'S COUNSEL HAS PETITIONED THE BOARD, PURSUANT TO OWN MOTION JURISDICTION UNDER ORS 656.278, TO REQUIRE THE FUND TO AUTHORIZE DR. RINEHART TO PROVIDE CLAIMANT WITH AN ADDITIONAL 12 MONTHS OF REHABILITATIVE TREATMENT.

THE NEED FOR PROLONGED TREATMENT BY DR. RINEHART IS NOT SUPPORTED BY ANY MEDICAL OPINION OTHER THAN THAT OF DR. RINEHART. THESE METHODS OF TREATMENT HAVE NOT BEEN WIDELY ACCEPTED BY THE MEDICAL PROFESSION IN OREGON AND WITH BENEFIT OF SUCH TREATMENT IN DOUBT, THE BOARD CONCLUDES THAT THE STATE ACCIDENT INSURANCE FUND SHOULD NOT BE RESPONSIBLE FOR AN ADDITIONAL 12 MONTHS TREATMENT FOR THIS CLAIMANT.

THE REQUEST FOR OWN MOTION CONSIDERATION IS HEREBY DENIED.

WCB CASE NO. 70-486 SEPTEMBER 26, 1975

LOLA MAE LOVEL, CLAIMANT

KEITH D. SKELTON, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON,
AND SCHWABE, DEFENSE ATTYS.
OWN MOTION ORDER

CLAIMANT HAS PETITIONED THE WORKMEN'S COMPENSATION BOARD TO REOPEN HER CLAIM ON ITS OWN MOTION PURSUANT TO ORS 656.278.

CLAIMANT SUSTAINED A COMPENSABLE INJURY IN JULY 1968. A LUMBAR LAMINECTOMY WAS PERFORMED AND CLAIMANT'S TESTIMONY ATTESTS THAT SHE HAS NOT BEEN PAIN FREE SINCE SURGERY.

THE PETITION WAS SUPPORTED BY A MEDICAL REPORT DATED SEPTEMBER 8, 1975, FROM HOWARD L. CHERRY, M.D., WHICH INDICATES CLAIMANT'S CONDITION HAS WORSENED TO THE EXTENT SHE IS LOSING CONTROL OF HER LEFT ARM AND LEG, HAS FALLEN MANY TIMES, HAS CONSTANT BURNING PAIN, HER RIGHT FOOT IS COLD AND HER ATTEMPTS TO RETURN TO WORK AND REHABILITATE HERSELF HAVE NOT BEEN SUCCESSFUL.

IT APPEARS TO THE BOARD THAT CLAIMANT'S WORSENED CONDITION IS THE RESULT OF HER INDUSTRIAL INJURY AND THAT HER CLAIM SHOULD BE REOPENED.

ORDER

IT IS THEREFORE ORDERED THAT CLAIMANT'S CLAIM BE REMANDED TO THE EMPLOYER FOR FURTHER MEDICAL CARE AND TREATMENT AND FOR PAYMENT OF BENEFITS AS PROVIDED BY LAW FROM SEPTEMBER 8, 1975, UNTIL THE CLAIM IS CLOSED PURSUANT TO ORS 656.278.

COUNSEL FOR CLAIMANT IS ALLOWED AS A REASONABLE ATTORNEY'S FEE, 25 PERCENT OF ANY COMPENSATION WHICH CLAIMANT MAY RECEIVE AS A RESULT OF THIS ORDER AND PRIOR TO CLOSURE PURSUANT TO ORS 656.278 NOT TO EXCEED 200 DOLLARS.

WCB CASE NO. 74-3646
AND NO. 74-4416 SEPTEMBER 26, 1975

ARNOLD ANDERSON, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER ON MOTION

COUNSEL FOR CLAIMANT IN THE ABOVE-ENTITLED MATTER HAS FILED A MOTION FOR RECONSIDERATION OF THE ATTORNEY'S FEE OF 300 DOLLARS AWARDED TO COUNSEL IN THE BOARD'S ORDER ON REVIEW DATED SEPTEMBER 3, 1975.

THE BOARD HAS CONSIDERED COUNSEL'S MOTION AND CONCLUDES THE ATTORNEY FEE ASSESSED IS EQUITABLE AND ADEQUATE.

THE MOTION FOR RECONSIDERATION IS HEREBY DENIED.

WCB CASE NO. 74-4338 SEPTEMBER 29, 1975

ALBERT A. SCOUTEN, CLAIMANT

JOEL B. REEDER, CLAIMANT'S ATTY.
JONES, LANG, KLEIN, WOLF AND SMITH,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

ON APRIL 3, 1973, CLAIMANT, A THEN 64 YEAR OLD CHIEF ELECTRICIAN, INJURED HIS NECK IN AN AUTOMOBILE ACCIDENT IN THE COURSE OF HIS EMPLOYMENT. IN JANUARY 1974, DR. TENNYSON, A NEUROLOGIST, DIAGNOSED CERVICAL SPONDYLOSIS WITH MILD LEFT C7 ROOT COMPRESSION. DR. TENNYSON PERFORMED A FORAMINOTOMY AT THE C6-C7 LEVEL WITH DECOMPRESSION OF THE LEFT C7 NERVE ROOT. CLAIMANT RECEIVED AN AWARD OF 15 PERCENT UNSCHEDULED NECK AND SHOULDER DISABILITY.

CLAIMANT RETURNED TO WORK AND WORKED UNTIL SEPTEMBER 1, 1974, WHEN HE TERMINATED BECAUSE OF A COMPULSORY RETIREMENT AT AGE 65. SINCE THIS TIME, HOWEVER, HE WAS WORKED CONTINUOUSLY FOR ANOTHER EMPLOYER AS A MECHANICAL AND ELECTRICAL MAINTENANCE SUPERVISOR, A JOB WHICH MAKES NO STRENUOUS PHYSICAL DEMANDS UPON HIM AND WHICH PAYS MORE MONEY THAN HE WAS PREVIOUSLY EARNING.

THE REFEREE FOUND CLAIMANT HAD SUSTAINED ONLY MINIMAL PERMANENT DISABILITY, NO LOSS OF WAGE EARNING CAPACITY, AND AFFIRMED THE DETERMINATION ORDER. THE BOARD CONCURS.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 8, 1975 IS AFFIRMED.

WCB CASE NOS. 74-2172
AND 75-31 SEPTEMBER 29, 1975

CESSNA SMITH, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
COLLINS, FERRIS AND VELURE,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT WORKED FOR THE SAME EMPLOYER WHICH HAD COVERAGE WITH INDUSTRIAL INDEMNITY FROM JULY 1, 1972, TO JUNE 30, 1973. THEREAFTER, ITS CARRIER WAS EMPLOYEE BENEFITS INSURANCE COMPANY (EBI). THE SOLE ISSUE BEFORE THE REFEREE WAS WHETHER CLAIMANT SUSTAINED A COMPENSABLE AGGRAVATION OF A 1972 INJURY OR SUFFERED A NEW INJURY ON JANUARY 26, 1974. BOTH CARRIERS DENIED BENEFITS TO THE CLAIMANT AND, PURSUANT TO ORS 656.307, EBI WAS DESIGNATED AS THE PAYING AGENT.

ON DECEMBER 27, 1972, CLAIMANT STRAINED HIS BACK LIFTING A PACKAGE WEIGHING APPROXIMATELY 40 POUNDS. HE SOUGHT MEDICAL CARE AND HIS CLAIM WAS ULTIMATELY CLOSED AS 'MEDICAL ONLY'. CLAIMANT CONTINUED TO WORK WITH SPORADIC BACK DIFFICULTIES UNTIL JANUARY 26, 1974, WHEN, WHILE LIFTING SOME MERCHANDISE, HE SUFFERED SEVERE BACK PAINS WHICH RADIATED DOWN HIS LEFT LEG. CLAIMANT AGAIN SOUGHT MEDICAL ATTENTION AND ALSO NOTIFIED INDUSTRIAL INDEMNITY OF THE ACCIDENT. INDUSTRIAL INDEMNITY REFUSED TO REOPEN THE CLAIM, ALLEGING IT WAS NOT THE EMPLOYER'S CARRIER ON JANUARY 26, 1974 -- THAT EBI WAS THE RESPONSIBLE CARRIER. CLAIMANT REQUESTED A HEARING AND, THEREAFTER, FILED A CLAIM WITH EBI FOR A NEW INJURY ON JANUARY 26, 1974. EBI DENIED ON THE GROUNDS THAT CLAIMANT'S BACK PROBLEMS RESULTED FROM AN AGGRAVATION OF HIS 1972 INDUSTRIAL INJURY.

THE REFEREE FOUND THAT CLAIMANT HAD BEEN SUFFERING RECURRENT BACK INJURIES SINCE 1951, THAT HIS EMPLOYMENT DURING THE ENTIRE PERIOD WAS BASICALLY WORKING IN GROCERY STORES, DOING JOBS WHICH REQUIRED LIFTING OF OBJECTS OF VARIOUS WEIGHTS. APPARENTLY ANY TIME CLAIMANT WOULD ATTEMPT TO LIFT AN ARTICLE WHICH WEIGHED BETWEEN 30 AND 60 POUNDS, HE WOULD HAVE A RECURRENCE OF HIS BACK PROBLEM. THE REFEREE DID NOT BELIEVE THE EVIDENCE SUPPORTED THE CONTENTION THAT THE 1972 INCIDENT TRIGGERED CLAIMANT'S SUBSEQUENT PROBLEMS. HE FELT THAT CLAIMANT'S HISTORY REVEALED WHAT MIGHT BE DESCRIBED AS MINOR LIFTING INCIDENTS FOR MANY YEARS TRIGGERING ACUTE EPISODES OF DISCOMFORT. THE REFEREE CITED THE GENERAL RULE FOUND IN 3 LARSON WORKMEN'S COMPENSATION, 95.00 --

> 'WHEN A DISABILITY DEVELOPS GRADUALLY, (OR WHEN IT COMES AS A RESULT OF SUCCESSION OF ACCIDENTS,) (UNDERSCORED) THE INSURANCE-CARRIER COVERING THE RISK AT THE TIME OF THE MOST RECENT INJURY OR EXPOSURE BEARING A CAUSAL RELATION TO THE DISABILITY IS USUALLY LIABLE FOR THE ENTIRE COMPENSATION.' (EMPHASIS SUPPLIED)

THE REFEREE CONCLUDED THAT THE INCIDENT OF JANUARY 26, 1974, WAS A MATERIAL CONTRIBUTING FACTOR, ALTHOUGH NOT THE SOLE CAUSE, OF THE SUDDEN MARKED INCREASE IN SYMPTOMS ON THAT DATE AND OF THE CONDITION FOR WHICH CLAIMANT SOUGHT MEDICAL TREATMENT AND, THEREFORE, IT SHOULD BE CONSIDERED AS A NEW INDUSTRIAL INJURY AND THE RESPONSIBILITY OF EBI, THE EMPLOYER'S WORKMEN'S COMPENSATION CARRIER AT THE TIME OF SAID INJURY.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE CONCLUSIONS REACHED BY THE REFEREE. WITH REFERENCE TO THE GENERAL STATEMENT CITED BY THE REFEREE, THE BOARD WOULD IMPLEMENT IT WITH A FURTHER STATEMENT FROM LARSON WHICH STATES --

> 'IF THE SECOND INJURY TAKES THE FORM MERELY OF A RECURRENCE OF THE FIRST, AND IF THE SECOND INCIDENT DOES NOT CONTRIBUTE EVEN SLIGHTLY TO THE CAUSATION OF THE DISABLING CONDITION, THE INSURER ON THE RISK AT THE TIME OF THE ORIGINAL INJURY REMAINS LIABLE FOR THE SECOND. - - - ON THE OTHER HAND, IF THE SECOND INCIDENT CONTRIBUTES INDEPENDENTLY TO THE INJURY, THE SECOND INSURER IS SOLELY LIABLE, EVEN IF THE INJURY WOULD HAVE BEEN MUCH LESS SEVERE IN THE ABSENCE OF THE PRIOR CONDITION, AND EVEN IF THE PRIOR INJURY CONTRIBUTED THE MAJOR PART TO THE FINAL CONDITION. THIS IS CONSISTENT WITH THE GENERAL PRINCIPLE OF THE COMPENSABILITY OF THE AGGRAVATION OF A PREEXISTING CONDITION.'

IN THIS CASE THE REFEREE FOUND THAT ALTHOUGH THE JANUARY 26, 1974, INJURY WAS NOT THE SOLE CAUSE OF THE INCREASE IN CLAIMANT'S SYMPTOMATOLOGY, IT WAS A MATERIAL CONTRIBUTING FACTOR, THEREFORE, HIS CONCLUSION THAT IT WAS THE RESPONSIBILITY OF THE SECOND INSURER, EBI, WAS CORRECT.

THE BOARD FURTHER CONCLUDES THAT THIS MATTER BOTH AT THE HEARING LEVEL AND ON REVIEW WAS BASICALLY A DISPUTE BETWEEN TWO CARRIERS -- COMPENSABILITY OF THE CLAIM WAS NOT AN ISSUE, THEREFORE, CLAIMANT WOULD HAVE PREVAILED REGARDLESS OF THE DISPOSITION MADE BY THE BOARD. HOWEVER, CLAIMANT'S COUNSEL FILED A VERY WELL WRITTEN AND INFORMATIVE BRIEF WHICH ASSISTED THE BOARD IN DETERMINING THIS MATTER AND, THEREFORE, SHOULD BE ENTITLED TO A NOMINAL FEE.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 30, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED, AS A REASONABLE ATTORNEY'S FEE IN CONNECTION WITH HIS SERVICES WITH THIS BOARD REVIEW, THE SUM OF 400 DOLLARS TO BE PAID BY THE EMPLOYER, PACIFIC FOODS.

WCB CASE NO. 75-370 SEPTEMBER 29, 1975

H. H. BOUTIN, CLAIMANT

JEROME F. BISCHOFF, ATTY.,
BAILEY, DOBLIE AND BRUUN,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
HENRY L. SEIFERT, REFEREE,
WORKMEN'S COMPENSATION BOARD
OWN MOTION ORDER

ON JULY 2, 1975, CLAIMANT REQUESTED THE BOARD TO EXERCISE ITS OWN MOTION JURISDICTION UNDER THE PROVISIONS OF ORS 656.278 AND REOPEN HIS CLAIM FOR AN INDUSTRIAL INJURY SUFFERED ON AUGUST 4, 1969. ON JANUARY 27, 1975, CLAIMANT HAD REQUESTED A HEARING ON A DENIAL OF AN ALLEGED INJURY SUFFERED JUNE 6, 1974, WHILE EMPLOYED BY LOUISIANA-PACIFIC CORPORATION, SELF-INSURED.

THE BOARD, NOT HAVING SUFFICIENT EVIDENCE TO DETERMINE THE MERITS OF THE REQUEST TO REOPEN THE 1969 CASE, REFERRED THE MATTER TO THE HEARINGS DIVISION TO HOLD A HEARING AND DETERMINE WHETHER CLAIMANT HAD AGGRAVATED HIS 1969 INJURY OR SUFFERED A NEW INJURY ON JUNE 6, 1974.

ON SEPTEMBER 8, 1975, THE REFEREE, AFTER A HEARING, CONCLUDED THAT CLAIMANT HAD SUFFERED A NEW INJURY ON JUNE 6, 1974, WHICH WAS THE RESPONSIBILITY OF LOUISIANA-PACIFIC CORPORATION, SELF-INSURED, AND ENTERED AN ADVISORY OPINION TO THAT EFFECT.

THE BOARD, BEING SO ADVISED, CONCLUDES THAT IT DOES NOT HAVE ANY ISSUE BEFORE IT TO DETERMINE UNDER THE PROVISIONS OF ORS 656.278 AND, THEREFORE, THE REQUEST OF JULY 2, 1975, MUST BE DENIED. THE BOARD FURTHER CONCLUDES THAT THE REFEREE SHOULD ENTER A FINAL AND APPEALABLE ORDER IN CONFORMITY WITH HIS ADVISORY OPINION INASMUCH AS ALL PARTIES WERE PRESENT AND-OR REPRESENTED AT THE HEARING AND ALL ISSUES FULLY PRESENTED AT THAT HEARING.

ORDER

THE REQUEST FOR THE BOARD TO EXERCISE ITS OWN MOTION JURISDICTION PURSUANT TO ORS 656.278 AND REOPEN CLAIMANT'S 1969 CLAIM IS DENIED AND THE REFEREE IS DIRECTED TO ENTER A FINAL AND APPEALABLE OPINION AND ORDER IN CONFORMITY WITH HIS ADVISORY OPINION ENTERED SEPTEMBER 8, 1975.

WCB CASE NO. 75-410 SEPTEMBER 29, 1975

ROBERT THOMAS, CLAIMANT

FRANKLIN, BENNETT, OFELT AND JOLLES,
CLAIMANT'S ATTYS.
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 AWARDING CLAIMANT 10 PERCENT LOSS OF THE RIGHT FOOT EQUAL TO 13.5 DEGREES.

ON DECEMBER 29, 1973, CLAIMANT SUFFERED A SEVERE CRUSHING INJURY TO HIS RIGHT FOOT WHEN HIS SHOE CAUGHT IN A CONVEYOR AND HIS FOOT WAS PULLED THROUGH A VERY NARROW OPENING, FRACTURING THE NECK OF THE SECOND, THIRD, FOURTH AND FIFTH METATARSALS. CLAIMANT RETURNED TO WORK ON APRIL 14, 1974, AND WORKED UNTIL HE WAS LAID OFF IN DECEMBER 1974.

DR. SMITH SAW CLAIMANT IN NOVEMBER 1974, AND ALTHOUGH CLAIMANT COMPLAINED OF PAIN, THERE WAS NO SWELLING, THE FRACTURES WERE WELL HEALED AND THE RESIDUAL DISABILITY WAS RATED AS MINIMAL. THE REFEREE FOUND THAT THE MEDICAL EVIDENCE WOULD NOT SUPPORT A FINDING OF A GREATER PERMANENT PARTIAL DISABILITY THAN THAT FOR WHICH CLAIMANT HAD BEEN AWARDED.

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

ORDER

THE ORDER OF THE REFEREE DATED MAY 21, 1975 IS AFFIRMED.

WCB CASE NO. 74-5425 SEPTEMBER 29, 1975

FRED O' NEIL, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH AWARDED HIM 15 PERCENT LOSS OF THE RIGHT LEG.

CLAIMANT IS 58 YEARS OLD AND SELF-EMPLOYED IN THE FLOOR COVERING BUSINESS. HE RECEIVED A COMPENSABLE INJURY TO HIS RIGHT KNEE ON MAY 31, 1974.

THE MEDICAL HISTORY REVEALS THAT CLAIMANT SUFFERED SEVERE PARALYTIC POLIO WHEN HE WAS EIGHT YEARS OLD WHICH INVOLVED BOTH LEGS, AND FOR WHICH HE NOW WEARS A LONG LEG BRACE ON THE LEFT LEG. THE INDUSTRIAL INJURY HAS CAUSED PAIN AND SWELLING IN THE

RIGHT LEG AND CLAIMANT IS NOW INCAPACITATED FOR THE ARDUOUS TYPE WORK INVOLVED IN HIS CARPET BUSINESS.

AT THE TIME OF CLAIM CLOSURE THE EVALUATION DIVISION MADE NO AWARD FOR PERMANENT DISABILITY. THE REFEREE FOUND CLAIMANT'S PERMANENT DISABILITY ATTRIBUTABLE TO THE INDUSTRIAL INJURY EQUAL TO 15 PERCENT LOSS OF THE RIGHT LEG. THE BOARD, ON DE NOVO REVIEW, RELIES ON THE PERSONAL OBSERVATIONS OF THE REFEREE AND CONCURS WITH HIS FINDINGS.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 4, 1975 IS AFFIRMED.

WCB CASE NO. 74-4066 OCTOBER 1, 1975

HARLEY GREEN, CLAIMANT

DEZENDORF, SPEARS, LUBERSKY AND CAMPBELL,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED A DETERMINATION ORDER AWARDING CLAIMANT 10 PERCENT UNSCHEDULED DISABILITY FOR UPPER BACK AND LEFT SHOULDER DISABILITY.

CLAIMANT SUSTAINED A COMPENSABLE INJURY ON OCTOBER 26, 1972, AND HAS NOT WORKED SINCE THAT DATE. MEDICAL REPORTS INDICATE A COMPLETE LACK OF OBJECTIVE FINDINGS -- A CERVICAL MYELOGRAM WAS NORMAL, THERE WAS FULL RANGE OF SHOULDER MOTION, NO ATROPHY OR SENSORY DEFICIT. THE DOCTOR'S FINAL IMPRESSION WAS 'PAIN OF UNDETERMINED ETIOLOGY, PROBABLY WITH AN EXTREME FUNCTIONAL OVERLAY.'

CLAIMANT HAS NOT SOUGHT ANY TYPE OF EMPLOYMENT. THE REFEREE HAS SET FORTH THE FACTS AND HIS FINDINGS VERY CLEARLY AND, IN HIS CONCLUSION, HAS DESCRIBED CLAIMANT'S DISABILITY AS FOLLOWS --

> 'CLAIMANT HAS SUFFERED A LOSS OF EARNING CAPACITY, BUT IN MY OPINION THIS REPRESENTS 10 PERCENT DISABILITY AND 90 PERCENT LACK OF MOTIVATION.'

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

ORDER

THE ORDER OF THE REFEREE DATED APRIL 10, 1975 IS AFFIRMED.

WCB CASE NO. 73-2725 OCTOBER 1, 1975

DOICE NOLTON SMITH, CLAIMANT

ALLAN COONS, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS REVIEW INVOLVES A CLAIMANT WHO RECEIVED PURSUANT TO DETERMINATION ORDER, 50 PERCENT UNSCHEDULED LOW BACK DISABILITY AND 10 PERCENT LOSS OF THE RIGHT FOOT. AFTER A HEARING, THE REFEREE AWARDED CLAIMANT PERMANENT AND TOTAL DISABILITY. THE STATE ACCIDENT INSURANCE FUND HAS REQUESTED BOARD REVIEW.

CLAIMANT WAS INJURED JULY 28, 1971, WHEN A STUMP ROLLED OVER ON HIM CAUSING MULTIPLE ABRASIONS AND CONTUSIONS, LEG AND BACK INJURIES. CLAIMANT'S MEDICAL PROBLEMS ARE DISCUSSED AT LENGTH IN THE REFEREE'S OPINION AND ORDER AND THE ISSUE BEFORE THE BOARD IS WHETHER CLAIMANT IS NOW PRECLUDED FROM ENGAGING IN ANY TYPE OF SUITABLE AND GAINFUL EMPLOYMENT, AND IS, THEREFORE, PERMANENTLY AND TOTALLY DISABLED.

THE BOARD, ON DE NOVO REVIEW, RELIES ON A REPORT BY JAMES R. BOOTH, CLINICAL SUPERVISOR, COUNSELING, UNIVERSITY OF OREGON, WHICH STATES IN PART --

> "IF ONE CONSIDERS MR. SMITH WITHOUT REFERENCE TO HIS DISABILITY, HE PRESENTS A PAUCITY OF ASSETS WHICH NORMALLY ARE REQUIRED FOR EMPLOYMENT NOT REQUIRING HARD PHYSICAL LABOR. HE PRESENTS SO MANY EDUCATIONAK, (SIC), PSYCHOLOGICAL AND SKILL DEFICITS THAT HIS STRENGTH AND PAST WILLINGNESS TO WORK PROBABLY WERE ALL HE HAD TO OFFER. AT AGE 60, AS HE IS NOW, EVEN THE ATTRIBUTES OF STRENGTH AND WILLINGNESS WOULD NOT NECESSARILY BE CONSIDERED ENOUGH TO WARRANT EMPLOYMENT."

THE BOARD CONCURS WITH THE REFEREE'S FINDINGS THAT CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 18, 1975 IS AFFIRMED.

COUNSEL FOR CLAIMANT IS AWARDED A REASONABLE ATTORNEY'S FEE IN THE SUM OF 450 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 75-1403 OCTOBER 2, 1975

DEAN A. NELSON, CLAIMANT

DUNCAN AND WALTER, CLAIMANT'S ATTYS.
COLLINS, FERRIS AND VELURE,
DEFENSE ATTYS.
ORDER ON MOTION

ON SEPTEMBER 15, 1975, THE WORKMEN'S COMPENSATION BOARD RECEIVED FROM THE EMPLOYER A MOTION TO QUASH CLAIMANT'S REQUEST FOR REVIEW OF THE ABOVE-ENTITLED MATTER AS NOT BEING TIMELY FILED IN COMPLIANCE WITH ORS 656.289(3).

THE REFEREE'S OPINION AND ORDER WAS ENTERED ON AUGUST 8, 1975, THEREFORE THE REQUEST FOR REVIEW HAD TO BE RECEIVED BY THE BOARD NO LATER THAN SEPTEMBER 7, 1975. IT WAS NOT RECEIVED BY THE BOARD UNTIL SEPTEMBER 9, 1975, MORE THAN 30 DAYS AFTER THE DATE OF THE REFEREE'S OPINION AND ORDER.

ORDER

THE MOTION TO QUASH CLAIMANT'S REQUEST FOR REVIEW IN THE ABOVE-ENTITLED MATTER IS GRANTED AND CLAIMANT'S REQUEST FOR REVIEW IS DISMISSED WITH PREJUDICE.

WCB CASE NOS. 74-2256 AND 75-226 NC OCTOBER 3, 1975

GEORGE W. PARKE, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
RALPH TODD, DISABILITY PREVENTION DIVISION
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER SEEKS REVIEW BY THE BOARD OF AN ORDER OF THE REFEREE WHICH HELD THAT THE ACCIDENT SUFFERED BY CLAIMANT ON SEPTEMBER 16, 1974, WAS A NEW INJURY AND THE RESPONSIBILITY OF CRYSTAL CONSTRUCTION, A NONCOMPLYING EMPLOYER.

THE ISSUES ARE -- (1) WAS THE INCIDENT OF SEPTEMBER 16, 1974, AN AGGRAVATION OF A PRIOR INJURY SUFFERED ON AUGUST 14, 1972, OR A NEW INJURY? (2) SHOULD ATTORNEY'S FEES AND PENALTIES BE AWARDED FOR UNREASONABLE DELAY AND RESISTANCE IN THE PAYMENT OF COMPENSATION?

CLAIMANT HAD HAD BACK DIFFICULTY PRIOR TO AUGUST 14, 1972, WHEN HE SUFFERED A COMPENSABLE INJURY. THEREAFTER CLAIMANT CONTINUED TO HAVE CONSIDERABLE TROUBLE AND DIFFICULTY WITH HIS BACK AND WAS WEARING A BACK BRACE INTERMITTENTLY PRIOR TO THE INJURY OF SEPTEMBER 16, 1974, WHICH OCCURRED WHILE CLAIMANT WAS CARRYING TOOLS AND STEPPED OUT OF A SHED APPROXIMATELY 14 INCHES TO THE GROUND. EVIDENTLY CLAIMANT MISSTEPPED AND DROPPED TO ONE KNEE. WHEN HE AROSE, HE WAS AWARE OF A SHARP PAIN IN THE SAME AREA OF HIS BACK WHICH WAS INJURED DURING 1972.

THE REFEREE FOUND THAT ALTHOUGH THE 1974 ACCIDENT WAS LESS TRAUMATIC THAN THE 1972, BOTH WERE FULLY CAPABLE OF PRODUCING TRAUMATIC INJURY TO CLAIMANT'S BACK. THE REFEREE CONCLUDED THAT DR. CHERRY, WHO EXAMINED CLAIMANT SEVERAL TIMES, WAS INCONSISTENT IN HIS REPORTS OF CLAIMANT'S MEDICAL CONDITION, THEREFORE, HE CHOSE TO DISREGARD DR. CHERRY'S REPORT THAT IT WAS AN AGGRAVATION RATHER THAN A NEW INJURY.

ON THE ISSUE OF PENALTIES AND ATTORNEY'S FEES FOR UNREASONABLE DELAY IN PAYMENT OF COMPENSATION, THE REFEREE FOUND THAT THE FUND HAD RECEIVED A CLAIM OF INJURY ON SEPTEMBER 23, 1974, AND, LATER, ON NOVEMBER 4, 1974, CLAIMANT'S ATTORNEY HAD REQUESTED REOPENING FOR FURTHER MEDICAL CARE AND TREATMENT SUPPORTED BY MEDICAL REPORTS -- THAT THE FUND WAS NOTIFIED OF A CLAIM OF NEW INJURY, WHETHER, IN FACT, IT WAS AN AGGRAVATION OR A NEW INJURY, AND THAT APPROXIMATELY SIX WEEKS LATER, AFTER HAVING RECEIVED DR. CHERRY'S REPORT, THE FUND WAS FURTHER NOTIFIED AND STILL FAILED TO ADMINISTER THE CLAIM.

THE REFEREE CONCLUDED THAT THIS WAS UNREASONABLE DELAY IN THE PAYMENT OF TEMPORARY TOTAL DISABILITY COMPENSATION AND CLAIMANT'S MEDICAL BILLS, AND ASSESSED A PENALTY OF 25 PERCENT TO BE PAID BY THE STATE ACCIDENT INSURANCE FUND, THE STATUTORY PARTY INASMUCH AS THE EMPLOYER WAS A NONCOMPLYING EMPLOYER, AND THE SUM OF 1,200 DOLLARS AS A REASONABLE ATTORNEY'S FEE.

THE BOARD, ON DE NOVO REVIEW, DISAGREES WITH THE REFEREE'S CONCLUSION THAT THE SEPTEMBER 16, 1974, INCIDENT CONSTITUTED A NEW INJURY. BASED UPON THE MEDICAL REPORTS, THE BOARD CONCLUDES THAT CLAIMANT HAD HAD A CHRONIC LOW BACK PROBLEM PRIOR TO THE COMPENSABLE INJURY SUFFERED ON AUGUST 14, 1972, AND IT CONTINUED TO PLAGUE HIM AND WAS AGGRAVATED BY SLIGHT INCIDENTS. DR. COHEN, WHO EXAMINED CLAIMANT ON DECEMBER 13, 1973, REPORTED THAT CLAIMANT WAS, AT THAT TIME, COMPLAINING OF SEVERE PAIN IN HIS LOWER BACK AND WAS UNABLE TO STAND UP STRAIGHT. THIS WAS AFTER THE CHRONIC LOW BACK STRAIN WAS AGGRAVATED ON DECEMBER 10, 1973, BY THE MERE MOVEMENT OF CLAIMANT'S ARM.

THE EVIDENCE IS NOT SUFFICIENT TO JUSTIFY THE CONCLUSION THAT THE INCIDENT OF SEPTEMBER 16, 1974, WAS AN INDEPENDENT INTERVENING TRAUMA -- RATHER IT WAS JUST ONE MORE INCIDENT IN THE SERIES OF SUCH WHICH AGGRAVATED THE CHRONIC LOW BACK PROBLEMS WHICH CLAIMANT HAD HAD FOR MANY YEARS.

THE BOARD AGREES WITH THAT PORTION OF THE REFEREE'S OPINION AND ORDER WHICH ASSESSES PENALTIES AND ATTORNEY'S FEES. THERE IS NO EVIDENCE TO REBUT THE FACT THAT THE FUND ACTED UNREASONABLY IN NOT ADMINISTERING CLAIMANT'S CLAIM AND MAKING PAYMENT COMPENSATION.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 7, 1975 IS MODIFIED TO THE EXTENT THAT THE ACCIDENT OF SEPTEMBER 16, 1974, SHALL BE CONSIDERED AS AN AGGRAVATION OF THE AUGUST 14, 1972, INJURY AND, THEREFORE, THE RESPONSIBILITY OF THE STATE ACCIDENT INSURANCE FUND, TO WHICH THE CLAIM IS HEREBY REMANDED FOR PAYMENT OF COMPENSATION, AS PROVIDED BY LAW, COMMENCING SEPTEMBER 16, 1974, AND UNTIL CLOSURE IS AUTHORIZED PURSUANT TO ORS 656.268.

IN ALL OTHER RESPECTS THE OPINION AND ORDER OF THE REFEREE DATED MARCH 7, 1975 IS AFFIRMED.

WCB CASE NO. 74-2094 OCTOBER 3, 1975

JACK JOHNSON, CLAIMANT

CHARLES PAULSON, CLAIMANT'S ATTY.
JONES, LANG, KLEIN, WOLF AND SMITH,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH FOUND CLAIMANT'S INJURY DID NOT ARISE 'IN THE COURSE OF HIS EMPLOYMENT', AND AFFIRMED THE DENIAL OF CLAIMANT'S CLAIM BY THE EMPLOYER.

CLAIMANT WORKED AS A MAINTENANCE MAN DOING CLEANUP, ERECTING FENCES, WATER SYSTEMS AND WAS ON CALL TO PATROL AND FIGHT FOREST FIRES. HIS PICKUP TRUCK, OWNED BY THE EMPLOYER, WAS EQUIPPED WITH A TWO-WAY RADIO FOR 24 HOUR CONTACT. ON AUGUST 5, 1972, CLAIMANT INFORMED HIS EMPLOYER HE WAS GOING INTO BEND TO PICK UP A SANDING BELT, THEN TO REDMOND TO TAKE HIS STEPCHILDREN TO A CARNIVAL, AND THEN TO TERREBONNE TO VISIT HIS BROTHER. ABOUT TWO MILES FROM TERREBONNE, CLAIMANT WAS INVOLVED IN A SERIOUS AUTOMOBILE ACCIDENT, WAS CRITICALLY INJURED AND NOW HAS PERMANENT DISABILITY.

CLAIMANT'S COUNSEL URGES THAT EVEN THOUGH CLAIMANT WAS ENGAGED IN A SIDE TRIP TO VISIT HIS BROTHER AT THE TIME OF THE ACCIDENT, THE COMPANY HAD THE RIGHT TO CONTROL HIS ACTIONS -- THAT HE WAS ON COMPANY PREMISES (THE TRUCK) -- THAT HE WAS SUBJECTING HIMSELF TO COMPANY CONTROL BY HAVING HIS TWO-WAY RADIO ON -- AND, THEREFORE, WAS UNDER THE EMPLOYER'S CONTROL AND WAS ENTITLED THEREBY TO WORKMEN'S COMPENSATION BENEFITS.

THE REFEREE FOUND THAT WHEN CLAIMANT DEVIATED FROM THE BUSINESS ROUTE, BY TAKING THE EXTENDED TRIP TO TERREBONNE, A SIDE TRIP WHICH WAS CLEARLY IDENTIFIABLE AS SUCH, HE WAS BEYOND THE COURSE OF HIS EMPLOYMENT WHILE GOING AWAY FROM HIS BUSINESS ROUTE AND TOWARD THE PERSONAL OBJECTIVE.

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

ORDER

THE ORDER OF THE REFEREE DATED APRIL 16, 1975 IS AFFIRMED.

WCB CASE NO. 74-4488 OCTOBER 3, 1975

IDA MAY SEKERMESTROVICH, CLAIMANT

RINGO, WALTON AND EVES, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH FOUND CLAIMANT'S CLAIM FOR BENEFITS TO BE COMPENSABLE AND, ADDITIONALLY, THAT CLAIMANT HAD SHOWN GOOD CAUSE FOR FAILURE TO REQUEST A HEARING WITHIN 60 DAYS OF THE DENIAL.

ALTHOUGH CLAIMANT BEGAN HAVING NECK PAIN IN 1967, SHE DID NOT FILE A CLAIM WITH SAIF FOR BENEFITS UNTIL MAY 16, 1974. SAIF'S LETTER OF DENIAL WAS MAILED JUNE 25, 1974, AND A REQUEST FOR HEARING ON SAID DENIAL WAS NOT FILED UNTIL DECEMBER 13, 1974.

DURING THE TIME BETWEEN THE NOTICE OF DENIAL AND REQUEST FOR HEARING, CLAIMANT CHANGED ATTORNEYS. SHE TESTIFIED THAT SHE CONTACTED HER ORIGINAL ATTORNEY THREE OR FOUR DAYS AFTER SHE HAD RECEIVED THE DENIAL.

THE BOARD DOES NOT CONCUR WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE. ON DE NOVO REVIEW, THE BOARD CONCLUDES THAT CLAIMANT IS CHARGEABLE WITH HER ATTORNEY'S NEGLIGENCE IN NOT TIMELY FILING A REQUEST FOR A HEARING ON THE DENIAL. HER RELIANCE UPON HIM DOES NOT ESTABLISH GOOD CAUSE FOR FAILURE TO FILE WITHIN 60 DAYS. THE PROCEDURAL (UNDERSCORED) REQUIREMENTS OF THE WORKMEN'S COMPENSATION LAW ARE TO BE STRICTLY CONSTRUED. GERBER V. SIAC, 146 OR 353. THE ISSUE OF COMPENSABILITY THEN BECOMES MOOT.

ORDER

THE ORDER OF THE REFEREE DATED MAY 23, 1975 IS REVERSED.

WCB CASE NO. 72-1430 OCTOBER 3, 1975

FREDA P. COLEMAN, CLAIMANT

HARRY G. SPENCER, CLAIMANT'S ATTY.
GRAY, FANCHER, HOMES AND HURLEY,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF AN ORDER OF THE REFEREE WHICH FOUND THAT THE SURGERY OF JUNE 19, 1972, AND OTHER MEDICAL CARE AND TREATMENT AND TIME LOSS BENEFITS REFERRED TO IN THE ORDER OF REMAND FROM THE CIRCUIT COURT FOR HARNEY COUNTY WERE NOT THE RESPONSIBILITY OF THE EMPLOYER.

CLAIMANT SUSTAINED A COMPENSABLE INJURY ON DECEMBER 15, 1970, HER CLAIM WAS CLOSED BY DETERMINATION ORDER DATED MAY 9, 1972, WHEREBY CLAIMANT WAS AWARDED 8 DEGREES FOR PARTIAL LOSS OF A RIGHT LEG. AFTER A HEARING, THE REFEREE AWARDED CLAIMANT AN ADDITIONAL 8 DEGREES FOR A TOTAL OF 16 DEGREES. AN ORDER ON REVIEW DATED MARCH 22, 1973, AFFIRMED THE 16 DEGREES AND ALSO GRANTED CLAIMANT 32 DEGREES FOR UNSCHEDULED DISABILITY. THE MATTER WAS APPEALED TO THE CIRCUIT COURT. THE CIRCUIT JUDGE, AFTER ADMITTING CERTAIN EVIDENCE AND HEARING THE TESTIMONY OF DR. WEARE, CLAIMANT'S TREATING PHYSICIAN, REMANDED IT FOR FURTHER HEARING TO DETERMINE WHETHER THE EMPLOYER WAS RESPONSIBLE FOR COMPENSATION FOR TIME LOSS AND MEDICAL CARE AND TREATMENT, INCLUDING SURGERY, INCURRED SUBSEQUENT TO THE AUGUST 24, 1972, HEARING.

THE HEARING ON REMAND, HELD ON MARCH 14, 1972, RESULTED IN THE REFEREE'S ORDER UPON WHICH CLAIMANT SEEKS THE BOARD REVIEW. AT THIS HEARING, EVIDENCE INDICATED CLAIMANT HAD UNDERGONE CONSIDERABLE MEDICAL CARE SUBSEQUENT TO AUGUST 24, 1972, INCLUDING CARE FOR OTHER AREAS OF HER BODY THAN THE LOW BACK FOR WHICH SHE HAD BEEN ORIGINALLY GRANTED 32 DEGREES. DR. WEARE HAD REFERRED CLAIMANT TO DR. TREGONING, A BOISE ORTHOPEDIST, WHO PERFORMED BACK SURGERY ON JUNE 21, 1973, WHICH FAILED TO REVEAL ANY DISC HERNIATION BUT DID INDICATE SOME COMPRESSION OF THE NERVE FROM OVERLYING OVERGROWTH OF FACET JOINT, THEREAFTER, A FORAMINOTOMY WAS PERFORMED.

THE REFEREE CONCLUDED THAT THE TESTIMONY OF DR. WEARE PRESENTED IN THE CIRCUIT COURT FAILED TO MEDICALLY RELATE THE FINDINGS FROM THE JUNE 21, 1973, SURGERY TO THE INDUSTRIAL INJURY. DR. WEARE DID NOT KNOW WHAT HAD CAUSED THE BONE OVERGROWTH AND ADMITTED IT COULD BE CAUSED BY TRAUMA OR BY OTHER THINGS. THE REFEREE REVIEWED ALL THE EXHIBITS SUBMITTED FOR THE PURPOSES OF THE REMAND HEARING AND ALSO AGAIN REVIEWED THE EXHIBITS RECEIVED AT THE AUGUST 24, 1972, HEARING AND CONCLUDED THAT THE CLAIMANT HAD FAILED TO ESTABLISH ANY CAUSAL RELATIONSHIP BETWEEN HER INDUSTRIAL INJURY AND THE SUBSEQUENT SURGERY.

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

ORDER

THE ORDER OF THE REFEREE DATED APRIL 23, 1975 IS AFFIRMED.

WCB CASE NO. 74-4039 OCTOBER 3, 1975

EDITH I. JENNESS, CLAIMANT

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

Reviewed by Commissioners Wilson and Sloan.

The State Accident Insurance Fund requests board review of a referee's order which found claimant to be permanently and totally disabled from and after March 13, 1975.

Claimant filed a report of injury to her neck, shoulder and both arms attributable to heavy lifting of racks of dishes during an unspecified period of time. The report was filed on June 18, 1969. Claimant's family physician, Dr. Bartell, diagnosed either a cervical disc disorder or a cervical strain and hospitalized claimant. Claimant's claim was initially closed by a determination order dated March 11, 1970, whereby she received 48 degrees for unscheduled neck disability.

During the next few years, claimant was seen by numerous physicians, including specialists in orthopedics, neurology and psychiatry, and the consensus of their opinion is that claimant has sustained a chronic muscular and ligamentous cervical strain with a psychophysiological musculoskeletal reaction. The claim was reopened and closed three times but without any additional permanent partial disability award. The last determination order was entered on November 4, 1974. On March 11, 1974, Dr. Bartell had said that with the amount of pain claimant states she has he doubted very much if she could do any type of work on a regular basis.

Dr. Rennebohm, a psychiatrist, testified that claimant had a moderately severe anxiety tension state, a psychoneurotic condition attributable to the accident. He did not consider the anxiety state out of the ordinary in the circumstances of claimant's case. Dr. Rennebohm found no evidence of malingering or any attempt by claimant to use functional disorder for purposes of litigation.

The referee found that the lay testimony and the medical record demonstrated permanent total disability.

The board, on de novo review, concludes that although claimant's motivation to return to work may not be the very best, there is no type of work which claimant now can do because of her limited education, work background and physical disability. Claimant has made a prima facie case of being within the odd-lot doctrine and the fund has not shown that there is any suitable, regular and sustained employment available to claimant in her present condition.

ORDER

The order of the referee dated May 2, 1975 is affirmed.

Claimant's counsel is awarded as a reasonable attorney's

FEE IN CONNECTION WITH THIS BOARD REVIEW, THE SUM OF 450 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 74-2989 OCTOBER 3, 1975

MARION CLINTON, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTED BOARD REVIEW OF A REFEREE'S ORDER AWARDING PENALTIES AND ATTORNEY FEES BASED ON A FINDING OF UNREASONABLE DELAY AND RESISTANCE TO THE PAYMENT OF MEDICAL EXPENSES.

THE STATE ACCIDENT INSURANCE FUND CONTENDS (1) THE REFEREE HAD NO JURISDICTION TO ENTER ANY ORDER, (2) THERE IS NO STATUTORY AUTHORIZATION FOR PENALTIES AND ATTORNEY FEES, (3) THE EVIDENCE DID NOT JUSTIFY THE IMPOSITION OF PENALTIES AND ATTORNEY FEES.

THE UNDERLYING FACTS ARE NOT IN DISPUTE AND THE BRIEFS OF THE PARTIES CLEARLY EXPRESS THEIR RESPECTIVE POSITIONS. WE FIND OURSELVES IN AGREEMENT WITH THE REFEREE'S OPINION AND ORDER FOR THE REASONS EXPRESSED IN HIS OPINION AND IN THE BRIEF OF CLAIMANT'S ATTORNEY. REVERSAL OF THE COURT OF APPEALS RULING IN CAVINS V. SAIF, 75 OAS 1963 ---OR--- (1975) MAKES CLEAR THAT '....A WORKMAN WHOSE CLAIM IS ERRONEOUSLY REJECTED AND WHO IS THEREBY FORCED TO APPEAL SHOULD NOT BE FORCED TO BEAR THE ADDITIONAL EXPENSE OF EMPLOYING AN ATTORNEY TO REPRESENT HIM.' THAT IS EXACTLY WHAT OCCURRED IN THIS CASE AND IT OCCURRED BECAUSE OF THE STATE ACCIDENT INSURANCE FUND'S UNREASONABLE CONDUCT. THUS BOTH PENALTIES AND ATTORNEY FEES WERE FACTUALLY AND LEGALLY JUSTIFIED.

THE STATE ACCIDENT INSURANCE FUND NEVERTHELESS CLAIMS THE REFEREE WAS WITHOUT JURISDICTION TO ENTER ANY ORDER IN THIS CASE. ALTHOUGH THE DISPUTE WAS INITIALLY PRESENTED AS A DENIED AGGRAVATION CLAIM, WITH ITS THEN JURISDICTIONAL REQUIREMENT OF A SUPPORTING MEDICAL OPINION, THAT THEORY WAS ABANDONED BY THE CLAIMANT. THE DISPUTE ACTUALLY PRESENTED INVOLVED SIMPLY A 'QUESTION CONCERNING A CLAIM' WHICH WAS WITHIN THE REFEREE'S JURISDICTION. (ORS 656.283) WE THEREFORE ADOPT THE REFEREE'S OPINION AND ORDER AS OUR OWN.

WHILE REVIEW OF THIS MATTER WAS PENDING, CLAIMANT'S ATTORNEY PRESENTED ANOTHER MEDICAL REPORT FROM DR. MC GREGOR CHURCH AND MOVED THE BOARD FOR AN ORDER REMANDING THIS CASE TO THE REFEREE SO THAT HE MIGHT REASSERT HIS CLAIM FOR AGGRAVATION ON THE REQUEST FOR HEARING WHICH HE MADE BEFORE THE EXPIRATION OF THE 5 YEAR STATUTE OF LIMITATION ON AGGRAVATION. WE CONCLUDE THE MOTION SHOULD BE DENIED.

IN LIEU OF A REMAND HEARING, THE BOARD CONCLUDES IT SHOULD, PURSUANT TO ORS 656.278, EXERCISE ITS CONTINUING JURISDICTION OVER THIS CLAIM. THE STATE ACCIDENT INSURANCE FUND SHOULD BE

ORDERED BY A SEPARATE ORDER, TO HAVE CLAIMANT REEXAMINED BY HIS TREATING PHYSICIAN. IF ADDITIONAL TREATMENT IS INDICATED IT SHOULD PROVIDE THE TREATMENT RECOMMENDED AND, IF NECESSARY, TEMPORARY DISABILITY COMPENSATION. IF ADDITIONAL TREATMENT IS NOT RECOMMENDED, THE STATE ACCIDENT INSURANCE FUND SHOULD SUBMIT THE CLAIM TO THE BOARD'S EVALUATION DIVISION FOR AN EVALUATION AND ADVISORY RATING OF CLAIMANT'S PERMANENT DISABILITY.

ORDER

THE OPINION AND ORDER OF THE REFEREE DATED THE 20TH OF JANUARY 1975 IS HEREBY AFFIRMED AND THE STATE ACCIDENT INSURANCE FUND IS HEREBY FURTHER ORDERED TO PAY FORTHWITH, THE MEDICAL EXPENSES FOR WHICH IT HAS ADMITTED LIABILITY.

CLAIMANT'S ATTORNEY, DONALD WILSON, IS HEREBY AWARDED A REASONABLE ATTORNEY'S FEE OF 300 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-2989 OCTOBER 3, 1975

MARION CLINTON, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
DISABILITY PREVENTION DIVISION
REQUEST FOR REVIEW BY SAIF

BY ORDER ON REVIEW DATED OCTOBER 3, 1975, THE WORKMEN'S COMPENSATION BOARD DENIED CLAIMANT'S MOTION TO REMAND WCB NO. 74-2989 TO THE REFEREE FOR FURTHER HEARING CONCERNING A CLAIMED AGGRAVATION OF DISABILITY. THE BOARD CONCLUDED THE MOST APPROPRIATE COURSE WAS TO PROCEED UNDER ITS OWN MOTION AUTHORITY GRANTED PURSUANT TO ORS 656.278.

PURSUANT TO THAT AUTHORITY, WE CONCLUDE THE STATE ACCIDENT INSURANCE FUND SHOULD ARRANGE FOR A REEXAMINATION OF CLAIMANT BY HIS TREATING PHYSICIAN, DR. MC GREGOR CHURCH. IF THE EXAMINATION REVEALS ADDITIONAL TREATMENT IS REQUIRED IT SHOULD PROVIDE SUCH TREATMENT AND APPROPRIATE TIME LOSS COMPENSATION IF A STATUS OF TOTAL DISABILITY IS MEDICALLY VERIFIED.

IF TOTAL DISABILITY IS FOUND THE SUBMISSION OF THE CLAIM TO THE EVALUATION DIVISION SHOULD BE DELAYED UNTIL CLAIMANT APPEARS TO BE MEDICALLY STATIONARY FOLLOWING SUCH STATUS. OTHERWISE, THE FUND SHOULD SUBMIT THE CLAIM TO THE BOARD'S EVALUATION DIVISION UPON RECEIPT OF THE REEXAMINATION REPORT FOR PREPARATION OF AN ADVISORY RATING OF PERMANENT DISABILITY.

FOLLOWING RECEIPT OF THE ADVISORY RATING, THE BOARD WILL ISSUE AN OWN MOTION ORDER SUBJECT TO THE APPEAL PROVISION OF ORS 656.278.

IT IS SO ORDERED.

WCB CASE NO. 74-4299 OCTOBER 7, 1975

ARTHUR W. CLAWSON, CLAIMANT

NICK CHAIVOE, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE ORDER OF THE REFEREE WHICH SUSTAINED THE EMPLOYER'S DENIAL OF CLAIMANT'S CLAIM FOR AGGRAVATION.

CLAIMANT, A 46 YEAR OLD TRUCK DRIVER, SUFFERED A COMPENSABLE INJURY ON SEPTEMBER 9, 1971. THE CLAIM WAS CLOSED ON APRIL 16, 1973, WITH AN AWARD OF 80 DEGREES EQUAL TO 25 PERCENT UNSCHEDULED DISABILITY. CLAIMANT COMPLETED A COURSE IN DIESEL MECHANICS UNDER A VOCATIONAL REHABILITATION PROGRAM ON OCTOBER 30, 1973, AND BECAME THE OWNER AND OPERATOR OF AN AUTOMOBILE REPAIR FACILITY.

ABOUT JULY 1, 1974, CLAIMANT, AS A VACATION, TRAVELLED TO STOCKTON, CALIFORNIA AND ONTO YELLOWSTONE NATIONAL PARK. ON JULY 9, 1974, CLAIMANT SUSTAINED A MYOCARDIAL INFARCTION AND WAS HOSPITALIZED FOR TWO WEEKS. HE WAS DISCHARGED FROM THE HOSPITAL AND RETURNED TO PORTLAND, HOWEVER, HIS CARDIOLOGIST HAD NOT, AT THE TIME OF THE HEARING, APPROVED HIS RETURN TO WORK.

ON AUGUST 28, 1974, CLAIMANT SAW DR. ECKHARDT COMPLAINING OF DEEP ACHING AND SOME MUSCLE SPASM IN THE LOWER BACK. DR. ECKHARDT EXPRESSED HIS OPINION THAT THIS WAS AN AGGRAVATION OF CLAIMANT'S PREVIOUS BACK PROBLEM AND REQUESTED, ON SEPTEMBER 3, 1974, THAT THE CLAIM BE REOPENED FOR TREATMENT. ON NOVEMBER 25, 1974, THE FUND, CONSIDERING THE CLAIM AS A CLAIM FOR AGGRAVATION, DENIED SAME.

THE REFEREE, RELYING UPON OFFICE NOTES OF DR. ECKHARDT DATED AUGUST 28, 1974, WHICH STATED -- 'THIS PATIENT HAS HAD AN INCREASE IN HIS BACK DISCOMFORT (RECENTLY) (UNDERSCORED) (EMPHASIS ADDED), CONCLUDED THAT BECAUSE OF THE VACATION AND THE HEART ATTACK, CLAIMANT HAD NOT BEEN EXPOSED TO ANY WORK FOR ALMOST TWO MONTHS, THEREFORE, IT WAS MORE LOGICAL TO CONSIDER THE SYMPTOMS TO WHICH DR. ECKHARDT REFERRED AS SYMPTOMS WHICH AROSE WITHIN TWO OR THREE WEEKS PRIOR TO AUGUST 28, 1974. THE REFEREE, FOLLOWING THIS LOGIC, ASSUMED THAT CLAIMANT HAD HAD NO INCREASED BACK SYMPTOMS REQUIRING TREATMENT UNTIL SHORTLY BEFORE AUGUST 28, 1974, AND THAT HE FAILED TO ESTABLISH CAUSAL RELATIONSHIP BETWEEN THOSE INCREASED SYMPTOMS AND HIS 1971 INJURY.

THE BOARD, ON DE NOVO REVIEW, DISAGREES WITH THE CONCLUSIONS OF THE REFEREE. THE EVIDENCE THAT CLAIMANT SUFFERED AN AGGRAVATION OF HIS 1971 INJURY IS MORE THAN ADEQUATELY SUPPLIED -- FIRST, BY A LETTER FROM DR. ECKHARDT DATED SEPTEMBER 3, 1974, WHEREIN HE ADVISED THE FUND THAT CLAIMANT HAD DEVELOPED FURTHER BACK DISCOMFORT WHICH HE FELT WAS SECONDARY TO HIS OLD BACK PROBLEM AND HAD BEEN AGGRAVATED BY HIS PRESENT OCCUPATION, SECOND, BY A LETTER FROM DR. ECKHARDT, DATED NOVEMBER 6, 1974, WHERE HE REITERATED HIS FIRST OPINION THAT THE PRESENT LOW BACK DISABILITY SUFFERED BY CLAIMANT WAS RELATED TO INJURIES WHICH HE SUFFERED IN A TRUCK ACCIDENT IN JULY OF 1971.

THE FACT THAT THERE WAS SOME TIME LAPSE BETWEEN THE LAST DAY CLAIMANT WAS KNOWN TO HAVE WORKED, NAMELY, JUNE 30, 1974, AND AUGUST 28, 1974, WHEN HE SAW DR. ECKHARDT COMPLAINING OF LOW BACK PAIN, IS IMMATERIAL. THE MEDICAL OPINION EXPRESSED BY DR. ECKHARDT CLEARLY INDICATES THAT CLAIMANT'S PRESENT CONDITION RELATED TO HIS ORIGINAL INJURY AND HAD WORSENED ON AUGUST 28, 1974. THAT IS SUFFICIENT TO SUSTAIN THE CLAIM FOR AGGRAVATION IN THE ABSENCE OF ANY MEDICAL EVIDENCE TO THE CONTRARY. THERE IS NO EVIDENCE THAT THE HEART ATTACK SUFFERED BY CLAIMANT WHILE ON VACATION WAS THE CAUSE FOR CLAIMANT RETURNING TO RECEIVE CARE AND TREATMENT FROM DR. ECKHARDT.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 27, 1975 IS REVERSED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE IN CONNECTION WITH HIS SERVICES BEFORE THE REFEREE, THE SUM OF 750 DOLLARS TO BE PAID BY THE STATE ACCIDENT INSURANCE FUND.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE IN CONNECTION WITH HIS SERVICES ON BOARD REVIEW, THE SUM OF 250 DOLLARS.

SAIF CLAIM NO. C 167511 OCTOBER 7, 1975

HOWARD E. PALMER, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
OWN MOTION ORDER ALLOWING ATTORNEY FEE

ON SEPTEMBER 9, 1975, THE BOARD RECEIVED A PETITION FROM CLAIMANT REQUESTING THE BOARD TO EXERCISE ITS 'OWN MOTION' JURISDICTION PURSUANT TO THE PROVISIONS OF ORS 656.278 AND REOPEN HIS CLAIM WHICH WAS INITIALLY CLOSED BY BOARD DETERMINATION DATED AUGUST 18, 1969. SAID PETITION WAS ACCOMPANIED BY A REPORT FROM DR. POULSON DATED AUGUST 1, 1975.

A COPY OF THE PETITION WAS FURNISHED TO THE STATE ACCIDENT INSURANCE FUND AND, SUBSEQUENTLY, THE BOARD WAS INFORMED THAT THE FUND WOULD VOLUNTARILY REOPEN CLAIMANT'S CLAIM COMMENCING ON THE DATE OF SURGERY.

UNDER THE FOREGOING CIRCUMSTANCES, THE BOARD DID NOT FEEL IT NECESSARY TO ISSUE ITS OWN MOTION ORDER, HOWEVER, IT DOES BELIEVE THAT CLAIMANT'S COUNSEL IS ENTITLED TO A NOMINAL ATTORNEY FEE.

ORDER

IT IS HEREBY ORDERED THAT CLAIMANT'S COUNSEL RECEIVE AS A REASONABLE ATTORNEY'S FEE 25 PERCENT OF THE INCREASED COMPENSATION RECEIVED BY CLAIMANT AS A RESULT OF THE VOLUNTARY REOPENING OF HIS CLAIM, NOT TO EXCEED 75 DOLLARS.

WCB CASE NO. 74-3507 OCTOBER 7, 1975

KENNETH W. WELLS, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT REQUESTS REVIEW BY THE BOARD OF A PORTION OF AN ORDER OF THE REFEREE WHICH DENIED CLAIMANT'S CLAIM FOR COMPENSATION FOR A LEFT SHOULDER CONDITION AND DIRECTED PAYMENT TO CLAIMANT'S ATTORNEY OF A FEE OF 25 PERCENT OF THE INCREASED COMPENSATION PAYABLE OUT OF THE INCREASED COMPENSATION RATHER THAN PAYABLE BY SAIF. THE REFEREE HAD, ADDITIONALLY, AWARDED CLAIMANT AN ADDITIONAL 38.4 DEGREES FOR 20 PERCENT PARTIAL LOSS OF THE RIGHT ARM AND DIRECTED SAIF TO PAY CLAIMANT THE SUM OF 10 DOLLARS AS A PENALTY UNDER ORS 656.262(8) FOR UNREASONABLE FAILURE OR DELAY IN PAYMENT OF COMPENSATION.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON AUGUST 30, 1972. HE HAD PREVIOUSLY SUFFERED INJURIES TO BOTH HIS RIGHT AND LEFT SHOULDER WITHOUT ANY RESIDUAL DISABILITY. THE ONLY AREA OF HIS BODY TO WHICH DIRECT TRAUMA WAS INFLICTED ON AUGUST 30, 1972, WAS AN AREA BELOW THE RIGHT ARMPIT. THERE WAS NO DIRECT TRAUMA TO THE LEFT SHOULDER OR TO THE LEFT SIDE OF THE BODY. THE REFEREE FOUND NO EVIDENCE THAT ANY LEFT SHOULDER INVOLVEMENT WAS FROM REFERRED OR RADIATING PAIN, DISTRESS OR IMPAIRMENT FROM THE RIGHT SHOULDER, RIGHT SIDE OF THE TRUNK OR RIGHT ARM INVOLVEMENT AND CONCLUDED THE CLAIMANT HAD NOT SUFFERED A COMPENSABLE INJURY TO HIS LEFT SHOULDER ON AUGUST 30, 1972.

CLAIMANT HAS RECEIVED BY DETERMINATION ORDER DATED AUGUST 20, 1974, AN AWARD OF 96 DEGREES EQUAL TO 30 PERCENT UNSCHEDULED DISABILITY OF THE RIGHT SHOULDER. THE REFEREE FOUND THAT CLAIMANT WAS UNDERTAKING A VOCATIONAL TRAINING COURSE AS AN AUTO PARTS MAN, THAT HE SHOULD BE ABLE TO RETURN TO SUITABLE LIGHTER WORK AND HIS ACTUAL EARNING LEVEL SHOULD BE APPROXIMATELY THE SAME AS WHEN HE WAS INJURED, THEREFORE, HE MADE NO INCREASE IN THE AWARD FOR UNSCHEDULED DISABILITY. HE FOUND THAT, IN ADDITION TO THE UNSCHEDULED DISABILITY, CLAIMANT HAD ALSO SUFFERED ACTUAL LOSS OF FUNCTION OF HIS RIGHT ARM AND AWARDED CLAIMANT 38.4 DEGREES THEREFOR.

THE REFEREE CONCLUDED THAT PENALTIES SHOULD BE IMPOSED UPON THE FUND FOR ITS UNREASONABLE CONDUCT REGARDING PAYMENT OF THE RELEVANT MEDICAL EXPENSES. IN AUGUST, 1973, CLAIMANT'S THEN TREATING PHYSICIAN INDICATED A POSSIBILITY OF A RIGHT SHOULDER ARTHROGRAM AND, ON JUNE 18, 1974, SUCH SURGERY WAS PERFORMED. THE FUND WAS BILLED FOR THIS BUT SUBSEQUENTLY REJECTED IT AND CLAIMANT WAS THEN BILLED. BECAUSE OF THE REJECTION CLAIMANT REQUESTED THAT THE DENIAL OF PAYMENT WAS SUFFICIENT TO JUSTIFY IMPOSITION OF PENALTIES AND AN ATTORNEY'S FEE TO BE PAID BY THE FUND. ALTHOUGH THE REFEREE AGREED THAT THE FUND SHOULD HAVE IMMEDIATELY PAID THE MEDICAL EXPENSES INCURRED AND, ACCORDINGLY ASSESSED 25 PERCENT OF THE AMOUNT OF THE BILL (10 DOLLARS) AS A PENALTY FOR ITS UNREASONABLE CONDUCT, HE FELT THE AMOUNT OF TIME CONSUMED IN THE HEARING WAS NOT SUFFICIENT, IN RELATION TO THE OTHER ISSUES PRESENTED, TO JUSTIFY AWARDING AN ATTORNEY'S FEE.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE WELL WRITTEN, COMPREHENSIVE OPINION AND ORDER OF THE REFEREE. THE BOARD FOUND NO EVIDENCE TO SUPPORT THE CLAIM FOR A COMPENSABLE INJURY TO CLAIMANT'S LEFT SHOULDER AND THE BOARD BELIEVES THAT THE REFEREE, HAVING HEARD ALL THE ISSUES, WAS IN THE BEST POSITION TO DETERMINE WHETHER OR NOT AN ATTORNEY'S FEE SHOULD BE ASSESSED WHEN SUCH ASSESSMENT IS BASED UPON A RELATIVELY MINOR ISSUE.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 28, 1975 IS AFFIRMED.

SAIF CLAIM NO. AB 35989 OCTOBER 8, 1975

RUBY M. ROLO, CLAIMANT

ROY KILPATRICK AND MILO POPE,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

PURSUANT TO THE BOARD'S OWN MOTION AUTHORITY GRANTED BY ORS 656.278, THIS MATTER WAS REFERRED TO THE HEARINGS DIVISION TO CONVENE A HEARING AND TAKE EVIDENCE REGARDING CLAIMANT'S PRESENT PHYSICAL CONDITION, THE CAUSATION OF HER BACK AND LEFT LEG PROBLEMS AS THEY RELATE TO THE INDUSTRIAL INJURY INVOLVING THE RIGHT LEG, AND THE EXTENT OF HER PRESENT PERMANENT PARTIAL DISABILITY.

THE BOARD HAS NOW RECEIVED THE RECOMMENDATIONS MADE BY THE REFEREE UPON HEARING, AND CONCURS WITH HIS FINDING THAT CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED.

ORDER

THE BOARD AFFIRMS AND ADOPTS THE RECOMMENDATIONS OF THE REFEREE, ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF, AS THE ORDER OF THE BOARD, AND CLAIMANT SHALL BE CONSIDERED AS PERMANENTLY AND TOTALLY DISABLED, AS DEFINED BY ORS 656.206 FROM SEPTEMBER 29, 1975.

COUNSEL FOR CLAIMANT IS AWARDED, AS A REASONABLE ATTORNEY'S FEE, 25 PERCENT OF THE INCREASED COMPENSATION MADE PAYABLE BY THIS ORDER, NOT TO EXCEED 2,300 DOLLARS.

WCB CASE NO. 74—3614 OCTOBER 8, 1975

ERMA BLOM, CLAIMANT

JOHN U. GROVE, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER ON MOTION

ON OCTOBER 1, 1975, CLAIMANT FILED A MOTION REQUESTING THE WORKMEN'S COMPENSATION BOARD TO ORDER THE ABOVE-ENTITLED MATTER REMANDED TO THE HEARINGS DIVISION FOR THE PURPOSE OF SUBMITTING ADDITIONAL MEDICAL TESTIMONY CONCERNING THE COMPENSABILITY OF CLAIMANT'S DENIED CLAIM OR, IN THE ALTERNATIVE, FOR AN ORDER RE-OPENING THE RECORD FOR THE PURPOSE OF ADMITTING AN ADDITIONAL MEDICAL REPORT.

THE BOARD CONCLUDES THERE HAS BEEN NO SHOWING THAT THE ADDITIONAL MEDICAL TESTIMONY CONCERNING THE COMPENSABILITY OF CLAIMANT'S DENIED CLAIM WAS UNAVAILABLE AT THE TIME OF THE HEARING OR THAT THERE HAD BEEN ANY RECENT DISCOVERY OF NEW MEDICAL EVIDENCE OR THAT ANY NEW MEDICAL EVIDENCE WOULD ADD ANYTHING TO THE RECORD.

THEREFORE, THE MOTION TO REMAND OR, IN THE ALTERNATIVE, TO REOPEN IS HEREBY DENIED.

WCB CASE NO. 75—2366 OCTOBER 8, 1975

(MRS.) ROBERT Z. CARTER, CLAIMANT

DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

PURSUANT TO THE BOARD'S OWN MOTION AUTHORITY GRANTED BY ORS 656.278, THIS MATTER WAS REFERRED TO THE HEARINGS DIVISION TO CONVENE A HEARING AND TAKE TESTIMONY REGARDING CLAIMANT'S NEED FOR FURTHER CARE, TREATMENT, AND-OR HOSPITALIZATION AND TO DETERMINE IF SUCH MEDICAL SERVICES ARE NECESSITATED BY A RECURRENCE OF THE SYMPTOMS RELATED TO THE INDUSTRIAL INJURY WHICH SHE SUSTAINED IN JUNE 1966.

THE RECOMMENDATION MADE BY THE REFEREE UPON HEARING HAVE NOW BEEN MADE, AND THE BOARD CONCURS WITH HIS FINDING THAT CLAIMANT'S CLAIM BE ACCEPTED FOR BENEFITS UNDER THE PROVISIONS OF ORS 656.245.

ORDER

THE BOARD AFFIRMS AND ADOPTS THE RECOMMENDATIONS OF THE REFEREE, ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF, AS THE ORDER OF THE BOARD.

WCB CASE NO. 74-4493 OCTOBER 9, 1975

LEVI MEDFORD, CLAIMANT

HAROLD W. ADAMS, CLAIMANT'S ATTY.
FRANK A. MOSCATO, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH DISMISSED THE ABOVE-ENTITLED MATTER UPON REQUEST OF THE EMPLOYER.

THE CLAIMANT HAD SUFFERED A COMPENSABLE INJURY ON NOVEMBER 2, 1972, AND WAS TREATED BY DR. CHESTER, AN ORTHOPEDIC SURGEON. CLAIMANT RETURNED TO WORK ON JULY 28, 1973, AND APPROXIMATELY 15 MONTHS LATER WAS SENT TO THE SALEM MEMORIAL HOSPITAL BY DR. CHESTER FOR SEVERAL TESTS. THE BILL OF 70 DOLLARS FOR THE TESTING WAS SENT TO THE CARRIER. THE CARRIER DECLINED TO MAKE IMMEDIATE PAYMENT UNTIL IT MADE A FULL INVESTIGATION WITH RESPECT TO ITS RESPONSIBILITY FOR THE BILL.

IN REPLY TO AN INQUIRY BY THE CARRIER, DR. CHESTER STATED THE BILL WAS RELATED TO THE ORIGINAL INJURY, HOWEVER, PRIOR TO THIS REPLY, CLAIMANT HAD REQUESTED A HEARING.

UPON RECEIPT OF THE INFORMATION FROM DR. CHESTER, PAYMENT WAS MADE AND THE EMPLOYER REQUESTED A DISMISSAL, ASSERTING THAT IT HAD THE INHERENT RIGHT OF QUESTIONING BILLS RECEIVED WITHOUT SUPPORTING DOCUMENTATION.

THE REFEREE RULED THAT PAYMENT OF THE BILL HAVING BEEN MADE, THE ONLY QUESTION BEFORE HIM WAS WHETHER OR NOT THE EMPLOYER SHOULD BE ASSESSED A PENALTY FOR "UNREASONABLE" DELAY (ORS 656.262(8)) AND-OR BE DIRECTED TO PAY CLAIMANT'S ATTORNEY A FEE (ORS 656.382(1)). HE CONCLUDED THAT THE CARRIER'S DELAY IN ACCEPTING THE BILL WAS NOT UNREASONABLE. THE CLAIMANT, HIMSELF, TESTIFIED HE SUFFERED NO HARDSHIP BY THE ALLEGED DELAY, HE DIDN'T PAY THE BILL NOR DID HE RECEIVE ANY PROBLEMS FROM THE CREDIT BUREAU NOR WAS TREATMENT REFUSED HIM OR DELAYED BECAUSE OF THE UNPAID BILL. ACCORDINGLY, THE REFEREE DISMISSED THE MATTER.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE CONCLUSION OF THE REFEREE AND AFFIRMS HIS ORDER.

ORDER

THE ORDER OF THE REFEREE DATED MAY 13, 1975 IS AFFIRMED.

WCB CASE NO. 74-2541 OCTOBER 9, 1975

BRENDA BOWEN (NOW BRENDA LEWALLEN)
JOHN D. LOGAN, CLAIMANT'S ATTY.
JONES, LANG, KLEIN, WOLF AND SMITH,
DEFENSE ATTYS.
ORDER OF DISMISSAL

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. 75-296 OCTOBER 9, 1975

PEGGIE ROBERTS, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
FRANK MOSCATO, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON, MOORE AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH DIRECTED IT TO PAY FOR CERTAIN MEDICAL BILLS AND FOR CHILD CARE EXPENSES INCURRED BY CLAIMANT DURING HER HOSPITALIZATION AND PERIOD OF RECOVERY. THE REFEREE'S ORDER ALSO IMPOSED PENALTIES AND ATTORNEY'S FEES FOR UNREASONABLE REFUSAL TO PAY THE CHILD CARE EXPENSES.

CLAIMANT SUSTAINED TRAUMATIC AMPUTATION OF HER LEFT INDEX FINGER ON AUGUST 14, 1974, WHILE EMPLOYED AS A CLEANUP PERSON IN THE EMPLOYER'S MILL. CLAIMANT WAS HOSPITALIZED FROM AUGUST 14, 1974, TO AUGUST 19, 1974, UNDER THE CARE OF DR. K. CLAIR ANDERSON, ALTHOUGH CLAIMANT WAS SUBSEQUENTLY REHOSPITALIZED, THE MEDICAL EXPENSES, THE PAYMENT OF WHICH BY THE EMPLOYER WAS AN ISSUE BEFORE THE REFEREE, WERE INCURRED DURING THE AUGUST 14, 1974, SURGERY. CLAIMANT RECEIVED PERIODIC BILLINGS FOR X-RAY CHARGES IN THE AMOUNT OF 12 DOLLARS AND ANETHESIA (SIC) SERVICES IN THE AMOUNT OF 64 DOLLARS. SHE DID NOT SEND THESE BILLS TO THE CARRIER NOR DID SHE PAY THEM HERSELF BUT DEMAND FOR PAYMENT OF BOTH BILLS WAS MADE BY CLAIMANT'S ATTORNEY. AT THE DATE OF THE HEARING, THERE WAS NO EVIDENCE THAT EITHER BILL HAD BEEN PAID BY THE EMPLOYER.

THE REFEREE, RELYING UPON THE PROVISIONS OF ORS 656.262(1), WHICH IMPOSES UPON AN EMPLOYER RESPONSIBILITY FOR CLAIM PROCESSING, CONCLUDED THAT CLAIMANT HAD ESTABLISHED A PRIMA FACIE CASE SHOWING UNREASONABLE RESISTANCE OR DELAY BY THE EMPLOYER REGARDING PAYMENT OF THE X-RAY AND ANETHESIA (SIC) STATEMENTS AND THAT THE EMPLOYER FAILED TO EITHER EXPLAIN ITS DELAY IN MAKING SUCH PAYMENT OR SHOW, IN FACT, THAT PROMPT PAYMENTS HAD BEEN MADE. THE REFEREE IMPOSED A PENALTY OF 25 PERCENT OF THE AMOUNTS OF THE MEDICAL SERVICES UNDER THE PROVISIONS OF ORS 656.268(8) AND AWARDED CLAIMANT'S ATTORNEY A FEE OF 300 DOLLARS.

WITH RESPECT TO THE ISSUE OF CHILD CARE EXPENSES, THE EVIDENCE INDICATES THAT CLAIMANT HAS SIX CHILDREN AT HOME, AGES FOUR TO TEN YEARS. ONE CHILD HAS SERIOUS MEDICAL PROBLEMS AND REQUIRES CLOSE AND CONTINUAL SUPERVISION. THE CLAIMANT, BEING UNABLE TO CARE FOR THESE CHILDREN WHILE HOSPITALIZED AND DURING HER PERIOD OF RECOVERY, EMPLOYED A LADY TO CARE FOR THE CHILDREN DURING CERTAIN PERIODS OF TIME.

AFTER CLAIMANT WAS RELEASED FROM THE HOSPITAL, THE FIRST TIME ON AUGUST 19, 1974, HER PERIOD OF RECOVERY EXTENDED TO AUGUST 26, 1974, AND THE BABY SITTER CARED FOR THE CHILDREN ON A 24 HOUR BASIS AT A RATE OF 15 DOLLARS A DAY. CLAIMANT WAS BILLED 180 DOLLARS FOR THESE SERVICES. CLAIMANT'S SECOND HOSPITALIZATION WAS FROM JANUARY 1, 1975, TO JANUARY 13, 1975, AND HER PERIOD OF RECOVERY THEREAFTER EXTENDED TO JANUARY 29, 1975, AT HER MOTHER'S HOME, AND TO FEBRUARY 13, 1975, AT HER OWN HOME. THE SAME LADY CARED FOR THE CHILDREN ON A 24 HOUR BASIS BETWEEN JANUARY 7 AND JANUARY 29, 1975, AT THE SAME RATE PER DAY AND ON A PART TIME BASIS, BETWEEN JANUARY 30, 1975, AND FEBRUARY 13, AT THE RATE OF 8 DOLLARS PER DAY. FOR THESE SERVICES, CLAIMANT RECEIVED A STATEMENT IN THE AMOUNT OF 465 DOLLARS.

THE EMPLOYER DECLINED RESPONSIBILITY FOR THE AUGUST 1974 EXPENSES ALLEGING THAT THE WORKMEN'S COMPENSATION ACT DID NOT SPECIFICALLY PROVIDE FOR SUCH EXPENSES, HOWEVER, AS A MATTER OF COMPANY POLICY, IT DID ALLOW A PER DIEM OF 5 DOLLARS FOR A TOTAL OF 65 DOLLARS. DEMANDS FOR PAYMENT IN FULL FOR BOTH THE AUGUST 1974 AND THE JANUARY 1975 CHILD CARE EXPENSES WERE MADE, FIRST ON DECEMBER 26, 1975, AND AGAIN ON FEBRUARY 24, 1975, BUT THE EMPLOYER HAS NOT MADE ANY FURTHER PAYMENTS BEYOND THE AFORESAID 65 DOLLARS. IT WAS STIPULATED THAT ALL DEMAND LETTERS HAD BEEN RECEIVED BY THE CARRIER.

THE EMPLOYER CONTENDS THAT IT HAD NO RESPONSIBILITY AS A MATTER OF LAW FOR CHILD CARE SERVICES AND, IN THE EVENT THAT THE REFEREE SHOULD DETERMINE THAT IT DID HAVE SUCH RESPONSIBILITY, THAT IT SHOULD BE LIMITED TO THE AMOUNT EXCEEDING CLAIMANT'S ORDINARY CHILD CARE SERVICES. THE EVIDENCE INDICATES THAT THE LADY EMPLOYED BY CLAIMANT WAS HER REGULAR BABY SITTER AND HER REGULAR EMPLOYMENT RATES FOR FIVE DAYS A WEEK, NINE HOURS PER DAY, RANGED BETWEEN 8.50 DOLLARS AND 10 DOLLARS PER DAY.

THE QUESTION TO BE DETERMINED BY THE REFEREE WAS WHETHER CHILD CARE, WHEN AUTHORIZED OR APPROVED BY THE WORKMAN'S TREATING PHYSICIAN, WAS A PROPER 'MEDICAL' OR 'OTHER RELATED SERVICE' WHICH WOULD BE THE RESPONSIBILITY OF THE EMPLOYER UNDER THE PROVISIONS OF ORS 656.245(1). THE REFEREE CONCLUDED, AFTER CONSIDERING THAT THE EXPENSE WOULD NOT HAVE BEEN INCURRED BUT FOR THE INDUSTRIAL INJURY, THAT IT WAS AUTHORIZED OR APPROVED BY CLAIMANT'S PHYSICIAN, THAT THE PHYSICAL STATE OF CLAIMANT DURING THE HOSPITALIZATION AND PERIOD OF RECOVERY PRECLUDED CLAIMANT FROM CARING FOR HER CHILDREN HERSELF, THAT THE CHILD CARE AIDED CLAIMANT IN THE RECOVERY PROCESS, AND, CONSIDERING THE UNWRITTEN ADMINISTRATIVE POLICY REGARDING CHILD CARE EXPENSES, THAT SUCH EXPENSES INCURRED BY CLAIMANT WERE COMPENSABLE 'MEDICAL' OR 'OTHER RELATED SERVICES' UNDER THE PROVISIONS OF ORS 656.245(1).

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE REFEREE'S CONCLUSION THAT THE EMPLOYER DID NOT MEET ITS RESPONSIBILITY FOR PROCESSING CLAIMANT'S CLAIM BY ITS FAILURE TO PAY THE CHARGES FOR X-RAY AND ANETHESIA(SIC)SERVICES AFTER A DEMAND FOR PAYMENT OF SUCH CHARGES HAD BEEN MADE UPON IT. CLAIMANT WAS, THEREFORE, REQUIRED

TO REQUEST A HEARING AND PRESENT EVIDENCE BEFORE THESE BILLS WERE PAID. THE BOARD CONCLUDES THAT THE IMPOSITION OF THE PENALTY UNDER ORS 656.268(8) AND THE ASSESSMENT OF ATTORNEY'S FEES TO BE PAID BY THE EMPLOYER WAS PROPER.

THE BOARD, AFTER CONSIDERING THE SECOND ISSUE OF CHILD CARE EXPENSE, NOTES THAT THIS IS A VERY UNIQUE CASE, IN FACT, A CASE OF FIRST IMPRESSION BEFORE THE BOARD. HOWEVER, AFTER CONSIDERING THE CASES CITED BY THE REFEREE AS INDICATIVE OF THE LIBERAL POLICY OF THE BOARD WITH RESPECT TO THE INCLUSION OF CERTAIN EXPENSES AS 'MEDICAL' OR 'OTHER RELATED SERVICES' REFERRED TO IN ORS 656.245(1), CONCLUDES THAT THE CHILD CARE EXPENSES MUST BE CONSTRUED AS A SERVICE CONTEMPLATED UNDER THE PROVISIONS OF ORS 656.245(1) AND THAT THE CLAIM THEREFOR IS THE RESPONSIBILITY OF THE EMPLOYER.

THE EVIDENCE STRONGLY INDICATES THAT WITHOUT THE CHILD CARE SERVICES WHICH CLAIMANT RECEIVED HER RECOVERY MIGHT HAVE BEEN IMPAIRED OR, AT THE VERY LEAST, HER PERIOD OF RECOVERY WOULD HAVE BEEN PROLONGED. DR. ANDERSON EXPRESSED HIS FEELING THAT A BABY SITTER WOULD BE NECESSARY FOR CLAIMANT'S CHILDREN DURING HER AUGUST HOSPITALIZATION AND, ON JANUARY 30, 1975, DR. ELLISON STATED THAT CLAIMANT HAD HAD FULL TIME ROUND-THE-CLOCK CHILD CARE FROM JANUARY 7 UNTIL JANUARY 29, AND WOULD NEED DAY TIME CARE OF HER CHILDREN FOR AT LEAST TWO MORE WEEKS.

THE BOARD CONCLUDES THAT THE REFEREE WAS CORRECT IN ORDERING THE EMPLOYER TO ASSUME RESPONSIBILITY FOR CLAIMANT'S CHILD CARE EXPENSES AND APPROVING AN AWARD OF 25 PERCENT OF THE INCREASED COMPENSATION FOR CHILD CARE SERVICES TO BE PAID THEREFROM, PAYABLE AS PAID, TO CLAIMANT'S ATTORNEY AS A REASONABLE ATTORNEY'S FEE.

ORDER

THE ORDER OF THE REFEREE DATED MAY 5, 1975 IS AFFIRMED.

COUNSEL FOR CLAIMANT IS AWARDED AS A REASONABLE ATTORNEY'S FEE THE SUM OF 400 DOLLARS, PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH THIS BOARD REVIEW.

COMMISSIONER GEORGE A. MOORE DISSENTS AS FOLLOWS --

THIS REVIEWER RESPECTFULLY DISSENTS FROM THE POSITION OF THE MAJORITY OF THE BOARD.

WITH RESPECT TO ISSUE NO. 1, PAYMENT OF MEDICAL, THERE IS CERTAINLY NO EVIDENCE OFFERED BY THE CLAIMANT THAT THE BILLS WERE NOT PAID AFTER THEY WERE FORWARDED TO THE EMPLOYER'S CARRIER. FURTHER, IT IS ADMITTED THAT THERE WAS NO CAUSE FOR EMBARRASSMENT TO THE CLAIMANT SUCH AS DUNNING LETTERS OR TELEPHONE CALLS. THERE IS NO REQUIREMENT FOR THE EMPLOYER OR THE FUND TO FURNISH AN AUDITED CERTIFICATE OF BENEFIT PAYMENTS TO A CLAIMANT. THE BOARD STATES IN THE MATTER OF THE COMPENSATION OF WARD F. WOODS, WCB CASE NO. 72-1129 --

> 'IF A CLAIMANT HAS BEEN FORCED TO PERSONALLY PAY MEDICAL BILLINGS DUE TO THE REFUSAL OF THE EMPLOYER, THESE MAY OCCASIONALLY BE THE BASIS FOR APPLICATION OF PENALTIES. . . . IT IS UNFORTUNATE THAT SUCH A MINIMAL 'HIDDEN ISSUE WITH SUCH LACK OF JUSTIFICATION HAS BECOME SUCH A COSTLY EXERCISE IN LITIGIOUSNESS.' (VAN NATTA, VOL. 8, P.117).

THE FACTS IN THIS CASE DO NOT WARRANT IMPOSITION OF PENALTY PAYMENT OF A LAWYER'S FEE OF 300 DOLLARS.

THE SECOND ISSUE ON REVIEW IS PAYMENT OF BABY SITTER FEES. ORS 656.245(1) DEALS WITH MEDICAL SERVICES.

> 'SUCH MEDICAL SERVICES SHALL INCLUDE MEDICAL, SURGICAL, HOSPITAL, NURSING, AMBULANCES AND OTHER RELATED SERVICES, AND DRUGS, MEDICINE, CRUTCHES AND PROSTHETIC APPLIANCES, BRACES AND SUPPORTS AND WHERE NECESSARY, PHYSICAL RESTORATIVE SERVICES.'

THE ABOVE ITEMS APPEAR TO HAVE DIRECT EFFECTS UPON THE INSURED WORKMAN HIMSELF.

ORS 656.210 (1) TEMPORARY TOTAL DISABILITY PAYMENTS PROVIDE FOR COMPENSATION IN THE FORM OF WAGE REPLACEMENT, WHICH FUNDS ARE USED TO DEFRAY LIVING COSTS OF THE WORKMAN AND HIS FAMILY NORMALLY DEFRAYED BY THE WORKMEN'S WAGE. CHILD CARE SERVICES WERE PROVIDED TO THE CLAIMANT'S CHILDREN PRIOR TO THE INJURY PAID FROM WAGES, THEREFORE IT WOULD SEEM THE LEGISLATURE WOULD INTEND THAT CHILD CARE SERVICES AFTER INJURY WOULD BE PAID FOR BY WAGE REPLACEMENT BENEFITS RATHER THAN MEDICAL AND RELATED SERVICE BENEFITS.

THEREFORE, THIS REVIEWER WOULD RECOMMEND REVERSING THE REFEREE'S ORDER AND DENYING THE CLAIMANT'S CONTENTIONS ON BOTH ISSUES.

-S- GEORGE A. MOORE, COMMISSIONER

WCB CASE 72-2753 OCTOBER 10, 1975

LOWINE M. CASEY, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTYS.
LONG, NEUNER, DOLE AND CALEY,
DEFENSE ATTYS.
ORDER OF DISMISSAL.

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. 75-594 OCTOBER 10, 1975

EDDIE HILL, CLAIMANT

WILLNER, BENNETT, RIGGS AND SKARSTAD,
CLAIMANT'S ATTYS.
JONES, LANG, KLEIN, WOLF AND SMITH,
DEFENSE ATTYS.
ORDER OF DISMISSAL

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. 74-4344 OCTOBER 14, 1975

HAROLD MITCHELL, CLAIMANT

SOUTHER, SPAULDING, KINSEY, WILLIAMSON,
AND SCHWABE, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER DENYING MOTION

ON OCTOBER 8, 1975, THE WORKMEN'S COMPENSATION BOARD RECEIVED A MOTION FROM CLAIMANT REQUESTING THAT IT DISMISS AN ALLEGED REQUEST FOR BOARD REVIEW FILED BY PORTLAND HEARING AID CENTER, CONTENDING THAT PORTLAND HEARING AID CENTER WAS NOT A PROPER PARTY, THAT THE REQUEST FOR REVIEW SHOULD HAVE BEEN MADE BY THE STATE ACCIDENT INSURANCE FUND.

PORTLAND HEARING AID CENTER HAD BEEN FOUND TO BE A NONCOMPLYING EMPLOYER PRIOR TO THE REQUEST FOR HEARING BY THE CLAIMANT. PURSUANT TO OAR 436-52-040(1), A NONCOMPLYING EMPLOYER IS A PROPER PARTY TO A HEARING INVOLVING A CLAIM FILED BY A SUBJECT WORKMAN FOR AN INJURY SUSTAINED DURING THE PERIOD OF NONCOMPLIANCE OF THE EMPLOYER WHILE SUCH WORKMAN WAS EMPLOYED BY THAT EMPLOYER. THE STATE ACCIDENT INSURANCE FUND IS MERELY A PAYING AGENCY FOR THE NONCOMPLYING EMPLOYER. IT IS REIMBURSED FOR ALL COSTS BY THE BOARD, WHICH, IN TURN, HAS THE RIGHT TO RECOVER SUCH COSTS FROM THE NONCOMPLYING EMPLOYER.

THEREFORE, PORTLAND HEARING AID CENTER, A NONCOMPLYING EMPLOYER, HAS THE ULTIMATE RESPONSIBILITY FOR ALL COSTS WHICH MAY BE INCURRED AS A RESULT OF THE CLAIM ORDERED ACCEPTED BY THE FUND FOR PAYMENT OF COMPENSATION PURSUANT TO THE REFEREE'S OPINION AND ORDER DATED JUNE 24, 1975.

THE MOTION FOR DISMISSAL FILED BY THE CLAIMANT IS HEREBY DENIED.

WCB CASE NO. 74-4395 OCTOBER 14, 1975

DONNA COLIRON, CLAIMANT

BURNS AND LOCK, CLAIMANT'S ATTYS.
TOOZE, KERR, PETERSON, MARSHALL AND SHENKER, DEFENSE ATTYS.
ORDER OF DISMISSAL

A REQUEST FOR REVIEW WAS MADE ON JULY 2, 1975, BY THE CLAIMANT IN THE ABOVE-ENTITLED MATTER. ON SEPTEMBER 22, 1975, THE BOARD WAS ADVISED THAT THE EMPLOYER AND CARRIER HAD ACCEPTED CLAIMANT'S AGGRAVATION CLAIM. THE ATTORNEY FOR THE CLAIMANT AND THE ATTORNEY FOR THE EMPLOYER AGREE THAT THE REVIEW BY THE BOARD IS NO LONGER NECESSARY.

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. 74-2523 OCTOBER 14, 1975

CATHY B. DE LA MARE, CLAIMANT

MYRICK, COULTER, SEAGRAVES AND NEALY, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER APPROVING STIPULATION

THE WORKMEN'S COMPENSATION BOARD, HAVING REVIEWED THE ATTACHED STIPULATION, FIND THE SAME TO BE IN GOOD ORDER AND THAT THE REQUEST FOR REVIEW MADE BY THE STATE ACCIDENT INSURANCE FUND SHOULD BE DISMISSED.

THE BOARD DESIRES TO MAKE IT CLEAR TO ALL PARTIES THAT IN APPROVING THE ATTACHED STIPULATION THE BOARD IS NOT BOUND BY ANY FUTURE ACTION TAKEN WITH RESPECT TO PAYMENT OF THE AWARD OF 256 DEGREES IN ONE LUMP SUM. IF AN APPLICATION FOR A LUMP SUM PAYMENT IS MADE, IT WILL BE PROCESSED UNDER THE PROVISIONS OF OAR 436-53-005.

ORDER

THE ATTACHED STIPULATION ENTERED IN THE ABOVE-ENTITLED MATTER IS HEREBY APPROVED AND THE REQUEST FOR REVIEW BY THE STATE ACCIDENT INSURANCE FUND IS HEREBY DISMISSED.

STIPULATION

COMES NOW, CATHY B. DE LA MARE, CLAIMANT, AND HER ATTORNEY, C. H. SEAGRAVES, JR., AND BRIAN POCOCK, ASSISTANT ATTORNEY GENERAL FOR THE STATE ACCIDENT INSURANCE FUND, AND HEREBY STIPULATE AND AGREE AS FOLLOWS --

THAT ON THE DATE OF JUNE 26, 1975, DOUGLAS W. DAUGHTRY, REFEREE FOR THE WORKMEN'S COMPENSATION BOARD, ISSUED AN OPINION AND ORDER GRANTING THE CLAIMANT PERMANENT TOTAL DISABILITY. SUBSEQUENT THERETO, THE STATE ACCIDENT INSURANCE FUND FILED AN

APPEAL TO THE WORKMEN'S COMPENSATION BOARD, WHICH APPEAL IS PRESENTLY PENDING. THE APPEAL RAISES THE QUESTION OF THE EXTENT OF DISABILITY, ALONG WITH OTHER ISSUES PRESENTED TO THE REFEREE, INCLUDING, BUT NOT LIMITED TO, THE QUESTION OF WHETHER OR NOT THE CLAIM, HAVING BEEN REOPENED ON GROUNDS OF AGGRAVATION, WAS PROPERLY REOPENED, AND THEREFORE WHETHER OR NOT THE DETERMINATION ORDER APPEALED FROM WAS PROPER. THE ISSUES ON AGGRAVATION AND EXTENT OF DISABILITY PRESENT A BONAFIDE DISPUTE AS TO COMPENSABILITY AND EXTENT OF DISABILITY.

THE PARTIES HEREBY STIPULATE AND AGREE, IN SETTLEMENT OF ALL PENDING ISSUES, AS FOLLOWS --

1) THAT THE REQUEST FOR REVIEW BY THE WORKMEN'S COMPENSATION BOARD SHALL BE DISMISSED,

2) THAT THE CLAIMANT BE GRANTED AN INCREASED AWARD OF PERMANENT PARTIAL DISABILITY, OVER THAT HERETOFORE ENTERED, THE INCREASE AMOUNTING TO 80 PERCENT OF THE UNSCHEDULED AREA FOR LOW BACK DISABILITY,

3) THAT THE 80 PERCENT INCREASE IN UNSCHEDULED DISABILITY EQUALS 256 DEGREES, AND SHALL BE COMPENSATED AT THE RATE OF 70.00 DOLLARS PER DEGREE,

4) THE PARTIES AGREE TO JOIN IN THE EXECUTION OF A LUMP SUM APPLICATION TO PAY THE PERMANENT PARTIAL AWARD INCREASE IN ONE LUMP SUM PAYMENT,

5) THAT ATTORNEY FEES MAY BE GRANTED OUT OF THE INCREASED PERMANENT PARTIAL AWARD IN THE AMOUNT OF 25 PERCENT, NOT TO EXCEED THE SUM OF 2,000.00 DOLLARS.

IT IS SO STIPULATED.

ORDER

THE UNDERSIGNED, REFEREE OF THE WORKMEN'S COMPENSATION BOARD, HAVING REVIEWED THE ABOVE STIPULATION, FINDS THE SAME TO BE IN GOOD ORDER, THEREFORE,

IT IS HEREBY ORDERED THAT THE REQUEST FOR REVIEW IS HEREBY DISMISSED. THAT THE CLAIMANT, CATHY B. DE LA MARE, SHALL RECEIVE AN INCREASE IN PERMANENT PARTIAL DISABILITY FOR THE UNSCHEDULED AREA INVOLVING DISABILITY TO THE LOW BACK, SAID INCREASE TO BE 80 PERCENT, EQUALLY 256 DEGREES DISABILITY.

IT IS FURTHER ORDERED THAT ATTORNEY FEES FOR CLAIMANT'S COUNSEL BE APPROVED IN THE SUM OF 2,000.00 DOLLARS, SAID FEE TO BE PAID OUT OF THE PERMANENT PARTIAL DISABILITY AWARD.

WCB CASE NO. 72-2444 OCTOBER 14, 1975

EDWARD O. MARTIN JR., CLAIMANT

CONNALL AND SPIES, CLAIMANT'S ATTYS.
JONES, LANG, KLEIN, WOLF AND SMITH,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT
CROSS REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH INCREASED AN AWARD OF 32 DEGREES FOR UNSCHEDULED NECK AND UPPER BACK DISABILITY TO 128 DEGREES. THE EMPLOYER CROSS REQUESTS REVIEW CONTENDING THAT CLAIMANT HAD NOT MADE AN HONEST EFFORT TO OBTAIN WORK OR TO REHABILITATE HIMSELF. HAD HE DONE SO AND THEN HAD DIFFICULTY FINDING A JOB, THE AWARD MIGHT HAVE BEEN APPROPRIATE, BUT IN THE ABSENCE OF SUCH SHOWING, THE AWARD WAS EXCESSIVE.

THE BOARD, ON DE NOVO REVIEW, CONCLUDES THAT THE FINDINGS OF FACT AND CONCLUSIONS REACHED THEREON BY THE REFEREE IN HIS OPINION AND ORDER, AS AMENDED, COINCIDE WITH ITS OWN AND, THEREFORE, AFFIRMS AND ADOPTS SAID OPINION AND ORDER AS ITS OWN. THE BOARD BELIEVES THAT CLAIMANT'S CONTENTION THAT NO TRAINING WOULD BE OF ANY ASSISTANCE TO HIM BECAUSE OF HIS AGE IS NOT PERSUASIVE. IT APPEARS THAT CLAIMANT IS WILLING TO LIVE, AT THE PRESENT TIME, ON THE BENEFITS HE IS RECEIVING, ALTHOUGH HOPEFUL THAT SAID BENEFITS MIGHT BE INCREASED.

ORDER

THE ORDER OF THE REFEREE DATED MAY 14, 1975, AS AMENDED ON MAY 27, 1975, IS AFFIRMED AND A COPY THEREOF IS ATTACHED HERETO AND, BY THIS REFERENCE, MADE A PART OF THE BOARD'S ORDER ON REVIEW.

WCB CASE NO. 74-4047 OCTOBER 14, 1975

PEGGY DRIVER, CLAIMANT

WILLNER, BENNETT, RIGGS AND SKARSTAD,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
CROSS REQUEST BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH INCREASED AWARDS TOTALLING 64 DEGREES FOR 20 PERCENT UNSCHEDULED DISABILITY TO 96 DEGREES. THE FUND HAS CROSS APPEALED CONTENDING CLAIMANT HAS RECEIVED AN EXCESSIVE AWARD.

CLAIMANT IS A 43 YEAR OLD OFFICE WORKER AND WAS COMPENSABLY INJURED JULY 10, 1972, WHILE WORKING IN THE CLACKAMAS COUNTY ASSESSOR'S OFFICE. DR. STAINSBY PERFORMED TWO CERVICAL LAMINECTOMIES WITH EXCELLENT RESULTS.

CLAIMANT NOW COMPLAINS OF SEVERE HEADACHES, CONSTANT ACHE AT THE SURGICAL SITES, CRAMPING IN THE LEFT ARM, OCCASIONAL PERIODS OF VERTIGO AND CONSTANT LOW BACK PAIN. THERE IS LITTLE IN THE WAY OF OBJECTIVE MEDICAL SUBSTANTIATION FOR THESE COMPLAINTS. DR. STAINSBY'S TESTIMONY REFLECTS HE EXPECTED CLAIMANT TO HAVE HEADACHES TO SOME DEGREE, BUT NOT OF SUCH SEVERITY AS TO PRECLUDE HER FROM RETURNING TO HER FORMER JOB. HER RETURN TO THIS EMPLOYMENT WAS NOT SUCCESSFUL DUE TO DISAGREEMENT AND MISUNDERSTANDING BETWEEN THE CLAIMANT AND THE NEW ASSESSOR, RATHER THAN TO HER INABILITY TO PERFORM THE WORK.

THE BOARD, ON DE NOVO REVIEW, CONCLUDES THAT CLAIMANT'S DISABILITY, BASED ON LOSS OF WAGE EARNING CAPACITY, HAS BEEN CORRECTLY EVALUATED.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 10, 1975 IS AFFIRMED.

WCB CASE NO. 75-1974 OCTOBER 14, 1975

THERESA HOFFMAN, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER OF REMAND

ON SEPTEMBER 29, 1975, THE STATE ACCIDENT INSURANCE FUND REQUESTED BOARD REVIEW OF THE ORDER OF THE REFEREE ENTERED SEPTEMBER 23, 1975, IN THE ABOVE-ENTITLED MATTER. THE FUND, ADDITIONALLY, REQUESTED THAT THE BOARD, PURSUANT TO ORS 656.295(5) REMAND THE CASE TO REFEREE JAMES P. LEAHY FOR CORRECTION OF AN OBVIOUS ERROR OF LAW, NAMELY HIS BASING AN INCREASE IN CLAIMANT'S SCHEDULED AWARD ON ' . . . THE ADDED FACTORS OF HER EMPLOYMENT, EDUCATION, ADAPTABILITY, RETURNABILITY AND AGE . . .', WHICH BASES OF INCREASE IN SCHEDULED CASES INVOLVES FACTORS NOT APPLICABLE TO SUCH CASES.

THE SOLE CRITERION IN DETERMINING THE EXTENT OF A WORKMAN'S SCHEDULED DISABILITY IS LOSS OF PHYSICAL FUNCTION OF THE SCHEDULED MEMBER OF THE WORKMAN'S BODY. SURRATT V. GUNDERSON BROS., 259 OR 65.

ORS 656.295 PROVIDES, IN PART, THAT IF THE BOARD DETERMINES THAT A CASE HAS BEEN IMPROPERLY DEVELOPED BY A REFEREE, IT MAY REMAND THE CASE TO THE REFEREE FOR CORRECTION.

THEREFORE, THIS MATTER IS REMANDED TO REFEREE LEAHY FOR THE PURPOSE OF MAKING AN EVALUATION OF CLAIMANT'S DISABILITY BASED SOLELY ON THE LOSS OF PHYSICAL FUNCTION OF HER RIGHT HAND AND TO ENTER AN AMENDED FINAL AND APPEALABLE ORDER.

WCB CASE NO. 75-295 OCTOBER 14, 1975

EVELYN MILLER, CLAIMANT

HERBERT CARTER, CLAIMANT'S ATTY.
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER
CROSS REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT 32 DEGREES FOR UNSCHEDULED DISABILITY, DERMATITIS OF THE FOREHEAD AND NECK AND ANXIETY NEUROSIS RESULTING FROM SAME. THE ORDER ALSO AWARDED CLAIMANT SOME TIME LOSS AND DIRECTED THE EMPLOYER TO PAY ATTORNEY'S FEE IN THE AMOUNT OF 535.00 DOLLARS, PURSUANT TO ORS 656.386, IN ADDITION TO THE 25 PERCENT TO BE PAID OUT OF THE INCREASED COMPENSATION. CLAIMANT CROSS-REQUESTS BOARD REVIEW, CONTENDING THE AWARD OF PERMANENT PARTIAL DISABILITY WAS INADEQUATE.

THE ISSUE BEFORE THE REFEREE WAS EXTENT OF CLAIMANT'S DISABILITY. A DETERMINATION ORDER DATED DECEMBER 31, 1974, MADE NO AWARD OF PERMANENT DISABILITY. ONE WEEK PRIOR TO THE HEARING, THE CARRIER ISSUED A LETTER OF DENIAL ALLEGING THAT CLAIMANT'S CONDITION DID NOT ARISE OUT OF NOR IN THE COURSE OF EMPLOYMENT BASED ON THE CONTENTION THAT THE WORDING OF THE DETERMINATION ORDER INDICATED THAT NO TEMPORARY TOTAL DISABILITY WAS OWING. THE REFEREE RULED THAT THE DENIAL WAS NOT VALID -- THAT IT WAS BASED UPON A TYPOGRAPHICAL ERROR IN THE DETERMINATION ORDER.

THE EMPLOYER ALSO MOVED TO DISMISS THE MATTER ON THE GROUNDS THAT THERE WAS NO SHOWING OF A CAUSAL CONNECTION BETWEEN THE INDUSTRIAL ACTIVITY AND CLAIMANT'S PRESENT CONDITION. THE REFEREE DENIED THIS MOTION AND PROCEEDED TO HEAR EVIDENCE RELATING TO CLAIMANT'S PHYSICAL CONDITION.

CLAIMANT COMMENCED WORKING FOR THE EMPLOYER ON AUGUST 7, 1973. APPROXIMATELY A MONTH LATER, SHE NOTICED A RASH ON HER ARMS, NECK AND EARS. SHE CONSULTED DR. CROTHERS ON SEPTEMBER 19, 1973, THE DAY AFTER SHE LAST WORKED, AND WAS REFERRED TO DR. MILLER, A DERMATOLOGIST WHO HAS TREATED CLAIMANT CONTINUOUSLY SINCE SEPTEMBER 26, 1973. ON APRIL 17, 1975, THE DATE OF THE HEARING AND OVER A YEAR AND A HALF AFTER CLAIMANT LEFT HER JOB, SHE STILL HAD VISUAL EVIDENCE OF SEVERE CONTACT DERMATITIS. DURING THAT PERIOD, MANY TESTS AND TREATMENTS WERE GIVEN CLAIMANT, BUT NONE OF THE DOCTORS COULD EXPLAIN THE CONTINUING PRESENCE OF CLAIMANT'S CONDITION LONG AFTER SHE HAD LEFT THE JOB WHICH SHE ALLEGED WAS THE CAUSE OF SAID CONDITION.

THE REFEREE FOUND THAT THE DERMATITIS BEGAN WHEN CLAIMANT WAS WORKING AT THE EMPLOYER'S CANNERY AND FROM THE LOCATION OF THE LESIONS, EXPOSURE TO THAT AREA OF HER BODY NOT PROTECTED BY RUBBER GLOVES OR OTHER CLOTHING WAS INDICATED. HE ALSO FOUND THAT HER CONDITION HAS BEEN CONTINUOUS SINCE THAT DATE AND EXISTS AT THE PRESENT TIME, AND CONCLUDED THAT THERE WAS A CAUSE AND EFFECT RELATIONSHIP BETWEEN THE INDUSTRIAL ACCIDENT AND CLAIMANT'S PRESENT DISABILITY.

HE FURTHER FOUND THAT BECAUSE OF THE DISFIGURING AND PAINFUL CONDITION RESULTING FROM CLAIMANT'S CONTACT DERMATITIS, HER ABILITY TO SECURE EMPLOYMENT HAD BEEN LIMITED. THE MAJOR AREA OF DISABILITY WAS ON CLAIMANT'S TWO FOREARMS, THEREFORE, LOSS OF WAGE EARNING CAPACITY CANNOT BE CONSIDERED. WITH RESPECT TO THE UNSCHEDULED DISABILITY, WHICH THE REFEREE FOUND TO BE RESTRICTED TO THE MILDER DERMATITIS CONDITION ON HER FOREHEAD AND THE ANXIETY NEUROSIS WHICH CLAIMANT SUFFERED BECAUSE OF THE SUBSTANTIAL DURATION OF THIS IRRITATING CONDITION, SUCH LOSS MUST BE CONSIDERED. THE REFEREE FOUND HER CONDITION WAS MEDICALLY STATIONARY AND AWARDED HER 10 PERCENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR THE UNSCHEDULED DISABILITY.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE AND WOULD AFFIRM HIS OPINION AND ORDER. THE BOARD WOULD LIKE TO POINT OUT THAT THERE ARE NOW AVAILABLE TO CLAIMANT SEVERAL RETRAINING PROGRAMS AND SUGGESTS THAT CLAIMANT MAKE INQUIRY CONCERNING THESE PROGRAMS WHICH POSSIBLY COULD ENABLE HER TO RETURN AS A USEFUL MEMBER OF THE LABOR MARKET.

ORDER

THE ORDER OF THE REFEREE DATED MAY 15, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE IN CONNECTION WITH BOARD REVIEW THE SUM OF 350.00 DOLLARS TO BE PAID BY THE EMPLOYER, DEL MONTE CORPORATION.

WCB CASE NO. 74-4540 OCTOBER 14, 1975

ROBERT R. VANCE, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS REVIEW INVOLVES A CLAIMANT WHO SUSTAINED A SERIOUS TRAUMATIC GUNSHOT INJURY WHILE WORKING FOR THE EMPLOYER. HE RECEIVED AN AWARD OF 90 DEGREES FOR 60 PERCENT LOSS OF THE LEFT LEG AND 80 DEGREES FOR 25 PERCENT UNSCHEDULED DISABILITY. AFTER A HEARING, THE REFEREE AFFIRMED THE AWARD FOR THE LEFT LEG DISABILITY AND ALSO AWARDED CLAIMANT 15 DEGREES FOR 10 PERCENT LOSS OF THE RIGHT LEG. THE REFEREE INCREASED THE AWARD FOR THE UNSCHEDULED DISABILITY TO 160 DEGREES.

CLAIMANT, AGE 37 AT THE TIME OF INJURY, WAS SHOT IN THE ABDOMEN WHEN HIS SERVICE STATION WAS ROBBED ON AUGUST 3, 1972. CLAIMANT SUFFERED DAMAGE TO HIS CAUDA EQUINA, A PERFORATION OF THE SMALL INTESTINE AND SIX HOLES IN THE PROXIMAL JEJUNUM. IN ADDITION TO SURGERY REMOVING THE BULLET AND FRAGMENTS, CLAIMANT UNDERWENT A LAMINECTOMY AT THE L-3 LEVEL WHERE HIS SPINE HAD BEEN DAMAGED BY THE BULLET. CLAIMANT STILL EXPERIENCES PARALYSIS IN HIS LEFT FOOT WHICH NECESSITATES A BRACE AND WALKING WITH A CANE, COMPLETE NUMBNESS OF BOTH SIDES OF HIS BUTTOCKS, BACK PAIN AND AN INABILITY TO CONTROL HIS URINARY AND BOWEL MOVEMENTS.

CLAIMANT WAS REFERRED TO THE REHABILITATION INSTITUTE OF OREGON WHERE CONSIDERABLE REHABILITATION WAS DONE, INCLUDING PSYCHOLOGICAL TESTING AS AN AID TO CLAIMANT. AFTER MOVING TO FRESNO, CALIFORNIA, HE CAME UNDER THE CARE OF DR. WILSON, ASSOCIATE DIRECTOR OF REHABILITATION MEDICINE, WHO FIT CLAIMANT WITH A MORE ACCEPTABLE SHORT LEG BRACE AND OFFERED CLAIMANT SOME INTENSIVE POOL AND GYM THERAPY.

CLAIMANT WAS NOT WORKING AT THE TIME OF HEARING, BUT HOPED TO RETURN TO COLLEGE. WITH A GOOD SCHOLASTIC RECORD AND ONLY ONE YEAR NECESSARY TO SECURE HIS DEGREE IN ACCOUNTING, IT APPEARS THAT CLAIMANT WILL BECOME PRODUCTIVE AND SELF-SUPPORTING DESPITE THE RESIDUAL DISABILITY IMPOSED BY THE SERIOUS INDUSTRIAL ACCIDENT, HOWEVER, THERE WILL BE A SUBSTANTIAL LIMITATION IMPOSED UPON THE TYPE OF EMPLOYMENT CLAIMANT CAN ACCEPT BECAUSE OF HIS URINARY AND BOWEL PROBLEMS.

THE BOARD, ON DE NOVO REVIEW, FINDS THE AWARDS FOR BOTH SCHEDULED AND UNSCHEDULED DISABILITY AS GRANTED BY THE REFEREE TO BE ADEQUATE.

ORDER

THE ORDER OF THE REFEREE DATED MAY 15, 1975 IS AFFIRMED.

WCB CASE NOS. 74-4070 AND 75-876 OCTOBER 14, 1975

ENRIQUE MEDINA, CLAIMANT

HAROLD W. ADAMS, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON, AND SCHWABE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

A CONSOLIDATED HEARING ON THE ABOVE-ENTITLED MATTER WAS HELD BY THE REFEREE AND RESULTED IN --

. . . AFFIRMATION OF A DETERMINATION ORDER DATED NOVEMBER 27, 1973, WHICH AWARDED NO PERMANENT DISABILITY FOR AN INJURY CLAIMANT SUSTAINED JUNE 15, 1973, (WCB CASE NO. 74-4070), AND

. . . ALLOWANCE OF CLAIMANT'S CLAIM FOR INCREASED COMPENSATION ON ACCOUNT OF AGGRAVATION RESULTING FROM SERIOUS INJURIES INCURRED JULY 3, 1969, (WCB CASE NO. 75-876).

ONLY THAT PORTION OF THE REFEREE'S ORDER RELATING TO WCB CASE NO. 74-4070 IS BEFORE THE BOARD ON REVIEW.

THE INJURY AT ISSUE OCCURRED JUNE 15, 1973, WHEN A CHEATER BAR SLIPPED ON A MACHINE CLAIMANT WAS OPERATING AND FRACTURED HIS NOSE. CLAIMANT WAS OFF WORK FOR ONE WEEK. BOTH DR. QUAN AND DR. HICKMAN RELATE CLAIMANT'S DETERIORATING PSYCHOPATHOLOGY TO THE EARLIER INDUSTRIAL INJURY, AND THE REFEREE FOUND NO PERMANENT DISABILITY HAD BEEN INCURRED AS A RESULT OF THE 1973 INCIDENT.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE REFEREE'S WELL WRITTEN ORDER AND AFFIRMS AND ADOPTS IT AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED MAY 22, 1975 IS AFFIRMED.

WCB CASE NO. 74-4341 OCTOBER 14, 1975

GREGORY MYERS, CLAIMANT

EVOHL F. MALAGON, CLAIMANT'S ATTY.
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH SUSTAINED THE EMPLOYER'S DENIAL OF HIS CLAIM FOR BENEFITS.

THE BOARD, ON DE NOVO REVIEW, RELIES ON THE FINDINGS MADE BY THE REFEREE, WHO IN THIS CASE, HEARD CONFLICTING EVIDENCE AND IN EXERCISING FACT-FINDING POWER, FOUND THE MORE CREDIBLE AND CONVINCING EVIDENCE WOULD NOT SUSTAIN A FINDING THAT CLAIMANT HAD SUSTAINED A COMPENSABLE INDUSTRIAL INJURY.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 21, 1975 IS AFFIRMED.

SAIF CLAIM NO. DB 155225 OCTOBER 14, 1975

WELDSON F. MC FARLAND, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
OWN MOTION ORDER

THE BOARD HAS BEEN PETITIONED BY CLAIMANT'S COUNSEL FOR CONSIDERATION OF CLAIMANT'S CLAIM PURSUANT TO THE OWN MOTION JURISDICTION GRANTED UNDER ORS 656.278.

CLAIMANT SUSTAINED A COMPENSABLE INJURY ON OCTOBER 12, 1965. IN ADDITION TO TEMPORARY TOTAL DISABILITY BENEFITS, CLAIMANT WAS AWARDED BY DETERMINATION ORDER 60 PERCENT LOSS FUNCTION OF AN ARM FOR UNSCHEDULED DISABILITY. THE PETITION ALLEGES THAT AS A RESULT OF THIS INJURY, CLAIMANT IS NOW IN NEED OF MEDICAL CARE AND TREATMENT AND REQUESTS REOPENING OF HIS CLAIM BY THE STATE ACCIDENT INSURANCE FUND. THIS REQUEST IS SUPPORTED BY MEDICAL REPORTS FROM NORMAN D. LOGAN, M.D., ADDRESSED TO THE FUND.

IT IS THEREFORE ORDERED THAT THE STATE ACCIDENT INSURANCE FUND REOPEN CLAIMANT'S CLAIM FOR SUCH MEDICAL CARE AND TREATMENT AS HE MAY REQUIRE AND PAY CLAIMANT COMPENSATION, AS PROVIDED BY LAW, COMMENCING FROM THE DATE OF THIS ORDER UNTIL THE CLAIM IS CLOSED PURSUANT TO ORS 656.278.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE 25 PERCENT OF THE INCREASED COMPENSATION WHICH CLAIMANT WILL RECEIVE FROM THIS ORDER AND 25 PERCENT OF ANY ADDITIONAL COMPENSATION HE MAY RECEIVE UPON CLOSURE OF THE CLAIM UNDER ORS 656.278.

SAIF CLAIM NO. C 52447 OCTOBER 14, 1975

R. B. COLLINS, CLAIMANT

FRANKLIN, BENNETT, OFELT AND JOLLES,
CLAIMANT'S ATTYS.
OWN MOTION ORDER

THIS MATTER IS BEFORE THE WORKMEN'S COMPENSATION BOARD PURSUANT TO THE OWN MOTION JURISDICTION GRANTED UNDER ORS 656.278.

COUNSEL FOR CLAIMANT HAS REQUESTED THAT CLAIMANT'S CLAIM BE REOPENED FOR MEDICAL CARE AND TREATMENT, AND SUPPORTS HIS REQUEST WITH A LETTER FROM M. N. DHRUVA, M.D., WHICH INDICATES THE NEED FOR SUCH BENEFITS IS THE RESULT OF A COMPENSABLE, INDUSTRIAL INJURY WHICH CLAIMANT SUSTAINED IN NOVEMBER 1966. ON JANUARY 27, 1975, DR. DHRUVA OF YAKIMA, WASHINGTON PERFORMED A MYELOGRAM WHICH REVEALED DISC HERNIATION AT C5-6 AND C6-7 REQUIRING A LAMINECTOMY AND FUSION.

IT IS THEREFORE ORDERED THAT THE STATE ACCIDENT INSURANCE FUND REOPEN CLAIMANT'S CLAIM FOR SUCH MEDICAL CARE AND TREATMENT AS HE MAY REQUIRE AND PAY CLAIMANT COMPENSATION, AS PROVIDED BY LAW, COMMENCING FROM THE DATE OF HOSPITALIZATION UNTIL THE CLAIM IS CLOSED PURSUANT TO ORS 656.278.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE 25 PERCENT OF THE INCREASED COMPENSATION WHICH CLAIMANT WILL RECEIVE FROM THIS ORDER AND 25 PERCENT OF ANY ADDITIONAL COMPENSATION HE MAY RECEIVE UPON CLOSURE OF THE CLAIM UNDER ORS 656.278.

WCB CASE NO. 74-2764 OCTOBER 17, 1975

LESLIE H. PETTY, CLAIMANT
STIPULATION AND ORDER OF DISMISSAL

WHEREAS, BY DETERMINATION ORDER DATED JULY 15, 1974, CLAIMANT HEREIN WAS GRANTED AN AWARD OF 32 DEGREES FOR A 10 PERCENT UNSCHEDULED LOW BACK DISABILITY, AND

WHEREAS, A HEARING WAS HELD ON DECEMBER 2, 1974, ON CLAIMANT'S APPEAL FROM SAID DETERMINATION ORDER, AND

WHEREAS, BY OPINION AND ORDER DATED MAY 27, 1975, REFEREE FORREST T. JAMES INCREASED CLAIMANT'S AWARD TO 128 DEGREES FOR 40 PERCENT UNSCHEDULED LOW BACK DISABILITY, AND

WHEREAS, CLAIMANT HAS FILED WITH THE WORKMEN'S COMPENSATION BOARD A REQUEST FOR REVIEW, DATED JUNE 19, 1975, CHALLENGING THE ADEQUACY OF THE OPINION AND ORDER ABOVE MENTIONED, AND

WHEREAS, SAID REQUEST FOR REVIEW IS NOW PENDING BEFORE THE WORKMEN'S COMPENSATION BOARD = AND

WHEREAS, THE PARTIES HERETO RECOGNIZE AND AGREE THAT THERE IS A DISPUTE CONCERNING THE EXTENT OF THE CLAIMANT'S PERMANENT PARTIAL LOW BACK DISABILITY AND THE PARTIES HERETO ARE DESIROUS OF SETTLING THIS DISPUTE,

NOW, THEREFORE, IT IS HEREBY STIPULATED BY AND BETWEEN THE CLAIMANT, LESLIE H. PETTY, AND THE EMPLOYER, MEIER AND FRANK CO., THROUGH THEIR RESPECTIVE ATTORNEYS, THAT, FOR AND IN CONSIDERATION OF THE ENTRY BY THE WORKMEN'S COMPENSATION BOARD OF A PERMANENT PARTIAL DISABILITY AWARD REFLECTING 176 DEGREES FOR A 55 PERCENT UNSCHEDULED LOW BACK DISABILITY, THE CLAIMANT HEREBY AGREES TO A DISMISSAL OF HIS REQUEST FOR REVIEW.

IT IS SO STIPULATED.

BASED UPON THE STIPULATION OF THE PARTIES HERETO,

IT IS HEREBY ORDERED THAT CLAIMANT IS GRANTED AN AWARD OF 176 DEGREES FOR A 55 PERCENT UNSCHEDULED LOW BACK DISABILITY. THIS AWARD IS IN LIEU OF AND NOT IN ADDITION TO THE AWARD GRANTED BY THE OPINION AND ORDER OF MAY 27, 1975. CLAIMANT'S REQUEST FOR REVIEW IS HEREBY DISMISSED.

IT IS FURTHER ORDERED THAT COUNSEL FOR CLAIMANT BE PAID A REASONABLE ATTORNEY'S FEE EQUAL TO 25 PERCENT OF THE ADDITIONAL COMPENSATION HEREIN AWARDED, PAYABLE THEREFROM AS PAID, NOT TO EXCEED 2,000.00 DOLLARS.

WCB CASE NO. 74-3739 OCTOBER 17, 1975

HARRY R. OLSON, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED HIS CLAIM TO BE REOPENED AS OF FEBRUARY 18, 1975, FOR THE PAYMENT OF BENEFITS AS PROVIDED BY LAW BY THE STATE ACCIDENT INSURANCE FUND UNTIL THE CLAIM WAS CLOSED PURSUANT TO ORS 656.268 AND ALLOWED CLAIMANT'S ATTORNEY AN ATTORNEY FEE OF 25 PERCENT OF TIME LOSS BENEFITS, NOT TO EXCEED 2,000.00 DOLLARS.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON OCTOBER 18, 1973, WHILE UNLOADING A TRUCK WHICH WAS STACKED WITH MUFFLERS. CLAIMANT WAS FIRST SEEN BY DR. TORRES WHO DIAGNOSED DORSAL BACK MYOFASCIAL STRAIN. CLAIMANT SUFFERED A RECURRENCE OF THE SAME SYMPTOMS ON FEBRUARY 5, 1974. BY STIPULATION, HIS CLAIM WAS REOPENED ON JANUARY 29, 1974.

DR. TORRES REFERRED CLAIMANT TO DR. GRAHAM WHO, IN TURN, REFERRED HIM TO DR. SHORT. DR. SHORT, BASED UPON THE HISTORY RELATED TO HIM BY CLAIMANT, FELT CLAIMANT HAD A POSSIBLE RUPTURED DORSAL DISC AND RECOMMENDED CERVICAL TRACTION FOR FIVE DAYS, STATING THAT SHOULD THERE BE NO IMPROVEMENT AS A RESULT THEREOF

HE WOULD ASSUME THERE WAS NO A DISC INVOLVEMENT AND HIS DIAGNOSIS WOULD BE THAT OF A STRAIN SUPERIMPOSED ON A MINOR POSTURAL DEFORMITY. THE TRACTION FAILED TO RELIEVE THE SYMPTOMATOLOGY AND, ON SEPTEMBER 6, 1974, DR. GRAHAM RECOMMENDED CLAIM CLOSURE, STATING CLAIMANT WAS MEDICALLY STATIONARY.

ON OCTOBER 2, 1974, A DETERMINATION ORDER AWARDED CLAIMANT 10 PERCENT UNSCHEDULED DISABILITY.

ON NOVEMBER 18, 1974, DR. CHERRY, HAVING EXAMINED CLAIMANT AND BEING OF THE OPINION THAT HE HAD A NECK STRAIN AND UPPER THORACIC STRAIN, STATED CLAIMANT MIGHT BENEFIT BY FURTHER TREATMENT IN THE FORM OF PHYSICAL THERAPY AND MEDICATION. CLAIMANT CONTINUED TO BE UNDER DR. CHERRY'S CARE AND WAS SO AT THE TIME OF THE HEARING.

