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WCB CASE NO. 75—2312 JULY 12, 1976

EDITH ARCHER, CLAIMANT

KEITH EVANS, CLAIMANT'S ATTY.
MICHAEL HOFFMAN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT AN ADDITIONAL 35 PER CENT FOR A TOTAL OF 160 DEGREES FOR 50 PER CENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON OCTOBER 1, 1974 TO HER LOW BACK. SHE WAS OFF WORK THREE MONTHS. CLAIMANT WAS TREATED BY DR. FITCHETT ON OCTOBER 9, 1974 - HE DIAGNOSED RESIDUALS OF A 1962 LAMINECTOMY AND LOWER BACK STRAIN.

AFTER A FOLLOWUP EXAMINATION ON NOVEMBER 11, 1974, DR. FITCHETT FELT CLAIMANT SHOULD AVOID REPETITIVE BENDING OR STOOPING.

CLAIMANT WAS EXAMINED ON JANUARY 7, 1975 BY DR. EDWARD ROBINSON WHO FOUND CLAIMANT'S DISABILITY IN THE UPPER 'MINIMAL' CATEGORY - HE FELT CLAIMANT COULD RETURN TO SALES WORK. DR. FITCHETT CONCURRED.

CLAIMANT RETURNED TO WORK FOR THE EMPLOYER IN FEBRUARY, 1974 BUT HAD TO QUIT UNTIL APRIL 30, 1974 WHEN SHE AGAIN RETURNED TO WORK. IN DECEMBER, 1975 SHE TERMINATED.

ON MAY 29, 1975 A DETERMINATION ORDER GRANTED CLAIMANT TEMPORARY TOTAL DISABILITY AND AN AWARD OF 48 DEGREES FOR 15 PER CENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT TESTIFIED SHE HAS NO PROBLEMS WITH HER BACK AS LONG AS SHE TREATS IT 'KINDLY'. SINCE SHE TERMINATED HER EMPLOYMENT CLAIMANT HAS NOT SOUGHT OTHER WORK.

THE REFEREE FELT THAT CLAIMANT FUNCTIONS NOW AT ONE HALF OF HER NORMAL CAPACITY AND AWARDED CLAIMANT AN ADDITIONAL 35 PER CENT.

THE BOARD, ON DE NOVO REVIEW, DISAGREES WITH THE REFEREE. THE BOARD FEELS THAT CLAIMANT LACKS MOTIVATION, SHE HAS NEVER ASKED THE EMPLOYER TO HIRE HER BACK, NOR HAS SHE SOUGHT OTHER FIELDS IN THE LABOR MARKET. THE BOARD ALSO FINDS THE PREPONDERANCE OF THE MEDICAL REPORTS INDICATE CLAIMANT'S DISABILITY TO BE ONLY 'MINIMAL'. AT THE TIME OF THE HEARING CLAIMANT HADN'T SEEN A DOCTOR FOR SEVERAL MONTHS, HAD TAKEN NO PAIN MEDICATION IN SIX MONTHS AND TESTIFIED THAT SHE WALKS TWO TO THREE MILES A DAY.

THE BOARD CONCLUDES THAT CLAIMANT WAS ADEQUATELY COMPENSATED FOR HER LOSS OF WAGE EARNING CAPACITY BY THE AWARD OF 48 DEGREES MADE BY THE DETERMINATION ORDER DATED MAY 29, 1975.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 6, 1976, IS REVERSED.

THE DETERMINATION ORDER OF MAY 29, 1975 IS AFFIRMED.

WCB CASE NO. 75-2432 JULY 12, 1976

RICKY BINGAMAN, CLAIMANT
ROD KIRKPATRICK, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

Reviewed by Board Members Wilson and Moore.

Claimant requests Board review of the referee's order which granted claimant an additional 10 per cent unscheduled low back disability, giving claimant a total award of 64 degrees.

Claimant suffered a compensable injury to his low back on October 28, 1974. After a period of conservative treatment claimant returned to work on March 3, 1975 at a job which was less physically demanding but paid lower wages.

Claimant's condition was diagnosed as a probable herniated lumbosacral disc. A myelogram with the probability of surgery was recommended - claimant declined.

Dr. Langston examined claimant on January 15, 1975 and diagnosed ruptured intervertebral disc at L4-5 on the right. An examination on January 17, 1975 found claimant improved, muscle spasm was absent and claimant could return to work.

On May 5, 1975 Dr. Langston again recommended a myelogram - again claimant refused. Dr. Langston felt claimant's claim could be closed.

A determination order, issued on June 6, 1975, granted claimant temporary total disability and 32 degrees for 10 per cent unscheduled disability.

The referee found claimant's refusal to submit to surgery to be unreasonable but, nevertheless, he felt that claimant's loss of wage earning capacity was greater than that indicated by the award of the determination order.

The Board, on de novo review, concurs with these findings, but feels that to do so one must assume that the proposed surgery would have been successful. Therefore, claimant is not entitled to a greater award than 20 per cent.

ORDER

The order of the referee, dated February 9, 1976, is affirmed.

WCB CASE NO. 74-3778 JULY 12, 1976
WCB CASE NO. 75-2910

JOHN SEIBERT, CLAIMANT
J. DAVID KRYGER, CLAIMANT'S ATTY.
ROGER WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THAT PORTION OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT 80 DEGREES FOR 25 PER CENT DISABILITY FOR HIS OCCUPATIONAL DISEASE. CLAIMANT CONTENDS HE IS PERMANENT TOTAL DISABILITY.

CLAIMANT'S AGGRAVATION CLAIM FOR HIS 1969 INJURY WAS DENIED BY THE REFEREE (WCB CASE NO. 74-3778). IT IS NOT AT ISSUE.

CLAIMANT SUFFERED AN OCCUPATIONAL DISEASE OF CONTACT DERMATITIS FOR WHICH HE FILED A CLAIM ON FEBRUARY 16, 1973. HIS CLAIM WAS FIRST CLOSED ON AUGUST 18, 1975 WITH NO COMPENSATION FOR EITHER TEMPORARY TOTAL DISABILITY OR FOR PERMANENT PARTIAL DISABILITY. A SECOND CLOSURE ON DECEMBER 4, 1975 ALSO GRANTED CLAIMANT NO AWARD FOR PERMANENT PARTIAL DISABILITY.

CLAIMANT'S FIRST OUTBREAK OF DERMATITIS OCCURRED IN NOVEMBER, 1969 AND HIS CONDITION HAS CONTINUED TO WORSEN. ON AUGUST 9, 1973 DR. BAIER'S REPORT STATED THAT CLAIMANT'S DISEASE WAS CAUSED BY MOSS WHICH IS FOUND WEST OF THE CASCADES IN OREGON AND CLAIMANT WOULD CONTINUE TO HAVE PROBLEMS AS LONG AS HE CAME IN CONTACT WITH THIS MOSS. DR. KINGERY FELT CLAIMANT WOULD HAVE TO STOP BUCKING AND FALLING, AN OCCUPATION IN WHICH CLAIMANT HAS ENGAGED ALL OF HIS LIFE, IN ANY AREA WHERE THE MOSS WAS FOUND - HE SAID CLAIMANT WOULD HAVE TO LOOK FOR WORK IN EASTERN OREGON.

INSTEAD OF TAKING THIS ADVICE OF DR. KINGERY, CLAIMANT RETIRED AT THE AGE OF 64. CLAIMANT STILL COMES IN CONTACT WITH THIS MOSS BUT SINCE RETIRING HIS CONDITION HAS MARKEDLY IMPROVED.

THE REFEREE FOUND THAT, ALTHOUGH CLAIMANT HAD RETIRED, HIS DERMATITIS CONDITION WAS DEFINITELY INVOLVED IN CLAIMANT MAKING THAT DECISION. ALSO BECAUSE SO MUCH OF OREGON HAS THIS MOSS HE FOUND THAT CLAIMANT HAS LOST SOME WAGE EARNING CAPACITY. CLAIMANT'S DERMATITIS APPEARS ALL OVER HIS BODY AND THE REFEREE CONCLUDED, THEREFORE, THAT THIS WOULD BE AN UNSCHEDULED AREA DISABILITY AND WOULD BE RATED ON CLAIMANT'S LOSS OF WAGE EARNING CAPACITY.

CLAIMANT'S CONTENTION THAT HE IS WITHIN THE 'ODD-LOT' CATEGORY AND IS PERMANENTLY AND TOTALLY DISABLED IS REFUTED BY EVIDENCE THAT CLAIMANT HAS BEEN TOLD BY HIS DOCTORS THAT HE COULD GO BACK TO WORK AT HIS JOB AS BUCKER AND FALLER IF HE WOULD MOVE TO EASTERN OREGON. CLAIMANT, BECAUSE OF HIS AGE AND THE FACT THAT HE HAS RETIRED, IS NOT INTERESTED IN DOING THIS. CLAIMANT COULD ALSO WORK IN THE CONSTRUCTION FIELD IF HE WERE SO INCLINED. CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED.

THE REFEREE GRANTED CLAIMANT 25 PER CENT FOR 80 DEGREES LOSS OF WAGE EARNING CAPACITY.

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

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 15, 1976, IS AFFIRMED.

WCB CASE NO. 75-146 JULY 12, 1976
WCB CASE NO. 75-3493

ROLAND LONGHOFER, CLAIMANT
JACK HOWE, CLAIMANT'S ATTY.
SCOTT KELLEY, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDERS. CLAIMANT CONTENDS HE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HIS LOW BACK ON MARCH 12, 1971 WHILE LIFTING A 100 POUND SACK OF FLOUR. HE WAS TREATED CONSERVATIVELY WITH TRACTION - SUBSEQUENTLY CLAIMANT HAD A LAMINECTOMY AT L4-5 AND L5-S1 LEVEL.

ON NOVEMBER 7, 1972 A DETERMINATION ORDER GRANTED CLAIMANT AN AWARD OF 80 DEGREES FOR 25 PER CENT UNSCHEDULED LOW BACK DISABILITY. AFTER A HEARING, THIS WAS INCREASED TO 160 DEGREES FOR 50 PER CENT UNSCHEDULED LOW BACK DISABILITY. BECAUSE OF INCREASED LOW BACK PAIN CLAIMANT CONSUMED LARGE DOSES OF ASPIRIN WHICH RESULTED IN A BLEEDING ULCER NECESSITATING A 75 PER CENT SUBTOTAL GASTRIC RESECTION. A SECOND DETERMINATION ORDER AWARDED CLAIMANT 64 DEGREES FOR 20 PER CENT UNSCHEDULED DISABILITY DUE TO THIS RESECTION.

ON AUGUST 17, 1973 CLAIMANT WAS EXAMINED BY DR. HENRY STORINO. NO DIFFERENT FINDINGS WERE REVEALED THAN THOSE SET FORTH IN THE MEDICAL REPORTS PRIOR TO JUNE 25, 1973. CLAIMANT FELT THAT HE HAD IMPROVED ABOUT 50 PER CENT. DR. STORINO FOUND CLAIMANT CAPABLE OF LIGHT EMPLOYMENT.

CLAIMANT CONTENDS THAT HE CAN DO VERY LITTLE - NO STOOPING, BENDING OR TWISTING. HE CANNOT MOW THE LAWN AND CANNOT GET IN AND OUT OF HIS CAR WITHOUT DIFFICULTY.

A FILM SHOWN AT THE HEARING DEMONSTRATED THAT CLAIMANT COULD DO ALL OF THE ABOVE, AND WITH APPARENT EASE.

THE REFEREE CONCLUDED, AFTER REVIEWING ALL OF THE MEDICAL REPORTS AND VIEWING THE MOVIE, THAT CLAIMANT WAS NOT PERMANENTLY AND TOTALLY DISABLED AND HAD BEEN ADEQUATELY COMPENSATED BY THE AWARDS HE HAS ALREADY RECEIVED WHICH TOTAL 224 DEGREES FOR 70 PER CENT UNSCHEDULED DISABILITY FOR HIS LOSS OF EARNING CAPACITY.

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

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 28, 1976, IS AFFIRMED.

WCB CASE NO. 75-4376 JULY 12, 1976

JACKIE LEE RUSS, CLAIMANT
ROBERT MARTIN, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

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

CLAIMANT ALLEGES SHE SUFFERED AN INJURY ON JULY 3, 1975 WHEN SHE EXPERIENCED A 'POP' IN HER BACK - AT NOON OF THAT DAY SHE ALLEGES SHE TOLD A CO-WORKER OF HER INJURY. THE CO-WORKER DENIED AT THE HEARING THAT THIS CONVERSATION TOOK PLACE.

ON JULY 5, 1975 CLAIMANT WAS EXAMINED BY DR. SAMPLE WHO DOESN'T STATE THE CAUSE OF CLAIMANT'S PROBLEMS. CLAIMANT'S HUSBAND TESTIFIED THAT AFTER LEAVING DR. SAMPLE'S OFFICE HE AND CLAIMANT STOPPED AT HER EMPLOYER'S OFFICE AND GAVE THEM DR. SAMPLE'S WORK EXCUSE.

ON AUGUST 7, DR. MILLER'S MEDICAL CHART INDICATED CLAIMANT'S BACK HAD HURT SINCE JULY 5, RESULTING IN PAIN AND NUMBNESS IN HER LEGS. HIS IMPRESSION WAS MUSCLE STRAIN. DR. SAMPLE'S CHART NOTES REFLECT CLAIMANT HAD CHEST WALL PAIN, HE MADE NO EXAMINATION FOR ANY BACK PROBLEMS.

CLAIMANT DENIED SHE HAD HAD AN ON THE JOB INJURY TO THE EMPLOYER'S OFFICE MANAGER - HOWEVER, SHE AND HER HUSBAND TESTIFIED TO SEVERAL VISITS TO THE EMPLOYERS AND MANY PHONE CALLS ALL RELATING TO HER ACCIDENT. CLAIMANT FILED AN 801 ON AUGUST 18, 1975.

THE REFEREE FOUND THAT THE EMPLOYER'S CONTENTION OF AN UNTIMELY FILING OF CLAIMANT'S CLAIM WAS NOT PERSUASIVE. HE FOUND THE EVIDENCE ON BOTH SIDES LACKED SUBSTANCE AND WAS QUITE VAGUE.

THE REFEREE CONCLUDED THAT ALTHOUGH CLAIMANT GAVE TIMELY NOTICE, SHE DID NOT SUSTAIN HER BURDEN OF PROVING SHE SUFFERED AN INDUSTRIAL INJURY. CLAIMANT'S DOCTOR DIDN'T CORROBORATE HER STATEMENTS OF AN INJURY AND SHE HAD DENIED TO THE EMPLOYER'S OFFICE MANAGER AN ON THE JOB INJURY. THE REFEREE AFFIRMED THE STATE ACCIDENT INSURANCE FUND'S DENIAL.

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

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 9, 1976, IS AFFIRMED.

WCB CASE NO. 75—3487 JULY 12, 1976

DELMORE CROY, CLAIMANT

RUDY M. MURGO, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

CLAIMANT SUFFERED A COMPENSABLE INJURY OF HIS LOW BACK ON JULY 24, 1967, AND, ON DECEMBER 29, 1975, REQUESTED THE BOARD TO REOPEN HIS CLAIM UNDER ITS OWN MOTION JURISDICTION GRANTED BY ORS 656.278, ALLEGING THE PRESENT CONDITION WAS THE RESULT OF THE 1967 INJURY. CLAIMANT SUPPORTED HIS REQUEST WITH A REPORT FROM DR. ANDERSON WHICH STATED CLAIMANT WAS UNABLE TO CARRY OUT A GAINFUL OCCUPATION.

THE STATE ACCIDENT INSURANCE FUND RESPONDED BY DENYING ANY RESPONSIBILITY FOR CLAIMANT'S PRESENT CONDITION, BASED UPON AN EXAMINATION AND REPORTS FROM THE ORTHOPEDIC CONSULTANTS.

BECAUSE OF THE CONFLICTING MEDICAL OPINIONS PRESENTED TO IT THE BOARD REFERRED THE MATTER TO THE HEARINGS DIVISION WITH INSTRUCTIONS FOR A REFEREE TO HOLD A HEARING, TAKE EVIDENCE AND SUBMIT WITH A TRANSCRIPT OF THE PROCEEDINGS HIS RECOMMENDATIONS.

ON APRIL 30, 1976 A HEARING WAS HELD BEFORE REFEREE HENRY L. SEIFERT. AFTER HAVING SEEN AND HEARD THE WITNESSES AND HAVING EXAMINED ALL OF THE EVIDENCE IN THE CASE, THE REFEREE FOUND NO OBLIGATION ON THE PART OF THE FUND TO PROVIDE ADDITIONAL COMPENSATION OR MEDICAL CARE TO CLAIMANT FOR HIS PRESENT CONDITION, EXCEPT AS MIGHT BE REQUIRED IN THE FUTURE PURSUANT TO ORS 656.245.

THE BOARD, AFTER DE NOVO REVIEW OF THE ENTIRE RECORD, ACCEPTS THE RECOMMENDATIONS MADE BY REFEREE SEIFERT, A COPY OF WHICH IS ATTACHED HERETO AND BY THIS REFERENCE MADE A PART OF THE BOARD ORDER.

NO APPEAL RIGHTS.

WCB CASE NO. 71—92 JULY 13, 1976

ROLAND GERLITZ, CLAIMANT

DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS LEFT KNEE ON MARCH 18, 1969. HIS INJURY WAS DIAGNOSED AS TORN LEFT MEDIAL MENISCUS AND ON APRIL 19, 1969 A MEDIAL MENISCECTOMY WAS PERFORMED. CLAIMANT'S AGGRAVATION RIGHTS HAVE EXPIRED.

A DETERMINATION ORDER WAS ISSUED ON MAY 5, 1970 GRANTING TEMPORARY TOTAL DISABILITY AND AN AWARD OF 15 DEGREES FOR 10 PER CENT LOSS OF LEFT LEG.

ON SEPTEMBER 21, 1971 THE CLAIM WAS REOPENED FOR AGGRAVATION, SUBSEQUENTLY CLAIMANT WAS EXAMINED BY DRS. MARXER, ADLOCH AND LAIN. CLAIMANT HAD SURGERY ON AUGUST 20, 1971 FOR REMOVAL OF THE STUMP OF THE LEFT MEDIAL MENISCUS.

A SECOND DETERMINATION ORDER ISSUED ON DECEMBER 28, 1971 GRANTED CLAIMANT ADDITIONAL TEMPORARY TOTAL DISABILITY AND TEMPORARY

PARTIAL DISABILITY AND AN ADDITIONAL AWARD OF 10 PER CENT LOSS OF LEFT LEG.

CLAIMANT'S CLAIM WAS REOPENED BY STIPULATION DATED DECEMBER 2, 1971.

ON SEPTEMBER 19, 1973 DR. MARXER DIAGNOSED AN OSTRECHONDRITIC FREE BODY OF THE UNDERSURFACE OF THE LEFT PATELLA WHICH HE SURGICALLY REMOVED ON NOVEMBER 6, 1973.

A THIRD DETERMINATION ORDER, ON MARCH 18, 1974, GRANTED CLAIMANT ADDITIONAL TIME LOSS AND AN ADDITIONAL 10 PER CENT LOSS OF LEFT LEG.

DR. MARXER REQUESTED A REOPENING OF CLAIMANT'S CLAIM ON NOVEMBER 27, 1974. AFTER SEVERAL EXAMINATIONS BETWEEN DECEMBER 12, 1975 AND MARCH 17, 1976, DR. MARXER FOUND CLAIMANT HAD PAIN AND DISCOMFORT IN THE KNEE AND HE RECOMMENDED SURGICAL RECONSTRUCTION - CLAIMANT REFUSED THE SURGERY.

THE CLAIM WAS SUBMITTED FOR CLOSURE ON JUNE 3, 1976 AND THE EVALUATION DIVISION RECOMMENDED CLAIMANT BE GRANTED NO ADDITIONAL TIME LOSS AND BE GRANTED AN ADDITIONAL 15 DEGREES FOR 10 PER CENT LOSS OF LEFT LEG, GIVING CLAIMANT A TOTAL OF 40 PER CENT LOSS OF LEFT LEG.

ORDER

CLAIMANT IS GRANTED 15 DEGREES OF A MAXIMUM 150 DEGREES LOSS OF THE LEFT LEG. THIS IS IN ADDITION TO THE PREVIOUS AWARDS RECEIVED.

WCB CASE NO. 75-919 JULY 13, 1976

VIOLA GROVER, CLAIMANT

MC NUTT, GANT, ORMSBEE AND GARDNER,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH UPHELD THE DENIAL OF CLAIMANT'S CLAIM FOR AN OCCUPATIONAL DISEASE.

CLAIMANT HAD WORKED AROUND SYNTHETIC CLOTHES FOR THE EMPLOYER FOR FOUR AND ONE HALF YEARS AND SHE ALLEGES SHE WAS FORCED TO QUIT BECAUSE OF AN ALLERGY CONDITION. THE FIRST TWO YEARS OF EMPLOYMENT CAUSED NO PROBLEMS, BUT AFTER THAT TIME SHE CLAIMS A GRADUAL PROGRESSION OF DIFFICULTIES.

DR. TUHY EXAMINED CLAIMANT ON JUNE 30, 1975 AND FELT THAT CLAIMANT'S WORK EXPOSURE DIDN'T CAUSE HER ALLERGY, HE FELT 'THERE IS CONSIDERABLE PSYCHOSOMATIC ELEMENT IN HER SYMPTOMS.'

DR. KUDOLKO WHO SAW CLAIMANT FELT THAT EXPOSURE TO THESE SYNTHETIC MATERIALS MIGHT HAVE BEEN A CONTRIBUTING FACTOR TO HER CONDITION.

A GROUP OF CHALLENGE TESTS WAS RECOMMENDED BY BOTH DR. GARGES AND DR. TUHY TO SEE IF CLAIMANT'S ALLERGY TO SYNTHETICS WAS THE CAUSE OF HER PROBLEMS, IF SHE WAS ALLERGIC TO SYNTHETICS. IT WAS CONDUCTED

AND REVEALED NO EVIDENCE OF REPRODUCTION OF BRONCHOSPASTIC CHANGES IN CLAIMANT ON EXPOSURE TO FABRICS. THE TESTS TENDED TO PROVE NO CAUSAL RELATIONSHIP OF CLAIMANT'S WORK ENVIRONMENT TO HER SYMPTOMS.

THE REFEREE, BASED UPON ALL OF THE MEDICAL EVIDENCE, FOUND THE PREPONDERANCE OF EVIDENCE DIDN'T SUSTAIN CLAIMANT'S CONTENTION THAT HER COMPLAINTS AND SYMPTOMS CONSTITUTED JOB-RELATED OCCUPATIONAL DISEASE.

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

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 6, 1976, IS AFFIRMED.

WCB CASE NO. 75-2520 JULY 13, 1976

RAYMOND KOCH, CLAIMANT

JAMES SUTHERLAND, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT AN AWARD OF PERMANENT TOTAL DISABILITY AND DIRECTED IT TO PAY CLAIMANT'S ATTORNEY'S FEE.

CLAIMANT SUSTAINED A COMPENSABLE INJURY ON MARCH 23, 1972 WHEN EXPOSED TO PAIN FUMES WHICH CAUSED CLAIMANT TO SUFFER CHEST PAINS. HIS CLAIM WAS CLOSED ON MARCH 28, 1973 BY DETERMINATION ORDER WHICH GRANTED CLAIMANT TEMPORARY TOTAL DISABILITY ONLY.

CLAIMANT WAS HOSPITALIZED FOLLOWING THE INCIDENT AND HIS CONDITION WAS DIAGNOSED AS TACHYCARDIA, PRECORDIA PAIN AND DYSPNEA DUE TO INHALATION OF PAINT FUMES. HE WAS REFERRED TO DR. WORTHYLAKE FOR PSYCHIATRIC TREATMENT.

ON JULY 25, 1973, AFTER A HEARING, THE REFEREE FOUND THAT THE PAINT FUMES CLAIMANT INHALED WERE A MATERIAL CONTRIBUTING FACTOR IN CLAIMANT'S PSYCHOPATHOLOGY AND THAT CONTINUED PSYCHIATRIC TREATMENT WAS NEEDED. HE ORDERED THE CLAIM REOPENED FOR SUCH TREATMENT.

DR. WORTHYLAKE CONTINUED TREATMENT AND, ON OCTOBER 18, 1974, STATED THAT CLAIMANT'S CONDITION HAD STABILIZED, THAT THE DISABILITY PREVENTION DIVISION HAD REFUSED TO REHABILITATE CLAIMANT, AND THAT CLAIMANT HAD AN INABILITY TO WORK DUE TO BEING UNSKILLED, HIS PSYCHOSOMATIC PROBLEMS AND A HEART PROBLEM OF UNKNOWN ORIGIN.

ON APRIL 25, 1975 A DETERMINATION ORDER GRANTED CLAIMANT TEMPORARY TOTAL DISABILITY AND AN AWARD OF 128 DEGREES FOR 40 PER CENT UNSCHEDULED PSYCHOLOGICAL DISABILITY.

DR. WORTHYLAKE TERMINATED HIS PRACTICE AND REFERRED CLAIMANT TO DR. KILGORE WHO, ON JUNE 3, 1975, REPORTED CLAIMANT'S CONDITION WAS NOT STATIONARY AND THAT WITHOUT CONTINUED PSYCHIATRIC TREATMENT CLAIMANT'S CONDITION WOULD DETERIORATE AND HE FELT THAT CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED.

ON JULY 28, 1975 THE FUND DENIED RESPONSIBILITY FOR ALL PRESENT AND FUTURE PSYCHIATRIC TREATMENT.

ON SEPTEMBER 11, 1975 DR. WORTHYLAKE FOUND CLAIMANT'S PSYCHIATRIC CONDITION HAD BEEN 'TRIGGERED' BY THE EVENT OF MARCH 23, 1972, BY CAUSING A COMPLEX CONVERSION REACTION. HE ALSO FOUND CLAIMANT TO BE PERMANENTLY AND TOTALLY DISABLED, CONSIDERING CLAIMANT'S LACK OF IMPROVEMENT AND LENGTH OF TIME OF TREATMENT WITHOUT MUCH PROGRESS.

THE REFEREE FOUND THAT THE INCIDENT OF MARCH 23, 1972 WAS A MATERIAL CONTRIBUTING FACTOR TO CLAIMANT'S PSYCHIATRIC PROBLEMS - THAT CLAIMANT WAS NOT MALINGERING, AND, BASED ON THE MEDICAL REPORTS, CLAIMANT WAS MEDICALLY STATIONARY BUT WOULD NEED SUPPORTIVE TREATMENT CONTINUOUSLY.

THE REFEREE CONCLUDED THAT CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED DUE TO THE SEVERE PSYCHOPATHOLOGY MAKING HIM UNABLE TO CONTROL HIS EMOTIONS. THE DENIAL MADE BY THE STATE ACCIDENT INSURANCE FUND FOR PSYCHIATRIC CARE WAS IMPROPER, THEREFORE, THE REFEREE AWARDED AN ATTORNEY FEE PURSUANT TO ORS 656.386.

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

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 5, 1976, IS AFFIRMED.

WCB CASE NO. 75-3313 JULY 13, 1976

RODNEY HOFFSTOT, CLAIMANT

GERALD DOBLIE, CLAIMANT'S ATTY.
MERLIN MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT A TOTAL AWARD OF 75 DEGREES FOR 50 PER CENT LOSS OF THE RIGHT LEG.

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS RIGHT KNEE ON OCTOBER 24, 1972 AND WAS TREATED BY DR. STANLEY JAMES WHO PERFORMED A RIGHT KNEE MENISCECTOMY ON OCTOBER 30, 1972. ON MARCH 22, 1973 A SECOND OPERATION WAS PERFORMED FOR A CHONDROMALACIA ON THE RIGHT MEDIAL PATELLAR FACET.

A DETERMINATION ORDER WAS ISSUED ON SEPTEMBER 11, 1973 GRANTING CLAIMANT 22.5 DEGREES FOR 15 PER CENT LOSS OF THE RIGHT LEG.

ON JANUARY 16, 1974, BY STIPULATION, CLAIMANT WAS GRANTED AN ADDITIONAL 25.5 DEGREES.

CLAIMANT'S KNEE BEGAN TO BOTHER HIM AGAIN AND, ON JANUARY 7, 1975, CLAIMANT SOUGHT THE AID OF DR. JAMES. DR. JAMES FELT CLAIMANT'S KNEE CONDITION HAD DEGENERATED AND A PATELLECTOMY WAS PERFORMED ON FEBRUARY 3, 1975. THEREAFTER, DR. JAMES FELT CLAIMANT WOULD HAVE CONTINUAL WEAKNESS IN HIS LOWER EXTREMITY.

A SECOND DETERMINATION ORDER, ISSUED ON AUGUST 7, 1975, GRANTED

CLAIMANT AN ADDITIONAL 15 DEGREES, FOR 42 PER CENT LOSS OF THE RIGHT LEG GIVING CLAIMANT A TOTAL OF 63 DEGREES.

AFTER THIS CLOSURE CLAIMANT SAW DR. JAMES COMPLAINING OF HIS KNEE GIVING WAY AND DR. JAMES PLACED CLAIMANT ON A SHORT LEG BRACE.

CLAIMANT TESTIFIED THAT HE FELL TWO OR THREE TIMES A DAY, AND THAT WITH THE BRACE HIS KNEE STILL GIVES WAY THREE OR FOUR TIMES A WEEK.

THE REFEREE FOUND, BASED UPON OBSERVATION OF CLAIMANT AND THE MEDICAL REPORTS, THAT CLAIMANT'S RIGHT KNEE FOR ALL PRACTICAL PURPOSES WAS GONE. HE CONCLUDED THAT A TOTAL AWARD OF 50 PER CENT LOSS OF FUNCTION OF THE LEG WAS AN ADEQUATE AWARD TO COMPENSATE CLAIMANT FOR THE LOSS OF HIS KNEE, THEREFORE, HE INCREASED THE PRIOR AWARDS BY 8 PER CENT.

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

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 12, 1976, IS AFFIRMED.

(NO NUMBER AVAILABLE) JULY 15, 1976

GLENN GRAVES, CLAIMANT

OWN MOTION DETERMINATION

CLAIMANT SUFFERED A COMPENSABLE INJURY ON APRIL 2, 1970 WHICH WAS DIAGNOSED AS THROMBOPHLEBITIS, RIGHT THIGH, AND A SUBSEQUENT PULMONARY EMBOLUS. A DETERMINATION ORDER OF JULY 15, 1970 GRANTED TEMPORARY TOTAL DISABILITY ONLY. CLAIMANT'S AGGRAVATION RIGHTS HAVE EXPIRED.

ON AUGUST 8, 1975 THE EMPLOYER'S CARRIER VOLUNTARILY REOPENED CLAIMANT'S CLAIM FOR AGGRAVATION. THERE IS NO INDICATION OF ANY RESIDUALS FOR THE PULMONARY EMBOLUS - HOWEVER, MEDICAL REPORTS INDICATE RESIDUAL IMPAIRMENT OF THE RIGHT LEG, AND CLAIMANT IS RESTRICTED FROM CERTAIN WORK ACTIVITIES AND THE EMPLOYER HAS ASSIGNED CLAIMANT TO A DIFFERENT JOB.

ON MAY 17, 1976 THE CLAIM WAS SUBMITTED FOR CLOSURE. IT WAS THE RECOMMENDATION OF THE EVALUATION DIVISION THAT CLAIMANT BE GRANTED COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM AUGUST 15, 1975 THROUGH OCTOBER 27, 1975, LESS TIME WORKED, AND FOR TEMPORARY PARTIAL DISABILITY FROM OCTOBER 28, 1975 THROUGH MAY 29, 1976 AND AN AWARD OF 15 DEGREES FOR 10 PER CENT LOSS OF THE RIGHT LEG.

ORDER

CLAIMANT IS AWARDED COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM AUGUST 15, 1975 THROUGH OCTOBER 27, 1975, LESS TIME WORKED, AND FOR TEMPORARY PARTIAL DISABILITY FROM OCTOBER 28, 1975 THROUGH MAY 29, 1976 AND AWARDED 15 DEGREES FOR 10 PER CENT LOSS OF THE RIGHT LEG.

SAIF CLAIM NO. BC 88072 JULY 15, 1976

W.B. GROSSNICKLE, CLAIMANT

DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

CLAIMANT SUFFERED A COMPENSABLE INJURY ON AUGUST 9, 1967, HE WAS EXAMINED ORIGINALLY BY A CHIROPRACTOR. ON MARCH 26, 1968 DR. COOPER EXAMINED CLAIMANT AND REPORTED CLAIMANT HAD HAD BACK TROUBLE SINCE THE 1950'S AND, ON APRIL 15, 1953, HAD HAD A FUSION L4-S1 DUE TO AN INDUSTRIAL INJURY FOR WHICH HE WAS AWARDED 65 PER CENT LOSS OF AN ARM.

CLAIMANT'S CLAIM FOR THE 1967 INJURY WAS INITIALLY CLOSED ON MAY 2, 1968 WITH NO AWARD FOR PERMANENT PARTIAL DISABILITY. IN JUNE, 1970 HIS CLAIM WAS REOPENED FOR FURTHER TREATMENT. DR. KIMBERLEY, ON MARCH 8, 1971, PERFORMED A FUSION OF L3 TO THE ORIGINAL FUSION MASS, THROUGH S1. THE CLAIM WAS CLOSED AGAIN ON MARCH 23, 1972 WITH AN AWARD OF 48 DEGREES FOR 15 PER CENT LOW BACK DISABILITY. CLAIMANT'S AGGRAVATION RIGHTS HAVE EXPIRED.

CLAIMANT WAS SEEN ON APRIL 29, 1976 BY THE ORTHOPEDIC CONSULTANTS WHO FELT CLAIMANT COULD RETURN TO LIGHT WORK. THIS OPINION WAS BASED BOTH ON THE 1967 INJURY AND ANOTHER INDUSTRIAL INJURY SUFFERED IN 1968 AND UPON THE RESIDUALS OF BOTH, AFFECTING CLAIMANT'S UPPER BACK, NECK AND LOWER BACK.

THE CLAIM FOR THE 1967 INJURY WAS SUBMITTED FOR CLOSURE ON MAY 14, 1976. THE EVALUATION DIVISION RECOMMENDED NO FURTHER TIME LOSS AND NO FURTHER AWARD FOR PERMANENT PARTIAL DISABILITY.

ORDER

THE DETERMINATION ORDER OF MARCH 23, 1972 IS AFFIRMED.

SAIF CLAIM NO. C 112155 JULY 15, 1976

W.B. GROSSNICKLE, CLAIMANT

DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

CLAIMANT SUFFERED A COMPENSABLE CERVICAL DORSAL STRAIN INJURY ON FEBRUARY 8, 1968 AND HIS CLAIM WAS CLOSED ON SEPTEMBER 18, 1969 WITH AN AWARD OF 10 PER CENT UNSCHEDULED DISABILITY.

IN THE FOLLOWING YEARS CLAIMANT RECEIVED PALLATIVE CARE AS WELL AS MEDICAL TREATMENT FOR HIS CERVICAL DORSAL BACK INJURY. CLAIMANT'S AGGRAVATION RIGHTS HAVE EXPIRED.

IN FEBRUARY, 1976 CLAIMANT QUIT WORK DUE TO PAIN IN HIS NECK, UPPER BACK, LOWER BACK AND A CHRONIC ARTHRITIS CONDITION. ON APRIL 29, 1976 CLAIMANT WAS SEEN BY THE ORTHOPEDIC CONSULTANTS FOR EVALUATION. TOTAL LOSS OF FUNCTION OF THE BACK WAS FOUND TO BE MODERATELY SEVERE - TOTAL LOSS OF FUNCTION OF THE NECK MINIMAL. CLAIMANT CAN'T RETURN TO HIS FORMER OCCUPATION BUT CAN DO LIGHTER TYPE WORK.

CLAIM CLOSURE WAS REQUESTED ON MAY 14, 1976 AND THE EVALUATION DIVISION, BASED ON THE ORTHOPEDIC CONSULTANT'S REPORT, RECOMMENDED AN ADDITIONAL AWARD OF 48 DEGREES FOR A TOTAL AWARD TO CLAIMANT OF

80 DEGREES FOR 25 PER CENT UNSCHEDULED DISABILITY. NO AWARD FOR TIME LOSS WAS JUSTIFIED.

ORDER

CLAIMANT IS AWARDED 48 DEGREES OF A MAXIMUM 320 DEGREES FOR UNSCHEDULED DISABILITY. THIS IS IN ADDITION TO ANY FORMER AWARDS FOR PERMANENT PARTIAL DISABILITY RECEIVED BY CLAIMANT.

CLAIM NO. 05X-011690 JULY 15, 1976

FRED N. ROSS, CLAIMANT

ALLEN SCOTT, CLAIMANT'S ATTY.
MICHAEL HOFFMAN, DEFENSE ATTY.
OWN MOTION ORDER

ON JULY 2, 1976 THE CLAIMANT, THROUGH HIS ATTORNEYS, REQUESTED THE BOARD EXERCISE ITS OWN MOTION JURISDICTION PURSUANT TO ORS 656.278 AND REOPEN HIS CLAIM FOR AN INDUSTRIAL INJURY SUFFERED ON NOVEMBER 5, 1969. IN SUPPORT OF HIS REQUEST CLAIMANT ATTACHED A MEDICAL REPORT FROM DR. COTTRELL, DATED MAY 20, 1976, AND THE SUBSEQUENT CLAIM DENIAL BY ARGONAUT INSURANCE COMPANY DATED JUNE 14, 1976.

THE BOARD, AFTER CAREFUL CONSIDERATION OF THE MEDICAL REPORT FROM DR. COTTRELL, CONCLUDES THAT ALTHOUGH DR. COTTRELL FINDS INCREASED NARROWING AT L5-S1 AND THINKS IT PROBABLE THAT THIS HAS CAUSED THE REFERRED NUMBNESS, NEVERTHELESS, HE FAILED TO RENDER ANY OPINION AS TO WHETHER THIS NARROWING WAS ATTRIBUTABLE TO THE 1969 INJURY. AS A RESULT OF THE 1969 INJURY CLAIMANT HAS HAD A FUSION OF L4-5 AND X-RAYS OF CLAIMANT'S BACK SHOW THAT THIS OLD FUSION IS ENTIRELY SOLID - THE NARROWING AT L5-S1 INTERVERTEBRAL DISC SPACE NOTED BY DR. COTTRELL IS BELOW THE FUSION SITE.

THE BOARD CONCLUDES THAT THERE IS NOT SUFFICIENT MEDICAL EVIDENCE AT THE PRESENT TIME TO JUSTIFY REOPENING CLAIMANT'S CLAIM.

ORDER

CLAIMANT'S REQUEST OF JULY 2, 1976 FOR THE BOARD TO EXERCISE ITS OWN MOTION JURISDICTION PURSUANT TO ORS 656.278 AND REOPEN HIS CLAIM FOR HIS NOVEMBER 3, 1969 INJURY IS DENIED.

CLAIM NO. B 143406 JULY 15, 1976

JESSE L. BRENCHLEY, CLAIMANT

DAVID JAQUA, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

ON MAY 5, 1976 THE CLAIMANT REQUESTED THE BOARD TO EXERCISE ITS OWN MOTION JURISDICTION PURSUANT TO ORS 656.278 AND REOPEN HIS CLAIM FOR INJURY SUFFERED ON APRIL 14, 1965. IN SUPPORT OF THE REQUEST WAS A MEDICAL REPORT FROM DR. JOHN P. CARROLL DATED AUGUST 25, 1975.

THE STATE ACCIDENT INSURANCE FUND WAS FURNISHED A COPY OF THE REQUEST AND DR. CARROLL'S REPORT AND ADVISED THAT IT HAD 20 DAYS

WITHIN WHICH TO STATE ITS POSITION RELATIVE TO THE MOTION. ON MAY 17, 1976 THE FUND RESPONDED, STATING IT DID NOT FEEL THAT DR. CARROLL'S LETTER WAS SUFFICIENT JUSTIFICATION TO REOPEN THE CLAIM.

THE BOARD, AFTER REVIEWING CAREFULLY THE REPORT OF DR. CARROLL, AGREES WITH THE FUND'S CONTENTION THAT THIS REPORT RELATES A LONG-STANDING SPONDYLOLISTHESIS WHICH PRE-EXISTED THE ORIGINAL INDUSTRIAL INJURY AND, FURTHERMORE, THAT DR. CARROLL MAKES MENTION THAT CLAIMANT IS WORKING AT THE PRESENT TIME AT A JOB WHICH REQUIRES PICKING UP AND CARRYING 100 POUND BAGS OF SEED WHICH, IN DR. CARROLL'S OPINION, MIGHT RESULT IN FURTHER BACK COMPLAINTS BY CLAIMANT.

THE BOARD CONCLUDES THAT THE REPORT FROM DR. CARROLL IS NOT SUFFICIENT TO WARRANT THE REOPENING OF CLAIMANT'S 1965 CLAIM.

ORDER

THE REQUEST OF THE CLAIMANT FOR THE BOARD TO REOPEN HIS CLAIM FOR THE INDUSTRIAL INJURY OF APRIL 14, 1965 THROUGH THE EXERCISE OF ITS OWN MOTION JURISDICTION PURSUANT TO ORS 656.278 IS HEREBY DENIED.

WCB CASE NO. 75-3584 JULY 15, 1976

DANIEL MC MULLEN, CLAIMANT

KENNEY ROBERTS, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH ORDERED IT TO PAY COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM AUGUST 21, 1975 TO JANUARY 9, 1976, ASSESSED A PENALTY OF 25 PER CENT OF THIS COMPENSATION FOR UNREASONABLE RESISTANCE AND DELAY IN PAYMENT OF COMPENSATION AND DIRECTED IT TO PAY CLAIMANT'S COUNSEL 600 DOLLARS.

A REPORT OF DR. KHAN, DATED AUGUST 22, 1975, INDICATED ON THE FUND'S FORM THAT CLAIMANT WAS NOT RELEASED TO WORK AND WOULD BE ON TIME LOSS FROM THREE TO SIX MONTHS. THE FUND TOOK NO ACTION ON THIS REPORT.

ON NOVEMBER 24, 1975 CLAIMANT'S COUNSEL WROTE THE FUND REQUESTING IT TO REOPEN THE CLAIM, STILL THE FUND FAILED TO TAKE ACTION.

ON DECEMBER 17, 1975 THE FUND REQUESTED A FURTHER REPORT FROM DR. KHAN TO WHICH HE RESPONDED ON JANUARY 9, 1976, STATING THAT CLAIMANT WAS MEDICALLY STATIONARY. AGAIN THE FUND DID NOTHING.

THE REFEREE CONCLUDED THAT, BASED ON THE ABOVE AND WITH NO CONTRADICTORY MEDICAL EVIDENCE, THE FUND'S FAILURE TO ACT WHEN ADVISED OF CLAIMANT'S STATUS CONSTITUTED AN UNREASONABLE RESISTANCE AND DELAY IN THE PAYMENT OF COMPENSATION.

BASED ON THESE FACTS AND MEDICAL REPORTS, THE REFEREE GRANTED CLAIMANT COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM AUGUST 21, 1975 TO JANUARY 9, 1976 AND ASSESSED AN APPROPRIATE PENALTY BASED ON THE COMPENSATION FOR TEMPORARY TOTAL DISABILITY AND GRANTED CLAIMANT'S COUNSEL AN ATTORNEY FEE TO BE PAID BY THE FUND.

THE REFEREE STATED HE DID NOT REACH THE ISSUE OF PERMANENT DISABILITY AND DIRECTED THE FUND TO SUBMIT THE NECESSARY DOCUMENTS TO THE EVALUATION DIVISION OF THE WORKMEN'S COMPENSATION BOARD TO ENABLE IT TO ISSUE A FURTHER DETERMINATION ORDER.

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

ORDER

THE ORDER OF THE REFEREE DATED FEBRUARY 13, 1976, IS AFFIRMED.

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

WCB CASE NO. 75-4361 JULY 15, 1976

KATHERINE MC RAY, CLAIMANT

C. S. EMMONS, CLAIMANT'S ATTY.
CHARLES HOLLOWAY III, DEFENSE ATTY.
OWN MOTION ORDER

THE EMPLOYER, MORLEY, THOMAS, ORONA AND KINGSLEY, ATTORNEYS AT LAW, AND ITS CARRIER, INDUSTRIAL INDEMNITY CO., REQUESTED THE BOARD TO EXERCISE ITS OWN MOTION AUTHORITY PURSUANT TO ORS 656.278 AND JOIN HARTFORD ACCIDENT AND INDEMNITY CO. AS A NECESSARY PARTY IN A HEARING REQUESTED BY CLAIMANT ON AN INDUSTRIAL INJURY SUFFERED AUGUST 25, 1975. CLAIMANT, WHILE EMPLOYED BY THE SAME EMPLOYER, HAD SUFFERED AN INDUSTRIAL INJURY ON OCTOBER 13, 1966 - AT THAT TIME THE EMPLOYER'S CARRIER WAS HARTFORD. THE BOARD, NOT HAVING SUFFICIENT EVIDENCE TO MAKE A DETERMINATION AS TO WHETHER CLAIMANT HAD SUFFERED A NEW INJURY IN 1975 OR AGGRAVATED THE INJURY OF 1966, REFERRED THE MATTER TO THE HEARINGS DIVISION WITH INSTRUCTIONS FOR THE REFEREE TO JOIN HARTFORD, HOLD A HEARING AND RECEIVE EVIDENCE. UPON CONCLUSION OF THE HEARING HE WAS TO HAVE A TRANSCRIPT OF THE PROCEEDINGS PREPARED AND SUBMIT IT TO THE BOARD WITH HIS RECOMMENDATIONS IF HE FOUND CLAIMANT HAD SUFFERED AN AGGRAVATION OF HER 1966 INJURY. IF HE FOUND CLAIMANT HAD SUFFERED A NEW INJURY HE WAS TO ENTER A FINAL AND APPEALABLE ORDER THEREON AND RECOMMEND THAT THE BOARD DENY THE REQUEST FOR THE BOARD TO EXERCISE ITS OWN MOTION AUTHORITY.

AFTER A HEARING ON APRIL 15, 1976, THE REFEREE ENTERED HIS RECOMMENDATION AND OPINION AND ORDER. HE RECOMMENDED THAT THE BOARD DENY THE REQUEST MADE BY EMPLOYER AND INDUSTRIAL INDEMNITY FOR THE BOARD TO EXERCISE ITS OWN MOTION AUTHORITY. THE BOARD ACCEPTS THE RECOMMENDATION OF THE REFEREE.

ORDER

THE REQUEST MADE BY THE EMPLOYER, MORLEY, THOMAS, ORONA, AND KINGSLEY, ATTORNEYS AT LAW, AND ITS CARRIER, INDUSTRIAL INDEMNITY CO., THAT THE BOARD EXERCISE ITS OWN MOTION AUTHORITY, PURSUANT TO ORS 656.278, IS HEREBY DENIED.

NO APPEAL RIGHTS.

WCB CASE NO. 74-1628 JULY 16, 1976

MILFORD O. BARACKMAN, CLAIMANT

J. MICHAEL GLEESON, CLAIMANT'S ATTY.
OWN MOTION DETERMINATION

CLAIMANT SUFFERED A COMPENSABLE INJURY ON DECEMBER 3, 1937. IT IS NOT NECESSARY FOR THE PURPOSE OF THIS ORDER TO GO INTO DETAIL WITH RESPECT TO THE SUBSTANTIAL LITIGATION RESULTING FROM THIS CLAIM, IT IS SUFFICIENT TO STATE THAT ON APRIL 8, 1975, THE BOARD ISSUED AN ORDER ON REVIEW AND OWN MOTION ORDER WHEREBY PURSUANT TO ORS 656.278, THE STATE ACCIDENT INSURANCE FUND WAS ORDERED TO PROVIDE COMPENSATION FOR TEMPORARY TOTAL DISABILITY AND MEDICAL CARE RELATED TO CLAIMANT'S LUMBAR SURGERY OF NOVEMBER 7, 1973. SUCH COMPENSATION WAS TO BE PAID FROM NOVEMBER 2, 1973 UNTIL TERMINATION WAS AUTHORIZED BY LAW. WHEN CLAIMANT'S CONDITION BECAME MEDICALLY STATIONARY THE MATTER WAS TO BE RESUBMITTED TO THE BOARD FOR AN OWN MOTION EVALUATION OF CLAIMANT'S DISABILITY.

IN A REPORT DATED DECEMBER 12, 1973, DR. SMITH, A NEUROLOGIST, HAD INDICATED THAT THE CONDITION FOR WHICH CLAIMANT UNDERWENT LUMBAR SURGERY BY DR. NELSON ON NOVEMBER 7, 1973 WAS THE DIRECT RESULT OF WEAR AND TEAR PRODUCED AT THESE LEVELS OF THE LUMBAR SPINE SECONDARY TO CLAIMANT'S PREVIOUS SPINAL FUSION.

DR. NELSON'S REPORT, DATED OCTOBER 29, 1975, STATED THAT THE FUSION NOW COULD BE CONSIDERED STATIONARY AND HE CONSIDERED CLAIMANT STILL COMPLETELY DISABLED IN TERMS OF RETURNING TO ANY OF THE USUAL TYPES OF WORK WHICH HE MIGHT BE CONSIDERED CAPABLE OF PERFORMING. ADDITIONALLY, IT WAS DR. NELSON'S BELIEF THAT CLAIMANT WOULD PROBABLY CONTINUE TO BE COMPLETELY DISABLED IN THE FUTURE ENTIRELY ON THE BASIS OF THE LOW BACK AREA.

ON JANUARY 9, 1976 CLAIMANT WAS EXAMINED BY THE ORTHOPEDIC CONSULTANTS WHO FOUND CLAIMANT'S CONDITION STABLE AND RECOMMENDED CLAIM CLOSURE. THE CONCENSUS OPINION WAS THAT CLAIMANT COULD NOT RETURN TO HIS FORMER OCCUPATION NOR TO ANY OTHER OCCUPATION AND THAT THE CLAIMANT'S TOTAL LOSS OF FUNCTION AS IT EXISTED AT THAT TIME WAS SEVERE. DR. NELSON AGREED WITH THESE FINDINGS.

THE CLAIM WAS RESUBMITTED TO THE EVALUATION DIVISION FOR AN ADVISORY RATING UPON WHICH TO MAKE AN OWN MOTION DETERMINATION. EVALUATION RECOMMENDED THAT THE BOARD, UNDER ITS OWN MOTION JURISDICTION, PURSUANT TO ORS 656.278, AWARD CLAIMANT COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM NOVEMBER 2, 1973 THROUGH JANUARY 8, 1976 AND FIND CLAIMANT TO BE PERMANENTLY AND TOTALLY DISABLED AS OF JANUARY 9, 1976.

IT IS SO ORDERED.

WCB CASE NO. 75-2437 JULY 16, 1976

RODNEY MC COWN, CLAIMANT
RICK MC CORMICK, CLAIMANT'S ATTY.
PHILIP MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE EMPLOYER REQUESTS BOARD REVIEW ON THE REFEREE'S ORDER WHICH ORDERED ACCEPTANCE OF CLAIMANT'S CLAIM FOR HIS BACK AND NECK INJURIES SUSTAINED IN HIS INDUSTRIAL INJURY.

ON APRIL 3, 1975 CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS ELBOW. CLAIMANT HAS LITTLE RECOLLECTION OF THE ACTUAL HAPPENINGS AT THE TIME OF THE ACCIDENT AND A DISPUTE AROSE AT THE HEARING WITH RESPECT TO CLAIMANT'S RECOLLECTIONS AND THOSE OF A CO-WORKER. CLAIMANT REMEMBERS A LARGE KNOT ON HIS FOREHEAD AND PAIN IN HIS ELBOW. HIS BACK AND NECK WERE SORE BUT, AT THE TIME IMMEDIATELY AFTER THE INJURY, CLAIMANT'S PRIMARY CONCERN WAS THE PAIN IN HIS ELBOW.

CLAIMANT WAS SEEN APRIL 3, 1975 BY DR. MENTZER WHOSE REPORT COMMENTS ON THE ELBOW AND ABRASIONS ON THE SCALP.

CLAIMANT TESTIFIED THAT HIS NECK AND BACK WERE SORE AND BRUISED WHILE AT THE HOSPITAL BUT IT WASN'T UNTIL HIS SECOND VISIT TO DR. ANDERSON ON MAY 16, 1975 THAT CLAIMANT RELATED HIS OTHER COMPLAINTS. DR. ANDERSON DIAGNOSED, AT THAT TIME, A PROBABLE CERVICAL SPRAIN.

CLAIMANT CONTACTED DR. NEUMANN WHOSE REPORT OF JUNE 15, 1975, INDICATED A DIAGNOSIS OF FIBROMYOSITIS.

ON JUNE 11, 1975 THE CARRIER DENIED RESPONSIBILITY FOR ANY ALLEGED INJURIES TO ANY AREAS OF CLAIMANT'S BODY OTHER THAN THE RIGHT ARM.

THE REFEREE FOUND CLAIMANT'S TESTIMONY TO BE THE MOST CREDIBLE AND FOUND CLAIMANT'S EXPLANATION FOR NOT IMMEDIATELY COMPLAINING OF NECK AND BACK SYMPTOMS AS TOTALLY REASONABLE IN VIEW OF THE FRACTURED ELBOW WHICH CAUSED GREAT PAIN.

THE REFEREE FOUND THAT DR. ANDERSON CONSIDERED CLAIMANT'S NECK AND BACK PROBLEMS WERE A RESULT OF THE INDUSTRIAL INJURY - DR. NEUMANN WAS OF THE OPINION THAT FIBROMYOSITIS COULD BE RELATED TO A TRAUMATIC INCIDENT. THERE WAS NO CONTRADICTORY MEDICAL EVIDENCE OFFERED.

THE REFEREE CONCLUDED THAT CLAIMANT'S NECK AND BACK INJURIES WERE THE DIRECT RESULT OF HIS INDUSTRIAL INJURY AND HIS CLAIM SHOULD BE ACCEPTED.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS THE FINDINGS OF THE REFEREE, BASED ON CLAIMANT'S CREDIBILITY AND THE SUPPORTIVE MEDICAL OPINIONS.

ORDER

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

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE, THE SUM OF 350 DOLLARS PAYABLE BY THE EMPLOYER, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 74-3051 JULY 16, 1976

MILES SHORTRIDGE, CLAIMANT

JACK OFELT, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

Reviewed by Board Members Wilson and Moore.

The State Accident Insurance Fund requests Board review of the referee's order which awarded claimant permanent total disability commencing February 4, 1974.

Claimant suffered a compensable electrical injury on December 17, 1973. He had been a boilermaker for 35 years - he has not worked since the injury.

On April 18, 1974 a determination order granted claimant temporary total disability only.

Dr. Tarro, in his August 13, 1974 report, indicated the severe electrical injury claimant had suffered could have late effects, including neurological disabilities - that injuries to the nervous system could have symptoms which resemble multiple sclerosis.

Claimant was hospitalized by Dr. Storino on July 13, 1975 for complaints of nervousness, slurring of speech, trouble walking and personality changes. He was seen by Dr. Hickman who said that the brain damage series test indicated organic brain impairment affecting the right hemisphere.

On August 15, 1975 Dr. Storino diagnosed 'moderately advanced cerebral atrophy' and he felt that the injury activated claimant's personality disorders. He found claimant incapable of continuous gainful employment.

The referee found that the industrial injury did precipitate claimant's present symptoms and that all of the medical evidence presented corroborates this finding. Although claimant would like to work and has tried over a period of two years to obtain a job there is no gainful employment claimant is able, either physically or mentally, to do.

The Board, on de novo review, adopts the findings and conclusions of the referee.

ORDER

The order of the referee, dated January 20, 1976 is affirmed.

Claimant's counsel is awarded as a reasonable attorney fee the sum of 400 dollars payable by the State Accident Insurance Fund for services in connection with Board review.

WCB CASE NO. 75—2490 JULY 16, 1976

JUANITA SKOPHAMMER, CLAIMANT

GARY DALTON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH ORDERED IT TO PAY 252 DOLLARS FOR HOUSEKEEPING SERVICES PROVIDED TO CLAIMANT - THE CLAIM BE REMANDED TO IT FOR ACCEPTANCE OF THOSE SERVICES RENDERED TO CLAIMANT IN CONNECTION WITH, AND SUBSEQUENT TO, THE AUTOMOBILE ACCIDENT - DIRECTED IT TO PAY A 15 PER CENT PENALTY OF THE ABOVE AMOUNT, PURSUANT TO ORS 656.262(8) - AND A REASONABLE ATTORNEY FEE.

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HER BACK ON MAY 27, 1974. SHE WAS OFF WORK UNTIL JUNE 16, 1974.

ON JULY 30, 1974 A DETERMINATION ORDER WAS ISSUED GRANTING CLAIMANT TEMPORARY TOTAL DISABILITY ONLY.

CLAIMANT RETURNED TO WORK ON JUNE 16, 1974 BUT ON DECEMBER 13, 1974 CLAIMANT SUFFERED INCREASED PAIN SYMPTOMS. ON DECEMBER 16 CLAIMANT CONTACTED A DOCTOR WHO TOLD HER NOT TO RETURN TO WORK. ALL TEMPORARY TOTAL DISABILITY PAYMENTS FOR THE PERIODS OF MAY 27, 1974 TO JUNE 16, 1974 AND DECEMBER 14, 1974 TO JANUARY 11, 1975 WERE PAID.

ON JANUARY 14, 1975, WHEN CLAIMANT WAS TRAVELING TO A PHYSICAL THERAPY CLASS SHE WAS INVOLVED IN AN AUTOMOBILE ACCIDENT, SUFFERING AN AGGRAVATION OF HER MID AND LOW BACK SYMPTOMS - ALSO, ADDED PROBLEMS IN THE UPPER BACK, NECK, LEFT FOREARM AND LOWER ABDOMEN. SHE WAS HOSPITALIZED FROM APRIL 20 TO MAY 10, 1975. THE HOSPITAL BILLS AND MEDICAL SERVICES HAVE NOT BEEN PAID NOR HAVE THEY BEEN DENIED.

THE ONLY DENIAL WAS ISSUED ON JULY 8, 1975, IT RELATED TO THE REQUEST TO REIMBURSE CLAIMANT FOR HOUSEKEEPING SERVICES, WHICH WERE SUPPLIED UPON THE RECOMMENDATION OF DR. CHERRY ON MAY 17, 1975.

THE REFEREE FOUND THAT THE HOUSEKEEPING SERVICES SHOULD BE PAID FOR BY THE CARRIER TO A REASONABLE AMOUNT BECAUSE THEY WERE RECOMMENDED BY DR. CHERRY AND THE NEED FOR SUCH SERVICES WAS THE RESULT OF DISABILITY RESULTING FROM AN INDUSTRIAL INJURY. THE SUM FOUND BY THE REFEREE TO BE REASONABLE WAS BASED ON A MINIMUM WAGE IN OREGON FOR ADULTS OF 2.10 DOLLARS AN HOUR.

THE CLAIMANT WAS ON HER WAY TO A PHYSICAL THERAPY PROGRAM ORDERED BY HER PHYSICIAN FOR HER INDUSTRIAL INJURY WHEN THE AUTOMOBILE ACCIDENT OCCURRED AND SHE SUFFERED AN AGGRAVATION OF THOSE INJURIES, THEREFORE, THE REFEREE FOUND THAT THE SERVICES RENDERED SHOULD BE COMPENSABLE.

THE REFEREE ASSESSED A PENALTY AGAINST THE STATE ACCIDENT INSURANCE FUND BECAUSE IT SHOULD HAVE ACCEPTED THE CLAIM FOR THE INJURIES SUFFERED IN THE AUTOMOBILE ACCIDENT AND THE SUBSEQUENT MEDICAL SERVICES RENDERED CLAIMANT, IT DID NOTHING AND ITS INACTION AMOUNTS TO A DE FACTO DENIAL WHICH HE FOUND WAS IMPROPER.

CLAIMANT'S ATTORNEY FEE MUST BE PAID BY THE STATE ACCIDENT INSURANCE FUND BECAUSE OF ITS UNREASONABLE DELAY IN ACCEPTING OR DENYING THE CLAIM.

THE REFEREE FOUND NO DELAY IN THE PAYMENT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY, AS CONTENDED BY CLAIMANT.

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

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 20, 1976, IS AFFIRMED.

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

WCB CASE NO. 75-1469 JULY 16, 1976

CELIA SLACK, CLAIMANT

D. KEITH SWANSON, CLAIMANT'S ATTY.
ROGER WARREN, 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. 75-2783 JULY 16, 1976
WCB CASE NO. 75-2784

ROBERT TEMPLETON, CLAIMANT

DAN O'LEARY, CLAIMANT'S ATTY.
JAMES HUEGLI, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE EMPLOYER, POPE AND TALBOT COMPANY, REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED CLAIMANT'S CLAIM TO IT TO BE ACCEPTED AS AN AGGRAVATION.

THERE ARE TWO EMPLOYERS AND DIFFERENT CARRIERS IN THIS CASE. CLAIMANT WAS WORKING IN 1968 FOR POPE AND TALBOT COMPANY. SOMETIME IN 1971 POPE AND TALBOT SOLD OUT TO BOISE CASCADE AND CLAIMANT CONTINUED WORKING AT THE SAME LOCATION.

ON JUNE 24, 1968 CLAIMANT SUFFERED A COMPENSABLE OCCUPATIONAL DISEASE IN THE FORM OF NERVE ROOT COMPRESSION OF THE CERVICAL SPINE. CLAIMANT UNDERWENT A CERVICAL LAMINECTOMY ON APRIL 14, 1969 FOR CERVICAL SPONDYLOSIS. CLAIMANT RETURNED TO WORK AND ON JANUARY 11, 1972 A DETERMINATION ORDER AWARDED CLAIMANT 64 DEGREES FOR 20 PER CENT UNSCHEDULED DISABILITY. AFTER A HEARING THIS AWARD WAS INCREASED TO 96 DEGREES BY AN ORDER DATED JANUARY 11, 1972.

CLAIMANT CONTINUED TO HAVE DIFFICULTIES AFTER THE CLAIM CLOSURE,

HE HAD PAIN IN HIS NECK, LEFT SHOULDER AND ARM. HE WAS SEEN BY DR. SMITH IN DECEMBER, 1972 FOR 'NECK, LEFT ARM PAIN, AND SHOULDER PAIN OF TWO TO THREE MONTHS DURATION.' ON AUGUST 17, 1973 DR. CHERRY REPORTED REOCCURRENCE OF NECK AND ARM PAIN.

BY STIPULATION IN FEBRUARY, 1973 CLAIMANT'S AWARD WAS INCREASED TO 144 DEGREES FOR 45 PER CENT UNSCHEDULED DISABILITY. THIS WAS THE LAST AWARD OF COMPENSATION RECEIVED BY CLAIMANT.

ON AUGUST 19, 1974 CLAIMANT, WHILE PUSHING LOGS, SUFFERED A RECURRENCE OF HIS SYMPTOMS AND SUBMITTED A CLAIM WHICH WAS ACCEPTED BY BOISE CASCADE ON A 'MEDICAL ONLY' BASIS.

CLAIMANT ALSO FILED A CLAIM WITH POPE AND TALBOT ALLEGING HE HAD AGGRAVATED HIS 1968 INJURY. BOISE CASCADE THEN REQUESTED THE BOARD TO DESIGNATE A PAYING AGENT PURSUANT TO ORS 656.307, BECAUSE IT DENIED THE INCIDENT OF AUGUST 19, 1974 INCREASED CLAIMANT'S DISABILITY AND THE CARRIER FOR POPE AND TALBOT, EMPLOYERS INSURANCE OF WAUSAU, HAD DENIED THAT SAID INCIDENT AGGRAVATED CLAIMANT'S 1968 INJURY. ON JULY 10, 1975 THE BOARD DESIGNATED BOISE CASCADE AS THE PAYING AGENT.

AFTER THE INCIDENT OF AUGUST 19, 1974 CLAIMANT WAS SEEN BY DRS. SMITH, ACKERMAN AND CHERRY. DR. SMITH, AFTER REVIEWING HIS EARLIER REPORTS AND EXAMINING CLAIMANT ON DECEMBER 4, 1974, FELT THAT CLAIMANT'S PRESENT CONDITION 'WAS SIMILAR TO THE PROBLEM BACK IN DECEMBER 1972'. DR. SMITH ALSO FOUND OSTEOARTHRITIS WITH NERVE ROOT IRRITATION. HE STATED 'IT IS REASONABLE TO ASSUME THAT THE PATIENT HAS, INDEED, SUFFERED A WORSENING OR AGGRAVATION OF HIS CONDITION.'

DR. CHERRY'S LAST REPORT OF MAY 17, 1975 EXPRESSED THE BELIEF THAT CLAIMANT HAS NEVER GOTTEN WELL FROM HIS ORIGINAL INJURY AND THAT IT WOULD BE MORE LIKELY THAT THE AUGUST, 1974 INCIDENT BE CLASSIFIED AS AN AGGRAVATION RATHER THAN A NEW INJURY.

THE REFEREE CONCLUDED THAT THE INCIDENT OF AUGUST 19, 1974 WAS AN EXACERBATION AND CONTINUATION OF CLAIMANT'S UNDERLYING CONDITION FROM HIS ORIGINAL OCCUPATIONAL DISEASE BASED UPON THE REPORTS OF CLAIMANT'S TREATING PHYSICIANS.

THE REFEREE ORDERED POPE AND TALBOT COMPANY TO REIMBURSE BOISE CASCADE FOR ALL PAYMENTS OF COMPENSATION IT HAD MADE AS THE DESIGNATED PAYING AGENT, AND TO ACCEPT THE CLAIM FOR AGGRAVATION AND PAY COMPENSATION, AS PROVIDED BY LAW, UNTIL THE CLAIM IS CLOSED AGAIN PURSUANT TO ORS 656.268.

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

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 8, 1976, IS AFFIRMED.

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

WCB CASE NO. 75-4648 JULY 16, 1976

JOEL WALSWORTH, CLAIMANT

JEROME BISCHOFF, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT 67.5 DEGREES FOR 50 PER CENT LOSS OF RIGHT FOOT.

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS RIGHT FOOT ON JULY 16, 1973. HIS CONDITION WAS DIAGNOSED AS COMPOUND-COMMINUTED FRACTURE OF THE DISTAL AND MIDDLE SHAFT OF THE TIBIA AND FRACTURE OF THE PROXIMAL SHAFT OF THE FIBULA. SURGERY WAS FIRST PERFORMED ON JULY 17, 1973 BY DR. DAVIS AND AGAIN ON JULY 20, 1973. CLAIMANT UNDERWENT FOUR SURGERIES INCLUDING SKIN GRAFTS FOR THE COVER OF THE SKIN DEFECT.

DR. DAVIS' CLOSING REPORT OF OCTOBER 9, 1974 STATES CLAIMANT HAS WEAKNESS IN THE EVERSION OF THE FOOT AND PLANTAR FLEXION OF THE FOOT. HE FOUND CLAIMANT TO BE BORDERLINE EMPLOYABLE AT HIS PREVIOUS OCCUPATION OF LOGGING.

ON SEPTEMBER 26, 1975 DR. GERMAN, WHO HAD OPERATED ON CLAIMANT ON APRIL 28, 1975, INDICATED THAT, AS OF SEPTEMBER 26, 1975, HE WOULDN'T IMPOSE ANY LIMITATION ON CLAIMANT BUT HE SUSPECTED CLAIMANT WOULD BE LIMITED IN HIS ABILITY TO PERFORM HEAVY LABOR AND HE DID HAVE PERMANENT DISABILITY.

ON OCTOBER 30, 1975 CLAIMANT WAS GRANTED COMPENSATION FOR TEMPORARY TOTAL DISABILITY AND 33.75 DEGREES FOR 25 PER CENT LOSS OF FUNCTION OF THE RIGHT FOOT.

THE REFEREE FOUND THAT DUE TO CLAIMANT'S INABILITY TO RETURN TO HIS OLD OCCUPATION AND ALSO BECAUSE OF HIS INABILITY TO DORSIFLEX HIS FOOT, A MOVEMENT NEEDED FOR UPHILL CLIMBING, CLAIMANT WOULD HAVE TO FIND OTHER EMPLOYMENT BECAUSE OF HIS DISABILITY. BASED ON THE MEDICAL REPORTS, THE REFEREE GRANTED CLAIMANT AN ADDITIONAL AWARD OF 25 PER CENT.

THE BOARD, ON DE NOVO REVIEW, DISAGREES WITH THE CONCLUSIONS OF THE REFEREE.

THE BOARD FINDS THAT THE PREPONDERANCE OF THE MEDICAL REPORTS FINDS CLAIMANT DOES HAVE SOME DISABILITY BUT IS ABLE TO RETURN TO WORK, POSSIBLY EVEN TO HIS OLD JOB. HOWEVER, EVEN IF HE COULD NOT RETURN TO HIS FORMER OCCUPATION, THE SOLE CRITERION FOR A SCHEDULED MEMBER IS LOSS OF FUNCTION NOT LOSS OF WAGE EARNING CAPACITY.

THE BOARD CONCLUDES THAT THE DETERMINATION ORDER OF OCTOBER 30, 1975 WHICH AWARDED CLAIMANT 33.75 DEGREES FOR LOSS OF HIS RIGHT FOOT ADEQUATELY REPRESENTS, BASED ON THE MEDICAL REPORTS AND THE TESTIMONY OF CLAIMANT, THE TOTAL LOSS OF FUNCTION OF CLAIMANT'S RIGHT FOOT.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 5, 1976, IS REVERSED.

THE DETERMINATION ORDER MAILED OCTOBER 30, 1975 IS AFFIRMED.

WCB CASE NO. 75-2278 JULY 16, 1976

RICHARD YOUNG, CLAIMANT

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

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH UPHELD THE DENIAL OF HIS CLAIM DUE TO UNTIMELY FILING OF HIS CLAIM.

CLAIMANT WORKED FOR THE CITY OF SALEM FROM 1955 TO 1961 AND FROM 1966 TO 1973 DOING MAINTENANCE WORK IN CONSTRUCTION AND WATER AND SEWER MAINTENANCE DIVISION AND WAS EXPOSED TO INDUSTRIAL NOISES. SINCE 1973 HE HAS BEEN WORKING IN AN OFFICE AND NOT EXPOSED TO SUCH NOISES.

CLAIMANT HAD BEEN EXAMINED AND TESTED BY DOCTORS EDIGER, COOPER AND DUNHAM - HIS HEARING LOSS IS NOT DISPUTED.

CLAIMANT FIRST SOUGHT MEDICAL AID FROM DR. COOPER ON APRIL 4, 1972. THE DIAGNOSIS WAS 'HIGH FREQUENCY SENSORINEURAL HEARING LOSS DUE TO ACOUSTIC TRAUMA'. DR. COOPER ADVISED CLAIMANT OF THIS BUT DID NOT SAY IT WAS INDUSTRIALLY-RELATED.

CLAIMANT WAS EXAMINED ON JULY 9, 1974 BY DR. DUNHAM WHO FOUND SENSORINEURAL HEARING LOSS IN BOTH EARS AT BOTH THE HIGH AND LOW FREQUENCIES AND A CONDITION OF TINNITUS. DR. DUNHAM TESTIFIED THAT THERE WAS A 'GOOD PROBABILITY' THAT THE HEARING LOSS WAS WORK RELATED.

CLAIMANT'S TESTIMONY WAS THAT HIS DAILY EXPOSURE TO NOISE LEVELS WAS SUBSTANTIAL - THIS WAS CORROBORATED BY A CO-WORKER, MR. HUNTER, WHO TESTIFIED THAT NOISE LEVELS TESTED IN 1975 WERE FAR QUIETER THAN THOSE LEVELS EXPERIENCED IN 1969-1973. MR. HUNTER ALSO TESTIFIED THAT CLAIMANT WORKED AROUND OTHER NOISY DEVICES INCLUDING A JACKHAMMER, COMPRESSOR, ETC.

THE REFEREE FOUND THAT THE PREPONDERANCE OF EVIDENCE ESTABLISHED THAT CLAIMANT'S HEARING LOSS AND TINNITIS CONDITION WAS DUE TO INDUSTRIAL NOISE EXPOSURE, CONFIRMED BY THE OPINIONS OF BOTH DR. EDIGER AND DR. COOPER. HE FOUND NO CONTRADICTORY MEDICAL EVIDENCE.

ON THE ISSUE OF TIMELINESS, THE REFEREE CONCLUDED THAT EVEN THOUGH CLAIMANT'S CLAIM WAS FOUND TO BE COMPENSABLE HE FAILED TO FILE HIS CLAIM WITHIN 180 DAYS AFTER CLAIMANT HAD BEEN INFORMED BY HIS PHYSICIAN THAT HE WAS SUFFERING FROM AN OCCUPATIONAL DISEASE, I.E., JULY 9, 1974, WHEN HE WAS EXAMINED BY DR. DUNHAM. CLAIMANT DID NOT FILE HIS CLAIM UNTIL JANUARY 15, 1975, 190 DAYS AFTER HE HAD KNOWLEDGE THAT THE DISEASE WAS WORK-RELATED.

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

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 12, 1976, IS AFFIRMED.

WCB CASE NO. 75-1725 JULY 20, 1976

ESTHER YOST, CLAIMANT

GARY GALTON, CLAIMANT'S ATTY.
DENNIS VAVROSKY, 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 A CROSS REQUEST FOR REVIEW HAVING BEEN DULY FILED WITH THE WORKMEN'S COMPENSATION BOARD IN THE ABOVE ENTITLED MATTER BY THE EMPLOYER - CARRIER, AND SAID REQUESTS FOR REVIEW NOW 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.

SAIF CLAIM NO. B53689 JULY 20, 1976

CHARLES R. PECK, CLAIMANT

COONS, COLE AND ANDERSON,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

ON DECEMBER 17, 1975 CLAIMANT REQUESTED THE BOARD TO EXERCISE ITS OWN MOTION JURISDICTION AND REOPEN HIS CLAIM FOR AN INDUSTRIAL INJURY SUFFERED SOMETIME DURING THE EARLY PART OF 1964. THE REQUEST WAS SUPPORTED BY 25 ITEMS, MOSTLY MEDICAL REPORTS DATING FROM APRIL 22, 1964 TO JULY 26, 1975 - ALSO, AN AFFIDAVIT FROM THE CLAIMANT.

ON DECEMBER 20, 1975 THE STATE ACCIDENT INSURANCE FUND RESPONDED, STATING THE CLAIM WAS FAIRLY COMPLEX AND IT FELT IT SHOULD BE REFERRED TO THE HEARINGS DIVISION FOR THE TAKING OF TESTIMONY ON THE ISSUE OF EXTENT OF CLAIMANT'S PRESENT DISABILITY AS IT RELATED TO THE 1964 INDUSTRIAL INJURY. THE BOARD AGREED AND REFERRED THE MATTER WITH INSTRUCTIONS TO HOLD A HEARING TAKING EVIDENCE ON THE ISSUE. UPON CONCLUSION OF THE HEARING, THE REFEREE WAS DIRECTED TO CAUSE A TRANSCRIPT OF THE PROCEEDINGS TO BE PREPARED AND SUBMITTED TO THE BOARD TOGETHER WITH RECOMMENDATIONS.

ON MAY 24, 1976 A HEARING WAS HELD BEFORE REFEREE HENRY L. SEIFERT. AT THE CONCLUSION OF THE HEARING, HE SUBMITTED TO THE BOARD A TRANSCRIPT OF THE PROCEEDINGS TOGETHER WITH COPIES OF ALL OF THE EXHIBITS RECEIVED IN THE RECORD AND HIS RECOMMENDATIONS BASED UPON SUCH EVIDENCE.

THE REFEREE RECOMMENDED THAT CLAIMANT'S PRESENT CONDITION BE FOUND TO BE CAUSALLY RELATED TO THE 1964 INDUSTRIAL INJURY AND CLAIMANT FOUND TO BE TOTALLY AND PERMANENTLY DISABLED AS A RESULT OF SUCH INJURY.

THE BOARD, AFTER REVIEWING THE TRANSCRIPT AND ALL OF THE EVIDENCE BEFORE THE REFEREE AND CAREFULLY STUDYING HIS RECOMMENDATION, ADOPTS AS ITS OWN THE REFEREE'S RECOMMENDATIONS, A COPY OF WHICH IS ATTACHED HERETO AND, BY THIS REFERENCE, MADE A PART HEREOF.

ORDER

CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED, AS DEFINED BY ORS 656.206, AS OF THE DATE OF THIS ORDER.

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. 75-3615 JULY 20, 1976

EUGENE ANISZEWSKI, CLAIMANT

CONTENTIONS OF THE PARTIES -
STIPULATIONS OF THE PARTIES -
ORDER APPROVING DISPUTED CLAIM SETTLEMENT AND DISMISSING REQUEST FOR HEARING

THIS MATTER COMES ON REGULARLY BEFORE THE UNDERSIGNED REFEREE UPON THE STIPULATION OF THE PARTIES, CLAIMANT ACTING BY AND THROUGH HIS ATTORNEY, GARY L. CASE, AND THE EMPLOYER, STEINFIELD'S PRODUCTS COMPANY, AND CARRIER ACTING BY AND THROUGH THEIR ATTORNEY, ROGER WARREN. IT APPEARS THAT THE PARTIES HAVE MUTUALLY AGREED TO DISPOSE OF THEIR DIFFERENCE AS RAISED BY CLAIMANT'S REQUEST FOR HEARING, AND THAT THE MATTER SHOULD BE SETTLED ON THE FOLLOWING TERMS SUBJECT TO THE APPROVAL OF THE HEARING REFEREE.

SECTION I

(A) CLAIMANT'S CONTENTIONS

CLAIMANT CONTENDS THAT -

1. THAT ON JANUARY 4, 1968 CLAIMANT SUSTAINED AN INDUSTRIAL INJURY WHICH CAUSED CLAIMANT'S PRESENT MEDICAL CONDITION -
2. THAT CLAIMANT IS ENTITLED TO RECEIVE ADDITIONAL COMPENSATION (UNSCHEDULED) ON ACCOUNT THE INJURY OF JANUARY 4, 1968 AND JULY 31, 1969 - OF WHICH A REQUEST FOR HEARING WAS FILED ON BEHALF OF CLAIMANT. ON AUGUST 22, 1975 CARRIER FOR EMPLOYER REJECTED AND DENIED CLAIM. CLAIMANT REQUESTED TIMELY HEARING ON THE DENIAL AND DENIAL IS HELD IN ABEYANCE UNTIL BOARD'S OWN MOTION DECISION -
3. THAT CLAIMANT'S OWN MOTION REQUEST TO THE WORKMEN'S COMPENSATION BOARD IS MERITORIOUS. THAT CLAIMANT HAS MEDICAL AND LAY EVIDENCE TO SUPPORT HIS CLAIM.

(B) DEFENDANT'S CONTENTIONS

DEFENDANT CONTENDS THAT -

1. THAT ANY AND ALL MEDICAL PROBLEMS THAT CLAIMANT HAS, OR WILL HAVE IN THE FUTURE ARE NOT RELATED TO THE INDUSTRIAL INJURY OF EITHER JANUARY 4, 1968 OR JULY 31, 1969, AND HAS EVIDENCE TO SUPPORT POSITION.

SECTION II

STIPULATIONS OF THE PARTIES

THE PARTIES STIPULATE THAT –

1. A FULL AND FINAL SETTLEMENT HAS BEEN AGREED TO BY THE PARTIES –
2. THAT IN CONSIDERATION OF 8,800.00 DOLLARS PAID TO CLAIMANT BY AND ON BEHALF OF EMPLOYER, CLAIMANT FOREVER RELEASES EMPLOYER ON ACCOUNT OF ANY ADDITIONAL COMPENSATION FROM EMPLOYER –
3. THAT CLAIMANT'S CLAIM IS DOUBTFUL AND DISPUTED AND OUGHT TO BE, AND MAY BE, SETTLED AND DISPOSED OF AS A DOUBTFUL AND DISPUTED CLAIM IN THE MANNER AND UPON THE TERMS AND CONDITIONS SET FORTH IN SECTION III HEREOF WHICH FOLLOWS –
4. THAT CLAIMANT'S ATTORNEY HAS SPENT CONSIDERABLE TIME ON THIS MATTER, AND SHOULD BE AWARDED 25 PER CENT OF SETTLEMENT AS FAIR AND REASONABLE FEE.

SECTION III

FINDINGS AND ORDER

THE WORKMEN'S COMPENSATION BOARD HAVING CONSIDERED THE MATTER AND HAVING NOTED BOTH THE CONTENTIONS OF THE PARTIES AND THE STIPULATIONS OF THE PARTIES HEREINFORE SET FORTH PLUS ALL OF THE OTHER DOCUMENTS IN THE FILE, THE WORKMEN'S COMPENSATION BOARD FINDS THAT CLAIMANT'S CLAIM IS DOUBTFUL AND DISPUTED AND THAT THE PENDING REQUEST FOR HEARING AND BOARD'S OWN MOTION SHOULD BE SETTLED AND DISPOSED OF. THEREFORE, IT IS HEREBY ORDERED, THAT THE MATTER IS SETTLED AND DISPOSED OF UPON THE FOLLOWING CONDITIONS –

1. DEFENDANT SHALL PAY JOINTLY TO CLAIMANT AND TO CLAIMANT'S ATTORNEY THE SUM OF 8,800.00 DOLLARS AND CLAIMANT AND CLAIMANT'S ATTORNEY SHALL RECEIVE FROM DEFENDANT THE SUM OF 8,800.00 DOLLARS AS A FULL AND FINAL SETTLEMENT AND DISPOSITION ON A DISPUTED CLAIM BASIS OF CLAIMANT'S CLAIM AND REQUEST FOR HEARING, AND, BOARD'S OWN MOTION.
2. CLAIMANT'S ATTORNEY SHALL RECEIVE AND HAVE OUT OF SAID 8,800.00 DOLLARS THE SUM OF 2,000.00 DOLLARS AS AND FOR HIS ATTORNEY FEES.
3. CLAIMANT'S CLAIM SHALL BE, AND IS, IN A FINALLY DENIED STATUS AND HE SHALL HAVE NO FURTHER RIGHTS OF ANY KIND WHATSOEVER IN RELATION TO SAID CLAIM, EXCEPT FOR THOSE RIGHTS CLAIMANT HAS BY REASON OF ORS 656.245.
4. CLAIMANT'S REQUEST FOR HEARING IS DISMISSED WITH PREJUDICE.
5. CLAIMANT'S REQUEST FOR BOARD'S OWN MOTION IS DISMISSED WITH PREJUDICE.

IT IS FURTHER UNDERSTOOD AND AGREED TO BETWEEN CLAIMANT AND EMPLOYER THAT THE FOREGOING STIPULATION SHOULD NOT AND WILL NOT IN ANY WAY BE CONSTRUED AS A COMPROMISE OR RELEASE OF ANY RIGHTS THAT CLAIMANT MAY HAVE PRESENTLY OR IN THE FUTURE UNDER ORS 656.245.

WCB CASE NO. 76-1482 JULY 20, 1976

LUTHER M. JACOBSON, SR., CLAIMANT

STIPULATION AND ORDER OF SETTLEMENT
PURSUANT TO ORS 656.289(4)

THE PARTIES STIPULATE AS FOLLOWS -

(1) THAT ON OR ABOUT JULY 11, 1967, CLAIMANT SUFFERED AN INDUSTRIAL INJURY WHICH WAS INITIALLY CLOSED BY DETERMINATION ORDER DATED AUGUST 11, 1969. THE CLAIM WAS SUBSEQUENTLY REOPENED AND CLOSED BY A SECOND DETERMINATION ORDER DATED MARCH 18, 1974. ON NOVEMBER 15, 1974, THE BOARD ON ITS OWN MOTION REOPENED THE CLAIM. THE BOARD'S OWN MOTION ORDER DATED MARCH 11, 1976, GRANTED A PERIOD OF TEMPORARY TOTAL DISABILITY. THAT CLAIMANT FILED A REQUEST FOR HEARING WITH THE BOARD AND ALSO APPEALED TO THE CIRCUIT COURT OF THE STATE OF OREGON FOR JACKSON COUNTY. THE EMPLOYER MOVED TO QUASH THE REQUEST FOR HEARING. SAID MOTION WAS GRANTED ON MAY 3, 1976. A MOTION TO QUASH THE APPEAL TO CIRCUIT COURT IS NOW PENDING. CLAIMANT HAS APPEALED THE REFEREE'S ORDER OF MAY 3, 1976, TO THE BOARD.

(2) THAT THE CLAIMANT CONTENDS THAT SINCE THE BOARD REOPENED SAID CLAIM WITHIN ONE YEAR OF THE SECOND DETERMINATION ORDER HE IS ENTITLED TO A HEARING.

(3) THE EMPLOYER CONTENDS THAT CLAIMANT HAD NO RIGHT TO A HEARING FROM THE SECOND DETERMINATION ORDER SINCE HE WAIVED SAID RIGHT BY REQUESTING AND ACCEPTING A LUMP SUM PAYMENT OF THE AWARD. THAT CLAIMANT HAS NO RIGHT TO A HEARING FROM THE BOARD'S OWN MOTION ORDER OF MARCH 11, 1976, UNDER ORS 656.278.

(4) THAT IT APPEARS TO THE PARTIES THAT A BONA FIDE DISPUTE EXISTS AS TO THE CLAIMANT'S REQUEST FOR HEARING AND THAT THE MATTER SHOULD BE SETTLED BY A LUMP SUM PAYMENT OF 500 DOLLARS TO CLAIMANT BY CARRIER UNDER THE PROVISIONS OF ORS 656.289(4). THAT CLAIMANT FULLY UNDERSTANDS THAT SAID COMPROMISE IS IN FULL AND FINAL SETTLEMENT OF ANY CONTENTION THAT HE HAS ANY HEARING OR APPEAL RIGHTS FOR THE BOARD'S OWN MOTION ORDER OF MARCH 11, 1976.

(5) CLAIMANT'S REQUEST FOR HEARING, APPEAL TO THE BOARD, AND APPEAL TO CIRCUIT COURT SHALL BE DISMISSED WITH PREJUDICE.

(6) CLAIMANT'S ATTORNEY SHALL BE ALLOWED 125.00 DOLLARS ATTORNEY FEES, SAID SUM TO BE PAID FROM SAID SETTLEMENT PROCEEDS.

ORDER

THE MATTER HAVING COME BEFORE THE BOARD ON THE STIPULATION OF THE PARTIES AND BEING FULLY ADVISED, IT IS HEREBY

ORDERED THAT SAID SETTLEMENT IS APPROVED, CLAIMANT'S REQUEST FOR HEARING AND APPEAL BE DISMISSED WITH PREJUDICED.

WCB CASE NO. 75-23-E JULY 20, 1976

CHARLES R. MILLER, CLAIMANT

CHARLES PAULSON, CLAIMANT'S ATTY.
CRAIG IVERSON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE EMPLOYER SEEKS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER MAILED MAY 10, 1974 WHEREBY CLAIMANT WAS AWARDED COMPENSATION FOR PERMANENT TOTAL DISABILITY.

CLAIMANT, WHO HAD BEEN A TRUCK DRIVER FOR THE EMPLOYER FOR THE PERIOD OF FOUR YEARS, SUFFERED A COMPENSABLE INJURY ON OCTOBER 13, 1972 WHEN BOXES OF GUM APPROXIMATELY 12 FEET HIGH FELL STRIKING HIM ON HIS CHEST AND ACROSS HIS SHOULDERS AND ANKLES. AT THE TIME OF THE INJURY CLAIMANT WAS LOADING A TRAILER WITH CASES OF GUM WHICH WEIGHED APPROXIMATELY 30 TO 80 POUNDS. THE INJURY WAS DIAGNOSED AS COMPRESSION FRACTURES OF T3, T5 AND T8 WITH DEGENERATIVE DISC DISEASE OF L5-S1 - CLAIMANT WAS ALSO OBSERVED FOR A THORACIC SPINE LESION AND CHECKED FOR THE PRESENCE OF CANCER, BOTH TESTS WERE NEGATIVE.

CLAIMANT HAD HAD NO HISTORY OF BACK INJURIES UNTIL MARCH 6, 1972 WHEN HE FELT SOMETHING GIVE IN HIS LOW BACK WHILE MOVING A LARGE CRATE. FOR THIS INJURY CLAIMANT WAS AWARDED COMPENSATION FOR TIME LOSS FROM MARCH 7, 1972 THROUGH JULY 6, 1972 ONLY.

CLAIMANT WAS EXAMINED BY THE BACK EVALUATION CLINIC ON AUGUST 23, 1973 - HE PREVIOUSLY HAD BEEN EXAMINED AND-OR TREATED BY DR. MINTZ, DR. BRODEUR, AND DR. BOYDEN AND THERE WAS A CONCURRENCE OF DIAGNOSIS OF CONTUSION OF THE DORSAL SPINE AND COMPRESSION FRACTURES OF THE THIRD AND FIFTH DORSAL VERTEBRA. DR. BOYDEN ALSO PRESCRIBED A LARGE BACK BRACE TO BE WORN BY CLAIMANT AND PHYSIOTHERAPY IN THE FORM OF ULTRA-SOUND AND ACTIVE MASSAGE, TOGETHER WITH PAIN TABLETS AND MUSCLE RELAXANTS. THE MEMBERS OF THE BACK EVALUATION CLINIC RECOMMENDED, AFTER EXAMINATION OF THE CLAIMANT AND REVIEW OF HIS MEDICAL HISTORY, NO SURGICAL, ORTHOPEDIC OR NEUROLOGICAL TREATMENT. IT WAS FELT THAT CLAIMANT SHOULD CONTINUE TO RECEIVE MEDICAL CARE FOR HIS PRE-EXISTING CONDITION OF OSTEOPOROSIS AND SHOULD CONTINUE WEARING THE BRACE PRESCRIBED BY DR. BOYDEN AT LEAST PART OF THE TIME AND AS INDICATED BY HIS SYMPTOMS. CLAIMANT WAS CONSIDERED MEDICALLY STATIONARY, HE WOULD NOT BE ABLE TO RETURN TO THE SAME OCCUPATION AT THAT TIME BUT HE SHOULD BE ABLE TO RETURN TO SOME OTHER OCCUPATION IF HE COULD WEAR THE BRACE AS NECESSARY. THE LOSS OF FUNCTION AS RELATED TO THE INJURY WAS IN THE REGION OF MILD, THE TOTAL LOSS WAS CONSIDERED MILDLY MODERATE IF THE PRE-EXISTING OSTEOPOROSIS WAS INCLUDED.

THE REFEREE HAD CONDUCTED A HEARING ON JUNE 6, 1973 WHICH INVOLVED CLAIMANT AND WAS SHORTLY BEFORE CLAIMANT WAS EXAMINED BY THE BACK EVALUATION CLINIC - HE AGAIN SAW CLAIMANT AT THE HEARING ON JUNE 10, 1975. THE REFEREE STATED THAT CLAIMANT HAD LOST BETWEEN 40 AND 50 POUNDS BETWEEN THOSE TWO DATES AND WAS STILL LOSING WEIGHT AND HAD AGED CONSIDERABLY. HE ALSO STATED THAT CLAIMANT'S WIFE DESCRIBED CLAIMANT AS A MAN GOING FROM SOMEBODY WHO WAS VERY PHYSICALLY ACTIVE AND ROBUST AND IN GOOD HEALTH PRIOR TO THE INDUSTRIAL INJURY TO A MAN ACTING LIKE HE WAS 80 YEARS OF AGE. THE REFEREE COMPLETELY AGREED WITH HER, HE FELT THAT A READING OF ALL THE REPORTS OF THE DOCTORS DID NOT PRESENT A PICTURE OF THE MAN PRESENT AT THAT JUNE 10, 1975 HEARING.

THE REFEREE FOUND THAT THE CLAIMANT WAS STILL TAKING CONSIDERABLE PRESCRIPTIVE DRUGS, MINERALS AND VITAMINS AND RECEIVING B12

HORMONE SHOTS, THAT CLAIMANT HAD HAD NO ALCOHOL FOR OVER TWO YEARS. CLAIMANT WAS STILL COMPLAINING OF CONSTANT BURNING IN HIS THORACIC SPINE AREA. HE IS 51 YEARS OLD AND WEARS HIS BACK BRACE EVERY DAY. CLAIMANT STATED HE COULD NOT THINK OF ANY JOB HE COULD DO IN HIS PRESENT CONDITION BECAUSE HE IS UNABLE TO WORK AROUND THE HOME AND IS UNABLE TO COMPLETE MORE THAN FIVE MINUTES OF WASHING DISHES OR ANY OTHER ACTIVITY.

AT THE HEARING THE EMPLOYER RAISED THE QUESTION AS TO THE BURDEN OF PROOF AND THE REFEREE RULED THAT THE BURDEN OF PROOF WAS UPON THE APPEALING PARTY, THE EMPLOYER, TO OVERTHROW THE PRESUMED VALIDITY OF THE DETERMINATION ORDER.

THE REFEREE FURTHER CONCLUDED THAT THE AWARD OF PERMANENT TOTAL DISABILITY MADE BY THE DETERMINATION ORDER OF MAY 10, 1974 WAS WELL FOUNDED AND SHOULD BE AFFIRMED.

THE BOARD, ON DE NOVO REVIEW, DISAGREES. IT WOULD APPEAR THAT THE REFEREE GAVE THE GREATEST WEIGHT TO HIS OBSERVATION OF CLAIMANT ON JUNE 10, 1975 WHEN HE NOTICED THE SUBSTANTIAL WEIGHT LOSS SINCE HE HAD SEEN HIM ON JUNE 6, 1973 AND ALSO GAVE GREAT WEIGHT TO THE CLAIMANT'S WIFE'S DESCRIPTION OF CLAIMANT'S SLOWLY DETERIORATING CONDITION.

THE REFEREE SAYS A READING OF ALL THE MEDICAL REPORTS DOES NOT PRESENT THE PICTURE OF THE CLAIMANT HE OBSERVED AT THE HEARING - THE BOARD FINDS THAT A READING OF THE MEDICAL REPORTS CERTAINLY DOES NOT JUSTIFY A FINDING OF PERMANENT TOTAL DISABILITY. CLAIMANT TOLD DR. TROMMALD ON JULY 23, 1973, THAT HE HAD LOST APPROXIMATELY 25 POUNDS, DROPPING TO 150 POUNDS BUT THAT ON THAT DATE HE WEIGHED 160 POUNDS WHICH WAS HIS 'WORKING WEIGHT'. CLAIMANT STATED HIS WEIGHT HAD BEEN AS HIGH AS 210 POUNDS THREE YEARS PREVIOUS AND HE STARTED LOSING WHEN HE COMMENCED WORKING ON THE DOCK WHICH HE DID BECAUSE HE WAS TOO NERVOUS TO ENJOY TRUCK DRIVING. CLAIMANT TOLD DR. TROMMALD HE WOULD LIKE TO RETURN TO HIS WORK AS A DOCKMAN LOADING AND UNLOADING. DR. TROMMALD, UPON INTERVIEWING CLAIMANT, FOUND HIM TO BE VERY COOPERATIVE AND A RATHER INTELLIGENT 48 YEAR OLD MAN IN NO GREAT PAIN OR DISTRESS AS LONG AS HE WAS NOT MOVING. HE HAD NO SLURRING OF SPEECH AND HIS EYES WERE CLEAR. CLAIMANT ADVISED HIM THAT HE HAD NOT HAD A DRINK IN THE PAST SEVEN MONTHS ALTHOUGH HE ADMITTED THAT PRIOR THERETO HE HAD BEEN AVERAGING A PINT A DAY AND SMOKING APPROXIMATELY TWO PACKAGES OF CIGARETTES A DAY. CLAIMANT TAKES SUBSTANTIAL MEDICATION BUT HAS APPARENTLY ADOPTED A REMARKABLE TOLERANCE TO THE DRUGS, DR. TROMMALD CAUTIONED HIM THAT HE SHOULD TRY TO GIVE THEM UP AS SOON AS POSSIBLE ON A GRADUAL BASIS.

IT WAS AT THIS TIME THAT DR. TROMMALD SUGGESTED TO DR. MCKIRDIE THAT CLAIMANT BE SENT TO GOOD SAMARITAN HOSPITAL FOR FURTHER DIAGNOSIS. DR. STEPHENS EXAMINED CLAIMANT AT THE REQUEST OF DR. MCKIRDIE BECAUSE OF BACK PAIN AND THE PRESENCE OF A NUMBER OF DORSAL VERTEBRA FRACTURES, ASSOCIATED WITH THE PICTURE OF OSTEOPOROSIS ON X-RAY STUDIES. DR. STEPHENS, AFTER EXAMINATION, FELT THAT CLAIMANT HAD WHAT WOULD HAVE TO BE CALLED IDIOPATHIC OSTEOPOROSIS, PROCEEDED BY A HISTORY OF LONG ETHANOL (ALCOHOL) USE ASSOCIATED WITH A POOR DIETARY HISTORY. MILK HAD BEEN USED VERY INFREQUENTLY IN CLAIMANT'S DIET AND HE HAD A HISTORY OF LONG PERIODS OF SKIPPING MEALS AND FREQUENTLY NOT HAVING HAD MEAT FOR A NUMBER OF MEALS NOR CONSUMING FRUIT WITH ANY REGULARITY. FOR THESE REASONS, DR. STEPHENS SUGGESTED THAT CLAIMANT CONTINUE UNDER THE OBSERVATION OF HIS PHYSICIANS AND CONTINUE TO WEAR HIS BACK BRACE AND HE PRESCRIBED CERTAIN MEDICATIONS PRIMARILY IN THE NATURE OF A NUTRITIONAL ADDITIVE.

DR. HICKMAN, AFTER A PSYCHOLOGICAL EVALUATION OF CLAIMANT,

RECOMMENDED THAT, IF PHYSICALLY ABLE, CLAIMANT SHOULD RETURN TO HIS FORMER OCCUPATION, IF NOT, HE STRONGLY RECOMMENDED REFERRAL TO THE VOCATIONAL REHABILITATION DIVISION FOR CAREFUL EDUCATION AND VOCATIONAL COUNSELING. AS PREVIOUSLY MENTIONED, THE MEMBERS OF THE BACK EVALUATION CLINIC HAD FOUND CLAIMANT'S LOSS OF FUNCTION DUE TO HIS INDUSTRIAL INJURY IN THE REGION OF MILD AND MILDLY MODERATE IF THE OSTEOPOROSIS WAS INCLUDED, ALTHOUGH CLAIMANT COULD NOT RETURN TO HIS OLD OCCUPATION THAT HE SHOULD BE ABLE TO RETURN TO SOME OTHER OCCUPATION IF HE COULD CONTINUE TO WEAR HIS BRACE AS REQUIRED.

AFTER THIS EXAMINATION CLAIMANT WAS EXAMINED BY DR. BEALS WHO NOTED THAT MANY OF THE PHYSICIANS WHO HAD SEEN AND-OR TREATED CLAIMANT HAD FELT HE MIGHT HAVE NEOPLASTIC OR METABOLIC DISEASE, IN ADDITION TO TRAUMA. MANY INVESTIGATIONS FAILED TO REVEAL SUCH A DISEASE. DR. BEALS FELT THAT AT THAT TIME CLAIMANT WAS NOT EXPERIENCING FURTHER VERTEBRAL COLLAPSE BUT WAS STILL SEVERELY DISABLED AND PROBABLY SLOWLY WORSENING. THE ONLY SPECIFIC FEATURE HE COULD IDENTIFY AS BEING DIFFERENT FROM THOSE FOUND AS A RESULT OF PREVIOUS EVALUATIONS WAS A DIFFUSE LYMPHADENOPOTHY INCLUDING SUPER CLAVICAL NODES. HE ADVISED A DIAGNOSTIC BIOPSY OF THE NODE. HIS BEST WORKING DIAGNOSIS WAS ALEUKEMIC LEUKEMIA BUT HE WASN'T SURE THIS WAS RELATED TO THE INDUSTRIAL INJURY AND SUGGESTED THAT CLAIMANT DISCUSS THIS WITH HIS PHYSICIAN, DR. MINTZ. THERE IS NO EVIDENCE THAT A DISCUSSION WAS HAD NOR IS THERE ANY EVIDENCE THAT A BIOPSY WAS PERFORMED. SUBSEQUENTLY, CLAIMANT WAS EXAMINED BY DR. MARXER WHO FOUND A COLLAPSE OF THE VERTEBRAL BODIES OF D3, D5, D7, D8 WITH QUESTIONABLE NARROWING OF D9, CAUSE UNKNOWN. WHETHER THE COMPRESSION OF THE ABOVE MENTIONED DORSAL SPINE WAS RELATED TO THE INDUSTRIAL ACCIDENT HE WAS UNABLE TO TELL WITHOUT OBSERVING THE ORIGINAL X-RAYS TAKEN IN EITHER NOVEMBER OR OCTOBER, 1972. HE FELT THAT IF THEY WERE OLD THEN CLAIMANT WAS ABLE TO RETURN TO WORK, HE ALSO FELT THAT CLAIMANT, EVEN AT THAT TIME, COULD DO SOME LIGHT WORK. HIS FINDINGS WERE VERY MINIMAL RELATIVE TO ANY TYPE OF INJURY ALTHOUGH CLAIMANT'S SUBJECTIVE SYMPTOMS SEEM TO BE QUITE GREAT.

DR. HICKMAN AGAIN SAW CLAIMANT FOR A FOLLOWUP PSYCHOLOGICAL EXAMINATION ON DECEMBER 16, 1974. HIS PROGNOSIS FOR RESTORATION AND REHABILITATION OF CLAIMANT WAS POOR AS FAR AS PSYCHOLOGICAL FACTORS WERE CONCERNED - CLAIMANT HAS NOT WORKED SINCE HIS INDUSTRIAL ACCIDENT IN OCTOBER, 1972. DR. HICKMAN SAID THAT CLAIMANT FELT HE WOULD NOT BE ABLE TO RETURN TO WORK, CLAIMANT IS VIRTUALLY A PSYCHOLOGICAL INVALID. AT LEAST HE HAS PSYCHOLOGICALLY WITHDRAWN FROM THE WORK FORCE, WITH HIS CONVICTION THAT HE IS NOT ABLE TO DO ANY KIND OF WORK. AS LONG AS CLAIMANT CONTINUES TO THINK OF HIMSELF AS SO SEVERELY DISABLED IT IS HIGHLY UNLIKELY THAT HE WILL EVER RETURN TO GAINFUL EMPLOYMENT. CLAIMANT IS SERIOUSLY PREOCCUPIED WITH HIS SYMPTOMS AND HIGHLY OVER-FOCUSED ON THEM. DR. HICKMAN CONCLUDED THAT THE CLAIMANT HAD NO INTENTION OF EVER RETURNING TO WORK BUT HE WAS UNABLE TO FIND MORE THAN A MODERATE RELATIONSHIP BETWEEN CLAIMANT'S INDUSTRIAL ACCIDENT AND HIS EXISTING PSYCHOPATHOLOGY AND HE FOUND NO REASON TO BELIEVE THAT ANY PSYCHOPATHOLOGY SPECIFICALLY RELATED TO THE INDUSTRIAL ACCIDENT WOULD BE PERMANENT IF CLAIMANT WOULD DEAL MORE EFFECTIVELY WITH HIS VOCATIONAL PROBLEMS. DR. HICKMAN FELT THAT CLAIMANT HAD A VERY WEAK PERSONALITY AND THERE WAS CERTAINLY SOME BASIS FOR WONDERING IF CLAIMANT WAS CONSCIOUSLY EXAGGERATING HIS SYMPTOMS FOR COMPENSATION PURPOSES. IN A FOLLOWUP EXAMINATION REPORT DR. HICKMAN REITERATED THAT THERE WAS STILL NO MORE THAN A MILD RELATIONSHIP BETWEEN THE INDUSTRIAL INJURY AND CLAIMANT'S CURRENT PSYCHOPATHOLOGY.