AT THE HEARING, THE CLAIMANT CONTENDED THAT HIS CLAIM WAS PREMATURELY CLOSED AND SHOULD BE REOPENED AS OF SEPTEMBER 6, 1974, OR IN THE ALTERNATIVE, THAT HE SHOULD RECEIVE AN INCREASED AWARD OF PERMANENT PARTIAL DISABILITY. CLAIMANT ALSO CONTENDED THAT PENALTIES AND ATTORNEY'S FEES SHOULD BE AWARDED FOR UNREASONABLE DELAY IN PAYING TEMPORARY TOTAL DISABILITY COMPENSATION AND ALSO IN ACCEPTING OR DENYING HIS CLAIM TO REOPEN.

THE REFEREE, ALTHOUGH STATING THAT HE WAS MORE PERSUADED BY THE TESTIMONY OF DRS. GRAHAM AND SHORT THAT CLAIMANT SHOULD BE CONSIDERED MEDICALLY STATIONARY AS OF THE DATE THE CLAIM WAS CLOSED, REOPENED THE CLAIM AS OF FEBRUARY 18, 1975, THE DATE DR. CHERRY EXPRESSED HIS OPINION THAT CLAIMANT WOULD BENEFIT BY FURTHER TREATMENT IN THE FORM OF PHYSICAL THERAPY AND MEDICATION. THE REFEREE DID NOT FEEL THAT PENALTIES AND ATTORNEY'S FEES WERE APPROPRIATE UNDER THE FACTS OF THIS PARTICULAR CASE.

THE BOARD, ON DE NOVO REVIEW, DISAGREES WITH THE CONCLUSION OF THE REFEREE THAT THE CLAIM SHOULD BE REOPENED AS OF FEBRUARY 18, 1975. THE BOARD FINDS THE EVIDENCE SUFFICIENT TO SUPPORT A CONCLUSION, BASED UPON THE REPORTS OF BOTH DR. GRAHAM AND DR. SHORT, THAT CLAIMANT WAS (UNDERSCORED) MEDICALLY STATIONARY AS OF SEPTEMBER 6, 1974, THEREFORE, THE DETERMINATION ORDER SHOULD BE AFFIRMED.

THE BOARD CONCLUDES, HOWEVER, THAT CLAIMANT IS ENTITLED TO RECEIVE, UNDER THE PROVISIONS OF ORS 656.245, SUCH MEDICAL CARE AND TREATMENT AS HAS BEEN RECOMMENDED BY DR. CHERRY. ALTHOUGH CLAIMANT'S COUNSEL DID NOT PREVAIL IN HIS REQUEST TO REOPEN CLAIMANT'S CLAIM, HE WAS SUCCESSFUL IN OBTAINING FOR CLAIMANT MEDICAL SERVICES UNDER THE PROVISIONS OF ORS 656.245 AND, THEREFORE, IS ENTITLED TO AN ATTORNEY'S FEE TO BE PAID BY THE FUND. CAVINS V. SAIF, 75 ADV SH 1963.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 31, 1975 IS REVERSED.

THE DETERMINATION ORDER DATED OCTOBER 2, 1974 IS AFFIRMED.

CLAIMANT'S COUNSEL IS ALLOWED, AS A REASONABLE ATTORNEY'S FEE FOR SECURING MEDICAL SERVICES FOR CLAIMANT UNDER THE PROVISIONS OF ORS 656.245 AFTER BOARD REVIEW, THE SUM OF 400.00 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 73-3681 OCTOBER 17, 1975

JAMES E. HUMPHREY, CLAIMANT

DEL PARKS, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER ON REMAND

ON FEBRUARY 19, 1975, THE WORKMEN'S COMPENSATION BOARD AFFIRMED THE ORDER OF THE REFEREE DATED JUNE 19, 1974, WHICH 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 DENIED ATTORNEY'S FEES BY THE FUND.

THE CLAIMANT APPEALED TO THE CIRCUIT COURT FOR THE COUNTY OF KLAMATH. IT WAS HEARD ON JUNE 16, 1975 ON THE SOLE ISSUE OF WHETHER CLAIMANT WAS ENTITLED TO A REASONABLE SUM OF ATTORNEY'S FEE PURSUANT TO ORS 656.382. THE CIRCUIT JUDGE HELD THAT THERE WAS NO DIFFERENCE BETWEEN UNREASONABLE REFUSAL TO PAY COMPENSATION AND UNREASONABLE RESISTANCE IN THE PAYMENT OF COMPENSATION AND REMANDED THE CLAIM TO THE BOARD FOR ALLOWANCE OF A REASONABLE ATTORNEY'S FEE FOR CLAIMANT'S ATTORNEY TO COVER THE HEARING BEFORE THE REFEREE AND THE REVIEW BEFORE THE BOARD.

THEREFORE, IT IS ORDERED THAT CLAIMANT'S ATTORNEY BE ALLOWED, AS A REASONABLE ATTORNEY'S FEE IN CONNECTION WITH HIS SERVICES AT THE HEARING BEFORE THE REFEREE, THE SUM OF 500 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, AND AS A REASONABLE ATTORNEY'S FEE IN CONNECTION WITH HIS SERVICES AT BOARD REVIEW, THE SUM OF 350 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 74-3219 OCTOBER 17, 1975

THE BENEFICIARIES OF

JAMES WISHART, DECEASED

AND IN THE MATTER OF THE COMPLYING STATUS
OF SHAKLEE CORPORATION
SOUTHER, SPAULDING, KINSEY, WILLIAMSON,
AND SCHWABE, CLAIMANT'S ATTORNEYS
DEPT. OF JUSTICE, DEFENSE ATTYS.
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE BENEFICIARIES OF JAMES WISHART, DECEASED, HAVE REQUESTED BOARD REVIEW OF A REFEREE'S ORDER WHICH HELD THAT = (1) SHAKLEE CORPORATION WAS NOT A SUBJECT NONCOMPLYING EMPLOYER DURING THE PERIOD DECEMBER 28, 1971 TO APRIL 11, 1974, (2) THAT NEITHER THE DECEDENT NOR BENEFICIARY WORKED AS SUBJECT WORKMEN DURING THAT PERIOD OF TIME, AND (3) THAT DECEDENT'S DEATH DID NOT ARISE OUT OF AND IN THE COURSE OF EMPLOYMENT.

THE BOARD, ON DE NOVO REVIEW, CONCLUDES THE REFEREE FULLY DEVELOPED THE CASE AT HEARING AND THE RECORD SPEAKS FOR ITSELF. WITH NO ADDITIONAL INFORMATION OR FACTS HAVING BEEN PRESENTED TO THE BOARD ON ITS REVIEW OF THE CASE, THE BOARD AFFIRMS AND ADOPTS THE ORDER OF THE REFEREE AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 5, 1975 IS AFFIRMED.

WCB CASE NO. 75-371 OCTOBER 20, 1975

DUANE PRATT, CLAIMANT
DAY AND PROHASKA, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE CLAIMANT SEEKS BOARD REVIEW OF THE REFEREE'S ORDER WHICH DISMISSED HIS AGGRAVATION CLAIM FOR LACK OF JURISDICTION BASED ON ONE OR MORE OF THE FOLLOWING GROUNDS - (1) CLAIMANT FAILED TO COMPLY WITH ORS 656.273 IN THAT HE DID NOT SUPPORT HIS AGGRAVATION CLAIM WITH A WRITTEN REPORT FROM A PHYSICIAN THAT THERE WERE REASONABLE GROUNDS FOR THE CLAIM, (2) CLAIMANT DID NOT FILE A CLAIM FOR AGGRAVATION WITH SAIF, (3) THE CLAIM FOR AGGRAVATION WAS NOT FILED WITHIN FIVE YEARS AFTER THE FIRST DETERMINATION WAS MADE.

CLAIMANT WAS INJURED ON SEPTEMBER 12, 1969 AND HIS CLAIM WAS CLOSED BY THE FIRST DETERMINATION ORDER DATED DECEMBER 8, 1969. HIS RIGHT TO OBTAIN A HEARING ON ANY CLAIM FOR AGGRAVATION EXPIRED ON DECEMBER 7, 1974.

ON JANUARY 27, 1975 AN APPLICATION FOR INCREASED COMPENSATION ON ACCOUNT OF AGGRAVATION AND A REQUEST FOR HEARING ON SAID CLAIM WAS RECEIVED BY THE WORKMEN'S COMPENSATION BOARD. THE REQUEST WAS SUPPORTED BY OPINIONS FROM THE PSYCHOLOGICAL CENTER DATED AUGUST 27, 1974, OCTOBER 8, 1974, JANUARY 3, 1975 AND JANUARY 16, 1975.

PRIOR TO COMMENCEMENT OF THE HEARING, THE FUND MOVED TO DISMISS FOR LACK OF JURISDICTION - THE MOTION WAS TAKEN UNDER ADVISEMENT BY THE REFEREE WHO PROCEEDED TO TAKE TESTIMONY ON THE MERITS, HOWEVER HIS ORDER DEALT ONLY WITH THE JURISDICTIONAL QUESTION AND HELD THAT THE REFEREE HAD NO JURISDICTION BECAUSE OF CLAIMANT'S FAILURE TO COMPLY WITH THE PROVISIONS OF ORS 656.273.

AFTER THE INITIAL CLOSURE OF THE CLAIM ON DECEMBER 8, 1969 IT WAS REOPENED AND THEN CLOSED BY SECOND DETERMINATION ORDER DATED AUGUST 20, 1973 WHEREBY CLAIMANT RECEIVED 48 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. A REQUEST FOR HEARING ON THIS DETERMINATION ORDER WAS MADE BY THE CLAIMANT AND THE OPINION AND ORDER ENTERED ON APRIL 17, 1974 INCREASED THE AWARD TO 80 DEGREES AND ALSO ORDERED THE FUND TO PROVIDE CLAIMANT WITH FURTHER PSYCHOLOGICAL COUNSELING PURSUANT TO ORS 656.245 IF, AND WHEN, CLAIMANT MADE APPLICATION THEREFOR.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT THE REFEREE DID HAVE JURISDICTION UNDER THE PROVISIONS OF ORS 656.273, AS AMENDED BY OREGON LAWS 1975, CH 497 SEC 1. THE AGGRAVATION STATUTE AS AMENDED NO LONGER REQUIRES A WORKMAN TO SUPPORT HIS CLAIM FOR AGGRAVATION WITH WRITTEN REPORTS FROM A PHYSICIAN THAT THERE WERE REASONABLE GROUNDS FOR THE CLAIM IN ORDER TO CONFER JURISDICTION.

THE AMENDED ACT PROVIDES THAT THE WORKMAN MUST FILE A CLAIM FOR AGGRAVATION WITH THE FUND AND THAT A PHYSICIAN'S REPORT INDICATING A NEED FOR FURTHER MEDICAL SERVICES OR ADDITIONAL COMPENSATION IS A CLAIM FOR AGGRAVATION. IN THE INSTANT CASE, SINCE THE DATE OF THE LAST AWARD OR ARRANGEMENT OF COMPENSATION WHICH WAS MADE BY THE OPINION AND ORDER DATED APRIL 17, 1974, THE FUND HAS BEEN SUPPLIED SEVERAL REPORTS FROM DR. HICKMAN AND DR. FLEMING,

BOTH PSYCHOLOGISTS, WHICH CLEARLY INDICATED TO THE FUND THAT CLAIMANT'S CONDITION WAS WORSENING AND THAT THE WORSENING WAS BASED UPON HIS PSYCHOPATHOLOGY.

THE FUND CONTENDS THAT THIS IS NOT A PHYSICIAN'S (UNDERSCORED) REPORT WITHIN THE MEANING OF ORS 656.273 BECAUSE NEITHER DR. HICKMAN NOR DR. FLEMING IS A PHYSICIAN WITHIN THE DEFINITION EXPRESSED IN ORS 656.002 (13). THE BOARD TAKES ADMINISTRATIVE NOTICE OF THE FACT THAT PSYCHOLOGICAL PROBLEMS ARE COMPENSABLE UNDER THE WORKMEN'S COMPENSATION ACT TO THE SAME EXTENT AS PHYSICAL INJURIES - THAT IN MANY CASES THE DETERMINATION OF THE WORKMAN'S DISABILITY IS BASED UPON HIS PSYCHOPATHOLOGY AS MUCH, IF NOT MORE, THAN UPON HIS PHYSIOLOGICAL CONDITION. THE BOARD, THEREFORE, FEELS INSOFAR AS APPLICATION OF THE WORKMEN'S COMPENSATION ACT IS CONCERNED, REPORTS FROM LICENSED PSYCHOLOGISTS TO THE FUND WHICH INDICATE THAT THE WORKMAN'S CONDITION HAS WORSENED PSYCHOLOGICALLY AND THAT HE IS IN NEED OF FURTHER MEDICAL SERVICES OR ADDITIONAL COMPENSATION AS A RESULT THEREOF, CAN BE PROPERLY CONSTRUED AS A CLAIM FOR AGGRAVATION. THE FUND RECEIVED SUCH REPORTS WELL WITHIN THE FIVE YEAR PERIOD AFTER THE FIRST DETERMINATION MADE UNDER ORS 656.268 (3).

OREGON LAWS 1975, CH 497 SEC 4 AMENDED ORS 656.319 BY DELETING THEREFROM THE REQUIREMENT THAT A REQUEST FOR HEARING WITH RESPECT TO ANY DISPUTE ON INCREASED COMPENSATION BY REASON OF AGGRAVATION UNDER ORS 656.273 MUST BE FILED WITHIN FIVE YEARS AFTER THE FIRST DETERMINATION MADE UNDER SUBSECTION (3) OF ORS 656.268.

THEREFORE, THE BOARD CONCLUDES THAT CLAIMANT'S CLAIM FOR AGGRAVATION SHOULD NOT BE DISMISSED FOR ANY OF THE GROUNDS SET FORTH IN THE ORDER OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE DISMISSING CLAIMANT'S CLAIM FOR AGGRAVATION IS REVERSED AND THE CLAIM IS REMANDED TO THE HEARINGS DIVISION FOR A HEARING ON THE MERITS.

CLAIMANT'S COUNSEL IS AWARDED, AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW, THE SUM OF 450 DOLLARS, PAYABLE BY SAIF.

WCB CASE NO. 74-3938-E OCTOBER 20, 1975

PETER BUYAS, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
JONES, LANG, KLEIN, WOLF AND SMITH,
DEFENSE ATTYS.
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 TO BE PERMANENTLY AND TOTALLY DISABLED AS OF FEBRUARY 23, 1974 AND DIRECTED THE FUND TO PAY CLAIMANT BENEFITS TO WHICH HE IS ENTITLED BY LAW. THE REFEREE FURTHER ORDERED THE FUND TO REIMBURSE EMPLOYEE BENEFITS INSURANCE COMPANY, HEREINAFTER REFERRED TO AS EBI, FOR ALL TIME LOSS BENEFITS PAID TO THE CLAIMANT FOR THE PERIODS SUBSEQUENT TO FEBRUARY 23, 1974 AND FOR ALL MEDICAL BILLS, IF ANY, PAID ON BEHALF OF THE CLAIMANT. THE

FUND WAS TO RECEIVE CREDIT FOR THE FOREGOING DISABILITY BENEFITS FOR SUCH PERIOD, AND ANY OVERPAYMENT, IF MADE TO CLAIMANT TO DATE BECAUSE OF DIFFERENCE IN THE RATE BETWEEN TEMPORARY TOTAL AND PERMANENT TOTAL BENEFITS, WAS TO BE RECOUPED BY THE FUND BY DEDUCTION FROM THE BENEFITS HEREAFTER PAID TO CLAIMANT AT THE RATE OF 10 PER CENT, UNTIL SUCH OVERPAYMENTS WERE COMPLETELY RECOUPED.

CLAIMANT SUSTAINED A COMPENSABLE INJURY ON DECEMBER 12, 1972. HIS EMPLOYER AT THAT TIME WAS COVERED BY THE FUND. CLAIMANT WAS RELEASED TO RETURN TO WORK ON DECEMBER 25, 1972 BY DR. RIEKE. ON APRIL 18, 1973 THE CLAIM WAS CLOSED BY DETERMINATION ORDER WHICH AWARDED CLAIMANT TIME LOSS COMPENSATION FROM DECEMBER 12, 1972 TO DECEMBER 25, 1972, BUT NO PERMANENT DISABILITY.

CLAIMANT WORKED STEADILY BETWEEN FEBRUARY 12, 1973 AND AUGUST 6, 1973. THEREAFTER, CLAIMANT COMMENCED SEEING DR. LANGSTON WHO TREATED HIM FOR CONTINUED BACK PAIN AND, ON AUGUST 21, 1973, STATED CLAIMANT HAD MULTIPLE INJURIES AND A DEGENERATIVE ARTHRITIS WHICH WAS RATHER EXTENSIVE AND DISABLING. CLAIMANT REQUESTED THAT HIS CLAIM BE REOPENED - AFTER DENIAL BY THE FUND, A HEARING WAS REQUESTED. ON APRIL 10, 1974, REFEREE JOSEPH D. ST. MARTIN ORDERED THE CLAIM REOPENED WITH TIME LOSS BENEFITS TO BE PAID FROM AUGUST 6, 1973 TO JANUARY 6, 1974. THE CLAIM WAS AGAIN CLOSED BY SECOND DETERMINATION ORDER DATED OCTOBER 24, 1974 WHICH AWARDED CLAIMANT TIME LOSS IN CONFORMITY WITH THE REFEREE'S ORDER BUT AWARDED NO PERMANENT DISABILITY.

ON JANUARY 8, 1974, CLAIMANT HAD RETURNED TO WORK FOR THE EMPLOYER WHO, AT THAT TIME, WAS AFFORDED WORKMEN'S COMPENSATION COVERAGE BY EBI. ON FEBRUARY 22, 1974 CLAIMANT SUSTAINED A SECOND COMPENSABLE INJURY WHILE LIFTING A BARREL ONTO A PALLET WHICH BROKE CAUSING CLAIMANT TO CATCH THE ENTIRE LOAD ON HIS BACK AND RESULTED IN LOW BACK PAIN OF RATHER SUBSTANTIAL SEVERITY. CLAIMANT WAS SEEN BY DR. LANGSTON ON FEBRUARY 25, 1974 - THIS WAS THE FIRST TIME CLAIMANT HAD BEEN SEEN BY DR. LANGSTON SINCE HE HAD BEEN RELEASED TO RETURN TO WORK ON JANUARY 4, 1974. DR. LANGSTON DIAGNOSED AN ACUTE LOW BACK STRAIN AND ADVISED CLAIMANT THAT THIS WAS A NEW INJURY AND WOULD REQUIRE HOSPITALIZATION.

ON MAY 17, 1974, DR. LANGSTON INFORMED THE FUND THAT CLAIMANT HAD BEEN HOSPITALIZED FROM FEBRUARY 25 UNTIL MARCH 9, 1974 WITH SOME IMPROVEMENT IN HIS CONDITION. HE HAD CONTINUED TO SEE HIM UNTIL MAY 10, 1974 AT WHICH TIME CLAIMANT, BASED UPON HIS RECOMMENDATION, DECIDED TO RETIRE. DR. LANGSTON FELT CLAIMANT HAD EXTENSIVE ARTHRITIS OF HIS ENTIRE SPINE, SEVERE ARTHRITIS OF HIS HANDS WITH ASSOCIATED DEFORMITIES AS WELL AS DIFFICULTY WITH BOTH FEET. HE STATED THAT IF CLAIMANT CONTINUED TO WORK HE WOULD CONTINUE TO HAVE PAIN AND DISABILITY FROM STRAINS AND, THEREFORE, CLAIMANT HAD ACCEPTED THE FACT THAT IT WOULD BE BETTER FOR HIM IF HE DID NOT WORK.

ON MARCH 14, 1974 CLAIMANT HAD BEEN EXAMINED, AT THE REQUEST OF THE FUND, BY DR. PASQUESI WHO COMMENTED THAT IT SEEMED ALMOST UNREASONABLE TO BELIEVE THAT A CLAIMANT WHO HAD BEEN GIVEN AS MANY PERMANENT PARTIAL DISABILITY AWARDS IN REGARD TO HIS BACK COMPLAINTS IN THE PAST AS CLAIMANT HAD WAS STILL BEING ALLOWED TO WORK IN A HEAVY LABORING CAPACITY WHICH NO DOUBT AGGRAVATED ALL OF HIS SYMPTOMS, FURTHERMORE, AS LONG AS ANYONE WAS WILLING TO EMPLOY CLAIMANT THE EMPLOYER WAS ASSUMING THE RESPONSIBILITY OF AGGRAVATION WHICH NO DOUBT WOULD BE FORTHCOMING AFTER HE RETURNED TO WORK.

ON JULY 9, 1974, DR. LANGSTON WROTE A LETTER TO EBI CONFIRMING HIS EARLIER LETTER OF JUNE 7, 1974 RELATING TO CLAIMANT'S CON-

DITION AND STATUS AND ADVISED EBI THAT HE DID NOT BELIEVE CLAIMANT HAD ANY INCREASED DISABILITY AS A RESULT OF THE ACCIDENT OF FEBRUARY 22, 1974, THAT HIS CONDITION WAS NOW MEDICALLY STATIONARY AND HE CONSIDERED CLAIMANT TO BE BACK TO THE PRE-INJURY STATUS WHICH, AS HE HAD PREVIOUSLY STATED IN HIS LETTER OF JUNE 7, WAS THAT OF A PERMANENT TOTAL DISABILITY. BASED UPON THIS REPORT A DETERMINATION ORDER WAS MAILED AUGUST 14, 1974, WHICH AWARDED CLAIMANT TEMPORARY TOTAL DISABILITY FROM FEBRUARY 23, 1974 THROUGH JULY 8, 1974 AND AWARDED COMPENSATION FOR UNSCHEDULED PERMANENT TOTAL DISABILITY EFFECTIVE JULY 9, 1974. THIS DETERMINATION ORDER RELATED TO THE FEBRUARY 22, 1974 INJURY AND NOTED THE INSURANCE CARRIER AS EBI.

AS A RESULT OF THE DETERMINATION ORDER OF AUGUST 14, 1974 EBI REQUESTED A HEARING, PROTESTING THE ORDER AND ALLEGING THAT CLAIMANT'S PERMANENT TOTAL DISABILITY WAS THE RESULT OF HIS DECEMBER 12, 1972 INJURY AND, THEREFORE, THE RESPONSIBILITY OF THE FUND. THE FUND CONTENDED THAT EBI HAD NO STANDING PROCEDURALLY TO REQUEST SUCH A HEARING AND RAISE THAT ISSUE AND, IF THE REFEREE FOUND THAT EBI DID HAVE THE RIGHT TO REQUEST THE HEARING ON THE ISSUE, A DETERMINATION HAD TO BE MADE AS TO WHICH CARRIER WAS RESPONSIBLE FOR THE PERMANENT TOTAL DISABILITY OF THE CLAIMANT.

THE REFEREE FOUND THAT EBI HAD, PURSUANT TO ORS 656.283, THE RIGHT TO REQUEST A HEARING AND CONCLUDED THAT EBI HAD SUSTAINED ITS BURDEN OF PROVING THAT THE CLAIMANT'S PERMANENT TOTAL DISABILITY HAD RESULTED FROM HIS COMPENSABLE INJURY OF DECEMBER 12, 1972 RATHER THAN THE ONE INCURRED ON FEBRUARY 22, 1974. ACCORDINGLY, HE SET ASIDE THE DETERMINATION ORDER OF AUGUST 14, 1974 AS WELL AS THE SECOND DETERMINATION ORDER OF OCTOBER 24, 1974 TO THE EXTENT THAT EACH MIGHT CONFLICT WITH THE HOLDING IN HIS OPINION AND ORDER, AND ORDERED CLAIMANT TO BE AWARDED PERMANENT TOTAL DISABILITY EFFECTIVE FEBRUARY 23, 1974 (THE BALANCE OF HIS ORDERS ARE SET FORTH IN THE OPENING PARAGRAPH HEREIN).

THE BOARD, ON DE NOVO REVIEW, DISAGREES WITH THE REFEREE'S CONCLUSION THAT THE RESPONSIBILITY FOR CLAIMANT'S PERMANENT TOTAL DISABILITY IS THAT OF THE FUND. THERE IS AMPLE EVIDENCE THAT SUBSEQUENT TO DECEMBER 12, 1972, CLAIMANT WAS EMPLOYED ON A FULL TIME BASIS AT A GAINFUL OCCUPATION DURING PERIODS PRIOR TO THE FEBRUARY 22, 1974 INCIDENT. CLAIMANT'S TREATING PHYSICIAN TESTIFIED THAT PRIOR TO THE FEBRUARY 22, 1974 INJURY CLAIMANT WAS ABLE TO WORK AT A GAINFUL AND SUITABLE OCCUPATION FOR REGULAR PERIODS OF TIME OF AROUND A MONTH OR SIX WEEKS AND THAT AFTER THAT INCIDENT HE WAS POSSIBLY ABLE TO DO IT BUT THAT HE, DR. LANGSTON, ADVISED CLAIMANT NOT TO RETURN TO ANY TYPE OF WORK. BECAUSE CLAIMANT WAS ABLE TO, AND DID, ENGAGE IN GAINFUL AND SUITABLE WORK BETWEEN DECEMBER 12, 1972 AND FEBRUARY 22, 1974, HE CANNOT BE CONSIDERED, AS A MATTER OF LAW, PERMANENTLY AND TOTALLY DISABLED AS A RESULT OF THE 1972 INJURY.

DR. LANGSTON TESTIFIED THAT THE INJURY SUFFERED ON FEBRUARY 22, 1974 WAS A MATERIAL FACTOR IN RENDERING CLAIMANT TOTALLY DISABLED 'IN THE SENSE THAT IT HAD DONE HIM IN TOGETHER WITH HIS WHOLE PICTURE.'

THE BOARD CONCLUDES THAT CLAIMANT WAS NOT PERMANENTLY AND TOTALLY DISABLED AS A RESULT OF HIS DECEMBER 12, 1972 INDUSTRIAL INJURY - HOWEVER, EVEN THOUGH DR. LANGSTON INDICATES IN HIS LETTER TO EBI THAT HE DID NOT BELIEVE CLAIMANT HAD ANY INCREASED DISABILITY AS A RESULT OF THE ACCIDENT OF FEBRUARY 22, 1974, NEVERTHELESS THE EVIDENCE, TAKEN AS A WHOLE, IS VERY PERSUASIVE THAT THE INDEPENDENT INTERVENING TRAUMA OF FEBRUARY 22, 1974 WAS 'THE STRAW THAT BROKE

THE CAMEL'S BACK', INSOFAR AS CLAIMANT'S CHRONIC BACK CONDITION WAS CONCERNED. AN EMPLOYER TAKES A WORKMAN AS HE FINDS HIM - ON FEBRUARY 22, 1974 CLAIMANT WAS ABLE TO WORK, AFTER THAT DATE HE WAS TOLD HE WAS UNABLE TO RETURN TO WORK. THEREFORE, THE BOARD FINDS THAT CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED AT THE PRESENT TIME, BUT THAT SUCH DISABILITY IS THE RESULT OF THE INJURY SUFFERED ON FEBRUARY 22, 1974 AND THEREFORE THE RESPONSIBILITY OF EBI.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 17, 1975 IS REVERSED.

THE DETERMINATION ORDER MAILED AUGUST 14, 1974 IS AFFIRMED.

WCB CASE NO. 74-3383 OCTOBER 20, 1975

DAVID COLLINS, CLAIMANT

JOEL B. REEDER, 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 DENIED CLAIMANT'S CLAIM FOR BENEFITS FOR AN ALLEGED INDUSTRIAL INJURY.

CLAIMANT WAS AN ELECTRICIAN EMPLOYED BY THE CITY OF MEDFORD AND WORKED OUT OF THE 'BUCKET' OF A HIGH RANGER MOBILE TOWER. HE ALLEGES THAT ON JULY 25, 1974, THE 'BUCKET' SUDDENLY DROPPED AND HE SUSTAINED INJURIES DESCRIBED AS SORE LEGS, HEEL PAIN AND LOW BACK PAIN. WHEN CLAIMANT WAS CHECKED INTO THE HOSPITAL, DR. SHOWERMAN FOUND A POSSIBLE HERNIATED DISC.

THE VERACITY OF CLAIMANT'S TESTIMONY WAS QUESTIONED BY THE REFEREE. EXPERT TESTIMONY ESTABLISHED THAT THE COLLAPSE OF THE 'BUCKET' COULD NOT BE SCIENTIFICALLY SUBSTANTIATED BY CLAIMANT'S DESCRIPTION OF THE INCIDENT.

DR. TENNYSON INDICATED CLAIMANT HAD PREEXISTING DEGENERATIVE DISC DISEASE AND THAT A MINOR TRAUMATIC EVENT COULD HAVE RENDERED IT SYMPTOMATIC. HOWEVER, HE STATED HIS OPINION WAS BASED UPON THE HISTORY OF THE INCIDENT GIVEN HIM BY CLAIMANT AND IF THIS HISTORY WAS NOT RELIABLE, HIS DIAGNOSIS WOULD BE DIFFERENT.

CLAIMANT FAILED TO PRODUCE EVIDENCE WHICH MIGHT HAVE BEEN FAVORABLE TO HIM - SUCH EVIDENCE WAS AVAILABLE TO CLAIMANT AND HIS FAILURE IMPLIES IT WOULD NOT HAVE SUPPORTED HIS CONTENTIONS, OR AT LEAST, HE WAS AFRAID IT WOULD NOT HAVE DONE SO.

THE BOARD, ON DE NOVO REVIEW, CONCLUDES THE CIRCUMSTANCES SURROUNDING CLAIMANT'S UNWITNESSED, ALLEGED ON-THE-JOB INJURY DO NOT LEND THEMSELVES TO A FINDING THAT CLAIMANT SUSTAINED A COMPENSABLE INJURY. THE BOARD, THEREFORE, AFFIRMS AND ADOPTS THE ORDER OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE DATED MAY 14, 1975 IS AFFIRMED.

WCB CASE NO. 74-4173 OCTOBER 21, 1975

DALE BURNETT, CLAIMANT

BAILEY, DOBLIE AND BRUUN,
CLAIMANT'S ATTYS.
PHILIP A. MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH DIRECTED IT TO ACCEPT CLAIMANT'S BILATERAL HIGH FREQUENCY IMPAIRMENT AS A COMPENSABLE HEARING LOSS CLAIM AND PROCESS SAID CLAIM AND PAY COMPENSATION, AS PROVIDED BY LAW, AND ALSO AWARDED CLAIMANT'S ATTORNEY A FEE OF 500 DOLLARS PAYABLE BY THE EMPLOYER.

CLAIMANT HAS BEEN EMPLOYED BY THE EMPLOYER FOR APPROXIMATELY 26 YEARS. DURING THIS TIME HE HAS WORKED ON OR NEAR THE CHAIN SAW AND RESAW WHICH EMIT NOISE WHICH CLAIMANT DEFINES AS COMFORTABLE OR TOLERABLE, THAT IS TO SAY, THE NOISE DOES NOT HURT HIS EARS BUT IT DOES EXIST.

CLAIMANT FIRST NOTICED A HEARING LOSS DURING 1968 - HE UNDERWENT A HEARING EXAMINATION AND RECEIVED A HEARING AID. AT THAT TIME HE WAS TOLD HE HAD A HEARING LOSS BUT WAS NOT ADVISED AS TO THE CAUSE OF IT.

APPROXIMATELY THREE YEARS AGO CLAIMANT COMMENCED WORKING AROUND AND NEAR A CIRCLE SAW WHICH EMITS A HIGH PITCHED SOUND. AFTER THIS, CLAIMANT NOTICED A CONSTANT RINGING IN BOTH EARS. HE ALSO EXPERIENCED INTERMITTENT HEADACHES PARTICULARLY WHEN THE CIRCLE SAW WAS IN OPERATION.

CLAIMANT WAS GIVEN AN AUDIOMETRIC EXAMINATION BY DR. HARTZELL WHO, AFTER THE SECOND AUDIOGRAM PERFORMED ON JUNE 27, 1974, EXPRESSED HIS OPINION THAT CLAIMANT'S HEARING IMPAIRMENT COULD BE A DIRECT RESULT OF EXPOSURE TO OCCUPATIONAL NOISE. ON SEPTEMBER 23, 1974, DR. JAMES ANDRUES GAVE CLAIMANT AN AUDIOMETRIC EVALUATION WHICH REVEALED AUDITORY ACUITY WITHIN NORMAL LIMITS BILATERALLY FOR FREQUENCIES UP THROUGH AND INCLUDING 1000 HERTZ AND MODERATELY SEVERE IMPAIRMENT BILATERALLY FOR FREQUENCIES ABOVE 1000 HERTZ. DR. METTLER EXAMINED CLAIMANT BUT DID NOT TEST HIM, HOWEVER, AFTER REVIEWING THE WORKUP OF SEPTEMBER 23, 1974, REPORTED THAT IT SHOWED 0 PERCENT HEARING LOSS IN BOTH EARS AND THE SPEECH RECEPTION THRESHOLD CONFIRMED THIS WITH A 4 DECIBEL LOSS IN BOTH EARS.

THE EMPLOYER CONTENDS THAT BECAUSE CLAIMANT HAS NORMAL HEARING BILATERALLY FOR FREQUENCIES UP THROUGH AND INCLUDING 1000 HERTZ THAT HE HAS ONLY SUFFERED A HIGH TONE LOSS IN BOTH EARS WHICH IS NOT COMPENSABLE BY STATUTE. NORMAL HEARING INCLUDES THE HIGH FREQUENCIES, A LOSS IN THOSE FREQUENCIES IS A LOSS OF NORMAL HEARING WITHIN THE MEANING OF THE STATUTE. IN THE MATTER OF THE COMPENSATION OF OSCAR PRIVETTE, CLAIMANT, (UNDERSCORED) WCB CASE NO. 73-1563.

THE REFEREE CONCLUDED THAT CLAIMANT'S BILATERAL HIGH FREQUENCY HEARING IMPAIRMENT WAS A DIRECT RESULT OF EXPOSURE TO OCCUPATIONAL NOISE AND WAS COMPENSABLE. ALTHOUGH DR. HARTZELL'S MEDICAL OPINION INCLUDED THE WORDS, 'COULD BE', THE DISTINCTION BETWEEN PROBABILITY AND POSSIBILITY SHOULD NOT FOLLOW TOO SLAVISHLY THE WITNESSES CHOICE OF WORDS, AS SOMETIMES HAPPENS IN RESPECT TO MEDICAL TESTIMONY. 3 LARSON WORKMEN'S COMPENSATION LAW (UNDERSCORED) 80.32.

HOWEVER, THE REFEREE CONCLUDED THAT CLAIMANT HAD FAILED TO PROVE THAT HIS TINNITIS CONDITION WAS CAUSALLY CONNECTED TO THE INDUSTRIAL NOISE EXPOSURE, THEREFORE, THAT CONDITION WAS NOT COMPENSABLE.

THE BOARD, ON DE NOVO REVIEW, NOTES THAT DR. ANDRUES, IN HIS REPORT OF OCTOBER 8, 1974 TO THE EMPLOYER'S CARRIER POINTS OUT THAT THE PURE TONE THRESHOLD CONFIGURATION OBSERVED BY HIM WHEN HE MADE HIS AUDIOMETRIC EVALUATION OF CLAIMANT ON SEPTEMBER 23, 1974 WAS SIMILAR TO THAT OBSERVED WITH CASES WHICH ARE MEDICALLY DIAGNOSED AS NOISE INDUCED HEARING LOSS. THIS WOULD AUGMENT THE OPINION EXPRESSED BY DR. HARTZELL THAT CLAIMANT'S HEARING IMPAIRMENT COULD BE A DIRECT RESULT OF EXPOSURE TO OCCUPATIONAL NOISE. THE BOARD CONCURS IN THE CONCLUSIONS CLEARLY EXPRESSED BY THE REFEREE IN HIS OPINION AND ORDER.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 4, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED, AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW, THE SUM OF 200 DOLLARS, PAYABLE BY THE EMPLOYER, WILLAMETTE INDUSTRIES, INC.

WCB CASE NO. 74-1930 OCTOBER 21, 1975

JEAN CHISHOLM, CLAIMANT

FRANKLIN, BENNETT, OFELT AND JOLLES,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER OF DISMISSAL

ON AUGUST 27, 1975, A REFEREE'S OPINION AND ORDER WAS ISSUED IN THE ABOVE ENTITLED MATTER.

ON SEPTEMBER 30, 1975 THE CLAIMANT REQUESTED A REVIEW BY THE BOARD.

MORE THAN 30 DAYS ELAPSED BETWEEN THE MAILING OF THE REFEREE'S ORDER AND THE REQUEST FOR REVIEW. THE REFEREE'S ORDER HAS BECOME FINAL BY OPERATION OF LAW IN ACCORDANCE WITH ORS 656.289(3) AND THE CLAIMANT'S REQUEST FOR REVIEW SHOULD BE DISMISSED.

IT IS SO ORDERED.

WCB CASE NO. 74-3933 OCTOBER 21, 1975

RAYMOND HOSKIN, CLAIMANT

BAILEY, DOBLIE AND BRUUN,
CLAIMANT'S ATTYS.
PHILIP A. MONGRAIN, DEFENSE ATTY.
ORDER OF DISMISSAL

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. 74-4253 OCTOBER 21, 1975

LARRY JACK PILGER, CLAIMANT

STULTS, MURPHY AND ANDERSON, CLAIMANT'S ATTYS.
FORD AND COWLING, DEFENSE ATTYS.
ORDER APPROVING STIPULATION

FROM THE FILES AND RECORDS OF THE WORKMEN'S COMPENSATION BOARD, IT APPEARS THAT -

1) CLAIMANT CONTENDS HE WAS INJURED WHILE EMPLOYED BY THE EMPLOYER ON OR ABOUT AUGUST 20 OR 21, 1974.

2) FOLLOWING A DENIAL BY THE EMPLOYER, CLAIMANT REQUESTED A HEARING, AND AFTER SAID HEARING, THE REFEREE FOUND THE CLAIM COMPENSABLE ORDERING THE EMPLOYER TO ACCEPT THE CLAIM AND PAY PENALTIES AND ATTORNEY FEES.

3) THE MATTER IS NOW BEFORE THE BOARD UPON REQUEST FOR REVIEW BY THE EMPLOYER.

THE PARTIES NOW WISH TO COMPROMISE AND DISPOSE OF THE MATTER IN ACCORDANCE WITH ORS 656.289(4) AND HAVE PRESENTED THE BOARD WITH A STIPULATION FOR DISPUTED CLAIMS SETTLEMENT, WHICH IS ATTACHED HERETO AND MADE A PART HEREOF.

THE BOARD BEING NOW FULLY ADVISED, FINDS -

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

2) THAT THE SETTLEMENT AGREEMENT IS FAIR AND EQUITABLE.

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

IT IS SO ORDERED.

STIPULATION FOR DISPUTED CLAIMS SETTLEMENT

IT IS STIPULATED BY THE PARTIES AND THEIR ATTORNEYS AS FOLLOWS -

1) CLAIMANT CONTENDS HE WAS INJURED WHILE EMPLOYED BY EMPLOYER ON OR ABOUT AUGUST 20 OR 21, 1974.

2) THE COMPENSABILITY OF THE CLAIM WAS DENIED BY EMPLOYER AND THEREAFTER CLAIMANT FILED A REQUEST FOR HEARING, A COPY OF WHICH IS ATTACHED AS EXHIBIT 'A'.

3) FOLLOWING HEARING AN ORDER WAS ENTERED BY HEARING OFFICER KIRK A. MULDER DATED JULY 24, 1975 ORDERING THAT EMPLOYER ACCEPT THE CLAIM AND PAY CLAIMANT PENALTIES AND ATTORNEY FEES. A COPY OF THE OPINION AND ORDER IS ATTACHED AND INCORPORATED AS EXHIBIT 'B'.

4) THEREAFTER THE EMPLOYER FILED A REQUEST FOR REVIEW, A COPY OF WHICH IS ATTACHED AND INCORPORATED AS EXHIBIT 'C', AND THE REVIEW IS PRESENTLY PENDING BEFORE THE WORKMEN'S COMPENSATION BOARD OF THE STATE OF OREGON.

5) THE PARTIES TO THIS STIPULATION DESIRE TO COMPROMISE THIS CLAIM PURSUANT TO ORS 656.289, RECOGNIZING THAT A BONA FIDE DISPUTE EXISTS AS TO THE COMPENSABILITY OF THIS CLAIM.

6) CLAIMANT FULLY RECOGNIZES THAT THE SETTLEMENT CONTEMPLATED BY THIS STIPULATION WOULD RELEASE THE EMPLOYER FROM ANY FURTHER LIABILITY IN CONNECTION WITH THIS CLAIM AND THAT SUCH SETTLEMENT WOULD CONSTITUTE A FINAL DISPOSITION OF THIS MATTER AND PRECLUDE ANY LATER CLAIMS AGAINST EMPLOYER FOR COMPENSATION ARISING FROM THE ACCIDENT DESCRIBED IN EXHIBIT 'A', INCLUDING ANY CLAIM FOR AGGRAVATION.

7) THE EMPLOYER HAS OFFERED TO PAY CLAIMANT THE SUM OF 4,788.48 DOLLARS, OF WHICH 2,311.68 DOLLARS HAS BEEN PAID, AND AN ADDITIONAL SUM OF 800 DOLLARS TO CLAIMANT'S ATTORNEY, EDWARD M. MURPHY.

8) CLAIMANT DESIRES TO ACCEPT THIS AMOUNT, IN FULL AND FINAL SETTLEMENT OF HIS CLAIM AGAINST EMPLOYER ARISING FROM THE ACCIDENT DESCRIBED IN EXHIBIT 'A'.

9) THE PARTIES REQUEST THAT THE PARTIES REVIEW THIS STIPULATION AND ENTER ITS ORDER APPROVING THIS PROPOSED SETTLEMENT.

SAIF CLAIM NO. OD 14644 OCTOBER 21, 1975

GEORGE DILLON, CLAIMANT

DEPARTMENT OF JUSTICE, DEFENSE ATTY.
ORDER OF REMAND

ON OCTOBER 14, 1965 CLAIMANT WAS AWARDED PERMENENT TOTAL DISABILITY BY CLAIMS COMMITTEE ACTION WHICH WAS PREDICTED UPON A RECOMMENDATION FROM DR. ROSE DATED SEPTEMBER 28, 1965.

ON OCTOBER 14, 1974, THE STATE ACCIDENT INSURANCE FUND REQUESTED THE WORKMEN'S COMPENSATION BOARD TO EXERCISE ITS OWN

MOTION JURISDICTION PURSUANT TO ORS 656.278 AND GIVE CONSIDERATION TO CANCELLATION OF THE PERMANENT TOTAL DISABILITY AWARD. THE REQUEST WAS SUPPORTED BY FINDINGS AND OPINIONS EXPRESSED BY DR. MALINER IN HIS REPORT OF SEPTEMBER 18, 1975.

THE BOARD IS OF THE OPINION THAT THIS MATTER SHOULD BE REMANDED TO THE HEARINGS DIVISION TO SET THE MATTER FOR HEARING, AFTER DUE NOTICE TO ALL PARTIES CONCERNED, FOR THE TAKING OF EVIDENCE WITH RESPECT TO CLAIMANT'S PRESENT CONDITION. UPON THE CONCLUSION OF THE HEARING, THE REFEREE SHALL SUBMIT HIS FINDINGS AND RECOMMENDATIONS TO THE BOARD WITH COPIES OF SAME FURNISHED TO ALL PARTIES PRESENT AND-OR REPRESENTED AT THE HEARING.

IT IS SO ORDERED.

WCB CASE NO. 74-3194 OCTOBER 22, 1975

NORMAN R. SHOOK, CLAIMANT
DON G. SWINK, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH GRANTED CLAIMANT AN AWARD OF PERMANENT AND TOTAL DISABILITY.

CLAIMANT SUSTAINED A COMPENSABLE INJURY NOVEMBER 30, 1971 WHEN, WHILE WORKING AS A SHEETROCK INSTALLER, HE FELL FROM STILTS LANDING ON HIS HEAD AND LEFT SHOULDER. THE FIRST DETERMINATION ORDER AWARDED 5 PER CENT FOR UNSCHEDULED NECK AND SHOULDER DISABILITY. THEREAFTER, THE CLAIM WAS REOPENED, CLAIMANT UNDERWENT SURGERY (A HEMILAMINECTOMY) AND A SECOND DETERMINATION ORDER AWARDED AN ADDITIONAL 15 PER CENT UNSCHEDULED DISABILITY, MAKING A TOTAL OF 20 PER CENT.

CLAIMANT WAS UNABLE TO RETURN TO CARPENTRY WORK WHICH WAS HIS PRINCIPAL OCCUPATION. SEVERAL EMPLOYERS FOR WHOM CLAIMANT HAD WORKED GAVE HIM CHANCES TO WORK BUT CLAIMANT WAS NOT PHYSICALLY ABLE TO DO ANY OF THESE JOBS. THE REFEREE CONCLUDED CLAIMANT HAD MADE A PRIMA FACIE CASE THAT HE FELL WITHIN THE ODD-LOT DOCTRINE AND THAT THE FUND HAD FAILED TO SHOW THAT THERE WAS ANY REGULAR, SUITABLE AND GAINFUL EMPLOYMENT AVAILABLE TO CLAIMANT.

THE BOARD, ON DE NOVO REVIEW, IS OF THE OPINION THAT REHABILITATIVE SERVICES ARE THREE YEARS PAST DUE AND CLAIMANT'S PREDICAMENT OF NOT HAVING GAINFUL EMPLOYMENT AT THE PRESENT TIME IS A DIRECT FAILURE OF THE SYSTEM. HAD SOME AGENCY FOLLOWED THROUGH ON THE RECOMMENDATIONS OF THE PHYSICIANS WHO TREATED AND-OR EXAMINED CLAIMANT RIGHT AFTER HIS CLAIM WAS CLOSED, IT IS VERY PROBABLE THAT CLAIMANT COULD HAVE BEEN SUCCESSFULLY RETRAINED. THIS WAS NOT DONE AND THE BOARD CONCLUDES THAT CLAIMANT IS NOW PERMANENTLY AND TOTALLY DISABLED.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 31, 1975 IS AFFIRMED.

COUNSEL FOR CLAIMANT IS AWARDED AS A REASONABLE ATTORNEY'S FEE THE SUM OF 450 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-3634 OCTOBER 22, 1975

DENNIS MAY, CLAIMANT

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

REVIEWED BY COMMISSIONERS SLOAN AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF AN ORDER OF THE REFEREE WHICH AFFIRMED THE DENIAL OF THE STATE ACCIDENT INSURANCE FUND OF CLAIMANT'S CLAIM FOR AN INDUSTRIAL INJURY.

THE ISSUES RAISED AT THE HEARING WERE COMPENSABILITY FOR AN INCIDENT WHICH OCCURRED ON APRIL 18, 1974, THE TIMELINESS OF THE REQUEST FOR HEARING PURSUANT TO ORS 656.319(2)(A), AND FAILURE OF THE FUND TO PAY COMPENSATION PURSUANT TO ORS 656.262(4).

THE REFEREE DID NOT RULE UPON THE COMPENSABILITY OF THE CLAIM BUT HELD THAT CLAIMANT HAD NOT SHOWN GOOD CAUSE WHY HIS REQUEST FOR HEARING HAD NOT BEEN FILED WITHIN 60 DAYS AFTER HE HAD RECEIVED THE NOTICE OF DENIAL FROM THE FUND.

CLAIMANT ALLEGES THAT HE SUFFERED A COMPENSABLE INJURY ON APRIL 18, 1974 WHILE CLEANING CASTINGS WHICH WEIGHED UP TO 400 POUNDS. CLAIMANT TWISTED HIS BODY, CAUSING PAIN IN HIS BACK AND RIGHT LEG. PLACING ANY WEIGHT ON HIS RIGHT LEG CAUSED PAIN AND LATER ON THE SAME DAY CLAIMANT TOLD THE FOUNDRY MANAGER THAT HIS BACK WAS BOTHERING HIM AND HE WAS HAVING TROUBLE WALKING BECAUSE OF HIS LEG. AT THAT TIME CLAIMANT TOLD THE MANAGER HE HAD HAD A PREVIOUS INJURY IN 1967 AND HE WASN'T SURE WHETHER THE PRESENT PROBLEMS WERE CAUSED BECAUSE OF THAT OR BECAUSE OF A NEW INJURY. THE MANAGER ASKED CLAIMANT TO WORK A LITTLE LONGER AS THEY HAD A LARGE ORDER TO GET OUT BY THE NEXT WEEK AND CLAIMANT TRIED TO DO SO BUT HE CONTINUED TO HAVE TROUBLE WITH HIS LEG ESPECIALLY WHILE CLIMBING LADDERS OR DOING ANY LIFTING AND WAS UNABLE TO WORK MORE THAN FOUR DAYS. THE MANAGER ASKED HIM TO SEE A DOCTOR BEFORE THE END OF THE WEEK AND CLAIMANT MADE AN APPOINTMENT TO SEE DR. TEAL, AN ORTHOPEDIST IN MCMINNVILLE. DR. TEAL CHECKED HIM OUT THOROUGHLY AND THEN PLACED HIM IN THE HOSPITAL, FIRST, TELLING CLAIMANT TO OBTAIN A LEAVE OF ABSENCE FROM THE FOUNDRY. CLAIMANT OBTAINED A LEAVE OF ABSENCE FORM, FILLED IT OUT, SIGNED IT AND GAVE IT TO THE LADY IN CHARGE OF THE OFFICE. IT WAS HIS UNDERSTANDING THAT HE WOULD NOT HAVE TO COME BACK TO WORK UNTIL JULY 9. AFTER CLAIMANT WAS DISCHARGED FROM THE HOSPITAL HE FILED A FORMAL CLAIM WHICH WAS SIGNED BY THE EMPLOYER ON JUNE 18, 1974 AND ON JUNE 26, 1974 THE CLAIM WAS DENIED.

THE EVIDENCE INDICATES THAT SHORTLY AFTER THE NOTICE OF DENIAL WAS MAILED, CLAIMANT RECEIVED IT, READ IT AND INTENDED TO CONTEST IT, HOWEVER, THE NOTICE WAS PLACED IN A BUREAU DRAWER AND WHEN CLAIMANT, A WEEK LATER, TOOK THE NOTICE OUT HE DISCOVERED THAT HIS THREE YEAR OLD DAUGHTER HAD TORN AND MUTILATED IT TO THE EXTENT

THAT IT WAS IMPOSSIBLE TO DETERMINE TO WHOM HE HAD TO MAKE THE NOTICE OF APPEAL. ON AUGUST 18, 1974 CLAIMANT WROTE SAIF (THIS WAS THE ONLY LEGIBLE MATTER REMAINING ON THE NOTICE OF DENIAL) ASKING IT TO RECONSIDER THE DENIAL. THE FUND DID NOTHING WITH RESPECT TO THIS LETTER, IT NEITHER ANSWERED IT NOR FORWARDED IT TO THE WORKMEN'S COMPENSATION BOARD. SUBSEQUENTLY, HAVING HEARD FROM NO ONE WITH RESPECT TO THE REQUEST FOR RECONSIDERATION CLAIMANT SOUGHT LEGAL ADVICE FROM AN ATTORNEY WHO IMMEDIATELY FILED A REQUEST FOR HEARING WITHIN THE 180 DAY TIME LIMIT.

THE OPINION AND ORDER INDICATES THE REFEREE WAS AWARE THAT THE NOTICE OF DENIAL HAD BEEN MUTILATED AND ALSO THAT A LETTER PROTESTING THE DENIAL AND ASKING THE FUND TO RECONSIDER HAD BEEN MAILED BY CLAIMANT TO THE FUND WITHIN THE 60 DAY PERIOD AND THAT THE CLAIMANT AND HIS WIFE WERE NOT AWARE OF THE DIFFERENCE BETWEEN THE STATE ACCIDENT INSURANCE FUND AND THE WORKMEN'S COMPENSATION BOARD, HOWEVER, THE REFEREE DID NOT CONSTRUE THESE FACTS TO BE GOOD CAUSE FOR FAILING TO FILE THE REQUEST WITHIN 60 DAYS.

WITH RESPECT TO THE FUND'S FAILURE TO MAKE PAYMENT OF COMPENSATION NO LATER THAN 14 DAYS AFTER NOTICE OR KNOWLEDGE OF THE CLAIM, THE REFEREE FOUND THAT THE FIRST TIME THE EMPLOYER KNEW OF THE INJURY WAS, ACCORDING TO THE FORM 801, ON APRIL 29, 1974. THE EMPLOYER CLAIMED THAT CLAIMANT REPORTED HIS BACK CONDITION WAS FOR AN OLD INJURY SUFFERED IN CALIFORNIA. THE REFEREE FOUND THERE WAS NO INDICATION THAT THERE WAS A CLAIM WITHIN THE MEANING OF THE STATUTE WHICH STATES THAT A CLAIM MEANS A WRITTEN REQUEST FOR COMPENSATION FROM A SUBJECT WORKMAN FOR A COMPENSABLE INJURY OR OF WHICH A SUBJECT EMPLOYER HAS NOTICE OR KNOWLEDGE, THEREFORE, THE FUND WAS NOT REQUIRED TO PAY ANY COMPENSATION PURSUANT TO ORS 656.262(4).

THE BOARD, ON DE NOVO REVIEW, DISAGREES WITH THE CONCLUSIONS REACHED BY THE REFEREE. THE CLAIMANT ADMITTED HE RECEIVED THE NOTICE OF DENIAL, HAD DISCUSSED IT WITH HIS WIFE AND WAS GOING TO APPEAL IT. HE ALSO ADMITTED THAT HAVING READ THE NOTICE, HE KNEW HE HAD TO FILE A REQUEST FOR HEARING WITHIN 60 DAYS. UNFORTUNATELY, HIS YOUNG DAUGHTER FOUND THE NOTICE AND MUTILATED IT SO BADLY THAT IT WAS IMPOSSIBLE FOR CLAIMANT TO DETERMINE TO WHOM HE SHOULD ADDRESS HIS REQUEST FOR HEARING. HE ONLY KNEW THAT HE HAD TO DO SOMETHING WITHIN 60 DAYS AND HE WROTE A LETTER TO THE FUND PROTESTING THE DENIAL.

IN THE BOARD'S OPINION THIS SHOULD HAVE PUT THE FUND ON NOTICE THAT CLAIMANT WAS REQUESTING A HEARING WITH RESPECT TO THE DENIED CLAIM. THE BOARD REALIZES THAT THE FUND DID ADVISE THE CLAIMANT, INITIALLY, IN ITS NOTICE OF DENIAL, NEVERTHELESS, WHEN IT RECEIVED THIS LETTER, DATED AUGUST 18, 1974, FROM CLAIMANT IT SHOULD HAVE EITHER FORWARDED THE LETTER TO THE WORKMEN'S COMPENSATION BOARD WHERE IT WOULD HAVE BEEN TREATED AS A REQUEST FOR HEARING OR, AS A MATTER OF COURTESY, ACKNOWLEDGED THE LETTER AND ADVISED CLAIMANT THAT HE HAD NOT MADE A PROPER REQUEST FOR HEARING. IT CHOSE TO DO NOTHING AND, AT THE HEARING, RELIED SOLELY ON THE STRICT INTERPRETATION OF THE STATUTE.

THE BOARD CONCLUDES THAT EVEN IF A STRICT INTERPRETATION OF THE STATUTE IS DEMANDED THE CLAIMANT HAS SHOWN GOOD CAUSE FOR HIS FAILURE TO FILE THE REQUEST BY THE 60TH DAY AFTER THE NOTIFICATION OF DENIAL AND HE IS THEREFORE ENTITLED TO A HEARING ON THE DENIAL OF HIS CLAIM.

THE BOARD CONCLUDES THAT WHEN CLAIMANT ADVISED THE FOUNDRY MANAGER THAT HE WAS HAVING TROUBLE WITH HIS BACK AND LEG, ALTHOUGH HE WASN'T SURE WHETHER IT WAS FROM A NEW INJURY OR AN OLD INJURY, AND WHEN HE FILLED OUT A LEAVE OF ABSENCE SLIP IN ORDER TO UNDERGO HOSPITALIZATION THAT THE EMPLOYER HAD KNOWLEDGE THAT CLAIMANT MIGHT HAVE SUSTAINED A COMPENSABLE INJURY. THE EMPLOYER SHOULD HAVE PROCESSED THE CLAIM PURSUANT TO ORS 656.264(4) AND SHOULD HAVE PAID CLAIMANT TIME LOSS FROM THAT DATE UNTIL THE DATE OF DENIAL.

ALTHOUGH THE REFEREE DID NOT RULE UPON THE COMPENSABILITY OF THE CLAIM IT WAS AN ISSUE BEFORE HIM AND EVIDENCE WAS RECEIVED WITH RESPECT THERETO. THE BOARD, BASED ON ITS DE NOVO REVIEW, CONCLUDES THAT THE EVIDENCE WAS SUFFICIENT TO JUSTIFY A FINDING THAT CLAIMANT HAD SUFFERED A COMPENSABLE INJURY ON APRIL 18, 1974.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 11, 1975 IS REVERSED.

THE CLAIMANT'S CLAIM IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR THE PAYMENT OF COMPENSATION, AS PROVIDED BY LAW, COMMENCING ON APRIL 18, 1974 UNTIL CLAIM CLOSURE IS AUTHORIZED PURSUANT TO ORS 656.268. THE FILING OF AN APPEAL FROM THIS ORDER BY THE STATE ACCIDENT INSURANCE FUND DOES NOT STAY PAYMENT OF COMPENSATION TO THE CLAIMANT.

CLAIMANT'S COUNSEL IS AWARDED, AS A REASONABLE ATTORNEY'S FEE, THE SUM OF 650 DOLLARS FOR HIS SERVICES AT THE HEARING BEFORE THE REFEREE AND THE SUM OF 350 DOLLARS, AS A REASONABLE ATTORNEY'S FEE, FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW, BOTH SUMS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 74-2930 OCTOBER 22, 1975

KENNETH BARROW, CLAIMANT

AND IN THE MATTER OF THE COMPLYING STATUS
OF JACQUELINE RUNYON, DBA, S.O.S. TOWING
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTYS.
MARVIN S. NEPOM, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT HAS REQUESTED BOARD REVIEW OF THE REFEREE'S ORDER WHICH DENIED HIS CLAIM FOR WORKMEN'S COMPENSATION BENEFITS.

THE MATTER ORIGINALLY COMMENCED AS A SUBJECTIVITY CASE WITH AN INJURED WORKMAN, HOWEVER, AT THE HEARING THE EMPLOYER STIPULATED SHE WAS A SUBJECT NONCOMPLYING EMPLOYER DURING THE TIME INVOLVED AND THE REFEREE PROCEEDED ON THE SOLE ISSUE OF THE COMPENSABILITY OF THE WORKMAN'S CLAIM FOR AN INDUSTRIAL INJURY.

CLAIMANT ALLEGES HE WAS EMPLOYED BY MR. RUNYON TO WORK FOR S.O.S. TOWING ON FEBRUARY 7, 1972 AND FURTHER ALLEGES THAT HE WORKED FOR THAT COMPANY UNTIL AN ACCIDENT OCCURRED EARLY IN THE MORNING OF FEBRUARY 12, 1972. MR. RUNYON TESTIFIED THAT HE WAS NOT AN EMPLOYEE OF S.O.S. TOWING, HAD NO BUSINESS INTEREST IN IT

AND HAD NO AUTHORITY TO HIRE NOR FIRE EMPLOYEES OF S. O. S. TOWING. MRS. RUNYON DENIED THAT CLAIMANT WAS EVER ON THE PAYROLL OF S. O. S. TOWING OR THAT HE WAS AN EMPLOYEE.

THE REFEREE, AFTER HEARING AND OBSERVING THE CLAIMANT AND MR. RUNYON TESTIFY, STATED HE HAD NO FAITH IN THEIR TRUTHFULNESS AND DID NOT BELIEVE THEIR TESTIMONY, HE FELT BOTH LACKED CREDIBILITY. THE REFEREE FURTHER CONCLUDED THAT CLAIMANT HAD FAILED TO MEET THE BURDEN OF PROOF AND, THEREFORE, HIS REQUEST FOR WORKMEN'S COMPENSATION BENEFITS SHOULD BE DENIED.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE REFEREE AND AFFIRMS AND ADOPTS THEM AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 11, 1975 IS AFFIRMED.

WCB CASE NO. 75-360 OCTOBER 22, 1975

MICHAEL BARKER, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT SEEKS BOARD REVIEW OF A REFEREE'S ORDER AFFIRMING THE DETERMINATION ORDER OF DECEMBER 23, 1974 WHICH AWARDED CLAIMANT 7.5 DEGREES FOR 5 PER CENT RIGHT ARM DISABILITY AND ORDERING PAYMENT OF TEMPORARY PARTIAL DISABILITY TO BE PAID, SUBJECT TO ANY OVERPAYMENT, ON AND AFTER SUCH TIME AS CLAIMANT PROVIDES THE PREREQUISITE EARNINGS DATA ON WHICH TO MAKE SUCH DETERMINATION, AS PRESCRIBED BY ORS 656.212.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON OCTOBER 31, 1973, BUT CONTINUED TO WORK UNTIL NOVEMBER 14, 1973 WHEN HE WAS SEEN BY DR. COTTEL WHO DIAGNOSED RADICULITIS, RIGHT CERVICAL, SECONDARY TO TRAUMA. CLAIMANT WAS COMPLAINING OF NUMBNESS IN HIS ARMS AND SOME HEAD PAIN AND HE WAS REFERRED TO DR. PERKINS, A NEUROSURGEON, WHOSE IMPRESSION WAS THAT OF PROBABLE CERVICAL STRAIN SYMPTOMATOLOGY. CLAIMANT DID NOT IMPROVE WITH RECOMMENDED CONSERVATIVE THERAPY AND WAS SUBSEQUENTLY SEEN BY DR. ADAMS, AN ORTHOPEDIC SURGEON, WHO, ON APRIL 29, 1974, SURGICALLY RELEASED THE RIGHT CARPAL TUNNEL. CLAIMANT WAS ADVISED TO ATTEMPT WORKING ON MAY 24, 1974 AND WAS CONSIDERED MEDICALLY STATIONARY ON OCTOBER 21, 1974.

ON JULY 26, 1974 THE EMPLOYER'S CARRIER WROTE CLAIMANT'S ATTORNEY ASKING FOR INFORMATION ON CLAIMANT'S INCOME FROM HIS LANDSCAPING BUSINESS SO THAT IT WOULD BE IN A POSITION TO COMPUTE TEMPORARY PARTIAL DISABILITY PAYMENTS. THE CARRIER AGAIN WROTE TO CLAIMANT'S ATTORNEY ON AUGUST 21, 1974 STATING HE HAD STILL RECEIVED NO INFORMATION AND THAT, ALTHOUGH A CHECK FOR ONE WEEK OF TEMPORARY TOTAL DISABILITY BENEFITS WOULD BE ISSUED, THE BENEFITS WOULD BE DISCONTINUED UNTIL THE EARNINGS STATEMENT WAS RECEIVED AS REQUESTED. NO RESPONSE WAS MADE TO THE SECOND REQUEST.

THE DETERMINATION ORDER HAD AWARDED TEMPORARY TOTAL DISABILITY

BENEFITS FROM NOVEMBER 13, 1973 THROUGH MAY 22, 1974 AND TEMPORARY PARTIAL DISABILITY PAYMENTS FROM MAY 23, 1974 THROUGH AUGUST 21, 1974 IN ADDITION TO THE AWARD FOR THE RIGHT ARM DISABILITY. THE TEMPORARY TOTAL DISABILITY BENEFITS WERE PAID FROM NOVEMBER 13, 1973 THROUGH AUGUST 13, 1974.

ON JANUARY 22, 1975 THE CLAIMANT'S WIFE GAVE CLAIMANT'S ATTORNEY CERTAIN DATA RELATING TO INCOME AND EXPENSES FROM JANUARY 1, 1974 THROUGH JUNE 30, 1974, WHICH HE FORWARDED TO THE CARRIER. ON FEBRUARY 13, 1975 THE CARRIER NOTIFIED CLAIMANT'S ATTORNEY THAT THE PERMANENT PARTIAL DISABILITY AWARD WAS DEDUCTED FROM WHAT WAS CONSIDERED TO BE A TEMPORARY TOTAL DISABILITY OVERPAYMENT AND THAT THE WAGE DATA WAS NECESSARY SO THAT TEMPORARY PARTIAL DISABILITY BENEFITS COULD BE PAID AS AWARDED BY THE DETERMINATION ORDER. THE ATTORNEY ADVISED THE CARRIER THAT HE HAD ALREADY PROVIDED THEM WITH ALL THE INFORMATION WHICH HAD BEEN GIVEN TO HIM BY CLAIMANT.

THE REFEREE FOUND THAT THE PRINCIPAL IMPAIRMENT COMPLAINED OF WAS LOSS OF STRENGTH, NUMBNESS, ACHING AND OCCASIONAL SHOCK-LIKE FEELING IN THE RIGHT ARM AND HAND, HOWEVER, CLAIMANT TESTIFIED THAT HIS HAND WAS BETTER THAN IT HAD BEEN. THE REFEREE CONCLUDED THAT THE AWARD FOR THE ARM DISABILITY WAS SUFFICIENT.

ON THE SECOND ISSUE, THE REFEREE FOUND THAT TEMPORARY PARTIAL DISABILITY IS APPLICABLE TO A PERIOD OF TIME WHEN CLAIMANT'S PHYSICAL CONDITION IS IMPROVING AND DURING WHICH TIME HE IS ABLE TO RETURN TO WORK, SUBJECT TO A LOSS OF EARNING CAPACITY RELATING TO THE INJURY. THE OBLIGATION IMPOSED BY LAW ON THE EMPLOYER WHEN THE WORKMAN IS ABLE TO RESUME LIGHTER WORK IS TO PAY THE PROPORTION OF THE COMPENSATION PROVIDED FOR TEMPORARY TOTAL DISABILITY REPRESENTED BY HIS LOSS OF EARNING CAPACITY. ORS 656.212 (UNDERSCORED). THE REFEREE CONCLUDED THAT A LONG ADMINISTRATIVE PRACTICE ALLOWED AN EMPLOYER TO SEEK INFORMATION FROM THE WORKMAN TO DETERMINE HOW MUCH TO PAY TO MAKE UP THAT PROPORTION AND, IN THE INSTANT CASE, CLAIMANT HAD FAILED TO RESPOND TO THE REQUEST FOR THIS INFORMATION AND, AS OF THE DATE OF THE HEARING, HAD NOT FURNISHED ANY MEANINGFUL INFORMATION UPON WHICH THE CARRIER COULD MAKE A DETERMINATION. THEREFORE, CLAIMANT WAS NOT ENTITLED TO MAKE A CLAIM FOR PENALTIES BECAUSE OF HIS OWN INACTION, WHEN THE INFORMATION REQUIRED IS SUPPLIED TO THE EMPLOYER THEN THERE IS AN OBLIGATION IMPOSED UPON THE EMPLOYER TO PAY THE REQUIRED TEMPORARY PARTIAL DISABILITY AS REQUIRED BY ORS 656.212.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT THE EMPLOYER'S CARRIER DOES NOT HAVE THE PRIMARY DUTY OF DETERMINING TIME LOSS INVOLVED, THE CLAIMANT MUST FURNISH THE NECESSARY INFORMATION TO ALLOW THE CARRIER TO MAKE A PROPER DETERMINATION. IN THIS CASE CLAIMANT HAD AMPLE INFORMATION IN THE WAY OF INCOME TAX RETURNS AND PAYROLLS FROM WHICH IT COULD HAVE GIVEN THE REQUIRED INFORMATION TO THE CARRIER. CLAIMANT CHOSE TO COMPLETELY IGNORE THE REQUESTS MADE BY THE EMPLOYER.

THE EVIDENCE WITH RESPECT TO THE RIGHT ARM DISABILITY INDICATES ONLY A MINIMAL LOSS OF PHYSICAL FUNCTION, THE BASIS FOR EVALUATING A SCHEDULED DISABILITY, AND THE BOARD CONCLUDES THAT CLAIMANT HAS BEEN ADEQUATELY COMPENSATED BY THE AWARD MADE IN THE DETERMINATION ORDER OF DECEMBER 23, 1974.

ORDER

THE ORDER OF THE REFEREE DATED MAY 21, 1975 IS AFFIRMED.

WCB CASE NO. 74-3174 OCTOBER 22, 1975

JAMES D. DE BORD, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE, DEFENSE ATTYS.
ORDER ON REVIEW

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS REQUEST FOR REVIEW IS MADE BY THE CLAIMANT OF A REFEREE'S ORDER INCREASING CLAIMANT'S UNSCHEDULED DISABILITY TO 96 DEGREES (AN INCREASE OF 48 DEGREES) AND AFFIRMING THE SCHEDULED AWARDS OF 38.4 DEGREES FOR LEFT ARM AND 38.4 DEGREES FOR THE RIGHT ARM.

CLAIMANT, NOW 42 YEARS OF AGE, BEGAN EMPLOYMENT IN A CHEMICAL PROCESSING AND MANUFACTURING OPERATION 20 YEARS AGO, BEGINNING AS A LABORER AND ADVANCING TO PLANT PRODUCTION MANAGER. ON NOVEMBER 4, 1970, AN EXPLOSION AND FIRE OCCURRED AT THE PLANT AND CLAIMANT SUFFERED SEVERE, SECOND DEGREE BURNS TO APPROXIMATELY 35 PER CENT OF HIS BODY, BUT PRIMARILY TO HIS UPPER EXTREMITIES, FACE AND HANDS. CLAIMANT UNDERWENT EXTENSIVE CARE INCLUDING GRAFTING AND SURGICAL RELEASE OF BURN SCAR CONTRACTURES. HE RETURNED TO FULL TIME EMPLOYMENT IN OCTOBER, 1971 IN A NEWLY CREATED ADMINISTRATIVE POSITION.

CLAIMANT'S CONTENTION IS THAT HE IS ENTITLED TO A GREATER SCHEDULED AWARD FOR BOTH ARMS. THE BOARD CANNOT JUSTIFY ANY INCREASE IN LIGHT OF MEDICAL REPORTS OF DR. PARSHLEY REFLECTING TREATMENT AND EXAMINATION OVER A PERIOD OF FOUR YEARS, AND IN BASING SUCH DISABILITY SOLELY ON LOSS OF PHYSICAL FUNCTION AS REQUIRED BY LAW. THE BOARD CONCURS WITH THE REFEREE, WHO SAW CLAIMANT'S ARMS, THAT THE SCHEDULED AWARDS ARE FAIR AND EQUITABLE.

WITH RESPECT TO THE UNSCHEDULED AWARD, WHICH MUST BE BASED ON LOSS OF EARNING CAPACITY, THE BOARD NOTES THAT CLAIMANT IS NOW EARNING A LARGER SALARY THAN BEFORE THE INJURY AND, AFTER 20 YEARS EMPLOYMENT WITH THIS GROWING COMPANY, CLAIMANT PROBABLY HAS NO INTENTION OF LEAVING. THE ONLY LOSS OF EARNING CAPACITY CLAIMANT HAS SUSTAINED IS IN THE BROAD FIELD OF INDUSTRIAL RELATIONS AND THE BOARD, ON DE NOVO REVIEW, FINDS THE AWARD OF 96 DEGREES FOR UNSCHEDULED DISABILITY HAS ADEQUATELY COMPENSATED CLAIMANT IN THIS AREA.

SAIF CLAIM NO. N 817499 OCTOBER 23, 1975

LAWRENCE L. KELLOGG, CLAIMANT

JAQUA AND WHEATLEY, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

ON JUNE 7, 1974 THE BOARD REMANDED THE ABOVE ENTITLED MATTER TO THE HEARINGS DIVISION TO CONDUCT A HEARING AND RENDER AN ADVISORY OPINION TO THE BOARD ON THE QUESTION OF WHETHER THERE WAS A MATERIAL CAUSAL CONNECTION BETWEEN CLAIMANT'S 1942 INJURY AND HIS 1971 SURGERY. ON JULY 10, 1975 THE BOARD ASKED THE REFEREE ALSO TO CONSIDER THE ISSUE OF CAUSAL RELATIONSHIP BETWEEN THE 1942 INJURY

AND THE SURGERY PERFORMED BY DR. JAMES BROOKE ON FEBRUARY 20, 1974 INASMUCH AS EVIDENCE HAD BEEN PRESENTED ON THAT ISSUE AT THE TIME THE MATTER WAS HEARD BY THE REFEREE.

ON OCTOBER 7, 1975 THE REFEREE SUBMITTED HIS ADVISORY OPINION TO THE BOARD AND THE BOARD CONCURS IN THE OPINIONS EXPRESSED BY THE REFEREE AND ADOPTS THEM AS ITS OWN.

ORDER

THE ADVISORY OPINION OF THE REFEREE ENTERED OCTOBER 7, 1975 IS ATTACHED HERETO AND, BY THIS REFERENCE, MADE A PART OF THE BOARD'S OWN MOTION ORDER.

THE STATE ACCIDENT INSURANCE FUND IS ORDERED TO REOPEN CLAIMANT'S CLAIM FOR SUCH MEDICAL CARE AND TREATMENT AS HE HAS RECEIVED SINCE FEBRUARY 20, 1974 AND TO PAY CLAIMANT COMPENSATION, AS PROVIDED BY LAW, COMMENCING FEBRUARY 20, 1974 AND UNTIL HIS CLAIM IS CLOSED PURSUANT TO ORS 656.278.

COUNSEL FOR CLAIMANT IS ALLOWED, AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN SECURING THE REOPENING OF CLAIMANT'S CLAIM, THE SUM OF 400 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 74-4313 OCTOBER 23, 1975

BOB DUNN, CLAIMANT

HELTZEL AND BYERS, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CARRIER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE CNA INSURANCE COMPANY REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH DISAPPROVED ITS DENIAL OF CLAIMANT'S CLAIM, REMANDED SAID CLAIM FOR PAYMENT OF COMPENSATION UNTIL CLOSURE, ASSESSED PENALTIES FOR UNREASONABLE DELAY IN ITS DENIAL AND AWARDED CLAIMANT'S COUNSEL AN ATTORNEY'S FEE TO BE PAID BY THE EMPLOYER.

THE ISSUES BEFORE THE REFEREE WERE - (1) WAS CLAIMANT, A SOLE PROPRIETOR, COVERED BY THE CARRIER'S WORKMEN'S COMPENSATION INSURANCE POLICY, COVERING BOB DUNN DBA SUBURBAN GARBAGE, AS NAMED INSURED, AND (2) WAS THERE UNREASONABLE DELAY IN THE DENIAL OF CLAIMANT'S CLAIM?

THE FACTS ARE VERY WELL SET FORTH IN THE COMPREHENSIVE OPINION AND ORDER OF THE REFEREE AND IT IS NOT NECESSARY TO GO INTO GREAT DETAIL WITH RESPECT THERETO IN THIS ORDER. SUFFICE IT TO SAY CLAIMANT WAS THE OWNER-OPERATOR OF SUBURBAN GARBAGE FROM 1957 UNTIL THE LATE SUMMER OF 1974, HE EMPLOYED TWO MEN TO DRIVE THE TRUCKS AND HAUL GARBAGE ON THE ROUTES AND ALSO DID THESE THINGS HIMSELF. CLAIMANT CONTACTED THE GENERAL INSURANCE AGENT FOR CNA, THE AGENT WAS INVOLVED IN SELLING CNA GROUP INSURANCE PROGRAMS FOR MEMBERS OF THE NATIONAL SOLID WASTE MANAGEMENT ASSOCIATION OF WHICH CLAIMANT WAS A MEMBER. AFTER DISCUSSIONS BETWEEN CLAIMANT AND THE AGENT, BOTH BELIEVED THAT THE COVERAGE WAS SUFFICIENT TO COVER CLAIMANT AS A SUBJECT WORKMAN. HOWEVER, THE APPLICATION

FORM DID NOT INDICATE APPLICANT HAD ELECTED TO TAKE NONSUBJECT WORKER COVERAGE. AS A SOLE PROPRIETOR CLAIMANT WAS A NONSUBJECT WORKER.

NEITHER THE CARRIER NOR THE WORKMEN'S COMPENSATION BOARD QUESTIONED THE EXTENT OF COVERAGE THE PARTIES INTENDED TO PROVIDE, HOWEVER, BOTH INTERPRETED THE FORM TO MEAN THAT NO COVERAGE FOR CLAIMANT WAS REQUESTED.

ON APRIL 1, 1974 CLAIMANT WAS SERIOUSLY INJURED, HE FILED A REPORT OF INJURY AND THE CLAIM WAS ACCEPTED ON APRIL 8, 1974 AND PAYMENT COMMENCED. LATER IT WAS DETERMINED BECAUSE THERE HAD BEEN NO INDICATION IN THE APPLICATION IN THE BOX RELATING TO AN ELECTION TO COVER A NONSUBJECT WORKMAN TO DISCONTINUE PAYMENT OF BENEFITS ON AUGUST 5, 1974. ON NOVEMBER 4, 1974 THE CARRIER DENIED THE CLAIM.

THE DEFENSE RELIES UPON STRICT INTERPRETATION OF ORS 656.027(7), HOWEVER, THE REFEREE WAS NOT PERSUADED THAT STRICT COMPLIANCE WITH THOSE PROVISIONS WAS A PREREQUISITE TO AN EFFECTIVE ELECTION OF COVERAGE BY A SOLE PROPRIETOR. THE REFEREE WAS SATISFIED THAT WHEN THE AGENT FIRST APPROACHED CLAIMANT, WHO INITIALLY WAS SEEKING ONLY COVERAGE FOR GENERAL LIABILITY, AND ASSURED HIM THAT BY TAKING THE ADDITIONAL COVERAGE HE WOULD BE PROTECTED WITH RESPECT TO WORKMEN'S COMPENSATION LIABILITY AND CLAIMANT AGREED TO APPLY FOR IT THERE WAS A BONA FIDE UNDERSTANDING BETWEEN THE PARTIES THAT CLAIMANT WAS COVERED INSOFAR AS HIS EMPLOYEES AND HIMSELF WERE CONCERNED. THE AGENT FAILED TO MARK THE PROPER BLOCK ON THE APPLICATION INDICATING ELECTION FOR NONSUBJECT WORKMAN COVERAGE, NEVERTHELESS, THE AGENT BOUND THE CARRIER WHEN HE ASSURED CLAIMANT THAT HE WAS COVERED BY THE WORKMEN'S COMPENSATION ACT EVEN THOUGH, IN FACT, HE WAS NOT.

THE REFEREE DISTINGUISHED THE INSTANT CASE FROM THE CASES CITED BY DEFENSE, NAMELY, NEWMAN V. MURPHY PACIFIC CORPORATION, (UNDERSCORED) 75 ADV SH 67 AND REED V. DEL CHEMICAL CORPORATION, (UNDERSCORED) 98 ADV SH 1024. HE CONCLUDED THE EVIDENCE BEFORE HIM CLEARLY SHOWED THAT THE CAUSE FOR DELAY OCCURRED ENTIRELY WITHIN THE CONFINES OF CNA'S CORPORATE OPERATIONS, FURTHERMORE, CLAIMANT DID SUFFER PREJUDICE BY HAVING HIS WORKMEN'S COMPENSATION BENEFITS TERMINATED UNTIL SUCH TIME AS HE MIGHT SUCCESSFULLY CHALLENGE THE APPROPRIATENESS OF THE DENIAL. THEY WERE TERMINATED ON AUGUST 6, 1974, YET THE CARRIER WAITED UNTIL NOVEMBER 4, 1974 BEFORE IT ISSUED ITS DENIAL. IT WAS UNREASONABLE TO DELAY THE DENIAL BEYOND AUGUST 6, 1974 BECAUSE AS OF THAT DATE, THE CARRIER HAD ALL THE INFORMATION IT NEEDED TO EITHER CONTINUE PAYMENT OF COMPENSATION OR DENY THE CLAIM, NO ADDITIONAL EVIDENCE WAS FORTHCOMING AFTER THAT DATE.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE WELL WRITTEN OPINION AND ORDER OF THE REFEREE AND AFFIRMS AND ADOPTS IT AS ITS OWN.

BY SUPPLEMENTAL ORDER, DATED JUNE 23, 1974, THE REFEREE ALLOWED CLAIMANT'S COUNSEL A REASONABLE ATTORNEY'S FEE OF 2,695 DOLLARS. THIS WAS A RATHER UNUSUAL CASE, TOOK TWO DAYS TO HEAR AND INVOLVED SOME VERY COMPLEX QUESTIONS. BOTH PARTIES SUBMITTED WRITTEN BRIEFS TO THE REFEREE. CONSIDERING ALL THESE THINGS, THE BOARD CONCLUDES THAT THE FEE WAS JUSTIFIED. NO ADDITIONAL BRIEFS WERE FURNISHED TO THE BOARD.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 6, 1975 AND THE SUPPLEMENTAL ORDER, DATED JUNE 23, 1975, ARE AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED, AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW, THE SUM OF 250 DOLLARS, PAYABLE BY THE CARRIER, CNA INSURANCE COMPANY.

WCB CASE NO. 73-1133 OCTOBER 27, 1975

JOHN MORFORD, CLAIMANT

MYRICK, COULTER, SEAGRAVES AND NEALY,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE CLAIMANT SEEKS BOARD REVIEW OF AN ORDER OF THE REFEREE WHICH AWARDED CLAIMANT 15 PER CENT LOSS OF THE RIGHT ARM EQUAL TO 20.8 DEGREES, 35 PER CENT LOSS OF THE LEFT FOOT EQUAL TO 47.25 DEGREES, AND 85 PER CENT FOR UNSCHEDULED LUNG AND BACK DISABILITY EQUAL TO 272 DEGREES.

THE CLAIMANT SUFFERED A COMPENSABLE INJURY ON JANUARY 14, 1972 WHEN STRUCK BY A CRANE BOOM WHICH CAUSED SEVERE AND MULTIPLE BODILY INJURIES. THE CLAIM WAS ACCEPTED AND CLOSED BY DETERMINATION ORDER DATED DECEMBER 13, 1972 WHEREBY CLAIMANT WAS AWARDED 15 PER CENT LOSS OF THE RIGHT ARM EQUAL TO 20.8 DEGREES, 20 PER CENT OF THE LEFT FOOT EQUAL TO 27 DEGREES AND 20 PER CENT FOR UNSCHEDULED LUNG AND NECK DISABILITY EQUAL TO 64 DEGREES. THE REFEREE, AFTER HEARING, INCREASED THE AWARDS FOR THE LEFT FOOT AND UNSCHEDULED DISABILITY AS INDICATED ABOVE. CLAIMANT CONTENDS HE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT WAS 57 YEARS OLD AT THE TIME OF HIS 1972 INJURY. AFTER HIS INITIAL RECOVERY CLAIMANT RETURNED TO WORK BUT CONTINUED TO HAVE PROBLEMS WHICH AFFECTED HIS WORKABILITY AS A MECHANIC. CLAIMANT ALSO TRIED TRUCK DRIVING BUT THIS WAS DIFFICULT FOR HIM AND THE CONTINUATION OF HIS EMPLOYMENT WITH ALL OF HIS PHYSICAL PROBLEMS WAS DUE MOSTLY TO THE TOLERANCE OF HIS EMPLOYER. CLAIMANT WORKED UNTIL DECEMBER, 1972 ON A REGULAR BASIS AND THEN SPORADICALLY UNTIL HE QUIT IN MAY, 1973.

CLAIMANT'S FORMAL EDUCATION CEASED BEFORE HE FINISHED THE 12TH GRADE, HE HAS HAD NO SPECIAL TRAINING NOR DOES HE HAVE ANY SKILLS OTHER THAN THOSE ACQUIRED BY ACTUAL WORK EXPERIENCE. HIS WORK BACKGROUND INDICATES THE JOBS THAT HE HAS ENGAGED IN ALL REQUIRED HEAVY PHYSICAL EXERTION.

THE MAIN PROBLEM CLAIMANT HAD DURING HIS RECOVERY FROM THE INDUSTRIAL INJURY AND WHICH HAD THE GREATEST INFLUENCE UPON HIS DETERMINATION TO CEASE WORK IN MAY, 1973 WAS A BREATHING DIFFICULTY CONDITION. WHEN CLAIMANT GETS THESE ATTACKS OF BREATHLESSNESS HE MUST LIE DOWN ON THE FLOOR AND REST UNTIL HIS BREATHING RETURNS TO NORMAL. THIS CONDITION IMPOSES A MAJOR RESTRICTION AGAINST CLAIMANT'S RETURNING TO ANY OF THE TYPES OF WORK WHICH HE HAD DONE OR ANY WORK WHICH REQUIRES MUCH PHYSICAL EXERTION OR BENDING.

THE REFEREE, HOWEVER, FELT THAT CLAIMANT WOULD BE ABLE TO PERFORM CERTAIN TYPES OF SEDENTARY WORK WHERE HE WOULD BE ALLOWED TO SIT DOWN OR MOVE AROUND AS HE DESIRED AND WHICH WOULD NOT REQUIRE HIM TO BEND OVER TOO FREQUENTLY. THE REFEREE NOTED THAT CLAIMANT'S FAILURE TO HAVE ACTIVELY ATTEMPTED TO LOOK FOR WORK ON HIS OWN WAS DISTRESSING, ALTHOUGH HE FOUND THAT THE EVIDENCE INDICATED CLAIMANT HAD VERY GOOD MOTIVATION BOTH BEFORE AND AFTER HIS INJURY IN ATTEMPTING TO RETURN TO WORK AND WORKING FOR A PERIOD OF TIME AFTER HIS INJURY.

THE REFEREE CONCLUDED THAT THE MEDICAL EVIDENCE, TAKEN AS A WHOLE, WHEN COUPLED WITH THE EVIDENCE OF CLAIMANT'S AGE, EDUCATION, TRAINING AND EXPERIENCE DID NOT ESTABLISH, PRIMA FACIE, THAT CLAIMANT WAS A MEMBER OF THE ODD-LOT WORK FORCE AND WOULD ONLY BE ABLE TO CONTINUE WORKING IN SUCH A LIMITED CAPACITY. HE WAS STRONGLY PERSUADED BY THE EVIDENCE THAT CLAIMANT WAS NOT ACTIVELY SEEKING WORK ON HIS OWN AND CONCLUDED THAT CLAIMANT WAS NOT ENTITLED TO COMPENSATION FOR PERMANENT TOTAL DISABILITY.

THE BOARD, ON DE NOVO REVIEW, DISAGREES WITH THE CONCLUSION REACHED BY THE REFEREE. THE CLAIMANT IS NOW 70 YEARS OLD AND THERE IS VERY LITTLE POSSIBILITY THAT HE WILL EVER FIND A JOB WHICH HE WOULD BE ABLE TO PHYSICALLY DO OR ANY EMPLOYER WILLING TO HIRE HIM, THEREFORE, IT IS NOT IMPORTANT THAT CLAIMANT ACTIVELY SEEK EMPLOYMENT. THE MEDICAL EVIDENCE WITH RESPECT TO CLAIMANT'S PHYSICAL IMPAIRMENTS INDICATES THAT THEY ARE SUBSTANTIAL. IN KRUGEN V. BEALL PIPE AND TANK CORP., (UNDERSCORED) 19 OR APP 926, THE COURT HELD -

> 'THE EVIDENCE ESTABLISHES THAT CLAIMANT'S PHYSICAL IMPAIRMENTS ARE SUBSTANTIAL. EVEN DISREGARDING THE CLAIMANT'S AGE IT IS QUESTIONABLE THAT ANY EMPLOYER WITH KNOWLEDGE OF HIS LIMITATIONS WOULD HIRE HIM FOR ANY KIND OF WORK AND, WITH RESPECT TO THE CONCEPT OF EARNING CAPACITY, THE TOTAL INABILITY TO GAIN (UNDERSCORED) EMPLOYMENT IS JUST AS TOTALLY DISABLING AS THE INABILITY TO HOLD (UNDERSCORED) EMPLOYMENT...'

THE BOARD FINDS THAT THE MEDICAL FACTS ESTABLISHING DISABILITY WHEN CONSIDERED ALONG WITH THE OTHER FACTORS, SUCH AS AGE, EDUCATION, MENTAL CAPACITY AND TRAINING ARE SUCH THAT IT WOULD BE IMPOSSIBLE FOR CLAIMANT TO RETURN TO EMPLOYMENT, THEREFORE, HE HAS MADE A PRIMA FACIE CASE THAT HE FALLS WITHIN THE ODD-LOT DOCTRINE. THE BOARD FINDS THAT THE FUND DID NOT BRING FORTH ANY EVIDENCE TO INDICATE THAT THERE WAS ANY GAINFUL REGULAR AND SUITABLE OCCUPATION AVAILABLE TO CLAIMANT.

THE BOARD RELIES ON THE HOLDING IN MANSFIELD V. CAPLENER BROS. (UNDERSCORED), 10 OR APP 545, THAT PERMANENT AND TOTAL DISABILITY DOES NOT HAVE TO BE THE RESULT OF ITSELF OF THE DISABILITY IN THE UNSCHEDULED AREA NOR THE RESULT BY ITSELF OF SCHEDULED DISABILITY BUT RATHER THE COMBINATION OF ALL THE PHYSICAL INJURIES OF THE WORKMAN AND HIS BASIC MENTAL INADEQUACIES WILL PERMANENTLY INCAPACITATE SAID WORKMAN FROM REGULARLY PERFORMING ANY WORK AT A GAINFUL AND SUITABLE OCCUPATION.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 14, 1975 IS REVERSED.

CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED AND SHALL BE CONSIDERED AS PERMANENTLY AND TOTALLY DISABLED FROM THE DATE OF THIS ORDER.

CLAIMANT'S COUNSEL IS ALLOWED, AS A REASONABLE ATTORNEY'S FEE, IN CONNECTION WITH HIS SERVICES ON BOARD REVIEW, 25 PER CENT OF THE INCREASED COMPENSATION GRANTED BY THIS ORDER ON REVIEW, NOT TO EXCEED THE SUM OF 2,300 DOLLARS, PAYABLE OUT OF SAID INCREASED COMPENSATION AWARD.

WCB CASE NO. 74-4492 OCTOBER 27, 1975

ESPERANZA CONTRERAS, CLAIMANT

WENDELL GRONSO, CLAIMANT'S ATTY.
KOTTKAMP AND O'ROURKE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF AN ORDER OF THE REFEREE WHICH DENIED CLAIMANT'S CLAIM FOR WORKMEN'S COMPENSATION BENEFITS.

CLAIMANT IS A 59 YEAR OLD WOMAN OF MEXICAN DESCENT WHO NEITHER SPEAKS NOR COMPREHENDS ENGLISH AND THE EVIDENCE INDICATES THAT SHE WENT ONLY THROUGH THE SECOND GRADE IN MEXICO. ON JANUARY 19, 1974 CLAIMANT WAS IN THE EMPLOY OF THE EMPLOYER, SHE REPORTED FOR WORK THAT MORNING BUT, AFTER A SHORT TIME, SHE AND THREE OTHER WOMEN WERE TOLD TO GO HOME. CLAIMANT AND THE OTHER WOMEN DEPARTED FROM THE MAIN BUILDING PART OF THE PLANT AND CROSSED THROUGH A SHED ON THE EMPLOYER'S PREMISES TO THE PARKING AREA WHERE THEIR CAR WAS PARKED. ON THE WAY CLAIMANT SLIPPED AND FELL INJURING HER LEFT KNEE. THIS INCIDENT WAS WITNESSED BY TWO OF HER COMPANIONS.

CLAIMANT DID NOT REPORT THE ACCIDENT TO HER SUPERIOR BUT RETURNED TO WORK THE FOLLOWING MONDAY AND CONTINUED TO WORK THE BALANCE OF JANUARY AND FEBRUARY, 1974. HOWEVER, SHE TESTIFIED THAT WHEN SHE RETURNED ON MONDAY SHE TOLD HER FOREMAN THAT SHE WAS LIMPING BECAUSE SHE HAD 'FALLEN DOWN GETTING OUT OF HERE.' SHE DID NOT TELL THE FOREMAN EXACTLY WHERE SHE FELL. THE FOREMAN ASKED HER IF SHE HAD REPORTED THE ACCIDENT AND SHE SAID SHE DID NOT KNOW IT WAS REQUIRED. CLAIMANT DID NOT NOTIFY ANY OTHER SUPERIOR NOR DID SHE FILE A WRITTEN NOTICE OF THE ALLEGED ACCIDENT WITH THE EMPLOYER.

ON DECEMBER 12, 1974 CLAIMANT REQUESTED A HEARING AND ON JANUARY 15, 1975, THE EMPLOYER DENIED THE CLAIM ON THE GROUNDS THAT IT WAS NOT FILED IN A TIMELY MANNER.

THE REFEREE FOUND THAT CLAIMANT HAD MET HER BURDEN OF PROOF ESTABLISHING THAT SHE HAD SUSTAINED AN ACCIDENTAL INJURY ARISING OUT OF AND IN THE COURSE OF HER EMPLOYMENT ON JANUARY 19, 1974. HOWEVER, THE REFEREE FOUND THAT CLAIMANT'S CLAIM WAS BARRED UNDER THE PROVISIONS OF ORS 656.265(4) BECAUSE THE CONTRIBUTING EMPLOYER OR DIRECT RESPONSIBILITY EMPLOYER DID NOT HAVE KNOWLEDGE OF THE INJURY AND THAT THE EMPLOYER HAD BEEN PREJUDICED BY CLAIMANT'S FAILURE TO GIVE IT NOTICE. THE REFEREE ALSO FOUND THAT CLAIMANT HAD FAILED TO ESTABLISH AT THE HEARING THAT SHE HAD GOOD CAUSE FOR FAILURE TO GIVE NOTICE WITHIN 30 DAYS AFTER THE ACCIDENT.

THE BOARD, ON DE NOVO REVIEW DISAGREES WITH THE REFEREE'S CONCLUSIONS INSOFAR AS THEY RELATE TO BARRING CLAIMANT'S CLAIM FOR FAILURE TO GIVE TIMELY NOTICE OF HER INJURY. THERE ARE THREE EXCEPTIONS TO THE PROVISIONS OF ORS 656.265(4) AND A WORKMAN'S CLAIM IS

BARRED UNLESS ONE OF THESE EXCEPTIONS APPLIES. IF THE EMPLOYER HAD KNOWLEDGE OF THE INJURY OR HAS NOT BEEN PREJUDICED BY FAILURE TO RECEIVE THE NOTICE THE CLAIM WILL STAND.

THE BOARD, BEING AWARE THAT THE BURDEN IS UPON THE EMPLOYER TO ESTABLISH THAT IT HAD BEEN PREJUDICED BY THE FAILURE TO RECEIVE NOTICE, FEELS THE EVIDENCE INDICATES IN THIS CASE THAT THE EMPLOYER HAS NOT BEEN PREJUDICED TO ANY DEGREE BY CLAIMANT'S FAILURE TO FILE A CLAIM. THE EVIDENCE IS UNCONTRADICTED THAT CLAIMANT TOLD THE FOREMAN, MARTINEZ, THAT SHE HAD FALLEN DOWN LEAVING HER PLACE OF EMPLOYMENT. UNDOUBTEDLY HAD CLAIMANT HAD MORE FAMILIARITY WITH THE ENGLISH LANGUAGE SHE COULD HAVE MADE A REPORT TO THE FOREMAN WITH GREATER CLARITY, BUT CERTAINLY HER STATEMENT WAS SUFFICIENT TO PUT THE EMPLOYER, THROUGH THE INFORMATION GIVEN TO ITS FOREMAN, UPON NOTICE THAT CLAIMANT HAD POSSIBLY SUFFERED A COMPENSABLE INJURY. THE REFEREE FELT THAT THE FOREMAN'S TESTIMONY WOULD HAVE BEEN THE STRONGEST EVIDENCE BUT CLAIMANT DIDN'T CALL HIM. THE EVIDENCE INDICATES THAT THE FOREMAN WAS CALLED TO TESTIFY BY CLAIMANT'S COUNSEL BUT DID NOT APPEAR, ALSO, THERE WAS NO EVIDENCE THAT THE EMPLOYER MADE ANY ATTEMPT TO OBTAIN THE TESTIMONY OF THE FOREMAN. THEREFORE, IT APPEARS THAT THE EMPLOYER DID HAVE KNOWLEDGE, IMPUTED TO IT THROUGH THE KNOWLEDGE OF ITS FOREMAN, OF THE INJURY. THE FACT THAT THE FOREMAN DID NOT SEE FIT TO REPORT CLAIMANT'S STATEMENT TO THE EMPLOYER CANNOT BE CONSTRUED AS CLAIMANT'S FAILURE TO GIVE TIMELY NOTICE OF THE INJURY. THEREFORE, THE CLAIMANT'S CLAIM IS NOT BARRED BECAUSE IT FALLS WITHIN THE FIRST EXCEPTION.

THE SECOND EXCEPTION IS NOT APPLICABLE BECAUSE THERE WAS NO COMMENCEMENT OF PAYMENT OF COMPENSATION IN THIS CASE BY THE EMPLOYER. THE THIRD EXCEPTION IS FAILURE BY CLAIMANT TO SHOW GOOD CAUSE FOR NOT GIVING NOTICE WITHIN 30 DAYS AFTER THE ACCIDENT. AGAIN, THE BOARD FEELS THAT BECAUSE OF CLAIMANT'S UNFAMILIARITY WITH THE ENGLISH LANGUAGE, IT IS REASONABLE TO ASSUME THAT SHE DID NOT FULLY UNDERSTAND THAT A NOTICE WAS REQUIRED TO BE GIVEN TO HER EMPLOYER WITHIN 30 DAYS. THE EVIDENCE INDICATES THAT WHEN SHE MADE HER REMARK TO THE FOREMAN HE ASKED HER IF SHE HAD MADE A REPORT AND SHE SAID SHE DIDN'T KNOW ONE WAS NECESSARY. THERE IS NO EVIDENCE THAT THE EMPLOYER, THE EMPLOYER'S FOREMAN OR ANYONE IN THE EMPLOY OF THE EMPLOYER, TOOK THE TIME TO EXPLAIN TO CLAIMANT WHAT WAS NECESSARY. MANY PEOPLE WELL CONVERSANT WITH THE ENGLISH LANGUAGE STILL HAVE DIFFICULTY IN COMPREHENDING SOME OF THE TECHNICALITIES OF THE LAW.

THE BOARD CONCLUDES THAT CLAIMANT DID GIVE NOTICE WITHIN ONE YEAR OF THE ACCIDENT AND THAT SHE HAS ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE THAT SHE HAD GOOD CAUSE FOR FAILING TO GIVE NOTICE WITHIN 30 DAYS. THEREFORE, UNDER THE THIRD EXCEPTION TO THE STATUTE CLAIMANT'S CLAIM IS NOT BARRED.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 12, 1975 IS REVERSED.

CLAIMANT'S CLAIM IS REMANDED TO THE EMPLOYER, FIESTA FARMS, FOR THE PAYMENT OF COMPENSATION, AS PROVIDED BY LAW, COMMENCING ON JANUARY 19, 1974 AND UNTIL CLOSURE IS AUTHORIZED PURSUANT TO ORS 656.268.

CLAIMANT'S COUNSEL IS AWARDED, AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THE HEARING BEFORE THE REFEREE, THE SUM OF 750 DOLLARS, PAYABLE BY THE EMPLOYER.

CLAIMANT'S COUNSEL IS AWARDED, AS A REASONABLE ATTORNEY'S FEE IN CONNECTION WITH HIS SERVICES AT BOARD REVIEW, THE SUM OF 350 DOLLARS, PAYABLE BY THE EMPLOYER.

WCB CASE NO. 74-4154 OCTOBER 27, 1975

RICHARD SHORT, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT 80 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY AND 52.5 DEGREES FOR SCHEDULED LEFT LEG DISABILITY. THE REFEREE'S ORDER REPRESENTS AN INCREASE OF 48 DEGREES FOR THE UNSCHEDULED DISABILITY AND 37.5 DEGREES FOR THE LEFT LEG DISABILITY IN THE AWARDS MADE BY THE DETERMINATION ORDER DATED NOVEMBER 4, 1974.

CLAIMANT, A 50 YEAR OLD SALESMAN, SUSTAINED A COMPENSABLE BACK INJURY ON NOVEMBER 27, 1972 WHEN HE STRAINED HIS BACK WHILE CARRYING BOXES UPSTAIRS. ON FEBRUARY 14, 1973, A HEMILAMINECTOMY AT L4-L5 AND L3-L4 ON THE LEFT WAS PERFORMED BY DR. STAINSBY. CLAIMANT HAD HAD A PREVIOUS LAMINECTOMY IN 1964, BUT TESTIFIED THAT AFTER A TWO YEAR PERIOD HIS BACK PROBLEMS HAD BEEN COMPLETELY RESOLVED.

CLAIMANT HAS A HIGH SCHOOL EDUCATION PLUS ONE YEAR OF COLLEGE AND HAS WORKED MOST OF HIS LIFE AS AN OUTSIDE SALESMAN SELLING BUILDING MATERIALS. AT THE PRESENT TIME HE IS DOING SALES WORK FOR A DIFFERENT EMPLOYER, THE EMPLOYMENT INVOLVES DRIVING A COMPANY CAR, WITH FULL POWER EQUIPMENT, ABOUT 28,000 MILES A YEAR.

CLAIMANT CONTENDS HE WAS INVOLVED IN A TRAINING PROGRAM AT THE TIME HE WAS INJURED WHICH ULTIMATELY WOULD HAVE GIVEN HIM A POTENTIAL WAGE EARNING CAPACITY OF 25,000 DOLLARS TO 35,000 DOLLARS PER YEAR BUT AFTER THE INJURY HE WAS TAKEN OFF THE PROGRAM AND, THEREFORE, LOST SUBSTANTIAL FUTURE EARNING POWER. IN 1974, IN HIS PRESENT JOB, CLAIMANT EARNED 11,000 DOLLARS, ADMITTEDLY HE MAY EARN MORE IN THE FUTURE.

CLAIMANT'S PRESENT JOB REQUIRES HIM TO LIFT AND CARRY SAMPLES AND DO EXTENSIVE DRIVING, OBVIOUSLY, A MAN WITH A SEVERELY DISABLED BACK IS SOMEWHAT LIMITED IN HIS EARNING CAPACITY FOR THIS TYPE OF WORK. CLAIMANT'S BACK CONDITION HAS GREATLY IMPROVED ALTHOUGH HE TESTIFIED THAT IT WAS HIS BELIEF THAT HIS PREVIOUS EMPLOYER HAD TERMINATED HIM BECAUSE OF THE EXISTENCE OF THE BACK CONDITION.

CLAIMANT ALSO CONTENDS THAT HE HAS NO CONTROL OVER HIS LEFT BIG TOE AND THAT UNLESS HE WEARS SLIPPERS OR SHOES HE WILL FALL BECAUSE HIS BIG TOE TURNS UNDER.

THE REFEREE FOUND THAT CLAIMANT WAS HIGHLY MOTIVATED, TOOK GREAT PRIDE IN HIS SALES ACHIEVEMENTS AND UNDOUBTEDLY MAINTAINED HIS SALES AND EARNING RECORD ONLY BECAUSE OF THESE FACTORS. THE

REFEREE CONCLUDED THAT THE MERE EXISTENCE OF THE BACK DISABILITY CONSTITUTED A SUBSTANTIAL LIMITATION OF CLAIMANT'S ABILITY TO FIND WORK AND, ON THAT BASIS, MADE THE INCREASE IN THE AWARD FOR UNSCHEDULED DISABILITY.

THE REFEREE CONCLUDED THAT THERE WAS GREATER PHYSICAL IMPAIRMENT TO CLAIMANT'S LEFT LEG AND INCREASED THAT AWARD ACCORDINGLY.

THE BOARD, ON DE NOVO REVIEW, FEELS THAT THE AWARD FOR UNSCHEDULED DISABILITY IS CERTAINLY GENEROUS, HOWEVER, IT AFFIRMS THE ORDER OF THE REFEREE WITH RESPECT TO BOTH THE AWARD FOR SCHEDULED AND UNSCHEDULED DISABILITY.

ORDER

THE ORDER OF THE REFEREE DATED MAY 30, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED, AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW, THE SUM OF 350 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 74-3825 OCTOBER 27, 1975

BARNEY DAGGETT, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTYS.
MERLIN L. MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH INCREASED CLAIMANT'S AWARD FOR UNSCHEDULED NECK AND UPPER BACK DISABILITY FROM 15 PER CENT TO 50 PER CENT OF THE MAXIMUM ALLOWABLE BY STATUTE.

ON SEPTEMBER 1, 1972, CLAIMANT, A DIESEL MECHANIC, SUFFERED NECK AND UPPER BACK INJURIES WHEN THE TOP ASSEMBLY OF A SCOOP MACHINE FELL ON HIM WHILE HE WAS BENDING OVER THE ENGINE. HE HAS NOT RETURNED TO WORK SINCE THE INJURY, AND CONTENDS HE IS PERMANENTLY AND TOTALLY DISABLED AS A RESULT OF THE INJURY.

ALTHOUGH CLAIMANT HAD SUBJECTIVE COMPLAINTS ABOUT NUMEROUS CONDITIONS, ONLY ONE PHYSICAL CONDITION WAS FOUND TO BE RELATED TO HIS INDUSTRIAL INJURY. THIS WAS A STRAIN OF THE DORSO-CERVICAL AREA WHICH WAS CONSIDERED MILD BY THE EXAMINING DOCTORS AT THE BOARD'S DISABILITY PREVENTION DIVISION. DR. HILL NOTED THAT THE PATIENT WAS CONVINCED HE WAS SEVERELY DISABLED. PSYCHOLOGICAL TESTING REVEALED CLAIMANT WAS EXPERIENCING EXCESSIVE OVERFOCUS AND PREOCCUPATION WITH PHYSICAL COMPLAINTS AND EXCESSIVE ANXIETY. IT WAS FELT THE PSYCHOPATHOLOGY PREDATED THE INDUSTRIAL INJURY AND WAS AGGRAVATED BY IT TO A MODERATE DEGREE. PROGNOSIS FOR HIS RETURN TO WORK WAS VERY POOR.

AFTER REVIEWING THE EVIDENCE AND OBSERVING CLAIMANT TESTIFY, THE REFEREE CONCLUDED THAT CLAIMANT'S PSYCHOPATHOLOGY WAS NOT TOTALLY DISABLING, HIS FAILURE TO RETURN TO WORK WAS ATTRIBUTABLE TO MALINGERING AND THERE WAS NOT A FINANCIAL NEED TO WORK. BASED ON THESE FACTS, HE FOUND THE LOSS OF WAGE EARNING CAPACITY ATTRIBUTABLE TO THE INJURY WAS 50 PER CENT.

THE BOARD, ON DE NOVO REVIEW, FEELS THE AWARD IS CERTAINLY SUFFICIENT AND CONCURS WITH THE REFEREE'S FINDINGS AND CONCLUSIONS.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 26, 1975 IS AFFIRMED.

WCB CASE NO. 74-3031 OCTOBER 27, 1975

VIVIAN MAC DOUGALL, CLAIMANT

JOHN D. RYAN, CLAIMANT'S ATTY.
JONES, LANG, KLEIN, WOLF, AND SMITH,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE CLAIMANT SEEKS BOARD REVIEW OF THE REFEREE'S ORDER WHICH DENIED CLAIMANT'S REQUEST FOR INCREASE IN THE RATE OF TEMPORARY TOTAL DISABILITY COMPENSATION PAID TO HER AND FURTHER ORDERED THAT THE EMPLOYER'S CARRIER ADJUST AND PAY TEMPORARY TOTAL DISABILITY ON THE BASIS OF AN AVERAGE WEEKLY EARNINGS EQUAL TO 28.08 DOLLARS WITH COMPENSATION RATE OF 25.27 DOLLARS.

CLAIMANT WORKED FULL TIME AS A COCKTAIL WAITRESS AT JUBITZ TRUCK STOP, EARNING 72.50 DOLLARS A WEEK. SHE ALSO EARNED 28.08 DOLLARS A WEEK WORKING PART-TIME AS A COCKTAIL WAITRESS AT THE HILTON HOTEL. THE ISSUE BEFORE THE REFEREE WAS WHETHER CLAIMANT'S TEMPORARY TOTAL DISABILITY COMPENSATION WAS TO BE COMPUTED WITH RESPECT TO THE EMPLOYMENT AT WHICH CLAIMANT WAS INJURED OR WHETHER IT SHOULD BE BASED UPON THE CLAIMANT'S INCOME FROM BOTH EMPLOYMENTS.

CLAIMANT CONTENDS THAT BECAUSE CONTRIBUTIONS WERE DEDUCTED FROM ALL OF HER EARNINGS SHE SHOULD BE ENTITLED TO AN AGGREGATE OF HER TOTAL WAGES FROM BOTH JOBS AS THE BASIS FOR THE DETERMINATION OF HER TEMPORARY TOTAL DISABILITY COMPENSATION RATE.

ORS 656.002(21) DEFINES 'WAGES' AS THE MONEY RATE AT WHICH THE SERVICE RENDERED IS RECOMPENSED UNDER THE CONTRACT OF HIRING IN FORCE AT THE TIME OF THE ACCIDENT. WHEN CLAIMANT SUFFERED A COMPENSABLE INJURY SHE WAS WORKING ON A PART-TIME BASIS AT THE HILTON HOTEL AND WAS EARNING 28.08 DOLLARS. THE INJURY WAS NOT THE RESPONSIBILITY OF ANY EMPLOYER OTHER THAN THE HILTON HOTEL. THE REFEREE CONCLUDED THAT THE CLAIMANT'S TEMPORARY TOTAL DISABILITY WAS CORRECTLY BASED UPON HER 'WAGES' AS EARNED IN HER PART-TIME EMPLOYMENT BY THE HILTON HOTEL.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE CONCLUSION OF THE REFEREE AND AFFIRMS AND ADOPTS HIS ORDER AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 29, 1975 IS AFFIRMED.

WCB CASE NO. 74-2521 OCTOBER 27, 1975

COLLEEN ANNE BARRY, CLAIMANT

LINDSAY, NAHSTOLL, HART, DAFOE AND KRAUSE,
CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE ORDER OF THE REFEREE WHICH AFFIRMED THE EMPLOYER'S DENIAL OF HER CLAIM.

CLAIMANT IS AN 18 YEAR OLD HIGH SCHOOL GRADUATE WORKING AS A NURSE'S AIDE AT THE WILLAMETTE FALLS COMMUNITY HOSPITAL. ON THE FIRST DAY FOR WHICH SHE WAS PAID SHE ATTENDED SEVERAL ORIENTATION LECTURES AND CLASSES AND AS SHE WAS LEAVING THE HOSPITAL AT THE END OF HER SHIFT SHE STEPPED FROM THE CURB ONTO THE PARKING LOT AND FELT HER LEFT KNEE 'SNAP OUT' AND FELT A SHARP PAIN.

DR. HAZEL, ON JUNE 6, 1974, DIAGNOSED A "CARTILAGINOUS FREE BODY OR JOINT MOUSE WITHIN THE KNEE." HE DID NOT BELIEVE CLAIMANT HAD SUFFERED AN INDUSTRIAL INJURY.

THE CLAIM WAS DENIED BY THE CARRIER ON JUNE 19, 1974. AFTER THE DENIAL THE CLAIMANT WAS AGAIN SEEN BY DR. HAZEL WHO FELT THAT HER CONDITION WAS UNCHANGED. CLAIMANT WAS STILL COMPLAINING OF A SENSATION OF A SNAPPING IN THE KNEE WHICH HE THOUGHT WAS RELATED TO JUST A SIMPLE THICKENING OF THE SYNOVIUM AS IT ROLLED OVER THE LATERAL FEMORAL CONDYLE AND WAS PRESENT ON BOTH THE UNINJURED AND ALLEGED INJURED SIDE.

CLAIMANT CONTENDED THAT MEDICAL TESTIMONY WAS NOT ESSENTIAL TO ESTABLISH HER CASE, RELYING UPON URIS V. SCD (UNDERSCORED), 247 OR 420.

THE REFEREE FOUND THAT THE ONLY RELATIONSHIP BETWEEN THE INCIDENT INVOLVING CLAIMANT'S LEFT KNEE AND HER EMPLOYMENT WAS THE FACT THAT IT OCCURRED WHILE CLAIMANT WAS ON THE EMPLOYER'S PREMISES. THERE IS NO EVIDENCE OF AN 'INJURY' OF ANY TYPE. BASED UPON THE TESTIMONY OF THE CLAIMANT AND THE EXPERT MEDICAL OPINION OF DR. HAZEL, THE REFEREE FOUND NO MEDICAL-CAUSAL RELATIONSHIP BETWEEN THE EPISODE OF PAIN IN CLAIMANT'S LEFT KNEE AND HER EMPLOYMENT AND HELD THE CLAIM WAS NOT COMPENSABLE.

THE BOARD, ON DE NOVO REVIEW, DOES NOT SUSPECT CLAIMANT'S MOTIVES IN FILING HER CLAIM, HOWEVER, THERE IS NO EVIDENCE, EITHER MEDICAL OR LAY, WHICH WILL SUPPORT A FINDING THAT THE ALLEGED INJURY AROSE OUT OF AND IN THE COURSE OF HER EMPLOYMENT. THE BOARD CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE REFEREE AND AFFIRMS THEM AND ADOPTS THEM AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 11, 1975 IS AFFIRMED.

SAIF CLAIM NO. SA 754859 OCTOBER 28, 1975

PAUL D. FLETCHER, CLAIMANT

OWN MOTION DETERMINATION

THIS CLAIMANT SUSTAINED SERIOUS MULTIPLE INJURIES ON SEPTEMBER 10, 1959 WHEN HE WAS STRUCK BY AN EARTH MOVER. UPON CLOSURE CLAIMANT RECEIVED THE FOLLOWING AWARDS -

100 PER CENT RIGHT LEG BY SEPARATION
65 PER CENT LOSS FUNCTION OF THE LEFT LEG
33 PER CENT LOSS OF AN ARM UNSCHEDULED DISABILITY
25 PER CENT LOSS FUNCTION RIGHT MIDDLE FINGER
75 PER CENT LOSS FUNCTION RIGHT RING FINGER

ON OR ABOUT JUNE 30, 1975, THE CLAIM WAS REOPENED BY THE STATE ACCIDENT INSURANCE FUND FOR REMOVAL OF A NEUROMA ON THE AMPUTATION STUMP AND REPAIR OF A HYDROCELE. THE CLAIM HAS NOW BEEN SUBMITTED TO THE EVALUATION DIVISION FOR A DETERMINATION.

THE BOARD, ON ITS OWN MOTION,

ORDERS

CLAIMANT IS ENTITLED TO COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM JUNE 30, 1975 THROUGH SEPTEMBER 8, 1975, AND HAS RECEIVED SUCH COMPENSATION.

NO ADDITIONAL AWARD FOR PERMANENT PARTIAL DISABILITY IS GRANTED IN EXCESS OF THAT GRANTED BY THE PREVIOUS CLOSING ORDER.

WCB CASE NO. 75-659 OCTOBER 28, 1975

CAROLYN J. MOE, CLAIMANT

MYRICK, COULTER, SEAGRAVES AND NEALY,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT APPEALS FROM THE ORDER OF THE REFEREE WHICH AWARDED HER AN ADDITIONAL 32 DEGREES FOR A TOTAL AWARD OF 96 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT SUFFERED A COMPENSABLE LOW BACK INJURY IN JANUARY, 1973, WHILE LIFTING CABINET PARTS. AFTER INITIALLY RECEIVING CHIROPRACTIC TREATMENTS, WHICH AFFORDED HER TEMPORARY RELIEF, CLAIMANT CAME UNDER THE CARE OF DR. TENNYSON, A NEUROSURGEON. A MYELOGRAM INDICATED A LUMBOSACRAL MIDLINE DISC PROTRUSION. A LUMBAR LAMINECTOMY AND FUSION PERFORMED IN NOVEMBER, 1973 WAS SUCCESSFUL AND CLAIMANT WAS RELEASED TO RETURN TO WORK AUGUST 28, 1974.

ALTHOUGH THE REFEREE INCREASED THE AWARD FOR THE UNSCHEDULED DISABILITY FROM 64 DEGREES TO 96 DEGREES, CLAIMANT CONTENDS SHE HAS SUFFERED BETWEEN 50 AND 60 PER CENT DISABILITY INASMUCH AS SHE HAS SUFFERED A SUBSTANTIAL LOSS OF HER WAGE EARNING CAPACITY.

CLAIMANT'S WORK HISTORY INDICATES SHE HAS BEEN MAINLY INVOLVED IN PRODUCTION LINE ASSEMBLY JOBS ALTHOUGH SHE HAS ALSO WORKED AS A WAITRESS AND AS A SALES PERSON IN A RETAIL DRESS SHOP. AT THE PRESENT TIME SHE IS EMPLOYED AS A BENCH WORKER ASSEMBLING TINY ELECTRICAL PARTS. THE WORK IS OF A LIGHT TYPE AND CONDITIONS ARE SUCH THAT CLAIMANT CAN FREQUENTLY ADJUST HER SITTING POSITION.

BEFORE HER INJURY CLAIMANT WAS DOING CABINET WORK AND EARNING 2.50 DOLLARS AN HOUR PLUS FRINGE BENEFITS. HER PRESENT JOB PAYS 2.15 DOLLARS AN HOUR BUT DOES NOT PROVIDE ANY FRINGE BENEFITS.

THE REFEREE MADE A DISTINCTION BETWEEN EARNINGS AND EARNING CAPACITY AND FOUND THAT WHILE CLAIMANT WAS LIMITED IN THE BROAD FIELD OF GENERAL INDUSTRIAL OCCUPATION, SHE POSSESSED ATTRIBUTES AND ABILITIES WHICH COMPENSATED SOMEWHAT FOR THE REDUCED JOB ALTERNATIVES AVAILABLE TO HER. THE CLAIMANT IS ONLY 39 AND SHE HAS SUCCESSFULLY COMPLETED A COURSE OF FORMAL TRAINING FOR HER PRESENT JOB AND IS NOW ASSISTING IN THE TRAINING OF NEW EMPLOYEES. THE REFEREE CONCLUDED, CONSIDERING CLAIMANT'S ATTRIBUTES AND ABILITIES, THAT THE INJURY HAD SIGNIFICANTLY REDUCED HER RANGE OF JOB ALTERNATIVES IN THE LABOR MARKET AND SHE HAD NOT BEEN ADEQUATELY COMPENSATED THEREFOR BY AN AWARD OF 64 DEGREES.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT THE EVIDENCE IS UNCONTRADICTED THAT CLAIMANT CANNOT RETURN TO HER FORMER JOB, IN FACT, THERE IS NOT MUCH CLAIMANT CAN DO OTHER THAN THE WORK SHE IS PRESENTLY DOING. CLAIMANT HAS LOST CONSIDERABLY MORE WAGE EARNING CAPACITY THAN THE REFEREE'S AWARD INDICATED AND TO SAY THAT SHE MIGHT, IN THE FUTURE, BE ABLE TO FIND GOOD JOBS IS PURE SPECULATION.

THE BOARD CONCLUDES THAT CLAIMANT SHOULD BE AWARDED 40 PER CENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED DISABILITY.

ORDER

THE ORDER OF THE REFEREE DATED MAY 22, 1975 IS MODIFIED BY AWARDING TO CLAIMANT 128 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. THIS AWARD IS IN LIEU OF AND NOT IN ADDITION TO THE AWARD MADE BY THE REFEREE'S OPINION AND ORDER.

CLAIMANT'S COUNSEL IS AWARDED, AS A REASONABLE ATTORNEY'S FEE IN CONNECTION WITH THIS BOARD REVIEW, 25 PER CENT OF THE COMPENSATION INCREASED BY THIS ORDER ON REVIEW, NOT TO EXCEED THE SUM OF 2,300 DOLLARS, PAYABLE OUT OF SAID INCREASED COMPENSATION, AS PAID.

WCB CASE NO. 74-2777 OCTOBER 28, 1975

DON CRAWFORD, CLAIMANT

EVOHL F. MALAGON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT REQUESTS REVIEW BY THE BOARD OF AN ORDER OF THE REFEREE WHICH AFFIRMED A DETERMINATION ORDER DATED APRIL 29, 1974 AWARDING CLAIMANT NO PERMANENT PARTIAL DISABILITY.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON OCTOBER 12, 1973 TO HIS HEAD, LEFT SHOULDER AND LEFT HAND WHEN HIS TRUCK SLID OFF THE ROAD AND ROLLED OVER SEVERAL TIMES. CLAIMANT WAS RELEASED TO RETURN TO WORK IN DECEMBER, 1973 AND HAS CONTINUED TO WORK AS A TRUCK DRIVER ALTHOUGH HE HAD COMPLAINTS OF LOW BACK PAIN.

ON JANUARY 21, 1975 DR. ROCKEY EXAMINED CLAIMANT AND COULD FIND NO PATHOLOGY IN CLAIMANT'S BACK ATTRIBUTABLE TO THE OCTOBER 12, 1973 ACCIDENT. THE CLAIMANT DOES HAVE A LUMBO-SACRAL SPONDYLOLYSIS WHICH PREDISPOSED HIM TO BACK PAINS BUT THIS WAS NOT EXACERBATED BY THE INDUSTRIAL ACCIDENT.

THE REFEREE FOUND, WITH RESPECT TO THE UNSCHEDULED DISABILITIES, THAT THERE WAS NO COMPETENT EVIDENCE THAT A MEDICAL-CAUSAL RELATIONSHIP EXISTED BETWEEN THE EMPLOYMENT AND THE ALLEGED DISABILITY AND THAT IN THE CASE BEFORE HIM RELIANCE MUST BE PLACED ON MEDICAL EXPERTS, CITING LEMONS V. SCD (UNDERSCORED), 2 OR APP 128.

THE REFEREE FURTHER FOUND THAT CLAIMANT FAILED TO SHOW ANY LOSS OF FUTURE EARNING CAPACITY, THE BASIS FOR DETERMINING UNSCHEDULED DISABILITY, TO THE CONTRARY, CLAIMANT TESTIFIED THAT HE IS PRESENTLY ABLE TO DO ALL THE JOBS HE DID BEFORE HIS INDUSTRIAL INJURY EXCEPT THAT HE HAS TO DO THEM IN PAIN. PAIN IS NOT COMPENSABLE UNLESS DISABLING.

WITH RESPECT TO THE SCHEDULED DISABILITY IN THE LEFT HAND, THE REFEREE FOUND THAT IT SHOULD, ACCORDING TO MEDICAL EVIDENCE, REHEAL AND BE AS GOOD AS BEFORE WITHIN A THREE MONTH PERIOD AND THAT THERE WAS NO EVIDENCE OF ANY RESIDUAL LOSS OF FUNCTION RESULTING FROM THE FRACTURE OF THE FIFTH METACARPAL OF THE LEFT HAND. THE REFEREE CONCLUDED THAT CLAIMANT HAD FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HE HAD SUFFERED ANY PERMANENT PARTIAL DISABILITY, EITHER SCHEDULED OR UNSCHEDULED.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS AND ADOPTS THE ORDER OF THE REFEREE AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED MAY 13, 1975 IS AFFIRMED.

WCB CASE NO. 74-4302 OCTOBER 28, 1975

CLARA L. HOLLAND, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER DATED NOVEMBER 15, 1974 AND ALSO AFFIRMED A PARTIAL DENIAL BY THE STATE ACCIDENT INSURANCE FUND DATED OCTOBER 4, 1974.

CLAIMANT SUFFERED AN INDUSTRIAL INJURY ON APRIL 16, 1974, PRIOR TO THAT DATE CLAIMANT HAD SUFFERED SEVERAL INDUSTRIAL INJURIES AND AN INJURY FROM AN AUTOMOBILE ACCIDENT, EACH INVOLVED AT DIFFERENT TIMES HER LOW BACK, NECK, RIGHT KNEE AND RIGHT HIP. DR. MASON IN HIS

EXAMINATION OF CLAIMANT AFTER THE APRIL, 1974 INJURY FOUND THAT CLAIMANT HAS SUSTAINED ONLY A MILD AGGRAVATION OF A PREEXISTING LOW BACK CONDITION AND A MILD AGGRAVATION OF A PREEXISTING CERVICAL-DORSAL CONDITION - HE FOUND CLAIMANT TO BE MEDICALLY STATIONARY. ON NOVEMBER 15, 1974 A DETERMINATION ORDER AWARDED CLAIMANT 80 DEGREES FOR 25 PER CENT UNSCHEDULED LOW BACK DISABILITY.

ON OCTOBER 4, 1974, THE FUND HAD REAFFIRMED ITS RESPONSIBILITY FOR CLAIMANT'S LOW BACK INJURY OF APRIL 16, 1974, BUT DENIED RESPONSIBILITY FOR HER CERVICAL-DORSAL STRAIN AND THE DEGENERATIVE CHANGES IN HER CERVICAL-DORSAL SPINE. CLAIMANT REQUESTED A HEARING ON THE PARTIAL DENIAL AND ALSO ON THE AWARD MADE BY THE DETERMINATION ORDER.

THE REFEREE, AFTER OBSERVING CLAIMANT AND LISTENING TO HER TESTIMONY, FOUND THAT CLAIMANT WAS LACKING IN CREDIBILITY. THE REFEREE ALSO FOUND THAT CLAIMANT HAD NO MOTIVATION TO RETURN TO WORK EVEN IF WORK WHICH CLAIMANT WAS PHYSICALLY ABLE TO DO WAS AVAILABLE TO HER AND, THEREFORE, CONCLUDED THAT CLAIMANT HAD BEEN SUFFICIENTLY COMPENSATED BY THE AWARD OF 80 DEGREES FOR HER UNSCHEDULED LOW BACK DISABILITY.

ON THE ISSUE OF THE PARTIAL DENIAL THE REFEREE FOUND THAT ALTHOUGH DR. MASON INDICATED BOTH CERVICAL-DORSAL AGGRAVATION AND LUMBOSACRAL AGGRAVATION ARISING FROM THE SUBJECT ACCIDENT, HIS DIAGNOSIS WAS BASED UPON HISTORY RELATED TO HIM BY THE CLAIMANT AND, AS INDICATED EARLIER, THE REFEREE FOUND CLAIMANT LACKING IN CREDIBILITY, THEREFORE, HE GAVE MORE CREDENCE TO THE REPORT OF DR. JOHNSON WHICH INDICATED LOW BACK PAIN, LUMBAR DEGENERATION.

CLAIMANT'S BASIC COMPLAINT WAS THAT OF BACK PAIN AND THE REFEREE CONCLUDED THAT THERE WAS NO MEDICAL RELATIONSHIP BETWEEN THE CERVICAL-DORSAL PROBLEM DENIED BY THE FUND AND CLAIMANT'S INJURY OF APRIL 16, 1974 AND, THEREFORE, AFFIRMED THE DENIAL.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE - HOWEVER, IT DOES NOT FEEL IT WAS NECESSARY FOR THE REFEREE TO QUOTE FROM DR. MASON'S REPORT AS SUCH QUOTE WAS A PERSONAL OPINION, NOT A MEDICAL ONE AND RELATED TO CLAIMANT'S PERSONALITY NOT HER PHYSICAL CONDITION.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 11, 1975 IS AFFIRMED.

WCB CASE NO. 74-2277 OCTOBER 28, 1975

ARLIE SUMMIT, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTYS.
MC KEOWN, NEWHOUSE, FOSS AND WHITTY,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED CLAIMANT'S CLAIM TO IT TO BE ACCEPTED FOR PAYMENT OF COMPENSATION FROM SEPTEMBER 22, 1973 UNTIL TERMINATION PURSUANT TO ORS 656.268 AND ALLOWED CLAIMANT'S ATTORNEY THE SUM OF

1000 DOLLARS AS A REASONABLE ATTORNEY'S FEE TO BE PAID BY THE EMPLOYER.

CLAIMANT WAS A 50 YEAR OLD MILLWRIGHT WHO HAD WORKED FOR THE EMPLOYER SINCE OCTOBER, 1959. CLAIMANT HAD HAD CHRONIC BRONCHITIS SINCE ABOUT 1959 AND HAD BEEN TAKING ANTIBIOTICS FOR IT AND ALSO HAD ANTACID MEDICATION FOR STOMACH PROBLEMS.

FOR SEVERAL WEEKS PRIOR TO SEPTEMBER 22, 1973, CLAIMANT HAD CHEST PAINS IN THE CENTER OF HIS CHEST WHICH WERE INDUCED BY EXERTION. HE ALSO HAD BEEN TIRED AND SUFFERED SHORTNESS OF BREATH, HOWEVER HE CONTINUED WORKING. ON SEPTEMBER 21, 1973, WHILE CLIMBING STAIRS TO REPAIR SOME MACHINERY, CLAIMANT SUFFERED PAIN IN THE CENTER AND TO THE LEFT OF HIS CHEST AND DOWN HIS ARM BOTH WHILE CLIMBING THE STAIRS AND LATER WHILE STEPPING DOWN OFF THE MACHINERY. THE PAIN WAS SEVERE BUT HE CONTINUED TO THE END OF THE SHIFT THINKING THE PROBLEM WAS STILL ULCERS AND BRONCHITIS. HIS SHIFT CONCLUDED AT 11 P.M. AND CLAIMANT RETURNED TO WORK THE FOLLOWING DAY, WHICH WAS SATURDAY, AT 7 A.M. AND AGAIN HAD CHEST PAINS ON EXERTION AND STILL SOUGHT NO MEDICAL HELP. SUNDAY CLAIMANT WORKED THE DAY SHIFT AND THE CHEST PAIN CONTINUED. THE ONLY STRENUOUS ACTIVITY IN WHICH CLAIMANT ENGAGED DURING THOSE DAYS WAS ON THE JOB. AT HOME HE RESTED AND SUFFERED NO PAIN.

ON MONDAY, SEPTEMBER 24, CLAIMANT INFORMED HIS FOREMAN HE WOULD BE OFF WORK FOR AN INDEFINITE PERIOD OF TIME. HE WENT TO THE NORTH BEND MEDICAL GROUP FOR A SERIES OF TESTS.

ULTIMATELY, AFTER A DIAGNOSIS OF A PROXIMAL OCCLUSION OF THE RIGHT CORONARY ARTERY, A SINGLE VEIN GRAFT WAS PERFORMED FROM THE AORTA TO THE RIGHT CORONARY ARTERY. CLAIMANT WAS DISCHARGED FROM THE HOSPITAL ON NOVEMBER 2, 1973 FREE OF ANGINA. ON APRIL 28, 1974 CLAIMANT WAS ADMITTED TO THE EMERGENCY ROOM OF THE KEIZER MEMORIAL HOSPITAL WITH RIGHT CHEST PAIN. AN EKG INDICATED POSSIBLE ISCHEMIA BUT NO DEFINITE INFARCT, CLAIMANT CONTINUED TO IMPROVE AND WAS DISCHARGED ON MAY 3, 1974 AND RETURNED TO WORK IN JULY, 1974.

ON APRIL 28, 1974 CLAIMANT FILED A CLAIM AGAINST AN OFF-THE-JOB INSURANCE CARRIER FOR THE ACUTE BRONCHITIS AND POSSIBLE ARTERIOSCLEROTIC HEART DISEASE AND RECEIVED COMPENSATION FROM THE CARRIER FROM SEPTEMBER 24, 1973 TO FEBRUARY, 1974. ON JUNE 5, 1974 CLAIMANT FILED A CLAIM FOR JOB-RELATED HEART ATTACK OCCURRING IN SEPTEMBER, 1973. THIS CLAIM WAS DENIED BY THE EMPLOYER AND CLAIMANT REQUESTED A HEARING.

THE EMPLOYER CONTENDS THAT THERE WAS NO EVIDENCE CLAIMANT SUFFERED A COMPENSABLE INJURY WITHIN THE COURSE AND SCOPE OF HIS EMPLOYMENT OR, IF HE HAD SUFFERED SUCH A COMPENSABLE INJURY ON SEPTEMBER 22, 1973, HIS CLAIM WAS UNTIMELY UNDER THE PROVISIONS OF ORS 656.265.

CLAIMANT CONTENDS THAT HE DID NOT KNOW THAT A HEART CONDITION COULD BE CAUSED BY WORKING AND WAS COVERED BY WORKMEN'S COMPENSATION AND, AT THE TIME, HE THOUGHT HIS PAIN WAS DUE TO BRONCHITIS AND STOMACH PROBLEMS.

THE REFEREE FOUND BOTH LEGAL AND MEDICAL CAUSATION. DR. ROSE REPORTED THAT CLAIMANT HAD SUFFERED A TOTAL OCCLUSION OF HIS RIGHT CORONARY ARTERY BUT THAT HE DID NOT DEVELOP A SEVERE INFARCTION BECAUSE HE HAD SOME COLLATERAL CIRCULATION FROM THE LEFT CORONARY ARTERY WHICH RESULTED IN SUCCESSFUL BY-PASS SURGERY. DR. ROSE SAID IT WAS DIFFICULT TO DETERMINE THE EXACT ROLE OR CONTRIBUTION

OF THE WORK EFFORT TO THE WORSENING OF CLAIMANT'S HEART CONDITION BUT IT APPEARED TO HIM THAT HAD CLAIMANT NOT BEEN REQUIRED TO WORK OVER THE WEEKEND AFTER THE INITIAL ONSET OF CHEST PAIN, HE MIGHT HAVE DONE CONSIDERABLY BETTER, HIS CONDITION MIGHT HAVE STABILIZED AND CLAIMANT MIGHT NOT HAVE BEEN REQUIRED TO BE HOSPITALIZED OR SUBMIT TO CARDIAC SURGERY. HE CONCLUDED THAT THE HEAVY WORK COULD HAVE BEEN AN IMPORTANT DERIVATIVE FACTOR IN WORSENING HIS CONDITION - THAT THE HEAVY PHYSICAL WORK PERFORMED AT THE TIME WHEN HIS CONDITION WAS PROGRESSING WAS A DEFINITE AGGRAVATING FACTOR.

DR. QUINN, ON THE OTHER HAND, FELT THAT CLAIMANT'S CONDITION WAS CONSTANTLY DEVELOPING AT HOME OR AT WORK AND WAS A NATURAL PROGRESSION AND THAT THE WORK CONDITION WAS NOT A MATERIAL CONTRIBUTING FACTOR. THE REFEREE CONCLUDED THAT EVEN IF CLAIMANT DID HAVE A SLOWLY DEVELOPING PROGRESSIVE ARTERIOSCLEROTIC CONDITION WHICH MIGHT HAVE FLARED UP AT HOME OR AT WORK, THE FACT REMAINED THAT HE DID WORK OVER THE WEEKEND AND THAT EXERTION OR WORK ACTIVITY WAS A PRECIPITATING FACTOR WHICH CAUSED HIS SUBSEQUENT HOSPITALIZATION. THE REFEREE FOUND THAT CLAIMANT HAD CARRIED HIS BURDEN OF PROOF THAT HE HAD SUFFERED A COMPENSABLE INJURY.

ON THE ISSUE OF THE TIMELINESS OF CLAIMANT'S CLAIM, THE REFEREE FOUND THAT CLAIMANT HAD NOTIFIED HIS FOREMAN ALMOST IMMEDIATELY OF HIS INJURY AND THAT ALTHOUGH THE EMPLOYER HAD GOOD REASON TO BELIEVE THE CLAIM WOULD BE FILED AGAINST THE OFF-THE-JOB INSURANCE CARRIER, THERE WAS SUFFICIENT NOTICE OF THE INJURY AND CLAIMANT'S CLAIM WAS NOT BARRED UNDER THE PROVISIONS OF ORS 656.265. THE REFEREE FURTHER FOUND THAT THE EMPLOYER HAD NOT BEEN PREJUDICED BY THE LATE NOTICE IN THIS CASE AS IT CLAIMED BECAUSE THERE WAS NO INDICATION THAT THE PRESENCE OF WITNESSES WOULD HAVE MATERIALLY CHANGED THE OUTCOME. FACTUALLY, THERE WAS LITTLE DISPUTE THAT CLAIMANT CLIMBED THE STEPS AND WAS SUBSEQUENTLY HOSPITALIZED, THE QUESTION WAS PRIMARILY A MEDICAL ONE.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE FINDINGS AND CONCLUSIONS SET FORTH BY THE REFEREE IN HIS WELL WRITTEN OPINION AND ORDER.

ORDER

THE ORDER OF THE REFEREE DATED MAY 22, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED, AS A REASONABLE ATTORNEY'S FEE IN CONNECTION WITH HIS SERVICES AT THIS BOARD REVIEW, THE SUM OF 500 DOLLARS, PAYABLE BY THE EMPLOYER.

WCB CASE NO. 75-247 OCTOBER 28, 1975

JEAN SULLIVAN, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER REMANDING CLAIMANT'S CLAIM OF AGGRAVATION TO IT FOR ACCEPTANCE AND PAYMENT OF COMPENSATION FROM JULY 4, 1974

UNTIL THE CLAIM WAS CLOSED PURSUANT TO ORS 656.268, ASSESSING A PENALTY EQUAL TO 25 PER CENT OF ALL TEMPORARY TOTAL DISABILITY DUE CLAIMANT UP TO THE DATE OF HIS ORDER (APRIL 9, 1975) AND ORDERING THE FUND TO PAY A REASONABLE ATTORNEY'S FEE OF 650 DOLLARS.

CLAIMANT, A 48 YEAR OLD OFFICE SECRETARY, SUFFERED A COMPENSABLE INJURY TO HER RIGHT SHOULDER ON JUNE 2, 1972. HER CLAIM WAS ACCEPTED AND SUBSEQUENTLY CLOSED BY DETERMINATION ORDER DATED SEPTEMBER 20, 1972 WHEREBY CLAIMANT WAS AWARDED 16 DEGREES FOR 5 PER CENT UNSCHEDULED RIGHT SHOULDER DISABILITY.

THEREAFTER, CLAIMANT DEVELOPED INCREASING WEAKNESS AND EXPERIENCED NUMEROUS DISLOCATIONS OF HER RIGHT SHOULDER. ON OCTOBER 24, 1974 CLAIMANT FILED A CLAIM FOR AGGRAVATION WITH SUPPORTING MEDICAL DOCUMENTATION. THE FUND DID NOT RESPOND IN ANY WAY TO THIS CLAIM AND CLAIMANT REQUESTED A HEARING.

AFTER CLAIMANT'S DISLOCATED SHOULDER HAD BEEN REPAIRED FOR THE SECOND TIME SUBSEQUENT TO THE CLOSURE OF HER INDUSTRIAL INJURY SHE CONTINUED TO SUFFER DISLOCATIONS WITH SLIGHT MOVEMENTS. HER TREATING PHYSICIAN, DR. HARDIMAN, WAS OF THE OPINION THAT THE RECURRENT DISLOCATIONS STEMMED FROM HER ORIGINAL INDUSTRIAL INJURY AND FELT THAT HER REQUIRED SURGERY SHOULD BE COVERED AND HER CASE REOPENED. THIS REPORT TOGETHER WITH AN EARLIER REPORT FROM DR. COHEN, WHO HAD REDUCED CLAIMANT'S DISLOCATED RIGHT SHOULDER FOLLOWING AN INCIDENT IN AUGUST, 1973, WERE FURNISHED TO THE FUND AT THE TIME CLAIMANT REQUESTED THE CLAIM BE REOPENED ON AN AGGRAVATION BASIS. IT DID NOTHING.

ON NOVEMBER 25, 1974, DR. HARDIMAN OPERATED ON CLAIMANT'S RIGHT SHOULDER.

THE REFEREE FOUND THAT THE FACTS AND EXPERT MEDICAL OPINION INDICATED THAT THE RECURRENT DISLOCATIONS IN 1974 PROBABLY WOULD NOT HAVE OCCURRED HAD IT NOT BEEN FOR THE ORIGINAL INDUSTRIAL INJURY AND HE CONCLUDED THAT CLAIMANT'S CONDITION RESULTED FROM AN AGGRAVATION OF THAT INDUSTRIAL INJURY AND THAT HER CLAIM SHOULD BE REMANDED FOR PAYMENT OF BENEFITS.

THE REFEREE CORRECTLY CONCLUDED THAT A CLAIM FOR AGGRAVATION IS ENTITLED TO THE SAME DIGNITY AS A CLAIM IN THE FIRST INSTANCE AND THE UNEXPLAINED FAILURE OF THE FUND TO RESPOND TO CLAIMANT'S CLAIM OF AGGRAVATION BY EITHER ACCEPTANCE, DENIAL OR DEFERRAL WITH PAYMENT OF TEMPORARY TOTAL DISABILITY DURING SUCH PERIOD OF DEFERRAL AMOUNT TO UNREASONABLE DELAY IN ACCEPTANCE OR DENIAL AND IMPOSED A PENALTY UNDER THE PROVISIONS OF ORS 656.268(8). THE REFEREE ALSO CONCLUDED THAT THE FAILURE TO RESPOND MUST BE CONSTRUED TO BE UNREASONABLE RESISTANCE TO THE PAYMENT OF COMPENSATION AND HE AWARDED A REASONABLE ATTORNEY'S FEE TO BE PAID BY THE FUND.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE CONCLUSIONS REACHED BY THE REFEREE AND AFFIRMS AND ADOPTS HIS OPINION AND ORDER AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 9, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED, AS A REASONABLE ATTORNEY'S FEE IN CONNECTION WITH HIS SERVICES AT BOARD REVIEW, THE SUM OF 350 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 74-1723 OCTOBER 28, 1975

PHILIP MAKINSON, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND HAS REQUESTED REVIEW OF THE REFEREE'S ORDER WHICH SET ASIDE ITS DENIAL OF APRIL 30, 1974, ORDERED THE CLAIM RESUBMITTED TO THE EVALUATION DIVISION OF THE WORKMEN'S COMPENSATION BOARD FOR CLOSURE UNDER ORS 656.268 AND AWARDED CLAIMANT ATTORNEY'S FEES PAYABLE BY THE FUND. THE ISSUE BEFORE THE REFEREE WAS A PARTIAL DENIAL DENYING RESPONSIBILITY FOR ANY MEDICAL TREATMENT AFTER AUGUST 20, 1973.

ON DECEMBER 2, 1970 CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS PELVIS, ARM AND CHEST, AND WAS TREATED BY DR. COLLIS WHO FOUND LITTLE OTHER THAN CLAIMANT'S SUBJECTIVE COMPLAINTS. IN HIS FINAL REPORT DR. COLLIS INDICATED CLAIMANT WAS LEFT WITH A MINOR PROBLEM BUT COULD RETURN TO WORK. CLAIMANT'S CLAIM WAS CLOSED ON SEPTEMBER 14, 1971 WITH AN AWARD OF 16 DEGREES FOR 5 PER CENT UNSCHEDULED LOW BACK DISABILITY.

ON MARCH 22, 1973 CLAIMANT RECEIVED ANOTHER INDUSTRIAL INJURY, THIS TIME IN HIS UPPER BACK. DR. MC HOLICK TREATED CLAIMANT AND FOUND VERY LITTLE ORGANICALLY WRONG WITH HIM. THIS CLAIM WAS CLOSED ON JUNE 19, 1973 WITH NO AWARD OF PERMANENT DISABILITY.

ON JULY 18, 1973 CLAIMANT HAD A THIRD INDUSTRIAL INJURY, HE WAS STRUCK IN THE HEAD BY A PANEL OF SHEETROCK. DR. JONES TREATED CLAIMANT WHO, AT THE TIME, HAD COMPAINTS OF NAUSEA, VOMITING, ALSO HEADACHES, STIFFNESS IN THE NECK, LIGHTHEADEDNESS AND SOME PHOTOPHOBIA. A NEUROLOGICAL EVALUATION REVEALED NOTHING ABNORMAL AND THE FINAL DIAGNOSIS WAS SEVERE MUSCLE CONTRACTION, HEADACHE AND THORACIC STRAIN.

AT THE TIME OF THE JULY 18, 1973 INJURY CLAIMANT WAS STILL COMPLAINING ABOUT THE UPPER BACK PROBLEMS RESULTING FROM HIS 1973 INJURY AND HIS LOW BACK PROBLEMS RELATED TO THE 1970 INJURY.

ON SEPTEMBER 13, 1973, CLAIMANT WAS INVOLVED IN A FIGHT AND WAS STRUCK ON THE HEAD WITH A POP BOTTLE. DR. JONES, WHO EXAMINED CLAIMANT ON APRIL 19, 1974, WAS UNABLE TO MAKE ANY SUBSTANTIAL OBJECTIVE FINDINGS.

ON APRIL 30, 1974 THE FUND ISSUED A PARTIAL DENIAL STATING, IN PART, THAT IT HAD ACCEPTED CLAIMANT'S CLAIM FOR HEAD AND THORACIC STRAIN INJURY SUSTAINED JULY 18, 1973 - HOWEVER, IT NOW APPEARED OTHER COMPLAINTS AND TREATMENTS WERE SHOWN IN THE RECORDS NOT RELATED TO THIS INJURY BUT DUE TO SUBSEQUENT INJURIES ON AND AFTER AUGUST 20, 1973 AND FOR WHICH IT DENIED RESPONSIBILITY.

BASED ON DR. JONES' REPORTS IN THE SPRING OF 1974, THE CLAIMANT'S CASE WAS SUBMITTED TO THE EVALUATION DIVISION WHICH, ON MAY 10, 1974 WITHOUT CONSIDERING THE CONDITIONS DENIED BY THE FUND, CLOSED THE CLAIM WITHOUT ANY ADDITIONAL TEMPORARY TOTAL DISABILITY.

CLAIMANT FILED AN APPEAL FROM THE PARTIAL DENIAL.

THE REFEREE, RELYING UPON THE OPINION OF DR. PALAFOX THAT THE ALTERCATION OF SEPTEMBER 13, 1973 HAD LITTLE TO DO WITH CLAIMANT'S

PROBLEMS AT THE PRESENT TIME AND THAT CLAIMANT'S CONDITION WAS THAT OF A PERSISTENT NECK AND UPPER AND LOWER BACK PAIN, FOUND THAT CLAIMANT HAD NEVER RECOVERED FROM HIS JULY 18, 1973 INDUSTRIAL INJURY AND THAT HIS COMPLAINTS WERE CONSISTENT WITH SUCH INJURY DESPITE THE FACT THAT NONE OF THE DOCTORS WERE ABLE TO FIND ANYTHING ORGANICALLY WRONG WITH CLAIMANT.

THE REFEREE CONCLUDED THAT THERE WAS NO QUESTION BUT WHAT CLAIMANT HAD HAD THREE INDUSTRIAL INJURIES AND THAT, ALTHOUGH CLAIMANT'S DISABILITY MIGHT NOT BE VERY GREAT AT THE PRESENT TIME, HE COULD NOT FIND ANY JUSTIFICATION IN THE RECORD FOR THE DENIAL OF CLAIMANT'S REQUEST FOR TREATMENT NECESSITATED AFTER AUGUST 20, 1973. THERE IS NO MEDICAL EVIDENCE WHATSOEVER THAT THE ALTERCATION OF SEPTEMBER 13, 1973 OR ANY OTHER INTERVENING TRAUMA LED TO ANY OF CLAIMANT'S DIFFICULTIES AFTER AUGUST 20, 1973.

THE REFEREE WAS UNABLE TO DETERMINE WHAT, IF ANY, INFLUENCE THE FUND'S PARTIAL DENIAL HAD UPON EVALUATION'S CLOSING ORDER OF MAY 10, 1974 AND HE SET ASIDE THE DENIAL AND RESUBMITTED THE CLAIM TO EVALUATION FOR CLOSURE.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE DATED MAY 13, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED, AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW, THE SUM OF 200 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 75-138 OCTOBER 29, 1975

OPAL TRIANO, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
JONES, LANG, KLEIN, WOLF AND SMITH,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT
CROSS REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE REFEREE, ON APRIL 23, 1975, ORDERED THE EMPLOYER TO PAY CLAIMANT TEMPORARY TOTAL DISABILITY BENEFITS FROM NOVEMBER 5, 1974 UNTIL THE DATE OF HIS ORDER, ASSESSED A PENALTY OF 25 PER CENT OF THE AMOUNT DUE CLAIMANT DURING THAT PERIOD, ALLOWED AN ATTORNEY'S FEE OF 650 DOLLARS TO BE PAID BY THE EMPLOYER AND ORDERED NO ADDITIONAL AWARD FOR CLAIMANT'S UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT REQUESTS BOARD REVIEW OF THAT PORTION OF THE REFEREE'S ORDER WHICH AFFIRMED THE TWO PREVIOUS AWARDS BY WHICH CLAIMANT HAD RECEIVED A TOTAL OF 80 DEGREES FOR 25 PER CENT UNSCHEDULED LOW BACK DISABILITY AND DENIED HER CLAIM FOR AGGRAVATION.

THE EMPLOYER REQUESTS BOARD REVIEW OF THE PORTION OF THE REFEREE'S ORDER WHICH IMPOSED ATTORNEY'S FEES AND PENALTIES, CONTENDING THAT CLAIMANT HAD SUFFERED NO TIME LOSS.

CLAIMANT SUFFERED A COMPENSABLE INJURY IN JULY, 1969 WHILE MOPPING A FLOOR. THIS CLAIM WAS CLOSED BY A DETERMINATION ORDER AWARDING CLAIMANT 32 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK DISABILITY. SUBSEQUENTLY, A STIPULATION, APPROVED APRIL 23, 1971, GRANTED CLAIMANT AN ADDITIONAL 48 DEGREES.

CLAIMANT MOVED TO CALIFORNIA AND REMARRIED. IN 1973 SHE CONSULTED DR. CRAIG FOR BACK PROBLEMS. SHE ALLEGED THAT HER BACK CONDITION BECAME SO DISABLING THAT SHE FILED A CLAIM FOR AGGRAVATION. THIS CLAIM, SUPPORTED BY A LETTER FROM DR. CRAIG STATING THAT CLAIMANT'S CONDITION HAD DETERIORATED SINCE APRIL 23, 1971 WAS PRESENTED TO THE EMPLOYER'S CARRIER BUT IT WAS NEITHER ACCEPTED NOR DENIED WITHIN 60 DAYS AFTER SUCH PRESENTATION. THE CLAIMANT REQUESTED A HEARING, ALLEGING A DE FACTO DENIAL OF HER CLAIM FOR AGGRAVATION AND REQUESTING APPROPRIATE PENALTIES AND ATTORNEY'S FEE FOR BOTH THE DENIED CLAIM AND FAILURE OF THE EMPLOYER TO PAY APPROPRIATE AND TIMELY TEMPORARY TOTAL DISABILITY BENEFITS. THE ISSUE OF EXTENT OF PERMANENT PARTIAL DISABILITY WAS ALSO RAISED.

THE REFEREE FOUND THAT CLAIMANT HAD NOT BORNE HER BURDEN OF PROOF THAT THE INCREASE IN HER SUBJECTIVE SYMPTOMS HAD ANYTHING TO DO WITH THE INDUSTRIAL ACCIDENT NOR WERE ANY OBJECTIVE SYMPTOMS FOUND TO SUPPORT HER COMPLAINTS. HE CONCLUDED THAT HER CLAIM FOR AGGRAVATION WAS NOT SUBSTANTIATED BY THE MEDICAL EVIDENCE.

THE REFEREE ALSO CONCLUDED THAT CLAIMANT WAS NOT ENTITLED TO TEMPORARY TOTAL DISABILITY COMPENSATION EXCEPT FROM NOVEMBER 5, 1974 (THE DATE OF HER CLAIM FOR AGGRAVATION) AND THE DATE OF HIS ORDER AND THAT HER PREVIOUS AWARDS FOR PERMANENT DISABILITY WERE ADEQUATE. THE REFEREE ASSESSED PENALTIES AND ATTORNEY'S FEES FOR THE EMPLOYER'S FAILURE TO PAY TEMPORARY TOTAL DISABILITY COMPENSATION WITHIN 14 DAYS OF THE AGGRAVATION CLAIM AND FOR FAILURE TO EITHER ACCEPT OR DENY THE CLAIM WITHIN 60 DAYS.

THE BOARD, ON DE NOVO REVIEW, FINDS NO EVIDENCE OF ANY TIME LOSS SUFFERED BY CLAIMANT. CLAIMANT WAS NOT EMPLOYED AT THE TIME SHE FIRST SAW DR. CRAIG, SHE WAS A HOUSEWIFE AND, AS FAR AS THE RECORD REVEALS, INTENDED TO CONTINUE TO BE ONE, ALTHOUGH HER ALLEGED DISABILITY MADE THE DUTIES OF A HOUSEWIFE MORE DIFFICULT. IN FACT, CLAIMANT HAD ALLEGED SHE SUFFERED WHAT IS DENOMINATED AS A 'DRY AGGRAVATION', I.E., HER CONDITION HAD WORSENED WITHOUT CAUSING HER TO LOSE ANY TIME FROM EMPLOYMENT. THE REFEREE HAS CONCLUDED HER CONDITION HAD NOT WORSENED. THE BOARD AGREES.

THE CLAIMANT'S CONDITION WAS MEDICALLY STATIONARY, THEREFORE, THE REFEREE HAD THE RIGHT TO RATE HER DISABILITY. THE BOARD AGREES WITH THE REFEREE'S CONCLUSION THAT CLAIMANT WAS ADEQUATELY COMPENSATED BY THE PREVIOUS AWARDS TOTALLING 80 DEGREES.

ORS 656.262(4) PROVIDES THAT THE FIRST INSTALLMENT OF COMPENSATION SHALL BE MADE NO LATER THAN THE 14TH DAY AFTER THE SUBJECT EMPLOYER HAS NOTICE OR KNOWLEDGE OF THE CLAIM. HOWEVER, THERE WAS NO TIME LOSS INCURRED BY THE CLAIMANT, THEREFORE, SHE WAS NOT ENTITLED TO PAYMENT OF COMPENSATION AT ANY TIME. TO THAT EXTENT THE REFEREE'S ORDER MUST BE MODIFIED.

WITH RESPECT TO THE ASSESSMENT OF THE PENALTY AND ATTORNEY'S FEE, ORS 656.262(5) REQUIRES THAT WRITTEN NOTICE OF ACCEPTANCE OR DENIAL OF THE CLAIM SHALL BE FURNISHED TO THE CLAIMANT BY THE EMPLOYER WITHIN 60 DAYS AFTER THE EMPLOYER HAS NOTICE OR KNOWLEDGE OF THE CLAIM. IN THE INSTANT CASE, THE EMPLOYER NEITHER ACCEPTED NOR DENIED THE CLAIM WITHIN THE 60 DAYS, HOWEVER, BECAUSE THE CLAIMANT WAS NOT ENTITLED TO ANY COMPENSATION, THERE IS NO MONETARY

BASE UPON WHICH TO ASSESS A PENALTY. THE REFEREE WAS CORRECT IN ALLOWING AN ATTORNEY'S FEE PAYABLE BY THE EMPLOYER BECAUSE OF ITS UNREASONABLE DELAY IN ACCEPTING OR DENYING THE CLAIM.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 23, 1975 IS MODIFIED BY DELETING THEREFROM THAT PORTION WHICH ORDERED CLAIMANT TO RECEIVE TEMPORARY TOTAL DISABILITY FROM NOVEMBER 5, 1974 UNTIL THE DATE OF THAT ORDER AND ORDERED A PENALTY OF 25 PER CENT OF THE AMOUNT DUE FROM NOVEMBER 5, 1974 UNTIL THE DATE OF THAT ORDER PAID CLAIMANT BY THE CARRIER.

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

WCB CASE NO. 74-3739 OCTOBER 29, 1975

HARRY R. OLSON, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER DENYING MOTION

ON OCTOBER 17, 1975 THE BOARD ENTERED ITS ORDER ON REVIEW IN THE ABOVE ENTITLED MATTER. ON OCTOBER 24, 1975, THE BOARD RECEIVED FROM THE CLAIMANT THREE ALTERNATIVE MOTIONS TO EITHER RECONSIDER ITS ORDER, AFFIRM THE REFEREE'S ORDER, OR REMAND THE MATTER FOR FURTHER HEARING ON THE ISSUE OF PERMANENT PARTIAL DISABILITY.

THE BOARD, HAVING FULLY CONSIDERED THE MOTIONS, CONCLUDES THAT THERE ARE NOT SUFFICIENT GROUNDS FOR SUPPORT ANY OF THEM.

THEREFORE, THE MOTIONS OFFERED BY THE CLAIMANT ON OCTOBER 24, 1975 ARE HEREBY DENIED.

WCB CASE NO. 75-165 OCTOBER 30, 1975

WILLIAM REICHLEIN, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH FOUND CLAIMANT TO BE PERMANENTLY AND TOTALLY DISABLED AS PROVIDED BY STATUTE.

CLAIMANT HAD BEEN EMPLOYED BY THE EMPLOYER AS A ROUTE SALESMAN SINCE MARCH 1, 1967. ON MAY 15, 1973, WHILE LIFTING CASES OF BEER FROM A TRUCK, HE FELT A SHARP PAIN IN THE RIGHT SIDE OF HIS BACK. CLAIMANT CONTINUED TO WORK UNTIL JUNE 1, 1973. ON JUNE 7, 1973 CLAIMANT WAS HOSPITALIZED FOR A WEEK BY DR. LOGAN WHO DIAGNOSED LUMBOSACRAL STRAIN AND DEGENERATION OF THE LUMBOSACRAL JOINT. CLAIMANT WAS REFERRED TO DR. GREWE WHO, ON AUGUST 15, 1973, PERFORMED A LUMBAR LAMINECTOMY L3-4, L4-5, L5-S1 WITH REMOVAL OF OSTEOPHYTES AT L4-5 AND DECOMPRESSION OF THE NERVE ROOTS AT THE LAST THREE INTERSPACES ON THE RIGHT.

CLAIMANT'S CONDITION IMPROVED AND, ON JULY 8, 1974, DR. GREWE RELEASED HIM TO RETURN TO WORK. CLAIMANT WORKED FOR FOUR DAYS, HOWEVER, ON THE SECOND DAY REQUIRED ASSISTANCE IN PERFORMING HIS JOB AND BY JULY 11, 1974 HE WAS EXPERIENCING SUCH PAIN WITH RADIATION INTO HIS RIGHT LEG THAT HE QUIT AND HAS NOT WORKED SINCE THAT DATE.

DR. GREWE'S OPINION WAS THAT BECAUSE OF CLAIMANT'S MULTIPLE ASSETS BY STAYING WITH HIS PRESENT UNION AND WHAT BENEFITS HE COULD OBTAIN FROM SOCIAL SECURITY, HE UNDOUBTEDLY WOULD BE BETTER OFF TO RETIRE RATHER THAN TO TRY TO BE REHABILITATED. HE DID NOT BELIEVE THAT CLAIMANT WAS ABLE TO RETURN TO HIS USUAL OCCUPATION.

DR. GREWE CONTINUED TREATING CLAIMANT AND, ON OCTOBER 15, 1974, MADE A CLOSING EVALUATION OF CLAIMANT INDICATING CLAIMANT HAD PROBABLY THE AVERAGE AMOUNT OF RESIDUAL FROM NERVE ROOT COMPRESSION AND REITERATED HIS OPINION THAT CLAIMANT WOULD BE UNABLE TO DO THE KIND OF WORK HE HAD BEEN DOING PRIOR TO HIS INJURY. HIS OPINION WAS THAT THE PRACTICAL THING WOULD BE TO CONSIDER CLAIMANT 'MEDICALLY DISABLED FOR HIS PRESENT OCCUPATION SO THAT HE CAN QUALIFY FOR HIS RETIREMENT BENEFITS.'

A DETERMINATION ORDER DATED NOVEMBER 19, 1974 GRANTED CLAIMANT 112 DEGREES FOR 35 PER CENT UNSCHEDULED DISABILITY.

AFTER THE AWARD, DR. GREWE CONTINUED TO TREAT CLAIMANT AND PRESCRIBED A TRANSCUTANEOUS STIMULATOR ON A TRIAL BASIS. LATER CLAIMANT WAS EXAMINED BY DR. CHERRY. HIS OPINION WAS THAT CLAIMANT COULD NOT FUNCTION IN ANY JOB THAT HE HAD HAD PREVIOUSLY AND THAT IT WAS PROBABLE THAT HE WOULD BE DIFFICULT TO RETRAIN TO DO ANY JOB.

CLAIMANT IS 58 YEARS OLD AND HAS AN 11TH GRADE EDUCATION. MOST OF HIS WORK EXPERIENCE HAS BEEN AS A ROUTE SALESMAN FOR BEER AND WINE COMPANIES, A JOB WHICH REQUIRES HEAVY LIFTING. CLAIMANT IS PRESENTLY RECEIVING A DISABILITY PENSION FROM THE TEAMSTERS WHICH AMOUNTS TO 304.40 DOLLARS PER MONTH AND IN ADDITION IS RECEIVING SOCIAL SECURITY BENEFITS IN THE AMOUNT OF 276 DOLLARS A MONTH. AT THE PRESENT TIME CLAIMANT ENGAGES IN VERY LITTLE ACTIVITY AT HOME AND IN NONE OF THE MANY ACTIVITIES WHICH WERE A PART OF HIS LIFE PRIOR TO HIS INJURY. CLAIMANT INTENDED TO RETIRE AT 62. ALTHOUGH HE HAS NOT LOOKED FOR WORK SINCE JULY 11, 1974, CLAIMANT STATES THE REASON HE HAS NOT DONE SO IS THAT HE KNOWS OF NO JOB WHICH HE COULD PERFORM ON A REGULAR BASIS IN HIS PRESENT PHYSICAL CONDITION.

THE REFEREE FOUND CLAIMANT TO BE A CREDIBLE WITNESS AND NOT LACKING IN MOTIVATION TO RETURN TO WORK. THE REFEREE CONCLUDED THAT, CONSIDERING CLAIMANT'S PHYSICAL LIMITATIONS, AGE, EDUCATION, TRAINING AND WORK EXPERIENCE, EVEN IF CLAIMANT DILIGENTLY SOUGHT EMPLOYMENT, HE WOULD NOT BE ABLE TO OBTAIN OR HOLD GAINFUL AND SUITABLE EMPLOYMENT IN THE GENERAL LABOR MARKET AND THEREFORE CLAIMANT CAME WITHIN THE 'ODD-LOT' CATEGORY OF THE WORK FORCE. THE REFEREE FURTHER CONCLUDED THAT, CLAIMANT HAVING ESTABLISHED PRIMA FACIE THAT HE WAS AN 'ODD-LOT' EMPLOYEE, THE BURDEN SHIFTED TO THE FUND TO SHOW SOME KIND OF SUITABLE WORK WAS REGULARLY AND CONTINUOUSLY AVAILABLE TO CLAIMANT AND THAT THE FUND FAILED TO PRESENT SUCH EVIDENCE.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE REFEREE'S ORDER WHICH SETS FORTH THEREIN THE CONTROLLING CASES ON AWARDS OF PERMANENT TOTAL DISABILITY GRANTED ON THE BASIS OF THE WORKMAN'S INABILITY TO OBTAIN OR HOLD GAINFUL

AND SUITABLE EMPLOYMENT IN THE GENERAL LABOR MARKET.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 13, 1975 IS AFFIRMED, AND CLAIMANT IS TO BE CONSIDERED PERMANENTLY AND TOTALLY DISABLED AS OF OCTOBER 30, 1975.

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

WCB CASE NO. 75-1034 OCTOBER 30, 1975

FRANKLIN M. SCHAFER, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTYS.
JAQUA AND WHEATLEY, DEFENSE ATTYS.
ORDER OF DISMISSAL

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. 75-695 OCTOBER 30, 1975

BONNIE J. GRAY, CLAIMANT

BAILEY, DOBLIE AND BRUUN,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER OF DISMISSAL

A REQUEST FOR REVIEW HAVING BEEN DULY FILED WITH THE WORKMEN'S COMPENSATION BOARD IN THE ABOVE-ENTITLED MATTER 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. 74-3148 OCTOBER 30, 1975

RAYMOND BURELL, CLAIMANT

WILLIAM BIEREK, CLAIMANT'S ATTY.
JONES, LANG, KLEIN, WOLF AND SMITH,
DEFENSE ATTYS.
ORDER OF DISMISSAL

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. 73-1133 OCTOBER 30, 1975

JOHN MORFORD, CLAIMANT

MYRICK, COULETER, SEAGRAVES AND NEALY,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
AMENDED ORDER

THE ABOVE ENTITLED MATTER WAS THE SUBJECT OF AN ORDER ON REVIEW ENTERED ON OCTOBER 27, 1975.

ON PAGE 2, THE SECOND LINE OF THE FOURTH PARAGRAPH, IT ERRONEOUSLY RECITES, 'THE CLAIMANT IS NOW 70 YEARS OF AGE...'

THE SOLE PURPOSE OF THIS ORDER IS TO CORRECT THE RECORD AND CONFIRM THE ORDER WHICH SHOULD RECITE, 'THE CLAIMANT IS NOW 60 YEARS OF AGE...'

THE ORDER OF OCTOBER 27, 1975, SHOULD BE, AND IT IS HEREBY AMENDED TO REFLECT THAT CORRECTION.

WCB CASE NO. 75-334 OCTOBER 31, 1975

ORVAL GRANT, CLAIMANT

MC NUTT, GANT, ORMSBEE AND GARDNER,
CLAIMANT'S ATTYS.
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF AN ORDER OF THE REFEREE WHICH DISMISSED CLAIMANT'S REQUEST FOR HEARING ON THE GROUND THAT HIS CLAIM FOR AGGRAVATION WAS NOT SUPPORTED BY A WRITTEN OPINION OF A PHYSICIAN WHICH MET THE REQUIREMENTS OF ORS 656.273(4).

ORS 656.273, AMENDED BY OREGON LAWS 1975, CH 497 SEC 1, PROVIDES, AMONG OTHER THINGS, THAT THE ADEQUACY OF THE PHYSICIAN'S REPORT IS NOT JURISDICTIONAL. SEC 5 PROVIDES THAT THE ACT SHALL APPLY TO ALL CLAIMS FOR COMPENSABLE INJURIES THAT OCCUR PRIOR TO THE EFFECTIVE DATE OF THE ACT.

THE BOARD CONCLUDES THAT IT HAS NO ALTERNATIVE BUT TO REMAND THE CLAIM FOR AGGRAVATION FOR A HEARING ON THE MERITS UNDER THE PROVISIONS OF ORS 656.273, AS AMENDED.

ORDER

THE ORDER OF THE REFEREE DISMISSING THE REQUEST FOR HEARING DATED JULY 11, 1975 IS REVERSED AND THE MATTER IS REMANDED TO THE HEARINGS DIVISION FOR A HEARING ON THE MERITS.

SAIF CLAIM NO. BC 212448 NOVEMBER 3, 1975

KADI M. BLACK, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

CLAIMANT PETITIONED THE WORKMEN'S COMPENSATION BOARD TO EXERCISE ITS OWN MOTION JURISDICTION PURSUANT TO ORS 656.278 AND CONSIDER WHETHER HER NEED FOR FURTHER MEDICAL CARE AND TREATMENT IS THE RESULT OF HER COMPENSABLE INDUSTRIAL ACCIDENT SUSTAINED IN AUGUST, 1969.

BASED UPON MEDICAL INFORMATION SUBMITTED BY DR. GEORGE W. KNOX AND A MEDICAL OPINION OF DR. PARCHER, THE BOARD CONCLUDES THAT CLAIMANT'S CLAIM SHOULD BE REMANDED TO THE STATE ACCIDENT INSURANCE FUND TO PROVIDE THE MEDICAL CARE AND TREATMENT RECOMMENDED BY DR. KNOX, AND TO PAY COMPENSATION, AS PROVIDED BY LAW, COMMENCING FEBRUARY 11, 1975 AND UNTIL THE CLAIM IS CLOSED UNDER THE PROVISIONS OF ORS 656.278.

IT IS SO ORDERED.

WCB CASE NO. 74-131 NOVEMBER 3, 1975

HARVEY THOMAS CLINE, CLAIMANT

AND IN THE MATTER OF THE COMPLYING STATUS
OF THE MAYDAY COMPANY, EMPLOYER
GRANT AND FERGUSON, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH FOUND THAT CLAIMANT HAD SUSTAINED A COMPENSABLE INJURY WHILE A SUBJECT WORKMAN OF THE EMPLOYER WHO WAS A NONCOMPLYING SUBJECT EMPLOYER, REFERRED THE MATTER TO THE COMPLIANCE DIVISION OF THE WORKMEN'S COMPENSATION BOARD FOR SUBMISSION TO THE STATE ACCIDENT INSURANCE FUND FOR ACTION PURSUANT TO ORS 656.054 AND ALLOWED CLAIMANT'S COUNSEL AN ATTORNEY'S FEE OF 1,500 DOLLARS TO BE PAID BY THE FUND AND RECOVERABLE FROM THE EMPLOYER UNDER ORS 656.054.

ON JANUARY 8, 1974 THE COMPLIANCE DIVISION FORWARDED A PROPOSED ORDER TO THE EMPLOYER ALLEGING THAT IT WAS A SUBJECT NONCOMPLYING EMPLOYER OF CLAIMANT FOR THE PERIOD MAY 1, 1972 TO MAY 14, 1973 AND FURTHER ALLEGING THAT CLAIMANT HAD SUFFERED A COMPENSABLE INJURY ON OR ABOUT MARCH 23, 1973 WHILE SO EMPLOYED.

ON JANUARY 11, 1974 MAYDAY FILED ITS ANSWER DENYING THE ALLEGATIONS OF THE PROPOSED ORDER AND MOVED THAT PROCEEDINGS BE DISMISSED WITH PREJUDICE BECAUSE THE CLAIM FILED BY CLAIMANT IN THE STATE OF WASHINGTON FOR THE MARCH 23 INJURY HAD BEEN DENIED BY THE ORDER OF THE WASHINGTON CLAIMS CONSULTANT ON JULY 11, 1974. ONE OF THE GROUNDS FOR THE DENIAL WAS THAT CLAIMANT WAS NOT IN THE 'COURSE OF EMPLOYMENT' THE DEFINITION OF WHICH WAS THE SAME IN WASHINGTON AS IN OREGON. FURTHERMORE, THAT NO APPEAL HAD BEEN TAKEN FROM THE WASHINGTON ORDER, THEREFORE, CLAIMANT WAS ESTOPPED FROM RE-LITIGATING IN OREGON ON THE QUESTION OF WHETHER HE WAS IN THE COURSE OF HIS EMPLOYMENT AT THE TIME OF THE ALLEGED MARCH 23, 1973 INJURY.

THE REFEREE CONCLUDED THAT THE ORDER ENTERED BY THE WASHINGTON CLAIMS CONSULTANT WAS NOT RES JUDICATA AND DID NOT SERVE AS A COLLATERAL ESTOPPEL TO PROCEED WITH THE CASE BEFORE HIM. ALTHOUGH THE WASHINGTON ORDER HELD THAT CLAIMANT WAS NOT IN THE COURSE OF EMPLOYMENT, THE REFEREE CONCLUDED THAT WAS NOT DISPOSITIVE OF THE QUESTION OF COURSE OF EMPLOYMENT IN OREGON AND, CONTRARY TO THE CONTENTION OF THE EMPLOYER, THE TERM 'COURSE OF EMPLOYMENT' IS NOT A UNIVERSAL TERM OF ART IN WORKMEN'S COMPENSATION PROCEEDINGS.

THE CLAIMANT HAD BEEN EMPLOYED BY THE EMPLOYER TO SOLICIT APPLICANTS FOR A CORRESPONDENCE COURSE IN PRIVATE INVESTIGATION. AFTER A SHORT PERIOD OF TRAINING IN SEATTLE, CLAIMANT MOVED TO MEDFORD AND LIVED THERE PRIOR TO AND BEYOND THE DATE OF THE ALLEGED INJURY OF MARCH 23, 1973. DURING THE PERIOD OF CLAIMANT'S ACTIVE EMPLOYMENT UP TO THE DATE OF THE ALLEGED INJURY HE WAS RESPONSIBLE FOR DEVELOPMENT OF TERRITORY IN SOUTHERN OREGON, PART OF NORTHERN CALIFORNIA AND PART OF THE STATE OF WASHINGTON. DURING THIS ENTIRE PERIOD OF TIME HE RECEIVED MAIL FROM THE EMPLOYER AT HIS MEDFORD OFFICE-HOME ADDRESS. THE PRESIDENT OF THE EMPLOYER ASKED CLAIMANT TO MEET HIM IN SACRAMENTO ON MARCH 23 AND CLAIMANT DID SO. THE PURPOSE OF THE MEETING WAS FOR ADJUSTMENT WITH RESPECT TO ASSIGNMENT ACTIVITIES FOR BOTH CLAIMANT AND THE OTHER EMPLOYEE. WHEN CLAIMANT LEFT HIS MOTEL HE FELL AND WAS RENDERED UNCONSCIOUS. HE WAS SUBSEQUENTLY TAKEN TO A HOSPITAL.

THE REFEREE CONCLUDED THAT THE INJURY OF MARCH 23, 1973 AROSE OUT OF AND IN THE COURSE OF CLAIMANT'S EMPLOYMENT AS AN OREGON EMPLOYEE OF THE EMPLOYER BECAUSE AT THE TIME OF HIS INJURY HE WAS CONCERNED SOLELY WITH THE BUSINESS OF THE EMPLOYER AND FOR THE PURPOSE OF ADVANCING THE EMPLOYER'S BUSINESS INTERESTS.

THE REFEREE FOUND THAT CLAIMANT HAD A PREEXISTING BACK CONDITION WHICH MAY HAVE CONTRIBUTED TO THE DISABILITY WHICH HE HAD SUBSEQUENT TO MARCH 23, 1973, HOWEVER, AFTER THE MARCH 23 INCIDENT CLAIMANT WAS IN TRACTION AND ULTIMATELY HAD A LAMINECTOMY ON APRIL 26, 1973. AFTER CLAIMANT WAS RELEASED FROM THE HOSPITAL IN JUNE, 1973, HE RETURNED TO WORK FOR THE EMPLOYER AND, ON SEPTEMBER 18, 1973, AS HE BENT TO PICK UP A BOX OF OFFICE SUPPLIES, HE FELT A SHARP PAIN IN HIS BACK AND HIS LEFT LEG WENT OUT FROM UNDER HIM.

DR. LUCE, A NEUROSURGEON, WAS OF THE OPINION THAT THE SEPTEMBER INCIDENT AGGRAVATED THE CONDITION RESULTING FROM THE MARCH 23RD INJURY AND THE REFEREE CONCLUDED THAT THE TWO TRAUMATIC INCIDENTS IN MARCH AND SEPTEMBER, 1973 WHERE CAUSATIVE FACTORS, IN COMBINATION WITH CLAIMANT'S PREEXISTING BACK CONDITION.

WITH RESPECT TO WHETHER MAYDAY WAS A SUBJECT NONCOMPLYING EMPLOYER, THE EVIDENCE WAS UNREBUTTED THAT THE EMPLOYER HAD NO GUARANTY CONTRACT ON FILE AND HAD NOT QUALIFIED AS A DIRECT

RESPONSIBILITY EMPLOYER FOR THE PERIOD MAY 1, 1972 TO MAY 14, 1973, NOR WAS THE FUND PROVIDING COVERAGE FOR THE EMPLOYER FOR THAT PERIOD, BUT WAS FROM MAY, 1973 THROUGH SEPTEMBER 18, 1973. THE REFEREE CONCLUDED THAT THE EMPLOYER HAD NO COMPENSATION COVERAGE ON MARCH 23, 1973, BUT DID HAVE COVERAGE PROVIDED BY THE FUND ON SEPTEMBER 18, 1973.

THE REFEREE FOUND THAT THE INJURY OF MARCH 23, 1973 WAS A MATERIAL CONTRIBUTING CAUSE OF CLAIMANT'S SUBSEQUENT DISABILITY AND THAT THE SEPTEMBER 18, 1973 INCIDENT WAS NOT AN INDEPENDENT INTERVENING ACCIDENT, BUT WAS AN EVENT AGGRAVATING THE PATHOLOGY RESULTING FROM THE EARLIER ACCIDENT.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE REFEREE'S FINDING THAT THE WASHINGTON STATUTES RELATING TO WORKMEN'S COMPENSATION PROCEEDINGS ARE NOT APPLICABLE IN OREGON AND THAT THE EVIDENCE CLEARLY INDICATES THAT CLAIMANT WAS AN OREGON EMPLOYEE AT THE TIME OF BOTH THE MARCH AND SEPTEMBER, 1973 INCIDENTS.

THE REFEREE HAS SET FORTH VERY CLEARLY THE CIRCUMSTANCES SURROUNDING THIS CASE AND THE BOARD AFFIRMS AND ADOPTS THE FINDINGS AND CONCLUSIONS OF THE REFEREE AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 23, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE IN CONNECTION WITH HIS SERVICES AT THIS BOARD REVIEW, THE SUM OF 300 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, HOWEVER THE STATE ACCIDENT INSURANCE FUND SHALL BE ALLOWED TO RECOVER THIS SUM FROM THE EMPLOYER UNDER THE PROVISIONS OF ORS 656.054.

WCB CASE NO. 75-182 NOVEMBER 3, 1975

PHILLIP M. CARVER, JR., CLAIMANT

AND IN THE MATTER OF THE COMPLYING STATUS
OF J. J. SIRI, INC.
TOOZE, KERR, PETERSON, MARSHALL, AND SHENKER,
CLAIMANT'S ATTYS.
JAMES C. PURCELLA, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH FOUND THAT CLAIMANT HAD SUFFERED A COMPENSABLE INJURY AND REMANDED CLAIMANT'S CLAIM TO THE COMPLIANCE DIVISION OF THE WORKMEN'S COMPENSATION BOARD FOR SUBMISSION TO THE STATE ACCIDENT INSURANCE FUND FOR ACTION PURSUANT TO ORS 656.054 AND AWARDED CLAIMANT'S ATTORNEY A FEE OF 600 DOLLARS TO BE PAID BY THE FUND BUT RECOVERABLE BY THE FUND UNDER ORS 656.054.

AT THE HEARING IT WAS STIPULATED THAT J. J. SIRI, INC. WAS A NONCOMPLYING SUBJECT EMPLOYER AND THAT CLAIMANT WAS A SUBJECT EMPLOYEE. THE ONLY ISSUE BEFORE THE REFEREE WAS THE DENIAL OF CLAIMANT'S CLAIM FOR WORKMEN'S COMPENSATION BENEFITS.

ON DECEMBER 2, 1974 CLAIMANT, ATTEMPTING TO CLEAR OUT PIECES OF WOOD CAUGHT BETWEEN THE CHAIN AND SPROCKET MECHANISM OF A HOPPER IN WHICH WOOD CHIPS WERE DUMPED, CAUGHT HIS HAND IN THE MECHANISM. CLAIMANT SUFFERED LACERATIONS OF THE PALM AND FRACTURES OF EACH METACARPAL AS WELL AS OF THE THUMB.

THE EMPLOYER CONTENDED THAT HE WAS NOT RESPONSIBLE BECAUSE THE WORKMAN INTENTIONALLY VIOLATED A SPECIFIC RULE, I.E., HE DID NOT TURN OFF THE POWER PRIOR TO ATTEMPTING TO CLEAR THE SPROCKET AND CHAIN AND, ADDITIONALLY, THAT CLAIMANT MEANT TO INJURE HIMSELF.

THE REFEREE, RELYING UPON THE REBUTABLE PRESUMPTION THAT AN INJURY IS NOT OCCASIONED BY THE WILLFUL INTENTION OF THE INJURED WORKMAN TO INJURE OR KILL HIMSELF, ORS 656.310(B) (UNDER SCORED), FOUND THAT THE EMPLOYER HAD NOTHING TO SUPPORT THE SECOND CONTENTION OTHER THAN INFERENCE OR INNUENDO AND, THEREFORE, DID NOT REBUT THE PRESUMPTION. HE ALSO FOUND THAT THE FACT THAT THE INJURY SUFFERED BY CLAIMANT WAS THE RESULT OF SAFETY RULE VIOLATION DID NOT PRECLUDE THE CLAIM FROM BEING COMPENSABLE.

THE REFEREE, AFTER CONSIDERING ALL OF THE EVIDENCE, CONCLUDED THAT CLAIMANT HAD SUFFERED A COMPENSABLE INJURY AND THAT THE DENIAL OF SAID CLAIM BY THE EMPLOYER WAS IMPROPER.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS WELL EXPRESSED IN THE OPINION AND ORDER OF THE REFEREE AND AFFIRMS AND ADOPTS IT AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 6, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED, AS A REASONABLE ATTORNEY'S FEE IN CONNECTION WITH THIS BOARD REVIEW, THE SUM OF 250 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND. THIS SUM SHALL BE RECOVERABLE BY SAIF UNDER THE PROVISIONS OF ORS 656.054.

WCB CASE NO. 74-2800 NOVEMBER 3, 1975

CURTIS WILKERSON, CLAIMANT

SANDERS, LIVELY AND WISWALL,
CLAIMANT'S ATTYS.
FRANK A. MOSCATO, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE CLAIMANT REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER DATED JULY 18, 1974 WHEREBY CLAIMANT WAS AWARDED 32 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS BACK ON AUGUST 7, 1973. HE WAS TREATED BY DR. OBYE AND DR. DEGGE FOR LOW BACK AND UPPER LEFT LEG PAIN, HE WAS ALSO REFERRED TO THE PAIN CLINIC IN PORTLAND. CLAIMANT'S DISABILITY WAS CONSIDERED MODERATE AND IT WAS FELT HE COULD RETURN TO SOME MEANINGFUL OCCUPATION IF HE AVOIDED HEAVY LIFTING.

CLAIMANT HAD BEEN INJURED IN FEBRUARY, 1962 AND HAD A SUCCESSFUL FUSION OF THE FOURTH AND FIFTH LUMBAR VERTEBRAE. IN 1964 HE RECEIVED AN AWARD OF PERMANENT PARTIAL DISABILITY OF 70 PER CENT FUNCTIONAL IMPAIRMENT OF THE UPPER EXTREMITY FOR UNSCHEDULED LOW BACK DISABILITY. UPON RECOVERY CLAIMANT RETURNED TO EMPLOYMENT IN THE MILL AND PERFORMED HEAVY MANUAL LABOR. BETWEEN 1964 AND 1971 HE WAS EMPLOYED AS A SCHOOL CUSTODIAN. AFTER 1971 CLAIMANT HAD BEEN A CLEANUP MAN IN THE MILL HANDLING HEAVY CHUNKS OF LUMBER AND, AT THE TIME OF THE AUGUST 7, 1973 INJURY, CLAIMANT WAS HANDLING HEAVY LUMBER ON THE GREEN CHAIN.

THE REFEREE FELT IT WAS NECESSARY TO CONSIDER THE PRESENT INJURY ALONG WITH THE PRIOR AWARD WHICH CLAIMANT HAD RECEIVED FOR HIS 1962 INDUSTRIAL INJURY IN ORDER TO ARRIVE AT THE COMBINED EFFECT TO DETERMINE WHETHER THE RESIDUAL COMPENSABLE PERMANENT DISABILITY AT ISSUE WAS GREATER THAN THAT FOR WHICH AWARDS HAD BEEN MADE. HE BELIEVED THAT IF CLAIMANT'S CONDITION AFTER THE ACCIDENT WAS NOT GREATLY DIFFERENT FROM THAT EXISTING PRIOR TO THE ACCIDENT THERE WAS NO PERMANENT PARTIAL DISABILITY.

THE REFEREE CONCLUDED THAT CLAIMANT HAD ALREADY BEEN AWARDED SUFFICIENT PERMANENT PARTIAL DISABILITY TO COMPENSATE HIM FOR LOSS OF EARNING CAPACITY, THE SOLE CRITERION FOR DETERMINING UNSCHEDULED DISABILITY.

THE BOARD, ON DE NOVO REVIEW, DISAGREES WITH THE THEORY UPON WHICH THE REFEREE BASED HIS CONCLUSION. THE BOARD DOES NOT BELIEVE THAT THE PROVISIONS OF ORS 656.222 APPLY TO UNSCHEDULED DISABILITIES. ORS 656.214(5) PROVIDES THAT IN ALL CASES OF INJURY RESULTING IN UNSCHEDULED PERMANENT PARTIAL DISABILITY, THE NUMBER OF DEGREES OF DISABILITY SHALL BE A MAXIMUM OF 320 DEGREES DETERMINED BY THE EXTENT OF THE DISABILITY COMPARED TO THE WORKMAN BEFORE SUCH (UNDERSCORED) INJURY AND WITHOUT SUCH (UNDERSCORED) INJURY.

IN THE INSTANT CASE CLAIMANT HAD BEEN ABLE TO RETURN AND COMPETENTLY DO HEAVY MANUAL LABOR, HE WAS WORKING ON THE GREEN CHAIN AT THE TIME OF HIS AUGUST, 1973 INJURY. PRIOR TO THAT HE HAD BEEN HANDLING HEAVY CHUNKS OF LUMBER AND FOR A PERIOD OF SEVEN YEARS HE HAD DONE JANITORIAL WORK. AS SOON AS HE RECOVERED FROM THE FUSION REQUIRED BY HIS 1962 INJURY, CLAIMANT RETURNED TO WORK AT THE MILL AND WORKED STEADILY AT DIFFERENT JOBS, AFTER HIS AUGUST 9, 1973 INJURY HE HAS NOT BEEN ABLE TO WORK. HE HAS ATTEMPTED TO DO SO SEVERAL TIMES BUT WAS UNABLE TO CONTINUE BECAUSE OF PAIN.

THE BOARD CONCLUDES THAT THE EVIDENCE IS SUFFICIENT TO ESTABLISH THAT CLAIMANT'S CONDITION AFTER THE 1973 INJURY WAS SUBSTANTIALLY MORE DISABLING THAN IT WAS PRIOR THERETO, FURTHERMORE, IF THE EFFECTS OF THE FIRST INJURY HAVE SO DISSIPATED THAT CLAIMANT IS AGAIN GAINFULLY EMPLOYED AND EARNING A NORMAL AND REASONABLE WAGE FOR HIS LABORS, IT IS ONLY REASONABLE TO CONCLUDE THAT CONSIDERATION OF THE AWARD WHICH CLAIMANT RECEIVED FOR HIS 1962 DISABLING INDUSTRIAL INJURY WOULD HAVE NO LOGICAL RELEVANCE IN DETERMINING HIS PRESENT PERMANENT PARTIAL DISABILITY.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 7, 1975 IS REVERSED.

CLAIMANT IS GRANTED AN AWARD OF 80 DEGREES OF THE MAXIMUM OF 320 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. THIS AWARD IS IN LIEU OF AND NOT IN ADDITION TO THE AWARD GRANTED JULY 18, 1974.

CLAIMANT'S COUNSEL IS AWARDED, AS A REASONABLE ATTORNEY'S FEE IN CONNECTION WITH HIS SERVICES ON THIS BOARD REVIEW, THE SUM OF 25 PER CENT OF THE COMPENSATION INCREASED BY THIS ORDER ON REVIEW PAYABLE FROM SAID INCREASED COMPENSATION, AS PAID.

WCB CASE NO. 74-3984 NOVEMBER 3, 1975

STEVE MINOR, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS THAT THE BOARD REVIEW THE ORDER OF THE REFEREE WHICH REMANDED CLAIMANT'S CLAIM TO IT FOR PAYMENT OF COMPENSATION PURSUANT TO LAW AND AWARDED CLAIMANT'S ATTORNEY A FEE TO BE PAID BY IT.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON MARCH 13, 1973 WHICH DR. RIEKE DIAGNOSED AN ABDOMINAL MUSCLE SPASM. EVENTUALLY, CLAIMANT UNDERWENT A LAPOROSCOPY AND AN EXPLORATORY LAPAROTOMY TO DETERMINE WHETHER HIS ABDOMINAL PAIN WAS RELATED TO ADHESIONS ASSOCIATED WITH AN OLD APPENDECTOMY OR WAS RELATED TO HIS ON THE JOB INJURY. DR. WEBBER, WHO PERFORMED THE SURGERY, HAD ADVISED THE FUND THAT HE FELT CLAIMANT HAD A SIGNIFICANT INJURY TO HIS RIGHT FLANK, INSIDE, WHICH WAS SUSTAINED WHILE ON THE JOB ALTHOUGH THE TRUE ETIOLOGY OF HIS PAIN COULD NOT BE DISCERNED AT THAT TIME.

A DETERMINATION ORDER DATED DECEMBER 26, 1973 GRANTED CLAIMANT TIME LOSS FOR CERTAIN PERIODS BETWEEN MARCH 13, 1973 AND NOVEMBER 16, 1973 BUT AWARDED NO PERMANENT DISABILITY.

THE ISSUES BEFORE THE REFEREE WERE (1) ADDITIONAL TIME LOSS BEYOND NOVEMBER 16, 1973, (2) FURTHER MEDICAL CARE AND TREATMENT, AND (3) IF MEDICALLY STATIONARY, THE EXTENT OF PERMANENT DISABILITY. CLAIMANT ALSO REQUESTED ATTORNEY'S FEE AND PENALTIES FOR THE FUND'S UNREASONABLE REFUSAL TO PAY TIME LOSS FOR THE ENTIRE PERIOD COVERED BY THE DETERMINATION ORDER.

DR. REYNOLDS, WHO TREATED CLAIMANT AFTER THE SURGERY, SUGGESTED THAT THE FUND REOPEN THE CLAIM -IT WAS NOT REOPENED, HOWEVER, THE FUND DID SEND CLAIMANT TO DRS. GRIPEKOVEN AND CAMPBELL. THE FORMER DIAGNOSED RIGHT ABDOMINAL AND FLANK PAIN, ETIOLOGY UNKNOWN, HOWEVER, IT COULD HAVE BEEN THE RESULT OF THE INDUSTRIAL ACCIDENT. THE OTHER FINDINGS MADE BY HIM WERE, IN HIS OPINION NOT RELATED TO THE ACCIDENT. FROM AN ORTHOPEDIC STANDPOINT, HE FELT CLAIMANT WAS MEDICALLY STATIONARY AND THAT THERE WAS NO REASON TO REOPEN THE CLAIM. DR. CAMPBELL'S OPINION WAS THAT CLAIMANT HAD REFERRED PAIN FROM THE BACK WHICH WAS CONSISTENT WITH PREVIOUS FINDINGS, THAT CLAIMANT HAD SUFFERED THIS DIFFICULTY SINCE THE DATE OF THE ACCIDENT. DR. CAMPBELL ALSO FOUND CLAIMANT HAD MANY OTHER MEDICAL PROBLEMS WHICH WERE NOT RELATED TO THE INDUSTRIAL ACCIDENT.

THE REFEREE FOUND THAT THERE HAD BEEN A CONSISTENCY IN THE EXPERIENCE OF BACK AND LEG PAIN AND THAT CLAIMANT HAD NEVER BEEN MEDICALLY STATIONARY, THAT CLAIMANT HAD CONSTANTLY SINCE THE DATE OF THE ACCIDENT HAD PAIN IN HIS LOWER STOMACH WHICH WAS SPREADING.

HE REMANDED THE CLAIM TO THE FUND AND ORDERED THE FUND TO PAY CLAIMANT'S ATTORNEY A REASONABLE ATTORNEY'S FEE.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE CONCLUSION REACHED BY THE REFEREE, HOWEVER, THE EVIDENCE INDICATES THAT THE MEDICAL CARE AND TREATMENT SHOULD BE LIMITED TO ABDOMINAL AND BACK PAINS. BOTH DR. GRIPEKOVEN AND DR. CAMPBELL FOUND CLAIMANT HAD OTHER MEDICAL PROBLEMS NONE OF WHICH WERE RELATED TO THE INDUSTRIAL ACCIDENT.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 21, 1975 IS MODIFIED TO THE EXTENT THAT THE CLAIM REMANDED TO THE STATE ACCIDENT INSURANCE FUND IS LIMITED TO MEDICAL CARE AND TREATMENT AS CLAIMANT MAY REQUIRE FOR HIS ABDOMINAL AND BACK PAIN AND FOR THE PAYMENT OF COMPENSATION, AS PROVIDED BY LAW, COMMENCING APRIL 21, 1975 AND UNTIL CLOSURE IS AUTHORIZED PURSUANT TO ORS 656.268.

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

CLAIMANT'S COUNSEL IS AWARDED, AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW, THE SUM OF 350 DOLLARS PAYABLE BY SAIF.

WCB CASE NO. 74-3774 NOVEMBER 3, 1975

ALBERT E. COX, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF AN ORDER OF THE REFEREE WHICH APPROVED THE DENIAL OF CLAIMANT'S CLAIM OF AGGRAVATION ON THE GROUND THAT SAID CLAIM WAS NOT SUPPORTED BY A WRITTEN OPINION OF A PHYSICIAN WHICH MET THE REQUIREMENTS OF ORS 656.273(4).

ORS 656.273, AMENDED BY OREGON LAWS 1975, CH 497 SEC 1, PROVIDES, AMONG OTHER THINGS, THAT THE ADEQUACY OF THE PHYSICIAN'S REPORT IS NOT JURISDICTIONAL. SEC 5 PROVIDES THAT THE ACT SHALL APPLY TO ALL CLAIMS FOR COMPENSABLE INJURIES THAT OCCUR PRIOR TO THE EFFECTIVE DATE OF THE ACT.

THE BOARD CONCLUDES THAT IT HAS NO ALTERNATIVE BUT TO REMAND THE CLAIM FOR AGGRAVATION FOR A HEARING ON THE MERITS UNDER THE PROVISIONS OF ORS 656.273, AS AMENDED.

ORDER

THE ORDER OF THE REFEREE APPROVING THE DENIAL OF CLAIMANT'S CLAIM OF AGGRAVATION DATED APRIL 22, 1975 IS REVERSED AND THE MATTER IS REMANDED TO THE HEARINGS DIVISION FOR A HEARING ON THE MERITS.

WCB CASE NO. 74-3711 NOVEMBER 3, 1975

ANNABELLE JUSTICE, CLAIMANT

NICK CHAIVOE, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE FUND'S DENIAL OF HER CLAIM FOR WORKMEN'S COMPENSATION BENEFITS.

CLAIMANT IS A 50 YEAR OLD WOMAN EMPLOYED AS A HARDWARE PACKAGER BY THE EMPLOYER. ON AUGUST 20, 1974 SHE FILED AN ACCIDENT REPORT ALLEGING AN INJURY OCCURRING ON AUGUST 16, 1974. THE CLAIM WAS DENIED BY THE FUND ON OCTOBER 2, 1974.

CLAIMANT'S JOB CONSISTED OF FILLING SMALL PLASTIC BAGS WITH NUTS, BOLTS, SCREWS, ETC. AND PUTTING THEM INTO A CARDBOARD BOX WHICH SHE CARRIED TO A NEARBY BIN WHERE THE BOXES WERE STORED. SHE ALLEGES THAT WHILE RETURNING FROM THE BIN SHE STUMBLED OR WAS TRIPPED BY A SMALL DOG WHICH HAD BEEN ON THE EMPLOYER'S PREMISES FOR SEVERAL DAYS AND FELL ON HER KNEES AND PALMS CAUSING BOTH TO BLEED. SHE ALSO TESTIFIED SHE FELT A 'CRUNCH' IN THE LOW BACK AREA ON THE LEFT SIDE. CLAIMANT TESTIFIED THAT TWO FEMALE CO-WORKERS AND A MR. KENAGA OBSERVED HER RISING FROM THE FLOOR AND OFFERED TO HELP HER, HOWEVER, THESE THREE PEOPLE DENIED ANY KNOWLEDGE OF SUCH INCIDENT.

CLAIMANT WENT TO THE EMERGENCY ROOM OF THE PROVIDENCE HOSPITAL WHOSE RECORDS INDICATE CLAIMANT DID HAVE A SMALL CONTUSION ON THE LEFT KNEE BUT NO CONTUSION ON THE LEFT HAND, THERE WAS NO MENTION OF THE RIGHT HAND. THE DIAGNOSIS WAS STRAIN LOW BACK.

THE REFEREE FELT, ALTHOUGH, TO A CERTAIN EXTENT, THE HOSPITAL RECORDS DID CORROBORATE CLAIMANT'S ALLEGATIONS OF AN INJURY THERE WAS NO MENTION OF CONTUSIONS ON THE PALM OF EITHER HAND OR ANY INDICATION OF BLEEDING OR LACERATIONS. HE GAVE SUBSTANTIAL WEIGHT TO THE TESTIMONY OF THE TWO CO-WORKERS WHO SAID THEY DID NOT OBSERVE THE FALL, DID NOT SEE THE CLAIMANT ON THE FLOOR, NOR OBSERVE ANY BLOODY PALMS OR KNEE, AND HE CONCLUDED THE ALLEGED INCIDENT SIMPLY DID NOT OCCUR AND, THEREFORE, AFFIRMED THE DENIAL OF HER CLAIM.

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

ORDER

THE ORDER OF THE REFEREE DATED JUNE 19, 1975 IS AFFIRMED.

SAIF CLAIM NO. YC 42295 NOVEMBER 4, 1975

GERALD BOCHSLER, CLAIMANT

OWN MOTION DETERMINATION

THIS CLAIMANT SUSTAINED A COMPENSABLE INDUSTRIAL INJURY ON SEPTEMBER 6, 1966. HIS CLAIM WAS PROCESSED AS A 'MEDICAL ONLY'.

DR. CORRIGAN, WHO EXAMINED CLAIMANT ON MAY 21, 1975, INDICATES CLAIMANT'S CONDITION HAS BECOME AGGRAVATED DUE TO THIS 1966 INJURY, AND HAS SET A PATTERN OF CAUSING REGULAR PERIODS OF MINOR TIME LOSS.

THIS MATTER WAS SUBMITTED TO THE EVALUATION DIVISION OF THE WORKMEN'S COMPENSATION BOARD FOR A DETERMINATION AND THEY FOUND CLAIMANT WAS ENTITLED TO A PERIOD OF TEMPORARY TOTAL DISABILITY AS WELL AS AN AWARD FOR 10 PER CENT PERMANENT PARTIAL DISABILITY.

ORDER

IT IS HEREBY ORDERED THAT THE CLAIM BE REMANDED TO SAIF FOR PAYMENT OF TEMPORARY TOTAL DISABILITY COMPENSATION FROM MAY 19, 1975 THROUGH MAY 26, 1975.

IT IS FURTHER ORDERED THAT CLAIMANT BE AWARDED 10 PER CENT OF THE MAXIMUM ALLOWABLE BY STATUTE IN 1966 FOR UNSCHEDULED DISABILITY TO THE LOW BACK.

WCB CASE NO. 74-4199 NOVEMBER 4, 1975

WILLIAM KAUFFMAN, CLAIMANT

MARION EMBICK, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT 272 DEGREES FOR 85 PER CENT UNSCHEDULED PERMANENT PARTIAL DISABILITY.

CLAIMANT AT THE TIME OF THE HEARING HAD RECEIVED A TOTAL OF 128 DEGREES FOR 40 PER CENT UNSCHEDULED NECK AND UPPER BACK DISABILITY. CLAIMANT CONTENDS THAT HE IS PERMANENTLY AND TOTALLY DISABLED AS THE RESULT OF HIS INJURY ON DECEMBER 15, 1970.

CLAIMANT IS 60 YEARS OLD AND FOR THE PAST 17 YEARS HIS PRIMARY OCCUPATION HAS BEEN THAT OF HIGHWAY BRIDGE CONSTRUCTION WORKER, HEAVY MANUAL LABOR WITH 50 PER CENT OVERHEAD WORK WHICH REQUIRES USE OF JACKHAMMERS AND CHIPPING HAMMERS.

AS A RESULT OF HIS DECEMBER 15, 1970 INJURY CLAIMANT UNDERWENT SURGERY FOR ANTERIOR DISC REMOVAL AND A DOUBLE LEVEL FUSION C5-6 AND C6-7. HE RETURNED TO WORK ON JUNE 24, 1971 AND CONTINUED TO WORK WITH HEAVY EQUIPMENT, ALTHOUGH HE DID HAVE SOME LIGHTER DUTIES UNTIL NOVEMBER 21, 1972, WHEN HE QUIT BECAUSE HE NO LONGER PERFORMED THE REQUIRED DUTIES. HIS REQUEST THAT HIS CLAIM BE

REOPENED WAS DENIED, BUT AFTER A HEARING, IT WAS REMANDED TO THE FUND. THE CLAIM WAS CLOSED AGAIN ON NOVEMBER 5, 1974.

CLAIMANT CONTINUES TO COMPLAIN OF CHRONIC PAIN AND DISCOMFORT IN HIS NECK, SHOULDERS AND ARMS. THE MOST SEVERE PAIN IS IN HIS LEFT ARM. HE ALSO HAS LIMITATION OF MOTION IN HIS NECK AND ARMS. CLAIMANT HAS A FORMAL EIGHTH GRADE EDUCATION BUT NO SPECIALIZED SKILLS OR TRAINING.

ON NOVEMBER 21, 1972, DR. WHITE, A NEUROSURGEON, WHO HAD PERFORMED THE SURGERY IN 1971, STATED THAT THERE WERE CONTINUED SIGNS OF MILD SPINAL CORD DAMAGE, HE RECOMMENDED CLAIMANT BE RETIRED FOR MEDICAL REASONS BECAUSE HE COULD NOT RETURN TO HIS FORMER EMPLOYMENT AND HIS AGE PRECLUDED VOCATIONAL REHABILITATION. CLAIMANT'S DISABILITY WAS ATTRIBUTED BY DR. WHITE AS BEING DIRECTLY RELATED TO HIS ACCIDENTAL INJURY.

ON APRIL 23, 1973 DR. TILEY, AN ORTHOPEDIC SURGEON, BASED UPON HIS EXAMINATION OF CLAIMANT, CONCLUDED THAT CLAIMANT WAS NOT TOTALLY DISABLED, HOWEVER, HE COULD NOT RETURN TO HIS FORMER EMPLOYMENT OR ANY WORK INVOLVING HEAVY LIFTING OR THE USE OF HIS ARMS IN AN OVERHEAD POSITION.

CLAIMANT WAS REFERRED TO THE DPD CENTER IN PORTLAND WHERE HE WAS EXAMINED BY DR. VAN OSDEL WHO RECOMMENDED A JOB CHANGE WITH NO HEAVY LIFTING AND NO OVERHEAD WORK OR REPETITIVE WORK REQUIRING AMBIDEXTROUS USE OF THE ARMS AT OR ABOVE SHOULDER LEVEL. HE THOUGHT THE PROGNOSIS FOR RESTORATION AND REHABILITATION WAS POOR PRIMARILY BECAUSE OF CLAIMANT'S CONVICTION THAT HE WAS PERMANENTLY TOTALLY DISABLED.

DR. HICKMAN, CLINICAL PSYCHOLOGIST, FELT THAT CLAIMANT HAD THE NECESSARY VOCATIONAL INTERESTS, INTELLECTUAL AND CONSTRUCTIVE PERSONALITY RESOURCES AND APTITUDES TO INVOLVE HIMSELF IN SOME TYPE OF WORK BUT THE PROGNOSIS FOR REHABILITATION WAS POOR BECAUSE OF CLAIMANT'S ATTITUDE REGARDING HIS PHYSICAL STATE AND PRODUCTIVE WORK. DR. HICKMAN FELT THAT CLAIMANT CONSIDERED HIMSELF PERMANENTLY AND TOTALLY DISABLED, AND HE RECOMMENDED PERSONAL COUNSELLING. AFTER PERSONAL COUNSELLING, DR. ROBINSON, CLINICAL PSYCHOLOGIST, INDICATED THAT CLAIMANT'S AGE AND GENERAL PHYSICAL AND MENTAL DETERIORATION RESULTING FROM HIS INJURIES ON THE JOB PRECLUDED REORIENTATION TO ANY OTHER TYPE OF WORK AND RECOMMENDED RETIREMENT.

DR. TILEY'S FINAL (UNDERSCORED) OPINION WAS THAT, CONSIDERING CLAIMANT'S PHYSICAL CONDITION, PHYSICAL LIMITATIONS, OVERALL EDUCATIONAL AND SOCIAL BACKGROUND, CLAIMANT WAS REALLY UNEMPLOYABLE AT THE PRESENT TIME.

BASED ON THE MEDICAL AND PSYCHOLOGICAL EVIDENCE, THE REFEREE CONCLUDED THAT MOTIVATION TO FIND WORK OR RETRAIN FOR LIGHTER WORK WAS A MATERIAL FACTOR IN THIS CASE AND CLAIMANT HAD FAILED TO PROVE SUFFICIENT MOTIVATION TO SEEK OTHER TYPES OF WORK.

HE WAS CONVINCED THAT DR. TILEY'S LAST OPINION THAT CLAIMANT WAS NOT EMPLOYABLE AT THE PRESENT TIME WAS BASED UPON INDUSTRIAL AND NON-INDUSTRIAL (UNDERSCORED) DISABILITIES AND, CONCLUDED AFTER CONSIDERING THE MEDICAL AND PSYCHOLOGICAL EVIDENCE, ALONE, AND CLAIMANT'S INDUSTRIAL RELATED DISABILITY THAT CLAIMANT HAD FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HE WAS PERMANENTLY AND TOTALLY DISABLED.

THE REFEREE FOUND THAT CLAIMANT HAD BEEN EFFECTIVELY PRECLUDED FROM RETURNING TO HIS ORDINARY OCCUPATION, AS WELL AS JOBS IN THE GENERAL INDUSTRIAL LABOR MARKET WHICH REQUIRED HEAVY LIFTING, OVERHEAD WORK FOR PROLONGED PERIODS OF TIME, REPETITIVE BENDING AND TWISTING OR PROLONGED POSITION MAINTENANCE EITHER SITTING OR STANDING AND, TAKING THAT INTO CONSIDERATION TOGETHER WITH CLAIMANT'S PHYSICAL IMPAIRMENT, AGE, EDUCATION, TRAINING AND EXPERIENCE, CONCLUDED CLAIMANT WAS ENTITLED TO AN AWARD OF 85 PER CENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED PERMANENT PARTIAL DISABILITY.

THE BOARD, ON DE NOVO REVIEW, BELIEVES THAT THE REFEREE DID AN EXCELLENT JOB OF PRESENTING THE FACTS AND HIS FINDINGS AND CONCLUSIONS BASED THEREON - HOWEVER, IT FEELS THAT DR. TILEY'S OPINION IS MISINTERPRETED BY THE REFEREE.

THE BOARD DOES NOT AGREE THAT CLAIMANT LACKED MOTIVATION TO SEEK WORK AT GAINFUL EMPLOYMENT. CLAIMANT HAD AN EXCELLENT WORK RECORD PRIOR TO THE 1970 INJURY, AFTER RECOVERY FROM THAT INJURY HE CONTINUED TO WORK UNTIL NOVEMBER, 1972, WHEN HE FOUND HE COULD NO LONGER ADEQUATELY HANDLE THE RESPONSIBILITIES OF HIS WORK. DR. WHITE RECOMMENDED THAT CLAIMANT BE RETIRED, HE COULD NOT RETURN TO HIS FORMER EMPLOYMENT AND, AT HIS AGE, WAS A VERY POOR PROSPECT FOR VOCATIONAL REHABILITATION. DR. TILEY SAID CLAIMANT WAS UNEMPLOYABLE AT THE PRESENT TIME. DR. HICKMAN FELT THE PROGNOSIS FOR REHABILITATION OF CLAIMANT WAS POOR BECAUSE CLAIMANT WAS CONVINCED THAT HE COULD NOT DO A FULL TIME PRODUCTIVE WORK BECAUSE OF HIS PHYSICAL CONDITION, YET, AFTER THE RECOMMENDED PERSONAL COUNSELLING, THE COUNSELOR STATED THAT BECAUSE OF CLAIMANT'S AGE AND GENERAL PHYSICAL AND MENTAL DETERIORATION RESULTING FROM HIS JOB INJURIES HE WAS PRECLUDED FROM BEING REORIENTED TO ANOTHER TYPE OF WORK.

IT APPEARS THERE IS VERY LITTLE POSSIBILITY THAT CLAIMANT WILL EVER FIND ANY JOB WHICH HE WILL BE ABLE TO PHYSICALLY DO OR THAT ANY EMPLOYER WILL BE WILLING TO HIRE HIM, THEREFORE, IT IS NOT IMPORTANT THAT CLAIMANT ACTIVELY SEEK EMPLOYMENT. THE MEDICAL EVIDENCE WITH RESPECT TO CLAIMANT'S PHYSICAL IMPAIRMENTS INDICATE THAT THEY ARE SUBSTANTIAL. IN APPLYING THE CONCEPT OF EARNING CAPACITY THE TOTAL INABILITY TO GAIN (UNDERSCORED) EMPLOYMENT IS JUST AS TOTALLY DISABLING AS THE INABILITY TO HOLD (UNDERSCORED) EMPLOYMENT. KRUGEN V. BEALL PIPE AND TANK CORP. (UNDERSCORED), 19 OR APP 926.

THE BOARD, AFTER CONSIDERING CLAIMANT'S AGE, HIS HEAVY MANUAL LABOR WORK BACKGROUND, ESPECIALLY THE WORK OF THE PREVIOUS 17 YEARS WHICH REQUIRED SUBSTANTIAL OVERHEAD WORK WHICH HE IS NOW DEFINITELY PRECLUDED FROM DOING, HIS LIMITED EDUCATION AND THE POOR PROGNOSIS EXPRESSED FOR REHABILITATION OF CLAIMANT, CONCLUDES THAT CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED.

ORDER

THE ORDER OF THE REFEREE DATED MAY 19, 1975 IS MODIFIED TO THE EXTENT THAT CLAIMANT IS FOUND TO BE PERMANENTLY AND TOTALLY DISABLED AND SHALL BE CONSIDERED AS PERMANENTLY AND TOTALLY DISABLED FROM THE DATE OF THIS ORDER ON REVIEW.

CLAIMANT'S COUNSEL IS AWARDED, AS A REASONABLE ATTORNEY'S FEE IN CONNECTION WITH HER SERVICES ON THIS BOARD REVIEW, 25 PER CENT OF THE ADDITIONAL COMPENSATION AWARDED CLAIMANT BY THIS ORDER, NOT TO EXCEED 2,300, PAYABLE FROM SAID COMPENSATION.

WCB CASE NO. 73-2595 NOVEMBER 4, 1975

DARRELL R. BETTELYOUN, CLAIMANT

GREGORY, CLYMAN AND OGILVY,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF AN ORDER WHICH REMANDED CLAIMANT'S CLAIM TO BE ACCEPTED FOR PAYMENT OF COMPENSATION AS PROVIDED BY LAW AND ORDERED IT TO PAY CLAIMANT'S ATTORNEY 600 DOLLARS.

CLAIMANT CONTENDS HE SUFFERED A COMPENSABLE INJURY WHILE LIFTING A REFRIGERATOR-FREEZER UNIT AT HIS EMPLOYER'S SHOP ON MARCH 16, 1973. NO ONE WITNESSED THE INCIDENT. CLAIMANT HAD PLANNED TO GO ON A VACATION THAT AFTERNOON. ALTHOUGH HE WAS IN PAIN, CLAIMANT AND HIS WIFE LEFT THE FOLLOWING DAY, HEADING TOWARDS BANDON WHERE THEY PLANNED TO REST AT CLAIMANT'S SISTER'S HOME. AT SALEM, CLAIMANT'S WIFE TOOK OVER THE DRIVING BECAUSE OF CLAIMANT'S BACK PAIN. ON ARRIVAL IN BANDON, CLAIMANT WAS HARDLY ABLE TO WALK AND IN GREAT PAIN. HE RESTED TWO DAYS AT HIS SISTER'S HOME AND THEN RETURNED TO PORTLAND.

ON MARCH 19, 1973, CLAIMANT WAS SEEN BY DR. BEARDALL, ON THAT SAME DAY HE CALLED THE EMPLOYER'S OFFICE AND ADVISED AN EMPLOYEE THAT HE HAD BEEN HURT AT WORK. DR. BEARDALL DIAGNOSED A LUMBOSACRAL STRAIN WITH LEFT RADICULITIS WITH NO EVIDENCE OF DISC HERNIATION AND PRESCRIBED CHIROPRACTIC MANIPULATION.

ON MAY 21, 1973 CLAIMANT FILED A REPORT OF HIS INJURY WHICH INDICATED THE EMPLOYER FIRST KNEW OF THE INJURY ON MARCH 16, 1973. THIS REPORT WAS SIGNED BY THE EMPLOYER'S MANAGER ON MAY 29, 1973. ON JUNE 26, 1973 THE FUND MAILED ITS NOTICE OF DENIAL.

THE REFEREE LISTENED TO THE TESTIMONY OF CLAIMANT, HIS WIFE AND HIS SISTER. HE ALSO HEARD TESTIMONY FROM MRS. HENRY, THE EMPLOYER'S MANAGER, AND A BRUCE BROWN. THE REFEREE WAS PERSUADED THAT CLAIMANT WAS A CREDIBLE WITNESS AS WAS HIS WIFE AND SISTER. THE WIFE TESTIFIED AS TO THE BACK PAIN WHICH CLAIMANT HAD ON THE AFTERNOON OF MARCH 16, 1973 UPON RETURNING FROM THE EMPLOYER'S SHOP AND ALSO THE CONTINUED PAIN DURING THEIR TRIP FROM PORTLAND TO BANDON. THE CLAIMANT'S SISTER TESTIFIED THAT FOR A PERIOD OF TWO DAYS CLAIMANT WAS IN PAIN AND HAD TO HAVE BED REST AT HER HOME IN BANDON BEFORE RETURNING TO PORTLAND. THE TESTIMONY OF MRS. HENRY WAS SOMEWHAT EQUIVOCABLE AND THE TESTIMONY FROM MR. BROWN HAD NO IMPEACHMENT VALUE IN THE OPINION OF THE REFEREE.

THE REFEREE CONCLUDED THAT THE TESTIMONY OF THE CLAIMANT, CORROBORATED BY BOTH HIS WIFE AND SISTER, WAS SUFFICIENT TO ESTABLISH THAT CLAIMANT HAD, IN FACT, SUFFERED A COMPENSABLE INJURY. THE EVIDENCE IS UNREBUTTED THAT THE EMPLOYER HAD TIMELY NOTICE OF AN INJURY SUFFERED ON THE JOB.

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

ORDER

THE ORDER OF THE REFEREE DATED MAY 20, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED, AS A REASONABLE ATTORNEY'S FEE IN CONNECTION WITH HIS SERVICES AT BOARD REVIEW, THE SUM OF 300 DOLLARS PAYABLE BY SAIF.

WCB CASE NO. 74-3409 NOVEMBER 4, 1975

LARRY TABOR, CLAIMANT

EVOHL MALAGON, CLAIMANT'S ATTY.
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE CLAIMANT REQUESTS A REVIEW OF AN ORDER OF THE REFEREE WHICH APPROVED THE DENIAL OF HIS CLAIM.

THE ISSUES BEFORE THE REFEREE WERE WHETHER CLAIMANT SUFFERED AN INJURY ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT ON JUNE 26, 1974, AND WHETHER TIMELY NOTICE OF THE INJURY WAS GIVEN BY THE CLAIMANT TO HIS EMPLOYER.

CLAIMANT ALLEGES HE WAS INJURED ON JUNE 26, WHEN HE SAW ANOTHER EMPLOYEE HAVING DIFFICULTY PUSHING ON THE CORES, WENT TO HIS ASSISTANCE AND STEPPED BETWEEN TWO ROLLERS, TWISTING HIS KNEE. CLAIMANT TOLD HIS FELLOW EMPLOYEE THAT HE HURT A LITTLE BUT THOUGHT HE WOULD BE ALRIGHT. HE KEPT ON WORKING THE BALANCE OF THE DAY EVEN THOUGH THE PAIN CONTINUED.

CLAIMANT DID NOT TELL ANYBODY AT WORK THAT HE WAS INJURED ON THE JOB, EVEN WHEN, ABOUT A WEEK AFTER THE INCIDENT, THE FOREMAN NOTICED HE WAS LIMPING AND ASKED IF HE'D BEEN TO A DOCTOR. THREE WEEKS AFTER THE INCIDENT CLAIMANT WENT TO SEE DR. YOUNG, HE DID NOT ADVISE THE DOCTOR THAT HE HAD INJURED HIS KNEE ON THE JOB BECAUSE THE DOCTOR SAID THERE WAS NOTHING WRONG WITH THE KNEE. CLAIMANT DID FILE A CLAIM FOR OFF-THE-JOB INJURY WITH OPS AND RECEIVED BENEFITS.

APPROXIMATELY THREE WEEKS AFTER HIS FIRST VISIT TO DR. YOUNG, HE RETURNED AND, AT THAT TIME, CLAIMANT TESTIFIED HE TOLD THE DOCTOR THAT HE HAD BEEN INJURED ON THE JOB AND, ON AUGUST 16, 1974, CLAIMANT FILED A REPORT OF THE INJURY. CLAIMANT WAS AWARE OF THE RULE THAT ON-THE-JOB ACCIDENTS WERE TO BE REPORTED TO THE EMPLOYER, HE HAD PREVIOUSLY FILED AN ACCIDENT REPORT AND ALSO A PREVIOUS CLAIM FOR AN ACCIDENT ON THE JOB ABOUT FOUR YEARS PRIOR TO THIS INCIDENT.

THE REFEREE FOUND THAT CLAIMANT FAILED TO GIVE NOTICE TO HIS EMPLOYER WITHIN 30 DAYS AFTER THE ACCIDENT BUT THAT THE CLAIM WAS NOT BARRED THEREBY AS THERE WAS NO EVIDENCE THAT THE EMPLOYER HAD BEEN PREJUDICED BY THE FAILURE TO RECEIVE SUCH NOTICE.

THE REFEREE FOUND IT VERY DIFFICULT TO BELIEVE CLAIMANT'S TESTIMONY THAT ON HIS SECOND VISIT HE INFORMED THE DOCTOR THAT HE WAS INJURED ON THE JOB AS THE HISTORY RELATED BY CLAIMANT TO THE DOCTOR MAKES NO MENTION OF AN ON-THE-JOB ACCIDENT. FURTHERMORE, THE REFEREE FOUND IT INCREDIBLE THAT CLAIMANT DID NOT FEEL HIS

INJURY WAS SERIOUS AND WAS CERTAIN THAT IT WAS GOING AWAY WHEN HE WAS VISIBLY LIMPING A WEEK AFTER THE INCIDENT, HAD DECLINED TO DO CERTAIN TYPES OF WORK AND HAD TAKEN TIME OFF DUE TO THE CONDITION OF HIS KNEE.

THE REFEREE CONCLUDED THAT CLAIMANT HAD FAILED TO MEET THE BURDEN OF PROVING EVERY ELEMENT OF HIS CLAIM BY A PREPONDERANCE OF THE EVIDENCE AND DENIED THE CLAIM.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE REFEREE AND ADOPTS THEM AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED MAY 16, 1975 IS AFFIRMED.

WCB CASE NO. 74-4430 NOVEMBER 4, 1975

WENDELL R. ARRIAGA, CLAIMANT

WILLIAM A. BARTON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER OF DISMISSAL

A REQUEST FOR REVIEW, HAVING BEEN DULY FILED WITH THE WORKMEN'S COMPENSATION BOARD IN THE ABOVE-ENTITLED MATTER 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. 74-3939 NOVEMBER 4, 1975

JESS CAMPBELL, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REFUSED TO CONSIDER ANY ASPECT OF PERMANENT PARTIAL DISABILITY INASMUCH AS THE CLAIM HAD NOT BEEN CLOSED PURSUANT TO STATUTE.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON DECEMBER 29, 1971 FOR WHICH HE WAS AWARDED TIME LOSS AND PERMANENT PARTIAL DISABILITY OF 22.5 DEGREES FOR 15 PER CENT LOSS OF THE RIGHT ARM. THE CLAIM WAS SUBSEQUENTLY REOPENED FOR TEMPORARY TOTAL DISABILITY AND FURTHER MEDICAL BENEFITS EFFECTIVE OCTOBER 6, 1974 AND, AT THE PRESENT TIME, IS IN AN OPEN STATUS WITH CLAIMANT RECEIVING TIME LOSS BENEFITS AND MEDICAL TREATMENT.

THE ONLY ISSUE BEFORE THE REFEREE IS WHETHER CLAIMANT WAS ENTITLED TO HAVE A HEARING ON PERMANENT PARTIAL DISABILITY WHILE HIS CLAIM WAS IN AN OPEN STATUS.

CLAIMANT CONTENDS THE MERE FACT THAT HE IS RECEIVING TEMPORARY TOTAL DISABILITY AT THE PRESENT TIME DOES NOT PRECLUDE A HEARING ON THE ISSUE OF PERMANENT PARTIAL DISABILITY AS IT RELATES TO HIS HEMLOCK ALLERGY WHICH HAS BEEN IN A STATIONARY STATUS FOR SOME TIME ALTHOUGH HIS CLAIM AS A WHOLE STILL REMAINS OPEN.

THE REFEREE CORRECTLY RULED THAT NO CLAIM CAN BE CLOSED UNTIL THE WORKMAN'S CONDITION BECOMES MEDICALLY STATIONARY AND THAT PERMANENT DISABILITY AWARDS CAN BE MADE ONLY AT THE TIME THE CLAIM IS CLOSED. WHEN CLAIMANT'S CLAIM WAS REOPENED IT WAS REOPENED FOR ALL PURPOSES THUS THE ISSUE OF PERMANENT PARTIAL DISABILITY CAN ONLY BE CONSIDERED AFTER CLAIMANT BECOMES MEDICALLY STATIONARY. HE WAS NOT MEDICALLY STATIONARY AT THE TIME OF THE HEARING.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE REFEREE AND ADOPTS THEM AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED MAY 9, 1975 IS AFFIRMED.

WCB CASE NO. 74-4457 NOVEMBER 4, 1975

ALICE DARLENE HECK, CLAIMANT

MARK A. BLIVEN, CLAIMANT'S ATTY.
RHOTEN, RHOTEN AND SPEERSTRA,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE EMPLOYER REQUESTS THE BOARD REVIEW THE REFEREE'S ORDER WHICH AWARDED CLAIMANT AN ADDITIONAL 30 DEGREES FOR 20 PER CENT LOSS OF THE LEFT LEG.

CLAIMANT SUFFERED A COMPENSABLE KNEE INJURY ON APRIL 15, 1970. INITIALLY SEEN BY DRS. CHARLES AND CASEY, CLAIMANT WAS REFERRED TO DR. BECKER, AN ORTHOPEDIC SURGEON, WHO HAS TREATED CLAIMANT CONTINUOUSLY SINCE NOVEMBER 16, 1970. DR. BECKER, AT FIRST, WAS RELUCTANT TO PERFORM SURGERY AND HIS CLOSING EVALUATION OF MARCH 10, 1972 WAS THAT CLAIMANT HAD CHONDROMALACIA OF THE PATELLA, LEFT, WITH RESOLVING FINDINGS. BASED UPON THIS REPORT, A DETERMINATION ORDER DATED MARCH 22, 1972 AWARDED CLAIMANT 8 DEGREES FOR PARTIAL LOSS OF HER LEFT LEG.

APPROXIMATELY THREE YEARS AFTER CLAIMANT WAS FIRST SEEN BY DR. BECKER SHE RETURNED AND, AFTER EXAMINATION, DR. BECKER FELT THAT SURGERY MIGHT BE INDICATED. ON FEBRUARY 18, 1974 HE PERFORMED A PATELLECTOMY. THE POST SURGERY RESULTS WERE UNEVENTFUL. IN HIS CLOSING EVALUATION REPORT, DR. BECKER STATED HIS IMPRESSION WAS POST-PATELLECTOMY FOR CHONDROMALACIA OF THE PATELLA, MODERATELY SEVERE. IN RESPONSE TO THE INQUIRY MADE BY THE REFEREE, DR. BECKER STATED HE FELT CLAIMANT'S CONDITION WAS MODERATELY SEVERE PRIOR TO INJURY AND WAS THE REASON FOR THE SURGERY.

CLAIMANT CONTENDS SHE HAS CONSTANT PAIN IN HER LEFT KNEE WITH ONLY PERIOD OF RELIEF OCCURRING WHEN THE KNEE IS RAISED OR BEARING ABSOLUTELY NO WEIGHT, SHE SAYS FROM TIME TO TIME THE KNEE WILL BUCKLE ON HER. CLAIMANT IS RESTRICTED NOT ONLY IN WORK ACTIVITIES

BUT IN RECREATIONAL ACTIVITIES. AT THE TIME OF THE HEARING CLAIMANT WAS STUDYING TO BE A BEAUTICIAN AND HOPED TO COMPLETE HER COURSE IN THE SUMMER OF 1975. THIS IS A JOB WHICH WILL REQUIRE HER TO BE ON HER FEET NOT MORE THAN 20 MINUTES AT A TIME AND THE INTERMITTENT STANDING AND SITTING AND MOVING ABOUT CAN BE ACCOMPLISHED WITHOUT TOO MUCH DIFFICULTY.

THE REFEREE RELIED STRONGLY ON THE CASE OF DENNIS WILLIAMS (UNDERSCORED), WCB CASE NO. 74-2274. IN THAT CASE, CLAIMANT HAD A LATERAL MENISCECTOMY AND THE BOARD, ON REVIEW, INCREASED THE AWARD TO 40 PER CENT LOSS OF THE RIGHT LEG. THE REFEREE FELT THAT IN THE PRESENT CASE, CLAIMANT'S DISABILITY WAS EVEN GREATER BECAUSE OF THE TENDENCY OF HER KNEE TO BUCKLE AND CAUSE HER TO FALL. THE REFEREE BELIEVED HER TESTIMONY WAS NOT INCONSISTENT WITH THE FINAL REPORT OF DR. BECKER, DATED OCTOBER 18, 1974, AND THEREFORE, AWARDED CLAIMANT AN ADDITIONAL 30 DEGREES, GIVING HER A TOTAL OF 68 DEGREES FOR LOSS OF HER LEFT LEG.

THE BOARD, ON DE NOVO REVIEW, DOES NOT AGREE WITH THE REFEREE IN HIS COMPARISON OF THE INSTANT CASE TO THE WILLIAMS (UNDERSCORED) CASE. IN WILLIAMS (UNDERSCORED), DR. SLOCUM PERFORMED A LATERAL MENISCECTOMY AND, BECAUSE THE WORKMAN CONTINUED HAVING DIFFICULTY, SUBSEQUENTLY, A MEDICAL MENISCECTOMY. IN HIS CLOSING REPORT DR. SLOCUM STATES THAT CLAIMANT HAD A 'MODERATE' PERMANENT DISABILITY. THE BOARD FELT IN THAT CASE THAT CLAIMANT'S DISABILITY EQUALLED 40 PER CENT LOSS OF THE RIGHT LEG. IN THE INSTANT CASE, DR. BECKER, IN RESPONSE TO AN INQUIRY FROM THE REFEREE, STATED THAT CLAIMANT'S CONDITION WAS MODERATELY SEVERE PRIOR (UNDERSCORED) TO THE PATELLECTOMY. IN HIS CLOSING REPORT OF OCTOBER 18, 1974 DR. BECKER STATED THAT CLAIMANT HAD DONE REASONABLY WELL AND HER CONDITION COULD BE CONSIDERED MEDICALLY STATIONARY. HIS EXAMINATION INDICATED CLAIMANT HAD MUCH LESS PAIN THAN BEFORE THE SURGERY ALTHOUGH SHE WAS STILL NOT ABLE TO DO ALL THE THINGS SHE HAD DONE BEFORE, THAT SHE WAS UNABLE TO SQUAT FULLY BUT DID GO UP AND DOWN STAIRS, FOOT OVER FOOT, WITHOUT DIFFICULTY. THERE IS NOTHING IN THE CLOSING EVALUATION OF DR. BECKER THAT INDICATES THAT HE WAS OF THE IMPRESSION THAT CLAIMANT'S RESIDUAL (UNDERSCORED) DISABILITY WAS MODERATELY SEVERE. ALSO, IN WILLIAMS (UNDERSCORED), DR. SLOCUM PRESCRIBED A LEG BRACE FOR THE WORKMAN, THUS, DESPITE A SIMILARITY IN SUBJECTIVE COMPLAINTS, THE OBJECTIVE MEDICAL EVIDENCE INDICATES LESS SEVERE PERMANENT DISABILITY TO THE CLAIMANT IN THE PRESENT CASE.

THE BOARD CONCLUDES THAT CLAIMANT HAD BEEN ADEQUATELY COMPENSATED FOR HER SCHEDULED INJURY BY THE PREVIOUS AWARDS WHICH TOTALLED 38 DEGREES - CLAIMANT STILL HAS AT LEAST 75 PER CENT USE OF HER LEFT LEG AND LOSS OF PHYSICAL FUNCTION IS THE SOLE FACTOR TO BE CONSIDERED IN EVALUATING A SCHEDULED DISABILITY.

ORDER

THE ORDER OF THE REFEREE DATED MAY 9, 1975 IS REVERSED.

THE SECOND DETERMINATION ORDER MAILED NOVEMBER 9, 1974 IS AFFIRMED.

WCB CASE NO. 75-165 NOVEMBER 6, 1975

WILLIAM REICHLEIN, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
AMENDED ORDER

ON OCTOBER 30, 1975 AN ORDER ON REVIEW WAS ENTERED IN THE ABOVE ENTITLED MATTER. THE ORDER PORTION THEREOF ERRONEOUSLY RECITES THAT CLAIMANT IS TO BE CONSIDERED PERMANENTLY AND TOTALLY DISABLED AS OF OCTOBER 30, 1975.

THE ORDER ON REVIEW IS CORRECTED AND THE CLAIMANT IS TO BE CONSIDERED PERMANENTLY AND TOTALLY DISABLED AS OF JUNE 13, 1975.

IN ALL OTHER RESPECTS THE ORDER ON REVIEW ENTERED OCTOBER 30, 1975 IS AFFIRMED AND REPUBLISHED.

WCB CASE NO. 73-4226 NOVEMBER 6, 1975

WELDON MULLEN, CLAIMANT

JACOBSON AND COUGHLIN, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF AN ORDER OF THE REFEREE WHICH AFFIRMED THE DENIAL OF A CLAIM FILED BY CLAIMANT FOR HER HUSBAND'S DEATH WHICH ALLEGEDLY OCCURRED ON THE JOB OCTOBER 22, 1973.

THE WORKMAN WAS 56 YEARS OLD AT THE TIME OF HIS DEMISE. THERE IS SOME DISPUTE AS TO THE TYPE OF WORK THE DECEASED WORKMAN WAS DOING IMMEDIATELY PRIOR TO HIS DEATH. CLAIMANT'S COUNSEL INDICATES THAT HE WAS DOING HEAVY RANCH LABOR WORK, THE TESTIMONY OF THE DECEASED'S CO-WORKERS IS THAT FOR A PERIOD OF APPROXIMATELY A MONTH PRIOR TO THE WORKMAN'S DEATH HIS WORK HAD BEEN FAIRLY LIGHT RANCH WORK.

SHORTLY FOLLOWING THE WORKMAN'S DEATH, AN AUTOPSY WAS PERFORMED BY DR. CONNELL, A PATHOLOGIST. THE AUTOPSY WAS ATTENDED BY DR. GRANT, MEDICAL EXAMINER FOR BAKER COUNTY, WHO EXPLICITLY DENIED A CAUSAL RELATIONSHIP. THE DECEASED WORKMAN'S TREATING PHYSICIAN, DR. MC KIM, JR., FOUND, UNEQUIVOCALLY, THAT THERE WAS NO CAUSAL RELATIONSHIP BETWEEN THE DEATH OF THE WORKMAN AND HIS EMPLOYMENT.

AT THE REQUEST OF CLAIMANT'S COUNSEL THE DECEASED'S MEDICAL HISTORY WAS SUBMITTED TO DR. STOTT FOR AN OPINION ON CAUSATION. DR. STOTT FOUND THAT THE DECEASED HAD HAD LONG STANDING CORONARY ARTERY DISEASE AND HIS WORK COULD NOT BE CONSIDERED AS THE SOLE CAUSE OF THIS AILMENT - HOWEVER, OF PERTINENCE WAS THE FACT THAT THE WORKMAN DID NOT DIE OF AN ACUTE MYOCARDIAL INFARCTION OR CORONARY OCCLUSION - HE DIED OF AN ACUTE CARDIAC ARRHYTHMIS SUCH AS VENTRICULAR FIBRILLATION. IN DR. STOTT'S OPINION, DEATH IN PEOPLE WITH CORONARY ARTERY DISEASE MAY BE PRECIPITATED BY PHYSICAL EXERTION DUE TO VENTRICULAR FIBRILLATION AND, THEREFORE, A SIGNIFICANT CASE COULD BE ESTABLISHED LINKING THE DECEASED'S WORK TO HIS SUDDEN DEATH.

THE DECEASED WORKMAN'S FILE WAS EXAMINED BY DR. WYSHAM WHO ALSO STUDIED THE STATEMENTS OF THE WITNESSES CONCERNING THE DECEASED WORKMAN'S ACTIVITIES IMMEDIATELY PRIOR TO HIS DEATH. DR. WYSHAM AGREED THAT THE MOST LIKELY CAUSE OF DEATH HAD BEEN AN ACUTE CARDIAC RHYTHM DISTURBANCE BUT, NOTING DR. GRANT'S FINDINGS OF ADVANCED ARTERIAL DISEASE AND AN OLD CORONARY OCCLUSION, STATED THAT IT IS KNOWN THAT CASES OF SUDDEN CARDIAC DEATH DUE TO VENTRICULAR RHYTHM DISTURBANCES COMMONLY OCCUR IN PATIENTS WITH OLD MYOCARDIAL INFARCTION AND EXTENSIVE, SEVERE CORONARY ARTERY DISEASE. IN MORE THAN 95 PER CENT OF THE CASES OF SUDDEN DEATH THERE HAS BEEN NO PRECEDING VIGOROUS PHYSICAL EFFORT AND IN THE REMAINING 5 PER CENT ONLY 8 TO 12 PER CENT OF THOSE OCCURRED AT WORK.

THE REFEREE CONCLUDED THAT THE PREPONDERANCE OF THE MEDICAL EVIDENCE INDICATED NO LEGAL OR MEDICAL CAUSATION. THE MOST FAVORABLE MEDICAL EVIDENCE FOR THE DECEASED WORKMAN WAS THAT OF DR. STOTT AND IT REQUIRED SPECULATION TO FIND MEDICAL CAUSATION AND WAS DISPUTED BY THE FINDINGS MADE BY DR. WYSHAM.

THE BOARD, ON DE NOVO REVIEW, AGREES THAT THE DENIAL BY THE EMPLOYER SHOULD BE AFFIRMED. HOWEVER, THE EVIDENCE INDICATES THAT LEGAL CAUSATION HAS BEEN ESTABLISHED AND THE SOLE ISSUE WAS WHETHER THE DECEASED'S EMPLOYMENT ACTIVITIES WERE A MATERIAL CONTRIBUTING FACTOR IN CAUSING HIS DEATH. DR. WYSHAM'S OPINION WAS THAT THE CAUSE OF THE DECEASED WORKMAN'S DEATH SELDOM WAS PRECIPITATED BY VIGOROUS PHYSICAL EFFORT. EVEN IF THE DECEASED'S EMPLOYMENT ACTIVITIES HAD BEEN OF A STRENUOUS NATURE IMMEDIATELY PRIOR TO HIS DEATH, AND THIS IS DISPUTED BY THE EVIDENCE OF THE DECEASED WORKMAN'S CO-WORKERS, ONLY DR. STOTT WAS OF THE OPINION THAT THERE WAS A POSSIBLE CAUSAL RELATIONSHIP.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 30, 1975 IS AFFIRMED.

WCB CASE NO. 74-1269 NOVEMBER 6, 1975

LISETT K. HAGLUND, CLAIMANT

ANDERSON, FULTON, LAVIS AND VAN THIEL,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH AWARDED HER 80 DEGREES FOR 25 PER CENT UNSCHEDULED LEFT HIP AREA DISABILITY.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON JANUARY 6, 1972 FOR WHICH SHE WAS AWARDED 32 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK AND PELVIC AREA DISABILITY BY DETERMINATION ORDER MAILED APRIL 10, 1973.

PRIOR TO THE CLOSING AWARD CLAIMANT HAD BEEN EXAMINED AT THE BACK CLINIC, THE DIAGNOSIS WAS TRAUMATIC TROCHANTERIC BURSITIS, OLD SOFT TISSUE AND HEMATOMA SUBSIDING. THE MEMBERS OF THE CLINIC FELT THAT CLAIMANT COULD RETURN TO HER FORMER OCCUPATION OR TO ANY OCCUPATION, THAT THE LOSS OF FUNCTION OF THE INJURY WAS MINIMAL.

DR. GILL, WHO HAD BEEN TREATING CLAIMANT SINCE HER INJURY, COMMENTED ON THE BACK CLINIC'S REPORTS - HE FELT THAT CLAIMANT SHOULD BE ALLOWED A LITTLE MORE TIME TO RECOVER FROM HER CONTUSION OVER THE LEFT LATERAL HIP WHICH HAD BEEN OBSERVED BY HIM ON AN EXAMINATION ON FEBRUARY 8, 1972, BUT HE SAW NO REASON FOR HER TO DEVELOP ANY CHRONIC SYMPTOMS OR DISABILITY AS A RESULT OF THE INJURY.

SUBSEQUENT TO THE CLOSURE OF THE CLAIM, DR. LARSON, A NEUROLOGIST, EXAMINED CLAIMANT. IT WAS HIS OPINION THAT CLAIMANT HAD A PROBLEM OF PAIN THAT HAD BEEN PRESENT SINCE JANUARY, 1972 WHICH OCCUPIED A LARGE AREA ABOUT THE LEFT BUTTOCK AND HIP AND, BASED UPON HER HISTORY, FELT SHE PROBABLY HAD A MUSCLE LIGAMENTOUS STRAIN ABOUT THE HIP. HE FOUND NO SIGNS OF SPECIFIC CENTRAL OR PERIPHERAL NERVOUS SYSTEM COMPLICATIONS. HE DID FEEL THAT THERE WAS INDICATION OF SIGNIFICANT AMOUNT OF SECONDARY GAIN PHENOMENON ASSOCIATED WITH THE CONTINUATION OF HER PAIN.

AS OF DECEMBER 15, 1974 CLAIMANT WAS 65 YEARS OLD, SHE HAD BEEN MARRIED 44 YEARS AND RAISED 12 CHILDREN. SHE WORKED IN THE FISH CANNERY FOR 8 TO 10 YEARS PRIOR TO HER INDUSTRIAL ACCIDENT AND DENIED ANY PRIOR BACK OR HIP PROBLEMS. CLAIMANT NOW USES A CANE. HER HUSBAND IS A DIABETIC AND HAS HAD SEVERAL HEART ATTACKS AND AT THE PRESENT TIME IS DISABLED AT HOME REQUIRING SOME NURSING CARE.

THE REFEREE DID NOT FIND PERSUASIVE EVIDENCE THAT CLAIMANT HAD BACK PROBLEMS AS A CONSEQUENCE OF HER INDUSTRIAL ACCIDENT BUT SHE HAS HAD PELVIC AND LEFT HIP PROBLEMS INCLUDING THE ECCHYMOSIS TO THE LEFT HIP WHICH WAS REFERRED TO BOTH IN THE REPORT OF THE BACK CLINIC AND DR. GILL'S REPORT. THE REFEREE WAS PERSUADED THAT HER LEFT HIP DISABILITY WAS GREATER THAN WHAT THE PHYSICIANS EXPECTED AT THE TIME OF THEIR EXAMINATION AND CONCLUDED THAT CLAIMANT WAS ENTITLED TO AN AWARD OF 25 PER CENT OF THE MAXIMUM TO ADEQUATELY COMPENSATE HER FOR HER LOSS OF EARNING CAPACITY.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE CONCLUSION REACHED BY THE REFEREE. THE BOARD NOTES THAT WHEN THE CLAIMANT HAD BEEN EVALUATED BY DR. PERKINS, A CLINICAL PSYCHOLOGIST, SHE WAS FOUND TO BE WELL MOTIVATED, ALSO WHEN CLAIMANT WAS AT THE DISABILITY PREVENTION DIVISION CENTER IN PORTLAND SHE WAS VERY COOPERATIVE WITH THE PERSONNEL, YET LATER MEDICAL REPORTS INDICATE CLAIMANT WAS A PERSON WITH NOTHING TO OFFER NOR ANY INCLINATION TO HELP HERSELF. IT APPEARS, THEREFORE, THAT THE CONTINUING PAIN WHICH CLAIMANT HAS HAD AS A RESULT OF THE INDUSTRIAL INJURY HAS HAD AN EFFECT UPON HER PERSONALITY WHICH, IN TURN, HAS AFFECTED HER POTENTIAL EARNING CAPACITY. HOWEVER, THE AWARD OF 25 PER CENT GRANTED BY THE REFEREE DOES ADEQUATELY COMPENSATE CLAIMANT FOR THIS.

ORDER

THE ORDER OF THE REFEREE DATED JANUARY 23, 1975 IS AFFIRMED.

WCB CASE NO. 74-4104 NOVEMBER 6, 1975

MABEL G. TAYLOR, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

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

CLAIMANT, A 57 YEAR OLD APARTMENT HOUSE MANAGER, SUFFERED A COMPENSABLE LOW BACK INJURY ON OCTOBER 3, 1971. SHE FIRST RECEIVED CHIROPRACTIC SPINAL ADJUSTMENT TREATMENTS AND AS OF APRIL 4, 1972 DR. GINGERICH, A CHIROPRACTIC PHYSICIAN, FELT CLAIMANT DID NOT NEED ANY FURTHER TREATMENT. CLAIMANT WAS SEEN BY DR. HOLM ON FEBRUARY 14, 1973, COMPLAINING OF LOW BACK PAIN, PAIN IN HER RIGHT LEG AND NECK STIFFNESS. BASED ON DR. HOLM'S REPORT, CLAIMANT'S CLAIM WAS CLOSED ON MARCH 22, 1973 WITH AN AWARD OF 10 PER CENT FOR UNSCHEDULED LOW BACK DISABILITY EQUAL TO 30 DEGREES.

ON JUNE 25, 1973 CLAIMANT WAS EXAMINED BY DR. BECKER WHOSE IMPRESSION WAS THAT OF A CHRONIC LUMBOSACRAL STRAIN SYMPTOMS, WITH MILD SCIATICA. NO FRANK HERNIATED INTERVERTEBRAL DISC DISEASE. HE DID NOT FEEL CLAIMANT COULD HANDLE THE MAJORITY OF WORK REQUIREMENTS ON THE JOB SHE WAS CURRENTLY EMPLOYED AT ESPECIALLY RUNNING A CARPET SWEEPER OR MOWING LAWNS OR DOING A GREAT DEAL OF MOPPING OR VACUUMING. DR. BECKER CONTINUED TO SEE CLAIMANT THROUGH SEPTEMBER, 1973 AS SHE WAS COMPLAINING OF PROGRESSIVE LOW BACK PAIN DOWN HER RIGHT LEG.

IN JANUARY, 1974 CLAIMANT WAS SEEN BY DR. MELGARD, WHO FELT CLAIMANT HAD PROBABLY PULLED HER BICEP MUSCLE ON THE RIGHT AND ALSO HAD MILD ARTHRITIC INVOLVEMENT IN HER LOW BACK AND ARM. HE INDICATED THE POSSIBILITY OF A CARPAL TUNNEL. AFTER CONDUCTION VELOCITY TESTS AND EEG'S REVEALED NO ABNORMALITIES, DR. MELGARD SAID CLAIMANT DID NOT NEED A MYELOGRAM OR ANY NEUROSURGICAL PROCEDURES.

DR. BECKER REPORTED ON APRIL 25, 1974 THAT HE WAS UNABLE TO RELATE OR FIND CAUSAL RELATIONSHIP IN THE MEDICAL PROBABILITY SENSE BETWEEN CLAIMANT'S NECK AND SHOULDER CONDITION AS RELATED TO HER LOWER BACK. CLAIMANT'S NECK AND SHOULDER CONDITIONS WERE NOT STATIONARY AT THAT TIME. DR. BECKER FELT THAT THE MAJORITY OF PEOPLE WITH A SIMILAR SHOULDER CONDITION DID NOT HAVE LOW BACK COMPLAINTS.