THE BOARD CONCLUDES THAT THE MEDICAL REPORTS AND PSYCHOLOGICAL EVALUATIONS SIMPLY DO NOT SUPPORT A FINDING OF PERMANENT TOTAL DISABILITY. THE REFEREE APPARENTLY BASED HIS AFFIRMANCE OF THE DETERMINATION ORDER WHICH AWARDED PERMANENT TOTAL DISABILITY SOLELY UPON

HIS OBSERVATION OF CLAIMANT AT THE HEARING ON JUNE 10, 1975 AND COMPARING IT WITH CLAIMANT'S APPEARANCE ON JUNE 6, 1973 WHEN HE HAD ALSO OBSERVED HIM. HE GAVE GREAT WEIGHT TO THE FACT THAT CLAIMANT HAD LOST SUBSTANTIAL WEIGHT AND AGED CONSIDERABLY - HE ALSO GAVE GREAT WEIGHT TO DESCRIPTION GIVEN BY CLAIMANT'S WIFE OF CLAIMANT'S PRESENT CONDITION. THE BOARD FEELS THAT THE CONTENT OF THE MEDICAL RECORDS MUST BE GIVEN GREATER CONSIDERATION IN THIS CASE THAN THE OBSERVATION OF THE REFEREE. DR. STEPHENS, FOR EXAMPLE, STATES THAT CLAIMANT HAS WHAT WOULD HAVE TO BE CALLED 'IDIOPATHIC OSTEOPOROSIS' BROUGHT ABOUT BY A LONG HISTORY OF DISABUSE OF HIS BODY THROUGH POOR EATING AND DRINKING HABITS.

THE BACK EVALUATION CLINIC FOUND THE LOSS OF FUNCTION, AS RELATED TO THE THORACIC SPINE, INCLUDING THE OSTEOPOROSIS, WAS MILDLY MODERATE AND WITH RESPECT TO THE INDUSTRIAL INJURY ONLY MILD. DR. MARXERS FINDINGS WERE VERY MINIMAL RELATIVE TO ANY TYPE OF AN INJURY ALTHOUGH CLAIMANT'S OBJECTIVE SYMPTOMS APPARENTLY WERE QUITE GREAT. HE FELT THAT CLAIMANT WAS ABLE AT THAT TIME TO RETURN TO SOME TYPE OF LIGHT WORK.

THE BOARD AGREES WITH THE REFEREE THAT THE EMPLOYER, HAVING QUESTIONED THE DETERMINATION ORDER, HAS THE BURDEN OF PROVING THAT THE AWARD MADE THEREBY WAS IMPROPER, BUT DOES NOT AGREE THAT CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED.

AS A RESULT OF HIS INDUSTRIAL INJURY OF OCTOBER 13, 1972 CLAIMANT HAS SUFFERED A SUBSTANTIAL LOSS OF EARNING CAPACITY, ALTHOUGH MUCH OF THIS LOSS CAN BE ATTRIBUTED TO CLAIMANT'S LACK OF MOTIVATION TO SEEK ANY TYPE OF RETRAINING AND HIS REFUSAL TO ATTEMPT ANY TYPE OF LIGHT WORK WITHIN HIS PHYSICAL CAPABILITIES. THE BOARD CONCLUDES THAT CLAIMANT WOULD BE ADEQUATELY AWARDED FOR HIS PRESENT LOSS OF WAGE EARNING CAPACITY BY AN AWARD OF 160 DEGREES WHICH REPRESENTS 50 PER CENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR HIS UNSCHEDULED DISABILITY.

THE REFEREE ALSO DIRECTED THE EMPLOYER TO PAY FOR ALL PRESCRIPTIONS EXPENSES PERTAINING TO THE MANAGEMENT OF CLAIMANT'S DORSAL COMPRESSION FRACTURE RESIDUALS WHICH WERE INTERTWINED WITH THE OSTEOPOROSIS AND AS OUTLINED BY DR. MINTZ'S LETTER OF JANUARY 20, 1976.

ORS 656.245 PROVIDES THAT A DIRECT RESPONSIBILITY EMPLOYER MUST PROVIDE MEDICAL SERVICES FOR CONDITIONS RESULTING FROM A COMPENSABLE INJURY AND THIS INCLUDES DRUGS AND MEDICINE. THE EMPLOYER CONTENDS THAT IN ORDER TO BE COMPENSABLE THE MEDICAL EXPENSES MUST BE FOR CONDITIONS WHICH RESULT FROM A COMPENSABLE INJURY AS OPPOSED TO A PRE-EXISTING DISABILITY AND THAT THE MEDICATIONS DESCRIBED IN DR. MINTZ'S LETTER OF JANUARY 20, 1976 AND THE ATTACHMENTS THERETO, ARE INTENDED TO TREAT ONLY THE PRE-EXISTING OSTEOPOROSIS AND, THEREFORE, THE EMPLOYER NO LONGER SHOULD BE REQUIRED TO CONTINUE PAYING FOR THIS MEDICATION.

THE BOARD FINDS IT VERY DIFFICULT TO DISTINGUISH BETWEEN THE MEDICATIONS PRESCRIBED FOR THE SYMPTOMS RELATING TO THE INDUSTRIAL INJURY AND THOSE PRESCRIBED FOR PRE-EXISTING OSTEOPOROSIS. OBVIOUSLY, THE VALIUM IS PRESCRIBED FOR CONTROL OF MUSCLE SPASMS AND PAIN AND THE DRIXORAL IS PRESCRIBED FOR THE CONGESTION OF THE LUNGS WHICH FOLLOWED THE CHEST INJURY - HOWEVER, THE PRESCRIPTIONS OF DICALCIUM PHOSPHATE, DIANOBLE AND SODIUM FLORIDE APPARENTLY ARE PRESCRIBED FOR CLAIMANT'S OSTEOPOROSIS.

THE BOARD CONCLUDES THAT THE EMPLOYER IS RESPONSIBLE ONLY FOR THE MEDICATION NECESSARY FOR THE CONTINUED TREATMENT OF CLAIMANT'S CONDITION AS IT RESULTS DIRECTLY FROM HIS INDUSTRIAL INJURY OF OCTOBER 13,

1972. CLAIMANT SHALL SUBMIT TO THE EMPLOYER, AND ITS CARRIER, AN AMENDED MEDICAL EXPENSE CLAIM SHOWING ONLY THOSE PRESCRIPTIONS WHICH RELATE TO CLAIMANT'S COMPENSABLE INJURY OF OCTOBER 13, 1972. THE EMPLOYER SHALL PAY DR. MINTZ' BILL IN THE AMOUNT OF 30 DOLLARS INASMUCH AS HE REVIEWED THE RECORD AS TO PRESCRIPTIONS AND REPORTED SAME TO THE REFEREE, PURSUANT TO A REQUEST MADE AT THE HEARING BY THE EMPLOYER.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 23, 1976, IS REVERSED.

CLAIMANT IS AWARDED 160 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED DISABILITY, EFFECTIVE MAY 1, 1974. THIS IS IN LIEU OF THE DETERMINATION ORDER, MAILED MAY 10, 1974, WHEREBY CLAIMANT WAS AWARDED PERMANENT TOTAL DISABILITY, EFFECTIVE MAY 1, 1974 AND WHICH WAS AFFIRMED BY THE REFEREE'S ORDER OF JANUARY 23, 1976.

THE EMPLOYER SHALL BE ALLOWED TO APPLY ITS PAYMENTS OF COMPENSATION FOR PERMANENT TOTAL DISABILITY, COMMENCING MAY 1, 1974 AND PAID THROUGH THE DATE OF THIS ORDER, ON ITS LIABILITY FOR COMPENSATION FOR PERMANENT PARTIAL DISABILITY AWARDED BY THIS ORDER.

DR. MINTZ' BILL DATED JANUARY 20, 1976 IN THE AMOUNT OF 30 DOLLARS SHALL BE PAID BY THE EMPLOYER.

WCB CASE NO. 76-294 JULY 20, 1976

RICHARD M. OLSON, CLAIMANT

HUGH K. COLE, JR., CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER REMANDING FOR HEARING

ON OR ABOUT JANUARY 25, 1955 CLAIMANT SUSTAINED AN INDUSTRIAL INJURY TO HIS LOW BACK WHILE EMPLOYED BY NATIONAL CASH REGISTER CO. AFTER A LAMINECTOMY AND FUSION, INFECTION DEVELOPED WHICH RESULTED IN A CONDITION OF OSTEOMYOLITIS WHICH WAS ACCEPTED AS COMPENSABLY RELATED BY STATE INDUSTRIAL ACCIDENT COMMISSION. AS A CONSEQUENCE OF THE INDUSTRIAL INJURY AND THE RESULT OF OSTEOMYOLITIS, CLAIMANT WAS AWARDED COMPENSATION EQUAL TO 55 PER CENT LOSS FUNCTION OF AN ARM WHICH, UPON APPEAL, WAS INCREASED TO 75 PER CENT LOSS OF FUNCTION OF AN ARM BY A JUDGMENT ORDER, ENTERED SEPTEMBER 5, 1957. CLAIMANT RECEIVED NO FURTHER DISABILITY COMPENSATION ON ACCOUNT OF HIS INDUSTRIAL INJURY SAVE AND EXCEPT PAYMENT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY DURING 1975, TOGETHER WITH PAYMENT OF CERTAIN MEDICAL EXPENSES.

CLAIMANT CONTENDS THAT THE OSTEOMYOLITIS CONDITION HAS CONTINUED IN STAGES OF EXACERBATION AND REMISSION TO THE PRESENT TIME. ON SEVERAL OCCASIONS FROM 1957 AND 1975 THIS CONDITION REQUIRED MEDICAL TREATMENT BUT REOPENINGS OF CLAIMANT'S CLAIM WERE REFUSED. CLAIMANT'S AGGRAVATION RIGHTS HAVE EXPIRED.

ON JUNE 1, 1976 CLAIMANT REQUESTED THE BOARD TO EXERCISE ITS OWN MOTION JURISDICTION, PURSUANT TO ORS 656.278, AND REOPEN HIS CLAIM FOR FURTHER COMPENSATION. IN SUPPORT OF HIS REQUEST CLAIMANT SUBMITTED MEDICAL REPORTS FROM DOCTORS WOOLPEST, MILLS AND SPATARO - ALSO HIS OWN AFFIDAVIT AND THE AFFIDAVIT OF HIS WIFE SETTING FORTH THE CIRCUMSTANCES OF CLAIMANT'S MEDICAL CONDITION BETWEEN 1957 AND 1975.

ON JANUARY 16, 1976 CLAIMANT REQUESTED A HEARING RELATING TO THIS CLAIM, SPECIFICALLY, ON THE ISSUE OF THE PROPRIETY OF THE STATE ACCIDENT INSURANCE FUND'S CLAIM CLOSURE WITHOUT ADDITIONAL AWARD OF PERMANENT DISABILITY. THE FUND HAD VOLUNTARILY CLOSED THE CLAIM WITHOUT SUBMITTING IT TO EVALUATION DIVISION, FOR A DETERMINATION PURSUANT TO ORS 656.278.

THE EVIDENCE BEFORE THE BOARD AT THE PRESENT TIME IS NOT SUFFICIENT FOR IT TO DETERMINE THE MERITS OF THE REQUEST TO REOPEN THE 1955 CLAIM, THEREFORE, THE MATTER IS REFERRED TO THE HEARINGS DIVISION WITH INSTRUCTIONS TO HOLD A HEARING, TAKE EVIDENCE, ON THE MERITS OF THE REQUEST TO REOPEN AND ALSO THE PROPRIETY OF THE UNILATERAL CLAIM CLOSURE BY THE FUND.

UPON CONCLUSION OF THE HEARING, THE REFEREE SHALL CAUSE A TRANSCRIPT OF THE PROCEEDINGS TO BE PREPARED AND SUBMITTED TO THE BOARD TOGETHER WITH A RECOMMENDATION ON BOTH ISSUES.

CLAIM NO. 05X—005891 JULY 20, 1976

ROBERT CHENEY, CLAIMANT

WARNER ALLEN, CLAIMANT'S ATTY.
ORDER OF DISMISSAL ON REQUEST FOR OWN MOTION

ON MAY 13, 1976 CLAIMANT, THROUGH HIS ATTORNEY, REQUESTED THE BOARD TO EXERCISE ITS OWN MOTION JURISDICTION PURSUANT TO ORS 656.278 AND REOPEN HIS 1968 CLAIM.

THE BOARD WAS ADVISED BY THE CARRIER, ARGONAUT INSURANCE COMPANY, THAT IT WILL PAY CLAIMANT'S MEDICAL EXPENSES. CLAIMANT'S ATTORNEY WAS ADVISED OF THIS AND INDICATED, ON JUNE 9, 1976, THAT HE WOULD ADVISE THE BOARD IF THIS WAS SATISFACTORY.

REPEATED TELEPHONE CALLS HAVE BEEN MADE TO THE CLAIMANT'S ATTORNEY BUT NO ACTION HAS BEEN TAKEN BY HIM, THEREFORE, THE BOARD CONCLUDES THAT CLAIMANT'S MEDICAL EXPENSES PAID BY THE CARRIER WAS SATISFACTORY AND THE REQUEST TO REOPEN UNDER THE BOARD'S OWN MOTION JURISDICTION SHOULD BE DISMISSED.

IT IS THEREFORE ORDERED THAT THE REQUEST TO REOPEN CLAIMANT'S CLAIM UNDER THE BOARDS OWN MOTION JURISDICTION NOW PENDING BEFORE THE BOARD IS HEREBY DISMISSED.

WCB CASE NO. 75—3742 JULY 21, 1976

THE BENEFICIARIES OF
KENNETH ALLEN, DECEASED

JAMES HUEGLI, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY BENEFICIARIES

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE BENEFICIARIES OF KENNETH ALLEN, DECEASED, HEREINAFTER CALLED CLAIMANT, REQUESTED BOARD REVIEW OF THE REFEREE'S ORDER WHICH SUSTAINED THE DENIAL OF THE EMPLOYER.

DECEDENT WAS 24 YEARS OLD AND EMPLOYED AS A SECURITY PATROLMAN BY MT. HOOD COMMUNITY COLLEGE AT THE TIME OF HIS DEATH. HIS WORK HOURS WERE FROM 8.00 A.M. TO 4.00 P.M., WITH TWO 15 MINUTE COFFEE BREAKS AND A 30 MINUTE LUNCH BREAK - THESE BREAKS COULD BE TAKEN AT ANY TIME, BUT HE WAS REQUIRED TO CARRY A TRANSCEIVER WITH HIM AT ALL TIMES WHEREBY HE COULD BE CALLED BACK TO THE SITE IF ANY PROBLEM SHOULD ARISE. HE USUALLY LUNCHED AT HOME, TWO MILES FROM THE COLLEGE.

ON JULY 1, 1975 AT 10.00 A.M. THE WORKMAN INFORMED THE SWITCHBOARD OPERATOR HE WAS TAKING AN EARLY LUNCH AND WAS GOING TO THE PORTLAND TEACHERS CREDIT UNION, A SHORT DISTANCE AWAY, BUT THAT HIS RADIO WOULD BE TURNED ON WHILE HE WAS OFF CAMPUS. ON HIS WAY TO THE CREDIT UNION, IN HIS PERSONAL AUTOMOBILE, HE WAS KILLED WHEN HIS AUTOMOBILE WAS DEMOLISHED BY A LOG TRUCK WHICH RAN A RED LIGHT.

CLAIMANT CONTENDS THE CIRCUMSTANCES CONSTITUTE AN EXCEPTION TO THE 'GOING AND COMING RULE' AS THE WORKMAN WAS ON A 'DUAL PURPOSE TRIP' - WAS CARRYING IMPEDIMENTA OF HIS EMPLOYMENT AND WAS PAID FOR HIS LUNCH HOUR. FURTHERMORE, SINCE THE WORKMAN WAS REQUIRED TO RESPOND TO ANY RADIO CALL, A RETENTION OF CONTROL EXISTED WHICH CONVERTED THE MISSION TO A BUSINESS TRIP IN WHICH DECEDENT WAS RENDERING SERVICE TO THE EMPLOYER.

THE REFEREE FOUND THAT IN THIS CASE THE WORKMAN WAS ON A MISSION WHICH WAS PURELY PERSONAL, HE WAS NOT ON THE EMPLOYER'S PREMISES NOR WAS HE PERFORMING THE REGULAR FUNCTIONS OF HIS JOB AT THE TIME HE MET HIS DEATH.

THE REFEREE CONCLUDED THAT THE FACT THAT THE WORKMAN'S DUTIES DID NOT REQUIRE THAT HE TRAVEL OFF CAMPUS AND THAT HIS DEATH OCCURRED WHILE HE WAS DRIVING HIS OWN AUTOMOBILE FOR THE PURPOSE OF DOING A PERSONAL ERRAND OUT-WEIGHED THE FACT THAT HE WAS ON PAID TIME AND CARRYING THE MEANS BY WHICH HE COULD BE RECALLED TO THE CAMPUS, I.E., THE RADIO. THEREFORE, THE WORKMAN'S DEATH AROSE IN (UNDERSCORED) THE COURSE OF EMPLOYMENT BUT IT DID NOT ARISE OUT (UNDERSCORED) OF SUCH EMPLOYMENT BECAUSE NO BENEFIT ACCRUED NOR WAS INTENDED TO ACCRUE TO THE EMPLOYER.

THE REFEREE ASSESSED NO PENALTIES NOR AWARDED ATTORNEY FEES AS THE EMPLOYER ACTED AS SOON AS IT WAS AWARE OF THE CLAIM. NEITHER THE CLAIMANT NOR ANYONE IN HER BEHALF HAD FILED A CLAIM PRIOR TO CLAIMANT'S REQUEST FOR A HEARING ON SEPTEMBER 8, 1975. UNDER THE RULE SET FORTH IN PRINTZ V. SCD (UNDERSCORED), 253 OR 148, THE FORM 801 WHICH WAS SIGNED BY THE EMPLOYER ON JULY 2, 1975 DOES NOT CONSTITUTE A CLAIM WHICH MUST BE ACCEPTED OR DENIED WITHIN 60 DAYS, BUT WHEN CLAIMANT REQUESTED A HEARING SHE ADOPTED THE EMPLOYER'S 801 AS HER OWN, THEREFORE, THE DENIAL THREE DAYS AFTER THE DATE OF SAID REQUEST WAS TIMELY.

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

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 12, 1976, IS AFFIRMED.

WCB CASE NO. 75-2513 JULY 21, 1976

JACK H. ADDIE, CLAIMANT

THOMAS DAVIS, CLAIMANT'S ATTY.
ROGER WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER AFFIRMING A SECOND DETERMINATION ORDER, MAILED APRIL 15, 1975, AWARDING CLAIMANT TEMPORARY TOTAL DISABILITY FROM JANUARY 1, 1973 THROUGH MARCH 14, 1975 ONLY.

CLAIMANT WAS A 50 YEAR OLD MACHINIST HELPER WHEN HE SUSTAINED A LOW BACK INJURY IN A FALL ON MARCH 6, 1968. THE INCIDENT WAS REPORTED TO FIRST AID ON APRIL 3, 1968 AND A CLAIM FILED ON JULY 1, 1968. CLAIMANT CONSULTED DR. MARXER ON JULY 8, 1968 AND WAS HOSPITALIZED FROM JULY 18 TO JULY 31, 1968. HE WAS TREATED WITH TRACTION AND THERAPY.

IN SEPTEMBER, 1968 CLAIMANT CONSULTED DR. CARTER WHO RECOMMENDED ENROLLMENT IN THE PHYSICAL REHABILITATION CENTER. CLAIMANT WAS SUBSEQUENTLY EXAMINED BY DR. PASQUESI WHO RECOMMENDED CLOSURE IN NOVEMBER, 1971. THE FIRST DETERMINATION ORDER, MAILED NOVEMBER 19, 1971, AWARDED CLAIMANT TEMPORARY TOTAL DISABILITY FROM MARCH 6, 1968 TO DECEMBER 3, 1968, LESS TIME WORKED, AND TEMPORARY PARTIAL DISABILITY FROM DECEMBER 3, 1968 TO NOVEMBER 12, 1971 AND PERMANENT PARTIAL DISABILITY OF 48 DEGREES FOR 15 PER CENT UNSCHEDULED LOW BACK.

IN JUNE, 1972 CLAIMANT SAW DR. GROTH WHO RECOMMENDED THE CLAIM BE REOPENED. FROM DECEMBER, 1972 TO MARCH, 1975 CLAIMANT SAW DR. MARXER AND DR. PASQUESI, AFTER WHICH THE CLAIM WAS CLOSED AGAIN ON APRIL 15, 1975.

CLAIMANT IS NOW ALMOST 58 YEARS OLD, HE HAS COMPLETED THE 7TH GRADE LEVEL IN SCHOOL. CLAIMANT'S ADAPTABILITY LEVEL, AS A WHOLE, IS BELOW AVERAGE - HOWEVER, DR. PASQUESI, IN HIS MEDICAL REPORT OF MARCH 20, 1975, STATES - '...THAT THE PATIENT APPEARS TO HAVE LESS IMPAIRMENT NOW THAN HE HAD BEFORE'.

DR. MARXER STATES THAT THE CLAIMANT'S SYMPTOMS ARE CERTAINLY WAY OUT OF PROPORTION TO THE FINDINGS. HE ALSO STATES THAT THE CLAIMANT'S PHYSICAL CONDITION IS ABOUT THE SAME AS IT WAS IN 1968 - THERE IS CERTAINLY NO INDICATION OF A WORSENING CONDITION. DR. MARXER RECOMMENDS WORK AS A MEANS OF IMPROVING CLAIMANT'S CONDITION.

THE REFEREE, BASED ON THE MEDICAL OPINIONS RELATING TO BOTH PHYSICAL AND PSYCHOLOGICAL FACTORS, CONCLUDES THAT CLAIMANT HAS BEEN ADEQUATELY COMPENSATED BY THE PREVIOUS AWARDS OF HIS LOSS OF WAGE EARNING CAPACITY.

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

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 18, 1976, IS AFFIRMED.

WCB CASE NO. 75-2871 JULY 21, 1976

PHYLLIS GLASER (COX), CLAIMANT

J. DAVID KRYGER, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

Reviewed by Board Members Wilson and Moore.

Claimant requests Board review of the referee's order which awarded claimant 52.5 degrees for 35 per cent loss of left leg. Claimant contends this is an adequate award.

On July 24, 1974 claimant injured her left leg, she continued working and a few days later again injured her left foot.

She originally saw Dr. Hurd, he referred her to Dr. Ellison who, on August 28, 1974, diagnosed probable posterior horn tear of the left medial meniscus. An arthrotomy and medial meniscectomy was performed on October 22, 1974.

Claimant returned to work but continued to have problems. Dr. Ellison declared her medically stationary on May 23, 1975, with continuing pain symptoms, swelling and loss of motion. On October 10, 1975 claimant terminated her employment due to the swelling and inflammation in her left leg. She has remained unemployed.

A determination order issued on July 9, 1975 granted claimant 37.5 degrees for 25 per cent loss of left leg.

The referee concluded, based on Dr. Ellison's 1975 reports, that claimant was progressively improving, but had still a greater loss of function of the left leg than that for which she had previously been awarded.

The Board, on de novo review, concurs with the findings and conclusions of the referee primarily because of the referee's observation of claimant at the hearing.

ORDER

The order of the referee, dated January 16, 1976, is affirmed.

WCB CASE NO. 75-926 JULY 21, 1976

STEPHEN KROUS, CLAIMANT

DAVID BLUNT, CLAIMANT'S ATTY.
JAMES HUEGLI, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

Reviewed by Board Members Wilson and Moore.

The employer seeks Board review of the referee's order which remanded to it claimant's claim for payment of all medical care and treatment for claimant's low back condition, for payment of temporary total disability compensation from February 5, 1975, less time worked, until the claim is closed pursuant to ORS 656.268, awarded claimant's attorney a reasonable attorney fee in the amount of 1100 dollars, payable by the employer, and directed the expense

OF DR. HOLMBOE'S MEDICAL REPORT AND EXAMINATION TO BE PAID BY THE CLAIMANT.

CLAIMANT IS A ROOFER WHO SUSTAINED A COMPENSABLE BACK INJURY IN APRIL, 1973. ON MAY 10, 1973 CLAIMANT SAW DR. GRAHAM, WHO DIAGNOSED AN ACUTE LUMBOSACRAL STRAIN WITH MILD DEGREE, HE TOLD DR. GRAHAM HE HAD BEEN IN AN AUTOMOBILE ACCIDENT INVOLVING A SNOW PLOW IN JANUARY, 1971 AND IN ANOTHER AUTOMOBILE ACCIDENT IN MAY, 1971, THE LATTER BEING A MULTIPLE REAR-END COLLISION. DR. GRAHAM RECOMMENDED CONSERVATIVE TREATMENT INCLUDING PHYSICAL THERAPY AND WILLIAMS FLEXION EXERCISES, HE TOLD CLAIMANT TO RETURN IN SIX WEEKS AND, IN THE MEANTIME, HE COULD CONTINUE TO WORK AT THE MILL. CLAIMANT DID NOT RETURN TO WORK BUT ON MAY 24, 1973 FILED A 'MEDICAL ONLY' CLAIM, STATING HE HAD LOST NO TIME FROM WORK BEYOND THE DATE OF THE ACCIDENT.

ON JUNE 29, 1973 CLAIMANT QUIT HIS JOB WITH BOISE CASCADE AND MOVED TO CALIFORNIA, SEEKING A JOB PAYING HIGHER WAGES. ON AUGUST 2, 1973 CLAIMANT WAS EXAMINED BY DR. FITZSIMMONS, AN ORTHOPEDIC SURGEON IN SAN JOSE, COMPLAINING OF LOW BACK PAIN AND A STIFF NECK. DR. FITZSIMMONS' REPORT OF THE SAME DATE INDICATES THAT CLAIMANT WAS WORKING EVERY DAY AND CLAIMANT DESCRIBED THE PAIN MAINLY AS ACHING AFTER HE HAD WORKED HARD. DR. FITZSIMMONS DIAGNOSED CLAIMANT'S CONDITION AS A POSSIBLE INFLAMMATION OF SACROILLIAC JOINT ON THE LEFT SIDE WITHOUT ANY EVIDENCE OF DISC INJURY.

IN ADDITION TO THE TWO AUTOMOBILE ACCIDENTS CLAIMANT WAS ALSO INVOLVED IN TWO ACCIDENTS THERETO WHILE IN CALIFORNIA. IN OCTOBER, 1973 CLAIMANT FELL OFF A ROOF AND IN JUNE, 1974 HE FELL FROM A LADDER.

DR. FITZSIMMONS CONTINUED TO TREAT CLAIMANT ALTHOUGH CLAIMANT WAS CONTINUING HIS EMPLOYMENT AS A ROOFER WHICH INVOLVED CONSIDERABLE AMOUNTS OF BENDING, STOOPING, AND LIFTING AND CARRYING MATERIALS WEIGHING UP TO 100 POUNDS. AFTER THE FALL FROM THE ROOF ON OCTOBER 3, 1973 CLAIMANT MISSED THREE WEEKS FROM WORK. THE INJURY WAS TO HIS RIGHT SIDE AND DIAGNOSED AS BRUISED RIBS AND KIDNEY.

ON OCTOBER 19, 1973 WHEN DR. CSEUZ EXAMINED CLAIMANT, CLAIMANT RELATED A SLIGHTLY DIFFERENT HISTORY OF PRIOR EVENTS THAN THAT WHICH HE GAVE DR. FITZSIMMONS - HOWEVER, HE DID TELL HIM ABOUT HIS PREVIOUS AUTOMOBILE ACCIDENTS, DENYING THAT EITHER CAUSED ANY LOW BACK SYMPTOMS. DR. CSEUZ THOUGHT THE CLAIMANT MIGHT HAVE INCURRED AN EARLY L5-S1 DISC DAMAGE WITHOUT FRANK PROTRUSION OR SIGNIFICANT RADICULAR COMPONENTS, HE NOTED THAT FOLLOWING THE INDUSTRIAL INJURY IN OREGON THE LOW BACK ACHE PERSISTED BUT THAT CLAIMANT WAS ABLE TO CONTINUE WORK IN A STRENUOUS OCCUPATION UNTIL HE SUFFERED HIS SECOND INJURY ON OCTOBER 3, 1973. IT WAS HIS OPINION THAT THE LOW BACK INJURY SHOULD BE APPORTIONED BETWEEN THE TWO INDUSTRIAL ACCIDENTS OF APRIL, 1973 AND OCTOBER, 1973 ON THE BASIS OF 75 PER CENT FOR THE FORMER AND 25 PER CENT FOR THE LATTER.

DR. FITZSIMMONS CONTINUED TO TREAT CLAIMANT ON SEVERAL OCCASIONS IN 1974 DURING WHICH TIME CLAIMANT WAS STILL WORKING AS A ROOFER. IN AUGUST, 1974 DR. FITZSIMMONS NOTED CLAIMANT HAD INCREASED SYMPTOMS IN THE LOW BACK, PARTICULARLY ON STRAIGHT LEG RAISING TESTS AND HE WAS OF THE OPINION THAT CLAIMANT MIGHT NEED SURGERY ON THE LUMBOSACRAL SPINE AT SOME FUTURE DATE. A MYELOGRAM PERFORMED BY DR. SAJJADI WAS SOMEWHAT EQUIVOCAL BUT IT WAS THOUGHT TO BE CONSISTENT WITH A HERNIATED DISC AT L4-5. ON FEBRUARY 5, 1975 DR. SAJJADI PERFORMED A LUMBAR LAMINECTOMY, L4. DURING THIS SURGERY IT WAS NOTED THAT THE NERVE ROOT APPEARED TO BE SWOLLEN AND ON THE ANTERIOR SIDE THERE WAS SOFT BULGING DISC MATERIAL ENCOUNTERED WITHOUT A RUPTURE OF THE ANNULUS FIBROSIS. DR. SAJJADI HAD BEEN FORWARDED A REPORT FROM DR. SCHEINDER, RELATING TO THE OCTOBER, 1973 INJURY,

GIVING HIS DIAGNOSIS AT THAT TIME OF A QUESTIONABLE FRACTURE OF THE RIGHT ILLIUM AND CONTUSION OF THE RIGHT FLANK AND KIDNEY AND STATING THAT AS OF NOVEMBER 19, 1973 THE CLAIMANT HAD BEEN COMPLETELY CURED AND WAS TOLD HE COULD RETURN TO WORK.

IN MARCH, 1975 DR. SAJJADI REPORTED THAT CLAIMANT WAS FREE OF PAIN.

ON FEBRUARY 18, 1975 THE EMPLOYER HAD DENIED THAT CLAIMANT'S NEED FOR THE ADDITIONAL MEDICAL CARE AND TREATMENT AND TIME LOSS WAS DUE TO HIS 'MEDICAL-ONLY' INJURY OF APRIL, 1973 BUT RATHER WAS THE RESULT OF AN INTERVENING INJURY ON OCTOBER 3, 1973, AND-OR HIS CONTINUED HEAVY WORK ACTIVITIES IN CALIFORNIA.

CLAIMANT REQUESTED A HEARING AND, AFTER THE HEARING HELD ON SEPTEMBER 9, 1975, REPORTS WERE RECEIVED FROM DR. GRAHAM AND DR. HOLMBOE. THE LATTER HAD INTERVIEWED AND EXAMINED CLAIMANT ON OCTOBER 27, 1975 AND ALSO REVIEWED CLAIMANT'S MEDICAL HISTORY. DR. GRAHAM WHO HAD SEEN CLAIMANT SHORTLY AFTER HIS INDUSTRIAL INJURY IN OREGON BUT NOT AGAIN UNTIL SHORTLY BEFORE HE FILED HIS REPORT OF SEPTEMBER 10, 1975, STATED THAT, BASED UPON CLAIMANT'S PRIOR HISTORY OF BACK DIFFICULTIES AND THE EMPLOYMENT WHICH HE WAS ENGAGED FOR A PERIOD OF NEARLY TWO YEARS PRIOR TO THE SURGERY AND TAKING INTO CONSIDERATION OF THE FINDINGS OF SURGERY, HE WAS OF THE OPINION THAT THERE WAS NOT SUFFICIENT EVIDENCE TO INDICATE THAT THE INJURY OF APRIL, 1973 WAS THE CAUSATIVE FACTOR FOR ANY DISC DAMAGE WHICH MAY HAVE OCCURRED. IT WAS HIS OPINION DESPITE CLAIMANT'S STATEMENTS THAT HE HAD CONTINUOUS AND UNRELENTING BACK PAIN FROM APRIL, 1973 FORWARD, THAT CLAIMANT HAD SUSTAINED A MINOR LUMBOSACRAL STRAIN IN APRIL, 1973 AND THIS INJURY DID NOT CAUSE A DISC PROTRUSION SUBSEQUENTLY DIAGNOSED AND TREATED AS SUCH AT A MUCH LATER DATE.

DR. HOLMBOE, ON THE OTHER HAND, AFTER A THOROUGH EXAMINATION OF CLAIMANT, FELT THERE WAS A RELATIONSHIP BETWEEN CLAIMANT'S APRIL, 1973 INJURY AND HIS SUBSEQUENT TREATMENT AND GRADUAL DEVELOPMENT OF RADICULAR SYMPTOMS. HE FELT THAT IN ALL PROBABILITY THE DISC WAS INJURED, GRADUALLY DETERIORATED AND PROTRUDED LATERALLY CAUSING RADICULOPATHY AND SUBSEQUENT SURGERY. HE FURTHER EXPRESSED HIS OPINION THAT, AT THE PRESENT TIME, CLAIMANT'S CONDITION WAS NOT STATIONARY AND IT WOULD NOT BE SO FOR AT LEAST 12 MONTHS FOLLOWING THE SURGERY. HE RECOMMENDED THAT CLAIMANT REMAIN UNDER THE TREATMENT OF DR. SAJJADI.

THE REFEREE FOUND THAT WHILE CLAIMANT WAS LESS THAN COMPLETELY CREDIBLE AND THAT THE HISTORIES RELATED BY HIM TO THE VARIOUS DOCTORS WITH RESPECT TO PRIOR AND SUBSEQUENT CONTRIBUTING INCIDENTS WERE INCONSISTENT, NEVERTHELESS, THE COMPENSABLE INJURY SUSTAINED BY CLAIMANT IN APRIL, 1973 WAS A MATERIAL CONTRIBUTING FACTOR AND NECESSITATED SURGICAL INTERVENTION, THEREFORE, THE CLAIM SHOULD BE REMANDED FOR ACCEPTANCE AND PAYMENT OF SURGERY AND FOR ANY TIME LOSS INCURRED BY CLAIMANT - ALSO, FOR PAYMENT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY COMMENCING FROM THE DATE OF THE SURGERY, FEBRUARY 5, 1975.

THE REFEREE FURTHER FOUND THAT BECAUSE OF CLAIMANT'S INABILITY TO RELATE CONSISTENT HISTORY OF HIS PRIOR AND SUBSEQUENT CONTRIBUTING INJURIES AND THE FACT THAT THE MEDICAL QUESTION WAS A CLOSE ONE THE DENIAL BY THE EMPLOYER, BASED UPON THE EVIDENCE IT HAD AT THE TIME IT MADE ITS DENIAL OF THE CLAIM, DID NOT JUSTIFY ASSESSMENT OF PENALTIES. BECAUSE THE DENIAL WAS IMPROPER, THE REFEREE AWARDED CLAIMANT'S ATTORNEY A REASONABLE ATTORNEY FEE PAYABLE BY THE EMPLOYER, ORS 656.386.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT THE FILM TAKEN ON

NOVEMBER 19 AND 20, 1974 OF CLAIMANT WHILE ENGAGED IN VARIOUS HARD PHYSICAL ACTIVITIES AS A ROOFER WAS OF LITTLE SIGNIFICANCE - CLAIMANT FELL FROM THE ROOF IN OCTOBER, 1973 AND THE FILM WAS NOT TAKEN UNTIL NOVEMBER, 1974, APPROXIMATELY A YEAR AND SIX WEEKS LATER. FURTHERMORE, HAD THE FILM BEEN TAKEN SIX WEEKS AFTER THE ACTUAL FALL, AS INDICATED IN THE REFEREE'S ORDER, THE REFEREE, AFTER VIEWING IT, FELT THAT ALTHOUGH THE FALL WAS OF A DRAMATIC TYPE ACCIDENT IT WAS NOT A TRAUMA-PRODUCING INCIDENT OF SUCH MAGNITUDE AS TO BE A MATERIAL CONTRIBUTING FACTOR.

INSOFAR AS THE MEDICAL EVIDENCE IS CONCERNED, THE BOARD FINDS THAT THE BEST EVALUATION OF CLAIMANT'S PRESENT CONDITION AND THE CAUSE THEREOF IS FOUND IN DR. HOLMBOE'S REPORT AND, RELYING PRIMARILY THEREON, BUT ALSO TAKING INTO CONSIDERATION ALL THE OTHER MEDICAL REPORTS, THE BOARD AFFIRMS THE ORDER OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE DATED JANUARY 28, 1976 IS AFFIRMED.

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

WCB CASE NO. 75-465 JULY 21, 1976

BEULAH HAMLIN, CLAIMANT

WILLIAM BARTON, CLAIMANT'S ATTY.
PHILIP MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER OF DECEMBER 17, 1974 AWARDING CLAIMANT COMPENSATION FOR TEMPORARY TOTAL DISABILITY ONLY.

CLAIMANT SUFFERED A COMPENSABLE ACUTE BRONCHIAL ATTACK FROM INHALING WELDING FUMES FROM LATE 1971 THROUGH EARLY 1972.

SHE WAS TREATED BY DR. FLETCHER, D.O. AND DR. PERLMAN, AN ALLERGIST. ON JUNE 14, 1972 DR. PERLMAN FELT IT WAS TOO EARLY TO RATE CLAIMANT'S PERMANENT DISABILITY. DURING FEBRUARY 15, 1972 THROUGH SEPTEMBER 13, 1972 CLAIMANT HAD SEVERAL ATTACKS OF ASTHMA, SOME SEVERE ENOUGH TO CAUSE HOSPITALIZATION.

DR. PERLMAN EXAMINED CLAIMANT ON FEBRUARY 19, 1975 AND FOUND REDUCTION IN BREATHING CAPACITY DIAGNOSED AS OBSTRUCTIVE AIRWAYS DISEASE, CAUSE UNKNOWN.

CLAIMANT WAS EXAMINED BY DR. V.C. VITUMS, A PULMONARY SPECIALIST, ON APRIL 29, 1975 WHO FOUND CLAIMANT'S BRONCHIAL ASTHMATIC CONDITION WORSE THAN WHEN HE EXAMINED CLAIMANT IN 1972. HE STATED IN A LETTER, DATED MAY 16, 1975, THAT CLAIMANT'S ASTHMATIC CONDITION WAS NOT RELATED TO HER INDUSTRIAL ACCIDENT AND THAT THE TREATMENT CLAIMANT RECEIVED AFTER INHALING WELDING FUMES WAS NOT RESPONSIBLE FOR HER PRESENT AGGRAVATION OF HER UNDERLYING DISEASE. HE ALSO FELT CLAIMANT'S PRESENT CONDITION WOULD NOT BE ANY DIFFERENT HAD SHE NOT HAD THE INDUSTRIAL EXPOSURE.

DR. FLETCHER, ON THE OTHER HAND, FELT THAT CLAIMANT'S CONDITION WAS WORSE NOW BECAUSE OF THE 1972 EXPOSURE.

THE REFEREE FOUND THAT THE OPINION OF DR. VITUMS, A PULMONARY SPECIALIST, WAS ENTITLED TO THE GREATEST WEIGHT AND THAT CLAIMANT'S 1972 INDUSTRIAL EXPOSURE TO WELDING FUMES WAS ONLY A TEMPORARY AGGRAVATION OF HER UNDERLYING DISEASE AND THUS CLAIMANT SUFFERED NO PERMANENT DISABILITY THEREFROM.

TWO PSYCHIATRISTS EXAMINED CLAIMANT AND FOUND SOME FUNCTIONAL OVERLAY, BUT THERE WAS NO EVIDENCE TO PROVE THIS CONDITION WAS COMPENSABLY RELATED TO CLAIMANT'S INDUSTRIAL EXPOSURE.

THE REFEREE CONCLUDED CLAIMANT HAD SUFFERED NO PERMANENT PARTIAL DISABILITY.

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

ORDER

THE ORDER OF THE REFEREE, DATED OCTOBER 31, 1975, IS AFFIRMED.

WCB CASE NO. 74-3221 JULY 21, 1976

ROBERT CORBELL, CLAIMANT

JAMES GRISWOLD, CLAIMANT'S ATTY.
DARYLL KLEIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH UPHELD THE DENIAL OF CLAIMANT'S CLAIM FOR HEPATITIS.

CLAIMANT WAS HOSPITALIZED ON MARCH 5, 1972 FOR SEVERE HEPATITIS. CLAIMANT ALLEGES THAT HE CONTACTED THE HEPATITIS WHEN HE NICKED HIS FINGER ON A VIAL OF BLOOD AT WORK. HE FILED A CLAIM ON JUNE 20, 1974 (OVER TWO YEARS AFTER THE ALLEGED INCIDENT AT WORK) WHICH WAS DENIED ON AUGUST 22, 1974, ON THE GROUNDS THAT CLAIMANT HAD HEPATITIS PRIOR TO HIS EMPLOYMENT.

DR. BRYANT OF THE UNIVERSITY OF OREGON MEDICAL SCHOOL TESTIFIED AT THE HEARING, AFTER REVIEWING ALL OF THE RECORDS AND HEARING THE TESTIMONY PRESENTED, AND OPINED THAT CLAIMANT HAD HEPATITIS WHEN HE STARTED TO WORK FOR THE EMPLOYER. HE HAD HAD A MEDICAL EXAMINATION WHEN HE STARTED WORKING AT THE LABORATORIES WHICH REVEALED SYMPTOMS THAT COULD INDICATE HEPATITIS.

DR. PFAFF COULDN'T CLEARLY STATE WHEN OR HOW CLAIMANT CONTACTED HIS HEPATITIS.

THE REFEREE CONCLUDED THAT CLAIMANT FAILED TO SUSTAIN HIS BURDEN OF PROVING A COMPENSABLE OCCUPATIONAL DISEASE - THERE WAS NO MEDICAL EVIDENCE WHATSOEVER TO SUPPORT HIS CLAIM.

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

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 18, 1976 IS AFFIRMED.

WCB CASE NO. 75-2911 JULY 22, 1976

RICHARD DAVIS, CLAIMANT
EVOHL MALAGON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DENIAL OF CLAIMANT'S CLAIM FOR A LOW BACK CONDITION.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON APRIL 16, 1973 AND WAS SEEN BY DR. SAFFELL WHO DIAGNOSED CONTUSION OF THE LEFT UPPER ARM, WITH NO MENTION OF INJURY TO ANY OTHER BODY PARTS.

ON APRIL 18, 1973 THE FORM 801 SIGNED BY CLAIMANT INDICATES BODY PARTS AFFECTED BY INJURY TO THE LEFT SHOULDER AND ARM, THE CLAIM WAS ACCEPTED AND CLOSED ON A 'MEDICAL ONLY' BASIS ON MAY 1, 1973.

ON NOVEMBER 29, 1973 CLAIMANT AGAIN SAW DR. SAFFELL AND AT THIS TIME COMPLAINED OF LOW BACK PAIN RADIATING INTO BOTH LEGS.

DR. SAFFELL REFERRED CLAIMANT TO DR. ROCKEY AND CLAIMANT INDICATED TO HIM THAT HE WAS STRUCK IN THE RIGHT BUTTOCK AND RIGHT CALF WHEN INJURED. DR. ROCKEY DIAGNOSED A HERNIATED LUMBAR DISC AT L4-5 ON THE RIGHT. CLAIMANT WAS SCHEDULED FOR A LAMINECTOMY BUT CHECKED HIMSELF OUT OF THE HOSPITAL WITHOUT DR. ROCKEY'S PERMISSION.

CLAIMANT RETURNED TO WORK BUT TERMINATED HIS EMPLOYMENT IN DECEMBER, 1974.

THE REFEREE FOUND THAT DR. SAFFELL HAD QUIT HIS PRACTICE AND THAT HIS FAILURE TO RESPOND TO CORRESPONDENCE AND INTERROGATORIES MADE THIS CASE DIFFICULT BECAUSE DR. SAFFELL'S MEDICAL REPORTS AND CHART NOTES WERE CRITICAL TO THIS CASE. HOWEVER, THE REFEREE FELT THAT DR. SAFFELL'S INITIAL EXAMINATION REPORTS FINDING CLAIMANT'S INJURIES TO BE TO THE LEFT ARM AND SHOULDER ONLY HELD THE GREATEST WEIGHT, CONSIDERING THE INCONSISTENCIES FOUND IN THE LATER HISTORIES RELATED BY CLAIMANT TO THE VARIOUS DOCTORS.

THE REFEREE CONCLUDED THAT CLAIMANT'S PRESENT MEDICAL CONDITION WAS NOT THE RESULT OF HIS APRIL, 1973 INDUSTRIAL INJURY AND HE AFFIRMED THE DENIAL OF A BACK CONDITION.

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

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 9, 1976, IS AFFIRMED.

SAIF CLAIM NO. BC 146338 JULY 22, 1976

JOHN KIEF, CLAIMANT

DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

CLAIMANT SUFFERED A COMPENSABLE INJURY ON SEPTEMBER 10, 1968 WHEN RIDING IN A PICKUP WHICH HIT A DITCH CAUSING CLAIMANT TO FALL BACKWARDS STRIKING HIS HEAD ON A TANK IN THE PICKUP.

CLAIMANT HAS BEEN HOSPITALIZED A NUMBER OF TIMES THROUGH THE YEARS FOR HIS HEAD INJURY. HIS CLAIM WAS FIRST CLOSED BY A DETERMINATION ORDER ON FEBRUARY 10, 1969 AWARDING TIME LOSS ONLY. A SECOND DETERMINATION ORDER, ON FEBRUARY 27, 1973, GRANTED CLAIMANT TIME LOSS AND 16 DEGREES FOR 5 PER CENT UNSCHEDULED HEAD DISABILITY.

ON MAY 4, 1973 BY STIPULATION CLAIMANT WAS GRANTED AN ADDITIONAL 32 DEGREES FOR 10 PER CENT UNSCHEDULED DISABILITY.

ON JANUARY 19, 1972 THE STATE ACCIDENT INSURANCE FUND DENIED RESPONSIBILITY FOR A LEFT CARPAL TUNNEL SYNDROME BUT ON DECEMBER 3, 1975, IT REOPENED CLAIMANT'S CLAIM FOR SURGERY. ON DECEMBER 4, 1975 NERVE TRANSLOCATION AND CARPAL TUNNEL RELEASE WAS PERFORMED.

ON MAY 12, 1976 CLAIMANT'S CLAIM WAS SUBMITTED FOR CLOSURE, BASED ON DR. NEUMAN'S REPORT OF MAY 3, 1976 WHICH FOUND CLAIMANT MEDICALLY STATIONARY. THE EVALUATION DIVISION RECOMMENDED TEMPORARY TOTAL DISABILITY BE GRANTED TO CLAIMANT FROM DECEMBER 3, 1975 THROUGH MAY 11, 1976 AND AN AWARD OF 15 DEGREES FOR 10 PER CENT SCHEDULED LOSS OF LEFT ARM.

ORDER

CLAIMANT IS GRANTED TEMPORARY TOTAL DISABILITY FROM DECEMBER 3, 1975 THROUGH MAY 11, 1976 AND AN AWARD OF 15 DEGREES OF A MAXIMUM 150 DEGREES FOR LOSS OF LEFT ARM. THIS IS IN ADDITION TO PREVIOUS AWARDS RECEIVED BY CLAIMANT.

WCB CASE NO. 75-3230 JULY 22, 1976

HELEN LEWIS, CLAIMANT

PETER DAVIS, CLAIMANT'S ATTY.
SCOTT GILMAN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED CLAIMANT'S CLAIM TO IT FOR ACCEPTANCE AND PAYMENT OF COMPENSATION UNTIL CLOSURE IS AUTHORIZED PURSUANT TO ORS 656.268.

CLAIMANT ALLEGES SHE SUFFERED AN INDUSTRIAL INJURY TO HER BACK ON JANUARY 14, 1975. THERE WERE NO WITNESSES TO THE CLAIMED ACCIDENT.

CLAIMANT AT FIRST CONTACTED DR. MICK WHO PRESCRIBED MEDICATION OVER THE PHONE. ON MAY 1, 1975 CLAIMANT SAW DR. HARDIMAN AND ON MAY 5, 1975 DR. MCGREEVEY - BOTH WERE OF THE OPINION THAT CONSERVATIVE TREATMENT WAS NOT IMPROVING CLAIMANT'S CONDITION AND SHE

THEREAFTER WAS HOSPITALIZED. ON MAY 14, 1975 A LAMINECTOMY WAS PERFORMED AT L5-S1.

ON JULY 9, 1975 CLAIMANT HAD FILED A CLAIM.

CLAIMANT RELATED A HISTORY TO HER DOCTORS OF AN ON-THE-JOB INJURY. SHE INFORMED DR. MICK ON SEPTEMBER 25, 1975 THAT SHE DID NOT FILE A WORKMEN'S COMPENSATION CLAIM SOONER FOR FEAR SHE WOULD LOSE HER JOB. DR. MICK STATED HE WOULD 'SUPPORT THE PATIENT IN HER CLAIM FOR A WORKMEN'S COMPENSATION INJURY' AND FELT SHE HAD SUBSTANTIAL DISABILITY.

CLAIMANT STATED THAT SHE COMPLAINED OF HER BACK PAIN TO SEVERAL CO-WORKERS AND TO THE PERSONNEL SUPERVISOR. THE CO-WORKERS TESTIFIED AT THE HEARING THAT THEY DIDN'T RECALL CLAIMANT TELLING THEM OF A JOB INJURY - THE PERSONNEL SUPERVISOR FELT THAT CLAIMANT COULDN'T GET HURT ON HER JOB.

THE REFEREE FOUND THAT CLAIMANT WAS A CREDIBLE WITNESS AND THAT THE DOCTORS DO NOT DISPUTE THAT HER BACK CONDITION WAS A RESULT OF AN ON-THE-JOB INJURY. SHE REPORTED TO THEM THAT SHE HAD NO PRIOR BACK PROBLEMS UNTIL THIS STRETCHING EPISODE AT WORK.

BASED UPON THE UNDISPUTED MEDICAL REPORTS AND A FINDING THAT CLAIMANT WAS A CREDIBLE WITNESS, THE REFEREE FOUND CLAIMANT'S CLAIM COMPENSABLE. HOWEVER, BECAUSE OF THE LATE FILING OF THE CLAIM BY CLAIMANT HE FOUND THAT THE EMPLOYER HAD NOT ACTED UNREASONABLY IN DENYING THE CLAIM AND HE DID NOT IMPOSE PENALTIES OR AWARD ATTORNEY FEES PURSUANT TO ORS 656.262(8) BUT DID AWARD ATTORNEY FEES TO CLAIMANT'S COUNSEL UNDER THE PROVISIONS OF ORS 656.386.

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

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 4, 1976, IS AFFIRMED.

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

WCB CASE NO. 75-4442 JULY 22, 1976

DENTON WATSON, CLAIMANT

DON WILSON, CLAIMANT'S ATTY.
PAUL ROESS, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER GRANTING CLAIMANT 64 DEGREES FOR 20 PER CENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON JUNE 10, 1974 WHICH CAUSED A PRE-EXISTING BACK CONDITION TO BECOME SYMPTOMATIC.

DR. SHORT PERFORMED A TWO LEVEL SPINAL FUSION, L4 TO SACRUM. ON FEBRUARY 3, 1975 CLAIMANT WAS RELEASED FOR WORK - HE RETURNED TO

THE SAME JOB HE HELD WHEN INJURED. CLAIMANT HAS LOST SOME STRENGTH AND MOBILITY, BUT HE IS ABLE TO PERFORM HIS OLD DUTIES AND EVEN WORKS OVERTIME.

THE RATING OF UNSCHEDULED DISABILITY IS BASED SOLELY UPON LOSS OF WAGE EARNING CAPACITY. THE REFEREE FOUND SOME EVIDENCE THAT IN THE FUTURE CLAIMANT MIGHT HAVE TO ATTEMPT LIGHTER EMPLOYMENT. AT THE PRESENT TIME CLAIMANT HASN'T LOST ANY EARNING CAPACITY. THE REFEREE CONCLUDED, HOWEVER, THAT EVEN SHOULD CLAIMANT AT SOME FUTURE TIME BE FORCED INTO LIGHTER EMPLOYMENT, THE AWARD OF 64 DEGREES GRANTED BY THE DETERMINATION ORDER STILL WAS ADEQUATE TO COVER ANY SUCH LOSS OF EARNING CAPACITY.

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

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 16, 1976, IS AFFIRMED.

WCB CASE NO. 75-4931 JULY 22, 1976
WCB CASE NO. 75-5587

ROBERT SMITH, CLAIMANT

CASH PERRINE, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER

ON JULY 16, 1976 CLAIMANT, BY AND THROUGH HIS ATTORNEY, MOVED THAT THE BOARD ISSUE AN ORDER TO DISMISS EMPLOYER'S REQUEST FOR REVIEW IN THE ABOVE ENTITLED MATTER ON THE GROUNDS THAT SAID REQUEST FAILED TO CONTAIN ANY STATEMENT FOR GROUNDS FOR THE REQUEST AS PROVIDED IN OAR 436-83-700(4).

THE BOARD, AFTER DUE CONSIDERATION, FEELS THAT SUCH FAILURE DOES NOT PREJUDICE CLAIMANT IN ANY WAY INASMUCH AS HE WILL BE FURNISHED A COPY OF APPELLANT'S BRIEF AFTER WHICH HE WILL HAVE 20 DAYS WITHIN WHICH TO RESPOND.

THEREFORE, THE MOTION IS DISMISSED.

WCB CASE NO. 75-1780 JULY 22, 1976

DOLORES A. SKIDMORE, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
GEARIN, CHENEY, LANDIS, AEBI AND KELLEY,
DEFENSE ATTYS.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE CLAIMANT REQUESTS BOARD REVIEW OF A REFEREE'S ORDER WHICH AFFIRMED THE SECOND DETERMINATION ORDER OF MARCH 6, 1975, FOUND CLAIMANT HAD SUSTAINED AN AGGRAVATION OF HER 1969 INDUSTRIAL INJURY, AWARDED PENALTIES AND ATTORNEY FEES AND ORDERED LIBERTY MUTUAL TO REIMBURSE INDUSTRIAL INDEMNITY CO. FOR ALL TEMPORARY TOTAL DISABILITY COMPENSATION THE LATTER HAD TO PAY DURING LIBERTY MUTUAL'S PERIOD OF DEFERRAL.

CLAIMANT WAS ORIGINALLY INJURED IN 1969 WHILE EMPLOYED AS A HOUSEKEEPING MAID AT EMANUEL HOSPITAL. LIBERTY MUTUAL, THE EMPLOYER'S CARRIER, ACCEPTED THE CLAIM AND PAID BENEFITS. THE CLAIM WAS CLOSED BY A DETERMINATION ORDER OF AUGUST 3, 1972, AWARDING CLAIMANT 80 DEGREES FOR 25 PER CENT UNSCHEDULED LOW BACK DISABILITY. A SECOND CLOSURE ON AN AGGRAVATION CLAIM WAS ISSUED MAY 6, 1975, WHICH AWARDED NO ADDITIONAL COMPENSATION FOR PERMANENT PARTIAL DISABILITY.

CLAIMANT CONTINUED WORKING UNTIL 1975, BEING ENCOURAGED AND ADVISED BY HER DOCTOR TO DO SO. DURING MAY 1975, CLAIMANT'S WORK ACTIVITIES AT THE HOSPITAL CHANGED AND CLAIMANT ALLEGES ON MAY 13, 1975 SHE SUSTAINED INJURIES WHILE 'WET MOPPING.' INDUSTRIAL INDEMNITY, WHO WAS AT THAT TIME, THE EMPLOYER'S CARRIER, ACCEPTED THE CLAIM AND STARTED PAYING COMPENSATION ON A DEFERRED BASIS, BUT ISSUED A FORMAL DENIAL JULY 25, 1975. LIBERTY MUTUAL IMMEDIATELY ACCEPTED THE CLAIM AS AN AGGRAVATION AND ASSUMED RESPONSIBILITY THEREFOR.

THE REFEREE FOUND THAT CLAIMANT HAD BEEN ADEQUATELY COMPENSATED BY THE AWARD OF 80 DEGREES - HE ALSO FOUND THAT THE INCIDENT OF MAY 13, 1975, WAS NOT A NEW INJURY BUT AN AGGRAVATION OF HER 1969 INJURY.

THE REFEREE FOUND BOTH CARRIERS HAD MADE LATE PAYMENTS AND ACCRUED PENALTIES AND AWARDED ATTORNEY'S FEES AGAINST BOTH.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT THERE WAS NEVER ANY DISAGREEMENT BETWEEN THE CARRIERS - IN FACT, THEY HAD COME TO A MUTUAL UNDERSTANDING AS TO THE CLAIMS HANDLING. BOTH LIBERTY MUTUAL AND INDUSTRIAL INDEMNITY HAVE MADE TIME LOSS PAYMENTS BUT THE LATENESS IN SOME PAYMENTS DOES NOT REFLECT UNREASONABLENESS BUT RATHER IS THE RESULT OF A LACK OF COMMUNICATION.

THE BOARD FEELS THAT THE REFEREE RATHER GENEROUSLY AWARDED CLAIMANT'S COUNSEL A TOTAL OF 100 DOLLARS IN ATTORNEY FEES FOR OBTAINING A 61.35 DOLLAR BENEFIT FOR HIS CLIENT, BASED ON THE PROPOSITION THAT ATTORNEY FEES SHOULD BE PROPORTIONATE TO THE RESULTANT BENEFIT OBTAINED BY THE CLIENT.

THE UNREASONABLE ASPECT OF THIS PROCEEDING APPEARS TO THE BOARD TO BE THE TIME, EFFORT AND EXPENSE INVOLVED IN LITIGATION OF THIS RELATIVELY MINOR MATTER. THE BOARD CONCLUDES THE REFEREE ABLY DECIDED THE ISSUES AND CONCURS WITH HIS FINDINGS AND CONCLUSIONS.

ORDER

THE ORDER OF THE REFEREE DATED DECEMBER 29, 1975, IS AFFIRMED.

WCB CASE NO. 75-4906 JULY 22, 1976

ROY V. SHELTON, CLAIMANT

GOODING AND SUSAK, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT AN AWARD OF PERMANENT TOTAL DISABILITY, EFFECTIVE FEBRUARY 23, 1976.

CLAIMANT SUSTAINED A COMPENSABLE INJURY ON SEPTEMBER 19, 1972

DIAGNOSED AS A 'LIGAMENTOUS STRAIN' AND 'HAIRLINE FRACTURE RIB'. HIS FIRST SURGERY WAS ON DECEMBER 27, 1972 FOR EXCISION OF DISC L4-5 AND ARTHRODESIS L4 TO SACRUM. HE AGAIN UNDERWENT SURGERY FOR REFUSION BETWEEN L4 AND 5 ON JULY 2, 1974.

DR. GERMAN, CLAIMANT'S TREATING PHYSICIAN, FELT CLAIMANT WAS TOTALLY DISABLED FOR HEAVY LABOR REQUIRING HANDLING 30 POUNDS OR MORE AND REFERRED CLAIMANT TO DISABILITY PREVENTION DIVISION IN AUGUST, 1975. DR. VAN OSDEL AT THE DISABILITY PREVENTION DIVISION FOUND A MODERATELY SEVERE DEGREE OF PSYCHOPATHOLOGY - A JOB CHANGE WAS INDICATED WITH NO LIFTING OVERHEAD, OR REPETITIVE BENDING, STOOPING OR TWISTING. HIS PROGNOSIS FOR CLAIMANT'S RETURNING TO GAINFUL EMPLOYMENT WAS 'VERY POOR'.

A DETERMINATION ORDER ISSUED ON OCTOBER 24, 1975 AWARDED CLAIMANT PERMANENT PARTIAL DISABILITY OF 144 DEGREES FOR 45 PER CENT UNSCHEDULED LOW BACK.

CLAIMANT TESTIFIED THAT HE IS IN CONSTANT PAIN, HIS PAIN IS CENTERED IN HIS LOW BACK AND RADIATES INTO HIS RIGHT LEG INTO THE KNEE. CLAIMANT'S PAST WORKING EXPERIENCE HAS BEEN IN FARMING, RANCHING AND LOGGING - HE WAS DESCRIBED AS A VERY GOOD AND HARD WORKER BY HIS EMPLOYER. CLAIMANT ATTEMPTED TO RETURN TO LOGGING AFTER HIS FIRST SURGERY BUT ONLY LASTED TWO OR THREE DAYS.

THE REFEREE FOUND CLAIMANT TO BE A CREDIBLE WITNESS AND BECAUSE OF HIS PAIN, INCAPABLE OF SUSTAINED LABOR. CLAIMANT KNOWS OF NO JOB OPPORTUNITIES HE COULD HANDLE IN HIS LIVING AREA.

THE REFEREE CONCLUDED, BASED ON HIS OBSERVATION OF CLAIMANT, HIS TESTIMONY, THE MEDICAL REPORTS, AND THE FACT THAT THERE WAS NO GAINFUL REGULAR WORK IN CLAIMANT'S AREA WHICH HE WOULD BE ABLE TO HANDLE, THAT CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED.

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

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 23, 1976, IS AFFIRMED.

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

CLAIM NO. B 159361 JULY 22, 1976

EUGENE SEITZ, CLAIMANT

DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS LOW BACK ON NOVEMBER 6, 1965 WHICH INCLUDED SURGERY IN DECEMBER, 1965 FOR A HERNIATED DISC EXCISION AT THE LUMBAR 4-5 LEVEL. HIS CLAIM WAS FIRST CLOSED ON JULY 21, 1966 GRANTING CLAIMANT 48 DEGREES FOR 25 PER CENT LOSS OF AN ARM FOR UNSCHEDULED DISABILITY. CLAIMANT'S AGGRAVATION RIGHTS HAVE EXPIRED.

ON APRIL 2, 1976 A BOARD'S OWN MOTION ORDER REMANDED CLAIMANT'S CLAIM AS OF JULY 10, 1976 FOR PAYMENT OF COMPENSATION AS PROVIDED BY

LAW UNTIL THE CLAIM IS CLOSED PURSUANT TO ORS 656.278. DURING JULY, 1975 CLAIMANT HAD HAD A LUMBAR HEMILAMINECTOMY AND A FUSION L4 TO THE SACRUM.

DR. HEUSCH'S CLOSING REPORT OF MAY 14, 1976 FOUND CLAIMANT MEDICALLY STATIONARY BUT STATED THAT FORWARD FLEXION OF THE BACK WAS MORE RESTRICTED THAN PREVIOUSLY.

ON JUNE 30, 1976 CLAIMANT'S CLAIM WAS SUBMITTED FOR CLOSURE. THE EVALUATION DIVISION RECOMMENDED COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM JULY 10, 1975 THROUGH NOVEMBER 19, 1975, LESS TIME WORKED, AND AN AWARD OF 19.2 DEGREES FOR 10 PER CENT LOSS OF AN ARM.

ORDER

CLAIMANT IS GRANTED COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM JULY 10, 1975 THROUGH NOVEMBER 19, 1975, LESS TIME WORKED, AND AN AWARD OF 19.2 DEGREES OF A MAXIMUM OF 192 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK DISABILITY. THIS IS IN ADDITION TO THE AWARD PREVIOUSLY GRANTED.

WCB CASE NO. 75-1864 JULY 22, 1976

MICHAEL MOSKO, CLAIMANT

GERALD DUBLIE, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE STATE ACCIDENT INSURANCE FUND'S DENIAL OF CLAIMANT'S CLAIM.

CLAIMANT ALLEGES HE AGGRAVATED AND FURTHER INJURED PRIOR BACK DIFFICULTIES INVOLVING FIVE DISCS ON SEPTEMBER 6, 1974 WHEN A TRUCK DOLLY TIPPED AND HE TRIED TO HOLD IT. CLAIMANT HAS A LONG HISTORY OF BACK PROBLEMS STEMMING FROM A PROGRESSIVE ARTHRITIC BACK CHANGES. CLAIMANT CLAIMED IMMEDIATE PAIN BUT DID NOT SEEK MEDICAL ATTENTION.

A WITNESS FOR CLAIMANT TESTIFIED TO CLAIMANT'S STORY OF THE LUMBER TRUCK TIPPING, BUT SAID HE COULDN'T RECALL CLAIMANT MENTIONING TO HIM THAT HE HAD HURT HIMSELF.

THE REFEREE FOUND THE CLAIMANT WAS NOT A CREDIBLE WITNESS = HE HAD BEEN INVOLVED IN A PREVIOUS WORKMEN'S COMPENSATION CLAIM AND WAS KNOWLEDGEABLE ABOUT PROCEDURES AND STILL FAILED TO IMMEDIATELY FILE HIS CLAIM OR TO SEEK MEDICAL SERVICES. HE FOUND NO MEDICAL SUBSTANTIATION OF CLAIMANT SUFFERING AN INJURY AND NO WITNESS TO CORROBORATE CLAIMANT'S TESTIMONY.

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

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 30, 1976, IS AFFIRMED.

WCB CASE NO. 75-2838 JULY 22, 1976

JAMES HANLON, CLAIMANT
ROLF OLSON, CLAIMANT'S ATTY.
RAY HAYSELL, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH INCREASED CLAIMANT'S AWARD TO 256 DEGREES FOR 80 PER CENT UNSCHEDULED DISABILITY AND AFFIRMED THE AWARD OF 30 DEGREES FOR 20 PER CENT LOSS OF LEFT LEG. CLAIMANT CONTENDS HE IS ODD-LOT PERMANENTLY TOTALLY DISABLED.

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS BACK IN A TWISTING INCIDENT ON NOVEMBER 2, 1970. CLAIMANT HAD HAD A PRIOR BACK INJURY WITH A LAMINECTOMY IN 1960 OR 1961. CLAIMANT CONTINUED TO WORK IN HIS MANAGERIAL JOB UNTIL JUST PRIOR TO SUBMITTING TO A SPINAL FUSION IN FEBRUARY, 1971. HE THEREAFTER RETURNED TO WORK FOR A PERIOD OF FOUR TO SIX WEEKS BUT QUIT DUE TO PAIN IN HIS BACK AND LEFT LEG.

CLAIMANT LIVES ON A FARM AND RAISES A FEW HEAD OF CATTLE, LIVING ON A FARM HAS BEEN A DREAM OF HIS WIFE AND HIMSELF FOR MANY YEARS. CLAIMANT WALKS TWO MILES A DAY, DRIVES HIS TRUCK, FEEDS 3 AND ONE HALF BALES OF HAY A DAY TO HIS CATTLE. SINCE TERMINATING HIS EMPLOYMENT CLAIMANT HAS ATTEMPTED TO SEARCH FOR WORK ONLY ONCE AND AT ONLY ONE PLACE.

THE MEDICAL EVIDENCE IN THIS CASE IS EXTENSIVE AND INCLUDES MANY OPINIONS OF PSYCHOLOGICAL PROBLEMS. DR. DOYLE IN MAY, 1973 DIAGNOSED 'CHRONIC DEPRESSIVE REACTION' AND SAID CLAIMANT WAS TOTALLY DISABLED FROM HIS PREVIOUS LIFE ACTIVITY BUT WAS ABLE TO RETURN TO LIGHTER ACTIVITIES.

AS FAR BACK AS AUGUST 9, 1972 DR. CASTLES HAD FELT THAT CLAIMANT LACKED MOTIVATION TO RETURN TO WORK, BEING VERY SATISFIED WITH HIS FARM AND HIS LIFE STYLE AT THAT TIME.

ON JANUARY 24, 1974 A DETERMINATION ORDER GRANTED CLAIMANT 192 DEGREES FOR 60 PER CENT UNSCHEDULED LOW BACK DISABILITY AND 30 DEGREES FOR 20 PER CENT LOSS OF THE LEFT LEG.

DR. HOLM EXAMINED CLAIMANT ON OCTOBER 17, 1975 AND REPORTED THAT CLAIMANT COULD RETURN TO SOME FORM OF SEDENTARY WORK. 'HE IS NOT TOTALLY DISABLED, AND, IN VIEW OF HIS AGE, HE PROBABLY CAN RETURN TO SOME PRODUCTIVE ACTIVITY.'

THE REFEREE FOUND THAT CLAIMANT HAD SUSTAINED A GREATER AMOUNT OF UNSCHEDULED PERMANENT PARTIAL DISABILITY THAN THAT GRANTED BY THE DETERMINATION ORDER, BUT HE WAS NOT PERMANENTLY AND TOTALLY DISABLED. THERE WAS NOT ONE MEDICAL REPORT TO CORROBORATE CLAIMANT'S CONTENTION THAT HE IS PERMANENTLY AND TOTALLY DISABLED. THE CLAIMANT CONTENDS HE FALLS WITHIN THE 'ODD-LOT' CATEGORY. THE REFEREE FOUND NO FOUNDATION FOR THIS, DISREGARDING CLAIMANT'S OBVIOUS LACK OF MOTIVATION, IT CANNOT BE SAID, MEDICALLY, THAT CLAIMANT IS NOT LIKELY TO BE GAINFULLY EMPLOYED. THE PREPONDERANCE OF MEDICAL EVIDENCE INDICATES THAT CLAIMANT COULD ENGAGE IN SEDENTARY OCCUPATIONS.

THE REFEREE CONCLUDED THAT CLAIMANT HAS FAILED TO SUSTAIN HIS EVIDENTIARY BURDEN OF PROVING ODD-LOT PERMANENT TOTAL DISABILITY, THEREFORE, IT IS UPON HIM TO SHOW A LACK OF GAINFUL AND SUITABLE EMPLOYMENT. HE FAILED TO DO SO.

THE REFEREE INCREASED CLAIMANT'S AWARD OF 60 PER CENT UNSCHEDULED LOW BACK DISABILITY TO 80 PER CENT OF THE MAXIMUM. HE FELT THAT THE AWARD OF 20 PER CENT LOSS OF LEFT LEG WAS ADEQUATE.

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

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 24, 1976, IS AFFIRMED.

WCB CASE NO. 75-536 JULY 22, 1976

BONNIE G. UNDI, CLAIMANT

CHARLES SEAGRAVES, CLAIMANT'S ATTY.
KEITH SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE EMPLOYER REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH REMANDED CLAIMANT'S CLAIM OF AGGRAVATION TO THE EMPLOYER FOR PAYMENT OF BENEFITS, AS PROVIDED BY LAW, FROM MARCH 19, 1975 UNTIL CLAIM CLOSURE PURSUANT TO ORS 656.268.

ON MARCH 23, 1970, CLAIMANT THEN A 52 YEAR OLD LPN, HURT HER BACK TURNING A PATIENT. DR. CAMPAGNA PERFORMED A MYELOGRAM IN MAY, 1970 WHICH REVEALED A CONGENITAL MALFORMATION OF THE DURAL SAC IN THE LUMBOSACRAL REGION, BUT WAS OTHERWISE NORMAL.

CLAIMANT RETURNED TO WORK AS AN LPN IN SEPTEMBER, 1970 AND CONTINUED WORKING UNTIL JULY, 1971. A DETERMINATION ORDER ISSUED JANUARY 7, 1971 RECITED THAT CLAIMANT HAD FAILED TO APPEAR FOR A CLAIM CLOSURE EXAMINATION, THEREFORE, THE PRESENT PHYSICAL CONDITION OF CLAIMANT WAS UNKNOWN AND PERMANENT RESIDUALS, IF ANY, AS A RESULT OF THE INJURY, COULD NOT BE EVALUATED - IT AWARDED COMPENSATION FOR TEMPORARY TOTAL DISABILITY TO SEPTEMBER 9, 1970 ONLY. WHEN DR. CAMPAGNA'S REPORT OF THE CLOSING EXAMINATION WAS RECEIVED BY THE BOARD THERE WAS NO MODIFICATION IN THE DETERMINATION ORDER.

CLAIMANT REQUESTED A HEARING ON FEBRUARY 5, 1975, WITH THE COMMENT -

> 'MY CONDITION WORSENED SOON AFTER MY RETURN TO WORK BUT DUE TO A MISUNDERSTANDING I DID NOT REQUEST A REOPENING OF MY CASE. RECENTLY I DID ASK FOR A REOPENING BUT THE INSURANCE CO. REFUSED.'

COUNSEL FOR THE EMPLOYER ARGUES THAT THE REQUEST FOR HEARING INDICATES THAT CLAIMANT'S CONDITION HAS EXISTED EVER SINCE THE ORIGINAL ONSET AND HAS NOT WORSENED SUBSEQUENT TO THE DETERMINATION ORDER. CLAIMANT TESTIFIED, HOWEVER, THAT THE CONDITION CONTINUED TO WORSEN SUBSEQUENT TO JANUARY, 1971 AND IT FINALLY BECAME SO BAD SHE COULD NO LONGER WORK. SHE SAID SHE COULD NOT AFFORD MEDICAL CONSULTATION BUT IN DECEMBER, 1974 HER CONDITION BECAME SO DESPERATE SHE RECEIVED CHIROPRACTIC TREATMENTS FROM JAMES LARIMORE, D.O.

THE CARRIER CONSIDERED DR. LARIMORE'S REPORT INADEQUATE TO REOPEN CLAIMANT'S CLAIM AND SHE CONSULTED DR. RAY JOHNSON, AN ORTHOPEDIST IN MARCH, 1975 AND DR. CAMPAGNA IN AUGUST, 1975.

THE REFEREE CONCLUDED THE LEVEL OF DISABILITY FOUND BY DRS. JOHNSON AND CAMPAGNA IN 1975 AS COMPARED TO THE MINIMAL FINDINGS OF DR. CAMPAGNA MADE IN 1970, INDICATED CLAIMANT'S CONDITION HAD WORSENED AND REMANDED THE CLAIM TO THE EMPLOYER TO BE ACCEPTED AS A CLAIM FOR AGGRAVATION.

ON DE NOVO REVIEW, THE BOARD AGREES WITH THE OPINION OF THE REFEREE. DR. JOHNSON STATED THAT AGGRAVATION WAS WITHIN THE REALM OF POSSIBILITY. BECAUSE HE HAD NOT SEEN CLAIMANT PRIOR TO MARCH, 1975, HIS BASIS FOR GIVING HIS OPINION OF HER CONDITION ON JANUARY 7, 1971 HAD TO BE THE HISTORY RELATED TO HIM BY CLAIMANT. HE FELT THAT HE COULD RELY ON ITS TRUTHFULNESS. THE REFEREE FOUND THAT CLAIMANT WAS A CREDIBLE PERSON AND AGREED WITH DR. JOHNSON. DR. CAMPAGNA, IN HIS AUGUST, 1975 REPORT, NOTED MUCH FUNCTIONAL OVERLAY, A CERVICAL SPONDYLOSIS WITH CONGENITAL FUSION AND A CONGENITAL LUMBOSACRAL ANOMALY. HE INDICATED TO THE CARRIER IN SEPTEMBER, 1975 THAT, ALTHOUGH IT WAS NOT KNOWN, AT THAT TIME, WHETHER THE NEED FOR POSSIBLE FUTURE SURGERY WAS RELATED TO THE 1970 INDUSTRIAL INJURY, THE CLAIM SHOULD BE REOPENED.

THE BOARD CONCLUDES THAT CLAIMANT DOES HAVE A CONGENITAL PROBLEM IN HER BACK BUT THERE IS EVIDENCE THAT CLAIMANT'S CONDITION HAS WORSENED SINCE JANUARY 7, 1971.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 13, 1976, IS AFFIRMED.

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

WCB CASE NO. 75-4226 JULY 22, 1976

EVA NEWMAN, CLAIMANT

JOHN SVOBODA, CLAIMANT'S ATTY.
RON RODNER, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE CLAIMANT RECEIVED AN AWARD OF 16 DEGREES FOR 5 PER CENT UNSCHEDULED RIGHT AND LEFT SHOULDER DISABILITY PURSUANT TO A DETERMINATION ORDER DATED SEPTEMBER 22, 1975. UPON HEARING, THE REFEREE AWARDED HER AN ADDITIONAL 10 PER CENT FOR A TOTAL OF 15 PER CENT FOR UNSCHEDULED LOW BACK DISABILITY. THE BOARD TAKES ADMINISTRATIVE NOTICE THAT THE REFEREE'S AWARD SHOULD HAVE BEEN DENOMINATED AS 15 PER CENT UNSCHEDULED 'RIGHT AND LEFT SHOULDER' DISABILITY. CLAIMANT NOW REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER ON THE EXTENT OF PERMANENT PARTIAL DISABILITY.

CLAIMANT, A 43 YEAR OLD DRYCLEANING WORKER, INJURED HER RIGHT ARM AND SHOULDER ON SEPTEMBER 14, 1974. WHEN SHE WAS REFERRED TO DR. SCHROEDER ON DECEMBER 31, 1973, HE FOUND CALCIFIC DEPOSITS WITHIN THE ROTATOR CUFF, BILATERALLY, CAUSING CALCIFIC TENDINITIS. EXCISION OF THESE DEPOSITS IN BOTH SHOULDERS WAS DONE.

CLAIMANT RETURNED TO WORK, SEEMED TO TOLERATE IT FAIRLY WELL AND DR. SHROEDER ANTICIPATED ONLY VERY MINOR DISABILITY. WHEN DR. SHROEDER SAW CLAIMANT ON AUGUST 11, 1975 SHE HAD WORKED A YEAR AND A HALF AND WAS COMPLAINING OF INCREASED SYMPTOMS AND DIFFICULTY IN REACHING ABOVE HER HEAD. HE DID NOT FEEL SHE WAS SERIOUSLY DISABLED, BUT FELT SHE

SHOULD CONSIDER SOME FORM OF LIGHT WORK WITH LESS STRESS ON THE SHOULDERS. CLAIMANT HAS NOT WORKED SINCE THIS TIME.

IT APPEARS THAT CLAIMANT IS NOW ATTEMPTING TO RECEIVE HER GED, AND THAT VOCATIONAL ASSISTANCE IS BEING PROVIDED FOR HER. SHE HAS MANY ASSETS, IS WELL MOTIVATED AND, HOPEFULLY, WITH SOME RETRAINING, WILL BE ABLE TO FIND SUITABLE EMPLOYMENT WITHIN HER PHYSICAL LIMITATIONS.

THE BOARD CONCLUDES CLAIMANT'S PRESENT DISABILITY DOES NOT EXCEED THAT FOR WHICH SHE HAS BEEN AWARDED.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 12, 1976, IS AFFIRMED.

WCB CASE NO. 74-3292 JULY 22, 1976

MARY YOUNG, CLAIMANT

JAMES KENIN, CLAIMANT'S ATTY.
DARYLL KLEIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH FOUND CLAIMANT'S CONDITION HAD WORSENED SINCE THE LAST AWARD OF COMPENSATION, BUT WAS NOW MEDICALLY STATIONARY, AND GRANTED 96 DEGREES FOR 30 PER CENT UNSCHEDULED DISABILITY. CLAIMANT CONTENDS SHE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT, A NURSES AIDE, SLIPPED AND FELL ON DECEMBER 22, 1971. HER CONDITION WAS DIAGNOSED BY A CHIROPRACTOR AS A LUMBAR SPRAIN. SHE CONTINUED TO BE EXAMINED BY SEVERAL PHYSICIANS AND WAS HOSPITALIZED ON TWO OCCASIONS. IN JUNE, 1973 A DETERMINATION ORDER AWARDED CLAIMANT 32 DEGREES FOR 10 PER CENT UNSCHEDULED DISABILITY. CLAIMANT REQUESTED A HEARING BUT A COMPROMISE WAS REACHED AND BY A STIPULATION DATED OCTOBER 25, 1973 CLAIMANT WAS AWARDED AN ADDITIONAL 28.6 DEGREES FOR A TOTAL OF 60.6 DEGREES.

CLAIMANT CONTINUED TO HAVE BACK PROBLEMS AND CONSULTED OTHER PHYSICIANS FOR HELP. DR. DUNCAN EXAMINED CLAIMANT IN MAY AND JUNE OF 1974 AND FOUND BACK PAIN AND LEG PAIN. IN MAY, 1974 DR. GRITZKA RECOMMENDED SURGERY FOR CLAIMANT'S DISC PROBLEMS BUT CLAIMANT DIDN'T WANT SURGERY. DR. GRITZKA FOUND CLAIMANT'S CONDITION TO BE WORSE THAN IT HAD BEEN IN 1973.

ON AUGUST 20, 1974 THE CARRIER DENIED CLAIMANT'S CLAIM FOR AGGRAVATION ON THE GROUNDS THAT HER SYMPTOMS MERELY INCREASED DUE TO PROGRESSIVE DISC DETERIORATION.

IN 1975 CLAIMANT WAS INVOLVED IN ONE OR TWO AUTOMOBILE ACCIDENTS WHICH SHE SAID DID NOT INVOLVE HER BACK BUT DID CAUSE OTHER PROBLEMS. DR. HARRIS EXAMINED CLAIMANT ON JULY 2, 1975 AND FELT CLAIMANT HAD RHEUMATOID ARTHRITIS AND CHRONIC FIBROMYOSITIS AND HEART DISEASE - HE CALLED CLAIMANT A 'MEDICAL BASKET CASE.'

DR. ROSENBAUM EXAMINED CLAIMANT ON NOVEMBER 20, 1975 AND WAS UNABLE TO VERIFY RHEUMATOID ARTHRITIS BUT FELT IT WAS IRRELEVANT WHETHER CLAIMANT HAD RHEUMATOID ARTHRITIS OR HEART DISEASE BECAUSE THERE WAS NO RELATIONSHIP BETWEEN THE TWO CONDITIONS AND CLAIMANT'S COMPENSABLE INJURY. THE REFEREE CONCURRED WITH DR. ROSENBAUM.

THE REFEREE EXAMINED THE MEDICAL REPORTS MADE JUST PRIOR TO OCTOBER 25, 1973 AND THE REPORTS MADE IMMEDIATELY PRIOR TO THE 1975 AUTOMOBILE ACCIDENT AND, BASED UPON THE PREPONDERANCE OF THIS EVIDENCE, FELT THAT CLAIMANT'S CONDITION HAD BECOME WORSENED SINCE OCTOBER 25, 1973 AND PRIOR TO HER AUTOMOBILE ACCIDENT. HER CLAIM FOR AGGRAVATION SHOULD BE ACCEPTED.

THE REFEREE FOUND THAT AT THE PRESENT TIME CLAIMANT'S CONDITION WAS MEDICALLY STATIONARY. IN DETERMINING THE AMOUNT OF CLAIMANT'S DISABILITY, HE FOUND THAT ALL THE PHYSICIANS AGREED ON THE DIAGNOSIS OF LUMBOSACRAL SPRAIN WITH PROBABLE DISC AND THAT SHE DID HAVE PERMANENT RESIDUALS OF HER INDUSTRIAL INJURY. BECAUSE A NURSES AIDE'S POSITION REQUIRES HEAVY LIFTING CLAIMANT WILL NOT BE ABLE TO PARTICIPATE IN THAT OCCUPATION ANY LONGER. BASED ON THESE FINDINGS, THE REFEREE GRANTED CLAIMANT AN ADDITIONAL 35.4 DEGREES FOR A TOTAL OF 96 DEGREES UNSCHEDULED DISABILITY FOR HER LOSS OF WAGE EARNING CAPACITY.

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

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 22, 1976, IS AFFIRMED.

SAIF CLAIM NO. EC 77622 JULY 22, 1976

HARRY SCHELSKE, CLAIMANT

ALAN M. SCOTT, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

ON JULY 1, 1976 THE CLAIMANT, BY AND THROUGH HIS ATTORNEY, REQUESTED THE BOARD TO REOPEN HIS CLAIM FOR AN INDUSTRIAL INJURY SUFFERED JUNE 15, 1967, EXERCISING ITS OWN MOTION JURISDICTION PURSUANT TO ORS 656.278.

PURSUANT TO OAR 436-83-810(C), THE STATE ACCIDENT INSURANCE FUND WAS INFORMED THAT IT HAD 20 DAYS FROM THE DATE THE BOARD HAD RECEIVED THE REQUEST WITHIN WHICH TO ADVISE THE BOARD OF ITS POSITION. ON JULY 14, 1976 THE STATE ACCIDENT INSURANCE FUND ADVISED THE BOARD THAT IT WAS REOPENING CLAIMANT'S CLAIM FOR SUCH BENEFITS AS MIGHT BE REQUIRED DUE TO THE AGGRAVATION OF HIS INDUSTRIAL INJURY OF JUNE 15, 1967.

THEREFORE, THERE BEING NOTHING FURTHER REQUIRED IN THIS MATTER, IT IS ORDERED THAT CLAIMANT'S CLAIM BE REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR SUCH MEDICAL CARE AND TREATMENT AS HE MAY REQUIRE AND FOR THE PAYMENT OF COMPENSATION, AS PROVIDED BY LAW, FROM APRIL 29, 1976 AND UNTIL THE CLAIM IS CLOSED PURSUANT TO ORS 656.278., AND

CLAIMANT'S ATTORNEY BE AWARDED AS A REASONABLE ATTORNEY FEE 25 PER CENT OF ANY COMPENSATION FOR TEMPORARY TOTAL DISABILITY PAID TO CLAIMANT, PAYABLE OUT OF SUCH COMPENSATION AS PAID, TO A MAXIMUM OF 500 DOLLARS AND 25 PER CENT OF ANY ADDITIONAL COMPENSATION FOR PERMANENT PARTIAL DISABILITY THAT CLAIMANT MAY RECEIVE AS A RESULT OF THE SUBSEQUENT CLOSURE PURSUANT TO ORS 656.278, PAYABLE OUT OF SAID COMPENSATION AS PAID, NOT TO EXCEED 2,000 DOLLARS.

WCB CASE NO. 75-1899 JULY 23, 1976

FENTRICE SMITH, CLAIMANT

MICHAEL STROOBAND, CLAIMANT'S ATTY.
MERLIN MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHEREIN HE ASSESSED A PENALTY OF 25 PER CENT ON A PAYMENT OF 399.21 DOLLARS MADE FEBRUARY 25, 1975 AND A PENALTY OF 25 PER CENT ON THE PAYMENT OF 931.49 DOLLARS MADE ON MAY 22, 1975 AND AWARDED AN ATTORNEY FEE OF 600 DOLLARS.

THE RECORD BEFORE THE BOARD IS REPLETE WITH ERRORS, MISUNDERSTANDING AND LACK OF COMMUNICATION NOT ONLY ON THE PART OF THE CARRIER BUT ALSO OCCASIONED BY THE ACTIONS OF CLAIMANT, HER DOCTOR, AND HER COUNSEL. MOST OF THE PROBLEMS IN THIS MATTER COULD HAVE BEEN SOLVED WITH A FEW QUICK TELEPHONE CALLS AND A LITTLE COOPERATION.

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HER LEFT ANKLE ON JANUARY 15, 1975 WHILE EMPLOYED AS A GROCERY CLERK FOR SAFEWAY STORES. THE FIRST TIME LOSS PAYMENT WAS MADE ON JANUARY 25, 1975 FOR THE PERIOD JANUARY 17 TO JANUARY 27. SHORTLY THEREAFTER, THE CARRIER RECEIVED A FORM 802 FROM CLAIMANT'S DOCTOR STATING CLAIMANT RETURNED TO WORK ON JANUARY 14 AND THERE WAS NO TIME LOSS INVOLVED. BASED ON THIS INFORMATION, THE CARRIER THEN REQUESTED REIMBURSEMENT FOR TIME LOSS IT HAD PAID. WHEN CLAIMANT RECEIVED THIS REQUEST, SHE INFORMED THE CARRIER SHE HAD NOT BEEN RELEASED AND WAS THEN UNDER THE CARE OF DR. CHANG. SHE WAS ASKED TO HAVE DR. CHANG SEND A REPORT, BUT INSTEAD OF DOING THIS SHE RETAINED AN ATTORNEY WHO SENT THE REPORT.

AT THIS POINT, THE CARRIER PAID TIME LOSS WHICH ADMITTEDLY WAS IN ERROR AS TO AMOUNT, BUT IT CORRECTED THE ERROR WITHIN FIVE DAYS.

THE SECOND PERIOD OF TEMPORARY TOTAL DISABILITY FOR WHICH THE REFEREE AWARDED A PENALTY INVOLVED APRIL 3 TO MAY 23, 1975. BY APRIL 3, CLAIMANT'S ANKLE HAD BEGUN TO SWELL AND SHE AGAIN WAS OFF WORK AND SOUGHT MEDICAL ATTENTION. THE CARRIER REOPENED THE CLAIM ON APRIL 10, AND BEGAN CORRESPONDENCE WITH THE DOCTORS. TIME LOSS AGAIN WAS DELAYED BY LACK OF COMMUNICATION BETWEEN THE CARRIER, CLAIMANT AND THE DOCTOR.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT THE DELAYS IN THE PROCESSING OF THIS CLAIM, ALTHOUGH REGRETABLE, ARE DUE NOT ENTIRELY TO THE ACTIONS OF THE CARRIER, BUT ARE DUE AS WELL TO THE ACTIONS OF THE CLAIMANT, THE DOCTORS AND COUNSEL.

THE BOARD CONCLUDES THAT PENALTIES AND ATTORNEY FEES ARE NOT JUSTIFIED.

ORDER

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

CLAIM NO. C6046336 HOD JULY 26, 1976

RAY F. PLYMALE, CLAIMANT

RICHARD KROPP, CLAIMANT'S ATTY.
KEITH SKELTON, DEFENSE ATTY.
ORDER

A STIPULATION AND AGREEMENT WAS ENTERED INTO IN THE ABOVE ENTITLED MATTER AND RECEIVED BY THE BOARD ON JULY 19, 1976.

THE BOARD HAS REVIEWED THE MATTER AND CONCLUDES THAT THE STIPULATION AND AGREEMENT SHOULD BE APPROVED IN ITS ENTIRETY.

ORDER

THE STIPULATION AND AGREEMENT SIGNED BY THE CLAIMANT, HIS ATTORNEY AND THE ATTORNEY FOR THE EMPLOYER AND CARRIER, AND RECEIVED BY THE BOARD ON JULY 19, 1976 IS APPROVED IN ITS ENTIRETY. A COPY OF SAID STIPULATION AGREEMENT IS ATTACHED HERETO AND, BY THIS REFERENCE, MADE A PART OF THIS ORDER.

STIPULATION AND AGREEMENT

THE PARTIES HERETO STIPULATE AND AGREE AS FOLLOWS -

I

THAT CLAIMANT SUSTAINED AN ACCIDENTAL INJURY UNDER THE WORKMEN'S COMPENSATION ACT IN THE COURSE OF HIS EMPLOYMENT AT U. S. PLYWOOD COMPANY ON JANUARY 6, 1967. THAT THEREAFTER, A DETERMINATION ORDER WAS ENTERED ON THE 19TH DAY OF DECEMBER, 1967, AWARDING TO CLAIMANT 25 PER CENT LOSS OF AN ARM BY SEPARATION FOR UNSCHEDULED DISABILITY AND 80 PER CENT LOSS OF USE OF THE RIGHT LEG.

II

THAT THEREAFTER, A REQUEST FOR HEARING WAS FILED FROM SAID DETERMINATION ORDER. THAT SAID REQUEST FOR HEARING WAS SETTLED BY A STIPULATION AWARDING TO CLAIMANT 150 DOLLARS PER MONTH FOR AS LONG AS HE LIVED - AND, IN THE EVENT OF HIS DEATH, UNTO HIS WIFE THE SUM OF 110 DOLLARS PER MONTH FOR SO LONG AS SHE SHALL LIVE AND UNTIL SHE SHALL REMARRY, WHICHEVER SHALL OCCUR FIRST AND ALSO PROVIDING FOR MEDICAL SERVICES AND OTHER BENEFITS AS PROVIDED BY THE WORKMEN'S COMPENSATION ACT.

III

THAT UNDER THE TERMS OF SAID STIPULATION THE EMPLOYER AND CARRIER HAVE BEEN PAYING THE CLAIMANT THE SUM OF 150 DOLLARS PER MONTH EVER SINCE JANUARY 15, 1969.

IV

THEREAFTER, CLAIMANT'S CONDITION WORSENED AS REFLECTED BY THE REPORT OF DR. ROBERT F. ANDERSON DATED MAY 30, 1975, FINDING THAT THE CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED FROM GAINFUL EMPLOYMENT. DR. ROBERT F. ANDERSON IN HIS REPORT DATED NOVEMBER 18, 1975, INDICATED THAT THE INJURY WAS A MATERIAL CONTRIBUTING AND AGGRAVATING FACTOR TO HIS DISABILITIES.

V

THAT CLAIMANT IS NOW PERMANENTLY AND TOTALLY DISABLED FROM ANY TYPE OF SUITABLE AND GAINFUL EMPLOYMENT ON A REGULAR BASIS AS DEFINED BY ORS 656.206 AND IS ENTITLED TO AN AWARD OF PERMANENT TOTAL DISABILITY UNDER THE WORKMEN'S COMPENSATION ACT.

VI

THAT THEREAFTER A PETITION FOR OWN MOTION JURISDICTION WAS FILED BY THE CLAIMANT ATTACHING THE REPORTS OF DR. ROBERT F. ANDERSON DATED FEBRUARY 28, 1972 - MAY 30, 1975 - AND THE REPORTS OF DR. A. GURNEY KIMBERLEY DATED MARCH 4, 1968 - AND DR. ROBERT F. ANDERSON DATED DECEMBER 6, 1967. THAT ATTACHED TO THIS STIPULATION IS THE REPORT OF DR. ROBERT F. ANDERSON DATED NOVEMBER 18, 1975.

VII

THAT THE EMPLOYER AND CARRIER CONTEND THAT THE BOARD HAD NO JURISDICTION TO ENTERTAIN AN OWN MOTION PETITION AFTER A CASE HAD BEEN SETTLED ON A CONTROVERTED BASIS, BUT THE BOARD RULED OTHERWISE AND HAS REMANDED THE CASE TO A HEARING OFFICER FOR FACT GATHERING.

VIII

THAT DUE TO CLERICAL ERROR AND WITHOUT FAULT ON PART OF THE CLAIMANT OR THE INSURANCE CARRIER, CLAIMANT HAS RECEIVED AN OVERPAYMENT OF COMPENSATION FROM LIBERTY MUTUAL INSURANCE COMPANY IN THE AMOUNT OF 3,280.82 DOLLARS - AND THAT LIBERTY MUTUAL INSURANCE COMPANY SHOULD BE ENTITLED TO RECOVER SAID OVERPAYMENT FROM FUTURE COMPENSATION DUE TO CLAIMANT.

IX

THAT THE PARTIES HERETO HAVE DISCUSSED THE RELATIVE MERITS OF THE CASE AND HAVE ARRIVED AT A FURTHER PROPOSED STIPULATION, DETAILS OF WHICH ARE AS FOLLOWS -

A. THE CLAIMANT SHALL BE CLASSIFIED AS PERMANENTLY AND TOTALLY DISABLED UNDER THE WORKMEN'S COMPENSATION LAW OF OREGON AS OF THE DATE OF THE APPROVAL OF THIS STIPULATION AND SHALL BE ENTITLED TO ALL BENEFITS AS PROVIDED BY THE WORKMEN'S COMPENSATION ACT, AS SHALL HIS SURVIVING SPOUSE AND BENEFICIARIES, AND HIS MONTHLY PAYMENTS SHALL BE INCREASED TO 185 DOLLARS PER MONTH, WHICH AMOUNT EMPLOYER AND CARRIER AGREE TO PAY.

B. IN ADDITION, THE RETROACTIVE RESERVE BENEFIT PROVISION OF THE LAW SHALL APPLY AND HENCEFORTH CARRIER WILL PAY BENEFITS TO CLAIMANT IN ACCORDANCE WITH THE OREGON LAW RELATING TO THE RETROACTIVE RESERVE, IN THE EVENT THAT THE WORKMEN'S COMPENSATION BOARD WILL ALSO AGREE TO REIMBURSE LIBERTY MUTUAL INSURANCE COMPANY FOR ANY RETROACTIVE RESERVE PAYMENTS MADE AFTER THE DATE OF THE APPROVAL OF THIS AGREEMENT.

C. THAT EMPLOYER AND CARRIER SHALL BE ENTITLED TO SET OFF AGAINST FUTURE PAYMENTS DUE TO CLAIMANT AND HIS WIFE THE SUM OF 100.00 DOLLARS PER MONTH UNTIL THE CARRIER SHALL HAVE RECOVERED FROM CLAIMANT AND HIS SURVIVING SPOUSE, IF ANY, THE SUM OF 3,280.82 DOLLARS WITHOUT INTEREST PROVIDED, HOWEVER, UPON TERMINATION OF PAYMENTS TO CLAIMANT AND-OR HIS SURVIVING SPOUSE THE REMAINING BALANCE OF THE 3,280.82 DOLLARS, IF ANY, SHALL BE SATISFIED BY THE EMPLOYER AND CARRIER AND SHALL NOT CONSTITUTE A DEBT OWED BY THE ESTATE OF EITHER - AND PROVIDED FURTHER THAT SAID 100.00 DOLLARS SETOFF SHALL ONLY BE

APPLICABLE IF CLAIMANT SHALL BE RECEIVING RETROACTIVE RESERVE BENEFITS OVER AND ABOVE THAT AMOUNT WHICH THE CLAIMANT WOULD BE ENTITLED TO AS A PERMANENTLY AND TOTALLY DISABLED WORKMAN AFTER THE DATE OF THE APPROVAL OF THIS AGREEMENT.

X

THAT CARRIER SHALL BE ENTITLED TO REIMBURSEMENT OF PAYMENTS MADE FOR RETROACTIVE RESERVE TO THE CLAIMANT IN ACCORDANCE WITH THE LAW AND ADMINISTRATIVE RULES AND PROCEDURES OF THE WORKMEN'S COMPENSATION ACT AS THE SAME SHALL BE IN EFFECT FROM TIME TO TIME EXCEPT AS MODIFIED BY THE TERMS OF THIS AGREEMENT.

XI

THIS AGREEMENT SHALL ONLY BECOME EFFECTIVE UPON THE WORKMEN'S COMPENSATION BOARD APPROVING SAME, AND AGREEING TO REIMBURSE LIBERTY MUTUAL INSURANCE COMPANY FOR ANY RETROACTIVE RESERVE PAYMENTS WHICH LIBERTY MUTUAL INSURANCE COMPANY MAKES AFTER THE DATE OF THE APPROVAL OF THIS AGREEMENT.

XII

THAT THIS STIPULATION AND AGREEMENT SETTLES ALL ISSUES BETWEEN THE PARTIES, AND THE CLAIMANT DOES HEREWITH WITHDRAW HIS PETITION FOR OWN MOTION JURISDICTION AND A REQUEST FOR HEARING BASED THEREON. THAT THERE SHALL BE PAID TO EMMONS, KYLE, KROPP AND KRYGER A REASONABLE ATTORNEY'S FEE EQUAL TO 20 PER CENT OF COMPENSATION DUE TO CLAIMANT BY VIRTUE OF THIS STIPULATION, BUT NOT TO EXCEED THE SUM OF 300.00 DOLLARS.

WCB CASE NO. 75-3421 JULY 26, 1976

PATRICK MC KEE, CLAIMANT

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

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED CLAIMANT'S CLAIM TO IT FOR PAYMENT OF COMPENSATION AS PROVIDED BY LAW.

ON JUNE 25, 1975, CLAIMANT WAS INVOLVED IN AN ALTERCATION WITH A FELLOW EMPLOYEE ON THE EMPLOYER'S PREMISES WHICH RESULTED IN CLAIMANT BEING INJURED.

ONE OF THE EVENTS LEADING UP TO THE ALTERCATION HAPPENED ON THE PREVIOUS EVENING WHEN CLAIMANT'S WIFE CAME TO PICK HIM UP AFTER WORK - WHILE SHE WAS WAITING THE CO-WORKER, MR. MILES, MADE A SUGGESTIVE GESTURE TO HER. CLAIMANT'S WIFE RELATED THIS TO CLAIMANT ON THE EVENING PRECEDING THE ALTERCATION. CLAIMANT HAD REPORTED TO HIS IMMEDIATE SUPERVISORS THAT ON TWO OCCASIONS MR. MILES HAD MADE ASSAULTIVE GESTURES TO HIM. MRS. MC KEE WOULD NOT HAVE BEEN ON THE PREMISES EXCEPT FOR CLAIMANT'S EMPLOYMENT.

ANOTHER POSSIBLE CAUSE FOR THE FIGHT WAS THAT CLAIMANT FELT A PAIR OF WORK GLOVES IN THE POSSESSION OF MR. MILES HAD BEEN STOLEN

FROM HIM. THIS CERTAINLY WOULD NOT HAVE HAD ANY BASIS EXCEPT AS A RESULT OF THE EMPLOYMENT.

THE REFEREE FOUND THAT CLAIMANT'S CLAIM WAS COMPENSABLE AS IT AROSE OUT OF AND IN THE COURSE OF CLAIMANT'S EMPLOYMENT. THESE TWO EMPLOYEES, WITH NO OUTSIDE SOCIAL CONTACT, WERE PLACED IN THE SAME CREW TOGETHER AND DEVELOPED A MUTUAL DISLIKE FOR EACH OTHER. THE REFEREE CONCLUDED THAT THERE WAS A CAUSAL RELATIONSHIP BETWEEN CLAIMANT'S EMPLOYMENT AND THE INJURY WHICH HAD ITS ORIGIN IN A RISK CONNECTED WITH SUCH EMPLOYMENT AND FLOWED FROM THAT SOURCE AS A RATIONAL AND NATURAL CONSEQUENCE.

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

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 23, 1976 IS AFFIRMED.

CLAIMANT'S ATTORNEY IS ALLOWED THE SUM OF 400.00 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, AS AND FOR A REASONABLE ATTORNEY FEE FOR HIS LEGAL SERVICES BEFORE THE HEARING OFFICER AND THE BOARD.

WCB CASE NO. 75-806 JULY 27, 1976

JOY EDWARDS, CLAIMANT

PETER BLYTH, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON, MOORE AND PHILLIPS.

CLAIMANT SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH AFFIRMED THE DENIAL BY THE EMPLOYER OF CLAIMANT'S CLAIM FOR WORKMEN'S COMPENSATION BENEFITS FOR URETHRITIS AND CYSTO-URETHROCELE.