A SECOND DETERMINATION ORDER WAS MAILED NOVEMBER 5, 1974 AWARDING CLAIMANT AN ADDITIONAL 20 PER CENT UNSCHEDULED DISABILITY TO HER LOW BACK EQUAL TO 64 DEGREES.

CLAIMANT HAS A HIGH SCHOOL EDUCATION. SHE WAS A REGISTERED NURSE MANY YEARS AGO BUT GAVE UP HER NURSING LICENSE AT THE REQUEST OF HER HUSBAND. SHE HAS ALSO BEEN A SEAMSTRESS AND A PLAYGROUND SUPERVISOR.

THE REFEREE DID NOT QUESTION CLAIMANT'S CREDIBILITY OR MOTIVATION, HE FELT THAT HER COMPLAINTS WERE CORROBORATED BY THE

CREDIBLE TESTIMONY OF HER HUSBAND. THE REFEREE CONCLUDED THAT ALTHOUGH CLAIMANT DID HAVE SOME MINOR NECK AND SHOULDER PROBLEMS, THE SUBSTANTIAL MAJORITY OF HER SYMPTOMS WERE LOW BACK AND LOWER EXTREMITY RELATED AND TRACEABLE TO THE INDUSTRIAL INJURY. TAKING INTO ACCOUNT CLAIMANT'S AGE, EDUCATION, TRAINING, POTENTIAL AND ADAPTABILITY, HE CONCLUDED THAT CLAIMANT WAS UNABLE TO WORK GAINFULLY, SUITABLY AND REGULARLY AND WAS PERMANENTLY AND TOTALLY DISABLED.

THE BOARD, ON DE NOVO REVIEW, FINDS CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED. THE MEDICAL REPORTS DO NOT SUPPORT A FINDING THAT THE DEGREE OF HER PHYSICAL IMPAIRMENT, COUPLED WITH OTHER FACTORS SUCH AS CLAIMANT'S MENTAL CAPACITY, EDUCATION, TRAINING OR AGE PLACES HER PRIMA FACIE IN THE ODD-LOT CATEGORY. THEREFORE, THE MOTIVATION OF THE CLAIMANT TO RETURN TO WORK MUST BE SHOWN BEFORE CLAIMANT ESTABLISHES A PRIMA FACIE CASE OF ODD-LOT STATUS. DEATON V. SAIF (UNDERSCORED), 13 OR APP 298. IN THE INSTANT CASE, CLAIMANT FAILED TO SHOW THAT SHE HAD ACTIVELY SOUGHT WORK, SHE SAID THE REASON SHE HAD NOT LOOKED FOR EMPLOYMENT WAS THAT SHE DIDN'T FEEL THERE WAS ANY SHE COULD DO. THE EVIDENCE DOES NOT INDICATE THAT THIS IS NECESSARILY TRUE. SHE HAD THE BURDEN TO SHOW GOOD MOTIVATION, SHE HAS FAILED TO MEET THIS BURDEN.

AS FAR AS CLAIMANT'S DISABILITY IS CONCERNED, BASED UPON THE MEDICAL REPORTS OF DR. BECKER, WHO TREATED CLAIMANT FAR MORE FREQUENTLY THAN ANY OF THE OTHER PHYSICIANS, CLAIMANT'S CONDITION IS IMPROVING AND THERE STILL ARE MANY TYPES OF WORK SHE CAN DO. HOWEVER, SHE HAS SUFFERED SUBSTANTIAL LOSS IN HER EARNING CAPACITY. THE BOARD CONCLUDES THAT CLAIMANT WILL BE ADEQUATELY COMPENSATED FOR THIS LOSS OF EARNING CAPACITY BY AN AWARD OF 50 PER CENT OF THE MAXIMUM FOR UNSCHEDULED LOW BACK DISABILITY EQUAL TO 160 DEGREES.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 30, 1975 IS REVERSED. CLAIMANT IS AWARDED 160 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. THIS IS IN LIEU OF AND NOT IN ADDITION TO ANY AWARDS MADE BY THE DETERMINATION ORDER OF MARCH 22, 1973 AND NOVEMBER 5, 1974.

WCB CASE NO. 74-2439 NOVEMBER 6, 1975

CARROLLE A. CLARK, CLAIMANT

HAYES PATRICK LAVIS, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT SEEKS BOARD REVIEW OF AN ORDER OF THE REFEREE WHICH AWARDED HER 112 DEGREES FOR 35 PER CENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT SUFFERED A COMPENSABLE INJURY RESULTING IN SEVERE PAINS PERIODICALLY IN HER RIGHT LEG AND BUTTOCKS AREA ON FEBRUARY 13, 1973.

CLAIMANT WAS FIRST SEEN BY DR. GRAHAM WHOSE INITIAL IMPRESSION WAS THAT CLAIMANT HAD A DEGENERATIVE L5-S1 DISC WITH A MILD

S1 RADICULOPATHY WITHOUT NEUROLOGICAL DEFICIT. HE TREATED CLAIMANT CONSERVATIVELY AND SHE SHOWED SOME IMPROVEMENT AND WAS RELEASED TO RETURN TO PART TIME WORK APRIL 5, 1973.

HOWEVER, BECAUSE OF REPETITIVE LIFTING REQUIRED AT WORK SHE WAS UNABLE TO CONTINUE. DR. GRAHAM WAS OF THE OPINION THAT AN L5-S1 SPINAL FUSION WAS INDICATED AND REFERRED CLAIMANT TO DR. SHORT FOR A SECOND ORTHOPEDIC OPINION. ON DECEMBER 1, 1973 CLAIMANT UNDERWENT AN L5-S2 INTER-TRANSVERSE SPINAL FUSION WITH THE DONOR SITE FROM THE RIGHT POSTERIAL ILLIUM, THERE WERE NO SIGNIFICANT POST-OPERATIVE COMPLICATIONS AND CLAIMANT PROGRESSED TO A SOLID FUSION AT THE LEVELS OPERATED ON.

CLAIMANT WAS LAST SEEN BY DR. GRAHAM ON MAY 15, 1974 STILL COMPLAINING OF INTERMITTENT MILD ACHING IN THE LUMBOSACRAL REGION BROUGHT ON BY CERTAIN MOVEMENTS OF THE BODY. DR. GRAHAM RECOMMENDED CLAIM CLOSURE, HE FELT CLAIMANT WOULD NOT BE ABLE TO RETURN TO HER PREVIOUS OCCUPATION AND THAT SHE WOULD REQUIRE INTERMITTENT REFILLS OF A MILD ANALGESIC MEDICATION. IT WAS HIS OPINION THAT CLAIMANT WAS NOT PERMANENTLY AND TOTALLY DISABLED BUT THAT SHE WAS EMPLOYABLE AT TASKS NOT REQUIRING REPEATED BENDING AND LIFTING, WORKING IN A CHRONIC POSITION, OR STANDING OR LIFTING FOR A FULL DAY.

CLAIMANT AT THE TIME OF THE HEARING WAS 49 YEARS OLD AND A HIGH SCHOOL GRADUATE. SHE HAD WORKED AS A GROCERY CLERK AT SAFEWAY AND FRED MEYER AND AS A RESTAURANT WAITRESS, SHORT ORDER COOK AND WORKED AT A MOTEL. SHE DID NOT FEEL SHE COULD WORK AT A MOTEL OR DO SHORT ORDER COOKING BECAUSE OF THE REQUIRED TWISTING AND TURNING MOVEMENTS.

THE REFEREE FOUND THAT CLAIMANT HAD MET HER BURDEN OF PROOF THAT HER AWARD WAS INADEQUATE, CONSIDERING ALL OF THE CIRCUMSTANCES, TO COMPENSATE FOR HER LOSS OF EARNING CAPACITY. HE DID NOT BELIEVE THAT CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED, BASED ON THE MEDICAL REPORTS.

THE REFEREE FOUND THAT CLAIMANT'S CREDIBILITY WAS NOT THE BEST - HOWEVER HE CONSIDERED THAT THE PRIMARY FACTOR TO BE CONSIDERED WAS THAT SHE HAD A REAL PHYSICAL IMPAIRMENT RESULTING IN A LOSS OF EARNING CAPACITY. THE FACT THAT SHE CAN NOT DO WORK WHICH REQUIRE CERTAIN MOVEMENTS OR POSITIONS HANDICAPS HER IN THE COMPETITION FOR JOBS IN THE OPEN LABOR MARKET.

THE REFEREE, BASED UPON THESE FINDINGS, CONCLUDED THAT CLAIMANT HAD LOST 35 PER CENT OF HER EARNING CAPACITY AS A RESULT OF THE INDUSTRIAL INJURY.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE AND AFFIRMS AND ADOPTS THEM AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED JANUARY 24, 1975 IS AFFIRMED.

WAYNE MILLER, CLAIMANT

GARY KAHN, CLAIMANT'S ATTY.
MICHAEL HOFFMAN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER. THE ORDER REVERSED A PARTIAL DENIAL OF A HEART CONDITION ON A FINDING THAT THE CLAIMANT'S CARDIAC PROBLEMS WERE CAUSED BY AN ANESTHETIC ADMINISTERED AS A PRELUDE TO SURGERY ON AN INDUSTRIALLY INJURED LEFT KNEE.

THE EMPLOYER DENIES THAT THE CLAIMANT'S CARDIAC PROBLEM WAS BROUGHT ON BY THE ANESTHETIC. IT FURTHER CONTENDS HOWEVER, THAT EVEN IF THE BOARD FINDS IT WAS SO INDUCED THAT IT ONLY TEMPORARILY AGGRAVATED A PREEXISTING HEART CONDITION.

CLAIMANT IS A NOW 48 YEAR OLD MAN WHO SUFFERED AN INJURY TO HIS LEFT KNEE ON JULY 12, 1973 WHILE WORKING AS A TIRE SALESMAN AT BAY TIRE SALES IN COOS BAY, OREGON.

CLAIMANT'S TREATING ORTHOPEDIST, DR. CURTIS D. ADAMS FOUND A TORN MEDIAL MENISCUS WHICH HE PLANNED TO REMOVE SURGICALLY ON SEPTEMBER 17, 1973. CLAIMANT ENTERED KEIZER MEMORIAL HOSPITAL ON THE AFTERNOON OF SEPTEMBER 16, 1973, FOR ROUTINE PREOPERATIVE TESTS PRIOR TO THE SCHEDULED SURGERY. HIS PULSE RATE UPON ADMISSION WAS 46. AT 9:30 P.M. ON THE EVENING OF THE 16TH, HE WAS GIVEN A SEDATIVE, NEMBUTOL.

AT 10:30 A.M. ON SEPTEMBER 17, AN E.K.G. WAS PERFORMED WHICH RECORDED A 'PECULIAR TRACING WITH SINUS AND JUNCTIONAL BEATS ASSOCIATED WITH BRADYCARDIA' BUT THE E.K.G. WAS NOT INTERPRETED UNTIL LATER. AN INTERNAL MEDICINE SPECIALIST, DR. DAVID R. WHITE, WHO EVENTUALLY INTERPRETED THAT E.K.G., EXPLAINED THAT THE 'PECULIAR TRACINGS' SHOWED A.V. DISSOCIATION TO BE PRESENT AT THAT TIME. AT 12.30 P.M. HIS PULSE WAS AGAIN TAKEN PREPARATORY TO ADMINISTERING THE ORDERED PREOPERATIVE MEDICATIONS. HIS PULSE WAS THEN 46 AND IRREGULAR. THE NURSE WAS UNABLE TO CONTACT DR. ADAMS OR DR. HOPPINS, THE ANESTHETIST, BUT DID CHECK WITH DR. FIET IN X-RAY WHO ADVISED HER TO DELAY ADMINISTERING THE MEDICATIONS UNTIL THE PATIENT WAS READY FOR X-RAY. AT 12:55, 75 MG OF DEMEROL AND 50 MG OF VISTARIL WERE INJECTED INTRAMUSCULARLY. AT 1:35 P.M. AFTER COMPLETION OF X-RAYS, HE ARRIVED IN THE OPERATING ROOM. HIS PULSE AT THAT TIME WAS 44. AT 1:50 P.M. ANESTHESIA WAS BEGUN WITH THE ADMINISTRATION OF FLUOTHANE, NITROUS OXIDE, OXYGEN AND SODIUM PENTATHOL. THE E.K.G. MONITOR IMMEDIATELY RECORDED A.V. DISSOCIATION OR BIGEMINA WITH JUNCTIONAL RHYTHM AND A QUESTIONABLE RETROGRADE P WAVE.

LIDOCAINE WAS ADMINISTERED, BUT THE BEAT RHYTHM DID NOT CONVERT TO SINUS. THE OPERATION WAS TERMINATED AND HE WAS SENT TO THE RECOVERY ROOM WHERE THE HEART BEAT RETURNED TO SINUS RHYTHM. HIS PULSE WAS 64 WHEN HE LEFT THE OPERATING ROOM. DR. WHITE ORDERED ATROPINE SULFATE GIVEN EVERY 6 HOURS AND A HEART RATE CHECK EVERY 2 HOURS. AT 5:00 P.M. IT REMAINED AT 64, AT 7:00 P.M. IT WAS 58, AT 9:00 P.M. AND AT 11:00 P.M., 46. AT 1:00 A.M. ON SEPTEMBER 18, HIS PULSE WAS 40 AND IRREGULAR, AT 3:00 A.M. 56 AND IRREGULAR, AT 7:00 A.M. 48, 7:35 A.M. 43.

AT 8:30 A.M. ANOTHER E.K.G. WAS PERFORMED WHICH DR. WHITE INTERPRETED AS REVEALING 'A.V. DISSOCIATION WITH COINCIDENTAL ATRIAL BRADYCARDIA AND T INVERSION S1, A.V.L. NOT PRESENT YESTERDAY.' AT 9:40 HIS PULSE WAS 48 AND REGULAR, AT 11:00 A.M. IT WAS 44. THE ATROPINE SULFATE WAS DISCONTINUED AT THE PATIENT'S REQUEST BECAUSE IT CAUSED 'NERVOUSNESS AND FLUTTER.'

HE WAS DISCHARGED AT 2-30 P.M. AFTER ARRANGEMENTS WERE MADE BY DR. ADAMS TO HAVE HIM EVALUATED BY A CARDIOLOGIST. DR. ADAMS' OFFICE ASKED THE KEIZER HOSPITAL TO SEND 'X-RAYS AND CHEST FILMS' TO THE CONSULTANT. APPARENTLY THE E.K.G. TRACINGS WERE NOT REQUESTED OR FORWARDED.

ON OCTOBER 1, 1973, CLAIMANT ENTERED SACRED HEART GENERAL HOSPITAL IN EUGENE FOR CORONARY STUDIES BY CARDIOLOGIST FOSTER F. KEENE. THE ADMITTING HISTORY INDICATES AN ASSUMPTION BY DR. KEENE THAT CLAIMANT'S FIRST E.K.G. WAS NORMAL AND THAT ONLY THE POST-OPERATIVE E.K.G. SHOWED A.V. DISSOCIATION. OTHER PERTINENT HISTORY INCLUDED A HISTORY OF GOOD HEALTH WITH NO HEART SYMPTOMOTOLOGY UNTIL SEPTEMBER 17, FOLLOWED THEREAFTER BY CHEST PAIN OF VARYING INTENSITY AND SHORTNESS OF BREATH ASSOCIATED WITH MILD EXERTION. HIS PULSE FOLLOWING SEPTEMBER 17 HAD BEEN IN THE RANGE OF 33 TO 44. HE REMEMBERED NO DIFFICULTY WITH SLOW PULSE IN THE PAST, BUT DID HAVE SOME IRREGULARITY OF HIS HEART RHYTHM AT THE TIME OF INDUCTION INTO THE SERVICE IN THE 1940'S.

DR. KEENE'S ADMITTING E.K.G. SHOWED PERIODS OF APPARENT SINUS RHYTHM WITH INTERMITTENT A.V. DISSOCIATION AMONG OTHER FINDINGS. WHILE THERE, A CORONARY ARTERIOGRAM WAS TAKEN AND A TEMPORARY PACEMAKER WAS INSERTED AND A STRESS TEST DURING E.K.G. WITH THE PACEMAKER BOTH ON AND OFF WAS ALSO DONE. ALL STUDIES WERE NEGATIVE EXCEPT FOR THE E.K.G. WHICH DEMONSTRATED A SINUS BRADYCARDIA WITH A HIS ESCAPE RHYTHM IN THE RANGE OF 40.

IN A LETTER TO THE EMPLOYER'S INSURANCE CARRIER CONCERNING THE RELATIONSHIP PROBLEM, DR. KEENE STATED -

> 'THE RELATIONSHIP OF THE GENERAL ANESTHETIC, WHICH WAS ADMINISTERED AT THE ONSET OF HIS SYMPTOMS, CANNOT BE ABSOLUTELY ESTABLISHED. SINCE MOST GENERAL ANESTHETICS HAVE CERTAIN CARDIOTOXIC PROPERTIES, IT MUST BE ASSUMED THAT THIS AGENT PRECIPITATED THE SUBSEQUENT BRADYARRYTHMIA. IT IS MY SUSPICIAN THAT THERE WAS A PREEXISTING CONDITION WHICH SENSITIZED THIS INDIVIDUAL TO THAT EFFECT. NEVERTHELESS, THE CAUSE-AND-EFFECT RELATIONSHIP EXISTS CLEARLY.' (DEFENDANT'S EXHIBIT 29)

DR. WHITE, IN RESPONDING TO THE CARRIER'S REQUEST FOR AN OPINION ON CAUSATION REGARDING THE HEART PROBLEM STATED -

> '... I DID NOT EXAMINE THIS PATIENT PRIOR TO THE TIME WHEN HE WAS GOING TO HAVE HIS SURGERY. HOWEVER, WHEN THE SURGERY WAS CANCELLED, HIS PREOPERATIVE ELECTROCARDIOGRAM WHICH HAD INADVERTENTLY NOT BEEN INTERPRETED TO THAT TIME, SHOWED THE A.V. DISSOCIATION TO BE PRESENT. THE TRACING TAKEN FOLLOWING THE CANCELLATION OF THE SURGICAL PROCEDURE SHOWED THE THE SAME FINDING. IT IS MY PERSONAL FEELING, ALTHOUGH I CANNOT PROVE IT, THAT HE HAD THIS SAME CONDITION AND WAS UNAWARE OF IT PRIOR TO THE SURGICAL DATE. THE PATIENT HIMSELF IS CONVINCED OTHERWISE AND BECAUSE OF HIS FEELINGS HE DATES THE ONSET OF ALL SYMPTOMS TO THAT DATE AND GAVE SUCH A HISTORY TO DR. FOSTER KEENE IN EUGENE, TO WHOM HE WAS REFERRED

FOR DEFINITIVE STUDIES. I BELIEVE THAT MOST OF THE SYMPTOMS THAT HE NOW EXHIBITS ARE A RESULT OF THE KNOWLEDGE THAT HE HAS SOMETHING WRONG WITH HIS HEART OR ITS CONDUCTION TIME, BUT THIS WILL BE A DIFFICULT POINT IN ANY UPCOMING DECISION OR LITIGATION.' (DEFENDANTS EXHIBIT 34)

ON AUGUST 7, 1974 THE EMPLOYER'S INSURER ISSUED A DENIAL OF ANY RESPONSIBILITY FOR THE CLAIMANT'S CARDIAC PROBLEM.

ON AUGUST 13, 1974, A DETERMINATION ORDER ISSUED EVALUATING THE DISABILITY CAUSED BY THE LEG INJURY.

AT THE HEARING REQUESTED BY CLAIMANT TO CONTEST THE DENIAL, IT WAS ESTABLISHED THAT CLAIMANT HAD LED AN ACTIVE, VIGOROUS LIFE, THAT HE HAD NEVER BEEN AWARE OF PROBLEMS WITH HIS HEART NOR HAD ANY BEEN REVEALED BY OCCASIONAL ROUTINE PHYSICAL EXAMS PRIOR TO THE INJURY.

THE REFEREE, FINDING NO HISTORY OF PREVIOUS HEART PROBLEMS AND ALSO FINDING THE FIRST E.K.G. WAS NORMAL, CONCLUDED THAT DR. KEENE'S OPINION OF CAUSAL RELATIONSHIP WAS CLEARLY CORRECT AND ORDERED THE EMPLOYER TO ACCEPT CLAIMANT'S CARDIAC CONDITION AS COMPENSABLE.

THE RECORD ESTABLISHES THAT CLAIMANT'S FIRST E.K.G. AT THE KEIZER HOSPITAL WAS NOT (UNDERSCORED) NORMAL AS BOTH THE REFEREE AND DR. KEENE CONCLUDED.

THE REFEREE CORRECTLY FOUND THE EMPLOYER'S TOTAL DENIAL OF THE CARDIAC CONDITION ERRONEOUS.

WHETHER THE ANESTHETIC PRECIPITATED ONLY A TEMPORARY OR A PERMANENT CONDITION REMAINS CONJECTURAL FROM THE EVIDENCE OF RECORD. WHILE THE CLAIMANT PROFESSES GOOD HEALTH BEFORE THE SURGERY AND POOR HEALTH SINCE, IT IS IMPOSSIBLE TO SIMPLY IGNORE THE CLAIMANT'S LOW PULSE RATE UPON ADMISSION AND THE SEPTEMBER 17TH ABNORMAL E.K.G. WHAT THE MEDICAL SIGNIFICANCE OF THESE SIGNS ARE, IF ANY, AND WHAT, IF ANY, EFFECT THE NEMBUTOL (A BARBITURATE) WHICH CLAIMANT WAS ADMINISTERED ON SEPTEMBER 16, MIGHT HAVE HAD ON THE FIRST E.K.G. READING REMAINS UNCLEAR. IT APPEARS NO MEDICAL EXPERT HAS CAREFULLY REVIEWED THE MEDICAL EVIDENCE ACCUMULATED NOR HAS SUCH AN EXPERT EXPRESSED AN OPINION ON THE RELATIONSHIP BETWEEN THE SEPTEMBER 17TH INCIDENT AND CLAIMANT'S PRESENT CARDIAC CONDITION.

ALTHOUGH IT HAS BEEN CORRECTLY SUGGESTED THAT ONLY 'COMPENSABILITY AND NOT THE EXTENT OF PERMANENT DISABILITY' IS IN ISSUE REGARDING THE CARDIAC CONDITION, IF WE CONCLUDE THE EMPLOYER IS LIABLE FOR ONLY A TEMPORARY AGGRAVATION OF AN UNDERLYING AND PRE-EXISTING HEART CONDITION, THE EXTENT OF DISABILITY WILL, OF NECESSITY, BE SETTLED. THIS APPEARS TO BE THE REAL DISPUTE IN THE CASE.

WE CONCLUDE THE RECORD WAS INSUFFICIENTLY DEVELOPED ON THIS POINT AND THAT BECAUSE OF ITS ULTIMATE IMPORTANCE TO THE PARTIES, THE MATTER SHOULD BE REMANDED FOR RECEIPT OF ADDITIONAL EVIDENCE ON WHETHER THE ANESTHESIA HAD A TEMPORARY OR CONTINUING EFFECT UPON CLAIMANT'S HEART. THE REFEREE SHOULD RECEIVE ADDITIONAL EVIDENCE UPON THESE QUESTIONS AND ISSUE AN ORDER IN ACCORDANCE WITH HIS FINDINGS. THE PARTIES SHOULD PRESENT TO THE REFEREE THE MATTER OF AN ATTORNEY'S FEE FOR CLAIMANT'S ATTORNEY FOR HIS SERVICES IN CONNECTION WITH THIS REVIEW AND THE FURTHER PROCEEDINGS CONTEMPLATED.

IT IS SO ORDERED.

WCB CASE NO. 75-501 NOVEMBER 10, 1975

WALTER WILES, CLAIMANT

BAILEY, DOBLIE AND BRUUN,
CLAIMANT'S ATTYS.
PHILIP A. MONGRAIN, DEFENSE ATTY.
ORDER OF DISMISSAL

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

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

SAIF CLAIM NO. DC 103538 NOVEMBER 10, 1975

MABEL J. SCHALLBERGER, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

ON AUGUST 6, 1975 THE BOARD WAS REQUESTED BY CLAIMANT TO EXERCISE ITS OWN MOTION JURISDICTION PURSUANT TO ORS 656.278 IN THE ABOVE ENTITLED MATTER. THE REQUEST WAS ACCOMPANIED BY A REPORT FROM DR. MC GREGOR L. CHURCH INDICATING CLAIMANT HAD SUFFERED AN EXACERBATION OF ORIGINAL INDUSTRIAL INJURY OF NOVEMBER 17, 1967 AND A COPY OF THE SUBSEQUENT CLAIM DENIAL BY THE STATE ACCIDENT INSURANCE FUND.

CLAIMANT ALSO HAD FILED A REQUEST FOR HEARING ON AUGUST 5, 1975 ON A DENIAL BY THE FUND TO PAY CERTAIN MEDICAL BILLS, THEREFORE, ON AUGUST 19, 1975 THE BOARD REMANDED THE REQUEST FOR OWN MOTION CONSIDERATION TO THE HEARINGS DIVISION TO BE HEARD IN CONSOLIDATION WITH THE HEARING ON THE DENIAL.

ON OCTOBER 16, 1975 THE REFEREE, AFTER A HEARING, FOUND THE PREPONDERANCE OF THE MEDICAL EVIDENCE INDICATED THAT CLAIMANT HAD SUFFERED AN EXACERBATION OF HER 1967 INJURY AND HE RECOMMENDED THAT THE CLAIM BE REOPENED AS OF MAY 5, 1975 FOR PAYMENT OF TEMPORARY TOTAL DISABILITY COMPENSATION, FOR FURTHER MEDICAL EXAMINATION AND PAYMENT OF MEDICAL BILLS, AND APPROVAL OF THE ATTORNEY FEE AGREEMENT.

ORDER

THE CLAIM IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR PAYMENT FOR COMPENSATION, AS PROVIDED BY LAW, COMMENCING MAY 5, 1975 AND UNTIL CLOSURE IS AUTHORIZED UNDER THE PROVISION OF ORS 656.278.

CLAIMANT'S COUNSEL SHALL BE AWARDED, AS A REASONABLE ATTORNEY'S FEE, 25 PER CENT OF ANY COMPENSATION WHICH CLAIMANT MAY RECEIVE AS A RESULT OF THIS ORDER AND 25 PER CENT OF ANY INCREASED COMPENSATION WHICH CLAIMANT MAY RECEIVE WHEN HER CLAIM IS CLOSED PURSUANT TO ORS 656.278.

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

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

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

WCB CASE NO. 74-3614 NOVEMBER 12, 1975

ERMA BLOM, CLAIMANT

JAN T. BAISCH, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER OF DISMISSAL

A REQUEST FOR REVIEW, HAVING BEEN DULY FILED WITH THE WORKMEN'S COMPENSATION BOARD IN THE ABOVE-ENTITLED MATTER 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. 75-575 NOVEMBER 12, 1975

THE BENEFICIARIES OF BRUCE N. MEYERS, DECEASED

COONS, COLE AND ANDERSON,
CLAIMANT'S ATTYS.
COLLINS, FERRIS AND VELURE,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THIS CASE INVOLVES A DENIAL BY THE EMPLOYER OF A CLAIM FOR BENEFITS BY CERTAIN BENEFICIARIES OF A DECEASED WORKMAN. THE REFEREE HELD THAT THE DENIAL WAS IMPROPER AND DIRECTED THE EMPLOYER TO PROVIDE THE DEPENDENTS BENEFITS. THE EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER.

THE WORKMAN WAS FATALLY INJURED ON DECEMBER 20, 1974. AT THAT TIME HE WAS A SUBJECT EMPLOYEE OF A SUBJECT EMPLOYER AND HIS FATAL INJURY AROSE OUT OF IT IN THE COURSE OF HIS EMPLOYMENT.

THE DECEASED WORKMAN WAS SURVIVED BY HIS WIDOW AND THREE STEPCHILDREN. THE WORKMAN'S WIDOW AND THE STEPCHILDREN'S NATURAL FATHER WERE DIVORCED DECEMBER 3, 1973 AND THE WIDOW MARRIED THE DECEASED WORKMAN ON MARCH 7, 1974. DURING THIS MARRIAGE, FOR THE MOST PART, THE TOTAL FAMILY INCOME WAS EXPENDED FOR THE WHOLE FAMILY IN A WAY TYPICAL OF A 5-PERSON FAMILY UNIT. THE WIDOW DID RECEIVE CHILD SUPPORT MONEY FROM HER FORMER HUSBAND WHICH WAS CO-MINGLED WITH THE DECEASED WORKMAN'S TAKE HOME PAY FOR GENERAL EXPENDITURES OF THE FAMILY. THE DECEASED WORKMAN ALSO PROVIDED MEDICAL AND DENTAL INSURANCE FOR THE STEPCHILDREN.

THE REFEREE, RELYING UPON THE RULING IN HOUSLEY V. EVERTS (UNDERSCORED), 4 OR APP 80, CONCLUDED THAT THE THREE STEPCHILDREN WERE SUBSTANTIALLY DEPENDENT UPON THEIR STEPFATHER PRIOR TO HIS DEATH EVEN THOUGH THEY DID RECEIVE SOME MONEY FROM THEIR NATURAL FATHER UNDER ORDER OF THE COURT. THE WORD 'SUBSTANTIAL' DOES NOT MEAN ANY STATED PERCENTAGE AND THE SUPPORT REQUIRED TO CREATE A DEPENDENCY COULD BE LESS THAN HALF THE TOTAL SUPPORT RECEIVED BY THE STEPCHILDREN AND STILL BE CONSIDERED SUBSTANTIAL.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE REFEREE'S FINDING THAT THE THREE CHILDREN WERE STEPCHILDREN, AS DEFINED BY ORS 656.002(5), WERE MEMBERS OF THE DECEDENT'S HOUSEHOLD AT THE TIME OF HIS DEATH AND, ALTHOUGH NOT WHOLLY DEPENDENT UPON THE DECEDENT FOR THEIR SUPPORT, WERE SUBSTANTIALLY DEPENDENT UPON HIM FOR THEIR DAILY NEEDS.

ORDER

THE ORDER OF THE REFEREE DATED JULY 3, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW, THE SUM OF 350 DOLLARS, PAYABLE BY THE EMPLOYER.

CLAIM NO. 519-69-0054 NOVEMBER 12, 1975

FRED GILTNER, CLAIMANT

OWN MOTION ORDER

THE BOARD HAS BEEN ASKED TO EXERCISE ITS OWN MOTION JURISDICTION UNDER THE PROVISIONS OF ORS 656.278 AND REMAND CLAIMANT'S CLAIM FOR PAYMENT OF MEDICAL CARE AND TREATMENT PURSUANT TO ORS 656.245.

THE BOARD RECEIVED A LETTER FROM DR. JOHN P. CARROLL DATED AUGUST 26, 1975 WHICH INDICATES THAT CLAIMANT WILL NEED TREATMENT PERIODICALLY FOR HIS BACK WITH MEDICATIONS AND PHYSICAL THERAPY. CLAIMANT SUFFERED A COMPENSABLE INJURY ON APRIL 7, 1969 AND DR. CARROLL'S REPORT INDICATES THAT HIS PRESENT CONDITION RELATES TO THAT INJURY.

THE EMPLOYER, BROOKS SCANLON, AND ITS CARRIER, SCOTT WETZEL SERVICES, INC., HAVE INDICATED THAT THE EMPLOYER WILL BE RESPONSIBLE FOR MEDICAL BILLS RELATING TO THE 1969 INJURY UNDER THE PROVISIONS OF ORS 656.245.

ORDER

THE CLAIM IN THE ABOVE ENTITLED MATTER IS REMANDED TO THE EMPLOYER, BROOKS SCANLON, AND ITS CARRIER, SCOTT WETZEL SERVICES, INC., FOR PAYMENT OF ALL MEDICAL BILLS INCURRED BY THE CLAIMANT FOR THE MEDICAL CARE AND TREATMENT RECOMMENDED BY DR. CARROLL.

SAIF CLAIM NO. DC 169055 NOVEMBER 12, 1975

JOSEPH SMALL, CLAIMANT

DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

CLAIMANT SUFFERED A COMPENSABLE INJURY ON JANUARY 2, 1969, HIS CLAIM WAS CLOSED BY AWARDS TOTALLING 48 DEGREES FOR 25 PER CENT PARTIAL LOSS OF THE LEFT ARM AND 19 DEGREES FOR PERMANENT LOSS OF WAGE EARNING CAPACITY. ULTIMATELY, CLAIMANT WAS ADVISED THAT HE WAS NOT ENTITLED TO THE 19 DEGREES FOR LOSS OF WAGE EARNING CAPACITY INASMUCH AS HIS INJURY WAS A SCHEDULED INJURY AND ONLY THE LOSS OF PHYSICAL FUNCTION OF THE SCHEDULED MEMBER CAN BE CONSIDERED. HOWEVER, THE AWARD HAD BEEN PAID OUT AT THAT TIME AND CLAIMANT WAS NOT REQUIRED TO REIMBURSE THE FUND.

CLAIMANT'S RIGHT TO A HEARING ON ANY CLAIM FOR AGGRAVATION EXPIRED JUNE 4, 1975.

THE BOARD HAS RECEIVED INFORMATION FROM DR. EDWIN B. ADAMS AND DR. WILLIAM W. T. WON, BOTH HONOLULU PHYSICIANS WHO HAVE TREATED AND - OR EXAMINED CLAIMANT, THAT CLAIMANT RECEIVED A NERVE TRANSPLANT TO HIS LEFT ELBOW IN 1972 AND THAT SUCH SURGERY WAS REQUIRED AS A RESULT OF HIS 1969 INDUSTRIAL INJURY. A NEUROLOGICAL EXAMINATION BY DR. WON IN JUNE, 1974 INDICATED CLAIMANT COULD MOVE HIS EXTREMITIES NORMALLY, HOWEVER, THERE WAS CONSIDERABLE ACHING IN THE WRIST AND LOWER THIRD OF THE LEFT FOREARM. DR. ADAMS EXAMINED CLAIMANT ON OCTOBER 18, 1975. SUCH EXAMINATION CONFIRMED A MARKED ULNAR SENSORY LOSS OF THE LEFT HAND WHICH DR. ADAMS BELIEVED WOULD BE PERMANENT.

THE BOARD HAS BEEN ADVISED BY THE STATE ACCIDENT INSURANCE FUND THAT IT WILL ASSUME RESPONSIBILITY FOR THE COST OF THE SURGERY PERFORMED AND A REASONABLE AMOUNT OF TIME LOSS RESULTING FROM SUCH SURGERY - HOWEVER, THE BOARD WILL REQUIRE MEDICAL INFORMATION FROM CLAIMANT'S DOCTORS IN HONOLULU BE FURNISHED TO ITS EVALUATION DIVISION TO PROVIDE A BASIS OF RE-EVALUATION OF CLAIMANT'S DISABILITY.

ORDER

THE STATE ACCIDENT INSURANCE FUND SHALL PAY FOR THE SURGERY WHICH CLAIMANT RECEIVED IN 1972 AND SHALL PAY TO CLAIMANT COMPENSATION, AS PROVIDED BY LAW, COMMENCING FROM THE DATE OF SAID SURGERY AND UNTIL 6 WEEKS AFTER CLAIMANT WAS DISCHARGED FROM THE HOSPITAL.

CLAIMANT SHALL HAVE HIS TREATING PHYSICIANS FURNISH TO THE EVALUATION DIVISION OF THE WORKMEN'S COMPENSATION BOARD AN EVALUATION OF CLAIMANT'S CONDITION AT THE PRESENT TIME, BASING SUCH EVALUATION SOLELY ON THE FUNCTIONAL LOSS OF CLAIMANT'S LEFT ARM. UPON RECEIPT OF SUCH MEDICAL INFORMATION THE EVALUATION DIVISION WILL MAKE A DETERMINATION OF THE EXTENT OF CLAIMANT'S DISABILITY.

CLAIM NO. 144-69-362 NOVEMBER 12, 1975

ROBERT L. INMAN, CLAIMANT

OWN MOTION ORDER

CLAIMANT SUFFERED A COMPENSABLE INJURY ON NOVEMBER 6, 1969 WHICH WAS CLOSED BY DETERMINATION ORDER MAILED APRIL 10, 1970 AWARDING CLAIMANT SOME TIME LOSS BUT NO PERMANENT PARTIAL DISABILITY COMPENSATION. CLAIMANT'S AGGRAVATION RIGHTS EXPIRED ON APRIL 9, 1975.

ON SEPTEMBER 22, 1975 CLAIMANT REQUESTED THE BOARD EXERCISE ITS OWN MOTION JURISDICTION PURSUANT TO ORS 656.278 AND DIRECT GEORGIA-PACIFIC CORPORATION, A SELF-INSURER, TO REOPEN HIS CLAIM FOR FURTHER MEDICAL CARE AND TREATMENT AND COMPENSATION, AS PROVIDED BY LAW.

ON SEPTEMBER 29, 1975 THE BOARD RECEIVED A REPORT FROM DR. L.V. CASEY, WHO HAD EXAMINED CLAIMANT ON AUGUST 11, 1975. AT THAT TIME CLAIMANT HAD A DEFINITE POP IN HIS LEFT KNEE, HOWEVER, THERE WAS NO LOCKING AND HE WAS TREATED WITH DIATHERMY. X-RAYS OF THE LEFT KNEE REVEALED A MILD SPUR FORMATION OFF THE LEFT PATELLA. IT WAS DR. CASEY'S OPINION THAT CLAIMANT'S PROBLEM STEMMED FROM HIS INDUSTRIAL INJURY OF NOVEMBER 1969 AND IF CLAIMANT CONTINUED TO HAVE DIFFICULTY HE WOULD REFER HIM TO THE ORTHOPEDIC CLINIC IN SALEM FOR FURTHER CARE AND TREATMENT.

THE BOARD CONCLUDES THAT THE CLAIM SHOULD BE REOPENED BY GEORGIA-PACIFIC TO PAY FOR THE TREATMENT WHICH CLAIMANT HAS RECEIVED FROM DR. CASEY AND TO PAY FOR SUCH CARE AND TREATMENT AS CLAIMANT MAY RECEIVE IF, AND WHEN, HE IS REFERRED TO THE ORTHOPEDIC CLINIC IN SALEM.

THE BOARD FURTHER CONCLUDES THAT GEORGIA-PACIFIC SHOULD PAY CLAIMANT COMPENSATION, AS PROVIDED BY LAW, FROM THE TIME HE IS HOSPITALIZED, IF HOSPITALIZATION IS REQUIRED, AND UNTIL CLAIMANT'S CONDITION BECOMES MEDICALLY STATIONARY AND CLAIM CLOSED UNDER THE PROVISIONS OF ORS 656.278.

IT IS SO ORDERED.

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

THE EMPLOYER MAY REQUEST A HEARING ON THIS ORDER.

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

WCB CASE NO. 74-1561 NOVEMBER 12, 1975

ROSE ANN RUBERT, CLAIMANT

BANTA, SILVEN, YOUNG AND MARLETTE,
CLAIMANT'S ATTYS.
MERLIN MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE EMPLOYER REQUESTS REVIEW BY THE BOARD OF AN ORDER OF THE REFEREE WHICH REMANDED CLAIMANT'S CLAIM TO THE EMPLOYER TO BE ACCEPTED FOR PAYMENT OF COMPENSATION COMMENCING APRIL 4, 1974 AND UNTIL CLOSED PURSUANT TO ORS 656.268.

CLAIMANT RECEIVED TWO BACK INJURIES WHILE WORKING FOR THE SAME EMPLOYER - THE FIRST, ON APRIL 4, 1973 WAS CLOSED AS A 'MEDICAL ONLY'. CLAIMANT CONTENDS SHE HAS NEVER RECOVERED FROM THIS INJURY, SHE WAS SEEN BY DR. WARD FOR MUSCLE SPASMS OF HER CERVICAL AND DORSAL AREAS AND PLACED ON A MUSCLE RELAXANT.

UPON RETURNING FROM HER VACATION, CLAIMANT SUFFERED A SECOND INJURY ON AUGUST 17, 1973. DR. MC KIM DIAGNOSED A DORSAL-LUMBAR SPINE MYALGIC, THORACIC. ON SEPTEMBER 13, 1973 A LUMBAR LAMINECTOMY WAS PERFORMED. CLAIMANT TESTIFIED THAT AT NO TIME DID HER CERVICAL PAINS DISAPPEAR.

THE REFEREE FOUND THAT THE MEDICAL EVIDENCE AND THE PREPONDERANCE OF THE OTHER EVIDENCE INDICATED CLAIMANT HAD NO PROBLEMS WITH HER NECK PRIOR TO APRIL 14, 1973 AND THAT SHE HAD NOT RECOVERED FROM THAT INJURY BEFORE SHE WAS RE-INJURED ON AUGUST 17, 1973. HE CONCLUDED THAT CLAIMANT'S PRESENT PROBLEMS ARE RELATED EITHER TO ONE OR BOTH OF THESE INJURIES. HE FURTHER CONCLUDED THAT AT THE PRESENT TIME CLAIMANT WAS NOT MEDICALLY STATIONARY AND THAT HER CLAIM SHOULD BE REOPENED.

THE EMPLOYER CONTENDS THAT CLAIMANT'S CERVICAL PROBLEMS ARE DUE EXCLUSIVELY TO OSTEOPHYTES POSTERIORLY AT C5-6 WHICH ARE NOT WORK-RELATED.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE CONCLUSION OF THE REFEREE THAT CLAIMANT, AT THE PRESENT TIME, IS NOT MEDICALLY STATIONARY. THE BOARD MAKES A SPECIFIC FINDING THAT THE MEDICAL EVIDENCE IS SUFFICIENT TO SUPPORT A CONCLUSION THAT CLAIMANT'S CERVICAL-DORSAL SPINE PROBLEMS ARE WORK-RELATED.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 29, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE IN CONNECTION WITH HIS SERVICES AT BOARD REVIEW, THE SUM OF 350 DOLLARS, PAYABLE BY THE EMPLOYER.

WCB CASE NO. 74-1783 NOVEMBER 13, 1975

JERRY BENAVIDEZ, CLAIMANT

MARVIN J. HOLLINGSWORTH,
CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE CLAIMANT REQUESTS BOARD REVIEW OF AN ORDER OF THE REFEREE WHICH INCREASED AN AWARD OF 64 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY BY A DETERMINATION ORDER DATED FEBRUARY 11, 1974 TO 112 DEGREES, AN INCREASE OF 48 DEGREES. CLAIMANT CONTENDS THAT HE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT, A 49 YEAR OLD GRINDER, SUSTAINED A COMPENSABLE LOW INJURY ON SEPTEMBER 14, 1971; HE RECEIVED EXTENSIVE CONSERVATIVE TREATMENT PRIMARILY BY DR. NOALL AND DR. SNODGRASS, THE FORMER AN ORTHOPEDIST, THE LATTER A NEUROLOGIST. AFTER THE ENTRY OF THE DETERMINATION ORDER HE RECEIVED FURTHER TREATMENT FROM DR. NOALL AND WAS EXAMINED BY DR. PASQUESI, AN ORTHOPEDIST.

CLAIMANT'S EMPLOYMENT BACKGROUND HAS BEEN IN THE UNSKILLED AND SEMI-SKILLED AREAS AND HE HAS A LIMITED EDUCATION. CLAIMANT HAS NOT WORKED SINCE HIS 1971 INJURY AND HAS BEEN ON WELFARE SINCE NOVEMBER, 1974. AT THE PRESENT TIME HE HAS AN APPLICATION PENDING FOR PERMANENT DISABILITY BENEFITS UNDER SOCIAL SECURITY.

THE REFEREE FOUND THAT BECAUSE OF CLAIMANT'S LIMITED EDUCATION, TRAINING AND GENERAL LEVEL OF ABILITIES, ALTHOUGH HIS PHYSICAL DISABILITY WAS NO GREATER NOW THAN IT WAS AT THE TIME OF THE DETERMINATION ORDER, CLAIMANT HAD SUFFERED A SUBSTANTIAL LOSS OF POTENTIAL WAGE EARNING CAPACITY FOR WHICH HE HAD NOT BEEN SUFFICIENTLY COMPENSATED.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE CONCLUSIONS REACHED BY THE REFEREE AND AFFIRMS HIS ORDER.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 25, 1975 IS AFFIRMED.

WCB CASE NO. 74-3772 NOVEMBER 13, 1975

ROGER MILES, CLAIMANT

TOOZE, KERR, PETERSON, MARSHALL AND SHENKER,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW BY THE BOARD OF AN ORDER OF THE REFEREE WHICH FOUND THAT THE FUND HAD UNREASONABLY DELAYED OR RESISTED PAYMENT OF CLAIMANT'S ADDITIONAL PERMANENT PARTIAL DISABILITY AWARD PROVIDED FOR UNDER A STIPULATION COMPROMISE APPROVED ON JULY 15, 1974, ASSESSED A PENALTY OF 25 PER

CENT OF THE AMOUNT DUE AGAINST THE FUND AND ALLOWED CLAIMANT'S ATTORNEY A FEE OF 750 DOLLARS PAYABLE BY THE FUND BECAUSE OF ITS UNREASONABLE RESISTANCE.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON OR ABOUT FEBRUARY 26, 1973. THE CLAIM WAS ACCEPTED BY THE EMPLOYER, WHO, AT THAT TIME, WAS A NON-COMPLYING EMPLOYER, AND THE PROCESSING OF THE CLAIM WAS DONE BY THE FUND AS PROVIDED BY LAW IN SUCH CASES.

THE CLAIM WAS CLOSED ON JANUARY 9, 1974 WITH AN AWARD OF 16 DEGREES FOR 5 PER CENT UNSCHEDULED DISABILITY. CLAIMANT REQUESTED A HEARING, CONTENDING THAT HE WAS ENTITLED TO A GREATER AWARD FOR HIS DISABILITY. THE MATTER WAS SETTLED BY A STIPULATION WHICH PROVIDED FOR AN ADDITIONAL AWARD OF 32 DEGREES. THIS STIPULATION WAS EXECUTED BY ALL PARTIES CONCERNED AND FORWARDED TO THE REFEREE WHO APPROVED IT ON JULY 15, 1974. ALL PARTIES WERE MAILED A COPY OF THE STIPULATION AND ORDER, HOWEVER, THE FUND AND THE ASSISTANT ATTORNEY GENERAL REPRESENTING THE FUND DID NOT RECEIVE COPIES. THE EVIDENCE INDICATES THAT THE ASSISTANT ATTORNEY GENERAL DID NOT REQUEST A COPY BE SENT TO HIM, HE NOW CONTENDS THAT SINCE HE DID NOT RECEIVE A CONFORMED COPY NEITHER HE NOR THE FUND IS UNDER ANY OBLIGATION TO HONOR THE STIPULATION.

THE REFEREE FOUND THAT AFTER THE DATE OF THE ORDER APPROVING THE STIPULATION NO ACTION WAS TAKEN UPON THE COMPROMISE SETTLEMENT FOR OVER 98 DAYS AND NO PAYMENT WAS RECEIVED BY CLAIMANT UNTIL AFTER OCTOBER 23, 1973. THE REFEREE CONCLUDED THAT THIS WAS UNREASONABLE RESISTANCE AND DELAY AND THAT CLAIMANT WAS ENTITLED TO HIS ATTORNEY'S FEE AND PENALTIES. THE FIRST PAYMENT RECEIVED BY CLAIMANT WAS IN THE SUM OF 369 DOLLARS AND THE REFEREE ASSESSED 25 PER CENT PENALTY OF THAT SUM FOR 98 DAYS EQUAL TO 277.02 DOLLARS AND ALLOWED AN ATTORNEY'S FEE OF 750 DOLLARS.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS OF THE REFEREE. THE BOARD FURTHER FINDS THAT BECAUSE THE UNREASONABLE RESISTANCE WAS SOLELY THAT OF THE FUND AND NOT IMPUTABLE TO THE NON-COMPLYING EMPLOYER THE FUND SHALL NOT RECOVER THE AMOUNT OF PENALTIES OR ATTORNEY'S FEE FROM THE EMPLOYER UNDER THE PROVISIONS OF ORS 656.054.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 4, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW, THE SUM OF 250 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND. THIS ATTORNEY'S FEE SHALL NOT BE RECOVERABLE FROM THE EMPLOYER BY THE FUND UNDER THE PROVISIONS OF ORS 656.054.

WCB CASE NO. 74-2253 NOVEMBER 13, 1975

WANDA PORTERFIELD, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF AN ORDER WHICH AFFIRMED

THE STATE ACCIDENT INSURANCE FUND'S DENIAL OF HER CLAIM FOR A PERFORATED RIGHT TYMPANIC MEMBRANE.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON OCTOBER 3, 1973 WHEN SHE TRIPPED AND FELL WHILE WALKING THROUGH THE HOTEL PARKING LOT. AT THE TIME CLAIMANT WAS EMPLOYED BY THE HOTEL AS A MAID. SHE RECALLS THAT UPON REGAINING CONSCIOUSNESS THE RIGHT SIDE OF HER HEAD WAS LYING ON A CONCRETE SLAB, HOWEVER, THE AREAS OF SHARPEST PAIN WERE IN HER LEFT ARM, BACK AND NECK. SHE SUFFERED A FRACTURE OF THE DISTAL RADIUS OF HER LEFT ARM. DR. FLETCHER, WHO ATTENDED CLAIMANT, DID NOT EXAMINE CLAIMANT'S EARS, IN FACT, HE STATED THAT CLAIMANT MADE NO COMPLAINTS REGARDING A HEAD INJURY NOR WAS THERE ANY RECORD OF A MARK BEHIND CLAIMANT'S RIGHT EAR.

CLAIMANT WAS LATER SEEN AND EXAMINED BY DR. YOUNG AND DR. SERBU, NEITHER RECALLED CLAIMANT COMPLAINING OF SHARP PAINS IN HER EAR NOR ANY MENTION BY CLAIMANT OF ANY HEAD INJURY. NEITHER EXAMINED HER HEAD OR EARS. CLAIMANT DID COMPLAIN TO DR. SERBU OF SUBOCCIPITAL HEADACHES.

CLAIMANT WAS AWARDED 16 DEGREES FOR 5 PER CENT UNSCHEDULED NECK DISABILITY ON JUNE 17, 1974.

CLAIMANT ALLEGES THAT WITHIN A PERIOD OF SEVERAL WEEKS AFTER THE INDUSTRIAL INJURY SHE NOTED RIGHT EAR SYMPTOMS AND SUFFERED TERRIFIC HEADACHES, ALSO PROBLEMS WITH HER BALANCE. CLAIMANT'S HUSBAND, WHO HAD AN EAR PROBLEM AND HAD RECEIVED IRRIGATION TREATMENTS FOR IT, ATTEMPTED TO IRRIGATE HIS WIFE'S EAR ON JUNE 29, 1974, THIS CAUSED SEVERE PAIN AND CLAIMANT WAS TAKEN TO THE EMERGENCY ROOM AND WAS TREATED FOR A RUPTURE OF THE TYMPANIC MEMBRANE OF THE RIGHT EAR. ON JULY 30, SURGICAL REPAIR OF THE PERFORATED EARDRUM WAS DONE BY DR. SCOTT. AFTER REVIEWING CLAIMANT'S HISTORY HE NOTED THAT PRIOR TO OCTOBER, 1973 CLAIMANT HAD SCARRING OF THE RIGHT TYMPANIC MEMBRANE BUT IT WAS THEN INTACT. HIS OPINION, BASED ON CLAIMANT'S HISTORY, WAS THAT THE OCTOBER 3, 1973 INJURY TRAUMATICALLY RUPTURED THE MEMBRANE AND THE ATTEMPT TO IRRIGATE CLAIMANT'S EAR ALLOWED WATER INTO THE INNER EAR CAUSING THE SEVERE PAIN.

THE REFEREE CONCLUDED THAT ALTHOUGH THE TESTIMONY OF DR. SCOTT WOULD BE SUFFICIENT TO SHOW THE CAUSE AND EFFECT RELATIONSHIP THERE WERE OTHER FACTORS TO BE CONSIDERED. CLAIMANT FAILED TO REPORT ANY HEAD OR EAR INJURY TO ANY DOCTOR AT OR NEAR THE TIME OF HER INDUSTRIAL INJURY, THERE WERE NO FINDINGS BY ANY DOCTOR WHO HAD EXAMINED AND-OR TREATED CLAIMANT RELATING TO HEAD OR EAR PROBLEMS. ONLY DR. SCOTT, WHO FIRST SAW CLAIMANT IN JULY, 1974, REPORTED AN EAR INJURY. AT THE EMERGENCY ROOM CLAIMANT MERELY TOLD THE DOCTOR THAT SHE HAD HAD AN EARACHE DURING THE PAST WEEK.

THE REFEREE CONCLUDED IF CLAIMANT SUFFERED A TYMPANIC MEMBRANE RUPTURE OF HER RIGHT (UNDERSCORED) EAR WHEN SHE FELL IN OCTOBER, 1973, THE MECHANICS OF THE FALL HAD TO BE MOST UNUSUAL. THE REFEREE FOUND IT INCREDULOUS THAT CLAIMANT COULD SUFFER A FRACTURE OF THE DISTAL RADIUS OF THE LEFT ARM AND AT THE SAME TIME FALL WITH SUCH FORCE, WITH THE RIGHT SIDE OF HER HEAD FLAT ENOUGH ON THE CONCRETE, TO SUSTAIN THE MEMBRANE RUPTURE OF THE RIGHT EAR.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE SET FORTH WITH CLARITY IN HIS OPINION AND ORDER.

ORDER

THE ORDER OF THE REFEREE DATED MAY 2, 1975 IS AFFIRMED.

ESPERANZA BLANCO, CLAIMANT

HAROLD W. ADAMS, CLAIMANT'S ATTY.
JONES, LANG, KLEIN, WOLF AND SMITH,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH REFUSED TO CONSIDER THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY BECAUSE THE EVIDENCE INDICATED THAT CLAIMANT WAS NOT MEDICALLY STATIONARY AND HER CLAIM HAD NOT BEEN CLOSED UNDER ORS 656.268. THE REFEREE REMANDED THE CLAIM TO THE EMPLOYER ON THE BASIS OF AGGRAVATION.

CLAIMANT SUFFERED A COMPENSABLE LOW BACK INJURY IN APRIL, 1968, HER CLAIM WAS CLOSED ON APRIL 4, 1969 BY DETERMINATION ORDER AWARDING NO PERMANENT PARTIAL DISABILITY. IN AUGUST, 1973 CLAIMANT HAD A RECURRENCE OF BACK PAIN AND HER CLAIM WAS REOPENED ON ACCOUNT OF AGGRAVATION AND SUBSEQUENTLY CLOSED ON MARCH 11, 1974 BY A SECOND DETERMINATION ORDER WHICH AWARDED CLAIMANT 96 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY.

ON NOVEMBER 12, 1974 CLAIMANT REQUESTED A HEARING ALLEGING, IN THE ALTERNATIVE, HER ENTITLEMENT TO FURTHER MEDICAL CARE AND TREATMENT AND TIME LOSS OR AN INCREASE IN HER AWARD FOR PERMANENT DISABILITY.

ON DECEMBER 2, 1974 CLAIMANT SAW DR. BURR BECAUSE HER LOW BACK AND RIGHT LEG PAIN WERE INCREASING. BASED UPON DR. BURR'S RECOMMENDATION THE CLAIM WAS REOPENED FOR FURTHER TREATMENT EFFECTIVE DECEMBER 2, 1974. CLAIMANT HAS BEEN RECEIVING TIME LOSS COMPENSATION FROM THAT DATE.

CLAIMANT CONTENDS THAT THE REOPENING WAS IMPROPER AND UNNECCESSARY AND PREVENTED HER FROM LITIGATING THE EXTENT OF DISABILITY ISSUE.

THE REFEREE FOUND THAT CLAIMANT HAD BEEN RECEIVING TREATMENTS FROM DR. BURR SINCE AUGUST 1973, THAT DR. BURR HAD INDICATED CLAIMANT'S CONDITION HAD WORSENED BY DECEMBER 1974 AND RECOMMENDED A NEUROLOGICAL EVALUATION. THE EVALUATION WAS DONE BY DR. BUZA, WHO WAS OF THE OPINION THAT CONSERVATIVE TREATMENT WAS THE PROPER COURSE BUT IF CLAIMANT DID NOT IMPROVE, A MYELOGRAM OR EMG SHOULD BE CONSIDERED. HE FOUND NO NEUROLOGICAL PROBLEM AND DR. BURR RESUMED TREATMENT OF CLAIMANT.

THE REFEREE CONCLUDED THAT UNDER THE PROVISIONS OF ORS 656.268(1) CLAIMANT COULD NOT BE CONSIDERED MEDICALLY STATIONARY BECAUSE FURTHER IMPROVEMENT COULD REASONABLY BE EXPECTED AS A RESULT OF THE CONTINUED TREATMENT BY DR. BURR. THERE WAS NO MEDICAL REPORT SUBSEQUENT TO THE DECEMBER, 1974 REOPENING WHICH INDICATED THAT CLAIMANT WAS MEDICALLY STATIONARY OR THAT HER CONDITION WOULD NOT CHANGE IN THE FUTURE OR THAT SHE WOULD NOT BENEFIT FURTHER TREATMENT OR THE PASSAGE OF TIME. HE CONCLUDED THE REOPENING, BASED ON DR. BURR'S REPORT, WAS PROPER.

THE REFEREE FURTHER FOUND THAT THE DECEMBER 1974 REPORT FROM DR. BURR CONSTITUTED A CLAIM FOR AGGRAVATION PURSUANT TO ORS 656.273(3).

AS AMENDED BY OR LAW 1975 CH. 497. HAVING FOUND THAT CLAIMANT'S CLAIM WAS, AT THE TIME OF THE HEARING, IN AN OPEN STATUS, THE REFEREE CONCLUDED THAT HE COULD NOT CONSIDER THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE REFEREE. THE BOARD RULED VERY RECENTLY THAT A WORKMAN WAS NOT ENTITLED TO A HEARING ON PERMANENT PARTIAL DISABILITY WHILE HIS CLAIM WAS IN AN OPEN STATUS AND HE WAS RECEIVING TIME LOSS BENEFITS AND MEDICAL TREATMENT. IN THE MATTER OF THE COMPENSATION OF JESS CAMPBELL, CLAIMANT (UNDERSCORED), WCB CASE NO. 74-3939, ORDER ON REVIEW ENTERED NOVEMBER 4, 1975. THE ISSUE IN THE INSTANT CASE IS THE SAME.

ORDER

THE ORDER OF THE REFEREE DATED JULY 23, 1975 IS AFFIRMED.

CLAIM NO. D-53-116569 NOVEMBER 13, 1975

CHARLES FLYNN, CLAIMANT

EDWARD N. MURPHY, CLAIMANT'S ATTY.
OWN MOTION ORDER

CLAIMANT SUFFERED A COMPENSABLE INJURY ON MARCH 16, 1967 WHILE EMPLOYED BY WIMER LOGGING COMPANY. A LAMINECTOMY WAS PERFORMED AT THE LUMBOSACRAL LEVEL ON APRIL 19, 1967. BECAUSE CLAIMANT MOVED AND LEFT NO FORWARDING ADDRESS THE CLAIM WAS INITIALLY CLOSED ADMINISTRATIVELY ON DECEMBER 8, 1967 WITH TIME LOSS BUT NO AWARD OF PERMANENT PARTIAL DISABILITY.

IT WAS SUBSEQUENTLY REOPENED AND CLOSED AGAIN ON MARCH 2, 1973 WITH AN AWARD OF 20 PER CENT UNSCHEDULED DISABILITY EQUAL TO 38.4 DEGREES.

CLAIMANT'S AGGRAVATION RIGHTS LAPSED ON DECEMBER 9, 1972.

ON JANUARY 29, 1975 CLAIMANT REQUESTED THE BOARD, PURSUANT TO ORS 656.278, TO ISSUE AN ORDER REQUIRING THE EMPLOYER TO PROVIDE CLAIMANT WITH MEDICAL CARE AND COMPENSATION FOR A WORSENING OF THE 1967 INJURY. THIS REQUEST WAS SUPPORTED BY A REPORT FROM DR. CAMPAGNA.

THE BOARD, ON APRIL 10, 1975, ORDERED THE EMPLOYER TO REOPEN THE CLAIM AS OF DECEMBER 29, 1974 AND PROVIDE CLAIMANT WITH MEDICAL CARE AND COMPENSATION FOR HIS WORSENED CONDITION AND ALLOWED CLAIMANT'S ATTORNEY 25 PER CENT OF CLAIMANT'S TEMPORARY TOTAL DISABILITY COMPENSATION PAYABLE FROM SAID COMPENSATION AS PAID TO A MAXIMUM OF 100 DOLLARS.

A LAMINECTOMY L4-5, RIGHT, WAS PERFORMED BY DR. CAMPAGNA AND A CLOSING REPORT SUBMITTED BY HIM ON JULY 17, 1975 WHICH INCLUDED A STATEMENT THAT CLAIMANT HAD AN INABILITY TO PERFORM HIS REGULAR WORK AND A DECREASE IN RANGE OF MOTION OF 50 PER CENT. DR. CAMPAGNA ADVISED THERE IS MODERATE DISABILITY OF THE LOW BACK DUE TO THE 1967 ACCIDENT.

THE BOARD SUBMITTED THE MATTER TO ITS EVALUATION DIVISION FOR AN ADVISORY RATING, AND IT WAS DETERMINED THAT CLAIMANT'S PRESENT

DISABILITY IS 40 PER CENT UNSCHEDULED DISABILITY, AN INCREASE OF 20 PER CENT OVER THE AWARD OF MARCH 2, 1973. IT WAS FURTHER DETERMINED THAT CLAIMANT'S TEMPORARY TOTAL DISABILITY COMPENSATION SHOULD COMMENCE DECEMBER 29, 1974 AND CONTINUE THROUGH MARCH 26, 1975 AND HIS TEMPORARY PARTIAL DISABILITY SHOULD COMMENCE MARCH 27, 1975 AND RUN THROUGH JULY 17, 1975, BOTH DATES INCLUSIVE.

ORDER

CLAIMANT IS AWARDED 38.4 DEGREES OF A MAXIMUM OF 192 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. THIS AWARD IS IN ADDITION TO AND NOT IN LIEU OF THE AWARD MADE ON MARCH 2, 1973.

CLAIMANT SHALL RECEIVE TEMPORARY TOTAL DISABILITY COMPENSATION FROM DECEMBER 29, 1974 THROUGH MARCH 26, 1975 AND TEMPORARY PARTIAL DISABILITY COMPENSATION FROM MARCH 27, 1975 THROUGH JULY 17, 1975.

CLAIMANT'S COUNSEL IS HEREBY AWARDED 25 PER CENT OF CLAIMANT'S COMPENSATION AS INCREASED BY THIS ORDER TO A MAXIMUM OF 2,000 DOLLARS.

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

THE EMPLOYER MAY REQUEST A HEARING ON THIS ORDER.

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

WCB CASE NO. 75-690 NOVEMBER 13, 1975

HARRY J. SIMMONS, CLAIMANT

KOTTKAMP AND O'ROURKE, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF AN AMENDED ORDER OF THE REFEREE WHICH SET ASIDE A DETERMINATION ORDER, MAILED JANUARY 15, 1975, WHICH GRANTED CLAIMANT TIME LOSS FROM JANUARY 15, 1974 TO NOVEMBER 20, 1974 AND 80 DEGREES FOR 25 PER CENT UNSCHEDULED LOW BACK DISABILITY AND REMANDED THE CLAIM TO THE FUND TO BE REOPENED FOR PAYMENT OF COMPENSATION AS PROVIDED BY LAW, FROM NOVEMBER 20, 1974 UNTIL CLOSED PURSUANT TO ORS 656.268.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON JANUARY 14, 1974 FOR WHICH HE WAS FIRST TREATED AND EXAMINED BY HIS FAMILY PHYSICIAN, DR. PFEIFFER, A CHIROPRACTOR, ON JANUARY 17, 1974. CLAIMANT CONTINUES TO RECEIVE TREATMENT FROM DR. PFEIFFER.

DURING SEPTEMBER, 1974 CLAIMANT UNDERWENT A COMPREHENSIVE PHYSICAL REHABILITATION EXAMINATION AT THE DISABILITY PREVENTION DIVISION CENTER IN PORTLAND, HE ALSO HAD A PSYCHOLOGICAL EVALUATION AND A FOLLOW-UP EXAMINATION. UPON HIS DISCHARGE FROM THE DPD CENTER IN OCTOBER 1974 CLAIMANT RETURNED TO THE CARE OF DR. PFEIFFER.

BOTH THE DOCTORS AT THE CENTER AND DR. PFEIFFER FELT CLAIMANT COULD BE RETURNED TO GAINFUL EMPLOYMENT IF HE WERE PERMITTED TO

DO LIGHTER TYPE OF WORK. BUT HE HAS BEEN UNABLE TO SECURE SUCH WORK, ALTHOUGH HE HAS MADE EFFORT TO DO SO.

BASED UPON THE MEDICAL REPORTS, THE REFEREE CONCLUDED THAT CLAIMANT'S CONDITION WAS NOT MEDICALLY STATIONARY AND HE REMANDED THE CLAIM TO THE FUND WITH ORDERS TO REINSTATE THE PAYMENT OF TEMPORARY TOTAL DISABILITY BENEFITS COMMENCING ON THE DATE SUCH PAYMENTS WERE TERMINATED BY THE DETERMINATION ORDER OF JANUARY 15, 1974. THE REFEREE FURTHER CONCLUDED THAT THE CLAIMANT WAS NOT MEDICALLY STATIONARY AT THE TIME OF THE DETERMINATION ORDER, MAILED JANUARY 15, 1975, AND THEREFORE, SET SAID DETERMINATION ORDER ASIDE.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE REFEREE IN HIS ORDER AS AMENDED.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 17, 1975 AS AMENDED ON JULY 3, 1975 IS AFFIRMED.

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

SAIF CLAIM NO. B 127047 NOVEMBER 13, 1975

ANDREW GRAVES, CLAIMANT

EVOHL MALAGON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

ON SEPTEMBER 11, 1975 CLAIMANT REQUESTED THE BOARD TO EXERCISE ITS AUTHORITY UNDER THE PROVISIONS OF ORS 656.278 AND REOPEN CLAIMANT'S CLAIM FOR FURTHER MEDICAL CARE AND TREATMENT AND PAYMENT OF COMPENSATION AS PROVIDED BY LAW.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON JUNE 1, 1965 WHEN HE FRACTURED HIS RIGHT LEG. AT THE TIME OF THE INJURY HE ALSO COMPLAINED OF PAIN IN THE CERVICAL SPINE REGION AS WELL AS SOME PAIN IN THE LOWER BACK. THE CLAIM WAS CLOSED JUNE 15, 1966.

ON JUNE 26, 1975 DR. DEGGE REQUESTED THE FUND TO REOPEN THE CLAIM FOR FURTHER MEDICAL CARE AND TREATMENT. THE FUND REPLIED IT WOULD NOT REOPEN THE CLAIM BUT WOULD PAY FOR ANY TREATMENT UNDER THE PROVISIONS OF ORS 656.245.

ON OCTOBER 13, 1975 CLAIMANT ADVISED THAT DR. ROBERT LARSON, AN ORTHOPEDIC SURGEON, WAS GOING TO OPERATE ON HIS KNEE. DR. LARSON'S REPORT OF OCTOBER 7, 1975 (RECEIVED BY THE BOARD ON NOVEMBER 6, 1975) INDICATES THAT CLAIMANT MAY BE BENEFITED BY A HIGH TIBIAL OSTEOTOMY TO REALIGN HIS LEG AND PUT THE WEIGHT BEARING LINE INTO THE MEDIAL SIDE OF THE JOINT WHICH APPEARED TO BE MORE NORMAL. SUBSEQUENT SURGERY MIGHT BE NECESSARY IF THIS IS NOT SUFFICIENT.

BASED UPON THE FOREGOING INFORMATION, THE BOARD CONCLUDES THAT CLAIMANT'S CLAIM SHOULD BE REOPENED FOR SUCH FURTHER MEDICAL CARE AND TREATMENT AS HAS BEEN RECOMMENDED BY DR. DEGGE AND LARSON AND FOR THE PAYMENT OF COMPENSATION, AS PROVIDED BY LAW, COMMENCING ON THE DATE CLAIMANT IS HOSPITALIZED BY DR. LARSON AND UNTIL THE CLAIM IS CLOSED PURSUANT TO ORS 656.278.

ORDER

THE CLAIM IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND TO PROVIDE CLAIMANT WITH SUCH MEDICAL CARE AND TREATMENT AS HE MAY RECEIVE BASED UPON THE RECOMMENDATIONS OF DR. DEGGE AND DR. LARSON AND FOR THE PAYMENT OF COMPENSATION, AS PROVIDED BY LAW, COMMENCING ON THE DATE DR. LARSON HOSPITALIZES CLAIMANT AND UNTIL CLOSURE IS AUTHORIZED PURSUANT TO ORS 656.278.

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

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

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

SAIF CLAIM NO. SC 287424 NOVEMBER 13, 1975

TED E. TAYLOR, CLAIMANT

DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION PROCEEDING
REFERRED FOR HEARING

ON OCTOBER 29, 1975 THE STATE ACCIDENT INSURANCE FUND REQUESTED THE BOARD TO EXERCISE ITS OWN MOTION JURISDICTION PURSUANT TO ORS 656.278 AND GIVE CONSIDERATION TO THE CANCELLATION OF A PERMANENT TOTAL DISABILITY AWARD GRANTED TO CLAIMANT ON JULY 5, 1974. IN SUPPORT OF THE REQUEST, THE FUND SUBMITTED A REPORT OF AN EXAMINATION OF CLAIMANT BY THE ORTHOPEDIC CONSULTANTS WHICH WAS DONE AT THE FUND'S REQUEST ON AUGUST 26, 1975.

THE BOARD DOES NOT, AT THIS TIME, HAVE SUFFICIENT EVIDENCE, EITHER LAY OR MEDICAL, UPON WHICH TO GIVE PROPER CONSIDERATION TO THE FUND'S REQUEST.

THE MATTER IS, THEREFORE, REFERRED TO THE HEARINGS DIVISION WITH INSTRUCTIONS TO HOLD A HEARING AND TAKE EVIDENCE ON THE ISSUE OF WHETHER CLAIMANT IS, AT THE PRESENT TIME, PERMANENTLY AND TOTALLY DISABLED. UPON CONCLUSION OF THE HEARING, THE REFEREE SHALL CAUSE A TRANSCRIPT OF THE PROCEEDINGS TO BE PREPARED AND SUBMITTED TO THE BOARD WITH HIS RECOMMENDATIONS ON THIS ISSUE.

WCB CASE NO. 74-3340 NOVEMBER 14, 1975

HAROLD A. STOLL, CLAIMANT

WILLIAM E. HANSON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER OF DISMISSAL

A REQUEST FOR REVIEW, HAVING BEEN DULY FILED WITH THE WORKMEN'S COMPENSATION BOARD IN THE ABOVE-ENTITLED MATTER 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. 74-3430 NOVEMBER 14, 1975

LLOYD BARTU, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER MAILED AUGUST 30, 1974 AWARDING CLAIMANT 25 PER CENT LOSS OF HIS RIGHT HAND AND 25 PER CENT LOSS OF HIS LEFT HAND, EACH EQUAL TO 37.5 DEGREES.

CLAIMANT, A 56 YEAR OLD RANCH HAND, SUFFERED A COMPENSABLE INJURY DECEMBER 2, 1972 WHEN HE FROZE HIS FINGERS AND HANDS WHILE DRIVING A TEAM AND FEEDING CATTLE ON A DAY WHEN THE TEMPERATURE WAS 32 DEGREES BELOW ZERO AND HAD A CHILL FACTOR OF ABOUT -80 DEGREES.

CLAIMANT WAS FIRST SEEN BY DR. WEARE ON JANUARY 29, 1973 WHO TREATED HIM FOR HIS PAIN AND SWELLING. BY MAY 1973, CLAIMANT WAS SUFFERING ULCERATIONS ON HIS FOREFINGERS, HE TRIED LIGHT WORK BUT DR. WEARE ADVISED HIM TO CEASE. IN JUNE CLAIMANT WAS STILL HAVING PAIN IN HIS FINGERS. HE WAS EXAMINED BY DR. ROSE WHOSE DIAGNOSIS WAS TROPHIC CHANGES SECONDARY TO FROSTBITE. THERE WAS INJURY TO THE BLOOD VESSELS OF THE FINGERS CAUSED BY THE FROSTBITE AND THE HANDS WOULD HAVE TO BE PROTECTED FROM EXPOSURE TO THE COLD IN DR. ROSE'S OPINION. DR. ROSE DID NOT FIND ANY UNDERLYING ORGANIC ARTERIAL DISEASE.

DR. WEARE AGAIN SAW CLAIMANT ON APRIL 11, 1974, CLAIMANT WAS COMPLAINING THAT ANY COLD CAUSED PAIN AND BLANCHING OF HIS FINGERS. ON JUNE 17, 1974 DR. DAHL EXAMINED CLAIMANT WHO TOLD HIM THAT HIS FINGERS STILL FELT COLD AND HE HAD DIFFICULTY PICKING UP ARTICLES. CLAIMANT APPEARED TO HAVE NORMAL ABILITY ON EXTENSION AND FLEXION OF THE FINGERS BUT SUCH MOVEMENTS PRODUCED DISCOMFORT.

THE CLAIMANT CONTENDS THAT HE IS PERMANENTLY AND TOTALLY DISABLED UNDER THE PROVISIONS OF ORS 656.206(1) AS AMENDED BY OR LAWS 1975 CH. 506 BECAUSE SUCH AMENDMENT HAD THE EFFECT OF ABOLISHING THE DISTINCTION, PREVIOUSLY ESTABLISHED BY THE COURTS, BETWEEN SCHEDULED AND UNSCHEDULED INJURIES AS FAR AS PERMANENT TOTAL DISABILITY WAS CONCERNED AND THAT HIS HANDS ARE NOW USELESS FOR EMPLOYMENT PURPOSES.

THE REFEREE, IN HIS OPINION, SET FORTH WITH GREAT CLARITY THE CASES IN WHICH EITHER THE COURT OR THE BOARD HAD HELD THAT PERMANENT TOTAL DISABILITY IN A SCHEDULED AREA COULD NOT BE GRANTED UNLESS THE WORKMAN SUFFERED A LOSS BY SEPARATION OR A LOSS OF FUNCTION OF BOTH HANDS OR OTHER SCHEDULED MEMBERS OF THE BODY AND DISTINGUISHED, ON A FACTUAL BASIS, THE INSTANT CASE FROM THOSE CASES. THE REFEREE CONCLUDED THAT CLAIMANT'S HANDS CONTINUED TO FULFILL SOME OF THE ORDINARY FUNCTIONS OF SUCH EXTREMITIES AND, THEREFORE, HE HAD NOT

SUFFERED THE LOSS LEGALLY REQUISITE TO AN AWARD OF PERMANENT TOTAL DISABILITY.

THE REFEREE, ON THE SAME BASIS, CONCLUDED THAT HE WOULD NOT FALL UNDER THE ORS 656.206(1) AS AMENDED BY SENATE BILL 743 (OR LAW 1975 CH. 506) BECAUSE HIS HANDS DID NOT INCAPACITATE HIM FROM REGULARLY PERFORMING ANY WORK AT A GAINFUL AND SUITABLE OCCUPATION.

THE BOARD, ON DE NOVO REVIEW, TAKES OFFICIAL NOTICE OF THE HOLDING IN THE RECENT CASE OF YIELDING V. WEST FOODS, INC. (UNDERSCORED) --OR ADV SH-- (FILED BY THE COURT OF APPEALS ON OCTOBER 13, 1975) IN WHICH THE COURT STATED IN A FOOTNOTE-

> 'INASMUCH AS NO RETROACTIVITY IS MENTIONED IN CHAPTER 506, WE DECERN NO EFFECT THE STATUTORY CHANGE MAY HAVE ON THE CASE AT BAR (WHICH AROSE PRIOR TO THE AMENDMENT).'

OBVIOUSLY THE 1975 AMENDMENTS TO ORS 656.206 MUST BE APPLIED PROSPECTIVELY AND IN THE INSTANT CASE THE SCHEDULED INJURIES SUFFERED BY CLAIMANT MUST BE EVALUATED UNDER THE PROVISIONS OF ORS 656.206 WHICH EXISTED PRIOR TO JULY 1, 1975. THE EVIDENCE IS CLEAR THAT CLAIMANT HAS NEITHER SUFFERED A LOSS BY SEPARATION OR A LOSS BY FUNCTION OF BOTH HANDS.

THE BOARD FINDS THAT CLAIMANT HAS CONSTANT PAIN IN HIS HANDS, HAS DIFFICULTY PICKING UP ARTICLES, AND WEAKNESS AND DISCOMFORT ON EXTENSION AND FLEXION OF HIS FINGERS. PAIN, BY AND OF ITSELF, IS NOT COMPENSABLE, BUT THE DISABLING EFFECTS OF SUCH PAIN MAY BE TAKEN INTO CONSIDERATION IN DETERMINING SCHEDULED DISABILITY. THE BOARD CONCLUDES THAT THE CLAIMANT HAS SUFFERED A GREATER LOSS OF PHYSICAL FUNCTION THAN 25 PER CENT OF EACH HAND, THE CLAIMANT DOES NOT HAVE REMAINING MORE THAN 50 PER CENT USE OF EITHER HIS RIGHT OR LEFT HAND.

ORDER

THE ORDER OF THE REFEREE DATED AUGUST 11, 1975 IS MODIFIED.

CLAIMANT IS AWARDED 75 DEGREES FOR 50 PER CENT LOSS OF THE RIGHT HAND AND 75 DEGREES FOR 50 PER CENT LOSS OF THE LEFT HAND. THIS IS IN LIEU OF AND NOT IN ADDITION TO THE AWARD MADE BY THE DETERMINATION ORDER MAILED AUGUST 30, 1974.

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

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE IN CONNECTION WITH HIS SERVICES AT THIS BOARD REVIEW 25 PER CENT OF THE COMPENSATION INCREASED BY THIS ORDER ON REVIEW, NOT TO EXCEED 2,300 DOLLARS.

WCB CASE NO. 75—176 NOVEMBER 14, 1975

AUTIE HUGHES, CLAIMANT

EVOHL MALAGON, CLAIMANT'S ATTY.
PHILIP MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS REVIEW BY THE BOARD OF AN ORDER OF THE REFEREE AWARDING CLAIMANT 40 PER CENT UNSCHEDULED DISABILITY TO HIS LOW BACK.

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HIS LOW BACK ON APRIL 18, 1974. HIS CLAIM WAS CLOSED ON JANUARY 15, 1975 WITH AN AWARD OF 64 DEGREES FOR 20 PER CENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT IS 39 YEARS OLD, HAS A SEVENTH GRADE EDUCATION AND MOST OF HIS PRIOR EMPLOYMENT HAS CONSISTED OF HARD PHYSICAL LABOR. DESPITE HIS LIMITED EDUCATION HE TESTIFIED HE HAD BEEN ABLE TO WORK UP TO A POSITION OF FOREMAN AND WAS EARNING APPROXIMATELY 1,100 DOLLARS A MONTH WHILE WORKING IN A CHEMICAL PLANT IN CALIFORNIA. HE LEFT THIS WELL-PAYING JOB FOR PERSONAL REASONS TO COME TO OREGON. HIS DUTIES AT HIS PRESENT JOB REQUIRED HIM TO USE A FORK LIFT AND TO DO A CONSIDERABLE AMOUNT OF LIFTING AND HE CLAIMS HE EARNS LESS MONEY THAN HE DID WHILE WORKING IN CALIFORNIA, PRIMARILY BECAUSE HE NOW HAS LESS OVERTIME.

CLAIMANT WAS SEEN BY DR. DONAHOO WHO INDICATED THAT CLAIMANT HAD A CONGENITAL DEFORMITY OF THE SPINE, IF HIS SYMPTOMS PERSISTED HE WOULD NEED A MYELOGRAM. HE RECOMMENDED CLAIMANT BE SEEN BY THE BACK EVALUATION CLINIC TO DETERMINE IF A FUSION WAS NECESSARY. SUBSEQUENT MEDICAL REPORTS RECEIVED FROM DR. GARDNER AND DR. WILSON RULED OUT THE NECESSITY FOR SURGERY.

IN ADDITION TO HIS REGULAR JOB, CLAIMANT HAD WORKED PART-TIME AS A MUSICIAN. AFTER HE RECEIVED TREATMENT FROM DR. DONAHOO HE TRIED TO RETURN TO WORK, WORKING WITH A BACK BRACE, BUT TERMINATED HIS EMPLOYMENT BECAUSE HE FELT HE WAS UNABLE TO DO THE WORK. HE THEN COMMENCED PLAYING REGULARLY WITH THE MUSICAL GROUP AND IS NOW MAKING APPROXIMATELY 125 DOLLARS A WEEK. CLAIMANT IS ABLE TO STAND WHILE PLAYING IN THE ORCHESTRA FOR PERIODS OF 4 TO 5 HOURS ALTHOUGH THIS AMOUNT OF TIME IS INTERSPERSED WITH INTERVALS WHERE HE CAN SIT AND RELAX.

THE REFEREE CONCLUDED THAT CLAIMANT HAD SUFFERED A SUBSTANTIAL DISABILITY AS EVIDENCE BY A MARKED DECREASED IN EARNING CAPACITY DUE PRIMARILY TO THE RESIDUALS FROM HIS BACK INJURY AND BECAUSE OF HIS LIMITED ABILITY AND, THEREFORE, INCREASED THE AWARD OF 20 PER CENT TO 40 PER CENT.

THE BOARD, ON DE NOVO REVIEW, FINDS IT RATHER DIFFICULT TO LEND MUCH CREDENCE TO CERTAIN STATEMENTS MADE BY THE CLAIMANT. DR. DONAHOO WAS OF THE OPINION THAT CLAIMANT HAD SUFFERED 20 PER CENT DISABILITY OF THE LOW BACK AND THAT HE HAD GOOD RANGE OF MOTION. THIS OPINION WAS SHARED BY THE OTHER DOCTORS WHO EXAMINED AND-OR TREATED CLAIMANT. THE BOARD FEELS THAT CLAIMANT RETAINS SUBSTANTIAL WAGE EARNING CAPACITY AT THE PRESENT TIME AND THAT THE LOSS OF EARNING CAPACITY DOES NOT JUSTIFY MORE THAN AN AWARD OF 20 PER CENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED DISABILITY.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 20, 1975 IS REVERSED.

THE DETERMINATION ORDER DATED JANUARY 15, 1975 IS AFFIRMED.

WCB CASE NO. 75—381 NOVEMBER 18, 1975

ELDORA J. CASTRO, CLAIMANT

JAMES P. HARRIS, II, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER APPROVING STIPULATION

ON AUGUST 19, 1975 THE STATE ACCIDENT INSURANCE FUND REQUESTED BOARD REVIEW OF A REFEREE'S ORDER ENTERED IN THE ABOVE ENTITLED MATTER ON JULY 28, 1975.

ON NOVEMBER 10, 1975 THE BOARD RECEIVED THE ATTACHED STIPULATION AND, HAVING REVIEWED IT, FINDS IT TO BE PROPER.

IT IS THEREFORE ORDERED THAT THE ATTACHED STIPULATION IS APPROVED AND THE REQUEST FOR REVIEW NOW PENDING BEFORE THE BOARD IS HEREBY DISMISSED.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN THE ABOVE-NAMED CLAIMANT AND THE STATE ACCIDENT INSURANCE FUND IN SETTLEMENT OF SAIF'S APPEAL THAT THE INJURY OF FEBRUARY 13, 1970, ARISING OUT OF HER WORK FOR FAIRVIEW HOSPITAL AND TRAINING CENTER, SALEM, OREGON, HAS NOW RESULTED IN 164 DEGREES TOTAL OF UNSCHEDULED PERMANENT PARTIAL DISABILITY AND THE WORKMAN'S COMPENSATION BOARD MAY ORDER A REDUCTION IN THE AWARD MADE BY THE REFEREE IN ACCORDANCE HEREWITH, AND FURTHER THAT THE REQUEST FOR REVIEW SHALL BE DISMISSED IN COMPROMISE AND SETTLEMENT OF ALL ISSUES PRESENTLY RAISED AND RAISABLE HEREIN.

WCB CASE NO. 74—3660 NOVEMBER 18, 1975

MARY MC KINNEY, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS REVIEW BY THE BOARD OF THE ORDER OF THE REFEREE WHICH AWARDED 128 DEGREES FOR 40 PER CENT UNSCHEDULED LOW BACK DISABILITY AND 37.5 DEGREES FOR 25 PER CENT SCHEDULED DISABILITY FOR LOSS OF FUNCTION OF THE LEFT LEG.

CLAIMANT SUFFERED A COMPENSABLE LOW BACK INJURY ON MARCH 22, 1973. SHE RECEIVED MEDICAL TREATMENT AND WAS RELEASED TO RETURN TO REGULAR WORK ON JUNE 6, 1973.

CLAIMANT'S COMPLAINTS PERSISTED AND SHE WAS REFERRED TO DR. CRUICKSHANK, A NEUROSURGEON, WHO, ON JULY 20, 1973, PERFORMED A LAMINECTOMY L4-5. DR. CRUICKSHANK CONTINUED TO BE CLAIMANT'S TREATING PHYSICIAN THROUGH THE REMAINDER OF 1973, 1974 AND INTO 1975. HE RELEASED CLAIMANT TO RETURN TO REGULAR WORK ON AUGUST 8, 1974. HIS REPORT AS OF THAT DATE CONCLUDED -

> 'THE PATIENT PRESENTING FOR CLOSING EXAMINATION FOLLOWING LAMINECTOMY AT L4-5 FOR HERNIATED DISK (SIC) FOLLOWING AN ON-THE-JOB INJURY. THE PATIENT STILL HAS RESIDUAL COMPLAINTS OF PAIN IN THE LEFT LEG WHICH SHE INDICATES TO BE ON THE LATERAL THIGH OVERLYING THE GREATER TROCHANTER WHICH MAY BE DUE TO A MILD BURSITIS, BUT I FEEL IT HAS NO RELATIONSHIP TO HER ON-THE-JOB INJURY. I FEEL THAT THIS PATIENT'S MEDICAL STATUS IS STATIONARY AND THAT HER CLAIM SHOULD BE CLOSED WITH PERMANENT PARTIAL DISABILITY BEING GRANTED IN ACCORDANCE WITH THE ABOVE FINDINGS.'

THE CLAIMANT WAS VERY SATISFIED WITH THE TREATMENT RECEIVED FROM DR. CRUICKSHANK BUT FELT THAT HE WAS NOT ACCURATE IN REMEMBERING THE HISTORY SHE RELATED TO HIM WITH RESPECT TO THE BURSITIS OF THE SHOULDERS THAT PRE-EXISTED THE INJURY, STATING SHE HAD NEVER COMPLAINED OF ANY BURSITIS IN HER LEFT HIP.

THE PSYCHOLOGICAL EVALUATION OF CLAIMANT INDICATED A VERY GOOD PROGNOSIS FOR RE-TRAINING AND, ACCORDINGLY, THE VOCATIONAL REHABILITATION DIVISION AUTHORIZED A TRAINING PROGRAM AT WESTERN BUSINESS COLLEGE TO PREPARE CLAIMANT TO BECOME AN IBM KEYPUNCH OPERATOR. CLAIMANT COMPLETED THE TWO SIX-WEEK COURSES PRINCIPALLY IN ACCOUNTING AND BUSINESS BUT DID NOT ENTER INTO THE COMPUTER PUNCH PHASE OF THE TRAINING BECAUSE HER HUSBAND HAD BEEN TRANSFERRED TO THE BEND AREA. CLAIMANT DID REGISTER AT CENTRAL OREGON COMMUNITY COLLEGE BUT QUIT SOON THEREAFTER AND DID NOT RENEW HER TRAINING ACTIVITIES.

THE REFEREE FOUND THAT CLAIMANT HAD A POST-OPERATIVE L4-5 SYNDROME WITH SUBSTANTIAL RESIDUAL NERVE ROOT IRRITATION PAIN IN THE LEFT LEG AND FOOT. THE REFEREE CONCLUDED THAT CLAIMANT HAD A SUBSTANTIAL DISABILITY OVER AND ABOVE THAT PREVIOUSLY AWARDED FOR UNSCHEDULED DISABILITY BECAUSE MANY EMPLOYERS WOULD TEND IN THE FUTURE TO SHY AWAY FROM EMPLOYING HER BECAUSE OF THE NATURE OF HER INJURY AND THIS WOULD DIMINISH CLAIMANT'S POTENTIAL EARNING CAPACITY. HE ALSO FOUND THAT SHE HAD SCHEDULED DISABILITY TO HER LEFT LEG AS A RESULT OF THE DISABLING PAIN AND CRAMPING IN THAT LEG.

THE BOARD, ON DE NOVO REVIEW, FEELS THAT THE REFEREE'S AWARD OF 40 PER CENT FOR CLAIMANT'S UNSCHEDULED DISABILITY CERTAINLY MUST BE CONSIDERED AS GENEROUS, HOWEVER, IT WILL NOT INTERFERE WITH THAT AWARD.

WITH RESPECT TO THE REFEREE'S CONCLUSION THAT CLAIMANT SUFFERED A SCHEDULED DISABILITY TO HER LEFT LEG, THE BOARD FINDS THAT THIS IS CONTRADICTED BY THE REPORT OF DR. CRUICKSHANK WHO SPECIFICALLY STATED HE FOUND NO RELATIONSHIP BETWEEN THE CLAIMANT'S COMPLAINTS INVOLVING THE LATERAL ASPECT OF HER LEFT HIP AND THIGH AND THE ON-THE-JOB INJURY. THE BOARD CONCLUDES THAT CLAIMANT HAS NOT SUFFERED ANY SCHEDULED DISABILITY TO HER LEFT LEG.

ORDER

THE ORDER OF THE REFEREE DATED JULY 21, 1975 IS MODIFIED BY ELIMINATING FROM SAID ORDER THE AWARD OF 37.5 DEGREES FOR 25 PER CENT SCHEDULED DISABILITY FOR LOSS OF FUNCTION OF THE LEFT LEG. IN ALL OTHER RESPECTS THE ORDER IS AFFIRMED.

WCB CASE NO. 74—274 NOVEMBER 18, 1975

WALTER MAKI, CLAIMANT

WHEELOCK, NIEHAUS, BAINES AND MURPHY,
CLAIMANT'S ATTYS.
LINDSAY, NAHSTOLL, HART, DUNCAN, DAFOE AND KRAUSE,
DEFENSE ATTYS.
ORDER APPROVING STIPULATION

ON OCTOBER 15, 1975 CLAIMANT REQUESTED BOARD REVIEW OF THE REFEREE'S ORDER ENTERED IN THE ABOVE ENTITLED MATTER ON OCTOBER 1, 1975.

ON NOVEMBER 13, 1975 THE BOARD RECEIVED THE ATTACHED STIPULATION AND, HAVING REVIEWED IT, FINDS IT TO BE PROPER.

IT IS THEREFORE ORDERED THAT THE ATTACHED STIPULATION IS APPROVED AND THE REQUEST FOR REVIEW NOW PENDING BEFORE THE BOARD IS HEREBY DISMISSED.

SETTLEMENT AGREEMENT

A HEARING WAS HELD IN THE ABOVE-CAPTIONED MATTER CONCERNING THE EXTENT OF PERMANENT DISABILITY AND AN INCREASED AWARD WAS GRANTED BY THE HEARING'S OFFICER PURSUANT TO OPINION AND ORDER ENTERED OCTOBER 1, 1975.

THEREAFTER, CLAIMANT FILED NOTICE OF APPEAL AND SUBSEQUENTLY THE PARTIES HAVE AGREED UPON A SETTLEMENT AND COMPROMISE WHEREBY THE EMPLOYER AND ITS CARRIER STIPULATE TO AN ADDITIONAL AWARD OF 20 PER CENT DISABILITY OF A WHOLE PERSON FOR AN ADDITIONAL 64 DEGREES.

CLAIMANT'S ATTORNEY IS TO BE PAID AN ADDITIONAL ATTORNEY'S FEE OF 600 DOLLARS FOR THIS ADDITIONAL AWARD.

IN CONSIDERATION OF THIS ADDITIONAL COMPENSATION, CLAIMANT AGREES AND DOES HEREBY DISMISS ITS APPEAL HEREIN. A COPY OF THIS SETTLEMENT AGREEMENT SHALL BE FILED IN THIS CASE AND SHALL ACT AS CLAIMANT'S STIPULATION OF DISMISSAL.

WCB CASE NO. 74—1755 NOVEMBER 18, 1975

CLAIR W. ADAMS, CLAIMANT

RONALD D. THOM, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER APPROVING STIPULATION

ON OCTOBER 12, 1975 CLAIMANT REQUESTED BOARD REVIEW OF THE REFEREE'S ORDER OF DISMISSAL ENTERED IN THE ABOVE ENTITLED MATTER ON AUGUST 28, 1975.

ON NOVEMBER 14, 1975 THE BOARD RECEIVED THE ATTACHED STIPULATION AND, HAVING REVIEWED IT, FINDS IT TO BE PROPER.

IT IS THEREFORE ORDERED THAT THE ATTACHED STIPULATION IS APPROVED AND THE REQUEST FOR REVIEW NOW PENDING BEFORE THE BOARD IS HEREBY DISMISSED.

STIPULATION

IT IS HEREBY STIPULATED BY AND BETWEEN THE ABOVE NAMED CLAIMANT AND THE STATE ACCIDENT INSURANCE FUND (FUND) THAT THE CLAIMANT'S REQUEST FOR REVIEW BE DISMISSED AND THAT THE MATTER BE REMANDED TO THE HEARINGS DIVISION OF THE WORKMEN'S COMPENSATION BOARD FOR A HEARING ON THE MERITS, OPINION AND ORDER.

WCB CASE NO. 74-1936 NOVEMBER 18, 1975

BERNARD BROUNSTEIN, CLAIMANT

MERTEN AND SALTVEIT, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH ORDERED IT TO PAY CLAIMANT'S BENEFICIARIES THE BENEFITS TO WHICH THEY WERE ENTITLED BY LAW AND AWARDED CLAIMANT'S ATTORNEY A FEE OF 2,000 DOLLARS.

CLAIMANT, WHO WAS 63 YEARS OLD AT THE TIME OF THE HEARING, WAS EMPLOYED AS A DISPATCHER. HE ALLEGED THAT HE SUFFERED AN OCCUPATIONAL DISEASE, NAMELY, CONGESTIVE HEART FAILURE CULMINATING IN A MYOCARDIAL INFARCTION ALLEGED TO HAVE BEEN AGGRAVATED BY THE STRESSFUL CONDITIONS OF HIS EMPLOYMENT. THE FUND DENIED THE CLAIM AND ALSO RAISED THE ISSUE OF UNTIMELY NOTICE.

CLAIMANT HAD BEEN EMPLOYED CONTINUOUSLY FROM MAY 17, 1954 UNTIL OCTOBER 30, 1973. HE HAD BEEN MANAGER OF THE WAREHOUSE UNTIL ABOUT THE LAST 3 1-2 YEARS OF HIS EMPLOYMENT WHEN HE ASSUMED THE DUTIES OF DISPATCHER. HE CONTENDS THAT STRESS RELATING TO THE LATTER JOB CONTRIBUTED TO HIS HEART PROBLEMS.

CLAIMANT HAD RECEIVED A COMPLETE PHYSICAL EXAMINATION ON JUNE 25, 1975 WHICH INDICATED NO HEART PROBLEMS OR ANY CONDITION OF HIGH BLOOD PRESSURE. APPARENTLY, HOWEVER, HE SUSTAINED A SILENT MYOCARDIAL INFARCTION SOMETIME BETWEEN OCTOBER 15 AND OCTOBER 21, 1973. CLAIMANT ATTRIBUTED THIS CONDITION TO THE FLU AND HE MISSED WORK BETWEEN OCTOBER 25 AND OCTOBER 26. HE RETURNED TO WORK AND ON OCTOBER 30 WAS HOSPITALIZED WITH A DIAGNOSIS OF A PREVIOUS MYOCARDIAL INFARCTION. HE WAS DISCHARGED ON NOVEMBER 11 AND REMAINED AT HOME UNTIL DECEMBER 14 WHEN BECAUSE OF PAINS IN HIS CHEST HE WAS RE-ADMITTED INTO THE HOSPITAL AND UNDERWENT HEART SURGERY. CLAIMANT DIED SUBSEQUENT TO THE HEARING.

ON THE ISSUE OF UNTIMELY NOTICE THE REFEREE HAD FOUND THAT THE EMPLOYER HAD FAILED TO ESTABLISH ANY PREJUDICE RESULTING THEREFROM AND CONCLUDED THAT CLAIMANT WAS NOT BARRED UNDER THE PROVISIONS OF ORS 656.265(4).

ON THE ISSUE OF COMPENSABILITY THERE WAS CONFLICTING MEDICAL EVIDENCE. DR. GRISWOLD CONCLUDED THAT THE FACT THAT CLAIMANT HAD HAD A MYOCARDIAL INFARCTION SOME TIME WITHIN A WEEK PRIOR TO HIS FIRST ADMISSION TO THE HOSPITAL AND THE FACT THAT HE HAD CONTINUED TO WORK WOULD PROBABLY AGGRAVATE THE DAMAGE TO THE HEART MUSCLE AND UNDOUBTEDLY WAS A MAJOR CONTRIBUTING FACTOR IN THE DEVELOPMENT OF HIS CONGESTIVE HEART FAILURE CAUSING THE RE-ADMISSION TO THE HOSPITAL.

ON THE OTHER HAND, DR. ROGERS WAS OF THE OPINION THAT THERE WAS NO RELATIONSHIP BETWEEN CLAIMANT'S CONDITION OF EMPLOYMENT AND HIS HEART PROBLEMS. HE BASED THIS UPON AN ASSUMPTION THAT CLAIMANT'S CONTINUING TO WORK AT HIS JOB WAS CONTINUATION OF EMPLOYMENT TO WHICH ONE WAS ACCUSTOMED. IN FACT, CLAIMANT'S JOB HAD BECOME INCREASINGLY DISTASTEFUL TO HIM AND, THEREFORE, CLAIMANT WAS NOT ACCUSTOMED TO IT, RATHER HE WAS DISTRESSED BY IT. FOR THIS REASON THE REFEREE ACCORDED A GREATER WEIGHT TO DR. GRISWOLD'S OPINION AND THE TESTIMONY INTRODUCED AT THE HEARING AND CONCLUDED THAT CLAIMANT HAD SUSTAINED HIS BURDEN OF PROVING HE HAD SUFFERED AN OCCUPATIONAL DISEASE.

INASMUCH AS CLAIMANT DIED SUBSEQUENT TO THE HEARING AND PRIOR TO THE ISSUANCE OF THE REFEREE'S ORDER, THE FUND WAS DIRECTED BY THE REFEREE TO PAY TO CLAIMANT'S BENEFICIARIES THE BENEFITS PROVIDED BY LAW.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS AND ADOPTS THE WELL-WRITTEN OPINION AND ORDER OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE DATED JULY 11, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HER SERVICES IN CONNECTION WITH THIS BOARD REVIEW THE SUM OF 300 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

CLAIM NO. 05X 006834 NOVEMBER 18, 1975

WALTER W. FETTER, CLAIMANT

OWN MOTION ORDER

ON JULY 8, 1968 THE CLAIMANT SUFFERED A COMPENSABLE INJURY WHILE WORKING FOR JACK LARSON LOGGING COMPANY WHOSE CARRIER AT THAT TIME WAS ARGONAUT INSURANCE COMPANY. THE CLAIM WAS CLOSED BY THE FIRST DETERMINATION ORDER MAILED JULY 29, 1970 WHEREBY CLAIMANT RECEIVED 23 DEGREES FOR PARTIAL LOSS OF THE LEFT LEG, IT WAS SUBSEQUENTLY REOPENED AND CLOSED TWICE. NEITHER THE SECOND DETERMINATION ORDER MAILED NOVEMBER 17, 1971 NOR THE THIRD DETERMINATION ORDER MAILED SEPTEMBER 4, 1973 AWARDED CLAIMANT ANY ADDITIONAL PERMANENT DISABILITY, ONLY ADDITIONAL TIME LOSS.

DR. THAD C. STANFORD, AN ORTHOPEDIC SURGEON, WHO HAS BEEN TREATING CLAIMANT CONTINUOUSLY SINCE THE ORIGINAL INJURY, ADVISED THE EMPLOYER'S CARRIER ON NOVEMBER 3, 1975 THAT CLAIMANT CONTINUED TO HAVE TROUBLE WITH HIS KNEE AND EXPRESSED HIS OPINION THAT CLAIMANT'S PRESENT PROBLEM WAS DIRECTLY RELATED TO HIS PREVIOUS KNEE PROBLEM AND TO NO OTHER PROBLEM.

CLAIMANT'S AGGRAVATION RIGHTS EXPIRED ON JULY 28, 1975 AND, THEREFORE, THE EMPLOYER AND ITS CARRIER HAVE REFUSED TO REOPEN CLAIMANT'S CLAIM.

THE CLAIMANT HAS REQUESTED THE BOARD TO EXERCISE ITS OWN MOTION JURISDICTION PURSUANT TO ORS 656.278 AND DIRECT THE EMPLOYER AND ITS CARRIER TO ACCEPT HIS CLAIM FOR SUCH TREATMENT AS MAY BE RECOMMENDED BY DR. STANFORD AND TO PAY CLAIMANT COMPENSATION, AS PROVIDED BY LAW, IF SUCH TREATMENT RESULTS IN CLAIMANT BEING UNABLE TO WORK AND TO CONTINUE TO PAY SUCH PAYMENTS UNTIL CLAIMANT'S CLAIM IS CLOSED PURSUANT TO ORS 656.278.

IT IS SO ORDERED.

WCB CASE NO. 74-3491 NOVEMBER 20, 1975

PHILIP D. ADAMS, CLAIMANT

RICHARD B. STINSON, JR.,
CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH DIRECTED IT TO ACCEPT THE TEMPORARY EXACERBATION OF THE BILATERAL FOOT SYMPTOMS OF CLAIMANT'S PRE-EXISTING AND UNDERLYING RHEUMATOID SPONDYLITIS AS A COMPENSABLE CONDITION UNDER THE OREGON OCCUPATIONAL DISEASE LAW AND TO PAY CLAIMANT'S MEDICAL EXPENSES AND TIME LOSS CAUSED BY THAT EXACERBATION.

CLAIMANT, A 30 YEAR OLD CUSTODIAN, COMMENCED EMPLOYMENT AS A JANITOR FOR THE EMPLOYER IN JULY 1973 AND LAST WORKED ON THE JOB ON MAY 7, 1974. ON JUNE 5, 1974 CLAIMANT FILED A CLAIM STATING HE WAS NO LONGER ABLE TO WORK ON HIS FEET 8 HOURS A DAY, FIVE DAYS A WEEK AT JANITORIAL TYPE WORK. SUCH WORK APPARENTLY AGGRAVATED AN ARTHRITIC CONDITION DIAGNOSED AS RHEUMATOID SPONDYLITIS, IT WAS STIPULATED THAT CLAIMANT'S CLAIM WAS RESTRICTED TO HIS FEET. DURING CLAIMANT'S EMPLOYMENT, HE HAD HAD HAMMER TOE SURGERY IN OCTOBER 1973 WHICH RESULTED IN SOME TIME LOSS BUT DID NOT PREVENT CLAIMANT FROM RETURNING TO HIS EMPLOYMENT.

DR. ROSENBAUM CHARACTERIZED RHEUMATOID SPONDYLITIS AS AN INFLAMMATORY DISEASE OF UNKNOWN ETIOLOGY AND EXPRESSED HIS OPINION THAT CLAIMANT'S RHEUMATOID SPONDYLITIS WAS NEITHER CAUSED BY NOR AGGRAVATED BY HIS EMPLOYMENT. HE STATED THAT THE DISEASE CAUSED PAIN, SWELLING AND JOINT DESTRUCTION AND WAS PROGRESSIVE, THEREFORE, CLAIMANT WOULD HAVE HAD THE SAME AMOUNT OF INFLAMMATION AND JOINT DESTRUCTION WHETHER HE HAD BEEN WORKING OR NOT. DR. ROSENBAUM DID STATE, HOWEVER, THAT WALKING ON FEET INFLAMED BY RHEUMATOID SPONDYLITIS WOULD BE EXTREMELY PAINFUL AND THAT HAD HE BEEN TREATING CLAIMANT HE WOULD HAVE ADVISED HIM TO STAY OFF OF HIS FEET. THE EVIDENCE IS ABUNDANT THAT CLAIMANT'S JANITORIAL JOB REQUIRED HIM TO DO CONSIDERABLE WALKING.

THE REFEREE FOUND THAT CLAIMANT'S UNDERLYING RHEUMATOID SPONDYLITIS PRE-DATED THE EMPLOYMENT OF JULY 1973 AND WAS NOT CAUSED BY SAID EMPLOYMENT NOR DID HIS EMPLOYMENT ACCELERATE OR AGGRAVATE DESTRUCTION OF THE CARTILAGE IN CLAIMANT'S FOOT BUT HE

DID FIND THAT THE SYMPTOMS OF PAIN AND SWELLING WERE ACCELERATED AND EXACERBATED BY THE WALKING NECESSITATED BY CLAIMANT'S JOB.

THE REFEREE CONCLUDED THAT CLAIMANT SUSTAINED A TEMPORARY EXACERBATION OF AN UNDERLYING PRE-EXISTING PROGRESSIVE CONDITION WHICH ENTITLED HIM TO MEDICAL CARE AND TREATMENT AND TO TEMPORARY TOTAL DISABILITY COMPENSATION FOR THE LIMITED PERIOD DURING WHICH HIS RHEUMATOID SPONDYLITIS, EXACERBATED BY HIS JANITORIAL DUTIES, CAUSED HIM TIME FROM WORK.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE FINDINGS AND CONCLUSIONS REACHED BY THE REFEREE. THE BOARD REALIZES, AS THE REFEREE POINTED OUT IN HIS ORDER, THAT A VERY FINE DISTINCTION HAS BEEN MADE IN THIS CASE BUT CONCLUDES THAT THE REFEREE WAS CORRECT IN FINDING THAT CLAIMANT'S WORK ACCELERATED AND ACCENTUATED THE SYMPTOMS OF HIS PRE-EXISTING DISEASE PROCESS, I.E., SYMPTOMS OF PAIN AND SWELLING, WHICH NECESSITATED MEDICAL TREATMENT AND TIME LOSS AND, THEREFORE, THE CLAIMANT IS ENTITLED TO BE COMPENSATED THEREFOR.

ORDER

THE ORDER OF THE REFEREE DATED MAY 8, 1975 IS AFFIRMED.

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

WCB CASE NO. 74-3716 NOVEMBER 20, 1975

JOHN FANDRICH, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT 144 DEGREES FOR 45 PER CENT UNSCHEDULED DISABILITY.

CLAIMANT SUSTAINED A COMPENSABLE INJURY ON FEBRUARY 1, 1973 WHEN HE SLIPPED AND INJURED HIS LOW BACK. CLAIMANT'S FAMILY PHYSICIAN HOSPITALIZED HIM FOR FIVE DAYS FOR TRACTION AND THERAPY. THE DIAGNOSIS WAS ACUTE SPASM AND ACUTE MYOFASCITIS OF THE LOW BACK. CLAIMANT RETURNED TO THE SAME JOB ON FEBRUARY 19, 1973, THE FIRST WORKING DAY AFTER HE HAD BEEN RELEASED FROM THE HOSPITAL.

ON JANUARY 14, 1974 A DETERMINATION ORDER GRANTED CLAIMANT TIME LOSS AND AN AWARD OF 48 DEGREES EQUAL TO 15 PER CENT FOR HIS UNSCHEDULED DISABILITY.

ON SEPTEMBER 3, 1974 DR. SCHLIM EXAMINED CLAIMANT, AT THE REQUEST OF THE FUND. HE WAS OF THE OPINION THAT CLAIMANT HAD A CHRONIC LOW BACK STRAIN WHICH WAS SLOWLY GETTING WORSE, THERE WAS SOME EVIDENCE OF DEGENERATIVE DISEASE. THE DISCOMFORT LESSENS OVER THE WEEKEND, ONLY HEAVY WORK AGGRAVATES HIS CONDITION. DR. SCHLIM ADVISED CLAIMANT THAT AS LONG AS HE CONTINUED TO WORK HE

WOULD CONTINUE TO HAVE PAIN BUT CLAIMANT SAID HE COULDN'T AFFORD TO DISCONTINUE WORK AND LOSE HIS SENIORITY BENEFITS. DR. SCHLIM FOUND HIS CONDITION TO BE MEDICALLY STATIONARY. ON NOVEMBER 13, 1974 A SECOND DETERMINATION ORDER AWARDED NO ADDITIONAL PERMANENT DISABILITY.

CLAIMANT WAS SEEN IN FEBRUARY 1975 BY DR. SACAMANO WHO FELT, AFTER EXAMINATION, THAT IT WOULD BE PREFERABLE IF CLAIMANT WERE EMPLOYED IN SOME OTHER TYPE OF WORK.

CLAIMANT IS 48 YEARS OLD, HAS AN EIGHTH GRADE EDUCATION, AND HIS WORK EXPERIENCE CONSISTS OF TRUCK DRIVING, WORKING IN A SERVICE STATION, AND SOME WORK IN THE WOODS UNTIL 1960 WHEN HE BECAME AN IRONWORKER. EXCEPT FOR HIS PERIOD OF HOSPITALIZATION FOLLOWING THE FEBRUARY 1973 INJURY, CLAIMANT HAS CONTINUED TO WORK AS AN IRONWORKER AND HAS SUFFERED NO TIME LOSS, ALTHOUGH HE DOES EXPERIENCE A CONSTANT DULL PAIN IN HIS LOW BACK WHICH HE FEELS PREVENTS HIM FROM WORKING AS EFFICIENTLY OR QUICKLY AS HE DID BEFORE THE INJURY.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE REFEREE THAT CLAIMANT IS ENTITLED TO A GREATER AWARD FOR HIS UNSCHEDULED DISABILITY THAN HE HAS RECEIVED BECAUSE HE IS PRECLUDED FROM DOING HIS JOB AS EFFICIENTLY AS HE DID PRIOR TO THE INJURY AND HAS TO BE CAREFUL IN LIFTING AND IN CARRYING OBJECTS. HOWEVER, CLAIMANT, BY HIS OWN CHOICE, HAS CONTINUED TO PERFORM HIS JOB AS AN IRONWORKER AND HAS SUFFERED NO TIME LOSS AS A RESULT OF THE INJURY. GRANTED HE HAS WORKED IN PAIN, BUT PAIN, UNLESS IT IS DISABLING, IS NOT COMPENSABLE.

THE CRITERION FOR EVALUATING UNSCHEDULED DISABILITY IS LOSS OF EARNING CAPACITY AND SUCH LOSS MUST BE CONSIDERED IN CONNECTION WITH THE WORKMAN'S HANDICAP IN OBTAINING AND HOLDING GAINFUL EMPLOYMENT IN THE BROAD FIELD OF GENERAL INDUSTRIAL OCCUPATIONS NOT JUST IN RELATION TO THE OCCUPATION HE HAD BEFORE HIS INJURY OR MAY HAVE RETURNED TO AFTER HIS INJURY. FORD V. SAIF (UNDERSCORED), 7 OR APP 549. IN THIS CASE CLAIMANT'S EARNING CAPACITY HAS BEEN DIMINISHED AS A RESULT OF HIS INDUSTRIAL INJURY BUT NOT TO THE EXTENT WHICH WOULD ENTITLED HIM TO AN AWARD OF 45 PER CENT OF THE MAXIMUM ALLOWABLE BY STATUTE.

THE BOARD CONCLUDES THAT CLAIMANT SHOULD RECEIVE AN AWARD OF 80 DEGREES FOR 25 PER CENT OF THE MAXIMUM. CLAIMANT IS TO BE COMMENDED FOR RETURNING TO WORK AND CONTINUING TO WORK EVEN THOUGH IN PAIN - HOWEVER, CONSIDERATION MUST BE GIVEN TO THE FACT THAT CLAIMANT HAS DONE SO PRIMARILY TO PROTECT HIS SENIORITY BENEFITS.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 8, 1975 IS MODIFIED.

CLAIMANT IS AWARDED 80 DEGREES OF A MAXIMUM OF 320 DEGREES FOR HIS UNSCHEDULED LOW BACK DISABILITY. THIS IS IN LIEU OF THE AWARD MADE BY THE REFEREE'S OPINION AND ORDER WHICH, IN ALL OTHER RESPECTS, IS AFFIRMED.

WCB CASE NO. 75-683 NOVEMBER 20, 1975

GEORGE N. ROTH, CLAIMANT

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

CLAIMANT REQUESTS BOARD REVIEW OF AN ORDER OF THE REFEREE WHICH GRANTED THE STATE ACCIDENT INSURANCE FUND'S MOTION TO DISMISS HIS CLAIM FOR AGGRAVATION ON THE GROUNDS THAT THE MEDICAL REPORTS OF FEBRUARY 24, 1975 AND DECEMBER 18, 1974 DID NOT MEET THE JURISDICTIONAL REQUIREMENTS OF AN AGGRAVATION CLAIM.

ORS 656.273, AMENDED BY OR LAWS 1975, CH. 497 SEC. 1 PROVIDES, AMONG OTHER THINGS, THAT THE ADEQUACY OF THE PHYSICIANS REPORT IS NOT JURISDICTIONAL. SECTION 5 PROVIDES THAT THE ACT SHALL APPLY TO ALL CLAIMS FOR COMPENSABLE INJURIES THAT OCCUR PRIOR TO THE EFFECTIVE DATE OF THE ACT.

THE BOARD CONCLUDES THAT IT HAS NO ALTERNATIVE BUT TO REMAND THE CLAIM FOR AGGRAVATION FOR A HEARING ON THE MERITS UNDER THE PROVISIONS OF ORS 656.273.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 20, 1975 IS REVERSED AND THE MATTER IS REMANDED TO THE HEARINGS DIVISION FOR A HEARING ON THE MERITS.

WCB CASE NO. 74-3265 NOVEMBER 20, 1975

ARVIE ROBERTSON, CLAIMANT

BAILEY, DOBLIE AND BRUUN, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF AN ORDER OF THE REFEREE WHICH AWARDED CLAIMANT 48 DEGREES FOR UNSCHEDULED RESPIRATORY DISABILITY.

IN DECEMBER, 1973 CLAIMANT FILED A CLAIM FOR A STEADILY WORSENING CONDITION INVOLVING BREATHING DIFFICULTIES. CLAIMANT WAS EMPLOYED TO ASSEMBLE FACE PLATES ON METAL DETECTORS AND, AFTER MAY 1973, GLUE WAS USED IN PLACE OF SCREWS TO ASSEMBLE THESE PLATES. CLAIMANT WAS CONTINUOUSLY EXPOSED TO THE ODOR OF THE GLUE IN A POORLY VENTILATED ROOM.

ON JULY 1, 1974 A DETERMINATION ORDER AWARDED CLAIMANT NO PERMANENT DISABILITY. CLAIMANT HAD QUIT HER JOB IN MAY 1974 DUE TO HER BREATHING DIFFICULTIES, EVEN DURING HER LAST MONTH WHEN SHE WAS EMPLOYED IN THE SAME BUILDING BUT IN A DIFFERENT DEPARTMENT AND NOT INVOLVED WORKING IN GLUE, CLAIMANT WOULD ENCOUNTER EYE AND THROAT IRRITATION IF A DOOR WAS OPEN AND THE GLUE ODOR PERMEATED THE AIR.

THE REFEREE FOUND, BASED ON THE MEDICAL REPORTS, THAT CLAIMANT HAD TEMPORARILY SEVERE CONDITONS INVOLVING BREATHING AND VISION AS A RESULT OF EXPOSURE TO FUMES WHILE AT WORK. THE SEVERITY OF THESE CONDITIONS HAD LESSENED SUBSTANTIALLY BUT CLAIMANT WAS STILL IRRITATED BY DUST AND FUMES ENCOUNTERED IN EVERYDAY LIFE AND HAD A SHORTNESS OF BREATH WHICH LIMITS HER ENDURANCE.

THE REFEREE FOUND THAT PRIOR TO HER WORK EXPOSURE CLAIMANT HAD NOT BEEN BOTHERED WITH BREATHING DIFFICULTIES AND ALTHOUGH THERE WAS NO PROOF THAT, AS A RESULT OF HER EXPOSURE, CLAIMANT HAD DEVELOPED INCREASED SENSITIVITY TO FUMES, SHE WAS PRECLUDED FROM RETURNING TO ANY WORK WHICH EXPOSED HER TO THESE FUMES WHICH HAD INITIALLY RESULTED IN HER ACUTE DISCOMFORT.

THE REFEREE FURTHER FOUND THAT CLAIMANT, BEING 54 YEARS OLD, WITH A FIFTH GRADE EDUCATION AND NO SPECIAL TRAINING AND THE BULK OF HER WORK EXPERIENCE OF 18 YEARS BEING THAT OF A CLERK, HAD SUFFERED SOME LOSS OF HER POTENTIAL WAGE EARNING CAPACITY - HOWEVER, SHE WAS STILL ABLE TO WORK AS A CLERK AND WAS PRESENTLY SEEKING SUCH WORK. THEREFORE, HE CONCLUDED THAT THE LIMITATIONS WHICH CLAIMANT HAS IN HER ABILITY TO GAIN AND HOLD WORK IN THE BROAD FIELD OF GENERAL INDUSTRIAL OCCUPATIONS ENTITLED HER TO AN AWARD OF 48 DEGREES OF A MAXIMUM OF 320 DEGREES FOR HER UNSCHEDULED RESPIRATORY DISABILITY.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE REFEREE AND AFFIRMS AND ADOPTS THEM AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 6, 1975 IS AFFIRMED.

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

WCB CASE NO. 73-2946 NOVEMBER 20, 1975

CLIFFORD GALUSHA, CLAIMANT

KEITH RODMAN, CLAIMANT'S ATTY.
JAQUA AND WHEATLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER AFFIRMING THE DENIAL OF CLAIMANT'S CLAIM FOR AGGRAVATION.

CLAIMANT SUFFERED AN INDUSTRIAL INJURY ON DECEMBER 14, 1970. FOLLOWING CONSERVATIVE TREATMENT A LAMINECTOMY WAS PERFORMED BY DR. SERBU ON MARCH 10, 1971. A DETERMINATION ORDER DATED MAY 11, 1972 AWARDED CLAIMANT 96 DEGREES FOR 36 PER CENT UNSCHEDULED LOW BACK DISABILITY. CLAIMANT REQUESTED A HEARING, AT THE HEARING PURSUANT TO A STIPULATION CLAIMANT RECEIVED AN ADDITIONAL 34 DEGREES FOR HIS UNSCHEDULED DISABILITY AND AN ADDITIONAL 30 DEGREES FOR RIGHT LEG DISABILITY. CLAIMANT NOW HAS 130 DEGREES FOR HIS UNSCHEDULED BACK DISABILITY AND 30 DEGREES FOR HIS RIGHT LEG DISABILITY.

CLAIMANT TESTIFIED, AS DID HIS WIFE, THAT HIS CONDITION WAS WORSE NOW THAN IT WAS ON OCTOBER 16, 1972, THE DATE OF THE STIPULATION. THIS CONTENTION IS NOT BORNE OUT BY THE MEDICAL REPORTS.

DR. SERBU HAD EXAMINED CLAIMANT JUST PRIOR TO THE STIPULATED SETTLEMENT. HE EXAMINED HIM AGAIN ON APRIL 1, 1974. IN DR. SERBU'S OPINION CLAIMANT HAD SUFFERED NO AGGRAVATION, IN FACT, CLAIMANT HAD MADE SOME IMPROVEMENT.

THE REFEREE FOUND CLAIMANT'S CREDIBILITY TO BE SUSPECT, THE HISTORY WHICH CLAIMANT RELATED TO THE VARIOUS PHYSICIANS WHO TREATED AND-OR EXAMINED HIM WAS INCONSISTENT AND CONTRADICTORY. CLAIMANT TESTIFIED THAT HE HAD NOT WORKED AND WAS NOT ABLE TO WORK IN ANY CAPACITY SINCE OCTOBER 1972, CLAIMANT ADMITS NO MOTIVATION FOR SEEKING OTHER WORK, ALLEGING IT WOULD BE USELESS TO DO SO AS HE SIMPLY COULD NOT DO ANY TYPE OF WORK.

THE REFEREE CONCLUDED THAT CLAIMANT'S POOR CREDIBILITY, THE CONSISTENT MEDICAL FINDINGS OF FUNCTIONAL OVERLAY AND THE INCONSISTENCIES OF COMPLAINT TAKEN TOGETHER WITH THE FINDINGS MADE BY DR. SERBU, BOTH BEFORE AND AFTER THE DATE OF THE LAST ARRANGEMENT OF COMPENSATION, INDICATED THAT CLAIMANT HAD FAILED TO MEET THE BURDEN OF PROOF TO SUPPORT HIS CLAIM FOR AGGRAVATION.

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

ORDER

THE ORDER OF THE REFEREE DATED MARCH 18, 1975 IS AFFIRMED.

WCB CASE NO. 74-2523 NOVEMBER 20, 1975

CATHY B. DE LA MARE, CLAIMANT

MYRICK, COULTER, SEAGRAVES AND NEALY,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER APPROVING AMENDED STIPULATION

ON OCTOBER 14, 1975 THE BOARD, HAVING REVIEWED THE STIPULATION ENTERED IN THE ABOVE ENTITLED MATTER AND EXECUTED BY ALL PARTIES CONCERNED, FOUND THE SAME TO BE IN GOOD ORDER AND APPROVED IT AND DISMISSED THE STATE ACCIDENT INSURANCE FUND'S REQUEST FOR REVIEW.