CLAIMANT WHO IS APPROXIMATELY 62 YEARS OLD SUSTAINED A COMPENSABLE INJURY ON SEPTEMBER 10, 1973 WHEN SHE SLIPPED ON A RUG ON A WAXED FLOOR AND FELL. SHE SUSTAINED A SPIRAL FRACTURE OF THE FIFTH METACARPAL OF HER LEFT HAND AND CONTUSION OF THE RIGHT HIP, LATER DIAGNOSED AS 'RIGHT HIP STRAIN'. CLAIMANT WAS GIVEN CONSERVATIVE TREATMENT BUT DID NOT RESPOND AND, ON JULY 24, 1974, AN ARTHRODESIS OF THE SYMPHYSIS-PUBIS. FOLLOWING THIS OPERATION CLAIMANT CONTINUED TO HAVE PELVIC PAIN AND, ON OCTOBER 29, 1974, SHE WAS HOSPITALIZED WITH A DIAGNOSIS OF URETHRITIS AND CYSTO-URETHROCELE.

THE SOLE ISSUE IS WHETHER THERE IS A CAUSAL RELATIONSHIP BETWEEN CLAIMANT'S COMPENSABLE SEPTEMBER 10, 1973 INJURY AND THESE CONDITIONS. CLAIMANT CONTENDS THAT THERE IS, THE FUND CONTENDS THAT THERE IS NOT.

INITIALLY, CLAIMANT HAD BEEN TREATED BY DR. GAMBEE AND DR. DAVIS, BOTH ORTHOPEDIC PHYSICIANS. DR. GAMBEE REFERRED CLAIMANT TO DR. WEDGE AND ALBRICH, UROLOGISTS, FOR CONSULTATION WITH REFERENCE TO HER PELVIC SYMPTOMATOLOGY. DR. ALBRICH, ON DECEMBER 18, 1974, STATED THAT HE COULD FIND NOTHING IN THE RECORD WHICH WOULD INDICATE THAT THE URETHRITIS WAS SECONDARY TO THE PREVIOUS INDUSTRIAL INJURY - THAT IT WAS A PROBLEM THAT CLAIMANT WAS HAVING AT THE SAME TIME AS THE RESIDUAL FROM THE BONE PAIN BUT HE WAS UNABLE TO STATE FOR CERTAIN THAT THE CAUSE OF THE PROBLEM WAS THE INDUSTRIAL INJURY.

DR. STIFF, AN OBSTETRICIAN AND GYNOCOLOGIST, EXAMINED CLAIMANT IN NOVEMBER, 1973 AND, IN A LETTER DATED JUNE, 1975, EXPRESSED HIS OPINION THAT CLAIMANT HAD A CONGESTED PELVIC SECONDARY TO CONTUSION AND THAT SHE HAD BEEN ADVISED TO TREAT IT WITH HOT SITZ BATHS AND REST. DR. DAVIS DIAGNOSED THE PAIN AS POST-TRAUMATIC DYSTROPHIC CHANGES, SYMPHYSIS-PUBIS AND CONCLUDED THAT THE INJURY WAS AN ADEQUATE EXPLANATION OF THE DIAGNOSIS AND CLAIMANT'S ENSUING SYMPTOMS.

IN THIS CASE WE HAVE DIAMETRICALLY OPPOSED OPINIONS, ONE EXPRESSED BY DR. DAVIS, AN ORTHOPEDIC PHYSICIAN, AND THE OTHER BY DR. ALBRICH, A UROLOGIST. THE RESPONSIBILITY IS UPON CLAIMANT TO PROVE BY PREPONDERANCE OF THE EVIDENCE THAT THE SUBSTANCE OF HER ALLEGATION THAT THE CONDITIONS OF URETHRITIS AND CYSTOURETHROCELE ARE RELATED TO HER INDUSTRIAL INJURY. IT IS A WELL-KNOWN RULE OF LAW THAT TECHNICAL MEDICAL PROBLEMS, BEYOND THE KNOWLEDGE OF LAYMEN, REQUIRE EXPERT MEDICAL EVIDENCE TO PROVE SUCH RELATIONSHIP.

THE REFEREE FOUND IT OBVIOUS THAT THE ETIOLOGY OF A URETHRITIS OR A CYSTOURETHROCELE CONDITION COULD ONLY BE ESTABLISHED BY EXPERT MEDICAL TESTIMONY AND THE MEDICAL TESTIMONY DID NOT PREPONDERATE IN FAVOR OF CLAIMANT. THE REFEREE RELIED HEAVILY ON THE REPORT FROM DR. ALBRICH, DATED DECEMBER 18, 1974, AND CONCLUDED THAT THE CONDITIONS WERE NOT COMPENSABLE UNDER THE WORKMEN'S COMPENSATION ACT.

THE MAJORITY OF THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE. THERE IS NO QUESTION THAT CLAIMANT SUFFERED A COMPENSABLE INDUSTRIAL INJURY ON SEPTEMBER 10, 1973 WHEN SHE FELL AND SUFFERED A FRACTURED WRIST AND A RIGHT HIP STRAIN. AT THAT TIME, HOWEVER, THERE WAS NO DIAGNOSIS OF A CONTUSED PELVIS, AS CONTENDED BY THE CLAIMANT. WHEN CLAIMANT DID NOT RESPOND TO THE CONSERVATIVE TREATMENT AND HER PAIN DID NOT ABATE SHE WAS OPERATED ON FOR AN UNSTABLE SYMPHYSIS-PUBIS AND THE FUND PAID FOR THIS SURGERY DONE BY DR. GAMBEE. ABOUT THREE MONTHS LATER CLAIMANT WAS HOSPITALIZED WITH A DIAGNOSIS OF URETHRITIS AND CYSTOURETHROCELE. THIS WAS THE FIRST FINDING OF THESE CONDITIONS AND, SUBSEQUENTLY, DR. GAMBEE REFERRED CLAIMANT TO DR. ALBRICH.

CLAIMANT CONTENDS THAT IT IS A MEDICALLY RECOGNIZED FACT THAT STRESS IS THE GENERAL CAUSE OF URETHRITIS AND CYSTOURETHROCELE BUT OFFERS NO MEDICAL SUPPORT FOR SUCH CONTENTION. URETHRITIS IS INFLAMMATION OF THE URETHRA AND CYSTOURETHROCELE IS A PROLAPSE OF THE FEMALE URETHRA AND BLADDER. ITS HIGHLY IMPROBABLE THAT STRESS WOULD CAUSE INFLAMMATION AND MORE LIKELY THAT STRAIN RATHER THAN STRESS WOULD CAUSE PROLAPSE.

THE BOARD CONCLUDES THAT THE MEDICAL EVIDENCE IS INSUFFICIENT TO JUSTIFY A FINDING THAT THE CONDITIONS OF URETHRITIS AND CYSTOURETHROCELE ARE RELATED TO CLAIMANT'S INDUSTRIAL INJURY. DR. ALBRICH DIDN'T SAY THE URETHRITIS WAS A RESIDUAL OF THE FALL, HE MERELY SAID THAT IT WAS PRESENT AT THE SAME TIME AS THE BONE PAIN AND HE SPECIFICALLY ELIMINATED IT AS 'SECONDARY' TO THE INDUSTRIAL INJURY.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 15, 1976, IS AFFIRMED.

BOARD MEMBER MOORE DISSENTS -

THE MAJORITY OF THE BOARD HAS CONCLUDED THAT THE MEDICAL EVIDENCE IS INSUFFICIENT TO JUSTIFY A FINDING THAT CLAIMANT'S URETHRITIS AND CYSTOURETHROCELE CONDITIONS ARE RELATED TO THE INDUSTRIAL INJURY. I AM UNABLE TO CONCUR WITH THEIR CONCLUSIONS.

FIRST - MY COLLEAGUES STATE THAT THE MEDICAL OPINIONS IN THIS CASE ARE 'DIAMETRICALLY OPPOSED'. THIS APPARENT DIVERSITY OF OPINION IS MERELY ONE OF INTERPRETATION. DR. ALBRICH'S REPORT OF DECEMBER 18, 1974 STATES IN CONCLUSION, '... I AM NOT ABLE TO STATE FOR CERTAIN (UNDERSCORED) THAT THE INITIATION OF THE PROBLEM WAS THE INJURY IN QUESTION.' THIS OPINION IS FAR FROM CONCLUSIVE. DR. ALBRICH IS IMPLYING THAT THERE MAY (UNDERSCORED) BE A RELATIONSHIP BUT HE CANNOT BE CERTAIN.

SECOND - THE MEDICAL REPORT BY DR. DAVIS OF MAY 3, 1974 STATES, 'I WOULD BE LED TO BELIEVE THAT THE EPISODE OF INJURY THAT SHE DESCRIBES WOULD BE AN ADEQUATE EXPLANATION FOR THE DIAGNOSIS AS STATED AND HER ENSUING SYMPTOMS.' THE SYMPTOMS WERE FINALLY DETERMINED TO BE URETHRITIS AND CYSTOURETHROCELE.

THIRD - THIS CASE IS ANALAGOUS TO VOLK V. BIRDSEYE DIVISION (UNDERSCORED), 16 OR APP 349 (1974) IN WHICH THE COURT OF APPEALS FOUND AN EYE INJURY TO BE COMPENSABLE EVEN THOUGH SOME MEDICAL OPINION VIEWED THE CAUSAL RELATIONSHIP TO THE INJURY AS A MEDICAL IMPOSSIBILITY. SUCH IS NOT THE CASE HERE. THERE IS NOT ONE MEDICAL OPINION WHICH STATES THAT THE CLAIMANT'S FALL AND ENSUING COMPENSABLE INJURY COULD NOT BE THE CAUSE OF THE URETHRITIS AND CYSTOURETHROCELE.

LASTLY, THE LACK OF DEFINITIVE MEDICAL ANALYSIS DOES NOT PRECLUDE A FINDING OF COMPENSABILITY IN THIS CASE. THE BETTER REASONING WOULD BE - WHERE AN INJURY APPEARS SOON AFTER AN ACCIDENT, AT THE POINT WHERE THE FORCE WAS APPLIED, THERE ARISES THE NATURAL INFERENCE THAT THE INJURY WAS A RESULT OF THE ACCIDENT. THIS IS THE VIEW HELD BY THE COURT OF APPEALS IN VOLK (UNDERSCORED) AND SHOULD BE APPLIED HERE.

I WOULD REVERSE THE REFEREE'S ORDER.

-S- GEORGE A. MOORE, BOARD MEMBER

SAIF CLAIM NO. B 53689 JULY 30, 1976

CHARLES R. PECK, CLAIMANT

ALLAN COONS, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
SUPPLEMENTAL ORDER AWARDING ATTORNEY FEES

THE BOARD'S OWN MOTION DETERMINATION ISSUED JULY 20, 1976 IN THE ABOVE ENTITLED MATTER FAILED TO INCLUDE AN AWARD OF ATTORNEY FEES.

ORDER

IT IS HEREBY ORDERED THAT CLAIMANT'S ATTORNEY IS GRANTED 25 PER CENT OF THE INCREASED COMPENSATION AWARDED TO CLAIMANT AS A REASONABLE ATTORNEY FEE NOT TO EXCEED THE SUM OF 2,000 DOLLARS.

WCB CASE NO. 75-3115 JULY 22, 1976

STEPHEN J. PACKER, CLAIMANT

STIPULATION TO SETTLE DISPUTED CLAIM

IT IS HEREBY STIPULATED BY THE PARTIES, CLAIMANT ACTING PERSONALLY AND BY HIS ATTORNEY, EVOHL F. MALAGON - THE EMPLOYER, CHRISTIAN LOGGING CO., INC., ACTING BY ITS PRESIDENT, CLIFTON G CHRISTIAN, AND ITS ATTORNEY, JOHN L. SVOBODA - AND THE STATE ACCIDENT INSURANCE FUND ACTING BY W. D. BATES, JR., ASSISTANT ATTORNEY GENERAL, AS FOLLOWS -

1. THAT ON JULY 11, 1975, CLAIMANT SUBMITTED AN ACCIDENT REPORT FORM ALLEGING THAT HE HAD RECEIVED A LEFT HAND PUNCH TO THE RIGHT JAW WHILE EMPLOYED BY CHRISTIAN LOGGING CO., INC.

2. THAT ON SEPTEMBER 11, 1975, THE STATE ACCIDENT INSURANCE FUND DENIED RESPONSIBILITY FOR CLAIMANT'S HEAD INJURY ON THE GROUND THAT IT DID NOT RESULT FROM HIS WORK ACTIVITIES.

3. THAT ON NOVEMBER 10, 1975, A HEARING WAS HELD BEFORE REFEREE KIRK A. MULDER AND ON NOVEMBER 24, 1975, AN OPINION AND ORDER WAS ISSUED IN WHICH THE CLAIM WAS FOUND TO BE COMPENSABLE.

4. THAT ON DECEMBER 10, 1975, THE STATE ACCIDENT INSURANCE FUND REQUESTED BOARD REVIEW OF THE DECISION.

5. THAT IT WAS SUBSEQUENTLY DISCOVERED THAT A TRANSCRIPT OF THE HEARING WAS NOT AVAILABLE AND THE MATTER WAS SET FOR RE-HEARING.

6. THAT THERE IS A BONA FIDE DISPUTE BETWEEN THE CLAIMANT ON ONE SIDE AND THE STATE ACCIDENT INSURANCE FUND AND THE EMPLOYER ON THE OTHER SIDE. THE CLAIMANT CONTENDS AND THE STATE ACCIDENT INSURANCE FUND AND THE EMPLOYER DENY THAT CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HIS HEAD WHILE WORKING FOR THE EMPLOYER IN JULY, 1975.

7. THAT THE PARTIES AGREE THAT ALL ISSUES WHICH WERE OR COULD HAVE BEEN RAISED AT THE HEARING ON NOVEMBER 10, 1975, OR AT THE SCHEDULED RE-HEARING MAY BE COMPROMISED AND SETTLED AS A DISPUTED CLAIM BY PAYMENT FROM THE STATE ACCIDENT INSURANCE FUND TO CLAIMANT AS FOLLOWS - (A) ALL TEMPORARY TOTAL DISABILITY AND MEDICAL TREATMENT DUE UNDER THE REFEREE'S ORDER DATED NOVEMBER 24, 1975, FOR THE PERIOD JULY 7, 1975, THROUGH MAY 27, 1976, WHICH IS THE DATE OF THE SCHEDULED RE-HEARING - (B) TEMPORARY TOTAL DISABILITY FROM MAY 28, 1976, THROUGH JUNE 17, 1976 - AND (C) ONE ADDITIONAL OFFICE VISIT FOR TREATMENT BY DR. J. ALAN COOK, M. D. ON JUNE 13, 1976.

8. THAT THE STATE ACCIDENT INSURANCE FUND SHALL PAY TO CLAIMANT'S ATTORNEY AN ATTORNEY FEE IN THE AMOUNT OF 700.00 DOLLARS WHICH IS IN LIEU OF AND NOT IN ADDITION TO THE ATTORNEY FEE AWARDED BY THE REFEREE ON NOVEMBER 24, 1975.

9. THAT THE REFEREE'S OPINION AND ORDER DATED NOVEMBER 24, 1975, SHALL BE SET ASIDE AND SUPERSEDED BY THIS DISPUTED CLAIM SETTLEMENT.

10. THAT THE DENIAL BY THE STATE ACCIDENT INSURANCE FUND DATED SEPTEMBER 11, 1975, SHALL REMAIN IN FULL FORCE AND EFFECT FOREVER AND THE STATE ACCIDENT INSURANCE FUND SHALL NOT BE RESPONSIBLE FOR ANY ADDITIONAL MEDICAL BILLS OR ANY OTHER EXPENSES IN CONNECTION WITH THE DENIED CONDITIONS.

11. THAT PAYMENT OF THE AGREED AMOUNTS IN NO WAY IMPLIES THAT THE STATE ACCIDENT INSURANCE FUND ACCEPTS RESPONSIBILITY FOR THE DENIED CONDITIONS, OR DISABILITIES, OR EXPENSES RESULTING THEREFROM.

12. THAT THE REQUEST FOR HEARING MAY BE DISMISSED WITH PREJUDICE.

ORDER

BASED UPON THE ABOVE STIPULATION OF THE PARTIES, THE UNDERSIGNED REFEREE FINDS THAT THERE IS A BONA FIDE DISPUTE BETWEEN THE PARTIES. PURSUANT TO ORS 656.289(4) THE FOREGOING STIPULATED SETTLEMENT IS THEREFORE APPROVED AND THE REQUEST FOR HEARING IS HEREBY DISMISSED WITH PREJUDICE.

WCB CASE NO. 74-4174 MAY 11, 1976

CHARLES C. CHANEY, CLAIMANT

STIPULATION AND ORDER

THE PARTIES STIPULATE AND AGREE AS FOLLOWS -

1. ON OR ABOUT OCTOBER 16, 1973 CHARLES C. CHANEY FILED WITH STATE ACCIDENT INSURANCE FUND A CLAIM ALLEGING AN INJURY TO ONE OF HIS FEET ON FEBRUARY 16, 1973 ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT.

2. FOLLOWING AN INVESTIGATION, STATE ACCIDENT INSURANCE FUND ISSUED A NOTICE OF DENIAL OF THE CLAIM ON DECEMBER 12, 1973. CHARLES C. CHANEY HAD DIED ON NOVEMBER 16, 1973 WITHOUT HAVING REQUESTED A HEARING. A TIMELY REQUEST FOR HEARING ON THE DENIAL WAS MADE BY HIS PERSONAL REPRESENTATIVE, JANET MCKAY.

3. THERE IS A BONA FIDE DISPUTE BETWEEN STATE ACCIDENT INSURANCE FUND AND THE PERSONAL REPRESENTATIVE OF THE ESTATE. STATE ACCIDENT INSURANCE FUND CONTENDS THE PERSONAL REPRESENTATIVE HAS NO STANDING UNDER LAW TO PURSUE THE CLAIM - THAT CHARLES C. CHANEY DID NOT SUSTAIN A COMPENSABLE INJURY - AND THAT HIS DISABILITY AND NEED FOR MEDICAL CARE AND TREATMENT UP UNTIL THE DATE OF HIS DEATH DID NOT RESULT FROM THE INJURY HE ALLEGED. THE PERSONAL REPRESENTATIVE CONTENDS THAT SHE HAS STANDING UNDER THE LAW TO RECOVER ON BEHALF OF THE ESTATE ALL DISABILITY PAYMENTS AND EXPENSES FOR MEDICAL CARE AND TREATMENT TO WHICH CLAIMANT WOULD HAVE BEEN ENTITLED IF HIS CLAIM HAD BEEN DETERMINED TO BE COMPENSABLE - THAT CHARLES C. CHANEY DID SUSTAIN A COMPENSABLE INJURY AND THAT HE WAS DISABLED AND INCURRED EXPENSES FOR MEDICAL CARE AND TREATMENT AS A RESULT OF THE INJURY.

THE PARTIES AGREE THAT ALL ISSUES IN DISPUTE BETWEEN THEM MAY BE SETTLED AND COMPROMISED BY A PAYMENT BY STATE ACCIDENT INSURANCE FUND OF THE SUM OF 6500.00 DOLLARS TO JANET MCKAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF CHARLES C. CHANEY, DECEASED, AND HER ACCEPTANCE OF THE PAYMENT IN FULL SETTLEMENT OF ALL ISSUES. THE PARTIES UNDERSTAND AND AGREE THAT THE CLAIM SHALL BE AND REMAIN IN A DENIED STATUS AND THAT PAYMENT OF THE SETTLEMENT SUM SHALL NOT BE AN ADMISSION OF RESPONSIBILITY NOR ACCEPTANCE OF THE CLAIM BY THE FUND.

4. CLAIMANT'S ATTORNEYS, BLACK, KENDALL, TREMAINE, BOOTHE, AND HIGGINS, SHALL BE AUTHORIZED TO COLLECT FROM THE PERSONAL REPRESENTATIVE THE SUM OF 3,100.00 DOLLARS AS A REASONABLE FEE FOR LEGAL SERVICES.

5. THE REQUEST FOR HEARING MAY BE DISMISSED.

WCB CASE NO. 75-4701 AUGUST 3, 1976

KAY BINETTE, CLAIMANT

WILLIAM WHITNEY, CLAIMANT'S ATTY.
ROGER LUEDTKE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DENIAL OF HER CLAIM FOR A COMPENSABLE INJURY.

CLAIMANT ALLEGES SHE SUFFERED AN INDUSTRIAL INJURY ON SEPTEMBER 19, 1975 AND WAS SEEN THAT AFTERNOON BY DR. OSBORNE WHO DIAGNOSED 'ACUTE LUMBOSACRAL STRAIN'. CLAIMANT FILED A WORKMEN'S COMPENSATION CLAIM WHICH WAS DENIED ON OCTOBER 30, 1975.

DR. OSBORNE, IN HIS REPORT OF OCTOBER 15, 1975, STATED CLAIMANT HAD HAD SEVERAL ATTACKS IN THE PAST FOR WHICH SHE WAS EXAMINED IN THE EMERGENCY ROOM AT VARIOUS HOSPITALS. HE ALSO STATED THAT CLAIMANT 'DID NOT RECALL OR KNOW OF ANY INJURY TO HER BACK'. CLAIMANT TESTIFIED AT THE HEARING THAT SHE HAD NOT HAD PREVIOUS BACK PROBLEMS.

THE REFEREE FOUND CLAIMANT TO BE 'EXTREMELY' EQUIVOCAL IN HER TESTIMONY. THIS WAS AN UNWITNESSED ACCIDENT, THUS CLAIMANT'S CREDIBILITY IS OF UTMOST IMPORTANCE. CLAIMANT STATED SHE SAW DR. OSBORNE ON THE DAY OF THE ALLEGED ACCIDENT, BUT DR. OSBORNE GAVE CLAIMANT NO PAIN MEDICATION - THE REFEREE DOUBTED THAT CLAIMANT'S PAIN WAS AS SEVERE AS SHE TESTIFIED.

THE REFEREE CONCLUDED THAT CLAIMANT'S ALLEGED ACCIDENT DID NOT ARISE OUT OF OR IN THE COURSE OF HER EMPLOYMENT - THE ONLY TESTIMONY INDICATING IT DOES WAS THAT OF CLAIMANT AND THE INCONSISTENCIES OF CLAIMANT'S TESTIMONY AND HER 'CONVENIENT LAPSES OF MEMORY' CONVINCED HIM SHE WAS NOT TO BE BELIEVED.

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

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 16, 1976, IS AFFIRMED.

WCB CASE NO. 75-1767 AUGUST 3, 1976
WCB CASE NO. 75-1768

MERLE CALDWELL, CLAIMANT

MONTE WALTER, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF.

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH FOUND THAT CLAIMANT'S CONDITION HAD BECOME WORSENED AND AGGRAVATED SINCE CLAIM CLOSURES - HOWEVER, CLAIMANT'S CONDITION WAS STATIONARY PRIOR TO THE HEARING AND HE GRANTED CLAIMANT 160 DEGREES FOR 50 PER CENT UNSCHEDULED DISABILITY AND 52.5 DEGREES FOR 35 PER CENT LOSS OF THE LEFT LEG. HE ALSO AWARDED

CLAIMANT'S ATTORNEY FEE TO BE PAID OUT OF CLAIMANT'S COMPENSATION AS PAID, NOT TO EXCEED THE SUM OF 2,000 DOLLARS.

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HIS LOW BACK ON NOVEMBER 16, 1972. ON JULY 19, 1973 CLAIMANT SUSTAINED A NEW COMPENSABLE INJURY WHICH ALSO AGGRAVATED HIS FORMER INJURY. BOTH INJURIES INVOLVED THE SAME EMPLOYER AND CARRIER AND CLAIMANT WAS AWARDED 32 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK DISABILITY ON EACH (UNDERSCORED) ACCIDENT AND ALSO 22.5 DEGREES FOR 15 PER CENT LOSS OF LEFT LEG BASED ON THE 1972 INJURY DETERMINATION ORDERS WERE ENTERED ON BOTH CLAIMS ON MAY 6, 1974.

ON NOVEMBER 15, 1974 CLAIMANT FILED A CLAIM FOR AGGRAVATION, AT THE SAME TIME REQUESTING A HEARING. ATTACHED TO HIS CLAIM FOR AGGRAVATION AND REQUEST FOR HEARING WAS A MEDICAL REPORT FROM DR. ABELE. AFTER THE REQUEST WAS MADE THE FUND DENIED CLAIMANT'S CONDITION HAD BECOME AGGRAVATED SINCE THE LAST AWARD OF COMPENSATION, NAMELY, THE DETERMINATION ORDERS OF MAY 6, 1974.

THE REFEREE FOUND THAT ALTHOUGH THE FUND HAD MADE NO MOTION TO DISMISS OR ANY OTHER OBJECTION TO THE PROCEDURE FOLLOWED ON BEHALF OF CLAIMANT, NEVERTHELESS, THE FUND HAD WAIVED ANY OBJECTIONS IT MIGHT HAVE HAD BY FILING A DENIAL ON THE MERITS AS TO THE AGGRAVATION.

THE REFEREE FOUND THAT DR. ABELE'S REPORT WAS SUFFICIENT TO JUSTIFY A FINDING OF AGGRAVATION. HE FOUND THAT ALTHOUGH THERE HAD BEEN AN AGGRAVATION OF CLAIMANT'S CONDITION IT HAD BEEN STATIONARY FOR A LONG PERIOD OF TIME. THERE WAS NO EVIDENCE THAT CLAIMANT HAD BEEN DENIED OR REFUSED MEDICAL TREATMENT OR COMPENSATION FOR TEMPORARY TOTAL DISABILITY AND THERE WAS NO NECESSITY FOR REOPENING CLAIMANT'S CLAIM AT THIS TIME. BECAUSE OF THESE FACTS HE CONCLUDED THAT THERE WOULD BE NO AWARD OF ATTORNEY FEES OR ASSESSMENT OF PENALTIES AS CLAIMANT'S COUNSEL HAD NOT ATTAINED ANYTHING BY WAY OF COMPENSATION OR MEDICAL TREATMENT ON BEHALF OF CLAIMANT, NOR WOULD THERE BE ANYTHING UPON WHICH TO BASE AN ASSESSMENT OF PENALTIES.

THE REFEREE, HAVING FOUND AGGRAVATION AND THAT CLAIMANT'S CONDITION WAS PRESENTLY MEDICALLY STATIONARY, PROCEEDED TO DETERMINE THE EXTENT OF CLAIMANT'S DISABILITY. THE INJURY RESULTING FROM THE FIRST ACCIDENT WAS DIAGNOSED AS A LUMBOSACRAL HERNIATED DISC ON THE LEFT WITH SEVERE NERVE PRESSURE CAUSING PAIN TO RADIATE DOWN THE LEFT LEG WITH A DEFINITE LOSS OF FUNCTION AND WEAKNESS IN THE DORSAL FLEXUS OF THE FOOT AND LOSS OF SENSATION - IT REQUIRED SURGICAL EXCISION OF THE HERNIATED DISC AT L4-5 - LEFT. A TEAR WAS FOUND IN THE POSTERIOR LIGAMENT CENTRALLY AND A LARGE FRAGMENT COMPLETELY EXTRUDED DISC MATERIAL WAS WEDGED UPWARD UNDER THE NERVE ROOT, SUGGESTING THE POSSIBILITY OF A COMPRESSION FRACTURE OF L1. CLAIMANT, AFTER SURGERY, STILL HAD SOME DIFFICULTY BUT NO PAIN AS SEVERE AS PRIOR THERETO.

THE INJURY SUFFERED AS A RESULT OF THE SECOND ACCIDENT WAS DIAGNOSED AS COMPRESSION FRACTURES OF THE LATERAL SUPERIOR BORDERS OF L1-2, WITH A SUSPICION OF FRACTURES OF THE DORSAL SPINE FROM T8-T12. IT WAS LATER DECIDED THAT THE COMPRESSION FRACTURES AND PATHOLOGY IN THE DORSAL SPINE WERE EITHER CONGENITAL DEFECTS OR CONSISTENT WITH AN OLD JUVENILE OSTEOCHONDRITIS. DR. ABELE DIAGNOSED THIS CONDITION AS A DEVELOPMENTAL JUVENILE KYPHOSIS RESULTING FROM TEENAGE GROWTH.

AS OF OCTOBER, 1974 CLAIMANT'S MAIN COMPLAINTS WERE PAIN IN THE LOWER THORACIC SPINE AREA, DIFFICULTY WITH THE FUNCTION OF THE LEFT LEG, LEFT ARM WEAKNESS, WEAKNESS OF THE LEFT FOOT AND CRAMPING ALONG THE LEFT SIDE OF THE NECK. THERE WAS SUBSTANTIAL LIMITATION OF MOVEMENTS DURING THE ORTHOPEDIC TESTS AND ALSO A SUBSTANTIAL INCREASE IN ATROPHY OF THE LEFT LEG.

AFTER THE FIRST INJURY CLAIMANT WAS ABLE TO RETURN AS A LONG HAUL TRUCK DRIVER UNTIL HIS SECOND ACCIDENT. SINCE THE LAST ACCIDENT CLAIMANT HAS APPLIED FOR AND IS STILL LOOKING FOR WORK AS A LONG HAUL DRIVER, BUT HE HAS MET WITH NO SUCCESS. HE FINALLY WENT TO WORK AS A HEAVY DUTY MECHANIC BUT FOUND HE HAD DIFFICULTY WITH THE DUTIES OF THIS JOB WHICH REQUIRED BENDING, LIFTING AND STRAINING. HIS EMPLOYER, BEING AWARE OF HIS CONDITION, TRANSFERRED CLAIMANT TO THE RESEARCH DEPARTMENT WHERE THE WORK WAS LIGHTER, NEVERTHELESS, CLAIMANT TESTIFIED THAT HE WAS STILL HAVING INCREASED PROBLEMS WITH A PRESENT BURNING SENSATION IN HIS BACK, DOWN INTO HIS LEG AND INTO HIS LEFT FOOT.

THE REFEREE CONCLUDED THAT ALTHOUGH CLAIMANT HAD NOT ATTEMPTED TO SEEK VOCATIONAL RETRAINING, HE HAD, THROUGH HIS OWN EFFORTS, AND THROUGH THE UNDERSTANDING OF HIS PRESENT EMPLOYER, VOCATIONALLY REHABILITATE HIMSELF TO THE EXTENT THAT HE IS STILL IN THE LABOR MARKET WORKING REGULARLY EVEN THOUGH HE IS EARNING SUBSTANTIALLY LESS THAN PRIOR TO HIS INJURIES. CLAIMANT WAS WELL MOTIVATED AND VERY CREDIBLE. THE REFEREE FURTHER CONCLUDED THAT CLAIMANT WAS A WORKMAN WHO HAD SUSTAINED TWO SERIOUS BACK INJURIES SUPERIMPOSED UPON A PRE-EXISTING JUVENILE KYPHOSIS OF THE UPPER BACK, THE LATTER OF WHICH WAS MOST CERTAINLY AGGRAVATED BY THE INDUSTRIAL INJURIES AND HAD ALSO SUSTAINED AN INJURY TO HIS LEFT LEG. TAKING INTO CONSIDERATION THE DISABLING AFFECTS OF THESE INJURIES, THE ASSOCIATED PAIN, THE GENERAL AND SPECIFIC LOSS OF EARNING CAPACITY AND CLAIMANT'S LIMITATIONS UPON AVAILABILITY FOR EMPLOYMENT IN THE FUTURE THE REFEREE INCREASED THE AGGRAGATE OF THE PREVIOUS AWARDS FOR UNSCHEDULED DISABILITY FROM 20 PER CENT TO 50 PER CENT AND THE AWARD FOR SCHEDULED DISABILITY FROM 15 PER CENT TO 35 PER CENT.

THE BOARD, ON DE NOVO REVIEW, CANNOT FULLY AGREE WITH THE FINDINGS AND CONCLUSIONS REACHED BY THE REFEREE. THE MEDICAL EVIDENCE INDICATES THAT THE FIRST INJURY REPRESENTED APPROXIMATELY 80 PER CENT OF CLAIMANT'S DISABILITY YET THE REFEREE'S OPINION INDICATES THAT HIS INCREASE FOR THE UNSCHEDULED DISABILITY WAS BASED PRIMARILY ON THE SECOND INJURY.

THE BOARD FEELS THAT AN AWARD OF 96 DEGREES EQUAL TO 30 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY ADEQUATELY COMPENSATES CLAIMANT FOR HIS LOSS OF EARNING CAPACITY. WITH RESPECT TO THE SCHEDULED AWARD FOR THE INJURY TO THE LEFT LEG THE BOARD AFFIRMS THE REFEREE, BELIEVING THAT THIS TRULY REPRESENTS THE LOSS OF FUNCTION OF THE CLAIMANT'S LOWER LEFT EXTREMITY.

THE REFEREE FOUND THAT CLAIMANT'S CONDITION HAD AGGRAVATED, HE ALSO FOUND THAT THE CLAIM FOR AGGRAVATION HAD BEEN DENIED BY THE FUND. ORS 656.386(1) PROVIDES THAT WHERE THE CLAIMANT PREVAILS FINALLY IN A HEARING BEFORE A REFEREE ON A REJECTED CLAIM THE REFEREE SHALL ALLOW A REASONABLE ATTORNEY FEE, SAID FEE TO BE PAID BY THE FUND OR THE EMPLOYER. HOWEVER, THE BOARD DOES NOT FEEL THAT THE CLAIMANT'S ATTORNEY IS ENTITLED TO RECEIVE AN ATTORNEY FEE UNDER BOTH (UNDERSCORED) ORS 656.386(1) AND (2), THEREFORE, THE AWARD OF 25 PER CENT OF THE COMPENSATION INCREASED BY THE REFEREE, PAYABLE OUT OF SAID COMPENSATION, NOT TO EXCEED 2,000 DOLLARS CANNOT BE ALLOWED.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 29, 1975, IS REVERSED.

CLAIMANT IS AWARDED 96 DEGREES OF A MAXIMUM 320 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY AND 52.5 DEGREES FOR 35 PER CENT LOSS OF THE LEFT LEG. THIS IS IN LIEU OF THE AWARDS MADE BY THE REFEREE.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY FEE FOR HIS SERVICES AT THE HEARING BEFORE THE REFEREE THE SUM OF 1,000 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 75-4389 AUGUST 3, 1976

JOHN FRANKLIN, CLAIMANT

RICK MC CORMICK, CLAIMANT'S ATTY.
G. HOWARD CLIFF, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER OF OCTOBER 14, 1975 WHICH GRANTED CLAIMANT AN AWARD OF 15 DEGREES FOR 10 PER CENT LOSS OF THE RIGHT FOREARM.

ON JULY 12, 1974 CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS RIGHT HAND, HE WAS EXAMINED THAT DAY BY DR. ASPER AND REFERRED TO DR. SPADY WHO FOUND SEVERE LACERATION OF DISTAL, MIDDLE AND RING FINGERS - THE WOUNDS WERE SUTURED CLOSED.

IN SEPTEMBER, 1974 THE RIGHT RING FINGER BECAME INFECTED AND AN AMPUTATION ON THE 1-2 DISTAL PHALANX WAS PERFORMED.

DR. CHESTER, IN JANUARY, 1975, FOUND CLAIMANT MEDICALLY STATIONARY WITH NO RESIDUALS. A DETERMINATION ORDER OF FEBRUARY 25, 1975 AWARDED COMPENSATION FOR TIME LOSS ONLY.

DR. MC VAY EXAMINED CLAIMANT ON MAY 15, 1975 AND FOUND DECREASED GRIP STRENGTH WHICH MIGHT IMPROVE WITH TIME. DR. MC VAY THOUGHT SURGERY ADVISABLE TO REMOVE NEUROMAS IN THE DISTAL DIGITAL NERVES OF THE STUMP AND ROUNDING OF THE DISTAL BONE. THIS WAS PERFORMED ON JUNE 4, 1975.

DR. MC VAY RATED CLAIMANT'S DISABILITY ACCORDING TO AMA STANDARDS FOR IMPAIRMENT AND CONCLUDED CLAIMANT HAD A 7 PER CENT IMPAIRMENT OF THE HAND OR 6 PER CENT IMPAIRMENT OF THE ENTIRE UPPER EXTREMITY.

DR. MC VAY AGAIN EXAMINED CLAIMANT ON AUGUST 6, 1975 AND ON SEPTEMBER 4, 1975 NOTED CLAIMANT'S 'GRIP STRENGTH HAS IMPROVED SIGNIFICANTLY' AND THAT THE 'PERCENTAGE IMPAIRMENT IS UNCHANGED FROM THE PREVIOUS EXAMINATION IN MAY, 1975'.

A DETERMINATION ORDER, ISSUED OCTOBER 14, 1975, GRANTED CLAIMANT 15 DEGREES FOR 10 PER CENT LOSS OF THE RIGHT FOREARM.

ON DECEMBER 16, 1975 CLAIMANT WAS EXAMINED BY DR. ELLISON WITH COMPLAINTS OF SENSITIVITY IN THE RING FINGER. DR. ELLISON FOUND RESIDUALS IN LOSS OF PART AND SOME EXTENT OF LOSS OF FUNCTION OF THE DISTAL PORTION OF THE LONG FINGER BUT HE FELT IT WAS TOO EARLY TO BE DISCOURAGED WITH THE EARLIER SURGICAL PROCEDURE.

THE REFEREE FOUND THAT CLAIMANT HAD RESIDUALS FROM HIS INJURY - HE HAS LOST GRIP STRENGTH AND HAS GREAT SENSITIVITY OF THE RING FINGER. THE TESTIMONY OF DR. MC VAY, CLAIMANT'S TREATING PHYSICIAN, WAS GIVEN SUBSTANTIAL WEIGHT IN ESTABLISHING CLAIMANT'S PERCENTAGE OF IMPAIRMENT SINCE A SCHEDULED MEMBER IS ONLY RATED ON LOSS OF FUNCTION.

THE REFEREE CONCLUDED CLAIMANT HAD BEEN SUFFICIENTLY COMPENSATED BY THE DETERMINATION ORDER OF OCTOBER 14, 1975 FOR HIS LOSS OF FUNCTION.

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

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 26, 1976, IS AFFIRMED.

WCB CASE NO. 75-3560-SI AUGUST 3, 1976

ICI CONTRACTORS, INC.
FOR REIMBURSEMENT FROM THE
SECOND INJURY RESERVE FUND
IN THE CASE OF
ROBERT PETERSON
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER

THE WORKMAN, ROBERT PETERSON HAD PREVIOUSLY INJURED HIS LEFT KNEE WHILE PLAYING FOOTBALL - HE REINJURED THE KNEE ON JANUARY 22, 1974 WHILE IN THE EMPLOY OF ICI CONTRACTORS, INC. SURGICAL REMOVAL OF THE CARTILAGE WAS REQUIRED. THE CLAIM WAS CLOSED BY A DETERMINATION ORDER, MAILED FEBRUARY 14, 1975, WHICH AWARDED CLAIMANT COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM JANUARY 23, 1974 THROUGH SEPTEMBER 28, 1974 AND TEMPORARY PARTIAL DISABILITY FROM SEPTEMBER 29, 1974 THROUGH DECEMBER 4, 1974 AND 15 DEGREES FOR 10 PER CENT LOSS OF THE LEFT LEG.

ON MAY 16, 1975 THE EMPLOYER REQUESTED REIMBURSEMENT FROM THE SECOND INJURY RESERVE FUND. AN ORDER, DATED JULY 17, 1975, FOUND THAT THE EMPLOYER DID NOT MEET THE CRITERIA FOR SECOND INJURY RELIEF BECAUSE THERE WAS NO SHOWING THAT THE WORKMAN HAD A KNOW PRE-EXISTING DISABILITY THAT PRESENTED AN OBSTACLE TO EMPLOYMENT THAT WAS OVERCOME IN HIRE OR RETENTION IN ITS EMPLOY. THE EMPLOYER REQUESTED A HEARING WHICH WAS HELD NOVEMBER 4, 1975 BEFORE REFEREE JOSEPH D. ST. MARTIN.

ORS 656.622(2) AUTHORIZES THE BOARD TO REIMBURSE AN EMPLOYER FOR THE ADDITIONAL AMOUNT THAT THE EMPLOYER PAYS WITH RESPECT TO ANY INJURY WHERE THE INJURY IS A CONTRIBUTABLE WHOLLY OR PARTIALLY TO A PRE-EXISTING DISABILITY OF THE EMPLOYEE. PRE-EXISTING DISABILITY IS DEFINED AS ANY PERMANENT CONDITION DUE TO PREVIOUS ACCIDENT OR DISEASE OR ANY CONGENITAL CONDITION WHICH IS OR IS LIKELY TO BE A SUBSTANTIAL HANDICAP IN OBTAINING OR GAINING EMPLOYMENT. PURSUANT TO THESE PROVISIONS THE BOARD ADOPTED WCB ADMINISTRATIVE ORDER 3-1973. ONE OF THE RULES ESTABLISHES THE CRITERIA FOR ELIGIBILITY. RULE IV(B) STATES IN PART -

> 'THE EMPLOYER MUST HAVE HAD KNOWLEDGE OF THE PRE-EXISTING DISABILITY AT THE TIME OF HIRING, REHIRING OR RETENTION...'

ONE OF THE OFFICERS OF THE EMPLOYER TESTIFIED THAT CLAIMANT WAS HIRED ON JANUARY 16, 1974 AND NO PRE-EMPLOYMENT INFORMATION WAS OBTAINED INDICATING THAT CLAIMANT HAD A PRE-EXISTING DISABILITY - HE EMPHATICALLY STATED THAT HAD THE EMPLOYER KNOWN OF ANY KNEE PROBLEM THE WORKMAN WOULD NOT HAVE BEEN HIRED. THIS WITNESS ADMITTED HE DID NOT KNOW IF THE WORKMAN'S PRE-EXISTING PROBLEM ENHANCED THE DISABILITY NOR DID HE KNOW IF THE INDUSTRIAL INJURY WAS ATTRIBUTABLE TO THE OLD KNEE INJURY.

THE SUPERINTENDENT FOR THE EMPLOYER TESTIFIED THAT HE WAS PRESENT WHEN THE WORKMAN WAS INJURED - THAT SAID WORKMAN LIMPED AROUND FOR ABOUT 30 MINUTES AND INDICATED THAT HE HAD HAD AN OLD KNEE INJURY.

HE SAID THERE WAS NO PROBLEM BUT THAT HE WAS GOING TO HAVE TO HAVE IT CHECKED BY A DOCTOR. ON CROSS-EXAMINATION THE SUPERINTENDENT TESTIFIED HE HAD HIRED THE WORKMAN AND THAT HE HAD MADE NO INQUIRY INTO THE WORKMAN'S HEALTH OTHER THAN TO OBSERVE THAT HE APPEARED TO BE STRONG AND HEALTHY. HE STATED HIS FIRST KNOWLEDGE OF THE WORKMAN'S ALLEGED PRIOR KNEE INJURY WAS AFTER (UNDERSCORED) THE WORKMAN HAD BEEN HURT ON THE JOB.

THE REFEREE PROPERLY FOUND THAT THE EMPLOYER, AS THE MOVING PARTY, HAD THE BURDEN OF PROOF TO SHOW ENTITLEMENT TO REIMBURSEMENT FROM THE SECOND INJURY RESERVE FUND. THE OFFICER FOR THE EMPLOYER WHO TESTIFIED HAD NO KNOWLEDGE TO OFFER IN SUPPORT OF THIS BURDEN - HOWEVER, THE SUPERINTENDENT TESTIFIED POSITIVELY THAT THERE WAS NO MENTION OF A PRE-EXISTING KNEE PROBLEM AT THE TIME OF THE HIRING, WHICH WAS DONE BY HIM. HE HAD OBSERVED THE WORKMAN AT WORK WITH NO APPARENT OBSERVABLE DEFECTS AND THAT THE FIRST KNOWLEDGE HE HAD OF ANY PRIOR KNEE INJURY WAS AFTER THE WORKMAN HAD ALREADY SUFFERED HIS INDUSTRIAL INJURY.

THE REFEREE FOUND THAT THE EMPLOYER, ICI CONTRACTORS, INC., HAD NO KNOWLEDGE OF AN ALLEGED PRE-EXISTING DISABILITY OF THE INJURED WORKMAN, THEREFORE, IT WAS NOT ENTITLED TO ANY REIMBURSEMENT FROM THE SECOND INJURY RESERVE FUND.

THE BOARD REVIEWED THE TRANSCRIPT OF THE PROCEEDINGS AND EXHIBITS AND GAVE FULL CONSIDERATION TO THE RECOMMENDATIONS OF THE REFEREE.

ORDER

THE EMPLOYER, ICI CONTRACTORS, INC., DID NOT HAVE KNOWLEDGE OF ANY ALLEGED PRE-EXISTING DISABILITY AT THE TIME OF THE HEARING AS REQUIRED BY RULE IV(B), WCB ADMINISTRATIVE ORDER 3-1973, THEREFORE, THE EMPLOYER'S REQUEST FOR REIMBURSEMENT FROM THE SECOND INJURY RESERVE FUND IS DENIED.

WCB CASE NO. 75-855 AUGUST 3, 1976

VIRGINIA HAMILTON, CLAIMANT

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

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

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

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HER LOW BACK ON AUGUST 1, 1970. A DETERMINATION ORDER ISSUED ON SEPTEMBER 14, 1971 GRANTED CLAIMANT 64 DEGREES UNSCHEDULED LOW BACK DISABILITY. A STIPULATION ENTERED ON MAY 25, 1972 GRANTED CLAIMANT AN ADDITIONAL 48 DEGREES FOR A TOTAL OF 112 DEGREES FOR 35 PER CENT UNSCHEDULED LOW BACK DISABILITY.

DR. WILSON EXAMINED CLAIMANT ON DECEMBER 27, 1972 AFTER THE LAST AWARD OF COMPENSATION AND HE FOUND THAT 'THE NEUROLOGIC FINDINGS HAVE NOT CHANGED APPRECIATIVELY SINCE MY EXAMINATION ON OCTOBER 19, 1971' - HE DID FIND SENSORY FINDINGS WHICH WERE INCONSISTENT.

ON SEPTEMBER 12, 1973, DR. WILSON STATED THAT THE FINDINGS 'ARE ALL SUBJECTIVE TODAY INCLUDING THE PAIN, THE DECREASE IN SENSATION AND THE WEAKNESS ON THE LEFT SIDE.'

THE REFEREE FOUND THAT THE MEDICAL EVIDENCE INDICATED THAT CLAIMANT HAS A LOT OF PHYSICAL AND PSYCHOLOGICAL PROBLEMS ALL UNRELATED TO THE INDUSTRIAL INJURY. THERE IS NOT ONE MEDICAL REPORT ENTERED AFTER THE DATE OF THE STIPULATION TO SHOW A WORSENING CONDITION ATTRIBUTABLE TO CLAIMANT'S INDUSTRIAL INJURY.

THE REFEREE CONCLUDED THAT CLAIMANT FAILED TO SUSTAIN HER BURDEN OF PROVING BY MEDICAL EVIDENCE THAT HER CONDITION HAD WORSENED SINCE HER LAST AWARD OF COMPENSATION AND HE DENIED HER AGGRAVATION CLAIM.

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

ORDER

THE ORDER OF THE REFEREE DATED MARCH 16, 1976 IS AFFIRMED.

WCB CASE NO. 73-4141 AUGUST 3, 1976

DONALD J. JANGALA, CLAIMANT

DAVID R. VANDENBERG, JR., CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH DIRECTED IT TO ACCEPT THE CLAIMANT'S CLAIM FOR ASBESTOSIS - PULMONARY DISEASE AND PROVIDE CLAIMANT WITH BENEFITS TO WHICH HE IS ENTITLED BY LAW.

IN DECEMBER, 1972 CLAIMANT EXPERIENCED SEVERE CHEST PAINS AT HOME AFTER HE HAD BEEN OFF WORK FOR TWO DAYS. HE WAS TREATED BY DR. BERVEN, AN INTERNIST, WHOSE IMPRESSION WAS (1) SEVERE CHEST PAINS, RULE OUT SEVERE ANGINA OR EARLIER INFERIOR MYOCARDIAL INFARCTION - (2) PROBABLE CHRONIC OBSTRUCTIVE PULMONARY DISEASE, SECONDARY TO SMOKING, RULE OUT OCCUPATIONAL DISEASE. APPROXIMATELY NINE MONTHS LATER IN SEPTEMBER, 1973, CLAIMANT FILED A CLAIM, ALLEGING THAT HIS HEART CONDITION AROSE OUT OF HIS EMPLOYMENT AND, ADDITIONALLY, THAT HE WAS SUFFERING FROM JOB-RELATED ASBESTOSIS.

DR. BERVEN COMMENCED TREATING CLAIMANT ON DECEMBER 11, 1972 AND CONTINUED TO BE CLAIMANT'S TREATING PHYSICIAN. ON SEPTEMBER 26, 1973 DR. BERVEN MADE THE FOLLOWING DIAGNOSIS - (1) CHRONIC OBSTRUCTIVE PULMONARY DISEASE WITH ASTHMATIC BRONCHITIS RELATED TO SMOKING AND, OR BRONCHIAL IRRITANTS (ASBESTOS) - (2) PROBABLE RIGHT HEART STRAIN RELATED TO INCREASED PULMONARY PRESSURE RELATED TO CHRONIC OBSTRUCTIVE PULMONARY DISEASE - (3) ATHEROSCLEROTIC HEART DISEASE WITH ANGINA BY HISTORY, CLASS I - (4) DIARRHEA DUE TO SPASTIC BOWEL SYNDROME - (5) LONG HISTORY OF ASBESTOS EXPOSURE.

IN FEBRUARY, 1973 CLAIMANT HAD BEEN SEEN BY DR. KLUMP, AN NEUROLOGIST, WHO FOUND CLAIMANT NEUROLOGICALLY NORMAL.

IN NOVEMBER, 1973 CLAIMANT WAS EXAMINED BY DR. TUHY, A PULMONARY

SPECIALIST, COMPLAINING OF FATIGABILITY, DIARRHEA, SHORTNESS OF BREATH, DIZZINESS, WEIGHT LOSS, CHRONIC COUGH, AND PRIOR CHEST PAIN AND CHEST RATTLING. DR. TUHY FOUND CHRONIC OBSTRUCTIVE PULMONARY DISEASE WITH CHRONIC BRONCHITIS. HE INDICATED THE X-RAY SHOWED NO TYPICAL CHANGE OF ASBESTOSIS AND IF THERE WERE FIBERS PRESENT NOT SHOWN ON THE X-RAY, IT WOULD NOT SIGNIFICANTLY EFFECT LUNG FUNCTION. HE BELIEVED THAT CLAIMANT'S COUGH AND SHORTNESS OF BREATH WERE DUE TO SMOKING.

DR. BERVEN, IN A REPORT DATED JUNE 11, 1975, STATED CLAIMANT WAS SUFFERING FROM AN AGGRAVATION OF A PRE-EXISTING PULMONARY DISEASE RESULTING FROM HIS EXPOSURE TO THESE PRODUCTS IN HIS WORK. LATER, DR. BERVEN ELABORATED ON THIS OPINION, STATING THAT CLAIMANT'S WORK EXPERIENCE AND SMOKING ACCOMPANIED THE DISEASE AND THAT A PERSON COULD HAVE ASBESTOS EXPOSURE DISEASE WITHOUT RADIOGRAPHIC FINDINGS - ALSO, CLAIMANT'S HEART CONDITION COULD BE RELATED TO HIS PULMONARY DISEASE AND THAT THE ARTERIOSCLEROSIS WAS A GREATER CAUSE OF CLAIMANT'S HEART CONDITION THAN HIS PULMONARY DISEASE. HE REITERATED HIS OPINION THAT INHALATION OF EITHER ASBESTOS PARTICLES OR FIBERGLASS PARTICLES CAUSED AN AGGRAVATION OF CLAIMANT'S PULMONARY DISEASE.

THE REFEREE FOUND THAT ALTHOUGH DR. TUHY HAD THE GREATER EXPERTISE, NEVERTHELESS, DR. BERVEN WAS THE TREATING PHYSICIAN AND ALSO HAS EXPERIENCE WITH RESPIRATORY DISEASES. BASED UPON THE OPINIONS EXPRESSED BY DR. BERVEN, THE REFEREE CONCLUDED THAT CLAIMANT HAD PROVED THAT HIS CONDITION WAS COMPENSABLE. THE REFEREE FOUND THAT BECAUSE OF THE MEDICAL OPINION EXPRESSED BY DR. TUHY PRIOR TO THE DENIAL OF CLAIMANT'S CLAIM, PENALTIES AND ATTORNEY FEES WERE NOT JUSTIFIED. ORS 656.262(8)

CLAIMANT'S ATTORNEY WAS ENTITLED TO AN ATTORNEY FEE PAYABLE BY THE FUND FOR IMPROPERLY DENYING THE CLAIM. ORS 656.386

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

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 5, 1975, AS CORRECTED ON JANUARY 6, 1976, 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. 75-2413 AUGUST 4, 1976

PAULETTE D. MOWRY, CLAIMANT

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

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH AWARDED HER 192 DEGREES FOR 60 PER CENT UNSCHEDULED PHYSICAL AND PSYCHOLOGICAL DISABILITY, TO BE PAID IN A LUMP SUM, CONTENDING THAT SHE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT, AT THAT TIME A 25 YEAR OLD WAITRESS, SUFFERED A

COMPENSABLE INJURY ON MAY 6, 1972 WHEN SHE WAS INVOLVED IN AN AUTOMOBILE ACCIDENT WHILE BEING DRIVEN TO WORK BY HER EMPLOYER. CLAIMANT SUSTAINED MULTIPLE ABRASIONS, LACERATIONS AND CONTUSIONS AND WAS HOSPITALIZED. THE MEDICAL REPORTS NOTE COMPLAINTS OF PAIN IN THE HEAD AND CERVICAL, DORSAL AND LUMBAR SPINE AREAS, NO FRACTURES WERE IDENTIFIED AND CLAIMANT WAS DISCHARGED FROM THE HOSPITAL ON MAY 13, 1972 WITH A DIAGNOSIS MADE BY DR. THOMAS OF ABRASIONS OF THE FACE AND MILD SPRAIN OF THE CERVICAL SPINE.

CLAIMANT ATTEMPTED TO RETURN TO WORK AFTER HER DISCHARGE BUT WORKED ONLY ONE DAY AS A WAITRESS AT THE CLUB PIONEER AND HAD TO TERMINATE BECAUSE OF INTENSE PAIN. CLAIMANT HAS NOT WORKED NOR SOUGHT WORK SINCE THAT TIME.

INITIALLY, THE CLAIM WAS ACCEPTED AND CLOSED WITH AN AWARD OF 64 DEGREES BY A DETERMINATION ORDER OF MARCH 12, 1974. CLAIMANT REQUESTED A HEARING. AFTER THE HEARING, THE REFEREE FOUND THAT THE CLAIM HAD BEEN PREMATURELY CLOSED, HE SET ASIDE THE DETERMINATION ORDER. HE COULD NOT BE CERTAIN WHETHER CLAIMANT'S PAIN WAS PHYSICAL, PSYCHOLOGICAL OR A COMBINATION OF BOTH, BUT HE WAS CONVINCED THAT IT WAS SUFFICIENT TO DISABLE CLAIMANT UNLESS SHE RECEIVED FURTHER MEDICAL TREATMENT AND HE REMANDED THE CLAIM TO THE FUND FOR SUCH TREATMENT. THE REFEREE'S ORDER WAS AFFIRMED BY THE BOARD IN AN ORDER WHICH HELD THAT, BASED ON MEDICAL REPORTS IN THE RECORD, IT APPEARED THAT PSYCHIATRIC CARE AND TREATMENT IS THE ONLY CARE AND TREATMENT WHICH IS LIKELY TO RESTORE CLAIMANT TO ANY DEGREE OF NORMAL FUNCTION.

CLAIMANT HAS HAD EXTENSIVE MEDICAL ATTENTION FROM THE DATE OF HER INJURY, INCLUDING AN ANTERIOR CERVICAL FUSION AT THE C5-6 LEVEL PERFORMED IN FEBRUARY, 1973 BY DR. MORELLI. CLAIMANT ALSO HAS BEEN TREATED BY DR. BECKER WHO NOTED A DEPRESSIVE REACTION WITH PSYCHOPHYSIOLOGICAL SKELETAL MUSCLE SYNDROMES. BECAUSE OF CLAIMANT'S CONTINUING DIFFICULTY A MYELOGRAM WAS TAKEN WHICH REVEALED NO GROSS DEFECT IN THE LUMBAR AREA AND NORMAL FINDINGS POSTOPERATIVE TO THIS CERVICAL FUSION. IT WAS AFTER THIS THAT THE DETERMINATION ORDER WAS ISSUED.

SUBSEQUENT TO THE BOARD'S ORDER OF NOVEMBER 26, 1974, CLAIMANT HAS HAD APPROXIMATELY EIGHT PSYCHOTHERAPEUTIC SESSIONS WITH DR. HENSON WHO REPORTED, MARCH 31, 1975, THAT CLAIMANT HAD ACHIEVED WHAT APPEARED TO BE QUITE MINIMAL BENEFITS FROM THE PSYCHOTHERAPY AND HE AND CLAIMANT HAD MUTUALLY AGREED TO DISCONTINUE THE SESSIONS. ON JUNE 4, 1975 A DETERMINATION ORDER AWARDED CLAIMANT 80 DEGREES FOR 25 PER CENT UNSCHEDULED NECK DISABILITY AND THE EMOTIONAL RESPONSE THERETO.

ON OCTOBER 8, 1975 DR. HENSON DIAGNOSED HYSTERICAL PERSONALITY DISORDER AND FELT THAT THE INDUSTRIAL INJURY SERVED AS A FOCUS FOR CLAIMANT TO IDENTIFY HER PHYSICAL, MENTAL AND EMOTIONAL CONCERNS IN A CAUSAL FACTION. HE FOUND NO MALINGERING COMPONENT AND HE DID NOT THINK THAT ADDITIONAL PSYCHOTHERAPY WOULD LIKELY BE PRODUCTIVE. INSOFAR AS RETURNING TO REGULAR, GAINFUL EMPLOYMENT WAS CONCERNED, DR. HENSON'S OPINION WAS THAT CLAIMANT SHOULD BE ABLE TO FIND SUCH EMPLOYMENT BUT PROBABLY WOULD RUN INTO CONFLICTS ON THE JOB WHICH WOULD CAUSE HER PHYSICAL SYMPTOMS TO RECUR, CONSEQUENTLY, HE CONSIDERED HER ABILITY TO RETAIN EMPLOYMENT BEYOND A PERIOD OF SIX WEEKS TO BE 'SEVERELY LIMITED'.

DR. THOMAS, WHO HAS BEEN CLAIMANT'S TREATING PHYSICIAN FROM THE TIME OF HER INJURY EXCEPT FOR THE TIME THAT CLAIMANT WAS OUTSIDE THE STATE OF OREGON, REPORTED, ON OCTOBER 13, 1975, THAT HE FELT, AT THAT TIME, THAT CLAIMANT WAS DISABLED AND UNABLE TO BE GAINFULLY

EMPLOYED – HE HELD LITTLE HOPE THAT SHE WOULD BE EMPLOYABLE IN THE FUTURE WITHOUT EXTENSIVE PSYCHOTHERAPY OR WITHOUT A MARKED MOTIVATIONAL ADJUSTMENT ON HER PART.

PRIOR TO HER INJURY CLAIMANT HAD SEVERAL PERIODS OF HOSPITALIZATION FOR RHEUMATIC FEVER AND ALSO HAD ENCOUNTERED SOME EMOTIONAL UPSETS BECAUSE OF MARITAL DIFFICULTIES TERMINATING IN DIVORCE, HOWEVER NEITHER THE PHYSICAL OR THE EMOTIONAL PROBLEMS INVOLVED APPEARED TO HAVE BEEN OF SUFFICIENT SEVERITY TO IMPEDE HER ABILITY TO WORK. AT THE PRESENT TIME SHE HAS MULTIPLE COMPLAINTS, I.E., CONTINUING HEADACHES, OCCASIONAL DEAFNESS, DIZZINESS AND BLACKOUTS WHICH HAVE CAUSED HER TO FALL ON SEVERAL OCCASIONS.

IN JANUARY, 1974 DR. PERKINS EVALUATED CLAIMANT FROM A PSYCHOLOGICAL STANDPOINT AND STATED HER PROSPECTS FOR REEMPLOYMENT WERE GOOD ASSUMING (UNDERSCORED) THERE WAS A RESOLUTION OF HER PSYCHONEUROTIC PROBLEMS.

CLAIMANT WAS PSYCHIATRICALLY EVALUATED JUST PRIOR TO THE HEARING BY DR. RENNEBOHM, A PSYCHIATRIST, WHOSE OPINION WAS THAT CLAIMANT HAD THE CAPACITY TO SUCCESSFULLY HANDLE COLLEGE LEVEL WORK AND IF (UNDERSCORED) HER PHYSICAL SYMPTOMS WERE REDUCED AND HER EMOTIONAL PROBLEMS RESOLVED HER AFFECTIVE LEVEL OF INTELLIGENCE WOULD BE RATHER HIGH. HER PROBLEMS WERE CONVERSION REACTION OF A HYSTERICAL PERSONALITY MANIFESTED IN MULTIPLE PHYSICAL COMPLAINTS AND CONTINUED ANXIETY AND DEPRESSION. HE FELT THAT THE LONG MEDICAL TREATMENT WAS A FACTOR WHICH EXACERBATED CLAIMANT'S EMOTIONAL TENSION. HIS OPINION WAS THAT TREATMENT FOR CLAIMANT'S PHYSICAL COMPLAINTS SHOULD BE TERMINATED FOR HER EMOTIONAL COMPLAINTS LIMITED TO INFREQUENT CONTACT WITH SOME QUALIFIED PERSON IN THE MENTAL HEALTH PROFESSION. CONTINUING LITIGATION, IN HIS OPINION, MERELY AGGRAVATED THE SITUATION.

DR. RENNEBOHM OFFERED A RATHER NOVEL SOLUTION TO CLAIMANT'S PROBLEMS, TO WIT – PROVIDING CLAIMANT SOME FIXED AMOUNT OF COMPENSATION BENEFITS FOR A FIXED PERIOD OF TIME WHICH WOULD PUT CLAIMANT ON NOTICE THAT SHE COULD NOT ANTICIPATE ADDITIONAL BENEFITS AND THEREFORE THERE WOULD BE A STRONG PROBABILITY THAT CLAIMANT WOULD BE TURNED TOWARDS RECOVERY BECAUSE OF HER BASIC MOTIVATION TO RECOVER AND BECAUSE OF OTHER POSITIVE PERSONALITY TRAITS AND INHERENT CAPABILITIES. HE AGREED THAT CLAIMANT WAS NOT MALINGERING, IN FACT, WAS IN A STATE OF EXTREME PAIN AND AT THAT TIME OF THE HEARING SHE WAS TOTALLY DISABLED EITHER AS TO EMPLOYMENT OR AS TO RETRAINING.

DR. RENNEBOHM STATED THAT IF THE CONDITIONS WHICH HE CONSIDERED BEST FOR CLAIMANT'S RECOVERY WERE IMPLEMENTED THERE WOULD NOT BE AN OVERNIGHT TRANSFORMATION BUT HE FELT THERE WOULD BE POSITIVE MOVEMENT TOWARDS RECOVERY WHICH WOULD PROGRESS TO THE POINT THAT CLAIMANT WOULD IN FACT BE ABLE TO TAKE SUCH TRAINING AS SHE TESTIFIED THAT SHE WOULD LIKE TO TAKE, I.E., TRAINING AS A MEDICAL RECORDS LIBRARIAN, BY THE FALL OF 1976. HE ALSO NOTED THAT IMMEDIATE CUTOFF OF FUNDS WOULD BE COUNTER-PRODUCTIVE SINCE THAT WOULD RESULT IN AN EXACERBATION OF CLAIMANT'S ANXIETY BECAUSE OF THE REALISTIC NEED TO HAVE AN INCOME DURING HER PERIOD OF RECUPERATION – HE FELT THAT A LUMP SUM PAYMENT WOULD BE THE BEST SOLUTION.

THE REFEREE CITED FERGUSON V. WOHL'S SHOE CO. (UNDERSCORED), 11 OR APP 407, WHEREIN THE COURT NOTED – 'THE DETERMINATION OF EARNING CAPACITY MUST BE MADE SOLELY BY ATTEMPTING TO ASCERTAIN WHAT THE FUTURE HOLDS FOR THE INDIVIDUAL CLAIMANT...'. HE FELT THE PRESENT CASE PRESENTED A PERPLEXING PROBLEM IN ATTEMPTING TO MAKE THIS PROJECTION. HE WAS PERSUADED BY BOTH THE LEGAL AND MEDICAL EVIDENCE THAT CLAIMANT WAS TOTALLY DISABLED FROM OBTAINING AND RETAINING EMPLOYMENT AT THE TIME OF THE HEARING. DR. THOMAS HER TREATING PHYSICIAN,

BELIEVES HE CANNOT HELP CLAIMANT AND CONSIDERS HER DISABLED UNLESS THERE IS EFFECTIVE PSYCHIATRIC PREVENTION. DR. HENSON WHO HAS HAD SEVERAL PSYCHOTHERPEUTIC SESSIONS WITH CLAIMANT, BELIEVES SHE WILL NOT RESPOND TO SUCH PSYCHOTHERAPY AND DR. RENNEBOHM APPARENTLY HAS SUBSTANTIALLY THE SAME OPINION, EXCEPT THAT HE DOES OFFER HIS NOVEL SOLUTION.

THE REFEREE CONCLUDED THAT IF DR. RENNEBOHM'S RECOMMENDATIONS RESULTED, AS HE ANTICIPATED, IN SUBSTANTIALLY IMPROVING CLAIMANT'S PHYSICAL AND EMOTIONAL STATUS, THIS WOULD BE THE BEST POSSIBLE RESOLUTION OF CLAIMANT'S PROBLEMS AND WOULD ACCOMPLISH THE DESIRED ACHIEVEMENT, NAMELY, BRING THE WORKMAN BACK TO THE STATUS OF SELF SUPPORT AND MAINTENANCE.

RELYING PRIMARILY ON DR. RENNEBOHM'S TESTIMONY, THE REFEREE CONCLUDED THAT CLAIMANT'S PRESENT LEVEL OF DISABILITY IS NOT DEMONSTRATED AS BEING PERMANENT, HOWEVER, THE CHARACTER OF HER INJURY SUSTAINED WITH THE NECESSITY FOR SURGERY, LONG RECUPERATIVE PERIOD AND VOCATIONAL RETRAINING DEMONSTRATES THAT HER PERMANENT DISABILITY IS MUCH GREATER THAN THAT WHICH SHE HAS PREVIOUSLY BEEN AWARDED.

HE ALSO CONCLUDED THAT IN ORDER TO IMPLEMENT THE RECOMMENDATION OF DR. RENNEBOHM, UPON WHOM HE RELIED HEAVILY, THE COMPENSATION SHOULD BE PAID TO CLAIMANT IN A LUMP SUM. HE THEREFORE, INCREASED HER AWARD TO 190 DEGREES WHICH EQUALS 60 PER CENT OF THE MAXIMUM FOR UNSCHEDULED DISABILITY, PAYABLE IN A LUMP SUM.

THE BOARD, ON DE NOVO REVIEW, FULLY REALIZES THE QUANDRY IN WHICH THE REFEREE FOUND HIMSELF. ALL OF THE DOCTORS, INCLUDING DR. RENNEBOHM, SAY THAT CLAIMANT IS TOTALLY DISABLED AND UNABLE TO BE REGULARLY AND GAINFULLY EMPLOYED. DR. RENNEBOHM'S SUGGESTION, WHICH THE REFEREE CHOSE TO FOLLOW, IS BASED ON SPECULATION. DR. RENNEBOHM WAS NOT A TREATING PHYSICIAN BUT HAD ONLY HAD ONE OCCASION TO EXAMINE CLAIMANT AND THAT WAS AFTER HER CLAIM HAD BEEN CLOSED AND JUST PRIOR TO THE HEARING. ON THE OTHER HAND, CLAIMANT'S TREATING PSYCHIATRIST, DR. HENSON, DR. WATTLEWORTH, ONE OF HER TREATING ORTHOPEDISTS, AND DR. THOMAS, CLAIMANT'S TREATING PHYSICIAN, ALL ARE VERY PESSIMISTIC IN THEIR RESPECTIVE PROGNOSIS FOR CLAIMANT'S EVENTUAL RETURN TO THE LABOR MARKET. DR. RENNEBOHM BELIEVED THE CLAIMANT WAS, IN FACT, IN A STATE OF EXTREME PAIN AND EXPRESSED HIS OPINION THAT, AT THE TIME OF THE HEARING, CLAIMANT WAS TOTALLY DISABLED EITHER AS TO EMPLOYMENT OR AS TO RETRAINING.

THE BOARD FINDS NO EVIDENCE INDICATING THAT CLAIMANT IS NOT MEDICALLY STATIONARY AT THIS TIME, THEREFORE, SHE IS ENTITLED TO AN AWARD FOR HER PERMANENT DISABILITY. HOWEVER, TO AWARD CLAIMANT ANYTHING LESS THAN TOTAL DISABILITY WOULD PLACE THE CLAIMANT IN AN INTOLERABLE POSITION FROM A LEGAL STANDPOINT, ALTHOUGH IT MIGHT GIVE HER TEMPORARY EXACERBATION WITH RESPECT TO HER PHYSICAL AND PSYCHOLOGICAL COMPLAINTS. IF DR. RENNEBOHM'S THEORY PROVES WRONG CLAIMANT HAS NO MEANS OF OBTAINING COMPENSATION TO WHICH SHE IS ENTITLED. SHE WOULD NOT BE ENTITLED TO BOARD'S OWN MOTION JURISDICTION UNDER ORS 656.278 UNTIL HER AGGRAVATION RIGHTS HAD EXPIRED, AND, WITH THE ABUNDANCE OF MEDICAL EVIDENCE WHICH INDICATES THAT AT THE TIME OF THE LAST AWARD OF COMPENSATION CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED, IT WOULD BE VIRTUALLY IMPOSSIBLE FOR CLAIMANT TO SHOW A WORSENING OF HER CONDITION. IF, ON THE OTHER HAND, DR. RENNEBOHM'S SPECULATION PROVES CORRECT AND CLAIMANT SHOWS A SIGNIFICANT IMPROVEMENT IN HER CONDITION, THE FUND HAS THE RIGHT UNDER THE PROVISIONS OF ORS 656.325(3) TO HAVE THE AWARD FOR PERMANENT TOTAL DISABILITY SET ASIDE OR REDUCED.

THE BOARD CONCLUDES, BASED UPON THE EVIDENCE, BOTH LEGAL AND

MEDICAL, THAT CLAIMANT IS AT THE PRESENT TIME PERMANENTLY AND TOTALLY DISABLED AS CONTEMPLATED BY THE WORKMEN'S COMPENSATION ACT AND SHOULD BE SO CONSIDERED AS OF THE DAY AFTER CLAIMANT'S COMPENSATION FOR TEMPORARY TOTAL DISABILITY TERMINATED ON MARCH 31, 1975. THE FUND SHOULD BE ALLOWED TO APPLY ITS PREVIOUS PAYMENTS OF COMPENSATION FOR PERMANENT PARTIAL DISABILITY ORDERED BY THE DETERMINATION ORDER, MAILED JUNE 4, 1975, AND INCREASED BY THE REFEREE'S ORDER OF NOVEMBER 26, 1975, AGAINST ITS PAYMENT OF COMPENSATION FOR PERMANENT TOTAL DISABILITY HEREBY ORDERED.

ORDER

THE ORDER OF THE REFEREE, DATED NOVEMBER 26, 1975, IS REVERSED.

CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED AS OF APRIL 1, 1975. THIS IS IN LIEU OF THE AWARD OF COMPENSATION FOR PERMANENT PARTIAL DISABILITY GRANTED BY THE REFEREE IN HIS NOVEMBER 26, 1975 ORDER.

THE STATE ACCIDENT INSURANCE FUND MAY APPLY THE PREVIOUS PAYMENTS OF COMPENSATION FOR PERMANENT PARTIAL DISABILITY ORDERED BY THE DETERMINATION ORDER, MAILED JUNE 4, 1975, AND INCREASED BY THE REFEREE'S ORDER OF NOVEMBER 26, 1975, WHICH IT HAS MADE AGAINST PAYMENTS DUE CLAIMANT FOR PERMANENT TOTAL DISABILITY FROM APRIL 1, 1975 FORWARD.

COUNSEL FOR CLAIMANT IS TO RECEIVE AS A FEE, 25 PER CENT OF THE COMPENSATION INCREASED BY THIS ORDER, PAYABLE OUT OF SAID COMPENSATION, AS PAID, TO A MAXIMUM OF 2,300 DOLLARS.

WCB CASE NO. 75-1941 AUGUST 4, 1976

MARVIN MEACHAM, CLAIMANT

HUGH COLE, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH SET ASIDE THE DETERMINATION ORDER, MAILED APRIL 28, 1975, BECAUSE HE FOUND CLAIMANT WAS STILL VOCATIONALLY HANDICAPPED, AND REMANDED TO IT THE CLAIM FOR PAYMENT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM JANUARY 25, 1975 UNTIL COMPLETION OF CLAIMANT'S VOCATIONAL REHABILITATION PROGRAM, WITH CREDIT FOR PERMANENT PARTIAL DISABILITY PAYMENTS MADE SINCE APRIL 28, 1975.

CLAIMANT WAS FIRST INJURED DURING DECEMBER, 1972. THE CLAIM WAS ACCEPTED AND CLOSED BY DETERMINATION ORDER, MAILED MARCH 18, 1974, WHEREBY CLAIMANT WAS AWARDED 16 DEGREES FOR 5 PER CENT UNSCHEDULED LEFT SHOULDER DISABILITY.

IN 1973 CLAIMANT WAS REFERRED BY THE BOARD TO THE VOCATIONAL REHABILITATION DIVISION AND EVENTUALLY ENROLLED IN LANE COMMUNITY COLLEGE TAKING COURSES IN DRAFTING, MATH, ACCOUNTING AND ELECTRONICS. CLAIMANT WAS PROVIDED BOOKS, TUITION, TRANSPORTATION AND LUNCHES. CLAIMANT COMPLETED THE SPRING TERM AND THEN RETURNED TO HIS FORMER WORK IN THE WOODS, STATING HIS REASON FOR DOING SO WAS FINANCIAL. CLAIMANT HAD SERVED IN VIET NAM AS A COMBAT INFANTRYMAN AND HAD BEEN EXPECTING ADDITIONAL FINANCIAL HELP UNDER THE GI BILL.

ON JUNE 22, 1974 CLAIMANT SUFFERED ANOTHER COMPENSABLE INJURY WHEN HE WAS CRUSHED BETWEEN A LOG AND THE CAB OF A LOG TRUCK. CLAIMANT'S INJURIES WERE MULTIPLE AND EXTREMELY SEVERE - HE WAS IN THE HOSPITAL FOR APPROXIMATELY 45 DAYS.

CLAIMANT'S COUNSELORS WERE AWARE OF THE SECOND INJURY. ON SEPTEMBER 25, 1974 DR. MASSEY THOUGHT CLAIMANT WOULD BE SAFE WORKING IN THE WOODS - HOWEVER, LATER, AFTER CLAIMANT TRIED TO RETURN TO THAT TYPE OF WORK, HE SAID CLAIMANT WAS NOT YET PHYSICALLY FIT TO RETURN TO WORK. COMPENSATION FOR TEMPORARY TOTAL DISABILITY WAS EXTENDED FROM SEPTEMBER 25, 1974, AND IT WAS STRONGLY URGED THAT CLAIMANT AGAIN ENROLL IN VOCATIONAL REHABILITATION AND TRY TO ADOPT SOME OTHER TYPE OF WORK.

ON DECEMBER 20, 1974 DR. MASSEY'S CLOSING EVALUATION STATED CLAIMANT HAD A SIGNIFICANT BACK INJURY, HE WAS NOT SURE IF CLAIMANT WAS REALLY STABLE IN THAT REGARD. DURING JANUARY, 1975 DR. SCHACHNER FOUND THAT CLAIMANT WAS PROBABLY STATIONARY AS FAR AS HIS BACK WAS CONCERNED - THAT THE COMPLAINTS THAT CLAIMANT HAD WERE NOT DISABLING.

A REQUEST FOR DETERMINATION WAS FILED AND UNDER THE COLUMN 'REMARKS' IT WAS STATED -

> 'VOCATIONAL REHABILITATION WAS APPROVED PRIOR TO THIS INJURY. CLAIMANT STATES HE IS AGAIN ENROLLED IN LANE COMMUNITY COLLEGE.'

THE CLAIM WAS CLOSED BY A DETERMINATION ORDER, MAILED APRIL 28, 1975, WHICH AWARDED CLAIMANT 32 DEGREES UNSCHEDULED LOW BACK AND ABDOMEN DISABILITY FOR HIS JULY 23, 1974 INJURY.

ON MARCH 18, 1975 THE VOCATIONAL REHABILITATION SUPERVISOR AT THE DISABILITY PREVENTION DIVISION TOLD CLAIMANT THAT HIS VOCATIONAL REHABILITATION NEED WAS BASED ON A REFERRAL OF DECEMBER, 1973 AND SINCE CLAIMANT HAD NOT NOTIFIED HIS COUNSELOR OF HIS RETURN TO WORK IN THE SUMMER OF 1974 NOR OF THE SECOND INJURY THAT ANY PROGRAM HAD TO BE CONTINUED ON THE BASIS OF THE 1973 REFERRAL AND THAT ANY PROGRAM OF VOCATIONAL REHABILITATION IN RELATIONSHIP TO THE 1974 INJURY WAS OFFICIALLY TERMINATED. THE EFFECT OF SUCH INFORMATION WAS TO PRECLUDE CLAIMANT FROM ANY BENEFITS UNDER ORS 656.268, AS AMENDED BY THE 1973 LEGISLATURE, AND ORS 656.728 TO WIT - ENTITLEMENT TO COMPENSATION FOR TEMPORARY TOTAL DISABILITY DURING AN APPROVED PROGRAM OF VOCATIONAL REHABILITATION. FURTHERMORE, THE TERMINATION PROCEDURES AS SET FORTH IN OAR 436-61-035 OBVIOUSLY WERE NOT FOLLOWED.

IN THE SPRING OF 1975 CLAIMANT, BECAUSE OF FINANCIAL CIRCUMSTANCES, TERMINATED HIS SCHOOLING AT LANE COMMUNITY COLLEGE BUT LATER CONTINUED BY ENROLLING AT CHEMEKETA COMMUNITY COLLEGE IN SALEM. COMMENCING IN THE SUMMER OF 1975 AND CONTINUING TO THE TIME OF THE HEARING CLAIMANT RECEIVED MAINTENANCE AND SUPPORT PAYMENTS BUT NO COMPENSATION FOR TEMPORARY TOTAL DISABILITY.

THE REFEREE FOUND THAT ORS 656.728 COVERED CLAIMANT AT ALL PERTINENT TIMES, THAT OAR 436-61 WAS EFFECTIVE FEBRUARY 26, 1975 AT A TIME WHEN CLAIMANT WAS STILL ENROLLED IN ONE OR MORE VOCATIONAL REHABILITATION PROGRAMS.

HE CONCLUDED THAT THE CLAIM COULD NOT BE CLOSED UNTIL CLAIMANT WAS FOUND TO BE MEDICALLY STATIONARY AND (UNDERSCORED) HAD COMPLETED HIS AUTHORIZED PROGRAM OF VOCATIONAL REHABILITATION, ORS 656.268. HE FURTHER CONCLUDED THAT CLAIMANT WAS VOCATIONALLY HANDICAPPED AS OF JANUARY 25, 1975, THEREFORE, HE SET ASIDE THE DETERMINATION ORDER

OF APRIL 28, 1975 AND REMANDED THE CLAIM TO THE FUND FOR PAYMENT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM JANUARY 25, 1975 UNTIL CLAIMANT'S VOCATIONAL REHABILITATION PROGRAM HAD BEEN COMPLETED OR TERMINATED IN ACCORDANCE WITH THE BOARD'S RULES RELATING THERETO. THE REFEREE ALLOWED THE FUND CREDIT FOR THE PAYMENTS FOR PERMANENT PARTIAL DISABILITY ALREADY MADE AS A RESULT OF THE DETERMINATION ORDER OF APRIL 28, 1975.

UNDER THE PROVISIONS OF OAR 436-61-050(5), IN EFFECT AT THE TIME OF CLAIMANT'S HEARING, AFTER THE BOARD AUTHORIZED A PROGRAM OF VOCATIONAL REHABILITATION THE CLAIMANT'S CLAIM WAS REOPENED AND HE WAS ENTITLED TO RECEIVE COMPENSATION FOR TEMPORARY TOTAL DISABILITY STARTING ON THE DATE THE DPD AUTHORIZED THE PROGRAM OR SUCH OTHER DATE AS MAY BE DETERMINED AT A HEARING (UNDERSCORED).

THE BOARD,ON DE NOVO REVIEW, FINDS THE REFEREE ACTED CORRECTLY IN FINDING CLAIMANT TO BE VOCATIONALLY HANDICAPPED FROM JANUARY 25, 1975 AND REMANDING HIS CLAIM TO THE FUND FOR PAYMENT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM THAT DATE UNTIL COMPLETION OF CLAIMANT'S VOCATIONAL REHABILITATION PROGRAM OR TERMINATION THEREOF UNDER OAR 436-61-035.

THE FUND CONTENDS THAT THE MARCH 18, 1975 LETTER FROM THE VOCATIONAL REHABILITATION SUPERVISOR AT THE DISABILITY PREVENTION DIVISION WAS A TERMINATION OF, OR REFUSAL TO RECOGNIZE, CLAIMANT'S RIGHTS UNDER ORS 656.728 AND 656.268, AS AMENDED, BASED ON HIS JULY, 1974 INJURY. THE BOARD FINDS THIS TERMINATION WAS ACCOMPLISHED WITHOUT ANY REFERENCE TO ITS RULES RELATING TO PROCEDURE FOR SUSPENSION OR TERMINATION. PROPER NOTICE TO ALL INTERESTED PARTIES WAS NOT GIVEN, NOR WERE THE REASONS FOR THE TERMINATION. THE LETTER SPECIFICALLY STATED THAT CLAIMANT'S VOCATIONAL REHABILITATION PROGRAM IN RELATION TO THE 1974 INJURY WAS OFFICIALLY TERMINATED AND BASED THE JUSTIFICATION OF SUCH TERMINATION ON AN ALLEGED FAILURE OF CLAIMANT TO NOTIFY THE COUNSELOR OF HIS INTENTION TO RETURN TO WORK OR OF THE FACT THAT HE HAD BEEN REINJURED. THE BOARD FINDS EVIDENCE THAT THE COUNSELOR WAS AWARE THAT CLAIMANT HAD RETURNED TO WORK AND HE WAS AWARE THAT HE HAD SUFFERED A NEW INJURY IN 1974. THERE IS NOT AN IOTA OF EVIDENCE THAT THE DISABILITY PREVENTION DIVISION WAS MISLED OR UNINFORMED BY CLAIMANT'S LACK OF COMMUNICATION WITH IT.

BASED UPON THE FOREGOING, THE BOARD CONCLUDES THAT THE REFEREE'S FINDINGS AND CONCLUSIONS CONTAINED IN HIS ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 7, 1976 IS AFFIRMED.

CLAIMANT'S COUNSEL FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW, IS AWARDED AS A REASONABLE ATTORNEY FEE, THE SUM OF 400 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 75-1237 AUGUST 4, 1976

AMANDA MARKER, CLAIMANT

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

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE CLAIMANT SEEKS BOARD REVIEW OF THE REFEREE'S ORDER WHICH

DENIED CLAIMANT'S CLAIM FOR COMPENSATION FOR MEDICAL SERVICES INCURRED AFTER JANUARY, 1975 OR RECOMMENDED DURING THAT PERIOD OF TIME, AND ALSO FOUND THE MAY 8, 1975 DENIAL BY THE STATE ACCIDENT INSURANCE FUND TO BE CORRECT.

CLAIMANT SUSTAINED A COMPENSABLE INJURY ON SEPTEMBER 11, 1969, THE CLAIM WHICH SHE FILED THEREFOR HAS BEEN THE SUBJECT OF TWO PRIOR HEARINGS AND THE REFEREE DID NOT FEEL IT NECESSARY TO REITERATE THE FINDINGS OF INJURY AND RESIDUAL DISABILITY DOCUMENTED IN THE OPINION AND ORDERS RESULTING FROM THE PRIOR HEARINGS.

CLAIMANT'S LAST AWARD PRIOR TO FEBRUARY, 1975 OCCURRED ON MAY 4, 1973 WHEN SHE WAS GRANTED SOME ADDITIONAL COMPENSATION FOR PERMANENT PARTIAL UNSCHEDULED DISABILITY. BETWEEN THAT TIME AND FEBRUARY, 1975 CLAIMANT WAS EMPLOYED AT THE UNIVERSITY OF OREGON AS A SECRETARY AND, AT TIMES, AS A MEMBER OF THE STUDENT REGISTRATION FINANCIAL ACCOUNTING AND BALANCING GROUP.

THE REFEREE FOUND THAT APPARENTLY CLAIMANT'S EMPLOYMENT CAUSED HER TO BECOME UPSET AND TO CRY ON VARIOUS OCCASIONS WHEN COMPLAINTS ABOUT HER SUPERVISION WERE MADE BY SOME OF THE EMPLOYEES SUBJECT TO SUCH SUPERVISION. CLAIMANT TERMINATED HER EMPLOYMENT ON JANUARY 8, 1975 AND OBTAINED A DIFFERENT POSITION AT THE UNIVERSITY. SHE HAD TOLD HER IMMEDIATE SUPERVISOR ON SEVERAL OCCASIONS DURING THE REGISTRATION PERIOD THAT SHE WOULD RATHER NOT WORK ANY MORE IN REGISTRATION.

IN FEBRUARY, 1975 CLAIMANT CONTACTED DR. SCOTT, A PSYCHIATRIST, WITH WHOM CLAIMANT HAD PREVIOUSLY CONSULTED ON VARIOUS OCCASIONS. (EXACERBATION OF CLAIMANT'S PRE-EXISTING PSYCHOLOGICAL DISORDER BY THE INDUSTRIAL INJURY OF SEPTEMBER 11, 1969 BECAME A CAUSALLY RELATED COMPONENT OF THE INJURY AND, TO SOME EXTENT, OF HER RESIDUAL PERMANENT DISABILITY AND WAS DISCUSSED IN BOTH PRIOR ORDERS). WHEN CLAIMANT CONTACTED DR. SCOTT IN FEBRUARY, 1975 SHE WAS EXPERIENCING SYMPTOMS IN HER ARMS SUCH AS SHE HAD EXPERIENCED PREVIOUSLY AND DR. SCOTT FELT THAT THE PRINCIPAL PROBLEM WAS ONE OF PHYSICAL DISTRESS AND REFERRED HER TO A PHYSICAL THERAPIST FOR MASSAGE THERAPY. HE SAW CLAIMANT IN JULY, 1975 AND HAS NOT SEEN HER SINCE THAT DATE. PRIOR TO FEBRUARY, 1975, THE LAST TIME DR. SCOTT HAD SEEN CLAIMANT WAS NOVEMBER 6, 1972.

DR. SCOTT'S TESTIMONY INDICATES THAT CLAIMANT'S PHYSICAL MANIFESTATIONS OF DISTRESS ARE A PSYCHOSOMATIC REACTION TO EMOTIONAL STRESS AND THAT WHEN AN EMOTIONAL TENSION BUILDS TO A CERTAIN POINT THE REACTION OCCURS BY SYMPTOMS OF PAIN OCCURRING AT HER MOST VULNERABLE SPOT, I.E., HER ARMS.

THE REFEREE FOUND THAT CLAIMANT DID OBTAIN MEDICAL SERVICES IN THE FORM OF CONSULTATION OF DR. SCOTT AND RECEIVED PHYSICAL THERAPY, PURSUANT TO HIS RECOMMENDATION, BETWEEN FEBRUARY, 1975 AND JULY, 1975 FOR BOTH PHYSICAL AND EMOTIONAL DISTRESS - HOWEVER, HE FELT THAT IT WAS NECESSARY TO ESTABLISH A CAUSAL RELATIONSHIP BETWEEN THE CONDITIONS FOR WHICH THE MEDICAL SERVICES WERE RENDERED AND THE INDUSTRIAL INJURY WHICH IS ALLEGED TO BE THE CAUSE OF SUCH CONDITIONS BY COMPETENT EXPERT MEDICAL OPINION. IT WAS HIS OPINION THAT THE EVIDENCE PRESENTED BY CLAIMANT FAILED TO MEET THE REQUIRED STANDARDS OF MEDICAL PROBABILITY.

THE REFEREE FOUND DR. SCOTT'S OPINION WAS NOT SUFFICIENTLY CONCLUSIVE TO ESTABLISH THAT CAUSAL RELATIONSHIP LINK BETWEEN THE SYMPTOMATOLOGY MANIFESTED IN 1975 AND THE CONDITIONS DETERMINED TO BE THE RESIDUALS OF THE 1969 INDUSTRIAL INJURY.

THE REFEREE CONCLUDED THAT THE CLAIMANT HAD FAILED TO SUSTAIN HER BURDEN OF PROOF TO ESTABLISH THAT SHE WAS ENTITLED TO COMPENSATION FOR THE MEDICAL SERVICES OBTAINED AS A RESULT OF THE INDUSTRIAL INJURY OF 1969.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT WHEN CLAIMANT CONSULTED WITH DR. SCOTT IN FEBRUARY, 1975 HE REQUESTED THAT THE FUND REOPEN HER CLAIM FOR TREATMENT. HIS REQUEST WAS NOT BASED ON ANY CLAIM OF AGGRAVATION, CLAIMANT WAS EXPERIENCING NO TIME LOSS, THEREFORE, IT SHOULD HAVE PROBABLY BEEN CONSTRUED AS A REQUEST FOR FURTHER MEDICAL CARE AND TREATMENT UNDER THE PROVISIONS OF ORS 656.245. HOWEVER, THE FUND DENIED CLAIMANT'S CLAIM ON THE GROUNDS THAT DR. SCOTT'S MEDICAL REPORT DID NOT SUPPORT HER CLAIM FOR AGGRAVATION.

THE RECORD INDICATES THAT THE HEARING CONSISTED OF TWO SESSIONS - AT THE FIRST SESSION, THE ISSUE OF AGGRAVATION WAS (UNDERSCORED) PRESENTED TO THE REFEREE AND THE FUND MOVED TO DISMISS ON THE GROUNDS OF INADEQUATE MEDICAL EVIDENCE. AT THE SECOND SESSION THE ISSUE OF AGGRAVATION WAS WITHDRAWN AND THE SOLE ISSUE BEFORE THE REFEREE WAS CLAIMANT'S RIGHT TO MEDICAL CARE AND TREATMENT UNDER THE PROVISIONS OF ORS 656.245. BETWEEN SESSIONS THE DEPOSITION OF DR. SCOTT WAS TAKEN.

DR. SCOTT, IN RESPONSE TO INQUIRIES MADE TO HIM BY THE FUND PRIOR TO THE HEARING AND ALSO IN HIS DEPOSITION, STATED THAT CLAIMANT'S PRESENT NEED FOR TREATMENT WAS RELATED TO THE SEQUELAE OF HER INDUSTRIAL INJURY. THE REFEREE SAID THAT DR. SCOTT'S OPINION WAS NOT SUFFICIENTLY CONCLUSIVE - IT IS NOT NECESSARY THAT HIS OPINION BE CONCLUSIVE IN ORDER TO MEET THE REQUIRED STANDARDS OF MEDICAL PROBABILITY. DR. SCOTT'S MEDICAL REPORT CLEARLY IDENTIFIES CLAIMANT'S PROBLEMS AS BEING RELATED TO HER INJURY AND, ON CROSS-EXAMINATION, COUNSEL FOR THE FUND WAS UNABLE TO PERSUADE DR. SCOTT TO CHANGE HIS EXPRESSED OPINION THAT CLAIMANT WAS PRESENTLY SUFFERING FROM CONDITIONS BROUGHT ON HER BY HER INDUSTRIAL INJURY. DR. SCOTT'S TESTIMONY MUST BE TREATED THE SAME AS THAT OF ANY TREATING PHYSICIAN. THE FUND DID NOT ATTEMPT TO REBUT DR. SCOTT'S OPINION BY ANY CONTRARY MEDICAL OPINIONS.

THE BOARD CONCLUDES THAT IT IS SUFFICIENT IF CLAIMANT CAN ESTABLISH WHETHER OR NOT HER CONDITION IS MATERIALLY RELATED TO THE INDUSTRIAL INJURY, IT IS NOT NECESSARY FOR HER TO ESTABLISH THAT HER CONDITION IS RELATED TO THE INDUSTRIAL INJURY WITHOUT INQUIRY AS TO ANY OTHER FACTOR - AND, IN THIS CASE, THE BOARD CONCLUDES THAT CLAIMANT HAS ESTABLISHED THAT HER PRESENT CONDITION IS RELATED TO THE INDUSTRIAL INJURY SUFFERED ON SEPTEMBER 11, 1969 AND, THEREFORE, CLAIMANT'S CLAIM FOR COMPENSATION FOR MEDICAL SERVICES INCURRED FROM THE DATE CLAIMANT WAS SEEN BY DR. SCOTT IN FEBRUARY, 1975 SHOULD HAVE BEEN ACCEPTED.

THE ISSUE OF AGGRAVATION WAS WITHDRAWN BY THE CLAIMANT AT THE TIME OF THE SECOND SESSION OF THE HEARING, THEREFORE, THE DENIAL OF CLAIMANT'S CLAIM FOR AGGRAVATION MADE BY THE FUND ON MAY 8, 1975 IS NOT BEFORE THE BOARD. HOWEVER, THE FUND DID NOT ACT UPON CLAIMANT'S CLAIM FOR FURTHER MEDICAL CARE AND TREATMENT UNDER THE PROVISIONS OF ORS 656.245 AND THIS AMOUNTS TO A DE FACTO DENIAL. THIS DENIAL BEING IMPROPER, CLAIMANT'S COUNSEL IS ENTITLED TO AN ATTORNEY FEE PURSUANT TO ORS 656.386. CAVINS V. SAIF (UNDERSCORED), 75 OR AD SH 1963.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 18, 1976, IS REVERSED.

CLAIMANT'S CLAIM FOR COMPENSATION FOR MEDICAL SERVICES BEGINNING FROM THE DATE SHE WAS SEEN BY DR. SCOTT IN FEBRUARY, 1975 IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR PAYMENT PURSUANT TO THE PROVISIONS OF ORS 656.245.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY FEE FOR HIS SERVICES AT THE HEARING BEFORE THE REFEREE THE SUM OF 800 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY 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. 75-3374 AUGUST 4, 1976

GEORGE JOHNSON, CLAIMANT

DON SWINK, CLAIMANT'S ATTY.
ROGER WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT AN AWARD OF PERMANENT TOTAL DISABILITY.

CLAIMANT SUFFERED TWO COMPENSABLE INJURIES. THE FIRST, SUFFERED ON JUNE 27, 1967, WAS AN ADHESIVE CAPSULITIS AND CLAIMANT WAS TREATED BY DR. HOCKEY AND DR. JAMES. LATER IN 1972 CLAIMANT COMPLAINED OF RIGHT NECK PAIN, RIGHT SHOULDER PAIN AND NUMBNESS AND RIGHT FINGERS TINGLING WHICH DR. JAMES DIAGNOSED AS RECURRENT ADHESIVE CAPSULITIS AND C6-7 DEGENERATIVE ARTHRITIS. A DETERMINATION ORDER DATED OCTOBER 8, 1968 AWARDED CLAIMANT 15 PER CENT LOSS OF RIGHT ARM.

CLAIMANT SUFFERED THE SECOND INJURY ON NOVEMBER 14, 1969. THE ORIGINAL DIAGNOSIS RELATED TO THE LEFT LEG AND THIGH. CLAIMANT RETURNED TO WORK IN FEBRUARY, 1970. A DETERMINATION ORDER ISSUED AUGUST 2, 1971 GRANTED CLAIMANT 23 DEGREES FOR 15 PER CENT LOSS OF LEFT LEG.

ON JULY 11, 1972 THE CLAIM WAS REOPENED FOR FURTHER SURGERY WHICH WAS DONE BY DR. SLOCUM ON JULY 11, 1972. ON MARCH 8, 1973 DR. SLOCUM FOUND CLAIMANT'S CONDITION MEDICALLY STATIONARY AND HE FELT CLAIMANT WAS UNEMPLOYABLE ON THE BASIS OF HIS THIGH INJURY.

ON JULY 12, 1973 A LAMINECTOMY AND DISCECTOMY AT L4-5, RIGHT WAS PERFORMED BY DR. FLANAGAN.

IN MID-1973 A PSYCHOLOGICAL EVALUATION OF CLAIMANT RESULTED IN A POOR PROGNOSIS FOR CLAIMANT TO RETURN TO WORK.

CLAIMANT WAS REFERRED TO THE BACK EVALUATION CLINIC AT THE DISABILITY PREVENTION DIVISION IN JANUARY, 1974. THE DIAGNOSES WERE LOW BACK AND RIGHT LEG PAIN - POSITIONAL VERTIGO - PARTIALLY FROZEN RIGHT SHOULDER - SOME HYPERTENSION AND HYSTERICAL SENSORY LOSS OF RIGHT ARM AND LEFT LEG. THE PHYSICIANS FELT THAT CLAIMANT COULDN'T RETURN TO HIS OLD OCCUPATION, BUT PROBABLY COULD RETURN TO LIGHT TYPE WORK. ON MARCH 11, 1974 DR. GOLDEN CONCURRED WITH THE FINDINGS OF THE BACK EVALUATION CLINIC.

DR. RAAF EXAMINED CLAIMANT ON JUNE 19, 1975 AND FOUND CLAIMANT'S COMPLAINTS OF DISABILITY IN THE LEFT LEG TO BE OUT OF PROPORTION TO HIS OBJECTIVE FINDINGS. DR. RAAF FELT THERE WAS A LARGE FUNCTIONAL ELEMENT PRESENT, EITHER HYSTERICAL OR MALINGERING. HE FELT THE CLAIM COULD BE CLOSED.

ON JULY 30, 1975 A SECOND DETERMINATION ORDER AWARDED CLAIMANT 64 DEGREES FOR 20 PER CENT UNSCHEDULED LOW BACK DISABILITY.

THE REFEREE FOUND CLAIMANT TO BE A CREDIBLE WITNESS AND THAT HE WAS NOT MALINGERING. CLAIMANT'S TESTIMONY WAS CORROBOARATED BY WITNESSES AND, BASED ON CLAIMANT'S AGE, EDUCATION, WORK POTENTIAL, HE CONCLUDED THAT CLAIMANT WAS UNABLE TO RETURN TO REGULAR, GAINFUL EMPLOYMENT AND AWARDED CLAIMANT PERMANENT TOTAL DISABILITY AS OF THE DATE OF HIS ORDER, DECEMBER 22, 1975.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT THE MEDICAL EVIDENCE DOES NOT SUPPORT A FINDING OF PERMANENT TOTAL DISABILITY.

THE REPORT OF JANUARY 25, 1974 OF THE BACK EVALUATION CLINIC STATES CLAIMANT'S TOTAL LOSS OF FUNCTION OF THE BACK TO BE MILDLY MODERATE - LOSS OF FUNCTION OF THE NECK AS MINIMAL, LOSS OF FUNCTION OF THE RIGHT SHOULDER AS MILD. DR. GOLDEN, ON MARCH 11, 1974, CONCURRED.

DR. RAAF ON JUNE 19, 1975 FELT THAT 15 PER CENT WAS A FAIR AWARD FOR CLAIMANT'S RIGHT ARM DISABILITY, LOSS OF FUNCTION OF THE BACK WAS 10 DEGREES AND 15 DEGREES FOR LOSS OF FUNCTION OF THE LEFT LEG. DR. GOLDEN ALSO AGREES WITH THIS.

THE BOARD ALSO FINDS THAT THE MEDICALS SUGGEST CLAIMANT TO BE EXAGGERATING HIS SYMPTOMS. DR. GANTENBEIN'S REPORT OF MAY 2, 1973 FOUND A DISCREPANCY BETWEEN FINDINGS AND SYMPTOMS. IN DR. HICKMAN'S REPORT HE FOUND A POSSIBILITY OF CLAIMANT'S 'FAKING' HIS PSYCHOLOGICAL TESTS. DR. RAAF ALSO HAD NOTED EVIDENCE OF CLAIMANT'S EXAGGERATING HIS SYMPTOMS - HE FELT THERE WAS A FUNCTIONAL ELEMENT OF HYSTERIA OR MALINGERING.

CLAIMANT ALSO SHOWS NO DESIRE, INCLINATION OR EFFORT TO RETURN TO WORK OR TO RECEIVE RETRAINING EVEN THOUGH THE BACK EVALUATION CLINIC STATED CLAIMANT COULD PROBABLY ENGAGE IN LIGHTER WORK. CLAIMANT'S LACK OF MOTIVATION SEEMS TO INDICATE THAT CLAIMANT DESIRES TO RETIRE.

BASED ON THE FOREGOING FINDINGS, THE BOARD CONCLUDES CLAIMANT DID NOT SUSTAIN HIS BURDEN OF PROVING BY THE PREPONDERANCE OF THE EVIDENCE THAT HE IS PERMANENTLY AND TOTALLY DISABLED. THE BOARD CONCLUDES THAT THE PREVIOUS AWARD OF 64 DEGREES ADEQUATELY COMPENSATES CLAIMANT FOR HIS LOSS OF WAGE EARNING CAPACITY.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 22, 1975, IS REVERSED.

THE DETERMINATION ORDER OF JULY 30, 1975 IS AFFIRMED.

DUANE PRATT, CLAIMANT

GLENN PROHASKA, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS 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, CONTENDING THAT THE AWARD OF 80 DEGREES FOR 25 PER CENT UNSCHEDULED LOW BACK DISABILITY GRANTED CLAIMANT BY THE OPINION AND ORDER ENTERED IN DUANE S. PRATT, CLAIMANT (UNDERSCORED), WCB CASE NO. 73-3697 ON APRIL 17, 1974, ADEQUATELY COMPENSATED CLAIMANT.

CLAIMANT SUFFERED AN INJURY ON SEPTEMBER 23, 1969. THE CLAIM WAS FIRST CLOSED BY DETERMINATION ORDER MAILED DECEMBER 8, 1969, WHICH AWARDED COMPENSATION FOR TIME LOSS ONLY. THE CLAIM WAS RE-OPENED AND CLOSED BY A SECOND DETERMINATION ORDER MAILED AUGUST 20, 1973, WHICH AWARDED CLAIMANT 48 DEGREES FOR 15 PER CENT UNSCHEDULED LOW BACK DISABILITY. A HEARING WAS REQUESTED AND AS A RESULT THEREOF, THE REFEREE, ON APRIL 17, 1974, INCREASED THE AWARD TO 80 DEGREES.

ON JANUARY 23, 1975, CLAIMANT FILED A CLAIM FOR AGGRAVATION WHICH WAS DENIED BY THE STATE ACCIDENT INSURANCE FUND AND CLAIMANT REQUESTED A HEARING. THE REFEREE DISMISSED THE HEARING ON THE GROUND THAT HE LACKED JURISDICTION, SETTING FORTH IN HIS ORDER SEVERAL GROUNDS FOR THIS RULING. CLAIMANT APPEALED. THE BOARD REVERSED THE REFEREE'S ORDER AND REMANDED THE MATTER TO THE HEARINGS DIVISION FOR A HEARING ON THE MERITS. THE STATE ACCIDENT INSURANCE FUND APPEALED THAT RULING AND THE CIRCUIT COURT FOR MULTNOMAH COUNTY, ON JANUARY 2, 1976, UPHELD THE BOARD'S RULING AND THE CLAIM WAS REMANDED FOR A HEARING ON THE MERITS. THIS HEARING WAS HELD ON MARCH 15, 1976 BEFORE REFEREE LEAHY AND THE OPINION AND ORDER ENTERED, AS A RESULT THEREOF, IS THE BASIS FOR THIS REVIEW.

CLAIMANT HAS NOT BEEN EMPLOYED SINCE DECEMBER, 1973, ALTHOUGH HE APPLIED FOR TWO WATCHMAN JOBS BUT OBTAINED NEITHER AND HE ALSO ATTEMPTED TO GO BACK TO HIS JOB AS A DRAFTSMAN, BUT WAS UNABLE TO DO THE WORK BECAUSE OF HIS BACK PAIN. CLAIMANT ALLEGES HE IS NOT NOW WORKING BECAUSE OF THE BACK PAIN, DENYING THAT HE WAS LAYED-OFF.

THE REFEREE, REFERRING TO HIS PREVIOUS OPINION, STATED THAT THE PREPONDERANCE OF THE MEDICAL EVIDENCE INDICATES THAT CLAIMANT'S PHYSICAL LOSS OF FUNCTION IS NOT GREAT. ITS DEGREE IS SO DISTORTED BY THE PSYCHOLOGICAL COMPONENT THAT ACCURACY IN EVALUATING THE DISABILITY IS ELUSIVE. PRIOR TO THE LAST HEARING CLAIMANT WAS GIVEN ADDITIONAL PSYCHOLOGICAL COUNSELING AT THE PSYCHOLOGICAL CENTER. DR. FLEMING, A PSYCHOLOGIST, STATED THAT THE INDUSTRIAL ACCIDENT WAS A MAJOR FACTOR IN CLAIMANT'S PRESENT PSYCHOLOGICAL STATUS. DR. BEALS, A PSYSICIAN, STATED THAT IN VIEW OF CLAIMANT'S PSYCHOLOGICAL EVALUATION, RETURNING CLAIMANT TO WORK PRESENTED A DIFFICULT CHALLENGE. FROM A PURELY PHYSICAL STANDPOINT, DR. BEALS FELT CLAIMANT COULD RETURN TO WORK IN A JOB NOT REQUIRING HEAVY LIFTING OR REQUIRING HIM TO SIT AND WORK OVER A DRAWING BOARD. HE HAD NO SPECIFIC SUGGESTIONS, BUT FELT THAT RETURNING CLAIMANT TO DRAFTING AT THAT POINT IN TIME WOULD NOT BE SUCCESSFUL.

EFFORTS ON THE PART OF BOTH THE VOCATIONAL REHABILITATION DIVISION AND THE PSYCHOLOGICAL CENTER WERE UNSUCCESSFUL. COUNSELOR RICHARD CRANDEL REPORTED = '...HIS (CLAIMANT) CONDITION PHYSICAL AND

EMOTIONAL IS TOO DISABLING NOW TO SAY OUR SERVICES CAN RESULT IN SUITABLE EMPLOYMENT. THE FILE IS CLOSED ON THAT BASIS.'

THE REFEREE FELT THAT, BASED ON CLAIMANT'S TESTIMONY, HE MIGHT BE CONSIDERED AS LACKING IN MOTIVATION TO THE EXTENT THAT WOULD EXCLUDE A FINDING OF PERMANENT TOTAL DISABILITY. DR. HICKMAN HAD FELT THAT AN AWARD OF TOTAL PERMANENT DISABILITY WOULD GIVE CLAIMANT A FEELING OF FINANCIAL SECURITY. THIS MIGHT STABILIZE HIS EMOTIONAL CONDITION SOMEWHAT AND, HOPEFULLY, CLAIMANT COULD REACH THE POINT WHERE HE WOULD BE ABLE TO ABANDON TOTAL PERMANENT DISABILITY STATUS AND RETURN TO GAINFUL EMPLOYMENT.

THE PSYCHOLOGICAL CENTER REPORTED THAT CLAIMANT WAS A PERMANENT TOTAL. CLAIMANT'S TESTIMONY REVEALS THAT HE IS ABLE TO ATTEND TWO COMMUNITY CLASSES A TERM WHICH WOULD INDICATE THAT, AS DR. BEALS FELT, THERE PROBABLY IS SOME TYPE OF WORK CLAIMANT CAN DO THAT DOESN'T REQUIRE HEAVY LIFTING OR WORKING OVER A DRAWING BOARD.

THE REFEREE, BASED UPON THE PSYCHOLOGICAL REPORTS AND ACCEPTING, IN THIS CASE, THAT LACK OF MOTIVATION WAS A PSYCHOLOGICAL DETERMINATION, FOUND CLAIMANT AT THE PRESENT TIME TO BE PERMANENTLY AND TOTALLY DISABLED.

THE BOARD, ON DE NOVO REVIEW, DOES NOT FEEL THAT CLAIMANT AT THE PRESENT TIME IS MEDICALLY STATIONARY AND, THEREFORE, HE CANNOT BE CONSIDERED AS PERMANENTLY AND TOTALLY DISABLED.

IT IS VERY OBVIOUS THAT CLAIMANT NEEDS EXTENSIVE PSYCHOLOGICAL AND PSYCHIATRIC CARE AND TREATMENT AND THE BOARD CONCLUDES THAT CLAIMANT'S CLAIM SHOULD BE REOPENED SO THAT CLAIMANT MAY RECEIVE SUCH CARE AND TREATMENT TOGETHER WITH COMPENSATION, AS PROVIDED BY LAW, COMMENCING ON THE DATE OF THIS ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 19, 1976, IS REVERSED.

CLAIMANT'S CLAIM IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR SUCH CARE AND TREATMENT, INCLUDING PSYCHIATRIC AND PSYCHOLOGICAL, AS HE MAY REQUIRE AND FOR THE PAYMENT OF COMPENSATION, AS PROVIDED BY LAW, COMMENCING ON THE DATE OF THIS ORDER AND UNTIL CLAIMANT'S CLAIM IS CLOSED PURSUANT TO ORS 656.268.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY 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. 75-2057 AUGUST 4, 1976

ALBERT I. NEEDHAM, CLAIMANT

ALLEN T. MURPHY, CLAIMANT'S ATTY.
JAMES HUEGLI, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER AWARDING CLAIMANT 115.2 DEGREES FOR BINAURAL HEARING LOSS.

CLAIMANT, THEN 63 YEARS OLD, FILED A CLAIM ON DECEMBER 18,

1974 ASSERTING A COMPENSABLE HEARING LOSS INCURRED DURING 42 YEARS OF EMPLOYMENT WITH BOISE CASCADE. THE CLAIM WAS ACCEPTED BY THE EMPLOYER AND AN AMENDED DETERMINATION ORDER ISSUED JANUARY 21, 1975 GRANTED CLAIMANT 6 DEGREES FOR 3.125 PER CENT LOSS OF BINAURAL HEARING.

CLAIMANT HAS WORKED IN DIFFERENT JOBS FOR THE EMPLOYER ALL OF WHICH HAVE EXPOSED HIM TO THE EQUIPMENT NOISE THROUGHOUT THE MILL. HE STATES THAT HE FIRST NOTICED A HEARING PROBLEM APPROXIMATELY 18 YEARS AGO AND THAT HIS HEARING HAS DECREASED OVER THE PAST 10 YEARS.

CLAIMANT STATES THAT HE HAS GREAT DIFFICULTY HEARING PEOPLE TALKING WHILE AT WORK UNLESS HE IS LOOKING DIRECTLY AT THEM - THAT HE IS UNABLE TO HEAR OR DISTINGUISH WHEN TWO OR MORE PEOPLE ARE TALKING AT THE SAME TIME.

CLAIMANT'S WIFE TESTIFIED THAT HE HAS MOST DIFFICULTY WHEN THERE IS BACKGROUND NOISE WHICH CAUSES HIM TO DIVIDE HIS ATTENTION. SHE ALSO STATED THAT CLAIMANT MUST TURN UP THE TELEVISION SET TO SUCH A VOLUME AS TO CAUSE DISCOMFORT FOR ANYONE ELSE IN THE HOUSE. A FELLOW WORKMAN ALSO TESTIFIED THAT CLAIMANT'S HEARING HAS BEEN GETTING NOTICEABLY WORSE IN THE PAST FIVE YEARS.

THE REFEREE INCREASED THE AWARD TO 115.2 DEGREES FOR 60 PER CENT LOSS OF BINAURAL HEARING ON SPEECH DISCRIMINATION CRITERIA, A 'CLINICAL JUDGMENT' OF DR. HODGSON THAT CLAIMANT WOULD EXPERIENCE A HEARING LOSS OF AT LEAST 75 PER CENT - THIS LOSS IS IN SPEECH DISCRIMINATION AND NOT PURE TONES.

THE BOARD, ON DE NOVO REVIEW, DISAGREES WITH THE REFEREE'S BASIS FOR INCREASING THE AWARD. WCB BULLETIN 122 IS APPLICABLE IN THIS CASE AND THE AWARD MUST BE CALCULATED USING FREQUENCIES OF 500, 1000, 2000, 3000, 4000 AND 6000 HZ - THE READING MUST BE AVERAGED AND THE FORMULA SET FORTH IN ORS 656.214(G) MUST BE APPLIED. THE REFEREE FAILED TO DO THIS AND RELIED SOLELY ON DR. HODGSON'S TESTIMONY.

THE ADDED FACTOR OF PRESBYCUSIS WILL BE CONSIDERED ON AN INDIVIDUAL BASIS IF APPROPRIATELY PRESENTED. THE REFEREE FAILED TO TAKE THIS FACTOR INTO CONSIDERATION ALTHOUGH IT WAS PRESENTED AT THE HEARING. THE BOARD BELIEVES THAT SIGNIFICANT DECIBEL CORRECTION VALUES DO EXIST FOR PERSONS IN THE SIXTY PLUS AGE CATEGORY, THEREFORE, CORRECTION VALUES FOR PRESBYCUSIS SHOULD HAVE BEEN CONSIDERED.

THE BOARD CONCLUDES THAT THE AUDIOGRAM OF APRIL 4, 1975 WHICH USED THE FORMULA SET FORTH IN ORS 656.214(G) AND ALSO TOOK INTO CONSIDERATION THE PRESBYCUSIS FACTOR MOST ACCURATELY PRESENTS THE ACTUAL BINAURAL HEARING LOSS SUFFERED BY CLAIMANT. THIS AUDIOGRAM INDICATES CLAIMANT'S BINAURAL HEARING LOSS TO BE 19.04 PER CENT EQUAL TO 36.55 DEGREES. THE AWARD OF THE REFEREE IS MODIFIED ACCORDINGLY.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 20, 1976, IS HEREBY MODIFIED. CLAIMANT IS AWARDED 36.55 DEGREES FOR LOSS OF BINAURAL HEARING. THIS IS IN LIEU OF THE AWARD MADE BY THE REFEREE'S ORDER WHICH IN ALL OTHER RESPECTS IS AFFIRMED.

WCB CASE NO. 75-5071 AUGUST 4, 1976
WCB CASE NO. 75-5072

LEO NEILAN, CLAIMANT

SIDNEY GALTON, CLAIMANT'S ATTY.
MERLIN MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF
CROSS-REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED CLAIMANT'S CLAIM TO IT FOR PAYMENT OF BENEFITS AS PROVIDED BY LAW, DIRECTED IT TO REIMBURSE TRAVELERS INSURANCE COMPANY FOR ITS PAYMENTS MADE AS THE DISIGNATED PAYING AGENT, DISMISSING THE CLAIMANT'S CLAIM AGAINST TRAVELERS, SETTING ASIDE THE DETERMINATION ORDER OF MARCH 14, 1975 AS BEING PREMATURE, DIRECTING THAT CLAIMANT BE PAID AS A PENALTY A SUM EQUAL TO 25 PER CENT OF HIS COMPENSATION FOR TEMPORARY TOTAL DISABILITY DUE FROM AUGUST 4, 1975 TO AUGUST 18, 1975 AND AWARDING CLAIMANT'S ATTORNEY A FEE OF 850 DOLLARS.

THE CLAIMANT FILED A CROSS-REQUEST FOR BOARD REVIEW, CONTENDING THAT CLAIMANT HAS HAD TWO SEPARATE COMPENSABLE INDUSTRIAL INJURIES AND WAS ENTITLED TO PROVE THE EXTENT OF HIS CLAIMS ON EACH, CITING, BLAIR V. SAIF (UNDERSCORED), 75 OR AD SH 1954. CLAIMANT REQUESTS THE BOARD TO MODIFY THE REFEREE'S ORDER BY REVERSING THE DENIAL OF TRAVELERS AND GRANTING CLAIMANT AN ADDITIONAL CARRIER-PAID ATTORNEY FEE FOR HAVING PREVAILED ON THE TRAVELERS DENIAL BOTH AT THE HEARINGS AND BOARD REVIEW LEVELS.

CLAIMANT HAS SUFFERED TWO INJURIES TO HIS LEFT KNEE WHILE WORKING FOR THE EMPLOYER, FRED SCHWARY APPLIANCE CENTER. THE FIRST INJURY OCCURRED ON MAY 11, 1974 AT WHICH TIME THE EMPLOYER WAS BEING FURNISHED WORKMEN'S COMPENSATION COVERAGE BY THE FUND = THE SECOND OCCURRED ON JUNE 2, 1975 WHEN THE EMPLOYER'S COVERAGE WAS FURNISHED BY TRAVELERS INSURANCE COMPANY. BOTH CARRIERS DENIED RESPONSIBILITY = THE FUND CONTENDS CLAIMANT SUFFERED A NEW INJURY ON JUNE 2, 1975 AND TRAVELERS CONTENDS THE JUNE 2, 1975 INCIDENT WAS AN AGGRAVATION OR CONTINUATION OF THE MAY 11, 1974 INJURY.

PURSUANT TO ORS 656.307, TRAVELERS WAS DESIGNATED AS THE PAYING AGENT AND DIRECTED TO IMMEDIATELY COMMENCE PAYMENT OF BENEFITS TO CLAIMANT AND CONTINUE PAYMENTS OF BENEFITS UNTIL THE RESPONSIBLE PARTY IS DETERMINED BY A HEARING ORDER.

ON MAY 11, 1974 CLAIMANT INJURED HIS LEFT LEG WHILE LOADING AN APPLIANCE ONTO A TRUCK AND THE APPLIANCE AND HANDTRUCK BOTH FELL ON THE LEG. CLAIMANT IMMEDIATELY FELT A SHARP PAIN AND STIFFNESS AND SWELLING. CLAIMANT'S FAMILY PHYSICIAN, DR. BROWN, DIAGNOSED A SPRAIN OF THE LEFT KNEE. ON MAY 29, 1974 THE FUND ACCEPTED THE CLAIM AS A DISABLING INJURY BASED UPON DR. BROWN'S REPORT THAT CLAIMANT WAS PHYSICALLY UNABLE TO PERFORM HIS REGULAR JOB DUTIES FROM MAY 12 TO MAY 20, 1974. THEREAFTER, CLAIMANT CONTINUED TO WORK BUT BECAUSE OF CONTINUING SYMPTOMS HE WAS REFERRED IN OCTOBER, 1974 TO DR. GOODWIN, AN ORTHOPEDIC SURGEON, TO WHOM CLAIMANT RELATED THAT HE STILL HAD LEFT KNEE PAIN AND SOME SWELLING = HE ALSO SUFFERS A 'CATCHING AND GIVING AWAY' SENSATION IN HIS LEFT KNEE. DR. GOODWIN'S DIAGNOSIS WAS 'PROBABLE TEAR OF THE MEDIAL MENISCUS OF THE LEFT KNEE AND TRAUMATIC SYNOVITIS OF THE LEFT KNEE'. HE ASPERATED THE KNEE AND INJECTED IT WITH 'PAINKILLERS', AND RECOMMENDED THE USE OF LOCAL HEAT ON THE KNEE. HE INDICATED THAT IF THIS DID NOT RELIEVE THE SYMPTOMS

AND SENSATION CLAIMANT PROBABLY WOULD BE SCHEDULED FOR AN ARTHROTOMY.

ON JANUARY 22, 1975 THE FUND ADVISED CLAIMANT THAT IT HAD SCHEDULED FOR HIM AN EXAMINATION WITH DR. SHLIM ON FEBRUARY 5, 1975. CLAIMANT HAD MOVED IN THE MEANTIME, HOWEVER, THE LETTER WAS SENT TO HIS FORMER ADDRESS. CLAIMANT ALLEGES HE NEVER RECEIVED THIS OR ANY SUBSEQUENT LETTERS FROM THE FUND. ON MARCH 14, 1975 A SPECIAL DETERMINATION ORDER WAS MAILED WHICH STATED THAT A DETERMINATION HAD BEEN REQUESTED INASMUCH AS CLAIMANT WAS NO LONGER UNDER ACTIVE MEDICAL TREATMENT DUE TO HIS INJURY - THAT CLAIMANT HAD FAILED TO KEEP AN APPOINTMENT FOR AN EXAMINATION ON FEBRUARY 5, 1975 AND, THEREFORE, ALTHOUGH A DETERMINATION WAS JUSTIFIED THE INFORMATION IN THE FILE WAS NOT ADEQUATE TO SUPPORT ONE ON THE ISSUES OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY OR PERMANENT PARTIAL DISABILITY. THE CLAIM WAS ORDERED CLOSED WITH NO AWARDS OF COMPENSATION.

ON JUNE 2, 1975 CLAIMANT HAD JUST COMPLETED UNLOADING A BOXCAR - HE JUMPED OFF THE BOXCAR APPROXIMATELY FIVE FEET OFF THE GROUND, LOST HIS BALANCE, TWISTED HIS LEG AND FELL. THE LEG BECAME VERY SORE AND COMMENCED TO SWELL RAPIDLY. CLAIMANT OBTAINED AN APPOINTMENT WITH DR. GOODWIN FOR THE FOLLOWING DAT AT 2.30 P.M. - HOWEVER, THE FOLLOWING DAY WAS THE HEAVIEST DELIVERY DAY AT THE EMPLOYERS AND THERE WAS NO OTHER EMPLOYEE, ACCORDING TO CLAIMANT'S TESTIMONY, WHO KNEW EXACTLY WHERE ALL OF THE APPLIANCES AND MERCHANDISE WERE IN THE WAREHOUSE, THEREFORE, CLAIMANT CANCELLED HIS APPOINTMENT BUT DID SEE DR. GOODWIN ON JUNE 9, 1975.

ON JUNE 12, 1975 AN ARTHROGRAM WAS PERFORMED BY DR. WHITING, A RADIOLOGIST, WHO REPORTED CLAIMANT WAS SUFFERING FROM A PROMINENT TEAR OF THE MEDIAL MENISCUS OF THE LEFT KNEE. CLAIMANT CONTINUED TO HAVE SWELLING AND WALKED WITH A LIMP ALTHOUGH HE WAS ABLE TO CONTINUE WORKING UNTIL AUGUST 4, 1975 WHEN DR. GOODWIN PERFORMED A LEFT ARTHROTOMY AND MEDIAL MENISCECTOMY. THE OPERATION REVEALED THE PRESENCE OF OSTEOPHYTES OVER THE MEDIAL FEMORAL CONDYLE AND A COMPLETELY SPLIT LOOSE MEDIAL MENISCUS WITH THE MEDIAL FRAGMENTS DISPLACED MEDIALLY IN THE CONDYLAR NOTCH.

DR. GOODWIN REPORTED ON DECEMBER 4, 1975 THAT IN ALL PROBABILITY CLAIMANT HAD SUFFERED AN INJURY OF HIS LEFT KNEE IN 1974 WITH A TEAR OF THE MEDIAL MENISCUS AND THAT THE EVENTUAL TREATMENT AND OPERATION IN 1975 WAS A CONSEQUENCE OF THAT INJURY. DR. GOODWIN WAS NOT IMPRESSED WITH THE FACT THAT CLAIMANT HAD JUMPED FROM A BOXCAR ON JUNE 2, 1975 AND DEVELOPED PAIN AND SWELLING, INSTEAD, HE WAS OF THE OPINION THAT THIS INDICATED THE TORN SEGMENT OF CLAIMANT'S MEDIAL MENISCUS WAS CAUGHT BETWEEN THE FEMORAL CONDYLAR AND THE TIBIAL PLATEAU. FROM A MEDICAL STANDPOINT, HE BELIEVED IT WAS ONLY A CONTINUATION OF THE SYMPTOMS OF THE LEFT LEG AS RELATED TO THE 1974 INJURY AND THE TORN MENISCUS AND RESULTS THEREOF.

THE REFEREE FOUND THAT CLAIMANT HAD A RECURRENCE OF AN INJURY TO HIS LEFT KNEE RATHER THAN A NEW ACCIDENT. HE RELIED STRONGLY ON THE EXPLANATION GIVEN BY DR. GOODWIN THAT A PIECE OF THE OLD TORN MENISCUS BECAME WEDGED ON JUNE 2, 1975 WHEN CLAIMANT JUMPED FROM THE BOXCAR. HE CONCLUDED THAT THERE WAS NO EVIDENCE THAT CLAIMANT HAD HAD PROBLEMS WITH HIS KNEE THAT INTERFERED WITH HIS ABILITY TO WORK PRIOR TO MAY 11, 1974. THE DIAGNOSIS AFTER THE MAY 11, 1974 ACCIDENT WAS A PROBABLE TORN MEDIAL MENISCUS AND CLAIMANT'S CONTINUING SYMPTOMATOLOGY UP TO THE DATE OF THIS JUNE 2, 1975 INCIDENT, COUPLED WITH DR. GOODWIN'S EXPLANATION OF THE MECHANICS OF THE INJURY, PERSUADED HIM THAT THE JUNE 2, 1975 INCIDENT WAS A CONTINUANCE AND AN ON-GOING PROBLEM CAUSED BY THE MAY 11, 1974 INJURY.

THE REFEREE FOUND THAT THE TOTAL EVIDENCE INDICATED THAT THE CLAIMANT'S CLAIM WAS PREMATURELY CLOSED WHEN CLAIMANT MOVED AND HIS CLAIM MAIL WAS NOT FORWARDED TO HIM WHICH RESULTED IN AN IMPRESSION THAT CLAIMANT WAS NOT COOPERATING WITH THE FUND. THE DOCTOR REPORTED THAT IT WAS UNDETERMINED WHETHER OR NOT CLAIMANT WOULD HAVE RESIDUALS FROM THE FIRST ACCIDENT AND THE CLAIM HAD NEVER BEEN PROPERLY CLOSED - THE REQUEST TO REOPEN WAS ONE YEAR OF THE DETERMINATION ORDER. THE REFEREE, THEREFORE, SET ASIDE THE DETERMINATION ORDER OF MARCH 14, 1975 AND REMANDED THE CLAIM TO THE FUND WHICH WAS THE EMPLOYER'S CARRIER AT THE TIME OF THE MAY 11, 1974 INJURY.

THE REFEREE DIRECTED THE FUND TO REIMBURSE TRAVELERS FOR ALL COMPENSATION IT HAD PAID CLAIMANT PURSUANT TO THE ORDER DATED DECEMBER 8, 1975 WHICH DESIGNATED TRAVELERS AS THE PAYING AGENT PURSUANT TO ORS 656.307.

THE REFEREE FOUND THAT THE FUND HAD BEEN PUT ON NOTICE BY DR. GOODWIN THAT TIME LOSS WOULD COMMENCE AUGUST 4, 1975, THE DATE OF THE OPERATION, BUT THAT IT DID NOT PAY CLAIMANT'S TIME LOSS BENEFITS DUE BETWEEN AUGUST 4, AND AUGUST 18, 1975 UNTIL OCTOBER 7, 1975. THIS CONSTITUTED AN UNREASONABLE DELAY AND THE REFEREE ASSESSED A PENALTY EQUAL TO 25 PER CENT OF THE COMPENSATION DUE CLAIMANT FOR THAT PERIOD OF TIME. INASMUCH AS THE DENIAL OF THE CLAIM BY THE FUND WAS FOUND TO BE IMPROPER THE FUND WAS ORDERED TO PAY CLAIMANT'S COUNSEL A REASONABLE ATTORNEY FEE OF 850 DOLLARS.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS THE ORDER OF THE REFEREE. WITH RESPECT TO THE CLAIMANT'S CONTENTION THAT HE HAS HAD TWO SEPARATE COMPENSABLE INDUSTRIAL INJURIES AND IS ENTITLED TO PROVE EXTENT OF HIS CLAIMS ON EACH, THE BOARD FINDS, BASED PRIMARILY ON DR. GOODWIN'S REPORTS AND EXPLANATIONS, THAT THE INCIDENT OF JUNE 2, 1975 CAN ONLY BE CONSTRUED AS A CONTINUANCE OF CLAIMANT'S MAY 11, 1974 INJURY. PERHAPS THE WORD 'AGGRAVATION' IS TOO STRONG TO USE IN DESCRIBING CLAIMANT'S CONDITION FOLLOWING THE INCIDENT OF JUNE 2, 1975. DR. GOODWIN STATED THAT THE JUNE 2 INCIDENT DID NOT AGGRAVATE THE KNEE CONDITION FOR WHICH CLAIMANT HAD HAD SURGERY - ALL IT DID WAS ALLOW A PREVIOUSLY TORN PIECE OF CARTILAGE TO BECOME WEDGED BETWEEN THE FEMORAL CONDYLE AND THE TIBIAL PLATEAU. THE LOOSE PIECE OF CARTILAGE HAD ALREADY BEEN CAUSED IN THE 1974 INJURY, THE FACT THAT THE WEDGING OCCURRED WHILE CLAIMANT WAS WORKING WAS PURELY COINCIDENTAL - IT COULD HAVE AS EASILY OCCURRED WHILE CLAIMANT WAS WALKING.

THE BOARD CONCLUDES THAT THE DENIAL BY TRAVELERS INSURANCE COMPANY WAS PROPER - HOWEVER, CLAIMANT DID PREVAIL WITH RESPECT TO THE FUND'S DENIAL AND, THEREFORE, CLAIMANT'S COUNSEL WAS ENTITLED TO A REASONABLE ATTORNEY FEE WHICH THE REFEREE GAVE HIM. HE IS ENTITLED TO NO ADDITIONAL FEE.

ORDER

THE ORDER OF THE REFEREE DATED JANUARY 30, 1976, IS AFFIRMED.

THE REQUEST FOR REVIEW WAS INITIATED BY THE STATE ACCIDENT INSURANCE FUND AND, ALTHOUGH CLAIMANT FAILED TO PREVAIL ON HIS CROSS-REQUEST FOR REVIEW, CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY FEE FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW THE SUM OF 200 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

ANDREA PEREZ, CLAIMANT

R. LADD LONNQUIST, CLAIMANT'S ATTY.
RICHARD DAVIS, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH HELD THAT CERTAIN BILLS FOR MEDICAL SERVICES RENDERED TO CLAIMANT BY DOCTORS OF HER OWN CHOOSING SUBSEQUENT TO THE CLOSING OF HER CLAIM WERE NOT PAYABLE PURSUANT TO ORS 656.245 AND DECLINED TO ASSESS PENALTIES OR AWARD ATTORNEY FEES.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON SEPTEMBER 22, 1972 WHICH WAS CLOSED BY A DETERMINATION ORDER MAILED MAY 30, 1973 AWARDING HER 16 DEGREES FOR 5 PER CENT UNSCHEDULED NECK AND RIGHT SHOULDER DISABILITY AND 9.6 DEGREES FOR 5 PER CENT LOSS OF RIGHT ARM. CLAIMANT REQUESTED A HEARING AND AN OPINION AND ORDER ISSUED NOVEMBER 28, 1973 DIRECTED THAT THE CLAIMANT BE REFERRED TO THE DISABILITY PREVENTION DIVISION FOR ENROLLMENT FOR WORK POTENTIAL EVALUATION AND AWARDED TIME LOSS BENEFITS DURING HER ATTENDANCE AT THE DISABILITY PREVENTION DIVISION AND THAT CLAIMANT BE PAID FOR THE COST OF HER ENROLLMENT. THIS WAS A NON-APPEALABLE ORDER.

ON FEBRUARY 14, 1974 A SECOND OPINION AND ORDER INCREASED CLAIMANT'S AMOUNT OF UNSCHEDULED DISABILITY TO 80 DEGREES. IN THE ORDER OF NOVEMBER 28, 1973 THE REFEREE FOUND NO PERSUASIVE EVIDENCE THAT CLAIMANT'S CLAIM SHOULD BE REOPENED FOR FURTHER MEDICAL CARE AND TREATMENT AND IN THE LATER ORDER THE SAME REFEREE STATED THAT THE ONLY ISSUE TO BE CONSIDERED THEREIN WAS THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY.

SUBSEQUENT TO THE ISSUANCE OF THE SECOND ORDER CLAIMANT INCURRED MEDICAL EXPENSES FOR TREATMENT AND EXAMINATION OF HER COMPENSABLE INJURIES FOR WHICH THE CARRIER REFUSED TO PAY. IT DID PAY FOR PRESCRIBED PAIN PILLS.

REFEREE PFERDNER IN HIS FIRST ORDER REFERRED TO CERTAIN SUGGESTED TESTS MADE BY DR. HALL AND STATED THAT HE WAS NOT PERSUADED BY THE EVIDENCE THAT BECAUSE OF SUCH SUGGESTIONS CLAIM SHOULD BE REOPENED FOR FURTHER MEDICAL CARE AND TREATMENT. DR. HALL'S SUGGESTIVE PHYSICAL THERAPY AND TRACTION HAD ALREADY BEEN INITIATED AT THE REQUEST OF DR. JONES AND, AS A RESULT CLAIMANT BECAME WORSE INSTEAD OF BETTER. AFTER THE SECOND ORDER DR. HALL HOSPITALIZED CLAIMANT FROM APRIL 30 TO MAY 4, 1974 AND SENT CLAIMANT TO DR. BRODIE FOR MORE ELECTROENCEPHLOGRAPH TESTS ALL OF WHICH WERE NEGATIVE.

THE REFEREE FOUND THAT THE SUGGESTED TREATMENT BY DR. HALL HAD BEEN CONSIDERED PREVIOUSLY BY REFEREE PFERDNER AND REJECTED AND THAT NO APPEAL HAD BEEN TAKEN ON THE PARTICULAR ISSUE, THEREFORE, THE CARRIER SHOULD NOT BE CHARGED WITH THESE BILLS UNDER THE GUISE THEY WERE FOR TREATMENT PROVIDED FOR BY ORS 656.245. DR. HALL DISCOVERED NOTHING NEW AND HIS PROCESS OF ELIMINATION EXPERIENCE WAS A DUPLICATION OF THE TESTS OF THE ORTHOPEDISTS AND NEUROSURGEONS WHO PREVIOUSLY FOUND CLAIMANT TO BE MEDICALLY STATIONARY.

CLAIMANT HAS A RIGHT TO CHOSE HER OWN DOCTORS WITHIN THE STATE OF OREGON AND DR. HALL, AN OSTEOPATHIC PHYSICIAN, QUALIFIES - HOWEVER, THE REFEREE CONCLUDED THAT THE TERM 'BROAD MEDICAL SERVICES' IS TO BE GIVEN LIBERAL INTERPRETATION. MEDICAL SERVICES MAY CONTINUE AFTER

THE CLAIM IS CLOSED WITH A DETERMINATION OF PERMANENT DISABILITY - HOWEVER, IN THIS CASE THE REPORTS ARE SIMPLY DUPLICATIONS OF PREVIOUSLY KNOWN EXAMINATIONS BY SPECIALISTS WHO, AFTER EXAMINING CLAIMANT, FOUND HER TO BE STATIONARY AND HAVE PRODUCED NOTHING NEW NOR DONE ANYTHING TO BENEFIT CLAIMANT. THE CARRIER HAS NOT REFUSED TO PAY FOR THE DRUGS AND FOR TREATMENT CONTEMPLATED UNDER ORS 656.245, ONLY THE MEDICAL EXPENSES RESULTING FROM DR. HALL'S HOSPITALIZATION AND CARE AND TREATMENT OF CLAIMANT IN APRIL AND MAY, 1974.

THE REFEREE CONCLUDED THAT THE CARRIER'S REFUSAL, BASED ON THE ORDER OF FEBRUARY 14, 1974, WHICH WAS NOT APPEALED, WAS REASONABLE, THEREFORE, NO PENALTIES OR ATTORNEY FEES WERE APPROPRIATE.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE REFEREE. IN WAITE V. MONTGOMERY WARD INC. (UNDERSCORED), 10 OR APP 333, THE COURT SAID IT WAS THE LEGISLATIVE INTENT TO COMPENSATE CLAIMANT FOR THE NAMED MEDICAL EXPENSES NECESSARILY AND REASONABLY (UNDERSCORED) INCURRED IN THE CONTINUED TREATMENT OF THE INJURY FOR WHICH HE HAD ALREADY RECEIVED A FINAL AWARD, WITHOUT REGARD TO AGGRAVATION PROBLEMS ARISING OUT OF ORS 656.273. (EMPHASIS SUPPLIED.)

HERE THE EVIDENCE CLEARLY ESTABLISHES THAT THE MEDICAL EXPENSES INCURRED BY CLAIMANT AFTER THE DETERMINATION OF HER PERMANENT DISABILITY WERE NOT NECESSARILY AND REASONABLY INCURRED. IT HAD BEEN PREVIOUSLY ESTABLISHED THAT SUCH MEDICAL CARE AND TREATMENT WOULD BE OF NO BENEFIT TO CLAIMANT. CLAIMANT AND HER PHYSICIAN IGNORED THIS AND PROCEEDED WITH SUCH CARE AND TREATMENT. THE COST, THEREFORE, IS NOT THE RESPONSIBILITY OF THE CARRIER.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 22, 1976, IS AFFIRMED.

WCB CASE NO. 75-3185 AUGUST 4, 1976

GEORGIA A. KELLY, CLAIMANT

HAROLD ADAMS, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER

ON APRIL 9, 1976 CLAIMANT REQUESTED BOARD REVIEW OF THE REFEREE'S ORDER ENTERED IN THE ABOVE ENTITLED MATTER. THE TRANSCRIPT OF THE PROCEEDINGS TOGETHER WITH EXHIBITS RECEIVED HAVE BEEN FURNISHED TO THE BOARD AND THE PARTIES HAVE BEEN ADVISED OF SCHEDULE FOR FILING BRIEFS, THE FINAL DATE BEING AUGUST 27, 1976.

ON JULY 21, 1976 CLAIMANT REQUESTED THE BOARD TO ALLOW CONSIDERATION OF A MEDICAL REPORT FROM DR. HOWARD L. CHERRY, DATED MAY 24, 1976, AS A PART OF THE RECORD IN THE REVIEW PROCEEDINGS, ON THE GROUND AND FOR THE REASON THAT SAID REPORT WAS NOT AVAILABLE AT THE TIME OF THE HEARING ON FEBRUARY 23, 1976.

THE BOARD, AFTER DUE CONSIDERATION, CONCLUDES THE EMPLOYER WOULD BE DEPRIVED OF ITS RIGHT TO CROSS-EXAMINE DR. CHERRY UNLESS THE ENTIRE MATTER IS REMANDED TO THE HEARINGS DIVISION. FURTHERMORE, IT DOES NOT APPEAR THAT THE INFORMATION CONTAINED IN DR. CHERRY'S LETTER OF MAY 24, 1976 COULD NOT HAVE BEEN SECURED PRIOR TO THE HEARING.

ORDER

THE MOTION IS HEREBY DENIED.

WCB CASE NO. 75-4765-E AUGUST 4, 1976

LAWRENCE 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 ENTER 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 AND 1974 INJURIES. ON OCTOBER 7, 1975 THE REFEREE SUBMITTED HIS RECOMMENDATION THAT THE BOARD FIND CLAIMANT HAD PROVEN A CAUSAL CONNECTION BETWEEN HIS 1942 INDUSTRIAL INJURY AND THE 1974 SURGERY BUT HAD FAILED TO PROVE A CAUSAL CONNECTION BETWEEN HIS 1942 INJURY AND THE 1971 SURGERY. THE BOARD ADOPTED THE RECOMMENDATION OF THE REFEREE AS ITS OWN. THE FUND, PURSUANT TO ORS 656.278, REQUESTED A HEARING ON THE BOARD'S OWN MOTION ORDER.

ON JUNE 23, 1976 A HEARING WAS HELD BEFORE REFEREE WILLIAM J. FOSTER WHO, AFTER TAKING EVIDENCE FROM BOTH PARTIES, CONCLUDED THAT THE BOARD'S OWN MOTION ORDER, DATED OCTOBER 23, 1975, SHOULD BE AFFIRMED.

ON JULY 19, 1976 THE STATE ACCIDENT INSURANCE FUND MOVED THE BOARD FOR AN ORDER STAYING PAYMENT IN REGARD TO THE AFORESAID OWN MOTION ORDER UNTIL SUCH TIME AS THERE HAS BEEN A FINAL DETERMINATION AS TO THE FUND'S RESPONSIBILITY ON THE GROUND AND FOR THE REASON THAT ONCE THE FUND HAS EXPENDED THE MONIES, EVEN ERRONEOUSLY, THERE IS NO PROCEDURE AT THE PRESENT TIME FOR IT TO RECOVER SAID MONIES.

ORS 656.313(1) PROVIDES THAT THE FILING BY AN EMPLOYER OR THE STATE ACCIDENT INSURANCE FUND FOR THE REQUEST FOR REVIEW OR COURT APPEAL SHALL NOT STAY PAYMENT OF COMPENSATION TO CLAIMANT. THE BOARD, AFTER DUE CONSIDERATION, CONCLUDES THAT THE PROVISIONS OF ORS 656.313(1) ARE APPLICABLE IN THIS CASE, THEREFORE, IT WOULD BE IMPROPER TO ISSUE AN ORDER STAYING PAYMENT OF COMPENSATION PREVIOUSLY ORDERED TO BE PAID TO CLAIMANT BY THE FUND.

ORDER

THE MOTION REQUESTING STAYING PAYMENT OF THE COMPENSATION ORDERED BY THE BOARD'S OWN MOTION, ENTERED OCTOBER 23, 1975, IS HEREBY DENIED.

WCB CASE NO. 75—540—SI AUGUST 4, 1976

G.C. LONG AND SONS
FOR REIMBURSEMENT FROM
THE SECOND INJURY RESERVE FUND
IN THE CASE OF
MELVIN SIMMS, CLAIMANT
J. PHILIP PARKS, EMPLOYER'S ATTY.
ORDER

ON JANUARY 29, 1976 THE EMPLOYER, G.C. LONG AND SONS, REQUESTED A HEARING ON A DETERMINATION ORDER WHICH DENIED SECOND INJURY BENEFITS.

ON MAY 24, 1976, AFTER A HEARING HAD BEEN SCHEDULED, THE EMPLOYER'S ATTORNEY ADVISED THAT HIS CLIENT WISHED TO WITHDRAW HIS REQUEST FOR HEARING. THE PROCEDURE IN THIS MATTER IS GOVERNED BY THE ADMINISTRATIVE PROCEDURES ACT AND THE REFEREE CAN ISSUE ONLY A RECOMMENDATION TO THE BOARD WHICH, IN TURN, ISSUES THE FINAL ORDER.

REFEREE KIRK A. MULDER TO WHOM THE HEARING HAD BEEN ASSIGNED, BY LETTER DATED JUNE 9, 1976, RECOMMENDED THAT THE BOARD DISMISS THE EMPLOYER'S REQUEST FOR HEARING.

THE BOARD GAVE FULL CONSIDERATION TO THE RECOMMENDATION OF THE REFEREE.

ORDER

THE EMPLOYER'S REQUEST FOR HEARING ON THE ISSUE OF ITS RIGHT TO RELIEF FROM THE SECOND INJURY FUND IS HEREBY DISMISSED.

NOTICE - YOU ARE ENTITLED TO JUDICIAL REVIEW OF THIS ORDER. JUDICIAL REVIEW MAY BE OBTAINED BY FILING A PETITION FOR REVIEW WITHIN SIXTY DAYS FROM THE SERVICE OF THIS ORDER. JUDICIAL REVIEW IS PURSUANT TO THE PROVISIONS OF ORS CHAPTER 183.

SAIF CLAIM NO. DC 248702 AUGUST 4, 1976

DOMINICO MARINELLE, CLAIMANT
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS BACK AND RIGHT HIP ON JUNE 5, 1970. HE WAS EXAMINED BY DR. CLARKE WHO DISCOVERED A VERY ARTHRITIC BACK. CLAIMANT WAS SEEN AT THE DISABILITY PREVENTION DIVISION ON DECEMBER 30, 1970 AND A LOW BACK STRAIN SUPERIMPOSED ON SEVERE DEGENERATIVE ARTHRITIS WITH SPONTANEOUS FUSION AT L1-2, L4-5 AND L5-S1 WAS DIAGNOSED. CLAIMANT'S DISABILITY WAS CONSIDERED MILDLY MODERATE.

A DETERMINATION ORDER ISSUED ON JANUARY 21, 1971 AWARDED CLAIMANT 48 DEGREES FOR 15 PER CENT UNSCHEDULED LOW BACK DISABILITY. CLAIMANT'S AGGRAVATION RIGHTS HAVE EXPIRED.

IN DECEMBER, 1972 THE STATE ACCIDENT INSURANCE FUND ON THE REQUEST OF DR. CLARKE REOPENED CLAIMANT'S CLAIM FOR PALLIATIVE TREATMENT.

DR. CLARKE REFERRED CLAIMANT TO THE BACK EVALUATION CLINIC ON

JANUARY 23, 1974 AND THE FUND REOPENED THE CLAIM AND PAID ONE DAY FOR TIME LOSS. THE MEMBERS OF THE BACK EVALUATION CLINIC DIAGNOSED LUMBOSACRAL DEGENERATIVE ARTHRITIS WITH S1 RADICULOPATHY ON THE LEFT AND FELT CLAIMANT WAS MEDICALLY STATIONARY AND UNABLE TO RETURN TO ACTIVE EMPLOYMENT. HIS TOTAL LOSS OF FUNCTION WAS SEVERE, HOWEVER, DUE TO THE INDUSTRIAL INJURY IT WAS ONLY MILDLY MODERATE.

A SECOND DETERMINATION ORDER ISSUED ON MARCH 15, 1974 GRANTED CLAIMANT AN ADDITIONAL 64 DEGREES FOR A TOTAL AWARD OF 112 DEGREES.

CLAIM CLOSURE WAS REQUESTED ON JUNE 11, 1976. THE EVALUATION DIVISION RECOMMENDED NO ADDITIONAL COMPENSATION THAN THAT PREVIOUSLY AWARDED BECAUSE THERE WAS NO MEDICAL EVIDENCE THAT CLAIMANT'S CONDITION HAS WORSENED SINCE MARCH 15, 1974.

ORDER

THE SECOND DETERMINATION ORDER OF MARCH 15, 1974 IS AFFIRMED.

WCB CASE NO. 75-4682 AUGUST 5, 1976

HERMAN WHITE, CLAIMANT

SAMUEL SUWOL, CLAIMANT'S ATTY.
ROGER WARREN, DEFENSE ATTY.
ORDER OF DISMISSAL

ON JUNE 1, 1976 THE REFEREE ISSUED AN ORDER OF DISMISSAL ON CLAIMANT'S REQUEST FOR HEARING IN THE ABOVE ENTITLED MATTER.

ON JULY 16, 1976 THE CLAIMANT REQUESTED A REVIEW.

MORE THAN 30 DAYS ELAPSED BETWEEN THE MAILING OF THE REFEREE'S ORDER AND THE MAKING OF THE REQUEST FOR REVIEW.

THE REFEREE'S ORDER HAS BECOME FINAL BY OPERATION OF LAW AND THE CLAIMANT'S REQUEST FOR REVIEW IS DISMISSED.

IT IS SO ORDERED.

WCB CASE NO. 75-4414 AUGUST 5, 1976

WILLARD H. SMITH, CLAIMANT

GARY PETERSON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT 100 DEGREES FOR TOTAL LOSS OF INDUSTRIAL VISION OF HIS LEFT EYE.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON OCTOBER 4, 1974 WHEN A SMALL PIECE OF METAL PENETRATED HIS LEFT EYE. HE WAS TREATED BY DR. CASPER WHO, FOUR DAYS AFTER THE INJURY, SURGICALLY REMOVED THE FOREIGN BODY FROM THE EYE. AS A RESULT OF THE INJURY A TRAUMATIC CATARACT HAD TO BE REMOVED ON OCTOBER 22, 1974 AND THE REMAINING LENS MATERIAL WAS ASPIRATED ON DECEMBER 11, 1974.

THE CLAIM WAS CLOSED BY DETERMINATION ORDER MAILED JUNE 30, 1975 WHICH AWARDED CLAIMANT 75 DEGREES FOR 75 PER CENT LOSS OF VISION IN THE LEFT EYE. CLAIMANT REQUESTED A HEARING.

THE REFEREE FOUND THAT CLAIMANT HAD ATTEMPTED TO WEAR CONTACT LENS WHICH CAUSED EXCESSIVE TEARING AND RESULTED IN BLURRED VISION. CLAIMANT ALSO TRIED WEARING A SPECTACLE LENS WHICH PRODUCED AN IMAGE 30 PER CENT LARGER THAN THAT PERCEIVED BY THE UNINJURED EYE, CAUSING CLAIMANT TO BE UNABLE TO PERFORM MANY TASKS. THE ONLY WAY CLAIMANT COULD ACHIEVE USEFUL BILATERAL VISION WOULD BE WITH A CONTACT LENS OR A SPECTACLE LENS AND, SINCE HE IS UNABLE TO USE EITHER, THE REFEREE CONCLUDED THAT HE WAS INDUSTRIALLY BLIND IN HIS LEFT EYE, AND ENTITLED TO AN APPROPRIATE AWARD FOR SUCH LOSS OF VISION.

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

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 8, 1976, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY 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. 75-4640 AUGUST 5, 1976

FRANK P. SMITH, CLAIMANT

CARL BURNHAM, CLAIMANT'S ATTY.
HAL HENIGSON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE EMPLOYER SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH DIRECTED IT TO PAY COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM MAY 1, 1973 TO AUGUST 21, 1973, TO PAY AS A PENALTY A SUM EQUAL TO 25 PER CENT OF THE AFORESAID COMPENSATION FOR TEMPORARY TOTAL DISABILITY AND TO PAY CLAIMANT'S ATTORNEY A REASONABLE ATTORNEY FEE OF 450 DOLLARS.

ON MAY 3, 1974 AN OPINION AND ORDER WAS ENTERED WHICH DIRECTED CLAIMANT'S CLAIM TO BE REOPENED AS OF MAY 1, 1973 FOR PAYMENT OF COMPENSATION, AS PROVIDED BY LAW, UNTIL CLOSURE PURSUANT TO ORS 656.268. THE BOARD, ON DE NOVO REVIEW, MODIFIED THIS ORDER, STATING THAT THE COMPENSATION FOR TEMPORARY TOTAL DISABILITY SHOULD COMMENCE ON AUGUST 21, 1973 RATHER THAN MAY 1, 1973 - HOWEVER, THE CIRCUIT COURT FOR MALHEUR COUNTY, OREGON, ON SEPTEMBER 5, 1975, REVERSED THE BOARD'S ORDER AND DIRECTED THE COMPENSATION FOR TEMPORARY TOTAL DISABILITY BE PAID FROM MAY 1, 1973 TO AUGUST 21, 1973. AT THE TIME OF THE HEARING BEFORE THE REFEREE THE COURT'S ORDER WAS PENDING ON APPEAL BEFORE THE COURT OF APPEALS.

THE ONLY ISSUE BEFORE THE REFEREE WAS PAYMENT OF TEMPORARY TOTAL DISABILITY COMPENSATION FROM MAY 1, 1973 TO AUGUST 21, 1973. IT WAS STIPULATED THAT COMPENSATION REPRESENTING TEMPORARY TOTAL DISABILITY PAYMENTS DUE DURING THAT PERIOD OF TIME HAD NEVER BEEN PAID BY THE EMPLOYER.

THE EMPLOYER CONTENDS THAT BECAUSE THE BOARD REVERSED THE

REFEREE, WAS SUBSEQUENTLY REVERSED BY THE CIRCUIT COURT AND THE MATTER IS NOW ON APPEAL TO THE COURT OF APPEALS THAT THERE WAS NO REQUIREMENT ON ITS PART TO PAY COMPENSATION REPRESENTING TEMPORARY TOTAL DISABILITY PAYMENTS IN 1973 UNTIL THE MATTER IS FINALLY DISPOSED OF BY THE COURT OF APPEALS.

THE REFEREE FOUND THAT THE CONTENTION OF THE EMPLOYER WAS NOT WELL TAKEN, THAT THE STATUTES INVOLVED ARE QUITE CLEAR THAT COMPENSATION WAS DUE AND PAYABLE WHEN ORDERED BY A REFEREE, THE BOARD OR A COURT AND COULD NOT BE DELAYED BECAUSE OF APPEAL TO A HIGHER BODY. HE CONCLUDED THAT THE COMPENSATION SHOULD HAVE BEEN PAID WHEN ORDERED BY THE REFEREE AT THE ORIGINAL HEARING, COMMENTING THAT THE BOARD APPARENTLY ANTICIPATED THE CONTINUATION OF PAYMENTS SINCE IT PROVIDED IN ITS ORDER FOR AN OFFSET FOR COMPENSATION ALREADY PAID.

THE REFEREE FOUND THAT THE EMPLOYER HAD REFUSED TO PAY COMPENSATION DUE UNDER THE ORDER OF THE REFEREE, THEREFORE, PURSUANT TO ORS 656.382(1) IT SHOULD PAY CLAIMANT'S ATTORNEY A REASONABLE ATTORNEY FEE. THE REFEREE FOUND THAT BECAUSE THE EMPLOYER UNREASONABLY REFUSED TO PAY COMPENSATION THAT THE EMPLOYER SHOULD PAY, AS A PENALTY, AN ADDITIONAL AMOUNT OF 25 PER CENT OF THE AMOUNTS THEN DUE CLAIMANT, PURSUANT TO ORS 656.262(8).

THE BOARD, ON DE NOVO REVIEW, AFFIRMS THE REFEREE'S ORDER. ALTHOUGH THE REFEREE DID NOT CITE ORS 656.313(1) THE FINDINGS CONTAINED IN HIS ORDER CERTAINLY INDICATE THAT HE WAS AWARE OF THE PROVISIONS OF SAID STATUTE, TO-WIT - THE FILING BY AN EMPLOYER OF A REQUEST FOR REVIEW OR COURT APPEAL SHALL NOT STAY PAYMENT OF COMPENSATION TO CLAIMANT.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 28, 1976 IS AFFIRMED.

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

WCB CASE NO. 75-4406 AUGUST 5, 1976

RAYMOND SEYMOUR, CLAIMANT

R. KENNEY ROBERTS, CLAIMANT'S ATTY.
ROGER LUEDTKE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT AN AWARD OF 32 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK DISABILITY. A DETERMINATION ORDER MAILED OCTOBER 7, 1975 HAD GRANTED CLAIMANT COMPENSATION FOR TEMPORARY TOTAL DISABILITY ONLY. CLAIMANT FEELS THE AWARD OF THE REFEREE IS INADEQUATE. ALSO THAT HE IS ENTITLED TO ADDITIONAL COMPENSATION FOR TEMPORARY TOTAL DISABILITY.

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HIS LOW BACK ON SEPTEMBER 14, 1974. HE WAS SEEN BY DR. KRAVITZ WHO DIAGNOSED AN ACUTE AND CHRONIC LUMBOSACRAL STRAIN. CLAIMANT WAS RELEASED TO RETURN TO REGULAR WORK BY DR. KRAVITZ ON JANUARY 28, 1975.

ON JULY 24, 1975 DR. PASQUESI EXAMINED CLAIMANT AND FOUND CLAIMANT HAD SOME IMPAIRMENT IN THE MODERATE CATEGORY EQUIVALENT TO 5 PER CENT OF THE WHOLE MAN. ON JULY 1, 1975 DR. GAMBEE, WHO WAS CLAIMANT'S LAST TREATING PHYSICIAN, REPORTED CLAIMANT WAS WORKING AND 'HAVING NO PAIN'.

THE REFEREE FOUND THE PREPONDERANCE OF THE MEDICAL EVIDENCE IS THAT CLAIMANT'S DISABILITY WAS MINIMAL AND THAT CLAIMANT'S TREATMENT WAS CONSERVATIVE IN NATURE ONLY. HE ALSO FOUND THAT CLAIMANT'S PROBLEMS WERE NOT HELPED BY HIS EXCESSIVE WEIGHT, A PROBLEM UPON WHICH ALL OF THE DOCTORS WHO EXAMINED CLAIMANT COMMENTED. THE REFEREE FELT CLAIMANT EXAGGERATED HIS SYMPTOMS. CLAIMANT IS WORKING AND THE REFEREE CONCLUDED THAT CLAIMANT HAS SUSTAINED A LOSS OF EARNING CAPACITY EQUAL TO AN AWARD OF 32 DEGREES FOR 10 PER CENT WHICH WOULD ADEQUATELY COMPENSATE HIM FOR SUCH LOSS.

ON THE ISSUE OF ADDITIONAL COMPENSATION FOR TEMPORARY TOTAL DISABILITY, THE REFEREE RULED IT WAS NOT PROPERLY BEFORE HIM. THIS ISSUE HAD BEEN FULLY LITIGATED BEFORE REFEREE LEAHY IN WCB CASE NO. 75-722.

THE BOARD, ON DE NOVO REVIEW, ADOPTS THE FINDINGS OF THE REFEREE. THE BOARD STRONGLY SUGGESTS THAT CLAIMANT MAKE A SERIOUS ATTEMPT TO LOSE WEIGHT, THEREBY REDUCING HIS DISABILITY.

ORDER

THE ORDER OF THE REFEREE DATED MARCH 8, 1976, IS AFFIRMED.

WCB CASE NO. 75-1245 AUGUST 5, 1976

AL SEEBER, CLAIMANT

LEEROY EHLERS, CLAIMANT'S ATTY.
JAMES HUEGLI, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH DISMISSED CLAIMANT'S REQUEST FOR HEARING, STATING HE HAD NO JURISDICTION.

ON JULY 27, 1972 AN ORDER APPROVING JOINT PETITION FOR SETTLEMENT WAS SIGNED BY THE HONORABLE HENRY KAYE, CIRCUIT JUDGE FOR UMATILLA COUNTY, OREGON, WHEREIN HE FOUND THAT A BONA FIDE DISPUTE OVER THE COMPENSABILITY OF CLAIMANT'S CLAIM EXISTED AND THAT THE PROPOSED SETTLEMENT AGREED TO BY THE PARTIES WAS REASONABLE.

THE CLAIMANT, ON MARCH 27, 1975, FILED A CLAIM FOR AGGRAVATION WHICH THE CARRIER DENIED BECAUSE OF THE PREVIOUS ORDER REFERRED TO IN THE ABOVE PARAGRAPH. CLAIMANT REQUESTED A HEARING, ASKING THE REFEREE, IN EFFECT, TO SET ASIDE JUDGE KAYE'S ORDER.

IT WAS THE CONTENTION OF CLAIMANT THAT JUDGE KAYE'S ORDER IS SUBJECT TO COLLATERAL ATTACK WHERE THE COURT LACKS JURISDICTION - CLAIMANT ALLEGES THAT THE COURT LACKED JURISDICTION BECAUSE THE ORDER AMOUNTED TO AN INVALID RELEASE OF CLAIMANT'S RIGHTS TO WORKMEN'S COMPENSATION BENEFITS WHICH IS PROHIBITED BY ORS 656.236(1).

JUDGE KAYE FOUND THAT THERE WAS A BONA FIDE DISPUTE OVER THE

COMPENSABILITY OF CLAIMANT'S AGGRAVATION CLAIM, IF THIS FINDING IS NOT CORRECT CLAIMANT SHOULD HAVE APPEALED TO THE NEXT HIGHER FORUM. THERE IS NO PROVISION IN THE WORKMEN'S COMPENSATION LAW FOR REVIEW BY A REFEREE OF A CIRCUIT JUDGE'S ORDER.

THE REFEREE CONCLUDED THAT HE LACKED JURISDICTION TO HEAR THIS CASE.

THE BOARD, ON DE NOVO REVIEW, ADOPTS THE CONCLUSION OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED NOVEMBER 10, 1975 IS APPROVED.

WCB CASE NO. 75-4642 AUGUST 5, 1976

MARJORIE SCHAEFFER, CLAIMANT

JEROME F. BISCHOFF, BAILEY, DOBLIE AND BRUUN,
CLAIMANT'S ATTYS.
EARL M. PRESTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEW BY BOARD MEMBERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED CLAIMANT'S CLAIM TO IT FOR ACCEPTANCE AND PAYMENT OF BENEFITS AS REQUIRED BY LAW.

CLAIMANT ALLEGES THAT SOMETIME SHORTLY PRIOR TO JULY 11, 1975, SHE DEVELOPED BACK PAIN WHICH SHE BELIEVED WAS CAUSED BY MUSCLE STRAIN. SHE WORKED ON A CONVEYOR BELT PULLING TRASH OFF THE BELT.

ON SEPTEMBER 8, 1975, CLAIMANT WAS EXAMINED BY DR. SERBU WHO DIAGNOSED A HERNIATED DISC AT L5-S1. HE PERFORMED A LAMINECTOMY ON SEPTEMBER 17, 1975.

ON OCTOBER 8, 1975, DR. SERBU STATED, "I FIND LITTLE EVIDENCE THAT WOULD SUGGEST THAT THIS HERNIATED DISC FOR WHICH MRS. SCHAEFFER WAS TREATED BY MYSELF WOULD BE AN INDUSTRIAL SITUATION. I FEEL THIS IS PURELY INCIDENTAL, IN A LADY WHO HAPPENS TO BE EMPLOYED."

BASED UPON THIS REPORT, THE STATE ACCIDENT INSURANCE FUND DENIED CLAIMANT'S CLAIM ON OCTOBER 30, 1975.

CLAIMANT TESTIFIED THAT SHE FIRST FILED AN OFF-THE-JOB INSURANCE CLAIM. THIS DECISION WAS BASED ON HER CONCERN FOR THE COMPANY'S SAFETY RECORD, HOWEVER, SHE BELIEVED THAT HER CONDITION WAS CAUSED BY HER JOB BECAUSE OF THE ONSET OF SYMPTOMS AFTER HER WORK ACTIVITIES WERE PERFORMED.

THE REFEREE CONCLUDED THAT CLAIMANT'S CLAIM WAS COMPENSABLE AND REMANDED THE CLAIM TO THE STATE ACCIDENT INSURANCE FUND FOR PAYMENT OF BENEFITS.

THE BOARD, ON DE NOVO REVIEW, DISAGREES WITH THE ORDER OF THE REFEREE.

THE BOARD FINDS THAT THE MEDICAL REPORT OF DR. SERBU INDICATES NO CAUSAL CONNECTION BETWEEN CLAIMANT'S COMPLAINTS AND HER EMPLOY-

MENT, AND THERE IS NO MEDICAL EVIDENCE TO CONTRADICT DR. SERBU'S OPINION. THE BOARD FINDS CLAIMANT'S CLAIM NOT COMPENSABLE.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 28, 1976, IS REVERSED.

THE DENIAL OF THE STATE ACCIDENT INSURANCE FUND, DATED OCTOBER 30, 1975, IS AFFIRMED.

SAIF CLAIM NO. YC 108670 AUGUST 5, 1976

EDNA REYNOLDS, CLAIMANT

DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

CLAIMANT FILED A WORKMEN'S COMPENSATION CLAIM ON JANUARY 16, 1968 FOR A PAINFUL RIGHT WRIST. ON APRIL 30, 1968 THE LEFT WRIST ALSO BECAME INVOLVED AND WAS ACCEPTED ALSO BY THE STATE ACCIDENT INSURANCE FUND AS A 'BILATERAL CARPAL TUNNEL SYNDROME'.

CARPAL TUNNEL SYNDROME SURGERY WAS PERFORMED BY DR. CORRIGAN ON MAY 28, 1968. ON DECEMBER 2, 1968 DR. CORRIGAN DECLARED CLAIMANT MEDICALLY STATIONARY. A DETERMINATION ORDER, ISSUED DECEMBER 19, 1968, GRANTED CLAIMANT 10 PER CENT LOSS OF LEFT FOREARM AND 5 PER CENT LOSS OF THE RIGHT FOREARM.

ON DECEMBER 30, 1968 DR. CORRIGAN REQUESTED THAT CLAIM CLOSURE BE DELAYED BECAUSE HE DIDN'T UNDERSTAND THE ETIOLOGY OF CLAIMANT'S CONTINUING COMPLAINTS AND REFERRED CLAIMANT TO DR. SERBU WHO EXAMINED CLAIMANT AND WASN'T SURE OF THE DIAGNOSIS.

AFTER SOME CONSERVATIVE TREATMENT, ON MARCH 10, 1969, DR. CORRIGAN DECLARED CLAIMANT MEDICALLY STATIONARY AND A SECOND DETERMINATION ORDER, ISSUED MARCH 27, 1969, GRANTED TIME LOSS ONLY.

IN MARCH OF 1973 CLAIMANT HAD A RECURRANCE OF HER PREVIOUS SYMPTOMS. SURGERY WAS PERFORMED ON AUGUST 21, 1973 FOR RIGHT WRIST CARPAL TUNNEL RELEASE - SURGERY WAS PERFORMED ON NOVEMBER 5, 1973 FOR RELEASE OF INTERCARPAL LIGAMENT AND NEUROLYSIS ON THE LEFT WRIST, BOTH BY DR. NYE, A PLASTIC SURGEON. DR. NYE FOUND CLAIMANT MEDICALLY STATIONARY ON AUGUST 8, 1974. AFTER A CLOSING INTERVIEW, A THIRD DETERMINATION ORDER GRANTED CLAIMANT AN ADDITIONAL 15 PER CENT LOSS OF RIGHT FOREARM.

CLAIMANT'S AGGRAVATION RIGHTS HAVE EXPIRED.

ON JANUARY 6, 1975 DR. ECKMAN SUBMITTED A MEDICAL DIAGNOSIS OF A CONDITION OF DYSAUTONMIA NOT RELATED TO TRAUMA BUT A FAMILIAL CONDITION WHICH IS NOT COMPENSABLE.

ON JULY 7, 1976 THE CLAIM WAS SUBMITTED FOR CLOSURE. THE EVALUATION DIVISION RECOMMENDED TIME LOSS INCLUSIVELY FROM FEBRUARY 16, 1976 THROUGH JUNE 15, 1976 AND NO ADDITIONAL AWARD OF PERMANENT PARTIAL DISABILITY.

ORDER

CLAIMANT IS GRANTED COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM FEBRUARY 16, 1976 THROUGH JUNE 15, 1976, INCLUSIVE.

WCB CASE NO. 75—4256 AUGUST 5, 1976

IVA LARSON, CLAIMANT

DONALD KRAUSE, CLAIMANT'S ATTY.
MERLIN MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT ADDITIONAL COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM DECEMBER 14, 1974 THROUGH AUGUST 18, 1975, INCLUSIVE, AND 15 DEGREES FOR LOSS OF THE RIGHT HAND.

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HER RIGHT HAND ON DECEMBER 12, 1973. IN MARCH, 1974 SHE NOTICED A SMALL MASS IN THE RIGHT WRIST WHICH SUBSEQUENTLY BECAME LARGER.

CLAIMANT HAS BEEN OFF WORK SINCE DECEMBER, 1974 AND DR. BURKE HAS PROVIDED HER WITH HAND MINIPULATIONS, ULTRA SOUND AND THERAPY TREATMENTS. DR. BURKE IN HIS REPORT OF AUGUST 18, 1975 FOUND CLAIMANT'S CONDITION STABLE, HOWEVER, HE CONTINUED TREATING HER CONSERVATIVELY AS DID OTHER DOCTORS INTO 1976. A DETERMINATION ORDER ISSUED OCTOBER 8, 1975 GRANTED CLAIMANT COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM DECEMBER 14, 1974 THROUGH MAY 31, 1975 ONLY.

THE REFEREE FOUND THAT CLAIMANT'S CLAIM WAS PREMATURELY CLOSED — THE FIRST MEDICAL REPORT INDICATING CLAIMANT'S CONDITION WAS STABLE WAS DR. BURKE'S REPORT OF AUGUST 18, 1975. THE REFEREE CONCLUDED THAT CLAIMANT SHOULD BE PAID COMPENSATION FOR TEMPORARY TOTAL DISABILITY THROUGH THAT DATE RATHER THAN JUST THROUGH MAY 31, 1975.

THE REFEREE FOUND THAT CLAIMANT WAS ENTITLED TO SOME COMPENSATION FOR HER PERMANENT PARTIAL DISABILITY. IN HIS REPORT OF AUGUST 18, 1975 DR. BURKE STATES 'IVA HAS MILD LOSS OF STRENGTH OF FLEXING HER RIGHT FOREARM WITH INCREASED SENSATION ALONG THE INSIDE OF THE RIGHT ARM AND RIGHT LITTLE FINGER'. THE REFEREE FOUND THAT THE MEDICAL REPORTS WERE VAGUE BUT HE CONCLUDED THAT CLAIMANT'S 'SUBJECTIVE SYMPTOMS OUTWEIGHED THE INCONCLUSIVE MEDICAL PICTURE'.

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

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 20, 1976, IS AFFIRMED.

WCB CASE NO. 75—909 AUGUST 5, 1976

RUSSELL DOGGETT, CLAIMANT

RICHARD KROPP, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH DENIED HIS CLAIM FOR AGGRAVATION.

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS LOW BACK ON

DECEMBER 12, 1969, DIAGNOSED AS ACUTE LUMBOSACRAL STRAIN. HIS CLAIM WAS CLOSED BY DETERMINATION ORDER ON DECEMBER 31, 1969 AS A 'MEDICAL ONLY'. IT WAS REOPENED FOR FURTHER MEDICAL TREATMENT, THEN AGAIN CLOSED ON APRIL 13, 1972 BY SECOND DETERMINATION ORDER WITH AN AWARD OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY ONLY.

CLAIMANT SUFFERS FROM A DEVELOPMENTAL CONDITION OF SPONDYLOLISTHESIS OF L5-S1 AND SPONDYLOLYSIS OF L5 WHICH MAKE HIS LOW BACK EXTREMELY SUSCEPTIBLE TO INJURIOUS INCIDENTS.

IN 1970 CLAIMANT HAD AN ONSET OF PAIN AND HAD TO LAY OFF WORK FOR A WHILE - AGAIN IN 1974 HIS PAIN SYMPTOMS INCREASED WHILE HE WAS DOING CARPENTRY WORK IN OHIO.

IN AUGUST, 1974, AFTER STRENUOUS ACTIVITY OF UNLOADING FLAGSTONE AND SAND, CLAIMANT HAD A FLAREUP OF SYMPTOMS AND PAIN AND SOUGHT CARE FROM DR. EVANS, A CHIROPRACTOR IN BELLAIRE, OHIO, WHOSE REPORTS REVEAL THAT THE PAIN AND INCREASED SYMPTOMS AROSE FROM THE STRENUOUS UNLOADING OF FLAGSTONE. DR. EVANS RELATED CLAIMANT'S PROBLEMS TO THE 1969 INJURY.

CLAIMANT FILED A CLAIM FOR AGGRAVATION WHICH WAS DENIED BY THE STATE ACCIDENT INSURANCE FUND ON JANUARY 23, 1975.

SUBSEQUENT TO THE HEARING, DR. PASQUESI EXAMINED CLAIMANT AND OPINED THAT HIS PROBLEMS IN 1974 WERE PRIMARILY CAUSED BY THE LIFTING INCIDENT WHICH WAS SUPERIMPOSED ON THE DEVELOPMENTAL INJURIES FROM HIS CONDITIONS OF SPONDYLOLISTHESIS AND SPONDYLOLYSIS.

THE REFEREE FOUND THAT CLAIMANT FOR 16 MONTHS PRIOR TO AUGUST 1974 HAD WORKED WITHOUT PAIN AND DISTRESS SUFFICIENT TO PREVENT HIS DOING CARPENTRY WORK.

THE REFEREE CONCLUDED, GIVING GREAT WEIGHT TO THE MEDICAL OPINION OF DR. PASQUESI, THAT CLAIMANT'S INCREASED SYMPTOMS IN 1974 WERE NOT AN AGGRAVATION OF HIS 1969 INJURY, BUT, IN FACT, WERE CAUSED BY THE LIFTING INCIDENT.

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

ORDER

THE ORDER OF THE REFEREE DATED JANUARY 23, 1976, IS AFFIRMED.

WCB CASE NO. 75-1298 AUGUST 5, 1976

WAYNE H. SCHEESE, CLAIMANT

FRANKLIN, BENNETT, OFELT AND JOLLES,
CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH STATED THAT CLAIMANT'S PERMANENT TOTAL DISABILITY AWARD COMMENCED ON NOVEMBER 20, 1974 AND ORDERED THAT THE STATE ACCIDENT INSURANCE FUND LIMIT ITS RECOVERY OF OVERPAYMENT TO A SPECIFIED SCHEDULE SET FORTH IN SAID ORDER.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON NOVEMBER 13, 1972, INITIALLY, HIS CLAIM WAS DENIED AND CLAIMANT REQUESTED A HEARING. AFTER THE HEARING ON NOVEMBER 21, 1973 AN ORDER WAS ISSUED ON DECEMBER 5, 1973 REMANDING THE CLAIM TO THE FUND FOR PAYMENT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM NOVEMBER 13, 1972 UNTIL THE CLAIM WAS CLOSED PURSUANT TO ORS 656.268.

THE CLAIM WAS CLOSED BY DETERMINATION ORDER DATED MARCH 1, 1974 WHICH AWARDED CLAIMANT COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM NOVEMBER 13, 1972 THROUGH DECEMBER 29, 1972 ONLY. CLAIMANT REQUESTED A HEARING ON THE ADEQUACY OF THIS DETERMINATION ORDER.

AFTER A HEARING HELD ON OCTOBER 31, 1974 THE REFEREE ISSUED AN OPINION AND ORDER, DATED NOVEMBER 20, 1974, GRANTING CLAIMANT AN AWARD OF PERMANENT TOTAL DISABILITY BUT NOT STATING ANY DATE OF COMMENCEMENT.

WHILE THE MATTER WAS PENDING THE FUND HAD PAID CLAIMANT 5,521.76 DOLLARS AS COMPENSATION FOR TEMPORARY TOTAL DISABILITY FOR THE PERIOD OF DECEMBER 29, 1972 TO MARCH 1, 1974. ON FEBRUARY 20, 1975 THE FUND WROTE CLAIMANT PROPOSING TO DEDUCT FROM HIS PAYMENTS FOR PERMANENT TOTAL DISABILITY THIS SUM, CONTENDING THAT CLAIMANT'S AWARD OF PERMANENT TOTAL DISABILITY BECAME EFFECTIVE AS OF NOVEMBER 20, 1974.

CLAIMANT REQUESTED A HEARING, CONTENDING THAT HE WAS ENTITLED TO BE FOUND PERMANENTLY TOTALLY DISABLED AS OF DECEMBER 29, 1972, THE DATE THAT HIS CONDITION WAS DECLARED TO BE MEDICALLY STATIONARY AND, THEREFORE, THE PAYMENTS OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY DURING THE PERIOD DECEMBER 29, 1972 TO MARCH 1, 1974 WERE, IN EFFECT, PAYMENTS OF COMPENSATION FOR PERMANENT TOTAL DISABILITY.

THE FUND HAD NO WAY OF KNOWING WHEN ITS LIABILITY FOR PAYMENT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY WOULD TERMINATE UNTIL THE ISSUANCE OF THE DETERMINATION ORDER ON MARCH 1, 1974, THEREFORE, IT PAID SUCH BENEFITS UNTIL THAT DATE - THIS IS THE BASIS FOR ITS CONTENTION THAT IT'S ENTITLED TO DEDUCT FROM THE PAYMENTS OF PERMANENT TOTAL DISABILITY THE SUM PAID BETWEEN THE TERMINATION OF CLAIMANT'S COMPENSATION FOR TEMPORARY TOTAL DISABILITY AND THE DATE OF THE DETERMINATION ORDER.

THE REFEREE STATED THAT CLAIMANT COULD NOT COLLATERALLY ATTACK THE REFEREE'S ORDER OF NOVEMBER 20, 1974 WHICH GRANTED HIM AN AWARD OF PERMANENT TOTAL DISABILITY BY ASSERTING THAT THE ORDER SHOULD HAVE MADE THE AWARD EFFECTIVE ON A DIFFERENT DATE.

THE REFEREE COMMENTED THAT THE RULES OF CONSTRUCTION PROVIDE THAT AN ORDER IS EFFECTIVE ON THE DATE IT IS SIGNED AND PUBLISHED IF NO OTHER DATE IS STATED - HAD CLAIMANT BEEN DISSATISFIED WITH THE PREVIOUS ORDER HE COULD HAVE REQUESTED RECONSIDERATION BY THE REFEREE, REQUESTED ON REVIEW THAT THE BOARD MODIFY THE ORDER BY PROVIDING A DATE OF COMMENCEMENT FOR THE PERMANENT TOTAL DISABILITY OR MADE THE SAME REQUEST TO THE CIRCUIT COURT WHEN IT REVIEWED THE BOARD'S ORDER. HE DID NONE OF THESE.

THE REFEREE CONCLUDED THAT HE DID NOT HAVE JURISDICTION TO AMEND OR MODIFY THE OPINION AND ORDER OF NOVEMBER 20, 1974. HE WAS RESTRICTED IN THE INTERPRETATION THEREOF AND, BASED ON THE RULES OF CONSTRUCTION, CLAIMANT'S PERMANENT TOTAL DISABILITY AWARD BEGAN ON THE DATE THE ORDER WAS PUBLISHED, TO WIT - NOVEMBER 20, 1974.

THE BOARD, ON DE NOVO REVIEW, REITERATES ITS RULING EXPRESSED IN EZRA ZINN (UNDERSCORED), WCB CASE NO. 72-3028, NAMELY, CLAIMANT

IS ENTITLED TO BE CONSIDERED PERMANENTLY AND TOTALLY DISABLED FROM THE TIME HE LAST BECAME MEDICALLY STATIONARY - IN THE INSTANT CASE THAT WOULD BE ON DECEMBER 29, 1972. THEREFORE, THE FUND IS NOT ENTITLED TO ANY OFFSET FOR THE COMPENSATION IT PAID CLAIMANT BETWEEN DECEMBER 29, 1972 AND MARCH 1, 1974 BECAUSE CLAIMANT WAS ENTITLED TO SUCH PAYMENTS AS COMPENSATION FOR PERMANENT TOTAL DISABILITY FROM DECEMBER 29, 1972.

THE BOARD, HAVING REVERSED THE REFEREE'S DETERMINATION OF THE COMMENCEMENT DATE FOR PERMANENT TOTAL DISABILITY, CONCLUDES THAT IT IS NOT NECESSARY TO DISCUSS THE SCHEDULE FOR RECOUPMENT FOR OVERPAYMENT PROPOSED BY THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 31, 1976, IS REVERSED.

WCB CASE NO. 75-4548 AUGUST 5, 1976

IDA LOU WILLIAMS, CLAIMANT

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

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE EMPLOYER REQUESTS THE BOARD REVIEW THE REFEREE'S ORDER WHICH AWARDED CLAIMANT 112 DEGREES FOR 35 PER CENT OF THE MAXIMUM FOR UNSCHEDULED DISABILITY.

CLAIMANT IS A 23 YEAR OLD SINGLE LADY, TRAINED AS AN LPN, WHO WORKED AT THE OREGON CITY HOSPITAL. SHE INJURED HER BACK ON JANUARY 12, 1974 WHILE LIFTING A PATIENT. SHE ATTEMPTED TO KEEP WORKING, BUT HAD TO QUIT IN APRIL 1974. ON MAY 31, 1974 DR. HAZEL PERFORMED SURGERY TO CORRECT A HERNIATED INTERVERTEBRAL DISC AT L5-S1. IN NOVEMBER 1974, DR. HAZEL FOUND HER MEDICALLY STATIONARY, HER SYMPTOMS MINIMAL AND INDICATED TO HER THAT HE THOUGHT SHE SHOULD RETURN TO LIGHTER WORK THAN SHE HAD BEEN DOING.

THE DETERMINATION ORDER ISSUED JANUARY 27, 1975 AWARDED CLAIMANT 48 DEGREES FOR 15 PER CENT OF THE MAXIMUM FOR UNSCHEDULED DISABILITY.

ON DECEMBER 5, 1974, CLAIMANT HAD COMMENCED HER PRESENT EMPLOYMENT AS A MEDICAL ASSISTANT AT THE OREGON CITY EYE CLINIC. HER DUTIES INCLUDE ESCORTING THE PATIENTS, TAKING PATIENT HISTORIES, ASSISTING THE DOCTORS IN MINOR SURGERY AND GIVING EYEDROPS. SHE HAS RECEIVED ON-THE-JOB TRAINING FROM THE DOCTORS AT THE CLINIC AND EVENTUALLY WILL BE LEARNING HOW TO MEASURE THE PRESSURE ON THE EYE. NO LIFTING, BENDING OR HEAVY WORK IS NECESSARY IN THIS PRESENT EMPLOYMENT.

CLAIMANT DID HAVE A GASTRITIS PROBLEM DUE TO HER HIGH INTAKE OF ASPIRIN FOR HER PAIN, BUT SHE WAS SUCCESSFULLY TREATED BY DR. STEVENS AND THIS IS NO LONGER A PROBLEM.

CLAIMANT IS YOUNG, IS ABOVE AVERAGE IN INTELLIGENCE AND APPEARS TO HAVE FOUND A SATISFACTORY AND CHALLENGING CAREER AT THE EYE CLINIC.

THE REFEREE ACKNOWLEDGED THAT CLAIMANT'S AGE, TRAINING, MOTIVATION AND ATTITUDE HAD REDUCED THE IMPACT OF HER PHYSICAL IMPAIRMENT UPON HER ULTIMATE LOSS OF EARNING CAPACITY AND ABILITY TO COMPETE ON THE OPEN LABOR MARKET FOR WAGES BUT CONCLUDED THAT THE AWARD OF 15 PER CENT DID NOT ADEQUATELY COMPENSATE CLAIMANT FOR HER LOSS OF WAGE EARNING CAPACITY.

THE BOARD, ON DE NOVO REVIEW, CANNOT AGREE WITH THE REFEREE'S FINDINGS THAT SHE HAS SUSTAINED A LOSS OF EARNING CAPACITY IN EXCESS OF 15 PER CENT. THE BOARD CONCLUDES THAT THE AWARD MADE BY THE DETERMINATION ORDER MORE ADEQUATELY REFLECTS CLAIMANT'S LOSS OF EARNING CAPACITY DUE TO HER INDUSTRIAL INJURY.

ORDER

THE ORDER OF THE REFEREE DATED FEBRUARY 27, 1976 IS REVERSED.

THE DETERMINATION ORDER MAILED JANUARY 27, 1975 IS AFFIRMED.

WCB CASE NO. 75-3371 AUGUST 5, 1976

JACQUELINE GRUE, CLAIMANT

DONALD WILSON, CLAIMANT'S ATTY.
DENNIS VAVROSKY, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE CLAIMANT SEEKS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER MAILED JUNE 30, 1975 WHEREBY CLAIMANT WAS GRANTED COMPENSATION FOR TEMPORARY TOTAL DISABILITY ONLY.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON AUGUST 13, 1974 WHILE LIFTING A CAST PART - SHE COMPLETED HER WORK SHIFT AND WENT HOME. HER BACK STIFFENED DURING THE NIGHT AND SHE REPORTED THE ACCIDENT THE FOLLOWING DAY AND WAS ADVISED TO SEE HER DOCTOR. CLAIMANT HAS NOT WORKED SINCE THE ACCIDENT.

CLAIMANT WAS FIRST SEEN BY DR. DINNEEN WHO DIAGNOSED A LUMBAR SPRAIN, WORK RELATED - HE FELT THAT THERE WOULD BE NO PERMANENT IMPAIRMENT BUT CLAIMANT MIGHT HAVE TO BE OFF WORK APPROXIMATELY TEN DAYS. CLAIMANT NEXT WAS SEEN BY DR. KELLY, HER HUSBAND'S TREATING PHYSICIAN, WHO DIAGNOSED A LOW BACK STRAIN, WORK RELATED AND PRESCRIBED REST AND MEDICATION FOR THE PAIN. HE ALSO PREDICTED NO PERMANENT IMPAIRMENT AND RELEASED CLAIMANT FOR UNMODIFIED WORK ON SEPTEMBER 30, 1974.

CLAIMANT APPARENTLY DID NOT IMPROVE AND SHE CONSULTED DR. MC KILLOP, AN ORTHOPEDIC SURGEON, ON DECEMBER 12, 1974. A COURSE OF PHYSICAL THERAPY AND WEIGHT REDUCTION WAS ARRANGED. AT THAT TIME CLAIMANT WAS QUITE OBESE AND SHE JOINED A 'WEIGHT WATCHERS' CLUB. ON JANUARY 30, 1975 DR. MC KILLOP RELEASED CLAIMANT FOR ANY TYPE OF WORK SHE COULD TOLERATE BUT FELT SHE SHOULD AVOID HEAVY LIFTING. AT THAT TIME CLAIMANT TOLD DR. MC KILLOP THAT SHE WAS GOING TO BE MARRIED AND WAS NOT INTERESTED IN RETURNING TO WORK.

THE WORK CLAIMANT WAS DOING AT THE TIME OF HER INJURY WAS A RATHER HEAVY TYPE. AFTER CLAIMANT HAD BEEN RELEASED BY DR. MC KILLOP ON JANUARY 30, 1975 THE EMPLOYER OFFERED CLAIMANT A JOB AS QUALITY CONTROL INSPECTOR, MOST OF THE INSPECTION IS VISUAL, SOME IS DONE WITH

A MICROMETER AND A RULER. IN MAY, 1975 DR. MC KILLOP, SUMMARIZING HIS EVALUATION OF CLAIMANT'S ABILITY TO DO CERTAIN TYPES OF WORK, STATED HE CONSIDERED HER CAPABLE OF DOING LIGHT WORK SUCH AS INSPECTING AND HAD BEEN CAPABLE OF DOING SUCH WORK SINCE SEPTEMBER 30, 1974 AND SINCE JANUARY 30, 1975 COULD DO ANY TYPE OF WORK.

CLAIMANT CONTENDS THAT THE EMPLOYER MISLED DR. MC KILLOP IN THE JOB DESCRIPTION INSPECTING BECAUSE THERE WAS SOME LIFTING INVOLVED.

THE REFEREE FOUND THAT CLAIMANT WAS REALLY NOT INTERESTED IN RETURNING TO WORK, ALSO THE CLAIMANT'S HUSBAND WISHED CLAIMANT TO STAY AT HOME. THE EVIDENCE INDICATES THAT THE EMPLOYER TELEPHONED CLAIMANT ON MORE THAN ONE OCCASION WITH RESPECT TO THE JOB OF INSPECTOR AND, IN FACT, WAITED OVER 8 MONTHS BEFORE HE FILLED THE POSITION WHICH WAS VACANT AT THE TIME HE ORIGINALLY OFFERED THE JOB TO CLAIMANT.

THE REFEREE FOUND THAT THE MEDICAL EVIDENCE WAS CONCLUSIVE THAT CLAIMANT'S DISABILITY WAS NOT PERMANENT. HE ALSO FOUND THAT CLAIMANT HAD BEEN RELEASED TO RETURN TO WORK OF AN UNMODIFIED NATURE ON SEPTEMBER 30, 1974 BY DR. KELLY AND DR. MC KILLOP LATER INDICATED THAT HE AGREED WITH DR. KELLY'S RELEASE DATE.

THE REFEREE CONCLUDED THAT CLAIMANT HAD SUFFERED NO PERMANENT DISABILITY AND WAS ENTITLED TO NO ADDITIONAL COMPENSATION FOR TEMPORARY TOTAL DISABILITY. HE AFFIRMED THE DETERMINATION ORDER OF JUNE 30, 1975.

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

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 20, 1976, IS AFFIRMED.

WCB CASE NO. 75-4323-E AUGUST 5, 1976

THOMAS BULTHUIS, CLAIMANT

ROBERT GRANT, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT 124.8 DEGREES FOR 65 PER CENT LOSS OF THE RIGHT ARM, BUT RESCINDED THE AWARD OF 64 DEGREES FOR UNSCHEDULED RIGHT SHOULDER DISABILITY GRANTED BY THE DETERMINATION ORDER MAILED FEBRUARY 25, 1975.

CLAIMANT SUSTAINED A COMPENSABLE INJURY ON FEBRUARY 27, 1973 AND SUBSEQUENTLY SAW DR. DAVIS WHO HOSPITALIZED HIM. HE DIAGNOSED CONSIDERABLE SOFT TISSUE DAMAGE AND OPEN COMMINUTED FRACTURES OF THE RIGHT RADIUS AND ULNA. DR. LYNCH PERFORMED A DEBRIDEMENT OF THE WOUND AND EXCISION OF NECROTIC TISSUE AND DELAYED PRIMARY CLOSURE ON THE DATE OF INJURY.

ON MARCH 26, 1973 DR. LYNCH PERFORMED OPEN REDUCTION AND INTERNAL FIXATION SURGERY OF THE COMMINUTED FRACTURES.

ON JANUARY 14, 1974 CLAIMANT WAS RELEASED FOR LIGHT WORK, LATER

HE PERFORMED HIS OLD JOB ON A FULL TIME BASIS UNTIL NOVEMBER, 1974 WHEN THERE WAS A GENERAL LAY-OFF AT THE PLANT.

ON DECEMBER 10, 1974 DR. LYNCH'S CLOSING EXAMINATION REVEALED CLAIMANT HAD SIGNIFICANT DISABILITY BUT HE WAS MEDICALLY STATIONARY.

ON FEBRUARY 25, 1975 A DETERMINATION ORDER GRANTED CLAIMANT 64 DEGREES FOR 20 PER CENT UNSCHEDULED SHOULDER DISABILITY AND 90 DEGREES FOR 50 PER CENT LOSS OF RIGHT ARM.

THE STATE ACCIDENT INSURANCE FUND, IN APRIL, 1975 WROTE TO DR. LYNCH ASKING ABOUT THE SHOULDER DISABILITY - DR. LYNCH RESPONDED THAT HE HAD 'NO KNOWLEDGE OF ANY INJURY TO HIS (CLAIMANT'S) RIGHT SHOULDER' AND STATED CLAIMANT HAD FULL RANGE OF MOTION IN HIS SHOULDER. THE STATE ACCIDENT INSURANCE FUND REQUESTED A HEARING.

CLAIMANT LAST SAW DR. LYNCH ON AUGUST 8, 1975 FOR COMPLAINTS REGARDING HIS RIGHT WRIST.

CLAIMANT TESTIFIED THAT HE WAS GIVEN THERAPY FOR HIS SHOULDER - THAT HE COULDN'T RAISE HIS RIGHT ARM STRAIGHT OUT ABOVE HIS SHOULDER, AND HE HAS SHOULDER PAIN AND LOSS OF MOTION.

THE REFEREE FOUND CLAIMANT WAS NOT ENTITLED TO AN AWARD FOR UNSCHEDULED DISABILITY BECAUSE THERE WAS NO MENTION OF ANY SHOULDER COMPLAINTS MADE BY CLAIMANT TO HIS TREATING PHYSICIAN AND ABSOLUTELY NO MEDICAL EVIDENCE TO SUPPORT A SHOULDER DISABILITY, ONLY LAY TESTIMONY BY CLAIMANT. THE REFEREE RESCINDED THAT PORTION OF THE DETERMINATION ORDER AWARDING CLAIMANT COMPENSATION FOR AN UNSCHEDULED DISABILITY.

BASED ON THE MEDICAL REPORTS WHICH SUBSTANTIATE A GREATER DISABILITY TO CLAIMANT'S RIGHT ARM THAN THAT PREVIOUSLY AWARDED, THE REFEREE CONCLUDED THAT CLAIMANT'S LOSS OF FUNCTION OF HIS RIGHT ARM ENTITLED HIM TO AN ADDITIONAL 28.8 DEGREES, MAKING A TOTAL AWARD OF 124.8 DEGREES LOSS OF FUNCTION OF THE RIGHT ARM.

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

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 11, 1976, IS AFFIRMED.

WCB CASE NO. 75-5276 AUGUST 5, 1976

KEVIN O. HANSEN, CLAIMANT

JAMES HUEGLI, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

THE CLAIMANT SEEKS BOARD REVIEW OF THE REFEREE'S ORDER WHICH ASSESSED PENALTIES AGAINST THE STATE ACCIDENT INSURANCE FUND EQUAL TO 25 PER CENT OF THE AMOUNT DUE CLAIMANT FOR ITS FAILURE TO PAY COMPENSATION FOR TEMPORARY TOTAL DISABILITY WITHIN 14 DAYS AFTER NOTICE BUT APPROVED THE DENIAL BY THE FUND OF CLAIMANT'S CLAIM.

CLAIMANT SUFFERED AN INJURY ON FEBRUARY 1, 1975 WHILE PARTICIPATING IN A 'FREE STYLE' SKIING CONTEST AT TIMBERLINE LODGE. CLAIMANT HAD BEEN A SKIER FOR QUITE A FEW YEARS ALTHOUGH HE IS STILL A VERY YOUNG MAN AND DURING 1974 HE ENROLLED IN AN INSTRUCTOR'S CLINIC AT TIMBERLINE LODGE SKI SCHOOL WITH ABOUT 60 OTHER STUDENTS. CLAIMANT'S TUITION WAS SPLIT BY THE GLACIER'S EDGE SKI SHOP, FOR WHOM HE WORKED AS A SALESMAN UNTIL JANUARY 15, 1975, AND THE CLINIC. THE CLINIC WAS TO MAKE THE MOST ADVANCED SKIERS INTO INSTRUCTORS AT TIMBERLINE LODGE, ACCORDING TO THE TESTIMONY OF CLAIMANT. ACCORDING TO THE TESTIMONY OF THE DEFENDANT EMPLOYER THE CLINIC WAS OPEN TO ANYONE.

CLAIMANT PASSED A FINAL EXAMINATION PREPARED BY THE DIRECTOR OF THE SCHOOL AND WAS GIVEN A TIMBERLINE LODGE PART-TIME SKI INSTRUCTOR PASS VALUED AT 140 DOLLARS.

THE DIRECTOR OF THE SCHOOL TESTIFIED THAT HE AND ANOTHER PERSON PUT TOGETHER A 'FREE STYLE' PROGRAM THROUGH THE GLACIER'S EDGE SKI SHOP, WHICH PROGRAM WAS BUILT AROUND CLAIMANT'S PARTICULAR ABILITY AND THAT HE HIRED CLAIMANT PART TIME TO TEACH IT. HE ALSO STATED THAT CLAIMANT HAD RECEIVED SKI INSTRUCTOR PRIVILEGES AND WAS LISTED ON THE TIMBERLINE LODGE SKI SCHOOL'S OWN ROSTER SO THAT HE COULD HAVE THE BADGE AND REDUCED FAMILY RATES BECAUSE OF THE GLACIER EDGE AGREEMENT. CLAIMANT DID NOT COMPLETE AN EMPLOYMENT CONTRACT OR A W4 FORM BUT HIS NAME WAS ON THE 'ROSTER LIST OF INSTRUCTORS', AND HE WAS INCLUDED ON A MASTER LIST AS A 'FREE STYLE' INSTRUCTOR.

CLAIMANT WAS TOLD THAT IF HE PRACTICED DILIGENTLY HE COULD ULTIMATELY BECOME A GENERAL ALL AROUND INSTRUCTOR IN ADDITION TO BEING A FREE STYLE INSTRUCTOR, BUT AT THAT TIME HE WAS THE ONLY PART-TIME SPECIAL CASE BY VIRTUE OF THE GLACIER'S EDGE PLAN. THE DIRECTOR OF THE SKI SCHOOL TESTIFIED HE WAS NOT AWARE THAT CLAIMANT HAD PREVIOUSLY QUIT HIS JOB AT GLACIER'S EDGE AND DID NOT FIND OUT THAT HE HAD UNTIL LONG AFTER THE ACCIDENT. CLAIMANT HAD TWO STUDENTS TO WHOM HE GAVE LESSONS ON WEDNESDAYS AND SUNDAYS, THESE STUDENTS WERE INTERESTED ONLY IN THE 'FREE STYLE' PROGRAM TAUGHT BY CLAIMANT. ALTHOUGH THE TIMBERLINE LODGE SKI SCHOOL ALSO INCLUDED IN ITS PROGRAMS AERIAL AND BALLET SKIING. CLAIMANT RECEIVED TUITION FROM THESE TWO STUDENTS AND TURNED IT OVER TO THE SCHOOL.

THE REFEREE FOUND THAT CLAIMANT WAS A PRESENT, NOT FUTURE, EMPLOYEE OF THE TIMBERLINE LODGE SKI SCHOOL, BUT THAT AT THE TIME HE SUFFERED HIS INJURY HE WAS VOLUNTARILY COMPETING IN A CONTEST WHICH WAS OF NO BENEFIT TO TIMBERLINE LODGE SKI SCHOOL. CLAIMANT WAS NOT SPONSORED IN ANY MANNER WHATSOEVER.

THE REFEREE FOUND THAT THE CONTEST WAS NOT PART OF THE EMPLOYMENT OF THE TIMBERLINE LODGE SKI SCHOOL AND THAT CLAIMANT WAS NOT ON DUTY AT THE TIME OF THE CONTEST. CLAIMANT'S SOLE REASON FOR ENTERING THE CONTEST WAS TO QUALIFY FOR OTHER CONTESTS AND, BY WINNING, HOPEFULLY, TO ENHANCE HIS REPUTATION WHICH WOULD ALLOW HIM TO ENTER BIGGER CONTESTS AND PERHAPS EVENTUALLY GET INTO THE PRO CIRCUIT.

THE REFEREE CONCLUDED THAT THE EVIDENCE DID NOT PREPONDERATE IN FAVOR OF EMPLOYMENT FOR THE PURPOSE OF THE 'FREE STYLE' CONTEST AND, THEREFORE, CLAIMANT WAS NOT INJURED IN THE COURSE AND SCOPE OF HIS EMPLOYMENT.

CLAIMANT CONTENDS THAT HE FIRST MADE A CLAIM BY A LETTER DATED NOVEMBER 12, 1975 BUT THE ENVELOPE WAS POSTMARKED DECEMBER 9, 1975 AND THE FORM 801 IS DATED DECEMBER 10, 1975 AND SIGNED BY THE CLAIMANT. THE FUND MADE NO PAYMENT WHATSOEVER AND ISSUED ITS DENIAL ON DECEMBER 30, 1975, BASED ON THE ARGUMENT THAT THE SKI CONTEST FROM WHICH CLAIMANT'S INJURIES AROSE WAS INDULGED IN ON CLAIMANT'S OWN

TIME AND WAS NOT A REQUIREMENT OF, A CONDITION OF OR DURING EMPLOYMENT. THE FUND DID NOT SPECIFICALLY DENY THAT CLAIMANT WAS EMPLOYED BY TIMBERLINE LODGE SKI SCHOOL BUT ONLY THAT CLAIMANT WAS NOT SO EMPLOYED AT THE TIME OF THE ACCIDENT.

THE REFEREE FOUND THAT THE EVIDENCE INDICATED THE FUND SHOULD HAVE RECEIVED CLAIMANT'S CLAIM ON DECEMBER 11, 1975 AND THAT THE FIRST PAYMENT OF COMPENSATION WAS DUE WITHIN 14 DAYS THEREAFTER, NAMELY, DECEMBER 25, 1975. INASMUCH AS NO PAYMENT WAS MADE AND THE CLAIM WAS NOT DENIED UNTIL DECEMBER 30, 1975 THE REFEREE FOUND THAT THE FUND HAD NOT COMPLIED WITH THE PROVISIONS OF ORS 656.262(4) AND, THEREFORE, HE ASSESSED A PENALTY EQUAL TO 25 PER CENT OF THE AMOUNT DUE CLAIMANT AND AWARDED CLAIMANT'S ATTORNEY A REASONABLE ATTORNEY FEE OF 240 DOLLARS.

THE BOARD, ON DE NOVO REVIEW, RECOGNIZES THE TRAGEDY INVOLVED IN THIS PARTICULAR CASE BUT IT HAS NO ALTERNATIVE BUT TO AFFIRM THE FINDINGS AND CONCLUSIONS OF THE REFEREE. THERE IS NO EVIDENCE IN THE RECORD THAT, AT THE TIME CLAIMANT WAS SO SEVERELY INJURED, HE WAS ACTING IN THE COURSE OF AND SCOPE OF HIS EMPLOYMENT WITH TIMBERLINE LODGE SKI SCHOOL.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 23, 1976, IS AFFIRMED.

WCB CASE NO. 75-933 AUGUST 5, 1976

LORETA SMITH, CLAIMANT

W. BRAD COLEMAN, CLAIMANT'S ATTY.
KEITH SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT AN ADDITIONAL 25 PER CENT UNSCHEDULED LOW BACK DISABILITY, MAKING A TOTAL AWARD OF 96 DEGREES FOR 30 PER CENT.

CLAIMANT SUSTAINED AN INDUSTRIAL INJURY ON MAY 11, 1969, AND WAS HOSPITALIZED FOR A LUMBOSACRAL STRAIN. A DETERMINATION ORDER ISSUED ON SEPTEMBER 8, 1969 GRANTED CLAIMANT COMPENSATION FOR TEMPORARY TOTAL DISABILITY ONLY.

IN 1972 CLAIMANT HAD AN EXACERBATION OF HER BACK SYMPTOMS WHILE WORKING AT THE CANNERY WHICH WAS ULTIMATELY DECIDED, AFTER A HEARING, TO BE AN AGGRAVATION OF HER 1969 INJURY RATHER THAN A NEW INJURY. ON MARCH 14, 1974 A SECOND DETERMINATION ORDER AWARDED CLAIMANT ADDITIONAL COMPENSATION FOR TEMPORARY TOTAL DISABILITY AND 16 DEGREES FOR 5 PER CENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT HAS NOT RETURNED TO WORK SINCE THE 1972 INCIDENT, AND HER COMPLAINTS AT THE PRESENT TIME ARE THE SAME AS THEY WERE IN 1972.

ALL OF THE PHYSICIANS WHO HAVE TREATED OR EXAMINED CLAIMANT OVER THE YEARS DIAGNOSED A CHRONIC LUMBOSACRAL STRAIN. DR. ANDERSON, WHO EXAMINED CLAIMANT IN 1973, FELT THE 'PATIENT'S PROBLEMS ARE LARGELY OF A SUBJECTIVE NATURE'. NONE OF THE DOCTORS RECOMMENDED FURTHER TREATMENT OR SURGERY AND CLAIMANT'S CONDITIONS REMAINS UNCHANGED FROM THAT OF 1972.

THE REFEREE CONCLUDED CLAIMANT DID NOT NEED FURTHER MEDICAL CARE AND TREATMENT. THE MEDICAL EVIDENCE DID NOT SUPPORT CLAIMANT'S COMPLAINTS. ALTHOUGH CLAIMANT CONTENDS HER CONDITION IS PROGRESSIVELY DETERIORATING AND WITNESSES TESTIFIED TO THIS ON HER BEHALF, THE REFEREE FOUND THAT THESE COMPLAINTS WERE UNSUBSTANTIATED BY THE MEDICAL EVIDENCE AND CLAIMANT'S CONDITION WAS MEDICALLY STATIONARY.

THE REFEREE CONCLUDED THAT CLAIMANT WAS ENTITLED TO A GREATER AWARD, BASED ON HER TESTIMONY AND THE MEDICAL REPORTS WHICH INDICATE THAT CLAIMANT CANNOT DO ANY TYPE OF WORK WHICH WOULD INVOLVE USE OF HER LOW BACK. HE INCREASED HER PRIOR AWARD FROM 16 DEGREES TO 96 DEGREES TO COMPENSATE HER FOR HER LOSS OF WAGE EARNING CAPACITY.

THE BOARD, ON DE NOVO REVIEW, ADOPTS THE FINDINGS AND CONCLUSIONS OF THE REFEREE. THE CLAIMANT CONTENDS SHE IS ENTITLED TO A GREATER AWARD THAN 30 PER CENT OF THE MAXIMUM BUT THE BOARD FINDS, AS DID THE REFEREE, THAT CLAIMANT HAS NOT SOUGHT ANY TYPE OF EMPLOYMENT NOR HAS SHE ATTEMPTED TO TAKE ADVANTAGE OF ANY TRAINING PROGRAMS, THEREFORE, HER FAILURE TO TRY TO VOCATIONALLY REHABILITATE HERSELF HAS CAUSED SOME OF HER LOSS OF WAGE EARNING CAPACITY. SHE IS NOT ENTITLED TO A GREATER AWARD BECAUSE OF THIS.

ORDER

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

WCB CASE NO. 75-4098 AUGUST 5, 1976

MATTHEW T. RUSSELL, CLAIMANT

DONALD ATCHISON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE CLAIMANT SEEKS REVIEW BY THE BOARD FROM THE REFEREE'S ORDER WHICH AWARDED CLAIMANT 15 DEGREES FOR 15 PER CENT PERMANENT PARTIAL DISABILITY TO THE LEFT EYE.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON DECEMBER 30, 1974 WHEN A TOOL HE WAS USING BROKE AND FLYING PIECES OF METAL, AFTER BREAKING HIS SAFETY GLASSES, INJURED HIS LEFT EYE. THE DIAGNOSIS WAS 'TRAUMATIC CORNEAL AND SCLERAL LACERATIONS WITH SECONDARY PROLAPSED IRIS.' ON JANUARY 2, 1975 SURGERY WAS PERFORMED FOR EXCISION OF PROLAPSED IRIS, REPAIR OF CORNEAL LACERATION AND RESTORATION OF THE ANTERIOR CHAMBER AND CLAIMANT WAS ABLE TO RETURN TO WORK ON FEBRUARY 24, 1975. INITIALLY, HE RETURNED TO LIGHT DUTY WORK BUT SHORTLY THEREAFTER RESUMED HIS REGULAR DUTIES AND HAS SUFFERED NO TIME LOSS FROM WORK BECAUSE OF HIS INDUSTRIAL INJURY SINCE THAT TIME.

THE CLAIM WAS CLOSED BY DETERMINATION ORDER MAILED AUGUST 27, 1975 AWARDING COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM DECEMBER 30, 1974 THROUGH FEBRUARY 24, 1975 AND FOR TEMPORARY PARTIAL DISABILITY FROM FEBRUARY 25, 1975 THROUGH MARCH 3, 1975 ONLY.