ON NOVEMBER 14, 1975 AN AMENDED STIPULATION IN THE ABOVE ENTITLED MATTER WAS FILED WITH THE BOARD, THE SOLE PURPOSE BEING TO CORRECT A STATEMENT IN THE ORIGINAL STIPULATION THAT THE 80 PER CENT INCREASE IN UNSCHEDULED DISABILITY EQUALED 256 DEGREES (THE CLAIMANT SUFFERED AN INDUSTRIAL INJURY IN 1965 WHEN THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY WAS 192 DEGREES RATHER THAN 320 DEGREES).

THE BOARD, HAVING REVIEWED THE AMENDED STIPULATION AND BEING AWARE OF THE NECESSITY FOR THE AMENDMENT, FINDS IT TO BE IN GOOD ORDER.

ORDER

THE ATTACHED AMENDED STIPULATION ENTERED IN THE ABOVE ENTITLED MATTER IS HEREBY APPROVED.

WCB CASE NO. 74-1291 NOVEMBER 20, 1975

CALVIN CANFIELD, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER AWARDING CLAIMANT PERMANENT TOTAL DISABILITY.

CLAIMANT SUFFERED COMPENSABLE LEG INJURIES ON APRIL 3, 1971. HE WAS TREATED BY DR. SMITH, AN ORTHOPEDIST, WHO RELEASED CLAIMANT FOR LIGHT WORK ON A LEVEL SURFACE ON OCTOBER 1, 1971. DR. SMITH, IN HIS CLOSING EVALUATION, INDICATED RESIDUAL DISABILITY FOLLOWING SEVERE INJURIES TO THE RIGHT TIBIA AND FIBULA AND LEFT KNEE.

ON JUNE 29, 1972 A DETERMINATION ORDER AWARDED CLAIMANT 25 PER CENT LOSS OF LEFT LEG AND 45 PER CENT LOSS OF THE RIGHT LEG. CLAIMANT APPEALED FROM THIS DETERMINATION ORDER AND, AFTER HEARING, THE REFEREE FOUND THE CLAIMANT TO BE PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT WAS REFERRED TO THE DISABILITY PREVENTION DIVISION WHERE DIAGNOSES WERE HEALED FRACTURE, NEUROPATHY AND HYPERTENSIVE CARDIOVASCULAR DISEASE. IT WAS RECOMMENDED THAT CLAIMANT RETURN TO WORK WHICH WOULD NOT REQUIRE WALKING OVER ROUGH TERRAIN OR GOING UP AND DOWN STAIRS OR LADDERS. THE PSYCHOLOGICAL EVALUATION REVEALED AVERAGE INTELLIGENCE, ANXIETY AND DEPRESSION.

THE CLAIM WAS REOPENED FOR ADDITIONAL SURGERY TO THE RIGHT TIBIA AND CLOSED AGAIN ON FEBRUARY 26, 1974 WITH NO ADDITIONAL AWARD OF PERMANENT DISABILITY.

CLAIMANT WAS EXAMINED BY DR. JAMES, AN ORTHOPEDIST, ON NOVEMBER 20, 1974 AND IT WAS DR. JAMES' IMPRESSION THAT CLAIMANT HAD SIGNIFICANT DISABILITY AND THE CHANCE OF HIS RETURNING TO THE LABOR MARKET WAS ESSENTIALLY NIL. DR. JAMES FELT THAT CLAIMANT HAD DEGENERATIVE DISC DISEASE WHICH PRECEDED THE ACCIDENT BUT WAS PROBABLY AGGRAVATED BY IT. HE DID NOT RECOMMEND SURGERY. CLAIMANT COMPLAINED, AT THE HEARING, THAT HIS HIPS AND BUTTOCKS ACHED AND THAT THE PAIN WAS GETTING WORSE, RUNNING FROM HIS TAILBONE TO HIS WAIST. HE COMPLAINED OF CONSTANT PAIN IN THE RIGHT LEG RUNNING FROM HIS KNEE TO HIS TOES AND IN THE HIP.

CLAIMANT HAD WORKED APPROXIMATELY 20 YEARS AS A WATCHMAKER, HE LEFT THIS BUSINESS BECAUSE IT APPARENTLY AFFECTED HIS NERVES. CLAIMANT HAS HAD EXPERIENCE AS A CARPENTER AND CABINET MAKER. HE HAS A HIGH SCHOOL EDUCATION.

THE BOARD, ON DE NOVO REVIEW, AGREES THAT CLAIMANT HAS SUFFERED SUBSTANTIAL SCHEDULED INJURIES BUT CANNOT AGREE WITH THE REFEREE'S FINDING OF PERMANENT TOTAL DISABILITY BASED UPON CLAIMANT'S UNSCHEDULED DISABILITY. THE REFEREE CONCLUDED THAT CLAIMANT HAD PROVEN HE WAS UNABLE TO WORK GAINFULLY, SUITABLY AND REGULARLY. THE BOARD DISAGREES, THE EVIDENCE INDICATES THAT CLAIMANT HAS MANY SKILLS, THAT HE HAS PROVEN THAT HE CAN RUN HIS OWN BUSINESS AND YET HE HAS MADE NO SERIOUS EFFORT, AFTER HIS INJURY, TO DO ANY TYPE OF WORK.

THE BOARD CONCLUDES THAT CLAIMANT RETAINS SUBSTANTIAL WAGE EARNING CAPACITY IF HE WILL AVAIL HIMSELF OF THE SKILLS WHICH HE HAS AND, BASED UPON CLAIMANT'S AGE, POTENTIAL TALENTS, AND EDUCATION, CLAIMANT CANNOT BE CONSIDERED TO BE WITHIN 'ODD-LOT' CATEGORY.

THE BOARD CONCLUDES THAT IN ADDITION TO THE AWARDS FOR HIS SCHEDULED DISABILITY RECEIVED BY THE DETERMINATION ORDER MAILED JUNE 29, 1972, CLAIMANT IS ENTITLED TO AN AWARD EQUAL TO 80 DEGREES FOR 25 PER CENT UNSCHEDULED DISABILITY TO ADEQUATELY COMPENSATE HIM FOR THE LOSS OF POTENTIAL WAGE EARNING CAPACITY RESULTING FROM HIS INDUSTRIAL INJURY.

THE BOARD URGES CLAIMANT TO TAKE ADVANTAGE OF SOME OF THE RE-TRAINING PROGRAMS AVAILABLE TO HIM UNDER THE AUSPICES OF THE DEPARTMENT OF VOCATIONAL REHABILITATION.

ORDER

THE ORDER OF THE REFEREE DATED MAY 23, 1975 IS REVERSED.

CLAIMANT IS AWARDED 80 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED DISABILITY. THIS AWARD IS IN ADDITION AND NOT IN LIEU OF THE AWARDS MADE BY THE DETERMINATION ORDERS OF JUNE 29, 1972 AND FEBRUARY 26, 1974.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE 25 PER CENT OF THE COMPENSATION AWARDED TO CLAIMANT FOR HIS UNSCHEDULED DISIBILITY BY THIS ORDER ON REVIEW, PAYABLE FROM SAID COMPENSATION, AS PAID, NOT TO EXCEED 2,000 DOLLARS.

WCB CASE NO. 74-977 NOVEMBER 20, 1975

BRUCE G. LATTIN, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE CLAIMANT REQUESTS BOARD REVIEW OF AN OPINION OF THE REFEREE WHICH DENIED THE RELIEF REQUESTED BY CLAIMANT.

CLAIMANT IS 55 YEARS OLD AND HAS BEEN WITH THE OREGON STATE POLICE FOR OVER 32 YEARS. ON JANUARY 17, 1974 CLAIMANT SUFFERED A HEART ATTACK FOR WHICH HE FILED A CLAIM FOR COMPENSATION WHICH WAS ACCEPTED BY THE STATE ACCIDENT INSURANCE FUND. ON MARCH 11, 1974 THE STATE ACCIDENT INSURANCE FUND DENIED RESPONSIBILITY FOR TIME LOSS PAYMENTS AND MEDICAL EXPENSES INCURRED SUBSEQUENT TO FEBRUARY 4, 1974 AND FOR ANY PERMANENT PARTIAL DISABILITY SUFFERED BY THE CLAIMANT. THE CLAIMANT REQUESTED A HEARING, THE REFEREE UPHELD THE DENIAL.

CLAIMANT HAD HAD A MYOCARDIAL INFARCTION IN 1968 WHILE STATIONED IN BAKER AND APPROXIMATELY TWO TIMES A WEEK SINCE THAT DATE CLAIMANT HAD SUBSTERNAL PAIN RADIATING TO THE LEFT ARM WHICH WOULD LAST ONE OR TWO MINUTES, ASSOCIATED WITH EMOTIONAL OR PHYSICAL EXERTION. APPROXIMATELY A YEAR LATER CLAIMANT WAS HOSPITALIZED IN KLAMATH FALLS WITH AN EPISODE OF SHORTNESS OF BREATH, SWEATING AND WEAKNESS, BUT NOT ACCOMPANIED BY ANY CHEST PAIN.

THERE APPARENTLY WAS NO CHANGE IN HIS CHRONIC STATUS UNTIL JANUARY 17, 1974 WHEN, WHILE INVESTIGATING A FIRE AT MYRTLE CREEK, HE HAD TO WALK UP THREE FLIGHTS OF STAIRS TWO OR THREE TIMES. ALTHOUGH CLAIMANT WAS TIRED AFTER DOING THIS HE HAD NO CHEST PAINS. LATER, INVESTIGATING A LAND SLIDE IN CANYONVILLE HE HAD TO CLIMB TO THE TOP OF THE SLIDE AREA, A DISTANCE OF APPROXIMATELY 200 YARDS IN SOFT DIRT AND MUD. STILL LATER IN THE AFTERNOON HE PICKED UP A WARRANT FOR A SUSPECT'S ARREST IN THE ARSON CASE AT MYRTLE CREEK AND DROVE APPROXIMATELY 30 MILES TO ROSEBURG. CLAIMANT HAD HAD NO PROBLEMS WITH HIS CHEST BUT WAS FEELING VERY TIRED, HOWEVER, WHILE LEAVING THE COURTHOUSE IN ROSEBURG HE DEVELOPED CHEST PAINS, NAUSEA, SWEATING, AND FELL TO THE SIDEWALK WITHOUT LOSING CONSCIOUSNESS.

CLAIMANT WAS HOSPITALIZED, HIS CONDITION WAS DIAGNOSED AS ARTERIOSCLEROTIC HEART DISEASE WITH OLD INFERIOR MYOCARDIAL INFARCTION, POSSIBLE HYPERVENTILATION SYNDROME, AND HE WAS HELD FOR OBSERVATION FOR MYOCARDIAL INFARCTION. AFTER A COUPLE OF DAYS IN THE HOSPITAL, CLAIMANT RETURNED TO HIS HOME.

DR. CHITTY, WHO HAD TREATED CLAIMANT SINCE LATE 1968, DIAGNOSED ISCHEMIC HEART DISEASE. DR. REAUME, A CARDIOLOGIST, DIAGNOSED THE CONDITION AS ARTERIOSCLEROTIC OCCLUSIVE CORONARY DISEASE, HYPERTENSIVE CARDIOVASCULAR DISEASE.

THE STATE ACCIDENT INSURANCE FUND ACCEPTED RESPONSIBILITY FOR THE HYPERVENTILATION, DIAPHORESIS AND SOME DISCOMFORT IN THE UPPER ABDOMEN SUFFERED BY CLAIMANT AS A RESULT OF HIS ACTIVITIES ON JANUARY 17, 1974 BUT, BECAUSE IT FELT THAT THAT INCIDENT DID NOT CONTRIBUTE IN ANY WAY TO WORSENING CLAIMANT'S CONDITION NOR CAUSE ANY PERMANENT IMPAIRMENT AND CLAIMANT WOULD HAVE COMPLETELY RECOVERED BY FEBRUARY 4, 1974, DENIED RESPONSIBILITY FOR TIME LOSS AND MEDICAL EXPENSES AFTER THAT DATE.

CLAIMANT CONTENDS HE IS ENTITLED TO THE ADDITIONAL MEDICAL CARE AND, FURTHER, THAT HE IS ENTITLED TO AN AWARD OF PERMANENT TOTAL DISABILITY AS A RESULT OF THE INCIDENT OF JANUARY 17, 1974. CLAIMANT HAD BEEN ADVISED BY HIS PHYSICIANS TO DISCONTINUE HIS WORK AS POLICE OFFICER AND DID SO AS OF MARCH 31, 1974 AND HAS NOT BEEN EMPLOYED SINCE THAT DATE.

DR. CHITTY'S OPINION WAS THAT THE INCIDENT OF JANUARY 17, 1974 EXCELERATED OR AGGRAVATED CLAIMANT'S UNDERLYING CONDITION BECAUSE CLAIMANT'S PAINS WORSENED SINCE THAT TIME. CLAIMANT'S CONDITION HAD BEEN RELATIVELY STABLE FOR A SUBSTANTIAL PERIOD OF TIME PRIOR TO THAT INCIDENT. DR. WYSHAM, BASED UPON A REVIEW OF THE MEDICAL RECORDS, OPINED THAT WHILE CLAIMANT DID HAVE BOTH HYPERVENTILATION AND HEART DISEASE, ONLY THE FIRST CONDITION WAS WORK RELATED. HE FOUND NO EVIDENCE OF PERMANENT DAMAGE TO CLAIMANT'S HEART, STATING THAT PERMANENT DAMAGE MEANS MAJOR IMPAIRMENT OF THE FUNCTION OF THE HEART, SUCH DAMAGE BEING THE EQUIVALENT OF DESTRUCTION OF TISSUE IN THE CLAIMANT'S HEART MUSCLE, MEASURABLE BY ENZYME PRODUCTION OF THE BODY.

THE REFEREE RELIED TO A GREAT EXTENT UPON THE TESTIMONY OF DR. WYSHAM AND CONCLUDED THAT THE ATTACK OF ANGINA OR HYPERVENTILATION WHICH CLAIMANT SUFFERED ON JANUARY 17, 1974 DID NOT AGGRAVATE OR WORSEN HIS ARTERIOSCLEROTIC OCCLUSIVE CORONARY DISEASE OR HYPERTENSIVE CARDIOVASCULAR DISEASE. HE ALSO CONCLUDED THAT THAT SINGLE EPISODE OF JANUARY 17 WAS NOT SUFFICIENT TO CAUSE ANY RESIDUAL PERMANENT PARTIAL DISABILITY. DR. CHITTY'S OPINION WAS SOMEWHAT EQUIVOCABLE. HE WAS UNABLE TO JUSTIFY HIS OPINION WITH 'CERTAINTY'.

THE BOARD, ON DE NOVO REVIEW, BELIEVES THAT THE REFEREE HAS VERY COMPREHENSIVELY ANALYZED ALL OF THE FACTORS INVOLVED IN THIS PARTICULAR CASE AND CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE REFEREE. BOTH PARTIES HAVE FILED BRIEFS WHICH HAVE BEEN EXTREMELY HELPFUL TO THE BOARD. HOWEVER, THE BOARD, AS WAS THE REFEREE, IS PERSUADED THAT DR. WYSHAM'S POSITION IS MORE LOGICAL AND PLAUSIBLE EVEN THOUGH HIS OPINION WAS BASED UPON MEDICAL RECORDS SUPPLIED TO HIM AND HE, AT NO TIME, HAD EXAMINED OR TREATED CLAIMANT.

ORDER

THE ORDER OF THE REFEREE DATED MAY 9, 1975 IS AFFIRMED.

WCB CASE NO. 74-4508 NOVEMBER 20, 1975

WILLIAM WAMSHER, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER HAS REQUESTED THAT THE BOARD REVIEW AN ORDER OF THE REFEREE WHICH REMANDED TO THE EMPLOYER CLAIMANT'S CLAIM TO BE ACCEPTED FOR PAYMENT OF COMPENSATION AS PROVIDED BY LAW.

ON AUGUST 16, 1974 CLAIMANT FILED A REPORT OF INJURY WITH THE EMPLOYER CONTENDING HE HAD SUSTAINED AN INJURY TO HIS SHOULDER DUE TO THE CONSTANT USE OF HIS RIGHT ARM IN HIS WORK FOR MANY YEARS. THE CLAIM WAS DENIED ON AUGUST 30, 1974 BY THE CARRIER AND ON NOVEMBER 4, 1974 CLAIMANT SENT A LETTER TO THE CARRIER REQUESTING A HEARING ON THE DENIAL. THE CARRIER BY LETTER ADVISED CLAIMANT TO REQUEST A HEARING BY WRITING TO THE WORKMEN'S COMPENSATION BOARD. COMPLIANCE DIVISION OF THE BOARD RECEIVED A PHOTOCOPY OF THE NOVEMBER 4 LETTER TO THE CARRIER ON NOVEMBER 14 AND THE BOARD RECEIVED A COPY ON DECEMBER 19, 1975.

THE EMPLOYER FILED A MOTION TO DISMISS FOR FAILURE TO FILE A REQUEST FOR HEARING WITHIN THE 60 DAY LIMITATION OF ORS 656.262(2) AND 656.319(2)(A). THIS WAS DENIED BY REFEREE FOSTER ON JANUARY 7, 1975 AND A HEARING WAS HELD ON FEBRUARY 24, 1975.

THE ISSUES BEFORE THE REFEREE WERE WHETHER CLAIMANT HAD SHOWN GOOD CAUSE FOR HIS FAILURE TO COMPLY WITH THE 60-DAY REQUIREMENT AND WHETHER CLAIMANT HAS SUSTAINED HIS BURDEN OF PROVING THAT HIS CURRENT SHOULDER CONDITION WAS CAUSALLY RELATED TO HIS EMPLOYMENT.

THE CLAIMANT ADMITTED, IN EFFECT, THAT HE FAILED TO COMPLY WITH THE 60-DAY LIMITATION PROVIDED IN THE AFOREMENTIONED STATUTES. THEREFORE, THE BURDEN WAS UPON CLAIMANT TO SHOW THAT THERE WAS GOOD CAUSE FOR HIS FAILURE TO FILE WITHIN THIS PERIOD. THE REFEREE CONCLUDED THAT BECAUSE CLAIMANT WAS UNCERTAIN AS TO WHETHER HIS SHOULDER INJURY WAS CAUSED BY PRIOR BULLET WOUND RECEIVED DURING THE KOREAN WAR OR DUE TO HIS INDUSTRIAL INJURY, HIS FAILURE TO FILE WITHIN THE 60-DAY PERIOD WAS JUSTIFIED AND CLAIMANT HAD SHOWN GOOD CAUSE FOR HIS FAILURE.

THE REFEREE FURTHER CONCLUDED THAT THE PREPONDERANCE OF THE MEDICAL EVIDENCE REVEALED CLAIMANT HAD A PRE-EXISTING SERVICE-CONNECTED RIGHT SHOULDER CONDITION WHICH WAS AGGRAVATED BY CLAIMANT'S

WORK AS A MOLDER. THE EMPLOYER TAKES THE EMPLOYEE AS HE FINDS HIM, THEREFORE, THE EMPLOYER WAS RESPONSIBLE FOR THIS AGGRAVATED CONDITION.

THE BOARD, ON DE NOVO REVIEW, DISAGREES WITH THE REFEREE'S CONCLUSION THAT CLAIMANT HAD ESTABLISHED GOOD CAUSE FOR HIS FAILURE TO REQUEST A HEARING ON THE DENIAL OF HIS CLAIM WITHIN 60 DAYS. THE EVIDENCE INDICATES CLAIMANT READ THE CLAUSE AT THE BOTTOM OF THE LETTER OF DENIAL INDICATING HE HAD 60 DAYS WITHIN WHICH TO APPEAL BUT SIMPLY DID NOT KEEP TRACK OF THE TIME. FROM THE DATE OF THE DENIAL UNTIL CLAIMANT FILED HIS REQUEST FOR HEARING THERE HAD BEEN NO MEDICAL REPORTS INDICATING A CHANGE IN CLAIMANT'S CONDITION WHICH WOULD INTERFERE WITH CLAIMANT'S INABILITY TO REQUEST A HEARING NOR WERE THERE OTHER EVENTS OR OCCURRENCES IN THE LIFE OF CLAIMANT OR HIS FAMILY WHICH WOULD DIVERT HIS ATTENTION FROM THE RUNNING OF THE APPEAL PERIOD.

IN FULOP V. OREGONIAN PUBLISHING COMPANY (UNDERSCORED), 10 OR APP 1, THE COURT OF APPEALS FOUND THAT GOOD CAUSE HAD NOT BEEN ESTABLISHED FOR FAILURE TO COMPLY WITH THE 60-DAY REQUIREMENT ALTHOUGH CLAIMANT WAS AN INVALID CONFINED TO A WHEELCHAIR AND WAS UNDER SUSPENSION OF HER CIVIL AND POLITICAL RIGHTS BECAUSE OF A FELONY CONVICTION DURING THAT PERIOD, ALSO SHE HAD MADE, DURING THAT PERIOD OF TIME, SIX MAJOR CHANGES OF RESIDENCE. IN THE INSTANT CASE CLAIMANT HAD FAR FEWER PHYSICAL LIMITATIONS AND HAD NO PREOCCUPATION WITH MOVING, WORKING, OR OTHER DIFFICULTIES. HE SIMPLY DISREGARDED OR FAILED TO PAY SUFFICIENT ATTENTION TO THE RUNNING OF THE 60-DAY PERIOD. THE BOARD DOES NOT FEEL THAT CLAIMANT HAS SHOWN GOOD CAUSE FOR HIS FAILURE TO FILE A REQUEST BY THE 60TH DAY AFTER NOTIFICATION OF DENIAL AND, THEREFORE, WAS NOT ENTITLED TO A HEARING.

INASMUCH AS CLAIMANT HAS NOT SHOWN GOOD CAUSE FOR HIS FAILURE TO COMPLY WITH THE REQUIREMENTS OF ORS 656.262(6) AND 656.319(2)(A), THE ISSUE OF COMPENSABILITY IS MOOT.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 4, 1975 IS REVERSED.

WCB CASE NO. 74-2101 NOVEMBER 20, 1975

RUSSELL D. BURCHELL, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
G. HOWARD CLIFF, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE CLAIMANT REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH AFFIRMED THE EMPLOYER'S DENIAL OF DECEMBER 2, 1974 AND AFFIRMED THE DETERMINATION ORDER MAILED FEBRUARY 7, 1974.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON JUNE 13, 1973 WHEN HE WAS STRUCK ON THE LEFT SIDE OF HIS FACE BY A RUG TUBE. AS A RESULT OF THIS INJURY CLAIMANT HAS BELL'S PALSY. CLAIMANT ALSO CONTENDS THAT THE EMPLOYER IS RESPONSIBLE FOR HIS RIGHT HIP AND GROIN CONDITION.

CLAIMANT LOST TIME FROM WORK FROM JUNE 15, 1973 TO JULY 15, 1973, AFTER HE RETURNED TO WORK HE NOTICED SOME PROBLEMS WALKING. CLAIMANT WAS SEEN BY DR. RAAF AND DR. CHERRY AND ON FEBRUARY 7, 1974 CLAIMANT'S CLAIM WAS CLOSED BY A DETERMINATION ORDER WHICH GRANTED NO AWARD OF PERMANENT PARTIAL DISABILITY. ON

DECEMBER 2, 1974 THE EMPLOYER DENIED RESPONSIBILITY FOR ANY PROBLEMS CLAIMANT WAS HAVING WITH HIS RIGHT HIP AND GROIN AREAS.

THE REFEREE FOUND THAT CLAIMANT HAD FAILED TO PROVE THAT HIS RIGHT HIP AND GROIN CONDITION WAS A RESULT OF HIS JUNE 13, 1973 INJURY. THE REFEREE FURTHER FOUND THAT THE BELL'S PALSY, ALTHOUGH CAUSED BY THE ACCIDENT, RESULTED IN NO PERMANENT DISABILITY TO CLAIMANT.

THE CLAIMANT HAD ASKED FOR PAYMENT OF PENALTIES AND ATTORNEY'S FEES BECAUSE OF LATE PAYMENT OF TEMPORARY TOTAL DISABILITY. HOWEVER, THE REFEREE FOUND THAT THE FIRST PAYMENT OF COMPENSATION WAS MADE ON THE 13TH DAY AFTER THE EMPLOYER HAD NOTICE OF THE ACCIDENT, THE SECOND ON THE 28TH DAY AND THE THIRD ON THE 45TH DAY, THEREFORE, THERE HAD BEEN SUBSTANTIAL COMPLIANCE WITH THE PROVISIONS OF ORS 656.262(4) AND CLAIMANT WAS NOT ENTITLED TO PENALTIES OR ATTORNEY'S FEES.

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

ORDER

THE ORDER OF THE REFEREE DATED MAY 13, 1975 IS AFFIRMED.

WCB CASE NO. 74-2920 NOVEMBER 20, 1975

DARRELL L. CONANT, CLAIMANT

EVOHL F. MALAGON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH FOUND THAT THE STATE ACCIDENT INSURANCE FUND WAS NOT LIABLE FOR THE PAYMENT OF A MEDICAL EXAMINATION AND REPORT MADE BY DR. CURTIS D. ADAMS.

DR. ADAMS EXAMINED CLAIMANT ON DECEMBER 16, 1974 AND HIS REPORT WAS ADMITTED TO THE HEARING AS CLAIMANT'S EXHIBIT 2. CLAIMANT CONTENDS THAT DR. ADAMS PROVIDED MEDICAL SERVICES WHICH WERE PAYABLE UNDER THE PROVISIONS OF ORS 656.245.

THE REFEREE, AFTER READING DR. ADAM'S REPORT, WAS OF THE OPINION THAT IT WAS OBTAINED BY CLAIMANT'S COUNSEL PURELY FOR THE PURPOSE OF LITIGATION AND, THEREFORE, CONCLUDED THAT THERE WAS NO STATUTORY AUTHORITY FOR REQUIRING THE FUND TO PAY FOR SUCH EXAMINATION AND REPORT.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE CONCLUSION REACHED BY THE REFEREE AND AFFIRMS AND ADOPTS HIS OPINION AND ORDER AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED MAY 20, 1975 IS AFFIRMED.

WCB CASE NO. 74—3269 NOVEMBER 20, 1975

BERNICE URBANO, CLAIMANT

G. HOWARD CLIFF, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

NO OPINION AND ORDER HAS BEEN ENTERED IN THE ABOVE ENTITLED MATTER. THE CLAIMANT DISPUTES THE FACT THAT SHE ENTERED INTO A BONA FIDE DISPUTE SETTLEMENT WITH THE EMPLOYER AND ITS CARRIER.

ON SEPTEMBER 4, 1974 CLAIMANT HAD REQUESTED A HEARING ON THE EMPLOYER'S DENIAL OF CLAIMANT'S CLAIM FOR AGGRAVATION. PRIOR TO HEARING, A DISPUTED CLAIM SETTLEMENT, STIPULATION AND ORDER, PRESUMEDLY SIGNED BY ALL PARTIES, WAS FORWARDED TO JOHN BAKER, PRESIDING REFEREE, REQUESTING APPROVAL THEREOF.

CLAIMANT CONTENDS THAT THE SIGNATURE ON THE DISPUTED CLAIM SETTLEMENT IS NOT HERS AND, ON THIS BASIS, REQUESTS BOARD REVIEW.

THE BOARD CONCLUDES THAT IT IS NOT THE PROPER TRIBUNAL BEFORE WHOM THIS ISSUE SHOULD BE PRESENTED, THEREFORE, IT MUST DISMISS THE REQUEST FOR REVIEW WITH PREJUDICE.

ORDER

THE REQUEST FOR REVIEW RECEIVED FROM THE CLAIMANT ON MAY 14, 1975 IS HEREBY DISMISSED WITH PREJUDICE.

WCB CASE NO. 74—2565 NOVEMBER 21, 1975

FRANK ROHAY, CLAIMANT

PETERSON, SUSAK AND PETERSON,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER OF DISMISSAL

A REQUEST FOR REVIEW, HAVING BEEN DULY FILED WITH THE WORKMEN'S COMPENSATION BOARD IN THE ABOVE-ENTITLED MATTER 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.

CLAIM NO. B—1631872 NOVEMBER 21, 1975

DORIS D. TADLOCK, CLAIMANT

MERLIN MILLER, DEFENSE ATTY.
OWN MOTION ORDER

ON DECEMBER 18, 1973 CLAIMANT REQUESTED THE BOARD GRANT HER RELIEF UNDER ITS OWN MOTION JURISDICTION PURSUANT TO ORS 656.278.

CLAIMANT HAD SUFFERED A COMPENSABLE INJURY ON JUNE 1, 1967 AND IN 1972 SUFFERED AN OFF-THE-JOB EXACERBATION WHICH REQUIRED SURGERY. HER CLAIM FOR AGGRAVATION WAS DENIED, A HEARING HELD AND THE REFEREE CONCLUDED THAT THE MEDICAL EVIDENCE WAS SUFFICIENT TO SHOW THAT THE AGGRAVATION WAS CAUSALLY RELATED TO CLAIMANT'S 1967 INJURY BUT THAT HER 5-YEAR AGGRAVATION PERIOD HAD EXPIRED.

THE BOARD, ON JANUARY 18, 1974, REMANDED THE CLAIM TO THE EMPLOYER TO ACCEPT THE CLAIM FOR AGGRAVATION AND PROVIDE WORKMEN'S COMPENSATION BENEFITS TO CLAIMANT UNTIL HER CLAIM WAS CLOSED PURSUANT TO ORS 656.278.

THE BOARD REQUESTED THAT CLAIMANT ATTEND AN EVALUATION PROGRAM AT ITS DISABILITY PREVENTION DIVISION CENTER FROM JULY 29, 1975 THROUGH AUGUST 13, 1975 TO BETTER DELINEATE THE EXTENT OF HER DISABILITIES. CLAIMANT HAD NOT RETURNED TO WORK SINCE HER DECEMBER 7, 1972 SURGERY BY DR. NASH. DR. NASH, WHO CONTINUED TO TREAT CLAIMANT, NOW FINDS HER CONDITION STATIONARY.

AT DPD, THE EVALUATION DISCLOSED SOME PHYSICAL DISABILITY. IT ALSO INDICATED THAT CLAIMANT LACKED MOTIVATION TO RETURN TO WORK, PREFERRING TO STAY HOME AND DO HOME CANNING AND SEWING. CLAIMANT HAS MADE NO ATTEMPT TO OBTAIN PRODUCTIVE EMPLOYMENT SINCE MAY 25, 1971. THE EVALUATION DIVISION RECOMMENDED TO THE BOARD THAT CLAIMANT BE AWARDED ADDITIONAL TEMPORARY TOTAL DISABILITY COMPENSATION FROM OCTOBER 30, 1972 THROUGH AUGUST 13, 1975 AND AN ADDITIONAL 30 PER CENT FOR UNSCHEDULED LOW BACK DISABILITY AS COMPARED TO THE LOSS OF AN ARM SEPARATION. THIS IS IN ADDITION TO AND NOT IN LIEU OF THE AWARD GRANTED CLAIMANT BY THE DETERMINATION ORDER DATED AUGUST 12, 1970.

IT IS SO ORDERED.

CLAIM NO. KA 864856 NOVEMBER 21, 1975

GARY P. ELLIS, CLAIMANT

GALBREATH AND POPE, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

THE CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS RIGHT KNEE ON MAY 31, 1961 AND HIS CLAIM WAS CLOSED ON SEPTEMBER 5, 1962 WITH AN AWARD OF 15 PER CENT OF THE RIGHT LEG EQUAL TO 16.5 DEGREES.

ON JANUARY 22, 1973 CLAIMANT WAS EXAMINED BY DR. MOOR FOR FURTHER TREATMENT OF HIS KNEE. HE WAS HOSPITALIZED AND A TIBIAL OSTEOTOMY WAS PERFORMED ON JUNE 12, 1973. THE CLAIM WAS REOPENED BY BOARD'S OWN MOTION, DATED SEPTEMBER 4, 1974, WHICH REQUIRED THE FUND TO ASSUME THE COSTS OF CLAIMANT'S KNEE SURGERY. A SUPPLEMENTAL OWN MOTION ORDER WAS ENTERED OCTOBER 11, 1974 AWARDING CLAIMANT TEMPORARY TOTAL DISABILITY COMPENSATION FROM MAY 12, 1973 UNTIL THE DATE HIS TREATING PHYSICIAN AUTHORIZED HIS RETURN TO REGULAR WORK OR FOUND HIM MEDICALLY STATIONARY, WHICHEVER WAS EARLIER. THE FUND, WHEN IT BELIEVED CLAIMANT'S CONDITION TO BE MEDICALLY STATIONARY, WAS ADVISED TO REQUEST THE BOARD TO RE-EVALUATE CLAIMANT'S CLAIM PURSUANT TO ORS 656.278.

ON JULY 9, 1975 CLAIMANT UNDERWENT A SURGICAL REMOVAL OF A PROTRUDING STAPLE FROM HIS RIGHT KNEE. A FINAL MEDICAL EVALUATION

OF CLAIMANT'S CONDITION WAS MADE BY DR. MOOR ON AUGUST 7, 1975 WHICH WAS REFERRED BY THE FUND TO THE BOARD ON OCTOBER 13, 1975.

THE EVALUATION DIVISION OF THE BOARD RECOMMENDS CLAIMANT BE AWARDED AN ADDITIONAL 10 PER CENT OF THE RIGHT LEG EQUAL TO 11 DEGREES AND TEMPORARY TOTAL DISABILITY COMPENSATION COMMENCING JUNE 12, 1973 THROUGH AUGUST 4, 1973 AND FOR JULY 9, 1975.

IT IS SO ORDERED.

WCB CASE NO. 74-3352 NOVEMBER 21, 1975

EDWARD DORSCHER, CLAIMANT

DAVID R. VANDENBERG, JR., CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH REMANDED TO IT CLAIMANT'S CLAIM FOR PAYMENT OF COMPENSATION FROM THE DATE OF THE INJURY UNTIL THE CLAIM IS CLOSED PURSUANT TO ORS 656.268 AND AWARDED ATTORNEY'S FEES PAYABLE BY THE FUND.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON OCTOBER 19, 1973 AND WAS SEEN BY DR. BALME WHO DIAGNOSED A HAMSTRING TEAR OR STRAIN. CLAIMANT WAS SEEN BY DR. BALME AGAIN ON NOVEMBER 8, 1973 BUT DID NOT RETURN THEREAFTER.

ON JUNE 30, 1974 WHILE CLAIMANT WAS RETURNING TO HIS HOME FROM A RECREATIONAL AFTERNOON, HE STOPPED ALONG SIDE THE ROAD TO OBTAIN SOME CREEK WATER. IN LIFTING THE BUCKET OF WATER HE FELT A 'POP' IN HIS LEFT HIP SIMILAR TO THE SENSATION HE HAD FELT AFTER THE LIFTING INCIDENT OF OCTOBER 19, 1973. THE FOLLOWING DAY HE CONSULTED WITH A CHIROPRACTIC PHYSICIAN TO WHOM HE DID NOT MENTION THE WATER LIFTING INCIDENT BUT STATED HIS CONDITION AROSE FROM THE OCTOBER 19, 1973 ACCIDENT. CLAIMANT FELT HE HAD RECEIVED NO RELIEF FROM DR. GARRISON AND RETURNED TO DR. BALME ON JULY 23, 1974. SUBSEQUENTLY, DR. BALME DIAGNOSED A HERNIATED NUCLEUS PULPOSUS L4-5 OR L5-S1 AND SURGERY WAS FERFORMED BY DR. LILLY.

CLAIMANT FILED A SECOND CLAIM AND ULTIMATELY STATED THAT HE WAS SEEKING CLAIM FOR AGGRAVATION FOR THE OCTOBER 1973 INJURY. THE FUND DENIED SAID CLAIM ON THE GROUNDS THAT THE 1974 INCIDENT WAS A NEW AND UNRELATED INJURY RATHER THAN AN AGGRAVATION OF THE OCTOBER 1973 INJURY.

THE REFEREE FOUND THAT CLAIMANT RECEIVED NO MEDICAL TREATMENT BETWEEN NOVEMBER 8, 1973 AND JUNE 30, 1974 AND THAT DR. BALME'S ORIGINAL DIAGNOSIS WAS OF A HAMSTRING TEAR OR STRAIN WHICH CERTAINLY WAS NOT RELATED TO A HERNIATED NUCLEUS PULPOSUS. HOWEVER, DR. LILLY EMPHATICALLY STATED THAT CLAIMANT HAD SUSTAINED THE HERNIATED DISC IN OCTOBER 1973, THAT IT HAD BEEN PRESENT ALL THE WHILE AND WAS AGGRAVATED BY THE WATER LIFTING INCIDENT. THE CLAIMANT ALSO TESTIFIED AS TO CONTINUOUS PAIN FROM OCTOBER 1973 THROUGH JUNE 1974, ADMITTING THAT HE HAD WORKED DURING THIS PERIOD BUT THAT IT HAD BEEN VERY PAINFUL FOR HIM TO DO SO.

THE FUND DID NOT ATTEMPT TO REBUT CLAIMANT'S TESTIMONY AND THE REFEREE CONCLUDED THAT, ALTHOUGH THERE WERE CONTRADICTORY MEDICAL REPORTS, MORE WEIGHT SHOULD BE GIVEN TO THE OPINION EXPRESSED BY DR. LILLY AND, BASED UPON THAT MEDICAL TESTIMONY AND UNCONTRADICTED TESTIMONY OF THE CLAIMANT AND HIS WIFE, CONCLUDED THAT THE CLAIM SHOULD BE ACCEPTED.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE REFEREE AND AFFIRMS AND ADOPTS HIS OPINION AND ORDER AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 18, 1975 IS AFFIRMED.

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

WCB CASE NO. 74-2359 NOVEMBER 21, 1975

LEONARD L. NASH, CLAIMANT

ROBERT GRANT, CLAIMANT'S ATTY.
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF AN ORDER OF THE REFEREE WHICH DISMISSED CLAIMANT'S REQUEST FOR HEARING ON THE GROUNDS THAT HIS CLAIM FOR AGGRAVATION WAS NOT SUPPORTED BY A WRITTEN OPINION OF A PHYSICIAN WHICH MET THE REQUIREMENTS OF ORS 656.273(4).

ORS 656.273, AMENDED BY OR LAWS 1975, CH. 497 SEC. 1 PROVIDES, AMONG OTHER THINGS, THAT THE ADEQUACY OF THE PHYSICIAN'S REPORT IS NOT JURISDICTIONAL. SECTION 5 PROVIDES THAT THE ACT SHALL APPLY TO ALL CLAIMS FOR COMPENSABLE INJURIES THAT OCCUR PRIOR TO THE EFFECTIVE DATE OF THIS ACT.

THE BOARD CONCLUDES THAT IT HAS NO ALTERNATIVE BUT TO REMAND THE CLAIM FOR AGGRAVATION FOR HEARING ON THE MERITS UNDER THE PROVISIONS OF ORS 656.273 AS AMENDED.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 14, 1975 IS REVERSED AND THE MATTER IS REMANDED TO THE HEARINGS DIVISION FOR A HEARING ON THE MERITS.

WCB CASE NO. 74-4371 NOVEMBER 25, 1975

ELAINE HARDER, CLAIMANT
JONES, LANG, KLEIN, WOLF AND SMITH,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

Reviewed by Commissioners Wilson and Moore.

The claimant requests review by the Board of the referee's order which affirmed a determination order mailed October 22, 1974 whereby claimant was awarded some time loss but no permanent partial disability compensation.

At the hearing before the referee claimant raised the issues of further medical care and treatment, temporary total disability compensation, extent of permanent disability, and vocational rehabilitation and compensation during the rehabilitation period.

Claimant suffered a compensable injury on September 19, 1973. She was first seen by Dr. Cohen, complaining of a painful left hip. Later she came under the care of Dr. Lobb who referred her to Dr. Mueller. Dr. Mueller's report of December 24, 1973 indicated claimant was doing well until the latter part of November 1973 when she confronted a prowler in her apartment and in the scuffle that followed restrained the injured area.

The referee found that the precise nature of claimant's injury had never been determined although claimant had been treated and examined by nearly a dozen doctors. Throughout these treatments claimant emphasized that the pain was in the left groin area but at the hearing claimant complained of pain in her low back and both legs, stating the low back pain did not develop until she had received osteopathic treatment from Dr. McGee in August 1974. The referee further found that claimant has personality problems unrelated to her injury which, together with her injury, have caused an increase in her psychopathology. Dr. Perkins, clinical psychologist, recommended psychological counseling. The referee found that should claimant wish to avail herself of such counseling it could be extended to her under the provisions of ORS 656.245 without requiring her claim to be reopened.

The referee concluded that claimant had failed to sustain the burden of proving any entitlement to temporary total disability compensation, further extent of permanent disability or need for vocational rehabilitation and compensation during the period of rehabilitation and he affirmed the determination order.

The Board, on de novo review, concurs with the findings of the referee. The Board concludes that claimant is capable of returning to work of a sedentary nature, although her prospects in that regard are somewhat inhibited by personal habits and attitudes.

ORDER

The order of the referee dated May 6, 1975 is affirmed.

WCB CASE NO. 74-3782 NOVEMBER 25, 1975

RALPH KITCH, CLAIMANT

FRANKLIN, BENNETT, OFELT AND JOLLES,
CLAIMANT'S ATTYS.
PHILIP A. MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT PERMANENT PARTIAL DISABILITY EQUAL TO 240 DEGREES FOR 75 PER CENT UNSCHEDULED LOW BACK DISABILITY, CONTENDING THAT HE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT IS 53 YEARS OLD, HE GRADUATED FROM HIGH SCHOOL AND COMPLETED 6 MONTHS AT A JUNIOR COLLEGE IN CALIFORNIA. ON DECEMBER 6, 1971 WHILE SORTING CORE, CLAIMANT SUFFERED A COMPENSABLE LOW BACK INJURY, DIAGNOSED AS AN ACUTE SPRAIN OF THE LUMBOSACRAL SPINE AND LEFT SCIATICA. CLAIMANT RETURNED TO HIS REGULAR WORK UNTIL NOVEMBER 9, 1972 WHEN HIS CONDITION BECAME EXACERBATED. A DISCECTOMY REVEALED AN UNSTABLE LUMBAR SPINE AND, ON APRIL 30, 1973, A SPINAL FUSION AT THE FOURTH LUMBAR AREA WAS PERFORMED. FOLLOWING CLAIMANT'S RELEASE FROM THE HOSPITAL, HE SUFFERED A MYOCARDIAL INFARCTION AND WAS AGAIN HOSPITALIZED. LATER HE SUFFERED ANOTHER HEART INCIDENT REQUIRING HOSPITALIZATION.

IN THE LATTER PART OF 1973 CLAIMANT WAS EXAMINED BY THE PHYSICIANS AND PSYCHOLOGISTS AT DISABILITY PREVENTION DIVISION CENTER BY THE BACK EVALUATION CLINIC. IT WAS RECOMMENDED THAT CLAIMANT BE RETRAINED AS HE WAS NOT ABLE TO PERFORM HIS PREVIOUS JOB. LOSS OF FUNCTION OF THE BACK WAS MODERATE. WITH THE RESPECT TO CLAIMANT'S CARDIAC CONDITION IT WAS FELT THAT HE HAD 'MILD ANGINA' BUT THERE WAS NO EVIDENCE OF ARRYTHMIA OR HEART FAILURE. IT WAS FELT THAT CLAIMANT SHOULD AVOID HEAVY EXERTION BUT SHOULD PERFORM REGULAR EXERCISES AND THE CLAIM WAS CLOSED WITH AN AWARD OF 50 PER CENT UNSCHEDULED LOW BACK DISABILITY.

THE REFEREE FOUND THAT CLAIMANT'S PERMANENT PARTIAL DISABILITY EXCEEDS THE AWARD OF 50 PER CENT BUT HE DID NOT FIND HIM TO BE PERMANENTLY AND TOTALLY DISABLED. CLAIMANT HAD CONTENDED THAT HE HAD SHOWN HIMSELF TO BE A MEMBER OF THE 'ODD-LOT' CATEGORY. HOWEVER, THE REFEREE FOUND THAT WHILE CLAIMANT DID HAVE A SERIOUS PHYSICAL IMPAIRMENT, SUCH IMPAIRMENT WHEN CONSIDERED WITH OTHER FACTORS SUCH AS AGE, EDUCATION, MENTAL CAPACITY, TRAINING AND EXPERIENCE DID NOT BRING CLAIMANT WITHIN THE 'ODD-LOT' STATUS.

THE REFEREE CONCLUDED THAT CLAIMANT WAS ENTITLED TO AN AWARD OF 75 PER CENT UNSCHEDULED LOW BACK DISABILITY BECAUSE MUCH OF THE LABOR MARKET HAS BEEN FORECLOSED TO HIM AND HE HAS SUFFERED A SUBSTANTIAL, ALTHOUGH NOT TOTAL, LOSS OF EARNING CAPACITY.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS AND ADOPTS THE FINDINGS AND CONCLUSIONS CONTAINED IN THE WELL-WRITTEN ORDER OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE DATED MAY 23, 1975 IS AFFIRMED.

BRIAN K. BISSINGER, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF AN ORDER OF THE REFEREE WHICH AWARDED CLAIMANT 135 DEGREES FOR PARTIAL LOSS OF HIS RIGHT HAND, REPRESENTING 90 PER CENT OF THE MAXIMUM ALLOWED BY STATUTE AND 16 DEGREES FOR 5 PER CENT UNSCHEDULED DISABILITY.

CLAIMANT IS 24 YEARS OLD, HE HAS A B. A. DEGREE WITH A MAJOR IN P. E. AND A MINOR IN LANGUAGES AND ARTS. HE SUFFERED A COMPENSABLE INJURY ON OCTOBER 24, 1973 WHEN HIS RIGHT HAND WAS CAUGHT IN SOME MACHINERY AND ALL FOUR FINGERS WERE AMPUTATED. SURGERY HAS BEEN PERFORMED SEVEN TIMES SINCE THE INJURY AND, ON MARCH 5, 1975, THE CLAIM WAS CLOSED BY DETERMINATION ORDER WHICH AWARDED TIME LOSS AND PERMANENT PARTIAL DISABILITY OF 90 DEGREES SCHEDULED DISABILITY OF THE RIGHT HAND EQUAL TO 60 PER CENT OF THE MAXIMUM.

CLAIMANT IS EMPLOYED AS A TEACHER OF LANGUAGE AND ARTS AND P. E. HE IS ALSO AN ASSISTANT COACH IN TRACK, FOOTBALL AND BASKETBALL. CLAIMANT TESTIFIED THAT AS A P. E. INSTRUCTOR HE IS LIMITED IN THE ACTIVITIES HE CAN PERFORM. ALSO, IN THE GENERAL USE OF THE HAND, CLAIMANT IS RESTRICTED IN THAT HE IS UNABLE TO GRASP THINGS, CARRY ITEMS SUCH AS A PAIL OF WATER VERY FAR AND IS UNABLE TO LIFT HEAVY WEIGHTS. HE IS ABLE TO USE HIS RIGHT HAND TO DRIVE AN AUTOMOBILE. CLAIMANT HAS COMPENSATED FOR THE RESTRICTION OF USE OF HIS RIGHT HAND BY LEARNING TO USE HIS LEFT HAND FOR MANY ACTIVITIES.

CLAIMANT CONTENDED THAT HE ALSO WAS ENTITLED TO AN AWARD FOR UNSCHEDULED DISABILITY BECAUSE THE DONOR SITE FOR THE REQUIRED SKIN GRAFTING, JUST BENEATH THE LEFT BREAST, SOMETIMES BOTHERED HIM WHEN HE HAD TO RAISE HIS HANDS OVER HIS HEAD AND HE HAD TO LIMIT SUCH RAISING ACTIVITIES BECAUSE OF THE PAIN CAUSED THEREBY.

THE REFEREE FOUND THAT, ALTHOUGH DR. KANZLER HAD RATED CLAIMANT'S HAND AS A 60 PER CENT LOSS, FROM HIS OBSERVATION THE LOSS EXCEEDED THAT EVALUATION, THAT CLAIMANT ALWAYS HAD TO BE CAREFUL IN ANY TYPE OF 'JAMMING' OR 'JABBING' SITUATIONS AS SUCH CONTACT CAUSED SEVERE PAIN. THE REFEREE CONCLUDED THAT AS A CONSEQUENCE CLAIMANT IS VERY CAUTIOUS IN THE USE OF HIS RIGHT HAND AND, AFTER EVALUATING ALL THE EVIDENCE, THAT CLAIMANT HAD ONLY 10 PER CENT REMAINING USE OF HIS RIGHT HAND.

WITH RESPECT TO UNSCHEDULED DISABILITY THE REFEREE FOUND THAT THE WORK CLAIMANT WAS ENGAGED IN PERMITTED HIM TO PROTECT THE DONOR SITE AND IT IS NOT ANY PARTICULAR INCONVENIENCE IN HIS PRESENT OCCUPATION. HOWEVER, CLAIMANT DID HAVE SOME RESTRICTIONS AND LIMITATIONS IN HIS PHYSICAL ACTIVITIES AND HE CONCLUDED THAT CLAIMANT HAS SUFFERED A SMALL LOSS OF EARNING CAPACITY.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE WITH THE RESPECT TO THE SCHEDULED DISABILITY. HOWEVER, THE BOARD CAN FIND NO JUSTIFICATION FOR AN AWARD OF UNSCHEDULED DISABILITY COMPENSATION. THERE IS NO EVIDENCE THAT

CLAIMANT HAS SUFFERED ANY DIMINUTION OF HIS POTENTIAL EARNING CAPACITY AS A RESULT OF THE PAIN AT THE DONOR SITE.

THE BOARD CONCLUDES THAT CLAIMANT'S ATTORNEY IS ENTITLED TO ATTORNEY'S FEE AT BOARD REVIEW INASMUCH AS CLAIMANT HAS PREVAILED ON THE MAJOR ISSUE, I.E. THE EXTENT OF SCHEDULED DISABILITY.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 2, 1975 IS MODIFIED BY ELIMINATING THEREFROM THE AWARD OF 16 DEGREES FOR 5 PER CENT UNSCHEDULED DISABILITY. IN ALL OTHER RESPECTS, THE REFEREE'S ORDER IS AFFIRMED.

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

WCB CASE NO. 74-1858 NOVEMBER 25, 1975

DENNIS BRANDTNER, CLAIMANT

SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE,
CLAIMANT'S ATTYS.
MC MURRAY AND NICHOLS, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH AFFIRMED A DETERMINATION ORDER ISSUED FEBRUARY 14, 1974 WHEREBY CLAIMANT WAS AWARDED 48 DEGREES FOR 15 PER CENT UNSCHEDULED DISABILITY RESULTING FROM EXPOSURE TO CONTACT DERMATITIS.

CLAIMANT IS A 50 YEAR OLD MACHINIST WHO SUSTAINED A COMPENSABLE INDUSTRIAL INJURY RESULTING FROM AN ALLERGY TO VARIOUS CUTTING OILS, SOLVENTS AND COOLANTS. THE EXPOSURE RESULTED IN ACUTE DERMATITIS WHICH COVERED CLAIMANT'S UPPER BODY, HANDS, ARMS, EYES, LEGS AND FEET.

CLAIMANT FIRST EXPERIENCED THIS SKIN REACTION IN 1950. THE FINAL AND MOST SEVERE ONSET OCCURRED IN JANUARY 1973 AND RESULTED IN CLAIMANT LOSING APPROXIMATELY 6 MONTHS OF WORK. AFTER THE LAST 'FLAREUP' CLAIMANT WAS TRANSFERRED TO A MACHINE WHICH DID NOT USE ANY CUTTING OIL, HOWEVER, HE STILL CONTINUED TO SUFFER THE ALLERGIES.

DR. FRISCH, CLAIMANT'S TREATING PHYSICIAN, RATED CLAIMANT AS PERMANENTLY AND TOTALLY DISABLED BECAUSE HE EXPECTED CLAIMANT IN THE FUTURE TO SUFFER VERY SEVERE REACTIONS LOCALLY AND SYSTEMICALLY SHOULD HE BE RE-EXPOSED. HE EMPHASIZED THAT CLAIMANT COULD NOT WORK WITH CUTTING OILS EXCEPT FOR A VERY FEW SELECTED TYPES AND ADVISED A CHANGE OF OCCUPATIONS.

THE REFEREE, ASSUMING THAT THERE WERE OTHER MACHINE SHOP JOBS AVAILABLE TO CLAIMANT EVEN THOUGH HE HAD DERMATITIS AND THAT THERE WERE OTHER EMPLOYERS WILLING TO HIRE HIM EVEN THOUGH HE HAD THAT CONDITION, CONCLUDED THAT CLAIMANT HAD BEEN ADEQUATELY COMPENSATED FOR HIS INDUSTRIAL INJURY BY THE AWARD OF 48 DEGREES FOR 15 PER CENT UNSCHEDULED DISABILITY.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT THE ASSUMPTION MADE BY THE REFEREE IS NOT SUPPORTED BY THE EVIDENCE IN THE RECORD. THE ASSUMPTION THAT CLAIMANT COULD CONTINUE TO WORK WITHOUT PROBLEMS ON A DRY MACHINE (ONE WHICH INVOLVES NO CUTTING OIL) IS REBUTTED BY THE EVIDENCE THAT CLAIMANT WAS TRANSFERRED TO SUCH A MACHINE AND STILL CONTINUED TO HAVE HIS PROBLEMS.

THE REFEREE HAD ALSO ASSUMED THAT MACHINE WORK INVOLVING OTHER METALS AND MATERIALS WOULD NOT INVOLVE COOLANTS, CUTTING OILS AND SO FORTH, DESPITE EVIDENCE THAT 90 PER CENT OF ALL MACHINISTS' WORK INVOLVES SUCH MATERIALS.

THE BOARD FINDS THAT CLAIMANT PRESENTED SUBSTANTIAL EVIDENCE WHICH INDICATED THAT, WHILE CLAIMANT POSSIBLY COULD RETURN TO CERTAIN TYPES OF MACHINIST WORK, HE HAS BEEN HANDICAPPED AS A RESULT OF HIS ALLERGY, IN OBTAINING AND HOLDING GAINFUL EMPLOYMENT IN THE BROAD FIELD OF GENERAL INDUSTRIAL OCCUPATIONS. FORD V. SAIF (UNDERSCORED), 7 OR APP 549. IN THE INSTANT CASE THE CLAIMANT HAS BEEN FORCED TO RETURN TO A PARTICULAR TYPE OF MACHINE ON WHICH CUTTING OILS ARE NOT USED YET HE STILL CONTINUES TO HAVE TROUBLE.

THE BOARD CONCLUDES THAT TO ADEQUATELY COMPENSATE CLAIMANT FOR HIS LOSS OF POTENTIAL EARNING CAPACITY HE SHOULD BE AWARDED 80 DEGREES FOR 25 PER CENT UNSCHEDULED DISABILITY.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 31, 1975 IS REVERSED.

THE CLAIMANT IS AWARDED 80 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED DISABILITY. THIS IS IN LIEU OF AND NOT IN ADDITION TO THE AWARD MADE BY THE DETERMINATION ORDER DATED FEBRUARY 14, 1974.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW 25 PER CENT OF THE COMPENSATION AWARDED CLAIMANT BY THIS ORDER, PAYABLE OUT OF SAID COMPENSATION, AS PAID.

WCB CASE NO. 74-3258 NOVEMBER 25, 1975

JAMES B. LEE, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER REOPENING CLAIMANT'S CLAIM AS OF APRIL 4, 1975 WITH PAYMENT OF TIME LOSS BENEFITS AS OF THAT DATE AND ALLOWING THE FUND TO RECEIVE CREDIT FOR PAYMENT OF PERMANENT PARTIAL DISABILITY PAYMENTS. THE REFEREE FURTHER ORDERED THAT CLAIMANT RECEIVE THE NEUROLOGICAL WORKUP RECOMMENDED BY DR. LOGAN AND BE REFERRED TO THE PAIN CLINIC IF IT WAS RECOMMENDED.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON AUGUST 26, 1972 WHILE LIFTING A PAN OF SHORTENING WHICH WEIGHED APPROXIMATELY

70 POUNDS. CLAIMANT HAD SUFFERED A PREVIOUS INJURY IN 1964 AND WAS OFF WORK FOR 2 YEARS. AFTER VOCATIONAL TRAINING, HE WORKED AS A BARTENDER UNTIL HE WAS HELD UP BY TWO MEN WHO BEAT HIM WITH A LUG WRENCH AND STOMPED ON HIS BACK. CLAIMANT HAD A SPINAL FUSION AND A DOUBLE LAMINECTOMY AND AGAIN WAS OFF WORK FOR ALMOST A YEAR. IN 1968 HE INJURED HIS BACK WHILE WORKING ABOARD SHIP.

ON AUGUST 20, 1974, AFTER TWO YEARS OF CONSERVATIVE MEDICAL TREATMENT BASED UPON A DIAGNOSIS OF ACUTE LUMBAR SPRAIN, CLAIMANT'S CASE WAS CLOSED WITH AN AWARD OF 96 DEGREES FOR 30 PER CENT UNSCHEDULED DISABILITY. CLAIMANT REQUESTED A HEARING.

ON APRIL 9, 1975 DR. LOGAN, WHO HAD GIVEN HIS OPINION PRIOR TO THE CLOSURE OF CLAIMANT'S CLAIM THAT CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED SINCE THE RE-INJURY SUFFERED ON AUGUST 26, 1972, EXPRESSED HIS FURTHER OPINION THAT CLAIMANT'S CONDITION HAD WORSENED TO THE EXTENT THAT HIS LOW BACK PAIN WAS CONSTANT. HE FELT CLAIMANT NEEDED A FURTHER NEUROLOGICAL EVALUATION OF HIS CONDITION TO SEE IF THERE WAS ANYTHING POSSIBLE THAT COULD BE DONE TO RELIEVE CLAIMANT'S PAIN. ALSO PERHAPS AN EVALUATION AT THE PAIN CLINIC TO DETERMINE WHETHER CLAIMANT COULD QUIT TAKING NARCOTIC DRUGS OR LIVE WITH HIS EXISTING INJURY AND EXISTING DISABILITY MIGHT BE OF VALUE. CLAIMANT HAS BEEN RELYING QUITE STRONGLY ON DRUGS BECAUSE OF HIS PAIN AT THE PRESENT TIME.

DR. LOGAN FELT CLAIMANT'S CONDITION WAS A RESULT OF ALL OF HIS PRIOR INJURIES AND HE COULD NOT SPECIFICALLY ATTRIBUTE HIS PRESENT CONDITION TO ANY PARTICULAR INJURY.

THE REFEREE CONCLUDED THAT THE CLAIM SHOULD BE REOPENED FOR REFERRAL TO A NEUROSURGEON AS RECOMMENDED BY DR. LOGAN AND A POSSIBLE REFERRAL BY THE NEUROSURGEON TO THE PAIN CLINIC.

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

ORDER

THE ORDER OF THE REFEREE DATED MAY 29, 1975 IS AFFIRMED.

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

WCB CASE NO. 75-760 NOVEMBER 25, 1975

RANDALL P. WHEELER, CLAIMANT

JOHN J. O'HARA, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER OF DISMISSAL

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

VIRGIL A. FARMER, CLAIMANT

JEROME BISCHOFF, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH UPHELD THE DENIAL OF CLAIMANT'S CLAIM BY THE STATE ACCIDENT INSURANCE FUND.

THE ISSUE BEFORE THE REFEREE WAS WHETHER CLAIMANT WAS ENTITLED TO COMPENSATION FOR MEDICAL SERVICES, INCLUDING A LUMBAR MYELOGRAM AND LAMINECTOMY PERFORMED BY DR. CAMPAGNA IN OCTOBER, 1974 AND POST-OPERATIVE TREATMENT.

CLAIMANT SUSTAINED A COMPENSABLE LOW BACK INJURY ON OCTOBER 30, 1972. CLAIMANT HAD HAD CHRONIC LOW BACK PAIN FOR AT LEAST 15 YEARS PRIOR TO THIS INJURY AND HAD UNDERGONE A BI-LEVEL SPINAL FUSION L4-S1 IN EITHER 1959 OR 1960.

IN APRIL 1973 DR. WEINMAN, THEN CLAIMANT'S TREATING PHYSICIAN, INDICATED THAT CLAIMANT HAD RECOVERED FROM THE LUMBOSACRAL SPRAIN SUFFERED OCTOBER 30, 1972 WHICH AGGRAVATED HIS OLD BACK PROBLEM, HIS CONDITION WAS STABLE AND HIS CLAIM SHOULD BE CLOSED. HOWEVER, DR. WEINMAN DID FEEL THAT CLAIMANT PROBABLY HAD A BULGING L3 DISC ABOVE THE SOLID SPINAL FUSION WHICH WAS NOT CAUSED OR RELATED TO THE INDUSTRIAL INJURY OF OCTOBER 30, 1972.

CLAIMANT'S CLAIM WAS CLOSED ON MAY 8, 1973 WITH AN AWARD OF PERMANENT PARTIAL DISABILITY OF 32 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT WOULD, FROM TIME TO TIME, TELL THE VARIOUS DOCTORS WHO WERE TREATING HIM OF INCREASING BACK PAIN AND RIGHT LEG PAIN, HOWEVER, CLAIMANT WENT FROM JUNE 1973 UNTIL THE LATE FALL OF 1974 WITHOUT ANY ADDITIONAL TRAUMA BEING EXPERIENCED. IN AUGUST 1970 CLAIMANT WAS REFERRED TO DR. CAMPAGNA. AFTER A MYELOGRAM, A DECOMPRESSIVE LAMINECTOMY WAS PERFORMED BY DR. CAMPAGNA. THE EXPLORATORY SURGERY INDICATED NO DISC PROBLEM BUT RATHER A CAUDA EQUINA COMPRESSION L3-4 SECONDARY TO OVERGROWTH OF SPINAL FUSION. THE FUND DENIED RESPONSIBILITY FOR THIS SURGERY ON OR ABOUT OCTOBER 15, 1974.

THE REFEREE FOUND NO MEDICAL EVIDENCE IN THE RECORD WHICH SPECIFICALLY RELATED THE SURGERY CONDUCTED IN OCTOBER 1974 WITH THE OCTOBER 1972 INJURY. HE FURTHER FOUND THAT THE ISSUE PRESENTED A COMPLEX MEDICAL QUESTION WHICH MUST BE DECIDED UPON EXPERT MEDICAL OPINION EVIDENCE OF CAUSAL RELATIONSHIP AND CONCLUDED THAT CLAIMANT HAD FAILED TO SHOW BY COMPETENT EXPERT MEDICAL OPINION EVIDENCE THAT THE SURGERY REQUIRED HAD ANY CONNECTION TO THE NATURE OF THE INJURY SUSTAINED IN OCTOBER 1972. THEREFORE, CLAIMANT WAS NOT ENTITLED TO COMPENSATION FOR THE MEDICAL SERVICES AND THE HOSPITAL EXPENSES INCURRED IN OCTOBER 1972 AS A RESULT OF THE SURGERY PERFORMED BY DR. CAMPAGNA.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS AND ADOPTS THE OPINION AND ORDER OF THE REFEREE AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 11, 1975 IS AFFIRMED.

WCB CASE NO. 74-1455 NOVEMBER 25, 1975

KENNETH HARMON, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THIS MATTER INVOLVES THE DENIAL OF A FIREMAN'S HEART CLAIM. THE REFEREE AFFIRMED THE DENIAL.

CLAIMANT, A FIREMAN FOR SALEM FIRE DEPARTMENT SINCE SEPTEMBER 1951, NOW 50 YEARS OF AGE, HAS HAD CHEST PAINS FOR THE PAST SEVERAL YEARS. DR. RICHARD C. ROSS PERFORMED THE VEIN BYPASS GRAFT.

ORS 656.802(1)(B) AND (2) PROVIDES THAT IT IS A DISPUTABLE PRESUMPTION THAT IMPAIRMENT OF HEALTH OF FIREMEN BY CARDIAL VASCULAR DISEASE RESULTED FROM THE FIREMAN'S EMPLOYMENT.

IN THIS CASE THE CLAIMANT HAD HIGH BLOOD PRESSURE, SMOKED ABOUT 1 AND ONE HALF PACKS OF CIGARETTES DAILY, WAS OVERWEIGHT AND HAD HEREDITARY HISTORY OF CORONARY HEART PROBLEMS. THE MEDICAL EVIDENCE CLEARLY REBUTS THE FIREMAN'S PRESUMPTION.

ON DE NOVO REVIEW, THE BOARD AFFIRMS THE FINDINGS AND ORDER OF THE REFEREE AND ADOPTS HIS AMENDED OPINION AND ORDER AS ITS OWN.

ORDER

THE AMENDED ORDER OF THE REFEREE DATED MAY 29, 1975 IS AFFIRMED.

WCB CASE NO. 74-67 NOVEMBER 25, 1975

COLLEEN ZEHR, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED TO IT CLAIMANT'S CLAIM FOR CARPAL TUNNEL SYNDROME AS A COMPENSABLE CONDITION RESULTING FROM HER INJURY OF NOVEMBER 1, 1972, AND ORDERED THE FUND TO PAY PENALTIES IN THE AMOUNT OF 25 PER CENT OF ALL COMPENSATION DUE AND OWING TO CLAIMANT WHICH REMAINED UNPAID AND A REASONABLE ATTORNEY'S FEE.

CLAIMANT RECEIVED A COMPENSABLE INJURY ON NOVEMBER 1, 1972 WHICH WAS DIAGNOSED BY DR. ELLISON AS A 'TRIGGER FINGER, RIGHT RING FINGER WITH PROBABLE SMALL GANGLION SECONDARY TO ACTIVITY'. DR. WADE, ON DECEMBER 2, 1972, EXCISED A SMALL GANGLION, HOWEVER,

CLAIMANT CONTINUED TO EXPERIENCE SWELLING, STIFFNESS, PAIN, AND DISCOMFORT IN HER RIGHT HAND. ON MAY 2, 1973 CLAIMANT HAD A SURGICAL RELEASE OF HER RIGHT TRIGGER FINGER. HER CLAIM WAS CLOSED ON JULY 16, 1973 BY DETERMINATION ORDER WHICH AWARDED CLAIMANT TIME LOSS COMPENSATION ONLY.

AFTER THE CLAIM HAD BEEN CLOSED DR. ELLISON NOTICED A SIGNIFICANT AMOUNT OF CARPAL TUNNEL SYMPTOMS AND OPINED THAT CLAIMANT'S SYMTOMATOLOGY WAS RELATED TO HER PREVIOUS INJURY AND SURGERY THEREFOR. ON NOVEMBER 13, 1973 THE CLAIM FOR HER CARPAL TUNNEL SYMDROME WAS DENIED AS NOT BEING CAUSALLY RELATED.

FOLLOWING ITS DENIAL THE FUND OBTAINED MEDICAL OPINIONS TO SUPPORT ITS CONCLUSION. ONE WAS FROM DR. HARWOOD WHO NEITHER EXAMINED CLAIMANT NOR REVIEWED HER MEDICAL RECORDS. THE OTHER OPINION WAS DR. MELGARD'S, A NEUROLOGIST, WHO STATED HE HAD SERIOUS DOUBT AS TO WHETHER OR NOT THE CARPAL TUNNEL SYMPTOMS WERE CAUSALLY RELATED. ON THE OTHER HAND, DR. ELLISON, CLAIMANT'S TREATING PHYSICIAN, TESTIFIED THAT, BASED UPON A REASONABLE PROBABILITY, CLAIMANT HAD CARPAL TUNNEL SYNDROME WHICH WAS CAUSED BY IRRITATION OF ONE OF THE NERVES OF THE RIGHT HAND AND HE BELIEVED IT WAS DIRECTLY RELATED TO THE INDUSTRIAL INJURY OF NOVEMBER 1, 1972. IN HIS OPINION IF CLAIMANT HAD NEVER HAD 'TRIGGER FINGER' WHICH REQUIRED THE SURGICAL TREATMENT THE CARPAL TUNNEL WOULD NOT HAVE OCCURRED.

CLAIMANT WAS INVOLVED IN A MOTORCYCLE-AUTOMOBILE ACCIDENT ON MAY 26, 1973 AT WHICH TIME SHE WAS THROWN FROM THE CYCLE. DR. ELLISON INDICATED THAT DIRECT TRAUMA COULD INDIRECTLY CAUSE CARPAL TUNNEL SYNDROME AND HE COULD NOT SAY WITH A REASONABLE MEDICAL PROBABILITY THAT CLAIMANT'S CARPAL TUNNEL SYNDROME WAS SOLELY CAUSED BY HER INDUSTRIAL INJURY BECAUSE OF THIS INTERVENING ACCIDENT.

BASED UPON THE EVIDENCE RECEIVED AT THE HEARING, INCLUDING THE TESTIMONY OF DR. ELLISON AND CLAIMANT, THE REFEREE CONCLUDED THAT CLAIMANT DID NOT RECEIVE A SIGNIFICANT INJURY TO HER RIGHT HAND, WRIST OR ARM DUE TO HER ACCIDENTAL INJURY OF MAY 26, 1973 AND THAT CLAIMANT'S CARPAL TUNNEL SYNDROME WAS CAUSALLY RELATED TO HER INDUSTRIAL INJURY OF NOVEMBER 1, 1972.

WITH RESPECT TO THE REQUESTED PENALTIES AND ATTORNEY'S FEES FOR UNREASONABLE DENIAL, CLAIMANT CONTENDS THAT THE DENIAL WAS UNREASONABLE BECAUSE AT THE TIME IT WAS MADE THE ONLY EVIDENCE AVAILABLE TO THE FUND WAS DR. ELLISON'S CHART NOTES OF OCTOBER 2, 1973 WHICH STATED HE DEFINITELY THOUGHT THE CARPAL TUNNEL SYNDROME WAS RELATED TO HER PREVIOUS INJURY AND SURGERY AND SHOULD BE COVERED UNDER HER COMPENSATION CLAIM. ON OCTOBER 4, 1973 AN EMPLOYEE OF THE FUND WROTE TO DR. ELLISON INDICATING THE FUND WOULD NOT BE RESPONSIBLE FOR WRIST COMPLAINTS OR THE CARPAL TUNNEL SYMPTOMS. IN RESPONSE THERETO, DR. ELLISON FORWARDED TO THE FUND HIS CHART NOTE DATED OCTOBER 2, 1973. THIS COMMUNICATION WAS RECEIVED BY THE FUND ON OCTOBER 12, 1973 AND ON THE FOLLOWING DAY THE WRITTEN NOTICE OF DENIAL WAS MADE.

THE REFEREE CONCLUDED THAT THE FUND'S ACTION REGARDING THE DENIAL OF THE CLAIM UNDER THOSE CIRCUMSTANCES WAS NOT REASONABLE IN THE LIGHT OF THE MEDICAL INFORMATION IT HAD BEFORE IT AT THE TIME OF THE DENIAL. HE ORDERED THE PENALTY OF 25 PER CENT OF ALL COMPENSATION WHICH WAS DUE AND OWING AND REMAINED UNPAID TO CLAIMANT AND ALSO ASSESSED AN ATTORNEY'S FEE.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT CLAIMANT'S CARPAL TUNNEL SYNDROME WAS CAUSALLY RELATED TO HER INDUSTRIAL INJURY OF

NOVEMBER 1, 1972 AND THAT DR. ELLISON'S REPORT OF OCTOBER 2, 1973 WAS AVAILABLE TO THE FUND PRIOR TO ITS FORMAL DENIAL OF CLAIMANT'S CLAIM, THEREFORE, THE ASSESSMENT OF PENALTIES AND ATTORNEY'S FEES WERE PROPER. THE BOARD, HOWEVER, FINDS THAT EVEN THOUGH THE FUND HAD THIS FIRST REPORT OF DR. ELLISON'S PRIOR TO ITS WRITTEN DENIAL THERE STILL WAS REASONABLE DOUBT ON THE PART OF THE FUND AS TO THE COMPENSABILITY OF THE CARPAL TUNNEL SYNDROME. THIS IS INDICATED BY ITS SEEKING ADDITIONAL MEDICAL OPINIONS FROM DR. HARWOOD AND DR. MELGARD AND INQUIRING INTO THE INTERVENING MOTORCYCLE-AUTOMOBILE ACCIDENT OF MAY 26, 1973.

THE BOARD CONCLUDES THAT THE CLAIM FOR CLAIMANT'S CARPAL TUNNEL SYNDROME SHOULD BE ACCEPTED BY THE FUND BUT THE PENALTY ASSESSED AGAINST THE FUND BY THE REFEREE SHOULD BE REDUCED TO 10 PER CENT OF ALL COMPENSATION DUE AND OWING TO CLAIMANT WHICH REMAINS UNPAID.

ORDER

THE ORDER OF THE REFEREE DATED MAY 29, 1975 IS MODIFIED TO THE EXTENT THAT THE STATE ACCIDENT INSURANCE FUND IS ORDERED TO PAY AS A PENALTY AN AMOUNT EQUAL TO 10 PER CENT OF ALL COMPENSATION DUE AND OWING TO CLAIMANT, WHICH REMAINS UNPAID. IN ALL OTHER RESPECTS THE ORDER OF THE REFEREE IS AFFIRMED.

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

WCB CASE NO. 74-4505 NOVEMBER 28, 1975

JIMMY FAULK, CLAIMANT

ROBERT J. THORBECK, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER GRANTING CLAIMANT AN AWARD OF 160 DEGREES FOR 50 PER CENT UNSCHEDULED BACK AND NECK DISABILITY, AN INCREASE OF 128 DEGREES OVER THAT AWARDED CLAIMANT BY A DETERMINATION ORDER DATED NOVEMBER 12, 1974.

CLAIMANT HAD SUFFERED AN INDUSTRIAL INJURY ON JANUARY 10, 1971 WHILE EMPLOYED BY MASTER CHEMICAL CORPORATION. CLAIMANT HAD SLIPPED AND FALLEN INJURING HIS BACK AND NECK, HE WAS TREATED BY DR. SNODGRASS. THE CLAIM WAS CLOSED ON JUNE 22, 1972 WITH AN AWARD OF 16 DEGREES FOR 5 PER CENT UNSCHEDULED NECK DISABILITY. MASTER CHEMICAL CORPORATION WAS FURNISHED WORKMEN'S COMPENSATION COVERAGE BY THE STATE ACCIDENT INSURANCE FUND.

ON MARCH 28, 1973 WHILE EMPLOYED BY INDEPENDENT MOTOR TRANSPORT, WHOSE WORKMEN'S COMPENSATION COVERAGE WAS FURNISHED BY EMPLOYEE BENEFITS INSURANCE COMPANY, HEREINAFTER CALLED EBI, CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS LEFT HIP AND HAND. THERE WAS NO EVIDENCE OF FRACTURES OR DISLOCATION AND THE DIAGNOSIS WAS ACUTE STRAIN. CLAIMANT SUFFERED NO TIME LOSS ALTHOUGH HE CONTINUED TO HAVE PAIN BETWEEN HIS SHOULDERS AND HIS LEFT ARM AND NECK

FOR WHICH HE RECEIVED CHIROPRACTIC MANIPULATION AND CONSERVATIVE CHIROPRACTIC MANAGEMENT UNTIL JANUARY 1974.

ON SEPTEMBER 10, 1974 CLAIMANT SAW DR. VASSELY, AN ORTHOPEDIC SURGEON, BECAUSE OF PERSISTENT, RECURRENT PAIN IN HIS NECK, LEFT SHOULDER AND LEFT LOWER BACK. CLAIMANT HAD CEASED WORKING ON JULY 11, 1974 AND HAS NOT WORKED SINCE THAT DATE BECAUSE OF THIS PAIN. DR. VASSELY FOUND FEW, IF ANY OBJECTIVE FINDINGS TO SUBSTANTIATE CLAIMANT'S COMPLAINTS AND CONCLUDED THAT CLAIMANT'S MAIN PROBLEMS BEGAN WITH HIS 1971 INJURY. CLAIMANT CONTINUED TO RECEIVE MEDICAL TREATMENT BOTH FROM HIS CHIROPRACTIC PHYSICIAN AND FROM DR. VASSELY AND DR. POULSON, AN ORTHOPEDIC SURGEON.

ON AUGUST 15, 1974 THE WORKMEN'S COMPENSATION BOARD ISSUED AN ORDER, PURSUANT TO ORS 656.307, DESIGNATING EBI AS THE PAYING AGENT TO PAY CLAIMANT BENEFITS.

ON NOVEMBER 12, 1974 THE 1973 CLAIM WAS CLOSED BY DETERMINATION ORDER WHICH AWARDED CLAIMANT 32 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK AND UPPER BACK DISABILITY. ON DECEMBER 16, 1974 CLAIMANT REQUESTED A HEARING AS A RESULT OF THIS DETERMINATION ORDER. A HEARING WAS INITIALLY SCHEDULED AND BOTH EBI AND THE FUND WERE BOTH MADE PARTIES THERETO. THE HEARING WAS CANCELLED AND SUBSEQUENTLY RE-SCHEDULED, HOWEVER, THE FUND WAS NOT MADE A PARTY TO THE SECOND HEARING.

ON MAY 13, 1975, PRIOR TO THE RE-SCHEDULED HEARING, THE EMPLOYER, INDEPENDENT MOTOR TRANSPORT, THROUGH EBI, MOVED FOR AN ORDER JOINING MASTER CHEMICAL CORPORATION AND THE STATE ACCIDENT INSURANCE FUND AS PARTIES TO THE HEARING ON THE GROUNDS THAT CLAIMANT'S PRESENT CONDITION WAS AN AGGRAVATION OF AN INJURY SUFFERED WHILE IN THE EMPLOY OF MASTER CHEMICAL CORPORATION ON JANUARY 10, 1971.

ON MAY 29, 1975 THE REFEREE DENIED THE MOTION WHICH HAD BEEN OPPOSED BY BOTH THE CLAIMANT AND THE FUND.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT THE REFEREE ERRED IN DENYING THE EMPLOYER'S MOTION.

ORS 656.307 PROVIDES THAT WHERE THERE IS AN ISSUE OF RESPONSIBILITY BETWEEN TWO OR MORE EMPLOYERS OR THEIR INSURERS INVOLVING PAYMENT OF COMPENSATION FOR TWO OR MORE ACCIDENTAL INJURIES THE BOARD SHALL, BY ORDER DESIGNATE WHO SHALL PAY THE CLAIM, IF THE CLAIM IS OTHERWISE COMPENSABLE. WHEN A DETERMINATION OF THE RESPONSIBLE PAYING AGENT HAS BEEN MADE, THE BOARD SHALL DIRECT ANY NECESSARY MONETARY ADJUSTMENT BETWEEN THE PARTIES INVOLVED.

IN THE INSTANT CASE A REQUEST FOR A DESIGNATED PAYING AGENT WAS MADE AND, BY ORDER, THE BOARD DESIGNATED EBI. EBI ACCEPTED THE ORDER AND COMMENCED PAYMENTS. THE BOARD CONCLUDES THAT EBI IS ENTITLED TO HAVE A DETERMINATION MADE WITH RESPECT TO THE RESPONSIBILITY FOR CLAIMANT'S PRESENT CONDITION AND THAT SUCH DETERMINATION CANNOT BE MADE UNLESS MASTER CHEMICAL CORPORATION AND THE STATE ACCIDENT INSURANCE FUND ARE JOINED AS PARTIES TO THE HEARING.

ORDER

THE ORDER OF THE REFEREE DATED JULY 9, 1975 IS SET ASIDE AND THE MATTER IS REMANDED TO THE HEARINGS DIVISION TO BE SET FOR HEARING ON THE ISSUE OF WHETHER THE INJURY OF MARCH 28, 1973 WAS A NEW INJURY AND, THEREFORE, THE RESPONSIBILITY OF INDEPENDENT MOTOR

TRANSPORT AND ITS CARRIER, EBI, OR WAS AN AGGRAVATION OF AN INJURY SUFFERED ON JANUARY 10, 1971 BY CLAIMANT WHILE IN THE EMPLOY OF MASTER CHEMICAL CORPORATION AND, THEREFORE, THE RESPONSIBILITY OF THE STATE ACCIDENT INSURANCE FUND. AFTER SUCH DETERMINATION HAS BEEN MADE BY THE REFEREE, THE EXTENT OF PERMANENT DISABILITY SHALL BE RESOLVED, IF THE EVIDENCE INDICATES CLAIMANT'S CONDITION IS MEDICALLY STATIONARY.

WCB CASE NO. 74-1825 NOVEMBER 28, 1975

SHARON FAYE WYRICK, CLAIMANT

GERALD C. KNAPP, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH DISMISSED HER REQUEST FOR HEARING ON THE GROUNDS THAT THE REQUEST HAD NOT BEEN FILED WITHIN 5 YEARS AFTER THE FIRST DETERMINATION WAS MADE UNDER SUBSECTION 3 OF ORS 656.268.

OR LAWS 1975 CH. 497, SECTION 4, AMENDED ORS 656.319 BY DELETING THEREFROM SUBSECTION 2(C). A HEARING ON ANY DISPUTE ON INCREASED COMPENSATION BY REASON OF AGGRAVATION UNDER ORS 656.273 NOW MAY BE GRANTED EVEN THOUGH THE REQUEST FOR HEARING IS NOT FILED WITHIN 5 YEARS AFTER THE FIRST DETERMINATION.

SECTION 5 OF OR LAWS 1975 CH. 497 PROVIDES THAT THE ACT APPLIES TO ALL CLAIMS FOR COMPENSABLE INJURIES THAT OCCURRED TO THE EFFECTIVE DATE OF THE ACT, THEREFORE, THE PROVISIONS MUST BE APPLIED RETROSPECTIVELY.

THE BOARD, ON DE NOVO REVIEW, CONCLUDES THAT IT HAS NO ALTERNATIVE BUT TO REMAND THE MATTER TO THE HEARINGS DIVISION FOR A HEARING ON THE MERITS.

ORDER

THE ORDER OF THE REFEREE DATED JULY 14, 1975 IS REVERSED AND THE MATTER IS REMANDED TO THE HEARINGS DIVISION FOR A HEARING ON THE MERITS.

WCB CASE NO. 75-1239 DECEMBER 1, 1975

FARID NABTI, CLAIMANT

RASK AND HEFFERIN, CLAIMANT'S ATTYS.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE,
DEFENSE ATTYS.
ORDER OF DISMISSAL

A REQUEST FOR REVIEW HAVING BEEN DULY FILED WITH THE WORKMEN'S COMPENSATION BOARD IN THE ABOVE ENTITLED MATTER 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. 73-1037 DECEMBER 1, 1975

DAN BOWMAN, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
PHILIP MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE CLAIMANT REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER DATED MARCH 30, 1973 AWARDING CLAIMANT 16 DEGREES FOR 5 PER CENT UNSCHEDULED RIGHT SHOULDER DISABILITY.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON APRIL 21, 1972 WHEN HE FELL FORWARD INTO A SAW WHICH HE WAS OPERATING AND RECEIVED SEVERE ABDOMINAL INJURIES AND INTERSCAPULAR PAIN WITH BILATERAL SHOULDER PAIN.

THE REFEREE FOUND THAT CLAIMANT HAD SUFFERED TWO DISTINCT TYPES OF INJURIES FROM A VERY TRAUMATIC ACCIDENT TO TWO SEPARATE AREAS OF THE BODY. WHEN CLAIMANT FELL INTO THE SAW HE SUFFERED A VERY SEVERE 'CUTTING' INTO HIS ABDOMEN. CLAIMANT HAS RECOVERED VERY WELL FROM THIS INJURY AND SHOULD HAVE NO PERMANENT PHYSICAL IMPAIRMENT AS A RESULT THEREOF, ALTHOUGH HE DOES HAVE SPASMOTIC CRAMPING SPELLS IN THE ABDOMINAL AREA WHICH CAUSE SHOOTING PAINS TO TRAVEL TO HIS CHEST. THERE IS NO INDICATION, HOWEVER, THAT THESE CRAMPING EPISODES CAUSED ANY LIMITATION OF CLAIMANT'S ABILITY TO WORK WHEN HE DID ATTEMPT TO RETURN TO WORK.

THE OTHER INJURY WAS TO CLAIMANT'S RIGHT SHOULDER AND CAUSED HIM CONSIDERABLE DIFFICULTY FOR A PERIOD OF TIME IN THE USE OF HIS RIGHT ARM. DR. HALFERTY, AFTER EXAMINING CLAIMANT AT THE DISABILITY PREVENTION DIVISION, FOUND NO EVIDENCE EXISTING OF SHOULDER PROBLEMS. THE MUSCLE WAS NOT WASTING AND THERE WAS NO LONGER ANY ATROPHY WHICH HAD PREVIOUSLY BEEN REPORTED. CLAIMANT HAD NO LOSS OF MOTION OF HIS RIGHT ARM. ON THE OTHER HAND, DR. NASH, CLAIMANT'S TREATING DOCTOR, REPORTED THAT CLAIMANT HAD A PARESIS OF THE RIGHT UPPER EXTREMITY DUE TO A BRACHIAL PLEXUS INJURY WHICH WAS OF A MIXED TYPE, BUT PRIMARILY INVOLVED THE UPPER TRUNK ON THE RIGHT AND SHOULD BE CONSIDERED AS CONSTITUTING PERMANENT PARTIAL DISABILITY FROM INJURY WITH REGARD TO THE SHOULDER, ARM AND HAND.

DR. PASQUESI, WHO EXAMINED CLAIMANT ON OCTOBER 12, 1972, WAS OF THE OPINION THAT THE CLAIMANT PROBABLY WOULD HAVE A PERMANENT PARTIAL DISABILITY EQUIVALENT TO 40 PER CENT LOSS OF FUNCTION OF AN ARM SEPARATED AT THE SHOULDER AND ON THE BASIS OF THE SUPRASPINATUS AND INTRASPINATUS MUSCLES WHICH ARE IN THE UNSPECIFIED AREA, CLAIMANT WOULD HAVE AN ADDITIONAL PERMANENT PARTIAL DISABILITY OF 10 PER CENT UNSCHEDULED DISABILITY.

THE REFEREE FOUND THAT CLAIMANT'S CONTINUED COMPLAINTS OF INABILITY TO WORK AND CONTINUED PHYSICAL DISTRESS FROM THE ABDOMINAL AREA AND THE SHOULDER AND ARM CONDITIONS WERE ASSOCIATED WITH EMOTIONAL PROBLEMS AS A RESULT OF THE TRAUMATIC ASPECT OF HIS INJURY. HE CONCLUDED THE EVIDENCE WAS NOT SUFFICIENT TO ESTABLISH

THAT CLAIMANT HAD CONTINUING PHYSICAL IMPAIRMENT AS A RESULT OF PSYCHIATRIC CONDITIONS OR THAT ANY IMPAIRMENT WAS CAUSED BY PSYCHIATRIC DISORDERS AND HE FELT THAT THE AWARD FOR UNSCHEDULED DISABILITY OF 5 PER CENT OF THE MAXIMUM WAS SUFFICIENT COMPENSATION FOR THE CLAIMANT'S LOSS OF POTENTIAL WAGE EARNING CAPACITY.

THE REFEREE FURTHER CONCLUDED THAT THE RIGHT SHOULDER INJURY HAD RESOLVED WITH NO MORE THAN A MINIMAL IMPAIRMENT AND THAT THERE WAS NO BASIS FOR AN AWARD OF SCHEDULED DISABILITY FOR THE RIGHT ARM, THAT THERE WAS NO MEDICAL SUPPORT FOR ANY CONTINUED COMPLAINT OF USE OF THE RIGHT HAND.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE FINDINGS OF THE REFEREE WITH RESPECT TO THE AWARD FOR UNSCHEDULED DISABILITY, FINDING THAT CLAIMANT'S ABDOMINAL PROBLEMS ARE MOSTLY PSYCHOLOGICAL BUT THAT THIS PSYCHOPATHOLOGY IS NOT DISABLING TO ANY GREAT EXTENT.

THE BOARD DOES FIND, HOWEVER, THAT THERE IS MEDICAL BASIS FOR AN AWARD FOR SCHEDULED DISABILITY. BOTH DR. NASH AND DR. PASQUESI EXAMINED CLAIMANT. DR. NASH WAS OF THE IMPRESSION THAT CLAIMANT HAD OBJECTIVE AND SUBJECTIVE EVIDENCE OF PARTIAL RESOLUTION OF HIS BRACHIAL PLEXIS INJURY AND RECOMMENDED CONTINUATION OF PHYSICAL THERAPY TO MAINTAIN MUSCLE INTEGRITY AND PREVENT 'FROZEN SHOULDER'. DR. PASQUESI'S OPINION ON CLAIMANT'S LOSS OF FUNCTION OF HIS ARM HAS BEEN PREVIOUSLY EXPRESSED, I.E., 40 PER CENT.

THE BOARD DOES NOT BELIEVE THAT CLAIMANT HAS LOST THAT MUCH FUNCTION IN HIS RIGHT ARM, HOWEVER, IT DOES FEEL THAT CLAIMANT HAS LOST 25 PER CENT FUNCTION OF HIS RIGHT ARM AND, THEREFORE, IS ENTITLED TO BE COMPENSATED THEREFOR.

ORDER

THE ORDER OF THE REFEREE DATED MAY 22, 1975 IS MODIFIED.

CLAIMANT IS AWARDED 48 DEGREES OF A MAXIMUM OF 192 DEGREES FOR SCHEDULED RIGHT ARM DISABILITY. THIS IS IN ADDITION TO AND NOT IN LIEU OF THE AWARD MADE BY THE DETERMINATION ORDER OF MARCH 30, 1973.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW 25 PER CENT OF THE COMPENSATION AWARDED CLAIMANT BY THIS ORDER ON REVIEW, PAYABLE OUT OF SAID COMPENSATION, AS PAID, NOT TO EXCEED 2,300 DOLLARS.

WCB CASE NO. 75-1299 DECEMBER 1, 1975

DAVID G. BARRERA, CLAIMANT

DAVID PAXTON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER OF DISMISSAL

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

IT IS THEREFORE ORDERED THAT THE REQUEST FOR REVIEW PENDING

BEFORE THE BOARD IS HEREBY DISMISSED AND THE ORDER OF THE REFEREE IS FINAL BY OPERATION OF LAW.

WCB CASE NO. 75-680 DECEMBER 4, 1975

RUSSELL HALL, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTYS.
MC KEOWN, NEWHOUSE, FOSS AND WHITTY,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT AN AWARD OF 128 DEGREES FOR 40 PER CENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT WAS A 45 YEAR OLD FALLER AND BUCKER WHO, COMMENCING IN 1974, STARTED DIRECTIONAL FALLING WHICH REQUIRED HAULING HEAVIER EQUIPMENT. CLAIMANT ON MARCH 18, 1974, WAS SEEN BY DR. SCHROEDER FOR LUMBAR PAINS. THE DIAGNOSIS WAS CHRONIC LUMBAR STRAIN, PROBABLY SECONDARY TO THE RECENT HEAVY LIFTING. CLAIMANT WAS RELEASED TO LIGHT WORK ON APRIL 29, 1974 WITH A RESTRICTION ON HEAVY LIFTING BUT CONTINUED TO RECEIVE TREATMENT FROM DR. SCHROEDER.

CLAIMANT SHOWED GRADUAL IMPROVEMENT AND, ON JULY 27, 1974, BID FOR AND RECEIVED A BOOM JOB WHICH HE HAS BEEN PERFORMING ON A STEADY BASIS SINCE THAT DATE. HE HAS SOME CHRONIC DISCOMFORT IN THE LOW BACK BUT IS ABLE TO DO HIS JOB AND HAS MISSED NO TIME FROM WORK. THE CLOSING EXAMINATION BY DR. SCHROEDER IN DECEMBER, 1974 INDICATED CLAIMANT WOULD HAVE MILD PERMANENT RESIDUAL DISABILITY WITH ACTIVITIES RESTRICTED FROM HEAVY LIFTING AND BENDING. HIS CLAIM WAS CLOSED ON JANUARY 21, 1975 WITH AN AWARD OF 64 DEGREES FOR 20 PER CENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT HAS A HIGH SCHOOL DIPLOMA, HE WORKED AS A FARM LABORER AND AS A TRUCK DRIVER PRIOR TO GOING TO WORK FOR THE EMPLOYER. AT THE TIME HE WAS INJURED CLAIMANT WAS EARNING 8.81 DOLLARS AN HOUR, AS A BOOM MAN HE IS PAID 5.37 DOLLARS AN HOUR. CLAIMANT CAN HANDLE HIS PRESENT JOB, WHICH PRIMARILY CONSISTS OF SORTING LOGS WITH A PIPE POLE, BUT IS UNABLE TO RETURN TO HIS FORMER JOB OF FALLING AND BUCKING EVEN THOUGH LIGHTER EQUIPMENT IS NOW BEING USED.

THE REFEREE FOUND THAT ALTHOUGH CLAIMANT HAD SUFFERED INJURIES PRIOR TO THE 1974 ACCIDENT HE HAD FULLY RECOVERED THEREFROM, THAT THE RESULTS OF THE 1974 ACCIDENT NOW PRECLUDES CLAIMANT FROM RETURNING TO JOBS WHICH REQUIRE REPETITIVE LIFTING AND BENDING.

ALTHOUGH DR. SCHROEDER STATED THAT CLAIMANT HAD ONLY MILD PERMANENT RESIDUAL DISABILITY, THE REFEREE FOUND THAT CLAIMANT HAS SUFFERED A LOSS OF EARNING CAPACITY AND CORRECTLY APPLIED THE TEST FOR DETERMINING UNSCHEDULED DISABILITY, I.E., LOSS OF FUTURE EARNING CAPACITY DETERMINED FROM CLAIMANT'S PRESENT CONDITION AND THE EVALUATION OF HIS FUTURE WORK PROSPECTS, HIS ABILITY TO OBTAIN AND HOLD EMPLOYMENT IN THE BROAD FIELD OF GENERAL OCCUPATIONS.

THE REFEREE CONCLUDED THAT CLAIMANT IS PHYSICALLY ABLE TO DO THE JOB WHICH HE PRESENTLY HOLDS, HOWEVER, HIS PAST WORK RECORD

INDICATES THAT HE IS CAPABLE OF HIGHER PAYING JOBS TO WHICH HE CANNOT RETURN BECAUSE OF HIS PRESENT PHYSICAL CONDITION AND THE LIMITATIONS PLACED UPON HIM BY HIS PHYSICIAN. THEREFORE, CLAIMANT WAS ENTITLED TO A GREATER AWARD FOR HIS PERMANENT PARTIAL DISABILITY THAN HE HAS RECEIVED.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE REFEREE THAT CLAIMANT'S WORK ABILITY WILL BE LIMITED IN THE FUTURE AND THAT HE HAS SUFFERED A SUBSTANTIAL LOSS OF POTENTIAL WAGE EARNING CAPACITY. THE BOARD CONCURS THAT CLAIMANT IS ENTITLED TO AN AWARD OF 40 PER CENT FOR HIS UNSCHEDULED LOW BACK DISABILITY EQUAL TO 128 DEGREES.

ORDER

THE ORDER OF THE REFEREE DATED MAY 15, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW THE SUM OF 350 DOLLARS PAYABLE BY WEYERHAEUSER COMPANY.

CLAIM NO. B—1631872 DECEMBER 4, 1975

DORIS D. TADLOCK, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MERLIN MILLER, DEFENSE ATTY.
SUPPLEMENTAL ORDER AWARDING ATTORNEY FEE

THE BOARD'S OWN MOTION ORDER ISSUED NOVEMBER 21, 1975 IN THE ABOVE-ENTITLED MATTER FAILED TO INCLUDE AN AWARD OF AN ATTTORNEY'S FEE.

ORDER

IT IS HEREBY ORDERED THAT CLAIMANT'S COUNSEL RECEIVE AS A FEE, 25 PER CENT OF THE INCREASE IN COMPENSATION MADE PAYABLE BY THE BOARD'S ORDER OF NOVEMBER 21, 1975, NOT TO EXCEED THE SUM OF 2,300 DOLLARS.

SAIF CLAIM NO. HB 157718 DECEMBER 4, 1975

VIRGINIA HINZ, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

CLAIMANT PETITIONED THE BOARD TO CONVENE A HEARING UNDER ITS OWN MOTION JURISDICTION PURSUANT TO ORS 656.278, CONTENDING SHE WAS PERMANENTLY AND TOTALLY DISABLED AS A RESULT OF HER INDUSTRIAL INJURY OF NOVEMBER 5, 1965.

CLAIMANT HAD SUBMITTED TO A TOTAL HIP REPLACEMENT IN 1970. SHE RETURNED TO TEACHING IN THE PUBLIC SCHOOLS IN PORTLAND AND RETIRED IN FEBRUARY, 1975. CLAIMANT HAS RECEIVED PERMANENT PARTIAL DISABILITY AWARDS OF 65 PER CENT LOSS OF USE OF LEFT LEG AND 30 PER CENT LOSS OF AN ARM BY SEPARATION FOR UNSCHEDULED DISABILITY.

ON AUGUST 26, 1975 THE BOARD REFERRED THE MATTER TO THE HEARINGS DIVISION FOR THE PURPOSE OF TAKING CURRENT MEDICAL EVIDENCE PERTAINING TO CLAIMANT'S PRESENT CONDITION AND, BASED THEREUPON, TO SUBMIT FINDINGS AND A RECOMMENDATION TO THE BOARD.

THE REFEREE FOUND THAT CLAIMANT HAD TAUGHT IN THE PUBLIC SCHOOLS OF PORTLAND SINCE 1938 AND UNTIL FEBRUARY 17, 1975 WHEN SHE HAD TO RETIRE BECAUSE OF HER PHYSICAL HANDICAP. ALTHOUGH DURING THE LAST THREE OR FOUR MONTHS CLAIMANT HAD BEEN GIVEN A SPECIAL CLASS AND GIVEN SPECIAL CONSIDERATION IN AN EFFORT TO ALLOW HER TO CONTINUE TEACHING WITH THIS PHYSICAL HANDICAP, SHE WAS NOT ABLE TO CONTINUE. SINCE 1972, IT HAS BEEN MORE DIFFICULT FOR CLAIMANT TO WALK, SIT OR WORK STEADILY AT A DESK. SHE EXPERIENCES PAIN FROM HER GENERAL LEFT HIP AREA EXTENDING UP UNDER THE LEFT SHOULDER BLADE AND DOWN INTO THE LEFT KNEE WHICH IS NEARLY CONSTANT AND ONLY RELIEVED BY RESTING FOR PERIODS OF 15 MINUTES TO ONE HOUR.

THE REFEREE CONCLUDED THAT ALTHOUGH CLAIMANT WAS OBVIOUSLY HIGHLY MOTIVATED AND HAD MADE EXTRAORDINARY EFFORTS TO CONTINUE HER TEACHING CAREER, HER PRESENT PHYSICAL CONDITIONS PRECLUDED HER FROM EITHER TEACHING OR HOLDING DOWN AN ADMINISTRATIVE TYPE OF POSITION IN THE SCHOOL SYSTEM AND SHOULD BE CONSIDERED AS PERMANENTLY AND TOTALLY DISABLED. THIS CONCLUSION WAS AUGMENTED BY THE REPORT OF DR. GOODWIN, AN ORTHOPEDIC SURGEON AND CLAIMANT'S TREATING MEDICAL DOCTOR, THAT HE BELIEVED CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED.

THE BOARD, ON DE NOVO REVIEW, ACCEPTS THE RECOMMENDATION OF THE REFEREE AND CONCLUDES THAT CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED AND SHOULD BE CONSIDERED AS PERMANENTLY AND TOTALLY DISABLED AS OF THE DATE OF THIS ORDER.

ORDER

CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED AS DEFINED BY ORS 656.206(1) AND SHALL BE CONSIDERED AS SUCH FROM THE DATE OF THIS ORDER.

CLAIMANT'S COUNSEL SHALL BE AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES AT THE OWN MOTION HEARING, 25 PER CENT OF THE COMPENSATION AWARDED TO CLAIMANT BY THIS ORDER.

WCB CASE NO. 74-4258 DECEMBER 4, 1975

RONALD HANKINS, CLAIMANT

FRANKLIN, BENNETT, OFELT AND JOLLES,
CLAIMANT'S ATTYS.
G. HOWARD CLIFF, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE EMPLOYER SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT AN AWARD OF 80 DEGREES FOR 25 PER CENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT, A 29 YEAR OLD WORKMAN, RECEIVED A COMPENSABLE INJURY TO HIS LOW BACK ON AUGUST 13, 1973. CLAIMANT WAS FIRST SEEN BY A CHIROPRACTOR AND IN OCTOBER, 1973 WAS EXAMINED BY DR. HO, AN

OSTEOPATHIC PHYSICIAN, WHO DIAGNOSED LUMBOSACRAL STRAIN, POSSIBLE HERNIATED L4 DISC LEFT. LATER IN OCTOBER, CLAIMANT WAS SEEN BY DR. MC GOUGH, WHOSE DIAGNOSIS WAS LOW BACK STRAIN, PROBABLY EARLY HERNIATED NUCLEUS PULPOSUS OF LOWER LUMBAR DISC. CLAIMANT HAS HAD NO SURGERY.

CLAIMANT RETURNED TO WORK APPROXIMATELY THREE DAYS AFTER THE INJURY AND LASTED ABOUT A WEEK. HIS BACK BECAME SO SORE THAT HE WAS UNABLE TO BEND OVER AND HE DID NOT WORK AGAIN UNTIL EARLY MARCH 1974 AT WHICH TIME HE LASTED EXACTLY ONE DAY AND AGAIN HIS BACK WORSENED AND HE ALSO HAD PAIN IN HIS LEFT LEG.

CLAIMANT WAS EXAMINED BY DR. GANTENBEIN AT THE DISABILITY PREVENTION DIVISION AND ALSO BY MEMBERS OF THE BACK CONSULTATION CLINIC. THE LATTER RECOMMENDED A CHANGE OF OCCUPATION AND EXPRESSED THE OPINION THAT THERE WAS MINIMAL LOSS OF FUNCTION OF THE BACK. THE CLAIM WAS CLOSED BY DETERMINATION ORDER DATED SEPTEMBER 18, 1974 WHEREBY CLAIMANT RECEIVED SOME TIME LOSS BUT NO AWARD FOR PERMANENT PARTIAL DISABILITY.

CLAIMANT TESTIFIED THAT PRIOR TO HIS INJURY HE HAD NEVER EXPERIENCED ANY BACK DISABILITY OR INJURY. SUBSEQUENT TO THE INJURY HIS BACK DID NOT BOTHER HIM AS LONG AS HE LIMITED HIS ACTIVITIES BUT HE WAS UNABLE TO LIFT HEAVY WEIGHTS OR RUN OVER UNEVEN TERRAIN.

AT THE PRESENT TIME CLAIMANT IS ATTENDING CLARK COLLEGE IN VANCOUVER, WASHINGTON, UNDER A PROGRAM SPONSORED BY THE DIVISION OF VOCATIONAL REHABILITATION, STUDYING ENGINEERING. HE HAS APPROXIMATELY A 3.0 GPA AT THE END OF THE SECOND SEMESTER.

THE EMPLOYER CONTENDS THAT CLAIMANT'S SYMPTOMATOLOGY IS ENTIRELY SUBJECTIVE AND THAT THERE ARE NO OBJECTIVE FINDINGS TO WARRANT AWARD OF PERMANENT PARTIAL DISABILITY. THE CLAIMANT ARGUES THAT HIS DISABILITY IS EQUAL TO 25 PER CENT OR 30 PER CENT OF THE MAXIMUM.

THE REFEREE FOUND CLAIMANT WAS VERY CREDIBLE AND THAT HE HAD HAD NO PHYSICAL RESTRICTIONS PRIOR TO HIS INDUSTRIAL INJURY BUT SUBSEQUENT TO THE INJURY HE HAS HAD TO GRADUALLY DECREASE HIS AREA OF PHYSICAL ACTIVITY BECAUSE OF THE BACK PAIN. THE REFEREE FOUND THAT THE FACTS IN THIS CASE WERE VERY SIMILAR TO THOSE IN HAWES V. SAIF (UNDERSCORED), 6 OR APP 136 AND MULLER V. SEARS ROEBUCK CO. (UNDERSCORED), 13 OR APP 10, IN THAT CLAIMANT WAS ABOVE AVERAGE IN INTELLIGENCE, HAD PREVIOUSLY ENGAGED IN LABORING TYPE EMPLOYMENT, WAS NO LONGER ABLE TO ENGAGE IN SUCH EMPLOYMENT BECAUSE OF HIS BACK AND WAS IN TRAINING FOR A DIFFERENT TYPE OF EMPLOYMENT.

THE REFEREE CONCLUDED, RELYING UPON THE COURT'S RULING IN THE ABOVE CASES, THAT CLAIMANT WAS ENTITLED TO AN AWARD OF 80 DEGREES FOR 25 PER CENT UNSCHEDULED LOW BACK DISABILITY.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT PRIOR TO THE INDUSTRIAL INJURY CLAIMANT HAD A VERY WELL PAYING JOB AND AS A RESULT OF THE INDUSTRIAL INJURY HE NO LONGER CAN RETURN TO THIS JOB, OR ANY SIMILAR TYPE JOB. THEREFORE, ALTHOUGH CLAIMANT MAY, AS AN ENGINEER, IN THE FUTURE DO VERY WELL IN HIS NEWLY CHOSEN PROFESSION, HE HAS, AT THE PRESENT TIME, LOST SOME POTENTIAL WAGE EARNING CAPACITY FOR WHICH HE SHOULD BE COMPENSATED.

THE BOARD CONCLUDES THAT THE AWARD OF 80 DEGREES FOR 25 PER CENT LOW BACK DISABILITY GRANTED CLAIMANT BY THE REFEREE'S ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 5, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW, THE SUM OF 350 DOLLARS PAYABLE BY THE EMPLOYER.

WCB CASE NO. 75-392 DECEMBER 4, 1975

MARIE GEISSBUHLER, CLAIMANT

PETER R. BLYTH, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE CLAIMANT HAS REQUESTED THAT THE BOARD REVIEW THE REFEREE'S ORDER WHICH AWARDED HER 112 DEGREES FOR 35 PER CENT BACK DISABILITY, CONTENDING SHE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON MARCH 7, 1973 WHEN SHE SLIPPED WHILE STEPPING FROM A BUS AND TURNED HER ANKLE. AT THAT TIME CLAIMANT WAS 61 YEARS OLD. SUBSEQUENTLY, CLAIMANT DEVELOPED BACK COMPLAINTS IN THE LUMBOSACRAL AREA WITH RADIATION DOWN THE LEFT LEG. HER CLAIM WAS CLOSED ON JANUARY 8, 1975 WITH AN AWARD OF 32 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK DISABILITY. CLAIMANT HAS NOT WORKED SINCE HER INDUSTRIAL ACCIDENT.

DR. BERG EXAMINED CLAIMANT ON NOVEMBER 19, 1974. HIS DIAGNOSIS WAS CHRONIC LUMBOSACRAL BACK STRAIN SUPERIMPOSED UPON PRE-EXISTING CONGENITAL OR DEVELOPMENTAL DEFECTS, SPONDYLOLYSIS WITH LIGHT SPONDYLOLISTHESIS AT THE LUMBOSACRAL LEVEL AND WITH CONGENITAL LORDOSIS AT THE LUMBOSACRAL AREA OF MARKED DEGREE. DR. BERG NOTED THAT CLAIMANT'S RATHER SEVERE OBESITY PLAYED A MARKED PART IN HER LOW BACK PAIN DUE TO THE ADDED STRESS AND STRAIN ON THE ALREADY WEAKENED AREA. CLAIMANT IS 4 FOOT 11, AND WEIGHS 222 POUNDS.

BASED UPON HIS EXAMINATION AND EVALUATION, DR. BERG CONCLUDED THAT CLAIMANT HAD A PERMANENT RESIDUAL DISABILITY OF APPROXIMATELY 12 PER CENT OF THE IMPAIRMENT OF THE WHOLE MAN OR APPROXIMATELY 20 PER CENT OF THE MAXIMUM ALLOWED FOR UNSCHEDULED DISABILITY.

THE REFEREE FOUND THAT ALTHOUGH DR. BERG'S REPORT ACCURATELY REFLECTED CLAIMANT'S PHYSICAL DISABILITY, THE RATING WAS SOMEWHAT LOW AND PROBABLY DID NOT TAKE INTO CONSIDERATION THE FACTORS OF CLAIMANT'S AGE, EDUCATION, TRAINING AND WORK EXPERIENCE. HE FOUND CLAIMANT HAD A TENTH GRADE EDUCATION AND HER WORK BACKGROUND WAS PRIMARILY A SEAMSTRESS AND A MAID. FURTHER, THAT CLAIMANT WAS NOT ABLE TO WALK UP AND DOWN STAIRS OR ABLE TO DO SUBSTANTIAL HOUSEWORK WHICH REQUIRED STOOPING OR BENDING OVER.

THE REFEREE CONCLUDED THAT CLAIMANT'S LOSS OF WAGE EARNING CAPACITY WAS 35 PER CENT.

THE BOARD, ON DE NOVO REVIEW, CONCLUDES THAT THIS 63 YEAR OLD RATHER HEAVY-SET SEAMSTRESS WHO HAS WORKED THE PAST THREE YEARS AS A MAID IN ALL PROBABILITY WILL NOT RETURN TO THE LABOR MARKET. NEVERTHELESS, THE MEDICAL EVIDENCE OF CLAIMANT'S PHYSICAL DISA-

BILITY, WHEN COUPLED WITH HER AGE, EDUCATION, TRAINING AND WORK BACKGROUND, IS NOT SUFFICIENT TO JUSTIFY A FINDING THAT CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED. CLAIMANT HAS DONE LITTLE, IF ANY, TO CONTROL HER WEIGHT PROBLEMS AND HER OBESITY HAS SUBSTANTIALLY CONTRIBUTED TO HER BACK PROBLEMS.

THE BOARD CONCLUDES THAT THE REFEREE'S EVALUATION OF CLAIMANT'S DISABILITY IS ACCURATE AND HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 19, 1975 IS AFFIRMED.

WCB CASE NO. 74-4499 DECEMBER 5, 1975

DELLA STEVENSON, CLAIMANT

DAVID H. BLUNT, CLAIMANT'S ATTY.
FRANK A. MOSCATO, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE CLAIMANT HAS REQUESTED BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER OF MARCH 28, 1974, AWARDING CLAIMANT 16 DEGREES FOR 5 PER CENT UNSCHEDULED RIGHT SHOULDER DISABILITY.

CLAIMANT, 53 YEAR OLD CABINET WORKER, SUFFERED A COMPENSABLE INJURY ON MAY 18, 1973 WHEN SHE INJURED HER RIGHT ARM AND SHOULDER WHILE STACKING CABINETS. SHE WAS FIRST SEEN BY DR. HALE, HER FAMILY DOCTOR, WHOSE DIAGNOSIS WAS RIGHT SHOULDER TENDINITIS. DR. HALE CONTINUED TO TREAT HER AND REFERRED HER TO DR. MCNEILL, AN ORTHOPEDIST, WHO EXAMINED CLAIMANT ON JANUARY 18, 1974.

CLAIMANT WAS OFF WORK BETWEEN MAY 18, 1973 AND JUNE 18, 1973 WHEN SHE RETURNED TO HER JOB AND WORKED UNTIL AUGUST 9, 1973. SHE HAS NOT WORKED SINCE THAT DATE.

ON JANUARY 23, 1974 DR. HALE AUTHORIZED CLAIMANT TO RETURN TO WORK WITH A LIMITATION OF LIFTING OVER 25 POUNDS. HE BELIEVED HER PROBLEM WAS AN ACUTE RIGHT SHOULDER TENDINITIS WHICH HAD BECOME CHRONIC AND WAS AGGRAVATED BY HER RETURN TO WORK, BUT HE FOUND SHE COULD CONTINUE TO BE EMPLOYABLE UNDER SUITABLE WORKING CONDITIONS THAT DID NOT INVOLVE HEAVY LIFTING. CLAIMANT HAD WORKED FOR THE EMPLOYER SINCE 1969 AND HER JOB REQUIRED HER TO LIFT CABINETS WEIGHING AS MUCH AS 85 POUNDS.

IN MARCH, 1974 DR. MCNEILL EXAMINED CLAIMANT AND FOUND SHE WAS SOMEWHAT IMPROVED BUT DID NOT BELIEVE THAT SHE COULD RETURN TO WORK. HIS DIAGNOSIS WAS SHOULDER PAIN OF UNDETERMINED ETIOLOGY POSSIBLY FROM MUSCLE STRAIN. WHEN DR. MCNEILL SAW CLAIMANT AGAIN IN MARCH 1975, HE WAS OF THE OPINION THAT CLAIMANT'S SYMPTOMS AT THAT TIME WERE MORE OF A BURSITIS THAN THE MUSCULAR STRAIN WHICH HE FELT SHE HAD HAD PREVIOUSLY.

CLAIMANT HAS LOOKED FOR WORK BUT HAS BEEN UNSUCCESSFUL, SHE HAS AN EIGHTH GRADE EDUCATION AND NO SPECIAL SKILLS. SHE BELIEVES SHE COULD DO WORK OF A LIGHT NATURE WHICH DOES NOT INVOLVE LIFTING BUT NOT OVERHEAD WORK OR WORK REQUIRING REPETITIVE HEAVY LIFTING.

THE REFEREE GAVE GREATER WEIGHT TO THE OPINION EXPRESSED BY DR. MCNEILL, AS A RESULT OF HIS EXAMINATION OF CLAIMANT ON MARCH 31, 1975. THE REFEREE CONCLUDED THAT CLAIMANT'S PRESENT CONDITION AND ANY RESULTANT DISABILITY WAS NOT THE RESULT OF HER INDUSTRIAL INJURY OF MAY 18, 1973.

THE BOARD, ON DE NOVO REVIEW, IS IN ACCORD WITH THE REFEREE'S STATEMENT THAT THE GENERAL RULE IS THAT CAUSAL CONNECTION MUST BE SHOWN BY MEDICAL EVIDENCE, AND FINDS NO FAULT WITH THE CASES CITED BY THE REFEREE IN HIS OPINION AND ORDER. HOWEVER, THE BOARD DOES NOT AGREE THAT CLAIMANT HAS FAILED TO MEET THE BURDEN OF PROVING A COMPENSABLE CLAIM BY A PREPONDERANCE OF THE EVIDENCE. DR. MCNEILL FELT THAT CLAIMANT'S PRESENT CONDITION WAS BURSITIS, DR. HALE WAS OF THE OPINION THAT CLAIMANT HAD DEVELOPED CHRONIC RIGHT SHOULDER TENDINITIS AS A RESULT OF HER JOB INJURY AND THAT IF, AT THE PRESENT TIME, CLAIMANT HAD BURSITIS IT WAS A CONDITION WHICH NORMALLY RESULTS FROM TRAUMA TO A STRAIN OF THE MUSCLES AND TENDONS ATTACHED TO AND SURROUNDING THE SHOULDER JOINT. DR. MCNEILL DID NOT SAY THAT THE BURSITIS WAS NOT CAUSED BY THE INDUSTRIAL ACCIDENT. HE MERELY STATED THAT HER CONDITION IN 1974 WAS DIFFERENT THAN IN 1973.

THE BOARD CONCLUDES THAT, BASED UPON CLAIMANT'S PHYSICAL DISABILITY, HER AGE, WORK BACKGROUND AND THE FACT THAT SHE CANNOT RETURN TO HER FORMER JOB BECAUSE OF HER LIMITATION WITH RESPECT TO LIFTING, CLAIMANT HAS SUFFERED MORE LOSS OF EARNING CAPACITY THAN THE AWARD OF 5 PER CENT REPRESENTS. THE BOARD FURTHER CONCLUDES THAT TO ADEQUATELY COMPENSATE CLAIMANT FOR THIS LOSS OF WAGE EARNING CAPACITY, SHE SHOULD RECEIVE AN AWARD OF 20 PER CENT UNSCHEDULED RIGHT SHOULDER DISABILITY.

ORDER

THE ORDER OF THE REFEREE DATED MAY 28, 1975 IS MODIFIED.

THE SECOND PARAGRAPH OF THE ORDER PORTION OF THE OPINION AND ORDER IS DELETED AND IN LIEU THEREOF THE FOLLOWING PARAGRAPH IS INSERTED -

> "CLAIMANT IS AWARDED 64 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED RIGHT SHOULDER DISABILITY. THIS IS IN LIEU OF AND NOT IN ADDITION TO THE AWARD OF PERMANENT PARTIAL DISABILITY GRANTED IN THE DETERMINATION ORDER DATED MARCH 28, 1974."

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

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW, 25 PER CENT OF THE INCREASED COMPENSATION AWARDED CLAIMANT BY THIS ORDER, PAYABLE OUT OF SAID INCREASED COMPENSATION AWARD AS PAID.

WCB CASE NO. 74-4512 DECEMBER 5, 1975

BEVERLY BOWERS, CLAIMANT

SAHLSTROM, LOMBARD, STARR AND VINSON,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THAT PORTION OF THE REFEREE'S ORDER WHICH DIRECTED IT TO PAY THE MEDICAL TREATMENT CLAIMANT RECEIVED FROM DR. BRINK AND ASSESSED PENALTIES AND ATTORNEY FEES, CONTENDING THAT SUCH ISSUES WERE NOT PROPERLY BEFORE THE REFEREE AND THAT THERE WAS NO EVIDENCE IN THE RECORD CONCERNING PAYMENT TO DR. BRINK FOR ANY SERVICES RENDERED.

CLAIMANT FILED A CLAIM FOR INCREASED COMPENSATION, INCLUDING MEDICAL TREATMENT RECEIVED OR RECOMMENDED, FOR AGGRAVATION UNDER ORS 656.273 FOR WORSENED CONDITIONS RESULTING FROM A COMPENSABLE INJURY WHICH OCCURRED ON FEBRUARY 3, 1972. THE FUND DENIED THE CLAIM FOR AGGRAVATION AND THE CLAIMANT REQUESTED A HEARING.

THE REFEREE FOUND THAT THE EVIDENCE WAS INSUFFICIENT TO SHOW ANY WORSENING OF CLAIMANT'S CONDITION BUT DID FIND THAT CLAIMANT WAS ENTITLED TO BE COMPENSATED UNDER THE PROVISIONS OF ORS 656.245 FOR THE PALLIATIVE TREATMENT SHE RECEIVED FROM DR. BRINK, CITING WAITE V. MONTGOMERY WARD, INC., (UNDERSCORED), 10 OR APP 533.

THE REFEREE CONCLUDED THAT THE FUND SHOULD HAVE IMMEDIATELY PAID FOR THESE SERVICES, HAD FAILED TO DO SO, AND, THEREFORE, SUCH FAILURE AMOUNTED TO UNREASONABLE CONDUCT ON ITS PART SUBJECTING IT TO A PENALTY OF 10 PER CENT OF THE COST OF THE MEDICAL SERVICES, ORS 656.262(8). THE REFEREE ALSO CONCLUDED SUCH FAILURE AMOUNTED TO UNREASONABLE RESISTANCE TO THE PAYMENT OF COMPENSATION AND, THEREFORE, THE FUND WAS REQUIRED TO PAY AN ATTORNEY'S FEE. ORS 656.382(1).

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE REFEREE AND AFFIRMS HIS ORDER IN ALL RESPECTS.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 5, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW, THE SUM OF 350 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

JOHN D. JACKSON, CLAIMANT
BURNS AND LOCK, CLAIMANT'S ATTYS.
JONES, LANG, KLEIN, WOLF AND SMITH,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE CLAIMANT SEEKS REVIEW BY THE BOARD OF THE ORDER OF THE REFEREE WHICH DIRECTED THE EMPLOYER TO PAY FOR THE HEARING AID CLAIMANT USES IN HIS LEFT EAR TOGETHER WITH ANY INTEREST COSTS WHICH HAVE ATTACHED SINCE THE HEARING AID WAS PURCHASED, DIRECTED THE EMPLOYER TO PAY AN ATTORNEY'S FEE, AND AFFIRMED THE DETERMINATION ORDER DATED MARCH 28, 1974 WHICH AWARDED CLAIMANT 34.5 DEGREES FOR 57.5 PER CENT LOSS OF HEARING IN THE RIGHT EAR.

CLAIMANT SUFFERED A COMPENSABLE INJURY WHEN HE WAS STRUCK ON THE RIGHT EAR WITH A PIECE OF METAL ON MAY 11, 1973. HE WAS TAKEN TO THE EMERGENCY OUTPATIENT ROOM AT THE HOSPITAL AND HIS LACERATIONS WERE SUTURED. ON MAY 15, 1973 DR. WALLACE FIRST SAW CLAIMANT FOR HIS EAR CONDITION. CLAIMANT HAD NOTICED DIMINISHED HEARING ABILITY IN HIS RIGHT EAR AND HAD ALSO EXPERIENCED EPISODES OF DIZZINESS, VERTIGO AND NAUSEA. IN OCTOBER, 1973 CLAIMANT WAS HOSPITALIZED FOR ACUTE TOXIC LABYRINTHITIS.

CLAIMANT RECEIVED A HEARING AID FOR USE IN HIS RIGHT EAR, HOWEVER, DURING A TESTING AND EVALUATION BY DR. MAURER, IT WAS DISCOVERED THAT BY USING A HEARING AID SOLELY IN THE RIGHT EAR CLAIMANT HAD DIFFICULTY ASCERTAINING THE DIRECTION FROM WHICH CERTAIN SOUNDS CAME. DR. MAURER RECOMMENDED CLAIMANT HAVE A HEARING AID FOR HIS LEFT EAR. CLAIMANT PURCHASED SUCH A HEARING AID FOR HIS LEFT EAR AND HIS PROBLEM WAS CORRECTED.

CLAIMANT SEEKS AN INCREASE OF 34.5 DEGREES BECAUSE OF HIS BINAURAL HEARING LOSS AND, BECAUSE OF HIS VERTIGO, DIZZINESS AND NAUSEA, WHICH AFFECTS HIS GENERAL ABILITY TO FUNCTION, AN AWARD OF 180 DEGREES FOR UNSCHEDULED DISABILITY.

CLAIMANT TESTIFIED THAT WHEN HE WEARS HIS HEARING AIDS HIS HEARING IS ABOUT THE SAME AS IT WAS PRIOR TO HIS INDUSTRIAL INJURY, THAT PRIOR TO THIS INJURY HE HAD NO PROBLEM OF ANY TYPE WITH EITHER EAR OR WITH DIZZINESS OR LOSS OF EQUILIBRIUM. WITHOUT THE HEARING AIDS, CLAIMANT HAS WHAT HE CALLS 'HEAD NOISES' AND IS UNABLE TO HEAR VERY WELL. WITH THEM HE STILL HAS SOME DISCOMFORT FROM DIZZINESS AND NAUSEA AND AT TIMES, DIFFICULTY WITH HIS SENSE OF BALANCE.

DR. METTLER'S EXPRESSED OPINION WAS THAT THE HEARING LOSS IN THE RIGHT EAR WAS NOT WORK-RELATED NOR WAS THE HEARING LOSS IN THE LEFT EAR AT THE HIGHER DECIBLE RANGE DUE TO THE INDUSTRIAL INJURY. HE THOUGHT THERE WAS SOME UNKNOWN ABNORMAL PATHOLOGY PRESENT INVOLVING CLAIMANT'S SENSE OF BALANCE.

CLAIMANT'S TREATING PHYSICIAN, DR. WALLACE, FELT THE PROBLEMS IN BOTH EARS WERE WORK-RELATED WHILE DR. EPLEY STATED THAT IT WAS STRONGLY SUGGESTED THAT THE HEARING LOSS IN THE RIGHT EAR WAS INDUCED THROUGH THE TRAUMA ON THE JOB BUT THAT THE HEARING LOSS OF THE LEFT EAR WAS DUE TO OTHER CAUSES.

THE REFEREE, BASED ON THE TESTIMONY OF DR. EPLEY AND DR. WALLACE AND THE CLAIMANT'S TESTIMONY, CONCLUDED THAT THE HEARING LOSS IN THE RIGHT EAR WAS CAUSALLY RELATED TO THE INDUSTRIAL INJURY OF MAY 11, 1973, BUT THAT THE HEARING LOSS IN THE LEFT EAR WAS NOT. HE FURTHER CONCLUDED THAT SINCE THE HEARING LOSS OF THE RIGHT EAR RESULTED IN CLAIMANT'S LOSS OF DIRECTIONAL HEARING, WHICH COULD ONLY BE CORRECTED BY THE USE OF A HEARING AID IN CLAIMANT'S LEFT EAR, THAT THE COST OF THE HEARING AID FOR THE LEFT EAR SHOULD BE CONSIDERED AS A NORMAL CLAIM EXPENSE, CAUSALLY RELATED TO THE INDUSTRIAL INJURY.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE REFEREE. HOWEVER, IT IS CONCERNED WITH THE EPISODES OF DIZZINESS, VERTIGO AND NAUSEA WHICH CLAIMANT EXPERIENCES PERIODICALLY AND FOR WHICH HE HAD BEEN HOSPITALIZED IN OCTOBER, 1973 WITH A DIAGNOSIS OF ACUTE TOXIC LABYRINTHITIS.

THE EVIDENCE INDICATES THAT THIS PROBLEM IS DIRECTLY RELATED TO THE INDUSTRIAL INJURY AND, INASMUCH AS SAID INJURY HAS BEEN FOUND TO BE COMPENSABLE, THE BOARD CONCLUDES THAT THIS CONDITION ALSO SHOULD BE COMPENSABLE AND THAT THE CLAIM SHOULD BE REOPENED FOR SUCH TREATMENT AS THIS CONDITION NEEDS.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 6, 1975 IS MODIFIED AND THE CLAIM IS REMANDED TO THE EMPLOYER TO ACCEPT FOR SUCH MEDICAL CARE AND TREATMENT AS MAY BE REQUIRED FOR THE CONDITION DIAGNOSED AS ACUTE TOXIC LABYRINTHITIS AND FOR THE PAYMENT OF ANY COMPENSATION PROVIDED BY LAW UNTIL THE CLAIM IS CLOSED UNDER THE PROVISIONS OF ORS 656.268. IN ALL OTHER RESPECTS THE ORDER OF THE REFEREE IS AFFIRMED.

WCB CASE NO. 74-3550 DECEMBER 8, 1975

WILLIAM K. MC COY, CLAIMANT

DYE AND OLSON, CLAIMANT'S ATTYS.
JONES, LANG, KLEIN, WOLF AND SMITH,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE EMPLOYER REQUESTED REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT AN AWARD OF PERMANENT TOTAL DISABILITY EFFECTIVE JUNE 10, 1975.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON OCTOBER 25, 1973. HIS CLAIM WAS CLOSED SEPTEMBER 20, 1974 WITH AN AWARD OF 32 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK DISABILITY.

AFTER A HEARING REQUESTED BY THE CLAIMANT, THE REFEREE FOUND CLAIMANT TO BE PERMANENTLY AND TOTALLY DISABLED, BASING THIS FINDING PRIMARILY ON THE 'ODD-LOT' DOCTRINE AND THE FAILURE OF THE EMPLOYER TO MEET ITS BURDEN OF SHOWING THAT THERE WAS REGULAR AND GAINFUL EMPLOYMENT AVAILABLE TO CLAIMANT WHICH HE COULD DO IN HIS PRESENT PHYSICAL CONDITION.

DR. TILEY, AFTER EXAMINING CLAIMANT, QUESTIONED WHETHER OR NOT CLAIMANT WOULD EVER BE ABLE TO RETURN TO WORK IN VIEW OF THE

PREEXISTING DEGENERATIVE DISC CONDITION OF THE LUMBAR SPINE WHICH WAS EXACERBATED BY THE INDUSTRIAL INJURY.

CLAIMANT IS 54 YEARS OLD, HE IS A HIGH SCHOOL GRADUATE AND, AT THE PRESENT TIME, IS IN THE MIDST OF A RETRAINING COURSE AT CHEMEKETA COMMUNITY COLLEGE. CLAIMANT'S VOCATIONAL REHABILITATION COUNSELOR EXPRESSED HIS OPINION THAT THE OUTLOOK FOR ACTUAL SUCCESS IN CLAIMANT'S BEING RE-EMPLOYED AT HIS AGE, CONSIDERING HIS EDUCATIONAL EXPERIENCE WAS VERY POOR, EVEN THOUGH CLAIMANT EXHIBITED EXCELLENT MOTIVATION.

THE REFEREE CONCLUDED THAT ALTHOUGH THE DIRECT RESIDUAL IMPAIRMENT FROM THE INDUSTRIAL INJURY WAS MINIMAL, WHEN SUPERIMPOSED ON A DEGENERATIVE DISC CONDITION IT HAD THE EFFECT OF PRECLUDING CLAIMANT FROM RETURNING TO HIS REGULAR LINE OF WORK AND THAT CLAIMANT HAD ESTABLISHED PRIMA FACIE THAT HE WAS IN THE ODD-LOT CATEGORY OF THE WORK FORCE. HAVING MADE HIS PRIMA FACIE CASE, THE BURDEN SHIFTED TO THE EMPLOYER TO SHOW REGULAR AND GAINFUL WORK AVAILABLE TO CLAIMANT WHICH HE COULD REGULARLY DO. THE EMPLOYER FAILED TO DO THIS.

THE BOARD, ON DE NOVO REVIEW, BELIEVES THAT THE REFEREE HAS ADEQUATELY AND CLEARLY SET FORTH THE BASES FOR HIS FINDINGS AND CONCLUSIONS AND CONCURS THEREIN.

THE BOARD NOTES THAT CLAIMANT WILL COMPLETE HIS TRAINING PROGRAM SOMETIME PRIOR TO JUNE 30, 1976 AND, AT THAT TIME, PERHAPS A MORE ACCURATE EVALUATION OF CLAIMANT'S POTENTIAL EARNING CAPACITY, THE SOLE CRITERION FOR DETERMINING THE EXTENT OF UNSCHEDULED PERMANENT DISABILITY, CAN BE MADE.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 10, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW, THE SUM OF 350 DOLLARS, PAYABLE BY THE EMPLOYER, I-5 FREIGHTLINES.

WCB CASE NO. 74-4343 DECEMBER 8, 1975

MARGARET LANKINS, CLAIMANT

BENNETT, KAUFMAN AND JAMES,
CLAIMANT'S ATTYS.
JAQUA AND WHEATLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF AN ORDER OF THE REFEREE WHICH FOUND CLAIMANT TO BE PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT SUFFERED A COMPENSABLE LOW BACK INJURY ON JANUARY 2, 1973. SHE RETURNED TO WORK ON JANUARY 29, 1973 AND HER CLAIM WAS CLOSED ON MARCH 20, 1973 WITH NO AWARD OF PERMANENT PARTIAL DISABILITY.

ON APRIL 17, 1973 SHE REINJURED HER LOW BACK AND, AGAIN, RECEIVED CHIROPRACTIC MANIPULATIVE THERAPY WHICH APPARENTLY

IMPROVED HER CONDITION AND SHE RETURNED TO WORK. HER WORK DUTIES, HOWEVER, EXACERBATED HER BACK PROBLEMS AND SHE QUIT WORK ON MAY 29, 1973 AND HAS NOT WORKED SINCE THAT DATE. HER CLAIM WAS CLOSED BY A DETERMINATION ORDER DATED NOVEMBER 21, 1974 WHEREBY CLAIMANT WAS AWARDED 32 DEGREES FOR 10 PER CENT UNSCHEDULED DISABILITY FOR THE LOW BACK.

CLAIMANT IS 56 YEARS OLD, HAS A SEVENTH GRADE EDUCATION. SHE HAS NO OTHER SPECIAL SKILLS OR TRAINING AND HER ABILITY TO READ AND WRITE AND DO ELEMENTARY ARITHMETIC IS POOR. CLAIMANT'S WORK BACKGROUND CONSISTS OF WORKING AS A DOMESTIC, COOK AND KITCHEN HELPER. SHE HAS ALSO WORKED AS A HOTEL MAID, CHICKEN PLUCKER AND, SPORADICALLY, IN THE CANNERIES. ALL OF THESE JOBS HAVE INVOLVED PHYSICAL LABOR AND REQUIRED PROLONGED STANDING AND PROLONGED AND REPETITIVE BENDING AND HEAVY LIFTING. PRIOR TO HER INDUSTRIAL INJURY SHE HAD NO PHYSICAL LIMITATIONS REGARDING HER JOB OR OTHER ACTIVITIES.

DR. BAKER RECOMMENDED CLAIMANT GO ON A WEIGHT REDUCTION PROGRAM. HE FOUND THAT SHE HAD A DEGENERATIVE DISC PROBLEM UPON WHICH HER BACK STRAIN WAS SUPERIMPOSED. MOST OF THE MEDICAL DOCTORS WHO EXAMINED AND-OR TREATED CLAIMANT FOUND HER PHYSICAL IMPAIRMENT TO BE MILD.

THE REFEREE FOUND THAT CLAIMANT HAD MADE A REASONABLE ATTEMPT TO LOSE WEIGHT BUT, HAD SHE NOT, IT WAS HIGHLY SPECULATIVE THAT SUCH A LOSS WOULD RESOLVE HER DISABILITY TO THE EXTENT THAT CLAIMANT WOULD BE EMPLOYABLE IN ANY WELL KNOWN BRANCH OF THE LABOR MARKET. THE REFEREE, CITING LEADING CASES ON PERMANENT DISABILITY, AND, TAKING INTO CONSIDERATION CLAIMANT'S AGE, EDUCATION, TRAINING AND EXPERIENCE, CONCLUDED THAT CLAIMANT HAD ESTABLISHED PRIMA FACIE THAT SHE FELL WITHIN THE 'ODD-LOT' CATEGORY.

THE REFEREE CONCLUDED THAT CLAIMANT HAD BEEN IN AN IMPOVERISHED AREA OF THE GENERAL INDUSTRIAL LABOR MARKET PRIOR TO HER INJURY DUE TO HER LIMITED EDUCATION AND, AS A RESULT OF THE INJURY, SHE COULD NOT EVEN RETURN TO THOSE TYPES OF EMPLOYMENT. THE REFEREE FURTHER CONCLUDED THAT PROOF OF MOTIVATION TO WORK WAS NOT NECESSARY IN THIS CASE BUT THAT, IN FACT, CLAIMANT HAD ESTABLISHED A REALISTIC LEVEL OF MOTIVATION.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE. THIS 56 YEAR OLD CLAIMANT WITH HER VERY LIMITED WORK BACKGROUND, ALL OF WHICH CONSISTED OF HEAVY MANUAL LABOR, AND HER LIMITED EDUCATION, CANNOT RETURN TO THE GENERAL LABOR MARKET NOR IS SHE A FEASIBLE PROSPECT FOR RETRAINING. THE FACT THAT HER PHYSICAL IMPAIRMENT MAY BE ONLY SLIGHT AS A RESULT OF HER INDUSTRIAL INJURY IS OVERCOME BY THE EVIDENCE THAT IT PREVENTS HER FROM PURSUING ANY GAINFUL AND SUITABLE EMPLOYMENT ON A REGULAR BASIS.

ORDER

THE ORDER OF THE REFEREE DATED JULY 11, 1975 IS AFFIRMED.

THE CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW THE SUM OF 300 DOLLARS, PAYABLE BY THE EMPLOYER, AMERICAN BUILDING MAINTENANCE.

WCB CASE NO. 74-1788 DECEMBER 8, 1975

THORVAL W. PATTEE, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT ASKED BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE EMPLOYERS DENIAL AND AMENDED DENIAL OF CLAIMANT'S CLAIM OF PROGRESSIVE INJURY TO HIS RIGHT ARM AND SHOULDER. CLAIMANT CONTENDS HIS RIGHT SHOULDER SYMPTOMS ARE CAUSALLY RELATED TO HIS EMPLOYMENT EITHER AS AN ACCIDENTAL INJURY OR AS AN OCCUPATIONAL DISEASE AND ALSO THAT THE RIGHT CARPAL TUNNEL SYNDROME WHICH HE HAS IS CAUSALLY RELATED TO HIS EMPLOYMENT EITHER AS AN ACCIDENTAL INJURY OR AS AN OCCUPATIONAL DISEASE.

CLAIMANT, A 49 YEAR OLD HATCHERYMAN, HAD WORKED FOR THE OREGON FISH COMMISSION FOR 10 YEARS PRIOR TO HIS RETIREMENT IN JANUARY 1974. CLAIMANT WAS UNCERTAIN AS TO THE APPROXIMATE DATE OF THE ONSET OF SYMPTOMS. FIRST HIS RIGHT HAND WOULD 'GO TO SLEEP', LATER THERE WAS PAIN IN THE RIGHT HAND AND TINGLING AND ALSO PAIN IN THE RIGHT SHOULDER. THE RIGHT HAND SYMPTOMS WERE ULTIMATELY DIAGNOSED AS RIGHT CARPAL TUNNEL SYNDROME AND SURGERY WAS PERFORMED. THE RIGHT SHOULDER SYMPTOMS WERE DIAGNOSED AS DEGENERATION OF THE ROTATOR CUFF AND-OR TENDONITIS.

THE REFEREE FOUND THAT THE MEDICAL EVIDENCE DID NOT SUPPORT A FINDING THAT CLAIMANT SUFFERED ANY COMPENSABLE OCCUPATIONAL DISEASE, BASICALLY, BECAUSE DR. STEINMAN COULD NOT DEFINITELY STATE THAT CLAIMANT'S ACTIVITIES PRODUCED THE SYMPTOMS WHICH HE HAD.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT THERE IS AMPLE MEDICAL EVIDENCE TO JUSTIFY A FINDING THAT CLAIMANT DOES SUFFER A COMPENSABLE OCCUPATIONAL DISEASE. DR. STEINMAN DID NOT CATEGORICALLY OPINE, BASED ON REASONABLE MEDICAL PROBABILITY, THAT CLAIMANT'S SYMPTOMS WERE CAUSED BY THE ACTIVITIES OF HIS EMPLOYMENT, HIS STRONGEST WORDS OF CAUSAL CONNECTION WERE 'COULD HAVE'. HOWEVER, PARTICULAR WORDS ARE NOT NECESSARY. IN LEMONS V. SCD (UNDERSCORED), 2 OR APP 128, THE COURT HELD THAT THE INFORMATION RECEIVED FROM DR. TSAI WAS SUFFICIENT TO ESTABLISH CAUSAL CONNECTION EVEN THOUGH DR. TSAI DID NOT USE THE PARTICULAR WORDS, 'WITHIN A REASONABLE DEGREE OF MEDICAL PROBABILITY.'

THE BOARD CONCLUDES THAT THE ORDER OF THE REFEREE SHOULD BE REVERSED AND THE CLAIM REMANDED TO THE STATE ACCIDENT INSURANCE FUND TO BE ACCEPTED AS A COMPENSABLE OCCUPATIONAL DISEASE.

ORDER

THE ORDER OF THE REFEREE DATED MAY 5, 1975 IS REVERSED.

THE CLAIM IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND TO BE ACCEPTED FOR THE PAYMENT OF COMPENSATION, AS PROVIDED BY LAW, COMMENCING MARCH 7, 1974 AND UNTIL CLOSED UNDER THE PROVISIONS OF ORS 656.268.

THE CLAIMANT'S ATTORNEY SHALL BE ALLOWED AS A REASONABLE

ATTORNEY'S FEE FOR HIS SERVICES AT THE HEARINGS LEVEL THE SUM OF 500 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

THE CLAIMANT'S ATTORNEY SHALL BE ALLOWED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW THE SUM OF 250 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 74-3410 DECEMBER 8, 1975

EUGENE KING, CLAIMANT

GRANT, FERGUSON AND CARTER,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER DENYING REQUEST FOR REMAND

ON NOVEMBER 20, 1975, CLAIMANT REQUESTED THE BOARD TO REMAND THE ABOVE ENTITLED MATTER TO THE HEARINGS DIVISION FOR THE TAKING OF ADDITIONAL TESTIMONY UPON THE QUESTION OF THE CONTINUATION OF CLAIMANT'S EMPLOYMENT.

THE BOARD, AFTER GIVING FULL CONSIDERATION TO THIS REQUEST, CONCLUDES THAT SUCH EVIDENCE CAN BE CONSIDERED BY THE BOARD ON REVIEW, THEREFORE, IT IS NOT NECESSARY TO REMAND THE MATTER TO THE HEARINGS DIVISION.

THE REQUEST FOR REMAND, FILED NOVEMBER 20, 1975, IS DENIED.

WCB CASE NO. 74-4466 DECEMBER 8, 1975

CHARLES LETTS, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
JAQUA AND WHEATLEY, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT AN ADDITIONAL 7.5 DEGREES FOR PARTIAL LOSS OF HIS RIGHT LEG.

CLAIMANT SUFFERED A COMPENSABLE INJURY IN FEBRUARY, 1974 WHEN HE SLIPPED AND STRUCK HIS RIGHT KNEE AGAINST THE METAL SIDE OF A LIFT TRUCK. IN APRIL, 1974, A RIGHT MEDIAL MENISCECTOMY WAS PERFORMED. IN SEPTEMBER, 1974 DR. STEELE STATED THAT CLAIMANT WAS MEDICALLY STATIONARY AND THAT WITH FURTHER ACTIVITY CLAIMANT'S KNEE LIMITATIONS WOULD RESOLVE WITHOUT RESIDUAL PERMANENT IMPAIRMENT. ON OCTOBER 7, 1974 A DETERMINATION ORDER AWARDED CLAIMANT 15 DEGREES FOR 10 PER CENT PARTIAL LOSS OF THE RIGHT LEG.

CLAIMANT CONTINUED TO HAVE DISCOMFORT IN HIS RIGHT KNEE WHICH WAS EXACERBATED BY ACTIVITY. HE COMPLAINED OF LOSS OF FLEXION AND INABILITY TO KNEEL. DR. BERG, AN ORTHOPEDIST, EXAMINED CLAIMANT IN FEBRUARY, 1975 AND NOTED THE LOSS OF 25 DEGREES OF FLEXION ALONG WITH SOME CHRONIC INFLAMMATION WITHIN THE JOINT. DR. BERG'S OPINION

WAS THAT CLAIMANT HAD SUFFERED 15 PER CENT LOSS OF FUNCTION BASED ON THE REDUCED FLEXION AND ALSO TAKING INTO CONSIDERATION CLAIMANT'S DISCOMFORT.

THE REFEREE CONCLUDED THAT WHILE THE AWARD MADE BY THE DETERMINATION ORDER WAS APPROPRIATE AT THE TIME IT WAS ENTERED, THE SUBSEQUENT MEDICAL REPORTS FROM BOTH DR. BERG AND DR. STEELE PERSUADED HIM THAT CLAIMANT'S DISABILITY EXCEEDED 10 PER CENT. THE REFEREE CONCLUDED THAT CLAIMANT WAS ENTITLED TO AN ADDITIONAL 7.5 DEGREES GIVING CLAIMANT A TOTAL OF 22.5 DEGREES OF A MAXIMUM OF 150 DEGREES FOR PARTIAL LOSS OF THE RIGHT LEG.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS AND ADOPTS THE ORDER OF THE REFEREE AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED JULY 15, 1975 IS AFFIRMED.

WCB CASE NO. 75-286 DECEMBER 8, 1975

HENRY J. PAYNTER, CLAIMANT

DYE AND OLSON, CLAIMANT'S ATTYS.
JONES, LANG, KLEIN, WOLF AND SMITH,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH DIRECTED THE EMPLOYER TO ACCEPT CLAIMANT'S CLAIM AS A COMPENSABLE HEART ATTACK, PROVIDE CLAIMANT WITH THE BENEFITS TO WHICH HE IS ENTITLED BY LAW AND ASSESSED PENALTIES AND ATTORNEY FEES.

CLAIMANT WAS EMPLOYED AS A MEAT CUTTER, A PROFESSION WHICH HE HAD FOLLOWED SINCE 1937. HIS DUTIES, GENERALLY, WERE MEAT CUTTING AND SUPERVISING THE WRAPPING OF MEAT. HOWEVER, BETWEEN AUGUST 14 AND AUGUST 24, 1974, DURING HIS SUPERVISOR'S ABSENCE CLAIMANT HAD INCREASED DUTIES WHICH INCLUDED BUYING MEAT, ADJUSTING PRICES, TAKING CARE OF FREIGHT AND OTHER SUPERVISORY MATTERS WHICH HE DID NOT NORMALLY DO. DURING THAT PERIOD OF TIME CLAIMANT ALLEGES THAT HE FELT MORE TIRED AND EXPERIENCED SOME ANXIETY.

ON SEPTEMBER 4, 1974, CLAIMANT'S DAY OFF, HE SUFFERED A MYOCARDIAL INFARCTION FOR WHICH HE WAS HOSPITALIZED. CLAIMANT HAD NOT EXPERIENCED ANY SIMILAR SYMPTOMS PREVIOUSLY. CLAIMANT'S ACTIVITIES ON SEPTEMBER 4 DID NOT INVOLVE ANYTHING OF A STRENUOUS NATURE. HIS WORK ACTIVITIES FOR THE WEEK INCLUDING SEPTEMBER 4, 1974, INCLUDED WORKING FOUR HOURS ON SUNDAY, OFF WORK MONDAY (LABOR DAY), WORKING A REGULAR 8 HOUR SHIFT TUESDAY AND OFF WORK WEDNESDAY.

DR. BERVEN, AN INTERNIST, TREATED CLAIMANT FROM THE DATE OF THE HEART ATTACK. IT WAS HIS OPINION THAT THE INFARCTION OCCURRED ON SEPTEMBER 4 AND THAT IT WAS CAUSALLY RELATED TO CLAIMANT'S WORK. HE FELT THAT THE EVENTS WERE SET IN PROGRESS PRIOR TO THE DATE OF THE INFARCTION AND ALLUDED TO AN EPISODE OF SHORTNESS OF BREATH WHICH CLAIMANT EXPERIENCED WHILE STACKING GOODS IN THE FREEZER.

DR. WYSHAM, A CARDIOLOGIST, WAS OF THE OPINION THAT CLAIMANT'S MYOCARDIAL INFARCTION WAS NOT CAUSED, OR MATERIALLY CONTRIBUTED TO, BY HIS EMPLOYMENT. AS FAR AS THE FREEZER INCIDENT WAS CONCERNED DR. WYSHAM FELT THAT IT HAD OCCURRED BECAUSE OF UNUSUAL EXERTION, THAT THE RIGHT CORONARY ARTERY HAD BEEN NARROWED AND CLAIMANT HAD ANGINA FOR A BRIEF PERIOD. HIS OPINION WAS THAT THE PHYSICAL EMOTIONAL STRESS NECESSARY TO CAUSE AN INFARCT MUST OCCUR WITHIN A SHORT TIME, POSSIBLY AN HOUR TO TWO BEFORE THE INFARCTION.

THE REFEREE FOUND, BASED UPON DR. BERVEN'S REASONING AND CONCLUSIONS, THAT CLAIMANT HAD PROVEN A MEDICAL CAUSAL CONNECTION BETWEEN HIS WORK AND HIS HEART ATTACK. THE REFEREE FELT THAT DR. BERVEN HAD AN ADVANTAGE AS CLAIMANT'S TREATING PHYSICIAN. THIS INDUCED THE REFEREE TO GIVE GREATER WEIGHT TO HIS OPINION THAN THAT EXPRESSED BY DR. WYSHAM, ALTHOUGH THE LATTER MAY HAVE HAD GREATER EXPERTISE IN MATTERS INVOLVING CARDIOVASCULAR DISEASES.

THE BOARD, ON DE NOVO REVIEW DISAGREES WITH THE REFEREE. DR. WYSHAM HAD CONCLUDED THAT CLAIMANT HAD A PARTIALLY OCCLUDED RIGHT CORONARY ARTERY WHICH, ON THE DAY OF INFARCTION, COMPLETELY OCCLUDED BY EITHER A RUPTURE IN THE PLAQUE OR A CLOT FORMING IN THE PLAQUE OR SOME OTHER PROCESS WHICH CAUSED THE INFARCTION TO OCCUR. HE STATED THAT THIS IS THE USUAL PROGRESSION OF A CASE LIKE THE PRESENT ONE WHICH INVOLVES LONGSTANDING PREEXISTING DEVELOPMENT OF ARTERIOSCLEROTIC NARROWING. DR. WYSHAM FURTHER STATED THERE WAS NO REASON TO BELIEVE, MEDICALLY, THAT AN EPISODE OF ANGINA WOULD CAUSE CLOTS OR THROMBI TO OCCUR.

THE BOARD FINDS THAT THE EVIDENCE INDICATES THE EPISODE OF ANGINA WHICH OCCURRED WHILE CLAIMANT WAS STACKING GOODS IN THE FREEZER WAS ON AUGUST 22, 1974 AND THERE IS NO EVIDENCE INDICATING ANY SUBSEQUENT SIMILAR EPISODES BETWEEN THAT DATE AND SEPTEMBER 4, 1974, THE DATE OF THE MYOCARDIAL INFARCTION.

THE BOARD FURTHER FINDS THAT CLAIMANT WAS NOT AT WORK AT THE TIME HE SUFFERED THE HEART ATTACK AND THERE WAS NO EVIDENCE OF EMPLOYMENT WORK ACTIVITY IMMEDIATELY PRECEDING THE INFARCTION THAT CAUSED ANY PROBLEMS NOR THAT PRECIPITATED THE INFARCTION.

THE BOARD CONCLUDES THAT THE OPINION EXPRESSED BY DR. WYSHAM IS MORE PERSUASIVE EVEN THOUGH HE WAS NOT THE TREATING PHYSICIAN. DR. BERVEN'S OPINION WAS BASED ON SPECULATION THAT A THROMBUS HAD BEEN CREATED AT THE TIME OF THE ANGINA EPISODE, NEARLY TWO WEEKS PRIOR TO THE DATE OF THE INFARCTION, AND CAUSED TO PROGRESS UNTIL THE INFARCTION OCCURRED.

THE BOARD FURTHER CONCLUDES THAT CLAIMANT HAS FAILED TO PROVE EITHER LEGAL OR MEDICAL CAUSATION AND THAT THE CLAIM WAS PROPERLY DENIED.

ORDER

THE ORDER OF THE REFEREE DATED JULY 3, 1975 IS REVERSED.

WCB CASE NO. 74—2593 DECEMBER 8, 1975

THE BENEFICIARIES OF
ROBERT PALMER, DECEASED
ROBERT P. JOHNSON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY BENEFICIARIES

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT'S WIDOW REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH AFFIRMED THE STATE ACCIDENT INSURANCE FUND'S DENIAL OF THE CLAIM FILED BY HER FOR HER HUSBAND'S DEATH.

AT THE HEARING THERE WERE TWO ISSUES PRESENTED - (1) TIMELINESS OF NOTICE OF CLAIM, AND (2) COMPENSABILITY.

THE DECEASED WORKMAN SUFFERED A FATAL HEART ATTACK WHILE AT WORK ON JANUARY 21, 1974.

THE REFEREE FOUND NO EVIDENCE THAT, AT THE TIME OF, OR IMMEDIATELY PRECEDING, THE FATAL HEART ATTACK, CLAIMANT HAD BEEN UNDER ANY UNDUE STRESS, EXERTION OR INVOLVED IN ANY UNUSUAL WORK ACTIVITY. THE REFEREE CONCLUDED THAT CLAIMANT HAD FAILED TO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE EITHER LEGAL CAUSATION OR MEDICAL CAUSATION.

THE BOARD, ON DE NOVO REVIEW, FINDS NO EVIDENCE THAT CLAIMANT'S WORK ACTIVITY CAUSED HIS DEATH. THE EVIDENCE INDICATES THAT AT THE ACTUAL TIME OF DEATH CLAIMANT WAS NOT WORKING ALTHOUGH HE WAS ON THE JOB.

THE BOARD CONCURS IN THE REFEREE'S CONCLUSION THAT CLAIMANT FAILED TO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE EITHER LEGAL OR MEDICAL CAUSATION. THEREFORE, IT IS NOT NECESSARY TO COMMENT ON THE REFEREE'S FINDINGS WITH RESPECT TO THE ISSUE OF TIMELINESS OF FILING THE CLAIM NOR THE TIMELINESS OF REQUESTING A HEARING AFTER THE CLAIM HAD BEEN DENIED.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 22, 1975 IS AFFIRMED.

SAIF CLAIM NO. BB 100466 DECEMBER 8, 1975

GENEVIEVE E. REYNOLDS, CLAIMANT
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

CLAIMANT SUFFERED A COMPENSABLE INJURY ON DECEMBER 26, 1964 RESULTING IN IMPAIRMENT OF HER RIGHT WRIST. CLAIMANT HAS BEEN GRANTED DISABILITY AWARDS TOTALLING 100 PER CENT LOSS OF FUNCTION OF HER RIGHT FOREARM. HOWEVER, CLAIMANT DOES HAVE CHRONIC BRONCHITIS, BRONCHIAL ASTHMA AND CHRONIC OBSTRUCTIVE PULMONARY DISEASE WHICH, IN THE OPINION OF DR. HAMMOND, IS AGGRAVATED ON AN EMOTIONAL BASIS BY HER ANXIETY, PAIN AND DISABILITY ARISING FROM HER RIGHT HAND INJURY.

DR. NATHAN HAD ARRANGED FOR CLAIMANT TO BE EXAMINED BY DR. QUAN, A PORTLAND PSYCHIATRIST, HOWEVER, THE BOARD WAS NEVER ADVISED WHETHER DR. QUAN EXAMINED CLAIMANT OR, IF NOT, WHY NOT.

THE BOARD, AFTER REVIEWING THE MEDICAL EVIDENCE, CONCLUDES THAT CLAIMANT SHOULD BE EXAMINED AND EVALUATED AT THE DISABILITY PREVENTION DIVISION. ALSO A PSYCHIATRIC EXAMINATION AND EVALUATION FOR THE PURPOSE OF DETERMINING WHETHER CLAIMANT'S CHRONIC OBSTRUCTIVE PULMONARY DISEASE AND BRONCHIAL ASTHMA IS RELATED TO AND THE RESULT OF HER INDUSTRIAL INJURY SUFFERED ON DECEMBER 26, 1964 AND FOR WHICH SHE MIGHT BE ENTITLED TO AN AWARD FOR UNSCHEDULED DISABILITY.

THE BOARD CONCLUDES THAT THE STATE ACCIDENT INSURANCE FUND SHOULD MAKE ARRANGEMENTS FOR CLAIMANT TO BE EXAMINED AND EVALUATED AT THE DISABILITY PREVENTION DIVISION CENTER IN PORTLAND AND TO HAVE A PSYCHIATRIC EXAMINATION AND EVALUATION WHILE AT THE CENTER. THE FUND SHOULD PAY CLAIMANT'S ROUND TRIP TRANSPORTATION BETWEEN HER HOME IN MARYSVILLE, WASHINGTON AND PORTLAND AND ALSO PAY TEMPORARY TOTAL DISABILITY COMPENSATION TO CLAIMANT DURING THE PERIOD OF TIME SHE IS AT THE DPD CENTER.

SAIF CLAIM NO. B 141617 DECEMBER 9, 1975

LEO D. CARPENTER, CLAIMANT

CLARK, MARSH AND LINDAUER,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER OF REMAND

ON SEPTEMBER 22, 1975 THE BOARD ISSUED AN OWN MOTION ORDER DENYING CLAIMANT ANY ADDITIONAL AWARD FOR HIS PERMANENT DISABILITY BASED UPON INFORMATION THAT THE MYELOGRAM PERFORMED ON JUNE 6, 1975 FAILED TO DEMONSTRATE FINDINGS SIGNIFICANT ENOUGH TO WARRANT SURGERY AND THAT A RECENT EXAMINATION OF CLAIMANT INDICATED HIS PHYSICAL CONDITION WAS THE SAME AS IT WAS IN 1966 AND AGAIN IN 1972.

ON NOVEMBER 21, 1975, CLAIMANT AGAIN REQUESTED THE BOARD TO EXERCISE ITS OWN MOTION JURISDICTION UNDER THE PROVISIONS OF ORS 656.278 ON THE BASIS OF NEW MEDICAL EVIDENCE, I.E., DR. BUZA'S REPORT DATED NOVEMBER 17, 1975.

CLAIMANT SUSTAINED A COMPENSABLE INJURY ON AUGUST 3, 1975. HIS CLAIM WAS CLOSED WITH AN AWARD OF 72.5 DEGREES FOR 50 PER CENT LOSS OF AN ARM FOR UNSCHEDULED DISABILITY. CLAIMANT'S AGGRAVATION RIGHTS EXPIRED ON AUGUST 3, 1970.

THE BOARD FINDS THAT THE MEDICAL INFORMATION CONTAINED IN DR. BUZA'S REPORT OF NOVEMBER 17, 1975 IS SUFFICIENT TO ALLOW THE BOARD TO EXERCISE ITS OWN MOTION JURISDICTION. HOWEVER, THERE IS NOT SUFFICIENT EVIDENCE BEFORE THE BOARD TO ENABLE IT TO DETERMINE THE MERITS OF THE REQUEST TO REOPEN THE 1965 CLAIM.

THE MATTER IS, THEREFORE, REFERRED TO THE HEARINGS DIVISION WITH INSTRUCTIONS TO HOLD A HEARING AND TAKE EVIDENCE ON THE ISSUE OF CLAIMANT'S PRESENT CONDITION AND WHETHER IT IS RELATED TO HIS AUGUST 3, 1965 INDUSTRIAL 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 THIS ISSUE.

WCB CASE NO. 75—938 DECEMBER 9, 1975

MARY ANN MURCH, CLAIMANT

BROWN, BURT AND SWANSON,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH ORDERED IT TO ACCEPT CLAIMANT'S BACK CONDITION AS A COMPENSABLE CONDITION.

CLAIMANT WAS EMPLOYED ON OCTOBER 21, 1973 IN THE HOUSEKEEPING DEPARTMENT OF THE EMPLOYER, HER DUTIES WERE GENERAL CLEANUP OF APPROXIMATELY 21 ROOMS PER DAY AND REQUIRED SWEEPING, MOPPING AND SOME HEAVY LIFTING. DURING APRIL, 1974 CLAIMANT NOTICED AN ONSET OF PAIN AND DISCOMFORT IN HER LOW BACK AND NECK WHICH WAS INTERMITTENT IN NATURE. THE PAIN AND DISCOMFORT DID NOT BOTHER CLAIMANT AS LONG AS SHE WAS NOT ENGAGED IN HER HOUSEKEEPING ACTIVITIES.

ON JULY 20, 1974 CLAIMANT TERMINATED FROM HER JOB BECAUSE OF HER BACK CONDITION. ABOUT A WEEK LATER SHE CALLED THE OFFICE OF THE EMPLOYER AND REQUESTED A FORM FOR FILING A WORKMEN'S COMPENSATION CLAIM. NOTHING CAME OF THE CONVERSATION. TEN DAYS LATER CLAIMANT AGAIN CALLED AND MADE THE SAME REQUEST AND, THEREAFTER, WENT TO THE OFFICE, PERSONALLY, AND OBTAINED A FORM UPON WHICH TO FILE THE CLAIM. HOWEVER, SHE DID NOT COMPLETE THE FORM BECAUSE SHE WAS NOT SURE SHE HAD A VALID CLAIM. AT THAT TIME SHE HAD RECEIVED NO MEDICAL ADVICE. CLAIMANT WAS SEEN BY DR. CASEY ON JULY 28 AND, AGAIN, ON AUGUST 19, 1974. HE ADVISED HER THAT HER PAIN WAS, AT LEAST, PARTIALLY DUE TO THE TYPE OF WORK SHE WAS DOING AND ADVISED HER TO TRY A DIFFERENT JOB. CLAIMANT'S CONDITION DID NOT IMPROVE AND, ON JANUARY 31, 1975, SHE SUFFERED A 'FLAREUP' OF HER BACK CONDITION AND SOUGHT TREATMENT FROM A CHIROPRACTIC PHYSICIAN.

ON MARCH 19, 1975 A FORM 801 WAS FILED BY DORIS FAGG, EVIDENTLY AN EMPLOYEE OF THE EMPLOYER.

THE FUND DENIED THE CLAIM, CONTENDING THAT CLAIMANT'S INJURY SHOULD BE CLASSIFIED AS AN OCCUPATIONAL DISEASE RATHER THAN AN ACCIDENTAL INJURY BECAUSE THERE WAS NO SPECIFIC EVENT WHICH OCCURRED WHICH RESULTED IN CLAIMANT'S PRESENT BACK CONDITION.

THE REFEREE FOUND THAT CLAIMANT WAS A WOMAN OF SLIGHT BUILD WHO HAD NOT PERFORMED DUTIES REQUIRING EXTENSIVE SWEEPING, MOPPING OR HEAVY LIFTING PRIOR TO HER PRESENT EMPLOYMENT, THAT SHE HAD HAD NO PROBLEM REGARDING HER BACK PRIOR TO APRIL, 1974 AND THAT SHE HAD NO PROBLEM WITH HER BACK WHEN SHE WAS NOT WORKING. ALSO HER DOCTOR HAD ADVISED HER THAT THE PAIN WAS, AT LEAST, PARTIALLY DUE TO HER WORK AND SHE SHOULD TRY A DIFFERENT TYPE OF EMPLOYMENT.

THE REFEREE CONCLUDED THAT CLAIMANT HAD RECEIVED AN ACCIDENTAL INJURY, AS DEFINED BY ORS 656.002(7)(A), AND, BASED UPON THE EVIDENCE, THAT CLAIMANT'S WORK-CONNECTED ACTIVITIES WERE A MATERIAL CONTRIBUTING CAUSE OF CLAIMANT'S BACK AND NECK DIFFICULTIES AND THAT SHE SUFFERED A COMPENSABLE ACCIDENTAL INJURY ON JULY 20, 1974, THE DATE OF TERMINATION OF WORK, WHEN THE DISABILITY BECAME APPARENT.

THE FUND CONTENDS CLAIMANT IS BARRED FROM ASSERTING HER CLAIM BECAUSE SHE FAILED TO GIVE WRITTEN NOTICE WITHIN 30 DAYS AFTER THE ACCIDENT AS REQUIRED BY ORS 656.265(1). THE REFEREE CONCLUDED THAT THE FUND WAS PUT ON NOTICE THAT CLAIMANT WAS CLAIMING A WORK-CONNECTED DISABILITY BOTH BEFORE AND FOLLOWING CLAIMANT'S TERMINATION DATE BY THE TELEPHONE CONVERSATIONS SHE HAD HAD WITH THE EMPLOYER'S PERSONNEL. FURTHERMORE, THERE WAS NO SHOWING THAT THE FUND HAD BEEN PREJUDICED BY FAILURE TO RECEIVE WRITTEN NOTICE OF CLAIM.

THE REFEREE ALSO CONCLUDED THAT THE CLAIM WAS NOT BARRED UNDER ORS 656.265(4)(C) BECAUSE A REQUEST FOR HEARING REGARDING CLAIMANT'S BACK DISABILITY WAS FILED BY CLAIMANT'S COUNSEL AND A COPY SENT TO THE EMPLOYER WITHIN ONE YEAR AFTER HER JOB TERMINATION IN JULY 1974. THE REQUEST FOR HEARING CONSTITUTED A TIMELY FILED WRITTEN NOTICE OF A CLAIM.

WITH RESPECT TO THE ASSESSMENT OF PENALTIES AND ATTORNEY FEES, THE REFEREE FOUND THAT THE FUND DID NOT MISLEAD CLAIMANT NOR DID IT INTENTIONALLY PREVENT CLAIMANT FROM FILING A WRITTEN NOTICE OF CLAIM. IMMEDIATELY UPON RECEIPT OF THE WRITTEN NOTICE OF THE CLAIM THE FUND PROMPTLY DENIED, THEREFORE, HE CONCLUDED IT WOULD NOT BE PROPER TO ASSESS PENALTIES. HOWEVER, THE FUND WAS LIABLE FOR CLAIMANT'S ATTORNEY FEES BECAUSE ITS DENIAL WAS IMPROPER.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE. HOWEVER, IT FEELS IT IS NECESSARY TO CLARIFY THE CONCLUSION OF THE REFEREE THAT CLAIMANT SUFFERED A COMPENSABLE ACCIDENTAL INJURY ON JULY 20, 1974, THE DATE OF TERMINATION FROM WORK, WHEN THE DISABILITY BECAME APPARENT. THE REFEREE FOUND THAT THIS WAS AN ACCIDENTAL INJURY RATHER THAN AN OCCUPATIONAL DISEASE, THEREFORE, THE DATE OF TERMINATION FROM WORK APPLIES ONLY TO THE COMMENCEMENT OF THE PAYMENT OF TEMPORARY TOTAL DISABILITY COMPENSATION. THE ACCIDENTAL INJURY WHICH THE REFEREE FOUND TO BE COMPENSABLE WAS SUFFERED IN APRIL, 1974.

ORDER

THE ORDER OF THE REFEREE DATED JULY 9, 1975 IS AFFIRMED, AS CLARIFIED BY THIS ORDER.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE THE SUM OF 400 DOLLARS FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 74-3446 DECEMBER 11, 1975

RAMON BARNETT, CLAIMANT

JOEL B. REEDER, CLAIMANT'S ATTYS.
PHILIP MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER DATED APRIL 30, 1974 WHEREBY CLAIMANT WAS GRANTED 7.5 DEGREES FOR 5 PER CENT LOSS OF THE RIGHT HAND.

CLAIMANT, A 44 YEAR OLD TRUCK DRIVER, SUFFERED A SOFT TISSUE INJURY TO THE BACK OF HIS RIGHT HAND WHILE LOADING A TARPAULIN. X-RAYS INDICATED NO BONE INJURY AND CLAIMANT RETURNED TO WORK, HOWEVER, HE CONTINUED TO HAVE ACHES AND PAINS AND A SMALL AREA OF NUMBNESS IN THE RIGHT HAND.

ON MARCH 22, 1974 CLAIMANT WAS EXAMINED BY DR. PETERSON. THE EXAMINATION REVEALED A WELL HEALED SCAR, CLAIMANT HAD COMPLETE RANGE OF MOTION AND NO ATROPHY. ON NOVEMBER 25, 1974 CLAIMANT WAS EXAMINED BY DR. MC INTOSH. HIS FINDINGS WERE SUBSTANTIALLY THE SAME AS DR. PETERSON'S.

CLAIMANT IS ABLE TO HANDLE LARGE OBJECTS WELL BUT HAS DIFFICULTY GRIPPING AND HOLDING SMALL OBJECTS. HE LACKS THE CONFIDENCE IN HIS RIGHT HAND THAT HE HAD PRIOR TO THE INJURY ALTHOUGH THE CONDITION OF HIS HAND HAS BEEN NEARLY UNCHANGED OVER THE PAST TWO YEARS. CLAIMANT'S DOMINANT HAND IS HIS RIGHT HAND BUT, AT THE PRESENT TIME, HE CAN BUTTON HIS CLOTHES, TIE HIS SHOES AND OPERATE CERTAIN PIECES OF EQUIPMENT. HE HAS HAD DIFFICULTY BOWLING AND SHOOTING A PISTOL.

THE REFEREE HELD THAT THE RIGHT TO COMPENSATION FOR A SCHEDULED INJURY IS FIXED BY STATUTE WITHOUT REGARD TO OCCUPATION. THE SOLE FACTOR TO BE CONSIDERED IS LOSS OF PHYSICAL FUNCTION. THE FACT THAT CLAIMANT'S INJURY WAS TO HIS DOMINANT HAND IS NOT A BASIS FOR INCREASED COMPENSATION UNDER THE OREGON STATUTE. COMPENSATION FOR PAIN OR SUFFERING, IN AND OF THEMSELVES, CANNOT BE AWARDED, SUCH PAIN AND SUFFERING MUST BE DISABLING.

THE REFEREE CONCLUDED THAT THE MEDICAL EVIDENCE INDICATED A MINIMUM IMPAIRMENT AND THE PREPONDERANCE OF THE EVIDENCE DID NOT SUPPORT A FINDING THAT CLAIMANT HAD SUFFERED PERMANENT PARTIAL DISABILITY GREATER THAN THAT FOR WHICH HE HAD BEEN AWARDED.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE REFEREE.

ORDER

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

WCB CASE NO. 74-4383 DECEMBER 11, 1975

NORA GARNES, CLAIMANT

BUSS, LEICHNER, BARKER AND BUONO,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT WAS AWARDED 80 DEGREES FOR 25 PER CENT UNSCHEDULED LOW BACK DISABILITY BY A DETERMINATION ORDER MAILED MAY 10, 1974. SHE REQUESTED A REVIEW AND THE REFEREE, AFTER A HEARING, INCREASED THE AWARD TO 144 DEGREES EQUAL TO 45 PER CENT OF THE MAXIMUM ALLOWABLE BY STATUTE. CLAIMANT NOW SEEKS BOARD REVIEW OF THE REFEREE'S ORDER.

CLAIMANT, A 34 YEAR OLD NURSE'S AIDE, INJURED HER LOW BACK ON MARCH 5, 1971 WHILE LIFTING A TRAY. HER MEDICAL TREATMENT

INCLUDED A LAMINECTOMY AT L4-5, A SECOND LAMINECTOMY AT L5-S1, AND A SYMPATHECTOMY ON THE RIGHT SIDE TO RELIEVE PAIN IN HER RIGHT LEG AND BUTTOCK. ON MARCH 13, 1974 THE BACK EVALUATION CLINIC FOUND MILD LOSS OF FUNCTION DUE TO THE INJURY AND THE CLAIM WAS CLOSED WITH THE AWARD OF 25 PER CENT.

SINCE THE INJURY, CLAIMANT'S ONLY EMPLOYMENT WAS A BRIEF THREE MONTH PERIOD AS A TEMPORARY CLERK AT THE DISABILITY PREVENTION DIVISION. WHILE SO EMPLOYED SHE REINJURED HER BACK OPENING A FILE ON DECEMBER 5, 1974. THIS CLAIM WAS CLOSED ON MARCH 31, 1975 WITH SOME TIME LOSS COMPENSATION BUT NO AWARD OF PERMANENT PARTIAL DISABILITY. WHEN CLAIMANT RETURNED TO HER JOB, SHE INSISTED THAT TYPING AND FILING WAS TOO STRENUOUS FOR HER AND SHE WAS ASSIGNED TO SORTING AND DISTRIBUTING THE MAIL.

CLAIMANT HAD BEEN RECEIVING VOCATIONAL COUNSELING SINCE JULY 1974, HOWEVER, THE REFEREE FOUND THAT IT WAS QUITE EVIDENT THAT CLAIMANT HAD NO PRESENT VOCATIONAL PLANS OTHER THAN A VAGUE DESIRE TO BE A RECEPTIONIST, AND CONCLUDED THAT SHE HAD NO REAL INTEREST IN VOCATIONAL RETRAINING OR IN REEMPLOYMENT OF ANY NATURE. HE FELT THAT CLAIMANT DID NOT POSSESS ANY REAL MOTIVATION TO RETURN TO WORK. HOWEVER, HE ALSO FOUND THAT, AS A RESULT OF HER INJURY, CLAIMANT WAS NOT ABLE TO WORK AS A NURSE'S AIDE, AN OCCUPATION WHICH SHE HAD FOLLOWED FOR NEARLY SIX YEARS. BASED ON THE FINDING THAT SHE COULD NOT RETURN TO THIS JOB, WHICH WAS PRIMARILY CLAIMANT'S ONLY VOCATIONAL EXPERIENCE, CLAIMANT HAD SUSTAINED A SUBSTANTIAL LOSS OF WAGE EARNING CAPACITY, DESPITE HER LACK OF MOTIVATION. THE REFEREE, THEREFORE, INCREASED HER AWARD TO 144 DEGREES.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS AND ADOPTS THE ORDER OF THE REFEREE AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED MAY 6, 1975 IS AFFIRMED.

WCB CASE NO. 74-2129 DECEMBER 11, 1975

EUGENE DOUGHTY, CLAIMANT

MCMENAMIN, JOSEPH AND HERRELL,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

CLAIMANT REQUESTS THE BOARD TO REVIEW THE REFEREE'S ORDER WHICH GRANTED CLAIMANT AN AWARD OF 80 DEGREES FOR 25 PER CENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT, A 32 YEAR OLD LATHE OPERATOR, HAS HAD A CHRONIC LOW BACK PROBLEM FOR MANY YEARS. IT DID NOT BECOME DISABLING, HOWEVER, UNTIL HE SUFFERED AN INDUSTRIAL INJURY ON APRIL 9, 1973. HIS CLAIM WAS CLOSED WITH AN AWARD OF 16 DEGREES FOR 5 PER CENT UNSCHEDULED LOW BACK DISABILITY.

ON OCTOBER 5, 1973 CLAIMANT SUFFERED A SIMILAR INJURY WHICH REQUIRED PROLONGED TREATMENT AND WAS DIAGNOSED AS A CHRONIC STRAIN OF A SUFFICIENT DEGREE AND TO REQUIRE CLAIMANT TO AVOID

DOING THE HEAVY WORK HE HAD BEEN DOING IN PRIOR YEARS. THIS CLAIM WAS CLOSED ON JUNE 6, 1974 BY A DETERMINATION ORDER WHICH AWARDED CLAIMANT 48 DEGREES FOR 15 PER CENT UNSCHEDULED LOW BACK DISABILITY.

THE MEDICAL REPORTS DO NOT INDICATE ANY DISC PATHOLOGY. A RHIZOTOMY FAILED TO AFFORD ANY RELIEF TO CLAIMANT FROM THE SYMPTOMS WHICH, AT TIMES, HAVE BEEN ALMOST UNBEARABLE. THESE SYMPTOMS HAVE NOT BEEN VERIFIED OBJECTIVELY BUT THERE IS NO DOUBT THAT THE PAIN EXISTS ALMOST CONSTANTLY IN CLAIMANT'S LOW BACK AND AT DIFFERENT TIMES IN THE LEG.

CLAIMANT DOES NOT HAVE ANY PERMANENT PSYCHOLOGICAL DISABILITY, ACCORDING TO DR. HICKMAN, BUT HE IS HAVING PROBLEMS READJUSTING TO HIS PRESENT PREDICAMENT. HE HAS AVERAGE INTELLIGENCE AND GOOD MECHANICAL APTITUDE. HE HAS A TENTH GRADE EDUCATION AND TWO YEARS VOCATIONAL SCHOOLING AS A MACHINIST AND OBTAINED HIS GED IN 1974. CLAIMANT HAS BEEN APPROVED FOR VOCATIONAL REHABILITATION SERVICES AND HAS STARTED A SIX MONTHS COURSE OF STUDY IN ELECTRIC MOTOR REPAIR.

CLAIMANT WAS CONCERNED ABOUT HIS PRESENT CONDITION. HE DID NOT FEEL THAT HE WAS MEDICALLY STATIONARY AND FELT HIS CLAIM SHOULD BE REOPENED FOR FURTHER MEDICAL CARE AND TREATMENT AND PAYMENT OF TIME LOSS. HOWEVER, SHOULD THE REFEREE FIND THAT HIS CONDITION WAS MEDICALLY STATIONARY, HE BELIEVED THAT HE WAS ENTITLED TO A LARGER AWARD THAN HE HAD BEEN GRANTED FOR HIS PERMANENT PARTIAL DISABILITY.

THE REFEREE FOUND THAT CLAIMANT'S MOTIVATION TO WORK WAS GOOD PRIOR TO HIS INJURY IN OCTOBER 1973. THEREAFTER, IT HAS BEEN SOMEWHAT RETARDED BECAUSE CLAIMANT IS MORE CONCERNED ABOUT RELIEVING HIS BACK PROBLEM THAN ANYTHING ELSE AND HAS GROWN SOMEWHAT RESTLESS AND TENSE. HOWEVER, THE REFEREE FELT THAT CLAIMANT WAS WELL QUALIFIED FOR THE ELECTRICAL MOTOR REPAIR COURSE.

THE REFEREE CONCLUDED THAT THE MEDICAL EVIDENCE DID NOT SUPPORT CLAIMANT'S CLAIM FOR REOPENING AT THE PRESENT TIME BUT THAT HE WAS ENTITLED TO A GREATER AWARD FOR HIS PERMANENT PARTIAL DISABILITY. HE, THEREFORE, INCREASED THE AWARD TO 80 DEGREES REPRESENTING 25 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED LOW BACK DISABILITY.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS THE FINDINGS AND CONCLUSIONS CONTAINED IN THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE DATED MAY 20, 1975 IS AFFIRMED.

LONNIE BAKER, CLAIMANT

MYRICK, COULTER, SEAGRAVES AND NEALY,
CLAIMANT'S ATTYS.
JONES, LANG, KLEIN, WOLF AND SMITH,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTED REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT 128 DEGREES FOR 40 PER CENT PERMANENT PARTIAL UNSCHEDULED DISABILITY.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON JANUARY 21, 1974, WHILE WORKING AS A PLANER CHAIN PULLER HE SLIPPED AND FELL BACKWARD AGAINST A STEEL BEAM STRIKING THE AREA BETWEEN THE SPINAL COLUMN AND THE RIGHT CLAVICLE. CLAIMANT TESTIFIED THERE WAS ALSO SOME IMPACT TO HIS LOW BACK, HOWEVER, THIS WAS NOT REPORTED TO HIS FOREMAN.

DR. RENAUD, AN ORTHOPEDIC SURGEON, EXAMINED CLAIMANT ON JANUARY 25, 1974. HE FOUND CONTUSION OF THE RIGHT SHOULDER WITH RADIATION TO THE RIGHT UPPER EXTREMITY AND FOUND SPONDYLOLYSIS WITH RESULTANT SPONDYLOLISTHESIS AT L5 ON S1. HE TOLD CLAIMANT TO REMAIN OFF WORK FOR A WEEK. ULTIMATELY CLAIMANT WAS HOSPITALIZED FOR BED REST AND PELVIC TRACTION.

ON FEBRUARY 14, DR. RENAUD FOUND THE SHOULDER INJURY ASYMPTOMATIC, HOWEVER, CLAIMANT CONTINUED TO COMPLAIN OF PAIN IN HIS LUMBOSACRAL AREA. ON MAY 6, DR. RENAUD STATED THAT CLAIMANT PROBABLY WOULD NOT BE ABLE TO RETURN TO HEAVY DUTY LABOR IN THE LUMBER INDUSTRY BASING HIS OPINION ON THE EXISTENCE OF SPONDYLOLYSIS AND THE SPONDYLOLISTHESIS, A CONDITION WHICH LIKELY PREEXISTED HIS INJURY.

ON JUNE 21, 1974 DR. RENAUD FOUND NO LOSS OF RANGE OF MOTION OR OTHER PHYSICAL OR NEUROLOGICAL DEFICIT AND RECOMMENDED CLAIM CLOSURE NOTING THAT THERE WERE CONTINUING SYMPTOMS SECONDARY TO THE SPONDYLOLYSIS AND THE SPONDYLOLISTHESIS WHICH HAD WORSENED SINCE THE INJURY. THE CLAIM WAS CLOSED WITH NO AWARD OF PERMANENT DISABILITY.

CLAIMANT HAS A 12TH GRADE EDUCATION AND ALTHOUGH HE DID NOT GRADUATE FROM HIGH SCHOOL, HE HAS A GED. HIS WORK BACKGROUND IS SUBSTANTIALLY LIMITED TO HEAVY PHYSICAL LABOR AND WAS SOMEWHAT INTERMITTENT IN NATURE.

CLAIMANT HAS BEEN UNEMPLOYED SINCE HIS INDUSTRIAL INJURY, LIVING ON UNEMPLOYMENT COMPENSATION AND PUBLIC ASSISTANCE. HE SAYS HE HAS MADE MANY APPLICATIONS FOR EMPLOYMENT WITHOUT SUCCESS AND IS WILLING TO ATTEMPT ANY KIND OF A JOB TO TEST HIS PHYSICAL CAPACITY DESPITE THE LIMITATIONS PLACED UPON HIM BY HIS DOCTOR. CLAIMANT FORMERLY PLAYED BASKETBALL AND SOFTBALL. AT THE PRESENT TIME HE STILL PLAYS BASKETBALL AND SOFTBALL BUT NO MORE THAN 15 OR 20 MINUTES AT A TIME AND HE FEELS POORLY COORDINATED.

THE EMPLOYER ATTEMPTED TO IMPEACH CLAIMANT'S CREDIBILITY, HOWEVER, THE REFEREE WAS NOT PERSUADED BY THE EVIDENCE OFFERED ON THAT POINT. THE REFEREE FOUND THAT ALTHOUGH MUCH OF THE

MEDICAL RECORD RELATED TO SUBJECTIVE COMPLAINTS, DR. RENAUD CLEARLY BELIEVED THAT THE DEMONSTRABLE SPONDYLOLYSIS AND THE SPONDYLOLISTHESIS WERE CONDITIONS WHICH UPON EXACERBATION COULD RESULT IN THE TYPE OF SYMPTOMS WHICH CLAIMANT HAS CLAIMED. HE CONCLUDED THAT THE INDUSTRIAL INJURY MADE SYMPTOMATIC A PRE-EXISTING PATHOLOGY AND PERMANENTLY EXCLUDED CLAIMANT FROM RETURNING TO THE CHARACTER OF WORK IN WHICH HE HAD PREVIOUSLY BEEN ENGAGED.

THE REFEREE FURTHER CONCLUDED THAT CLAIMANT APPEARED CAPABLE OF RECEIVING SUBSTANTIAL HELP IN THE FORM OF VOCATIONAL REHABILITATION. TAKING THIS INTO CONSIDERATION, ALONG WITH THE FAVORABLE ASPECTS OF YOUTH, EDUCATION AND INTELLIGENCE, THE REFEREE NEVERTHELESS CONCLUDED THAT CLAIMANT HAD SUSTAINED A SUBSTANTIAL LOSS OF WAGE EARNING CAPACITY AND AWARDED HIM 40 PER CENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR HIS UNSCHEDULED DISABILITY.

THE BOARD, ON DE NOVO REVIEW, IS NOT PERSUADED BY THE EVIDENCE THAT CLAIMANT'S PREEXISTING LOW BACK PROBLEMS WERE EXACERBATED BY THE INDUSTRIAL INJURY WHICH AFFECTED ONLY HIS UPPER BACK. THE CLAIMANT APPARENTLY IS ABLE TO PLAY BASKETBALL AND SOFTBALL FOR SHORT PERIODS OF TIME AND YET HE DOES NOT SEEM TO BE ABLE TO DO ANY WORK. THE REFEREE FELT CLAIMANT HAD A LEVEL OF EDUCATION ADEQUATE FOR MANY OCCUPATIONS AND THAT SOME FORM OF VOCATIONAL REHABILITATION WOULD BE WITHIN HIS PHYSICAL COMPETENCE BUT CONCLUDED THAT CLAIMANT HAD SUSTAINED A SUBSTANTIAL LOSS OF WAGE EARNING CAPACITY.

THE BOARD CONCLUDES THAT CLAIMANT HAS SUFFERED SOME LOSS OF WAGE EARNING CAPACITY. IT IS OBVIOUS THAT HE CANNOT RETURN TO THE TYPE OF WORK FOR WHICH HE HAS HAD EXPERIENCE AND IS QUALIFIED. THE BOARD BELIEVES, AS DID THE REFEREE, THAT CLAIMANT IS YOUNG ENOUGH AND INTELLIGENT ENOUGH TO BE VOCATIONALLY REHABILITATED AND THE BOARD IS NOT CONVINCED THAT CLAIMANT HAS MADE A BONA FIDE ATTEMPT TO FIND WORK WHICH HE COULD DO, NOR HAS HE TAKEN ADVANTAGE OF THE VOCATIONAL REHABILITATION PROGRAMS WHICH WERE SUGGESTED TO HIM. CLAIMANT MERELY STATED THAT HE WAS NOT PHYSICALLY ABLE TO EITHER WORK OR ATTEND SCHOOL. THE BOARD FEELS THAT THE MEASURE OF CLAIMANT'S LOSS OF EARNING CAPACITY IS 20 PER CENT RATHER THAN 40 PER CENT OF THE MAXIMUM.

ORDER

THE ORDER OF THE REFEREE DATED JULY 2, 1975 IS MODIFIED TO THE EXTENT THAT CLAIMANT IS AWARDED 64 DEGREES EQUAL TO 20 PER CENT PERMANENT PARTIAL UNSCHEDULED DISABILITY. THIS IS IN LIEU OF THE AWARD GRANTED CLAIMANT BY THE REFEREE'S OPINION AND ORDER. IN ALL OTHER RESPECTS THE REFEREE'S ORDER IS AFFIRMED.

SAIF CLAIM NO. B 159361 DECEMBER 9, 1975

EUGENE R. SEITZ, CLAIMANT

DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER OF REMAND

CLAIMANT SUSTAINED A COMPENSABLE INDUSTRIAL INJURY TO HIS BACK ON NOVEMBER 6, 1965. HIS CLAIM WAS CLOSED JULY 21, 1966 WITH AN AWARD OF 40 DEGREES FOR 25 PER CENT LOSS OF AN ARM FOR UNSCHEDULED DISABILITY.

ON NOVEMBER 28, 1975 THE CLAIMANT REQUESTED THE BOARD TO EXERCISE ITS OWN MOTION JURISDICTION UNDER THE PROVISIONS OF ORS 656.278 AND REOPEN HIS CLAIM, ALLEGING THAT HIS PRESENT CONDITION IS THE DIRECT RESULT OF HIS 1965 INJURY.

THE BOARD DOES NOT HAVE SUFFICIENT EVIDENCE, MEDICAL OR LAY, UPON WHICH TO MAKE A DETERMINATION WITH RESPECT TO THE MERITS OF CLAIMANT'S REQUEST TO REOPEN HIS CLAIM. THEREFORE, THE MATTER IS REMANDED TO THE HEARINGS DIVISION FOR THE TAKING OF SUCH EVIDENCE. UPON CONCLUSION OF THE HEARING, THE REFEREE SHALL HAVE A TRANSCRIPT OF THE PROCEEDINGS PREPARED AND FORWARDED TO THE BOARD TOGETHER WITH HIS RECOMMENDATIONS.

WCB CASE NO. 74-3002 DECEMBER 9, 1975

ELDON R. DRIESEL, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTED REVIEW OF THE REFEREE'S ORDER WHICH REMANDED TO IT CLAIMANT'S CLAIM TO BE ACCEPTED FOR PAYMENT OF COMPENSATION AS PROVIDED BY LAW.

CLAIMANT WAS EMPLOYED AS A FOREMAN FOR A BRICKMASON CONTRACTOR, HE WAS APPROXIMATELY 40 YEARS OLD AT THE TIME AND THIS WAS HIS FIRST IMPORTANT JOB INVOLVING HEAVY PRESSURE AND RESPONSIBILITIES. ON SEPTEMBER 20, 1973, AFTER CLAIMANT HAD HAD TO WORK SUCCESSIVE OVERTIME ON THE 19TH AND 20TH WITHOUT ANY SLEEP ON THE EVENING OF THE 19TH, HE COMPLAINED OF CHEST PAINS, SHORTNESS OF BREATH AND GENERAL WEAKNESS. HE TOLD PEOPLE AT THAT TIME THAT HE WAS NOT FEELING WELL. HE APPEARED PALE. HE DID NOT RETURN TO WORK UNTIL OCTOBER 1. HE WORKED UNTIL OCTOBER 23, WHEN HE HAD HIS SECOND ATTACK OF CHEST PAIN. CLAIMANT HAS NOT WORKED SINCE THAT DATE ALTHOUGH HE HAS RECOVERED TO A CERTAIN DEGREE.

THE STRESS ELECTROCARDIOGRAPHY TAKEN ON OCTOBER 27, 1973 SHOWED NO ISCHEMIA, HOWEVER DR. BANGS RECOMMENDED A CORONARY ANGIOGRAPHY.

DR. STEELE EXAMINED CLAIMANT IN JANUARY, 1974 AND CONCLUDED THAT HE WAS A CANDIDATE FOR AN ACUTE CORONARY OCCLUSION ON ANY EFFORT AND SHOULD BE KEPT UNDER CONSTANT OBSERVATION FOR CORONARY ARTERY DISEASE.

CLAIMANT'S CLAIM WAS DENIED BY THE FUND ON JULY 30, 1974.

CLAIMANT APPLIED FOR BENEFITS UNDER THE MASONARY WELFARE TRUST FUND. DR. CRISLIP, WHO HAD SEEN CLAIMANT DURING NOVEMBER 1973 AND FELT POSSIBLY THAT CLAIMANT HAD ANGINA PECTORIS, STATED ON THE APPLICATION THE NATURE OF CLAIMANT'S SICKNESS WAS POSSIBLY ARTERIOSCLEROTIC HEART DISEASE WITH ANGINA WHICH DID NOT ARISE OUT OF CLAIMANT'S EMPLOYMENT. DR. STEELE, HOWEVER, WAS OF THE OPINION THAT THE CLAIMANT'S WORK STRESS, ALTHOUGH NOT CAUSING THE CORONARY ARTERY DISEASE, VERY LIKELY PRECIPITATED IT. THIS OPINION WAS ALSO EXPRESSED BY DR. NORRIS WHO EXAMINED CLAIMANT IN DECEMBER 1974.

DR. GRISWOLD FELT DURING MARCH 1975 THAT CLAIMANT'S INABILITY TO WORK MIGHT BE RELATED TO IATROGENIC (PHYSICIAN-INDUCED) HEART DISEASE AND RECOMMENDED A CORONARY ARTERIOGRAM. HE ADMITTED THAT CLAIMANT'S CORONARY ARTERY DISEASE HAD BECOME SUFFICIENTLY SERIOUS TO RESULT IN CARDIAC PAIN ON EFFORT.

THE REFEREE FOUND THAT WHILE THERE WAS A DIVERSITY OF MEDICAL OPINION, THE PREPONDERANCE OF THE MEDICAL EVIDENCE WAS THAT CLAIMANT'S JOB HAD AFFECTED HIS HEART CONDITION AND, THEREFORE, HE HAD SUFFERED A COMPENSABLE INJURY.

WITH RESPECT TO THE FUND'S CONTENTION THAT CLAIMANT WAS UNTIMELY IN FILING HIS CLAIM, THE REFEREE FOUND THAT THE EMPLOYER WAS NOT PREJUDICED BY THE DELAY IN REPORTING THE ACCIDENT, THAT IT WAS UNREBUTTED THAT THE EMPLOYER PERSONALLY KNEW OF THE INJURY.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS REACHED BY THE REFEREE.

ORDER

THE ORDER OF THE REFEREE DATED MAY 13, 1975 IS AFFIRMED.

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

WCB CASE NO. 74-4460 DECEMBER 11, 1975

WALTER BOZARTH, CLAIMANT

COREY, BYLER AND REW,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH REMANDED TO IT CLAIMANT'S CLAIM FOR LEFT SHOULDER INJURY.

ON SEPTEMBER 17, 1974 CLAIMANT, WITH THE HELP OF A CO-WORKER, WAS LOADING SOME ANGLE IRON ON A FLATBED TRUCK. HE FELT PAIN IN HIS LEFT SHOULDER AND HE REPORTED THE OCCURRENCE TO THE SHOP FOREMAN. WHEN HE WENT HOME AT THE CONCLUSION OF HIS SHIFT HE TOLD HIS WIFE HE HAD HURT HIMSELF AND WAS STILL HURTING. CLAIMANT CALLED DR. MOOR, WHO HAD TREATED CLAIMANT PREVIOUSLY FOR AN INJURY TO HIS RIGHT SHOULDER, AND AFTER AN EXAMINATION BY DR. MOOR, WAS TOLD TO FILL OUT AN ACCIDENT REPORT. CLAIMANT HAS NOT RETURNED TO WORK.

DR. MOOR WAS OF THE OPINION THAT CLAIMANT WAS SUFFERING FROM EITHER BICIPITAL OR SUPRASPINATUS TENDINITIS WHICH COULD POSSIBLY HAVE RESULTED FROM THE INJURY OR THAT HE HAD SUFFERED A PARTIAL ROTATOR CUFF TEAR. DR. MOOR FELT THAT THE TENDINITIS COULD BE CAUSED BY ONE INCIDENT OF TRAUMA BUT IT WAS NOT PROBABLE. HOWEVER, THE TEAR COULD BE CAUSED BY A SINGLE INJURY. DR. MOOR THOUGHT IT VERY LIKELY THAT CLAIMANT HAD SUCH A TEAR ALTHOUGH THE ARTHROGRAM WAS NEGATIVE BECAUSE INCOMPLETE TEARS OFTEN GIVE NEGATIVE ARTHROGRAMS. DR. MOOR RECOMMENDED EXPLORATORY SURGERY.

THE REFEREE FOUND SOME QUESTION AS TO CLAIMANT'S CREDIBILITY BUT IT WENT TO THE ISSUE OF THE EXTENT OF DISABILITY RATHER THAN COMPENSABILITY. BASED UPON THE TESTIMONY OF CLAIMANT, CLAIMANT'S WIFE AND CLAIMANT'S CO-WORKER, WHO TESTIFIED THAT CLAIMANT SAID SOMETHING TO HIM ABOUT STRAINING HIS SHOULDER AT THE TIME OF THE INCIDENT, THE REFEREE FOUND THAT THE PREPONDERANCE OF EVIDENCE WAS FAVORABLE TO CLAIMANT. THE REFEREE CONCLUDED THAT THE SUDDEN LIFTING OF AN ANGLE IRON WEIGHING APPROXIMATELY 100 POUNDS WITH THE IMMEDIATE COMPLAINT OF PAIN MADE DR. MOOR'S DIAGNOSIS PLAUSIBLE AND SUPPORTED HIS CONCLUSION THAT IT WAS JOB RELATED.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE FINDINGS AND CONCLUSIONS REACHED BY THE REFEREE IN HIS ORDER.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 4, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW, THE SUM OF 300 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 74-1713 DECEMBER 11, 1975

MICHAEL P. HOFFMAN, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT HAD RECEIVED 7.5 DEGREES FOR 5 PER CENT LOSS OF HIS RIGHT LEG BY A DETERMINATION ORDER MAILED APRIL 16, 1974. CLAIMANT HAD ALSO FILED A CLAIM FOR INJURY TO HIS LEFT KNEE WHICH HAD BEEN DENIED ON JULY 15, 1974. HE REQUESTED A HEARING ON BOTH THE DETERMINATION ORDER AND THE DENIAL.

THE REFEREE, AFTER A HEARING, ENTERED AN ORDER APPROVING THE DENIAL OF CLAIMANT'S CLAIM FOR LEFT KNEE DISABILITY AND AWARDING CLAIMANT 22.5 DEGREES FOR 15 PER CENT LOSS OF HIS RIGHT LEG. THE CLAIMANT REQUESTS BOARD REVIEW OF THIS ORDER.

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS RIGHT LEG ON JULY 30, 1973 WHEN HE JUMPED INTO A PIT AND STRUCK HIS RIGHT KNEE. HE WAS SEEN BY DR. ROCKEY ON AUGUST 3, 1973 WHO DIAGNOSED HYPER-EXTENSION SPRAIN OF THE RIGHT KNEE. NO FRACTURE OR OTHER PATHOLOGY WAS NOTED. ON AUGUST 9, 1973 CLAIMANT RE-INJURED THE RIGHT KNEE, ULTIMATELY A RIGHT MEDIAL MENISCECTOMY WAS PERFORMED.

ON FEBRUARY 4, 1974 DR. ROCKEY MADE A CLOSING EVALUATION WHICH INDICATED THAT CLAIMANT'S RIGHT KNEE DISABILITY WAS 'MINIMAL' AND THAT THE LEFT KNEE HAD FULL RANGE OF MOTION AND THERE WAS NO OBSERVABLE PROBLEMS WITH RESPECT THERETO.

THE CLAIMANT WAS EXAMINED ON MARCH 21, 1974 BY DR. HARWOOD WHOSE FINDINGS WERE MUCH THE SAME AS THOSE OF DR. ROCKEY'S. THE CLAIM WAS THEN CLOSED WITH AN AWARD OF 5 PER CENT LOSS OF THE RIGHT LEG.

ON JULY 17, 1974, AFTER THE CLAIM HAD BEEN CLOSED, CLAIMANT WAS EXAMINED BY DR. SHORT WHO NOTED SOME SWELLING IN THE CLAIMANT'S LEFT KNEE BUT WAS UNABLE TO SAY WITH ANY MEDICAL CERTAINTY WHAT THE DIAGNOSIS COULD BE. HE CONCLUDED THAT THE LEFT KNEE HAD SOME PREEXISTING CONDITION WHICH HAD BEEN AGGRAVATED BY INACTIVITY RESULTING FROM THE RIGHT KNEE SURGERY FOLLOWED BY THE INCREASED WORK PLACED ON THE KNEE WHILE CONVALESCING FROM SAID SURGERY.

THE REFEREE FOUND THAT NOT ONLY WAS DR. SHORT NOT A TREATING PHYSICIAN BUT THAT HIS CONCLUSIONS WERE BASED, IN PART, ON A HISTORY RELATED TO HIM BY THE CLAIMANT WHOM HE FOUND TO BE NOT TOO CREDIBLE.

THE REFEREE CONCLUDED, BASED ON THE MEDICAL OPINIONS EXPRESSED BY DR. ROCKEY AND DR. HARWOOD, THAT CLAIMANT HAD FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HIS LEFT KNEE INJURY AROSE OUT OF HIS WORK ACTIVITIES OR WAS CAUSED BY HIS WORK ACTIVITIES.

WITH RESPECT TO CLAIMANT'S RIGHT KNEE DISABILITY, THE REFEREE FOUND THAT CLAIMANT HAD SOME LIMITATION WITH RESPECT TO HIS ABILITY TO BEND, STOOP OR KNEEL, THAT IT WAS DIFFICULT FOR HIM TO WALK ON UNEVEN GROUND, RUN, CLIMB OR SCALE LADDERS AND THAT THE WEIGHT BEARING FUNCTION OF HIS RIGHT KNEE HAD BEEN WEAKENED. CONSIDERING THE MEDICAL EVIDENCE, THE REFEREE CONCLUDED THAT THE DISABILITY WAS NOT SUBSTANTIAL BUT, BASED UPON LOSS OF FUNCTION, THAT IT WAS GREATER THAN THE 5 PER CENT HE HAD BEEN AWARDED.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS AND ADOPTS THE FINDINGS AND CONCLUSIONS OF THE REFEREE'S OPINION AND ORDER.

ORDER

THE ORDER OF THE REFEREE DATED JULY 14, 1975 IS AFFIRMED.

WCB CASE NO. 75-638 DECEMBER 11, 1975

STAVROS KARAKASSIS, CLAIMANT

AND IN THE MATTER OF THE COMPLYING STATUS
OF GARY L. LUCAS
PETERSON, SUSAK AND PETERSON,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTYS.
R FOR R BY N-C EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE NONCOMPLYING EMPLOYER REQUESTS REVIEW OF THE REFEREE'S ORDER WHICH HELD THAT CLAIMANT WAS A SUBJECT EMPLOYEE AND REMANDED CLAIMANT'S CLAIM TO THE COMPLIANCE DIVISION OF THE BOARD FOR SUBMISSION TO THE STATE ACCIDENT INSURANCE FUND FOR ACTION PURSUANT TO ORS 656.054.

AT THE HEARING IT WAS STIPULATED THAT THE EMPLOYER WAS A SUBJECT EMPLOYER WHO WAS NONCOMPLYING AT THE TIME OF THE INCIDENT AND THE INCIDENT, IF IT HAD HAPPENED TO A COVERED EMPLOYEE, WOULD HAVE BEEN ONE WHICH WOULD HAVE BEEN ACCEPTED AND COVERED. THE SOLE ISSUE BEFORE THE REFEREE WAS WHETHER CLAIMANT WAS AN EMPLOYEE OR AN INDEPENDENT CONTRACTOR.

THE EVIDENCE INDICATES THAT CLAIMANT SUFFERED AN INJURY ON NOVEMBER 18, 1974 WHILE WORKING IN THE PAINT DEPARTMENT OF THE

EMPLOYER. CLAIMANT WAS TO GET 50 PER CENT OF THE LABOR AMOUNT BILLED TO THE CUSTOMER ON ANY CAR THAT CLAIMANT AGREED INITIALLY TO REPAIR. IF THE EMPLOYER TOOK A CAR IN FOR LESS THAN CLAIMANT THOUGHT IT COULD BE DONE THE EMPLOYER WOULD REPAIR THE CAR BUT IF THEY AGREED ON THE FIGURE THE CLAIMANT WOULD GET THE CAR AS HIS JOB. THE BILLING, HOWEVER WAS TO BE DONE BY THE EMPLOYER.

CLAIMANT KEPT RATHER IRREGULAR WORKING HOURS, HOWEVER, HE TESTIFIED THAT THE EMPLOYER SAID HE WOULD BE FIRED IF HE DID NOT KEEP MORE REGULAR HOURS. THE TOOLS WERE PROVIDED BY THE EMPLOYER AND ALL THE VEHICLES WHICH WERE TO BE REPAIRED WERE OBTAINED BY HIM.

THE EMPLOYER TESTIFIED HE CONTACTED THE BOARD CONCERNING WHETHER HE SHOULD CARRY WORKMEN'S COMPENSATION COVERAGE ON CLAIMANT AND THAT AS A RESULT OF SAID CONVERSATION HE FELT THERE WAS NO NEED TO OBTAIN SUCH COVERAGE. HE CONTENDS THAT AT ALL TIMES CLAIMANT WAS AN INDEPENDENT CONTRACTOR.

THE REFEREE FOUND THAT THE PREPONDERANCE OF THE EVIDENCE INDICATED THAT THE EMPLOYER HAD THE RIGHT OF CONTROL OVER CLAIMANT AND HE CONCLUDED, THEREFORE, THAT CLAIMANT WAS A SUBJECT EMPLOYEE OF THE EMPLOYER AT THE TIME OF THE NOVEMBER 18, 1974 ACCIDENT.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE CONCLUSIONS OF THE REFEREE. THE BOARD TAKES NOTICE OF THE RULING IN BOWSER V. SIAC (UNDERSCORED), 182 OR 42 WHICH ESTABLISHES THE CRITERIA FOR DETERMINING INDEPENDENT CONTRACTOR STATUS AS OPPOSED TO EMPLOYEE-EMPLOYER RELATIONSHIP. IN THE INSTANT CASE ALL OF THE FACTS DEVELOPED AT THE HEARING SATISFY EACH AND EVERY REQUIREMENT SET FORTH IN BOWSER (UNDERSCORED).

ORDER

THE ORDER OF THE REFEREE DATED JULY 8, 1975 AS CORRECTED BY AN ORDER DATED JULY 15, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE IN CONNECTION WITH HIS SERVICES AT THIS BOARD REVIEW, THE SUM OF 250 DOLLARS TO BE PAID BY THE STATE ACCIDENT INSURANCE FUND WHICH SHALL BE REIMBURSED BY THE WORKMEN'S COMPENSATION BOARD UNDER ORS 656.054.

WCB CASE NO. 71-82 DECEMBER 11, 1975

THE BENEFICIARIES OF
LOREN A. SKIRVIN, DECEASED
HAROLD W. ADAMS, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER FILING FINDINGS OF MEDICAL
BOARD OF REVIEW

THE ABOVE ENTITLED MATTER WAS HERETOFORE THE SUBJECT OF A HEARING INVOLVING A CLAIM FOR BENEFITS BY THE DECEDENT'S PERSONAL REPRESENTATIVE AND BENEFICIARY. THE PERSONAL REPRESENTATIVE AND BENEFICIARY CONTEND THAT THE DECEDENT WAS ENTITLED TO ADDITIONAL BENEFITS DURING HIS LIFETIME AND THAT THE DEATH OF THE DECEDENT EITHER AROSE OUT OF AND IN THE SCOPE OF HIS EMPLOYMENT AS A FIREMAN FOR THE CITY OF EUGENE, OREGON OR THAT HIS DEATH OCCURRED

WHILE HE WAS PERMANENTLY AND TOTALLY DISABLED FROM A JOB RELATED CONDITION.

ON JUNE 22, 1972, AN ORDER OF A HEARING OFFICER WAS ENTERED FINDING AGAINST THE PERSONAL REPRESENTATIVE AND BENEFICIARY.

THE ORDER OF THE HEARING OFFICER WAS REJECTED BY THE PERSONAL REPRESENTATIVE AND BENEFICIARY AND A MEDICAL BOARD OF REVIEW WAS CONVENED TO CONSIDER THE APPEAL.

ON SEPTEMBER 22, 1975, A MEDICAL BOARD OF REVIEW WAS APPOINTED CONSISTING OF DR. JAMES HAMPTOM, DR. JOSEPH A. CALLAN AND DR. JOHN E. TUHY.

THE FINDINGS AND REPORT OF THE MEDICAL BOARD OF REVIEW HAVE NOW BEEN RECEIVED AND ARE ATTACHED HERETO AS EXHIBIT 'A'. THE FINDINGS IN EFFECT, AFFIRM THE HEARING OFFICER'S DECISION THAT THE DECEDENT'S PERSONAL REPRESENTATIVE AND BENEFICIARY ARE NOT ENTITLED TO FURTHER COMPENSATION.

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

WCB CASE NO. 74-2644 DECEMBER 11, 1975
WCB CASE NO. 74-2812

EUGENE WILLIAMS, CLAIMANT

BROWN, BURT AND SWANSON,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND ASKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH HELD THAT THE INCIDENT OF DECEMBER 27, 1973 CONSTITUTED AN AGGRAVATION OF CLAIMANT'S 1970 INJURY, ORDERED SAIF TO PAY FOR MEDICAL TREATMENT AND TIME LOSS SUSTAINED BY CLAIMANT SUBSEQUENT TO DECEMBER 21, 1973 AND TO REPAY TO LIBERTY MUTUAL INSURANCE COMPANY ALL SUMS ADVANCED TO IT TO CLAIMANT BY VIRTUE OF THE ORDER DESIGNATING IT AS THE PAYING AGENT ISSUED BY THE BOARD ON JULY 24, 1974.

ON JULY 14, 1970 CLAIMANT SUSTAINED A LOW BACK INJURY WHILE EMPLOYED AT FORT HILL LUMBER COMPANY, WHOSE WORKMEN'S COMPENSATION COVERAGE WAS FURNISHED BY THE STATE ACCIDENT INSURANCE FUND. THIS CLAIM WAS CLOSED ON AUGUST 24, 1970 WITH NO AWARD OF PERMANENT PARTIAL DISABILITY. ON MAY 5, 1972 CLAIMANT QUIT FORT HILL AND, SOON THEREAFTER, COMMENCED WORKING FOR BURKLAND LUMBER COMPANY. ON JUNE 13, 1972 CLAIMANT SUFFERED AN INDUSTRIAL INJURY INVOLVING HIS SHOULDER, ARM, NECK AND UPPER BACK. A MYELOGRAM PERFORMED REVEALED THAT, IN ADDITION TO THE DAMAGE IN THE NECK AREA, THERE WAS EXISTENCE OF A DISC DISEASE AT L4-5 AND, IT WAS ULTIMATELY DIAGNOSED THAT THIS LOW BACK CONDITION RESULTED FROM THE JULY 14, 1970 INJURY RATHER THAN THE JUNE 1972 ACCIDENT. AFTER HEARING, THE REFEREE HELD THAT IT WAS A NEW INJURY, HOWEVER THE OPINION WAS REVERSED BY THE BOARD. IN THE MATTER OF THE COMPENSATION OF EUGENE WILLIAMS, CLAIMANT, WCB CASE NO. 73-764 (UNDERSCORED), ORDER ON REVIEW DATED AUGUST 16, 1974. THE BOARD'S ORDER IS PRESENTLY ON APPEAL TO THE CIRCUIT COURT FOR POLK COUNTY.

CLAIMANT SUFFERED AN INJURY ON DECEMBER 27, 1973 FOR WHICH HE SUBMITTED A CLAIM TO BURKLAND LUMBER COMPANY WHOSE CARRIER WAS LIBERTY MUTUAL INSURANCE COMPANY. THE CLAIM WAS FIRST ACCEPTED BUT WAS LATER DENIED ON THE GROUNDS THAT THIS WAS NOT A NEW INJURY BUT AN AGGRAVATION OF A PREEXISTING INJURY. BOARD DETERMINATION UNDER THE PROVISIONS OF ORS 656.307 WAS REQUESTED. THE ORDER DESIGNATED LIBERTY MUTUAL AND THE MATTER WAS REFERRED FOR A HEARING TO DETERMINE THE ISSUE OF RESPONSIBILITY FOR THE PAYMENT OF BENEFITS TO THE CLAIMANT.

DR. SPADY, WHO EXAMINED CLAIMANT AT THE REQUEST OF LIBERTY MUTUAL, WAS OF THE OPINION THAT THE PRESENT LOW BACK COMPLAINTS WERE RELATED TO THE 1970 INJURY AND THAT CLAIMANT HAD HAD A CONTINUOUS PERIOD OF LAW BACK SYMPTOMS SINCE 1970. THE INJURIES SUFFERED IN NOVEMBER 1973 AND, AGAIN, IN DECEMBER 1973 WERE MERELY 'FLAREUPS' OF CLAIMANT'S BACK SYMPTOMS BROUGHT ON BY THE PERFORMANCE OF HEAVY WORK BY THE CLAIMANT.

AFTER THE 1972 ACCIDENT, SURGERY WAS PERFORMED BY DR. WHITE INVOLVING BOTH A FUSION AT THE C5-6 LEVEL AND A LAMINECTOMY AT THE L4-5 LEVEL. THE FORMER THE RESULT OF THE 1972 ACCIDENT, THE LATTER THE RESULT OF THE 1970 ACCIDENT. DR. WHITE STATED, AFTER CLAIMANT HAD ATTEMPTED TO RETURN TO WORK IN APRIL 1973, THAT CLAIMANT WOULD BE SUBJECT TO THE USUAL INCIDENT RECURRENCE. HE ADVISED CLAIMANT TO AVOID HEAVY LIFTING. CLAIMANT RETURNED TO WORK AND REPORTED AN ACCIDENT IN NOVEMBER 1973 WHICH CAUSED HIM TO LOSE NO TIME FROM WORK.

THE REFEREE, RELYING TO A GREAT EXTENT ON THE OPINION EXPRESSED BY DR. WHITE AND DR. SPADY, CONCLUDED THAT THE ACCIDENT ON DECEMBER 27, 1973, AS WELL AS THE NOVEMBER 1973 INCIDENT WERE 'FLAREUPS' BROUGHT ABOUT BY THE SAME TYPE OF ACTIVITY RESULTING IN PAIN TO THE SAME GENERAL AREA OF THE BACK AND THAT BOTH INCIDENTS MUST BE CONSIDERED AS AN AGGRAVATION OF CLAIMANT'S 1970 INJURY.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS AND ADOPTS THE ORDER OF THE REFEREE AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED AUGUST 14, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW, THE SUM OF 150 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 75-1357 DECEMBER 11, 1975

ALDEN LEWIS, CLAIMANT

JOHN R. SIDMAN, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER OF DISMISSAL

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

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

SAIF CLAIM NO. DC 169055 DECEMBER 11, 1975

JOSEPH SMALL, CLAIMANT
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

THIS CLAIM HAS BEEN CONSIDERED BY THE WORKMEN'S COMPENSATION BOARD UNDER THE OWN MOTION JURISDICTION GRANTED IT BY ORS 656.278.

CLAIMANT SUFFERED A COMPENSABLE INDUSTRIAL INJURY JANUARY 2, 1969. HE HAS BEEN AWARDED 25 PER CENT PARTIAL LOSS OF THE LEFT ARM. TWO HONOLULU PHYSICIANS REPORTED THAT CLAIMANT RECEIVED A NERVE TRANSPLANT TO THE LEFT ELBOW IN 1972, AND THAT THIS SURGERY WAS REQUIRED AS THE RESULT OF HIS 1969 INJURY.

ON NOVEMBER 6, 1975 THE STATE ACCIDENT INSURANCE FUND ADVISED THE BOARD THAT IT WOULD REOPEN CLAIMANT'S CLAIM FOR THE PAYMENT OF TIME LOSS AND MEDICAL BILLS AS NECESSITATED BY THE 1972 SURGERY TO THE ULNAR NERVE.

BY AN OWN MOTION ORDER DATED NOVEMBER 12, 1975, THE CLAIMANT WAS REQUESTED TO FURNISH THE BOARD AN EVALUATION OF HIS PRESENT CONDITION, SAID EVALUATION TO BE MADE BY CLAIMANT'S MEDICAL DOCTOR. UPON RECEIPT OF SUCH MEDICAL INFORMATION, A DETERMINATION OF THE EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY WAS TO BE MADE.

MEDICAL REPORTS HAVE NOW BEEN SUBMITTED TO THE EVALUATION DIVISION OF THE BOARD FOR THE EVALUATION OF CLAIMANT'S LEFT ARM DISABILITY AND IT IS THEIR FINDING THAT CLAIMANT'S RESIDUAL DISABILITY IS EQUAL TO 50 PER CENT OF HIS LEFT ARM, AN INCREASE OF 25 PER CENT OVER THAT PREVIOUSLY AWARDED.

ORDER

IT IS THEREFORE ORDERED THAT CLAIMANT BE GRANTED AN ADDITIONAL AWARD OF 48 DEGREES FOR 25 PER CENT LOSS OF THE LEFT ARM.

WCB CASE NO. 74-4248 DECEMBER 11, 1975

THE BENEFICIARIES OF
ROBERT CROXTON, DECEASED
PETERSON, SUSAK AND PETERSON,
CLAIMANT'S ATTYS.
JONES, LANG, KLEIN, WOLF AND SMITH,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY BENEFICIARIES

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE BENEFICIARIES OF ROBERT CROXTON, DECEASED, (HEREINAFTER REFERRED TO AS CLAIMANT) REQUESTED BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DENIALS OF THE WIDOW'S CLAIM BY THE DEFENDANT.

THE DECEDENT WAS KILLED IN AN ACCIDENT WHICH AROSE OUT OF AND IN THE COURSE OF HIS WORK IN CALIFORNIA ON SEPTEMBER 23, 1974. ON OCTOBER 29, 1974 THE CLAIM FILED BY THE WIDOW WAS DENIED ON THE BASIS THAT DECEDENT WAS AN INDEPENDENT CONTRACTOR AND NOT AN EMPLOYEE. CLAIMANT REQUESTED A HEARING. ON APRIL 3, 1975 A WEEK PRIOR TO THE HEARING, THE CLAIM WAS DENIED ON THE ADDITIONAL GROUNDS THAT CLAIMANT WAS NOT AN OREGON EMPLOYEE OF DEFENDANT AT THE TIME OF HIS FATAL ACCIDENT.

THE DEFENDANT IS AN OREGON CORPORATION ENGAGED IN LOGGING AND ROAD BUILDING AND MAINTAINS OFFICES AND CONDUCTS BUSINESS IN BOTH OREGON AND CALIFORNIA. THE DECEDENT HAD BEEN IN THE LOG HAULING BUSINESS FOR ABOUT 35 YEARS. FOR SOME TIME HE HAD HAULED LOGS FOR DEFENDANT IN OREGON WITH A TRUCK WHICH HE OWNED AND OPERATED AND MAINTAINED. THE DECEDENT HAD THE RIGHT TO HIRE HIS OWN HELP AND EITHER HE OR DEFENDANT COULD HAVE TERMINATED THEIR RELATIONSHIP AT ANY TIME. ON AUGUST 15, 1974 THE DECEDENT CANCELLED HIS OREGON WORKMEN'S COMPENSATION COVERAGE WHICH HE HAD HAD WITH THE STATE ACCIDENT INSURANCE FUND.

IN 1974 DEFENDANT ENTERED INTO A FIVE YEAR CONTRACT WITH ANOTHER CORPORATION TO DO A LOGGING JOB IN CALIFORNIA. AN AGREEMENT WAS ARRANGED BETWEEN DEFENDANT AND DECEDENT FOR THE LATTER TO HAUL LOGS FOR THE FORMER IN CALIFORNIA IN MUCH THE SAME FASHION AS HE HAD BEEN DOING IN OREGON. THE DEFENDANT DID NOT PROVIDE WORKMEN'S COMPENSATION COVERAGE FOR THE DECEDENT AT ANY TIME EITHER IN OREGON OR CALIFORNIA. IT HAD REQUIRED DECEDENT AND OTHER TRUCKERS WHO HAD SIMILAR WORK FOR IT TO FURNISH EVIDENCE THAT THEY HAD THEIR OWN WORKMEN'S COMPENSATION INSURANCE IN OREGON BEFORE ALLOWING THEM TO DO ANY HAULING FOR IT. THE DEFENDANT DID NOT ACQUIRE SUCH EVIDENCE FROM DECEDENT DURING THE ONE MONTH PERIOD THAT HE HAULED FOR IT IN CALIFORNIA.

SHORTLY BEFORE LEAVING FOR CALIFORNIA WITH DECEDENT, CLAIMANT HAD THE FIRST OF SEVERAL CONVERSATIONS WITH AN OFFICER OF DEFENDANT ABOUT THE PROVISION OF WORKMEN'S COMPENSATION COVERAGE FOR DECEDENT. HOWEVER, NOTHING DEFINITE HAD BEEN DECIDED PRIOR TO THE FATAL INJURY.

THE REFEREE FOUND, BASED UPON THE CRITERIA LAID DOWN IN BOWSER V. SIAC (UNDERSCORED), 182 OR 42 AND BUTTS V. SIAC (UNDERSCORED), 193 OR 147, THAT, PRIOR TO ENTERING INTO THE VERBAL CONTRACT WITH THE DEFENDANT TO WORK FOR IT IN CALIFORNIA, DECEDENT WAS AN INDEPENDENT CONTRACTOR.

THE REFEREE FOUND THAT THERE WERE SOME DIFFERENCES BETWEEN THE DECEDENT'S ACTIVITIES IN OREGON AND THOSE IN WHICH HE ENGAGED IN CALIFORNIA, MOST IMPORTANT WERE - (1) THAT DECEDENT HAD CANCELLED HIS OWN WORKMEN'S COMPENSATION COVERAGE BEFORE LEAVING OREGON AND HIS WIFE ENDEAVORED TO GET DEFENDANT TO PROVIDE REPLACEMENT THEREFOR, AND (2) THAT THE MANNER IN WHICH THE DECEDENT PERFORMED HIS SERVICES FOR THE ALLEGED EMPLOYER IN CALIFORNIA INDICATED A LACK OF RIGHT OF CONTROL ON THE PART OF THE DECEDENT.

THE REFEREE CONCLUDED THAT, ALTHOUGH THE EVIDENCE WAS PERSUASIVE THAT CLAIMANT MIGHT NOT HAVE BEEN AN INDEPENDENT CONTRACTOR AFTER THE VERBAL CONTRACT TO WORK FOR DEFENDANT IN CALIFORNIA, HE WAS NOT A WORKMAN SUBJECT TO THE OREGON WORKMEN'S COMPENSATION LAW. ORS 656.126(1) PROVIDES FOR EXTRATERRITORIAL COVERAGE OF OREGON WORKMEN. HOWEVER, THE STATUTE EXTENDS TO WORKMEN EMPLOYED IN OREGON WHO ARE INJURED WHILE TEMPORARILY (UNDERSCORED) OUT OF THE STATE. IN THIS CASE THE CALIFORNIA JOB WAS TO LAST FIVE YEARS, THEREFORE, THE PROVISIONS OF THE STATUTE DID NOT APPLY WITH RESPECT TO THE DECEDENT.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS AND ADOPTS THE FINDINGS AND CONCLUSIONS OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 29, 1975 IS AFFIRMED.

WCB CASE NO 74-4398 DECEMBER 11, 1975

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT 256 DEGREES FOR 80 PER CENT UNSCHEDULED BACK DISABILITY, CONTENDING HE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS BACK ON MAY 13, 1973 WHICH WAS FIRST DIAGNOSED AS AN ACUTELY RUPTURED DISC. AFTER A PERIOD OF CONSERVATIVE TREATMENT, A MYELOGRAM WAS PERFORMED ON OCTOBER 2, 1973 WHICH SHOWED A DEFECT AT L4-5 CENTRALLY. SURGERY WAS PERFORMED THE FOLLOWING DAY FOR THE EXCISION OF THE RUPTURED DISC.

THE POST-OPERATIVE RECOVERY WAS SLOW AND DR. ELLISON, WHO PERFORMED THE SURGERY, SUSPECTED THAT PART OF THE DIFFICULTY WAS ON AN 'EMOTIONAL' BASIS. CLAIMANT WAS GIVEN A PSYCHOLOGICAL EXAMINATION BY DR. ACKERMAN WHO DIAGNOSED A PSYCHONEUROTIC CONVERSION REACTION IN ADDITION TO THE GENUINE BACK PROBLEMS WHICH CLAIMANT HAD. CLAIMANT WAS ALLOWED BY HIS DOCTOR TO RETURN TO WORK ON A TRIAL BASIS WHICH HE DID. THE EMPLOYER MADE AN ATTEMPT TO GIVE CLAIMANT AN EASIER JOB BUT CLAIMANT REFUSED IT AND SAID HE COULD DO HIS FORMER JOB. HE COULD NOT, AND HAS NOT WORKED SINCE MAY 21, 1974.

CLAIMANT WAS EVALUATED AT THE DISABILITY PREVENTION DIVISION BY DR. HALFERTY AND ALSO GIVEN A PSYCHOLOGICAL EVALUATION BY DR. HICKMAN. DR. HALFERTY FELT THAT CLAIMANT'S PERMANENT PARTIAL DISABILITY WAS MILDLY MODERATE AND THAT CLAIMANT WAS MEDICALLY STATIONARY. A DETERMINATION ORDER DATED SEPTEMBER 5, 1974 AWARDED CLAIMANT 96 DEGREES FOR 30 PER CENT UNSCHEDULED DISABILITY.

CLAIMANT CONTINUES TO BE TREATED BY DR. ACKERMAN. ALSO HE WAS EVALUATED BY MR. ROBERT ADOLPH.

THE REFEREE FOUND A SIMILARITY IN THE REPORTS FROM DR. HICKMAN, DR. ACKERMAN AND MR. ADOLPH, AND CONCLUDED THAT IF CLAIMANT HAD A VALID PSYCHONEUROTIC CONVERSION REACTION WHICH, WHEN ADDED TO HIS MILDLY MODERATE ORTHOPEDIC DISABILITY, FORECLOSED HIM FROM RETURNING TO HIS PREVIOUS OCCUPATIONS, THEN BASED UPON THESE REPORTS, CLAIMANT WHEN HIS CLAIM WAS ULTIMATELY CLOSED AND HE BECAME AWARE OF HIS DISABILITY WOULD BECOME MORE WILLING TO ACCEPT VOCATIONAL REHABILITATION IN A FIELD SUITABLE TO HIM BOTH PHYSICALLY AND PSYCHOLOGICALLY.

THE REFEREE CONCLUDED THAT, CONTRARY TO CLAIMANT'S CONTENTION, HE WAS NOT PERMANENTLY AND TOTALLY DISABLED. CLAIMANT

SHOWED POOR MOTIVATION IN REFUSING TO ACCEPT A LIGHTER POSITION OFFERED TO HIM BY THE EMPLOYER, HOWEVER, THE REFEREE CONCLUDED THAT CLAIMANT HAD SUFFERED A MAJOR LOSS OF WAGE EARNING CAPACITY BECAUSE OF THE PSYCHONEUROTIC CONVERSION REACTION CONDITION AND HIS PHYSICAL IMPAIRMENTS AND WAS ENTITLED TO AN INCREASE IN THE AWARD FOR THIS LOSS.

THE BOARD, ON DE NOVO REVIEW, FEELS THAT THE REFEREE WAS VERY GENEROUS IN AWARDING CLAIMANT AN ADDITIONAL 50 PER CENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR HIS DISABILITY, BUT IT AGREES, GENERALLY, WITH THE FINDINGS AND CONCLUSIONS REACHED BY THE REFEREE IN HIS OPINION AND ORDER.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 3, 1975 IS AFFIRMED.

WCB CASE NO. 74-4617 DECEMBER 11, 1975

LUTHER ANDERSON, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

BOARD REVIEW IS REQUESTED BY THE STATE ACCIDENT INSURANCE FUND OF THE REFEREE'S ORDER WHICH ASSESSED A PENALTY AGAINST THE FUND AND DIRECTED IT PAY CLAIMANT AN ATTORNEY'S FEE BECAUSE OF LATE PAYMENTS OF TEMPORARY TOTAL DISABILITY COMPENSATION.

BY AN OPINION AND ORDER ENTERED NOVEMBER 26, 1974 CLAIMANT'S CLAIM WAS REMANDED TO THE FUND TO BE ACCEPTED FOR PAYMENT OF COMPENSATION PAYABLE FROM MAY 14, 1974, LESS PAYMENTS ALREADY MADE, UNTIL TERMINATION AUTHORIZED PURSUANT TO ORS 656.268. PENALTIES WERE ALSO ORDERED FOR UNREASONABLE DELAY IN DENYING THE CLAIM WHICH WAS FILED IN JUNE 1974.

ON DECEMBER 10, 1974 THE FUND MAILED CLAIMANT TWO CHECKS. THE FIRST CHECK PAID THE ORDERED PENALTIES. THE SECOND CHECK CONSTITUTED PAYMENT OF TEMPORARY TOTAL DISABILITY COMPENSATION FROM MAY 14 TO OCTOBER 17, 1974. ON DECEMBER 20, 1974 A CHECK FOR PAYMENT OF TEMPORARY TOTAL DISABILITY COMPENSATION FROM OCTOBER 17 TO OCTOBER 31, 1974 WAS MAILED. THE NEXT PAYMENT WAS MADE ON JANUARY 7, 1975 FOR THE PERIOD OCTOBER 31, 1974 TO JANUARY 9, 1975.

IT WAS CONCEDED BY CLAIMANT THAT THE 14 DAY REQUIREMENT FOR PAYMENT OF COMPENSATION HAD BEEN MET BY THE FIRST PAYMENT ON DECEMBER 10, 1974. HOWEVER, HE CONTENDED THAT THAT PAYMENT SHOULD HAVE BROUGHT HIM TO A CURRENT STATUS WITHOUT AN APPROXIMATE TWO-MONTH LAG IN THE PERIOD OF TIME FOR WHICH COMPENSATION WAS PAID.

THE REFEREE CONCURRED IN THE CLAIMANT'S CONTENTION AND CONCLUDED THAT CLAIMANT WAS ENTITLED TO PENALTIES FOR COMPENSATION DUE HIM FOR THE PERIOD OCTOBER 17, 1974 TO DECEMBER 6, 1974.

THE REFEREE ALSO FOUND THAT THE PAYMENT MADE ON JANUARY 7, 1975 WAS LATE, AT LEAST FOR PART OF THE COMPENSATION INCLUDED IN THAT CHECK. HE CONCLUDED THAT SINCE THE JANUARY 7, 1975 CHECK

WAS LATE ANY COMPENSATION DUE FOR DECEMBER, 1974 WOULD HAVE BEEN LATE, THEREFORE, CLAIMANT ALSO WAS ENTITLED TO PENALTIES FOR THE COMPENSATION TO WHICH HE WAS ENTITLED FOR THE PERIOD DECEMBER 6 THROUGH DECEMBER 31.

THE FUND HAD BEEN ORDERED BY THE PREVIOUS OPINION AND ORDER TO MAKE PAYMENTS OF COMPENSATION, THEREFORE, THE REFEREE CONCLUDED THAT THE FUND'S ACTION AMOUNT TO UNREASONABLE RESISTANCE IN THE PAYMENT OF COMPENSATION SO ORDERED AND DIRECTED THE FUND TO PAY CLAIMANT'S ATTORNEY A REASONABLE ATTORNEY'S FEE UNDER THE PROVISIONS OF ORS 656.382(1).

THE BOARD, ON DE NOVO REVIEW, AFFIRMS AND ADOPTS THE FINDINGS AND CONCLUSIONS OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE DATED MAY 28, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW THE SUM OF 300 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 74-3944 DECEMBER 11, 1975

PIO DAVID ZANOBELLI, CLAIMANT

CHARLES B. GUINASSO, CLAIMANT'S ATTY.
SOUTHER, SPAULDING, KINSEY, WILLIAMSON AND SCHWABE,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE CLAIMANT REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER DATED JULY 11, 1974 WHEREBY CLAIMANT RECEIVED SOME TIME LOSS COMPENSATION BUT NO AWARD FOR PERMANENT PARTIAL DISABILITY.

CLAIMANT IS A 21 YEAR OLD LIFT TRUCK OPERATOR. HE FRACTURED HIS RIGHT TENTH RIB IN A FALL AND, AFTER RECEIVING EMERGENCY ROOM TREATMENT, WAS TREATED BY HIS FAMILY PHYSICIAN, DR. DUNCAN, UNTIL JUNE 25, 1974 WHEN HE WAS RELEASED TO RETURN TO WORK.

CLAIMANT'S CLAIM WAS CLOSED ON JULY 11, 1974. ON OCTOBER 16, 1974 CLAIMANT CONSULTED DR. LANGSTON WHO HOSPITALIZED CLAIMANT. ON THE DATE CLAIMANT WAS HOSPITALIZED HE MAILED HIS REQUEST FOR HEARING.

WHEN CLAIMANT CONSULTED DR. LANGSTON HE ADVISED HIM HE HAD FRACTURED TWO RIBS AS WELL AS SUFFERING AN INJURY TO HIS CERVICAL SPINE. HE ALSO COMPLAINED OF DISCOMFORT AND PAIN IN HIS LOW BACK AREA. DR. LANGSTON'S DIAGNOSIS WAS MUSCULOLIGAMENTOUS STRAIN OF THE DORSAL AND LUMBAR SPINE. AFTER DR. LANGSTON TERMINATED HIS RELATIONSHIP WITH CLAIMANT, DR. REICHLE WAS CONSULTED BY CLAIMANT CONCERNING HIS LOW BACK PAIN. DR. REICHLE DIAGNOSED A LUMBOSACRAL STRAIN.

THE REFEREE CONCLUDED THAT BECAUSE THE COMPENSABLE INJURY WAS IN THE AREA OF THE RIGHT TENTH RIB AND THE TREATMENT WHICH CLAIMANT RECEIVED AFTER HE WAS RELEASED TO RETURN TO WORK BY DR.

DUNCAN ON JUNE 26, 1974 WAS FOR LUMBAR COMPLAINTS, THERE WAS INADEQUATE EVIDENCE THAT SUCH TREATMENT AND HOSPITALIZATION SUBSEQUENT TO OCTOBER 1, 1974 WAS RELATED TO HIS COMPENSABLE INJURY AND, THE EMPLOYER'S REFUSAL TO FURNISH SUCH MEDICAL TREATMENT WAS REASONABLE.

THE REFEREE FURTHER CONCLUDED THAT THERE WAS NO EVIDENCE THAT CLAIMANT HAD SUSTAINED ANY LOSS OF EARNING CAPACITY AS THE RESULT OF HIS RIB FRACTURE.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE AND AFFIRMS AND ADOPTS THEM AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED MAY 30, 1975 IS AFFIRMED.

SAIF CLAIM NO. B 127047 DECEMBER 16, 1975

ANDREW GRAVES, CLAIMANT

EVOHL F. MALAGON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
SUPPLEMENTAL ORDER AWARDING ATTORNEY FEE

THE BOARD'S OWN MOTION ORDER ISSUED NOVEMBER 13, 1975 IN THE ABOVE ENTITLED MATTER FAILED TO INCLUDE AN AWARD OF A REASONABLE ATTORNEY'S FEE.

ORDER

IT IS HEREBY ORDERED CLAIMANT'S ATTORNEY SHALL BE AWARDED A FEE OF 25 PER CENT OF THE TEMPORARY TOTAL DISABILITY AWARDED CLAIMANT BY THE ORDER DATED NOVEMBER 13, 1975 AND 25 PER CENT OF ANY PERMANENT PARTIAL DISABILITY AWARD EVENTUALLY RECEIVED BY CLAIMANT WHEN THE CLAIM IS CLOSED PURSUANT TO ORS 656.278 NOT TO EXCEED 2,300 DOLLARS.

SAIF CLAIM NO. HB 157718 DECEMBER 16, 1975

VIRGINIA HINZ, CLAIMANT

POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
AMENDED ORDER

THE ABOVE-ENTITLED MATTER WAS THE SUBJECT OF AN OWN MOTION ORDER ISSUED BY THE BOARD ON DECEMBER 4, 1975.

THE SOLE PURPOSE OF THIS ORDER IS TO CORRECTLY SET FORTH THE LAST PARAGRAPH OF THE SECTION ENTITLED 'ORDER' RELATIVE TO THE AWARD OF AN ATTORNEY FEE AS FOLLOWS -

> 'CLAIMANT'S COUNSEL SHALL BE AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES AT THE OWN MOTION HEARING, 25 PER CENT OF THE COMPENSATION AWARDED TO CLAIMANT BY THIS ORDER NOT TO EXCEED 2,300 DOLLARS.'

SAIF CLAIM NO. DC 103538 DECEMBER 16, 1975

MABEL J. SCHALLBERGER, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
AMENDED ORDER

THE ABOVE-ENTITLED MATTER WAS THE SUBJECT OF AN OWN MOTION ORDER ISSUED BY THE BOARD ON NOVEMBER 10, 1975.

THE SOLE PURPOSE OF THIS ORDER IS TO CORRECTLY SET FORTH THE LAST PARAGRAPH OF THE ORDER ON PAGE 1 REGARDING THE ATTORNEY FEE AWARDED AS FOLLOWS -

> 'CLAIMANT'S COUNSEL SHALL BE AWARDED, AS A REASONABLE ATTORNEY'S FEE, 25 PER CENT OF ANY COMPENSATION WHICH CLAIMANT MAY RECEIVE AS A RESULT OF THIS ORDER AND 25 PER CENT OF ANY INCREASED COMPENSATION WHICH CLAIMANT MAY RECEIVE WHEN HER CLAIM IS CLOSED PURSUANT TO ORS 656.278, NOT TO EXCEED 2,300 DOLLARS.'

WCB CASE NO. 73-4174 DECEMBER 16, 1975

THE BENEFICIARIES OF
CHARLES C. CHANEY, DECEASED

ROBERT MILLER, CLAIMANT'S ATTY.
DENNETH L. KLEINSMITH, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

DECEDENT'S PERSONAL REPRESENTATIVE HAS REQUESTED BOARD REVIEW OF A REFEREE'S ORDER DISMISSING HER REQUEST FOR HEARING CONTESTING THE DENIAL OF DECEDENT'S CLAIM FOR WORKMEN'S COMPENSATION BENEFITS.

THE FACTS ARE CLEAR.

THE DECEDENT, CHARLES CHANEY, ALLEGEDLY SUFFERED AN ON-THE-JOB INJURY ON FEBRUARY 16, 1973. HE FILED A CLAIM ON OCTOBER 8, 1973. HE DIED OF A HEART ATTACK ON NOVEMBER 16, 1973 LEAVING NEITHER A SPOUSE, NOR DEPENDENT CHILDREN OR ANY OTHER PERSON DEFINED AS A DEPENDENT BY THE WORKMEN'S COMPENSATION LAW.

ON DECEMBER 11, 1973, JANET CHANEY MCKAY WAS APPOINTED EXECUTRIX OF THE DECEDENT'S ESTATE BY THE CIRCUIT COURT OF MULTNOMAH COUNTY.

ON DECEMBER 12, 1973, THE STATE ACCIDENT INSURANCE FUND DENIED THE COMPENSABILITY OF DECEDENT'S CLAIM AND ON DECEMBER 21, 1973 THE PERSONAL REPRESENTATIVE REQUESTED A HEARING.

THE FUND MOVED TO DISMISS THE REQUEST FOR HEARING ON THE GROUNDS THAT IN VIEW OF THE LAW IN EFFECT AT THE TIME OF THE ALLEGED INJURY AND THE AMENDED LAW IN EFFECT AT THE DATE OF HIS DEATH, AND THE FACT THAT, AMONG OTHER THINGS -

> (1) CHARLES C. CHANEY HAD NOT REQUESTED A HEARING PRIOR TO HIS DEATH

(2) NO DISABILITY PAYMENTS WERE BEING MADE AT THE TIME OF HIS DEATH

(3) NO ORDER REQUIRING BENEFIT PAYMENTS HAD BEEN ENTERED PRIOR TO HIS DEATH AND

(4) THERE WERE NO BENEFICIARIES OR DEPENDENTS WHO WOULD HAVE BEEN ENTITLED TO RECEIVE DEATH BENEFITS IF THE ALLEGED INJURY HAD BEEN FATAL,

THAT ANY CLAIM FOR COMPENSATION DID NOT SURVIVE IN FAVOR OF HIS ESTATE AND THAT THE PERSONAL REPRESENTATIVE HAD NO STANDING TO REQUEST A HEARING.

ON OCTOBER 5, 1973, ORS 656.218 WAS AMENDED BY THE 1973 OREGON LEGISLATURE.

BEFORE OCTOBER 5, IT READ -

CONTINUANCE OF PERMANENT PARTIAL DISABILITY PAYMENTS TO SURVIVORS, BURIAL ALLOWANCE.

(1) IN CASE OF THE DEATH OF A WORKMAN RECEIVING MONTHLY PAYMENTS ON ACCOUNT OF PERMANENT PARTIAL DISABILITY SUCH PAYMENTS SHALL CONTINUE FOR THE PERIOD DURING WHICH THE WORKMAN, IF SURVIVING, WOULD HAVE BEEN ENTITLED THERETO.

(2) THE PAYMENTS SHALL BE MADE TO THE PERSONS WHO WOULD HAVE BEEN ENTITLED TO RECEIVE DEATH BENEFITS IF THE INJURY CAUSING THE DISABILITY HAD BEEN FATAL. IN THE ABSENCE OF PERSONS SO ENTITLED, A BURIAL ALLOWANCE MAY BE PAID NOT TO EXCEED THE LESSER OF EITHER THE UNPAID AWARD OR THE AMOUNT PAYABLE BY ORS 656.204.

(3) THIS SECTION DOES NOT ENTITLE ANY PERSON TO DOUBLE PAYMENTS ON ACCOUNT OF THE DEATH OF A WORKMAN AND A CONTINUATION OF PAYMENTS FOR PERMANENT PARTIAL DISABILITY, OR TO A GREATER SUM IN THE AGGREGATE THAN IF THE INJURY HAD BEEN FATAL.

AFTER OCTOBER 5, 1973, IT READ -

CONTINUANCE OF PERMANENT PARTIAL DISABILITY PAYMENTS TO SURVIVORS, EFFECT OF DEATH PRIOR TO FINAL CLAIM DISPOSITION, BURIAL ALLOWANCE.

(1) IN CASE OF THE DEATH OF A WORKMAN ENTITLED TO COMPENSATION WHETHER HIS ELIGIBILITY THEREFORE OR THE AMOUNT THEREOF HAVE BEEN DETERMINED, PAYMENTS SHALL BE MADE FOR THE PERIOD DURING WHICH THE WORKMAN, IF SURVIVING, WOULD HAVE BEEN ENTITLED THERETO.

(2) IF THE WORKMAN'S DEATH OCCURS PRIOR TO A DETERMINATION HAVING BEEN MADE UNDER ORS 656.268, THE STATE ACCIDENT INSURANCE FUND OR DIRECT RESPONSIBILITY EMPLOYER SHALL SO NOTIFY THE BOARD AND REQUEST THE CLAIM BE EXAMINED AND COMPENSATION FOR PERMANENT PARTIAL DISABILITY, IF ANY, BE DETERMINED.

(3) IF THE WORKMAN HAS FILED A REQUEST FOR A HEARING PURSUANT TO ORS 656.283 AND DEATH OCCURS PRIOR TO THE FINAL DISPOSITION OF HIS REQUEST, THE PERSONS DESCRIBED IN SUBSECTION (5) OF THIS SECTION SHALL BE ENTITLED TO

PURSUE THE MATTER TO FINAL DETERMINATION OF ALL ISSUES PRESENTED BY THE REQUEST FOR HEARING.

(4) IF THE WORKMAN DIES BEFORE THE EXPIRATION OF THE ONE-YEAR PERIOD DURING WHICH HE COULD HAVE FILED A REQUEST FOR HEARING PURSUANT TO ORS 656.319 WITHOUT HAVING FILED SUCH A REQUEST, THE PERSONS DESCRIBED IN SUBSECTION (5) OF THIS SECTION SHALL BE ENTITLED TO FILE A REQUEST FOR HEARING WITHIN SUCH ONE-YEAR PERIOD AND TO PURSUE THE MATTER TO FINAL DETERMINATION AS TO ALL ISSUES PRESENTED BY THE REQUEST FOR HEARING.

(5) THE PAYMENTS PROVIDED IN SUBSECTIONS (1), (2), (3), AND (4) OF THIS SECTION SHALL BE MADE TO THE PERSONS WHO WOULD HAVE BEEN ENTITLED TO RECEIVE DEATH BENEFITS IF THE INJURY CAUSING THE DISABILITY HAD BEEN FATAL. IN THE ABSENCE OF PERSONS SO ENTITLED, A BURIAL ALLOWANCE MAY BE PAID NOT TO EXCEED THE LESSER OF EITHER THE UNPAID AWARD OR THE AMOUNT PAYABLE BY ORS 656.204.

(6) THIS SECTION DOES NOT ENTITLE ANY PERSON TO DOUBLE PAYMENTS ON ACCOUNT OF THE DEATH OF A WORKMAN AND A CONTINUATION OF PAYMENT FOR PERMANENT PARTIAL DISABILITY, OR TO A GREATER SUM IN THE AGGREGATE THAN IF THE INJURY HAD BEEN FATAL.

THE REFEREE CONCLUDED THE FAILURE TO SPECIFICALLY MENTION PERSONAL REPRESENTATIVES IN AMENDING THE STATUTE EVINCED A LEGISLATIVE INTENT TO DISCARD THE RULE, ESTABLISHED BY HEUCHERT V. SIAC (UNDERSCORED), 168 OR 74 (1942), WHICH PERMITTED A DECEDENT'S PERSONAL REPRESENTATIVE TO RECOVER UNPAID COMPENSATION ACCRUING BEFORE THE DECEDENT'S DEATH.

THE REFEREE ALSO CONCLUDED THAT ORS 656.218 AND THE 1973 AMENDMENTS THERETO DEALT WITH 'PROCEDURAL' RATHER THAN 'SUBSTANTIVE' MATTERS AND THEREFORE APPLIED THE AMENDMENTS RETROACTIVELY TO FIND THE LEGISLATURE HAD OVERRULED APPLYING THE HEUCHERT (UNDERSCORED) HOLDING TO THIS CASE. THESE CONCLUSIONS LED THE REFEREE TO GRANT THE FUND'S MOTION.

WHETHER THE STATUTE IN QUESTION IS PROCEDURAL OR SUBSTANTIVE IS UNIMPORTANT IN OUR VIEW OF THE CASE SINCE IT IS CLEAR THAT THE LEGISLATURE NEVER INTENDED TO, AND DID NOT BY THE TERMS OF THE NEW ACT, DISCARD OR OVERRULE HEUCHERT (UNDERSCORED). THE ONLY PURPOSE OF THE NEW LEGISLATION WAS TO GIVE THAT CLASS OF PERSONS FORMERLY PERMITTED ONLY (UNDERSCORED) TO RECEIVE THE BALANCE OF AN ESTABLISHED PERMANENT PARTIAL DISABILITY AWARD, THE ABILITY TO ESTABLISH THE CLAIM AND THE CORRECT AMOUNT OF COMPENSATION DUE THEM AS WELL. IT WAS NOT THE LEGISLATURE'S INTENT TO STRIP THE PERSONAL REPRESENTATIVE OF THE ABILITY TO PURSUE A CHOSE IN ACTION OWNED BY THE DECEDENT'S ESTATE.

IT IS AXIOMATIC THAT IN THE CONSTRUCTION OF A STATUTE THE INTENTION OF THE LEGISLATURE IS TO BE PURSUED IF POSSIBLE. ORS 174.020. NOTHING IN THE LANGUAGE OF THE NEW ACT REQUIRES EXCLUDING CHARLES CHANEY'S PERSONAL REPRESENTATIVE FROM RECOVERING THE INSTALLMENTS SHE SEEKS JUST AS NOTHING IN THE OLD ACT PREVENTED EMILIE HEUCHERT FROM SEEKING THE SAME KIND OF BENEFITS.