AS A RESULT OF THE INDUSTRIAL INJURY CLAIMANT'S LEFT EYE IS VERY SENSITIVE TO LIGHT AND CLAIMANT TESTIFIED THAT HE WEARS DARK GLASSESS ALL THE TIME AT WORK AND 75 PER CENT OF THE TIME WHEN HE IS NOT WORKING. HE USES CORRECTIVE LENSES AT WORK BUT IT IS NOT NECESSARY

FOR HIM TO USE GLASSES FOR READING WHEN AT HOME AND HE CAN READ FOR ONE HALF HOUR BEFORE HIS EYE BECOMES TIRED AND COMMENCES TO BURN. CLAIMANT DOES CLOSE TOLERANCE WORK ALL DAY WHICH CAUSES HIS EYE TO BURN AND REDDEN - HE ALSO HAS DIFFICULTY WITH DEPTH PERCEPTION AND HAS TROUBLE CENTERING THE LATHES AND HIS CUTTING TOOLS. CLAIMANT IS A JOURNEYMAN MACHINIST.

DR. JOHNSON, AN OPTHOMOLOGIST, IN NOVEMBER, 1975, HAD STATED THAT CLAIMANT'S LEFT EYE WAS 20-50 BUT COULD BE CORRECTED TO 20-20.

THE REFEREE, CITING IN THE MATTER OF THE COMPENSATION OF SAM FINLEY, CLAIMANT (UNDERSCORED), WCB CASE NO. 67-148 = VAN NATTA VOLUME 1, P. 55, WHEREIN THE BOARD CONCLUDED THAT THE LEGISLATIVE INTENT IN OREGON WAS TO COMPENSATE FOR LOSS OF VISION AND THAT THE LOSS OF VISION WAS NOT RESTRICTED TO THE OPTIMUM OBTAINABLE UNDER STRICT CLINICAL CONDITIONS, FELT THAT STRICT INTERPRETATION OF ORS 656.214(1) WAS NOT REQUIRED. HE CONCLUDED THAT CLAIMANT'S RESIDUAL PROBLEMS OF SENSITIVITY TO LIGHT, TO THE POINT THAT HE IS NO LONGER ABLE TO BURN OR WELD, AND MUST WEAR SHADED GLASSES WHEN OUT OF DOORS INDICATES THAT CLAIMANT HAS SUFFERED A PERMANENT SCHEDULED DISABILITY. HE AWARDED CLAIMANT 15 DEGREES WHICH IS EQUAL TO 15 PER CENT OF THE MAXIMUM ALLOWABLE FOR PARTIAL LOSS OF VISION OF ONE EYE.

THE BOARD, ON DE NOVO REVIEW, EXPRESSLY AND SPECIFICALLY REVERSES ITS RULING MADE IN FINLEY (UNDERSCORED). THE BOARD NOW TAKES THE POSITION THAT ORS 656.214(2)(H)(I), WHICH RELATED TO PERMANENT PARTIAL DISABILITY AWARDS INVOLVING PARTIAL OR COMPLETE LOSS OF VISION, ARE WHOLLY UNAMBIGUOUS. THESE PROVISIONS PROVIDE ONLY FOR COMPENSATION FOR LOSS OF EYE SIGHT. IN THE INSTANT CASE, DR. JOHNSON HAS STATED HIS OPINION THAT CLAIMANT'S LEFT EYE COULD BE CORRECTED TO 20-20 VISION, THEREFORE, HE HAS NO VISUAL LOSS WITH CORRECTION AND, ACCORDINGLY, IS NOT ENTITLED TO ANY COMPENSATION FOR PERMANENT PARTIAL SCHEDULED DISABILITY TO HIS LEFT EYE. THIS MAY APPEAR, AT FIRST BLUSH, TO BE A HARSH RULING BUT THE WORDING OF ORS 656.214(2)(H)(I) LEAVES NO ROOM FOR INTERPRETATION.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 29, 1976, IS REVERSED.

WCB CASE NO. 75-2567 AUGUST 5, 1976

RICHARD VESSELA, CLAIMANT

DONALD WILSON, CLAIMANT'S ATTY.
DAVID BANGSUND, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT SEEKS BOARD REVIEW OF THE REFEREE'S ORDER WHICH WAS AMENDED AND CORRECTED SEVERAL TIMES BUT ULTIMATELY AWARDED CLAIMANT 22.5 DEGREES OF A MAXIMUM 150 DEGREES FOR PARTIAL LOSS OF THE LEFT LEG AND AWARDED CLAIMANT'S COUNSEL 25 PER CENT OF THE INCREASED COMPENSATION AS A REASONABLE ATTORNEY FEE, PAYABLE OUT OF THE INCREASED COMPENSATION AS PAID, NOT TO EXCEED 2,000 DOLLARS.

CLAIMANT WAS INJURED ON NOVEMBER 8, 1974 AND, INITIALLY, THE CLAIM WAS DENIED - HOWEVER, AFTER A HEARING, REFEREE H. DON FINK ON APRIL 18, 1975, ORDERED THE CLAIM TO BE ACCEPTED (WCB CASE NO. 74-4311).

THE CLAIM WAS CLOSED BY DETERMINATION ORDER MAILED JUNE 18, 1975 WHICH AWARDED CLAIMANT COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM NOVEMBER 8, 1974 TO DECEMBER 15, 1974 AND 15 DEGREES FOR 10 PER CENT LOSS OF THE LEFT LEG. HOWEVER, THE CARRIER MISTAKENLY CONTINUED TO PAY COMPENSATION FOR TEMPORARY TOTAL DISABILITY UP TO JUNE 18, 1975, THE DATE OF THE DETERMINATION ORDER, WHICH RESULTED IN AN OVERPAYMENT OF 2,023.70 DOLLARS. HAVING MADE SUCH OVERPAYMENT THE CARRIER CONCLUDED NOTHING WAS DUE CLAIMANT ON HIS AWARD FOR PERMANENT PARTIAL DISABILITY CONTAINED IN THE SAME DETERMINATION ORDER - IN FACT, THE TOTAL AMOUNT ALREADY PAID TO CLAIMANT BY THE CARRIER FOR TEMPORARY TOTAL DISABILITY AMOUNTED TO MORE THAN THE AMOUNT DUE CLAIMANT FOR BOTH TEMPORARY TOTAL DISABILITY AND PERMANENT PARTIAL DISABILITY, PURSUANT TO THE DETERMINATION ORDER OF JUNE 18, 1975.

ON THE ISSUE OF CLAIMANT'S EXTENT OF DISABILITY, THE REFEREE FOUND THAT THE MINIMAL PERMANENT IMPAIRMENT OF CLAIMANT'S KNEE WOULD BE NO MORE THAN THAT OF AN AVERAGE KNEE FOLLOWING A MENISCECTOMY WITHOUT COMPLICATIONS AND WITHOUT DEGENERATIVE CHANGES WITHIN THE KNEE. CLAIMANT IS A MUSICIAN WITH A PROFESSIONAL BAND, HE CANNOT JUMP UP ONTO THE RAISED BANDSTAND BUT MUST ASCEND WITH HIS RIGHT KNEE FIRST, HIS LEFT KNEE IS PHYSICALLY WEAK. CLAIMANT IS UNABLE TO SUCCESSFULLY PLAY TENNIS, SKI OR WALK UP OR DOWN STAIRS WITH ANY WEIGHT. THE REFEREE FOUND THAT CLAIMANT'S ACTUAL LOSS OF PHYSICAL FUNCTION APPEARED TO BE GREATER THAN 10 PER CENT AND HE INCREASED IT TO 15 PER CENT. THE REFEREE GAVE NO CONSIDERATION TO CLAIMANT'S SUGGESTION THAT HAD HE RECEIVED HIS FULL AWARD FOR PERMANENT PARTIAL DISABILITY GRANTED BY THE DETERMINATION ORDER OF JUNE 18, 1975 HE WOULD NOT HAVE APPEALED THE ADEQUACY OF SAID DETERMINATION ORDER.

CLAIMANT CONTENDED THAT THERE SHOULD HAVE BEEN NO OFFSET BECAUSE THE CARRIER TOOK THE DEDUCTION UNILATERALLY. THE REFEREE FOUND THAT THE CARRIER'S UNILATERAL OFFSET OF OVERPAYMENT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY AGAINST THE AWARD FOR PERMANENT PARTIAL DISABILITY WAS ALLOWED UNDER THE PROVISIONS OF ORS 656.268(3) AND WCB BULLETIN NO. 24 (REVISED).

THE BOARD, ON DE NOVO REVIEW, AFFIRMS THE OPINION, AS CORRECTED AND AMENDED. THE BOARD FEELS THAT IT IS NECESSARY TO COMMENT ON THE FACT THAT THE ORIGINAL OPINION AND ORDER WAS ENTERED OCTOBER 30, 1975 AND WAS SUBSEQUENTLY MODIFIED FIVE TIMES AND IT WAS NOT UNTIL JANUARY 7, 1976 THAT THE LAST OPINION AND ORDER WAS ISSUED. THIS IS NOT A PROCEDURE FAVORED BY THE BOARD.

ORDER

THE ORDER OF THE REFEREE, DATED OCTOBER 30, 1975, AS AMENDED, IS AFFIRMED.

WCB CASE NO. 75-3049 AUGUST 5, 1976

DAVID WARD, CLAIMANT
MICHAEL STROOBAND, CLAIMANT'S ATTY.
PHILIP MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH

REMANDED CLAIMANT'S CLAIM TO IT FOR PAYMENT OF COMPENSATION UNTIL CLOSURE IS AUTHORIZED PURSUANT TO LAW AND ASSESSED A PENALTY OF 25 PER CENT OF THE COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM JANUARY 22, 1975 TO APRIL 1, 1975 GRANTED BY AN INTERIM ORDER OF NOVEMBER 24, 1975, AGAINST THE EMPLOYER FOR FAILURE TO PAY COMPENSATION WITHIN 14 DAYS AFTER THE FILING OF A CLAIM WITHOUT DENYING THE CLAIM. THE EMPLOYER ALSO RAISES THE ISSUE OF CLAIMANT'S FAILURE TO REQUEST A HEARING WITHIN 60 DAYS AFTER THE EMPLOYER'S ISSUANCE OF A DENIAL.

ON OCTOBER 17, 1974 CLAIMANT SUFFERED A COMPENSABLE INDUSTRIAL INJURY TO HIS LEFT LEG - HE WAS HOSPITALIZED ON OCTOBER 23, 1974 BY DR. GUSTAVSON. CLAIMANT WAS RELEASED TO RETURN TO WORK ON NOVEMBER 4, 1974, HOWEVER, HE HAD BEEN TERMINATED BY THE EMPLOYER ON OCTOBER 23, 1974.

ON DECEMBER 30, 1974 CLAIMANT SAW DR. GUSTAVSON FOR AN ULCER CONDITION WHICH HAD DEVELOPED ON HIS LEFT LEG. DR. GUSTAVSON REFERRED CLAIMANT TO DR. BRETTSCHNEIDER WHO TREATED THE ULCER FROM DECEMBER, 1974 THROUGH FEBRUARY, 1975. AFTER FEBRUARY, 1975 CLAIMANT DEVELOPED FURTHER ULCERATIONS. IN JANUARY, 1975 CLAIMANT ASKED THE CARRIER TO REOPEN HIS CLAIM FOR THE ULCER CONDITION. ON APRIL 1, 1975 THE CARRIER ISSUED ITS DENIAL.

CLAIMANT RECEIVED COMPENSATION FOR TEMPORARY TOTAL DISABILITY THROUGH NOVEMBER 3, 1974 PURSUANT TO A DETERMINATION ORDER ISSUED JUNE 4, 1975. THE DENIAL LETTER INFORMED CLAIMANT THAT HE HAD 60 DAYS TO REQUEST A HEARING, BUT IT DID NOT (UNDERSCORED) INFORM HIM OF THE CONSEQUENCES IF HE DID NOT FILE WITHIN THAT PERIOD OF TIME.

THE CARRIER MADE NO PAYMENTS OF COMPENSATION AFTER IT HAD RECEIVED NOTICE JANUARY 22, 1975 FROM CLAIMANT THAT HE DESIRED TO HAVE HIS CLAIM REOPENED. IT NEITHER ACCEPTED OR DENIED THE CLAIM UNTIL APRIL 1, 1975. THE REFEREE FOUND THAT THE CARRIER HAD FAILED TO COMPLY WITH ORS 656.262 AND ENTERED AN INTERIM ORDER ON NOVEMBER 24, 1975 DIRECTING THE CARRIER TO PAY COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM JANUARY 22, 1975 THROUGH APRIL 1, 1975.

THE REFEREE FOUND THAT THE MEDICAL EVIDENCE WAS OF LITTLE HELP - DR. GUSTAVSON CONCURRED WITH DR. BRETTSCHNEIDER THAT THERE WAS 'MAYBE' A CAUSAL CONNECTION BETWEEN THE ULCER CONDITION AND CLAIMANT'S INDUSTRIAL INJURY. CLAIMANT HAS HAD A HISTORY OF LEG PROBLEMS OF THROMBOPHLEBITIS AND UNDERWENT THROMBECTOMY AND VENOPLASTY IN 1968 AND HAD AN AUTOMOBILE ACCIDENT INVOLVING HIS RIGHT LEG IN 1970. HOWEVER, DESPITE CLAIMANT'S NUMBEROUS LEG PROBLEMS A STASIS ULCER HAD NEVER PREVIOUSLY DEVELOPED.

THE REFEREE FOUND THAT THE ULCER DID DEVELOP AT THE SAME LOCATION AS THE SITE OF THE INDUSTRIAL INJURY AND ONLY A SHORT TIME THEREAFTER AND CONCLUDED THAT CLAIMANT'S CONTENTION THAT THE ULCER WAS RELATED TO THE INDUSTRIAL INJURY WAS THE MORE LOGICAL. HE REMANDED CLAIMANT'S CLAIM FOR SUCH CONDITION TO THE EMPLOYER FOR ACCEPTANCE. THE DETERMINATION ORDER OF JUNE 4, 1975 STATED IT WAS NOT A DETERMINATION OF THIS DENIED CONDITION.

THE REFEREE CONCLUDED THAT THE LATE ISSUANCE OF THE DENIAL LETTER AND FAILURE TO PAY COMPENSATION WITHIN 14 DAYS SUBJECTED THE EMPLOYER TO A PENALTY OF 25 PER CENT OF THE TEMPORARY TOTAL DISABILITY GRANTED BY THE INTERIM ORDER.

THE EMPLOYER CONTENDS THAT CLAIMANT FAILED TO FILE HIS REQUEST FOR HEARING WITHIN 60 DAYS FROM THE DATE OF THE DENIAL LETTER AND WAS NOT ENTITLED TO A HEARING.

THE REFEREE FOUND THAT THE DENIAL LETTER WAS DEFECTIVE BECAUSE IT FAILED TO STATE THAT THE CLAIM WOULD BE UNENFORCEABLE UNLESS A REQUEST FOR HEARING WAS FILED WITHIN 60 DAYS. CLAIMANT NOT BEING FULLY INFORMED OF HIS RIGHTS IS NOT PRECLUDED FROM A HEARING ON THE MERITS OF HIS CLAIM.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE REFEREE'S FINDING THAT THE DENIAL WAS DEFECTIVE. IT FINDS THAT CLAIMANT'S CLAIM IS COMPENSABLE FOR THE REASON THAT BUT FOR THE INDUSTRIAL INJURY IT IS PROBABLE THAT CLAIMANT WOULD NOT HAVE DEVELOPED THE ULCER.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 19, 1975, AND THE INTERIM ORDER, DATED NOVEMBER 24, 1975, ARE BOTH AFFIRMED.

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

WCB CASE NO. 75-5177 AUGUST 5, 1976

KARL MAIER, CLAIMANT

LADD LONNQUIST, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS WILSON, MOORE AND PHILLIPS.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH DIRECTED IT TO ACCEPT CLAIMANT'S CLAIM AND PAY HIM THE BENEFITS TO WHICH HE IS ENTITLED BY LAW AND AWARDED CLAIMANT'S ATTORNEY A FEE OF 650 DOLLARS. THE FUND ALSO RAISES THE ISSUE OF UNTIMELY FILING OF THE CLAIM.

THE REFEREE SUMMARILY DISPOSED OF THE ISSUE OF UNTIMELINESS OF THE CLAIM BY FINDING CLAIMANT'S UNCONTROVERTED TESTIMONY ESTABLISHED THAT, ALTHOUGH CLAIMANT HAD EXPERIENCED SYMPTOMS RELATING TO BOTH HANDS OVER A TEN YEAR PERIOD, HE DID NOT BECOME AWARE OF THEIR NATURE IN RELATIONSHIP TO HIS EMPLOYMENT UNTIL 1975 WHEN DR. RAAF MADE THIS DIAGNOSIS AND INFORMED CLAIMANT OF ITS WORK RELATIONSHIP.

CLAIMANT, 60 YEARS OLD AT THE TIME OF THE HEARING, HAS BEEN EMPLOYED BY THE WATER BUREAU FOR THE CITY OF PORTLAND SINCE 1949 AS A LABORER AND A WATER SERVICE MECHANIC. HE ALLEGES THAT HE HAS SUFFERED AN OCCUPATIONAL DISEASE (CARPAL TUNNEL SYNDROME OF BOTH HANDS) AS A RESULT OF HIS WORK ACTIVITIES. CLAIMANT FILED A CLAIM FOR THIS CONDITION ON SEPTEMBER 30, 1975 AND IT WAS DENIED BY THE FUND ON NOVEMBER 17, 1975.

CLAIMANT TESTIFIED THAT HIS DUTIES AS A LABORER FROM 1949 TO 1952 INCLUDED DIGGING DITCHES USING A CROWBAR AND SHOVEL MOST OF THE TIME AND FROM 1952 UNTIL 1956 HE HAD BEEN EMPLOYED AS A WATER SERVICE MECHANIC WHICH INVOLVED CAULKING THE JOINTS OF SIX INCH WATER MAINS AND USING A HAMMER, WRENCHES AND PLIERS. FROM 1956 TO THE PRESENT TIME CLAIMANT HAS BEEN EMPLOYED AS A FOREMAN IN THE SERVICE CREW DOING THE SAME TYPE OF WORK BUT NOT WITH THE SAME FREQUENCY. HE HAS HAD INCREASING DIFFICULTY WITH HIS HANDS OVER THE PAST FIVE YEARS. DR. STEELE GAVE HIM RHEUMATISM PILLS AND DR. BENNETT TOLD

HIM TO STOP SMOKING BUT IT WAS NOT UNTIL 1975 THAT HIS OWN DOCTOR, DR. LAWRENCE, REFERRED CLAIMANT TO DR. RAAF WHO DIAGNOSED BILATERAL CARPAL TUNNEL SYNDROME AND RELATED THE CONDITION TO CLAIMANT'S WORK ACTIVITY AND SO ADVISED THE CLAIMANT.

ON OCTOBER 2, 1975 DR. RAAF PERFORMED SURGERY ON BOTH OF CLAIMANT'S WRISTS.

DR. NATHAN, WHO SPECIALIZES IN HAND INJURIES, EXPRESSED HIS OPINION, ON JANUARY 27, 1976, THAT THE CONDITION WAS NOT RELATED TO THE WORK. THIS OPINION WAS CONCURRED IN BY DR. HARWOOD, A MEDICAL CONSULTANT WITH THE FUND, ALTHOUGH HIS OPINION WAS SOMEWHAT MORE QUALIFIED THAN DR. NATHANS'.

THE REFEREE FOUND THAT DR. NATHAN APPARENTLY CONSIDERED ONLY CLAIMANT'S USE OF A JACKHAMMER AND EITHER IGNORED OR WAS UNAWARE OF CLAIMANT'S OTHER JOB ACTIVITIES WHICH REQUIRED CONSTANT USE OF HIS HANDS AND ARMS.

THE REFEREE ACCEPTED THE OPINION OF DR. RAAF AND CONCLUDED THAT CLAIMANT HAD SUSTAINED THE BURDEN OF PROVING HE HAD SUFFERED A COMPENSABLE OCCUPATIONAL DISEASE. HE, ACCORDINGLY, DIRECTED THE FUND TO ACCEPT THE CLAIM AND, BECAUSE THE DENIAL WAS IMPROPER, HE DIRECTED THE FUND TO PAY CLAIMANT'S ATTORNEY A REASONABLE ATTORNEY FEE.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS AND ADOPTS THE CONCISE AND WELL WRITTEN OPINION OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 16, 1976, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW IN THE SUM OF 400 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

SAIF CLAIM NO. PC 175492 AUGUST 5, 1976

LAWRENCE O. BEMAN, CLAIMANT

DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

CLAIMANT SUFFERED A COMPENSABLE INDUSTRIAL INJURY ON MARCH 25, 1969 TO HIS RIGHT FOOT. DR. HOLBERT DIAGNOSED A FRACTURE OF THE RIGHT 5TH METATARSAL. A DETERMINATION ORDER ISSUED ON AUGUST 25, 1969 GRANTED TEMPORARY TOTAL DISABILITY AND 10 PER CENT LOSS OF THE RIGHT FOOT FOR PERMANENT PARTIAL DISABILITY.

ON AUGUST 27, 1970 CLAIMANT REQUESTED A HEARING ON THE ISSUE OF EXTENT OF DISABILITY WHICH WAS, ON OCTOBER 14, 1970, DISMISSED FOR NON-COMPLIANCE WITH ORS 656.268(4).

CLAIMANT'S CLAIM WAS REOPENED FOR EXCISION OF A BONE SPUR ON MARCH 2, 1972 BY DR. HOLBERT.

ON AUGUST 9, 1972 DR. HOLBERT FOUND CLAIMANT'S CONDITION MEDICALLY STATIONARY - HE STATED CLAIMANT'S CONDITION WAS NO DIFFERENT THAN IN JULY, 1970. A SECOND DETERMINATION ORDER ISSUED ON AUGUST 22, 1972 GRANTED CLAIMANT ADDITIONAL COMPENSATION FOR TEMPORARY TOTAL

DISABILITY ONLY. CLAIMANT'S AGGRAVATION RIGHTS HAVE EXPIRED.

SURGERY FOR AN ARTHRODESIS OF THE 1ST METATARSAL AND CUNEIFORM BONES OF THE RIGHT FOOT WAS PERFORMED BY DR. CASE ON NOVEMBER 24, 1975 AND THE STATE ACCIDENT INSURANCE FUND REOPENED CLAIMANT'S CLAIM FOR THIS SURGERY.

A DETERMINATION WAS REQUESTED ON JULY 8, 1976 AND THE EVALUATION DIVISION RECOMMENDED ADDITIONAL COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM NOVEMBER 24, 1975 THROUGH MAY 9, 1976, INCLUSIVE, BUT NO FURTHER AWARD FOR PERMANENT PARTIAL DISABILITY, BASED ON DR. CASE'S CLOSING EXAMINATION WHICH FOUND CLAIMANT'S FOOT CONDITION IMPROVED SINCE AUGUST, 1969.

ORDER

CLAIMANT IS GRANTED ADDITIONAL COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM NOVEMBER 24, 1975 THROUGH MAY 9, 1976, INCLUSIVE.

WCB CASE NO. 75-2190 AUGUST 6, 1976

SHARON L. ANDERSON, CLAIMANT

ANNE MAC DONALD, CLAIMANT'S ATTY.
BRYANT AND ERICKSON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE EMPLOYER SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH FOUND CLAIMANT'S CLAIM TO BE COMPENSABLE BUT BECAUSE THE DENIAL THEREOF WAS NOT UNTIMELY AND, BECAUSE OF VARIOUS POSSIBLE INTERPRETATIONS OF THE MEDICAL REPORT, WAS NOT UNREASONABLE SO HE ASSESSED NO PENALTIES AGAINST THE EMPLOYER.

CLAIMANT IS A DENTAL ASSISTANT WHO WAS WORKING FOR DR. ARMSTRONG, A DIRECT RESPONSIBILITY EMPLOYER, ON DECEMBER 1, 1971. AT THAT TIME THE DOCTOR'S PRACTICE WAS NOT LARGE - HOWEVER, SINCE THAT TIME HIS PRACTICE HAS GROWN AND THE TESTIMONY INDICATED THAT CLAIMANT IS CONSTANTLY BUSY AT HER STATION. IN HER CAPACITY AS A DENTAL ASSISTANT CLAIMANT IS REQUIRED TO SIT OPPOSITE THE DENTIST LEANING TO HER LEFT AND SLIGHTLY FORWARD IN A CHAIR WHICH IS SLIGHTLY HIGHER THAN THE DENTIST'S AND FACING THE DENTIST SO THAT THE PATIENT'S HEAD IS IN A HORIZONTAL POSITION BETWEEN THEM. IT IS NOT POSSIBLE FOR CLAIMANT TO CHANGE HER POSITION WHILE THE DENTIST IS WORKING ON A PATIENT.

CLAIMANT TESTIFIED, AND HER TESTIMONY WAS CORROBORATED BY DR. ARMSTRONG, THAT ABOUT THREE MONTHS AFTER SHE COMMENCED HER EMPLOYMENT SHE BEGAN TO DEVELOP HEADACHES WHICH GRADUALLY INCREASED IN RATIO TO THE INCREASE IN HER WORK LOAD. AT THE ONSET, CLAIMANT CONSULTED AN EYE DOCTOR AND WAS ADVISED THAT HER EYES WERE NORMAL. HER FAMILY PHYSICIAN, DR. THOMAS, SUGGESTED THE POSSIBILITY OF MIGRAINE HEADACHES AND PRESCRIBED MEDICATION WHICH HELPED ONLY FOR A SHORT PERIOD OF TIME. DR. THOMAS, SPECULATING THAT HER HEADACHES WERE A RESULT OF TENSION, PRESCRIBED A TRANQUILIZER WHICH CLAIMANT TESTIFIED ALLOWED HER TO RELAX BUT DID NOT ALLEVIATE THE SEVERITY OF HER HEADACHES. A PRESCRIBED MUSCLE RELAXANT ALSO FAILED TO GIVE ANY RELIEF TO CLAIMANT AND, ULTIMATELY, DR. THOMAS REFERRED HER TO A NEUROLOGIST, DR. MILLER, WHO SUGGESTED THE POSSIBILITY OF A CONNECTION

BETWEEN THE HEADACHES AND HER EMPLOYMENT. HE ADVISED HER, BY LETTER TO DR. THOMAS, THAT SHE MIGHT HAVE TO CHANGE HER JOB IF THE AWKWARD POSITION SHE WAS REQUIRED TO BE IN FOR LONG PERIODS OF TIME REPRODUCED HER SYMPTOMS. FOLLOWING THIS CLAIMANT FILED A FORM 801 IN OCTOBER, 1974. HER CLAIM WAS INITIALLY ACCEPTED WITH BENEFITS PAID AND A DETERMINATION ORDER, MAILED ON FEBRUARY 27, 1975, AWARDED CLAIMANT COMPENSATION FOR TIME LOSS ONLY.

SUBSEQUENTLY, CLAIMANT WAS EXAMINED BY DR. LARSON AND DR. EISLER AND, THEREAFTER, THE CARRIER ELECTED TO DISCLAIM RESPONSIBILITY FOR SUCH EXAMINATION AND TREATMENT, FOR ANY FUTURE MEDICAL BILLS AND ANY FUTURE DISABILITY BENEFITS.

THE REFEREE FOUND CLAIMANT TO BE VERY CREDIBLE. IT WAS OBVIOUS THAT SHE WAS SUFFERING FROM HEADACHES AS SHE DESCRIBES AND SHE WAS SINCERELY CONVINCED THAT THESE HEADACHES AROSE DIRECTLY OUT OF AND SOLELY BECAUSE OF HER EMPLOYMENT, A CONTENTION SHARED BY HER EMPLOYER. THE REFEREE FOUND THAT CLAIMANT FELT CONSISTENTLY BETTER DURING HER THREE DAY WEEKEND - BY SUNDAY NIGHT THE HEADACHES WOULD COMPLETELY DISAPPEAR BUT WOULD COMMENCE AGAIN ON MONDAY AND GROW STEADILY WORSE UNTIL THURSDAY NIGHT.

THE REFEREE FOUND NO EVIDENCE AS TO WHY THE DENIAL WAS ISSUED SOME MONTHS AFTER THE CLAIM WAS ORIGINALLY ACCEPTED. THE MEDICAL EVIDENCE INDICATES THAT CLAIMANT'S ATTENDING PHYSICIAN, DR. THOMAS, REFERRED CLAIMANT TO DR. LARSON, A NEUROLOGIST, AND ASSUMED THAT DR. LARSON REFERRED CLAIMANT TO DR. EISLER AT GOOD SAMARITAN HOSPITAL. THE GOOD SAMARITAN HOSPITAL REPORT INDICATES DR. LARSON AS THE ATTENDING PHYSICIAN AND HE FOUND IT DIFFICULT TO UNDERSTAND WHY THE CARRIER WOULD ISSUE A DENIAL AT THAT POINT IN TIME.

A REVIEW OF THE COMMENTS OF SEVERAL MEDICAL REPORTS INDICATES THE POSSIBILITY THAT CLAIMANT INTERPRETED DR. EISLER'S REPORT TO INDICATE CLAIMANT'S PROBLEMS AROSE AS A SIDE EFFECT TO CONTRACEPTIVE TREATMENT RATHER THAN FROM HER EMPLOYMENT. EVEN THOUGH HE DISCUSSED THIS POSSIBILITY, DR. EISLER ALSO STATED THAT HER WORK HABITS MAY BE A CONTRIBUTING FACTOR AND IN SOME WAYS THE HEADACHES ARE LIKE A MUSCLE CONTRACTION HEADACHE EVEN ANALGESICS DO NOT SEEM TO HELP. THE REFEREE CONCLUDED THAT THE CLAIM WAS COMPENSABLE.

WITH RESPECT TO CLAIMANT'S ARGUMENT THAT THE EMPLOYER'S DENIAL WAS NOT TIMELY, THE REFEREE FOUND THAT A DENIAL COULD BE MADE AT ANY TIME EVEN THOUGH THE CLAIM HAS BEEN PREVIOUSLY ACCEPTED. THE DETERMINATION ORDER HAD AWARDED NO COMPENSATION FOR PERMANENT DISABILITY - HOWEVER, UNDER THE PROVISIONS OF ORS 656.245 THE CARRIER REMAINS RESPONSIBLE FOR PAYMENT OF MEDICAL EXPENSES INCURRED AS A RESULT OF THE INDUSTRIAL INJURY REGARDLESS OF THE FACT THAT A DETERMINATION HAD BEEN MADE. IN THIS CASE THE DENIAL WAS ISSUED SUBSEQUENT TO THE DETERMINATION ORDER AND INTENDED TERMINATING THE CLAIMANT'S RIGHTS UNDER ORS 656.245.

THE REFEREE CONCLUDED THAT BY SETTING ASIDE THE DENIAL THE EFFECT WAS TO ORDER PAYMENT OF ALL MEDICAL EXPENSES INCURRED UNDER THE PROVISIONS OF ORS 656.245 ONLY. THE REFEREE STATED THAT HIS ORDER SHOULD NOT EFFECT CLAIMANT'S RIGHT TO APPEAL THE ADEQUACY OF THE DETERMINATION ORDER ENTERED ON FEBRUARY 27, 1975. HE ORDERED THE CLAIM REMANDED TO THE CARRIER FOR PAYMENT OF COMPENSATION, AS PROVIDED BY ORS 656.245, AND DIRECTED THE CARRIER TO PAY CLAIMANT'S ATTORNEY A REASONABLE ATTORNEY FEE BECAUSE OF ITS IMPROPER DENIAL.

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

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 10, 1976, IS AFFIRMED.

CLAIMANT'S ATTORNEY IS AWARDED AS A REASONABLE ATTORNEY FEE FOR SERVICES IN CONNECTION WITH BOARD REVIEW, THE SUM OF 350 DOLLARS, PAYABLE BY THE EMPLOYER.

WCB CASE NO. 75-2998 AUGUST 6, 1976

STANLEY HASEY, CLAIMANT

J. DAVID KRYGER, CLAIMANT'S ATTY.
BERNARD STEA, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT 80 DEGREES FOR 25 PER CENT UNSCHEDULED NECK DISABILITY. CLAIMANT CONTENDS THIS IS AN INADEQUATE AWARD.

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS NECK ON FEBRUARY 8, 1974 AND RE-INJURED OR EXACERBATED THAT CONDITION ON JUNE 7, 1974. CLAIMANT WAS SUBSEQUENTLY EXAMINED BY DRS. BECKER, NICKILA AND GRIPEKOVEN WITH A DIAGNOSIS OF ACUTE CERVICAL SPRAIN SUPERIMPOSED ON A PRE-EXISTING DEGENERATIVE CERVICAL SPINE CONDITION.

BOTH DRS. BECKER AND GRIPEKOVEN FOUND CLAIMANT HAS LIMITATION OF MOTION OF HIS NECK AND PAIN AND DISCOMFORT IN HIS NECK AND SHOULDER AREA. ON NOVEMBER 1, 1974 DR. GRIPEKOVEN FOUND CLAIMANT'S CONDITION MEDICALLY STATIONARY AND STATED 'NO SPECIFIC TREATMENT IS INDICATED AT THE PRESENT TIME'. HE RELEASED CLAIMANT TO ANY SEDENTARY JOB WHICH DID NOT REQUIRE ANY LIFTING OR PLACING THE BODY IN AWKWARD POSITIONS. SUCH LIMITATIONS PRECLUDED CLAIMANT FROM RETURNING TO HIS FORMER OCCUPATION.

A DETERMINATION ORDER ISSUED ON JANUARY 14, 1975 GRANTED CLAIMANT COMPENSATION FOR TEMPORARY TOTAL DISABILITY AND 32 DEGREES FOR 10 PER CENT UNSCHEDULED DISABILITY.

CLAIMANT WAS OFFERED A LIGHTER-TYPE JOB WITH THE EMPLOYER BUT EVEN AFTER CLAIMANT WAS RELEASED FOR SEDENTARY EMPLOYMENT HE DIDN'T RETURN TO HIS JOB UNTIL THE SPRING OF 1975. CLAIMANT QUIT WORKING IN MAY, 1975 AND HAS BEEN DRAWING UNEMPLOYMENT SINCE.

THE REFEREE FOUND THAT CLAIMANT COULD HANDLE SOME TYPES OF LIGHT WORK WITH HIS PHYSICAL LIMITATIONS AND RESTRICTIONS BUT THESE LIMITATIONS WOULD PRECLUDE HIM FROM RETURNING TO HIS FORMER OCCUPATION. HE CONCLUDED THAT AN AWARD OF 25 PER CENT OF THE MAXIMUM WOULD MORE ADEQUATELY COMPENSATE CLAIMANT FOR HIS LOSS OF WAGE EARNING CAPACITY AND HE GRANTED CLAIMANT AN ADDITIONAL 15 PER CENT.

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

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 6, 1976, IS AFFIRMED.

WCB CASE NO. 75—3088 AUGUST 6, 1976
WCB CASE NO. 75—4754

REX HENDRICKSON, CLAIMANT

RICHARD NESTING, CLAIMANT'S ATTY.
G. HOWARD CLIFF, DEFENSE ATTY.
JAMES HUEGLI, 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—2054 AUGUST 6, 1976

VIVIAN JOHNSON, CLAIMANT

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

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

THE CLAIMANT SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH FOUND THAT THE DETERMINATION ORDER, MAILED JUNE 15, 1970, BY WHICH CLAIMANT WAS AWARDED COMPENSATION FOR TEMPORARY TOTAL DISABILITY TO JUNE 5, 1970, LESS TIME WORKED, AND 32 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK DISABILITY, WAS A VALID ORDER AND SHOULD NOT BE SET ASIDE — THAT THE SECOND DETERMINATION ORDER, MAILED AUGUST 15, 1975, WHICH AWARDED CLAIMANT ADDITIONAL COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM OCTOBER 25, 1971 THROUGH OCTOBER 25, 1973 AND FROM NOVEMBER 13, 1974 THROUGH NOVEMBER 25, 1974, BUT NO ADDITIONAL COMPENSATION FOR PERMANENT PARTIAL DISABILITY SHOULD BE MODIFIED TO AWARD CLAIMANT ADDITIONAL COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM OCTOBER 26, 1973 THROUGH SEPTEMBER 19, 1974, PLUS A PENALTY EQUAL TO 25 PER CENT OF SUCH COMPENSATION AND AFFIRMED IN ALL OTHER RESPECTS, AND DIRECTED THE STATE ACCIDENT INSURANCE FUND TO PAY CLAIMANT'S COUNSEL AN ATTORNEY FEE.

CLAIMANT WAS A 37 YEAR OLD WAITRESS WHEN SHE SUFFERED A COMPENSABLE INJURY ON DECEMBER 13, 1969. CLAIMANT HAS NOT WORKED SINCE THAT DATE EXCEPT FOR A FEW HOURS.

ON JUNE 15, 1970 THE CLAIM WAS CLOSED WITH AN AWARD OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY TO JUNE 5, 1970 AND 32 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK DISABILITY. THE CLAIMANT REQUESTED A REVIEW AND THE FUND WAS ORDERED TO REOPEN THE CLAIM FOR FURTHER MEDICAL CARE AND TREATMENT UNTIL THE CLAIM WAS AGAIN CLOSED AND TO PAY CLAIMANT APPROPRIATE COMPENSATION FROM OCTOBER 25, 1971 UNTIL CLAIMANT BECAME MEDICALLY STATIONARY. THE REFEREE'S ORDER WAS AFFIRMED BY THE COURT OF APPEALS. JOHNSON V. SAIF (UNDERSCORED), 99 OR ADV SH 765.

CLAIMANT HAS BEEN SEEN BY NUMEROUS SPECIALISTS ALL OF WHOM HAVE FAILED TO COME UP WITH ANY SIGNIFICANT POSITIVE FINDINGS, ORTHOPEDICALLY OR NEUROLOGICALLY. ON OCTOBER 25, 1973, DR. HOLLAND, A

PSYCHIATRIST, AFTER HAVING TREATED CLAIMANT FOR SEVERAL MONTHS, CONCLUDED THAT CLAIMANT'S PSYCHIATRIC CONDITION WAS STATIONARY AND NON-DISABLING. ON SEPTEMBER 19, 1974, DR. ADAMS, AN ORTHOPEDIST, REPORTED THAT CLAIMANT WAS STATIONARY AS OF OCTOBER 25, 1973.

LATE IN 1974 CLAIMANT MOVED TO PORTLAND AND COMMENCED RECEIVING TREATMENTS FROM DR. POST, WHO INDICATED, ON NOVEMBER 13, 1974, THAT CLAIMANT WAS FUNDAMENTALLY MEDICALLY STATIONARY. ON APRIL 9, 1975, DR. POST ADVISED THE FUND THAT CLAIMANT WAS MEDICALLY STATIONARY AND THAT HE WAS DISAPPOINTED THAT THE DISABILITY PREVENTION DIVISION WOULD NOT EVALUATE CLAIMANT - HE FELT CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED FROM RETURNING TO WORK AS A WAITRESS AND WITHOUT ANY VOCATIONAL RETRAINING SHE WOULD BE PERMANENTLY AND TOTALLY DISABLED FROM RETURNING TO ANY OCCUPATION.

ON JUNE 30, 1975 AND AGAIN ON JULY 18, 1975, DR. POST RECOMMENDED THAT CLAIMANT BE SEEN BY A RHEUMATOLOGIST TO DETERMINE IF CLAIMANT HAD AN INFLAMMATORY JOINT DISEASE THAT MIGHT BE RELATED TO HER COMPENSABLE INJURY - HOWEVER, INSTEAD OF FOLLOWING DR. POST'S RECOMMENDATION, THE FUND SUBMITTED A CLAIM FOR A CLOSURE WHICH WAS AFFECTED BY THE SECOND DETERMINATION ORDER MAILED AUGUST 15, 1975.

ON NOVEMBER 12, 1975 THE REFEREE ENTERED AN INTERIM ORDER DIRECTING THE FUND TO PROVIDE FOR A RHEUMATOLOGIC CONSULTATION WITH DR. ROSENBAUM. DR. ROSENBAUM, ON DECEMBER 29, 1975, EXPRESSED HIS OPINION THAT CLAIMANT MIGHT HAVE RHEUMATIC OR COLLAGEN DISEASE WHICH HE WAS UNABLE TO RELATE IN ANY WAY TO AN INDUSTRIAL ACCIDENT.

CLAIMANT'S CLAIM WITH VOCATIONAL REHABILITATION DIVISION WAS CLOSED ON OCTOBER 13, 1975. HER REHABILITATION COUNSELOR FELT THAT HER PHYSICAL PROBLEMS PREVENTED HER FROM FOLLOWING THROUGH WITH A TRAINING PROGRAM OR WITH WORKING - HE DID CONGRATULATE CLAIMANT ON HER EFFORTS STATING THAT SHE HAD GIVEN IT A VERY GOOD TRY, BUT IT WAS NOT THE TIME AND SHE WAS JUST NOT READY FOR RETRAINING.

BASED UPON THE ABOVE EVIDENCE, THE REFEREE FOUND THAT CLAIMANT COULD NOT COLLATERALLY ATTACK THE FIRST DETERMINATION ORDER AS BEING PREMATURE BECAUSE THE MATTER WAS RES JUDICATA. ALSO, IT WOULD, IN EFFECT, AMOUNT TO MODIFICATION BY A REFEREE OF A JUDGMENT RENDERED BY THE COURT OF APPEALS.

THE REFEREE DID FIND, HOWEVER, THAT CLAIMANT WAS NOT MEDICALLY STATIONARY ANY TIME BETWEEN OCTOBER 26, 1973 AND SEPTEMBER 19, 1974 - DR. ADAMS' STATEMENT THAT SHE WAS MEDICALLY STATIONARY AS OF OCTOBER 25, 1973 TO THE CONTRARY. HE FOUND, BASED UPON THE MEDICAL EVIDENCE, THAT CLAIMANT HAD BEEN ADEQUATELY COMPENSATED FOR HER UNSCHEDULED LOW BACK DISABILITY BY THE AWARD OF 32 DEGREES. CLAIMANT'S OWN DOCTOR FELT HER OBJECTIVE IMPAIRMENT WAS MINIMAL BUT THAT THE PSYCHOLOGICAL PROBLEMS RELATED TO HER INJURY CAUSED SIGNIFICANT DISABILITY, BUT HER PSYCHIATRIST, DR. HOLLAND, FOUND HER PSYCHIATRIC CONDITION STATIONARY AND NON-DISABLING.

THE REFEREE, ALTHOUGH NOTING THAT CLAIMANT WAS EXCELLENTLY MOTIVATED AND THAT DR. HOLLAND HAD SPECIFICALLY RULED OUT MALINGERING AND UNCONSCIOUS SECONDARY GAIN, FELT THAT THE REASONS HE EXPRESSED IN SUPPORT THEREOF TENDED TO UNDERMINE HIS OPINION.

THE REFEREE FOUND THAT THE FUND HAD REFUSED TO PAY CLAIMANT COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM OCTOBER 25, 1973 TO THE DATE THE CLAIM SHOULD HAVE BEEN PROPERLY CLOSED (SEPTEMBER 19, 1974). THE FUND APPARENTLY QUIT PAYING COMPENSATION FOR TIME LOSS ON OCTOBER 25, 1973 BASED ON DR. HOLLAND'S REPORT THAT CLAIMANT WAS THEN PSYCHIATRICALLY STATIONARY. THE REFEREE FOUND NOTHING

IN THE RECORD TO INDICATE WHY IT TOOK NEARLY ONE YEAR TO OBTAIN DR. ADAMS' CONFIRMATION THAT CLAIMANT WAS ORTHOPEDICALLY STATIONARY AS OF OCTOBER 25, 1973. HE,THEREFORE, ASSESSED A PENALTY FOR FAILURE TO PAY COMPENSATION BETWEEN OCTOBER 26, 1973 AND SEPTEMBER 20, 1974, FINDING THAT THE DELAY WAS UNREASONABLE AND JUSTIFIED NOT ONLY THE ASSESSMENT OF THE PENALTY BUT AN AWARD OF A REASONABLE ATTORNEY FEE TO BE PAID BY THE FUND.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT THE MEDICAL EVIDENCE INDICATES THAT CLAIMANT HAS NOT BEEN ADEQUATELY COMPENSATED BY AN AWARD OF 10 PER CENT OF THE MAXIMUM ALLOWED BY STATUTE FOR HER UNSCHEDULED DISABILITY. CLAIMANT'S BACK PROBLEMS HAVE BEEN SO DISABLING THAT CLAIMANT HAS BEEN UNABLE TO RETURN TO WORK EXCEPT FOR A FEW SHORT PERIODS OF TIME. AFTER SHE WAS RELEASED BY DR. CHATBURN TO RETURN TO HER USUAL WORK SHE TRIED ON TWO SEPARATE WEEKENDS TO RETURN TO WORK AS A WAITRESS BUT FOUND THAT SERVING TABLES AND CARRYING TRAYS CAUSED HER SEVERE LOW BACK PAIN AND SHE HAD TO DISCONTINUE AND RETURN TO DR. CHATBURN FOR FURTHER TREATMENT. LATER, DR. LUCE HOSPITALIZED CLAIMANT AND WHEN CLAIMANT REMAINED ESSENTIALLY SYMPTOMATIC AND DISABLED, HE RECOMMENDED FURTHER ORTHOPEDIC EVALUATION. CLAIMANT WAS EXAMINED BY DR. HOLBERT WHO THOUGHT CLAIMANT WAS MEDICALLY STATIONARY, AFTER EXAMINING HER ON JUNE 4, 1970, AND HE RECOMMENDED CLAIM CLOSURE BUT ALSO RECOMMENDED THAT SHE WEAR A LUMBOSACRAL CORSET COMMONLY DESCRIBED AS A 'FUSION BRACE'. ON JUNE 12, 1970 CLAIMANT AGAIN TRIED TO RETURN TO WORK. SHE WORE HER LUMBOSACRAL BRACE BUT FOUND SHE COULD NOT CARRY THE TRAYS AND TRIED TO RESTRICT HER ACTIVITIES TO JUST TAKING ORDERS. AFTER AN HOUR SHE TOLD HER EMPLOYER THAT SOMEONE ELSE WOULD HAVE TO TAKE OVER. SHE COULD NOT CONTINUE. SHE DID NOT RETURN TO ANY TYPE OF WORK SINCE THAT DATE.

CLAIMANT CONTINUED TO BE TREATED BY HER FAMILY PHYSICIAN, DR. FRENCH, AND ALSO BY DR. HOLBERT AND DR. LUCE. IN THE SPRING OF 1972, DR. LUCE DIAGNOSED A CERVICAL CEPHALGIA, THORACIC OUTLET SYNDROME, BILATERAL, AND DEGENERATIVE DISC AT C5-6 WITH BILATERAL NERVE ROOT DEFORMITY, BUT HE COULD FIND NO REASON FOR NEUROSURGICAL TREATMENT AND RECOMMENDED CONTINUING TRACTION AND HEAT. DR. LUCE FELT THE AWARD OF 32 DEGREES WAS ADEQUATE FOR CLAIMANT'S LOW BACK DISABILITY, BUT HE ALSO FELT SHE WAS ENTITLED TO SOME CONSIDERATION FOR HER DISABILITY IN THE CERVICAL AREA.

CLAIMANT WAS THEN SEEN BY DR. HOLLAND, A PSYCHIATRIST, TO DETERMINE HOW MUCH OF HER DISABILITY WAS PSYCHOGENIC. HE FELT THAT CLAIMANT'S PRESENT SYMPTOMATOLOGY WAS DIRECTLY RELATED TO HER INDUSTRIAL INJURY OF 1969 AND THAT PART OF IT WAS PSYCHOGENIC AND HE, THEREFORE, RECOMMENDED FURTHER MEDICAL EVALUATION TO DIAGNOSE OR RULE OUT A SURGICALLY TREATABLE MALADY.

CLAIMANT WAS SEEN BY DR. HOCKEY, A NEUROSURGEON, WHO FOUND CLAIMANT DID HAVE A FOURTH AND FIFTH HYPALGESIA AND CONSIDERABLE DIFFICULTY IN ABDUCTION OF HER RIGHT ARM BUT HE COULD FIND NO OBJECTIVE NEUROLOGICAL BASIS FOR THESE SYMPTOMS. DR. HOLLAND THEN RECOMMENDED THAT A COURSE OF EXPLORATORY PSYCHO-THERAPY, STATING THAT CLAIMANT WAS EXPERIENCING INTENSIFICATION OF HER SYMPTOMS, WHICH WAS PSYCHOPHYSIOLOGICALLY DETERMINED. AFTER SEEING CLAIMANT ON FOUR SEPARATE OCCASIONS, DR. HOLLAND FELT CLAIMANT HAD A PREMORBID PERSONALITY WHICH HE SUSPECTED WOULD MAKE HER VULNERABLE TO A POSTTRAUMATIC SEQUELA.

AFTER DR. HOLLAND RELEASED CLAIMANT FROM PSYCHIATRIC TREATMENT SHE MOVED FROM COOS BAY TO PORTLAND AND CAME UNDER THE CARE OF DR. POST. HE STATED, UNEQUIVOCALLY, THAT CLAIMANT MUST HAVE SOME ASSISTANCE IN THE FIELD OF VOCATIONAL REHABILITATION OR SHE WOULD BE PERMANENTLY AND TOTALLY DISABLED AND THAT SHE CERTAINLY COULD NEVER

RETURN TO HER REGULAR EMPLOYMENT AS A WAITRESS. CLAIMANT, ON HER OWN INITIATIVE, MADE CONTACT WITH THE VOCATIONAL REHABILITATION DIVISION SEEKING ASSISTANCE AND GUIDANCE IN SOME TYPE OF WORK COMPATIBLE WITH HER DISABILITY. HER COUNSELOR FOUND CLAIMANT'S PHYSICAL PROBLEMS WERE OF SUCH MAGNITUDE THAT HE DOUBTED THE FEASIBILITY OF REHABILITATION BUT CLAIMANT NEVERTHELESS PERSISTED IN HER EFFORTS AND WAS FINALLY REFERRED TO A SPECIAL PROGRAM AT GOODWILL. ULTIMATELY, IT WAS FOUND THAT CLAIMANT'S PAIN AND DISCOMFORT INTERFERED WITH HER CONCENTRATION AND WITH HER ABILITY TO WORK AND, AS A RESULT, HER CLAIM AT VOCATIONAL REHABILITATION DIVISION WAS CLOSED.

THE BOARD FINDS THAT, ALTHOUGH CLAIMANT IS NOT WITHIN THE 'ODD-LOT' CATEGORY, SHE HAS SUFFERED A SUBSTANTIAL LOSS OF WAGE EARNING CAPACITY BECAUSE OF HER LIMITED JOB EXPERIENCE AND HER POOR VOCATIONAL APTITUDE. THE LATTER IS CERTAINLY NOT THE FAULT OF CLAIMANT, THE EVIDENCE INDICATES THAT SHE HAS PERSEVERED TO A GREAT EXTENT IN ATTEMPTING TO OBTAIN VOCATIONAL REHABILITATION BUT BECAUSE OF THE SEVERITY OF HER PAIN SHE SIMPLY IS NOT RETRAINABLE.

THE BOARD CONCLUDES THAT CLAIMANT IS ENTITLED TO AN AWARD OF 160 DEGREES WHICH IS 50 PER CENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR HER UNSCHEDULED DISABILITY. THE BOARD RELIES HEAVILY ON THE REPORTS AND OPINIONS OF DR. POST. DR. HOLLAND ADDRESSED HIS REPORTS ONLY TO THE PSYCHIATRIC RESIDUALS AND STATED THAT THEY WERE NOT IN AND OF THEMSELVES DISABLING. HOWEVER, IN HIS AUGUST, 1972 OPINION, HE ESTIMATED THAT CLAIMANT'S DISABILITY WAS 75 PER CENT PHYSICAL AND 25 PER CENT EMOTIONAL. DR. POST, ON THE OTHER HAND, TOOK INTO CONSIDERATION ALL OF CLAIMANT'S RESIDUALS, BOTH PSYCHIATRIC AND PHYSICAL, AND WAS OF THE OPINION THAT THERE WAS SUBSTANTIAL DISABILITY. THE BOARD AGREES.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 18, 1976, IS MODIFIED.

CLAIMANT IS AWARDED 160 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. THIS IS IN LIEU OF THE PREVIOUS AWARD OF 32 DEGREES GRANTED BY THE DETERMINATION ORDER MAILED JUNE 15, 1970. IN ALL OTHER RESPECTS, THE ORDER OF THE REFEREE IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW THE SUM EQUAL TO 25 PER CENT OF THE INCREASED COMPENSATION AWARDED CLAIMANT BY THIS ORDER, PAYABLE OUT OF SUCH COMPENSATION AS PAID, NOT TO EXCEED A MAXIMUM OF 2,300 DOLLARS.

WCB CASE NO. 75-2760 AUGUST 6, 1976

LUTHER ANDERSON, JR., CLAIMANT

GARY GALTON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED TO IT CLAIMANT'S CLAIM TO BE ACCEPTED FOR PAYMENT OF TEMPORARY TOTAL DISABILITY COMPENSATION FROM THE DATE CLAIMANT IS ENROLLED AT THE DIVISION OF VOCATIONAL REHABILITATION PROGRAM UNTIL COMPLETION OF THAT PROGRAM, STATING THAT PAYMENT OF

CLAIMANT'S PRESENT PERMANENT PARTIAL DISABILITY AWARD SHALL BE HELD IN ABEYANCE DURING THIS TRAINING AND SHALL BE RESUMED UPON COMPLETION THEREOF. THE REFEREE AWARDED CLAIMANT'S COUNSEL AN ATTORNEY FEE EQUAL TO 25 PER CENT OF THE TEMPORARY TOTAL DISABILITY COMPENSATION AND 25 PER CENT OF ANY ADDITIONAL PERMANENT PARTIAL DISABILITY CLAIMANT MIGHT RECEIVE AS A RESULT OF A SUBSEQUENT CLOSURE BY THE EVALUATION DIVISION OF THE WORKMEN'S COMPENSATION BOARD TO A MAXIMUM OF 500 DOLLARS FROM THE TEMPORARY TOTAL DISABILITY COMPENSATION AND AN AGGRAGATE MAXIMUM OF BOTH TEMPORARY TOTAL DISABILITY AND PERMANENT PARTIAL DISABILITY COMPENSATION OF 2,000 DOLLARS PAYABLE OUT OF COMPENSATION AS PAID.

THE CLAIMANT CROSS-REQUESTS BOARD REVIEW, CONTENDING THE REFEREE FAILED TO AWARD PENALTIES AND ATTORNEY FEES FOR THE FUND'S ALLEGED FAILURE TO COMPLY TIMELY WITH THE ORDER OF REFEREE FINK ENTERED MAY 28, 1975 IN WCB CASE NO. 74-4617.

CLAIMANT SUFFERED AN INJURY ON NOVEMBER 20, 1973 FOR WHICH HE FILED A CLAIM ON JUNE 5, 1974. THE CLAIM WAS DENIED BY THE FUND ON AUGUST 1, 1974 ON THE GROUNDS THAT THE INJURY DID NOT ARISE OUT OF AND IN THE COURSE AND SCOPE OF CLAIMANT'S EMPLOYMENT AND, FURTHERMORE, THAT CLAIMANT HAD FAILED TO NOTIFY HIS EMPLOYER OF THE ALLEGED ACCIDENT WITHIN 30 DAYS AND THAT THE FUND HAD BEEN PREJUDICED BY SUCH FAILURE.

THE CLAIMANT REQUESTED A HEARING AND, AS A RESULT THEREOF, AN ORDER WAS ENTERED ON NOVEMBER 26, 1974 BY REFEREE LEAHY, WHICH REMANDED THE CLAIM TO THE FUND FOR PAYMENT OF COMPENSATION FROM MAY 14, 1974, LESS PAYMENTS MADE ALREADY, AND UNTIL TERMINATION WAS AUTHORIZED BY ORS 656.268 AND ASSESSED A PENALTY AGAINST THE FUND FOR UNREASONABLE DELAY IN DENYING THE CLAIM UNTIL AFTER 60 DAYS HAD EXPIRED FROM THE TIME IT HAD KNOWLEDGE THEREOF, THE PENALTY WAS IN THE AMOUNT OF 25 PER CENT OF THE AMOUNT DUE CLAIMANT ON AUGUST 1, 1974 = CLAIMANT'S ATTORNEY WAS ALSO AWARDED A REASONABLE ATTORNEY FEE. WCB CASE NO. 74-3001.

APPARENTLY, THE FUND DELAYED ITS PAYMENT OF COMPENSATION AS ORDERED BY REFEREE LEAHY AND CLAIMANT AGAIN REQUESTED A HEARING. PURSUANT TO THAT HEARING REFEREE FINK ENTERED AN ORDER ON MAY 28, 1975 IN WCB CASE NO. 74-4617 DIRECTING THE FUND TO PAY A SUM EQUAL TO 25 PER CENT OF THE COMPENSATION FOR TEMPORARY TOTAL DISABILITY DUE CLAIMANT FOR THE PERIOD OCTOBER 17 THROUGH DECEMBER 31, 1974 AS A PENALTY FOR ITS LATE PAYMENTS OF THE COMPENSATION PREVIOUSLY ORDERED BY REFEREE LEAHY. THE FUND AGAIN DID NOT ACT WITHIN A REASONABLE PERIOD OF TIME, ACCORDING TO CLAIMANT, AND HE REQUESTED A HEARING ON JULY 9, 1975, CONTENDING THAT HE WAS IN NEED OF FURTHER MEDICAL CARE AND TREATMENT AND PAYMENT OF TEMPORARY TOTAL DISABILITY COMPENSATION AND ALSO ENTITLED TO PENALTIES AND ATTORNEY FEES FOR UNREASONABLE DELAY AND RESISTANCE OF PAYMENT OF COMPENSATION. ON AUGUST 20 THE FUND RESPONDED DENYING THAT CLAIMANT WAS ENTITLED TO FURTHER MEDICAL CARE AND TREATMENT AND TIME LOSS BENEFITS AND WAS NOT ENTITLED TO PENALTIES OR ATTORNEY FEES FOR UNREASONABLE RESISTANCE IN PAYMENT OF COMPENSATION.

A HEARING ON THE CLAIMANT'S REQUEST WAS SET FOR OCTOBER 28, 1975, HOWEVER, ON AUGUST 25, 1975 A DETERMINATION ORDER WAS ISSUED WITH RESPECT TO THE NOVEMBER 20, 1973 INJURY WHEREBY CLAIMANT WAS AWARDED 64 DEGREES FOR 20 PER CENT UNSCHEDULED DISABILITY. AFTER THE ISSUANCE OF THIS ORDER CLAIMANT FILED ANOTHER REQUEST FOR HEARING, QUESTIONING THE ADEQUACY OF THE DETERMINATION ORDER AND ALSO RAISING THE ISSUE OF WHETHER OR NOT CLAIMANT'S CLAIM HAD BEEN PREMATURELY CLOSED. THE TWO REQUESTS WERE COMBINED FOR A CONSOLIDATED HEARING.

THE REFEREE FOUND THAT CLAIMANT WAS MEDICALLY STATIONARY AND THAT HE HAD JUST ENROLLED IN THE VOCATIONAL REHABILITATION COURSE, ALTHOUGH IT WAS NOT KNOWN AT THAT TIME WHAT TYPE OF COURSE WOULD BE OFFERED TO HIM BY THE STATE OF WASHINGTON'S DEPARTMENT OF VOCATIONAL REHABILITATION. THE REFEREE FOUND THAT CLAIMANT'S PERMANENT PARTIAL DISABILITY PAYMENTS GRANTED BY THE DETERMINATION ORDER TERMINATED ON MARCH 1, 1976 AND IT WAS ANTICIPATED THAT CLAIMANT WOULD BE IN THE REHABILITATION PROGRAM BY THAT TIME.

ON THE ISSUE OF WHETHER CLAIMANT WAS ENTITLED TO TEMPORARY TOTAL DISABILITY COMPENSATION DURING VOCATIONAL REHABILITATION, THE REFEREE FOUND THAT THE ACCIDENT WHICH PRECIPITATED CLAIMANT'S REQUEST FOR THE 801 DURING MAY, 1974 OCCURRED DURING APRIL, 1974 AND BOTH ACCIDENTS WERE LITIGATED IN WCB CASE NO. 74-3001. HE CONCLUDED THAT IT WAS MORE REASONABLE UNDER THE CIRCUMSTANCES TO FIND CLAIMANT WAS COVERED BY ORS 656.268, AS AMENDED BY THE 1973 LEGISLATURE WHICH ENTITLED CLAIMANT TO TEMPORARY TOTAL DISABILITY BENEFITS WHILE IN A PROGRAM OF VOCATIONAL REHABILITATION, AND THE REQUEST FOR CLAIM CLOSURE AND THE DISPUTED DETERMINATION ORDER RELATING TO THE FIRST INJURY ONLY WERE PREMATURE.

ON THE ISSUE OF PENALTIES AND ATTORNEY FEES, THE REFEREE FOUND THAT THE ORDER ENTERED IN WCB CASE NO. 75-4617 GRANTING PENALTIES AND ATTORNEY FEES ONLY WAS COMPLIED WITH BY THE FUND ABOUT FIVE OR SIX DAYS AFTER THE JULY, 1975 REQUEST FOR HEARING WAS FILED BY CLAIMANT, A TOTAL DELAY OF ABOUT SIX WEEKS IN THE PAYMENT OF PENALTIES. CLAIMANT CONTENDS THAT PENALTIES ARE COMPENSATION THAT MUST BE PAID WITHIN 14 DAYS AND IF NOT SO PAID THEN PENALTIES ACCRUE ON PENALTIES. THE REFEREE CONCLUDED THAT ALTHOUGH CLAIMANT MAY HAVE BEEN PREJUDICED TO A CERTAIN EXTENT IN MEETING HIS OBLIGATIONS, PENALTIES WERE NOT COMPENSATION BUT WERE SANCTIONS AGAINST THE CARRIER. HE REFUSED TO IMPOSE PENALTIES UPON PENALTIES.

ON THE MERITS OF THE EXTENT OF CLAIMANT'S DISABILITY, THE REFEREE FOUND THAT HE COULD NOT MAKE A DETERMINATION WITH RESPECT THERETO SINCE CLAIMANT WAS NOT VOCATIONALLY STATIONARY. HE FOUND THAT CLAIMANT HAD NOT WORKED SINCE HIS DISABLING INJURY (WHICH HE SEEMS TO BELIEVE OCCURRED ON APRIL 30, 1974) AND ALSO THAT DR. CHERRY HAD RECOMMENDED THAT CLAIMANT BE RETRAINED BEFORE HIS CLAIM BE CLOSED. THE REFEREE REFUSED TO AWARD ATTORNEY FEES PAYABLE BY THE FUND, STATING THAT ATTORNEY FEES ARE NOT RECOVERABLE ON A PREMATURE BOARD CLOSURE.

THE BOARD, ON DE NOVO REVIEW, FINDS ONLY ONE CLAIM FOR AN INDUSTRIAL INJURY WAS EVER FILED AND THAT CLAIM ALLEGED AN INJURY SUFFERED ON NOVEMBER 20, 1973. THE REFEREE'S ORDER ENTERED ON NOVEMBER 26, 1974 IN WCB CASE NO. 74-3001 STATES IN THE SECOND PARAGRAPH OF PAGE 1 -

> 'THE CLAIMANT FIRST REQUESTED A CLAIM FORM ON OR ABOUT MAY 5, 1974. NOT UNTIL JUNE 5, 1974 WAS CLAIMANT ABLE TO OBTAIN AN 801 AND FILE FOR AN INDUSTRIAL ACCIDENT ALLEGED TO HAVE OCCURRED ON NOVEMBER 20, 1973 ABOUT 6.15 A.M. THE 801 REFLECTS THAT THE EMPLOYER FIRST KNEW OF THE INJURY ON MAY 14, 1974. IT WAS SIGNED BY THE EMPLOYER ON JUNE 6, 1974. THE UNREBUTTED EVIDENCE REVEALED THAT THE EMPLOYER'S DISPATCHER KNEW THAT CLAIMANT 'HAD TAKEN A DIRTY FALL' ONE DAY AFTER NOVEMBER 20, 1973 BUT CLAIMANT MADE NO CLAIM, LOST NO TIME FROM WORK, REQUIRED NO MEDICAL, AND THE INCIDENT WAS NOT TREATED AS AN INJURY.'

THE FACT REMAINS THAT CLAIMANT FILED ONE CLAIM FOR ONE INJURY, ALLEGED

TO HAVE OCCURRED ON NOVEMBER 20, 1973. THIS CLAIM WAS FIRST DENIED BY THE FUND, ULTIMATELY WAS HELD TO BE COMPENSABLE BY THE ORDER OF NOVEMBER 26, 1974 AND, ON AUGUST 25, 1975, CLAIMANT WAS AWARDED 64 DEGREES FOR 20 PER CENT UNSCHEDULED DISABILITY AS A RESULT OF THIS INDUSTRIAL INJURY SUFFERED ON NOVEMBER 20, 1973.

IN THE ORDER PRESENTLY BEFORE THE BOARD ON REVIEW THE REFEREE REFERS TO A NON-DISABLING INJURY ON NOVEMBER 20, 1973 AND A DISABLING INJURY ON APRIL 30, 1974 - HOWEVER, THE FACTS INDICATE THAT THE ONLY INJURY FOR WHICH CLAIMANT FILED A CLAIM ALLEGED OCCURRED ON NOVEMBER 20, 1973 WHILE WORKING IN VANCOUVER, WASHINGTON. ON APRIL 30, 1974 CLAIMANT DROVE A TRUCK TO TRACY, CALIFORNIA AND, WHILE UNLOADING SOME HEAVY ROLLS OF MATERIAL, REINJURED HIS BACK. HOWEVER, CLAIMANT NEVER FILED A CLAIM FOR THIS ALLEGED INJURY.

THE BOARD CANNOT ACCEPT THE PROPOSITION THAT AN INJURY INCURRED PRIOR TO JANUARY 1, 1974 ENTITLES CLAIMANT TO THE BENEFITS PROVIDED BY SENATE BILL 251 WHICH AMENDED ORS 656.268 AND ALLOWED A CLAIMANT COMPENSATION FOR TEMPORARY TOTAL DISABILITY DURING THE PERIOD OF TIME CLAIMANT IS UNDER A VOCATIONAL REHABILITATION PROGRAM JUST BECAUSE THE CLAIMANT CLAIMS HE SUFFERED ANOTHER INJURY IN MAY, 1974 BUT FOR WHICH HE FILED NO CLAIM. THE SITUATION WOULD HAVE BEEN ENTIRELY DIFFERENT HAD CLAIMANT FILED A CLAIM FOR AN ALLEGED INJURY SUFFERED ON APRIL 30, 1974 - HE DIDN'T. CLAIMANT HAS BEEN FOUND TO BE MEDICALLY STATIONARY AND, THEREFORE, THE REQUEST FOR CLAIM CLOSURE OF THE 1973 INJURY UNDER THE PROVISIONS OF ORS 656.268 WAS PROPER.

THE BOARD, BASED UPON THE MEDICAL EVIDENCE CONTAINED IN THE RECORD, CONCLUDES THAT THE AWARD OF 64 DEGREES ADEQUATELY COMPENSATES CLAIMANT FOR HIS LOSS OF WAGE EARNING CAPACITY AFTER CONSIDERING CLAIMANT'S AGE, EDUCATION, WORK BACKGROUND AND RETRAINING POTENTIAL.

THE BOARD AGREES WITH THE REFEREE THAT PENALTIES ARE NOT COMPENSATION AND, THEREFORE, PENALTIES WILL NOT BE IMPOSED UPON PRIOR PENALTIES. HOWEVER, THE BOARD DISAGREES WITH THE REFEREE'S CONCLUSION THAT CLAIMANT IS ENTITLED TO RECEIVE COMPENSATION FOR TEMPORARY TOTAL DISABILITY DURING THE PERIOD OF TIME HE IS UNDERGOING VOCATIONAL REHABILITATION INASMUCH AS HIS INDUSTRIAL INJURY WAS INCURRED PRIOR TO JANUARY 1, 1974.

ORDER

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

THE DETERMINATION ORDER MAILED AUGUST 25, 1975 IS AFFIRMED.

WCB CASE NO. 76-477 AUGUST 6, 1976

LUTHER ANDERSON, CLAIMANT

GARY GALTON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE CLAIMANT SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH DENIED CLAIMANT'S CONTENTION THAT HE WAS ENTITLED TO PENALTIES AND ATTORNEY FEES FOR THE STATE ACCIDENT INSURANCE FUND'S FAILURE TO COMPLY WITH REFEREE LEAHY'S ORDER ENTERED OCTOBER 28, 1975.

THE REFEREE RULED THAT THE ISSUES PRESENTED BY CLAIMANT OF WHETHER THE DETERMINATION ORDER, MAILED AUGUST 25, 1975, WAS PREMATURE AND SHOULD BE SET ASIDE - OF WHETHER CLAIMANT WAS ENTITLED TO COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM JUNE 25, 1975 TO THE PRESENT DATE AND OF WHETHER THE FUND WAS REMISS IN ITS OBLIGATION TO PROPERLY PROCESS THE CLAIM AND ABIDE BY THE RULES REGARDING VOCATIONAL REHABILITATION PRIOR TO THE ISSUANCE OF THE DETERMINATION ORDER AND SUBSEQUENT THERETO, BUT PRIOR TO THE HEARING BEFORE REFEREE LEAHY WERE NOT PROPERLY BEFORE HER. ALL OF THESE ISSUES WERE OR COULD HAVE BEEN RAISED AT THE HEARING BEFORE REFEREE LEAHY AND IF THE CLAIMANT WAS DISSATISFIED WITH THE ORDER OF REFEREE LEAHY RELATING THERETO HE WAS ACCORDED THE RIGHT TO REQUEST BOARD REVIEW THEREOF.

IN AN ORDER ON REVIEW ENTERED THIS SAME DATE THE BOARD REVERSED REFEREE LEAHY'S ORDER ENTERED OCTOBER 28, 1975 EXCEPT HIS RULING THAT PENALTIES SHOULD NOT BE APPLIED UPON PENALTIES. IN THE MATTER OF THE COMPENSATION OF LUTHER ANDERSON, JR., CLAIMANT (UNDERSCORED), WCB CASE NO. 75-2760. HOWEVER, UNTIL THIS ORDER WAS REVERSED IT WAS BINDING UPON ALL PARTIES. IN HIS ORDER OF OCTOBER 28, 1975, REFEREE LEAHY REMANDED THE CLAIM TO THE FUND FOR PAYMENT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM THE DATE CLAIMANT WAS ENROLLED (UNDERSCORED) IN THE DIVISION OF VOCATIONAL REHABILITATION PROGRAM AND UNTIL COMPLETION OF THAT PROGRAM.

THE ONLY ISSUE BEFORE THE REFEREE WAS WHETHER CLAIMANT WAS ENTITLED TO PENALTIES AND ATTORNEY FEES FOR THE FUND'S FAILURE TO PAY TEMPORARY TOTAL DISABILITY COMPENSATION AND THE REFEREE FOUND THAT CLAIMANT HAS NOT YET BEEN ACTUALLY ENROLLED IN A PROGRAM OF VOCATIONAL REHABILITATION. HE HAS BEEN FOUND ELIGIBLE FOR VOCATIONAL REHABILITATION BY BOTH THE STATES OF WASHINGTON AND OREGON BUT HE IS STILL NOT ENROLLED IN ANY PROGRAM, THEREFORE, THE FUND'S CONDUCT IN FAILING TO BEGIN PAYMENT OF TEMPORARY TOTAL DISABILITY COMPENSATION TO CLAIMANT UNTIL THE DATE OF HIS ENROLLMENT CANNOT BE FOUND TO BE UNREASONABLE AND JUSTIFY THE IMPOSITION OF PENALTIES AND AN AWARD OF ATTORNEY FEES.

THE BOARD, ON DE NOVO REVIEW, FEELS IT IS NOT NECESSARY TO COMMENT ON THE FINDINGS AND CONCLUSIONS REACHED BY REFEREE LEAHY IN WCB CASE NO. 75-2760. THE FACT THAT THE BASIC FINDINGS AND CONCLUSIONS REACHED BY HIM IN THAT ORDER WERE REVERSED BY THE BOARD DOES NOT RELIEVE THE PARTIES FROM THE DIRECTIVES CONTAINED THEREIN UNTIL THE DATE OF THE REVERSAL.

WITH RESPECT TO THE ISSUE OF PENALTIES AND ATTORNEY FEES, THE BOARD CONCURS FULLY WITH THE CONCLUSION REACHED BY THE REFEREE. HOWEVER, THE 'SYSTEM' HAS NOT FAILED CLAIMANT IN THIS CASE - CLAIMANT'S INJURY WAS INCURRED IN 1973, THEREFORE, HE WAS NOT, AT ANY TIME, ENTITLED TO RECEIVE COMPENSATION FOR TEMPORARY TOTAL DISABILITY WHILE ENROLLED IN A PROGRAM OF VOCATIONAL REHABILITATION.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 25, 1976, IS AFFIRMED.

JOHN GUILLIAMS, CLAIMANT

GARY JONES, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED TO IT CLAIMANT'S CLAIM TO BE REOPENED FOR FURTHER MEDICAL CARE AND TREATMENT AND FOR PAYMENT OF TEMPORARY TOTAL DISABILITY COMPENSATION, COMMENCING JULY 10, 1975 AND UNTIL THE CLAIM IS AGAIN CLOSED PURSUANT TO ORS 656.268.

CLAIMANT IS 46 YEARS OF AGE AND SUFFERED A COMPENSABLE INJURY ON NOVEMBER 6, 1973, STRAINING HIS LOWER BACK WHILE LIFTING AT WORK. ON JANUARY 29, 1975 THE CLAIM WAS CLOSED BY SPECIAL DETERMINATION ORDER WHICH AWARDED CLAIMANT TEMPORARY TOTAL DISABILITY BENEFITS FROM NOVEMBER 8, 1973 THROUGH NOVEMBER 8, 1974 AND STATED = 'THAT INFORMATION IN YOUR FILE IS NOT ADEQUATE TO SUPPORT A DETERMINATION ON THE ISSUE OF PERMANENT PARTIAL DISABILITY.'

THE CLAIMANT REQUESTED A REVIEW, CONTENDING THAT HE WAS ENTITLED TO COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM NOVEMBER 8, 1974 UNTIL HIS CONDITION BECAME MEDICALLY STATIONARY OR, IN THE ALTERNATIVE, IF HIS CONDITION WAS MEDICALLY STATIONARY, THAT A DETERMINATION BE MADE WITH RESPECT TO THE EXTENT OF HIS PERMANENT DISABILITY.

THE MEDICAL REPORTS INDICATE THAT CLAIMANT IS UNABLE TO DO ANY HEAVY LIFTING AND VERY LITTLE BENDING, AT THE PRESENT TIME HE WEIGHS APPROXIMATELY 95 POUNDS WHICH IS 15 POUNDS BELOW HIS NORMAL WEIGHT. CLAIMANT IS UNDERNOURISHED AND THIS HAS LED TO A GENERAL WEAKENING AND DETERIORATION OF HIS OVERALL CONDITION. EVIDENCE INDICATES THAT CLAIMANT IS MISSING A SUBSTANTIAL NUMBER OF TEETH WHICH UNDOUBTEDLY PLAYS SOME PART IN HIS INADEQUATE FOOD INTAKE AND ACCORDING TO DR. BUTTS CLAIMANT IS AN ALCOHOLIC. DR. BECKER REPORTS THAT CLAIMANT'S EMPLOYMENT AT THE TIME OF HIS INJURY WAS NOT COMPATIBLE WITH A NORMAL LOW BACK, LET ALONE A BACK IN THE CONDITION CLAIMANT'S WAS IN AT THE TIME HE SUFFERED HIS INJURY. DR. BECKER'S OPINION WAS THAT CLAIMANT SHOULD SEEK SOME LIGHTER TYPE OF EMPLOYMENT. DR. BECKER'S DIAGNOSIS WAS ACUTE LUMBOSACRAL SPRAIN WITH CHRONIC LUMBOSACRAL SPRAIN SYMPTOMATOLOGY WITH UNDERLYING DEGENERATIVE DISEASE AT SEVERAL LUMBOSACRAL LEVELS.

THE EVALUATION DIVISION OF THE BOARD WAS UNABLE TO MAKE ANY DETERMINATION WITH RESPECT TO PERMANENT PARTIAL DISABILITY INASMUCH AS CLAIMANT FAILED TO KEEP MEDICAL APPOINTMENTS SCHEDULED FOR HIM IN AUGUST, OCTOBER AND DECEMBER, 1974.

THE REFEREE CONCLUDED THAT THE CLAIM SHOULD BE REOPENED AS OF THE DATE OF SUBMISSION FOR PHYSICAL EXAMINATION BY DR. CROTHERS ON JULY 10, 1975, THE FIRST EXAMINATION TO WHICH CLAIMANT SUBMITTED, AND THAT THE BEST INTERESTS OF THE CLAIMANT AND THE PROPER ADMINISTRATION OF HIS CLAIM WOULD BE SERVED BY PLACING CLAIMANT IN THE UNIVERSITY OF OREGON MEDICAL SCHOOL HOSPITAL FOR A COMPLETE COMPREHENSIVE MEDICAL WORKUP RELATING TO HIS BACK CONDITIONS, MALNUTRITION, HIS DENTURE PROBLEM AND HIS ALCOHOL PROBLEM.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT THE FUND IS NOT RESPONSIBLE FOR CLAIMANT'S MALNUTRITION, HIS DENTURE PROBLEM OR HIS ALCOHOL PROBLEM. IT FURTHER FINDS THAT CLAIMANT HAS FAILED TO COOPERATE IN THE PAST IN KEEPING APPOINTMENTS SCHEDULED FOR HIM. THE

EVIDENCE INDICATES THAT CLAIMANT, AT THIS TIME, IS MEDICALLY STATIONARY, THEREFORE, HIS CLAIM SHOULD BE CLOSED UNDER THE PROVISIONS OF ORS 656.268.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 30, 1976, IS REVERSED.

CLAIMANT'S CLAIM IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR SUBMISSION BY IT TO THE EVALUATION DIVISION OF THE WORKMEN'S COMPENSATION BOARD FOR CLOSURE PURSUANT TO THE PROVISIONS OF ORS 656.268.

CLAIMANT IS NOT ENTITLED TO ANY COMPENSATION FOR TEMPORARY TOTAL DISABILITY BEYOND NOVEMBER 8, 1974.

WCB CASE NO. 75-663 AUGUST 10, 1976

JERRY TABOR, CLAIMANT

WILLIAM FLINN, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER OF SEPTEMBER 10, 1974 GRANTING CLAIMANT 208 DEGREES FOR 65 PER CENT UNSCHEDULED DISABILITY. CLAIMANT CONTENDS HE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT IS A 31 YEAR OLD FINISH CARPENTER WHO SUSTAINED A COMPENSABLE INJURY TO HIS LOW BACK ON NOVEMBER 13, 1972. HE WAS SEEN BY DR. CUNNINGHAM WHOSE DIAGNOSIS WAS SPRAIN OF THE LUMBAR SPINE WITH LOW BACK SYNDROME. CLAIMANT CONTINUED TO WORK AND LOST NO TIME THEREFROM.

ON JUNE 14, 1973 CLAIMANT EXPERIENCED SEVERE BACK PAIN AND AGAIN SOUGHT MEDICAL ATTENTION FROM DR. CUNNINGHAM. CLAIMANT HAS NOT RETURNED TO WORK SINCE THIS INCIDENT.

CLAIMANT CONTINUED TO EXPERIENCE BACK PAIN AND CONSULTED DR. DEGGE WHO HOSPITALIZED CLAIMANT IN JULY, 1973. ON JULY 17, 1973 A LAMINECTOMY WAS PERFORMED BY DR. DEGGE FOR A PROTRUDED INTERVERTEBRAL DISC AT L5-S1 ON THE LEFT. DR. DEGGE THEN REFERRED CLAIMANT TO THE DISABILITY PREVENTION DIVISION.

ON FEBRUARY 8, 1974 CLAIMANT WAS EXAMINED BY THE BACK EVALUATION CLINIC WHICH FELT CLAIMANT HAD A S1 NERVE ROOT DEFICIT ON THE LEFT AND THAT CONSIDERATION SHOULD BE GIVEN TO A RE-EXPLORATION OF CLAIMANT'S LUMBAR SPINE. CLAIMANT WAS NOT MEDICALLY STATIONARY.

ON AUGUST 9, 1974 DR. DEGGE AGAIN EXAMINED CLAIMANT. CLAIMANT DID NOT WANT FURTHER SURGERY SUGGESTED FOR THE STABILIZATION OF THE LUMBOSACRAL AREA. DR. DEGGE FELT THAT THIS PROCEDURE WOULD BE THE ONLY MEANS BY WHICH CLAIMANT'S CONDITION WOULD IMPROVE. HE FOUND CLAIMANT'S DISABILITY TO BE MODERATE - HE RECOMMENDED CLAIM CLOSURE. MEANWHILE CLAIMANT HAD ENROLLED AT LANE COMMUNITY COLLEGE IN A REHABILITATION PROGRAM.

A DETERMINATION ORDER, ISSUED ON SEPTEMBER 10, 1975, GRANTED

CLAIMANT TEMPORARY TOTAL DISABILITY COMPENSATION AND 208 DEGREES FOR 65 PER CENT UNSCHEDULED LOW BACK DISABILITY.

DR. DEGGE LAST EXAMINED CLAIMANT ON SEPTEMBER 18, 1975 - HE FELT THAT CLAIMANT'S 'PROBLEM IS PREDOMINATELY A MECHANICAL ONE IN THE LOWER LUMBAR SEGMENTS' AND RECOMMENDED STABILIZATION BY ARTHRODESIS - HOWEVER, CLAIMANT STILL FEARED ANOTHER OPERATION.

THE REFEREE FOUND THAT CLAIMANT DID HAVE SUBSTANTIAL RESIDUALS FROM HIS INDUSTRIAL INJURY AND THAT HE COULD NOT RETURN TO HIS FORMER OCCUPATION AS A FINISH CARPENTER, BUT SHE CONCLUDED, BASED UPON THE MEDICAL EVIDENCE AND TAKING INTO CONSIDERATION CLAIMANT'S AGE, EDUCATION AND TRAINING, THAT CLAIMANT HAD FAILED TO ESTABLISH THAT HE WAS PERMANENTLY AND TOTALLY DISABLED. NOT ONE MEDICAL REPORT SUBSTANTIATED SUCH A FINDING.

THE CLAIMANT'S RELUCTANCE TO SUBMIT TO SURGERY WAS NOT CONSIDERED BY THE REFEREE IN EVALUATING CLAIMANT'S DISABILITY. SHE CONCLUDED THAT CLAIMANT HAD BEEN ADEQUATELY COMPENSATED FOR HIS LOSS OF WAGE EARNING CAPACITY BY THE AWARD OF 65 PER CENT OF THE MAXIMUM ALLOWED BY STATUTE.

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

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 19, 1976, IS AFFIRMED.

WCB CASE NO. 75-1470 AUGUST 10, 1976

JOHN CHILDERS, CLAIMANT

SIDNEY GALTON, CLAIMANT'S ATTY.
DAVID BANGSUND, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE EMPLOYER SEEKS BOARD REVIEW OF THE REFEREE'S ORDER WHICH DIRECTED IT TO ACCEPT CLAIMANT'S CLAIM AND PAY HIM THE BENEFITS TO WHICH HE IS ENTITLED BY LAW, TO COMMENCE PAYMENT OF TEMPORARY TOTAL DISABILITY BENEFITS AS OF FEBRUARY 17, 1975, ALLOWING THE EMPLOYER TO TAKE CREDIT FOR ANY PAYMENTS FOR TEMPORARY TOTAL DISABILITY HERETOFORE PAID BY REASON OF THE REFEREE'S INTERIM ORDER OF MAY 22, 1975, ASSESSED AS A PENALTY A SUM EQUAL TO 25 PER CENT OF THE COMPENSATION DUE CLAIMANT FROM THE DATE OF HIS HOSPITALIZATION UNTIL THE CLAIM WAS OFFICIALLY DENIED BY THE EMPLOYER AND DIRECTED THE EMPLOYER TO PAY CLAIMANT'S ATTORNEY A FEE OF 1500 DOLLARS.

CLAIMANT SUFFERED A PULMONARY EMBOLISM ON FEBRUARY 17, 1975 WHICH HE ALLEGED WAS CAUSED BY A FALL ON SOME STAIRS ON JANUARY 16, 1975 WHILE IN THE COURSE AND SCOPE OF HIS EMPLOYMENT. CLAIMANT SOUGHT IMPOSITION OF PENALTIES FOR FAILURE OF THE EMPLOYER TO ACCEPT OR DENY HIS CLAIM WITHIN 60 DAYS AFTER KNOWLEDGE OF IT AND THE AWARD OF ATTORNEY FEES FOR AN IMPROPER DENIAL.

CLAIMANT WAS WORKING AS AN APARTMENT HOUSE MANAGER WHEN HE FELL WHILE MOVING A STOVE FROM AN APARTMENT TO THE BASEMENT STORAGE. THE STOVE SLIPPED FROM THE HANDTRUCK CLAIMANT WAS USING AND CLAIMANT LOST HIS FOOTING AND FELL, LANDING ON HIS RIGHT HIP AND

BUTTOCKS - THE HANDTRUCK STRUCK HIM IN THE RIGHT GROIN AREA AND IN THE RIGHT LEG. NO ONE WITNESSED THE INCIDENT, HOWEVER, CLAIMANT'S WIFE CAME ON THE SCENE SOON THEREAFTER. THE INJURY DID NOT APPEAR TO BE VERY SEVERE AND CLAIMANT, WITH THE ASSISTANCE OF HIS FATHER-IN-LAW, CONTINUED MOVING THE STOVE INTO THE STORAGE AREA IN THE BASEMENT.

LATER, WHEN CLAIMANT CALLED HIS EMPLOYER TO SECURE ANOTHER HANDTRUCK HE INFORMED THE EMPLOYER THAT HE HAD FALLEN. THE ABRASION ON CLAIMANT'S LEG WAS ABOUT THREE INCHES LONG AND ONE AND A HALF INCHES WIDE - CLAIMANT DID NOT FILE A WRITTEN REPORT AND CONTINUED TO WORK ALTHOUGH HE DID HAVE A LARGE BRUISE ON HIS HIPS AND LEG AND HAD PAIN IN HIS LEG AND GROIN.

PART OF CLAIMANT'S DUTIES INCLUDED DRIVING BETWEEN TWO OF HIS EMPLOYER'S BUILDINGS DOING SOME LIGHT HAULING - HE ALSO HAULED MATERIALS FROM THE SALEM OFFICE TO PORTLAND. APPROXIMATELY TWO HOURS OF DRIVING WERE INCLUDED IN EACH WORK DAY. PRIOR TO HIS EMPLOYMENT AS AN APARTMENT HOUSE MANAGER CLAIMANT HAD FOR MANY YEARS BEEN A TRUCK DRIVER AND HAD ALSO BEEN ENGAGED AS A PAINTING CONTRACTOR.

ON FEBRUARY 17, 1975 IN THE EARLY MORNING CLAIMANT WAS AWAKENED BY SHARP PAINS IN HIS CHEST WHICH HE FIRST BELIEVED TO BE GAS PAIN. BUT THE PAIN INCREASED AND HIS BREATHING BECAME DIFFICULT AND CLAIMANT WAS TAKEN FIRST TO THE UNIVERSITY OF OREGON MEDICAL SCHOOL AND THEN TO THE PORTLAND VETERANS ADMINISTRATION HOSPITAL. EXAMINATION AND TESTING RESULTED IN A DIAGNOSIS OF PULMONARY EMBOLISM. CLAIMANT FILED A CLAIM ON MARCH 31, 1975 AFTER HE HAD BEEN RELEASED FROM THE VA HOSPITAL.

DR. GRISWOLD STATED THAT IT WAS IMPOSSIBLE TO SAY WITH ABSOLUTE ASSURANCE THAT CLAIMANT'S INJURY ON JANUARY 16 CAUSED THE PULMONARY EMBOLUS - HOWEVER, SUCH AN INJURY AS DESCRIBED WITH BRUISING AND PAIN IN CLAIMANT'S BUTTOCKS AND RIGHT LEG MIGHT WELL HAVE CAUSED LEG THROMBOSIS WHICH WAS AGGRAVATED BY CLAIMANT'S SITTING AND DRIVING A TRUCK AND, EVENTUALLY, A PULMONARY EMBOLIS ON FEBRUARY 17. HE STATED IT WOULD BE MOST UNUSUAL FOR A PERSON TO HAVE A SPONTANEOUS PULMONARY EMBOLUS WITHOUT SOME HISTORY OF PREVIOUS TRAUMA OR INACTIVITY.

THE REFEREE FOUND CLAIMANT TO BE A CREDIBLE WITNESS WHO HAD BEEN ACTIVE AND IN GOOD GENERAL HEALTH WITH NO KNOWN PHYSICAL PROBLEMS PRIOR TO HIS FALL. HE FOUND THAT NO ONE WAS ABLE TO SAY WITH ABSOLUTE CERTAINTY EXACTLY WHAT CAUSED THE EMBOLUS OR PRECISELY WHERE IN THE BODY IT ORIGINATED BUT THE UNCONTRADICTED TESTIMONY OF CLAIMANT AND HIS WITNESSES AS TO THE FALL AND THE OPINION OF DR. GRISWOLD REFERRED TO ABOVE CONVINCED HIM THAT THE CLAIMANT HAD CARRIED HIS BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT HE HAD SUSTAINED A COMPENSABLE INJURY ON JANUARY 16, 1975 AND THAT A PULMONARY EMBOLISM RESULTED THEREFROM ON FEBRUARY 17, 1975.

THE REFEREE FOUND THAT THE EMPLOYER HAD HAD NOTICE OF THE ORIGINAL INCIDENT AND THAT THERE WAS NO PREJUDICE TO THE EMPLOYER BY REASON OF THE FORM 801 NOT BEING FILED BY CLAIMANT UNTIL MARCH 21, 1975. THE EMPLOYER HAD FAILED TO EITHER ACCEPT OR DENY THE CLAIM WITHIN 60 DAYS AFTER NOTICE THEREOF AND, THEREFORE, CLAIMANT'S ATTORNEY FEES SHOULD BE PAID BY THE EMPLOYER, AND THE EMPLOYER SHOULD PAY CLAIMANT A SUM EQUAL TO 25 PER CENT OF THE COMPENSATION DUE CLAIMANT FROM THE DATE OF HIS HOSPITALIZATION UNTIL THE CLAIM WAS OFFICIALLY DENIED BY THE EMPLOYER AS A PENALTY FOR SUCH FAILURE.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 12, 1976, IS AFFIRMED.

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

WCB CASE NO. 75-4574 AUGUST 10, 1976

WILLIAM WISHERD, CLAIMANT

GARRY KAHN, CLAIMANT'S ATTY.
A. THOMAS CAVANAUGH, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

THE EMPLOYER SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH DIRECTED IT TO PAY THE ACRUED MEDICAL EXPENSES IN THE SUM OF 9,211.89 DOLLARS PLUS 58.30 DOLLARS, PLUS AN ADDITIONAL AMOUNT EQUAL TO 25 PER CENT THEREON, TOGETHER WITH TEMPORARY TOTAL DISABILITY COMPENSATION FOR THE PERIOD OF MARCH 1, 1974 TO MARCH 14, 1975 WITH A PENALTY EQUAL TO 25 PER CENT OF THE TEMPORARY TOTAL DISABILITY COMPENSATION DUE CLAIMANT AS PREVIOUSLY ORDERED, PLUS AN ADDITIONAL PENALTY OF 25 PER CENT OF THE AGGRAGATE OF THE UNPAID AMOUNTS AND TO PAY CLAIMANT'S ATTORNEY THE FEE OF 600 DOLLARS.

CLAIMANT HAD SUFFERED A HEART ATTACK WHILE EMPLOYED AS A USED CAR MANAGER. INITIALLY, THE CLAIM HAD BEEN DENIED AND THE CLAIMANT REQUESTED A HEARING. REFEREE ST. MARTIN, BY ORDER DATED MARCH 14, 1975, REMANDED THE CLAIM TO THE EMPLOYER AND ALSO ORDERED PAYMENT OF 2,000 DOLLARS AS AN ATTORNEY FEE. AFTER REVIEW THE BOARD AFFIRMED THE REFEREE'S ORDER AND AT THE PRESENT TIME THE MATTER IS ON APPEAL TO THE CIRCUIT COURT.

APPARENTLY THE EMPLOYER HAD NOT PAID CERTAIN COMPENSATION FOR TEMPORARY TOTAL DISABILITY DUE FROM MARCH 1, 1974 TO MARCH 14, 1975, THEREFORE, CLAIMANT REQUESTED A SECOND HEARING. THE EMPLOYER HAD NOT PAID THE SUM OF 9,211.89 DOLLARS, WHICH REPRESENTED MEDICAL BILLS ACCRUED, AND CLAIMANT ASKED FOR THE IMPOSITION OF PENALTIES AND AN AWARD OF ATTORNEY FEES. AS A RESULT OF THIS (UNDERSCORED) HEARING, REFEREE JAMES ORDERED THE EMPLOYER TO PAY THE AMOUNT OF 9,211.89 DOLLARS AND TO PAY COMPENSATION FOR TEMPORARY TOTAL DISABILITY FOR THE PERIOD OF MARCH 1, 1974 TO MARCH 14, 1975, AND TO PAY AN ADDITIONAL AMOUNT EQUAL TO 25 PER CENT OF THE AMOUNTS DUE FOR THE ACCRUED MEDICAL EXPENSE AND THE TEMPORARY TOTAL DISABILITY AS A PENALTY PURSUANT TO ORS 656.262(8). REFEREE JAMES ALSO DIRECTED THE EMPLOYER TO PAY CLAIMANT'S ATTORNEY A FEE IN THE AMOUNT OF 2,000 DOLLARS.

THE EMPLOYER'S REQUEST FOR REVIEW OF THIS (UNDERSCORED) ORDER IS NOW PENDING BEFORE THE BOARD AND THE EMPLOYER'S CARRIER CONTINUES TO REFUSE TO PAY, CONTENDING THAT CLAIMANT HAS HAD HIS DAY IN COURT AND THERE IS NO PROCEDURE FOR PENALTIES ON PENALTIES. THE CARRIER ARGUES THAT THE CORRECT INTERPRETATION OF ORS 656.313 WHERE THERE IS AN APPEAL OF THE BENEFITS ORDERED, COMPENSATION IS NOT PAYABLE RETROACTIVE TO THE DATE OF INJURY AND, FURTHERMORE, THAT UNDER THE WORKMEN'S COMPENSATION LAW THE ONLY AVENUE OPEN FOR THE CHALLENGE OF ORDERS IS THROUGH THE HEARINGS AND APPELLATE PROCEDURE TO THE ULTIMATE COURT AND IT IS UNFAIR FOR THE CLAIMANT TO REQUEST HEARINGS

IN THE INTERIM PERIOD. THE CARRIER CITED NO AUTHORITY IN SUPPORT OF THESE CONTENTIONS.

THE REFEREE FOUND THAT ALTHOUGH PAYMENT OF ATTORNEY FEES MAY AWAIT THE ULTIMATE OUTCOME, COMPENSATION MAY NOT BE STAYED BY THE REQUEST FOR REVIEW OR COURT APPEAL AND, ACCORDINGLY, DIRECTED THE EMPLOYER TO COMPLY WITH REFEREE JAMES' ORDER TO PAY THE ACCRUED MEDICAL EXPENSES AND TEMPORARY TOTAL DISABILITY COMPENSATION AND 25 PER CENT OF SAID AMOUNTS AS A PENALTY AND, ALSO, ASSESSED ANOTHER PENALTY EQUAL TO 25 PER CENT OF THE AGGRAGATE OF THE UNPAID AMOUNTS AND ATTORNEY FEES OF 600 DOLLARS TO BE PAID CLAIMANT'S COUNSEL BY EMPLOYER. (NOTE - AT THIS HEARING AN ADDITIONAL MEDICAL BILL OF 58.30 DOLLARS HAD NOT BEEN PAID).

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE ORDER OF THE REFEREE EXCEPT FOR THE IMPOSITION OF THE ADDITIONAL PENALTY OF 25 PER CENT OF THE AGGRAGATE OF THE UNPAID AMOUNTS. PENALTIES ARE NOT COMPENSATION BUT ARE SANCTIONS IMPOSED UPON THE EMPLOYER AND ITS CARRIER FOR FAILURE TO COMPLY WITH THE PROVISIONS OF THE WORKMEN'S COMPENSATION ACT IN CERTAIN RESPECTS. THE BOARD CONTINUES TO TAKE THE POSITION THAT PENALTIES CANNOT BE IMPOSED ON PRIOR PENALTIES - HOWEVER, IF AN EMPLOYER AND ITS CARRIER CONTINUE TO REFUSE TO COMPLY WITH AN ORDER DIRECTING PAYMENT OF COMPENSATION TO A WORKMAN SUCCESSIVE PENALTIES CAN BE IMPOSED BASED UPON THE COMPENSATION AWARDED TO THE WORKMAN (UNDERSCORED).

THE BOARD CONCLUDES THAT THE REFEREE'S ORDER SHOULD BE CLARIFIED. PENALTIES CANNOT BE IMPOSED UPON THE PENALTIES PREVIOUSLY IMPOSED BY REFEREE JAMES, HOWEVER, AN ADDITIONAL PENALTY, BASED UPON COMPENSATION (UNDERSCORED) WHICH REFEREE JAMES DIRECTED THE EMPLOYER-CARRIER TO PAY CLAIMANT CAN AND SHOULD BE IMPOSED.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 3, 1976, IS MODIFIED TO READ AS FOLLOWS -

> 'THE EMPLOYER-CARRIER SHALL PAY FORTHWITH THE ACCRUED MEDICAL EXPENSES IN THE SUM OF 9,211.89 DOLLARS PLUS 58.30 DOLLARS, PLUS AN ADDITIONAL AMOUNT EQUAL TO 25 PER CENT THEREON AND TO PAY COMPENSATION FOR TEMPORARY TOTAL DISABILITY FOR THE PERIOD MARCH 1, 1974 TO MARCH 14, 1975, PLUS AN ADDITIONAL AMOUNT EQUAL TO 25 PER CENT OF SUCH TEMPORARY TOTAL DISABILITY COMPENSATION AS PREVIOUSLY ORDERED BY REFEREE JAMES ON AUGUST 14, 1975, PLUS AN ADDITIONAL PENALTY EQUAL TO 25 PER CENT OF THE AGGRAGATE OF THE UNPAID MEDICAL EXPENSES AND TEMPORARY TOTAL DISABILITY COMPENSATION, SPECIFICALLY EXCLUDING THE PENALTIES IMPOSED ON SUCH SUMS BY REFEREE JAMES, TOGETHER WITH A REASONABLE ATTORNEY FEE TO BE PAID CLAIMANT'S COUNSEL BY THE EMPLOYER IN THE AMOUNT OF 600 DOLLARS.'

THE BENEFICIARIES OF
RAYMOND ANDERSEN, DECEASED
ROY KILPATRICK, CLAIMANT'S ATTY.
JAMES HUEGLI, DEFENSE ATTY.
REQUEST FOR REVIEW BY BENEFICIARIES

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE BENEFICIARIES OF THE DECEDANT WORKMAN, HEREAFTER CALLED CLAIMANT, REQUESTED BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DENIAL OF THEIR CLAIM FOR COMPENSABILITY OF HIS DEATH.

THE DECEDANT HAD BEEN EMPLOYED BY DOBYNS-HART PEST CONTROL SINCE OCTOBER, 1968 DOING SPRAYING FOR PEST CONTROL AND ACTING AS A SALESMAN. THIS BUSINESS ESTABLISHMENT FUMIGATED NOT ONLY PRIVATE RANCHES AND SUMMER CABINS BUT COMMERCIAL BUSINESSES SUCH AS TAVERNS AND RESTAURANTS.

ON SEPTEMBER 27, 1975 THE DECEASED HAD THREE SPRAYING JOBS IN THE RECREATION AREA OF MEACHAM. WHEN THESE JOBS WERE COMPLETED HE WENT TO A FRIEND'S CABIN WHERE HE AND OTHERS HELPED THIS FRIEND ROOF HIS CABIN. THIS WAS A SOCIAL OCCASION AND HAD NOTHING TO DO WITH HIS EMPLOYMENT.

AROUND 6 P.M. THIS GROUP OF FRIENDS WENT TO SEE ANOTHER FRIEND AND THEY HAD DINNER AND DRANK BEER. AT THIS TIME THE DECEASED HAD DISCUSSED PEST CONTROL PROBLEMS. AROUND 7 P.M. HE AND ANOTHER COUPLE WENT TO A NEARBY TAVERN AND DRANK BEER UNTIL 2.30 A.M. THE DECEASED HAD DISCUSSED PEST CONTROL WITH THE BARTENDER AND ALLEGEDLY SOLD A 'BUG BOMB' TO A MAN CALLED SUMMERFIELD.

AT 3.45 A.M. THE DECEDANT WAS FOUND IN HIS CAR SOMEWHERE BETWEEN THE TAVERN AND PENDLETON. HE HAD HAD A COLLISION WITH A TRUCK.

THE EMPLOYER DENIED THE CLAIM ON THE GROUNDS THAT THE DEATH DID NOT ARISE OUT OF NOR IN THE COURSE OF DECEDANT'S EMPLOYMENT.

CLAIMANT'S COUNSEL ALLEGES THAT THE DECEASED HAD BEEN EMPLOYED 24 HOURS A DAY AND THE EMPLOYER SUBSTANTIATED THIS.

THE REFEREE FOUND THAT EVEN VIEWING THE EVIDENCE FAVORABLY TOWARDS CLAIMANT, I.E., TAKING INTO CONSIDERATION THE DECEDANT'S CONVERSATIONS AND SELLING DURING THE EVENING HOURS, THAT THERE WAS A 12 HOUR LAPSE BETWEEN DECEDANT'S FINAL PEST CONTROL SPRAYING ACTIVITIES ON SEPTEMBER 27 AND HIS DEATH.

THE REFEREE CONCLUDED THAT DECEDANT'S PRESENCE AT THE TAVERN HAD BEEN PURELY SOCIAL AND THE BUSINESS CONVERSATIONS HE HAD HAD WITH OTHERS WERE CASUAL IN NATURE, EVEN CONSIDERING DECEDANT HAD BEEN PROMOTING GOODWILL FOR HIS EMPLOYER AT THAT TIME. ALSO THE DRINKING DURING THE AFTERNOON AND EVENING ADDED A RISK OF INJURY. HOWEVER, THE 12 HOUR LAPSE IS THE CRITICAL CRITERIA AND IS ENTITLED TO BE GIVEN THE GREATEST WEIGHT. CLAIMANT HAVE FAILED TO SUSTAIN THEIR BURDEN OF PROOF.

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

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 17, 1976, IS AFFIRMED.

SAIF CLAIM NO. HA 708092 AUGUST 10, 1976

EVERETT GROGAN, CLAIMANT

W. A. FRANKLIN, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

ON MAY 25, 1976 THE CLAIMANT, THROUGH HIS ATTORNEY, REQUESTED THE BOARD TO EXERCISE ITS OWN MOTION JURISDICTION, PURSUANT TO ORS 656.278, AND REOPEN HIS CLAIM FOR AN INDUSTRIAL INJURY SUFFERED ON DECEMBER 30, 1958. IN SUPPORT OF THE REQUEST THE CLAIMANT FURNISHED MEDICAL REPORTS FROM DR. GREWE.