NOR IS THERE ANYTHING IN HEUCHERT (UNDERSCORED) WHICH REQUIRES THAT THE CLAIM MUST HAVE BEEN VOLUNTARILY ACCEPTED OR THAT THE REQUEST FOR HEARING MUST HAVE PERSONALLY BEEN FILED BY THE DECEDENT OR THAT THE 'CAUSE OF ACTION' MUST HAVE 'MERGED INTO A

FINAL JUDJMENT' AS THE FUND SUGGESTS IS A CONDITION PRECEDENT TO SURVIVAL OF THE CLAIM AND THUS TO THE PERSONAL REPRESENTATIVE'S RIGHT TO PURSUE THIS MATTER. THE CASE SIMPLY HOLDS THAT '...AS TO ACCRUED INSTALLMENTS, THE CLAIM (UNDERSCORED) SURVIVES THE DEATH OF THE EMPLOYEE'. HEUCHERT, SUPRA (UNDERSCORED), 77 (EMPHASIS ADDED) IF THE CLAIM (UNDERSCORED) SURVIVES THEN ALL APPROPRIATE REMEDIES TO PURSUE THE CLAIM, INCLUDING REQUESTING A HEARING, ARE AVAILABLE TO THE PERSONAL REPRESENTATIVE.

WE CONCLUDE THE REFEREE ERRED IN GRANTING THE FUND'S MOTION. HIS ORDER SHOULD BE REVERSED AND THE MATTER SHOULD BE REMANDED TO THE HEARINGS DIVISION FOR A HEARING ON THE MERITS OF THE CLAIM.

IT IS SO ORDERED.

WCB CASE NO. 75-707 DECEMBER 16, 1975

KENNETH MYERS, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON, MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED TO IT FOR ACCEPTANCE AND PAYMENT OF COMPENSATION, AS PROVIDED BY LAW, CLAIMANT'S CLAIM FOR AN OCCUPATIONAL DISEASE.

CLAIMANT FOR SOME TIME HAD BEEN AFFLICTED WITH A MEDICAL CONDITION DESCRIBED AS 'SYSTEMIC LUPUS ERYTHEMATOSUS' (HEREINAFTER CALLED SLE) WHICH BECAME SYMPTOMATIC IN 1969 BECAUSE OF HIS JOB AS AN IRONWORKER WHICH REQUIRED HIM TO WORK OUTSIDE AND EXPOSED HIM OFTEN TO SUNLIGHT. IT BECAME DISABLING TO SUCH AN EXTENT THAT CLAIMANT HAD TO GIVE UP HIS OCCUPATION AS AN IRONWORKER IN OCTOBER, 1974.

IN 1972 CLAIMANT HAD BEEN ADVISED BY DR. PIROFSKY THAT HE HAD THE DISEASE OF SLE. CLAIMANT TESTIFIED HE BECAME DISABLED FROM SUCH DISEASE AND LEFT WORK ON JULY 3, 1972. DR. PIROFSKY VERIFIED THIS. CLAIMANT HAD BEEN ADVISED BY DR. PIROFSKY THAT EXPOSURE TO SUNLIGHT WAS EXACERBATING HIS PREEXISTING DISEASE OF SLE, ADVISED TO AVOID EXPOSURE TO SUNLIGHT, WEAR A SUN GUARD, AND TOLD HIS CONDITION WOULD GET WORSE BY SUCH EXPOSURE. LATER, WHILE STILL TREATING CLAIMANT, DR. PIROFSKY ADVISED CLAIMANT IT WOULD BE A GOOD IDEA TO QUIT WORK, HOWEVER, CLAIMANT CONTINUED WORKING UNTIL OCTOBER 1974.

THE REFEREE FOUND THAT UNDER THIS STATEMENT OF FACTS ONE WOULD ASSUME THAT ANY REASONABLE MAN WOULD UNDERSTAND THAT HE HAD SUSTAINED SOME TYPE OF OCCUPATIONAL DISEASE, HOWEVER, THAT THIS WAS NOT THE TEST NOR DID THE FOREGOING FACTS CONSTITUTE NOTICE TO CLAIMANT THAT HE HAD AN OCCUPATIONAL DISEASE IN LIGHT OF THE COURT'S RULING IN TEMPLETON V. POPE AND TALBOT (UNDERSCORED), 7 OR APP 119.

THE BOARD, ON DE NOVO REVIEW CONCLUDES THAT WHEN DR. PIROFSKY, ON JULY 3, 1972, TOLD CLAIMANT THE NAME OF HIS DISEASE, THAT EXPOSURE TO SUNLIGHT AT WORK WAS EXACERBATING IT AND RECOMMENDED THAT

CLAIMANT QUIT WORK TO SEEK ANOTHER OCCUPATION, CLAIMANT HAD BEEN TOLD 'SIMPLY AND DIRECTLY' THAT HIS CONDITION AROSE OUT OF HIS EMPLOYMENT AND THAT SUCH INFORMATION MET THE TEST SET FORTH IN TEMPLETON (UNDERSCORED).

ORS 656.807(1) PROVIDES, IN PART, THAT A CLAIM FOR OCCUPATIONAL DISEASE MUST BE FILED WITHIN 180 DAYS FROM THE DATE CLAIMANT BECOMES DISABLED OR IS INFORMED BY A PHYSICIAN THAT HE IS SUFFERING FROM AN OCCUPATIONAL DISEASE, WHICHEVER IS LATER. THAT CLAIMANT WAS DISABLED ON JULY 3, 1972 IS NOT DISPUTED. THE CLAIMANT SO TESTIFIED AS DID DR. PIROFSKY. ON THAT SAME DATE CLAIMANT WAS ADVISED, IN THE BOARD'S OPINION, SIMPLY AND DIRECTLY THAT HE WAS SUFFERING AN OCCUPATIONAL DISEASE. THEREFORE, THE 180 DAYS BEGAN TO RUN FROM JULY 3, 1972. CLAIMANT'S CLAIM FOR COMPENSATION WAS NOT FILED UNTIL DECEMBER 27, 1974.

THE BOARD CONCLUDES THAT CLAIMANT'S CLAIM WAS NOT TIMELY FILED AND, THEREFORE, IS VOID UNDER THE PROVISIONS OF ORS 656.807(1).

THE BOARD, HAVING REACHED THAT CONCLUSION, IT IS NOT NECESSARY TO RULE ON THE OTHER ISSUES BEFORE THE REFEREE.

ORDER

THE ORDER OF THE REFEREE DATED JULY 1, 1975 IS REVERSED.

DISSENT

JUDGE SLOAN RESPECTFULLY DISSENTS AS FOLLOWS -

THE EVIDENCE IN THIS CASE APPEARS TO ME TO BE SO SIMILAR TO THAT RECITED AND RELIED ON IN TEMPLETON V. POPE AND TALBOT, INC. (UNDERSCORED), 7 OR APP 119 THAT THE TEMPLETON CASE SHOULD BE FOLLOWED IN THIS CASE.

WCB CASE NO. 75-187 DECEMBER 16, 1975

BILL R. STAGGS, CLAIMANT

KEITH D. EVANS, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER DATED DECEMBER 20, 1974 AWARDING CLAIMANT 112 DEGREES FOR 35 PER CENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT, A 45 YEAR OLD PLUMBER, SUFFERED A COMPENSABLE BACK INJURY ON NOVEMBER 5, 1973 WHICH WAS DIAGNOSED AS AN ACUTE BACK STRAIN. CLAIMANT WAS HOSPITALIZED FOR TRACTION. SUBSEQUENTLY, CLAIMANT WAS REFERRED TO THE PAIN CLINIC BECAUSE OF ALMOST CONSTANT LOW BACK PAIN WITH OCCASIONAL RADIATION DOWN HIS LEFT LEG. THE TREATMENT RECEIVED AT THE PAIN CLINIC RELIEVED CLAIMANT ALMOST COMPLETELY FROM PAIN.

PRIOR TO THE NOVEMBER, 1973 INJURY CLAIMANT HAD HAD WORK-RELATED BACK INJURIES IN 1954, 1957 AND 1959 AND HAD HAD THREE FUSIONS. HE HAD RECEIVED AWARDS FOR 70 PER CENT UNSCHEDULED

DISABILITY. BETWEEN 1959 AND 1973 CLAIMANT HAD BEEN ABLE TO WORK WITHOUT DIFFICULTY.

THE REFEREE, IN CONSIDERING THE EXTENT OF CLAIMANT'S PRESENT DISABILITY, GAVE LITTLE CONSIDERATION TO THE PRIOR AWARD AS HE FOUND CLAIMANT HAD SIGNIFICANTLY RECOVERED FROM THE EFFECTS OF THESE INJURIES. ALSO THE 1973 INJURY WAS ABOVE THE FUSION LEVEL AND INVOLVED A DIFFERENT AREA OF THE CLAIMANT'S SPINE.

THE REFEREE CONCLUDED THAT CLAIMANT, WHEN COMPARED NOW TO BEFORE HIS NOVEMBER 1973 INJURY, WAS SIGNIFICANTLY LESS SUITABLE FOR EMPLOYMENT IN THE GENERAL LABOR MARKET. HE COULD NOT ENGAGE IN HEAVY WORK BUT HE DID HAVE THE CAPACITY TO PERFORM LIGHT WORK WHICH WOULD ALLOW HIM TO MOVE ABOUT AND CHANGE POSITIONS FREQUENTLY. THE WORK FOR WHICH CLAIMANT IS NOW TRAINING WILL ALLOW SUCH CONDITIONS.

BASED UPON CLAIMANT'S ABILITY TO GAIN AND HOLD WORK IN THE BROAD FIELD OF GENERAL INDUSTRIAL EMPLOYMENT RATHER THAN ON HIS EARNINGS ON ONE JOB OR HIS SUITABILITY FOR ONE JOB, THE REFEREE FELT THAT THERE WERE CONSIDERABLE EMPLOYMENT ALTERNATIVES NOW AVAILABLE TO CLAIMANT AND THAT THE AWARD OF 112 DEGREES CORRECTLY REFLECTED HIS EARNING CAPACITY.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS AND ADOPTS THE FINDINGS AND CONCLUSIONS OF THE REFEREE AS SET FORTH IN A WELL WRITTEN OPINION AND ORDER.

ORDER

THE ORDER OF THE REFEREE DATED JULY 10, 1975 IS AFFIRMED.

WCB CASE NO. 74-1362 DECEMBER 16, 1975

WILLIS H. CANNON, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT AN ADDITIONAL AWARD OF 160 DEGREES FOR 50 PER CENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON FEBRUARY 9, 1972. IT WAS DIAGNOSED AS A SACROILLIAC STRAIN, SUPERIMPOSED ON CONGENITAL SPINAL DEFECTS OF THE LUMBAR AND SACRAL AREAS OF THE SPINE AND SCATTERED OSTEOARTHRITIS OF THE LUMBAR SPINE. THE CLAIM WAS ACCEPTED AND CLOSED ON NOVEMBER 13, 1973 BY A DETERMINATION ORDER WHICH AWARDED CLAIMANT TIME LOSS AND 32 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK DISABILITY.

AS A RESULT OF PRIOR INDUSTRIAL INJURIES AND CERTAIN MEDICAL CONDITIONS NOT WORK-RELATED, CLAIMANT IS COMPLETELY DEAF IN THE LEFT EAR AND ALMOST DEAF IN HIS RIGHT EAR, HAS IMPAIRED VISION IN ONE EYE AND A CARDIAC CONDITION. HOWEVER, DESPITE THESE HANDICAPS CLAIMANT HAD BEEN ABLE TO WORK AS A FALLER AND BUCKER UNTIL THE FEBRUARY 9, 1972 INJURY. HE HAD ALSO BEEN ABLE TO WORK AT TIMES AS A COMMERCIAL FISHERMAN.

CLAIMANT IS 51 YEARS OLD, HE HAS A NINTH GRADE EDUCATION, HAS HAD NO SPECIAL TRAINING OTHER THAN SOME TRAINING IN OIL BURNERS AND TURBINES AND WITH AIRCRAFT ENGINES WHILE IN THE MILITARY SERVICE. HE HAS NO SPECIAL SKILLS OTHER THAN THOSE WHICH HE HAS ACQUIRED THROUGH HIS WORK EXPERIENCE.

CLAIMANT IS NOW RECEIVING 100 DOLLARS AS RENT ON SOME PROPERTY WHICH HE OWNS AND IS ALSO DRAWING SOCIAL SECURITY DISABILITY BENEFITS.

THE REFEREE FOUND THAT THE NATURE OF THE PERMANENT RESIDUAL EFFECTS OF THE FEBRUARY 1972 INJURY, WHEN SUPERIMPOSED ON HIS PRE-EXISTING CONDITIONS, HAD PRODUCED DEFINITE LIMITATIONS ON CLAIMANT'S PHYSICAL ACTIVITY TO THE EXTENT THAT HE WAS PREVENTED FROM RETURNING TO HEAVY MANUAL LABOR, INCLUDING THE TWO MAJOR FIELDS OF EMPLOYMENT IN WHICH HE HAD ENGAGED, I.E., LOGGING AND COMMERCIAL FISHING.

THE REFEREE FURTHER FOUND THAT DESPITE CLAIMANT'S LIMITED EDUCATION, HE HAD GOOD INTELLECTUAL RESOURCES AND VOCATIONAL APTITUDES BUT THERE APPEARED TO BE A CONFLICT IN THE EVIDENCE WITH RESPECT TO CLAIMANT'S MOTIVATION TOWARD VOCATIONAL RE-TRAINING OR ATTEMPTING TO FIND SUITABLE OCCUPATIONS WHICH HE COULD PERFORM IN HIS PRESENT PHYSICAL CONDITION.

THE CLAIMANT CONTENDS THAT HE IS ENTITLED TO BE CONSIDERED PERMANENTLY AND TOTALLY DISABLED. THE REFEREE FOUND THAT THE EVIDENCE WAS NOT SUFFICIENT TO SUPPORT THAT CONTENTION. HE CONCLUDED THAT THE MEDICAL EVIDENCE, COUPLED WITH THE OTHER EVIDENCE OF AGE, EDUCATION, PRIOR HANDICAPS, INTELLECTUAL RESOURCES, TRAINING AND EXPERIENCE DID NOT PLACE HIM, PRIMA FACIE, IN THE ODD-LOT CATEGORY. THE REFEREE FURTHER CONCLUDED THAT, ALTHOUGH THE EVIDENCE DID NOT INDICATE THAT CLAIMANT HAD MADE A REAL DILIGENT EFFORT TOWARDS VOCATIONAL REHABILITATION OR RETRAINING, NEVERTHELESS CLAIMANT WAS ENTITLED TO A FAR GREATER AWARD TO ADEQUATELY COMPENSATE HIM FOR HIS LOSS OF WAGE EARNING CAPACITY.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE. THE TWO OCCUPATIONS FOR WHICH CLAIMANT IS BEST QUALIFIED ARE NO LONGER AVAILABLE TO HIM AS A RESULT OF THE DECEMBER 9, 1972 INJURY. HOWEVER, HE IS A RELATIVELY YOUNG PERSON WITH SUBSTANTIAL INTELLECTUAL CAPACITY AND SUFFICIENT RESIDUAL PHYSICAL ABILITY TO ENABLE HIM TO ENGAGE IN SOME TYPES OF LIGHTER EMPLOYMENT IF HE MAKES A BONA FIDE ATTEMPT TO SEEK SUCH EMPLOYMENT OR BE RETRAINED THEREFOR.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 4, 1975 IS AFFIRMED.

WCB CASE NO. 75-208 DECEMBER 16, 1975

THE BENEFICIARIES OF
WINDELL D. CORDER, DECEASED
VINCENT G. IERULLI, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY BENEFICIARIES

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE BENEFICIARIES OF WINDELL D. CORDER, DECEASED, (HEREINAFTER

REFERRED TO AS CLAIMANT) REQUEST BOARD REVIEW OF THE REFEREE'S ORDER WHICH DISMISSED CLAIMANT'S REQUEST FOR HEARING ON THE GROUNDS THAT HE LACKED JURISDICTION TO HEAR THE MATTER.

THE WORKMAN, NOW DECEASED, SUFFERED A COMPENSABLE MYOCARDIAL INFARCTION ON MAY 23, 1969. THE CLAIM WAS CLOSED BY A DETERMINATION ORDER DATED APRIL 3, 1970, WHEREBY HE WAS AWARDED 32 DEGREES FOR UNSCHEDULED HEART DISABILITY.

ON AUGUST 17, 1974 THE WORKMAN DIED OF A HEART ATTACK AND ON OCTOBER 1, 1974 A CLAIM FOR DEATH BENEFITS WAS FILED ON BEHALF OF THE WIDOW AND BENEFICIARIES OF THE DECEASED. THE CLAIM WAS DENIED ON NOVEMBER 22, 1974.

CLAIMANT REQUESTED A HEARING ON THE SOLE ISSUE OF WHETHER THE MYOCARDIAL INFARCTION SUSTAINED BY THE DECEASED ON MAY 23, 1969 WAS A MATERIAL CONTRIBUTING FACTOR AND CAUSE OF HIS DEATH. THE REQUEST FOR HEARING WAS RECEIVED BY THE WORKMEN'S COMPENSATION BOARD ON JANUARY 17, 1975.

ON MARCH 11, 1975, PRIOR TO THE HEARING, THE FUND MOVED THAT THE REQUEST FOR HEARING BE DISMISSED ON THE GROUND AND FOR THE REASON THAT THE HEARINGS DIVISION HAD NO JURISDICTION IN THE CASE. THE MOTION STATED THAT NONE OF THE PROVISIONS OF ORS 656.218 WERE APPLICABLE AND THAT ALL OF THE TIME ELEMENTS ALLOWED IN ORS 656.319 HAD EXPIRED EXCEPT THE PROVISIONS OF SUBSECTION (2)(C) WHICH APPLIED ONLY TO CLAIM FOR AGGRAVATION AND WERE NOT APPLICABLE IN THIS PARTICULAR CASE.

AT THE HEARING ON JUNE 9, 1975 NO TESTIMONY WAS TAKEN. ALL EVIDENCE RECEIVED WAS DOCUMENTARY AND THE REFEREE ALLOWED THE FUND'S MOTION, STATING =

> 'CLAIMANT ASSERTS THAT THIS IS A 'DEATH' CLAIM, A 'WIDOW'S' CLAIM. CLAIMANT HAS NOT SHOWN THAT SHE HAS A RIGHT TO A HEARING ON THE MERITS OF THIS CLAIM. THE HEARINGS DIVISION HAS NO JURISDICTION.'

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE FUND THAT THE PROVISIONS OF ORS 656.218 ARE NOT APPLICABLE. HOWEVER, IT CERTAINLY FEELS THAT THE PROVISIONS OF ORS 656.204 AND, PERHAPS, THE PROVISIONS OF ORS 656.208 ARE APPLICABLE. THE ONLY MEANS BY WHICH THE REFEREE CAN DETERMINE APPLICABILITY OF EITHER OR BOTH OF THESE STATUTES IN THE INSTANT CASE IS TO ALLOW THE CLAIMANT TO PRESENT TESTIMONY IN SUPPORT OF HER CLAIM.

ORDER

THE ORDER OF THE REFEREE DATED JULY 7, 1975 IS REVERSED AND THE MATTER IS REMANDED TO THE HEARINGS DIVISION TO BE SET FOR HEARING ON THE MERITS.

GEORGE JONES, CLAIMANT

EVOHL F. MALAGON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

Reviewed by Commissioners Wilson and Sloan.

The claimant requests board review of the referee's order which awarded claimant 75 degrees for 50 per cent loss of the right leg, but did not award claimant any permanent partial disability for his unscheduled low back injury nor for his alleged unscheduled disability by virtue of a psychiatric impairment precipitated by his industrial injury.

Claimant, a mechanic and truck driver, suffered a compensable injury on June 12, 1973. He experienced pain in his right lower anterior chest, abdomen and right lower extremity. No fractures or dislocation of the lumbar spine were revealed by x-rays although there was pain in this area. The right lower extremity injury was diagnosed as a compound fracture of the mid shaft of the right tibula and crushing injury to the right leg.

Dr. Larson, an orthopedist who was claimant's treating physician, indicated, on August 13, 1974, that claimant still had some discomfort in his low back. As far as his right foot was concerned, claimant was developing increased strength but was still unable to walk on the heel on the right but could walk on his toes. The right leg had a tendency to swell if claimant stood for an extended period of time. On October 8, 1974 claimant was examined by Dr. Harwood, a physician employed by the fund, who found claimant had a definite deformity in his right leg but felt he tended to exaggerate with respect to his subjective symptoms which were not borne out by any objective findings. The claim was closed on December 2, 1974 with an award of 30 degrees for 20 per cent loss of the right leg.

Claimant contends that he is entitled to an award for unscheduled low back disability and the psychiatric impairment brought about by his injury.

The referee found that claimant had had no physical limitations with respect to his former job or other activities prior to his industrial injury but had not been able to return to work after the injury. Claimant is limited in his ability to walk for prolonged distances or over rough or uneven ground because of the disability in his right lower leg. The claimant had been treated and-or examined by several physicians. Dr. Larson recommended a job change and retraining due solely to the leg disability (subsequently he related this to both 'back and leg problem'). Dr. Halferty, at the disability prevention division, also recommended a change of occupation because of claimant's disability in his right lower leg. Dr. Wilson concurred but based his recommendation on both the leg and back condition.

The referee concluded that the medical evidence substantiated a finding that claimant's right leg residual impairment was substantial and that the loss of function of the right leg was equal to 50 per cent.

WITH RESPECT TO THE LOW BACK DISABILITY, THE REFEREE FOUND THAT THIS DISABILITY WAS DUE, IN PART, TO THE INDUSTRIAL INJURY AND, IN PART, TO CLAIMANT BEING SUBSTANTIALLY OVERWEIGHT. THE REFEREE FOUND THAT THERE WERE NO MEDICAL OPINIONS WHICH INDICATED CLAIMANT DID NOT HAVE A LOW BACK STRAIN, TO THE CONTRARY, DR. WILSON'S FINDINGS SUPPORTED CLAIMANT'S SUBJECTIVE COMPLAINTS AND INDICATED THAT HIS LOW BACK STRAIN WAS REFERRABLE TO HIS INDUSTRIAL INJURY. NEVERTHELESS, THE REFEREE CONCLUDED THAT, BECAUSE CLAIMANT COULD CONTROL HIS WEIGHT IF HE MADE A REASONABLE EFFORT TO DO SO AND THAT SUCH LOSS IN WEIGHT WOULD REDUCE THE AFFECTS OF HIS LOW BACK DISABILITY, NO AWARD FOR PERMANENT PARTIAL LOW BACK DISABILITY COULD BE MADE WITH REASONABLE CERTAINTY.

WITH RESPECT TO THE PSYCHIATRIC IMPAIRMENT, THE REFEREE CONCLUDED THAT, BASED ON DR. HICKMAN'S REPORT, CLAIMANT'S PSYCHOPATHOLOGY, IF ANY, COULD NOT BE CONSIDERED TO BE REASONABLY PERMANENT IN NATURE, THEREFORE, CLAIMANT WAS NOT ENTITLED TO AN AWARD FOR SUCH DISABILITY.

CLAIMANT HAD ALSO CONTENDED THAT THE FUND WAS RESPONSIBLE FOR POST-CLAIM CLOSURE MEDICAL TREATMENT RECEIVED FROM DR. LARSON AND DR. SINGER. THE REFEREE FOUND THAT CLAIMANT FAILED TO SHOW THAT THE FUND HAD NOT TIMELY PAID FOR THESE MEDICAL SERVICES. HE DENIED CLAIMANT'S CLAIM FOR MEDICAL SERVICES AND HIS REQUEST FOR PENALTIES AND ATTORNEY'S FEES.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT THERE IS SUBSTANTIAL MEDICAL EVIDENCE TO SUPPORT CLAIMANT'S CONTENTION THAT HE HAD SUFFERED A COMPENSABLE LOW BACK INJURY WHICH HAS DIMINISHED HIS POTENTIAL WAGE EARNING CAPACITY. DR. LARSON AND DR. WILSON BOTH RECOMMENDED CHANGE OF OCCUPATION FOR CLAIMANT AND POSSIBLE RETRAINING, BASING SUCH RECOMMENDATIONS ON CLAIMANT'S LEG AND (UNDERSCORED) BACK CONDITION. WHILE THE AWARD FOR THE RIGHT LEG MUST BE BASED SOLELY ON THE LOSS OF FUNCTION OF THAT EXTREMITY, THE SOLE CRITERION FOR DETERMINING THE EXTENT OF UNSCHEDULED DISABILITY IS LOSS OF EARNING CAPACITY. IN THIS CASE CLAIMANT IS PRECLUDED FROM RETURNING TO THE TYPE OF WORK FOR WHICH HE WAS QUALIFIED AND IN WHICH HE HAD PREVIOUSLY ENGAGED PARTIALLY BECAUSE OF HIS BACK DISABILITY. THE BOARD CONCLUDES THAT HE HAS SUFFERED A LOSS OF HIS EARNING CAPACITY AND SHOULD BE COMPENSATED THEREFOR BY AN AWARD OF 64 DEGREES FOR 20 PER CENT UNSCHEDULED LOW BACK DISABILITY.

THE BOARD CONCURS IN ALL OF THE OTHER FINDINGS AND CONCLUSIONS MADE BY THE REFEREE IN HIS OPINION AND ORDER.

ORDER

THE ORDER OF THE REFEREE DATED JULY 17, 1975 IS MODIFIED TO THE EXTENT THAT CLAIMANT IS AWARDED 64 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. THIS AWARD IS IN ADDITION TO AND NOT IN LIEU OF THE 75 DEGREES OF A MAXIMUM OF 150 DEGREES FOR SCHEDULED RIGHT LEG DISABILITY.

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

THE CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW, 25 PER CENT OF THE INCREASED COMPENSATION AWARDED BY THIS ORDER, PAYABLE OUT OF SAID INCREASED COMPENSATION AS PAID, TO A MAXIMUM OF 2,300 DOLLARS.

WCB CASE NO. 75-1705 DECEMBER 16, 1975

JOHN PACHECO, CLAIMANT
DON SWINK, CLAIMANT'S ATTY.
MERLIN MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE CLAIMANT REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT 160 DEGREES FOR 50 PER CENT UNSCHEDULED DISABILITY.

CLAIMANT, A 45 YEAR OLD MECHANIC, SUFFERED HEAD AND NECK INJURIES ON APRIL 28, 1972. THE CLAIM WAS ACCEPTED AND CLOSED BY A DETERMINATION ORDER DATED MARCH 5, 1973 WHEREBY CLAIMANT WAS AWARDED 32 DEGREES FOR 10 PER CENT UNSCHEDULED CERVICAL DISABILITY. ON JUNE 7, 1973, CLAIMANT WAS GIVEN AN ADDITIONAL AWARD OF 24 DEGREES FOR 7.5 PER CENT UNSCHEDULED DISABILITY PURSUANT TO STIPULATION APPROVED ON THAT DATE. SUBSEQUENTLY THE CLAIM WAS REOPENED AND CLOSED BY A SECOND DETERMINATION ORDER ON APRIL 23, 1974 WHICH AWARDED CLAIMANT NO ADDITIONAL PERMANENT PARTIAL DISABILITY. AT THE TIME OF THE HEARING CLAIMANT HAD A TOTAL OF 56 DEGREES FOR 17.5 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY.

CLAIMANT'S TREATING PHYSICIAN, DR. WINKLER, ORIGINALLY DIAGNOSED CLAIMANT'S CONDITION AS CEREBRAL CONCUSSION, ACUTE CERVICAL STRAIN, CONTUSION OF THE RIGHT FACIAL NERVE, ANXIETY AND DEPRESSION. WHILE CLAIMANT CONTINUED TO BE TREATED BY DR. WINKLER, HE WAS ALSO SEEN BY DR. RATHKEY, AN EYE SPECIALIST, WHO DIAGNOSED CONCUSSION OR SEVERANCE TO THE 5TH NERVE FRONTAL BRANCH OF THE ORBITAL RIM ON THE RIGHT SIDE AND FELT THAT, DEPENDING UPON THE SEVERITY OF THE CONCUSSION, CLAIMANT MIGHT HAVE ANESTHESIA OF THE FOREHEAD FOR APPROXIMATELY SIX MONTHS - HOWEVER, HE FELT CLAIMANT COULD RETURN TO WORK.

IN JANUARY, 1973 CLAIMANT WAS EXAMINED AT THE DISABILITY PREVENTION DIVISION - THE CONSENSUS OF OPINION WAS THAT THE MAIN DETERRENT TO RETURN TO WORK WAS PSYCHOLOGICAL RATHER THAN PHYSICAL. DR. WINKLER AGREED AND RECOMMENDED CLAIM CLOSURE.

IN JUNE 1974, DR. WINKLER REHOSPITALIZED CLAIMANT AND IN JULY 1974, CLAIMANT ENTERED THE PAIN CLINIC FOR FURTHER TREATMENT. DR. WINKLER FELT IT WOULD BE IMPOSSIBLE FOR CLAIMANT TO UNDERGO ANY TYPE OF RETRAINING UNTIL HE COULD LEARN TO COPE WITH HIS SITUATION.

CLAIMANT HAS AN EIGHTH GRADE EDUCATION, HE SERVED 12 YEARS IN THE MILITARY WHERE MOST OF HIS WORK WAS THAT OF A MECHANIC OR AIRCRAFT MECHANIC. UPON HIS DISCHARGE FROM THE SERVICE, HE CONTINUED TO WORK PRIMARILY AS A MECHANIC. WHEN CLAIMANT RETURNED TO WORK FOR THE EMPLOYER FOR WHOM HE HAD WORKED THE LAST SEVERAL YEARS PRIOR TO THE INJURY, THE SUPERVISOR, WHO BELIEVED CLAIMANT TO BE A GOOD WORKER, TRIED TO HELP HIM BY GIVING HIM LIGHT WORK WHICH INVOLVED SOME LIFTING. THE EMPLOYER DID TAKE THE MAJOR OVERHAUL JOBS AWAY BECAUSE THEY REQUIRED EXTREMELY HEAVY LIFTING.

AT THE PRESENT TIME CLAIMANT IS NOT WORKING AND DOES NOT KNOW WHAT HE CAN DO ALTHOUGH HE SEEMS TO BE IN RELATIVELY GOOD PHYSICAL CONDITION.

THE REFEREE CONCLUDED THAT DESPITE CLAIMANT'S GOOD PHYSICAL APPEARANCE, HE WAS GOING THROUGH SOME TYPE OF STRESS - HE WAS STILL COMPLAINING OF VERY SEVERE HEADACHES IN THE OCCIPITAL REGION, PAIN IN HIS NECK AND PAIN OVER HIS RIGHT SHOULDER AND UPPER BACK AREA. THE REFEREE FELT THE EVIDENCE DID NOT INDICATE THAT CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED - HE FELT SOME RETRAINING WOULD BE BENEFICIAL TO HIM. AT THE TIME OF THE HEARING CLAIMANT WAS INVOLVED IN A DVR PROGRAM.

THE REFEREE FOUND THAT CLAIMANT'S PRIMARY PROBLEM, THE SEVERE HEADACHES WHICH RECUR INTERMITTENTLY AND REQUIRE MEDICAL HELP, APPARENTLY OCCURS REGARDLESS OF CLAIMANT'S ACTIVITIES. HE CONCLUDED THAT CLAIMANT WAS UNDOUBTEDLY RESTRICTED AND WOULD HAVE TO MODIFY HIS METHOD OF MAKING A LIVELIHOOD - THAT THE LOSS OF CLAIMANT'S WAGE EARNING CAPACITY WAS IN EXCESS OF THAT FOR WHICH HE HAD BEEN AWARDED BY THE TWO DETERMINATION ORDERS AND THE STIPULATION. BASED UPON THIS CONCLUSION, HE INCREASED CLAIMANT'S AWARD TO 50 PER CENT OF THE MAXIMUM ALLOWABLE BY STATUTE, AN INCREASE OF 32.5 PER CENT.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS REACHED BY THE REFEREE IN HIS OPINION AND ORDER.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 18, 1975 AS AMENDED BY THE ORDER DATED JULY 2, 1975 IS AFFIRMED.

SAIF CLAIM NO. BC 55543 DECEMBER 16, 1975

FRED C. STEINHAUSER, CLAIMANT

DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS RIGHT KNEE ON JANUARY 5, 1967. THE CLAIM WAS INITIALLY CLOSED AUGUST 17, 1967 WITH AN AWARD OF 11 DEGREES FOR 10 PER CENT LOSS OF THE RIGHT LEG. IT WAS REOPENED AND A PARTIAL PATELLECTOMY PERFORMED ON JUNE 12, 1969. A SECOND DETERMINATION ORDER DATED FEBRUARY 20, 1971 AWARDED CLAIMANT AN ADDITIONAL 17 DEGREES FOR APPROXIMATELY 15 PER CENT OF THE RIGHT LEG.

BASED ON A REPORT FROM DR. ANDERSON DATED MARCH 8, 1972, THE CLAIM WAS REOPENED FOR TREATMENT AND, ON MAY 24, 1972 DR. SLOCUM DID A TOTAL PATELLECTOMY. THE THIRD DETERMINATION ORDER DATED AUGUST 7, 1973 AWARDED CLAIMANT AN ADDITIONAL 22 DEGREES FOR 20 PER CENT LOSS OF THE RIGHT LEG, THEREBY GIVING CLAIMANT A TOTAL OF 72 DEGREES FOR 65 PER CENT LOSS OF HIS RIGHT LEG.

ON JANUARY 14, 1975 DR. SLOCUM PERFORMED FURTHER SURGERY ON THE RIGHT KNEE, A HIGH TIBIAL WEDGE OSTEOTOMY AND EXCISION OF OSTEOPHYTES. ON OCTOBER 31, 1975 DR. SLOCUM STATED THAT CLAIMANT'S CONDITION WAS MEDICALLY STATIONARY AND THE BOARD SUBMITTED THE MATTER TO ITS EVALUATION DIVISION AND REQUESTED AN ADVISORY RATING.

BASED UPON THE ADVISORY RATING OF ITS EVALUATION DIVISION, THE BOARD AWARDS CLAIMANT 11 DEGREES OF A MAXIMUM OF 110 DEGREES FOR SCHEDULED RIGHT LEG DISABILITY. THIS AWARD IS IN ADDITION TO AND NOT IN LIEU OF THE PREVIOUS AWARDS GRANTED BY THE DETERMINATION ORDERS AND THE STIPULATION, ALL OF WHICH HAVE BEEN IDENTIFIED IN THIS ORDER.

SAIF CLAIM NO. HA 871378 DECEMBER 16, 1975

JOYCE M. GREEN, CLAIMANT

SUSAK AND LAWRENCE, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HER LOW BACK ON JULY 15, 1961. HER CLAIM WAS CLOSED BY AN AWARD OF 20 PER CENT LOSS FUNCTION OF AN ARM FOR UNSCHEDULED DISABILITY ON SEPTEMBER 13, 1962 - CLAIMANT WAS AWARDED AN ADDITIONAL 15 PER CENT BY THE CIRCUIT COURT FOR MULTNOMAH COUNTY ON NOVEMBER 15, 1963.

CLAIMANT'S AGGRAVATION RIGHTS HAVING EXPIRED, SHE PETITIONED THE BOARD TO EXERCISE ITS OWN MOTION PURSUANT TO ORS 656.278 AND, ON MARCH 26, 1973, THE BOARD ORDERED THE STATE ACCIDENT INSURANCE FUND TO EXTEND TO CLAIMANT SUCH MEDICAL CARE AND COMPENSATION AS HER LOW BACK CONDITION MIGHT REQUIRE.

CLAIMANT HAD A LUMBOSACRAL FUSION ON APRIL 16, 1973 AND A RE-FUSION FOR PSEUDOARTHROSIS ON JUNE 10, 1974. ON JULY 25, 1975, DR. NOALL CONSIDERED THAT CLAIMANT WAS MEDICALLY STATIONARY AND THE MATTER WAS SUBMITTED TO THE EVALUATION DIVISION OF THE BOARD FOR AN ADVISORY RATING WITH RESPECT TO CLAIMANT'S PRESENT PHYSICAL DISABILITY.

ON DECEMBER 4, 1975 THE BOARD WAS ADVISED THAT CLAIMANT SHOULD BE AWARDED TEMPORARY TOTAL DISABILITY COMPENSATION FROM SEPTEMBER 25, 1969 THROUGH JULY 25, 1975, AND THAT SHE BE CONSIDERED PERMANENTLY AND TOTALLY DISABLED AS A RESULT OF HER UNSCHEDULED LOW BACK DISABILITY.

ORDER

CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED AS DEFINED BY ORS 656.206(1) AND SHALL BE CONSIDERED AS SUCH FROM JULY 25, 1975 THE DATE SHE WAS MEDICALLY STATIONARY.

THE STATE ACCIDENT INSURANCE FUND, WHICH HAS BEEN PAYING CLAIMANT TEMPORARY TOTAL DISABILITY COMPENSATION SINCE SEPTEMBER 25, 1969, SHALL BE ALLOWED TO RECOUP THE AMOUNT REPRESENTED BY THE DIFFERENCE BETWEEN TEMPORARY TOTAL DISABILITY COMPENSATION AND PERMANENT TOTAL DISABILITY COMPENSATION PAID BY IT TO CLAIMANT FROM JULY 25, 1975 UNTIL THE DATE OF THIS ORDER. THE METHOD OF RECOUPMENT SHALL BE SUCH THAT THE PAYMENTS OF PERMANENT TOTAL DISABILITY PAID BY THE FUND TO CLAIMANT AFTER THE DATE OF THIS ORDER SHALL NOT BE DECREASED IN EXCESS OF 10 PER CENT PER MONTH.

CLAIMANT'S COUNSEL IS ENTITLED TO RECEIVE AS A REASONABLE ATTORNEY'S FEE, 25 PER CENT OF THE COMPENSATION CLAIMANT WILL RECEIVE AS A RESULT OF THIS ORDER TO A MAXIMUM OF 2,300 DOLLARS.

WCB CASE NO. 75-1576 DECEMBER 17, 1975

OTTO G. YUTZE, CLAIMANT

CHARLES PAULSON, CLAIMANT'S ATTY.
DAVIES, BIGGS, STRAYER, STOEL AND BOLEY,
DEFENSE ATTYS.
ORDER OF DISMISSAL

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. 75-40 DECEMBER 17, 1975

ETHEL MOLCHANOFF, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
G. HOWARD CLIFF, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE EMPLOYER REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT 64 DEGREES FOR 20 PER CENT UNSCHEDULED LOW BACK DISABILITY IN ADDITION TO THE AWARD OF 30 DEGREES FOR 20 PERCENT SCHEDULED DISABILITY OF THE LEFT LEG AWARDED BY THE DETERMINATION ORDER MAILED NOVEMBER 6, 1974.

CLAIMANT, A 55 YEAR OLD SEAMSTRESS, SUFFERED A COMPENSABLE INJURY ON NOVEMBER 20, 1973 WHEN SHE TRIPPED ON A CORD AND FELL TO HER HANDS AND KNEES. CLAIMANT CONTINUED WORKING BUT, ON DECEMBER 7, 1973, SAW HER FAMILY DOCTOR COMPLAINING OF PAIN IN HER LEFT HIP. THE DIAGNOSIS WAS TENDERNESS OF THE SUBTROCHANTER BURSA - HE ADVISED CLAIMANT THAT SHE SHOULD NOT HAVE CONTINUED WORKING AFTER HER ACCIDENT, HOWEVER, CLAIMANT DISREGARDED HIS ADVICE AND CONTINUED WORKING UNTIL SHE WAS LAID OFF BECAUSE OF ECONOMIC REASONS ON DECEMBER 20, 1973.

CLAIMANT HAS BEEN SEEN BY SEVERAL PHYSICIANS. DR. SCHULER FOUND TENDINITIS IN HER LEFT HIP AT THE LEVEL OF THE TROCHANTER AND RULED OUT TROCHANTER BURSITIS. DR. GEIST DIAGNOSED COMBINED TROCHANTERIC BURSITIS AND TENDINITIS - HE FOUND CLAIMANT NEUROLOGICALLY NORMAL IN BOTH LOWER EXTREMITIES BUT WITH GENERALIZED WEAKNESS AND ATROPHY OF THE LEFT LEG BECAUSE OF DISUSE. HE ALLOWED HER TO RETURN TO WORK ON A PART TIME BASIS BUT TO REPORT TO HIM WITH RESPECT AS TO HOW SHE WAS ABLE TO TOLERATE HER WORK ACTIVITY.

ON AUGUST 27, DR. GEIST FELT CLAIMANT WAS BEGINNING TO HAVE BACK AND HIP DIFFICULTY AND HE SUSPECTED THE LOW BACK PROBLEM WAS PROBABLY SECONDARY TO HER LIMP, HOWEVER, ON THAT DATE HE RELEASED HER TO FULL TIME WORK AND, ON SEPTEMBER 24, 1974, FOUND HER TO BE MEDICALLY STATIONARY. HER CLAIM WAS CLOSED WITH AN AWARD OF 20 PER CENT FOR THE LEFT LEG.

CLAIMANT CONTENDS THAT SHE SHOULD HAVE, IN ADDITION TO THE

AWARD FOR HER REPRESENTED LOSS OF LEFT LEG, AN AWARD FOR HER UNSCHEDULED LOW BACK DISABILITY BECAUSE SUCH LOW BACK PAIN IS THE RESULT OF HER INDUSTRIAL INJURY. THIS CONTENTION WAS SUPPORTED BY A REPORT FROM DR. CHERRY.

AT THE REQUEST OF THE EMPLOYER CLAIMANT WAS EXAMINED BY THE ORTHOPEDIC CONSULTANT GROUP WHO FELT THAT CLAIMANT DID NOT HAVE SUFFICIENT DISABILITY TO JUSTIFY A FASCIOTOMY AND THAT THE DISABILITY RATING OF 20 PER CENT LOSS FUNCTION OF THE LEFT LEG WAS ADEQUATE TO COVER ANY DISABILITY WHICH MIGHT HAVE ARISEN FROM HER NOVEMBER 23, 1973 ACCIDENT. THEY DID NOT BELIEVE HER LOW BACK DISABILITY WHICH, ACCORDING TO THEIR REPORT, CAME ON OVER ONE YEAR AFTER HER INJURY WAS CONNECTED WITH THAT INJURY.

THE REFEREE FOUND THAT ACCORDING TO DR. GEIST'S CHART NOTES, THE ONSET OF CLAIMANT'S LOW BACK PAIN WAS DURING AUGUST 1974 RATHER THAN OCTOBER 23, 1974, THE DATE INDICATED IN THE ORTHOPEDIC CONSULTANT GROUP'S REPORT. HE RECOGNIZED THAT THERE WAS A CONFLICT IN THE MEDICAL TESTIMONY WITH RESPECT TO CLAIMANT'S LOW BACK PROBLEM BUT WAS PERSUADED BY THE EVIDENCE THAT CLAIMANT HAD NO PROVEN BACK PROBLEMS PRIOR TO HER INDUSTRIAL INJURY AND THE LACK OF ANY EVIDENCE THAT CLAIMANT HAD ANY FALLS OR ACCIDENTS IN THE PERIOD BETWEEN HER INDUSTRIAL INJURY AND THE ONSET OF LOW BACK PAIN.

THE REFEREE FOUND CLAIMANT TO BE A CREDIBLE WITNESS AND CONCLUDED THAT THE LOW BACK PAIN HAD COME ABOUT AS A RESULT OF THE LIMP IN THE LEFT LEG WHICH HAD COME ABOUT AS THE RESULT OF THE HIP PAIN. BOTH CLAIMANT'S TREATING ORTHOPEDIC SURGEON AND AN EXAMINING ORTHOPEDIC SURGEON HAD FOUND THAT HER BACK PROBLEMS WERE THE RESULT OF HER INDUSTRIAL INJURY.

THE REFEREE CONCLUDED THAT CLAIMANT HAD BORNE HER BURDEN OF PROOF THAT THERE WAS CAUSAL CONNECTION BETWEEN HER INDUSTRIAL ACCIDENT AND HER LOW BACK PAIN. HE FELT SHE NOT PROVEN SHE WAS UNABLE TO WORK BECAUSE OF HER DISABILITIES, NEVERTHELESS, HE AWARDED HER 64 DEGREES FOR 20 PER CENT UNSCHEDULED LOW BACK DISABILITY.

THE BOARD, ON DE NOVO REVIEW, DOES NOT AGREE WITH THE REFEREE'S CONCLUSION THAT CLAIMANT HAS FAILED TO SHOW THAT SHE IS UNABLE TO WORK BECAUSE OF HER PHYSICAL DISABILITIES. IT IS TRUE THAT THE REASON CLAIMANT IS NOT WORKING AT THE PRESENT TIME IS ECONOMIC RATHER THAN BECAUSE OF HER PHYSICAL CONDITION, HOWEVER, BASED UPON DR. SCHULER'S REPORTS OF CLAIMANT'S CONDITION, IT IS APPARENT THAT CLAIMANT WILL HAVE DIFFICULTY RETURNING TO HER FORMER TYPE OF WORK AND HER POTENTIAL FOR RETRAINING FOR TYPES OF WORK WHICH SHE COULD ADEQUATELY HANDLE IN HER PRESENT PHYSICAL CONDITION IS ONLY FAIR.

THE BOARD CONCLUDES THAT CLAIMANT HAS SUFFERED SOME LOSS IN HER EARNING CAPACITY AS A RESULT OF HER LOW BACK DISABILITY BUT THAT IT IS NOT IN EXCESS OF 10 PER CENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR SUCH DISABILITY.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 9, 1975 IS MODIFIED AND CLAIMANT IS AWARDED 32 DEGREES OF A MAXIMUM OF 320 DEGREES FOR HER UNSCHEDULED LOW BACK DISABILITY. THIS AWARD IS IN LIEU OF THE AWARD FOR UNSCHEDULED LOW BACK MADE BY THE REFEREE IN HIS OPINION AND ORDER WHICH, IN ALL OTHER RESPECTS, IS AFFIRMED.

RICKIE LOTTS, CLAIMANT

BENNETT, KAUFMAN AND JAMES,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT 60 DEGREES FOR 40 PER CENT LOSS OF THE RIGHT HAND.

CLAIMANT SUSTAINED A COMPENSABLE INJURY ON MAY 9, 1974 WHEN HE CUT THE FINGERS ON HIS RIGHT HAND WHILE FEEDING LUMBER INTO A MACHINE. DR. DAVIS FOUND A COMPLETE AMPUTATION OF THE TIP OF THE RIGHT INDEX FINGER INVOLVING THE PULP PAD ONLY, A LARGE SEMI-CIRCUMFERENTIAL LACERATION OF THE LONG FINGER AT THE LEVEL OF THE MIDDLE PHALANX WITH INVOLVEMENT OF THE EXTENSOR MECHANISM AND AN INCOMPLETE FRACTURE OF THE MIDDLE PHALANX AND LACERATION OF THE EXTENSOR MECHANISM. THE LACERATIONS WERE CLOSED AND A FULL THICKNESS SKIN GRAFT APPLIED TO THE INDEX FINGER.

ON OCTOBER 7, 1974 DR. DAVIS FOUND DECREASED SENSATION OF THE PULP PAD OF THE LONG FINGER AND OF A VERY SMALL AREA WHERE THE SKIN GRAFT WAS APPLIED ON THE INDEX FINGER - THE RANGE OF MOTION OF BOTH INDEX AND RING FINGERS WAS NORMAL BUT CLAIMANT WAS UNABLE TO MAKE A FIST WITH THE LONG FINGER, LACKING THE LAST 60 DEGREES OF FLEXION OF OF THE DISTAL INTERPHALANGEAL JOINT. THE CLAIM WAS CLOSED WITH AN AWARD OF 15 DEGREES FOR 10 PER CENT LOSS OF RIGHT HAND.

CLAIMANT HAS DIFFICULTY IN PICKING UP AND HOLDING ONTO OBJECTS - HE HAS PROBLEMS WORKING ON HIS CAR AND OFTEN SPILLS OR DROPS THINGS BECAUSE OF THE UNSURENESS OF HIS GRIP.

BASED UPON THE TESTIMONY AND THE MEDICAL EVIDENCE REGARDING THE LOSS OF FUNCTION OF THE RIGHT HAND, THE SOLE CRITERION FOR EVALUATING SCHEDULED DISABILITY, THE REFEREE CONCLUDED THAT CLAIMANT HAD SUSTAINED 40 PER CENT LOSS OF FUNCTION OF THE RIGHT HAND AND INCREASED THE AWARD ACCORDINGLY.

THE BOARD, ON DE NOVO REVIEW, FEELS THAT, BASED UPON THE MEDICAL AND LAY EVIDENCE, CLAIMANT HAS RETAINED MUCH MORE THAN 60 PER CENT FUNCTION OF HIS RIGHT HAND. THE BOARD CONCLUDES THAT THE AWARD OF 15 DEGREES FOR 10 PER CENT LOSS OF THE RIGHT HAND SUFFICIENTLY COMPENSATES CLAIMANT FOR THE LOSS FUNCTION AND USE OF THAT HAND.

ORDER

THE ORDER OF THE REFEREE DATED JULY 28, 1975 IS REVERSED.

THE DETERMINATION ORDER MAILED NOVEMBER 8, 1975 IS AFFIRMED.

WCB CASE NO. 74-1117 DECEMBER 17, 1975

PAUL BALEY, CLAIMANT
DYE AND OLSON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER OF DISMISSAL

ON DECEMBER 9, 1975, CLAIMANT FILED A REQUEST FOR REVIEW ON THE ABOVE ENTITLED MATTER. ON DECEMBER 12, 1975, THE STATE ACCIDENT INSURANCE FUND MOVED TO DISMISS THE REQUEST FOR REVIEW ON GROUNDS THAT IT WAS NOT FILED WITHIN 30 DAYS FROM THE DATE OF THE REFEREE'S OPINION AND ORDER.

THE BOARD FINDS THAT THE OPINION AND ORDER WAS ENTERED OCTOBER 30, 1975. AN AMENDED OPINION AND ORDER WAS ENTERED NOVEMBER 7, 1975 WHICH DID NOT AFFECT THE SUBSTANCE OF THE OPINION AND ORDER.

A REQUEST FOR REVIEW OF SAID OPINION AND ORDER HAD TO BE FILED ON OR BEFORE NOVEMBER 29, 1975, THEREFORE, THE REQUEST FOR REVIEW RECEIVED DECEMBER 9, 1975, MUST BE DISMISSED.

THE MOTION TO DISMISS THE REQUEST FOR REVIEW IS GRANTED.

SAIF CLAIM NO. BB 92418 DECEMBER 17, 1975

GERTRUDE COLLINS, CLAIMANT
EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
OWN MOTION ORDER

ON DECEMBER 5, 1975 CLAIMANT, THROUGH HER ATTORNEY, REQUESTED THE BOARD TO EXERCISE ITS OWN MOTION JURISDICTION UNDER ORS 656.278 AND FIND CLAIMANT TO BE PERMANENTLY AND TOTALLY DISABLED AS A RESULT OF HER INDUSTRIAL INJURY OF NOVEMBER, 1964.

THE BOARD, AFTER READING THE MEDICAL REPORT SUBMITTED BY CLAIMANT AS WELL AS THE MEDICAL REPORT SUBMITTED BY THE STATE ACCIDENT INSURANCE FUND, CONCLUDES THAT THE MEDICAL EVIDENCE DOES NOT SUPPORT A FINDING THAT CLAIMANT IS ENTITLED TO A GREATER AWARD THAN THAT WHICH SHE HAS ALREADY RECEIVED FOR HER NOVEMBER 5, 1964 INDUSTRIAL INJURY.

THE REQUEST FOR BOARD'S OWN MOTION JURISDICTION PURSUANT TO ORS 656.278 RECEIVED FROM THE CLAIMANT ON DECEMBER 5, 1975 HEREBY IS DENIED.

WCB CASE NO. 75-2531 DECEMBER 17, 1975

LYNN MC KINNEY, CLAIMANT
POZZI, WILSON AND ATCHISON,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER ON MOTION

ON DECEMBER 9, 1975 THE CLAIMANT MOVED THE BOARD FOR AN ORDER REFERRING THE ABOVE ENTITLED MATTER TO THE HEARING REFEREE FOR THE TAKING OF FURTHER EVIDENCE ON THE ISSUE OF LIABILITY. THE MOTION WAS SUPPORTED BY AN AFFIDAVIT OF CLAIMANT'S ATTORNEY AND COPIES OF STATEMENTS OF TWO WITNESSES.

THE BOARD, AFTER STUDYING THE AFFIDAVIT AND STATEMENTS, CONCLUDES THAT THERE IS NO SHOWING THAT SUCH EVIDENCE AS CLAIMANT NOW DESIRES TO HAVE ADMITTED WAS NOT AVAILABLE TO HIM AT THE TIME OF HEARING.

ORDER

THE MOTION FILED IN THE ABOVE ENTITLED MATTER BY THE CLAIMANT ON DECEMBER 9, 1975 IS DENIED.

WCB CASE NO. 75-1625 IF DECEMBER 18, 1975

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S AMENDED OPINION AND ORDER WHICH AWARDED CLAIMANT 35 PER CENT UNSCHEDULED CERVICAL SPINE DISABILITY - REMANDED THE CLAIM FOR PAYMENT OF TEMPORARY TOTAL DISABILITY FROM FEBRUARY 19, 1975 UNTIL CLAIMANT IS EITHER RELEASED TO RETURN, OR HAS RETURNED, TO WORK - FOR PAYMENT OF ALL UNPAID MEDICAL SERVICES RELATED TO THE TREATMENT OF THE ORIGINAL COMPENSABLE INJURY AND THE CONSEQUENTIAL CERVICAL INJURY AND DIRECTED THE FUND TO PAY CLAIMANT'S ATTORNEY A REASONABLE ATTORNEY'S FEE IN THE SUM OF 600 DOLLARS.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON SEPTEMBER 3, 1971 WHILE INCARCERATED IN THE OREGON STATE PENITENTIARY. THE INJURY WAS TO CLAIMANT'S PRIVATE PARTS. HE SUBMITTED HIS CLAIM TO THE STATE ACCIDENT INSURANCE FUND FOR PAYMENT OF BENEFITS UNDER 655.505 TO 655.550 - THE CLAIM WAS ACCEPTED AND ADMINISTERED BY THE FUND WHILE CLAIMANT WAS INCARCERATED. ON NOVEMBER 26, 1971 CLAIMANT WAS RELEASED FROM THE PENITENTIARY AND THE FUND THEN PROCESSED HIS CLAIM FOR PERMANENT PARTIAL DISABILITY PURSUANT TO ORS 655.515 AND ON AUGUST 10, 1973 ISSUED A 'DETERMINATION' AWARDING TEMPORARY TOTAL DISABILITY COMPENSATION TO JANUARY 3, 1973 AND PERMANENT PARTIAL DISABILITY FOR '25 PER CENT LOSS FUNCTION OF THE RIGHT ARM'.

FOLLOWING THE INJURY, CLAIMANT WAS HOSPITALIZED IN SALEM FOR EXTENSIVE MEDICAL CARE - LATER HE WAS TRANSFERRED TO THE EMANUEL

HOSPITAL IN PORTLAND FOR PLASTIC SURGICAL RECONSTRUCTION AND SKIN GRAFTING. ADDITIONAL SURGERY WAS CONTEMPLATED BUT, IN THE OPINION OF THE DOCTOR, WAS NOT POSSIBLE UNTIL CLAIMANT LOST A GREAT DEAL OF WIEGHT - AT THAT TIME HE WAS WELL OVER 100 POUNDS OVERWEIGHT. CLAIMANT WAS THEN ADMITTED TO THE EXTENDED CARE FACILITY OF EMANUEL HOSPITAL FOR THE PERFORMANCE OF EXERCISES PRESCRIBED FOR THE TREATMENT OF HIS OBESITY. WHILE PERFORMING THESE EXERCISES HE DEVELOPED A WEAKNESS IN HIS RIGHT SHOULDER DUE TO AN ACUTE HERNIATED VERTEBRAL DISC C4-5 ON THE RIGHT.

ON DECEMBER 6, 1972 CLAIMANT UNDERWENT AN ANTERIOR CERVICAL FUSION AND DISC REMOVAL. DR. SERES INFORMED THE FUND THAT THE RELATIONSHIP THAT EXISTED BETWEEN THE ANTERIOR CERVICAL FUSION AND HIS ORIGINAL INDUSTRIAL INJURY HAD TO DO WITH THE TREATMENT OF OBESITY.

ON MARCH 25, 1975 THE FUND WAS INFORMED BY CLAIMANT'S ATTORNEY THAT HE WAS MAKING A CLAIM FOR ALL (UNDERSCORED) ADDITIONAL COMPENSATION AND ADDITIONAL MEDICAL SERVICES DUE TO CLAIMANT AS A RESULT OF AN AGGRAVATION OF HIS COMPENSABLE INJURY OF SEPTEMBER 3, 1971. ON APRIL 3, 1975 THE FUND ISSUED A LETTER OF DENIAL.

AT THE HEARING THE REFEREE FOUND THAT THE CLAIM FOR AGGRAVATION WAS COMPENSABLE BUT THAT CLAIMANT WAS PRESENTLY MEDICALLY STATIONARY AND HE, THEREFORE, AWARDED CLAIMANT 112 DEGREES FOR 35 PER CENT UNSCHEDULED CERVICAL SPINE DISABILITY AND ALSO TIME LOSS AND ATTORNEY'S FEES.

THE BOARD, ON DE NOVO REVIEW, CAN FIND NOTHING CONTAINED IN THE BRIEF FILED BY THE FUND UPON WHICH TO REVERSE OR EVEN MODIFY THE FINDINGS AND CONCLUSIONS OF THE REFEREE WHICH ARE CLEARLY SET FORTH IN THE OPINION AND ORDER AND THE AMENDED OPINION AND ORDER.

ORDER

THE OPINION AND ORDER DATED JULY 25, 1975, AS AMENDED, NUNC PRO TUNC JULY 25, 1975, ON AUGUST 13, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW THE SUM OF 550 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 75-488 DECEMBER 18, 1975

DOYLE BUSHONG, CLAIMANT

JOHN W. SMALLMON, CLAIMANT'S ATTY.
RALPH TODD, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED A DETERMINATION ORDER, DATED DECEMBER 6, 1974, AWARDING CLAIMANT 70 PER CENT UNSCHEDULED DISABILITY EQUAL TO 224 DEGREES. CLAIMANT CONTENDS HE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT, EMPLOYED AT A PLYWOOD MILL, ON AUGUST 31, 1973, SUFFERED A LOW BACK STRAIN SUPERIMPOSED ON AN OLD LUMBAR LAMINECTOMY AND TWO FUSIONS. ON SEPTEMBER 19, 1973, HE WAS REFERRED TO THE DIVISION OF VOCATIONAL REHABILITATION AND, UNDER THEIR AUSPICES, BEGAN A BUILDING INSPECTOR PROGRAM AND SUCCESSFULLY

COMPLETED A TERM WITH A 3.0. PROSPECTS FOR CLAIMANT SECURING A JOB IN THIS FIELD APPEARED TO BE VERY GOOD.

SHORTLY AFTER HIS CLAIM WAS CLOSED, CLAIMANT BECAME VERY DEPRESSED, BECAME ENGROSSED WITH HIS PHYSICAL COMPLAINTS AND WAS APPREHENSIVE ABOUT COMPLETING HIS DVR PROGRAM. CLAIMANT WAS, INITIALLY, TREATED BY HIS FAMILY PHYSICIAN IN HERMISTON, DR. MILTON JOHNSON. HE WAS LATER SEEN BY DR. DONALD D. SMITH RELATING SYMPTOMS WHICH INCLUDED CONSTANT PAIN UNRELIEVED BY MEDICATION, NUMBNESS IN THE LEGS, HEADACHES, LACK OF CONCENTRATION, UNABLE TO SIT STILL, SEXUAL PROBLEMS AND, AS NOTED BY THE DOCTOR, RATHER SEVERE DEPRESSION.

DR. RAAF EXAMINED CLAIMANT ON MARCH 31, 1975 AND FOUND NO ABNORMAL NEUROLOGICAL FINDINGS. HE DISCUSSED WITH CLAIMANT THE POSSIBILITY OF TRAINING FOR SOME TYPE OF LIGHT WORK. PRIOR TO THIS TIME CLAIMANT HAD TOLD HIS DVR COUNSELOR IN JANUARY 1975 THAT HE WOULD NEVER WORK AGAIN.

FROM 1964 TO 1971 CLAIMANT WAS THE OWNER OF A SUCCESSFUL FURNITURE AND APPLIANCE STORE. AFTER SELLING THE STORE, CLAIMANT DID NOT WORK FOR THE NEXT YEAR AND A HALF. DURING THAT TIME HE BUILT A CABIN IN THE BLUE MOUNTAINS WHERE HE GOES FOR 2 TO 4 DAYS WHEN HIS PAIN BECOMES SEVERE AND HE IS UNABLE TO COPE WITH IT.

THE BOARD, ON DE NOVO REVIEW, CANNOT FIND THAT CLAIMANT'S PHYSICAL COMPLAINTS REACH THE DEGREE OF SEVERITY THAT HE IS INCAPABLE OF SOME TYPE OF LIGHT EMPLOYMENT. AT AGE 50, CLAIMANT IS YET NOT AN OLD WORKMAN AND APPEARED TO BE SUCCESSFUL AT THE BEGINNING OF HIS BUILDING INSPECTOR PROGRAM.

THE BOARD CONCLUDES THAT CLAIMANT IS NOT ENTITLED TO A GREATER AWARD THAN HE HAS ALREADY RECEIVED.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 18, 1975 IS AFFIRMED.

WCB CASE NO. 74-4252 DECEMBER 18, 1975

DELOIN BARNES, CLAIMANT

TOM HANLON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER MAILED NOVEMBER 14, 1974, AWARDING CLAIMANT 19.2 DEGREES FOR 10 PER CENT LOSS OF THE RIGHT ARM.

CLAIMANT CONTENDS THAT HE IS ENTITLED TO AN AWARD FOR AN UNSCHEDULED SHOULDER DISABILITY AND THAT THE AWARD RECEIVED FOR HIS RIGHT ARM WAS INSUFFICIENT.

CLAIMANT WAS INVOLVED IN AN AUTOMOBILE ACCIDENT ON DECEMBER 25, 1972 AND SUSTAINED A FRACTURE OF THE RIGHT SHOULDER. LATER HE RETURNED TO WORK BUT CONTINUED TO COMPLAIN OF PAIN AND DISCOMFORT IN HIS SHOULDER. ON MARCH 21, 1973, AFTER DR. BROOKE HAD

DIAGNOSED A RUPTURE LONG HEAD OF THE RIGHT BICEPS, CLAIMANT UNDERWENT SURGICAL REPAIR THEREFOR.

PRIOR TO THIS SURGERY CLAIMANT HAD FILED A CLAIM FOR A RIGHT ARM INJURY SUSTAINED ON MARCH 16, 1973 WHILE PULLING ON THE GREEN CHAIN - THIS CLAIM WAS DENIED AND THERE WAS NO APPEAL TAKEN FROM THE DENIAL.

ON SEPTEMBER 13, 1973 CLAIMANT FILED A CLAIM FOR AGGRAVATION OF THE MARCH 16, 1973 INJURY. IT WAS DENIED BUT, AFTER A HEARING, WAS REMANDED TO THE FUND AND CLOSED BY THE DETERMINATION ORDER REFERRED TO IN THE OPENING PARAGRAPH.

ALTHOUGH THE CLAIMANT COMPLAINED OF PAIN AND DISCOMFORT AND LOSS OF STRENGTH IN HIS RIGHT SHOULDER AND ARM, THE REFEREE FOUND THAT CLAIMANT HAD FAILED TO PROVE HIS CASE BECAUSE OF HIS LACK OF CREDIBILITY.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT THE MEDICAL REPORTS JUSTIFY AN AWARD FOR THE CLAIMANT'S SHOULDER DISABILITY ALTHOUGH THE DISABILITY IS MINIMAL. THE BOARD FURTHER NOTES THAT CREDIBILITY IS NOT A PROPER BASIS FOR THE DETERMINATION OF THE EXTENT OF PERMANENT DISABILITY - IT IS A MEDICAL QUESTION.

ORDER

THE ORDER OF THE REFEREE DATED JULY 30, 1975 IS REVERSED.

CLAIMANT IS AWARDED 32 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED RIGHT SHOULDER DISABILITY. THIS IN ADDITION TO AND NOT IN LIEU OF THE COMPENSATION AWARDED CLAIMANT BY THE DETERMINATION ORDER MAILED NOVEMBER 14, 1974.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW, 25 PER CENT OF THE COMPENSATION GRANTED CLAIMANT BY THIS ORDER ON REVIEW, PAYABLE FROM SUCH COMPENSATION AS PAID, NOT TO EXCEED 2,300 DOLLARS.

WCB CASE NO. 75-993 DECEMBER 18, 1975

WILLIAM BUSHNELL, CLAIMANT

FORD AND COWLING, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH FOUND CLAIMANT TO BE PERMANENTLY AND TOTALLY DISABLED FROM AND AFTER THE DATE OF HIS ORDER (MAY 29, 1975).

CLAIMANT IN APRIL 1968, WHEN HE WAS A 38 YEAR OLD FURNITURE MOVER, INJURED HIS BACK LIFTING LAMPS INTO A STATIONWAGON. IN APRIL 1969 A SPINAL FUSION L4-S1 WAS PERFORMED AND, IN FEBRUARY 1971, DR. WILSON FOUND CLAIMANT, THOUGH SYMPTOMATIC FROM HIS LOW BACK DISORDER, CAPABLE OF LIGHT EMPLOYMENT. THE FIRST DETERMINATION ORDER AWARDED CLAIMANT 96 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY PLUS 32 DEGREES FOR PERMANENT LOSS OF WAGE EARNING CAPACITY FOR 40 PER CENT TOTAL UNSCHEDULED DISABILITY.

IN JULY 1972, DR. MASON, AT THE DISABILITY PREVENTION DIVISION, NOTED X-RAYS REVEALED A PSEUDOARTHROSIS OF THE FUSION AT THE L5-S1 LEVEL AND A SOLID FUSION AT THE L4-5 LEVEL. A REPEAT FUSION WAS PERFORMED IN JUNE 1973. IN MAY 1974 DR. WILSON FELT THAT CLAIMANT HAD ACHIEVED A SOLID SPINAL FUSION AND, BY SECOND DETERMINATION ORDER MAILED JULY 16, 1974, CLAIMANT WAS AWARDED AN ADDITIONAL 64 DEGREES FOR 20 PER CENT LOW BACK DISABILITY WHICH GAVE HIM AN AGGREGATE OF 192 DEGREES FOR 60 PER CENT OF THE MAXIMUM FOR UNSCHEDULED DISABILITY.

CLAIMANT HAS A SEVENTH GRADE EDUCATION AND HIS WORK BACKGROUND IS LIMITED TO COMMON LABOR EXCEPT FOR SOME CLERICAL AND MATERIAL-SUPPLY WORK WHILE IN THE MILITARY SERVICE.

THE REFEREE FOUND THAT CLAIMANT'S EMPLOYMENT WAS RATHER IRREGULAR BUT NOT MORE SO THAN THAT OF OTHER PERSONS WITH SIMILARLY POOR EDUCATION AND SKILL BACKGROUNDS. THE FUND QUESTIONED CLAIMANT'S MOTIVATION BECAUSE OF THIS ERRATIC WORK HISTORY AND ALSO BECAUSE OF A COMMENT MADE BY DR. HICKMAN THAT CLAIMANT WAS RECEIVING 500 DOLLARS PER MONTH TAX FREE AT THE PRESENT TIME WHICH WAS APPROXIMATELY WHAT HE WAS EARNING BEFORE HIS INJURY.

THE REFEREE DID NOT FEEL THAT CLAIMANT WAS UNMOTIVATED AND HE DID NOT FEEL THAT THE BASES FOR THE FUND'S ATTACK UPON CLAIMANT'S MOTIVATION WERE WELL FOUNDED. HE CONCLUDED THAT CLAIMANT, A CREDIBLE WITNESS, HAD NOT EXAGGERATED HIS SYMPTOMS AND THAT CLAIMANT HAD TOO MUCH DIFFICULTY SITTING TO PROCEED WITH ANY VOCATIONAL RETRAINING PROGRAM.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE. THE BOARD FEELS THAT PROBABLY CLAIMANT HAD BEEN IN THE 'ODD-LOT' CATEGORY MOST OF HIS LIFE BUT HE HAD BEEN ABLE TO DO COMMON LABOR AND HAD DONE SO - HIS INDUSTRIAL INJURY NOW PRECLUDES HIM FOR EVEN RETURNING TO THAT TYPE OF WORK.

ORDER

THE ORDER OF THE REFEREE DATED MAY 29, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW, THE SUM OF 400 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 74-4654 DECEMBER 19, 1975

BILLY THORP, CLAIMANT

EMMONS, KYLE, KROPP AND KRYGER,
CLAIMANT'S ATTYS.
FRANK MOSCATO, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER DATED DECEMBER 18, 1974 WHEREBY CLAIMANT WAS AWARDED 128 DEGREES FOR 40 PER CENT UNSCHEDULED LOW BACK DISABILITY. CLAIMANT CONTENDS HE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT SUFFERED A COMPENSABLE BACK INJURY IN AUGUST 1973 AND HAS NOT RETURNED TO WORK SINCE THAT DATE. HE HAS RECEIVED MEDICAL TREATMENT ON A FAIRLY REGULAR BASIS SINCE THAT TIME, BUT HAS NOT REQUIRED ANY SURGICAL TREATMENT.

DR. GANTENBEIN AT THE DISABILITY PREVENTION DIVISION DIAGNOSED STRAIN, LOW BACK, SUPERIMPOSED ON DEGENERATIVE CHANGES IN THE LOWER TWO LUMBAR VERTEBRAE AND HE FELT CLAIMANT'S CONDITION WAS MEDICALLY STATIONARY WITH A MILD DEGREE OF DISABILITY.

DR. PERKINS, WHO PREPARED A PSYCHOLOGICAL PROFILE OF CLAIMANT, WAS OF THE OPINION THAT HE LACKED MOTIVATION AND THAT IF HE WERE TO RECEIVE SOCIAL SECURITY BECAUSE OF HIS DISABILITY, HE WOULD NEVER RETURN TO WORK.

CLAIMANT'S OWN DOCTOR, DR. FITCHETT, AGREED THAT CLAIMANT WAS MEDICALLY STATIONARY IN AUGUST 1974, HOWEVER, HE FOUND MORE SIGNIFICANT DISABILITY THAN DR. GANTENBEIN.

THE REFEREE FOUND THAT, ALTHOUGH CLAIMANT TESTIFIED THAT HE WAS RESTRICTED IN WALKING, BENDING, STOOPING AND ESPECIALLY IN LIFTING, A 16 MM FILM WHICH WAS TAKEN OVER A SIX DAY PERIOD BY A PRIVATE INVESTIGATOR, INDICATED THAT CLAIMANT COULD WALK WITHOUT MUCH DIFFICULTY OTHER THAN A VERY LIGHT LIMP AND THAT HE WAS ABLE TO BEND, SQUAT AND STOOP. THE MOVIES ALSO SHOWED CLAIMANT CARRYING A 100 POUND SACK OF CHICKEN FEED FROM THE STORE TO HIS CAR WITHOUT ANY GREAT DIFFICULTY. THE REFEREE FURTHER FOUND THAT WITH RESPECT TO CLAIMANT'S LOSS OF EARNING CAPACITY, CLAIMANT HAD SHOWN LITTLE MOTIVATION TO RETURN TO WORK AT ANY TIME. THE DOCTORS WERE IN AGREEMENT THAT HE SHOULD NOT RETURN TO THE WOODS OR ENGAGE IN HEAVY MANUAL LABOR, BUT NONE HAD SAID THAT HE COULD NOT RETURN TO LIGHTER TYPE WORK. THE REHABILITATION COUNSELOR HAD FELT THAT RETRAINING WOULD BE VERY DIFFICULT BECAUSE OF CLAIMANT'S LIMITED EDUCATION.

THE REFEREE CONCLUDED THAT CLAIMANT, BEING ONLY 44 YEARS OLD AND THE MOVIES INDICATED HE HAD THE ABILITY TO LIFT, STOOP, BEND AND WALK, THEREFORE HE SHOULD BE ABLE TO DO VARIOUS TYPES OF WORK - THAT THE MEDICAL EVIDENCE, IN AND OF ITSELF, DID NOT SHOW THAT CLAIMANT WAS PRIMA FACIE TOTALLY DISABLED AND THAT CLAIMANT HAD NOT SHOWN AN INABILITY TO OBTAIN OTHER EMPLOYMENT.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE REFEREE THAT CLAIMANT HAS NOT SHOWN THAT HE IS PERMANENTLY AND TOTALLY DISABLED, HOWEVER, IT DOES FEEL THAT CLAIMANT HAS LOST A SUBSTANTIAL PORTION OF HIS EARNING CAPACITY FOR WHICH THE AWARD OF 40 PER CENT DOES NOT ADEQUATELY COMPENSATE HIM.

THE BOARD CONCLUDES THAT CLAIMANT SHOULD BE AWARDED 60 PER CENT FOR HIS UNSCHEDULED LOW BACK DISABILITY.

ORDER

THE ORDER OF THE REFEREE DATED AUGUST 19, 1975 IS MODIFIED.

CLAIMANT IS AWARDED 192 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. THIS IS IN LIEU OF AND NOT IN ADDITION TO THE DETERMINATION ORDER MAILED DECEMBER 18, 1974.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW, 25 PER CENT OF THE INCREASED COMPENSATION GRANTED BY THIS ORDER PAYABLE FROM SUCH COMPENSATION AS PAID, NOT TO EXCEED 2,300 DOLLARS.

WILLIAM TOLIVER, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE FUND'S DENIAL OF CLAIMANT'S CLAIM FOR AGGRAVATION.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON APRIL 8, 1970 WHEN HE TWISTED HIS BACK. DR. FAGAN DIAGNOSED A DISPLACED 5TH LUMBAR VERTEBRA AND REFERRED CLAIMANT TO DR. SHLIM WHO FOUND SOME DEGENERATIVE DISEASE OF THE CERVICAL SPINE TO A MINIMAL DEGREE AND SACRALIZATION OF THE 4TH LUMBAR SEGMENT. DR. POST FOUND CLAIMANT'S CONDITION TO BE AN ACUTE AND CHRONIC LUMBOSACRAL STRAIN WITH INSTABILITY. THE CLAIM WAS CLOSED ON APRIL 20, 1971 BY A DETERMINATION ORDER WHICH AWARDED CLAIMANT 16 DEGREES FOR 5 PER CENT UNSCHEDULED BACK DISABILITY.

ON SEPTEMBER 7, 1972 A SETTLEMENT STIPULATION WAS APPROVED WHEREBY CLAIMANT WAS GIVEN AN ADDITIONAL 64 DEGREES FOR 20 PER CENT UNSCHEDULED DISABILITY MAKING A TOTAL OF 25 PER CENT EQUAL TO 80 DEGREES OF A MAXIMUM OF 320 DEGREES.

ON OCTOBER 13, 1973 CLAIMANT INJURED HIS BACK WHILE PAINTING HIS HOME - HE HAD NO IMMEDIATE PAIN, HOWEVER, TWO DAYS AFTER THE INCIDENT HE FELT 'PARALYZED' AND WAS HOSPITALIZED FOR TRACTION FOR A PERIOD OF 12 DAYS. THE FUND CONTENDS THAT THIS WAS A NEW NON-INDUSTRIAL INJURY UNRELATED TO THE ORIGINAL INJURY OF APRIL 8, 1970 - CLAIMANT CONTENDS HIS CONDITION WAS BROUGHT ABOUT BY A GRADUAL WORSENING OF HIS 1970 INJURY SINCE SEPTEMBER 7, 1972, THE DATE OF THE LAST AWARD OR ARRANGEMENT OF COMPENSATION.

THE REFEREE FOUND THAT, OTHER THAN THE OCTOBER 13, 1973 INCIDENT, CLAIMANT HAD NOT HAD ANY ACCIDENTS OR INJURIES SINCE SEPTEMBER 7, 1972, BUT THAT HIS CONDITION HAD WORSENED AND HE EXPERIENCED MORE PAIN AND DISCOMFORT AND HIS SLEEP WAS INTERRUPTED BECAUSE OF HIS BACK PROBLEM AND NECESSITATED THE USE OF MORE MEDICATION THAN IT DID ON SEPTEMBER 7, 1972.

DR. WINKLER HAD RECOMMENDED THAT CLAIMANT'S CASE BE REOPENED AND REEVALUATED, STATING HE DEFINITELY FELT HIS HOSPITALIZATION WAS RELATED TO THE 1970 INJURY, ALTHOUGH HE WAS CERTAIN THAT HIS OTHER OCCUPATION AGGRAVATED IT. THE REFEREE FOUND THAT BETWEEN APRIL 1, 1973 AND OCTOBER 1, 1973 CLAIMANT HAD A NEWSPAPER DISTRIBUTORSHIP WHICH REQUIRED SUPERVISION OF 14 PAPERBOYS AND REQUIRED CLAIMANT TO DRIVE EXTENSIVELY AND ENGAGE IN LIFTING WEIGHTS FROM 25 TO 50 POUNDS AND THIS WAS THE 'OTHER' OCCUPATION ALLUDED TO IN DR. WINKLER'S REPORT.

THE REFEREE CONCLUDED THAT DR. WINKLER'S REPORTS COULD NOT BE ACCORDED TOO MUCH WEIGHT BECAUSE THEY WERE BASED UPON CERTAIN MISUNDERSTANDINGS, THAT DR. WINKLER HAD ADMITTED CLAIMANT TO THE HOSPITAL ON OCTOBER 15, 1973 UNDER THE ASSUMPTION CLAIMANT WOULD BE COVERED BY THE FUND AND HIS CONDITION TREATED AS AN INDUSTRIAL INJURY, AN ASSUMPTION, IN FACT, ERRONEOUS. HE ALSO FELT THAT THE DOCTOR'S REPORT WAS WEAKENED DUE TO THE FACT THAT HE HAD AN INDIRECT PECUNIARY INTEREST IN THE CASE - THEREFORE, HIS REPORTS

WHICH INDICATED A CAUSAL CONNECTION BETWEEN CLAIMANT'S AGGRAVATED CONDITION AND HIS INDUSTRIAL INJURY OF APRIL 8, 1972, SHOULD BE VIEWED WITH DISTRUST.

THE REFEREE FURTHER CONCLUDED THAT IT WAS DIFFICULT, IF NOT IMPOSSIBLE, TO EXACTLY DETERMINE THE REASON FOR CLAIMANT'S HOSPITALIZATION IN OCTOBER 1973 - THAT CLAIMANT HAD FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HIS INDUSTRIAL INJURY OF APRIL 8, 1972 WAS A MATERIAL CONTRIBUTING FACTOR TO HIS WORSENED OR AGGRAVATED CONDITION.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT DR. WINKLER'S REPORTS ARE QUITE CLEAR AND PERSUASIVE. IN HIS REPORT OF NOVEMBER 23, 1973 DR. WINKLER STATES THAT HE DEFINITELY FELT CLAIMANT'S HOSPITALIZATION WAS RELATED TO HIS INJURY OF 1970 ALTHOUGH HE WAS NOT CERTAIN HIS OTHER OCCUPATION AGGRAVATED IT. SHOULD CLAIMANT NOT HAVE HAD THE BACK DIFFICULTY HE FELT HE WOULD BE WORKING AT THE REGULAR JOB BECAUSE HE BELIEVED CLAIMANT WAS VERY WELL MOTIVATED BUT PHYSICALLY UNABLE TO DO THE WORK. HE ALSO STATED THAT HE FELT CLAIMANT HAD ADDITIONAL IMPAIRMENT. THIS OPINION IS SUBSTANTIATED BY THE OPINION OF DR. FAX AND REAFFIRMED BY DR. WINKLER'S REPORTS OF FEBRUARY 21, 1975 AND JUNE 13, 1974.

THE BOARD CONCLUDES THAT THERE IS NO EVIDENCE TO INDICATE THAT DR. WINKLER'S REPORTS SHOULD NOT BE ACCORDED THE SAME WEIGHT AS THAT OF ANY OF THE OTHER MEDICAL REPORTS IN THE RECORD. THE BOARD FURTHER CONCLUDES THAT THE OCTOBER 13, 1973 INCIDENT WAS NOT AN INDEPENDENT INTERVENING ACCIDENT WHICH CONSTITUTED THE SOLE CAUSE OF CLAIMANT'S AGGRAVATED OR WORSENED CONDITION - THE EVIDENCE INDICATES THAT CLAIMANT'S CONDITION HAS WORSENED ON A CONTINUING BASIS AND TO THE EXTENT THAT IT REQUIRED MEDICAL TREATMENT SINCE THE LAST AWARD OR ARRANGEMENT OF COMPENSATION ON SEPTEMBER 7, 1972.

THE BOARD CONCLUDES THAT CLAIMANT'S CLAIM FOR AGGRAVATION SHOULD HAVE BEEN ACCEPTED BY THE FUND.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 23, 1975 IS REVERSED.

CLAIMANT'S CLAIM FOR AGGRAVATION OF HIS APRIL 8, 1970 INDUSTRIAL INJURY IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR THE PAYMENT OF COMPENSATION, AS PROVIDED BY LAW, COMMENCING ON OCTOBER 15, 1973 AND UNTIL CLOSURE IS AUTHORIZED PURSUANT TO ORS 656.268.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES BEFORE THE REFEREE, THE SUM OF 750 DOLLARS - AND FOR HIS SERVICES AT BOARD REVIEW, THE SUM OF 250 DOLLARS, BOTH SUMS TO BE PAID BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 74-405 DECEMBER 19, 1975

GEORGE STONE, CLAIMANT

BERNARD K. SMITH, CLAIMANT'S ATTY.
PHILLIPS, COUGHLIN, BUELL, STOLOFF AND BLACK,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH FOUND CLAIMANT TO BE PERMANENTLY AND TOTALLY DISABLED AS DEFINED BY ORS 656.206.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON SEPTEMBER 30, 1969 WHEN HE FRACTURED HIS SHOULDER. HE WAS HOSPITALIZED AND SUBSEQUENTLY DEVELOPED PAIN IN HIS RIGHT CHEST AND WAS HOSPITALIZED WITH A DIAGNOSIS OF PULMONARY EMBOLUS - FOLLOWING THIS, CLAIMANT DEVELOPED PULMONARY ADHESIONS.

ON DECEMBER 10, 1973 THE CLAIM WAS CLOSED WITH AN AWARD OF 32 DEGREES FOR UNSCHEDULED LEFT SHOULDER DISABILITY. CLAIMANT REQUESTED A HEARING ON THE COMPENSABILITY OF HIS PULMONARY CONDITION AND ON THE SUFFICIENCY OF THE SHOULDER AWARD. THE REFEREE FOUND THE 'CHEST AND LUNG' CONDITION TO BE COMPENSABLE AND ORDERED THE EMPLOYER TO ACCEPT CLAIMANT'S CLAIM THEREFOR. ON NOVEMBER 8, 1974 THE BOARD AFFIRMED THE REFEREE'S OPINION AND ORDER AND DIRECTED THE EMPLOYER TO SUBMIT THE MATTER TO THE BOARD'S EVALUATION DIVISION FOR A DETERMINATION RELATING TO THE CHEST AND LUNG CONDITION. ON JANUARY 6, 1975 A DETERMINATION ORDER GRANTED NO ADDITIONAL PERMANENT PARTIAL DISABILITY TO CLAIMANT AND HE REQUESTED A HEARING. AFTER THIS HEARING, THE REFEREE FOUND CLAIMANT TO BE PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT IS NOW 71 YEARS OLD. HE WAS A LINEMAN FOR THE EMPLOYER FOR APPROXIMATELY 45 YEARS BEFORE RETIREMENT ON NOVEMBER 30, 1969 AT AGE 65, ALTHOUGH AFTER RECEIVING A HAND INJURY IN 1950, HE HAD WORKED AS A TESTER AND COORDINATOR, A JOB WHICH REQUIRED STRENUOUS EFFORT AT TIMES.

THE REFEREE FOUND THAT AFTER CLAIMANT'S RELEASE FROM THE HOSPITAL HE CONTINUED TO SUFFER RECURRENCES OF PAIN AND COULD NO LONGER DO HIS WORK AS A TESTER AND COORDINATOR, NOR COULD HE DO SIMILAR WORK TO THAT WHICH HE HAD DONE IN THE PAST WITHOUT INCURRING PAIN. THERE APPARENTLY IS NO MEDICATION WHICH ALLEVIATES THIS PAIN, ALTHOUGH IT DOES HELP CLAIMANT WHEN HE LIES ON HIS BACK. THE REFEREE FOUND THAT SINCE THE INJURY CLAIMANT WAS NOT PHYSICALLY ABLE TO LOOK FOR ANOTHER JOB, BUT THAT HE DID HAVE THE FULL USE OF THE LEFT SHOULDER. CLAIMANT HAS A HIGH SCHOOL EDUCATION AND ONE YEAR OF COLLEGE. HE SUFFERED A HIP INJURY WHILE RIDING A BICYCLE DURING JANUARY 1973.

THE REFEREE CONCLUDED, BASED UPON THE MEDICAL EVIDENCE AND THE TESTIMONY OF SEVERAL WITNESSES WHO KNEW CLAIMANT PRIOR TO HIS 1969 ACCIDENT, AS WELL AS AFTER, THAT HE WAS NOW PERMANENTLY AND TOTALLY DISABLED.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT THE MEDICAL REPORTS DO NOT SUPPORT A CONCLUSION THAT CLAIMANT IS PRESENTLY PERMANENTLY AND TOTALLY DISABLED AS A RESULT OF HIS INDUSTRIAL INJURY. TO THE CONTRARY, THE ORIGINAL INJURY WAS TO THE LEFT SHOULDER FOR WHICH CLAIMANT WAS AWARDED 32 DEGREES - SUBSEQUENTLY, AFTER TAKING INTO

CONSIDERATION CLAIMANT'S PULMONARY PROBLEMS, A SECOND DETERMINATION ORDER WAS ENTERED ON JANUARY 6, 1975 WHEREBY CLAIMANT WAS GIVEN NO ADDITIONAL COMPENSATION FOR PERMANENT PARTIAL DISABILITY. THE MEDICAL REPORTS DO NOT INDICATE THAT CLAIMANT'S CONDITION HAS CHANGED TO ANY GREAT EXTENT SINCE THE LAST AWARD WAS MADE.

THE EVIDENCE INDICATES CLAIMANT COULD HAVE CONTINUED TO DO LIGHT WORK BUT THAT WHEN HE REACHED THE AGE OF 65 ON NOVEMBER 30, 1969, HE TOOK RETIREMENT AS HE WAS ENTITLED TO AND IS RECEIVING BENEFITS FOR AND HAS NOT TRIED SINCE THAT DATE TO FIND ANY EMPLOYMENT.

THE BOARD CONCLUDES THAT CLAIMANT WOULD BE ADEQUATELY COMPENSATED FOR ANY LOSS OF EARNING CAPACITY WHICH HE SUFFERED AS A RESULT OF THE 1969 INJURY (ACTUALLY CLAIMANT VOLUNTARILY REMOVED HIMSELF FROM THE LABOR MARKET WHEN HE RETIRED IN 1969) BY AN AWARD OF 25 PER CENT UNSCHEDULED LEFT SHOULDER DISABILITY.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 26, 1975 IS MODIFIED.

CLAIMANT IS AWARDED 80 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED LEFT SHOULDER DISABILITY. THIS AWARD IS IN LIEU OF THE AWARD MADE BY THE REFEREE IN HIS OPINION AND ORDER AND THE DETERMINATION ORDER MAILED DECEMBER 10, 1973. IN ALL OTHER RESPECTS THE ORDER IS AFFIRMED.

WCB CASE NO. 74-1686 DECEMBER 19, 1975

FRANK V. HURD, CLAIMANT

EVOHL F. MALAGON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH REMANDED TO IT CLAIMANT'S CLAIM FOR AGGRAVATION TO BE ACCEPTED FOR PAYMENT OF COMPENSATION AS PROVIDED BY LAW UNTIL CLOSED PURSUANT TO ORS 656.268 AND TO PAY FOR THE MEDICAL EXAMINATIONS AND REPORTS OF DR. DUNN AND DR. GILSDORF. THE FUND WAS ALSO DIRECTED TO PAY CLAIMANT'S ATTORNEY THE SUM OF 2,000 DOLLARS BY SUPPLEMENTAL ORDER OF THE REFEREE ENTERED AFTER HE HAD BEEN FURNISHED, AT HIS REQUEST, AN AFFIDAVIT FROM CLAIMANT'S ATTORNEY.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON DECEMBER 27, 1971 WHEN HE WAS STRUCK IN THE LEFT FOREARM BY THE LIMB OF A TREE. THE QUESTION BEFORE THE REFEREE WAS WHETHER CLAIMANT'S PRESENT DISABILITY IN HIS RIGHT SHOULDER REPRESENTED AN AGGRAVATION OF THE DECEMBER 1971 INJURY. THE FUND DENIED RESPONSIBILITY FOR THE RIGHT SHOULDER INJURY.

CLAIMANT TESTIFIED THAT HE HAD HAD CONTINUING DIFFICULTY WITH HIS RIGHT SHOULDER IMMEDIATELY AFTER THE DECEMBER 1971 INJURY. HIS BROTHER TESTIFIED THAT CLAIMANT HAD HAD DIFFICULTY WITH HIS RIGHT ARM DURING A PERIOD OF SOME TWO OR THREE MONTHS WHEN HE WAS OFF WORK AND THAT HE HAD COMPLAINED EVER SINCE THE INJURY OF RIGHT ARM AND SHOULDER PAIN.

CLAIMANT WAS SUBSEQUENTLY SENT TO THE PENITENTIARY AND WHEN OUT ON A WORK RELEASE IN MARCH 1974, HIS RIGHT ARM CONTINUED TO TROUBLE HIM AND CAUSED MARKED DIMINUTION IN HIS PRODUCTIVITY. THE CLAIMANT WAS GIVEN A NEUROLOGICAL EXAMINATION BY DR. DUNN WHO REPORTED A POSSIBLE ROTATOR CUFF TEAR OF THE RIGHT SHOULDER AND REFERRED HIM TO DR. GILSDORF, AN ORTHOPEDIC SURGEON, WHO FELT THAT SURGICAL EXPLORATION WAS NEEDED AND THAT A SUBTOTAL ACROMIONECTOMY WOULD PROBABLY BE REQUIRED.

THE REFEREE ACCEPTED AS TRUE CLAIMANT'S TESTIMONY THAT HE HAS HAD CONTINUED DIFFICULTY WITH THE RIGHT SHOULDER SINCE THE DECEMBER 27, 1970 INJURY - SUCH TESTIMONY WAS SUPPORTED BY THE FINDINGS MADE BY THE SEVERAL DOCTORS WHO SAW CLAIMANT PRIOR TO THE EXAMINATIONS BY DR. DUNN AND DR. GILSDORF.

THE REFEREE WAS NOT PERSUADED BY THE SOMEWHAT CONTRADICTORY RECORD, AS HE DESCRIBED IT, THAT CLAIMANT HAD RECEIVED NO INJURY TO HIS RIGHT SHOULDER AT THE TIME OF THE INDUSTRIAL INJURY IN 1971. HE FOUND THAT CLAIMANT HAD BEEN STRUCK A VERY FORCEFUL BLOW BY A TREE LIMB AND HAD MULTIPLE PHYSICAL COMPLAINTS IMMEDIATELY FOLLOWING THE INCIDENT AND, ALTHOUGH SOME OF THE MEDICAL REPORTS REFLECT NO CURRENT COMPLAINTS OF RIGHT SHOULDER PAIN, THERE WERE EARLY REFERENCES, AS INDICATED BY THE REPORTS OF DR. DONAHOO AND DR. GOLDEN, TO DIFFICULTIES WITH THE RIGHT SIDE OF THE BODY AND THE RIGHT UPPER EXTREMITY IN ADDITION TO THE LEFT EXTREMITY PROBLEM.

THE REFEREE CONCLUDED THERE WAS NOTHING IN THE RECORD TO ATTRIBUTE CLAIMANT'S PRESENT RIGHT SHOULDER PATHOLOGY TO ANY INCIDENT OTHER THAN THE 1971 INDUSTRIAL INJURY - HOWEVER, THERE WAS SUFFICIENT AMBIGUITY IN THE MEDICAL RECORDS TO CONCLUDE THAT THE FUND'S DENIAL WAS NOT UNREASONABLE EVEN THOUGH THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE CLAIM FOR AGGRAVATION.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE REFEREE AND AFFIRMS THEM. THE BOARD APPROVES THE SUM OF 2,000 DOLLARS WHICH THE REFEREE ALLOWED CLAIMANT'S COUNSEL AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES AT THE HEARING.

ORDER

THE ORDER OF THE REFEREE DATED AUGUST 14, 1975 AND THE SUPPLEMENTAL ORDER DATED AUGUST 29, 1975 ARE AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW THE SUM OF 300 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 75-612 DECEMBER 19, 1975

SANDRA GARDNER, CLAIMANT

EVOHL F. MALAGON, CLAIMANT'S ATTY.
MC MURRAY AND NICHOLS, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE CLAIMANT SEEKS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED HER CLAIM TO THE EMPLOYER FOR PAYMENT OF COMPENSATION

FROM FEBRUARY 13, 1975 TO MAY 19, 1975, BUT AFFIRMED THE EMPLOYER'S DENIAL OF HER CLAIM FOR AGGRAVATION.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON AUGUST 14, 1972 WHEN SHE SLIPPED AND FELL INJURING HER BACK WHILE WORKING AS A COCKTAIL WAITRESS.

CLAIMANT SAW DR. SPADY IN APRIL 1973, COMPLAINING OF LOW BACK PAIN. HE CONCLUDED THAT SHE HAD APPARENTLY SUSTAINED A LUMBAR AND, PERHAPS, A CERVICAL SPRAIN AS A RESULT OF HER INDUSTRIAL ACCIDENT BUT, AT THAT TIME, SHE HAD VERY LITTLE IN THE WAY OF OBJECTIVE SYMPTOMS TO INDICATE SIGNIFICANT IMPAIRMENT. HER CLAIM WAS CLOSED BY A DETERMINATION ORDER DATED MAY 3, 1973 AWARDING NO PERMANENT PARTIAL DISABILITY.

CLAIMANT WAS TREATED BY DR. CULLEN, HOWEVER, SHE RECEIVED ONLY TEMPORARY RELIEF FROM THIS TREATMENT AND BY STIPULATED AGREEMENT, APPROVED JANUARY 1974, CLAIMANT WAS AWARDED 22.4 DEGREES FOR 7 PER CENT UNSCHEDULED DISABILITY. THIS WOULD BE THE DATE OF THE LAST AWARD OR ARRANGEMENT OF COMPENSATION.

CLAIMANT WAS EXAMINED BY A NEUROLOGIST AND A CHIROPRACTOR BOTH OF WHOM FELT THE CLAIMANT'S CONDITION AGGRAVATED SUBSEQUENT TO THE DATE OF THE STIPULATION.

THE REFEREE FOUND THAT CLAIMANT WAS NERVOUS AND HIGH STRUNG AND HAD MIGRAINE HEADACHES, THE LATTER STARTED IN FEBRUARY 1974 AND HAVE BECOME WORSE. IN THE LATE SPRING OF 1974 CLAIMANT ATTEMPTED TO WORK AS A BARTENDER AT A TAVERN, SHE WORKED TWO WEEKS BUT COULD NOT DO THE BENDING AND LIFTING THE WORK REQUIRED AND SHE COMMENCED HAVING SERIOUS PROBLEMS FROM THAT TIME ON.

THE REFEREE FOUND THAT AN AGGRAVATION, TO BE COMPENSABLE PURSUANT TO ORS 656.273, MUST CONCERN A WORSENED CONDITION RESULTING FROM THE ORIGINAL INJURY, AND CAUSED BY THE SPECIFIC INJURY ON WHICH THE CLAIM WAS BASED, THAT IS, EXTENDING ONLY TO THE SPONTANEOUS PROGRESS OF THE MEDICAL CONDITION WHICH ORIGINALLY CAUSES THE DISABILITY. THE REFEREE FURTHER CONCLUDED THAT THE EVIDENCE INDICATED THAT CLAIMANT'S CONDITION HAD DETERIORATED SINCE THE LAST AWARD OR ARRANGEMENT OF COMPENSATION IN 1974, BUT THAT IT WAS THE RESULT OF A SUBSEQUENT INJURY WHILE CLAIMANT WAS WORKING AS A BARTENDER IN THE TAVERN AND THAT (UNDERSCORED) INJURY WAS THE PRIMARY CAUSE OF HER PRESENT DIFFICULTY. SUCH EVIDENCE WOULD NOT SUPPORT AN AGGRAVATION CLAIM RELATIVE TO THE AUGUST 14, 1972 INDUSTRIAL ACCIDENT.

THE REFEREE ALSO FOUND THAT THE EMPLOYER HAD NEITHER ACCEPTED NOR DENIED THE CLAIM WITHIN 60 DAYS BUT HE DID NOT FEEL THAT SUCH INACTION WAS UNREASONABLE TO THE EXTENT OF JUSTIFYING IMPOSITION OF PENALTIES AND ASSESSMENT OF ATTORNEY FEES. THE REFEREE CONCLUDED THAT ALTHOUGH PENALTIES AND ATTORNEY FEES WERE NOT JUSTIFIED, THE PLAIN INTENT OF ORS 656.262(4), WHICH PROVIDES FOR PAYMENT OF COMPENSATION UNTIL A DENIAL IS MADE, REQUIRED THE EMPLOYER TO PAY SUCH COMPENSATION TO CLAIMANT FROM FEBRUARY 13, 1975 UNTIL MAY 19, 1975, THE DATE OF THE HEARING. THE APPEARANCE OF THE EMPLOYER AT THE HEARING IN PROTEST WAS CONSIDERED AS A DE FACTO DENIAL BY THE REFEREE.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE AND AFFIRMS AND ADOPTS THEM AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 13, 1975 IS AFFIRMED.

WCB CASE NO. 74-3110 DECEMBER 19, 1975

HILDA M. HORN, CLAIMANT

EVOHL MALAGON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH REFERRED CLAIMANT'S CLAIM FOR AGGRAVATION TO IT FOR ACCEPTANCE AND PAYMENT OF COMPENSATION AND GRANTED CLAIMANT AN AWARD OF PERMANENT TOTAL DISABILITY EFFECTIVE THE DATE OF THIS ORDER, (MAY 30, 1975). THE REFEREE ALSO DIRECTED THE FUND TO PAY CLAIMANT'S ATTORNEY THE SUM OF 600 DOLLARS AS A REASONABLE ATTORNEY'S FEE.

THE CLAIMANT CROSS REQUESTED REVIEW OF THAT PORTION OF THE REFEREE'S ORDER WHICH AWARDED HER ATTORNEY THE SUM OF 600 DOLLARS, CONTENDING SUCH FEE WAS INSUFFICIENT UNDER THE CIRCUMSTANCES OF THIS PARTICULAR CASE.

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HER LOW BACK ON JULY 5, 1971 - HER CLAIM WAS ACCEPTED AND CLOSED ON JUNE 22, 1972 WITH AN AWARD OF 160 DEGREES FOR 50 PER CENT UNSCHEDULED LOW BACK DISABILITY. SINCE THAT TIME CLAIMANT'S CLAIM HAS BEEN REOPENED FOR ADDITIONAL MEDICAL TREATMENT WITH FURTHER CLOSURES WITH AWARDS OR ARRANGEMENTS OF COMPENSATION FOR PERMANENT PARTIAL DISABILITY TO THE EXTENT THAT AT THE DATE OF THE HEARING SHE HAD A TOTAL AWARD OF 272 DEGREES FOR 85 PER CENT LOSS OF UNSCHEDULED LOW BACK DISABILITY. THE LAST ARRANGEMENT OF COMPENSATION WAS BY STIPULATION APPROVED AUGUST 17, 1973.

A LUMP SUM WAS REQUESTED BY CLAIMANT OF 50 PER CENT OF THE AMOUNT REMAINING DUE TO HER AS A RESULT OF THE PREVIOUS AWARDS. THIS APPLICATION FOR LUMP SUM SETTLEMENT WAS APPROVED OCTOBER 4, 1973 BY THE BOARD.

IN MAY 1974 CLAIMANT FELT THAT HER CONDITION HAD WORSENED AND THAT HER CASE SHOULD BE REOPENED ON THE GROUNDS OF AGGRAVATION OF HER JULY 5, 1971 INJURY. THE CLAIM FOR AGGRAVATION WAS DENIED BY THE FUND ON DECEMBER 16, 1974.

THE REFEREE, AFTER THE HEARING, FOUND THE MEDICAL EVIDENCE INDICATED A LONG AND VARIED COURSE OF TREATMENT BOTH BEFORE AND AFTER A LUMBOSACRAL FUSION PERFORMED IN DECEMBER 1972, AND THAT DURING THE COURSE OF TREATMENT RECEIVED BY CLAIMANT IT WAS INDICATED SEVERAL TIMES THAT A SUBSTANTIAL DEGREE OF PSYCHOPATHOLOGY WAS CONTRIBUTING TO CLAIMANT'S CONTINUING PROBLEMS AND INTERFERING WITH ANY ATTEMPT AT REHABILITATION.

THE REFEREE FOUND THAT AT THE TIME OF THE LAST ARRANGEMENT OF COMPENSATION IN SEPTEMBER 1973, CLAIMANT'S INCAPACITY TO RETURN TO WORK WAS NO GREATER THAN THE ACCUMULATIVE AMOUNT OF PERMANENT PARTIAL DISABILITY COMPENSATION SHE HAD BEEN AWARDED, THAT THE MEDICAL EVIDENCE INDICATED THAT CLAIMANT WAS MEDICALLY STATIONARY AT THE TIME OF THE LAST ARRANGEMENT OF COMPENSATION IN SEPTEMBER 1973. HOWEVER, IN JUNE 1974 CLAIMANT BEGAN TO SEEK ADDITIONAL MEDICAL HELP FOR INCREASING SUBJECTIVE COMPLAINTS, BOTH PHYSICAL AND MENTAL.

THE REFEREE CONCLUDED THAT THE MEDICAL EVIDENCE ESTABLISHED THAT THE PSYCHOLOGICAL CONDITION WAS RELATED TO THE LOW BACK INJURY WHICH OCCURRED ON JULY 5, 1971 AND THAT IT HAS CONTINUED TO WORSEN SINCE 1973 TO THE EXTENT THAT IT IS NOW THE MAJOR COMPONENT OF CLAIMANT'S CONTINUING INABILITY TO RETURN TO GAINFUL EMPLOYMENT AND THAT SHE IS, IN FACT, AT THE PRESENT TIME, NO LONGER ABLE TO RETURN TO ANY GAINFUL EMPLOYMENT. BASED UPON THE REPORTS OF DR. COTTRELL AND DR. BUCK RELATING TO HER OVERALL CONDITION AND THE REPORT OF DR. BASSFORD, A PSYCHIATRIST, AS TO HER PSYCHOGENIC CONDITION, THE REFEREE CONCLUDED CLAIMANT WAS TOTALLY AND PERMANENTLY DISABLED AS A RESULT OF THE COMBINATION OF HER MEDICAL PROBLEMS.

THE REFEREE FOUND THAT, OTHER THAN SOME OCCASIONAL PALLIATIVE RELIEF, THERE WAS NO INDICATION THAT ANY FURTHER MEDICAL TREATMENT EITHER FOR HER PHYSICAL OR MEDICAL CONDITION WOULD IMPROVE CLAIMANT'S CONDITION, THAT HE CONSIDERED HER CONDITION TO BE MEDICALLY STATIONARY AND HER DISABILITY TO BE PERMANENT AND TOTAL.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE FINDINGS AND CONCLUSIONS REACHED BY THE REFEREE IN HIS OPINION AND ORDER INSOFAR AS THEY APPLY TO THE AWARD OF PERMANENT TOTAL DISABILITY.

THE BOARD FINDS, HOWEVER, THAT THE PARTIES ARE IN DISAGREEMENT WITH RESPECT TO HOW AN OFFSET, IF ANY, AGAINST THE PERMANENT TOTAL DISABILITY AWARDED BY THE REFEREE IS TO BE ALLOWED THE FUND FOR THAT PORTION OF THE ADVANCE PAYMENT MADE TO CLAIMANT UNDER THE LUMP SUM APPLICATION.

THE BOARD, THEREFORE, WHILE AFFIRMING THE GRANT OF PERMANENT TOTAL DISABILITY, REMANDS THE REFEREE'S ORDER TO HIM FOR A DETERMINATION OF HOW SUCH OFFSET, IF ANY, SHALL BE MADE.

THE CLAIMANT HAS CROSS REQUESTED A REVIEW ON THE SUFFICIENCY OF THE ATTORNEY'S FEE AWARDED HER ATTORNEY BY THE REFEREE. THE BOARD FEELS THAT THE PERSON BEST QUALIFIED TO DETERMINE WHAT IS A REASONABLE ATTORNEY'S FEE AT THE HEARING LEVEL IS THE REFEREE - THEREFORE, IF THE REFEREE CHOOSES TO RECONSIDER THE SUFFICIENCY OF THE ATTORNEY'S FEE AWARDED TO CLAIMANT'S ATTORNEY, HE MAY DO SO UNDER THIS ORDER OF REMAND.

ORDER

THE ORDER OF THE REFEREE DATED MAY 30, 1975 IS AFFIRMED IN ALL RESPECTS EXCEPT FOR THE REQUESTED DETERMINATION OF A POSSIBLE OFFSET OF COMPENSATION PAID BY THE FUND TO CLAIMANT UNDER A LUMP SUM PAYMENT APPLICATION APPROVED OCTOBER 4, 1973 AND A POSSIBLE RECONSIDERATION OF THE SUFFICIENCY OF THE ATTORNEY'S FEE AWARDED CLAIMANT'S COUNSEL FOR HIS SERVICES AT THE HEARING LEVEL.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW, THE SUM OF 300 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 75-642 DECEMBER 22, 1975

OPAL C. BRAUGHTON, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER AWARDING CLAIMANT PERMANENT AND TOTAL DISABILITY EFFECTIVE JUNE 18, 1975.

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HER LOW BACK ON DECEMBER 31, 1970 - HER CLAIM WAS CLOSED BY A DETERMINATION ORDER MAILED FEBRUARY 4, 1975 AWARDING CLAIMANT 64 DEGREES FOR 20 PER CENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT, AT THE TIME OF THE ACCIDENT, WAS A 56 YEAR OLD RECEPTIONIST-BOOKKEEPER. HER LOW BACK PROBLEM STARTED SOMETIME BETWEEN 1956 AND 1961. IN FEBRUARY 1964 SHE HAD HAD A TWO LEVEL FUSION. CLAIMANT CONTINUED TO HAVE SYMPTOMS BUT SHE RETURNED TO WORK AND CONTINUED WORKING UNTIL 1969 WHEN HER SYMPTOMS BECAME MORE SEVERE.

IN JUNE 1970 A LAMINECTOMY AT L3-4 WAS PERFORMED. CLAIMANT CONTINUED TO HAVE SOME LOW BACK PAIN BUT SHE HAD A COMPLETE REMISSION OF THE SYMPTOMS FOR SIX MONTHS PRECEDING THE DECEMBER 31, 1970 ACCIDENT. IN DECEMBER 1972 DR. JOHNSON PERFORMED A REPEAT LAMINECTOMY AND DISKECTOMY AT L3-4 LEVEL AND A THREE LEVEL FUSION FROM L3 TO S1. DR. JOHNSON FELT CLAIMANT'S CONDITION WAS MEDICALLY STATIONARY IN DECEMBER 1974 AND HER CLAIM WAS CLOSED WITH THE AWARD OF 64 DEGREES.

DR. JOHNSON'S OPINION WAS THAT CLAIMANT'S SYMPTOMS WERE AGGRAVATED BY PSYCHOGENIC DYSFUNCTION, HOWEVER, THIS WAS NOT VERIFIED FOR THE REASON THAT CLAIMANT REFUSED TO HAVE A PSYCHIATRIC EVALUATION.

THE REFEREE FOUND THAT CLAIMANT WAS PRESENTLY UNABLE TO REGULARLY ENGAGE IN SUITABLE AND GAINFUL EMPLOYMENT DUE TO THE CONSEQUENCES OF HER INDUSTRIAL INJURY SUPERIMPOSED ON HER PRE-EXISTING DISABILITY. HE FOUND THAT THE FUND'S ATTACK ON CLAIMANT'S MOTIVATION WAS FOUNDED ON SPECULATION AND SUSPICION AND CONCLUDED THAT CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED AS A RESULT OF HER DECEMBER 31, 1970 INJURY.

THE BOARD, ON DE NOVO REVIEW, FEELS THAT CLAIMANT WAS NOT COMPLETELY COOPERATIVE IN REFUSING TO SUBMIT TO A PSYCHIATRIC EVALUATION SO THAT THE EXTENT OF HER PSYCHOGENIC DYSFUNCTION COULD BE DETERMINED.

THE BOARD CONCLUDES THAT THE EVIDENCE IS SUFFICIENT TO SHOW ALTHOUGH CLAIMANT HAS SUFFERED A SUBSTANTIAL LOSS OF EARNING CAPACITY AS A RESULT OF HER INDUSTRIAL INJURY SHE IS NOT PERMANENTLY AND TOTALLY DISABLED. THE BOARD FURTHER CONCLUDES THAT AN AWARD OF 80 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED LOW BACK DISABILITY WOULD ADEQUATELY COMPENSATE CLAIMANT FOR HER LOSS OF EARNING CAPACITY.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 18, 1975 IS MODIFIED.

CLAIMANT IS AWARDED 256 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. THIS IS IN LIEU OF THE AWARD OF PERMANENT TOTAL DISABILITY GRANTED BY THE REFEREE. IN ALL OTHER RESPECTS THE REFEREE'S ORDER IS AFFIRMED.

WCB CASE NO. 74-4629 DECEMBER 22, 1975

ROBERT C. HILL, CLAIMANT

THOMAS O. CARTER, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

CLAIMANT REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH AFFIRMED THE SECOND DETERMINATION ORDER MAILED NOVEMBER 19, 1974 AWARDING CLAIMANT 144 DEGREES FOR 45 PER CENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT HAS A HISTORY OF LOW BACK INJURIES - HE HAD RECEIVED 20 PER CENT OF THE MAXIMUM FOR AN INJURY SUFFERED ON AUGUST 9, 1963, AND 15 PER CENT OF THE MAXIMUM FOR AN INJURY SUFFERED ON APRIL 9, 1966.

ON FEBRUARY 12, 1971 CLAIMANT WRENCHED HIS LOW BACK. AN EXPLORATORY RIGHT LAMINECTOMY L4-5 INDICATED NO EXTRUDED DISC BUT REVEALED A TIGHT NERVE ROOT IN THE FORAMINA AND A FORAMINOTOMY WAS PERFORMED. CLAIMANT'S CLAIM WAS CLOSED WITH AN AWARD OF 160 DEGREES FOR 50 PER CENT OF A MAXIMUM OF 320 DEGREES ON MARCH 13, 1973. CLAIMANT APPEALED - HOWEVER, THE AWARD WAS AFFIRMED BY THE HEARING OFFICER, THE BOARD AND THE CIRCUIT COURT.

IN MARCH 1974 CLAIMANT SUFFERED AN EXACERBATION OF HIS LOW BACK SYMPTOMS WHILE WORKING AND IN JUNE 1974 HE AGGRAVATED HIS LOW BACK WHILE WASHING HIS CAR. DR. ECKHARDT, WHO HAD TREATED CLAIMANT FOR HIS BACK INJURY SINCE 1966, REQUESTED THAT THE CLAIM BE REOPENED FOR CONSERVATIVE CARE OF HIS PRESENT DISABILITY AND THE FUND REOPENED THE CLAIM EFFECTIVE JUNE 11, 1974. ON AUGUST 22, 1974 CLAIMANT'S ATTORNEY WROTE THE FUND REQUESTING THE CLAIMANT BE AWARDED PERMANENT TOTAL DISABILITY BENEFITS - THE FUND NOTIFIED CLAIMANT'S ATTORNEY THAT THE CLAIM WAS BEING RESUBMITTED TO THE BOARD FOR A DETERMINATION OF FURTHER IMPAIRMENT. ON NOVEMBER 19, 1974 THE CLAIM WAS CLOSED BY THE BOARD WITH THE SECOND DETERMINATION ORDER WHICH AWARDED 144 DEGREES FOR 45 PER CENT UNSCHEDULED DISABILITY.

BASED UPON THE MEDICAL REPORTS AND DR. HICKMAN'S REPORT, THE REFEREE FOUND THAT THERE HAD BEEN NO SUBSTANTIAL CHANGE IN CLAIMANT'S CONDITION SINCE HIS CLAIM WAS CLOSED ON MARCH 13, 1973 NOR HAD THERE BEEN ANY SIGNIFICANT CHANGE IN HIS EARNING CAPACITY SINCE HIS HEARING IN JUNE 1973. HE AFFIRMED THE DETERMINATION ORDER OF NOVEMBER 19, 1974.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE. THE FACT THAT A WORKMAN HAS RECEIVED AWARDS FOR UNSCHEDULED DISABILITY THAT TOTAL MORE THAN A 100 PER

CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY DOES NOT, BY AND OF ITSELF, MAKE THAT WORKMAN PERMANENTLY AND TOTALLY DISABLED IN THE ABSENCE OF SUFFICIENT EVIDENCE TO SHOW THAT SAID WORKMAN IS PRESENTLY UNABLE TO FIND ANY GAINFUL, SUITABLE EMPLOYMENT IN WHICH HE CAN ENGAGE ON A REGULAR BASIS.

ORDER

THE ORDER OF THE REFEREE DATED MAY 28, 1975 IS AFFIRMED.

WCB CASE NO. 75-1368 DECEMBER 22, 1975

ARTHUR LEE VERMENT, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
LINDSAY, NAHSTOLL, HART, DAFOE AND KRUSE,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER MAILED MARCH 20, 1975 WHEREBY CLAIMANT WAS AWARDED 32 DEGREES FOR 10 PER CENT UNSCHEDULED RIGHT SHOULDER DISABILITY.

CLAIMANT SUFFERED A COMPENSABLE INJURY WHILE WORKING AS A SHOE SALESMAN ON MAY 4, 1971. HE SUSTAINED AN INJURY IN THE RIGHT SHOULDER DIAGNOSED ORIGINALLY BY DR. PASQUESI AS 'CONTUSION AND STRAIN RIGHT ELBOW WITH SUPRASPINATUS TENDINITIS RIGHT. CONTUSION AND STRAIN LEFT ELBOW.' CLAIMANT CONTINUED WORKING ALTHOUGH HE HAD SYMPTOMATOLOGY IN HIS RIGHT SHOULDER.

HE WAS SEEN BY DR. MARKEE WHO REFERRED HIM TO DR. BERSELLI, WHO, ON OCTOBER 16, 1974, EXCISED THE LONG HEAD OF THE BICEPS TENDON ON THE RIGHT SIDE AND DID A TRANSFER OF THE CORACOID PROCESS. THE CLAIM WAS SUBSEQUENTLY CLOSED WITH THE AWARD NOTED ABOVE.

ALTHOUGH CLAIMANT WAS WORKING AS A SHOE SALESMAN WHEN HE SUFFERED HIS INJURY, HE HAS BEEN EMPLOYED FOR ALMOST FOUR YEARS AS A 'ROVING INSPECTOR,' WHICH REQUIRES THE INSPECTION OF BOXCARS AND FLATCARS LOADED WITH LUMBER.

CLAIMANT TESTIFIED HE HAS PAIN IN HIS RIGHT SHOULDER WHICH SOMETIMES GOES INTO THE HAND AFTER A LONG DAYS WORK - THAT HE ALWAYS HAS AN UNCOMFORTABLE FEELING IN THE SHOULDER AND SOMETIMES GETS CRAMPS. HE IS UNABLE TO PLAY BASKETBALL OR GOLF. DURING THE PAST YEAR HE HAS SEEN DR. BERSELLI ON ONE OCCASION AND, AT THE PRESENT TIME, HE IS NOT UNDER ANY MEDICAL TREATMENT.

THE REFEREE FOUND THAT, ALTHOUGH DR. CHERRY'S REPORT INDICATED CLAIMANT WAS UNABLE TO PLAY BALL OR CATCH WITH HIS YOUNG SON, THE TESTIMONY OF CLAIMANT INDICATES THAT HE DOES THESE ACTIVITIES EVEN THOUGH IT IS SOMETIMES TEDIOUS. AFTER EVALUATING ALL OF THE EVIDENCE, THE REFEREE CONCLUDED THAT CLAIMANT'S LOSS OF FUTURE EARNING CAPACITY WAS NOT IN EXCESS OF THAT FOR WHICH HE HAD BEEN AWARDED BY THE DETERMINATION ORDER OF MARCH 20, 1975.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT BOTH DR. JONES AND DR. CARLSON OF THE ORTHOPEDIC CONSULTANTS FOUND THAT WITH RESPECT TO CLAIMANT'S RIGHT SHOULDER, THE TOTAL LOSS OF FUNCTION AT THE

TIME OF EXAMINATION WAS MILD DUE TO THE INJURY AND THE BOARD CONCLUDES, AS DID THE REFEREE, THAT CLAIMANT'S LOSS OF EARNING CAPACITY HAS BEEN ADEQUATELY COMPENSATED BY THE AWARD OF 32 DEGREES. THE BOARD AFFIRMS AND ADOPTS THE FINDINGS AND CONCLUSIONS OF THE REFEREE AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED JULY 15, 1975 IS AFFIRMED.

WCB CASE NO. 75-2038 DECEMBER 22, 1975

CLARENCE H. COCHRAN, CLAIMANT

DON G. SWINK, CLAIMANT'S ATTY.
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

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

CLAIMANT, A 67 YEAR OLD WORKMAN, HAS ARTHRITIS OF THE JOINTS OF BOTH THUMBS. IN OCTOBER 1969 HIS RIGHT HAND WAS PRESSED BETWEEN A LARGE BUCKET AND AN I-BEAM - ON DECEMBER 8, 1972 THE HOD CARRIER TOSSED HIM A BRICK WHICH HE CAUGHT IN BOTH HANDS AND THE CORNER OF THE BRICK HIT THE BASE OF HIS RIGHT THUMB INJURING IT. BOTH OF THESE INCIDENTS WERE CONSIDERED AS INDUSTRIAL INJURIES. CLAIMANT ALSO RECEIVED INJURIES TO HIS LEFT THUMB IN MARCH 1973 AND AGAIN IN MAY 1973.

WHILE ON VACATION ON AUGUST 11, 1974 CLAIMANT SLIPPED AND THREW OUT HIS RIGHT HAND AGAINST THE WALL TO PREVENT HIMSELF FROM FALLING - THE BUTT OF HIS PALM AND THE BASE OF THE THUMB AREA STRUCK THE WALL AND HE FELT PAIN AT THE BASE OF THE THUMB WITHIN AN HOUR AND HAS HAD SUBSEQUENT SWELLING AND PAIN IN THAT AREA. CLAIMANT FILED A CLAIM BASED ON THE AUGUST 1974 SYMPTOMATOLOGY AS AN AGGRAVATION OF THE DECEMBER 8, 1972 INDUSTRIAL INJURY. THE CLAIM WAS FIRST ACCEPTED AND COMPENSATION PAID FOR APPROXIMATELY SIX MONTHS AND THEN DENIED IN APRIL 1975.

THE EMPLOYER CONTENDS THAT CLAIMANT'S PROBLEMS ARE CAUSED BY ARTHRITIS AND ARE NOT RELATED TO THE 1972 INDUSTRIAL INJURY.

AFTER THE AUGUST 1974 INJURY CLAIMANT WAS SEEN BY DR. BARNHOUSE, WHO, BASED UPON A HISTORY RELATED TO HIM BY CLAIMANT, WAS OF THE OPINION THAT WHEN CLAIMANT INJURED HIS RIGHT THUMB SUCH INJURY WOULD IN ALL PROBABILITY AGGRAVATE THE PREEXISTING INJURY AND SUBSEQUENT OSTEOARTHRITIS. DR. CHURCH EXAMINED CLAIMANT ON SEPTEMBER 4, 1974. X-RAYS SHOWED DEGENERATIVE ARTHRITIS BUT AFTER VIEWING THE FILMS, DR. CHURCH SAID THERE WAS A CAUSAL CONNECTION BETWEEN CLAIMANT'S CONDITION AT THAT TIME AND THE INDUSTRIAL INJURIES SUFFERED IN OCTOBER 1969 AND DECEMBER 1972.

DR. NATHAN, AT THE REQUEST OF THE CARRIER, EXAMINED CLAIMANT IN OCTOBER 1974 AND FOUND CARPOMETACARPAL ARTHRITIS OF BOTH THUMBS AND METACARPOPHALANGEAL JOINT ARTHRITIS IN BOTH THUMBS. HE FELT THAT THIS WOULD INDICATE THAT CHANGES IN BOTH HANDS AT THE CARPOMETACARPAL AS WELL AS THE METACARPOPHALENGEAL JOINTS WERE NOT RELATED TO ANY SPECIFIC INJURY BUT WERE ASSOCIATED WITH THE NORMAL AGING PROCESS.

THE REFEREE, RELYING ON THE OPINION EXPRESSED BY DR. NATHAN AFFIRMED THE DENIAL, STATING THAT DR. NATHAN WAS THE ONLY PHYSICIAN WHO MADE A REPORT OF COMPARISON BETWEEN BOTH OF THE WORKMAN'S THUMBS. BECAUSE DR. NATHAN WAS A HAND SURGERY SPECIALIST, THE REFEREE FOUND THAT HIS REPORTS WERE ENTITLED TO GREATER WEIGHT THAN THOSE SUBMITTED BY THE OTHER PHYSICIANS.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT DR. NATHAN'S REPORT IS SOMEWHAT AMBIGUOUS AND SEES NO REASON WHY HIS REPORT SHOULD BE ACCORDED ANY GREATER WEIGHT THAN THAT OF DR. CHURCH OR DR. BARNHOUSE, BOTH OF WHOM FOUND THAT THERE WAS CAUSAL RELATION BETWEEN CLAIMANT'S PRESENT CONDITION AND THE INDUSTRIAL INJURIES HE HAD INCURRED IN OCTOBER 1969 AND DECEMBER 1972. THE BOARD CONCLUDES THAT THE DENIAL OF CLAIMANT'S CLAIM WAS IMPROPER.