PURSUANT TO 83-310 ET SEQ, BOARD'S RULES OF PRACTICE AND PROCEDURE, THE STATE ACCIDENT INSURANCE FUND, ON MAY 26, 1976, WAS FORWARDED A COPY OF CLAIMANT'S REQUEST TOGETHER WITH THE ATTACHED MEDICAL REPORTS AND ADVISED THAT IT HAD 20 DAYS WITHIN WHICH TO ADVISE THE BOARD OF ITS POSITION.

ON AUGUST 2, 1976 THE FUND FURNISHED THE BOARD A COPY OF THE RESULTS OF THE EXAMINATION CONDUCTED BY ORTHOPAEDIC CONSULTANTS WHICH INDICATED THAT CLAIMANT'S PROBLEMS WERE DUE TO THE NORMAL PROGRESSION OF DEGENERATION AND THAT HIS CONDITION WAS STABLE. THE FUND OPPOSED REOPENING THE CLAIM.

THE BOARD, AFTER GIVING DUE CONSIDERATION TO THE MEDICAL REPORTS FROM DR. GREWE AND FROM ORTHOPAEDIC CONSULTANTS, IS MORE PERSUADED BY THE LATTER REPORT WHICH INDICATES THAT CLAIMANT'S CONDITION IS STATIONARY AND APPARENTLY HAS BEEN SO FOR MANY YEARS - THAT NO FURTHER SURGICAL TREATMENT OF ANY KIND IS NECESSARY OR ADVISED. ORTHOPAEDIC CONSULTANTS FELT CLAIMANT WAS MOST LIKELY UNEMPLOYABLE CAUSE OF LACK OF MOTIVATION, TOTALLY AND 18 YEARS STANDING, ALL OF WHICH WOULD MAKE IT IMPOSSIBLE TO REHABILITATE CLAIMANT IN ANY MANNER. THEY DID NOT FEEL, CONSIDERING THE TWO LAMINECTOMIES, THAT CLAIMANT'S PERMANENT PARTIAL DISABILITY WAS GREATER THAN MODERATE AND FOUND THAT THERE HAD BEEN SOME NORMAL PROGRESSION OF HIS DEGENERATIVE CHANGES IN THE CERVICAL REGION. THEY SAID IT WOULD BE IMPOSSIBLE TO DETERMINE WHETHER THE CERVICAL LAMINECTOMY PERFORMED BY DR. GREWE ON JUNE 6, 1975 WAS NECESSITATED BY THE CERVICAL LAMINECTOMY AND DECOMPRESSION OF NERVE ROOTS ON THE LEFT SIDE PERFORMED IN AUGUST, 1962.

ORDER

THE REQUEST FOR THE BOARD TO EXERCISE ITS OWN MOTION JURISDICTION, PURSUANT TO ORS 656.278, AND REOPEN CLAIMANT'S CLAIM IS HEREBY DENIED.

WCB CASE NO. 76-1 AUGUST 11, 1976

ROBERT LUTZ, CLAIMANT

WILLIAM WHITNEY, CLAIMANT'S ATTY.
MERLIN MILLER, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

THE CLAIMANT SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT 32 DEGREES FOR 10 PER CENT UNSCHEDULED BACK DISABILITY.

CLAIMANT IS 25 YEARS OLD AND HAS COMPLETED NEARLY TWO YEARS OF COLLEGE - PRIOR TO HIS JOB AS A TIRE RETREADER, THE CLAIMANT HAD A BACKGROUND OF LIGHTER WORK, E.G., BANK EMPLOYEE, POSTAL CARRIER, AND MANAGER OF A PLAID PANTRY GROCERY STORE.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON JULY 16, 1975 WHILE HE WAS UNLOADING TIRES ON THE GROUND FROM A TRUCK. THE TRUCK DRIVER, APPARENTLY UNAWARE OF CLAIMANT'S PREOCCUPATION WITH STACKING THE TIRES ALREADY ON THE GROUND, THREW ANOTHER TIRE FROM THE TRUCK ON TO THE GROUND AND ACCIDENTLY HIT CLAIMANT IN THE BACK. CLAIMANT WORKED THE REMAINING PORTION OF THE DAY BUT DID NOT WORK THE FOLLOWING DAY AND SAW DR. CHEATHAM ON JULY 17, 1975 AND AGAIN ON JULY 21 AND JULY 29. HE WAS THEN REFERRED TO DR. HO WHO STATED, AFTER EXAMINING CLAIMANT ON AUGUST 13, 1975, THAT IT WAS ANTICIPATED CLAIMANT COULD RETURN TO WORK WITHIN ONE TO TWO WEEKS WITH MINIMAL, IF ANY, PERMANENT PARTIAL IMPAIRMENT OF FUNCTION FROM HIS INJURY.

CLAIMANT ALLEGES THAT THE EMPLOYER WOULD NOT TAKE HIM BACK UNLESS HE HAD 100 PER CENT CLEARANCE FOR RETURN TO REGULAR WORK. THE EMPLOYER STATES THAT IT HAD NO 'LIGHT-TYPE' WORK AT THE TIME BUT WOULD EMPLOY HIM WHEN HE WAS RELEASED TO RETURN TO REGULAR WORK. VOCATIONAL REHABILITATION WAS RECOMMENDED AND, AFTER SEVERAL EVALUATIONS, IT WAS DETERMINED THAT CLAIMANT WOULD NOT BE ABLE TO RETURN TO HIS OLD JOB.

THE REFEREE FOUND THAT ALTHOUGH THE MEDICAL REPORTS ALL INDICATE THAT CLAIMANT HAS MINIMAL PERMANENT UPPER BACK DISABILITY, CLAIMANT HAS NOT WORKED SINCE HIS INJURY AND CLAIMS HE HAS DIFFICULTY IN OBTAINING EMPLOYMENT BECAUSE OF HIS 'BAD BACK'. HE FOUND NO EVIDENCE THAT CLAIMANT WAS VOCATIONALLY HANDICAPPED, IN FACT THE ISSUE WAS NOT RAISED.

THE REFEREE FOUND THAT CLAIMANT, WITH HIS BETTER THAN AVERAGE EDUCATION, AND EXPERIENCE IN CLERICAL WORK AND OTHER JOBS REQUIRING LIGHT PHYSICAL EFFORT, HAD AN EXCELLENT CHANCE OF RETURNING TO THE LABOR MARKET IN A DIFFERENT TYPE OF JOB THAN THAT WHICH HE WAS DOING AT THE TIME HE WAS INJURED. ACTUALLY CLAIMANT COULD HAVE WORKED IN THE OFFICE OF THE EMPLOYER BUT ELECTED TO WORK IN THE SHOP BECAUSE THE RETREADER'S PAY WAS BETTER.

THE CLAIM HAD BEEN CLOSED BY A DETERMINATION ORDER MAILED DECEMBER 31, 1975 WHICH AWARDED CLAIMANT 16 DEGREES FOR 5 PER CENT UNSCHEDULED DORSAL BACK DISABILITY. THE REFEREE CONCLUDED THAT CLAIMANT HAD ONLY MINIMAL LOSS OF EARNING CAPACITY AND WITH HIS EDUCATIONAL AND EMPLOYMENT BACKGROUND A WIDE FIELD OF REALISTIC JOB OPPORTUNITIES EXISTED FOR HIM, THEREFORE, CLAIMANT'S LOSS OF EARNING CAPACITY DID NOT EXCEED 10 PER CENT.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 23, 1976, IS AFFIRMED.

WCB CASE NO. 75-819 AUGUST 11, 1976

CLARA B. LA HAIE, CLAIMANT

CHARLES SEAGRAVES, CLAIMANT'S ATTY.
LYLE VELURE, 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. 75-3035 AUGUST 11, 1976

ISAAC HARPOLE, SR., CLAIMANT

MICHAEL FRYAR, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED CLAIMANT'S CLAIM TO IT TO PROVIDE THE BENEFITS PROVIDED BY LAW.

CLAIMANT WAS EMPLOYED FOR 25 YEARS BY THE CITY OF PORTLAND, FOR THE LAST 15 YEARS AS A MECHANICAL SWEEPER OPERATOR. IN APRIL OR MAY, 1975 CLAIMANT HAD SYMPTOMS 'SIMILAR TO ASTHMA' AND 'BURNING IN THE RIGHT LUNG'. HE WAITED TWO MONTHS UNTIL IT WAS TIME FOR HIS ANNUAL PHYSICAL EXAMINATION BY DR. GOLDMAN TO SEE A PHYSICIAN.

DR. GOLDMAN REFERRED CLAIMANT TO DR. GREVE, A PULMONARY SPECIALIST, WHO DIAGNOSED VASOMOTOR RHINITIS. BOTH DRS. GOLDMAN AND GREVE OPINED THAT CLAIMANT'S SYMPTOMS WERE RELATED TO DUST AND THEY RECOMMENDED CLAIMANT 'REFRAIN FROM THE TYPE OF WORK WHICH HE WAS DOING'. DR. GREVE'S FELT THAT THE NOXIOUS PARTICLES IN THE DUST WHICH CLAIMANT INHALED COULD HAVE BAD RESULTS.

IN JULY, 1975 CLAIMANT'S CONDITION WORSENED AND HE FILED A CLAIM WHICH THE STATE ACCIDENT INSURANCE FUND DENIED AS AN OCCUPATIONAL DISEASE ON SEPTEMBER 4, 1975.

THE REFEREE FOUND THAT CLAIMANT HAD A PRE-EXISTING CONDITION WHICH WAS AGGRAVATED BY INHALING DUST DURING THE COURSE OF STREET SWEEPING. HE FOUND CLAIMANT'S CLAIM COMPENSABLE AND REMANDED THE CLAIM TO THE STATE ACCIDENT INSURANCE FUND FOR ACCEPTANCE THEREOF.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS THE REFEREE BASED ON THE MEDICAL REPORTS AND OPINIONS OF DR. GOLDMAN AND DR. GREVE AND THE FACT THAT THERE WAS NO CONTRADICTORY MEDICAL EVIDENCE IN THE RECORD.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 30, 1976, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW, IN THE SUM OF 350 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

SAIF CLAIM NO. ZB 141617 AUGUST 11, 1976

LEO D. CARPENTER, CLAIMANT

ERIC B. LINDAUER, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

CLAIMANT HAD SUSTAINED A COMPENSABLE INJURY ON AUGUST 3, 1965, CLAIM WAS CLOSED WITH 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 AND ON NOVEMBER 21, 1975 CLAIMANT, FOR THE SECOND TIME, REQUESTED THE BOARD TO EXERCISE ITS OWN MOTION JURISDICTION, PURSUANT TO ORS 656.278, AND REOPEN HIS CLAIM BASED UPON THE MEDICAL REPORT OF DR. BUSA DATED NOVEMBER 17, 1975.

ON DECEMBER 9, 1975 THE BOARD, FINDING THE EVIDENCE BEFORE IT WAS NOT SUFFICIENT EVIDENCE TO ENABLE IT TO DETERMINE THE MERITS OF THE REQUEST, REFERRED THE MATTER TO THE HEARINGS DIVISION WITH INSTRUCTIONS TO HOLD A HEARING AND TAKE EVIDENCE ON THE ISSUE OF WHETHER CLAIMANT'S PRESENT CONDITION IS RELATED TO HIS 1965 INDUSTRIAL INJURY. UPON CONCLUSION OF THE HEARING THE REFEREE WAS TO CAUSE A TRANSCRIPT OF THE PROCEEDING TO BE PREPARED AND SUBMITTED TO THE BOARD TOGETHER WITH HIS RECOMMENDATIONS.

ON FEBRUARY 19, 1976 A HEARING WAS HELD BEFORE REFEREE JOHN F. DRAKE - HIS RECOMMENDATIONS WERE SUBMITTED TO THE BOARD ON JULY 28, 1976.

THE BOARD ADOPTS THE REFEREE'S RECOMMENDATION, A COPY OF WHICH IS ATTACHED HERETO AND, BY THIS REFERENCE, MADE A PART THEREOF.

ORDER

CLAIMANT'S CLAIM IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR THE PAYMENT OF COMPENSATION, AS PROVIDED BY LAW, COMMENCING NOVEMBER 17, 1975 AND UNTIL THE CLAIM IS CLOSED PURSUANT TO THE PROVISIONS OF ORS 656.278.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY FEE A SUM EQUAL TO 25 PER CENT OF THE COMPENSATION FOR TEMPORARY TOTAL DISABILITY PAID TO CLAIMANT AS A RESULT OF THIS ORDER, PAYABLE OUT OF SAID COMPENSATION AS PAID, NOT TO EXCEED A MAXIMUM OF 500 DOLLARS.

IF UPON CLOSURE CLAIMANT SHALL RECEIVE AN ADDITIONAL AWARD FOR PERMANENT PARTIAL DISABILITY, THE CLAIMANT'S COUNSEL SHALL BE ENTITLED TO A SUM EQUAL TO 25 PER CENT OF SUCH ADDITIONAL COMPENSATION PAYABLE OUT OF SAID COMPENSATION AS PAID, NOT TO EXCEED A MAXIMUM OF 2,000 DOLLARS.

CLAIM NO. C 67227 AUGUST 11, 1976
CLAIM NO. B 150256

ROBERT B. BENNETT, CLAIMANT

DAVID GUYETT, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

ON JULY 27, 1976 CLAIMANT, BY AND THROUGH HIS ATTORNEY, REQUESTED THE BOARD TO EXERCISE ITS OWN MOTION JURISDICTION, PURSUANT TO ORS 656.278, AND REOPEN HIS CLAIMS AND AUTHORIZE DR. BERNSON TO PERFORM SURGERY FOR A HERNIATED DISC PROBLEM IN THE LUMBAR AREA. THE REQUEST WAS SUPPORTED BY DR. BERNSON'S REPORT ADDRESSED TO THE STATE ACCIDENT INSURANCE FUND, DATED JANUARY 30, 1976, WHEREIN HE EXPRESSED HIS OPINION THAT THE NECESSITY FOR THE SURGERY WAS RELATED TO CLAIMANT'S 1961 INJURY WHICH WAS FURTHER AGGRAVATED BY HIS INJURY IN 1967.

CLAIMANT'S INITIAL BACK INJURY OCCURRED IN 1961 WHILE HE WAS EMPLOYED BY DOUGLAS VENEER COMPANY - THEREAFTER, HE AGGRAVATED HIS BACK WHILE WORKING FOR THE CITY OF MEDFORD IN 1967. HIS FIRST CLAIM WAS DENOMINATED C 67227 AND THE SECOND, B 150256.

ON AUGUST 2, 1976, THE STATE ACCIDENT INSURANCE FUND RESPONDED STATING THAT CLAIMANT AT THE PRESENT TIME HAD AN OPEN CLAIM, C 395055, FOR WHICH HE IS RECEIVING COMPENSATION FOR TIME LOSS FOR AN INJURY SUFFERED ON SEPTEMBER 15, 1972. THE FUND DENIES ANY RESPONSIBILITY FOR CLAIMANT'S LOW BACK PROBLEMS, STATING ALL THE PROBLEMS WHICH CLAIMANT HAS HAD SUBSEQUENT TO 1970 HAVE BEEN IN THE CERVICAL AREA.

THE BOARD, AFTER DUE CONSIDERATION, CONCLUDES THAT DR. BERNSON'S REPORT IS SUFFICIENT TO ESTABLISH A CAUSAL RELATIONSHIP BETWEEN CLAIMANT'S PRESENT NEED FOR SURGERY IN THE LUMBAR AREA OF THE SPINE AND HIS INDUSTRIAL INJURY SUFFERED IN 1961 AND WHICH WAS SUBSEQUENTLY AGGRAVATED IN 1967 AND, FURTHERMORE, IF THE RECOMMENDED SURGERY IS NOT PERFORMED, CLAIMANT'S CONDITION WILL WORSEN AND PERHAPS PREVENT HIM FROM ENGAGING IN ANY TYPE OF EMPLOYMENT.

ORDER

CLAIMANT'S CLAIM FOR AN INDUSTRIAL INJURY SUFFERED IN 1961, DESIGNATED AS CLAIM NO. C 67227, IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND WHICH IS DIRECTED TO FURNISH CLAIMANT THE MEDICAL TREATMENT RECOMMENDED BY DR. BERNSON AND TO PAY CLAIMANT COMPENSATION, AS PROVIDED BY LAW, UNTIL HIS CONDITION BECOMES MEDICALLY STATIONARY AND HIS CLAIM CAN BE CLOSED PURSUANT TO ORS 656.278.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY FEE FOR OBTAINING THE REOPENING OF CLAIMANT'S CLAIM, A SUM EQUAL TO 25 PER CENT OF THE COMPENSATION CLAIMANT SHALL RECEIVE FOR TEMPORARY TOTAL DISABILITY, PAYABLE OUT OF SAID COMPENSATION AS PAID TO A MAXIMUM OF 500 DOLLARS. UPON CLOSURE OF CLAIMANT'S CLAIM, PURSUANT TO ORS 656.278, A FURTHER ORDER WILL BE ENTERED AND, AT THAT TIME, CLAIMANT'S COUNSEL WILL BE AWARDED AS AN ATTORNEY FEE, 25 PER CENT OF ANY COMPENSATION CLAIMANT MAY RECEIVE FOR PERMANENT PARTIAL DISABILITY IN THE OWN MOTION DETERMINATION.

WCB CASE NO. 76-88 AUGUST 11, 1976

ALFRED VAN BLOKLAND, CLAIMANT

JAMES GIDLEY, CLAIMANT'S ATTY.
BOB JOSEPH, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

Reviewed by Board Members Wilson and Moore.

Claimant requests review by the Board of the referee's order which dismissed his request for hearing for lack of jurisdiction.

Claimant suffered a heart attack on February 19, 1975 for which he filed a claim. The employer denied the claim on May 5, 1975 and claimant did not request a hearing on the denial until January 7, 1976. On March 16, 1976 the employer filed a motion to dismiss on the grounds that the board lacked jurisdiction since more than 180 days had elapsed after claimant received notification of the denial.

The claimant's attorney conceded that no statutory authority existed for the position which he took nor was he able to find any Oregon case law supporting his position, but he requested the referee to receive whatever evidence was available on the limited issue of claimant's right to a hearing on the merits.

The referee found that the workmen's compensation law creates certain rights which never existed before its enactment and that it is to be liberally constructed in favor of the workman - however, liberal construction does not include application of the law in violation of, and contrary to, specific, unambiguous provisions of such law - in this case, ORS 656.281(1) which provides -

> 'subject to ORS 656.319 (underscored), any party or the board may at any time request a hearing on any question concerning a claim.' (emphasis supplied)

ORS 656.319(1) provides for certain time limitations in which a request for a hearing on a denial must (underscored) be filed. (emphasis supplied)

The claimant conceded that he had failed to meet the time requirements set forth in ORS 656.319(1). The referee concluded that claimant had no right to a hearing, that his rights to workmen's compensation benefits had been completely extinguished by the passage of time. He dismissed the request on the grounds of lack of jurisdiction.

The board, on de novo review, affirms the referee's order of dismissal. Under the workmen's compensation law, the referee had no alternative but to dismiss the matter.

ORDER

The order of the referee, dated March 29, 1976, is affirmed.

WINIFRED ROSS, CLAIMANT

ALLAN COONS, CLAIMANT'S ATTY.
JAMES GIDLEY, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT 240 DEGREES FOR 75 PER CENT UNSCHEDULED BACK, NECK AND EMOTIONAL DISABILITY. CLAIMANT CONTENDS SHE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON DECEMBER 13, 1973 WHICH AFFECTED HER TAILBONE, UPPER BACK, LOW BACK, RIGHT ARM, RIGHT SHOULDER AND NECK. CLAIMANT WAS EXAMINED BY DR. SINGER WHO STATED THAT THE INJURY AGGRAVATED A PRE-EXISTING DEGENERATIVE DISEASE OF THE CLAIMANT'S CERVICAL SPINE. CLAIMANT WAS TREATED CONSERVATIVELY BUT RECEIVED LITTLE RELIEF.

IN AUGUST, 1974 CLAIMANT WAS EXAMINED BY DR. JONES FOR SYMPTOMS OF DIZZINESS AND RIGHT HAND NUMBNESS - NO NEUROLOGICAL BASIS WAS FOUND FOR THESE SYMPTOMS.

DR. ANDERSON ON JANUARY 22, 1975 DIAGNOSED DEGENERATIVE DISC DISEASE WITH POSSIBLE HERNIATED DISC AT C5-6 - HE FOUND HER CONDITION STABLE.

A DETERMINATION ORDER ISSUED ON JUNE 9, 1975 GRANTED CLAIMANT 32 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK AND NECK DISABILITY.

ON OCTOBER 25, 1975 THE ORTHOPAEDIC CONSULTANTS STATED CLAIMANT COULD NOT RETURN TO HER FORMER OCCUPATION BUT COULD WORK IN A JOB THAT PUT NO STRESS ON HER BACK, E.G., A RECEPTIONIST. FROM AN ORTHOPEDIC STANDPOINT THEY DESCRIBED 'HER TOTAL LOSS OF FUNCTION AS BEING IN THE UPPER BORDER OF MILD AND LOSS OF FUNCTION DUE TO THIS INJURY THE SAME'. THEY FOUND NO LOSS OF FUNCTION OF THE LOW BACK.

CLAIMANT WAS EXAMINED BY DR. WILSON, A PSYCHIATRIST, WHO FOUND SIGNIFICANT PSYCHOLOGICAL COMPONENTS TO HER DISABILITY IN THE FORM OF TENSION AND HYSTERICAL DISPLACEMENT.

THE REHABILITATION COUNSELOR AND EMPLOYMENT COUNSELOR FELT CLAIMANT WOULD HAVE A HARD TIME FINDING EMPLOYMENT DUE TO THE PRESENT ECONOMIC SITUATION PLUS CLAIMANT'S AGE AND WORK BACKGROUND. HOWEVER, SOME JOBS THAT WERE CONSIDERED FOR CLAIMANT WERE REJECTED ENTIRELY BY CLAIMANT BECAUSE SHE FELT SHE PHYSICALLY COULD NOT HANDLE THEM.

THE REFEREE FOUND THAT THE RANGE OF JOBS AVAILABLE TO CLAIMANT WAS, INDEED, NARROW BUT THAT CLAIMANT'S INABILITY TO FIND WORK WAS NOT ENTIRELY DUE TO THE INJURY. HE FOUND THAT 'THE GENERAL ECONOMIC SITUATION PLAYED MORE THAN A DE MINIMIS ROLE IN CLAIMANT'S INABILITY TO FIND WORK' AND HER PRESENT UNEMPLOYMENT DOESN'T PROVE SHE IS INCAPABLE OF WORKING IN LIGHT EMPLOYMENT.

THE REFEREE CONCLUDED THAT CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED BUT SHE HAS SUFFERED A SUBSTANTIAL DISABILITY IN TERMS OF LOSS OF WAGE EARNING CAPACITY AND HE GRANTED HER 240 DEGREES FOR HER UNSCHEDULED DISABILITY.

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

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 8, 1976, IS AFFIRMED.

WCB CASE NO. 75-3687-E AUGUST 12, 1976

JEANETTE FARRAH, CLAIMANT

DONALD WILSON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

CLAIMANT SUFFERED A COMPENSABLE BACK INJURY ON JUNE 8, 1964 FOR WHICH SHE RECEIVED AN AWARD OF 30 PER CENT LOSS OF FUNCTION OF AN ARM FOR UNSCHEDULED DISABILITY. AFTER CLAIMANT'S AGGRAVATION RIGHTS EXPIRED SHE PETITIONED THE BOARD TO EXERCISE ITS OWN MOTION JURISDICTION PURSUANT TO ORS 656.278 AND REOPEN HER CLAIM. THE BOARD FOUND THERE WAS NOT SUFFICIENT EVIDENCE FOR IT TO DETERMINE THE MERITS OF THE PETITION AND REFERRED THE MATTER TO THE HEARINGS DIVISION BY AN ORDER DATED JANUARY 30, 1975.

ON APRIL 18, 1975 A HEARING WAS HELD BEFORE REFEREE JOHN D. MCLEOD AND, AS A RESULT THEREOF, HE RECOMMENDED THAT THE BOARD REOPEN CLAIMANT'S CLAIM, FINDING THAT CLAIMANT HAD, IN FACT, SUFFERED AN AGGRAVATION OF HER PRE-EXISTING CONDITION AND THAT HER CONDITION AT THE PRESENT TIME WAS WORSE AND AGGRAVATED SINCE HER LAST AWARD OF COMPENSATION IN 1969.

THE RECOMMENDATION OF THE REFEREE, MADE ON JULY 25, 1975, WAS ACCEPTED BY THE BOARD WHICH ISSUED ITS OWN MOTION ORDER ON AUGUST 14, 1975 REMANDING THE CLAIM TO THE FUND TO BE ACCEPTED FOR PAYMENT OF COMPENSATION AS PROVIDED BY LAW, COMMENCING SEPTEMBER 23, 1974 AND UNTIL CLOSURE WAS AUTHORIZED PURSUANT TO ORS 656.278. PURSUANT TO ORS 656.278 THE FUND WAS GIVEN 30 DAYS FROM THE DATE OF THIS ORDER IN WHICH TO REQUEST A HEARING THEREON. THE FUND DID REQUEST A HEARING WHICH WAS HELD BEFORE REFEREE JAMES P. LEAHY ON JANUARY 8, 1976.

THE FUND CONTENDS THAT THE BOARD EXCEEDED ITS AUTHORITY IN ALLOWING THE AGGRAVATION CLAIM UNDER ITS OWN MOTION JURISDICTION PURSUANT TO ORS 656.278 OR, IN THE ALTERNATIVE, IF SUCH DISCRETION DID EXIST THE BOARD ABUSED IT AND ASSUMED A POWER NOT GRANTED.

THE FUND CONTENDED THAT THE BOARD DID NOT ALTER, CHANGE OR TERMINATE A FORMER AWARD BUT CONFUSED AGGRAVATION IN A FIVE YEAR PERIOD WITH CONTINUING POWER GRANTED UNDER ORS 656.278. IT ALSO CONTENDED THAT THERE WAS NO BASIS FOR THE AWARD OF TEMPORARY TOTAL DISABILITY COMPENSATION BECAUSE THERE WAS NO EVIDENCE PRESENTED THAT CLAIMANT WAS UNDERGOING CARE AND TREATMENT AS A RESULT OF THE SEPTEMBER 14, 1974 INJURY, THAT THE ONLY DISABILITY THAT CLAIMANT HAD WAS DIRECTLY DUE TO AGING.

THE REFEREE FOUND THE FUND'S CONTENTION THAT THE BOARD EXCEEDED ITS AUTHORITY UNDER ORS 656.278 WITHOUT MERIT. WITH RESPECT TO ITS CONTENTION THAT THE BOARD COULD NOT DELEGATE TO ITS EVALUATION DIVISION A POWER WHICH REPOSED ONLY IN THE BOARD, THE FUND FAILED TO PRESENT ANY EVIDENCE IN SUPPORT THEREOF.

THE REFEREE FOUND THAT THE MEDICAL REPORT OF DR. NOALL INDICATED CLAIMANT WAS SUFFERING AN AGGRAVATION OF CHRONIC DORSAL LUMBAR BACK STRAIN WITH A RECENT INCREASE OF AGGRAVATION OF THE PROBLEM. THIS MEDICAL EVIDENCE, WHICH WAS PRESENTED BY THE FUND, TOGETHER WITH CLAIMANT'S OWN TESTIMONY (CLAIMANT WAS CALLED AS A WITNESS FOR THE FUND) THAT HER DISABILITY IS NOT CAUSED SOLELY BY THE AGING PROCESS BUT BY AN AGGRAVATION OF A BACK INJURY FOR WHICH SHE DOES REQUIRE PAIN MEDICATION CERTAINLY IS FAVORABLE TO CLAIMANT. ALSO THE EVIDENCE THAT THE HOSPITAL PHYSICAL THERAPY AFFORDS MORE RELIEF THAN HOME REMEDIES AND THAT THE AWARD FOR COMPENSATION FOR TEMPORARY TOTAL DISABILITY SINCE SEPTEMBER, 1974 WAS GRANTED DURING A TIME WHEN CLAIMANT NECESSARILY NEEDED MEDICAL CARE AND TREATMENT AND COULD NOT SEEK WORK PREPONDERATED IN CLAIMANT'S FAVOR.

THE REFEREE CONCLUDED THAT NONE OF THE ARGUMENTS RAISED BY THE FUND WERE SUPPORTED BY ITS EVIDENCE. HE FURTHER CONCLUDED THAT THE BOARD'S OWN MOTION ORDER, ENTERED AUGUST 14, 1975, SHOULD BE AFFIRMED.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS THE ORDER OF THE REFEREE. NO NEW EVIDENCE WAS PRESENTED ON THIS REVIEW WHICH HAD NOT ALREADY BEEN PRESENTED TO THE BOARD AT THE TIME IT REVIEWED THE TRANSCRIPT OF PROCEEDINGS, EXHIBITS AND THE RECOMMENDATIONS OF REFEREE MCLEOD.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 4, 1976, IS AFFIRMED.

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

WCB CASE NO. 75-3343 AUGUST 12, 1976

LLOYD FRASER, CLAIMANT

DONALD ATCHISON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT SEEKS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER, MAILED JULY 15, 1975, WHEREBY CLAIMANT WAS AWARDED 22.5 DEGREES FOR 15 PER CENT LOSS OF HIS LEFT LEG.

CLAIMANT SUFFERED A COMPENSABLE INJURY TO THE LEFT KNEE WHEN HE WAS CUT BY A LATHE KNIFE JUST ABOVE THE KNEE, SEVERELY LACERATING THE QUADRICEPS TENDON. HE UNDERWENT SURGERY FOR THE REPAIR OF THE QUADRICEPS TENDON AND REMOVAL OF A LOOSE BODY FROM THE KNEE JOINT.

PRIOR TO THE INDUSTRIAL INJURY, CLAIMANT HAD OBSERVABLE PHYSICAL IMPAIRMENT OF THE LEFT LEG AS A RESULT OF PRIOR INJURIES THERETO. THERE IS SOME EVIDENCE THAT CLAIMANT HAD A SLIGHT LIMP PRIOR TO THE INJURY - THERE WAS ALSO EVIDENCE THAT CLAIMANT WAS ABLE TO DO HIS WORK AS WELL NOW AS HE WAS PRIOR TO HIS INJURY.

THE REFEREE FOUND THAT ALTHOUGH CLAIMANT HAD SUSTAINED SOME ADDITIONAL PHYSICAL IMPAIRMENT AND FUNCTIONAL LOSS OF USE OF HIS LEFT LEG AS A RESULT OF THE AUGUST 13, 1973 INJURY, SUCH ADDITIONAL IMPAIRMENT DOES NOT JUSTIFY A GREATER AWARD THAN CLAIMANT HAS ALREADY

RECEIVED. THE OBSERVABLE LOSS OF USE OF CLAIMANT'S LEG NOW IS NOT MUCH MORE THAN BEFORE THE INJURY. CLAIMANT HAS SOME LOSS OF STRENGTH AND SOME LOSS OF MOBILITY BUT, CONSIDERING THE USE THAT HE HAS OF HIS LEFT LEG NOW COMPARED TO THE USE HE HAD OF IT BEFORE THE INDUSTRIAL INJURY, THE LOSS OF FUNCTION IS NO GREATER THAN 15 PER CENT.

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

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 9, 1976, IS AFFIRMED.

WCB CASE NO. 75-4408 AUGUST 12, 1976

PAUL A. SNYDER, CLAIMANT

DONALD WILSON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

CLAIMANT SEEKS BOARD REVIEW OF THE REFEREE'S ORDER WHICH DIRECTED THE STATE ACCIDENT INSURANCE FUND TO ACCEPT CLAIMANT'S CLAIM FOR AGGRAVATION BUT DENIED CLAIMANT ANY COMPENSATION FOR TEMPORARY TOTAL DISABILITY.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON JULY 5, 1972 WHEN, WHILE WORKING AS A CARPENTER, HE FELL 16 FEET AND AS A RESULT FRACTURED THREE RIBS ON THE RIGHT AND SUFFERED A COMPRESSION FRACTURE OF THE SECOND LUMBAR VERTEBRA. DR. ECKHARDT, AN ORTHOPEDIST, HAS BEEN CLAIMANT'S TREATING PHYSICIAN AND, BASED UPON HIS CLOSING EVALUATION, THE CLAIM WAS CLOSED BY A DETERMINATION ORDER, MAILED MAY 17, 1973, WHEREBY CLAIMANT WAS AWARDED 64 DEGREES FOR 20 PER CENT UNSCHEDULED CHEST AND LOW BACK DISABILITY.

CLAIMANT HAS NOT WORKED AS A CARPENTER SINCE HIS INJURY, BUT WAS REHIRED BY THE EMPLOYER AS A FLAGMAN AT LABORER'S WAGES, WHICH WERE LOWER THAN THOSE HE WAS RECEIVING ON JULY 5, 1972. THE FLAGMAN'S JOB WAS TERMINATED IN JULY, 1975 DUE TO A GENERAL LAYOFF.

IN JUNE, 1975 CLAIMANT RECEIVED TREATMENT FROM DR. RINEHART, AND ON SEPTEMBER 17, 1975 WAS EXAMINED BY THE ORTHOPAEDIC CONSULTANTS. DR. RINEHART HAD RECOMMENDED THAT THE CLAIM BE REOPENED FOR FURTHER TREATMENT, STATING CLAIMANT COULD RETURN TO MODIFIED EMPLOYMENT. THE MEMBERS OF THE ORTHOPAEDIC CONSULTANTS CONCLUDED THAT THERE HAD BEEN NO AGGRAVATION SINCE THE CLOSURE ON MAY 17, 1973, BASED UPON THE PHYSICAL EXAMINATION OF CLAIMANT, IMPROVED HISTORY AND OBSERVATION OF THE X-RAYS. DR. RINEHART, AFTER REVIEWING THE REPORT OF THE ORTHOPAEDIC CONSULTANTS STATED -

> 'THE SPECIFIC QUESTION OF 'AGGRAVATION' UPON WHICH I DID NOT COMMENT IN MAY REPORT OF JUNE 16, 1975, REQUIRES FURTHER CLARIFICATION.
>
> SYMPTOMATICALLY, BOTH IN REGARD TO RHEUMATIC COMPLAINT AND ABILITY TO WORK AS A FLAGMAN, THERE WAS NO AGGRAVATION BETWEEN MAY, 1973 AND THE PRESENT. CONSEQUENTLY NO CLAIM CAN BE MADE FOR DIMINISHED FUNCTION DURING THAT TIME.

MR. SNYDER DID AND DOES HAVE RESIDUALS CORRECTABLE DISABILITY AS DESCRIBED IN MY PREVIOUS REPORT. HE IS ANXIOUS TO FIND OUT IF SAIF ACCEPTS RESPONSIBILITY FOR CORRECTION OF THIS DISABILITY.'

ON OCTOBER 9, 1975 THE FUND, AFTER CONSIDERING THE REPORTS SUBMITTED BY DR. RINEHART AND THE ORTHOPAEDIC CONSULTANTS, TOGETHER WITH OTHER INFORMATION, INFORMED CLAIMANT THAT THERE HAD BEEN NO AGGRAVATION OF THE CONDITION FOR WHICH HE HAD FILED HIS CLAIM AND IT WAS UNABLE TO REOPEN THE CLAIM FOR ADDITIONAL MEDICAL TREATMENT. THE CLAIMANT REQUESTED A HEARING.

AFTER THE DENIAL AND REQUEST FOR HEARING, REPORTS FROM DR. ECKHARDT DATED NOVEMBER 19, 1975, AND JANUARY 12, 1976 WERE SECURED. THE LATTER REPORT, BASED UPON DR. ECKHARDT'S EXAMINATION OF CLAIMANT ON DECEMBER 22, 1975, INDICATED THAT THE ARTHRITIS IN THE UPPER LUMBAR AREA OF CLAIMANT'S BACK AND THE GRADUALLY INCREASING DISABILITY HE WAS HAVING WITH HIS BACK WERE DIRECTLY ATTRIBUTABLE TO THE INDUSTRIAL ACCIDENT OF JULY 5, 1972. DR. ECKHARDT RECOMMENDED PHYSICAL THERAPY TREATMENT IN THE FORM OF DEEP HEAT AND MASSAGE TO HIS LOW BACK. ON JANUARY 2, 1976 DR. ECKHARDT AGAIN SAW CLAIMANT WHO WAS STILL HAVING SUBSTANTIAL BACK PAIN AFTER RECEIVING FIVE THERAPY TREATMENTS. PAIN MEDICATION AND A MUSCLE RELAXANT WERE PRESCRIBED AND DR. ECKHARDT RECOMMENDED HE CONTINUE HIS PHYSICAL THERAPY TREATMENTS.

THE REFEREE, BASED UPON THE JANUARY 12, 1976 REPORT OF DR. ECKHARDT, FOUND THAT CLAIMANT HAD SUSTAINED HIS BURDEN OF PROVING HE HAD SUFFERED AN AGGRAVATION OF HIS INDUSTRIAL INJURY. THE REFEREE FOUND, HOWEVER, THAT CLAIMANT HAD NOT SUSTAINED HIS BURDEN OF PROVING THAT HE WAS ENTITLED TO ANY ADDITIONAL COMPENSATION FOR TEMPORARY TOTAL DISABILITY, THE MEDICAL TREATMENT WHICH CLAIMANT HAS BEEN RECEIVING SINCE 1975 WAS PALLIATIVE OR SUPPORTIVE IN NATURE AND DID NOT JUSTIFY AN AWARD OF TEMPORARY TOTAL DISABILITY COMPENSATION.

THE REFEREE CONCLUDED THAT INASMUCH AS THE MEDICAL REPORTS FROM DR. ECKHARDT WHICH ESTABLISHED AGGRAVATION WERE SECURED SUBSEQUENT TO THE DENIAL, THEREFORE, THE LETTER OF DENIAL WAS CORRECT AS OF ITS DATE AND THE FUND, NOT HAVING HAD AN OPPORTUNITY TO ACCEPT OR DENY THE AGGRAVATION CLAIM BASED ON THE TWO FOREGOING REPORTS FROM DR. ECKHARDT PRIOR TO THE REQUEST FOR HEARING, DID NOT HAVE TO PAY CLAIMANT'S ATTORNEY FEE.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS, IN PART, THE FINDINGS AND CONCLUSIONS OF THE REFEREE. IT AGREES THAT CLAIMANT HAD ESTABLISHED THAT HIS PRESENT CONDITION IS DIRECTLY ATTRIBUTABLE TO HIS COMPENSABLE INJURY OF JULY 5, 1972 AND THAT IT IS WORSE NOW THAN IT WAS AT THE TIME HIS CLAIM WAS CLOSED ON MAY 17, 1973. IT AGREES THAT THERE IS NO EVIDENCE IN THE RECORD TO SUPPORT A CLAIM FOR ADDITIONAL COMPENSATION FOR TIME LOSS. THE CLAIM SHOULD BE REMANDED TO THE FUND TO SUBMIT FOR CLOSURE UNDER THE PROVISIONS OF ORS 656.268.

WITH RESPECT TO THE REFEREE'S CONCLUSION THAT CLAIMANT'S ATTORNEY WAS NOT ENTITLED TO BE PAID AN ATTORNEY FEE BY THE FUND, ORS 656.386(1) PROVIDES THAT IN REJECTED CASES WHERE THE CLAIMANT PREVAILS FINALLY IN A HEARING BEFORE THE REFEREE, THEN THE REFEREE SHALL ALLOW A REASONABLE ATTORNEY FEE. CLAIMANT'S CLAIM FOR AGGRAVATION WAS DENIED BY THE FUND BUT THE REFEREE FOUND THAT IT SHOULD HAVE BEEN ACCEPTED, THEREFORE, ALTHOUGH ASSESSMENT OF PENALTY UNDER THE PROVISIONS OF ORS 656.262(8) AND ATTORNEY FEES UNDER ORS 656.382 ARE NOT INDICATED, THE REFEREE HAD NO ALTERNATIVE BUT TO AWARD CLAIMANT'S COUNSEL A REASONABLE ATTORNEY FEE AS PROVIDED FOR IN ORS 656.386.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 5, 1976, HAS BEEN MODIFIED TO READ AS FOLLOWS -

'CLAIMANT'S CLAIM FOR AGGRAVATION IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND WHICH IS DIRECTED TO SUBMIT SAID CLAIM TO THE EVALUATION DIVISION OF THE BOARD FOR A DETERMINATION UNDER THE PROVISIONS OF ORS 656.268.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY FEE FOR HIS SERVICES AT THE HEARING BEFORE THE REFEREE THE SUM OF 800 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.'

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY FEE FOR HIS SERVICES IN CONNECTION WITH THE BOARD REVIEW A SUM EQUAL TO 25 PER CENT OF ANY INCREASED COMPENSATION CLAIMANT MAY RECEIVE WHEN HIS CLAIM IS CLOSED PURSUANT TO ORS 656.268, PAYABLE OUT OF SAID COMPENSATION AS PAID TO A MAXIMUM OF 2,300 DOLLARS.

CLAIM NO. DA 792657 AUGUST 12, 1976

CHARLES J. HACKING, CLAIMANT

HAYES PATRICK LAVIS, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

ON APRIL 7, 1976 CLAIMANT'S ATTORNEY REQUESTED A HEARING ON CLAIMANT'S REQUEST TO HAVE HIS CLAIM REOPENED ON BOARD'S OWN MOTION AND THE FAILURE OF THE BOARD TO ACT BASED UPON MEDICAL EVIDENCE THAT CLAIMANT WAS ENTITLED TO RELIEF.

CLAIMANT IS NOT ENTITLED, AT THIS TIME, TO A HEARING INASMUCH AS THERE HAS BEEN NO OWN MOTION ORDER ISSUED BY THE BOARD PURSUANT TO ORS 656.278.

ON JULY 30, 1976 THE BOARD ADVISED CLAIMANT'S ATTORNEY THAT IT WOULD BE NECESSARY UNDER ITS RULES OF PRACTICE AND PROCEDURE FOR CLAIMANT TO PROVIDE COPIES OF HIS APPLICATION FOR OWN MOTION RELIEF (THE BOARD CONSTRUED THE REQUEST FOR A HEARING AS SUCH) TO THE FUND AND THAT THE FUND WOULD HAVE 20 DAYS WITHIN WHICH TO ADVISE THE BOARD OF ITS POSITION. THE LETTER OF APRIL 7, 1976 DID NOT INDICATE THIS HAD BEEN DONE AND THE BOARD, IN ORDER TO EXPEDITE THE MATTER, FORWARDED COPIES OF THE REQUEST, AND ATTACHMENTS THERETO, TO THE FUND.

ON AUGUST 5, 1976 THE FUND RESPONDED, STATING IT WOULD VOLUNTARILY REOPEN THE CLAIM AND HAD REFERRED THE CLAIM TO AN EXAMINER FOR IMMEDIATE HANDLING. THROUGH SOME INADVERTANCE THE FUND, AFTER RECEIVING THE REPORT FROM THE ORTHOPAEDIC CONSULTANTS IN AUGUST, 1975, ADMITTEDLY FAILED TO FOLLOW THROUGH ON THE RECOMMENDATIONS MADE IN SAID REPORT.

ORDER

CLAIMANT'S CLAIM IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR THE PAYMENT OF COMPENSATION, AS PROVIDED BY LAW, COMMENCING AUGUST 8, 1975 AND UNTIL THE CLAIM IS CLOSED PURSUANT TO ORS 656.278, LESS TIME WORKED BETWEEN THOSE DATES, AND FOR SUCH MEDICAL CARE AND TREATMENT AS CLAIMANT MAY REQUIRE.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY FEE A SUM EQUAL TO 25 PER CENT OF THE AMOUNT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY THAT CLAIMANT SHALL RECEIVE PAYABLE OUT OF SUCH COMPENSATION AS PAID, TO A MAXIMUM OF 150 DOLLARS.

CLAIM NO. (24) 144—70—285 AUGUST 12, 1976

DAVID E. TOFFLEMIRE, CLAIMANT

DELL ALEXANDER, CLAIMANT'S ATTY.
OWN MOTION ORDER

ON JUNE 22, 1973 CLAIMANT REQUESTED THE BOARD TO EXERCISE ITS OWN MOTION JURISDICTION, PURSUANT TO ORS 656.278, AND REOPEN HIS CLAIM FOR A COMPENSABLE INJURY SUFFERED ON AUGUST 30, 1970 WHILE CLAIMANT WAS EMPLOYED WITH GEORGIA PACIFIC. CLAIMANT'S CLAIM WAS ACCEPTED BY THE EMPLOYER AND CLOSED BY A DETERMINATION ORDER MAILED NOVEMBER 25, 1970 WHEREBY CLAIMANT WAS AWARDED COMPENSATION FOR TEMPORARY TOTAL DISABILITY ONLY. CLAIMANT'S AGGRAVATION RIGHTS HAVE EXPIRED.

IN SUPPORT OF HIS REQUEST, CLAIMANT ATTACHED THREE LETTERS FROM DR. DON L. POULSON FROM WHOM HE HAD BEEN RECEIVING MEDICAL CARE AND TREATMENT FOR HIS LOW BACK CONDITION. COPIES OF THE REQUEST FOR OWN MOTION RELIEF AND THE ATTACHED LETTERS FROM DR. POULSON WERE FURNISHED TO THE EMPLOYER, GEORGIA PACIFIC CORPORATION. MORE THAN 20 DAYS HAVE EXPIRED AND THE EMPLOYER HAS NOT RESPONDED STATING ITS POSITION.

THE BOARD, AFTER DUE CONSIDERATION OF THE STATEMENTS MADE BY DR. POULSON IN HIS LETTERS OF MAY 10, MAY 20 AND JUNE 2, 1976, CONCLUDES THAT CLAIMANT IS ENTITLED TO HAVE HIS CLAIM REOPENED AND TO RECEIVE COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM OCTOBER 3, 1975 TO APRIL 14, 1976. FURTHERMORE, DR. POULSON'S BILLS SHOULD BE PAID BY THE CARRIER. AT THE PRESENT TIME THERE IS NOT SUFFICIENT EVIDENCE FOR THE BOARD TO DETERMINE THE EXTENT, IF ANY, OF CLAIMANT'S PERMANENT PARTIAL DISABILITY, THEREFORE, THE EMPLOYER, GEORGIA PACIFIC CORPORATION, SHOULD BE DIRECTED TO ASCERTAIN IF CLAIMANT'S CONDITION IS MEDICALLY STATIONARY AND, IF SO, TO REQUEST A DETERMINATION BY THE EVALUATION DIVISION OF THE BOARD.

ORDER

CLAIMANT'S CLAIM FOR HIS INDUSTRIAL INJURY OF AUGUST 30, 1970 IS REMANDED TO THE EMPLOYER, GEORGIA PACIFIC CORPORATION, FOR THE PAYMENT OF DR. POULSON'S BILLS AND FOR THE PAYMENT TO CLAIMANT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM OCTOBER 3, 1975 TO APRIL 14, 1976.

THE EMPLOYER, GEORGIA PACIFIC CORPORATION, SHALL, IF CLAIMANT'S CONDITION IS MEDICALLY STATIONARY, REQUEST THE EVALUATION DIVISION OF THE BOARD TO MAKE A DETERMINATION OF CLAIMANT'S PERMANENT PARTIAL DISABILITY.

CLAIMANT'S COUNSEL IS GRANTED A SUM EQUAL TO 25 PER CENT OF THE TEMPORARY TOTAL DISABILITY COMPENSATION AWARDED BY THIS ORDER AS A REASONABLE ATTORNEY FEE, PAYABLE OUT OF SUCH COMPENSATION AS PAID, TO A MAXIMUM OF 500 DOLLARS.

CLAIMANT'S COUNSEL IS GRANTED AS A REASONABLE ATTORNEY FEE A SUM EQUAL TO 25 PER CENT OF ANY PERMANENT PARTIAL DISABILITY THAT

MAY BE AWARDED TO CLAIMANT UPON CLOSURE OF HIS CLAIM, PAYABLE OUT OF SUCH COMPENSATION AS PAID, TO A MAXIMUM OF 2,000 DOLLARS.

WCB CASE NO. 76-29 AUGUST 12, 1976

DONNA BASSFORD, CLAIMANT

ROLF OLSON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER OF DISMISSAL

ON JULY 2, 1976 A REFEREE'S ORDER WAS ISSUED IN THE ABOVE ENTITLED MATTER.

ON AUGUST 4, 1976 CLAIMANT'S ATTORNEY REQUESTED BOARD REVIEW.

MORE THAN 30 DAYS ELAPSED BETWEEN THE MAILING OF THE REFEREE'S ORDER AND THE MAKING OF 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 VIEW SHOULD BE DISMISSED.

IT IS SO ORDERED.

WCB CASE NO. 75-2652 AUGUST 13, 1976

SUSAN C. OTT, CLAIMANT

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

REVIEWED BY BOARD MEMBERS WILSON, MOORE AND PHILLIPS.

THE WORKMEN'S COMPENSATION BOARD, WHICH BY AN INTERIM ORDER ENTERED BY REFEREE GEORGE RODE ON OCTOBER 27, 1975 WAS MADE A PARTY TO THE ABOVE PROCEEDINGS AND HELD TO BE THE REAL PARTY IN INTEREST ON THE ISSUE OF REOPENING CLAIMANT'S CLAIM FOR CONTINUED TEMPORARY TOTAL DISABILITY BENEFITS AND GRANTING TO CLAIMANT VOCATIONAL REHABILITATION BENEFITS, SEEKS REVIEW OF THE REFEREE'S ORDER WHICH DIRECTED THE BOARD TO GRANT CLAIMANT VOCATIONAL REHABILITATION BENEFITS TO WHICH SHE WAS ENTITLED AS A VOCATIONALLY HANDICAPPED WORKER.

CLAIMANT IS A 26 YEAR OLD TYPIST WHO WAS EMPLOYED BY A LEGAL FIRM IN PORTLAND AND SUSTAINED A COMPENSABLE INJURY TO HER RIGHT FOREARM, IN THE NATURE OF AN OCCUPATIONAL DISEASE, ON AUGUST 2, 1974. THE DIAGNOSIS MADE BY DR. KIEST WAS TENOSYNOVITIS INVOLVING THE RIGHT WRIST AREA. DR. KIEST RELEASED THE EXTENSOR TENDON ON OCTOBER 30, 1974.

CLAIMANT RETURNED TO HER FORMER JOB WHICH CONSISTED OF TYPING FROM A DICTAPHONE, SHE HAD NO OTHER DUTIES SUCH AS RECEPTION, OFFICE OR SECRETARIAL WORK, ALTHOUGH SHE DID OCCASIONALLY DO SOME FILING. CLAIMANT HAD BEEN RATED AS THE BEST TYPIST WITH RESPECT TO SPEED AND ACCURACY IN THE LAW FIRM BUT UPON HER RETURN SHE WAS UNABLE TO RESUME TYPING BECAUSE OF HER WRIST CONDITION. SHE WAS ALSO UNABLE

TO UNDERGO RETRAINING AS A COURT REPORTER BECAUSE OF SIMILAR PROBLEMS IN USING THE REPORTING MACHINE. DR. KIEST, ON APRIL 23, 1975 RECOMMENDED VOCATIONAL RETRAINING FOR CLAIMANT.

DR. NATHAN, WHO SPECIALIZES IN HAND SURGERY, EXAMINED CLAIMANT ON SEPTEMBER 8, 1975 AND CONCLUDED THAT ALTHOUGH TYPING DID CAUSE SOME FATIGUE ABOUT THE WRIST AND FINGERS IN CERTAIN PEOPLE AND IT MIGHT VERY WELL BE THAT CLAIMANT WOULD NOT BE ABLE TO PERFORM WITH THE SAME RAPIDITY AND EFFICIENCY, HE FOUND IT DIFFICULT TO RECOMMEND A CHANGE OF OCCUPATION OTHER THAN TO A LESS STRENUOUS TYPE OF SECRETARIAL TYPING WORK.

THE ASSISTANT VOCATIONAL REHABILITATION COORDINATOR FOR THE BOARD DENIED CLAIMANT'S ELIGIBILITY FOR VOCATIONAL REHABILITATION, STATING SHE DID NOT HAVE A VOCATIONAL HANDICAP.

ORS 656.728(1) STATES THAT THE BOARD MAY (UNDERSCORED) PROVIDE UNDER UNIFORM RULES AND REGULATIONS FOR THE VOCATIONAL REHABILITATION OF MEN AND WOMEN INJURED BY ACCIDENTS ARISING OUT OF AND IN THE COURSE OF THEIR EMPLOYMENT WHILE WORKING UNDER PROTECTION OF THE WORKMEN'S COMPENSATION LAW.

IT WAS THE POSITION OF THE BOARD, AS WELL AS OF THE EMPLOYER, THAT BECAUSE 656.278 USES THE WORD 'MAY' ABSOLUTE DISCRETION IS INVESTED IN THE BOARD TO PROVIDE VOCATIONAL REHABILITATION ALONG WITH THE ATTENDANT TEMPORARY TOTAL DISABILITY BENEFITS PROVIDED BY CHAPTER 634 OREGON LAWS, 1973 - THAT A WORKMAN HAS NO INHERENT RIGHT TO SUCH BENEFITS IN THE SENSE THAT HE HAS A RIGHT TO DISABILITY AND OTHER COMPENSATION BENEFITS ARISING OUT OF A COMPENSABLE INJURY. INASMUCH AS THE MATTER IS WITHIN THE DISCRETION OF THE BOARD, COUNSEL FOR THE BOARD ARGUED THAT THE EVIDENCE MUST INDICATE THAT THE BOARD HAD ABUSED ITS DISCRETION IN DENYING CLAIMANT VOCATIONAL REHABILITATION.

THE REFEREE RELIED UPON THE BOARD'S ADMINISTRATIVE RULES RELATING TO VOCATIONAL REHABILITATION, ADOPTED ON FEBRUARY 4, 1975 BY WCB ADMINISTRATIVE ORDER 4-1975, AND, MORE SPECIFICALLY, ON SECTION 61-005(4) WHICH DEFINES A VOCATIONALLY HANDICAPPED WORKER AS A WORKER WHO HAS AN OCCUPATIONAL HANDICAP CAUSED BY A COMPENSABLE INJURY WHICH PREVENTS HIM RETURNING TO HIS REGULAR EMPLOYMENT AND WHO HAS NO OTHER SKILLS WHICH WOULD ENABLE HIM READILY TO RETURN TO FULL TIME EMPLOYMENT AND SECTION 61-010(2) WHICH PROVIDES, IN PART, THAT A TRAINING PROGRAM SHOULD BE DESIGNED FOR EACH VOCATIONAL HANDICAPPED WORKER TO PROVIDE SKILLS WHICH WILL ENABLE THE WORKER TO FUNCTION AT AN EMPLOYMENT LEVEL COMPARABLE TO HIS PRE-INJURY LEVEL. HE INTERPRETED THE PHRASES 'FULL TIME EMPLOYMENT' AND 'AN EMPLOYMENT LEVEL COMPARABLE TO HIS PRE-INJURY LEVEL' AS MEANING THAT THE JOB WHICH THE WORKMAN CAN PERFORM WITHOUT RETRAINING OR FOR WHICH THE WORKMAN IS RETRAINED SHALL BE ONE PAYING WAGES SUBSTANTIALLY THE SAME AS THE WAGES THE WORKMAN WAS MAKING AT THE TIME OF THE INJURY.

ASSUMING THAT THE BOARD HAD DISCRETIONARY POWERS UNDER ORS 656.728, THE REFEREE CONCLUDED THAT THE EVIDENCE INDICATES THAT THE BOARD, THROUGH ITS COORDINATOR, HAD ABUSED ITS DISCRETION IN FAILING TO PROVIDE VOCATIONAL REHABILITATION TO CLAIMANT. THE EVIDENCE CLEARLY DEMONSTRATED THAT THE COMPENSABLE INJURY PREVENTED CLAIMANT FROM RETURNING TO HER REGULAR EMPLOYMENT AND THAT CLAIMANT HAD SHOWN THAT SHE HAD NO OTHER SKILLS THAT WOULD ENABLE HER TO READILY RETURN TO FULL TIME EMPLOYMENT. HAVING FOUND CLAIMANT HAD SUSTAINED THE BURDEN OF PROVING THAT SHE WAS VOCATIONALLY HANDICAPPED WITHIN THE DEFINITION OF WCB ADMINISTRATIVE ORDER 4-1975, SECTION 61-005(4), REFEREE FELT IT NOT NECESSARY TO PROCEED ON THE ISSUE OF EXTENT OF CLAIMANT'S PERMANENT PARTIAL DISABILITY. HE ORDERED THE BOARD TO GRANT CLAIMANT THE VOCATIONAL REHABILITATION BENEFITS TO WHICH SHE WAS ENTITLED AS A VOCATIONALLY HANDICAPPED WORKER.

THE BOARD, ON DE NOVO REVIEW, ACCEPTS, AS DID ITS COUNSEL, THE FACT THAT THE RECORD CLEARLY ESTABLISHES THAT CLAIMANT CANNOT RETURN TO HER FORMER OR 'REGULAR' WORK AS A PRODUCTION TYPIST AND, THEREFORE, SHE CERTAINLY WOULD BE CONSIDERED VOCATIONALLY HANDICAPPED UNLESS SHE HAD OTHER SKILLS WHICH WOULD ENABLE HER TO READILY RETURN TO FULL TIME EMPLOYMENT.

CLAIMANT IS 26 YEARS OLD, SHE IS A HIGH SCHOOL GRADUATE AND HER EMPLOYMENT BACKGROUND INCLUDES FIVE AND A HALF YEARS OF WORKING FOR A BOOK SALES ORGANIZATION, DOING GENERAL OFFICE WORK AND PRODUCTION TYPING UNTIL THE DEVELOPMENT OF HER TENOSYNOVITIS. CLAIMANT WAS TESTED BY DR. JULIA PERKINS, CLINICAL PSYCHOLOGIST, WHO FOUND CLAIMANT HAD WELL ABOVE AVERAGE INTELLIGENCE, EXCELLENT READING AND COMPREHENSIVE ABILITY AND GOOD APTITUDES FOR WORK INVOLVING MANUAL DEXTERITY. SHE ALSO FOUND CLAIMANT TO BE HIGHLY MOTIVATED TO RETURN TO WORK. THE MEDICAL EVIDENCE, AS WELL AS CLAIMANT'S OWN TESTIMONY, INDICATES SHE IS IN GOOD HEALTH EXCEPT FOR THE TENOSYNOVITIS RESIDUALS. SHE DOES HAVE PAIN AND SWELLING IN THE RIGHT WRIST WITH SUCH ACTIVITIES AS TYPING, STENOTYPING OR REPETITIVE RAPID USE OF THE WRIST AND SHE HAS SUFFERED A 20 PER CENT LOSS OF GRIP AND SOME NUMBNESS IN THE WRIST AT NIGHT.

CLAIMANT CONSIDERS HERSELF CAPABLE, TAKING INTO CONSIDERATION HER HEALTH, EDUCATION, APTITUDES AND ABILITIES, OF HANDLING MANY TYPES OF ALTERNATIVE EMPLOYMENT AND, IN FACT, SHE HAS SEARCHED WIDELY FOR SUCH ALTERNATIVE EMPLOYMENT BUT, UNFORTUNATELY, WITHOUT SUCCESS. SHE HAS BEEN DRAWING UNEMPLOYMENT BENEFITS DURING PART OF THAT TIME. THE BOARD FINDS, BASED UPON THE EVIDENCE, THAT THE REASON CLAIMANT CANNOT READILY RETURN TO EMPLOYMENT IS NOT DUE TO THE FACT THAT SHE IS VOCATIONALLY HANDICAPPED BUT IS DUE TO THE FACT THAT THE TYPE OF WORK SHE SOUGHT, E.G., ASSEMBLY WORK, JANITORIAL, OR LAUNDRY WORK, WORK AS A PLANT GUARD, POSTAL EMPLOYEE, BARMAID AND TRUCK OR VEHICLE DRIVER, ARE JOBS WHICH, AT THIS TIME, HAVE FEW, IF ANY, VACANCIES. THEREFORE, CLAIMANT'S INABILITY TO RETURN TO THE LABOR MARKET IS DUE TO AN ECONOMY OF MORE SUPPLY THAN DEMAND IN THE AREAS IN WHICH SHE SOUGHT WORK. THIS CERTAINLY IS NOT AN INDICATION OF LACK OF ALTERNATIVE SKILLS,APTITUDES OR ABILITIES TO DO SUCH JOBS IF THEY WERE AVAILABLE.

CLAIMANT HAS CONTENDED THAT NO ONE WOULD HIRE HER BECAUSE OF HER PERMANENT DISABILITY AND FOR THAT REASON SHE SHOULD BE ENTITLED TO VOCATIONAL REHABILITATION. IF EMPLOYERS ARE PREJUDICED BECAUSE OF CLAIMANT'S RESIDUAL PERMANENT DISABILITY SUCH PREJUDICE WILL REMAIN REGARDLESS OF SKILLS CLAIMANT HAS TO OFFER AND VOCATIONAL RETRAINING WILL NOT OVERCOME IT. MERELY TO SHOW PREJUDICE ON THE PART OF THE EMPLOYER OR POTENTIAL EMPLOYER OR TO SHOW A PARTICULAR DEGREE OF PERMANENT DISABILITY DOES NOT ESTABLISH A WORKMAN'S NEED FOR VOCATIONAL REHABILITATION.

IF CLAIMANT TAKES EMPLOYMENT AT A LESSER WAGE THAN SHE WAS EARNING BEFORE HER INJURY THAT IS TAKEN INTO CONSIDERATION IN DETERMINING HER AWARD FOR PERMANENT PARTIAL DISABILITY BUT IT DOES NOT INDICATE SHE IS VOCATIONALLY HANDICAPPED.

THE BOARD CONCLUDES THAT CLAIMANT'S CLAIM SHOULD NOT BE REOPENED FOR CONTINUED VOCATIONAL REHABILITATION AND FOR THE PAYMENT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY DURING SUCH PROGRAM. CLAIMANT IS NOT VOCATIONALLY HANDICAPPED AS DEFINED BY WCB ADMINISTRATIVE ORDER 4-1975, SECTION 61-005(4). FURTHERMORE, THE POLICY STATEMENTS CONTAINED IN SECTION 61-010 OF THE SAME ORDER ARE NOT APPLICABLE UNTIL AFTER (UNDERSCORED) THE WORKMAN IS DETERMINED TO BE VOCATIONALLY HANDICAPPED. THE STATEMENTS CONTAINED IN THAT SECTION ARE MERELY GUIDELINES TO BE USED IN THE PREPARATION OF THE PROGRAM

FOR A WORKMAN ALREADY DETERMINED TO BE VOCATIONALLY HANDICAPPED, THEY ARE NOT TO BE USED TO DETERMINE WHETHER OR NOT THERE IS A VOCATIONAL HANDICAP. THE REFEREE WAS IN ERROR IN SO CONSTRUING SAID SUBSECTION.

HAVING FOUND THAT CLAIMANT IS NOT VOCATIONALLY HANDICAPPED, AND INASMUCH AS CLAIMANT HAS ALREADY BEEN DETERMINED TO BE MEDICALLY STATIONARY (A DETERMINATION ORDER MAILED JUNE 4, 1975 AWARDED CLAIMANT 5 PER CENT OF THE RIGHT FOREARM) THE BOARD CONCLUDES THAT THE MATTER SHOULD BE REMANDED TO REFEREE RODE, WHO OBSERVED AND HEARD THE WITNESSES AT THE TIME OF THE HEARING, TO ENTER AN OPINION AND ORDER ON THE ISSUE OF THE ADEQUACY OF THE DETERMINATION ORDER.

ORDER

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

THE ISSUE OF THE ADEQUACY OF THE DETERMINATION ORDER, MAILED DECEMBER 23, 1975, WHEREBY CLAIMANT WAS AWARDED 7.5 DEGREES FOR 5 PER CENT LOSS OF THE RIGHT FOREARM, IS REMANDED TO THE REFEREE FOR A DETERMINATION WITHOUT A FURTHER HEARING.

DISSENT

BOARD MEMBER KENNETH V. PHILLIPS DISSENTS AS FOLLOWS -

THE MATTER OF ELIGIBILITY FOR VOCATIONAL REHABILITATION IS NECESSARILY A JUDGMENTAL ISSUE BASED ON THE DETERMINATION OF THE CLAIMANT'S VOCATIONAL HANDICAP. THAT DETERMINATION MUST BE MADE FROM THE INFORMATION AVAILABLE AND WITH THE USE OF THE PROFESSIONAL EXPERTISE OF AVAILABLE JOBS AND APPROPRIATE JOB SKILLS.

EVIDENCE INDICATES THAT CLAIMANT HAS A HIGH DEGREE OF SKILL AND NATIVE TALENT IN THE USE OF HER HANDS. HER DISABILITY PRECLUDES HER USING MUCH OF THAT SKILL. THE EMPLOYMENT OPPORTUNITIES FOR WHICH SHE HAS APPLIED AND WOULD BE COMFORTABLE WITH ALSO REQUIRE A DEGREE OF SKILL. IT IS HER LACK OF TRAINING OR EXPERIENCE THAT HAS CAUSED HER FAILURE TO BECOME EMPLOYED, NOT THE DEPRESSED JOB MARKET.

ALTHOUGH IT IS TRUE THAT CLAIMANT DOES HAVE SOME EXPERIENCE IN FIELDS OTHER THAN PRODUCTIVE TYPING, THAT EXPERIENCE IN ITSELF DOES NOT QUALIFY AS A SATISFACTORY MEANS OF SELF SUPPORT AS REQUIRED BY THE RULE. IT MAY BE THAT THOSE JOBS IN WHICH SHE HAS SOME EXPERIENCE WERE ABHORRENT TO HER - IT MAY BE THAT THEY WERE OF SUCH LOW WAGES THAT ONE COULD NOT LIVE ON THE INCOME - IT MAY BE THAT HER ABILITIES DID NOT COINCIDE WITH THE JOB REQUIREMENTS TO THE DEGREE THAT REEMPLOYMENT IN THOSE AREAS WAS A PROBABILITY. EVIDENCE IN REGARD TO PREVIOUS EXPERIENCE WAS NOT DEVELOPED AT THE HEARING. THE FACT REMAINS THAT SHE HAS NOT SOUGHT REEMPLOYMENT IN THOSE AREAS IN WHICH SHE HAS SOME EXPERIENCE, BUT HAS DEMONSTRATED MOTIVATION IN A NUMBER OF OTHER FIELDS. DR. PERKINS' PSYCHOLOGICAL EXAMINATION INDICATES PERSONALITY TRAITS THAT OF THEMSELVES WOULD BE A BAR TO THAT REEMPLOYMENT.

IT IS THE JUDGMENT OF THIS REVIEWER THAT CLAIMANT IS VOCATIONALLY HANDICAPPED AND I WOULD AFFIRM THE ORDER OF THE REFEREE. RESPECTFULLY SUBMITTED,

-S- KENNETH V. PHILLIPS

WCB CASE NO. 75-3977 AUGUST 19, 1976

HELEN JACKSON HAMMONS, CLAIMANT

J. DAVID KRYGER, CLAIMANT'S ATTY.
PHILIP MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

THE EMPLOYER SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH DENIED CLAIMANT'S CLAIM FOR AGGRAVATION BUT ORDERED THE EMPLOYER TO PAY CLAIMANT'S MEDICAL EXPENSES INCURRED PURSUANT TO ORS 656.245, DIRECTED THE EMPLOYER TO PAY FOR A MEDICALLY SUPERVISED WEIGHT LOSS PROGRAM PURSUANT TO ORS 656.245 IF CLAIMANT SHOULD EVER SUBMIT HERSELF TO SUCH A PROGRAM AND AWARDED TO CLAIMANT'S ATTORNEY A FEE OF 150 DOLLARS BECAUSE OF THE EMPLOYER'S REFUSAL TO PAY COMPENSATION WITHIN 14 DAYS AND ITS REFUSAL TO ACCEPT THE CLAIM FOR MEDICAL CARE AND TREATMENT UNDER ORS 656.245.

CLAIMANT HAD SUFFERED AN INJURY ON AUGUST 8, 1967 - HER CLAIM WAS ORIGINALLY CLOSED BY DETERMINATION ORDER OF OCTOBER 9, 1972 WHEREBY CLAIMANT WAS AWARDED 64 DEGREES FOR 20 PER CENT UNSCHEDULED LOW BACK DISABILITY. THE CLAIMANT REQUESTED A HEARING AND, AS A RESULT OF THAT HEARING, CLAIMANT'S AWARD WAS INCREASED TO 128 DEGREES BY OPINION AND ORDER ENTERED MAY 7, 1973.

CLAIMANT IS 44 YEARS OLD AND IS VERY OBESE. SHE HAS NOT WORKED SINCE HER INDUSTRIAL INJURY AND, WITH THE EXCEPTION OF DR. BOLIN, D.C., EVERY PHYSICIAN WHO HAS EXAMINED AND-OR TREATED CLAIMANT HAS BEEN UNABLE TO GIVE ANY REAL EXPLANATION FOR CLAIMANT'S PROBLEMS, STATING HER PROBLEMS HAD NOT CHANGED GREATLY SINCE HER INDUSTRIAL INJURY. NEVERTHELESS, ON AUGUST 25, 1975, CLAIMANT FILED A CLAIM FOR AGGRAVATION, BASED UPON TWO REPORTS FROM DR. BOLIN.

ON NOVEMBER 26, 1975, DR. PALUSKA, AFTER EXAMINING CLAIMANT, INDICATED CLAIMANT HAD A CHRONIC LOW BACK STRAIN AGGRAVATED BY EXOGENOUS OBESITY AND CONVERSION REACTION, AT THAT TIME CLAIMANT WEIGHED 240 POUNDS. DR. PALUSKA FELT THAT THERE WAS NO SUBSTANTIAL CHANGE IN CLAIMANT'S SYMPTOMS COMPARED TO THOSE PRESENT IN 1972.

THE EMPLOYER OFFERED IN EVIDENCE FILM TAKEN OF CLAIMANT ON OCTOBER 14 AND 15, 1975, WHICH WAS VERY REVEALING. THE FILM SHOWS CLAIMANT MOVING AROUND QUITE WELL, LIFTING AND BENDING WITHOUT ANY APPARENT DIFFICULTY AND DIRECTLY CONTRADICTED THE TESTIMONY OF CLAIMANT AS TO WHAT SHE WAS ABLE TO DO.

THE REFEREE FOUND THAT CLAIMANT WAS NOT CREDIBLE. HE ALSO FOUND THAT SHE WAS AWARE SHE HAD A WEIGHT PROBLEM BUT HAD NOT ENTERED INTO ANY WEIGHT CONTROL PROGRAM. SHE DID HAVE A BACK PROBLEM AND SHOULD HAVE A FUSION - HOWEVER, NO DOCTOR, APPARENTLY, IS WILLING TO PERFORM SUCH SURGERY UNTIL CLAIMANT LOSES A SUBSTANTIAL AMOUNT OF WEIGHT.

THE REFEREE CONCLUDED THAT CLAIMANT'S CONDITION WAS COMPOUNDED BY HER REFUSAL OR INABILITY TO LOSE WEIGHT. HE FELT THERE WAS NO JUSTIFICATION TO REOPEN THE MATTER ON AGGRAVATION BUT HE DID FEEL THAT THE CLAIMANT HAD A NEED FOR MEDICAL HELP TO WHICH SHE WAS ENTITLED UNDER THE PROVISIONS OF ORS 656.245. HE FOUND THAT THE EMPLOYER HAD NEITHER ACCEPTED NOR DENIED CLAIMANT'S NEED FOR THIS MEDICAL CARE AND TREATMENT AND THEY SHOULD HAVE DONE SO. HE INFERRED THAT THE EMPLOYER HAD, IN FACT, DENIED ALL RESPONSIBILITY IN THIS MATTER BOTH AS TO AGGRAVATION AND MEDICAL CARE AND TREATMENT UNDER ORS 656.245 AND

FOR THAT REASON HE ORDERED PAYMENT OF CLAIMANT'S ATTORNEY'S FEE BY THE EMPLOYER AND DIRECTED THE EMPLOYER TO PAY FOR THE MEDICAL EXPENSES INCURRED BY CLAIMANT WHILE UNDER THE CARE OF DR. BOLIN.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE REFEREE THAT THE EVIDENCE INDICATES THAT CLAIMANT'S TESTIMONY IS NOT CREDIBLE. THE BOARD FINDS THAT CLAIMANT IS NOT EVEN ENTITLED TO MEDICAL CARE AND TREATMENT UNDER THE PROVISIONS OF ORS 656.245. IT IS NOT THE RESPONSIBILITY OF THE EMPLOYER, AND ITS CARRIER, TO PAY FOR TREATMENT WHICH IS NECESSITATED SOLELY BY CLAIMANT'S REFUSAL OR INABILITY TO LOSE WEIGHT. THERE IS NO EVIDENCE THAT CLAIMANT'S INABILITY TO LOSE WEIGHT IS SOMETHING WHICH IS BEYOND HER CONTROL.

THE BOARD DOES NOT FEEL IT IS PROPER TO DIRECT THE EMPLOYER TO PAY FOR A MEDICALLY SUPERVISED WEIGHT LOSS PROGRAM AT THE PRESENT TIME WHEN THERE IS NO INDICATION THAT CLAIMANT WILL EVER SUBMIT HERSELF TO SUCH A PROGRAM.

HAVING FOUND THAT CLAIMANT IS NOT ENTITLED TO MEDICAL CARE AND TREATMENT PURSUANT TO ORS 656.245, OBVIOUSLY THE EMPLOYER SHOULD NOT BE PENALIZED FOR FAILING TO EITHER ACCEPT OR DENY SUCH TREATMENT. AN AWARD OF ATTORNEY'S FEES PAYABLE BY THE EMPLOYER WAS NOT JUSTIFIED.

ORDER

THE ORDER OF THE REFEREE DATED FEBRUARY 11, 1976 IS REVERSED.

WCB CASE NO. 75-1810 AUGUST 19, 1976

THE BENEFICIARIES OF
FRANK A. FOLEY, DECEASED
PAUL R. ROESS, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH REMANDED TO IT THE CLAIM OF THE BENEFICIARIES OF FRANK A. FOLEY, DECEASED, FOR ACCEPTANCE AND FOR THE PAYMENT OF BENEFITS, AS PROVIDED BY LAW, AND ORDERED IT TO PAY AN ATTORNEY FEE OF 2,000 DOLLARS.

THE DECEDENT WORKMAN HAD BEEN EMPLOYED AS A HEAD SAWYER FOR THE EMPLOYER AND WORKED THE SWING SHIFT. THE SAW BLADE ON THE HEAD RIG WAS CHANGED FOUR TIMES DAILY AND IT HAD BEEN THE DUTY OF THE DECEDENT WORKMAN TO ASSIST IN THE CHANGING OF THIS SAW BLADE AFTER WHICH HE WOULD TAKE HIS LUNCH BREAK. ON SEPTEMBER 12, 1974 THE DECEDENT WORKMAN HAD CHANGED THE SAW BLADE AT APPROXIMATELY 9 P.M., ASSISTED BY TWO OTHER EMPLOYEES - APPROXIMATELY SEVEN OR EIGHT MINUTES LATER HE WAS FOUND UNCONSCIOUS - POSSIBLY DEAD - IN HIS SAW SHACK BY THE MILLWRIGHT. FROM THE POSITION OF THE BODY AND THE FACT THAT THE SAW WAS STILL OPERATIVE THE MILLWRIGHT CONCLUDED THAT FOLLOWING THE CHANGE OF THE BLADE THE DECEDENT WORKMAN HAD PROCEEDED TO THE SHACK GIVING THE BLADE A BRIEF SPIN TO MAKE SURE IT WAS PROPERLY SEATED IN ITS DRIVE PULLEY, THE NORMAL PROCEDURE AFTER BLADE INSTALLATION.

THE EXACT CAUSE OF DEATH WAS UNDETERMINED AS NO AUTOPSY WAS

PERFORMED. THE DEATH CERTIFICATE INDICATED 'OCCLUSIVE CORONARY ARTERY DISEASE'.

THE REFEREE FOUND THAT THE DECEDENT WORKMAN HAD SUFFERED FROM HIGH BLOOD PRESSURE FOR A NUMBER OF YEARS AND WAS A HIGH-RISK FACTOR BECAUSE HE SMOKED RATHER HEAVILY, SUFFERED FROM HYPERTENSION, WAS EXTREMELY NERVOUS, ANXIOUS ABOUT HIS HEALTH AND WAS OBESE. HE WAS TAKING MEDICATION PRIOR TO THE TIME OF HIS DEATH TO CONTROL HIS HIGH BLOOD PRESSURE CONDITION, HOWEVER, HIS WIFE TESTIFIED THAT HE HAD BEEN FEELING MUCH BETTER IN THE LAST SIX TO EIGHT MONTHS BEFORE HIS DEATH AND WAS FEELING GOOD WHEN HE LEFT FOR WORK ON THE DAY OF HIS DEATH. THIS IS SUBSTANTIATED BY THE MEDICAL EVIDENCE WHICH INDICATES THAT THE DECEASED WORKMAN HAD NOT SEEN A PHYSICIAN SINCE JANUARY 15, 1974.

DR. MURRAY WAS OF THE OPINION, FOLLOWING HIS EXAMINATION OF ALL THE MEDICAL REPORTS, THAT THERE WAS 'CERTAINLY A REASONABLE PROBABILITY' THAT THE AFOREMENTIONED SAW BLADE CHANGING PROCESS WAS SUFFICIENT EXERTION TO CAUSE THE ATTACK. DR. MURRAY HAD BEEN GIVEN A COMPLETELY ACCURATE SUMMATION OF THE EVENTS OF THE EVENING OF SEPTEMBER 12, 1974 BY THE ATTORNEY REPRESENTING THE BENEFICIARIES.

THE FUND SOLICITED OPINIONS FROM BOTH DR. HARWOOD, A MEMBER OF ITS MEDICAL STAFF, AND DR. GRISWOLD - HOWEVER, THE FUND'S INVESTIGATIVE REPORT WHICH WAS SUBMITTED TO BOTH DOCTORS WITH A MEDICAL REPORT WAS NOT OFFERED NOR WAS THERE ANY INDICATION IN THE RECORD AS TO ITS CONTENTS. DR. GRISWOLD STATED - 'UNLESS THERE ARE NEW FACTS THAT COME OUT IN THIS CASE INDICATING SPECIFIC WORK ACTIVITY. . .' IT WAS HIS OPINION THAT THERE WAS NO RELATIONSHIP BETWEEN THE WORK ACTIVITY AND THE FATAL HEART ATTACK. DR. HARWOOD AGREED.

THE REFEREE FOUND THAT THE SAW BLADE WHICH THE DECEDENT WORKMAN HAD BEEN CHANGING WEIGHED APPROXIMATELY 192 POUNDS AND THIS WAS INCLUDED IN THE SUMMATION OF EVENTS OF SEPTEMBER 12, 1974 GIVEN TO DR. MURRAY. BECAUSE NO INVESTIGATIVE REPORTS WERE SUBMITTED TO EITHER DR. GRISWOLD OR DR. HARWOOD, THE REFEREE ASSUMED THAT THE FACTS WHICH WERE GIVEN TO THESE TWO DOCTORS DID NOT INCLUDE A DESCRIPTION OF THE SAW CHANGING ACTIVITY, BUT RATHER INDICATED THAT THE DECEDENT WORKMAN WAS DOING NOTHING INVOLVING EXERTION OR STRESS, AND HIS WORK ONLY INVOLVED PUSHING BUTTONS.

BASED UPON DR. MURRAY'S OPINION, WHICH THE REFEREE ACCEPTED OVER THAT EXPRESSED BY THE OTHER TWO PHYSICIANS, THE REFEREE FOUND THAT MEDICAL CAUSATION HAD BEEN PROVEN. WITH RESPECT TO LEGAL CAUSATION, THE UNCONTRADICTED TESTIMONY CONCERNING THE SAW BLADE, THE WEIGHT THEREOF AND THE MANNER IN WHICH IT WAS HANDLED WERE SUFFICIENT TO SATISFY THE REQUIREMENT OF LEGAL CAUSATION.

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

ORDER

THE ORDER OF THE REFEREE DATED FEBRUARY 26, 1976, 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 400 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 75-4968 AUGUST 19, 1976

DIANE DUVENECK, CLAIMANT

WESLEY FRANKLIN, CLAIMANT'S ATTY.
ROGER LUEDTKE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER OF NOVEMBER 17, 1975 WHICH GRANTED CLAIMANT 15 DEGREES LOSS OF THE LEFT LEG AND 32 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. CLAIMANT CONTENDS THE AWARD IS INADEQUATE.

CLAIMANT SUSTAINED A COMPENSABLE LUMBOSACRAL STRAIN ON JULY 9, 1974. SHE WAS INITIALLY TREATED BY DR. BARNETT WHO REFERRED HER TO DR. VESSELY WHO TREATED CLAIMANT CONSERVATIVELY. ON OCTOBER 24, 1974 DR. VESSELY REPORTED CLAIMANT'S CONDITION WAS IMPROVING.

IN MARCH, 1975 CLAIMANT SAW DR. NAG, WHO HAD PERFORMED A LAMINECTOMY ON CLAIMANT IN FEBRUARY, 1972 FOR A LUMBAR DISC HERNIATION AND DROP FOOT. HE NOW FOUND A RECURRENCE OF THE DROP FOOT CONDITION. ON MARCH 6, 1975 DR. NAG OPERATED FOR LEFT PERONEAL NERVE ENTRAPMENT AND ON AUGUST 1, 1975 HE INDICATED THAT THE PERONEAL NERVE ENTRAPMENT WAS NOT RELATED TO AN INDUSTRIAL INJURY.

ON AUGUST 19, 1975 CLAIMANT WAS EXAMINED BY DR. PASQUESI WHOSE OPINION WAS THAT CLAIMANT'S CONDITION WAS STATIONARY AND SHE COULD RETURN TO ANY WORK NOT REQUIRING STOOPING, TWISTING, NO OVERHEAD WORK, OR STANDING ON HER FEET TOO LONG. DR. PASQUESI RATED CLAIMANT'S DISABILITY TO BE 31 PER CENT OF THE WHOLE MAN.

BASED ON ALL OF THE MEDICAL EVIDENCE, THE REFEREE CONCLUDED THAT THE DETERMINATION ORDER AWARDING 10 PER CENT UNSCHEDULED LOW BACK DISABILITY ADEQUATELY COMPENSATED CLAIMANT FOR ANY LOSS OF HER WAGE EARNING CAPACITY - THE 10 PER CENT LOSS OF LEFT LEG ADEQUATELY COMPENSATED CLAIMANT FOR LOSS OF FUNCTION IN THAT LEG.

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

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 15, 1976, IS AFFIRMED.

WCB CASE NO. 75-4520 AUGUST 19, 1976

CLARA BUTTERFIELD, CLAIMANT

NORMAN LINDSTEDT, CLAIMANT'S ATTY.
WILLIAM BEERS, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER OF SEPTEMBER 16, 1974 AWARDING CLAIMANT 15 DEGREES FOR 10 PER CENT LOSS OF RIGHT FOREARM. CLAIMANT CONTESTS THE ADEQUACY OF THE AWARD.

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HER RIGHT FOREARM ON JANUARY 25, 1974. DR. MASON, ON JULY 7, 1975, DIAGNOSED CHRONIC BURSITIS, HEAD AND NECK OF THE RADIUS, RIGHT ELBOW AND FOUND DEFINITE FUNCTIONAL OVERLAY. IT WAS DR. MASON'S OPINION THAT CLAIMANT NEEDED CORTICOSTEROID INJECTIONS ABOUT THE HEAD OF THE RADIUS TO RELIEVE HER SYMPTOMS - SHE REFUSED TO HAVE THEM. HE ALSO FELT A JOB CHANGE WAS INDICATED.

DR. MASON AGAIN SAW CLAIMANT ON JULY 18, 1975 AND FELT HER CONDITION WAS UNCHANGED AND THERE WAS NO NEED FOR FURTHER TREATMENT. HE STILL FELT STRONGLY ABOUT STEROID INJECTIONS BUT CLAIMANT STILL OPPOSED RECEIVING THEM.

DR. CLIFTON EXAMINED CLAIMANT ON AUGUST 18, 1975 AND FOUND CLAIMANT 'IS PROBABLY BETTER THAN SHE HAS BEEN IN MY EXPERIENCE WITH THIS PATIENT'. DR. CLIFTON ALSO FELT THE STEROID INJECTIONS WOULD ALLEVIATE CLAIMANT'S SYMPTOMS, HOWEVER, CLAIMANT REFUSED.

THE REFEREE FOUND THAT CLAIMANT'S REFUSAL TO SUBMIT TO THE INJECTIONS WHICH HER TREATING PHYSICIAN RECOMMENDED WAS UNREASONABLE ON THE PART OF CLAIMANT - IT ALSO MADE IT DIFFICULT TO EVALUATE HER DISABILITY. HE CONCLUDED THAT BECAUSE OF HER UNREASONABLENESS TO SUBMIT TO TREATMENT CLAIMANT HAD FAILED TO SUSTAIN HER BURDEN OF PROVING SHE IS ENTITLED TO A GREATER AWARD.

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

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 9, 1976, IS AFFIRMED.

WCB CASE NO. 75-2383 AUGUST 19, 1976

THE BENEFICIARIES OF
JOSEPH BRUNICK, DECEASED
HAYES PATRICK LAVIS, CLAIMANT'S ATTY.
JAMES HUEGLI, DEFENSE ATTY.
REQUEST FOR REVIEW BY BENEFICIARIES

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE BENEFICIARIES OF THE DECEASED WORKMAN REQUESTED BOARD REVIEW OF THE REFEREE'S ORDER WHICH DENIED THE COMPENSABILITY OF THEIR CLAIM FOR DEATH BENEFITS.

THE WORKMAN SUFFERED A BROKEN ANKLE WHEN, ON JUNE 19, 1974, HE FELL OFF A SCAFFOLD. HE WAS PUT IN A FULL LENGTH CAST FOR THREE OR FOUR WEEKS THEN THE CAST WAS REPLACED BY A SHORTER ONE.

ON OCTOBER 8, 1974 THE WORKMAN WAS HOSPITALIZED WITH AN ACUTE MYOCARDIAL INFARCTION AND DIED SIX DAYS LATER OF A RUPTURE OF HIS VENTRICLE.

THE BENEFICIARIES CONTEND THAT THE WORKMAN HAD SUFFERED A HEART ATTACK WHEN HE FELL ON JUNE 19, 1974 OR THAT THE STRESS AND STRAIN OF USING THE CAST CONTRIBUTED TO HIS LATER HEART ATTACK.

DR. BOELLING INDICATED THAT THE DECEDANT HAD SUFFERED A PRIOR ATTACK WHICH COULD HAVE OCCURRED - 'ANY TIME FROM SEVERAL YEARS TO

WITHIN 3 OR 5 MONTHS OF HIS DEATH' AND CONCLUDED = 'I DON'T THINK THAT THE QUESTION OF WHEN THE OLD INFARCTION OCCURRED CAN BE DEFINITELY ASCERTAINED.'

THE REFEREE FOUND THAT THE WORKMAN'S WALKING WITH A CAST WAS NOT A CONTRIBUTING FACTOR TO THE WORKMAN'S OCTOBER, 1974 ATTACK AND THAT AN EARLIER MYOCARDIAL INFARCTION COULD HAVE OCCURRED ON JUNE 19, 1974, BUT THIS WAS NOT SUBSTANTIATED BY MEDICAL EVIDENCE.

THE REFEREE DISMISSED THE CLAIM FOR WORKMEN'S COMPENSATION BENEFITS, FINDING THE BENEFICIARIES HAD FAILED TO MEET THEIR BURDEN OF PROOF AS REQUIRED BY LAW.

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

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 12, 1976, IS AFFIRMED.

WCB CASE NO. 75-2730 AUGUST 19, 1976

THOMAS BRADY, CLAIMANT

J. DAVID KRYGER, CLAIMANT'S ATTY.
MICHAEL HOFFMAN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

CLAIMANT SEEKS BOARD REVIEW OF THE REFEREE'S ORDER WHICH FOUND CLAIMANT DID NOT QUALIFY, PURSUANT TO OAR 436-61, FOR THE WORKMEN'S COMPENSATION BOARD'S SPONSORSHIP OF HIS RETRAINING PROGRAM AND REMANDED HIS CLAIM TO EVALUATION DIVISION OF THE BOARD FOR CLOSURE PURSUANT TO ORS 656.268.

CLAIMANT, WHO IS 30 YEARS OLD, SUFFERED A COMPENSABLE INJURY TO HIS LOW BACK ON OCTOBER 14, 1974 - IT WAS DIAGNOSED AS A BACK STRAIN AND CONSERVATIVE TREATMENT RESULTED IN IMPROVEMENT. IN JANUARY, 1975 CLAIMANT'S TREATING PHYSICIAN, DR. ELLISON, EXPRESSED HIS OPINION THAT CLAIMANT WOULD HAVE DIFFICULTY WITH FREQUENT REPETITIVE HEAVY LIFTING, BENDING OR STOOPING AND SUGGESTED VOCATIONAL RETRAINING.

IN MAY, 1975 A DETERMINATION ORDER AWARDED CLAIMANT 32 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK DISABILITY. CLAIMANT FILED A REQUEST FOR HEARING CONTENDING HE WAS ENTITLED TO ADDITIONAL COMPENSATION FOR TEMPORARY TOTAL DISABILITY AND PERMANENT DISABILITY. CLAIMANT DID NOT RETURN TO HIS FORMER JOB BUT HAS BEEN ATTENDING THE COMMUNITY COLLEGE SINCE JANUARY, 1975 MAJORING IN WASTE WATER TECHNOLOGY. DURING THE SUMMER OF 1975 CLAIMANT PLAYED APPROXIMATELY 40 GAMES IN A SLOW PITCH SOFTBALL LEAGUE AND, ACCORDING TO THE EVIDENCE, PLAYED QUITE WELL.

IN AUGUST, 1975 DR. GRIPEKOVEN EXAMINED CLAIMANT AT THE REQUEST OF THE EMPLOYER. CLAIMANT GAVE A HISTORY OF A PRIOR LUMBAR SPRAIN INJURY IN 1971 WHILE LIFTING AND DR. GRIPEKOVEN'S OPINION WAS THAT THE PRESENT INJURY WAS A LUMBAR SPRAIN SUPERIMPOSED UPON A PRE-EXISTING CHRONIC BACK CONDITION, AND DUE TO THIS CONDITION HE FELT CLAIMANT SHOULD CONTINUE HIS SCHOOLING SO HE WOULD NOT HAVE TO ENGAGE IN HEAVY PHYSICAL LABOR WHICH WOULD CAUSE RECURRENT BACK PROBLEMS.

ON OCTOBER 1, 1975 THE BOARD ISSUED AN INTERIM ORDER WHICH FOUND CLAIMANT TO HAVE BECOME VOCATIONALLY HANDICAPPED AND TO BE IN AN AUTHORIZED PROGRAM OF REHABILITATION AND ORDERED CLAIMANT'S CLAIM TO BE REOPENED EFFECTIVE JUNE 9, 1975 AND AS HIS CONDITION SHOULD WARRANT. ON OCTOBER 28, 1974 THE EMPLOYER REQUESTED THAT THE INTERIM ORDER BE HELD IN ABEYANCE UNTIL THE BOARD, THROUGH ITS DISABILITY PREVENTION DIVISION, AND-OR THE HEARINGS REFEREE COULD BE INFORMED BY BOTH PARTIES OF ALL RELEVANT FACTS CONCERNING CLAIMANT'S DISABILITY. IT CONTENDED THAT, AT THAT TIME, A HEARING WAS PENDING CHALLENGING THE ADEQUACY OF THE DETERMINATION ORDER AND THE EMPLOYER HAD INTENDED TO PRESENT EVIDENCE SHOWING CLAIMANT WAS NOT, IN FACT, VOCATIONALLY HANDICAPPED IN ANY WAY AS A RESULT OF HIS INDUSTRIAL INJURY AT THAT HEARING - BY THE ISSUANCE OF THE INTERIM ORDER THE BOARD HAD PRECLUDED IT FROM HAVING AN OPPORTUNITY TO MAKE SUCH A SHOWING.

AT THE HEARING THE EMPLOYER ASSERTED THAT IT HAD A RIGHT TO A HEARING ON THE INTERIM ORDER, PURSUANT TO ORS 656.283(1). THE CLAIMANT MOVED TO DISMISS THE EMPLOYER'S REQUEST FOR HEARING, CITING OAR 436-61-060(2).

ORS 656.283 PROVIDES THAT, SUBJECT TO ORS 656.319, ANY PARTY OR THE BOARD MAY AT ANY TIME REQUEST A HEARING ON ANY QUESTION CONCERNING A CLAIM. ORS 656.319 SETS FORTH THE TIME WITHIN WHICH SUCH REQUESTS MUST BE FILED. OAR 436-61-060(2) STATES THAT INTERIM FINDINGS MADE BY THE BOARD PURSUANT TO THESE RULES ARE NOT FINAL AND, THEREFORE, NON-APPEALABLE AT THE TIME THE ACTION IS TAKEN. ANY APPEAL FROM SUCH ACTION IS PROPERLY MADE AFTER ISSUANCE OF A DETERMINATION ORDER MADE PURSUANT TO ORS 656.268.

THE REFEREE, STATING CORRECTLY THAT WHERE A RULE IS INCONSISTENT OR CONFLICTING WITH A STATUTE THE STATUTE CONTROLS, FOUND THAT OAR 436-61-060(2) WAS, IN FACT, IN CONFLICT WITH ORS 656.283. THEREFORE, UNDER THE PROVISIONS OF ORS 656.283, THE EMPLOYER WAS ENTITLED TO A HEARING AND HE DENIED CLAIMANT'S MOTION TO DISMISS THE REQUEST.

ON THE MERITS, THE REFEREE FOUND THAT CLAIMANT WAS LIMITED IN REGARDS TO HIS CAPACITY FOR REPETITIVE PHYSICAL ACTIVITY WHICH, IN ALL PROBABILITY, PRECLUDED A RETURN TO HIS PRE-INJURY TYPES OF WORK, E.G., MANUAL LABOR IN A PLYWOOD MILL, MACHINE SHOP AND CASTING PLANT, THEREFORE, CLAIMANT DOES HAVE AN OCCUPATIONAL HANDICAP. BECAUSE OF THE DIMINUTION OF CLAIMANT'S EARNING CAPACITY CLAIMANT WAS AWARDED COMPENSATION FOR PERMANENT DISABILITY.

THE REFEREE FOUND THAT THE LOSS OF EARNING CAPACITY WAS CAUSED BY THE INJURY AND DID PREVENT CLAIMANT FROM RETURNING TO HIS 'REGULAR' EMPLOYMENT. HOWEVER, FOR CLAIMANT TO BE FOUND 'VOCATIONALLY HANDICAPPED', IN ADDITION TO BEING PRECLUDED FROM RETURNING TO HIS REGULAR EMPLOYMENT, CLAIMANT MUST BE FOUND TO BE WITHOUT SKILLS WHICH WOULD READILY ENABLE HIM TO RETURN TO FULL TIME EMPLOYMENT.

THE REFEREE FOUND THAT THE CLAIMANT HAD A HIGH SCHOOL EDUCATION AND HAD TAKEN SOME NIGHT SCHOOL COURSES SINCE GRADUATION AND WAS PRESENTLY MAINTAINING A 3.5 GPA WHILE ATTENDING COMMUNITY COLLEGE. HE FOUND CLAIMANT HAD THE ABILITY TO LEARN JOB DUTIES AND TO ADAPT TO WORK WITH WHICH HE WAS NOT PRESENTLY FAMILIAR AND CONCLUDED THAT CLAIMANT DID POSSESS MARKETABLE SKILLS WHICH WOULD BE OF BENEFIT TO HIM IN SEEKING AND GAINING WORK IN THE GENERAL LABOR MARKET. THE STANDARD IS CLAIMANT'S ABILITY TO RETURN TO ANY FULL TIME WORK, NOT HIS PRIOR WORK.

THE REFEREE CONCLUDED THAT WHILE CLAIMANT HAD AN OCCUPATIONAL HANDICAP WHICH PREVENTED HIM FROM RETURNING TO HIS REGULAR EMPLOYMENT

HE DID HAVE SUCH SKILLS WHICH WOULD ENABLE HIM TO READILY RETURN TO FULL TIME EMPLOYMENT AND, THEREFORE, HE WAS NOT A VOCATIONALLY HANDICAPPED WORKER, AS DEFINED BY OAR 436-61-005(4) AND, CONSEQUENTLY, NOT ENTITLED TO THE WORKMEN'S COMPENSATION BOARD'S SPONSORSHIP OF HIS RETRAINING PROGRAM. THE REFEREE REMANDED THE CLAIM TO BE CLOSED PURSUANT TO ORS 656.268.

THE BOARD, ON DE NOVO REVIEW, AGREES THAT OAR 436-61-060(2) CONFLICTS WITH ORS 656.283 AND THE LATTER IS CONTROLLING AND THE MOTION WAS PROPERLY DISMISSED BY THE REFEREE.

ON THE MERITS THE BOARD AGREES WITH THE FINDINGS AND CONCLUSIONS REACHED BY THE REFEREE.

THE CONFLICT BETWEEN THE RULE AND THE STATUTE IN THIS CASE, IS NOW ACADEMIC AS WCB ADMINISTRATIVE ORDER 4-1975, APPLICABLE IN THE ABOVE CASE WAS REPEALED MARCH 29, 1976 BY WCB ADMINISTRATIVE ORDER 1-1976. THE NEW ORDER PROVIDES, IN PART, THAT ANY PARTY AGGRIEVED BY THE DECISION OF DISABILITY PREVENTION CONCERNING A WORKMAN'S ENTITLEMENT TO VOCATIONAL REHABILITATION OR TIME LOSS AFTER BECOMING MEDICALLY STATIONARY MAY REQUEST A HEARING IN ACCORDANCE WITH ORS 656.283, EXCEPT THAT ANY WORKER SEEKING VOCATIONAL TRAINING AFTER ISSUANCE OF THE DETERMINATION ORDER SHALL, BEFORE REQUESTING A HEARING, APPLY TO DISABILITY PREVENTION FOR CONSIDERATION OR RECONSIDERATION OF REFERRAL FOR VOCATIONAL REHABILITATION.

ORDER

THE ORDER OF THE REFEREE, DATED DECEMBER 19, 1975 IS AFFIRMED IN ITS ENTIRETY.

WCB CASE NO. 75-5518 AUGUST 19, 1976

MARSHALL R. BIXELL, CLAIMANT

J. DAVID KRYGER, CLAIMANT'S ATTY.
MICHAEL HOFFMAN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT SEEKS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT 64 DEGREES FOR 20 PER CENT UNSCHEDULED LOW BACK DISABILITY, CONTENDING HE IS ENTITLED TO A GREATER AWARD.

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS LOW BACK IN NOVEMBER, 1971 WHICH WAS DIAGNOSED AS A LUMBOSACRAL STRAIN. CLAIMANT RETURNED TO WORK FOR THE EMPLOYER IN LATE DECEMBER, 1971 AND WORKED THROUGH MARCH, 1975 WHEN HE QUIT. DURING THE FIRST TWO YEARS CLAIMANT WORKED WITHOUT SUFFERING ANY TIME LOSS - FOR THE REMAINDER OF HIS EMPLOYMENT HE WORKED REGULARLY EXCEPT FOR THREE PERIODS OF TIME LOSS, TWICE FOR ONE MONTH EACH AND ONCE FOR TWO MONTHS.

CLAIMANT'S CLAIM HAS BEEN CLOSED BY THREE DETERMINATION ORDERS. ON AUGUST 21, 1972 CLAIMANT WAS AWARDED COMPENSATION FOR TIME LOSS ONLY, ON MAY 2, 1974 CLAIMANT RECEIVED 32 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK DISABILITY AND ADDITIONAL COMPENSATION FOR TIME LOSS AND ON DECEMBER 2, 1975 CLAIMANT WAS AWARDED ADDITIONAL COMPENSATION FOR TIME LOSS ONLY.

AFTER CLAIMANT'S INJURY THE EMPLOYER TRIED TO PLACE HIM IN SEVERAL DIFFERENT JOBS SUITABLE TO HIS PHYSICAL CAPABILITY, HOWEVER, CLAIMANT WAS NOT ABLE TO PERFORM ANY JOB ON A SUSTAINED BASIS THAT REQUIRED REPETITIVE BENDING, STOOPING, LIFTING, TWISTING OR CONTINUALLY BEING ON HIS FEET FOR LONG PERIODS OF TIME. AFTER CLAIMANT RETURNED TO WORK HE CONTINUED TO HAVE DISCOMFORT WHICH WOULD REQUIRE HIM TO LIE DOWN OCCASIONALLY AND DURING THE LATTER PERIOD OF HIS EMPLOYMENT NECESSITATED TAKING SOME TIME OFF TO RECUPERATE. THE REASON HE QUIT WAS BECAUSE OF HIS BACK PROBLEMS AND BECAUSE OF THE EFFECT OF THE WORK UPON HIM.

DR. STANFORD, CLAIMANT'S TREATING PHYSICIAN, FELT CLAIMANT HAD A CHRONIC BACK CONDITION AND SHOULD BE RETRAINED FOR LESS PHYSICAL WORK SO AS TO LESSEN THE STRAIN MADE UPON HIS BACK. CLAIMANT WAS REFERRED TO THE DISABILITY PREVENTION DIVISION AND, AFTER EXAMINATION, THE OPINION WAS EXPRESSED THAT CLAIMANT HAD MILD RESIDUALS FROM HIS INDUSTRIAL INJURY.

AFTER QUITTING HIS JOB, CLAIMANT ENROLLED IN A COMMUNITY COLLEGE AS A FULL TIME STUDENT SEEKING TO BE TRAINED AS A JUVENILE COUNSELOR. AT THE PRESENT TIME HE IS ATTENDING SCHOOL THE YEAR AROUND AND EXPECTS TO COMPLETE HIS EDUCATION IN TWO AND ONE HALF YEARS. HE IS RECEIVING VOCATIONAL REHABILITATION ASSISTANCE FOR BOOKS AND TUITION.