ORDER

THE ORDER OF THE REFEREE DATED SEPTEMBER 17, 1975 IS REVERSED.

CLAIMANT'S CLAIM IS REMANDED TO THE EMPLOYER FOR THE PAYMENT OF COMPENSATION, AS PROVIDED BY LAW, COMMENCING AUGUST 12, 1974 AND UNTIL CLOSURE IS AUTHORIZED PURSUANT TO ORS 656.268.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES AT THE HEARING, THE SUM OF 750 DOLLARS AND FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW, THE SUM OF 250 DOLLARS, BOTH SUMS TO PAID BY THE EMPLOYER.

WCB CASE NO. 74-4636 DECEMBER 23, 1975

ESTHER LAKEY, CLAIMANT

MERTEN AND SALTVEIT, CLAIMANT'S ATTYS.
MERLIN MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER MAILED DECEMBER 10, 1974 GRANTING CLAIMANT NO ADDITIONAL AWARD FOR PERMANENT PARTIAL DISABILITY.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON JANUARY 4, 1971, HER CLAIM WAS CLOSED BY DETERMINATION ORDER DATED OCTOBER 25, 1972 WHEREBY CLAIMANT WAS AWARDED 32 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK DISABILITY AND 15 DEGREES FOR 10 PER CENT LOSS OF THE RIGHT LEG. CLAIMANT REQUESTED A HEARING AND, AS A RESULT OF THAT HEARING, THE REFEREE AWARDED CLAIMANT AN ADDITIONAL 32 DEGREES FOR HER LOW BACK DISABILITY BUT DID NOT INCREASE THE AWARD OF 15 DEGREES FOR THE RIGHT LEG DISABILITY. THE BOARD AFFIRMED THE REFEREE'S AWARD, HOWEVER, THE CIRCUIT COURT ORDERED CLAIMANT TO BE PAID COMPENSATION FOR HER UNSCHEDULED DISABILITY EQUAL TO 145 DEGREES AND AFFIRMED THE AWARD OF 15 DEGREES FOR THE RIGHT LEG DISABILITY.

ON JANUARY 13, 1972 CLAIMANT ENTERED INTO A STIPULATION WHEREIN SHE MADE NO CONTENTION THAT HER NECK PROBLEMS OR COMPLAINTS WERE IN ANY WAY RELATED TO HER INDUSTRIAL ACCIDENT OF JANUARY 4, 1971 AND THE EMPLOYER ACCEPTED RESPONSIBILITY FOR CLAIMANT'S STOMACH AND INTESTINAL CONDITIONS.

THE REFEREE FOUND THAT CLAIMANT APPARENTLY WAS CONTENDING THAT ALL OF HER AILMENTS, INCLUDING COLON, LOW BACK, CERVICAL AREA, SHOULDER, HYPERGLYCEMIA, GOUT, TREMORS, NAUSEA AND HEADACHES STEMMED FROM HER INDUSTRIAL ACCIDENT. HE CONCLUDED THAT THERE WAS NO CONVINCING EVIDENCE TO ALTER THE PREVIOUS OPINION OF THE REFEREE, ENTERED ON MARCH 13, 1973, THAT CLAIMANT'S INJURIES SUSTAINED ARE THE SAME AS THOSE ACCEPTED, NAMELY, LOW BACK AND GASTROINTESTINAL PROBLEMS.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT, ALTHOUGH THE MEDICAL REPORTS INDICATE LITTLE OBJECTIVE FINDINGS, THE EVIDENCE DOES SHOW CLEARLY THAT CLAIMANT CANNOT RETURN TO HER FORMER TYPE OF WORK AND THAT SHE HAS SUFFERED A SUBSTANTIAL LOSS OF HER WAGE EARNING CAPACITY. THE REFEREE SEEMED TO FEEL THAT CLAIMANT HAD BEEN ADEQUATELY COMPENSATED FOR THIS LOSS BY THE AWARD OF 145 DEGREES GIVEN HER BY THE JUDGMENT OF THE CIRCUIT COURT.

THE BOARD CONCLUDES THAT CLAIMANT WOULD BE MORE ADEQUATELY COMPENSATED BY AN AWARD OF 240 DEGREES FOR 75 PER CENT UNSCHEDULED DISABILITY BASED UPON HER LOSS OF EARNING CAPACITY.

ORDER

THE ORDER OF THE REFEREE DATED AUGUST 15, 1975 IS REVERSED.

CLAIMANT IS AWARDED 240 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. THIS IS IN LIEU OF THE AWARD CLAIMANT HAS PREVIOUSLY RECEIVED FOR HER UNSCHEDULED DISABILITY AND IN ADDITION TO THE AWARD SHE RECEIVED FOR 15 DEGREES OF A MAXIMUM OF 150 DEGREES FOR SCHEDULED RIGHT LEG DISABILITY.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW, 25 PER CENT OF THE COMPENSATION INCREASED BY THIS AWARD, PAYABLE OUT OF SAID COMPENSATION AS PAID, NOT TO EXCEED 2,300 DOLLARS.

WCB CASE NO. 74-4621 DECEMBER 23, 1975

DOUGLAS BROWN, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED TO THE EMPLOYER CLAIMANT'S CLAIM FOR AGGRAVATION.

CLAIMANT SUFFERED TWO COMPENSABLE INJURIES, ONE ON AUGUST 20, 1971 AND ONE ON MARCH 17, 1972 WHILE WORKING FOR THE SAME EMPLOYER. THE FIRST INJURY WAS A SPRAIN AND CONTUSION OF THE LEFT KNEE - NO PERMANENT DISABILITY WAS AWARDED. THE 1972 INJURY WAS CAUSED WHEN CLAIMANT BUMPED HIS LEFT KNEE ON A KNOT. THIS CLAIM WAS CLOSED ON AUGUST 22, 1972 - AGAIN, NO AWARD OF PERMANENT DISABILITY WAS MADE.

DR. POTTER EXAMINED CLAIMANT ON OCTOBER 22, 1974 AND, BASED UPON THE HISTORY OF CLAIMANT'S LEFT LEG PROBLEMS RELATED TO HIM BY CLAIMANT, FELT THAT CLAIMANT'S CONDITION HAD BECOME AGGRAVATED

DUE TO HIS EMPLOYMENT. IN HIS DEPOSITION DR. POTTER STATES THAT BOTH THE MENISCUS TEAR AND THE CHONDROMALACIA PATELLAE WERE REFERRABLE TO THE INJURY.

THE REFEREE FOUND THAT CLAIMANT HAD PROVEN HIS AGGRAVATION CLAIM BASED UPON DR. POTTER'S FINDING OF A RELATIONSHIP BETWEEN THE 1971 ACCIDENT AND CLAIMANT'S CURRENT PROBLEMS.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT THERE IS SUFFICIENT MEDICAL EVIDENCE TO SUPPORT CLAIMANT'S CLAIM FOR AGGRAVATION AND AFFIRMS THE REFEREE'S FINDINGS AND CONCLUSIONS.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 6, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW, THE SUM OF 350 DOLLARS PAYABLE BY THE EMPLOYER.

WCB CASE NO. 74-4031 DECEMBER 23, 1975

ELMER STRADER, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER MAILED NOVEMBER 1, 1974, BUT ASSESSED THE STATE ACCIDENT INSURANCE FUND A PENALTY EQUAL TO 25 PER CENT OF THE TEMPORARY TOTAL DISABILITY COMPENSATION PAID TO CLAIMANT COVERING THE PERIOD JUNE 13 THROUGH AUGUST 7, 1974, AND DIRECTED THE FUND TO PAY CLAIMANT'S ATTORNEY A REASONABLE ATTORNEY'S FEE.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON JUNE 12, 1974. HE COMPLETED HIS SHIFT ON THAT DAY AND COMMENCED TO WORK THE FOLLOWING DAY BUT, BECAUSE OF THE INJURY, WAS UNABLE TO CONTINUE. HE REPORTED HIS INJURY TO HIS EMPLOYER WHO SAID THAT HE WOULD SEE THAT THE ACCIDENT WAS REPORTED TO THE FUND. BOTH THE EMPLOYER AND CLAIMANT VISITED THE FUND'S OFFICE IN NORTH BEND SEVERAL TIMES AND ADVISED IT OF THE SPECIFIC ACCIDENT OCCURRING ON JUNE 12, 1974 - HOWEVER, IT WAS NOT UNTIL CLAIMANT CONSULTED AN ATTORNEY, THAT HE RECEIVED HIS FIRST COMPENSATION CHECK ON AUGUST 15, 1974.

CLAIMANT WAS FIRST EXAMINED ON JUNE 16 BY DR. BILLS AT THE EMERGENCY ROOM AT THE HOSPITAL - AT THAT TIME CLAIMANT WAS COMPLAINING OF RIGHT NECK AND COLLARBONE SORENESS. ON JUNE 25, 1974, DR. HOLBERT EXAMINED CLAIMANT, HIS FINDINGS INCLUDED MINIMAL NECK MOTION LIMITATION, TENDERNESS AND SOME SWELLING ON THE RIGHT STERNAL CLAVICULAR JOINT AND SOME TENDERNESS OF THE RIGHT SECOND RIB. BY SEPTEMBER 13 FULL RANGE OF NECK MOTION WAS NOTED BY DR. HOLBERT AND THE CONDITION WAS DIAGNOSED AS CHRONIC SUBLAXATION OF THE RIGHT STERNOCLAVICULAR JOINT AND CHRONIC CERVICAL SPRAIN. CLAIMANT'S CONDITION WAS FELT TO BE MEDICALLY STATIONARY AND HIS CLAIM WAS CLOSED WITH AN AWARD OF 16 DEGREES FOR 5 PER CENT UNSCHEDULED NECK AND RIGHT SHOULDER DISABILITY.

CLAIMANT WAS NOT REHIRED AFTER HE WAS RELEASED TO RETURN TO WORK AND HAS BEEN UNEMPLOYED SINCE THAT TIME ALTHOUGH HE HAS SPENT SOME TIME CUTTING FIREPLACE WOOD. HE HAS APPLIED FOR WORK AND HAS CONTACTED VOCATIONAL REHABILITATION SERVICES FOR ASSISTANCE.

TWO ISSUES WERE PRESENTED TO THE REFEREE AT THE HEARING. (1) UNREASONABLE DELAY IN PAYMENT OF COMPENSATION AND (2) EXTENT OF PERMANENT PARTIAL DISABILITY.

WITH RESPECT TO THE FIRST ISSUE, THE REFEREE FOUND THAT THE FAILURE OF THE FUND TO BEGIN PROMPT PAYMENT OF COMPENSATION AMOUNTED TO SUCH UNREASONABLE BEHAVIOR THAT BOTH PENALTIES AND ATTORNEYS FEE SHOULD BE ASSESSED UNDER THE PROVISIONS OF ORS 656.262(8) AND 656.382(1). THE EMPLOYER HAD ALMOST IMMEDIATE KNOWLEDGE OF THE CLAIM AND ADVISED CLAIMANT HE WOULD TAKE CARE OF FILING THE REPORT WHICH CLAIMANT HAD SIGNED AND DELIVERED IT TO THE EMPLOYER. CLAIMANT HAD HAD 13 PREVIOUS INDUSTRIAL INJURIES AND, ON EACH OCCASION, HAD FOLLOWED THIS PROCEDURE. ALTHOUGH BOTH CLAIMANT AND THE EMPLOYER REPORTED THE ACCIDENT NO COMPENSATION WAS PAID UNTIL AFTER AN ATTORNEY WAS HIRED BY CLAIMANT. THE REFEREE CONCLUDED THAT THE FUND HAD FAILED TO EXPLAIN ITS REASON FOR THIS DELAY - IT ADMITTED COMPENSATION WAS NOT PAID UNTIL THE LAPSE OF MORE THAN 60 DAYS AFTER THE INJURY.

WITH RESPECT TO THE SECOND ISSUE, THE REFEREE FOUND THAT CLAIMANT HAD BEEN ADEQUATELY COMPENSATED BY THE AWARD OF 16 DEGREES FOR 5 PER CENT UNSCHEDULED DISABILITY, THAT THE MEDICAL EXHIBITS REFLECTED ONLY MINIMAL IMPAIRMENT AND THE TESTIMONY OF THE CLAIMANT DID NOT CONVINCE THE REFEREE THAT HE WAS MORE SERIOUSLY DISABLED.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE. THE CLAIMANT'S LOSS OF WAGE EARNING CAPACITY IS MINIMAL AT BEST. THERE IS NO EVIDENCE THAT ANY DOCTOR INDICATED THAT CLAIMANT COULD NOT RETURN TO HIS REGULAR EMPLOYMENT AND THERE IS EVIDENCE THAT CLAIMANT IS ABLE TO CUT, AND IS CUTTING, FIREPLACE WOOD BOTH FOR HIMSELF AND OTHER PEOPLE AND THAT SUCH WORK IS AS STRENUOUS AS HIS REGULAR WORK AS A LOGGER.

ORDER

THE ORDER OF THE REFEREE DATED MAY 16, 1975 IS AFFIRMED.

WCB CASE NO. 75-1006 DECEMBER 23, 1975

BRIAN K. BISSINGER, CLAIMANT

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

REVIEWED BY COMMISSIONERS MOORE AND SLOAN.

THE BOARD'S ORDER ON REVIEW, ENTERED ON NOVEMBER 25, 1975, IN THE ABOVE ENTITLED MATTER AWARDED CLAIMANT'S COUNSEL A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THE BOARD REVIEW PAYABLE BY THE EMPLOYER.

THE ORDER ON REVIEW MODIFIED THE OPINION AND ORDER OF THE

REFEREE BY ELIMINATING THEREFROM THE AWARD OF 16 DEGREES FOR 5 PER CENT UNSCHEDULED DISABILITY, THEREFORE, UNDER THE PROVISIONS OF ORS 656.382(2) THE EMPLOYER IS NOT REQUIRED TO PAY TO THE CLAIMANT OR HIS ATTORNEY A REASONABLE ATTORNEY'S FEE.

ORDER

IT IS HEREBY ORDERED THAT THE SECOND PARAGRAPH OF THE ORDER PORTION OF THE ORDER ON REVIEW, ENTERED NOVEMBER 25, 1975, BE DELETED THEREFROM.

WCB CASE NO. 75-721 DECEMBER 23, 1975

JACK SICHTING, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT AN ADDITIONAL 15 DEGREES, MAKING A TOTAL OF 82.5 DEGREES OF A MAXIMUM OF 150 DEGREES FOR PARTIAL LOSS OF THE LEFT LEG.

CLAIMANT SUSTAINED A COMPENSABLE TWISTING INJURY TO HIS LEFT KNEE ON SEPTEMBER 19, 1972 WHILE WORKING AS A LOGGER. A LEFT KNEE ARTHROGRAM WAS PERFORMED ON DECEMBER 1, 1972 AND IN MARCH 1973 CLAIMANT WAS RELEASED FOR LIGHT WORK IN THE WOODS. CLAIMANT ENGAGED IN SUCH WORK UNTIL MAY, 1973 WHEN, BECAUSE OF CONTINUING PAIN AND SWELLING, A LEFT LATERAL MENISCECTOMY WAS PERFORMED.

CLAIMANT AGAIN ATTEMPTED TO RETURN TO WORK BUT WAS UNSUCCESSFUL BECAUSE OF HIS KNEE PROBLEMS. DR. SLOCUM, TO WHOM CLAIMANT WAS REFERRED, RECOMMENDED SURGERY AND IN JANUARY, 1974, CLAIMANT UNDERWENT HIS THIRD AND FINAL MAJOR LEFT KNEE SURGERY. HE RETURNED TO WORK IN THE SUMMER OF 1974 AND HIS CLAIM WAS CLOSED ON JANUARY 7, 1975 BY A DETERMINATION ORDER WHEREBY HE WAS AWARDED 67.5 DEGREES FOR 45 PER CENT LOSS OF THE LEFT LEG.

IN OCTOBER, 1974, DR. SLOCUM FOUND, AS A RESULT OF A CLOSING EVALUATION OF CLAIMANT, THAT CLAIMANT LIMPED AND HE COULD NOT COME TO A FULL SQUAT NOR COULD HE KNEEL.

THE REFEREE FOUND, BY COMPARING CLAIMANT NOW AS TO PRIOR TO HIS INJURY, THAT THE EVIDENCE ESTABLISHED HE HAS USE OF HIS LEFT LEG BUT THAT SUCH USE IS SUBSTANTIALLY LESSENED DUE, MAINLY, TO THE LOSS OF MOTION AND, TO A LESSER DEGREE, DISABLING PAIN AND INSTABILITY. HE CONCLUDED THAT CLAIMANT HAD LOST 55 PER CENT OF THE USE OF HIS LEFT LEG DUE TO THE INDUSTRIAL INJURY.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS REACHED BY THE REFEREE. THE BOARD NOTES THAT DR. SLOCUM INDICATES THAT CLAIMANT HAS ARTHRITIS IN HIS KNEE AS A RESULT OF THE INJURY AND THAT SUCH CONDITION MAY GET WORSE. IF THIS BECOMES FACT, CLAIMANT HAS HIS REMEDIES EITHER UNDER ORS 656.245 OR 656.273.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 11, 1975 IS AFFIRMED.

WCB CASE NO. 74-4308 DECEMBER 23, 1975

RAY WILLIAMS, CLAIMANT
GALTON AND POPICK, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REFERRED TO IT FOR ACCEPTANCE CLAIMANT'S CLAIM FOR HIS CANCER CONDITION AND FOR THE PAYMENT OF COMPENSATION AS PROVIDED BY LAW UNTIL CLOSURE PURSUANT TO ORS 656.268. THE REFEREE ALSO IMPOSED A PENALTY AND AWARDED CLAIMANT'S ATTORNEY A REASONABLE ATTORNEY'S FEE.

CLAIMANT IS A 54 YEAR OLD SCHOOL TEACHER - ON JANUARY 31, 1974 WHILE ACTING AS A HALL MONITOR, CLAIMANT'S ARM WAS STRUCK BY A RUNNING STUDENT CAUSING CLAIMANT TO BE KNOCKED BACK AGAINST A STAIRWAY THEREBY CAUSING A LUMBAR SACRAL STRAIN.

CLAIMANT RECEIVED MEDICAL ATTENTION COMMENCING ON FEBRUARY 5, 1974 AT THE KEIZER FOUNDATION HOSPITAL AND CLINIC. HE RETURNED ON APRIL 2 AND AGAIN ON APRIL 6. THE FIRST TIME HE WAS SEEN BY DR. DOUGAN WHO RECOMMENDED BED REST, THE SECOND TIME BY DR. MYER WHO TOLD CLAIMANT HE SHOULD HAVE FOLLOWED DR. DOUGAN'S ADVICE, REPRIMANDED HIM AND INDICATED THERE WAS NO MORE THEY COULD DO FOR HIM. CLAIMANT DID NOT RETURN AFTER THAT DATE.

ON JULY 9, 1974, DR. HARWOOD, AT THE REQUEST OF THE FUND, EXAMINED CLAIMANT AND FOUND NO IMPAIRMENT IN HIS BACK, DIAGNOSED A BACK SPRAIN AND RECOMMENDED CLOSURE.

ON AUGUST 29, 1974, DR. BUMP LOOKED AT THE X-RAYS TAKEN ON APRIL 2 AND REQUESTED FURTHER INVESTIGATION WITH RESPECT THERETO - HOWEVER, DESPITE THIS REQUEST, THE CLAIM WAS CLOSED BY A DETERMINATION ORDER, DATED SEPTEMBER 6, 1974, WHICH AWARDED CLAIMANT NO PERMANENT PARTIAL DISABILITY.

ON NOVEMBER 25, 1974, DR. BUMP SENT IN A REPORT CRITICAL OF THE PREVIOUS DIAGNOSES OF CLAIMANT'S COMPLAINTS. HE HAD FOUND A MALIGNANCY IN THE LEFT KIDNEY AND FELT THAT THAT WAS THE REASON FOR CLAIMANT'S CONTINUING BACK PROBLEMS. SHORTLY AFTER THIS REPORT WAS MADE BY DR. BUMP, CLAIMANT DISCUSSED WITH THE FUND THE LATTER'S RESPONSIBILITY FOR A PENDING CANCER OPERATION. CLAIMANT REQUESTED THE FUND TO REOPEN HIS CLAIM BUT THE FUND NEITHER ACCEPTED NOR DENIED IT. ALL IT DID WAS INFORM THE TREATING PHYSICIAN AND THE HOSPITAL THAT IT WOULD NOT PAY THE BILLS.

DR. BUMP INDICATED THAT ADDITIONAL DIAGNOSITIC PROCEDURES SHOULD HAVE BEEN EMPLOYED BASED UPON INFORMATION CONTAINED IN THE X-RAYS TAKEN ON APRIL 2 AT KEIZER. IN ALL MEDICAL PROBABILITY THE CANCER DID SPREAD OR INCREASE FROM JANUARY 31, 1974 THROUGH SEPTEMBER 4, 1974 AND IT WAS HIS OPINION THAT THE SEVEN MONTH DELAY IN DIAGNOSING AND TREATING THE CANCER WAS PROBABLY DETRIMENTAL TO CLAIMANT'S CONDITION.

THE REFEREE CONCLUDED THAT WHEN CLAIMANT WAS SEEN AT KEIZER FOUNDATION FOR TREATMENT OF HIS BACK INJURY, DISCOVERY OF THE MALIGNANCY IN THE KIDNEY COULD HAVE BEEN MADE AND AN IMMEDIATE OPERATION UNDOUBTEDLY WOULD HAVE BEEN WARRANTED. HOWEVER, THE DOCTORS DID NOT MAKE SUCH DISCOVERY.

THE REFEREE CONCLUDED THAT THE QUESTION OF 'MASKING' DID COME INTO EFFECT SINCE THE INDUSTRIAL INJURY SET FORTH A CHAIN OF EVENTS WHICH DELAYED FOR SOME NINE MONTHS THE TREATMENT OF A CANCEROUS CONDITION - THAT DELAY HAD UNDOUBTEDLY BEEN VERY DETRIMENTAL TO THE HEALTH OF THE CLAIMANT AND, THEREFORE, SHOULD BE THE RESPONSIBILITY OF THE STATE ACCIDENT INSURANCE FUND.

WITH RESPECT TO THE FAILURE OF THE FUND TO EITHER ACCEPT OR DENY CLAIMANT'S CLAIM FOR HIS CANCER, THE REFEREE FELT IT WOULD NOT HAVE BEEN OBJECTIONABLE IF THE FUND HAD ISSUED A DENIAL BECAUSE THERE WAS A PROBABLE QUESTION AS TO WHETHER THE CONDITION WAS OR WAS NOT 'MASKED' BY THE INDUSTRIAL INJURY WHICH IT HAD ACCEPTED AS THEIR RESPONSIBILITY - HOWEVER, AFTER THE FUND HAD BEEN INFORMED BY CLAIMANT OF HIS MALIGNANCY, THE FUND NEITHER DENIED NOR ACCEPTED THE CLAIM. THE REFEREE CONSIDERED THIS CONDUCT INEXCUSABLE INASMUCH AS CLAIMANT FELT THERE WAS PROPER BASIS FOR HIS CLAIM AND HE WAS ENTITLED TO HAVE IT EITHER ACCEPTED OR DENIED.

THE REFEREE CONCLUDED THE CONDUCT OF THE FUND WAS IMPROPER DE FACTO DENIAL AND ALSO WAS UNREASONABLE RESISTANCE AND DELAY IN THE PROCESSING OF THE CLAIM. BASED UPON THE UNREASONABLE ACTION OF THE FUND, HE ASSESSED A 20 PER CENT PENALTY TO BE PAID TO THE CLAIMANT BASED ON ALL COMPENSATION DUE CLAIMANT FOR TEMPORARY TOTAL DISABILITY FROM AUGUST 1, 1974 TO APRIL 21, 1975 AND AWARDED CLAIMANT'S ATTORNEY AN ATTORNEY FEE.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS MADE BY THE REFEREE AND ADOPTS THEM AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED APRIL 21, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW, THE SUM OF 500 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 74-4289 DECEMBER 24, 1975

DONALD MC MURTY, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH HELD THAT THE FUND UNREASONABLY DELAYED IN PAYING THE BILLS FOR THE SERVICES OF DR. WOODARD IN THE AMOUNT OF 82 DOLLARS AND ORDERED THE FUND TO PAY CLAIMANT AS A PENALTY AN ADDITIONAL AMOUNT EQUAL TO 25 PER CENT OF THE 82 DOLLARS AND ALSO TO PAY CLAIMANT'S ATTORNEY AN ATTORNEY'S FEE. THE CLAIMANT

CROSS REQUESTS REVIEW, CONTENDING THE REFEREE ERRED IN NOT FINDING THAT THE FUND'S FAILURE TO PAY DR. JONES WAS UNREASONABLE TO THE EXTENT THAT A PENALTY SHOULD HAVE BEEN ASSESSED THEREFOR.

CLAIMANT SUSTAINED A COMPENSABLE INJURY ON DECEMBER 8, 1973 - THIS CLAIM WAS ACCEPTED AND CLOSED BY A DETERMINATION ORDER DATED FEBRUARY 12, 1974 WITH AN AWARD OF SOME TIME LOSS BUT NO AWARD FOR PERMANENT PARTIAL DISABILITY. SINCE HIS INJURY CLAIMANT ALLEGES HE HAS INCURRED MEDICAL SERVICES RESULTING FROM SAID INJURY, THE PAYMENT FOR WHICH HAS BEEN UNREASONABLY DELAYED BY THE FUND.

CLAIMANT SAW DR. WOODARD ON DECEMBER 8, 1973 AND RECEIVED TREATMENT FROM HIM FOR APPROXIMATELY FOUR WEEKS. IN AUGUST 1974, CLAIMANT AGAIN EXPERIENCED SIMILAR SYMPTOMS TO HIS LOW BACK AND HE AGAIN CONSULTED DR. WOODARD WHO TREATED HIM ON A DAILY BASIS FOR MORE THAN ONE WEEK. CLAIMANT THEN SAW DR. LARSON ON TWO OCCASIONS, GAVE DR. LARSON HIS FUND'S CLAIM NUMBER AND TOLD HIM TO BILL THE FUND. CLAIMANT RECEIVED ONLY ONE BILL FROM DR. LARSON. NEXT, CLAIMANT WAS SEEN BY DR. JONES, A NEUROLOGIST, WHO PRESCRIBED MUSCLE RELAXANTS AND TOLD CLAIMANT TO RETURN IN SIX WEEKS WHICH CLAIMANT DID AND DR. JONES PRESCRIBED MORE PILLS AND TOLD HIM TO RETURN IF HE HAD AN ADDITIONAL PROBLEM. CLAIMANT HAS NOT HAD TO RETURN.

THE REFEREE FOUND THAT THERE WAS NOT SUFFICIENT EVIDENCE ON WHICH TO BASE A FINDING THAT THE FUND UNREASONABLY REFUSED OR DELAYED PAYMENT OF THE MEDICAL SERVICES PROVIDED BY DR. LARSON. THERE WAS NO EVIDENCE THAT HIS BILL WAS EVER SUBMITTED TO THE FUND, THE AMOUNT OF THE BILL OR WHETHER THE SERVICES RENDERED WERE CAUSALLY RELATED TO CLAIMANT'S INJURY.

WITH REGARD TO THE SERVICES PERFORMED BY DR. JONES, THE REFEREE FOUND THAT THE FIRST CONSULTATION WAS ON SEPTEMBER 23, 1974 AND THE FUND PAID DR. JONES ON OCTOBER 30, 1974. THE REFEREE CONCLUDED THIS WAS NOT UNREASONABLE DELAY.

WITH RESPECT TO THE MEDICAL SERVICES PROVIDED BY DR. WOODARD, THE EVIDENCE SHOWS THAT THE FUND DID RECEIVE HIS BILL ON AUGUST 23, 1974 AND REFUSED PAYMENT. ON NOVEMBER 26, 1974 THE BILL, WHICH AMOUNTED TO 82 DOLLARS WAS PAID BY THE FUND - THIS WAS AFTER A REQUEST FOR HEARING HAD BEEN MADE BY THE CLAIMANT. THE REFEREE CONCLUDED THAT THIS WAS UNREASONABLE DELAY AND ENTITLED CLAIMANT TO PENALTIES AND ATTORNEY'S FEES PURSUANT TO ORS 656.262(8).

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

THE BOARD BELIEVES THE CLAIMANT'S ATTORNEY HAS BEEN ADEQUATELY COMPENSATED BY THE ORDER OF THE REFEREE AND, THEREFORE, NO AWARD FOR AN ATTORNEY'S FEE WILL BE GIVEN BY THIS ORDER ON REVIEW.

ORDER

THE ORDER OF THE REFEREE DATED JULY 7, 1975 IS AFFIRMED.

WCB CASE NO. 74-3128 DECEMBER 24, 1975

JUNICE C. HALKYARD, CLAIMANT
BOYER AND PUTNEY, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH AWARDED CLAIMANT AN ADDITIONAL 32 DEGREES FOR A TOTAL OF 80 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT SUFFERED A COMPENSABLE LOW BACK INJURY JULY 1973 WHILE WORKING AS A WELDER. DR. TENNYSON, NEUROSURGEON, DIAGNOSED A LUMBAR STRAIN - A LUMBAR MYELOGRAM WHICH WAS TAKEN PROVED NORMAL. CLAIMANT'S COMPLAINTS PERSISTED AND HE WAS SEEN BY DR. MCINTOSH, AN ORTHOPEDIST, WHO DIAGNOSED A DEGENERATIVE DISC WITHOUT NEUROPATHY AND PRESCRIBED PHYSICAL THERAPY AND A BACK SUPPORT.

CLAIMANT WAS REFERRED TO THE DISABILITY PREVENTION DIVISION TO DETERMINE IF A FUSION WOULD BE OF BENEFIT - NO FUSION WAS RECOMMENDED. CLAIMANT WAS SEEN BY DR. MELSON, A NEUROSURGEON, WHO DIAGNOSED A CHRONIC LUMBOSACRAL STRAIN WITH DEGENERATIVE JOINT DISC - ANOTHER MYELOGRAM WAS NORMAL AND DR. MELSON FELT CLAIMANT WAS MEDICALLY STATIONARY. A DETERMINATION ORDER MAILED JULY 8, 1974 AWARDED CLAIMANT 48 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. CLAIMANT CONTENDS HE IS PERMANENTLY AND TOTALLY DISABLED.

IN 1968 CLAIMANT HAD SUFFERED ANOTHER INDUSTRIAL INJURY AND HAD HAD A LAMINECTOMY. FROM THAT DATE FORWARD, HIS BACK WAS OCCASIONALLY SYMPTOMATIC BUT IT DID NOT PREVENT HIM FROM WORKING AS A WELDER AND HE WAS NOT SUFFERING ANY DISABLING EFFECTS FROM THAT INJURY AT THE TIME OF THE 1973 INJURY.

THE REFEREE FOUND CLAIMANT HAD A LONGSTANDING PERSONALITY DISORDER WHICH, IN THE OPINION OF THE PSYCHIATRIST WHO EXAMINED CLAIMANT, WAS NOT AFFECTED BY THE INDUSTRIAL INJURY AND CLAIMANT'S PERMANENT DISABILITY, AS A RESULT OF THE JULY 1973 INJURY, DID NOT HAVE A PSYCHOLOGICAL COMPONENT. HE FURTHER FOUND THAT CLAIMANT HAD FAILED TO PROVE THAT HE WAS INCAPABLE OF PERFORMING WORK AT A GAINFUL AND SUITABLE OCCUPATION AND HAD NOT PROVEN THAT HE FELL WITHIN THE 'ODD-LOT' CATEGORY. THE MEDICAL EVIDENCE INDICATES CLAIMANT SHOULD NOT ENGAGE IN HEAVY LIFTING AND THAT HE SHOULD BE RETRAINED BUT THERE IS NO MEDICAL OPINION SUPPORTING CLAIMANT'S CLAIMED INABILITY TO WORK. THE REFEREE FELT, HOWEVER, THAT THE LIFTING RESTRICTION WOULD PRECLUDE CLAIMANT FROM RETURNING TO WELDING AND ALSO FROM ENGAGING IN JOBS INVOLVING STRENUOUS MANUAL LABOR.

THE REFEREE CONCLUDED THAT THE FACT OF CLAIMANT'S PRESENT UNEMPLOYMENT AND THE FACT THAT HE HAD UNSUCCESSFULLY SOUGHT WORK WHICH HE MAINTAINS HE COULD NOT DO IN ANY CASE DO NOT CONSTITUTE EVIDENCE OF HIS LACK OF EARNING CAPACITY. ALTHOUGH CLAIMANT HAS FAILED TO ESTABLISH THAT HE IS PRESENTLY PERMANENTLY AND TOTALLY DISABLED, HE DOES HAVE A LOSS OF EARNING CAPACITY IN EXCESS OF THAT FOR WHICH HE HAD BEEN AWARDED. THE REFEREE, THEREFORE, INCREASED THE AWARD TO 80 DEGREES OF A MAXIMUM OF 320 DEGREES.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE REFEREE. IT IS OBVIOUS THAT CLAIMANT HAS NOT BEEN COOPERATIVE WITH RESPECT TO VOCATIONAL REHABILITATION PROGRAMS

AND IT IS DOUBTFUL THAT HE HAS MADE ANY BONA FIDE ATTEMPT TO RETURN TO WORK WHICH HE COULD DO IN HIS PRESENT PHYSICAL CONDITION.

ORDER

THE ORDER OF THE REFEREE DATED AUGUST 6, 1975 IS AFFIRMED.

WCB CASE NO. 75-727 DECEMBER 24, 1975

VERA HARVILL, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER AWARDING CLAIMANT PERMANENT AND TOTAL DISABILITY.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON AUGUST 5, 1973 WHEN SHE STRUCK HER HEAD AND SHOULDER ON AN OPEN CASH REGISTER DRAWER. SHE CONTINUED WORK UNTIL SEPTEMBER 12, WHEN SHE WAS SEEN BY DR. WILSON WHO DIAGNOSED MILD POST CONCUSSION HEADACHES AND MILD BILATERAL TARDY ULNAR PALSIES - THE LATTER WERE DENIED BY THE FUND AND THE MEDICAL EVIDENCE DOES NOT CONNECT THEM TO THE INDUSTRIAL INJURY.

BY OCTOBER 3, 1974 CLAIMANT WAS EXPERIENCING, IN ADDITION TO HER ORIGINAL SYMPTOMS, A VARIETY OF OTHER SYMPTOMS AND SHE WAS SEEN BY A VARIETY OF SPECIALISTS FOR THESE SYMPTOMS. SHE STATES SHE HAS CONTINUAL PAIN IN THE LEFT SHOULDER, THE LEFT NECK AND SHARP, PIERCING PAINS BEHIND HER LEFT EAR WITH PRESSURE ALL THE TIME. CLAIMANT IS ON A VERY HEAVY DIET OF MEDICATION.

THE REFEREE FOUND CLAIMANT HAD MINIMAL ORTHOPEDIC AND NEUROLOGICAL PROBLEMS AND HAS HAD NO SURGERY. DR. PASQUESI IN JUNE 1974 WONDERED WHETHER HER PROBLEMS WERE FUNCTIONAL AND SHE WAS REFERRED TO THE PAIN CLINIC FOR DEPRESSION, SECONDARY TO INTRACTABLE PAIN.

THE REFEREE FOUND THAT THE MEDICAL EVIDENCE REVEALED THAT THE AWARD OF 32 DEGREES FOR 10 PER CENT UNSCHEDULED DISABILITY RESULTING TO HER NECK, BACK AND LEFT SHOULDER WHICH WAS GRANTED ON OCTOBER 24, 1974 WAS ACCURATE AS FAR AS PHYSICAL IMPAIRMENT WAS CONCERNED, BUT THAT SHE HAS A HEAVY FUNCTIONAL OVERLAY IS INDICATED BY HER CONVERSION REACTIONS AND SOMATIZATION. APPARENTLY CLAIMANT IS ABLE TO CONTRIBUTE HER CHRONIC HEADACHES, BLURRY VISION, DEAFNESS IN THE LEFT EAR, NUMBNESS IN THE LEFT HAND, CONSTIPATION, STOMACH PAIN AND OCCASIONAL CHEST PAIN, AMONG OTHER SYMPTOMS, ALL TO THE INDUSTRIAL INJURY.

BASED UPON THIS FINDING, THE REFEREE CONCLUDED THERE WAS A CAUSAL CONNECTION AND SUGGESTED THE ONLY CURE FOR HER CONDITION WOULD BE A WILLINGNESS AND DESIRE ON HER PART TO BE CURED - THAT SHE WAS ENTITLED TO COUNSELING BY PSYCHIATRISTS WHICH POSSIBLY COULD AID HER UNLESS SHE REMAINED UNCOOPERATIVE. THE REFEREE STATED THAT, 'SINCE THE MEDICAL EVIDENCE OFFERS NO SOLUTION WHATSOEVER, EVEN THOUGH HER (CLAIMANT'S) ACTUAL PHYSICAL IMPAIRMENT IS MODERATE, SHE MUST AT THIS TIME BE FOUND TO BE A PERMANENT TOTAL.'

THE BOARD, ON DE NOVO REVIEW, IS PUZZLED BY THE CONCLUSIONS REACHED BY THE REFEREE. DR. WILSON, WHO FIRST DIAGNOSED CLAIMANT'S CONDITION, STATES SHE HAD MILD POST CONCUSSION HEADACHES - FOUR MONTHS LATER DR. DIETRICH NOTED HER X-RAY REPORT INDICATED ONLY MINIMAL DEGENERATIVE CHANGES AND STATED SHE MIGHT HAVE A SOFT CERVICAL DISC, HOWEVER, HE DID NOT THINK SHE WAS HAVING ENOUGH TROUBLE TO WARRANT FURTHER INVESTIGATION. HER TREATING PHYSICIAN, DR. VINK, WITHOUT MAKING ANY OBJECTIVE CLARIFICATIONS, STATED IN A REPORT THAT SHE WAS MAKING POOR PROGRESS WITH REST AND NECK TRACTION AND CONTINUED TO HAVE PAIN IN THE HEAD, NECK AND ARMS - LATER HE SAID SHE WAS IMPROVING.

THE BOARD IS MOST IMPRESSED WITH A REPORT FROM DR. DAVIS WHICH STATED THAT HE DID NOT THINK CLAIMANT HAD ANY DEFINITE EVIDENCE OF A SINGLE ROOT NERVE INVOLVEMENT, HE DID NOT BELIEVE SHE HAD A HERNIATED DISC NOR DID HE FEEL THAT SHE HAD ANY UNDERLYING NEUROSURGICAL PROBLEM. HE ADMITTED HE DID NOT HAVE ANY GOOD SUGGESTIONS OTHER THAN THE CONTINUATION OF CONSERVATIVE MANAGEMENT, BUT HE FELT THAT CLAIMANT WOULD EVENTUALLY GET WELL. HE INDICATED THAT SHE HAD NO SERIOUS UNDERLYING PATHOLOGY AT THE TIME HE EXAMINED HER.

THE EVIDENCE INDICATES THAT CLAIMANT RELIES HEAVILY UPON NARCOTICS AND OTHER MEDICATION. THE PSYCHOLOGICAL EVALUATION INDICATES SHE IS EXTREMELY PRONE TO CONVERSION REACTIONS AND TENDS TO USE SOMATIC SYMPTOMATOLOGY AS A MEANS OF DEALING WITH EMOTIONAL AND LIFE PROBLEMS. THE CLAIMANT HAS NOT WORKED SINCE SHORTLY AFTER THE INDUSTRIAL INJURY, SHE HAS NOT SOUGHT, NOR HAS ANY PHYSICIAN SUGGESTED SURGICAL INTERVENTION PROBABLY BECAUSE ALL X-RAYS AND MYELOGRAMS RESULTED IN NEGATIVE FINDINGS.

THE BOARD CONCEDES THAT CLAIMANT HAS A SERIOUS PROBLEM AND THAT IT IS, FOR THE MOST PART, FUNCTIONAL. THE BOARD CANNOT FIND ANY EVIDENCE THAT WOULD JUSTIFY A CONCLUSION THAT CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED - HOWEVER, THE INJURY, TOGETHER WITH CLAIMANT'S REACTION THERETO, HAS DEPRIVED HER OF A SUBSTANTIAL SEGMENT OF THE LABOR MARKET. THE BOARD CONCLUDES THAT CLAIMANT IS ENTITLED TO AN AWARD OF 160 DEGREES FOR 50 PER CENT UNSCHEDULED NECK, LEFT SHOULDER, BACK AND PSYCHOLOGICAL DISABILITIES.

ORDER

THE ORDER OF THE REFEREE DATED AUGUST 8, 1975 IS REVERSED.

CLAIMANT IS AWARDED 160 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED NECK, LEFT SHOULDER, BACK AND PSYCHOLOGICAL DISABILITY.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE 25 PER CENT OF THE COMPENSATION AWARDED CLAIMANT BY THIS ORDER ON REVIEW, PAYABLE OUT OF SAID COMPENSATION AS PAID, NOT TO EXCEED THE SUM OF 2,300 DOLLARS.

WCB CASE NO. 75-1048 DECEMBER 24, 1975

HARLAN GOBLE, CLAIMANT

HAROLD W. ADAMS, CLAIMANT'S ATTY.
ROGER R. WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH DIRECTED IT TO ACCEPT CLAIMANT'S CLAIM AND PROVIDE HIM WITH THE BENEFITS TO WHICH HE IS ENTITLED BY LAW.

CLAIMANT CONTENDS HE DEVELOPED A NECK DISABILITY AS A RESULT OF HIS WORK WITH THE EMPLOYER AS A WELDER - HE STATES THAT APPROXIMATELY FIVE YEARS PRIOR TO THE HEARING HE GRADUALLY BEGAN TO DEVELOP NECK PAIN AND STIFFNESS WHICH WOULD BE MORE SEVERE AT THE END OF THE WORK DAY AND AT THE END OF THE WORK WEEK. WHEN THE PLANT WAS SHUT DOWN CLAIMANT NOTICED A REMISSION OF HIS SYMPTOMS.

AS A WELDER, CLAIMANT WAS REQUIRED TO WEAR A WELDING HOOD APPROXIMATELY 80 PER CENT OF THE TIME HE WAS WORKING. THIS HOOD OR HELMET WEIGHED NEARLY TWO POUNDS.

CLAIMANT WAS IN A REAR-END AUTOMOBILE ACCIDENT ON SEPTEMBER 26, 1973 AND, AT FIRST, HIS NECK WAS SORE - HE ALSO HAD SOME LOW BACK PAIN. CLAIMANT'S LAST TREATMENT FOR THESE CONDITIONS WAS IN MARCH 1974. THEREAFTER, CLAIMANT HAD NECK AND SUB OCCIPITAL COMPLAINTS AND ALSO BACK COMPLAINTS - HE WAS SEEN BY J. F. SCHMIDT, CHIROPRACTIC PHYSICIAN WHO INDICATED ON MARCH 12, 1975 THAT THERE WAS A RELATIONSHIP BETWEEN CLAIMANT'S NECK SYMPTOMS AND HIS JOB.

CLAIMANT WAS EXAMINED BY DR. SPADY, AN ORTHOPEDIST, WHO INDICATED THAT THE OCCURRENCE OF THE NECK SYMPTOMS WERE COINCIDENTAL AND THAT AS FAR AS HE KNEW THE WEARING OF A WELDER'S HOOD WAS NOT COMMONLY ASSOCIATED WITH NECK SYMPTOMS AND NOT A RECOGNIZED COMPLAINT OF WELDERS.

THE REFEREE FOUND THAT, WITHOUT OTHER EVIDENCE, IF A PERSON HAS SYMPTOMS AT THE END OF A WORK DAY AN INFERENCE IS CREATED, ESPECIALLY IF THE SYMPTOMS ARE LESS OR NON-EXISTENT DURING WEEKENDS, VACATIONS AND EXTENDED LAYOFFS. THIS INFERENCE IS THAT SOMETHING AT WORK MAY HAVE CAUSED THE SYMPTOMS.

THE REFEREE CONCLUDED THAT THE WORKMAN NEEDED MEDICAL CORROBORATION THAT HIS WORK CAUSED HIS DISABILITY AND THAT THE REPORT OF DR. SCHMIDT WAS PERSUASIVE THAT HIS NECK SYMPTOMS WERE RELATED TO HIS WORK. THE REFEREE WAS NOT CONVINCED BY DR. SPADY'S OPINION THAT CLAIMANT COULD NOT HAVE A NECK PROBLEM BECAUSE IT IS NOT A COMMON COMPLAINT OF WELDERS.

HE FURTHER CONCLUDED THAT THE 1973 AUTO ACCIDENT COULD HAVE AGGRAVATED CLAIMANT'S THEN DEVELOPING CERVICAL PROBLEMS BUT THE CERVICAL PROBLEMS PREEXISTED THE AUTO ACCIDENT.

THE BOARD, ON DE NOVO REVIEW, LIKE THE REFEREE, IS MORE PERSUADED BY THE REPORT OF DR. SCHMIDT, AND CONCLUDES THAT CLAIMANT'S CLAIM SHOULD HAVE BEEN ACCEPTED BY THE EMPLOYER AS A COMPENSABLE CLAIM.

ORDER

THE ORDER OF THE REFEREE DATED JULY 18, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE IN CONNECTION WITH THIS BOARD REVIEW, THE SUM OF 400 DOLLARS, PAYABLE BY THE EMPLOYER.

WCB CASE NO. 74-2895 DECEMBER 24, 1975

ALFRED KING, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
COSGRAVE AND KESTER, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

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

CLAIMANT IS A 28 YEAR OLD WORKMAN WHO INITIALLY WAS ASSIGNED TO YARD JOBS BUT ON JANUARY 28, 1974 COMMENCED WORKING IN THE FURNACE AREA WHERE THERE WAS CONSIDERABLE HEAT AND ALSO SMOKE AND FUMES IN THE AIR. THE FURNACES WERE MELTING METAL.

ON JULY 8, 1974, CLAIMANT CONSULTED DR. MATAR COMPLAINING OF RECURRENT COLD AND COUGHING UP BLACK PHLEGM. IT WAS DETERMINED HE HAD A MILD CONSTRICTIVE AND RESTRICTIVE PULMONARY DISEASE. CLAIMANT ATTRIBUTED THIS CONDITION TO EXPOSURE TO THE HEAT IN THE MELT ROOM AND FILED A CLAIM FOR WORKMEN'S COMPENSATION BENEFITS. THIS CLAIM WAS DENIED ON JULY 24, 1974. THE CLAIMANT REQUESTED A HEARING.

THE REFEREE FOUND THE EVIDENCE WAS BOTH EQUIVOCAL AND INCONSISTENT IN MANY INSTANCES. THE CLAIMANT CONTENDS THAT THE REFEREE MISINTERPRETED THE OPINIONS EXPRESSED BY DR. MATAR. THE REFEREE FELT THAT THE EXPLANATIONS OFFERED BY DR. MATAR WERE RATHER UNREALISTIC ESPECIALLY HIS INABILITY TO DISTINGUISH BETWEEN THE MEANING OF 'MAY HAVE' AND 'PROBABLY' WHEN STATING HIS OPINION AS TO WHETHER THE CONDITION WAS RELATED TO THE CLAIMANT'S WORK.

THE REFEREE CONCLUDED THAT, AFTER CONSIDERING ALL OF THE EVIDENCE IN THE RECORD, CLAIMANT HAD FAILED TO PROVE HIS CLAIM FOR WORKMEN'S COMPENSATION BENEFITS.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE DATED AUGUST 21, 1975 IS AFFIRMED.

WCB CASE NO. 75-1267 DECEMBER 24, 1975

RONALD LARSON, CLAIMANT

EVOHL F. MALAGON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT SEEKS BOARD REVIEW OF THE REFEREE'S ORDER WHICH DENIED CLAIMANT'S CLAIM FOR PENALTIES AND ATTORNEY'S FEES BASED UPON THE FUND'S FAILURE TO ACCEPT OR DENY CLAIMANT'S CLAIM WITHIN 60 DAYS OF NOTICE.

CLAIMANT SUFFERED A COMPENSABLE BACK INJURY ON OCTOBER 13, 1971 FOR WHICH HE HAD A SERIES OF SURGERIES AND, ULTIMATELY, RECEIVED AN AWARD OF 88 DEGREES - THE DATE OF THE LAST AWARD AND ARRANGEMENT OF COMPENSATION WAS AUGUST 22, 1974.

BY LETTER DATED MARCH 31, 1975 ADDRESSED TO THE WORKMEN'S COMPENSATION BOARD, CLAIMANT'S ATTORNEY FILED A REQUEST FOR HEARING ON AGGRAVATION AND SUBMITTED A MEDICAL REPORT FROM DR. DUNN. A COPY WAS SENT TO THE STATE ACCIDENT INSURANCE FUND REQUESTING COPIES OF ALL MEDICAL REPORTS.

ON MAY 15, 1975 DR. WILSON, WHO EXAMINED CLAIMANT AT THE REQUEST OF DR. DUNN, FELT CLAIMANT MIGHT BE HELPED BY DECOMPRESSION AND A TWO LEVEL LUMBAR FUSION L4-S1. AN ORTHOPEDIC CONSULTATION ON JUNE 6, 1975 RECOMMEDED NO FUSION - HOWEVER DR. DUNN DID NOT AGREE.

THE CLAIM FOR AGGRAVATION WAS ACCEPTED BY THE FUND ON JULY 21, 1975.

THE REFEREE FOUND THAT PENALTIES AND ATTORNEY'S FEES SHOULD NOT BE ASSESSED BECAUSE OF THE LAPSE OF FOUR MONTHS BEFORE THE FUND ACCEPTED THE AGGRAVATION CLAIM. THE EVIDENCE DID NOT INDICATE THAT A CLAIM FOR AGGRAVATION WAS EVER FILED WITH THE FUND AS PROVIDED BY ORS 656.273(2). THE REFEREE CONCLUDED THAT THE PENALTY PROVISIONS REQUIRED STRICT CONSTRUCTION AND THAT THE APPLICATION OF PENALTIES AND ASSESSMENT OF ATTORNEY'S FEES FOR UNREASONABLE CONDUCT DO NOT FALL WITHIN THE BOUNDS OF LIBERAL CONSTRUCTION IN FAVOR OF A WORKMAN.

HE FURTHER CONCLUDED THAT THE PROVISION OF THE STATUTE PROVIDING FOR FILING A CLAIM FOR AGGRAVATION DIRECTLY WITH THE BOARD IS ONLY APPLICABLE IN THE EVENT THE DIRECT RESPONSIBILITY EMPLOYER CANNOT BE LOCATED, IS UNKNOWN OR HAS CEASED TO EXIST AND THAT THERE IS NO PROVISION FOR FILING A FUND CLAIM WITH THE BOARD.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT, ALTHOUGH IT IS NOT A RECOMMENDED PRACTICE, WHEN THE CLAIMANT FILES A REQUEST FOR A HEARING WITH THE BOARD ON THE GROUNDS OF AGGRAVATION AND FURNISHES THE FUND A COPY OF SUCH REQUEST AND ASKS THAT HE BE SUPPLIED COPIES OF ALL MEDICAL REPORTS THE 60 DAY PROVISION CONTAINED IN ORS 656.262(4) STARTS TO RUN.

THE BOARD CONCLUDES THAT THE FUND WAS PUT ON NOTICE WHEN IT RECEIVED A COPY OF CLAIMANT'S REQUEST FOR HEARING AND THERE IS NO EVIDENCE TO JUSTIFY THE FUND'S DELAY BETWEEN MARCH 31, 1975, WHEN IT RECEIVED ITS COPY OF THE REQUEST, AND JULY 21, 1975, WHEN IT FINALLY ACCEPTED THE CLAIM. THE BOARD CONCLUDES THAT PENALTIES AND FEES ARE JUSTIFIED AND SHOULD HAVE BEEN IMPOSED BY THE REFEREE.

ORDER

THE ORDER OF THE REFEREE DATED AUGUST 14, 1975, AND HIS ORDER ON RECONSIDERATION, DATED AUGUST 26, 1975, ARE REVERSED.

THE STATE ACCIDENT INSURANCE FUND SHALL PAY TO CLAIMANT AS A PENALTY UNDER THE PROVISIONS OF ORS 656.262(8) AN AMOUNT EQUAL TO 20 PER CENT OF THE TEMPORARY TOTAL DISABILITY TO WHICH CLAIMANT WAS ENTITLED UNDER THE PROVISIONS OF THE LAW BETWEEN MARCH 31, 1975 AND JULY 21, 1975.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES AT THE HEARING THE SUM OF 650 DOLLARS - AND FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW, THE SUM OF 300 DOLLARS, BOTH SUMS TO BE PAID BY THE STATE ACCIDENT INSURANCE FUND.

WARD CADWALLADER, CLAIMANT

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

Reviewed by Commissioners Wilson and Sloan.

The State Accident Insurance Fund requests board review of the referee's order which awarded claimant additional temporary total disability compensation and increased his award for unscheduled low back disability to 160 degrees, 50 per cent of the maximum.

Claimant suffered a compensable injury on November 26, 1973 when he fell approximately 10 feet from a ladder. Claimant sustained an acute fracture of the superior end of the plate of the L-1 vertebral body and an acute lumbosacral traumatic fasciomyositis.

Claimant is 42 years old, he has the equivalent of one year college education and has taken vocational rehabilitation training with the goal of becoming a building inspector. Claimant has not worked since the date of his injury.

Dr. Goodwin felt that claimant should return to work but not to his old job as a drywall taper. Claimant testified that he was unable to return to any work because of his back pain.

Dr. Pasquesi examined claimant and both he and Dr. Goodwin rated the loss of function of the back as moderate. A determination order mailed on June 20, 1974 awarded temporary total disability to May 31, 1974 and 48 degrees for 15 per cent unscheduled low back disability.

Claimant felt he was unable to work and consulted Dr. Eilers, an orthopedist, who hospitalized claimant for traction therapy for two weeks. Dr. Eilers also advised claimant to do certain physical therapy exercises in the hope of alleviating his back problem.

On April 18, 1975 claimant was seen by Drs. Noall, Short and Stainsby of the orthopedic consultants. It was their consensus recommendation that claimant's condition was medically stationary at that time and his claim could be closed - that the total loss of function of the back as then existed was moderate and that such loss of function was due to the injury.

The referee found that the preponderance of the evidence indicated that the closure of the claim on May 30, 1974 was premature as at that time it was undetermined whether claimant was ready to return to his regular occupation. He concluded that claimant was entitled to receive temporary total disability payments from May 31, 1974 until April 18, 1975, less time worked, if any, as the latter date was the date when claimant actually became medically stationary.

The referee also concluded that claimant had suffered a substantial loss of wage earning capacity and, based on the medical reports rating the loss of function alone as moderate, and

TAKING INTO CONSIDERATION THE OTHER FACTORS OF AGE, EDUCATION, AND WORK BACKGROUND, HE INCREASED THE AWARD FOR UNSCHEDULED LOW BACK DISABILITY FROM 15 PER CENT TO 50 PER CENT.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE REFEREE AND AFFIRMS AND ADOPTS THEM AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED JULY 22, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE IN CONNECTION WITH HIS SERVICES AT BOARD REVIEW, THE SUM OF 300 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 75-746 DECEMBER 30, 1975

MARIAN L. WALKER, CLAIMANT

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

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED CLAIMANT'S CLAIM FOR HER BACK CONDITION TO IT TO BE ACCEPTED FOR PAYMENT OF COMPENSATION FROM THE DATE OF INJURY UNTIL CLOSURE PURSUANT TO ORS 656.268.

ON OCTOBER 24, 1974 CLAIMANT SUFFERED AN INJURY TO HER LEFT FOOT WHEN SHE SLIPPED WHILE STANDING ON A STAIRWAY, LOST HER BALANCE AND THE NEXT THING SHE WAS AWARE OF SHE WAS SITTING ON THE STEPS. THERE WAS NO FRACTURE BUT CLAIMANT WAS OFF WORK APPROXIMATELY TWO WEEKS DURING WHICH PERIOD SHE WAS ABLE TO WALK, BUT WITH A LIMP - SHE HAD NO BACK DISCOMFORT AT THAT TIME.

CLAIMANT RETURNED TO WORK ON NOVEMBER 6, BUT COULD ONLY WORK FOR TWO AND ONE HALF DAYS BECAUSE OF FOOT DISCOMFORT - SHE STILL HAD NO BACK DISCOMFORT. SUBSEQUENTLY, CLAIMANT CONTRACTED THE FLU AND WAS CONFINED TO BED FOR A WEEK - AFTER RECOVERING CLAIMANT BEGAN TO EXPERIENCE BACK DISCOMFORT. BY NOVEMBER 19, 1974 CLAIMANT'S FOOT PROBLEMS HAD RESOLVED AND SHE HAD ONLY BACK COMPLAINTS. SHE HAD RETURNED TO WORK ON THAT DATE AND CONTINUED TO WORK UNTIL DECEMBER 7, 1974 WHEN SHE COULD NO LONGER CONTINUE BECAUSE OF HER BACK DISCOMFORT.

CLAIMANT FILED A CLAIM AND THE FUND ACCEPTED RESPONSIBILITY FOR THE LEFT FOOT CONDITION BUT DENIED RESPONSIBILITY FOR THE BACK CONDITION.

DR. VIETS WAS OF THE OPINION THAT THE FALL CAUSED CLAIMANT'S SUBSEQUENT BACK CONDITIONS ON ONE OR TWO ALTERNATIVE THEORIES - (1) DIRECTLY, OR (2) CONSEQUENTIALLY AS THE RESULT OF LIMPING.

THE REFEREE FOUND THAT, BASED UPON DR. VIETS' TESTIMONY, THE ONSET OF CLAIMANT'S BACK SYMPTOMS A LITTLE OVER TWO WEEKS AFTER HER FALL MIGHT LESSEN THE LIKELIHOOD OF A CAUSAL RELATIONSHIP BUT IT DID NOT RULE IT OUT AND THERE WAS NOTHING IN THE RECORD INDICATING ANY INTERVENING ACCIDENT OR EVENT WAS POSSIBLY OR PROBABLY CAUSAL. DR. VIETS INDICATED THE LIMPING, AS A CONSEQUENTIAL

EFFECT, WOULD PLACE EXTRA STRESS ON THE LOW BACK AND THEREBY AGGRAVATE THE LOW BACK OR CAUSE THE CONDITION TO BECOME SYMPTOMATIC.

THE REFEREE CONCLUDED THAT CLAIMANT DID NOT HAVE TO ESTABLISH THE NEGATIVE PROPOSITION THAT NOTHING BUT THE ACCIDENT COULD HAVE CAUSED THE RESULTANT BACK CONDITION AND THAT CLAIMANT HAD MET HER BURDEN OF PROOF. SHE HAD SOUGHT MEDICAL ATTENTION SOON AFTER THE BACK SYMPTOMS APPEARED, SHE HAD HAD NO PRIOR BACK PROBLEMS, THERE WAS EXPERT MEDICAL OPINION THAT THE INJURY WAS RESPONSIBLE AND THERE WAS NO OPINION TO THE CONTRARY.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE REFEREE'S FINDINGS AND CONCLUSIONS AND AFFIRMS AND ADOPTS THEM AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED AUGUST 29, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW, THE SUM OF 350 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 75-1283 DECEMBER 30, 1975

DALE ALLEN BUSH, CLAIMANT

BICK, MONTE AND JOSEPH,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT AN ADDITIONAL 80 DEGREES MAKING AN ACCUMULATIVE AWARD OF 320 DEGREES FOR 100 PER CENT UNSCHEDULED DISABILITY.

CLAIMANT, WHO WAS 21 YEARS OLD AT THE TIME, SUFFERED AN INDUSTRIAL INJURY ON JULY 3, 1973 WHICH WAS DIAGNOSED AS A SEVERE HEAD INJURY.

CLAIMANT WAS TREATED BY DR. WHITE, A NEUROLOGIST, WHO FOUND SOME SLOW IMPROVEMENT AFTER FIVE MONTHS BUT CLAIMANT STILL HAD ABNORMAL SPEECH AND A SIGNIFICANT ABNORMALITY IN HIS GAIT AND BALANCE.

IN MARCH 1974 AN EVALUATION EXAMINATION BY DR. ABBOTT INDICATED CLAIMANT HAD, AND PROBABLY WOULD CONTINUE TO HAVE, POOR COORDINATION, UNSTEADY BALANCE AND POOR MEMORY SPAN. DR. ABBOTT STATED THAT CLAIMANT'S PERMANENT DISABILITIES HAD NOT IMPROVED AND HE DOUBTED THAT THEY EVER WOULD.

CLAIMANT WAS ALSO EVALUATED AT THE DISABILITY PREVENTION DIVISION BY DR. HALFERTY AND GIVEN A PSYCHOLOGICAL EVALUATION AND, FOLLOWING ALL OF THESE EVALUATIONS AND MEDICAL REPORTS, THE EVALUATION DIVISION OF THE BOARD CONDUCTED A PERSONAL INTERVIEW WITH CLAIMANT. AS A RESULT OF THE EVALUATIONS, REPORTS AND THE INTERVIEW, A DETERMINATION ORDER WAS ISSUED MARCH 14, 1975 AWARDING CLAIMANT 240 DEGREES FOR 75 PER CENT UNSCHEDULED CENTRAL NERVOUS SYSTEM DISABILITY.

THE CLAIMANT REQUESTED A HEARING - HE DID NOT CONTEND HE WAS PERMANENTLY AND TOTALLY DISABLED BUT HE DID WANT TO BE RETRAINED IF POSSIBLE AND HE BELIEVED THAT HIS PARTIAL DISABILITY WAS SO GREAT THAT HE WAS ENTITLED TO THE MAXIMUM AWARD.

THE REFEREE FOUND MUCH VALIDITY IN CLAIMANT'S CONTENTION. CLAIMANT IS STILL A VERY YOUNG PERSON AND ALTHOUGH THERE IS A POSSIBILITY HE COULD BE RETRAINED IN SOME FIELDS, THEREFORE PRECLUDING A FINDING OF TOTAL DISABILITY, NEVERTHELESS, HIS IMPAIRMENTS, AS INDICATED BY THE MEDICAL AND PSYCHOLOGICAL REPORTS AND EVALUATIONS, ARE SUCH AS TO PERMANENTLY AFFECT HIS WAGE EARNING CAPACITY FOR THE REST OF HIS LIFE.

THE REFEREE CONCLUDED THAT CLAIMANT WAS ENTITLED TO AN ADDITIONAL 25 PER CENT WHICH, WHEN ADDED TO THE PREVIOUS AWARD OF 75 PER CENT, WOULD GIVE HIM AN ACCUMULATIVE AWARD OF 100 PER CENT OR 320 DEGREES.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE. THE REFEREE QUOTED FROM THE REPORT OF DR. LOWERY, A CLINICAL PSYCHOLOGIST THAT -

"I SUSPECT THAT HE IS TOTALLY, PERMANENTLY DISABLED."

THE BOARD AGREES WITH THIS CONCLUSION, IT IS SUPPORTED BY OTHER PSYCHOLOGICAL EVALUATIONS AS WELL AS THE MEDICAL REPORTS.

ORDER

THE ORDER OF THE REFEREE DATED SEPTEMBER 11, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW, THE SUM OF 350 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 74-3828 DECEMBER 30, 1975

MAURICE W. CARTWRIGHT, SR., CLAIMANT

BEN ANDERSON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT 224 DEGREES FOR 70 PER CENT UNSCHEDULED LOW BACK DISABILITY.

A DETERMINATION ORDER MAILED OCTOBER 24, 1973 AWARDED CLAIMANT 224 DEGREES FOR 70 PER CENT UNSCHEDULED LOW BACK AND LEFT HIP (UNDERSCORED) DISABILITY. THE FUND CONTENDED THAT CLAIMANT WAS NOT ENTITLED TO AN AWARD FOR LEFT HIP DISABILITY AS IT HAD DENIED RESPONSIBILITY FOR IT ON AUGUST 9, 1972 AND ITS DENIAL WAS NOT APPEALED. CLAIMANT CONTENDS THAT HE IS ENTITLED TO PERMANENT TOTAL DISABILITY.

CLAIMANT IS A 56 YEAR OLD BOILERMAKER-WELDER WHO SUFFERED A LOW BACK INJURY ON APRIL 14, 1971 FOR WHICH HE WAS TREATED BY DR. SCHULER AND DR. LANGSTON. DR. LANGSTON FELT THAT A PREVIOUSLY SEVERELY INJURED LEFT HIP IRRITATED CLAIMANT'S LOW BACK. HE PER-

FORMED A TOTAL HIP REPLACEMENT UTILIZING A CHARNLEY PROSTHESIS. THE FUND PAID FOR THIS SURGERY BUT DENIED LIABILITY FOR THE HIP AS A RELATED INJURY. APPARENTLY THE HIP OPERATION WAS A SUCCESS AND CLAIMANT WAS ABLE TO WALK MUCH BETTER THAN HE HAD FOR MANY YEARS BUT HE WAS UNABLE TO STAND THE DEMANDS OF HIS HEAVY TYPE WORK.

IN MAY 1973 CLAIMANT WAS ADMITTED TO THE PORTLAND PAIN REHABILITATION CENTER AND AN L5-S1 FACET RHIZOTOMY WAS PERFORMED. DR. SERES WAS OF THE OPINION CLAIMANT WOULD BE ABLE TO RETURN TO SOME FORM OF MEANINGFUL OCCUPATION IF HE WAS SO MOTIVATED BUT THAT HE WOULD BE UNABLE TO PERFORM THE HEAVY WORK THAT HE WAS DOING PRIOR TO HIS INJURY. DR. LANGSTON AGREED WITH THIS OPINION BUT POINTED OUT THAT THE ONLY TYPE OF WORK THAT CLAIMANT KNEW WAS HEAVY WORK.

DR. PASQUESI EVALUATED CLAIMANT IN APRIL 1974 AND FOUND HIS PHYSICAL IMPAIRMENT TO BE 40 PER CENT OF THE WHOLE MAN. HE BELIEVED THAT CLAIMANT COULD NOT RETURN TO WORK AS A BOILERMAKER BUT COULD BE EMPLOYED IN ANY CAPACITY WHICH DID NOT REQUIRE HIM TO LIFT MORE THAN 20 POUNDS AT ANY ONE TIME OR REQUIRE CONSTANT REPETITIVE STOOPING, CRAWLING, WORKING OVERHEAD OR FLEXING THE TRUNK OF THE BODY REPETITIVELY.

AT THE PRESENT TIME CLAIMANT IS 60 YEARS OLD AND HAS A NINTH GRADE EDUCATION - SINCE 1940 HIS EMPLOYMENT HAS BEEN THAT OF A BOILERMAKER-WELDER-SHEET-METAL WORKER WITH THE EXCEPTION OF FIVE YEARS WHEN HE OWNED AND OPERATED A TAVERN.

THE REFEREE FOUND CLAIMANT TO BE MORE INTELLIGENT AND ADAPTABLE THAN THE AVERAGE PERSON. HE FOUND THAT BECAUSE OF HIS PHYSICAL DISABILITY HE WAS UNABLE TO RETURN TO HIS REGULAR EMPLOYMENT BUT THERE WAS PERSUASIVE MEDICAL EVIDENCE THAT CLAIMANT WAS ABLE TO BE REGULARLY EMPLOYED AT A GAINFUL AND SUITABLE OCCUPATION - IF CLAIMANT'S IMPAIRMENT WAS SUFFICIENT TO PLACE HIM IN THE 'ODD-LOT' CATEGORY, HIS LACK OF MOTIVATION PRECLUDED HIM FROM BEING AWARDED PERMANENT TOTAL DISABILITY.

THE REFEREE FOUND THAT PRIOR TO 1970, CLAIMANT HAD BEEN BUYING AND REMODELING HOMES BUT THAT HE WAS NOW SELLING THEM BECAUSE HE WAS UNABLE TO KEEP THEM UP. THE REFEREE FOUND THAT CLAIMANT WAS ACQUIRING THIS REAL ESTATE AS RENTAL PROPERTY WHICH PRODUCED INCOME FOR HIM AND, IN ADDITION, CLAIMANT WAS RECEIVING A SMALL DISABILITY PENSION FROM HIS UNION AND ALSO SOCIAL SECURITY DISABILITY INCOME. CLAIMANT HAD CONTEMPLATED SELLING REAL ESTATE AS A PROFESSION BUT DECIDED AGAINST IT, PRIMARILY, BECAUSE OF RECESSIONARY FACTORS RATHER THAN BECAUSE OF ANY PHYSICAL OR INTELLECTUAL INABILITY TO DO SO.

THE REFEREE CONCLUDED THAT CLAIMANT HAD ACQUIRED SUFFICIENT INCOME AND NET WORTH TO MEET HIS NEED DURING THE REMAINDER OF HIS YEARS, THEREBY ELIMINATING THE NECESSITY OF OBTAINING LIGHT WORK WITHIN HIS PHYSICAL CAPABILITIES. HE FURTHER CONCLUDED THAT THE DENIAL BY THE FUND FOR CLAIMANT'S LEFT HIP DISABILITY HAD NOT BEEN APPEALED AND THAT SINCE THE SURGERY PERFORMED BY DR. LANGSTON CLAIMANT NO LONGER HAD ANY LEFT HIP DISABILITY. HE, THEREFORE, AFFIRMED THE DETERMINATION ORDER'S AWARD OF 224 DEGREES BUT BASED IT SOLELY ON THE LOW BACK DISABILITY.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS THE OPINION AND ORDER OF THE REFEREE. THE MEDICAL REPORTS WERE NOT ENTIRELY PERSUASIVE THAT CLAIMANT WAS ABLE TO ENGAGE IN SOME SUITABLE AND GAINFUL WORK, HOWEVER, THE BOARD FINDS THAT CLAIMANT HAS NOT MADE A BONA FIDE EFFORT TO FIND ANY WORK - HE HAS, IN EFFECT, VOLUNTARILY REMOVED HIMSELF FROM THE LABOR MARKET, CHOOSING TO LIVE ON HIS PRESENT INCOME.

ORDER

THE ORDER OF THE REFEREE DATED JULY 22, 1975 IS AFFIRMED.

WCB CASE NO. 74-3209 DECEMBER 30, 1975

DAVID JONES, CLAIMANT
BODIE, MINTURN, VAN VOORHEES AND LARSON,
CLAIMANT'S ATTYS.
GRAY, FANCHER, HOLMES AND HURLEY,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH REMANDED CLAIMANT'S CLAIM TO ITS CARRIER FOR REOPENING, DIRECTING THAT CLAIMANT RECEIVE TEMPORARY TOTAL DISABILITY PAYMENTS COMMENCING JUNE 7, 1974 UNTIL HE IS AGAIN MEDICALLY STATIONARY AND AWARDING CLAIMANT'S ATTORNEY THE SUM OF 750 DOLLARS.

CLAIMANT SUSTAINED AN INDUSTRIAL INJURY ON JANUARY 21, 1971 - THE CLAIM WAS CLOSED BY A DETERMINATION ORDER AWARDING CLAIMANT 16 DEGREES FOR 5 PER CENT UNSCHEDULED LOW BACK DISABILITY. CLAIMANT REQUESTED A HEARING, THE REFEREE AFFIRMED THE DETERMINATION ORDER AND NO REQUEST FOR REVIEW WAS MADE.

IN 1973 CLAIMANT, WHILE THROWING A STICK FOR HIS DOG TO FETCH, SUFFERED AN EXACERBATION OF THE 1971 INJURY. THE CLAIM WAS DENIED AND AFTER A HEARING, THE REFEREE FOUND THAT THE INCIDENT REPRESENTED A NEW NON-INDUSTRIAL INJURY. THE BOARD, ON DE NOVO REVIEW, FOUND THAT THE STICK THROWING INCIDENT WAS NOT A NEW INJURY.

IN JUNE 1974 ANOTHER INCIDENT OCCURRED WHILE CLAIMANT WAS AT WORK AND WAS PUSHING A STALLED TRUCK. CLAIMANT WAS SEEN BY DRS. RENWICK, MACCLOSKEY AND BERNSON. A CLAIM FOR AGGRAVATION WAS FILED WHICH WAS DENIED ON THE GROUNDS THAT THERE WAS NO MEDICAL EVIDENCE SUBMITTED TO SUBSTANTIATE A REOPENING OF THE CLAIM.

THE REFEREE FOUND THAT DR. BERNSON'S REPORT OF MAY 8, 1975, AS WELL AS HIS SUBSEQUENT DEPOSITION, STATED UNEQUIVOCALLY THAT CLAIMANT SUSTAINED A VALID AGGRAVATION OF HIS 1971 INJURY IN THE EVENTS OF 1973 AND 1974. HE CONCLUDED THAT THE AGGRAVATION CLAIM HAD BEEN PROVEN.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE REFEREE AND AFFIRMS AND ADOPTS HIS ORDER.

ORDER

THE ORDER OF THE REFEREE DATED JULY 7, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW, THE SUM OF 300 DOLLARS, PAYABLE BY THE EMPLOYER.

WCB CASE NO. 74-3697 DECEMBER 31, 1975

MICHAEL BELL, CLAIMANT
LINDSAY, NAHSTOLL, HART, DUNCAN, DAFOE AND KRAUSE,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH DENIED HIS CLAIM FOR COMPENSABLE INJURY ALLEGEDLY SUSTAINED ON JUNE 18, 1974.

AT THE TIME OF THE ALLEGED INJURY, CLAIMANT WAS OPERATING THE FURNACE IN THE MELTING DEPARTMENT OF THE EMPLOYER. IN HIS JOB HE STANDS BEHIND A THREE INCH SHIELD PROTECTING HIM FROM THE HEAT OF THE FURNACE WHICH CONTAINS A MOLTEN MASS RANGING FROM 2650 TO 2800 DEGREES F. HE SAID HE NOTICED AN UNAUTHORIZED PERSON IN THE AREA AT THE TIME HE WAS IN THE PROCESS OF DROPPING A CHARGE INTO THE FURNACE, AN ACT WHICH CREATED A POTENTIALLY HAZARDOUS CONDITION. CLAIMANT STATED HE WAS CONCERNED AND HE LED THE PERSON AWAY AND ASKED HIM WHAT HIS BUSINESS WAS. AN ALTERCATION THEN TOOK PLACE WHEREIN CLAIMANT WAS BEATEN UNCONSCIOUS WITH A 2 X 4 WHICH REQUIRED HIM TO BE HOSPITALIZED FOR A WEEK.

CLAIMANT PREFERRED CRIMINAL CHARGES AGAINST HIS ASSAILANT AND ALSO MADE A CLAIM FOR WORKMEN'S COMPENSATION BENEFITS ON THE THEORY THAT THE EMPLOYER PERMITTED AN UNAUTHORIZED PERSON ON THE PREMISES AND THAT HE WAS ASSISTING HIM AWAY FROM THE 'DANGER ZONE' WHEN THE ALTERCATION TOOK PLACE.

THE REFEREE FOUND THAT THE GATE TO THE PREMISES WAS NOT CLOSED, THAT PEOPLE COULD COME AND LEAVE THE PREMISES, THAT DURING LUNCH BREAKS THE GATE WAS OFTEN KEPT OPEN FOR THE EMPLOYEES. HE FOUND THAT THE GUARD, WHO MADE HIS ROUNDS ON THE PREMISES, DID NOT MAKE ANY ATTEMPT TO EXCLUDE EVERYONE FROM THE PROPERTY. A WITNESS SAW THE ASSAILANT LONG BEFORE HE APPROACHED THE AREA IN WHICH CLAIMANT WAS WORKING AND TOLD THIS PERSON HE WOULD HAVE TO LEAVE THAT AREA AND THAT HE, THE WITNESS, WOULD GET THE CLAIMANT FOR HIM - THAT HE DID ASK SOMEONE TO GET CLAIMANT AND ABOUT 15 MINUTES LATER CLAIMANT CAME OUT AND AN ARGUMENT WAS OVERHEARD BETWEEN CLAIMANT AND THE ASSAILANT WITH REGARD TO A DEBT AND DESTRUCTION OF RECORDS. THE ASSAILANT ALSO TESTIFIED THAT HE DID NOT GO INTO THE FURNACE ROOM - HIS VERSION OF THE INCIDENT WAS IDENTICAL TO THAT OF THE WITNESS.

THE REFEREE CONCLUDED THAT CLAIMANT HAD NOT SHOWN BY A PREPONDERANCE OF EVIDENCE THAT HIS CLAIM WAS COMPENSABLE.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS AND ADOPTS THE FINDINGS AND CONCLUSIONS OF THE REFEREE. IN THE MATTER OF THE COMPENSATION OF THE BENEFICIARIES OF INGRID VIVIAN ROBINSON, DECEASED (UNDERSCORED), 75 ADV SH 3544, THE COURT HELD THAT TO FIND A COMPENSABLE INJURY IT MUST FIRST BE DETERMINED WHETHER IT WAS 'ACCIDENTAL' - SECOND, WHETHER IT AROSE 'IN THE COURSE OF' THE EMPLOYMENT, AND THIRD, IF IT AROSE 'OUT OF' THE EMPLOYMENT. THE COURT RELIED UPON THE RULING IN BLAIR V. SIAC (UNDERSCORED), 133 OR 450, WHEREIN THE COURT SAID -

'...FOR A PERSONAL INJURY TO ARISE OUT OF (UNDERSCORED)

AND IN THE COURSE OF THE EMPLOYMENT, THERE MUST BE SOME CONNECTION BETWEEN THE INJURY AND THE EMPLOYMENT OTHER THAN THE MERE FACT THAT THE EMPLOYMENT BROUGHT THE INJURED PARTY TO THE PLACE OF INJURY. THERE MUST BE A CAUSAL CONNECTION BETWEEN THE EMPLOYMENT AND THE INJURY WHICH HAD ITS ORIGIN IN A RISK CONNECTED WITH THE EMPLOYMENT (UNDERSCORED), AND FLOWED FROM THAT SOURCE AS A RATIONAL (UNDERSCORED) AND NATURAL CONSEQUENCE (UNDERSCORED)...'

THE BOARD CONCLUDES THAT THE INJURY TO CLAIMANT DID NOT ARISE 'OUT OF' HIS EMPLOYMENT - THE RULINGS IN ROBINSON (UNDERSCORED) AND BLAIR (UNDERSCORED) ARE APPLICABLE IN THIS CASE.

ORDER

THE ORDER OF THE REFEREE DATED JULY 10, 1975 IS AFFIRMED.

WCB CASE NO. 75-478 DECEMBER 31, 1975

RICKIE LOTTS, CLAIMANT

BENNETT, KAUFMAN AND JAMES,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
AMENDED ORDER

THE ABOVE ENTITLED MATTER WAS THE SUBJECT OF AN ORDER ON REVIEW DATED DECEMBER 17, 1975.

ON PAGE 2, UNDER ORDER THE LAST PARAGRAPH ERRONEOUSLY RECITES, 'THE DETERMINATION ORDER MAILED NOVEMBER 8, 1975 IS AFFIRMED.'

THE SOLE PURPOSE OF THIS ORDER IS TO CORRECT THE RECORD AND CONFIRM THE ORDER SHOULD RECITE, 'THE DETERMINATION ORDER MAILED NOVEMBER 8, 1974 IS AFFIRMED.'

THE ORDER OF DECEMBER 17, 1975, SHOULD BE, AND IT IS HEREBY AMENDED TO REFLECT THAT CORRECTION.

WCB CASE NO. 74-4260 DECEMBER 31, 1975

LELAND ROBERTS, CLAIMANT

WILLNER, BENNETT, RIGGS AND SKARSTARD,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER AFFIRMING THE FOURTH DETERMINATION ORDER MAILED NOVEMBER 6, 1974 WHICH AWARDED CLAIMANT NO ADDITIONAL COMPENSATION.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON NOVEMBER 26, 1968. THEREAFTER, AS A RESULT OF SEVERAL DETERMINATION ORDERS AND AN OPINION OF REFEREE H. DON FINK, CLAIMANT RECEIVED A TOTAL OF 50 DEGREES FOR 30 PER CENT LOSS OF THE RIGHT LEG.

THE CLAIM WAS REOPENED ON JUNE 20, 1974 FOR AN ARTHROGRAM AND AN ARTHROSCOPY TO CHECK OUT THE SURFACE OF THE PATELLA - THIS PROCEDURE INDICATED THE PATELLA HAD JUST A VERY SMALL AMOUNT OF CHONDROMALACIAL CHANGES BUT NO MAJOR PROBLEM. THE LATERAL ASPECT OF THE JOINT SHOWED NO MARKED CHANGES ON THE FEMORAL CONDYLE. THE FOURTH DETERMINATION ORDER CLOSED THE CLAIM WITH NO ADDITIONAL PERMANENT PARTIAL DISABILITY AND CLAIMANT REQUESTED A HEARING.

THE REFEREE FOUND THERE WAS NOT SUFFICIENT MEDICAL EVIDENCE TO SUPPORT A CONCLUSION THAT THERE WAS ANY MATERIAL DIFFERENCE BETWEEN CLAIMANT'S CONDITION ON MARCH 16, 1973 (THE DATE OF REFEREE H. DON FINK'S OPINION AND ORDER) AND HIS PRESENT CONDITION. THE CLAIMANT TESTIFIED, AS DID HIS FATHER, THAT HIS CONDITION, GENERALLY, WAS WORSE NOW THAN IT WAS IN 1973 BUT THIS TESTIMONY WAS NOT SUPPORTED BY THE MEDICAL REPORTS.

THE REFEREE CONCLUDED THAT CLAIMANT HAD FAILED TO MEET HIS BURDEN OF PROOF THAT HIS PHYSICAL IMPAIRMENT EXCEEDED THAT AWARDED BY THE REFEREE'S ORDER OF MARCH 16, 1973. THE SOLE TEST IS LOSS OF PHYSICAL FUNCTION - LOSS OF EARNING CAPACITY IS NOT A FACTOR TO BE CONSIDERED IN EVALUATING SCHEDULED INJURIES.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE FINDINGS AND CONCLUSIONS OF THE REFEREE AND AFFIRMS AND ADOPTS HIS ORDER AS ITS OWN.

ORDER

THE ORDER OF THE REFEREE DATED SEPTEMBER 18, 1975 IS AFFIRMED.

WCB CASE NO. 74-4708 DECEMBER 31, 1975

JEAN LANGLEY, CLAIMANT

BROWN, BURT AND SWANSON,
CLAIMANT'S ATTYS.
ROGER R. WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT 208 DEGREES FOR 65 PER CENT UNSCHEDULED DISABILITY.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON AUGUST 24, 1972 WHILE WORKING AS A WAITRESS. THE INJURY WAS TO HER LOW BACK AND SHE FIRST CONSULTED F. C. WARNER, A CHIROPRACTIC PHYSICIAN, THE DAY FOLLOWING THE INCIDENT. LATER SHE WAS SEEN BY DR. UPJOHN, COMPLAINING OF PAIN AND TENDERNESS OVER THE SACRUM - SHE ALSO HAD AN AREA OF ECCHYMOSIS WITH SWELLING OVER HER LEFT BUTTOCK. ON SEPTEMBER 20, 1972, A PILONIDAL CYST WAS EXCISED.

IN OCTOBER 1972, DR. SPADY DIAGNOSED A POSSIBLE RUPTURED DISC AT L5-S1 LEVEL - IN JANUARY, 1973 CLAIMANT WAS SEEN BY DR. MELGARD - A MYELOGRAM PERFORMED WAS NEGATIVE. DR. SPADY COULD FIND NO OBJECTIVE EVIDENCE OF A LOW BACK PROBLEM AND REFERRED CLAIMANT TO THE DISABILITY PREVENTION DIVISION OF APRIL 19, 1973. DR. HALFERTY, AS A RESULT OF HIS EXAMINATION OF CLAIMANT, DESCRIBED A CHRONIC LOW BACK STRAIN RELATED TO INJURY COMPLICATED BY SEVERE OBESITY. THE BACK EVALUATION DIVISION ALSO DIAGNOSED LOW BACK STRAIN AND

OBESITY BUT STATED THAT CLAIMANT COULD RETURN TO HER FORMER OCCUPATION AND THAT THE LOSS OF FUNCTION WAS CONSIDERED MILD.

IN MAY, 1973 CLAIMANT WAS SEEN BY DR. POULSON WHO CONTINUED TO TREAT CLAIMANT UP TO THE DATE OF HEARING. DR. POULSON FELT CLAIMANT HAD A DEGENERATIVE LUMBAR DISC AND TOLD CLAIMANT SHE MUST LOSE WEIGHT BEFORE HE COULD DO ANYTHING FURTHER. ON OCTOBER 17, 1974, DR. POULSON FELT CLAIMANT WAS MEDICALLY STATIONARY BUT HE DID NOT AUTHORIZE HER RETURN TO WORK, STATING THAT HE DOUBTED SHE WOULD BE ABLE TO RETURN TO HER WORK AS A WAITRESS BUT THAT SHE COULD BE CAPABLE OF DOING OTHER TYPES OF WORK, E.G., CLERICAL, DESK WORK. THE CLAIM WAS CLOSED ON DECEMBER 19, 1974 WITH AN AWARD OF 80 DEGREES FOR 25 PER CENT UNSCHEDULED DISABILITY.

CLAIMANT IS 29 YEARS OLD - SHE DID NOT FINISH THE 12TH GRADE. HER WORK BACKGROUND CONSISTS ENTIRELY OF WORKING AS A WAITRESS AND, FOR A SHORT TIME, AS A GROCERY CLERK. SHE HAS NOT WORKED SINCE THE INJURY.

THE REFEREE FOUND CLAIMANT TO BE CREDIBLE AND AS WELL MOTIVATED AS COULD BE EXPECTED UNDER THE CIRCUMSTANCES. AT THE PRESENT TIME CLAIMANT IS ATTENDING CHEMEKETA COMMUNITY COLLEGE IN AN ATTEMPT TO OBTAIN HER GED, HOWEVER, SHE TESTIFIED SHE DIDN'T KNOW WHETHER SHE WAS SMART ENOUGH TO GET THROUGH CLERICAL TRAINING, BUT WOULD TRY. THE REFEREE FOUND THAT HER DESIRE TO ENTER THE CLERICAL FIELD WAS POSSIBLY UNREALISTIC IN VIEW OF HER SKILL AND INTELLIGENCE LEVELS, BASING THIS UPON A PSYCHOLOGICAL EVALUATION OF CLAIMANT BY DR. PERKINS.

THE REFEREE CONCLUDED THAT CLAIMANT HAD CHRONIC LOW BACK PAIN AND LIMITATION WHICH PREVENTED HER FROM RETURNING TO THE ONLY TYPE OF WORK FOR WHICH SHE WAS TRAINED AND, TAKING INTO CONSIDERATION HER AGE, EDUCATION, WORK EXPERIENCE, MENTAL CAPACITY AND SUITABILITY TO THE EXISTING LABOR MARKET, FURTHER CONCLUDED THAT SHE WAS ENTITLED TO AN AWARD OF 65 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY TO ADEQUATELY COMPENSATE HER FOR THE LOSS OF EARNING CAPACITY WHICH SHE SUSTAINED AS A RESULT OF THE INJURY.

THE BOARD, ON DE NOVO REVIEW, NOTES THAT WHILE NO DEFINITE REHABILITATION PROGRAM HAD BEEN DEVELOPED BEYOND ALLOWING CLAIMANT TO OBTAIN HER GED, THAT CLERICAL TYPE WORK OF SOME NATURE HAD BEEN DISCUSSED BY THE CLAIMANT WITH HER VOCATIONAL REHABILITATION COUNSELOR WHO HAD REPORTED THAT HIS PROGNOSIS FOR CLAIMANT'S REHABILITATION WAS GOOD IF HE AND CLAIMANT COULD AGREE ON A REHABILITATION PLAN. IT APPEARS TO THE BOARD THAT THE DESIRE OF CLAIMANT TO ENTER THE CLERICAL FIELD IS NOT ONLY ADMIRABLE, AS EXPRESSED BY THE REFEREE, BUT IS NOT UNREALISTIC.

THE BOARD FURTHER FEELS THAT CLAIMANT HAS MADE NO SUBSTANTIAL EFFORTS TO OBTAIN EMPLOYMENT WHICH SHE COULD DO IN HER PRESENT CONDITION. FURTHERMORE, IT APPEARS THAT OBESITY PLAYS A SUBSTANTIAL PART IN THE CLAIMANT'S LOW BACK PAIN AND CLAIMANT HAS NOT DONE AS MUCH AS SHE COULD TO RELIEVE THIS PROBLEM. CLAIMANT IS ONLY 29 YEARS OLD, SHE WILL SOON HAVE HER GED AND THE EVIDENCE INDICATES THAT SHE IS TRAINABLE IN LIGHT WORK OF SOME TYPE. SURGERY AS A MEANS OF TREATMENT HAS BEEN SUGGESTED BUT CLAIMANT DOES NOT WANT, AT THIS TIME, TO CONSIDER IT.

THE BOARD CONCLUDES THAT CLAIMANT HAS SUFFERED A SIGNIFICANT LOSS OF EARNING CAPACITY BUT IT CANNOT BELIEVE THAT 65 PER CENT OF THE LABOR MARKET HAS BEEN FORECLOSED TO CLAIMANT AS A RESULT OF THE INJURY - CLAIMANT WOULD BE ADEQUATELY COMPENSATED FOR THE LOSS OF EARNING CAPACITY SUFFERED AS A RESULT OF HER INDUSTRIAL INJURY BY AN AWARD OF 40 PER CENT OF THE MAXIMUM ALLOWABLE BY STATUTE.

ORDER

THE ORDER OF THE REFEREE DATED MAY 14, 1975 IS MODIFIED TO THE EXTENT THAT CLAIMANT IS AWARDED 128 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. THIS IS IN LIEU OF THE AWARD GRANTED TO CLAIMANT BY THE REFEREE'S ORDER, WHICH IN ALL OTHER RESPECTS IS AFFIRMED.

WCB CASE NO. 75-506 DECEMBER 31, 1975

JAMES B. SEYMOUR, CLAIMANT

POZZI, WILSON AND ATCHISON, CLAIMANT'S ATTYS.
MCMURRAY AND NICHOLS, DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER DATED MAY 8, 1974.

CLAIMANT IS A 36 YEAR OLD EQUIPMENT SERVICEMAN. HE HAS WORKED FOR THE EMPLOYER FOR TEN YEARS GROOMING, FUELING AND LOADING AIRCRAFT - HE ALSO WORKED IN THE AIR CARGO DEPARTMENT. CLAIMANT, WHILE HE WAS WORKING FOR THIS EMPLOYER, HAD SUSTAINED A COMPENSABLE BACK INJURY IN 1966. AS A RESULT OF THIS INJURY HE SUFFERED SOME TIME LOSS AND RECEIVED SOME MEDICAL CARE AND TREATMENT BUT RECEIVED NO AWARD FOR PERMANENT PARTIAL DISABILITY. SINCE THAT TIME HE HAS HAD, AT LEAST, EIGHT RECURRENCES OF BACK STRAIN INCLUDING THE ACCIDENT SUFFERED ON FEBRUARY 19, 1974, FOR WHICH THE DETERMINATION ORDER DATED MAY 8, 1974, AWARDED NO PERMANENT DISABILITY COMPENSATION.

THE CLAIMANT TESTIFIED HIS PROBLEM IS NOW CONTINUOUS AND HAS CONSTANTLY BECOME WORSE WITH EACH SUCCESSIVE INCIDENT - HOWEVER, THE EVIDENCE INDICATES THAT CLAIMANT HAS CONTINUED IN HIS SAME OCCUPATION, WHICH IS PROTECTED BY BOTH SENIORITY AND UNION CONTRACTS, AND CLAIMANT HAS, AT LEAST UNTIL THE DATE OF THE HEARING, SUFFERED NO LOSS OF EARNINGS.

THE REFEREE FOUND THAT, BASED UPON DR. SPECHT'S EXAMINATION AND REPORT OF MARCH 27, 1975, CLAIMANT HAD FULL RANGE OF MOTION IN THE BACK AND THERE WAS NO EVIDENCE OF PATHOLOGY. CLAIMANT HAD A TYPICAL RECURRENT LOW BACK STRAIN RESULTING FROM LIFTING AND USE OF HIS BACK. DR. SPECHT HAD FELT THAT CLAIMANT SHOULD NOT LIFT MORE THAN 50 POUNDS AND SHOULD PROBABLY CONSIDER A JOB CHANGE, BUT HE DID NOT CONNECT THESE RECOMMENDATIONS WITH ANY SPECIFIC INJURY - HE FELT CLAIMANT'S CONDITION HAD EXISTED SINCE OCTOBER 1966.

THE REFEREE FOUND CLAIMANT HAD CHRONIC BACK PROBLEMS BUT NO EVIDENCE OF ANY SPECIFIC INJURY.

THE REFEREE CONCLUDED THAT CLAIMANT HAD NOT SUSTAINED ANY IMPAIRMENT RESULTING FROM THE INCIDENT OF FEBRUARY 19, 1974 NOR WAS THERE ANY EVIDENCE THAT, AS A RESULT OF THAT INCIDENT, CLAIMANT HAD SUFFERED ANY LOSS OF EARNING CAPACITY.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS THE FINDINGS AND CONCLUSIONS OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE DATED JUNE 26, 1975 IS AFFIRMED.

THE BENEFICIARIES OF
KENNETH C. KING, DECEASED
GREEN, GRISWOLD AND PIPPIN, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY COMMISSIONERS WILSON AND SLOAN.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED TO IT THE CLAIM FOR WIDOW'S BENEFITS FOR ACCEPTANCE AND PAYMENT OF SUCH BENEFITS AS PROVIDED BY LAW AND AWARDED AN ATTORNEY'S FEE TO BE PAID BY THE FUND.

THE ISSUE BEFORE THE REFEREE WAS THE COMPENSABILITY OF A CORONARY VASCULAR ACCIDENT OCCURRING ON MARCH 26, 1972, DECEDENT'S DEATH WAS ATTRIBUTED TO ATHEROSCLEROTIC OCCLUSION OF THE CORONARY ARTERY OF THE HEART - AT THE TIME OF DEATH DECEDENT WAS THE PRESIDENT AND GENERAL MANAGER OF KING BROTHERS STEEL FABRICATORS WHICH WAS HAVING SERIOUS FINANCIAL PROBLEMS AND DECEDENT HAD BEEN WORKING UNDER SEVERE STRESS AND FOR LONG HOURS IN AN EFFORT TO RESOLVE THESE PROBLEMS. HE WAS WORKING ON A BID FOR A JOB IN ALASKA, WHICH, IF ACCEPTED, WOULD HAVE MADE HIS COMPANY FINANCIALLY SOUND.

THE REFEREE FOUND THAT, ALTHOUGH DECEDENT HAD DIED IN HIS SLEEP AT HOME, THERE WAS SUFFICIENT EVIDENCE OF MENTAL STRESS OVER AN EXTENDED PERIOD OF TIME BECAUSE OF WORRY AND CONCERN OVER HIS COMPANY'S FINANCIAL PROBLEMS TO JUSTIFY A CONCLUSION THAT THE DEATH WAS COMPENSABLE. DR. GRISWOLD BELIEVED THAT EVIDENCE OF THE PROTRACTED PERIOD OF EMOTIONAL STRESS WORKING THE SATURDAY AND SUNDAY PRIOR TO HIS HEART ATTACK ON SUNDAY EVENING AND THE FACT THAT THERE WAS NO HISTORY OF CORONARY DISEASE CONNECTED WITH DECEDENT'S FAMILY WOULD SUPPORT HIS OPINION THAT THERE WAS PROBABLY A RELATIONSHIP TO THE STRESS WHICH DECEDENT WAS UNDER IN THE PRECEDING SEVERAL YEARS, AND PARTICULARLY THE PRECEDING SEVERAL WEEKS TO HIS HEART ATTACK IN THE DEVELOPMENT OF HIS ACUTE HEART ATTACK.

THIS OPINION WAS DISAGREED WITH BY DR. LEE, WHO FELT DECEDENT'S DEATH WAS NOT PRECIPITATED, CAUSED OR MATERIALLY CONTRIBUTED TO BY THE CHRONIC MENTAL AND PHYSICAL STRESSES OF THE JOB AS PRESIDENT AND GENERAL MANAGER OF HIS COMPANY - HOWEVER, HE GAVE NO REASONS IN SUPPORT OF THIS OPINION.

THE BOARD, ON DE NOVO REVIEW, IS NOT PERSUADED BY THE CONTENTIONS SET FORTH IN THE FUND'S BRIEF THAT DR. GRISWOLD HAD TESTIFIED DIFFERENTLY IN OTHER HEART CASES. THE FUND HAD THE OPPORTUNITY TO CROSS EXAMINE DR. GRISWOLD HAD IT SO DESIRED, BUT IT DID NOT DO SO. IT CERTAINLY HAS NO RIGHT TO COLLATERALLY ATTACK HIS TESTIMONY ON THIS REVIEW.

BASED UPON THE REFEREE'S ANALYSIS OF THE CASE AND THE FUND'S FAILURE TO CROSS EXAMINE DR. GRISWOLD, THE BOARD AFFIRMS AND ADOPTS THE FINDINGS AND CONCLUSIONS OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE DATED JULY 10, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE IN CONNECTION WITH HIS SERVICES AT BOARD REVIEW, THE SUM OF 500 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

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76 BENNETT, LARRY CASE NO. 75-3298 = AFFIRMED.
79 VAUGHN, RAY CASE NO. 13,884-E = AFFIRMED.
94 PARKES, MARGARET M. WCB CASE NO. 74-2730 = AFFIRMED.
96 REED, EVERETT O. WCB CASE NO. 74-3572 = 55 PER CENT RIGHT FOOT ALLOWED.
104 COLE, ROBERT A. NO. 418-353 = 20 PER CENT INCREASE ALLOWED.
105 MENGE, MERTON CASE NO. 75-3442 = 5 PER CENT INCREASE ALLOWED.
108 CAMPBELL, WILMA WALTERS WCB CASE NOS. 73-3390-E, 73-3391-E AFFIRMED.

110 OGLESBY, BARBARA NO. 418-278 = 20 PER CENT RIGHT ARM ALLOWED.
115 FLICK, ROBERT M. NO. 418 495 = SETTLED FOR 95 PER CENT HEARING LOSS.
117 FULLER, ROBERT N. WCB CASE NO. 74-1139 = DISMISSED.
120 HAMILTON, DONALD R. NO. 418,352 = CLAIM ALLOWED.

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122 RANKINS, CONSTANCE NO. 418-649 - AFFIRMED.
128 WHITE, JOHN J. NO. 418-324 - REMANDED TO THE HEARING REFEREE.
129 SHOULTS, DOYLE NO. 19921 - AFFIRMED.
131 HARMON, HAROLD J. NO. 418-920 - AFFIRMED.
134 AUDAS, TROY NO. 418-643 - 48 DEGREES INCREASE ALLOWED.
139 WILSON, JAMES H. WCB CASE NO. 73-3274 - DISMISSED.
141 CRAIG, JESSE WCB CASE NO. 74-3445 - AFFIRMED.
142 MCCAMMON, JOYCE CASE NO. 75-3502 - REFEREE ORDER REINSTATED.

145 MCMAHON, VIVIAN CASE NO. 75-3750 - AFFIRMED.
155 TEGGE, WILMA A. CASE NO. 13,910-L - AFFIRMED.
156 WEEDEMAN, EARL WCB CASE NO. 74-661 - AFFIRMED.
157 LIGGETT, HERBERT CASE NO. 46127 - AFFIRMED.
158 DITTRICH, ROBERT C. NO. 419-325 - ADDITIONAL MEDICAL AND TIME LOSS ALLOWED.
161 ATWOOD, WOODROW W. WCB CASE NO. 74-3126 - AFFIRMED.
162 COX, KERRY M. WCB CASE NO. 74-1279 - AFFIRMED.
163 ROBERTS, LARRY WCB CASE NO. 74-3811 - AFFIRMED.

164 DOKEY, STEPHEN WCB CASE NO. 73-4034 - AFFIRMED.
166 GRONQUIST, GEORGE O., DECEASED NOS. 401-594, 419-742 - PENALTIES DELETED.
170 BUTLER, RONALD NO. 419-091 - 15 PER CENT INCREASE ALLOWED.
173 DELANEY, MICHAEL WCB CASE NO. 74-4665 - AFFIRMED.
174 BURCH, PAUL W. CASE NO. 74-1712 - 35 PER CENT INCREASE ALLOWED.
175 MCGARRY, ROBERT C. WCB CASE NO. 74-3040 - AFFIRMED IN RESULT.
180 RIGGS, JAMES W. WCB CASE NO. 74-1121 - AFFIRMED.
182 BROWNING, ROBERT A. WCB CASE NO. 74-3230 - 30 PER CENT ALLOWED.

182 FRYE, LEWIS J. LAW NOS. 10,790, 10,791 - REMANDED TO THE HEARING'S REFEREE.
189 MARSH, RALPH A. WCB CASE NO. 74-1316 - AFFIRMED.
191 WILLS, GERALD WCB CASE NO. 74-2950 - AFFIRMED.
192 LOVRIEN, JAMES NO. 419-079 - SETTLED FOR 3000 DOLLARS.
197 REED, WILLIAM WCB CASE NO. 74-3813 - 10 PER CENT INCREASE ALLOWED.
199 ASHENBRENNER, ARTHUR WCB CASE NO. 74-3467 - AFFIRMED.
203 LISH, WILLIAM J. WCB CASE NO. 74-3261-E - AFFIRMED.
208 PETERSON, ALLEN WCB CASE NO. 74-3141 - 48 DEGREES INCREASE ALLOWED.

213 CHEEK, TROY NO. 419-570 - 32 DEGREES INCREASE ALLOWED.
215 PRICE, STERLING WCB CASE NO. 74-463 - AFFIRMED.
217 GRANGER, ROBERT WCB CASE NO. 73-720 - AFFIRMED.
218 STAINES, WILLIAM E. NO. 35-892 - AFFIRMED.
219 SWANSON, KNOX C. WCB CASE NOS. 74-2107, 74-4010 - AFFIRMED.
219 CARTER, SIDNEY WCB CASE NO. 74-3057 - AFFIRMED.
221 CRAIGEN, JANET WCB CASE NO. 74-3278 - AFFIRMED.
225 JACKSON, CHARLES NO. 420-048 - AFFIRMED.

226 FITCH, CARL R. WCB CASE NO. 74-2624-E - SETTLED FOR 5 PER CENT INCREASE.
227 STEARNS, JIM C. WCB CASE NO 74-3877 - 15 PER CENT INCREASE ALLOWED.
229 ROYLANCE, GEORGE L. WCB CASE NO. 74-1741 - AFFIRMED.
232 STEWART, HUGH WCB CASE NO. 74-2191 - PENALTIES ALLOWED.
233 COCHENOUR, HARLIN J. NO. 14205 - AFFIRMED.
235 MARTIN, RALPH J. WCB CASE NO. 73-3761 - BOARD REVERSED.

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239 IMEL, ROY WCB CASE NO. 74-4315 - DISMISSED.
240 TURNER, HAROLD CASE NO. 75-4258 - DISMISSED.
242 TAIT, BILLY H. CASE NO. 91964 - AFFIRMED.
244 VAN DOLAH, HELEN WCB CASE NO. 75-772 - AFFIRMED.
244 VAN DOLAH, HELEN WCB CASE NO. 75-772 - AFFIRMED.
247 PARAZOO, FLOYD WCB CASE NO. 74-475 - CLAIM ALLOWED.
247 BARTLETT, NOAH DAVID WCB CASE NOS. 74-3468, 74-3661, 74-4584 - AFFIRMED.
248 BIGGS, DENNIS LEE JR. WCB CASE NO. 74-3339 - AFFIRMED.

260 OLSON, DOLLY M. NO. 420-453 - AFFIRMED.
260 OLSON, DOLLY M. NO. 420-453 - AFFIRMED.
278 WOOD, CLYDE WCB CASE NO. 73-2218 - AFFIRMED.
280 FREED, HENRY J. NO. 420-485 - PERMANENT TOTAL DISABILITY ALLOWED.
284 WALKER, MICHAEL E. CASE NO. 420-651 - AFFIRMED.
285 RISKE, JOHN NO. 420-372L - 50 PER CENT LEFT LEG ALLOWED.
287 PFLUGHAUPT, WALTER WCB CASE NO. 73-3525 - AFFIRMED.
288 BARRY, JEFFERY JAMES WCB CASE NO. 73-3325 - AFFIRMED.

289 COX, WAVA WCB CASE NO. 74-2313 - AFFIRMED.
291 FORCHT, ALBERT WCB CASE NO. 74-3244 - AFFIRMED.
295 IAZEOLLA, LEOTTA WCB CASE NO. 74-3906 - 525 DOLLARS INCREASE ALLOWED.
295 COOK, R. JOHN WCB CASE NO. 74-3033 - AFFIRMED.
296 BOYD, CHARLES WCB CASE NO. 73-3836 - AFFIRMED.
300 VELASQUEZ, FRANCISCO CASE NO. 420-548 - AFFIRMED.

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2	Schneider, Mary, WCB 73-2690, MULTNOMAH; Fee increased to $1,400.
3	Webster, Raymond E., No. 17-442, TILLAMOOK; Affirmed.
8	Farley, Don, WCB 74-1298, MULTNOMAH; Permanent total allowed.
10	Prosser, Steven, WCB 74-3928, MULTNOMAH; Affirmed.
12	Edwards, Doyle O., WCB 74-505, MULTNOMAH; Affirmed.
13	Pennse, Charles, No. 421-113, MULTNOMAH; Increased to 40%.
14	Lucas, Craig, WCB 75-4707, LANE; Award increased 25%.
15	Farnham, Louise T., WCB 75-738, MULTNOMAH; Time loss allowed.
20	Tubb, James P., WCB 75-4834, LANE; Remanded for payment.
25	Poelwijk, James A., WCB 74-1703, MULTNOMAH; Time loss allowed.
29	Kolaks, Lowell, WCB 74-1851, MULTNOMAH; Claim allowed.
30	Wayne, Jack, WCB 74-3676, MULTNOMAH; Increased by 10%.
35	Cutler, Harry L., WCB 73-3090-E, MULTNOMAH; Permanent total disability.
37	Mayes, Peggy, WCB 74-4330, MULTNOMAH; Increase of 10%.
37	Olney, Mary A., No. 421-351, MULTNOMAH; Affirmed.
38	Aranda, Arturo, WCB 74-4241, MULTNOMAH; Affirmed.
39	Hunt, Gilbert, WCB 74-1650, MULTNOMAH; Affirmed.
39	Hunt, Gilbert, WCB 74-1650, MULTNOMAH; Affirmed.
40	Veerkamp, Sheilia A., WCB 74-4194, MULTNOMAH; Award set at 15%.
41	Mackey, Herman, No. 421-356, MULTNOMAH; Affirmed.
46	Lingenfelter, Roy L., WCB 74-4481, MARION; Affirmed.
48	Barr, Edith F., No. 421-780, MULTNOMAH; Medicals allowed.
53	Court, Hollis H., Sr., WCB 71-1752, MULTNOMAH; Affirmed.
55	Anderson, Arnold C., WCB 75-1553, MULTNOMAH; Penalties and fees allowed.
55	Scouten, Albert A., WCB 74-4338, JACKSON; Affirmed.
59	O'Neil, Fred S., No. 46525, LINN; Voluntary reopening.
60	Green, Harley G., No. 13,981-L, MALHEUR; Affirmed.
61	Smith, Doice Nolton, WCB 75-5210, LANE; Affirmed.
62	Parke, George W., No. 421-994, MULTNOMAH; Hearing Officer decision reinstated.
64	Johnson, Jack, WCB 74-2094, DESCHUTES; Affirmed.
72	Wells, Kenneth W., WCB 74-3507, MULTNOMAH; Fee of $75 allowed.
80	Mitchell, Harold, No. A-76-03-04020, MULTNOMAH; Affirmed.
83	Martin, Edward O., Jr., WCB 72-2444, WASCO; Affirmed.
84	Hoffman, Theresa, WCB 75-1974, YAMHILL; Award increased to 40%.
86	Vance, Robert R., No. 422-048, MULTNOMAH; Affirmed.
88	Myers, Gregory L., WCB 74-4341, LANE; Affirmed.
90	Olson, Harry R., WCB 74-3739, MULTNOMAH; Referee's order reentered.
93	Pratt, Duane, WCB 75-371, MULTNOMAH; Affirmed.
94	Buyas, Peter, WCB 74-3938-E, MULTNOMAH; Permanent total allowed.
97	Collins, David, WCB 74-3383, JACKSON; Affirmed.
99	Chisholm, Jean, No. 94402, CLACKAMAS; Appeal allowed.
102	Shook, Norman R., WCB 74-4194, WASHINGTON; Affirmed.
105	Barrow, Kenneth, No. 422 568, MULTNOMAH; Affirmed.
108	DeBord, James, WCB 74-3174, MULTNOMAH; Costs fixed at $10.
108	DeBord, James D., WCB 74-3174, MULTNOMAH; Affirmed.

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116 Daggett, Barney, No. 422 456, MULTNOMAH; Affirmed.
117 MacDougall, Vivian, WCB 74-3031, MULTNOMAH; Affirmed.
121 Holland, Clara L., WCB 74-4303, DOUGLAS; Affirmed.
122 Summit, Arlie, WCB 74-2277, COOS; Denial upheld.
127 Triano, Opal, 423-298, MULTNOMAH; Affirmed.
129 Reichlein, William J., 423-409, MULTNOMAH; Affirmed.
133 Cline, Harvey Thomas, No. 75-2654-E-3, JACKSON; Affirmed.
138 Minor, Steve, WCB 74-3984, MULTNOMAH; Referee's decision reinstated.
147 Heck, Alice Darlene, No. 22918, POLK; Total disability allowed.
152 Taylor, Mabel, No. 93105, MARION; Affirmed.
159 Meyers, Bruce N., No. 75-5731, LANE; Affirmed.
164 Benavidez, Jerry, WCB 74-1783, MULTNOMAH; Affirmed.
164 Miles, Roger F., WCB 74-3772, MULTNOMAH; Affirmed.
165 Porterfield, Wanda, WCB 74-2253, DOUGLAS; Affirmed
178 Brounstein, Bernard C., No. 424-102, MULTNOMAH; Affirmed.
180 Adams, Philip D., No. 36-243, WASHINGTON; Affirmed.
181 Fandrich, John, WCB 74-3716, MULTNOMAH; Referee's decision reinstated.
186 Canfield, Calvin, WCB 74-1291, COOS; Permanent total disability.
187 Lattin, Bruce G., No. 423-403, MULTNOMAH; Permanent total disability.
189 Wamsher, William, WCB 74-4508, MULTNOMAH; Affirmed.
200 Lee, James B., WCB 74-3258, MULTNOMAH; Affirmed.
203 Harmon, Kenneth, WCB 74-1455, MARION: Affirmed.
203 Zehr, Colleen, WCB 74-67, LINN; Penalty allowed.
208 Bowman, Dan, No. 424-097, MULTNOMAH; Affirmed.
214 Geissbuhler, Marie G., No. 94779, CLACKAMAS; Disability of 58 degrees.
218 Jackson, John D., WCB 74-3127, HOOD RIVER; Settled for $20,000.
222 Pattee, Thorval W., No. CC75-654, CLATSOP; Affirmed.
228 Murch, Mary Ann, WCB 75-938, POLK; Affirmed.
230 Garnes, Nora Sue, WCB 74-4383, MULTNOMAH; Affirmed.
231 Doughty, Eugene, WCB 74-2129, MULTNOMAH; Affirmed.
235 Driesel, Eldon R., No. 424-333, MULTNOMAH; Affirmed.
240 Williams, Eugene, No. 22980, POLK; Affirmed.
244 Sullivan, Jim, No. 46841, LINN; Affirmed.
248 Chaney, Charles C., WCB 73-4174, MULTNOMAH; Affirmed.
251 Myers, Kenneth, No. A 7601 00026, MULTNOMAH; Referee's order reinstated.
253 Cannon, Willis H., WCB 74-1362, LINCOLN; Affirmed.
254 Corder, Windell D., WCB 75-208, DOUGLAS; Affirmed.
256 Jones, George, WCB 74-4405, LANE; Affirmed.
261 Molchanoff, Ethel, WCB 75-40, MULTNOMAH; Referee's order reinstated.
263 Lotts, Rickie, WCB 75-6273, LANE; Hand award increased to 25%.
267 Barnes, Deloin, No. 76-0110, LANE; Affirmed.
269 Thorp, Billy, No. 46-914, LINN; Referee's order reinstated.
274 Hurd, Frank V., No. 76-0028-E, DOUGLAS; Affirmed.
275 Gardner, Sandra, No. 76-0203, LANE; Claim allowed.
279 Braughton, Opal C., WCB 75-642, UNION; Referee's order reinstated.
280 Hill, Robert C., WCB 74-4629, MULTNOMAH; Permanent total disability.
282 Cochran, Clarence H., No. A7601-01184, MULTNOMAH; Affirmed.
287 Sichting, Jack, WCB 75-721, COOS; Affirmed.
292 Harvill, Vera, No. 7601 00084, MULTNOMAH; Award increased to 200 degrees.
295 King, Alfred, WCB 74-2895, MULTNOMAH; Claim allowed.
303 Bell, Michael, No. A-76-01-00617, MULTNOMAH; Affirmed.
304 Roberts, Leland G., WCB 74-4260, MULTNOMAH; Affirmed.
307 Seymour, James B., No. A-7601-00643, MULTNOMAH; Affirmed.
308 King, Kenneth C., WCB 73-1076, MULTNOMAH; Affirmed.

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3 Ehrmantrout, Dalvin, WCB 75-693, LANE; Referee's order reinstated.
5 Walker, Betty Jean, WCB 75-1201, MARION; Claim denied.
7 Beckman, Jacob N., WCB 74-4667, MULTNOMAH; Affirmed.
8 Barnes, Verna, WCB 73-2292, UMATILLA; Affirmed.
9 Leaton, Gerald L., 76-0218, LANE; Referee's order reinstated.
17 Brooks, Gloria J., WCB 75-1271, JEFFERSON; Affirmed.
19 Anderson, Carma, WCB 75-3416, MULTNOMAH; Compensation ordered paid.
19 Anderson, Carma, WCB 75-289, MULTNOMAH; Affirmed.
22 Meader, Robert, WCB 47-2898, MULTNOMAH; Affirmed.
26 Bugge, Milton H., WCB 74-2353, MARION; Affirmed.
32 Rohrs, Joann, WCB 75-1669, MULTNOMAH; Affirmed.
39 Schultz, Donna, WCB 75-159, MULTNOMAH; Award of 10% plus medical trav
44 Velasquez, Donna R., No. A-76-02-01680, MULTNOMAH; Permanent total disability.
46 Cunningham, George E., No. 47077, LINN; Affirmed.
48 Dulcich, Jeffrey, WCB 74-4454, MULTNOMAH; Affirmed.
49 Mosko, Michael, WCB 74-3145, MULTNOMAH; Claim allowed.
55 Smith, Darrell P., No. A 760 101366, MULTNOMAH; Affirmed.
61 Woods, Neil, No. 76-0462, LANE; Unscheduled award of 15% allowed.
64 Hickman, Kenneth, No. 95222, CLACKAMAS; Permanent total disability.
66 Hood, Ewell E., WCB 75-312, LINN; Right arm increased to 65%.
67 Carpenter, Frank W., WCB 75-1175, MULTNOMAH; Affirmed.
69 Bench, Thomas E., WCB 74-4622, MULTNOMAH; Award increased 27 degrees.
71 Wicklander, Gordon L., WCB 75-400, MULTNOMAH; Reversed and fees allow
74 Haines, Robert J., WCB 73-1077, LINCOLN; Permanent and total disabili
77 Schoonover, Edna, No. 76-0495, LANE; Affirmed.
83 Long, Cecil, No. 7390, HOOD RIVER; Remanded for further hearing.
85 Barreth, Charlene L., No. 95312, CLACKAMAS; Affirmed.
90 Jones, Jess, WCB 74-1513, MARION; Affirmed.
101 Bidwell, James L., WCB 75-685, MULTNOMAH; Increase of 25% allowed.
102 Olson, Conan, No. 76-0670, LANE; Additional 50% allowed.
108 Young, Paul, No. 47089, LINN; Affirmed.
108 Young, Paul, No. 47089, LINN; Affirmed.
110 Webster, Sharon S., WCB 75-2379, MULTNOMAH; Affirmed.
113 Kern, Phyllis R., WCB 75-1619, MULTNOMAH; Affirmed.
127 Smith, Janet G., WCB 74-3345, LANE; Industrial Indemnity wins.
131 McKeen, Charles H., No. A7602 01981, MULTNOMAH; Increase of 12 degre allowed.
138 Brusco, Palma, No. A 76 02 02595, MULTNOMAH; Permanent total disabili
141 Norgard, Minnie, WCB 75-992, MULTNOMAH; Affirmed.
143 Ledford, Raymond R., No. 47774, LINN; Remanded on psychiatric conditi
146 Prater, Jerry L., WCB 74-3398, COOS; Affirmed.
152 Jones, Mary M., WCB 74-4068, MULTNOMAH; Affirmed.
155 O'Bryant, Jack W., No. 76-0828, LANE; Claim reopened.
159 Christensen, Gary T., WCB 74-1694, JACKSON; Affirmed.
163 Hughes, Charlie, WCB 74-3023, COOS; Affirmed.
165 Rhode, Harry, WCB 75-260, MULTNOMAH; Affirmed.
166 White, Mary, No. 47818, LINN; Dismissed.
168 Thompson, Gordon, WCB 75-68, LANE; Affirmed.

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0 Rea, Rekka, No. 76 02-02333, MULTNOMAH; Odd-lot permanent total disability.
1 Martin, Kenneth H., No. A 76 02 02553, MULTNOMAH; Thumb increased 15 degrees.
3 Webb, Julian, WCB 74-3934, JACKSON; Affirmed.
2 Crone, Robert, WCB 75-1036, MULTNOMAH; Increase of 30% unscheduled.
8 Lucky, Delmer, No. A-76-02-02683, MULTNOMAH; Affirmed.
3 Gerstner, John, No. 76-1214, LANE; Affirmed.
5 Engel, Loren, WCB 75-995, LANE; Increase of 15% allowed.
7 Dahlstrom, Robert, WCB 75-910, MULTNOMAH; Remanded for hearing.
8 Bott, Katherine Pettey, WCB 75-2382, MULTNOMAH; Affirmed.
4 Biasi, James R., WCB 74-4139, MARION; Affirmed.
5 Zarbano, S. Tony, WCB 75-1101, COOS; Reopened for payment.
9 Gillander, Nicholas R., WCB 74-4350, MULTNOMAH; Affirmed.
1 Spriggs, Charles L., WCB 75-2140, MULTNOMAH; Increased compensation and medical care.
6 Rogoway, Ted I., WCB 74-4619, MULTNOMAH; Affirmed.
7 Parmenter, Ruby, No. 76-1610, LANE; Reopened for further medical care.
5 Grimes, Robert, WCB 75-1385, DOUGLAS; Affirmed.
0 Barnes, Lola, WCB 74-3934, COOS; Claim allowed.
2 Kringen, Neil, WCB 75-1021, MULTNOMAH; Affirmed.
3 Pierce, Robert J., No. A7603 03174, MULTNOMAH; Reopened.
3 Douglas, Fred F., No. A 76 03 03873, MULTNOMAH; Affirmed.
3 Norris, William J., WCB 75-1719, WASHINGTON; Claim denied.
2 Smith, Ivan, No. 47325, LINN; Increase to 40%.
6 Prince, Helen M., WCB 75-1284 & 75-1679, JACKSON; Affirmed.
3 Wisherd, William, No. 96029, CLACKAMAS; Affirmed.
4 Nishimura, Akira, WCB 75-2679, MULTNOMAH; Affirmed.
5 Klingbell, Joyce E., No. A 76-03-03871, MULTNOMAH; Affirmed.
7 Gueck, Troy, WCB 75-2457, MULTNOMAH; Affirmed.
3 Sorber, Arthur, WCB 74-4128, COLUMBIA; Affirmed.
6 Wilson, Marlene (Steckley), WCB 75-821, MULTNOMAH; Claim allowed with $2,500 fee.
9 Anderson, Arnold C., WCB 75-1553, MULTNOMAH; Penalties on penalties.
1 Johnson, Fred, No. A-76-04-04959, MULTNOMAH; Affirmed.
4 Roberts, David H., WCB 75-2588, MULTNOMAH; Affirmed.
1 Tompkins, Thomas G., WCB 75-499, LINCOLN; Affirmed.
6 Larson, Earl J., WCB 75-1729 & 75-2770, MULTNOMAH; Affirmed.
0 Peterson, Edwin E., WCB 75-3116, WASCO; Affirmed.
1 Leiser, Florence, No. 47337, LINN; Affirmed.

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50 Holden, Robert WCB Case No. 74-3355 -- Claim allowed on Reversal.
65 Coleman, Freda P. No. 69-56 -- Affirmed.
83 Driver, Peggy R. WCB Case No. 74-4047 -- Affirmed.
219 McCoy, William K. WCB Case No. 74-3550 -- Affirmed.
271 Toliver, William WCB Case No. 74-870 -- Affirmed.

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125 Thompson, Joe Allen WCB Case No. 74-4123 -- Affirmed.
154 Faulk, Jimmy WCB Case No. 74-4505 -- Remanded.
179 Bonner, Earl WCB Case No. 75-966 -- Affirmed.
220 Hadley, Tony WCB Case No. 75-1014 -- Leg award set at 25%.
258 Wisherd, William No. 96029 -- Affirmed.
263 Curry, Harold WCB Case No. 75-668 -- Affirmed.
265 Templeton, Al WCB Case No. 74-3039 -- Affirmed.
268 Basl, Myrtle M. Case No. 94867 -- Affirmed.
270 Luster, Melvin WCB Case No. 74-3818 -- Affirmed.
276 Wilson (Steckley), Marlene WCB Case No. 75-821 -- Affirmed.
277 Bleth, James Case Nos. 05X-008027 & 751-C-511,444 -- Dismissed.
293 Greenawald, Jack WCB Case No. 74-1523 -- Affirmed.