THE REFEREE FOUND THAT CLAIMANT'S WORK EXPERIENCE CONSISTED OF JOBS PARKING CARS, DRIVING A TOW TRUCK AND AUTO MECHANICS - HE WAS ALSO IN THE NAVY AND WORKED ON AIR-CONDITIONING AND REFRIGERATION, LARGELY REQUIRING SKILLS IN THE LATTER ON HIS OWN. CLAIMANT HAS ALSO WORKED IN A WOOD PRODUCTS PLANT AS A SUPERVISORY-TRAINEE WHICH REQUIRED HIM TO BE ABLE TO DO AND UNDERSTAND PRACTICALLY EVERY JOB IN THE PLANT - HE ALSO WORKED FOR A SHORT PERIOD OF TIME AS A MANAGEMENT TRAINEE IN AN AUTO DIAGNOSTIC CENTER. CLAIMANT OPERATED MACHINES, WORKED AROUND MACHINES, DROVE A LIFT TRUCK AND PERFORMED UNSKILLED LABOR FOR THE EMPLOYER. CLAIMANT HAS COMPLETED HIGH SCHOOL AND HAS SOME COLLEGE TRAINING IN BUSINESS ADMINISTRATION AND MUSIC. PRIOR TO HIS INJURY CLAIMANT WAS EXTREMELY ACTIVE IN ATHLETICS. SINCE THE INJURY, CLAIMANT'S LEVEL OF ACTIVITY HAS BEEN DRASTICALLY REDUCED ALTHOUGH HE DOES WATER SKI. HE IS ABLE TO WORK IN HIS YARD, MOWING IT WITH A POWER MOWER AND HE IS ABLE TO HUNT DEER AND HAS COACHED A LITTLE LEAGUE BASEBALL TEAM AND DOES SOME AUTOMOBILE REPAIRING AS A SIDE LINE.

THE REFEREE, BASED UPON THE MEDICAL EVIDENCE AND THE TESTIMONY, FOUND THAT CLAIMANT COULD NOT RETURN TO WORK WHICH INVOLVED REPETITIVE BENDING, STOOPING, TWISTING AND SO FORTH, WHICH ELIMINATED A SUBSTANTIAL PORTION OF THE JOB MARKET FOR WHICH HE WAS FORMERLY SUITED - HOWEVER, CLAIMANT WAS NOT LIMITED TO HIS PRIOR WORK OR PHYSICAL WORK IN GENERAL BECAUSE OF HIS AGE (29), HIS ABOVE AVERAGE I.Q. AND HIS DEMONSTRATED TRAINABILITY. CLAIMANT HAS THE APTITUDE TO FINISH SCHOOL AND THERE IS NO PRESENTLY FORESEEABLE REASON WHY CLAIMANT SHOULD NOT FINISH SCHOOL. THE REFEREE DID NOT CONSIDER IT UNSUBSTANTIATED SPECULATION TO FIND THAT BY VIRTUE OF CLAIMANT'S PRESENT SCHOOLING HE HAS SIGNIFICANTLY COMPENSATED FOR THE REDUCTION IN PHYSICAL EMPLOYMENT OPPORTUNITIES CAUSED BY AN INJURY.

THE REFEREE CONCLUDED THAT PRIOR TO THE INJURY CLAIMANT DID NOT HAVE BACK PAIN AND WAS STEADILY EMPLOYED AND, ALTHOUGH CLAIMANT STILL HAS HIS APTITUDES AND HAS MOVED HIMSELF CLOSER TO A SUITABLE AND OBTAINABLE CAREER OPPORTUNITY, NEVERTHELESS, HE IS FORECLOSED FROM DOING MOST, IF NOT ALL, OF THE TYPES OF WORK WHICH HE FORMERLY COULD DO AND, THEREFORE, WAS ENTITLED TO A GREATER AWARD FOR LOSS OF WAGE EARNING CAPACITY THAN THE AWARD OF 32 DEGREES. THE REFEREE INCREASED IT TO 64 DEGREES.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS THE FINDINGS AND CONCLUSIONS OF THE REFEREE. THE CLAIMANT FEELS THAT THE REFEREE DID SPECULATE TO A GREAT EXTENT WITH REGARD TO THE RESULTS OF CLAIMANT'S PRESENT SCHOOLING AND THAT, THEREFORE, HE HAD SIGNIFICANTLY COMPENSATED FOR THE REDUCTION IN SUITABLE EMPLOYMENT OPPORTUNITIES CAUSED BY HIS INJURY. SPECULATION THAT CLAIMANT WILL FINISH HIS SCHOOLING AND, WHEN HE DOES SO, WILL BE ABLE TO GAIN SUITABLE EMPLOYMENT IN THE GENERAL LABOR MARKET AT A WAGE NOT SUBSTANTIALLY OUT OF LINE WITH THAT HE WAS CAPABLE OF MAKING IN HIS FORMER AVENUES OF EMPLOYMENT, SHOULD NOT BE THE BASIS FOR DETERMINATION OF DISABILITY. ANSWERING THIS CONTENTION, THE EMPLOYER STATES THAT THERE IS NECESSITY OF SOME SPECULATION, THAT IF A REFEREE WERE NOT ALLOWED TO MAKE SUCH REASONABLE INFERENCES, AN OVERWHELMING MAJORITY OF COMPENSATION CASES WOULD BE STAYED AND THE SYSTEM SPOILED. IN SUPPORT OF ITS POSITION, THE EMPLOYER CITES THE FOLLOWING STATEMENT MADE BY THE COURT IN HAWES V. SAIF (UNDERSCORED), 6 OR APP AT 139 =

> '... THE FACT FINDER IS NOT LIMITED TO THE QUESTION OF WHETHER THE CLAIMANT IS ABLE TO RETURN TO HIS FORMER OCCUPATION. CONSIDERATION MUST BE GIVEN TO THE ABILITY 'TO PERFORM OR OBTAIN WORK SUITABLE TO CLAIMANT'S QUALIFICATIONS AND TRAINING' LARSON, OP. CIT., SECTION 57.22'.

THE BOARD CONCLUDES THAT THE EVIDENCE INDICATES THAT CLAIMANT'S EARNING CAPACITY WILL NOT BE SIGNIFICANTLY DIMINISHED ONCE HE HAS COMPLETED HIS RETRAINING PROGRAM. HE IS ONLY 29 YEARS OLD AND HE IS DOING EXCELLENTLY IN SCHOOL, HIS DOCTORS HAVE NOTED THAT HE IS CAPABLE, ANXIOUS TO RETURN TO WORK AND ALSO AMBITIOUS ABOUT IMPROVING HIS POSITION. THE BOARD CANNOT AGREE WITH CLAIMANT THAT THE REFEREE ERRED IN TAKING INTO CONSIDERATION THE FACT THAT, ULTIMATELY, CLAIMANT WILL GAIN SUBSTANTIALLY FROM HIS PRESENT SCHOOLING AND THAT SAID WILL SIGNIFICANTLY COMPENSATE CLAIMANT FOR THE PRESENT REDUCTION IN SUITABLE EMPLOYMENT OPPORTUNITIES RESULTING FROM HIS INDUSTRIAL INJURY. THE AWARD OF 64 DEGREES MADE BY THE REFEREE ADEQUATELY COMPENSATES CLAIMANT FOR HIS LOSS OF WAGE EARNING CAPACITY.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 26, 1976, IS AFFIRMED.

WCB CASE NO. 75-2198 AUGUST 19, 1976

WAYNE H. SCHEESE, CLAIMANT

WESLEY FRANKLIN, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
AMENDED ORDER ON REVIEW

ON AUGUST 5, 1976 THE BOARD ENTERED ITS ORDER ON REVIEW IN THE ABOVE ENTITLED MATTER. THE SECOND SENTENCE OF THE LAST PARAGRAPH ON PAGE 2 OF SAID ORDER SHOULD BE CORRECTED TO READ AS FOLLOWS =

> 'THEREFORE THE FUND IS ENTITLED TO ONLY OFFSET THE DIFFERENCE IN THE AMOUNT IT PAID TO CLAIMANT AS COMPENSATION FOR TEMPORARY TOTAL DISABILITY BETWEEN DECEMBER 29, 1972 AND MARCH 1, 1974 AND THE COMPENSATION IT SHOULD HAVE PAID CLAIMANT FOR PERMANENT TOTAL DISABILITY BETWEEN THE SAME PERIOD OF TIME.'

ON PAGE 3 THE 'ORDER' SHOULD READ AS FOLLOWS -

'THE ORDER OF THE REFEREE, DATED MARCH 31, 1976 IS REVERSED.

CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED AS OF DECEMBER 29, 1972 AND IS ENTITLED TO RECEIVE COMPENSATION FOR HIS PERMANENT AND TOTALLY DISABILITY FROM THAT DATE FORWARD.'

IN ALL OTHER RESPECTS THE ORDER ON REVIEW, DATED AUGUST 5, 1976 IS REAFFIRMED AND RATIFIED.

WCB CASE NO. 75-4759 AUGUST 19, 1976

HELEN POINTER, CLAIMANT

HAYES PATRICK LAVIS, CLAIMANT'S ATTY.
LAWRENCE DEAN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT 112 DEGREES FOR 35 PER CENT UNSCHEDULED DISABILITY. CLAIMANT CONTENDS SHE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HER RIGHT ARM AND SHOULDER ON SEPTEMBER 10, 1974 AND CONSULTED HER FAMILY PHYSICIAN, WHO DIAGNOSED RIGHT ARM STRAIN. CLAIMANT WAS REFERRED TO DR. HAFNER ON FEBRUARY 11, 1975 WHO DIAGNOSED DEGENERATIVE ARTHRITIS OF THE RIGHT SHOULDER AND RECOMMENDED AN INTRARTICULAR INJECTION OF CORTICOSTEROID.

ON APRIL 30, 1975 DR. LINEHAN STATED CLAIMANT COULD NOT RETURN TO HER OLD OCCUPATION BECAUSE IT CAUSED SHOULDER DISCOMFORT.

ON SEPTEMBER 11, 1975 CLAIMANT WAS EXAMINED AT THE DISABILITY PREVENTION DIVISION, AND X-RAYS SHOWED 'MILD DEGENERATIVE CHANGE'. DR. HALFERTY COULDN'T 'VISUALIZE THIS WOMAN AS BEING PROFITABLY EMPLOYED IN ANY WAY' BUT SAID 'THIS IS RELATED ONLY TO A MINOR DEGREE TO HER RIGHT SHOULDER', CLAIMANT ALSO SUFFERS FROM HIGH BLOOD PRESSURE, BLOOD CHOLESTEROL, SEVERE DIABETES AND OBVIOUS OBESITY. DR. VIZZARD, A PSYCHOLOGIST, RECOMMENDED CLAIMANT BE DISENROLLED AT THE DISABILITY PREVENTION DIVISION, STATING THERE WAS LITTLE THAT COULD BE DONE TO HELP CLAIMANT.

A DETERMINATION ORDER ISSUED NOVEMBER 3, 1975 AWARDED CLAIMANT 48 DEGREES FOR 15 PER CENT UNSCHEDULED RIGHT SHOULDER DISABILITY.

THE REFEREE CONCURRED WITH THE FINDINGS OF DR. HALFERTY AND FOUND THAT CLAIMANT'S LOSS OF WAGE EARNING CAPACITY DUE (UNDERSCORED) TO HER RIGHT SHOULDER ENTITLED HER TO 112 DEGREES FOR 35 PER CENT UNSCHEDULED DISABILITY. THERE IS NO DOUBT BUT THAT CLAIMANT IS TOTALLY DISABLED - HOWEVER, MOST OF HER DISABILITY IS UNRELATED TO HER INDUSTRIAL INJURY.

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

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 9, 1976, IS AFFIRMED.

WCB CASE NO. 74=3585 AUGUST 19, 1976

EMMA OVERALL, CLAIMANT

JEROME BISCHOFF, CLAIMANT'S ATTY.
PHILIP 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. 75—3187 AUGUST 19, 1976

ROBERT NICHOLS, CLAIMANT

FRANK SUSAK, CLAIMANT'S ATTY.
ROGER WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED CLAIMANT'S CLAIM FOR AGGRAVATION TO IT FOR ACCEPTANCE AND PAYMENT OF BENEFITS AS PROVIDED BY LAW. CLAIMANT CROSS-APPEALS ON THE ISSUE OF TIME LOSS.

CLAIMANT SUSTAINED A COMPENSABLE LOW BACK INJURY ON FEBRUARY 1, 1974. A DETERMINATION ORDER, ISSUED APRIL 1, 1975, AWARDED CLAIMANT 16 DEGREES FOR 5 PER CENT UNSCHEDULED LOW BACK DISABILITY. CLAIMANT APPEALED AND, AS A RESULT OF A HEARING HELD ON JULY 24, 1975, WAS GRANTED AN ADDITIONAL 32 DEGREES FOR 10 PER CENT UNSCHEDULED DISABILITY AWARD.

ON SEPTEMBER 10, 1975 CLAIMANT RETURNED TO HIS TREATING PHYSICIAN, DR. CASE, COMPLAINING THAT HIS BACK SYMPTOMS WERE GETTING WORSE. DR. CASE INFORMED THE CARRIER OF HIS INTENTION TO PERFORM A SPINAL FUSION TO RELIEVE CLAIMANT'S SYMPTOMS AND ASKED THE CARRIER TO REOPEN THE CLAIM. THE CARRIER SET UP AN APPOINTMENT FOR CLAIMANT TO BE EXAMINED BY DR. JONES — HOWEVER, THIS DID NOT OCCUR AS DR. CASE PERFORMED THE SPINAL FUSION ON OCTOBER 16, 1975.

IN HIS DEPOSITION OF SEPTEMBER, 1975 DR. CASE TESTIFIED THAT CLAIMANT'S INDUSTRIAL ACCIDENT OF FEBRUARY 1, 1974 AGGRAVATED CLAIMANT'S PRE-EXISTING CONGENITAL PROBLEM AND HE PERFORMED THE SPINAL FUSION BECAUSE HE FELT IT WOULD IMPROVE CLAIMANT'S CONDITION — CONSERVATIVE TREATMENT HAD NOT.

THE REFEREE FOUND IT WAS NOT PROPER TO ASSESS A PENALTY FOR THE EMPLOYER'S FAILURE TO EITHER DENY OR ACCEPT THE REQUEST FOR REOPENING. THE SURGERY WAS PERFORMED BEFORE THE CARRIER HAD A CHANCE TO HAVE CLAIMANT EXAMINED BY A DOCTOR OF ITS OWN CHOICE AND DR. CASE OPERATED ON CLAIMANT WITHOUT FIRST OBTAINING AUTHORIZATION FROM THE CARRIER TO DO SO.

THE REFEREE CONCLUDED, BASED ON THE OPINION OF DR. CASE, THAT CLAIMANT HAD SUSTAINED HIS BURDEN OF PROVING HIS CONDITION HAD ACTUALLY

AGGRAVATED SINCE THE ISSUANCE OF THE DETERMINATION ORDER.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE REFEREE'S FINDINGS OF AGGRAVATION. ON THE ISSUE OF CLAIMANT'S CROSS-APPEAL, THE BOARD FINDS NO BASIS FOR ADDITIONAL TIME LOSS BENEFITS TO CLAIMANT. CLAIMANT CONTENDS HE IS ENTITLED TO TIME LOSS FROM THE DATE OF DR. CASE'S REQUEST TO OPEN. THE BOARD CONCLUDES THAT THE TIME LOSS SHOULD NOT COMMENCE UNTIL THE DATE OF THE SURGERY.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 17, 1976, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY FEE FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW, THE SUM OF 350 DOLLARS PAYABLE BY THE EMPLOYER.

WCB CASE NO. 75-3673 AUGUST 19, 1976

PAUL MARDIROSIAN, CLAIMANT

ALLEN DRESCHER, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH DENIED CLAIMANT'S CLAIM FOR AGGRAVATION BUT ORDERED THE STATE ACCIDENT INSURANCE FUND TO PAY FOR MEDICAL TREATMENT PROVIDED BY DR. BAMFORTH AFTER MAY 1, 1975 AND ANY OTHER TREATMENT GIVEN TO CLAIMANT FOR HIS BACK CONDITION AND TO PAY CLAIMANT'S COUNSEL 500 DOLLARS.

CLAIMANT HAS SUFFERED TWO COMPENSABLE INJURIES - THE FIRST ON SEPTEMBER 1, 1972 FOR WHICH A DETERMINATION ORDER, ISSUED ON MAY 11, 1973, GRANTED CLAIMANT TEMPORARY TOTAL DISABILITY ONLY. THE SECOND INJURY OCCURRED WHILE CLAIMANT WAS WORKING FOR SHAKEY'S PIZZA PARLOR, INSURED THROUGH INDUSTRIAL INDEMNITY, ON JULY 10, 1974 (BOTH INJURIES INVOLVED THE SAME BODY AREA). A DETERMINATION ORDER, ISSUED ON JULY 29, 1975, GRANTED CLAIMANT TEMPORARY TOTAL DISABILITY ONLY. A STIPULATION, ENTERED ON DECEMBER 9, 1975, AWARDED CLAIMANT 42.5 DEGREES UNSCHEDULED LOW BACK DISABILITY FOR THE 1974 (UNDERSCORED) INJURY.

THE MEDICAL REPORTS PRIOR TO THE 1974 INCIDENT SHOW CLAIMANT'S CONDITION TO BE STABLE BUT WITH CONTINUING COMPLAINTS AND THE SAME SYMPTOMS AS IN 1972. AFTER 1974 CLAIMANT'S COMPLAINTS WERE THE SAME IN NATURE AND CONTINUED THROUGH ALL OF THE MEDICAL REPORTS AS BEING THE SAME AS HIS CONDITION IN 1972.

BASED ON THE ABOVE, THE REFEREE FOUND THAT CLAIMANT'S CONTENTION THAT HE HAD SUFFERED AN AGGRAVATION OF HIS 1972 INJURY WAS NOT SUBSTANTIATED BY THE MEDICAL EVIDENCE. HOWEVER, HE DID FIND CLAIMANT STILL IN NEED OF FURTHER MEDICAL CARE AND TREATMENT TO RELIEVE THE SYMPTOMS THAT CLAIMANT HAS BEEN SUFFERING SINCE 1972 AND THAT THIS MEDICAL CARE AND TREATMENT WAS THE RESPONSIBILITY OF THE STATE ACCIDENT INSURANCE FUND.

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

ORDER

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

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY FEE FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW, THE SUM OF 350 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 75-4255-SI AUGUST 19, 1976

CANBY CARE CENTER
FOR REIMBURSEMENT FROM THE
SECOND INJURY RESERVE FUND
IN THE CASE OF
GLADYS STOPPLEWORTH
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER ON REVIEW

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

ON JUNE 25, 1976 REFEREE JOSEPH D. ST. MARTIN RECOMMENDED THAT THE BOARD GRANT THE EMPLOYER'S REQUEST FOR REIMBURSEMENT FROM THE SECOND INJURY FUND IN THE AMOUNT OF 35 PER CENT, BASED UPON THE FINDINGS AND FACTS AND CONCLUSIONS OF LAW CONTAINED IN HIS RECOMMENDED ORDER.

THE BOARD, AFTER DE NOVO REVIEW, ACCEPTS THE RECOMMENDATION OF THE REFEREE AND ADOPTS AS ITS OWN THE FINDINGS OF FACT AND CONCLUSIONS OF LAW SET FORTH IN THE RECOMMENDED ORDER, DATED JUNE 25, 1976, A COPY OF WHICH IS ATTACHED HERETO AND, BY THIS REFERENCE, MADE A PART OF THE BOARD'S ORDER.

WCB CASE NO. 76-1163 AUGUST 19, 1976

DUANE GRASSL, CLAIMANT
DISPUTED CLAIM SETTLEMENT

IT IS HEREBY STIPULATED BY AND BETWEEN DUANE GRASSL AND CONSOLIDATED PINE, INCORPORATED THROUGH THEIR INSURER ARGONAUT INSURANCE COMPANY BY AND THROUGH R. KENNEY ROBERTS THAT CLAIMANT HAD TWO PRIOR LOW BACK INJURIES, ONE IN 1964 AND ONE IN 1965, THE LAST INJURY RESULTING IN A LAMINECTOMY AT THE L5-S1 LEVEL. CLAIMANT SUBSEQUENTLY CAME TO WORK FOR CONSOLIDATED PINE, INCORPORATED AND WHILE EMPLOYED IN OCTOBER, 1968, SUFFERED AN INJURY TO HIS LOW BACK. THIS CLAIM WAS ACCEPTED AND A LAMINECTOMY WAS SUBSEQUENTLY DONE AT THE L4-L5 LEVEL. THIS CLAIM WAS CLOSED BY DETERMINATION ORDER DATED JULY 3, 1970. IT IS CLAIMANT'S CONTENTION THAT THE BACK CONDITION WHICH WAS A RESULT OF THE 1968 INJURY AT CONSOLIDATED PINE, INC. HAS BECOME AGGRAVATED AND HE IS ENTITLED TO ADDITIONAL MEDICAL TREATMENT. IN THE ALTERNATIVE, HE CONTENDS THAT THE BOARD SHOULD EXERCISE ITS OWN MOTION JURISDICTION AND GRANT HIM ADDITIONAL MEDICAL AND DISABILITY BENEFITS. IT IS THE EMPLOYER'S CONTENTION THAT CLAIMANT'S REQUEST FOR ADDITIONAL BENEFITS ON ACCOUNT OF AGGRAVATION IS UNTIMELY IN THAT CLAIMANT DID NOT REQUEST AGGRAVATION BENEFITS UNTIL AFTER THE FIVE YEAR PERIOD HAD EXPIRED. IT IS FURTHER THE CONTENTION OF THE EMPLOYER THAT CLAIMANT RETURNED TO WORK AT THE DUNES MOTEL AND WHILE IN THAT EMPLOYMENT,

SUFFERED AN INTERVENING AND SUPERSEDING INJURY TO HIS BACK. IT IS FURTHER THE CONTENTION OF THE EMPLOYER THAT THE SUBSEQUENT LAMINECTOMY PERFORMED AT THE L5-S1 LEVEL IN OCTOBER OF 1975, WAS NOT A RESULT OF THE INJURY OF 1968 BUT WAS A RESULT OF PRIOR INJURIES AND PRIOR SURGERIES WHICH PRECEDED THE 1968 INDUSTRIAL INJURY. THERE BEING A BONA FIDE DISPUTE BETWEEN THE PARTIES AND THE PARTIES WISHING TO RESOLVE THIS DISPUTE -

IT IS HEREBY STIPULATED AND AGREED THAT THIS MATTER BE COMPROMISED AND SETTLED, SUBJECT TO THE APPROVAL OF THE WORKMEN'S COMPENSATION BOARD BY ARGONAUT INSURANCE COMPANY PAYING AND CLAIMANT ACCEPTING THE SUM OF 15,000 DOLLARS AND IN CONSIDERATION FOR THIS PAYMENT CLAIMANT AGREES THAT THE SURGERY PERFORMED IN OCTOBER OF 1975 AND ANY DIFFICULTIES RESULTING THEREFROM ARE NOT THE RESPONSIBILITY OF THE OCTOBER 1968 INJURY. FURTHERMORE ALL CLAIMS THAT CLAIMANT'S CONDITION, RESULTING FROM THE 1968 INJURY, HAS WORSENED RESULTING IN ADDITIONAL DISABILITY OR REQUIRING ADDITIONAL MEDICAL TREATMENT SHALL REMAIN IN ITS DENIED STATUS AND HE SHALL TAKE NOTHING BY HIS CLAIM FOR AGGRAVATION. IT IS FURTHER AGREED THAT CLAIMANT WITHDRAWS, WITH PREJUDICE, HIS REQUEST FOR OWN MOTION RELIEF FOR THE REASON THAT THE OCTOBER 1975 SURGERY AND ANY AND ALL DISABILITY, OTHER THAN THAT PREVIOUSLY AWARDED, IS NOT THE RESPONSIBILITY OF CONSOLIDATED PINE, INC.

THIS IS A COMPROMISE ON A DISPUTED BASIS AND CLAIMANT AGREES TO HOLD ARGONAUT INSURANCE COMPANY HARMLESS FROM ANY AND ALL MEDICAL EXPENSES INCURRED FOR THE SURGERY OF OCTOBER OF 1975 AND ANY AND ALL MEDICAL TREATMENT REQUIRED FOR THAT SURGERY AND ANY DISABILITY RESULTING THEREFROM.

IT IS FURTHER STIPULATED THAT CLAIMANT'S ATTORNEY, JAMES F. LARSON, SHALL RECEIVE AN ATTORNEY FEE EQUAL TO 25 PER CENT OF THE FIRST 8,000.00 DOLLARS OF THIS COMPENSATION AND 10 PER CENT OF THE REMAINING 7,000.00 DOLLARS OF THIS COMPENSATION (A TOTAL FEE OF 2,700.00 DOLLARS IN ACCORDANCE WITH OAR 436-82-050) PAYABLE OUT OF THE SETTLEMENT AND NOT IN addition TO IT.

WCB CASE NO. 75-2959 AUGUST 19, 1976

JUNE HOLDER, CLAIMANT

ROBERT GRANT, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER OF DISMISSAL

ON AUGUST 2, 1976 REFEREE WILLIAM J. FOSTER SET ASIDE HIS OPINION AND ORDER ENTERED ON JULY 16, 1976 IN THE ABOVE ENTITLED MATTER AND RESCHEDULED SAID MATTER FOR FURTHER HEARING.

AT THE TIME THE CLAIMANT REQUESTED THE REFEREE TO RECONSIDER HIS OPINION AND ORDER OF JULY 16, 1976, PURSUANT TO OAR 83-480, THIRTY DAYS HAD NOT EXPIRED FROM THE DATE OF THE OPINION AND ORDER NOR HAD EITHER PARTY REQUESTED A REVIEW BY THE BOARD, PURSUANT TO ORS 656.295 - THEREFORE, REFEREE FOSTER HAS JURISDICTION TO ENTER HIS INTERIM ORDER ON AUGUST 2, 1976 AND SUCH ORDER IS NOT APPEALABLE.

ORDER

THE REQUEST BY THE STATE ACCIDENT INSURANCE FUND FOR BOARD REVIEW OF THE REFEREE'S ORDER DATED AUGUST 2, 1976 IS HEREBY DISMISSED.

CLAIM NO. RC 69131 AUGUST 19, 1976

IVA GUYER, CLAIMANT

DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

CLAIMANT SUSTAINED A COMPENSABLE INJURY ON APRIL 17, 1967 DIAGNOSED BY DR. JENNINGS AS 'CERVICAL, THORACIC, LUMBAR STRAIN AND CONTUSION, COCCYX'.

IN SEPTEMBER, 1967 DR. MCINTOSH PERFORMED A LUMBAR LAMINECTOMY. ON FEBRUARY 27, 1969 CLAIMANT'S CLAIM WAS CLOSED WITH AN AWARD OF 19.2 DEGREES FOR 10 PER CENT LOSS OF AN ARM BY SEPARATION FOR UNSCHEDULED DISABILITY AND 7.25 DEGREES FOR 5 PER CENT LOSS OF USE OF LEFT ARM.

ON SEPTEMBER 2, 1970 DR. MCINTOSH ADVISED THE STATE ACCIDENT INSURANCE FUND THAT CLAIMANT HAD AGGRAVATED HER CONDITION AND HE REQUESTED THE CLAIM TO BE REOPENED. ON SEPTEMBER 8, 1970 HE PERFORMED A LAMINECTOMY AT L5-S1 AND, ON DECEMBER 20, 1972, HER CLAIM WAS AGAIN CLOSED BY DETERMINATION ORDER WHICH AWARDED CLAIMANT AN ADDITIONAL 5 PER CENT UNSCHEDULED LOW BACK DISABILITY AWARD.

DR. MCINTOSH, ON APRIL 8, 1974, REQUESTED THE STATE ACCIDENT INSURANCE FUND TO REOPEN CLAIMANT'S CLAIM DUE TO AN EXACERBATION OF HER CONDITION. AT THIS TIME CLAIMANT'S AGGRAVATION RIGHTS HAD EXPIRED. THE STATE ACCIDENT INSURANCE FUND REOPENED CLAIMANT'S CLAIM AND, ON OCTOBER 8, 1974, DR. DUNN PERFORMED A FORAMINOTOMY AT L4 05 RIGHT.

ON JULY 2, 1976 THE STATE ACCIDENT INSURANCE FUND REQUESTED A DETERMINATION AND THE EVALUATION DIVISION RECOMMENDED ADDITIONAL TEMPORARY TOTAL DISABILITY COMPENSATION FROM APRIL 17, 1974 THROUGH JUNE 4, 1976 AND AN ADDITIONAL AWARD OF 38.4 DEGREES FOR 20 PER CENT UNSCHEDULED DISABILITY.

ORDER

CLAIMANT IS GRANTED COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM APRIL 17, 1974 THROUGH JUNE 4, 1976 AND 38.4 DEGREES OF A MAXIMUM OF 192 DEGREES FOR HER UNSCHEDULED DISABILITY. THIS IS IN ADDITION TO AND NOT IN LIEU OF PREVIOUS AWARDS OF COMPENSATION RECEIVED BY CLAIMANT.

WCB CASE NO. 75-1932 AUGUST 23, 1976

ROSS COSTELLO, CLAIMANT

ROGER TODD, CLAIMANT'S ATTY.
JACK MATTISON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

THE EMPLOYER SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH DIRECTED IT TO ACCEPT CLAIMANT'S CLAIM AND PAY COMPENSATION, AS PROVIDED BY STATUTE, AND AWARDED CLAIMANT'S ATTORNEY A FEE OF 850 DOLLARS PAYABLE BY THE EMPLOYER.

THERE ARE TWO ISSUES INVOLVED. THE FIRST IS WHETHER THE CLAIM IS BARRED FOR FAILURE TO GIVE TIMELY NOTICE AS PROVIDED BY ORS 656.265

AND THE SECOND IS WHETHER CLAIMANT HAS SUSTAINED A COMPENSABLE INJURY OR OCCUPATIONAL DISEASE.

CLAIMANT, AT THAT TIME 62 YEARS OF AGE, WAS EMPLOYED BY GEORGIA PACIFIC CORPORATION ON FEBRUARY 22, 1975 - HE HAD BEEN EMPLOYED BY IT AS A RAIMANN MECHANIC FOR APPROXIMATELY 13 YEARS. FOR THE PAST SEVEN OR EIGHT YEARS HE HAD BEEN RESPONSIBLE FOR MAINTENANCE ON THE CUT-OFF SAW WHICH INVOLVED WALKING TWO TO THREE MILES A DAY AROUND THE MILL TO PERFORM HIS DUTIES. ON THE MORNING OF FEBRUARY 22, 1975 CLAIMANT WENT TO WORK AND, ACCORDING TO HIS TESTIMONY, FELT FINE - HE DID HIS NORMAL DUTIES ASSISTING THE GENERAL MECHANIC WORK AND AFTER COFFEE BREAK DECIDED TO SET THE CUT-OFF SAW WHICH IS LOCATED IN ANOTHER PART OF THE BUILDING. THE CUT-OFF SAW IS A LARGE CIRCULAR SAW ABOUT EIGHT FEET IN DIAMETER WITH 158 TEETH AROUND ITS PERIMETER. TO SET THE SAW CLAIMANT USED AN ANVIL WHICH WEIGHED APPROXIMATELY EIGHT OR NINE POUNDS AND WAS 8 AND ONE HALF INCHES LONG. HOLDING THE ANVIL IN HIS LEFT HAND AND USING A HAMMER IN HIS RIGHT HAND, CLAIMANT WOULD POUND EACH TOOTH BY PLACING THE ANVIL ON THE EDGE OF THE TOOTH AND STRIKING IT WITH THE HAMMER TWO OR THREE TIMES. CLAIMANT TESTIFIED THAT ON FEBRUARY 22, HE DID NOTHING OUTSIDE OF HIS REGULAR ROUTINE EXCEPT SET THE SAW, A JOB WHICH HE DID ONCE EVERY TWO WEEKS AND WHICH TOOK ABOUT 35 MINUTES. CLAIMANT TESTIFIED THAT HE USUALLY HAD TO STOP A COUPLE OF TIMES DURING THE JOB TO REST AS HIS ARMS WOULD BEGIN ACHING.

ON THE MORNING OF FEBRUARY 22 CLAIMANT TESTIFIED HE HAD NO PROBLEMS OR NO PAINS PRIOR TO STARTING TO SET THE SAW BUT THAT HIS ARMS COMMENCED TO ACHING AS THEY USUALLY DID. HIS RIGHT ARM PAIN EASED AS USUAL, BUT THE LEFT ARM PAIN CONTINUED. HE COMPLETED SETTING THE SAW AND WALKED BACK TO THE MILL, ATE HIS LUNCH AND COMPLETED HIS WORK SHIFT AT 3.30 P.M. THAT EVENING HE WENT OUT FOR DINNER AND HAD STEAK AND CRAB, RETURNED HOME AND WATCHED SOME TELEVISION. ACCORDING TO HIS TESTIMONY, THE ACHE IN HIS ARM KEPT GOING FURTHER UP AND INTO HIS SHOULDER AND THE AREA BECAME NUMB. HE BELIEVED THAT HE HAD GAS FROM EATING THE CRAB BUT AT THE INSISTANCE OF HIS WIFE HE WENT TO THE HOSPITAL AT APPROXIMATELY 9.30 P.M. AT THAT TIME HIS SHOULDER WAS GETTING NUMB AND HIS ARM ACHED BUT HE WAS NOT EXPERIENCING, NOR HAD HE AT ANY TIME PRIOR THERETO, CHEST PAINS. THE FOLLOWING MORNING IN THE HOSPITAL CLAIMANT SUFFERED A HEART ATTACK. HE TESTIFIED HE NEVER EXPERIENCED CHEST PAINS UNTIL THE MORNING OF FEBRUARY 23.

DR. BILLS SAW CLAIMANT ON FEBRUARY 22 IN THE EMERGENCY ROOM AND REPORTED A HISTORY OF 'INTERMITTENT CHEST ACHES SINCE A.M., GENERALIZED REFERRED TO ARM.' CLAIMANT WAS SEEN BY DR. PETERSON ON THE EVENING OF FEBRUARY 22 AND RECORDED A CHIEF COMPLAINT OF CHEST PAIN STATING THAT THE CLAIMANT HAD AWAKENED ON THE MORNING OF FEBRUARY 22 AWARE OF SIGNIFICANTLY CHEST PAINS WHICH WOULD OCCASIONALLY SEND TWINGES OUT TO HIS LEFT SHOULDER AND ARM. THIS PAIN SUBSIDED AND HE WENT TO WORK THAT MORNING AND WAS ABLE TO STAY ON THE JOB ALL DAY ALTHOUGH HE WAS AWARE OF RECURRING CHEST PAINS WITH RADIATION.

CLAIMANT WAS ALSO SEEN BY DR. BROWN, INTERNIST, ON FEBRUARY 23, AND HER SUMMARY INDICATES THAT CLAIMANT WAS ADMITTED THE PRECEDING DAY WITH CHEST PAINS, STATING CLAIMANT DEVELOPED CHEST PAINS UPON AWAKENING ONE DAY PRIOR TO ADMISSION WHICH HE DESCRIBED AS SQUEEZING ACHING, SUBSTERNAL PAIN WHICH RADIATED INTO THE ELBOW WITH SOME RADIATION TO THE BACK OF THE LEFT SHOULDER.

CLAIMANT TESTIFIED THAT HE DOES NOT REMEMBER GIVING DR. BROWN SUCH A HISTORY OR TELLING HER THAT HE HAD CHEST PAINS ON THE MORNING OF THE 22ND. CLAIMANT TESTIFIED THAT FOR SEVERAL DAYS HE WASN'T AWARE OF VERY MUCH.

THE REFEREE FOUND THAT THE HISTORY TAKEN BY DR. BILLS, DR. PETERSON AND DR. BROWN, INDEPENDENT OF EACH OTHER AT THE TIME WHEN FACTS WERE FRESH IN THE MIND OF CLAIMANT AND RECORDED BY THOSE DOCTORS WHEN THE FACTS WERE FRESH IN THEIR MINDS WAS MORE CREDIBLE THAN THE RECOLLECTION OF CLAIMANT LONG AFTER THE EVENT OCCURRED. SHE, THEREFORE, FOUND THAT THE HISTORY AS RECORDED BY DOCTORS BROWN AND PETERSON ACCURATELY DEPICTED THE CIRCUMSTANCES SURROUNDING CLAIMANT'S MYOCARDIAL INFARCTION.

THE REFEREE FOUND, BASED UPON THE EVIDENCE THAT CLAIMANT EXERTED HIMSELF IN CARRYING OUT HIS JOB ON FEBRUARY 22 WHEN HE SET THE CUT-OFF SAW, THAT LEGAL CAUSATION HAD BEEN ESTABLISHED, THEREFORE, THE REMAINING QUESTION WAS ONE OF MEDICAL CAUSATION.

THE MEDICAL EVIDENCE CONSISTS OF TWO DIAMETRICALLY OPPOSED OPINIONS. CLAIMANT'S TREATING PHYSICIAN, DR. BROWN, WAS OF THE OPINION THAT CLAIMANT'S WORK ACTIVITY ON FEBRUARY 22, 1975 MATERIALLY CONTRIBUTED TO HIS HEART ATTACK ON THE MORNING OF FEBRUARY 23. DR. ROGERS, A CARDIAC SPECIALIST, EXPRESSED HIS OPINION THAT IT DID NOT. HOWEVER, DR. ROGERS DID NOT EXAMINE OR TREAT CLAIMANT, BUT MERELY EXAMINED THE HOSPITAL RECORDS WHILE DR. BROWN EXAMINED CLAIMANT IMMEDIATELY FOLLOWING HIS MYOCARDIAL INFARCTION AND TREATING THEREAFTER. HER TESTIMONY WAS THAT IF CLAIMANT AWAKENED WITH CHEST PAINS ON THE MORNING OF THE 22ND, ANY SIGNIFICANT ACTIVITY WOULD AGGRAVATE OR PRECIPITATE THE SITUATION AND THAT CLAIMANT'S WORK ACTIVITIES AS CONTRASTED WITH WHATEVER OTHER ACTIVITIES CLAIMANT ENGAGED IN THAT DAY, IN HER OPINION, CONTRIBUTED TO THE HEART ATTACK.

THE REFEREE CONCLUDED THAT DR. BROWN'S OPINION WAS MORE CONVINCING AND THAT CLAIMANT HAD PROVED BY A PREPONDERANCE OF EVIDENCE THAT HIS WORK ACTIVITY WAS A MATERIAL CONTRIBUTING FACTOR TO HIS MYOCARDIAL INFARCTION OF MARCH 23, 1975 AND HIS CLAIM WAS COMPENSABLE.

WITH RESPECT TO THE ISSUE OF TIMELY NOTICE, THE REFEREE FOUND THAT THE CLAIM WAS NOT BARRED BY UNTIMELY FILING OF NOTICE. THE CLAIMANT FILED HIS CLAIM ON APRIL 7, 1975 AND UNDER ORS 656.265(4) FAILURE TO GIVE NOTICE WITHIN 30 DAYS DOES NOT BAR CLAIMANT IF THE EMPLOYER HAS NOT BEEN PREJUDICED BY FAILURE TO RECEIVE THE NOTICE. THE REFEREE FOUND NO EVIDENCE THAT THE EMPLOYER WAS IN ANY WAY PREJUDICED BY CLAIMANT'S FAILURE TO GIVE NOTICE WITHIN 30 DAYS.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS THE REFEREE'S ORDER, RELYING STRONGLY, AS DID THE REFEREE, ON THE TESTIMONY OF DR. BROWN, CLAIMANT'S TREATING PHYSICIAN.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 22, 1976 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH THE BOARD REVIEW, THE SUM OF 350 DOLLARS, PAYABLE BY THE EMPLOYER.

WCB CASE NO. 75-4350 AUGUST 23, 1976

NORVILL HOLLIS, CLAIMANT

JACK HOWE, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER OF OCTOBER 9, 1975 WHICH GRANTED CLAIMANT 32 DEGREES FOR 10 PER CENT UNSCHEDULED NECK AND BACK DISABILITY. CLAIMANT CONTENDS HE IS 'ODD-LOT' PERMANENT TOTAL DISABILITY.

CLAIMANT IS AN ILLITERATE 44 YEAR OLD WORKMAN WHO SUFFERED A COMPENSABLE INJURY ON DECEMBER 13, 1974. CLAIMANT WAS HOSPITALIZED IN MARCH, 1975 AND THE DIAGNOSIS OF THE INJURY WAS LOW BACK, NECK AND HEAD PAIN AND 'NO DEFINITE ETIOLOGY... FOUND FOR HIS SYMPTOMS'. HIS EXAMINATION WAS NORMAL BUT CONVERSION HYSTERICAL REACTION WAS NOTED AND CLAIMANT WAS ADMITTED TO THE PSYCHIATRIC UNIT.

CLAIMANT HAS BEEN TREATED OR EXAMINED BY NUMEROUS PHYSICIANS AND SPECIALISTS WITHOUT ANY SIGNIFICANT NEUROLOGICAL OR PHYSICAL OBJECTIVE FINDINGS.

THE ORTHOPAEDIC CONSULTANTS, ON JULY 3, 1975, DIAGNOSED STRAIN CERVICAL, DORSO-LUMBAR AREA AND FOUND CLAIMANT MEDICALLY STATIONARY. THEY RECOMMENDED PSYCHIATRIC EXAMINATION, STATING, 'IF THE PSYCHIATRIC TESTING SHOWS NO RELATIONSHIP TO THE INJURY THEN THE CASE SHOULD BE CLOSED WITH MINIMAL LOSS OF FUNCTION OF THE BACK'.

CLAIMANT SAW DR. PARVARESH ON SEPTEMBER 17, 1975 WHO OPINED THAT CLAIMANT 'DOES NOT DISPLAY ANY SPECIFIC FORM OF PSYCHIATRIC DISORDER.' HE FELT CLAIMANT'S SYMPTOMS HAD TO BE EVALUATED BY OBJECTIVE ORTHOPEDIC AND NEUROLOGICAL FINDINGS.

A DETERMINATION ORDER ISSUED ON OCTOBER 9, 1975 GRANTED CLAIMANT 32 DEGREES UNSCHEDULED NECK AND BACK DISABILITY.

CLAIMANT WAS EXAMINED BY DR. CHERRY ON NOVEMBER 5, 1975. HIS MEDICAL REPORT INDICATED THAT CLAIMANT'S DISABILITY WAS SUBSTANTIAL. NO OTHER MEDICAL REPORT MADE SUCH FINDINGS.

BASED UPON THE MEDICAL REPORTS, THE REFEREE CONCLUDED THAT THE PREPONDERANCE OF MEDICAL EVIDENCE DID NOT WEIGH IN CLAIMANT'S FAVOR. THERE WERE NO OBJECTIVE FINDINGS. CLAIMANT'S LOSS OF FUNCTION OF HIS BACK WAS MINIMAL.

THE REFEREE CONCLUDED THAT THERE WAS NO NEED FOR PSYCHIATRIC CARE DUE TO THIS INJURY AND THAT CLAIMANT HAD BEEN ADEQUATELY COMPENSATED FOR ANY LOSS OF WAGE EARNING CAPACITY DUE TO HIS INDUSTRIAL INJURY BY THE AWARD OF 32 DEGREES.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE. ONLY DR. CHERRY FOUND ANY SIGNIFICANT PERMANENT DISABILITY AND THIS FINDING WAS OVERWHELMINGLY CONTRADICTED BY THE OTHER MEDICAL FINDINGS.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 20, 1976, IS AFFIRMED.

WCB CASE NO. 75-4956 AUGUST 23, 1976

RONALD DICKEY, CLAIMANT

KEITH TICHENOR, CLAIMANT'S ATTY.
PAUL ROESS, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

Reviewed by Board Members Wilson and Moore.

Claimant requested Board review of the referee's order which affirmed the determination order of October 9, 1975 granting claimant no additional permanent partial disability from that granted to him previously.

On June 20, 1968 claimant sustained a compensable injury to his right foot when a hyster struck that extremity. On that day Dr. Smith operated for repair of the foot.

On September 24, 1968 Dr. Smith found claimant's condition improving and released him to regular work on September 30, 1968. On February 17, 1969 Dr. Smith found 'residual disability following a severe bone and soft tissue injury' that claimant had made a substantial recovery and found his condition stationary.

The claim was closed by a determination order, dated March 17, 1969, which awarded claimant 25 per cent loss of right foot. The claimant requested a hearing and, as a result thereof, the referee increased the award to 45 per cent. This award was affirmed by the Board and the Circuit Court of Coos County. The date of the court's judgment order was January 16, 1970.

Dr. Maeyens and Dr. Smith continued to treat claimant and Dr. Smith, on August 21, 1975, stated that claimant 'will require periodic trimming of the callosities on the plantar aspect of the foot for an indefinite period of time.'

Claimant has limitation of motion in his right foot, instability of the bones, tenderness in the long scar and inability to propel. Claimant's impairment is considerable and he will continue to need treatment from Dr. Maeyens for his callouses, although he is working full time on a normal shift.

The referee concluded, based on all of the medical reports, that claimant 'suffers essentially now from the same disabling factors he had at the time of his first appeal'. Claimant still has a substantial amount of use of his right foot.

The referee concluded that the claimant has no more impairment now than he had on January 16, 1970, therefore, the award of 45 per cent adequately compensated claimant for loss of function of his right foot.

The Board, on de novo review, adopts the findings and conclusions of the referee.

ORDER

The order of the referee, dated February 9, 1976, is affirmed.

NORMAN ROLEY, CLAIMANT

ALLAN KNAPPENBERGER, CLAIMANT'S ATTY.
ROGER LUEDTKE, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

THE EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT 160 DEGREES FOR 50 PER CENT UNSCHEDULED RIGHT SHOULDER DISABILITY. THE EMPLOYER CONTENDS THAT THE AWARD GRANTED BY THE DETERMINATION ORDER WAS ADEQUATE.

CLAIMANT SUFFERED A COMPENSABLE INDUSTRIAL INJURY TO HIS RIGHT SHOULDER ON AUGUST 19, 1974, DIAGNOSED AS ACUTE ACROMCLAVICLAR DISLOCATION AND, ON AUGUST 21, 1974, DR. CHURCH PERFORMED A LIGAMENTOUS REPAIR OF THE DISLOCATION.

ON DECEMBER 5, 1974 DR. CHURCH REPORTED CLAIMANT COULD POSSIBLY RETURN TO LIGHT WORK BUT HE WAS NOT MEDICALLY STATIONARY. HE FELT CLAIMANT COULD NOT RETURN TO HIS FORMER OCCUPATION AND HE RECOMMENDED VOCATIONAL REHABILITATION. CLAIMANT ENTERED VOCATIONAL REHABILITATION PROGRAM IN WELDING AND COMPLETED THIS COURSE.

ON JANUARY 16, 1975 DR. ROBINSON FOUND CLAIMANT TO HAVE 'SOME DEGREE OF PERMANENT PARTIAL DISABILITY'.

ON MARCH 11, 1975 CLAIMANT WAS RECEIVING CORTISONE INJECTIONS AND DR. CHURCH REPORTED HIS CONDITION WAS GREATLY IMPROVED. ON AUGUST 12, 1975 DR. ROBINSON EXAMINED CLAIMANT AND FOUND 'VAST IMPROVEMENT' IN CLAIMANT'S RIGHT SHOULDER AND HE FOUND 'MILD TO MODERATE DEGREE OF PERMANENT PARTIAL DISABILITY'.

ON NOVEMBER 7, 1975 DR. CHURCH FOUND CLAIMANT'S CONDITION MEDICALLY STATIONARY AND RATED HIS DISABILITY AS MODERATE, STATING THAT CLAIMANT'S BASIC PROBLEMS WAS WITH OVERHEAD WORK.

A DETERMINATION ORDER, ISSUED ON DECEMBER 8, 1975 GRANTED CLAIMANT 32 DEGREES FOR 10 PER CENT UNSCHEDULED RIGHT SHOULDER DISABILITY.

THE REFEREE FOUND THAT CLAIMANT HAD REDUCED HIS LOSS OF WAGE EARNING CAPACITY BY HIS VOCATIONAL REHABILITATION TRAINING BUT, NEVERTHELESS, HE WAS NOW EXCLUDED FROM THE HEAVY LABOR MARKET. HE FOUND A SUBSTANTIAL LOSS OF MOTION IN CLAIMANT'S RIGHT ARM AND AWARDED CLAIMANT A TOTAL OF 50 PER CENT UNSCHEDULED RIGHT SHOULDER DISABILITY.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE REFEREE THAT THE AWARD OF 10 PER CENT OF THE MAXIMUM WAS INADEQUATE - HOWEVER, THE BOARD FEELS THAT THE MEDICAL EVIDENCE SUPPORTS NO MORE THAN A FINDING OF CLAIMANT'S DISABILITY TO BE IN THE 'MODERATE' RANGE. THE EVIDENCE AS A WHOLE INDICATES THAT CLAIMANT'S LOSS OF WAGE EARNING CAPACITY WOULD BE ADEQUATELY COMPENSATED BY AN AWARD OF 25 PER CENT.

THE BOARD CONCLUDES, BASED ON CLAIMANT'S AGE, WORK POTENTIAL, EDUCATION AND THE PHYSICAL FINDINGS, THAT CLAIMANT IS ENTITLED TO 80 DEGREES FOR 25 PER CENT PERMANENT PARTIAL DISABILITY TO HIS RIGHT SHOULDER.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 27, 1976, AS AMENDED, IS MODIFIED.

CLAIMANT IS GRANTED 80 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED RIGHT SHOULDER DISABILITY. THIS IS IN LIEU OF THE AWARD GRANTED BY THE REFEREE'S ORDER, AS AMENDED, WHICH IS IN ALL OTHER RESPECTS AFFIRMED.

WCB CASE NO. 75-4972 AUGUST 23, 1976

MARY LEE NACOSTE, CLAIMANT

PAUL RASK, CLAIMANT'S ATTY.
CHRIS DAVIS, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE 3RD DETERMINATION ORDER OF NOVEMBER 4, 1975 WHICH GRANTED CLAIMANT 86.4 DEGREES FOR 45 PER CENT UNSCHEDULED LOW BACK AND INTESTINAL DISABILITY. CLAIMANT CONTENDS THE DETERMINATION ORDER IS INADEQUATE.

CLAIMANT SUSTAINED A COMPENSABLE INJURY ON NOVEMBER 5, 1966 - HER CLAIM WAS CLOSED BY DETERMINATION ORDER ISSUED ON SEPTEMBER 3, 1968 WITH NO AWARD FOR PERMANENT PARTIAL DISABILITY. IN OCTOBER, 1970 CLAIMANT FILED A CLAIM FOR AGGRAVATION AND HER CLAIM WAS REOPENED. ON DECEMBER 13, 1971 A 2ND DETERMINATION ORDER GRANTED CLAIMANT 19.2 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK DISABILITY. CLAIMANT APPEALED AND, AFTER A HEARING, CLAIMANT WAS FOUND NOT TO BE MEDICALLY STATIONARY - HER CLAIM WAS REMANDED TO THE EMPLOYER.

ON NOVEMBER 5, 1975 CLAIMANT'S CLAIM WAS CLOSED BY 3RD DETERMINATION ORDER GRANTING CLAIMANT 86.4 DEGREES FOR 45 PER CENT UNSCHEDULED LOW BACK AND INTESTINAL DISABILITY.

CLAIMANT HAS, THROUGHOUT THE YEARS SINCE HER INDUSTRIAL INJURY, BEEN EXAMINED AND TREATED BY FOURTEEN DIFFERENT DOCTORS. IT IS NOT NECESSARY IN THIS REVIEW TO REITERATE THE FINDINGS OF ALL FOURTEEN DOCTORS WHICH ARE DESCRIBED IN THE REFEREE'S ORDER. SUFFICE IT TO SAY, THAT THE REFEREE, BASED ON THESE MEDICAL OPINIONS, FOUND THAT MOST OF CLAIMANT'S PROBLEMS WERE EMOTIONAL IN NATURE AND LARGELY UNRELATED TO CLAIMANT'S INDUSTRIAL INJURY. DR. CHERRY, CLAIMANT'S PRESENT TREATING PHYSICIAN, OFFERED THE ONLY CONTRADICTORY MEDICAL OPINION, AND HE INITIALLY TREATED CLAIMANT IN 1972, SIX YEARS AFTER HER INDUSTRIAL ACCIDENT OCCURRED.

THE REFEREE FOUND THAT THE PREPONDERANCE OF THE MEDICAL EVIDENCE WEIGHED IN OPPOSITION TO CLAIMANT'S CONTENTION THAT THE AWARD MADE BY THE 3RD DETERMINATION ORDER WAS INADEQUATE. HE CONCLUDED THAT CLAIMANT HAD BEEN ADEQUATELY COMPENSATED FOR HER PHYSICAL DISABILITY BUT THAT SHE WAS ENTITLED TO FURTHER CARE AND COUNSELING UNDER THE PROVISIONS OF ORS 656.245.

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

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 6, 1976, IS AFFIRMED.

WCB CASE NO. 75-2407 AUGUST 25, 1976

VERA M. BRIGGS, CLAIMANT

DAVID VANDENBERG, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT PERMANENT TOTAL DISABILITY COMMENCING ON THE DATE OF THIS ORDER.

CLAIMANT, A 61 YEAR OLD COOK, SUSTAINED A COMPENSABLE INJURY ON OCTOBER 24, 1974 WHEN SHE HAD A SUDDEN ONSET OF PAIN IN HER LOW BACK - SHE CONTINUED WORKING FOR A WHILE ON THAT DAY BUT LATER SAW DR. PAYNE WHO DIAGNOSED ACUTE LUMBAR STRAIN.

CLAIMANT WAS INVOLVED IN AN AUTOMOBILE ACCIDENT ON MAY 10, 1974 WHICH INVOLVED HER NECK, DORSAL AND LUMBAR SPINE AREAS.

DR. LILLY EXAMINED CLAIMANT ON NOVEMBER 1, 1974 AND FOUND FULL RANGE OF MOTION OF HER LOW BACK AND DEGENERATION OF L5-S1. HE DIAGNOSED LUMBOSACRAL STRAIN SUPERIMPOSED ON DEGENERATIVE DISC DISEASE.

ON JANUARY 27, 1975 DR. LILLY OPINED THAT CLAIMANT'S MAIN INJURY WAS HER AUTOMOBILE ACCIDENT AND THAT THE OCTOBER, 1974 INDUSTRIAL INJURY AGGRAVATED THAT CONDITION.

ON FEBRUARY 5, 1975 DR. LILLY FOUND CLAIMANT'S CONDITION STATIONARY AND EXPRESSED HIS OPINION THAT CLAIMANT'S MAIN PROBLEM IS DEGENERATION OF L5-S1 DISC DISEASE WHICH IS A 'GRADUAL PROBLEM AND NOT A RESULT OF ANY INDUSTRIAL ACCIDENT'.

A DETERMINATION ORDER ISSUED ON FEBRUARY 25, 1975 AWARDED TEMPORARY TOTAL DISABILITY COMPENSATION ONLY.

ON MAY 5, 1975 CLAIMANT WAS EXAMINED BY DR. KLUMP WHO DIAGNOSED LUMBAR OSTEOARTHRITIS - HE FELT CLAIMANT'S LOW BACK PAIN WAS NOT RELATED TO THE AUTOMOBILE ACCIDENT, BUT THAT THE INDUSTRIAL INJURY 'WAS AN AGGRAVATION OF HER PRE-EXISTING OSTEOARTHRITIS'.

THE REFEREE FOUND CLAIMANT TO BE A CREDIBLE WITNESS WITH GOOD MOTIVATION AND THAT THE INJURY SO INCREASED THE SYMPTOMATOLOGY OF HER DEGENERATIVE DISC DISEASE AS TO CAUSE HER CONDITION TO PROGRESS TO THE POINT WHERE SHE COULD NOT RETURN TO WORK.

THE REFEREE CONCLUDED, BASED ON THE MEDICAL REPORTS, CLAIMANT'S AGE, AND THE NARROW FIELD OF CLAIMANT'S WORK EXPERIENCE, THAT SHE FELL WITHIN THE 'ODD-LOT' DOCTRINE - HE FOUND HER TO BE PERMANENTLY AND TOTALLY DISABLED.

THE BOARD, ON DE NOVO REVIEW, DISAGREES. IT FINDS THAT THE MEDICAL EVIDENCE DOES NOT SUPPORT A FINDING OF PERMANENT TOTAL DISABILITY. THE PREPONDERANCE OF THE MEDICAL EVIDENCE INDICATES THAT CLAIMANT'S OSTEOARTHRITIS WAS SYMPTOMATIC PRIOR TO HER INDUSTRIAL

INJURY, THE INDUSTRIAL INJURY ONLY CAUSED A TEMPORARY EXACERBATION OF CLAIMANT'S SYMPTOMS. CLAIMANT'S REAL PHYSICAL PROBLEMS ARE A RESULT OF THE PROGRESSIVE WORSENING OF HER OSTEOARTHRITIC CONDITION.

THE BOARD, GIVING THE GREATEST WEIGHT TO THE OPINIONS OF DR. LILLY, WHO WAS CLAIMANT'S TREATING PHYSICIAN, CONCLUDES THAT AN AWARD OF 96 DEGREES FOR 30 PER CENT UNSCHEDULED LOW BACK DISABILITY WILL ADEQUATELY COMPENSATE CLAIMANT FOR HER LOSS OF WAGE EARNING CAPACITY.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 14, 1976, IS MODIFIED.

CLAIMANT IS AWARDED 96 DEGREES FOR 30 PER CENT UNSCHEDULED LOW BACK DISABILITY. THIS AWARD IS IN LIEU OF THE AWARD GRANTED IN THE REFEREE'S ORDER, WHICH IN ALL OTHER RESPECTS IS AFFIRMED.

WCB CASE NO. 75-5132 AUGUST 25, 1976

FRED MILES, CLAIMANT

ALLEN MURPHY, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED CLAIMANT'S CLAIM FOR AGGRAVATION TO IT FOR ACCEPTANCE AND PAYMENT OF BENEFITS AS PROVIDED BY LAW, TO PAY A PENALTY OF 25 PER CENT OF THE COMPENSATION DUE CLAIMANT PRIOR TO THE DATE OF THE REFEREE'S ORDER, SAID PENALTY TO BE RECOVERED BY THE STATE ACCIDENT INSURANCE FUND FROM THE EMPLOYER, AND AWARDED CLAIMANT'S ATTORNEY A FEE OF 750 DOLLARS.

CLAIMANT SUFFERED A LOW BACK INJURY IN 1968 WHILE WORKING FOR JOHNSON BROTHERS SALVAGE COMPANY. IN 1972 CLAIMANT AGAIN INJURED HIS LOW BACK WHILE EMPLOYED BY SEALY MATTRESS COMPANY. HIS CLAIM WAS CLOSED BY A DETERMINATION ORDER DATED JULY 13, 1972, WITH NO AWARD FOR PERMANENT PARTIAL DISABILITY - THIS WAS NOT APPEALED AND CLAIMANT RETURNED TO WORK.

CLAIMANT RECEIVED HIS REAL ESTATE LICENSE AND WORKED FOR A REALTOR UNTIL MAY, 1974 - HOWEVER, AROUND OCTOBER, 1973 CLAIMANT RETURNED TO WORK FOR JOHNSON BROTHERS AND AT THIS TIME CLAIMANT'S LOW BACK SYMPTOMS REOCCURRED. IN NOVEMBER, 1973 DR. KIEST RECOMMENDED SURGERY FOR REPAIR OF A SPONDYLOLISTHESIS.

CLAIMANT FILED A CLAIM FOR AGGRAVATION AGAINST SEALY MATTRESS COMPANY WHICH THE STATE ACCIDENT INSURANCE FUND DENIED ON DECEMBER 7, 1973. THIS DENIAL WAS SUSTAINED BY A REFEREE, THE WORKMEN'S COMPENSATION BOARD AND THE MULTNOMAH COUNTY CIRCUIT COURT.

ON JULY 21, 1975 CLAIMANT FILED AN AGGRAVATION CLAIM AGAINST JOHNSON BROTHERS BUT IT DID NOT SUBMIT THIS CLAIM TO THE STATE ACCIDENT INSURANCE FUND UNTIL JANUARY 21, 1976.

THE REFEREE FOUND THAT THE MEDICAL EVIDENCE SHOWS CLAIMANT'S SPONDYLOLISTHESIS WAS ASYMPTOMATIC BETWEEN THE TERMINATION OF CLAIMANT'S EMPLOYMENT AT SEALY MATTRESS COMPANY AND HIS COMMENCEMENT

OF EMPLOYMENT BY THE DEFENDANT-EMPLOYER, JOHNSON BROTHERS SALVAGE COMPANY.

THE DEFENDANT-EMPLOYER WAS AWARE OF CLAIMANT'S LOW BACK PAIN BUT HE AND CLAIMANT BOTH ATTRIBUTED THIS BACK PAIN TO AN EXACERBATION OF CLAIMANT'S 1972 INJURY.

THE REFEREE CONCLUDED, BASED ON THE EVIDENCE AND THE RULING OF THE COURT THAT AN AGGRAVATION OF A PRE-EXISTING CONDITION CONSTITUTES A COMPENSABLE INJURY, ARMSTRONG V SIAC (UNDERSCORED), 146 OR 569 = 31 P2 ND 186, THAT CLAIMANT'S CLAIM FOR AGGRAVATION MUST BE ACCEPTED.

ON THE ISSUE OF CLAIMANT'S FAILURE TO FILE HIS CLAIM WITHIN ONE YEAR, THE REFEREE FOUND THAT THE STATE ACCIDENT INSURANCE FUND WAS AWARE OF CLAIMANT'S SYMPTOMS AT THE TIME OF THE HEARING ON HIS CLAIM FOR AGGRAVATION AGAINST SEALY AND THE FUND'S DEFENSE WAS SUCCESSFUL BECAUSE IT WAS ABLE TO SHOW SUCH SYMPTOMS WERE CAUSED BY CLAIMANT'S HEAVY WORK AT JOHNSON BROTHERS. THEREFORE, THE FUND WAS NOT PREJUDICED, AS IT HAD KNOWLEDGE OF CLAIMANT'S HISTORY AND SYMPTOMS. THE CLAIM WAS NOT BARRED BY ORS 656.265(4).

THE REFEREE FOUND THAT JOHNSON BROTHERS KNEW OF CLAIMANT'S SYMPTOMS ON A DAY TO DAY BASIS BUT WHEN IT RECEIVED THE CLAIM ON JULY 21, 1975 IT DECIDED IT WAS NOT COMPENSABLE AND REFUSED TO SUBMIT THE CLAIM TO THE FUND. HE CONCLUDED THAT THIS REFUSAL TO SUBMIT CLAIMANT'S CLAIM TO THE FUND UNTIL JANUARY, 1976 DENIED CLAIMANT OF HIS RIGHTS TO COMPENSATION AND ALSO DENIED THE FUND ITS RIGHT TO ACCEPT OR DENY THE AGGRAVATION CLAIM.

THE REFEREE ASSESSED THE FUND A PENALTY OF 25 PER CENT OF THE COMPENSATION DUE CLAIMANT BUT ALLOWED IT TO RECOVER FROM THE EMPLOYER PURSUANT TO ORS 656.262(3).

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

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 20, 1976, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY FEE FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW, THE SUM OF 400 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 75-2422 AUGUST 25, 1976

MICKEL HOPKINS, CLAIMANT

GARY GALTON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT A SUM EQUAL TO 25 PER CENT OF THE COMPENSATION PAYABLE TO HIM FROM MAY 19, 1955 TO MAY 26, 1975 AS A PENALTY FOR UNREASONABLE DELAY IN PAYMENT OF COMPENSATION AND AWARDED CLAIMANT'S ATTORNEY A FEE OF 600 DOLLARS.

IT WAS STIPULATED THAT THE REPORT OF THE ACCIDENT (FORM 801) WAS

RECEIVED BY THE FUND ON MAY 29, 1975 AND THAT THE INITIAL PHYSICIANS REPORT (FORM 827) WAS RECEIVED ON MAY 19, 1975.

THE CLAIMANT SUSTAINED A COMPENSABLE INJURY ON MAY 13, 1975 WHICH CAUSED HIM TO LEAVE WORK SHORTLY BEFORE NOON TO SEEK MEDICAL ATTENTION. CLAIMANT'S REGULAR WORK DAY WAS FROM 8 A.M. TO 4.30 P.M., FIVE DAYS A WEEK, MONDAY THROUGH FRIDAY. WHEN CLAIMANT RETURNED FROM THE DOCTOR'S OFFICE, HE HAD A SLIP, ACCORDING TO HIS TESTIMONY, STATING CLAIMANT WOULD BE UNABLE TO WORK ON THAT DAY. THE REFEREE FOUND THAT THE EMPLOYER HAD NOTICE OF THE CLAIM BY RECEIPT OF THE 801 ON MAY 29, 1975 AND HAD ACTUAL KNOWLEDGE OF THE INJURY WHEN CLAIMANT RETURNED TO WORK AND SHOWED THE DOCTOR'S SLIP TO HIS SUPERVISOR - THIS WAS THE DAY OF THE INJURY.

THE FORM 827 HAD INDICATED CLAIMANT COULD RETURN TO WORK ON MAY 19, 1975. ON JUNE 8, 1975, CLAIMANT WAS RELEASED FOR REGULAR WORK AS OF MAY 26. TWO DAYS PRIOR TO THIS CLAIMANT HAD WRITTEN THE FUND COMPLAINING HE HAD RECEIVED COMPENSATION FOR ONE DAY ONLY. THE FUND TESTIFIED IT RECEIVED THIS LETTER ON JUNE 9, 1975 AND THE FOLLOWING DAY WROTE CLAIMANT STATING THAT THE TREATING DOCTOR INDICATED HE COULD TO RETURN TO WORK ON MAY 26, 1975 - IT ASKED TO BE INFORMED AS TO WHICH DOCTOR WAS TREATING CLAIMANT. THE FUND RECEIVED A CERTIFICATION FROM THE TREATING DOCTOR NOTIFYING IT THAT CLAIMANT HAD BEEN EXAMINED AT THEIR CLINIC ON MAY 13, 1975 AND WAS TOTALLY DISABLED FROM MAY 13 UNTIL MAY 19, 1975. THERE WAS NO INDICATION ON THE CERTIFICATION THAT CLAIMANT WAS ABLE TO RETURN TO HIS REGULAR OCCUPATION. CLAIMANT WAS LAST SEEN BY THE DOCTORS AT PERMANENTE CLINIC ON MAY 19, 1975.

THE REFEREE FOUND THAT CLAIMANT UNTIL THE TIME HE WAS RELEASED TO RETURN TO WORK ON MAY 26, 1975 HAD LOST A TOTAL OF NINE WORKING DAYS OR 13 FULL CALENDAR DAYS, ONE DAY SHORT OF THE 14 DAY STATUTORY REQUIREMENTS BUT THE 14 DAY WAITING PERIOD WAS APPLICABLE. CLAIMANT DID NOT RECEIVE COMPENSATION FOR MAY 16, 1975 UNTIL MAY 27, 1975, FIFTEEN DAYS AFTER ACTUAL KNOWLEDGE OF THE INJURY BY THE EMPLOYER. HE WAS FURTHER ENTITLED TO TIME LOSS FOR THE FIVE DAYS FROM MAY 19 TO MAY 23, 1975 WHICH WAS NOT PAID BY THE FUND UNTIL JUNE 11, 1975.

THE REFEREE FOUND THAT PAYMENT OF COMPENSATION WAS ONE DAY LATE AND, NORMALLY, HE WOULD NOT BE CONCERNED OVER SUCH TARDINESS - HOWEVER, HE WAS CURIOUS AS TO WHY THE ENTIRE REMAINING COMPENSATION WAS NOT PAID ON MAY 27, 1975, WHY THE FUND FOUND IT NECESSARY TO WAIT UNTIL JUNE 11, 1975 TO PAY SUCH COMPENSATION.

THE REFEREE FOUND THAT THE FUND HAD BEEN CONTENT TO RELY SOLELY UPON THE PHYSICIANS REPORT (FORM 827) FOR ITS TOTAL INVESTIGATION AS TO THE COMPENSATION IN WHICH CLAIMANT WAS ENTITLED - HAD IT PROPERLY ASSISTED IN THE ADMINISTRATION OF THE CLAIM, IT COULD HAVE DETERMINED FROM THE PERMANENTE CLINIC THAT CLAIMANT HAD NOT IMPROVED AS OF MAY 19, 1975. HE CONCLUDED THAT THE IMPROPER MANNER OF ASSISTING IN THE ADMINISTRATION OF THIS CLAIM CONSTITUTED AN UNREASONABLE DELAY IN THE PAYMENT OF THE FIVE DAYS COMPENSATION FOR THE WEEK OF MAY 19, 1975 WHICH RESULTED IN PREJUDICE TO CLAIMANT, THEREFORE, HE ASSESSED A PENALTY FOR 25 PER CENT OF THE SAID COMPENSATION TO BE PAID TO THE CLAIMANT AND AWARDED A REASONABLE ATTORNEY FEE TO CLAIMANT'S ATTORNEY.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS THE REFEREE'S ORDER - HOWEVER, IT IS WORTHY OF COMMENT THAT CLAIMANT'S ATTORNEY'S EFFORTS RESULTED IN ADDITIONAL COMPENSATION BEING PAID TO CLAIMANT AMOUNTING TO LESS THAN 50 DOLLARS, THE AWARD OF 600 DOLLARS AS AN ATTORNEY FEE FOR THAT SERVICE IS SOMEWHAT DISPROPORTIONATE TO THE RESULTS OBTAINED. HOWEVER, IT WILL NOT DISTURB THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 20, 1976, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED, AS A REASONABLE ATTORNEY FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW, THE SUM OF 50 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 76-3193 AUGUST 25, 1976

ELDON E. DRIESEL, CLAIMANT

DAN O'LEARY, 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. 75-5479 AUGUST 25, 1976
WCB CASE NO. 76-1031

DAVID JORDAN, CLAIMANT

AND THE COMPLYING STATUS OF
IRVING DEVERE AND CATHERINE DEVERE
VERNON RICHARDS, CLAIMANT'S ATTY.
DOUGLAS GORDON, 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. 75-2067 AUGUST 25, 1976

ROSIE MAYES, CLAIMANT

JOEL REEDER, CLAIMANT'S ATTY.
MICHAEL HOFFMAN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

THE EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED CLAIMANT'S CLAIM TO IT FOR THE PAYMENT OF THE MEDICAL CARE AND TREATMENT RECOMMENDED BY DRS. LUCE AND WILSON AND FOR THE PAYMENT OF TEMPORARY TOTAL DISABILITY COMPENSATION FROM FEBRUARY 25, 1975 UNTIL CLOSURE IS AUTHORIZED PURSUANT TO ORS 656.268.

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HER LEFT CHEST ON NOVEMBER 21, 1973. CLAIMANT'S FAMILY PHYSICIAN, DR. FERGUSON, WAS UNAVAILABLE SO CLAIMANT WENT TO THE HOSPITAL WHERE HER CONDITION WAS DIAGNOSED AS A FRACTURE OF THE 8TH RIB ON THE LEFT. SHE RETURNED TO DR. FERGUSON WHO HAS PROVIDED CONTINUING TREATMENT.

CLAIMANT RETURNED TO WORK IN JANUARY, 1974 BUT CONTINUED TO HAVE PAIN SYMPTOMS AND, FINALLY, IN 1975 SHE SAW DR. FERGUSON AGAIN. CLAIMANT QUIT WORK IN FEBRUARY, 1975 AND HAS NOT WORKED SINCE. DR. FERGUSON FELT THAT CLAIMANT'S LOW BACK PROBLEMS WERE PROBABLY CAUSED BY HER INJURY.

CLAIMANT WAS EXAMINED BY DR. WILSON ON FEBRUARY 25, 1975, HE RECOMMENDED CONSERVATIVE TREATMENT AND HE FELT HER LOW BACK PROBLEMS WERE UNRELATED TO HER INDUSTRIAL INJURY.

DR. THOMPSON REFERRED CLAIMANT TO DR. LUCE WHO EXAMINED CLAIMANT ON MAY 12, 1975. HE HAS BEEN CLAIMANT'S PRIMARY TREATING PHYSICIAN SINCE. ON NOVEMBER 10, 1975 DR. LUCE PERFORMED A LAMINECTOMY AND DR. WILSON PERFORMED A FUSION OF THE LOW BACK. THIS TREATMENT WAS DENIED BY THE CARRIER.

DEPOSITIONS WERE TAKEN OF BOTH DR. THOMPSON AND DR. LUCE. DR. THOMPSON INDICATED THAT IT WAS POSSIBLE THAT THE INJURY TRIGGERED HER LOW BACK PAIN. DR. LUCE FELT THERE WAS A RELATIONSHIP BETWEEN THE INJURY AND HER BACK PROBLEMS.

THE REFEREE, BASED UPON THE MEDICAL REPORTS AND THE DEPOSITIONS, FOUND THAT THIS CASE WAS FULL OF 'SUPPOSITIONS' AND THE HYPOTHETICAL QUESTIONS PUT TO THE DOCTORS WERE CONFUSING. HOWEVER, HE FOUND IT PLAUSIBLE FOR CLAIMANT TO FRACTURE A RIB, WHICH IS VERY PAINFUL, AND ALSO HAVE BACK PAIN WHICH WAS OF LESS CONCERN TO HER AT THE TIME BECAUSE OF THE PAIN OF THE FRACTURED RIB AND TO LATER HAVE LOW BACK PAIN OF WHICH SHE WAS MUCH AWARE. THE REFEREE FOUND EVIDENCE OF LOW BACK PAIN COMPLAINTS IN 1973 AND 1974.

THE REFEREE GAVE GREAT WEIGHT TO THE OPINION OF DR. LUCE WHO BELIEVED THE HISTORY GIVEN TO HIM BY CLAIMANT AND FELT THERE WAS A RELATIONSHIP OF HER LOW BACK PROBLEMS AND THE NOVEMBER, 1973 INJURY. THE REFEREE BELIEVED THE INCONSISTENCIES IN THE HISTORIES GIVEN BY CLAIMANT TO THE DOCTORS WAS UNDERSTANDABLE - HE FOUND CLAIMANT TO BE A CREDIBLE WITNESS. HE CONCLUDED, BASED ON THE ABOVE, THAT CLAIMANT'S CLAIM SHOULD BE REOPENED FOR THE MEDICAL CARE AND TREATMENT RECOMMENDED BY DRS. LUCE AND WILSON FOR COMPENSATION, AS PROVIDED BY LAW, UNTIL CLOSURE PURSUANT TO ORS 656.268.

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

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 4, 1976, IS AFFIRMED.

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

WCB CASE NO. 75-925 AUGUST 25, 1976

ARCHIE F. KEPHART, CLAIMANT

DAVID VINSON, CLAIMANT'S ATTY.
MARSHALL CHENEY, DEFENSE ATTY.
OWN MOTION PROCEEDING REFERRED FOR HEARING

ON JULY 13, 1976 CLAIMANT, THROUGH HIS ATTORNEYS, 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 DECEMBER 9, 1969. THIS CLAIM WAS INITIALLY CLOSED BY DETERMINATION ORDER MAILED JULY 10, 1970 WHICH AWARDED CLAIMANT 32 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK DISABILITY. CLAIMANT'S AGGRAVATION RIGHTS HAVE EXPIRED.

ON JULY 13, 1976 CLAIMANT REQUESTED A HEARING ON THE SAME EMPLOYER'S DENIAL TO PAY MEDICAL AND HOSPITAL BENEFITS, PURSUANT TO ORS 656.245, REQUESTING ASSESSMENT OF PENALTIES AND AN AWARD OF ATTORNEY FEES FOR THE ALLEGED UNREASONABLE DELAY.

THE EVIDENCE BEFORE THE BOARD AT THE PRESENT TIME CONSISTS, PRIMARILY, OF MEDICAL REPORTS FROM DR. GOLDEN WHICH THE BOARD DOES NOT FEEL IS SUFFICIENT EVIDENCE UPON WHICH TO DETERMINE THE MERITS OF THE REQUEST TO REOPEN THE 1969 CLAIM.

THEREFORE, THE MATTER IS REFERRED TO THE HEARINGS DIVISION WITH INSTRUCTIONS TO HOLD A HEARING AND TAKE EVIDENCE ON THE ISSUE OF WHETHER CLAIMANT HAS AGGRAVATED HIS 1969 INJURY, SAID HEARING TO BE HELD IN CONJUNCTION WITH THE HEARING ON THE ISSUE OF THE DENIAL BY THE EMPLOYER OF CLAIMANT'S CLAIM FOR MEDICAL AND HOSPITAL BENEFITS PURSUANT TO ORS 656.245.

UPON CONCLUSION OF THE HEARING THE REFEREE SHALL CAUSE A TRANSCRIPT OF THE PROCEEDING TO BE PREPARED AND SUBMITTED TO THE BOARD, TOGETHER WITH A RECOMMENDATION ON THE ISSUE OF WHETHER CLAIMANT HAS AGGRAVATED HIS 1969 INJURY.

WCB CASE NO. 75-1567 AUGUST 26, 1976

WILLARD PATTON, CLAIMANT

SETTLEMENT STIPULATION

WHEREAS, CLAIMANT SUSTAINED A COMPENSABLE INJURY WHILE IN THE EMPLOY OF SIMPSON TIMBER ALBANY PLYWOOD, WHOSE INSURANCE CARRIER IS THE STATE ACCIDENT INSURANCE FUND, ON SEPTEMBER 15, 1973 - AND

WHEREAS, THE WORKMEN'S COMPENSATION BOARD CLOSED CLAIMANT'S CLAIM BY DETERMINATION ORDER DATED APRIL 7, 1975 WHEREIN THEY AWARDED CLAIMANT 96 DEGREES FOR 30 PER CENT UNSCHEDULED DISABILITY RESULTING FROM THE INJURY TO CLAIMANT'S LOW BACK AND 9.6 DEGREES FOR 5 PER CENT LOSS OF THE LEFT ARM - AND

WHEREAS, CLAIMANT REQUESTED A HEARING AND HEARING WAS HELD BEFORE HEARINGS REFEREE KIRK A. MULDER ON JULY 14, 1976 - AND

WHEREAS, REFEREE MULDER ISSUED AN OPINION AND ORDER DATED JULY 29, 1976 WHEREIN HE AWARDED CLAIMANT AN ADDITIONAL 112 DEGREES OR 35 PER CENT UNSCHEDULED LOW BACK DISABILITY AND AN ADDITIONAL 28.8 DEGREES, OR 15 PER CENT LOSS OF THE LEFT ARM - AND

WHEREAS, CLAIMANT APPEALED SAID OPINION AND ORDER TO THE WORKMEN'S COMPENSATION BOARD AND THEREAFTER THE EMPLOYER, THROUGH THE STATE ACCIDENT INSURANCE FUND, CROSS APPEALED = AND

WHEREAS, IT IS THE DESIRE OF THE PARTIES TO SETTLE THIS MATTER AND TO ALLOW CLAIMANT TO RECEIVE THE MONIES PREVIOUSLY AWARDED TO HIM IN A LUMP SUM =

IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN THE ABOVE NAMED CLAIMANT AND THE STATE ACCIDENT INSURANCE FUND AS FOLLOWS =

(1) CLAIMANT HEREBY WITHDRAWS HIS REQUEST FOR REVIEW OF THE OPINION AND ORDER OF JULY 29, 1976 =

(2) THE STATE ACCIDENT INSURANCE FUND HEREBY WITHDRAWS THEIR CROSS APPEAL FROM THE OPINION AND ORDER DATED JULY 29, 1976 = AND

(3) IT IS AGREED THAT CLAIMANT SHALL RECEIVE, LESS STATUTORY DISCOUNT AND ATTORNEYS FEES, 100 PER CENT OF THE MONIES DUE AND OWING FROM THE OPINION AND ORDER DATED JULY 29, 1976.

WCB CASE NO. 75—3629 AUGUST 26, 1976

WILLIAM H. MARCUM, CLAIMANT

GOODING AND SUSAK, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH FOUND CLAIMANT TO BE AN EMPLOYER RATHER THAN AN INDEPENDENT CONTRACTOR, DIRECTED THE FUND TO ACCEPT THE CLAIM AND PROVIDE CLAIMANT WITH ALL BENEFITS TO WHICH HE WAS ENTITLED, AWARDED CLAIMANT'S ATTORNEY A REASONABLE ATTORNEY'S FEE BUT ASSESSED NO PENALTIES.

CLAIMANT, A 53 YEAR OLD LOGGER, WAS INJURED WHILE PRUNING TREES FOR THE LA GRANDE COUNTY CLUB, HEREINAFTER CALLED THE CLUB, ON APRIL 18, 1975. CLAIMANT HAD BEEN LAYED OFF FROM LOGGING ACTIVITIES DUE TO THE SPRING BREAK-UP.

THE CLUB'S BOARD OF DIRECTOR'S SOLICITED BIDS FOR THE PRUNING PROJECT AND CLAIMANT BID 25 DOLLARS PER TREE, AGREEING TO HAUL AWAY THE DEBRIS, PROVIDE HIS OWN TOOLS AND TRUCK AND TO HIRE A HELPER FOR THE JOB. CLAIMANT'S HELPER WAS PAID DIRECTLY BY THE CLUB AND DID NOT CONTINUE THE PROJECT AFTER CLAIMANT'S INJURY.

THE REFEREE CONCLUDED THAT THE FACT THAT THE HELPER WAS PAID BY THE CLUB FROM A DIFFERENT FUND THAN THAT USED TO PAY THE CLAIMANT AND THAT THE CLUB'S AGENT FELT HE COULD EXERCISE CONTROL OVER THE CLAIMANT INDICATED THERE WAS NOT AN INDEPENDENT CONTRACTOR RELATIONSHIP BUT ONE OF THE EMPLOYER-EMPLOYEE, AND CLAIMANT WAS AN EMPLOYEE OF THE CLUB. HE ALSO FOUND THAT CLAIMANT HAD SUFFERED A COMPENSABLE INJURY WHILE SO EMPLOYED.

WITH RESPECT TO CLAIMANT'S REQUEST FOR PENALTIES AND ATTORNEY'S FEES FOR UNREASONABLE DELAY IN PROCESSING HIS CLAIM, THE REFEREE FOUND THAT ALTHOUGH THE CLUB WAS AWARE OF THE INJURY IT HAD CONSIDERED THE RELATIONSHIP AS THAT OF AN INDEPENDENT CONTRACTOR AND DID NOT

CONSIDER THE POSSIBILITY OF WORKMEN'S COMPENSATION BEING INVOLVED. THE REFEREE CONCLUDED THAT BECAUSE OF THE DIFFICULTY PRESENTED TO AN EMPLOYER ON MAKING THE CORRECT DISTINCTION BETWEEN AN INDEPENDENT CONTRACTOR AND AN EMPLOYEE THE DELAY BY THE CLUB IN PROCESSING THE CLAIM WAS NOT UNREASONABLE. ASSESSMENT OF PENALTIES WAS NOT JUSTIFIED - HOWEVER, BECAUSE CLAIMANT PREVAILED AT THE HEARING ON THE DENIAL OF HIS CLAIM, HIS ATTORNEY WAS ENTITLED TO A REASONABLE ATTORNEY'S FEE PAYABLE BY THE CLUB.

THE BOARD, ON DE NOVO REVIEW, REVERSES THE REFEREE'S ORDER AND FINDS CLAIMANT TO BE AN INDEPENDENT CONTRACTOR. THERE IS NO EVIDENCE THAT THE CLUB EXERCISED ANY SUBSTANTIAL CONTROL OVER THE PRUNING PROJECT. THE CLUB'S GREENKEEPER, WHO NORMALLY TOOK CARE OF THE CLUB'S MAINTENANCE, HAD NO POWER OF CONTROL OVER EITHER CLAIMANT OR HIS HELPER.

THE BOARD IS OF THE OPINION THAT THIS CASE IS ANALGOUS TO BOWSER V. SIAC (UNDERSCORED), 182 OR 42 (1948) AND BUTTS V. SIAC (UNDERSCORED), 193 OR 417 (1951) WHICH SET FORTH THE CRITERIA USED TO DISTINGUISH AN EMPLOYEE FROM AN INDEPENDENT CONTRACTOR. IN THIS CASE CLAIMANT INDEPENDENTLY CONTRACTED FOR THE PRUNING JOB, THEREFORE, HE IS NOT ENTITLED TO BENEFITS UNDER THE PROVISIONS OF THE WORKMEN'S COMPENSATION LAW.

ORDER

THE ORDER OF THE REFEREE ENTERED MARCH 16, 1976 IS REVERSED.

WCB CASE NO. 75-4676 AUGUST 26, 1976

JAMES CROOK, CLAIMANT

DONALD ATCHISON, CLAIMANT'S ATTY.
ROGER LUEDTKE, DEFENSE ATTY.
ORDER

ON MARCH 30, 1976, THE EMPLOYER REQUESTED BOARD REVIEW OF THE REFEREE'S ORDER, DATED MARCH 22, 1976, WHICH AWARDED CLAIMANT 160 DEGREES FOR 50 PER CENT UNSCHEDULED DISABILITY. CLAIMANT HAD SUFFERED A COMPENSABLE INJURY ON AUGUST 14, 1975 FOR WHICH HE HAD BEEN AWARDED 30 DEGREES FOR 25 PER CENT UNSCHEDULED DISABILITY BY A DETERMINATION ORDER MAILED SEPTEMBER 26, 1975.

THE BOARD IS NOW ADVISED THAT ON JUNE 15, 1976, IT WAS DETERMINED THAT CLAIMANT HAD A VOCATIONAL HANDICAP AS A RESULT OF HIS INJURY OF AUGUST 14, 1974 AND A PROGRAM OF VOCATIONAL REHABILITATION WAS AUTHORIZED FOR HIM. THE BOARD HAS NO ALTERNATIVE BUT TO SET ASIDE THE ORDER OF THE REFEREE, DATED MARCH 22, 1976, AND ALSO TO SET ASIDE THE DETERMINATION ORDER, MAILED SEPTEMBER 26, 1975, ON THE BASIS THAT THE CLAIM CLOSURE WAS PREMATURE IN ALL RESPECTS EXCEPT FOR THE DATE CLAIMANT WAS FOUND TO BE MEDICALLY STATIONARY.

ORDER

CLAIMANT'S CLAIM FOR HIS COMPENSABLE INJURY OF AUGUST 14, 1974 IS REMANDED TO THE EMPLOYER TO BE SUBMITTED TO THE EVALUATION DIVISION OF THE BOARD FOR CLOSURE UNDER ORS 656.268 UPON THE COMPLETION OR TERMINATION, AS THE CASE MAY BE, OF CLAIMANT'S AUTHORIZED VOCATIONAL REHABILITATION PROGRAM.

WCB CASE NO. 75-4404 AUGUST 26, 1976

RONALD LEWIS, CLAIMANT

DAN O'LEARY, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

CLAIMANT REQUESTED BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED HIM 64 DEGREES FOR 20 PER CENT UNSCHEDULED DISABILITY. CLAIMANT CONTENDS THE AWARD IS INADEQUATE.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON JANUARY 30, 1975 WHICH WAS DIAGNOSED BY DR. DAVIS AS THORACO-CERVICAL AND THORACO-LUMBAR STRAIN.

DR. LILLY EXAMINED CLAIMANT ON FEBRUARY 24, 1975 AND FOUND CLAIMANT HAD 75 PER CENT NORMAL RANGE OF MOTION AND MILD SPASM AND A POSSIBLE HERNIATED LUMBAR DISC. ON FEBRUARY 26, 1975 DR. LILLY PERFORMED AN EXCISION OF A HERNIATED DISC AT L5-S1 ON THE RIGHT.

ON MAY 28, 1975 CLAIMANT WAS EXAMINED BY DR. TENNYSON WHO FOUND FULL RANGE OF MOTION AND NO SPASM. ON JUNE 27, 1975 DR. TENNYSON RELEASED CLAIMANT TO LIGHT DUTY WORK AS OF JUNE 30, 1975.

ON JULY 11, 1975 DR. TENNYSON DIAGNOSED POSSIBLE RECURRENT PROTRUDED INTERVERTEBRAL DISC WITH MUCH FUNCTIONAL OVERLAY AND ORDERED A MYELOGRAM WHICH PROVED NEGATIVE. ON JULY 29, 1975 HE RECOMMENDED CLAIM CLOSURE, AGAIN STRESSING MUCH FUNCTIONAL OVERLAY.

IN HIS CLOSING REPORT OF AUGUST 26, 1975, DR. TENNYSON FOUND 'MODERATE SUBJECTIVE AND MINIMAL OBJECTIVE FINDINGS OF PERMANENT PARTIAL DISABILITY' AND RECOMMENDED VOCATIONAL REHABILITATION AND NO ENGAGEMENT IN ANY OCCUPATION WHICH INVOLVED HEAVY MANUAL LABOR.

A DETERMINATION ORDER ISSUED ON DECEMBER 12, 1975 GRANTED CLAIMANT AN AWARD OF 32 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK DISABILITY.

THE REFEREE FOUND THAT ALTHOUGH CLAIMANT'S OBJECTIVE PHYSICAL FINDINGS WERE MINIMAL, NEVERTHELESS, CLAIMANT IS PRECLUDED FROM RETURNING TO HIS REGULAR OCCUPATION. HE CONCLUDED THAT CLAIMANT WAS ENTITLED TO AN ADDITIONAL 32 DEGREES FOR HIS LOSS OF WAGE EARNING CAPACITY.

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

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 14, 1976, IS AFFIRMED.

WCB CASE NO. 74-3310 AUGUST 26, 1976

GEORGE R. SIMON, CLAIMANT
FORD AND COWLING, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED CLAIMANT'S CLAIM TO IT FOR PAYMENT OF BENEFITS, AS PROVIDED BY LAW, AND AWARDED CLAIMANT'S ATTORNEY A REASONABLE ATTORNEY'S FEE OF 1,700 DOLLARS.

CLAIMANT IS 47 YEARS OLD, HE HAS BEEN A MINISTER SINCE 1957 AND SINCE 1966 SERVED THE WOLF CREEK ALLIANCE COMMUNITY CHURCH. COMMENCING IN EARLY 1974 AND UNTIL HIS MYOCARDIAL INFARCTION OF JUNE 14, 1974, CLAIMANT HAD A LOAD MUCH HEAVIER THAN USUAL. IT CONSISTED, IN PART, OF THE COUNSELING OF SEVERAL FAMILIES ON THE VERGE OF BREAKING UP AND OTHER UPSETTING INCIDENTS WHICH CAUSED CLAIMANT TO SHOW MANIFESTATIONS OF STRESS WHICH WERE OBSERVABLE BY THE MEMBERS OF HIS CHURCH, TO WIT - HIS SERMONS HAD BECOME ERRATIC, DISJOINTED AND HOSTILE. IT WAS SUGGESTED THAT HE REDUCE HIS WORK LOAD AND HE DID NOT PREACH A SERMON ON THE SUNDAY PRECEDING THE DATE OF THE HEART ATTACK.

CLAIMANT WAS THE ONLY MINISTER IN THE IMMEDIATE AREA AND WAS CONSTANTLY ON THE GO AND HE WAS ALSO CONCERNED WITH A SITUATION INVOLVING A 'HIPPY' ELEMENT VERSUS THE 'STRAIGHT' SOCIETY IN THE AREA. THE UPSETTING INCIDENTS HERETOFORE ALLUDED TO, WHICH PRECEDED THE HEART ATTACK INCLUDED A SHOOTING, ATTEMPTED SUICIDES AND OTHER UPSETTING ACTIVITIES ALL WHICH HAD AN ADVERSE EFFECT ON THE CLAIMANT.

ON JUNE 13, 1974 CLAIMANT WENT TO MEDFORD WITH HIS WIFE - HE HAD TO CONCLUDE SOME WORK RELATING TO A BERRY PATCH WHICH BELONGED TO CLAIMANT'S RELATIVES AND ALSO CONTACT A MAN WHOM HE HOPED TO INDUCE TO TRANSFER SOME PROPERTY TO THE CHURCH. CLAIMANT WAS SOMEWHAT APPREHENSIVE ABOUT THIS LATTER MATTER. HE WENT TO SEE THE GENTLEMAN BUT FOUND THAT HE WAS NOT AT HOME. SHORTLY THEREAFTER, CLAIMANT AND HIS WIFE WENT INTO A MEN'S STORE TO BUY A SUIT. AT THAT TIME THE SYMPTOMS COMMENCED.

CLAIMANT'S FAMILY DOCTOR, DR. ROBERTS, TESTIFIED THAT CLAIMANT WAS A 'TYPE A' PERSONALITY, I.E., A PERSON WHO IS GENERALLY TENSE, COMPULSIVE AND ANXIOUS TO SUCCEED. DR. ROBERTS HAD TREATED CLAIMANT SINCE 1953 AND TESTIFIED THAT THE CLAIMANT'S GENERAL WORK SITUATION REGARDING THE CHURCH IN THE MONTHS PRIOR TO JUNE 14, 1974 WAS OF A MATERIAL CONTRIBUTING CAUSE TO CLAIMANT'S MYOCARDIAL INFARCTION.

DR. DYSART, DIAGNOSTICIAN AND INTERNIST, EXPRESSED AN OPINION THAT THE UNUSUAL STRESS IN CONNECTION WITH CLAIMANT'S CHURCH ACTIVITIES TOGETHER WITH HIS SUPERVISION OF THE PICKING OF HIS FATHER'S STRAWBERRY FIELD IN MEDFORD WERE SUBSTANTIAL CONTRIBUTING CAUSES OF THE MYOCARDIAL INFARCTION. DR. HALL, INTERNIST, TESTIFIED THAT HE DID NOT FEEL STRESS EVOKED EITHER CORONARY DISEASE OR HEART DISEASE AND THAT CLAIMANT'S WORK STRESSES DID NOT CAUSE THE HEART ATTACK NOR WERE THEY A MATERIAL CONTRIBUTING FACTOR IN THE DEVELOPMENT OF THE CORONARY ARTERY DISEASE. DR. PARCHER, A MEDICAL DIRECTOR FOR THE FUND, AGREED.

THE REFEREE FOUND THAT CLAIMANT'S BERRY FIELD ACTIVITIES HAD MINIMAL IMPACT ON HIS GENERAL STRESS POSTURE. HE ALSO FOUND THAT

THE FACT THAT THE ATTACK DID NOT OCCUR DURING DIRECT OR INDIRECT ADMINISTERIAL DUTIES DID NOT NECESSARILY PROVE A NON-CONNECTION. HE FOUND CLAIMANT WAS UNDER GENERAL STRESS AND HAD BEEN FOR SEVERAL MONTHS. HE ALSO FOUND THAT ON THAT PARTICULAR MORNING HE WAS UNDER APPREHENSION ASSOCIATED WITH THE POSSIBLE VISIT WITH THE GENTLEMAN WHOM HE HOPED TO INDUCE TO GIVE PROPERTY TO THE CHURCH.

THE REFEREE CONCLUDED THE PREPONDERANCE OF THE EVIDENCE ESTABLISHED THAT CLAIMANT'S EMPLOYMENT WAS A MATERIAL CONTRIBUTING FACTOR CAUSING THE HEART ATTACK ON JUNE 14, 1974 AND THAT THE CLAIM WAS COMPENSABLE.

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

ORDER

THE ORDER OF THE REFEREE DATED DECEMBER 29, 1975 IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY'S FEE FOR HIS SERVICES IN CONNECTION WITH HIS BOARD REVIEW, THE SUM OF 350 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 76-195 AUGUST 26, 1976

THE BENEFICIARIES OF
LORN ASELSON, DECEASED
ROBERT MCKEE, CLAIMANT'S ATTY.
DARYLL KLEIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

THE EMPLOYER SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH DIRECTED IT TO REINSTATE CLAIMANT'S WIDOW'S BENEFITS AND PAY TO HER ALL OF HER BENEFITS FROM THE DATE SAID BENEFITS WERE TERMINATED, ALLOWING THE EMPLOYER A CREDIT FOR A LUMP SUM MADE TO CLAIMANT.

CLAIMANT IS THE WIDOW OF LORN ASELSON WHO SUFFERED A COMPENSABLE HEART ATTACK ON MARCH 22, 1972 WHICH RESULTED IN HIS DEATH ON SEPTEMBER 21, 1972. A DETERMINATION ORDER ENTERED JANUARY 3, 1973 AWARDED CLAIMANT'S WIDOW BENEFITS WHICH SHE CONTINUED TO RECEIVE UNTIL DECEMBER 29, 1973 WHEN SHE MARRIED RUDOLPH HILL.

ON FEBRUARY 20, 1975 CLAIMANT OBTAINED A DECREE OF ANNULMENT AND THE MARRIAGE WAS DECLARED VOID, AB INITIO, AS OF DECEMBER 29, 1973.

CLAIMANT REQUESTED REINSTATEMENT OF HER WIDOW'S BENEFITS AND THE EMPLOYER DENIED THAT REQUEST ON DECEMBER 19, 1973, STATING THAT CLAIMANT HAD BEEN LEGALLY MARRIED AND, THEREFORE, HAD TERMINATED HER RIGHT TO SUCH BENEFITS.

THE REFEREE FOUND THAT THE DECREE OF ANNULMENT HAD RENDERED THE MARRIAGE VOID, AB INITIO, AS OF DECEMBER 29, 1973, THEREFORE, CLAIMANT WAS NEVER MARRIED TO MR. HILL AND SHE WAS ENTITLED TO HAVE HER WIDOW'S BENEFITS REINSTATED.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS AND ADOPTS THE FINDINGS AND CONCLUSIONS REACHED BY THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 9, 1976, IS AFFIRMED.

WCB CASE NO. 75-1870 AUGUST 26, 1976

DONALD CHRISTIAN, CLAIMANT

MILO POPE, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH DIRECTED IT TO ACCEPT CLAIMANT'S CLAIM AND PROVIDED HIM WITH BENEFITS PURSUANT TO LAW AND TO PAY CLAIMANT'S ATTORNEY A REASONABLE ATTORNEY FEE IN THE AMOUNT OF 500 DOLLARS.

THERE WERE THREE ISSUES PRESENTED TO THE REFEREE AT THE HEARING - (1) IS CLAIMANT'S RIGHT TO A HEARING BARRED FOR FAILURE TO REQUEST THE HEARING WITHIN 60 DAYS AFTER THE FUND'S DENIAL? (2) WAS CLAIMANT'S COMPENSABLE INJURY OF AUGUST 5, 1974 DISABLING OR NON-DISABLING? (3) DID SYMPTOMS ARISING AFTER AN INCIDENT OCCURRING ON OR ABOUT OCTOBER 12, 1974 RESULT FROM AGGRAVATION OR FROM A NEW INJURY?

THE REFEREE FOUND THAT CLAIMANT'S ORIGINAL REQUEST FOR A HEARING WAS RECEIVED BY THE FUND ON MAY 6, 1975 WHO FORWARDED IT TO THE HEARINGS DIVISION OF THE BOARD WHICH RECEIVED IT ON MAY 9, 1975, MORE THAN 60 DAYS AFTER THE DATE OF THE FUND'S DENIAL OF MARCH 3, 1975. ON AUGUST 22, 1975 THE HEARINGS DIVISION RECEIVED A REQUEST FOR A HEARING FROM CLAIMANT'S COUNSEL, THIS WAS WITHIN THE 180 DAYS OF THE DATE OF THE DENIAL. CLAIMANT'S REQUEST FOR A HEARING IS BARRED UNLESS IT IS FILED WITHIN 180 DAYS AND CLAIMANT ESTABLISHES AT A HEARING THAT THERE WAS GOOD CAUSE FOR FAILING TO FILE WITHIN 60 DAYS (UNDERSCORED).

THE REFEREE FOUND SUFFICIENT EVIDENCE TO SUPPORT HIS CONCLUSIONS THAT CLAIMANT HAD ATTEMPTED TO OBTAIN THE SERVICES OF THE SEVERAL ATTORNEYS WITHOUT ANY SUCCESS UNTIL FINALLY MR. POPE UNDERTOOK TO REPRESENT HIM AND THIS CONSTITUTED GOOD CAUSE FOR CLAIMANT'S FAILURE TO REQUEST A HEARING WITHIN 60 DAYS. THEREFORE, HIS RIGHT TO SUCH A HEARING WAS NOT BARRED BY ORS 656.319.

ON AUGUST 5, 1974 CLAIMANT FELL FROM A LOG BUNK AND SUSTAINED WHAT WAS DIAGNOSED BY DR. PFEIFFER, D.C., AS 'AN APPARENT MODERATE STRAIN OF THE PARAVERTEBRAL STRUCTURES OF THE LUMBOSACRAL REGION...'. HE DID NOT THINK CLAIMANT WOULD LOSE MORE THAN FIVE DAYS FROM WORK OR THAT HE WOULD SUFFER ANY PERMANENT DISABILITY. CLAIMANT, ON AUGUST 8, FILED HIS REPORT OF INJURY. ON THAT SAME DAY THE EMPLOYER ACKNOWLEDGED THE INJURY AND NOTED THAT CLAIMANT HAD LEFT WORK AT THE END OF AUGUST 6, 1974 AND 'RETURNING TO WORK AUGUST 12, 1974'. THE FUND ACCEPTED THE CLAIM AS A NON-DISABLING INJURY ON AUGUST 20, 1974.

AT THE HEARING THE FUND MOVED TO DISMISS THE REQUEST FOR HEARING AS PREMATURE BECAUSE THERE WAS STILL A QUESTION AS TO WHETHER OR NOT CLAIMANT'S INJURY WAS DISABLING OR NON-DISABLING AND THE REFEREE LACKED JURISDICTION BECAUSE CLAIMANT HAD NOT REQUESTED A DETERMINATION ON SUCH QUESTION PURSUANT TO ORS 656.268. BECAUSE OF THE NEED TO LITIGATE THE PROPRIETY OF THE FUND'S DENIAL OF MARCH 3, 1975 AND THE FACT THAT HAD A DETERMINATION BEEN DULY APPLIED FOR AND OBTAINED,

IT WOULD BE SUBJECT TO AFFIRMANCE, MODIFICATION OR REVERSAL BY A REFEREE SHOULD EITHER PARTY REQUEST A HEARING ON IT, THE REFEREE DENIED THE MOTION. FURTHERMORE, THE REFEREE NOTED THE ABSENCE OF ANY NOTICE TO CLAIMANT OF HIS HEARING AND AGGRAVATION RIGHTS, INCLUDING THE RIGHT TO OBJECT TO THE DECISION THAT HIS INJURY WAS NON-DISABLING.

THE REFEREE FOUND THAT CLAIMANT HAD BEEN TEMPORARILY AND TOTALLY DISABLED FROM AUGUST 7 THROUGH AUGUST 11, A TOTAL OF THREE WORK DAYS, BECAUSE OF HIS INJURY AND, PURSUANT TO ORS 656.210, A WORKMAN IS NOT ENTITLED TO RECEIVE COMPENSATION FOR TEMPORARY TOTAL DISABILITY IF HE IS TEMPORARILY DISABLED FOR ONLY THREE DAYS. THEREFORE, HE CONCLUDED THAT THE INJURY OF AUGUST 5, 1974 WAS A NON-DISABLING INJURY.

ALTHOUGH CLAIMANT RETURNED TO WORK ON AUGUST 12, ACTUALLY HE CAME BACK ONLY LONG ENOUGH TO QUIT HIS JOB AS A TRUCK DRIVER, STATING HE HAD ACCEPTED EMPLOYMENT AS A PARTS AND SERVICE MANAGER IN AN AUTO DEALERSHIP. CLAIMANT WAS ABLE TO WORK BUT, ACCORDING TO HIS TESTIMONY, HIS BACK CAUSED HIM PAIN. ON SEPTEMBER 10, CLAIMANT RETURNED TO SEE DR. PFEIFFER, STATING HE HAD SOME MILD SYMPTOMS IN THE LUMBOSACRAL REGION - AFTER A ROUTINE TREATMENT HE WAS AGAIN CONSIDERED ASYMPTOMATIC. DR. PFEIFFER HAS NOT SEEN CLAIMANT SINCE SEPTEMBER 10, BUT STATED THAT, AS OF THAT DATE, HE WAS FREE OF SYMPTOMS AND DID NOT HAVE, NOR WOULD HE HAVE ANY DISABILITY OF A PERMANENT NATURE AS A RESULT OF AN AUGUST 5, 1974 INJURY.

ON OCTOBER 12, 1974 CLAIMANT WAS HELPING A FRIEND MOVE SOME HOUSEHOLD BELONGINGS AT WHICH TIME HE SUFFERED LOW BACK PAIN WHICH REQUIRED MEDICAL ATTENTION, INCLUDING HOSPITALIZATION. DR. DONALD D. SMITH WAS OF THE OPINION THAT THE INJURY THAT CAUSED CLAIMANT TO BE HOSPITALIZED IN OCTOBER, 1974 WAS VERY MINOR AND APPARENTLY REPRESENTED AN AGGRAVATION OF HIS EARLIER INJURY.

THE REFEREE FOUND CLAIMANT HAD SUFFERED AN APPARENTLY MINOR INJURY IN AUGUST FROM WHICH HE HAD NEVER COMPLETELY RECOVERED. THE MARKED INCREASE IN CLAIMANT'S SYMPTOMS IN THE SAME BODY AREA AS A RESULT OF THE OCTOBER INCIDENT BROUGHT ABOUT BY A RELATIVELY SLIGHT PROVOCATION LED THE REFEREE TO CONCLUDE THAT THE OCTOBER INCIDENT AMOUNTED TO AN AGGRAVATION OF CLAIMANT'S AUGUST 5, 1974 INJURY. HE REMANDED THE CLAIM TO THE FUND.

ON NOVEMBER 1, 1975 DR. SMITH HAD REQUESTED THE FUND TO REOPEN CLAIMANT'S CLAIM TO COVER HIS HOSPITALIZATION AND TREATMENT AND, ON MARCH 3, 1975, THE FUND DENIED THE REQUEST. THE REFEREE, HAVING FOUND THAT THE DENIAL WAS NOT PROPER, CORRECTLY AWARDED CLAIMANT'S ATTORNEY A REASONABLE ATTORNEY'S FEE PAYABLE BY THE FUND.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS THE REFEREE'S ORDER.

ORDER

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

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY FEE FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW, THE SUM OF 400 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

V. DALE RITTER, CLAIMANT

HAROLD SNOW, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED THE CLAIM TO THE STATE ACCIDENT INSURANCE FUND FOR ACCEPTANCE AND FOR PAYMENT OF COMPENSATION UNTIL CLAIM CLOSURE, PURSUANT TO ORS 656.268, AND ATTORNEY FEES.

CLAIMANT, 32 YEARS OLD AT THE TIME OF HEARING, SUSTAINED A COMPENSABLE INJURY TO HIS RIGHT MIDDLE FINGER ON SEPTEMBER 4, 1975 WHILE EMPLOYED AS A DUMP TRUCK DRIVER BY HOFFMAN CONSTRUCTION CO.

AFTER THE INJURY, I.E., A LACERATION ON THE RIGHT MIDDLE FINGER, THE WOUND WAS BANDAGED BY CLAIMANT AND, LATER, ATTENDED TO BY HIS WIFE WHEN HE RETURNED HOME AFTER WORK.

ON SEPTEMBER 5, 1975, CLAIMANT WORKED ALL DAY, WENT TO THE ASTORIA CLINIC EMERGENCY ROOM AND WAS ATTENDED TO BY A NURSE WHO NOTED 'CUT 8-29'. HE RETURNED TO THE EMERGENCY ROOM AFTER WORK ON THE FOLLOWING DAY AND WAS SEEN BY DR. MOORE. ON OCTOBER 9, 1975, CLAIMANT SAW DR. KERBEL AS HIS FINGER REMAINED BENT AND TENDER. DR. KERBEL REFERRED CLAIMANT TO DR. FOSTER WHO WAS OF THE OPINION THAT SURGERY MIGHT BE NEEDED TO CORRECT THE CONDITION. IT WAS NOT UNTIL HE HAD BEEN SEEN BY DR. FOSTER THAT CLAIMANT BECAME AWARE OF THE SERIOUSNESS OF THE FINGER INJURY AND CONSIDERED FILING A CLAIM.

ON JANUARY 2, 1976, A FUND REPRESENTATIVE WENT TO THE CLAIMANT'S HOME AND ASSISTED IN FILING OUT AN 801 FORM. ON JANUARY 30, 1976 THE FUND DENIED THE CLAIM DUE TO CONFLICTING INJURY DATES, NO APPARENT PROOF OF EMPLOYMENT WITH HOFFMAN CONSTRUCTION CO. AND A MEDICAL DETERMINATION MADE BY A NON-MEDICALLY QUALIFIED STATE ACCIDENT INSURANCE FUND EMPLOYEE.

THE REFEREE FOUND THAT THE INJURY OCCURRED, AS CLAIMANT CONTENDS, ON SEPTEMBER 9, 1975, THE NOTATION BY THE NURSE ON SEPTEMBER 5, 1975 WAS ERRONEOUS. THE CONFLICTING DATES ARE ADEQUATELY EXPLAINED BY THE TESTIMONY OF DR. MOORE.

THE REFEREE FOUND THAT AT THE TIME OF THE INJURY, CLAIMANT WAS IN THE SCOPE AND COURSE OF HIS EMPLOYMENT AS HE HAD JUST RETURNED FROM DELIVERING ONE LOAD AND WAS WAITING IN LINE FOR ANOTHER WHEN THE INJURY OCCURRED, AND THE INJURY WAS CAUSED BY AN ACT WHICH WOULD NORMALLY BE PERFORMED AND WAS DONE FOR THE BENEFIT OF CLAIMANT'S EMPLOYER.

THE ISSUE OF TIMELINESS WAS RAISED BY THE STATE ACCIDENT INSURANCE FUND. THE REFEREE FOUND THAT THE FUND WAS NOT PREJUDICED BY THE LATE FILING OF THE 801 - HOWEVER, THE FUND DID NOT ACT UNREASONABLY IN DENYING THE CLAIM AND, THEREFORE, THE IMPOSITION OF PENALTIES WAS NOT WARRANTED.

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

ORDER

THE ORDER OF THE REFEREE DATED MARCH 16, 1976 IS HEREBY AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED A REASONABLE ATTORNEY FEE IN THE SUM OF 400.00 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICE IN CONNECTION WITH BOARD REVIEW.

WCB CASE NO. 75-4083 AUGUST 26, 1976

LEONARD WHITE, CLAIMANT

JAMES GRISWOLD, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

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

CLAIMANT SUFFERED AN INDUSTRIAL INJURY TO HIS LOW BACK ON APRIL 27, 1973. HE HAS NO HISTORY OF PREVIOUS BACK PROBLEMS. CLAIMANT IS 48 YEARS OLD, WITH A 5TH GRADE EDUCATION AND IS FUNCTIONALLY ILLITERATE - HE HAS BEEN, PRIMARILY, A MACHINIST MOST OF HIS LIFE. CLAIMANT HAD TWO SURGERIES FOLLOWING THIS INJURY THE FIRST A HEMILAMINECTOMY, THE SECOND A DISCECTOMY.

CLAIMANT WAS FIRST AWARDED 15 PER CENT UNSCHEDULED BACK DISABILITY AND 5 PER CENT SCHEDULED DISABILITY FOR A LEG - THE FIRST DETERMINATION ORDER IS MISSING FROM THE RECORD.

IN APRIL, 1974 CLAIMANT WAS EXAMINED BY DR. HALFERTY WHO DIAGNOSED RECURRENT ROOT IRRITATION. ON APRIL 25, 1974 DR. KIEST EXAMINED CLAIMANT AND FOUND HIM 'THE CLASSIC CASE OF POORLY EDUCATED, WEARING OUT, MIDDLE AGED WORKING MAN'. HE BELIEVED IT WAS 'ESSENTIALLY IMPOSSIBLE TO VOCATIONALLY RETRAIN' CLAIMANT AND THAT HIS CONDITION WAS NOT MEDICALLY STATIONARY.

IN CLAIMANT'S PSYCHOLOGICAL EVALUATION DR. HICKMAN FOUND CLAIMANT VERY DEPRESSED AND WANTING TO RETURN TO HIS OLD OCCUPATION. HE FOUND A MODERATELY SEVERE RELATIONSHIP BETWEEN CLAIMANT'S ACCIDENT AND HIS PSYCHOPATHOLOGY.

ON MAY 29, 1974 CLAIMANT RETURNED TO DR. KIEST WHO STATED THAT 'THERE IS A HIGH LIKELIHOOD OF A TOTAL AND PERMANENT DISABILITY CASE UNDER ANY METHOD OF TREATMENT IN THIS SITUATION'. LATER HE REPORTED THAT CLAIMANT 'WOULD NOT BE ABLE TO RETURN TO ANY GAINFUL EMPLOYMENT UNDER ANY CIRCUMSTANCES'.

ON JUNE 10, 1974 DR. KIEST PERFORMED A LUMBAR MYELOGRAM AND A LAMINECTOMY AND REMOVAL OF EXTRUDED HERNIATED INTERVERTEBRAL DISC.

AN EXAMINATION BY THE ORTHOPAEDIC CONSULTANTS ON JANUARY 17, 1975 RESULTED IN A DIAGNOSIS OF LUMBAR SPONDYLOSIS L4-5 AND CHRONIC DEPRESSIVE STATE, SECONDARY TO HIS INJURY. CLAIMANT WAS MEDICALLY STATIONARY, BUT NOT ABLE TO RETURN TO HIS FORMER OCCUPATION EVEN WITH STRICT LIMITATIONS. CLAIMANT COULD RETURN TO SOME OTHER TYPES OF WORK INVOLVING NO EXCESSIVE BENDING OR ANY LIFTING OF OVER 15 POUNDS. LOSS OF FUNCTION OF CLAIMANT'S BACK WAS MODERATELY SEVERE, LOSS OF FUNCTION DUE TO THE INJURY WAS THE SAME.

A SECOND DETERMINATION ORDER OF FEBRUARY 24, 1975 AWARDED CLAIMANT 144 DEGREES FOR 45 PER CENT UNSCHEDULED LOW BACK DISABILITY.

BASED ON THE MEDICAL FINDINGS OF DR. KIEST, CLAIMANT'S TREATING PHYSICIAN, AND ON CLAIMANT'S AGE, LACK OF EDUCATION AND PRIOR LACK OF VARIED WORK EXPERIENCE, THE REFEREE CONCLUDED THAT CLAIMANT FELL WITHIN THE 'ODD-LOT' CATEGORY AND THE FUND FAILED TO SHOW THAT THERE WAS ANY GAINFUL, SUITABLE EMPLOYMENT REGULARLY AVAILABLE TO CLAIMANT. HE FOUND CLAIMANT TO BE PERMANENTLY AND TOTALLY DISABLED.

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

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 1, 1976, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY FEE FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW, THE SUM OF 400 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

CLAIM NO. 630—2411 008 AUGUST 30, 1976

MARION FREED, CLAIMANT

OWN MOTION DETERMINATION

CLAIMANT SUSTAINED A COMPENSABLE LEFT KNEE INJURY ON NOVEMBER 25, 1968. AN ARTHROTOMY WAS PERFORMED DECEMBER, 1968. A DETERMINATION ORDER, ISSUED ON MAY 28, 1969, AWARDED CLAIMANT 15 PER CENT LOSS OF LEFT LEG.

CLAIMANT'S CLAIM WAS REOPENED IN 1972 FOR FURTHER MEDICAL TREATMENT — IN OCTOBER, 1973 SURGERY WAS PERFORMED WITH AN INSERTION OF A KNEE JOINT PROTHESIS. A SECOND DETERMINATION ORDER ISSUED ON OCTOBER 1, 1974 AWARDED CLAIMANT AN ADDITIONAL 45 PER CENT LOSS OF LEFT LEG.

AFTER CLAIMANT'S AGGRAVATION RIGHTS HAD EXPIRED THE CLAIM WAS REOPENED BY THE CARRIER FOR COMPLAINTS OF PATELLAR PAIN. ON NOVEMBER 19, 1975 DR. LYNCH PERFORMED A LATERAL RELEASE AND PATELLAR REVISION SURGERY. POST-OPERATIVELY, DR. LYNCH FOUND THE KNEE HAD GOOD RANGE OF MOTION, WAS STABLE AND NO FURTHER MEDICAL TREATMENT WAS INDICATED. HE FELT THERE WAS NO INCREASE IN CLAIMANT'S DISABILITY.

ON JULY 8, 1976 THE CARRIER REQUESTED A DETERMINATION AND THE EVALUATION DIVISION, BASED ON THE FINDINGS OF DR. LYNCH, RECOMMENDED CLAIMANT RECEIVE TEMPORARY TOTAL DISABILITY COMPENSATION FROM NOVEMBER 17, 1975 THROUGH JUNE 22, 1976 BUT NO ADDITIONAL AWARD FOR PERMANENT PARTIAL DISABILITY.

ORDER

CLAIMANT IS GRANTED TEMPORARY TOTAL DISABILITY COMPENSATION FROM NOVEMBER 17, 1975 THROUGH JUNE 22, 1976.

CLAIM NO. FB 91918 AUGUST 30, 1976

ANTHONY BRUGATO, CLAIMANT

DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

CLAIMANT SUFFERED SERIOUS MULTIPLE INJURIES ON NOVEMBER 1, 1964 IN AN AUTOMOBILE-PICKUP COLLISION WHICH RESULTED IN NUMEROUS HOSPITALIZATIONS AND SURGERIES FOR CLAIMANT.

THE CLAIM WAS INITIALLY CLOSED ON OCTOBER 28, 1968 WITH AN AWARD OF 75 PER CENT LOSS OF FUNCTION OF THE LEFT LEG, 30 PER CENT LOSS OF FUNCTION OF THE RIGHT LEG, AND 30 PER CENT LOSS OF AN ARM FOR UNSCHEDULED DISABILITY.

ON MARCH 31, 1969, AFTER A RE-HEARING, AN ORDER WAS ENTERED INCREASING CLAIMANT'S PREVIOUS AWARDS TO 80 PER CENT LOSS OF FUNCTION OF THE LEFT LEG, 45 PER CENT LOSS OF FUNCTION OF THE RIGHT LEG, AND 40 PER CENT LOSS OF FUNCTION OF AN ARM FOR UNSCHEDULED DISABILITY.

CLAIMANT RETURNED TO WORK FOR A FRIEND AS A TELEPHONE SALESMAN - WITHOUT THIS FRIEND'S HELP CLAIMANT PROBABLY WOULD NOT HAVE BEEN ABLE TO RETURN TO WORK. CLAIMANT'S AGGRAVATION RIGHTS HAVE EXPIRED.

ON JUNE 26, 1970 AFTER ANOTHER RE-HEARING, AN ORDER WAS ENTERED WHICH GRANTED CLAIMANT AN ADDITIONAL AWARD OF 10 PER CENT LOSS OF FUNCTION OF THE LEFT LEG FOR A TOTAL OF 90 PER CENT.

ON NOVEMBER 15, 1971 THE MULTNOMAH COUNTY CIRCUIT COURT ISSUED A STIPULATED JUDGMENT ORDER WHICH INCREASED CLAIMANT'S AWARDS EQUAL TO 95 PER CENT LOSS OF FUNCTION OF LEFT LEG, 50 PER CENT LOSS OF FUNCTION OF THE RIGHT LEG, AND 40 PER CENT LOSS OF FUNCTION OF AN ARM FOR UNSCHEDULED DISABILITY.

ON MAY 13, 1976 THE STATE ACCIDENT INSURANCE FUND REQUESTED A DETERMINATION OF CLAIMANT'S DISABILITY. THE EVALUATION DIVISION FOUND THAT CLAIMANT'S CONDITION HAS BEEN PROGRESSIVELY DETERIORATING FOR QUITE SOME TIME IN A SHELTERED WORKSHOP TYPE OF EMPLOYMENT - IT RECOMMENDED THAT CLAIMANT BE GRANTED AN AWARD OF PERMANENT TOTAL DISABILITY.

ORDER

CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED, AND SHALL BE CONSIDERED AS SUCH FROM THE DATE OF THIS ORDER.

WCB CASE NO. 75-2463-B AUGUST 30, 1976
WCB CASE NO. 75-2464-B

RICHARD SHAW, CLAIMANT

JOHN COONEY, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH ORDERED IT TO REIMBURSE EBI FOR ALL SUMS PAID

TO CLAIMANT UNDER THE ORDERS DESIGNATING IT AS THE PAYING AGENT, ISSUED ON JANUARY 20, 1975 AND MARCH 2, 1975 - AND DIRECTED THE STATE ACCIDENT INSURANCE FUND TO ACCEPT THE CLAIMS FOR THE 1975 AND 1976 INCIDENTS AND TO FURNISH BENEFITS TO CLAIMANT AS PROVIDED BY LAW.

THE TWO ORDERS DESIGNATING EBI AS PAYING AGENT WERE ISSUED FOR TWO INCIDENTS OCCURRING ON JANUARY 27, 1975 AND JANUARY 19, 1976. IT HAD TO BE DETERMINED WHETHER EITHER OR BOTH OF THESE INCIDENTS WERE AGGRAVATIONS AND THE RESPONSIBILITY OF THE FUND OR NEW INJURIES AND THE RESPONSIBILITY OF EBI.

CLAIMANT SUSTAINED A COMPENSABLE INDUSTRIAL INJURY TO HIS LEFT SHOULDER AND THIGH ON DECEMBER 30, 1970. HE WAS REFERRED TO DR. LYNCH WHO PROVIDED TREATMENT OF HIS SHOULDER COMPLAINTS. ON OCTOBER 15, 1971 DR. LYNCH REFERRED CLAIMANT TO DR. CAMPAGNA BECAUSE OF CONTINUED PAIN SYMPTOMS. DR. CAMPAGNA DIAGNOSED POST-TRAUMATIC AGGRAVATION OF DEGENERATIVE THORACIC DISC DISEASE. CLAIMANT RETURNED TO WORK.

ON MAY 26, 1972 A DETERMINATION ORDER AWARDED CLAIMANT 10 PER CENT UNSCHEDULED DISABILITY.

CLAIMANT CONTINUED WORKING BUT NO LONGER OPERATING THE STACKER. HE HAD SWITCHED TO PULLING DRY CHAIN. ON APRIL 24, 1974 CLAIMANT EXPERIENCED SEVERE PAIN SYMPTOMS IN HIS NECK, BETWEEN HIS SHOULDERS AND INTO HIS LEFT ARM. DR. CAMPAGNA DIAGNOSED NERVE ROOT COMPRESSION SECONDARY TO PROTRUDED CERVICAL DISC AND HOSPITALIZED CLAIMANT. ON APRIL 24, 1974 EBI DENIED RESPONSIBILITY FOR THIS INCIDENT BUT THE FUND ACCEPTED THE CLAIM AS AGGRAVATION OF THE 1970 INJURY.

ON JULY 29, 1974 DR. CAMPAGNA PERFORMED A DECOMPRESSIVE LAMINECTOMY.

IN NOVEMBER, 1974 CLAIMANT RETURNED TO WORK AND WORKED UNTIL JANUARY 27, 1975 WHEN, WHILE PULLING ON THE DRY CHAIN, HE EXPERIENCED A BURNING PAIN IN THE SAME BODY AREAS AS BEFORE. DR. CAMPAGNA DIAGNOSED CERVICAL SPRAIN AND RECOMMENDED TRACTION.

ON JUNE 20, 1975, THE BOARD, PURSUANT TO ORS 656.307, DESIGNATED EBI AS THE PAYING AGENT FOR THE JANUARY 27, 1975 INCIDENT.

CLAIMANT RETURNED TO WORK ON DECEMBER 1, 1975. ON JANUARY 19, 1976 WHILE PILING LUMBER, CLAIMANT EXPERIENCED A BURNING PAIN INTO HIS HEAD, HIS BACK AND INTO HIS ARMS, STARTING WHERE HIS PREVIOUS PROBLEMS HAD BEEN.

ON JANUARY 29, 1976 DR. CAMPAGNA DIAGNOSED CERVICAL STRAIN SECONDARY TO THE ACCIDENT OF JANUARY 19, 1976.

ON MARCH 2, 1976 THE BOARD ISSUED AN ORDER, PURSUANT TO ORS 656.307, DESIGNATING EBI AS THE PAYING AGENT FOR THE JANUARY 19, 1976 INCIDENT. CLAIMANT HAS NOT RETURNED TO WORK SINCE THIS INCIDENT.

THE REFEREE FOUND THAT CLAIMANT HAD HAD NO PREVIOUS BACK INJURIES PRIOR TO DECEMBER 30, 1970. THEREAFTER, ON THREE SEPARATE OCCASIONS, IN THE COURSE OF HIS ORDINARY WORK DUTIES, CLAIMANT SUFFERED EXACERBATIONS OF HIS SYMPTOMS. THE MEDICAL EVIDENCE WAS NOT VERY CLEAR IN ESTABLISHING AGGRAVATION OR NEW INJURIES, BUT, BASED ON ALL OF THE EVIDENCE AND TESTIMONY, THE REFEREE FOUND THAT CLAIMANT HAD NEVER FULLY RECOVERED FROM HIS DECEMBER 30, 1970 INJURY - HE HAD HAD CONTINUING DIFFICULTY. RELYING ON 3 LARSON, WORKMEN'S COMPENSATION LAW (UNDERSCORED), SEC. 95.12, THE REFEREE FOUND THIS

TO BE A CASE WHERE THE INSURER AT THE TIME OF THE FIRST (UNDERSCORED) INJURY REMAINS LIABLE. THE INCIDENTS OF JANUARY 27, 1975 AND JANUARY 19, 1976 AND ALL OF THE NECESSARY MEDICAL TREATMENT RENDERED BECAUSE OF THESE INCIDENTS, WERE AGGRAVATIONS OF CLAIMANT'S ORIGINAL DECEMBER 30, 1970 INDUSTRIAL INJURY AND, THEREFORE, THE RESPONSIBILITY OF THE STATE ACCIDENT INSURANCE FUND. SHE DIRECTED THE FUND TO REIMBURSE EBI FOR ALL COMPENSATION PAID TO CLAIMANT AS PAID BY A DESIGNATING PAYING AGENT, AND TO ACCEPT THE CLAIMS.

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

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 27, 1976, IS AFFIRMED.

WCB CASE NO. 74-1237 AUGUST 30, 1976
WCB CASE NO. 75-3470

CHARLES RASH, CLAIMANT

J. DAVID KRYGER, CLAIMANT'S ATTY.
KEITH SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT AN AWARD FOR 37.5 DEGREES FOR 25 PER CENT LOSS OF THE RIGHT LEG, AND 22.5 DEGREES FOR 15 PER CENT LOSS OF THE LEFT LEG AND APPROVED A PARTIAL DENIAL BY THE CARRIER ON A CLAIM FOR TREATMENT OF HIS LEFT SHOULDER.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON APRIL 21, 1971 TO HIS RIGHT KNEE, LEFT KNEE, HIP AND SHOULDER. THE NEXT DAY CLAIMANT SAW DR. MACK WHO HOSPITALIZED CLAIMANT.

ON JUNE 21, 1971 DR. MACK REPORTED THAT CLAIMANT HAD COMPLETELY RECOVERED AND THAT THERE WAS NO PERMANENT DISABILITY FROM THIS ACCIDENT. A DETERMINATION ORDER AWARDED CLAIMANT TIME LOSS ONLY ON JULY 8, 1971.

DR. ELLISON EXAMINED CLAIMANT ON FEBRUARY 16, 1972 AND DIAGNOSED POSSIBLE MEDIAL MENISCUS TEAR, LEFT KNEE - HE PERFORMED AN ARTHROTOMY AND MEDIAL MENISCECTOMY, LEFT KNEE, ON APRIL 4, 1972.

ON JUNE 15, 1972 DR. ELLISON FOUND CLAIMANT MEDICALLY STATIONARY WITH SOME DISABILITY IN TERMS OF LOSS OF MOTION. A SECOND DETERMINATION ORDER, ISSUED ON NOVEMBER 8, 1972, GRANTED CLAIMANT AN AWARD OF 15 DEGREES FOR 10 PER CENT LOSS OF LEFT LEG.

DR. MARTENS EXAMINED CLAIMANT ON MARCH 19, 1973 WITH COMPLAINTS OF 'PAIN BOTH KNEES'. IT WAS DR. MARTENS' DIAGNOSIS THAT CLAIMANT HAD INTERNAL DERANGEMENT, RIGHT KNEE. ON MARCH 26, 1973 DR. MARTENS PERFORMED AN ARTHROGRAM WHICH SHOWED AN EXTENSIVE TEAR OF THE MEDIAL MENISCUS OF THE RIGHT KNEE. ON MAY 8, 1973 DR. ELLISON CONCURRED WITH THE FINDINGS OF DR. MARTENS.

ON SEPTEMBER 20, 1973 DR. ELLISON PERFORMED AN ARTHROTOMY AND MEDIAL MENISCECTOMY, RIGHT KNEE.

A STIPULATION, ENTERED OCTOBER 16, 1973, REOPENED CLAIMANT'S CLAIM FOR FURTHER MEDICAL CARE AND TREATMENT. ON DECEMBER 14, 1973 DR. ELLISON FOUND CLAIMANT MEDICALLY STATIONARY BUT HE FELT CLAIMANT MIGHT NEED AN ARTHROGRAPHY OF HIS LEFT SHOULDER.

A THIRD DETERMINATION ORDER, ISSUED ON FEBRUARY 6, 1974, GRANTED CLAIMANT 15 DEGREES FOR 10 PER CENT LOSS OF RIGHT LEG.

ON APRIL 28, 1975 DR. ELLISON REPORTED THAT CLAIMANT HAD SIGNIFICANT PROBLEMS WITH HIS LEFT SHOULDER WHICH PRECLUDED HIM FROM HEAVY WORK AND FELT THIS CONDITION COULD POSSIBLY BE RELATED TO CLAIMANT'S INDUSTRIAL INJURY. DR. MARTENS FELT THAT THE SHOULDER PROBLEMS WERE NOT RELATED TO THE INDUSTRIAL INJURY BECAUSE THERE NEVER HAD BEEN ANY COMPLAINTS OF SHOULDER PROBLEMS DURING ANY PRIOR EXAMINATION.

ON AUGUST 14, 1975 THE EMPLOYER DENIED CLAIMANT'S LEFT SHOULDER CLAIM.

THE REFEREE FOUND THAT THE CARRIER'S DENIAL OF THE LEFT SHOULDER PROBLEMS WAS PROPER BECAUSE THE MEDICAL EVIDENCE WAS DEVOID OF ANY PROBLEMS OR COMPLAINTS IN THE LEFT SHOULDER FOR TWO YEARS AFTER THE INDUSTRIAL INJURY.

THE REFEREE FOUND, BASED ON THE MEDICAL EVIDENCE, THAT CLAIMANT HAD A GREATER DISABILITY OF THE RIGHT AND LEFT KNEES THAN THAT FOR WHICH HE HAD BEEN PREVIOUSLY AWARDED. HE INCREASED CLAIMANT'S AWARDS TO 37.5 DEGREES FOR THE RIGHT LEG AND 22.5 DEGREES FOR THE LEFT.

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

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 24, 1976, IS AFFIRMED.

WCB CASE NO. 75-3433 AUGUST 30, 1976

CLARENCE B. FRIEND, CLAIMANT

ROLF OLSON, CLAIMANT'S ATTY.
DARYLL KLEIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

THE EMPLOYER SEEKS BOARD REVIEW OF THE REFEREE'S ORDER WHICH DIRECTED IT TO ACCEPT CLAIMANT'S CLAIM FOR AGGRAVATION AND PAY CLAIMANT BENEFITS TO WHICH HE IS ENTITLED BY LAW, INCLUDING PERMANENT TOTAL DISABILITY, EFFECTIVE JUNE 2, 1975.

THE EMPLOYER CONTENDS THAT CLAIMANT WAS TOTALLY DISABLED FROM HIS SCHEDULED INJURY AT THE FIRST HEARING IN APRIL, 1974 AND THE FACT THAT CLAIMANT NOW MIGHT HAVE SOME UNSCHEDULED DISABILITY SHOULD NOT CHANGE THE STATUS OF THE CLAIM.

CLAIMANT, AT THE TIME OF THE APRIL 18, 1974 HEARING, WAS 65 YEARS OLD, HE HAD BEEN EMPLOYED BY THE DEFENDANT EMPLOYER FOR OVER 21 YEARS AT DIFFERENT TYPES OF WORK, ALL OF WHICH REQUIRED PHYSICAL LABOR. CLAIMANT SUFFERED A COMPENSABLE INJURY ON OCTOBER 22, 1970

WHILE WORKING AS A PRESSMAN'S HELPER, DIAGNOSED AS A SUBTROCHANTERIC FRACTURE OF THE LEFT FEMUR, NOT DISPLACED. IT WAS REPAIRED THROUGH INTERNAL FIXATION. IN JANUARY, 1971 CLAIMANT SUFFERED A SECOND FRACTURE JUST SLIGHTLY BELOW THE FIRST FRACTURE. OPEN REDUCTION WITH INTERNAL FIXATION WAS AGAIN PERFORMED. DR. LILLY, AN ORTHOPEDIC SURGEON, WHO HAD BEEN CLAIMANT'S TREATING PHYSICIAN, FELT CLAIMANT WOULD PROBABLY NOT RETURN TO WORK AND INDICATED CLAIMANT'S LEFT LOWER EXTREMITY WAS ABOUT ONE INCH SHORT AS COMPARED TO THE RIGHT.

ON OCTOBER 16, 1972 DR. LILLY RECOMMENDED CLAIM CLOSURE. ON NOVEMBER 6, 1972 CLAIMANT WAS AWARDED 45 DEGREES FOR 30 PER CENT LOSS OF HIS LEFT LEG.

THE CLAIMANT REQUESTED A HEARING AND, AS A RESULT THEREOF, REFEREE FITZGERALD FOUND THAT ALTHOUGH CLAIMANT'S CONTENTION THAT HE WAS PERMANENTLY AND TOTALLY DISABLED WAS PROBABLY TRUE, CLAIMANT'S DISABILITY WAS IN THE SCHEDULED AREA AND, THEREFORE, NO CONSIDERATION COULD BE GIVEN TO LOSS OF EARNING CAPACITY IN RATING HIS DISABILITY. HE FOUND THE CLAIMANT'S INJURY WAS TO THE LEFT FEMUR AND THERE WAS NO SHOWING OF ANY DISABILITY IN THE UNSCHEDULED AREA. HE INCREASED THE SCHEDULED AWARD FROM 30 PER CENT TO 60 PER CENT LOSS OF THE LEFT LEG EQUAL TO 90 DEGREES.

ON JUNE 2, 1975 DR. LILLY AGAIN EXAMINED CLAIMANT AND EXPRESSED HIS OPINION THAT THE LEFT HIP FRACTURE AND THE SHORTENING OF THE LOWER LEFT EXTREMITY HAD RESULTED IN SYMPTOMS OF PAIN AT THE LEFT SACROILIAC JOINT, THAT THIS SACROILIAC JOINT PAIN WAS A RESULT OF THE HIP FRACTURE. HE STATED THAT BECAUSE OF THIS PRESENT BACK PROBLEM CLAIMANT'S CONDITION WAS WORSE THAN IT HAD BEEN AT THE TIME OF THE LAST ARRANGEMENT OR AWARD OF COMPENSATION. DR. LILLY SO ADVISED SCOTT WETZEL, THE EMPLOYER'S CARRIER, WHO ACKNOWLEDGED THE LETTER AND STATED THAT THE CLAIM HAD BEEN REOPENED FOR PAYMENT OF MEDICAL BILLS PURSUANT TO ORS 656.245, BUT DENIED THE CLAIM FOR AGGRAVATION. CLAIMANT REQUESTED A HEARING.

DR. LILLY, IN HIS DEPOSITION TAKEN ON DECEMBER 19, 1975, INDICATED HE HAD TREATED CLAIMANT SINCE EARLY 1971 AND THAT HE HAD TESTIFIED AT THE 1974 HEARING THAT BECAUSE OF THE CLAIMANT'S LEG, CLAIMANT WAS THEN TOTALLY DISABLED. HE FURTHER STATED THAT CLAIMANT HAD DEVELOPED BACK PROBLEMS SINCE THAT TIME AND THAT IF CLAIMAND DID NOT HAVE THE SHORTENED LEG, HE WOULD NOT HAVE HAD THE BACK PROBLEM.

REFEREE MULDER, BASED UPON DR. LILLY'S TESTIMONY, TOGETHER WITH CLAIMANT'S CREDIBLE COMPLAINTS OF WORSENING, FOUND THAT CLAIMANT HAD ESTABLISHED THAT HE HAD SUFFERED A COMPENSABLE AGGRAVATION AND THAT THE BACK CONDITION WAS A CONSEQUENCE OF THE LEG INJURY. HE FURTHER FOUND THAT BECAUSE DR. LILLY ADVOCATED NO ACTIVE TREATMENT CLAIMANT WAS MEDICALLY STATIONARY AND HE COULD DETERMINE THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY.

THE REFEREE CONCLUDED THAT CLAIMANT WAS WITHIN THE 'ODD-LOT' CATEGORY BECAUSE HE WAS UNABLE TO WORK GAINFULLY, SUITABLY, AND REGULARLY, AND THAT CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED AS OF JUNE 2, 1975, THE DATE OF DR. LILLY'S REPORT.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT THE MEDICAL EVIDENCE DOES NOT SUPPORT A FINDING OF PERMANENT TOTAL DISABILITY. DR. LILLY, CLAIMANT'S TREATING PHYSICIAN SINCE 1971, TESTIFIED THAT THERE WERE TYPES OF WORK THAT CLAIMANT COULD DO ON A REGULAR AND GAINFUL BASIS AND WHICH WERE AVAILABLE TO CLAIMANT, THEREFORE, CLAIMANT HAS FAILED TO ESTABLISH THAT HE FALLS WITHIN THE ODD-LOT CATEGORY AND THE BURDEN STILL RESTS WITH HIM TO SHOW THERE IS NO AVAILABLE REGULAR GAINFUL EMPLOYMENT.

THE EVIDENCE DOES INDICATE THAT CLAIMANT HAS SUFFERED A SUBSTANTIAL LOSS OF WAGE EARNING CAPACITY (THE RECORD CLEARLY REVEALS THAT CLAIMANT HAS BOTH UNSCHEDULED AND SCHEDULED DISABILITY AT THE PRESENT TIME), THEREFORE, CLAIMANT IS ENTITLED TO AN AWARD EQUAL TO 80 PER CENT OF THE MAXIMUM FOR HIS UNSCHEDULED DISABILITY TO COMPENSATE HIM FOR SUCH LOSS AND IS ALSO ENTITLED TO THE AWARD OF 60 PER CENT LOSS OF THE LEFT LEG GRANTED BY REFEREE FITZGERALD'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 25, 1976, IS MODIFIED.

CLAIMANT IS AWARDED 256 DEGREES OF THE MAXIMUM 320 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY AND 90 DEGREES OF THE MAXIMUM 150 DEGREES FOR LOSS OF THE LEFT LEG. THIS IS IN LIEU OF THE AWARD MADE BY THE REFEREE IN HIS ORDER OF MARCH 25, 1976 WHICH IN ALL OTHER RESPECTS IS AFFIRMED.

WCB CASE NO. 75-3412 AUGUST 30, 1976

GWENDOLYN J. ORMAN, CLAIMANT

MERRITT J. WILLSON, CLAIMANT'S ATTY.
DARYLL KLEIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

CLAIMANT SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH AWARDED HER 160 DEGREES FOR 50 PER CENT UNSCHEDULED NECK AND LOW BACK DISABILITY. CLAIMANT CONTENDS THAT SHE IS PERMANENTLY AND TOTALLY DISABLED AS A RESULT OF HER INDUSTRIAL INJURY.

THE EMPLOYER CROSS-REQUESTS BOARD REVIEW, CONTENDING THAT CLAIMANT IS NOT ENTITLED TO AN AWARD GREATER THAN 96 DEGREES GRANTED HER BY THE DETERMINATION ORDER MAILED JULY 10, 1975.

CLAIMANT, A SEAMSTRESS, SUFFERED A COMPENSABLE INJURY IN DECEMBER, 1966 TO HER LEFT ARM AND SHOULDER. THE CLAIM WAS CLOSED AND SHE ULTIMATELY WAS AWARDED 20 DEGREES LOSS OF THE LEFT ARM. SHE WAS PRECLUDED FROM RETURNING TO HER WORK AS A SEAMSTRESS AND, THEREAFTER, WORKED AS A NURSES AID. SHE ATTENDED CLACKAMAS COMMUNITY COLLEGE AND WAS TRAINED AS A HOME HEALTH AIDE AND WAS EMPLOYED BY THE VISITING NURSE ASSOCIATION. SHE CONTINUED TO WORK IN THAT CAPACITY UNTIL SHE WAS INJURED ON OCTOBER 24, 1973 WITH THE EXCEPTION OF ONE YEAR DURING WHICH TIME SHE WORKED AS A NURSES AID AT THE HOLIDAY PARK HOSPITAL.

CLAIMANT'S 1973 INJURY OCCURRED WHEN HER AUTOMOBILE WAS REAR ENDED. CLAIMANT HAS BEEN SEEN BY SEVERAL SPECIALISTS IN THE VARIOUS FIELDS OF MEDICINE. DR. STORINO FOUND HER DISABILITY TO BE IN THE 'MILD' RANGE AS DID DR. PASQUESI. THE ORTHOPAEDIC CONSULTANTS SAID CLAIMANT COULD RETURN TO HER FORMER JOB BUT SHE COULD DO NO LIFTING. THIS WOULD BE RATHER DIFFICULT FOR A NURSES AID. DR. STORINO REFERRED CLAIMANT TO DR. CHERRY, WHO CONTINUED TO BE CLAIMANT'S TREATING PHYSICIAN UNTIL APRIL, 1975 - HE WAS OF THE OPINION THAT CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT TESTIFIED SHE WAS NO LONGER ABLE TO PERFORM TASKS SHE PREVIOUSLY HAD DONE, INCLUDING HER OWN HOUSEWORK OR GARDENING. HER HUSBAND IS A CARDIOVASCULAR RETIREE AND HE AND CLAIMANT HAVE MOVED

TO A RETIREMENT COMMUNITY. CLAIMANT IS NOW 57 YEARS OLD AND HAS A HIGH SCHOOL EDUCATION AND TRAINING AS A NURSES AID AND AS A HOME HEALTH AIDE. SHE IS REPORTED TO HAVE AVERAGE INTELLIGENCE ON VERBAL MATTERS IS WITHIN THE BRIGHT NORMAL RANGE OF INTELLIGENCE ON NON-VERBAL MATERIALS.

BASED UPON THE EVIDENCE, CLAIMANT'S AGE, WORK BACKGROUND AND APTITUDE FOR RETRAINING AS WELL AS HER PHYSICAL DISABILITY, THE REFEREE CONCLUDED THAT CLAIMANT'S LOSS OF WAGE EARNING CAPACITY ENTITLED HER TO AN AWARD OF 160 DEGREES EQUAL TO 50 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY, THIS BEING AN INCREASE OF 60 DEGREES OVER THE AWARD MADE BY THE DETERMINATION ORDER.

THE BOARD, ON DE NOVO REVIEW, DISAGREES WITH THE REFEREE'S ASSESSMENT OF CLAIMANT'S LOSS OF WAGE EARNING CAPACITY. BASED UPON THE MEDICALS WHICH INDICATE FEW PURELY OBJECTIVE MEDICAL FINDINGS (ONLY DR. CHERRY WAS OF THE OPINION THAT CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED, ALL THE OTHER DOCTORS FOUND CLAIMANT'S DISABILITY TO BE IN THE 'MILD' RANGE), THE BOARD CONCLUDES THAT CLAIMANT HAS BEEN ADEQUATELY COMPENSATED FOR HER LOSS OF WAGE EARNING CAPACITY BY THE AWARD OF 96 DEGREES AND, THEREFORE, THE DETERMINATION ORDER OF JULY 10, 1975 SHOULD BE REINSTATED.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 27, 1976, IS REVERSED.

THE DETERMINATION ORDER MAILED JULY 10, 1975 IS AFFIRMED.

SAIF CLAIM NO. DC 174642 AUGUST 30, 1976

KIRIL KUTSEV, CLAIMANT

DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

CLAIMANT SUSTAINED A COMPENSABLE BACK INJURY ON FEBRUARY 27, 1969 AND HIS CLAIM WAS CLOSED ON OCTOBER 30, 1969 GRANTING TIME LOSS ONLY.

AFTER CLAIMANT'S AGGRAVATION RIGHTS HAD EXPIRED HIS CLAIM WAS REOPENED BY THE STATE ACCIDENT INSURANCE FUND FOR SURGERY ON MARCH 13, 1976.

ON APRIL 2, 1976 CLAIMANT HAD A MYELOGRAM AND ON APRIL 5, 1976 A HEMILAMINECTOMY WAS PERFORMED. CLAIMANT BECAME MEDICALLY STATIONARY ON JULY 28, 1976.

THE STATE ACCIDENT INSURANCE FUND REQUESTED A DETERMINATION ON AUGUST 3, 1976. THE EVALUATION DIVISION RECOMMENDED TEMPORARY TOTAL DISABILITY COMPENSATION FROM MARCH 13, 1976 THROUGH JULY 28, 1976, LESS TIME WORKED - AND AN AWARD OF 48 DEGREES FOR 15 PER CENT UNSCHEDULED BACK DISABILITY FOR CLAIMANT'S LOSS OF WAGE EARNING CAPACITY.

ORDER

CLAIMANT IS HEREBY GRANTED TEMPORARY TOTAL DISABILITY COMPENSATION FROM MARCH 13, 1976 THROUGH JULY 28, 1976, LESS TIME WORKED - AND 48 DEGREES FOR 15 PER CENT UNSCHEDULED BACK DISABILITY.

CLAIM NO. 65—62885 AUGUST 30, 1976

TONY KOVACH, CLAIMANT

OWN MOTION DETERMINATION

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HIS LOW BACK ON AUGUST 23, 1968 = HE UNDERWENT SURGERY IN FEBRUARY, 1969 FOR A FUSION. THE CLAIM WAS INITIALLY CLOSED BY A DETERMINATION ORDER WHICH AWARDED HIM 64 DEGREES FOR 20 PER CENT UNSCHEDULED DISABILITY.

IN 1971 CLAIMANT'S CLAIM WAS REOPENED AND HE WAS SEEN AT THE DISABILITY PREVENTION DIVISION WHERE A FUSION REPAIR WAS RECOMMENDED, BUT CLAIMANT CHOSE NOT TO HAVE IT DONE. A SECOND DETERMINATION ORDER AWARDED CLAIMANT AN ADDITIONAL 32 DEGREES FOR A TOTAL OF 30 PER CENT UNSCHEDULED DISABILITY.

THE CARRIER VOLUNTARILY REOPENED CLAIMANT'S CLAIM IN JANUARY, 1976. CLAIMANT'S AGGRAVATION RIGHTS HAD EXPIRED. CLAIMANT HAD THE SURGERY FOR FUSION REPAIR IN 1974 BUT HIS CONDITION HAD NOT IMPROVED AND HE WAS REFERRED TO THE PAIN CLINIC WHERE HE WAS ADMITTED ON FEBRUARY 16, 1976. HE WAS DISCHARGED ON MARCH 5, 1976 WITH A FAIR TO GOOD PROGNOSIS FOR CONTINUING EMPLOYMENT. CLAIMANT RETURNED TO WORK AS A USED CAR DEALER.

ON JULY 26, 1976 THE CARRIER REQUESTED A DETERMINATION. THE EVALUATION DIVISION RECOMMENDED TEMPORARY TOTAL DISABILITY COMPENSATION FROM FEBRUARY 16, 1976 THROUGH MARCH 5, 1976 AND FOR JUNE 11, 1976, THE DATE OF HIS FOLLOWUP EXAMINATION BY DR. RUSSAKOV, AND NO FURTHER AWARD FOR PERMANENT PARTIAL DISABILITY.

ORDER

CLAIMANT IS HEREBY GRANTED COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM FEBRUARY 16, 1976 THROUGH MARCH 5, 1976 AND FOR JUNE 11, 1976.

WCB CASE NO. 75—2448 AUGUST 30, 1976

FLORENCE KIMBALL, CLAIMANT

J. DAVID KRYGER, CLAIMANT'S ATTY.
JAMES GIDLEY, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S DENIAL OF A MOTION FOR RECONSIDERATION, REQUESTING REOPENING OF HER CLAIM AS OF JULY 29, 1975.

CLAIMANT, 46 YEARS OLD, INJURED HER BACK IN 1970 WHEN SHE SLIPPED AND FELL. IN AUGUST, 1970 CLAIMANT HAD A LAMINECTOMY PERFORMED WHICH GAVE HER PARTIAL AND TEMPORARY RELIEF OF PAIN. A DETERMINATION ORDER, DATED MAY 27, 1971 AWARDED CLAIMANT 48 DEGREES UNSCHEDULED LOW BACK, 32 DEGREES LOSS OF EARNING CAPACITY AND 8 DEGREES PARTIAL LOSS OF LEFT LEG. SINCE THAT TIME CLAIMANT HAS COMPLAINED OF SEVERE BACK PAIN.

ON JUNE 10, 1974 A SECOND DETERMINATION ORDER AWARDED CLAIMANT AN ADDITIONAL 32 DEGREES FOR HER UNSCHEDULED LOW BACK DISABILITY.

ON JULY 29, 1975 CLAIMANT FIRST SAW DR. ACKERMAN, A PSYCHOLOGIST, AT THE REQUEST OF HER ATTORNEY. SHE RETURNED FOR FURTHER VISITS ON AUGUST 8, 18 AND 26, 1975. DR. ACKERMAN BELIEVED CLAIMANT BENEFITED FROM THESE TREATMENTS AND WILL CONTINUE TO DO SO. THE REFEREE FOUND THAT CLAIMANT WOULD BENEFIT FROM FURTHER TREATMENTS AS RECOMMENDED BY DR. ACKERMAN AND REMANDED THE CLAIM FOR SUCH TREATMENT AS OF DECEMBER 2, 1975 UNTIL CLOSURE PURSUANT TO ORS 656.268. HOWEVER, THE REFEREE FOUND THAT THE SESSIONS CLAIMANT HAD WITH DR. ACKERMAN IN JULY AND AUGUST, 1975 WERE OF NO BENEFIT TO CLAIMANT - THAT THEY WERE MERELY PRELIMINARY TO THE FILING OF HER CLAIM. HE REFUSED TO REOPEN THE CLAIM AS OF JULY 29, 1975.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT DR. ACKERMAN'S SESSIONS WITH CLAIMANT IN JULY AND AUGUST, 1975 WERE, IN FACT, BENEFICIAL TO CLAIMANT AND ARE COMPENSABLE UNDER ORS 656.245. THE REFEREE'S ORDER ON RECONSIDERATION, THEREFORE, SHOULD BE REVERSED AND THE EMPLOYER DIRECTED TO PAY THE MEDICAL BILLS FROM DR. ACKERMAN INCURRED SUBSEQUENT TO JULY 29, 1975.

ORDER

THE REFEREE'S ORDER ON RECONSIDERATION DATED DECEMBER 29, 1975 IS MODIFIED.

THE EMPLOYER IS DIRECTED TO ACCEPT AND PAY THE MEDICAL TREATMENTS FURNISHED BY DR. ACKERMAN SUBSEQUENT TO JULY 29, 1975 PURSUANT TO ORS 656.245.

WCB CASE NO. 75-2749 AUGUST 30, 1976

CLARENCE VAN METER, CLAIMANT

ROLF OLSON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT PERMANENT TOTAL DISABILITY AS OF THE DATE OF HIS ORDER.

THIS 55 YEAR OLD HEAVY EQUIPMENT OPERATOR SUFFERED A COMPENSABLE INJURY ON OCTOBER 2, 1974 CAUSING INJURY TO HIS LOW BACK AND RIGHT LEG. CLAIMANT HAD HAD TWO OTHER INJURIES TO HIS BACK, THE FIRST RESULTING IN A LAMINECTOMY IN 1965 - THE SECOND IN A HEMILAMINECTOMY AT L4-5 IN 1972. FOR THESE EARLIER INJURIES CLAIMANT RECEIVED 25 PER CENT LOSS OF FUNCTION OF AN ARM FOR UNSCHEDULED DISABILITY IN 1965 AND 5 PER CENT UNSCHEDULED DISABILITY IN 1973. AFTER EACH OF THESE INJURIES CLAIMANT HAD RETURNED TO FULL TIME WORK.

CLAIMANT WAS ADMITTED TO THE HOSPITAL ON OCTOBER 23, 1974 BY DR. LILLY WHO DIAGNOSED A HERNIATED DISC AND RECOMMENDED BED REST, TRACTION AND MEDICATION.

ON MAY 23, 1975 DR. LILLY FOUND CLAIMANT HAD 75 PER CENT NORMAL RANGE OF MOTION OF HIS LOWER BACK AND DECLARED CLAIMANT MEDICALLY STATIONARY, STATING CLAIMANT HAD 'SLIGHT RESIDUALS AS A RESULT OF THE ACCIDENT OF OCTOBER 2, 1974'. DR. LILLY FELT POSSIBLY THIS INJURY CAUSED LOW BACK STRAIN SUPERIMPOSED ON A PRE-EXISTING DEGENERATIVE ARTHRITIS CONDITION AND DEGENERATIVE DISC DISEASE.

ON JULY 1, 1975 A DETERMINATION ORDER GRANTED CLAIMANT 32 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK DISABILITY.

ON AUGUST 16, 1975 DR. LILLY STATED CLAIMANT COULD NOT RETURN TO HIS FORMER OCCUPATION OF HEAVY MANUAL LABOR BUT COULD DO LIGHT WORK IF CLAIMANT COULD BE RETRAINED.

ON AUGUST 27, 1975 CLAIMANT WAS SEEN AT THE DISABILITY PREVENTION DIVISION BY DR. HALFERTY WHO DIAGNOSED DEGENERATIVE INTERVERTEBRAL DISC AND LUMBAR JOINT DISEASE, NO FUNCTIONAL OVERLAY WAS PRESENT AND 'PATIENT'S SYMPTOMS SEEM QUITE MINIMAL'.

ON SEPTEMBER 5, 1975 DR. PERKINS FOUND CLAIMANT WITHIN THE HIGH BRIGHT NORMAL RANGE OF INTELLIGENCE AND RECOMMENDED FURTHER COUNSELING TO AID HIM IN ADJUSTMENT. HIS PSYCHOLOGICAL PROBLEMS WERE RELATED TO THE INJURY ONLY TO A 'MILD DEGREE'.

IT WAS CLAIMANT'S CONTENTION THAT HE WAS 'ODD-LOT' PERMANENTLY AND TOTALLY DISABLED.

THE REFEREE CONCLUDED, BASED ON THE TESTIMONY OF CLAIMANT, CLAIMANT'S INABILITY TO RETURN TO HIS FORMER OCCUPATION, AND HIS AGE, THAT CLAIMANT HAD SUSTAINED HIS BURDEN OF PROVING HE FELL WITHIN THE DEFINITION OF THE 'ODD-LOT' DOCTRINE AND WAS PERMANENTLY AND TOTALLY DISABLED, RELYING UPON DEATON V SAIF (UNDERSCORED), 13 OR APP 298.

THE BOARD, ON DE NOVO REVIEW, DISAGREES WITH THE CONCLUSION OF THE REFEREE.

THE BOARD, BASED UPON THE EVIDENCE, FINDS THAT THE MEDICAL REPORTS DO NOT JUSTIFY PERMANENT TOTAL DISABILITY. DR. LILLY, CLAIMANT'S TREATING PHYSICIAN, FOUND CLAIMANT CAPABLE OF RETURNING TO SOME LIGHT EMPLOYMENT. DR. LILLY ALSO, UPON EXAMINATION IN MAY, 1975, FOUND CLAIMANT HAD 75 PER CENT NORMAL RANGE OF MOTION IN HIS LOW BACK AND FOUND ONLY SLIGHT RESIDUALS. DR. HALFERTY FOUND ONLY 'MINIMAL' SYMPTOMATOLOGY.

THE CRITERIA FOR EVALUATION OF UNSCHEDULED DISABILITY IS THE LOSS OF WAGE EARNING CAPACITY. THE BOARD FINDS THAT CLAIMANT HAS SUFFERED A SUBSTANTIAL LOSS OF EARNINGS AND CONCLUDES THAT HE SHOULD BE GRANTED 224 DEGREES FOR 70 PER CENT UNSCHEDULED LOW BACK DISABILITY.

THE BOARD FEELS THAT CLAIMANT HAS A HIGH DEGREE OF MENTAL CAPABILITY AND POTENTIAL AND IT URGES ALL-OUT EFFORTS BE MADE TO VOCATIONALLY REHABILITATE CLAIMANT SO THAT HE CAN RETURN TO SOME TYPE OF LIGHT EMPLOYMENT WHICH HE IS PHYSICALLY CAPABLE OF PERFORMING.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 5, 1976, IS MODIFIED.

CLAIMANT IS GRANTED AN AWARD OF 224 DEGREES FOR 70 PER CENT UNSCHEDULED LOW BACK DISABILITY. THIS AWARD IS IN LIEU OF THE AWARD GRANTED BY THE REFEREE'S ORDER WHICH IN ALL OTHER RESPECTS IS AFFIRMED.

WCB CASE NO. 76-964 AUGUST 31, 1976

MAJOR CANADY, CLAIMANT

R. KENNY ROBERTS, CLAIMANT'S ATTY.
ROGER LUEDTKE, DEFENSE ATTY.
ORDER

ON AUGUST 24, 1976 THE BOARD RECEIVED A REQUEST FROM CLAIMANT'S COUNSEL TO HAVE THE ABOVE ENTITLED MATTER REMANDED TO THE REFEREE FOR THE PURPOSE OF TAKING ADDITIONAL EVIDENCE ALLEGEDLY NOT OBTAINABLE AT THE TIME OF THE HEARING.

ON AUGUST 25, 1976 THE BOARD RECEIVED A RESPONSE FROM THE EMPLOYER'S COUNSEL OBJECTING TO THE REQUEST AND, ON AUGUST 26, 1976, CLAIMANT'S COUNSEL REPLIED TO THE RESPONSE.

THE BOARD, AFTER GIVING DUE CONSIDERATION TO THE MATTER, CONCLUDES THAT SUFFICIENT GROUNDS HAVE NOT BEEN ADVANCED TO JUSTIFY REMANDING THE ABOVE ENTITLED MATTER TO THE REFEREE, THEREFORE, THE CLAIMANT'S REQUEST SHOULD BE DENIED.

ORDER

THE REQUEST MADE BY CLAIMANT TO HAVE THE ABOVE ENTITLED MATTER BE REMANDED TO THE REFEREE FOR THE PURPOSE OF TAKING ADDITIONAL EVIDENCE WHICH HE ALLEGES WAS NOT OBTAINABLE AT THE TIME OF THE HEARING, IS HEREBY DENIED.

WCB CASE NO. 75-1812 AUGUST 31, 1976

VELMA GRAY, CLAIMANT

JAN BAISCH, CLAIMANT'S ATTY.
RICHARD LANG, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT AN AWARD OF 160 DEGREES FOR 50 PER CENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS RIGHT HIP AND LOW BACK ON AUGUST 24, 1973. CLAIMANT HAD CONSERVATIVE TREATMENT AND EVENTUALLY HIS CONDITION WAS DIAGNOSED AS A HERNIATED DISC L5-S1. ON DECEMBER 31, 1973 A LAMINECTOMY WAS PERFORMED BY DR. KHAN WITH EXCISION OF THE DISC.

ON APRIL 4, 1974 DR. KHAN FELT CLAIMANT'S CONDITION WAS IMPROVING BUT THAT CLAIMANT SHOULD NOT RETURN TO HIS FORMER EMPLOYMENT. HE SUGGESTED CLAIMANT BE REFERRED TO VOCATIONAL REHABILITATION SERVICE. CLAIMANT HAS NOT WORKED SINCE THIS INJURY.

DR. KLOPFER, A PSYCHOLOGIST, INTERVIEWED CLAIMANT AND FOUND HIM TO BE INTELLECTUALLY DISABLED AND HIS PROGNOSIS FOR VOCATIONAL REHABILITATION RETRAINING WAS CONSIDERED TO BE ONLY FAIR.

A DETERMINATION ORDER ENTERED ON APRIL 28, 1975 AWARDED CLAIMANT 112 DEGREES FOR 35 PER CENT UNSCHEDULED LOW BACK DISABILITY.

THE REFEREE FOUND CLAIMANT TO BE FUNCTIONALLY ILLITERATE AND UNABLE TO RETURN TO MOST OF THE JOBS HE HAS PREVIOUSLY PERFORMED. HE CONCLUDED THAT EVEN IF CLAIMANT WERE WELL MOTIVATED IT WOULD TAKE A SPECIAL EFFORT TO RETRAIN HIM. BECAUSE OF THIS AND BECAUSE OF CLAIMANT'S INABILITY TO RETURN TO HIS FORMER OCCUPATIONS HE FOUND CLAIMANT WAS ENTITLED TO A GREATER AWARD FOR HIS LOSS OF WAGE EARNING CAPACITY. HE AWARDED CLAIMANT 160 DEGREES UNSCHEDULED DISABILITY.

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

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 16, 1976, IS AFFIRMED.

SAIF CLAIM NO. RC 52447 AUGUST 31, 1976

R. B. COLLINS, CLAIMANT

DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS NECK ON NOVEMBER 29, 1966. A DETERMINATION ORDER ISSUED ON NOVEMBER 10, 1976 GRANTED CLAIMANT 20 PER CENT LOSS OF AN ARM BY SEPARATION FOR UNSCHEDULED DISABILITY.

CLAIMANT WAS HOSPITALIZED ON JANUARY 27, 1975 AND A CERVICAL LAMINECTOMY AND INTERBODY FUSION WAS PERFORMED. CLAIMANT HAD A PRIOR LAMINECTOMY IN 1967. CLAIMANT RETURNED TO LIGHT DUTY WORK AND, ON JANUARY 7, 1976, CLAIMANT'S CONDITION WAS MEDICALLY STATIONARY.

ON AUGUST 10, 1976 THE STATE ACCIDENT INSURANCE FUND REQUESTED A DETERMINATION. THE EVALUATION DIVISION RECOMMENDED PAYMENT OF TEMPORARY TOTAL DISABILITY COMPENSATION FROM JANUARY 27, 1975 THROUGH MARCH 9, 1976 AND OF TEMPORARY PARTIAL DISABILITY COMPENSATION FROM MARCH 10, 1975 THROUGH JANUARY 7, 1976, AND AN ADDITIONAL AWARD EQUAL TO 10 PER CENT UNSCHEDULED NECK DISABILITY.

ORDER

CLAIMANT IS HEREBY GRANTED COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM JANUARY 27, 1975 THROUGH MARCH 9, 1975 AND COMPENSATION FOR TEMPORARY PARTIAL DISABILITY FROM MARCH 10, 1975 THROUGH JANUARY 7, 1976, AND AN ADDITIONAL 10 PER CENT FOR UNSCHEDULED DISABILITY.

WCB CASE NO. 76-3125 AUGUST 31, 1976

LEO J. NEILAN, JR., CLAIMANT

SIDNEY A. GALTON, CLAIMANT'S ATTY.
MERLIN MILLER, DEFENSE ATTY.
ORDER

ON AUGUST 13, 1976 THE STATE ACCIDENT INSURANCE FUND FILED A RESPONSE AND MOTION TO DESIGNATE PAYING AGENT IN THE ABOVE ENTITLED MATTER.

ON JANUARY 30, 1976 AN ORDER WAS ENTERED BY REFEREE ST. MARTIN

IN WCB CASE NOS. 75-5071 AND 75-5072 WHICH DIRECTED THE STATE ACCIDENT INSURANCE FUND TO ACCEPT CLAIMANT'S CLAIM FOR AGGRAVATION. THIS ORDER WAS AFFIRMED BY THE BOARD ON AUGUST 4, 1976, THEREFORE, THE STATE ACCIDENT INSURANCE FUND IS THE ULTIMATE RESPONSIBLE PAYING AGENT UNTIL AND UNLESS THE BOARD'S ORDER ON REVIEW IS REVERSED.

THE ABOVE ENTITLED MATTER IS BASED UPON A REQUEST FOR HEARING ON THE ADEQUACY OF THE DETERMINATION ORDER ENTERED WHEN THE AGGRAVATION CLAIM WAS CLOSED.

THE BOARD, HAVING GIVEN FULL CONSIDERATION TO THE RESPONSE AND MOTION AND TO THE LETTERS RECEIVED FROM SIDNEY A. GALTON, ATTORNEY FOR THE CLAIMANT, AND MERLIN L. MILLER, ATTORNEY FOR THE TRAVELERS INSURANCE COMPANY, FINDS NO MERIT IN THE STATE ACCIDENT INSURANCE FUND'S RESPONSE AND MOTION.

ORDER

THE RESPONSE AND MOTION TO DESIGNATE PAYING AGENT IN THE ABOVE ENTITLED MATTER FILED WITH THE BOARD BY THE STATE ACCIDENT INSURANCE FUND ON AUGUST 13, 1976 IS HEREBY DENIED.

WCB CASE NO. 76-1377 AUGUST 31, 1976

DOLORES HARDING, CLAIMANT

JAN BAISCH, CLAIMANT'S ATTY.
G. HOWARD CLIFF, DEFENSE ATTY.
ORDER

ON AUGUST 23, 1976 THE BOARD RECEIVED FROM THE ATTORNEY FOR THE EMPLOYER AND ITS CARRIER IN THE ABOVE ENTITLED MATTER A MOTION TO DISMISS CLAIMANT'S REQUEST FOR REVIEW BY THE BOARD OF THE REFEREE'S ORDER ENTERED IN THE ABOVE ENTITLED MATTER ON JUNE 16, 1976 FOR THE REASON THAT SAID REQUEST WAS NOT TIMELY FILED.

ORS 656.289(3) PROVIDES THAT THE REFEREE'S ORDER IS FINAL UNLESS, WITHIN 30 DAYS AFTER THE DATE ON WHICH A COPY OF SAID ORDER IS MAILED TO THE PARTIES, ONE OF THE PARTIES REQUESTS A REVIEW BY THE BOARD UNDER ORS 656.295. ORS 656.295 PROVIDES THAT THE REQUEST FOR REVIEW SHALL BE MAILED TO THE BOARD AND COPIES OF THE REQUEST SHALL BE MAILED TO ALL OTHER PARTIES TO THE PROCEEDINGS BEFORE THE REFEREE.

IN THIS CASE COUNSEL FOR CLAIMANT FILED A NOTICE OF APPEAL IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH WHICH STATED CLAIMANT WAS APPEALING FROM AN ORDER OF THE WORKMEN'S COMPENSATION BOARD DATED JUNE 16, 1976, A COPY OF THIS NOTICE OF APPEAL WAS MAILED TO THE WORKMEN'S COMPENSATION BOARD IN AN ENVELOPE POSTMARKED JULY 16, 1976. SUBSEQUENTLY A 'NOTICE OF APPEAL-AMENDED' WAS FILED WITH THE BOARD, STATING CLAIMANT APPEALS FROM THE ORDER OF THE WORKMEN'S COMPENSATION BOARD DATED JULY 16, 1976. THIS 'AMENDED NOTICE OF APPEAL' WAS DATED JULY 27, 1976 AND WAS RECEIVED BY THE BOARD ON AUGUST 5, 1976 IN AN ENVELOPE POSTMARKED AUGUST 4, 1976.

THE BOARD FINDS THAT THE COPY OF THE NOTICE OF APPEAL TO THE CIRCUIT COURT CAN NOT BE CONSTRUED AS A REQUEST FOR BOARD REVIEW PURSUANT TO ORS 656.289 AND THAT THE 'AMENDED NOTICE OF APPEAL' IS ACTUALLY THE FIRST REQUEST FOR REVIEW RECEIVED FROM CLAIMANT APPEALING THE ORDER OF THE REFEREE WHICH WAS ENTERED ON JUNE 16, 1976, NOT JULY 16, 1976.

MORE THAN 30 DAYS HAD EXPIRED SINCE THE ENTRY OF THE REFEREE'S ORDER BEFORE THE REQUEST FOR REVIEW WAS MAILED TO THE BOARD, THEREFORE, THE REFEREE'S ORDER HAS BECOME FINAL AND THE REQUEST FOR REVIEW MUST BE DISMISSED.

ORDER

THE EMPLOYER'S MOTION TO DISMISS CLAIMANT'S REQUEST FOR BOARD REVIEW IS GRANTED AND CLAIMANT'S REQUEST FOR REVIEW IS HEREBY DISMISSED.

WCB CASE NO. 75-3656 AUGUST 31, 1976

NEIL EVENSON, CLAIMANT

J. DAVID KRYGER, CLAIMANT'S ATTY.
KEITH SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DECISION BY THE DISABILITY PREVENTION DIVISION THAT CLAIMANT DID NOT QUALIFY FOR VOCATIONAL REHABILITATION AND AWARDED 32 DEGREES FOR UNSCHEDULED DISABILITY.

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HIS BACK ON MAY 16, 1974. HE HAD HAD PRIOR BACK INJURIES. ON OCTOBER 17, 1974 CLAIMANT AGGRAVATED THE MAY, 1974 INJURY BUT NO CLAIM WAS FILED. FOLLOWING BOTH OF THESE INCIDENTS CLAIMANT SOUGHT CHIROPRACTIC TREATMENTS FROM DR. COOK WHO REFERRED CLAIMANT TO DR. ELLISON. THE EXTENT OF CLAIMANT'S MEDICAL TREATMENT HAS BEEN SLIGHT.

DR. ELLISON, IN HIS REPORT OF JANUARY 28, 1975, FELT CLAIMANT HAD MINIMAL DISABILITY AND HE MIGHT BENEFIT FROM VOCATIONAL GUIDANCE.

THE BOARD REJECTED AN APPROVED VOCATIONAL REHABILITATION DIVISION PROGRAM AND LATER MR. HITT, A VOCATIONAL REHABILITATION COUNSELOR, SET UP A DIAGNOSTIC PLAN FOR CLAIMANT AT LINN-BENTON COMMUNITY COLLEGE, HOPING THE BOARD WOULD APPROVE IT. THE BOARD REJECTED ANY VOCATIONAL REHABILITATION PROGRAM STATING THAT UNDER THE BOARD'S RULES CLAIMANT DID NOT QUALIFY.

THE REFEREE FOUND THAT THE BOARD, BASED ON GERALD LEATON, CLAIMANT (UNDERSCORED), WCB CASE NO. 74-4448, MUST DETERMINE WHETHER OR NOT CLAIMANT HAD BEEN RENDERED VOCATIONALLY HANDICAPPED BY HIS INDUSTRIAL INJURY. CLAIMANT IS NOT ENTITLED TO BE PLACED IN AN AUTHORIZED VOCATIONAL REHABILITATION PROGRAM AS A MATTER OF RIGHT. AN INJURED WORKMAN TO BE CONSIDERED AS A VOCATIONALLY HANDICAPPED WORKER, MUST BE PRECLUDED FROM RETURNING TO HIS REGULAR EMPLOYMENT AND ALSO MUST HAVE NO OTHER SKILLS WHICH WOULD ENABLE HIM TO RETURN TO FULL TIME REGULAR EMPLOYMENT.

THE REFEREE FOUND CLAIMANT COULD NOT RETURN TO HIS FORMER OCCUPATION BUT THAT HE DID (UNDERSCORED) HAVE OTHER SKILLS AVAILABLE TO HIM AND COULD RETURN TO SOME TYPE OF EMPLOYMENT, THEREFORE, HE WAS NOT ENTITLED TO BE PLACED IN AN AUTHORIZED VOCATIONAL REHABILITATION PROGRAM. THE FINDING BY THE DISABILITY PREVENTION DIVISION THAT CLAIMANT DID NOT QUALIFY WAS PROPER.

ON THE ISSUE OF EXTENT OF PERMANENT PARTIAL DISABILITY THE REFEREE CONCLUDED THAT, BASED ON DR. ELLISON'S REPORT, CLAIMANT DID HAVE A MINIMAL DISABILITY AND HE GRANTED CLAIMANT 32 DEGREES FOR UNSCHEDULED DISABILITY FOR SOME LOSS OF WAGE EARNING CAPACITY.

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

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 10, 1976, IS AFFIRMED.

WCB CASE NO. 75-1037 AUGUST 31, 1976

HELEN WEAVER, CLAIMANT

J. DAVID KRYGER, CLAIMANT'S ATTY.
C. ANDERSON GRIFFITH, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT AN ADDITIONAL AWARD OF 32 DEGREES FOR 10 PER CENT UNSCHEDULED RIGHT SHOULDER DISABILITY. CLAIMANT CONTENDS THIS AWARD IS INADEQUATE.

CLAIMANT, A 45 YEAR OLD LPN, SUSTAINED A COMPENSABLE INJURY TO HER RIGHT SHOULDER AND RIGHT SIDE ON AUGUST 15, 1972 WHILE WORKING AS A PRACTICAL NURSE. SHE WAS TREATED CONSERVATIVELY AND THEN RELEASED FOR MODIFIED WORK, WITH NO HEAVY LIFTING. CLAIMANT HAS NOT WORKED SINCE THIS INJURY.

CLAIMANT WAS EXAMINED ON DECEMBER 20, 1972 BY DR. ANDERSON WHO DIAGNOSED MILD STRAIN OF MUSCLES AND LIGAMENTS AND FOUND CLAIMANT MEDICALLY STATIONARY. A DETERMINATION ORDER DATED FEBRUARY 2, 1973 GRANTED CLAIMANT 16 DEGREES FOR 5 PER CENT UNSCHEDULED RIGHT SHOULDER DISABILITY.

ON APRIL 25, 1973 CLAIMANT SAW DR. MARTENS FOR COMPLAINTS OF 'PAIN RIGHT ARM, NECK AND BETWEEN SHOULDER BLADES'. DR MARTENS DIAGNOSED 'STRAIN NECK AND RIGHT UPPER EXTREMITY'. HE REFERRED CLAIMANT TO DR. KNOX FOR A NEUROLOGICAL EVALUATION.

ON AUGUST 23, 1973 DR. KNOX EXAMINED CLAIMANT AND DIAGNOSED A POSSIBLE C8-T1 NEURORADICULOPATHY WITH DISTAL DENERVATION AND MILD LOSS OF MOTOR UNITS.

ON OCTOBER 2, 1973, PURSUANT TO A STIPULATION, CLAIMANT'S CLAIM WAS REOPENED FOR FURTHER MEDICAL CARE AND TREATMENT.

ON DECEMBER 3, 1973 CLAIMANT WAS EXAMINED BY DR. GREWE WHO BECAME HER TREATING PHYSICIAN. ON APRIL 10, 1974 HE PERFORMED A MYELOGRAM, IT WAS NORMAL. ON NOVEMBER 25, 1974 DR. GREWE FELT CLAIMANT WAS APPROACHING MAXIMUM BENEFIT, HIS CLOSING EXAMINATION OF JANUARY 28, 1975 FOUND NO INCREASING DISTRESS OF CLAIMANT'S SYMPTOMS BUT STATED SHE SHOULD NOT RETURN TO HER FORMER OCCUPATION OF PRACTICAL NURSING.

A SECOND DETERMINATION ORDER OF FEBRUARY 24, 1975 AWARDED 32 DEGREES FOR 10 PER CENT UNSCHEDULED RIGHT SHOULDER DISABILITY AND 15 DEGREES FOR 10 PER CENT LOSS OF THE RIGHT FOREARM.

ON MARCH 28, 1969 CLAIMANT HAD SUFFERED STRAINS OF HER WRISTS WHILE WORKING PICKING SHRIMP AND SHAKING CRAB - FOR THIS INJURY CLAIMANT RECEIVED 25 DEGREES PARTIAL LOSS OF THE RIGHT FOREARM AND 15 DEGREES FOR PARTIAL LOSS OF THE LEFT FOREARM.

CLAIMANT WAS EXAMINED BY THE ORTHOPAEDIC CONSULTANTS ON JULY 31, 1975 WHO FOUND FUNCTIONAL OVERLAY AND FELT CLAIMANT COULD RETURN TO HER PRACTICAL NURSING JOB IF SHE DID NO LIFTING. THEY FELT SHE COULD PERFORM OTHER TYPES OF WORK AND HER DISABILITY WAS NOW NO GREATER THAN IT WAS ON FEBRUARY 24, 1975.

THE REFEREE FOUND THAT DR. GREWE'S EXAMINATION IN NOVEMBER, 1974 AND THE EXAMINATION BY THE ORTHOPAEDIC CONSULTANTS INDICATED CLAIMANT HAD NORMAL ELBOW, WRIST AND SHOULDER MOTION AND HER GRIP WAS NORMAL. HE CONCLUDED THAT CLAIMANT'S COMBINED AWARDS EQUAL TO 45 DEGREES LOSS OF THE RIGHT FOREARM (ORS 656.222) ADEQUATELY COMPENSATED HER FOR THE LOSS OF FUNCTION OF THIS SCHEDULED MEMBER.

IN THE UNSCHEDULED AREA THE REFEREE FOUND, BASED ON THE CRITERIA OF LOSS OF WAGE EARNING CAPACITY, THAT CLAIMANT COULD RETURN TO AN OCCUPATION NOT INVOLVING HEAVY LIFTING. SHE WAS NOT MOTIVATED TO RETURN TO WORK - HOWEVER, SHE WAS PRECLUDED FROM RETURNING TO CERTAIN SEGMENTS OF THE LABOR MARKET AND HER AWARDS TOTALLING 48 DEGREES DOES NOT ADEQUATELY COMPENSATE FOR HER LOSS OF WAGE EARNING CAPACITY. HE GRANTED CLAIMANT AN ADDITIONAL 32 DEGREES FOR HER RIGHT SHOULDER DISABILITY.

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

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 16, 1976, IS AFFIRMED.

WCB CASE NO. 75-210 SEPTEMBER 1, 1976

BEVERLY BRODERICK, CLAIMANT

HAYES PATRICK LAVIS, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT 70 PER CENT UNSCHEDULED LOW BACK DISABILITY AND 30 PER CENT LOSS OF RIGHT LEG. CLAIMANT CONTENDS SHE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO THE AREA OF HER NECK AND LUMBAR BACK ON OCTOBER 16, 1968 WHILE DRIVING A SCHOOL BUS. CLAIMANT HAS BEEN TREATED CONSERVATIVELY FOR A LUMBOSACRAL STRAIN UNTIL HER FIRST CLAIM CLOSURE ON AUGUST 1, 1969. SHORTLY AFTER THE CLAIM CLOSURE DR. SHORT DIAGNOSED A HERNIATED DISC. HE STATED THAT, IN LOOKING BACK OVER CLAIMANT'S CASE, SHE UNDOUBTEDLY HAD THIS RUPTURED DISC FROM THE BEGINNING BUT HER FUNCTIONAL OVERLAY CLOUDED THE PICTURE TO THE EXTENT THAT THE DIAGNOSIS COULD NOT BE MADE UNTIL CLAIMANT DEVELOPED A LOSS OF THE REFLEX.

IN OCTOBER, 1969 CLAIMANT HAD A LAMINECTOMY AND DISC FUSION WHICH COMPLETELY RELIEVED HER LEG PAIN. ON JUNE 26, 1970 CLAIMANT

WAS EXAMINED BY DR. SMITH WHO FOUND CLAIMANT HAD NO MOTIVATION TO RETURN TO WORK BUT THAT SHE WAS MEDICALLY STATIONARY. CLAIMANT RETURNED TO CANNERY WORK FOR A PERIOD OF APPROXIMATELY TWO MONTHS IN THE FALL OF 1970 BUT WAS UNABLE TO CONTINUE BECAUSE OF THE PROLONGED STANDING, TWISTING AND BENDING AND THE PAIN SHE STILL HAD IN HER LOW BACK AS WELL AS THE NUMBNESS IN HER LEFT LEG. ON NOVEMBER 4, 1973 DR. SMITH PERFORMED A LAMINECTOMY AND FUSION AT L5-S1 ON THE RIGHT.

DR. SHORT'S REPORT OF NOVEMBER 7, 1974 STATED CLAIMANT'S DISABILITY IN THE LOW BACK AND RIGHT LEG WAS MODERATE. ON JANUARY 28, 1975 HE SUGGESTED A JOB CHANGE TO CLAIMANT BUT CLAIMANT STATED SHE WAS NOT PLANNING ON RETURNING TO WORK.

CLAIMANT HAD, PRIOR TO THE HEARING, RECEIVED AWARDS TOTALLING 50 PER CENT UNSCHEDULED LOW BACK DISABILITY AND 20 PER CENT LOSS OF RIGHT LEG.

THE REFEREE CONCLUDED, BASED ON ALL OF THE MEDICAL REPORTS, THAT CLAIMANT'S PHYSICAL PROBLEMS AND HER LOSS OF WAGE EARNING CAPACITY ENTITLED HER TO A GREATER AWARD THAN SHE PREVIOUSLY HAD RECEIVED. HE INCREASED HER AWARD FOR UNSCHEDULED LOW BACK DISABILITY 20 PER CENT AND HER AWARD FOR LOSS OF RIGHT LEG 10 PER CENT FOR A TOTAL OF 70 PER CENT UNSCHEDULED DISABILITY AND 30 PER CENT LOSS OF RIGHT LEG.

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

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 30, 1976, IS AFFIRMED.

WCB CASE NO. 75-1310 SEPTEMBER 1, 1976

ROBERT BURNS, CLAIMANT

TOM HANLON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT 128 DEGREES FOR 40 PER CENT UNSCHEDULED LOW BACK DISABILITY AND 37.5 DEGREES FOR 25 PER CENT LOSS OF LEFT LEG AND 37.5 DEGREES FOR 25 PER CENT LOSS OF RIGHT LEG. CLAIMANT CONTENDS HE IS 'ODD-LOT' PERMANENTLY TOTALLY DISABLED.

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HIS LOW BACK ON JULY 17, 1972. ON OCTOBER 20, 1972 DR. YOUNG DIAGNOSED A HERNIATED NUCLEOUS PULPOSUS AND SOME ELEMENT OF ARTERIOSCLEROTIC VASCULAR DISEASE. ON NOVEMBER 30, 1972 DR. YOUNG PERFORMED A LAMINECTOMY.

CLAIMANT RETURNED TO WORK AS A CRANE OPERATOR BUT STARTED HAVING PROBLEMS WITH HIS BACK AND HIS CIRCULATION. CLAIMANT WORKED OFF AND ON THROUGH DECEMBER, 1974. IN JANUARY, 1975 HE QUIT HIS JOB.

DR. YOUNG, ON MAY 24, 1974, DIAGNOSED DEGENERATIVE ARTHRITIS OF THE LUMBOSACRAL SPINE, RESIDUAL RADICULITIS AND FOUND CLAIMANT'S CONDITION MEDICALLY STATIONARY. DR. YOUNG STATED CLAIMANT'S 'DISABILITY IS MILD TO MODERATE'.

A DETERMINATION ORDER OF JULY 12, 1974 GRANTED CLAIMANT 80 DEGREES FOR 25 PER CENT UNSCHEDULED LOW BACK DISABILITY AND 15 DEGREES FOR 10 PER CENT LOSS OF LEFT LEG AND 15 DEGREES FOR 10 PER CENT LOSS OF RIGHT LEG.

ON OCTOBER 21, 1974 DR. YOUNG REFERRED CLAIMANT TO DR. NORRIS-PEARCE WHO EXAMINED CLAIMANT AND DIAGNOSED PERIPHERAL NEUROPATHY. ON OCTOBER 20, 1974 HE FELT THAT VASCULAR INSUFFICIENCY WAS A CONTRIBUTING CAUSE TO CLAIMANT'S PERIPHERAL NEUROPATHY.

IN FEBRUARY, 1975 CLAIMANT HAD A RESECTION OF AN ABDOMINAL AORTIC ANEURYSM.

ON MARCH 10, 1975 DR. NORRIS-PEARCE STATED - 'I CAN IN NO WAY RELATE THE PERIPHERAL NEUROPATHY NOR THE AORTIC ANEURYSM TO AN ON THE JOB INJURY'. THE FUND DENIED RESPONSIBILITY FOR IT.

IN SEPTEMBER CLAIMANT WAS SEEN AT THE DISABILITY PREVENTION DIVISION, HIS CONDITIONS WERE DIAGNOSED AS CHRONIC LUMBOSACRAL STRAIN, MILDLY MODERATE - INTER DISC DISEASE AT L5-S1 AND L4-5 MODERATE - OSTEOARTHRITIS IN THE LUMBAR AND SACRAL SPINE - AND DIFFICULTIES IN HIS LEGS DUE TO ARTERIAL INSUFFICIENCY.

DR. PARVERESH FOUND CLAIMANT NOT MOTIVATED TO RETURN TO WORK, THAT HE SUFFERED FROM CHRONIC TENSION. A PSYCHOLOGIST AT THE DISABILITY PREVENTION DIVISION, DR. MUNSEY, FOUND THE PROGNOSIS FOR CLAIMANT'S RETURN TO WORK WAS POOR, BASED ON CLAIMANT'S AGE AND HIS DESIRE TO RETIRE.

THE REFEREE FOUND THAT CLAIMANT'S PRIMARY OCCUPATION HAS BEEN THAT OF A CRANE OPERATOR TO WHICH HE CANNOT RETURN. HE FELT THAT CLAIMANT'S CONTENTION THAT HE WAS PERMANENTLY AND TOTALLY DISABLED WAS 'MOOT'. THERE WAS LITTLE DOUBT BUT THAT CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED - HOWEVER, NOT BECAUSE OF HIS INDUSTRIAL INJURY BUT MAINLY DUE TO HIS ARTERIOSCLOROTIC CONDITION. THE CONCENSUS OF THE MEDICAL EVIDENCE IS THAT CLAIMANT'S UNSCHEDULED DISABILITY RESULTING FROM THIS INDUSTRIAL INJURY IS MODERATE.

THE REFEREE FOUND IT HARD TO RATE THE SCHEDULED DISABILITY DUE TO THE ARTERIAL INSUFFICIENCY IN HIS LEGS.

BASED ON ALL OF THE EVIDENCE AND THE ABOVE STATED FACTORS, THE REFEREE GRANTED CLAIMANT 40 PER CENT UNSCHEDULED LOW BACK DISABILITY AND 25 PER CENT LOSS OF EACH LEG.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE AWARD FOR UNSCHEDULED DISABILITY GRANTED BY THE REFEREE - HOWEVER, THE BOARD FINDS THAT THE MEDICAL EVIDENCE DOES NOT SUPPORT GREATER AWARDS IN THE SCHEDULED AREA THAN THOSE PREVIOUSLY MADE. CLAIMANT'S GREATEST PROBLEM IN HIS LOWER EXTREMITIES IS DUE TO ARTERIAL INSUFFICIENCY IN HIS LEGS.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 1, 1976, IS MODIFIED.

CLAIMANT IS AWARDED 15 DEGREES OF A MAXIMUM OF 150 DEGREES FOR LOSS OF RIGHT LEG AND 15 DEGREES OF A MAXIMUM 150 DEGREES FOR LOSS OF LEFT LEG. THIS IS IN LIEU OF THE AWARDS FOR THESE SCHEDULED INJURIES MADE BY THE REFEREE'S ORDER OF MARCH 1, 1976 WHICH IN ALL OTHER RESPECTS IS AFFIRMED.

WCB CASE NO. 75-2995 SEPTEMBER 1, 1976

GEORGE HIXSON, CLAIMANT

JAMES WALTON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER OF JULY 7, 1975.

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS PELVIS ON JUNE 15, 1974. HE WAS HOSPITALIZED BY DR. BRUNS.

DR. THRASHER, ON SEPTEMBER 30, 1974, PERFORMED AN OPEN REDUCTION AND STABILIZATION OF PUBIC SYMPHYSIS. ON OCTOBER 1, 1974 DR. THRASHER AGAIN OPERATED FOR DOUBLE WIRING OF PUBIC SYMPHYSIS.

CLAIMANT RETURNED TO WORK ON JANUARY 9 THROUGH JANUARY 13, 1975 AND THEN HIS PAIN SYMPTOMS INCREASED AND HE QUIT - HE AGAIN RETURNED TO WORK ON FEBRUARY 19, BUT AGAIN HAD TO QUIT BECAUSE OF HIS PAIN. CLAIMANT, AT THIS TIME, ALSO WAS BEING TREATED BY DR. HALL, D.C. FOR HIS BACK COMPLAINTS - THE CHIROPRACTIC TREATMENTS SEEMED TO HELP.

ON JULY 17, 1975 DR. HALL REPORTED THAT THE SEVERE PELVIC FRACTURE CLAIMANT SUSTAINED WOULD UNDERSTANDABLY CAUSE BACK PROBLEMS AND REQUESTED THE CARRIER TO LET HIM CONTINUE HIS TREATMENTS OF CLAIMANT. THE CARRIER WOULD NOT ACCEPT THE BACK COMPLAINTS AS RELATED TO THE INDUSTRIAL INJURY.

ON JULY 7, 1975 A DETERMINATION ORDER AWARDED CLAIMANT 32 DEGREES FOR 10 PER CENT UNSCHEDULED PELVIC DISABILITY.

ON DECEMBER 2, 1975 DR. THRASHER INDICATED THAT CLAIMANT HAD CONSIDERABLE SUBJECTIVE COMPLAINTS, OBJECTIVE FINDINGS, HOWEVER, DID NOT SHOW VERY MUCH AND HIS STUDIES WERE UNREMARKABLE. CLAIMANT HAD PRIOR TO HIS INDUSTRIAL INJURY SUFFERED A GUNSHOT WOUND TO THE PELVIC AREA - ALSO CLAIMANT HAS SPONDYLOLISTHESIS AT L5. DR. THRASHER STATED THAT THE PELVIC DISTRESS WAS PROBABLY THE ONLY PROBLEM RELATED TO THE INDUSTRIAL INJURY AND OBJECTIVE FINDINGS WERE MINIMAL. HE ALSO FOUND CLAIMANT TO BE OBESE.

THE REFEREE FOUND THAT THE PREPONDERANCE OF THE MEDICAL EVIDENCE WAS NOT FAVORABLE TO CLAIMANT AND CLAIMANT HAD FAILED TO PROVE THAT HIS LOSS OF WAGE EARNING CAPACITY AS RELATED TO HIS INDUSTRIAL INJURY WAS ANY GREATER THAN THAT AWARDED BY THE DETERMINATION ORDER WHICH THE REFEREE AFFIRMED.

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

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 16, 1976, IS AFFIRMED.

SHIREEN MAY LARSEN, CLAIMANT

GALE POWELL, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT PERMANENT TOTAL DISABILITY.

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HER BACK ON SEPTEMBER 17, 1966. CLAIMANT HAS UNDERGONE YEARS OF CONTINUED MEDICAL TREATMENT BY VARIOUS PHYSICIANS. IN OCTOBER, 1966 CLAIMANT WAS FIRST DIAGNOSED BY DR. GUYER AS HAVING PROBABLE HERNIATED INTERVERTEBRAL DISC L5-S1 ON THE RIGHT. ON NOVEMBER 2, 1966 HE PERFORMED A LAMINECTOMY.

CLAIMANT CAME UNDER THE CARE OF DR. GREWE WHO, ON AUGUST 31, 1967, PERFORMED A LUMBAR LAMINECTOMY. ON OCTOBER 7, 1968, DR. HUGHES, DIAGNOSED CLAIMANT AS NON-PSYCHOTIC, WITH FUNCTIONAL OVERLAY. ON DECEMBER 13, 1968 DR. GREWE PERFORMED A THIRD LAMINECTOMY - AT THIS TIME HIS DIAGNOSIS WAS LUMBAR NERVE ROOT COMPRESSION L4-5 RIGHT, SECONDARY TO RECURRENT PROTRUSION OF THE DISC.

ON MAY 6, 1970 DR. LOGAN FOUND CLAIMANT MEDICALLY STATIONARY WITH PERMANENT DISABILITY. A DETERMINATION ORDER OF MAY 22, 1970 GRANTED CLAIMANT 58 DEGREES FOR 30 PER CENT LOSS OF AN ARM BY SEPARATION FOR UNSCHEDULED DISABILITY.

ON FEBRUARY 25, 1972 DR. CHERRY REQUESTED CLAIMANT'S CLAIM BE REOPENED FOR FURTHER TREATMENT, HE FELT HER DISABILITY EXCEEDED HER AWARD. ON APRIL 24, 1972 DR. LOGAN FELT CLAIMANT HAD AGGRAVATED HER PRE-EXISTING PROBLEM.

IN A REPORT, DATED JULY 23, 1973, DR. GREWE STATED THAT CLAIMANT HAS MODERATE TO SEVERE FUNCTIONAL OVERLAY AND THAT 'WHENEVER SHE GETS CROWDED FROM A FINANCIAL STANDPOINT, NAMELY, HER CLAIM CLOSURES, SHE HAS A FLAREUP THAT LEAD PRINCIPALLY TO RE-EXAMINATION, HOSPITALIZATION AND FURTHER STUDIES.'

ON NOVEMBER 13, 1973 DR. SHLIM EXAMINED CLAIMANT AND FOUND CLAIMANT INTERESTING TO EXAMINE 'BECAUSE OF THE GREAT VARIETY OF FINDINGS WHICH VARY FROM MOMENT TO MOMENT.' HE FOUND NO LIMITATION OF MOTION IN HER ARMS, NORMAL SHOULDER MOTION, NO MUSCLE SPASM OF THE BACK, LITTLE TENDERNESS AND HE RECOMMENDED CLAIM CLOSURE.

ON DECEMBER 21, 1973 A SECOND DETERMINATION ORDER GRANTED CLAIMANT COMPENSATION FOR TEMPORARY TOTAL DISABILITY ONLY.

ON APRIL 9, 1975 DR. SMITH EXAMINED CLAIMANT AND FOUND CLAIMANT'S CONDITION STABLE, WITH LITTLE CHANGE IN HER CONDITION FOR SEVERAL YEARS. HER PHYSICAL IMPAIRMENT WAS CONSIDERED TO BE MILDLY MODERATE AND HE BELIEVED CLAIMANT COULD RETURN TO SUITABLE EMPLOYMENT.

CLAIMANT HAS MADE NO ATTEMPT TO FIND WORK OR TO UTILIZE ANY TYPE OF VOCATIONAL RETRAINING. CLAIMANT FEELS SHE IS TOTALLY INCAPACITATED FROM ANY TYPE OF WORK.

THE REFEREE FOUND THAT CLAIMANT WAS NOT MALINGERING, AND THAT THE WEIGHT OF THE LAY AND MEDICAL EVIDENCE PLACED CLAIMANT IN THE 'ODD-LOT CATEGORY' AND HE AWARDED PERMANENT TOTAL DISABILITY.

THE BOARD, ON DE NOVO REVIEW, DISAGREES WITH THE CONCLUSIONS OF THE REFEREE. THE BOARD FEELS THAT THE MEDICAL EVIDENCE DOES NOT SUPPORT A FINDING OF PERMANENT TOTAL DISABILITY. NOT ONE DOCTOR PUT CLAIMANT IN THAT TYPE OF PHYSICAL IMPAIRMENT CATEGORY. DR. SHLIM FOUND CLAIMANT HAD NO MUSCLE SPASM IN HER BACK OR TENDERNESS. DR. SMITH, IN 1975, CONSIDERED HER IMPAIRMENT MILDLY MODERATE, THAT CLAIMANT COULD RETURN TO SUITABLE EMPLOYMENT. THERE IS A LACK OF OBJECTIVE MEDICAL FINDINGS TO SUPPORT CLAIMANT'S SUBJECTIVE COMPLAINTS. WITHOUT MEDICAL EVIDENCE TO SUPPORT CLAIMANT'S CONTENTION THAT SHE IS IN THE 'ODD-LOT' CATEGORY, THE BURDEN IS ON CLAIMANT TO SHOW NO SUITABLE, GAINFUL AND REGULAR WORK IS AVAILABLE TO HER. SHE FAILED TO DO SO.

THE BOARD FINDS THAT CLAIMANT HAS SUSTAINED A GREATER DISABILITY THAN THAT FOR WHICH SHE PREVIOUSLY HAD BEEN AWARDED. IT GRANTS CLAIMANT 192 DEGREES FOR 60 PER CENT UNSCHEDULED DISABILITY TO COMPENSATE CLAIMANT FOR HER LOSS OF WAGE EARNING CAPACITY.

CLAIMANT IS ALSO ENTITLED TO PSYCHIATRIC COUNSELING UNDER THE PROVISIONS OF ORS 656.245.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 2, 1976, IS REVERSED.

CLAIMANT IS HEREBY GRANTED 192 DEGREES OF A MAXIMUM 320 DEGREES FOR UNSCHEDULED BACK DISABILITY. THIS IS IN LIEU OF THE AWARD GRANTED CLAIMANT BY THE REFEREE.

CLAIMANT'S COUNSEL SHALL BE PAID, AS A REASONABLE ATTORNEY FEE, 25 PER CENT OF THE INCREASE IN COMPENSATION, PAYABLE OUT OF CLAIMANT'S COMPENSATION AS PAID, NOT TO EXCEED 2,000 DOLLARS.

WCB CASE NO. 75-4045 SEPTEMBER 1, 1976

VIRGINIA MCCLAIN, CLAIMANT

DONALD ATCHISON, CLAIMANT'S ATTY.
CHARLES PAULSON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

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

CLAIMANT SUSTAINED INJURY TO HER LOW BACK IN DECEMBER, 1973 AND, AS A RESULT THEREOF, A LAMINECTOMY AT L5-S1 WAS DONE ON OCTOBER 14, 1974. ON OR ABOUT JUNE 25, 1975 CLAIMANT FELT A BURNING PAIN IN HER NECK WHICH PROGRESSIVELY WORSENED. SHE SAW DR. MCNEILL, WHO HAD TREATED HER PREVIOUS INJURY - HE DIAGNOSED A CERVICAL DISC SYNDROME CAUSED BY REPETITIVE NECK MOTION AT WORK.

DR. MCNEILL WAS OF THE OPINION THAT CLAIMANT'S WORK CAUSED HER HERNIATED CERVICAL DISC 'SINCE IT HAPPENED AT WORK AND SHE HAD NOT HAD THESE SYMPTOMS PREVIOUSLY'.

THE REFEREE FOUND THAT THE EVIDENCE INDICATED THERE WAS VERY LITTLE NECESSITY FOR CLAIMANT TO EVER TURN HER HEAD OR TWIST HER NECK FROM SIDE TO SIDE WHILE WORKING - IN FACT, CLAIMANT WAS TO KEEP HER EYES GLUED TO THE OPERATING END OF THE POWERHEAD OF THE SEWING MACHINE. THERE WAS NO EVIDENCE THAT CLAIMANT WAS REQUIRED TO LIFT THE BOLTS OF MATERIAL WHICH WERE BROUGHT TO HER ON A CART.

THE REFEREE CONCLUDED THAT CLAIMANT HAD FAILED TO ESTABLISH MEDICAL CAUSATION AND HE AFFIRMED THE EMPLOYER'S DENIAL.

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

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 22, 1976 IS AFFIRMED.

WCB CASE NO. 75-3677 SEPTEMBER 1, 1976

DONALD MCINTOSH, CLAIMANT

JAN BAISCH, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT AN ADDITIONAL 80 DEGREES FOR A TOTAL OF 208 DEGREES FOR 65 PER CENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT SUSTAINED A COMPENSABLE INJURY ON APRIL 20, 1973 TO HIS LOW BACK AND LEFT KNEE. DR. BOOTS DIAGNOSED ACUTE LOW BACK SYNDROME DUE TO STRAIN.

CLAIMANT WAS REFERRED TO DR. ADAMS WHO DIAGNOSED CHRONIC DEGENERATIVE DISCOGENIC DISEASE AT L4-5 LEVELS. ON JANUARY 10, 1974 DR. ADAMS PERFORMED A SPINAL FUSION AT L4 TO THE SACRUM WITH BONE GRAFT. ON OCTOBER 28, 1974 A LEFT MEDIAL MENISCECTOMY WAS PERFORMED.

ON DECEMBER 19, 1974 CLAIMANT WAS EXAMINED BY DR. CAMPAGNA WHO DIAGNOSED NEUROPATHY S1 NERVE ROOT AND MODERATE FUNCTIONAL OVERLAY.

CLAIMANT'S PSYCHOLOGICAL EVALUATION ON JUNE 5, 1975 INDICATED CLAIMANT'S PROGNOSIS FOR RESTORATION AND REHABILITATION WAS POOR. DR. MUNSEY FELT CLAIMANT NEEDED LONG TERM COUNSELING TO AID HIM IN ADJUSTMENT TO HIS PHYSICAL PROBLEMS, HOWEVER, CLAIMANT'S NEED FOR PSYCHIATRIC TREATMENT IS NOT WORK RELATED.

A DETERMINATION ORDER OF AUGUST 13, 1975 GRANTED CLAIMANT 128 DEGREES FOR 40 PER CENT UNSCHEDULED LOW BACK DISABILITY AND 15 DEGREES FOR 10 PER CENT LOSS OF LEFT LEG.

DR. BERT EXAMINED CLAIMANT ON OCTOBER 13, 1975 AND INDICATED THAT MOST OF CLAIMANT'S PAIN AROSE FROM A PSEUDO-ARTHROSIS AND NERVE ROOT SCARRING.

THE REFEREE FOUND CLAIMANT'S TESTIMONY CONCERNING HIS PROBLEMS TO BE QUITE CREDIBLE. CLAIMANT IS 49 YEARS OLD WITH A 7TH GRADE EDUCATION AND MOST OF HIS PAST EMPLOYMENT HAS BEEN IN HEAVY

PHYSICAL LABOR JOBS. THERE IS DEFINITE EVIDENCE OF LACK OF MOTIVATION - ALSO EVIDENCE OF FUNCTIONAL OVERLAY.

THE REFEREE FOUND THE EVIDENCE DOES NOT SUSTAIN A FINDING OF PERMANENT TOTAL DISABILITY AS CLAIMANT CONTENDED - HOWEVER, CLAIMANT'S DISABILITY IS MODERATELY SEVERE. HE CONCLUDED THAT CLAIMANT HAS SUSTAINED A SUBSTANTIAL LOSS OF WAGE EARNING CAPACITY BECAUSE HE IS NOW PRECLUDED FROM RETURNING TO HIS REGULAR EMPLOYMENT.

THE REFEREE INCREASED CLAIMANT'S AWARD FROM 40 PER CENT TO 65 PER CENT.

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

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 30, 1976, IS AFFIRMED.

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

WCB CASE NO. 75-985 SEPTEMBER 1, 1976

ROBERT MOTTA, CLAIMANT

AND IN THE MATTER OF THE COMPLIANCE
OF SAMUEL HUGH MALLICOAT
WILLIAM RUTHERFORD, CLAIMANT'S ATTY.
DARYLL KLEIN, EMPLOYER'S ATTY.
MICHAEL HOFFMAN, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS AND WILSON.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REVERSED PROPOSED ORDER NO. 25-70-A, DATED FEBRUARY 4, 1975, WHICH DECLARED SAMUEL HUGH MALLICOAT A NON-COMPLYING EMPLOYER AND REMANDED THE CLAIMANT'S CLAIM TO THE FUND FOR PAYMENT OF COMPENSATION FROM NOVEMBER 12, 1974 AND UNTIL THE CLAIM WAS CLOSED PURSUANT TO ORS 656.268.

EARLY IN 1974 SAMUEL HUGH MALLICOAT, HEREINAFTER REFERRED TO AS MALLICOAT, TALKED TO MARVIN R. PENROSE ABOUT BUILDING A HOME FOR HIM - PENROSE WAS TO DO THE CARPENTRY WORK AT 10 DOLLARS AN HOUR AND TO FURNISH THE TOOLS. PENROSE TOLD MALLICOAT HE NEEDED HELP AND IN JULY, 1974 ASKED THE CLAIMANT, WHO WAS A CARPENTER, TO HELP HIM. CLAIMANT AGREED IF MALLICOAT WOULD PAY 8 DOLLARS AN HOUR, WHICH HE DID. MOTTA WAS TO FURNISH HIS OWN CARPENTRY TOOLS WITH THE EXCEPTION OF POWER TOOLS WHICH WOULD BE ON THE JOB AND FURNISHED BY PENROSE. CLAIMANT SETS HIS OWN HOURS, USUALLY FROM 8 A.M. TO 4.30 P.M. AND FOR THE WORK INVOLVED IN THIS CASE, HE WAS PAID BY MALLICOAT WITH A PERSONAL CHECK EACH WEEK FOR THE HOURS HE REPORTED THAT HE WORKED - NO DEDUCTIONS WERE TAKEN OUT OF PAYCHECKS. PENROSE ACTED IN THE NATURE OF A SUPERVISING CARPENTER AND DIRECTED MOTTA WITH RESPECT TO WHAT HE WANTED HIM TO DO - HOWEVER, THEY WORKED TOGETHER BUILDING THE HOME.

MALLICOAT WAS AT THE HOME SITE NEARLY EVERY DAY AND HIRED SUBCONTRACTORS, SOME OF WHOM WERE RECOMMENDED BY PENROSE. MALLICOAT GAVE PENROSE A SET OF PLANS AND TOLD HIM TO BUILD THE HOUSE ACCORDING

TO THE PLANS. WITH RESPECT TO THE OTHER SUB-CONTRACTORS, MALLICOAT PUT THE PLANS OUT FOR BIDS AND MADE ALL THE DECISIONS. ALTHOUGH THE OTHER SUB-CONTRACTORS HAD A BID PRICE, PENROSE AND MOTTA WORKED BY THE HOUR, THE REASON BEING THAT PENROSE DID NOT KNOW HOW LONG IT WOULD TAKE TO DO THE CARPENTRY WORK AND HE DID NOT WANT TO BID ON THE CONTRACT BASIS. THE WORK BEGAN IN JULY, 1974 AND PENROSE AND MOTTA WERE PAID BETWEEN 800 DOLLARS AND 1000 DOLLARS EACH MONTH.

PENROSE WAS ALLOWED TO MAKE SMALL CHANGES RELATING TO THE WORK DONE BY THE SUB-CONTRACTORS BUT THE LARGE ALTERATIONS IN THE PLANS WERE MADE BY MALLICOAT WHO ALSO ORDERED THE LUMBER. PENROSE OBTAINED THE MATERIAL FROM THE SUPPLIER AND WHEN HE WAS REQUIRED TO GET EXTRA MATERIALS, HE WOULD CHARGE THEM TO MALLICOAT'S ACCOUNT.

ON NOVEMBER 12, 1974 CLAIMANT INJURED HIS BACK AND WAS HOSPITALIZED ON NOVEMBER 15 AND DISCHARGED NOVEMBER 23, 1974. MALLICOAT DID NOT HAVE WORKMEN'S COMPENSATION COVERAGE WITH THE STATE ACCIDENT INSURANCE FUND FOR THE PERIOD JULY 18 THROUGH NOVEMBER 12, 1974. MALLICOAT'S PRINCIPAL BUSINESS WAS THAT OF A CONSULTANT - THIS BUSINESS WAS CONDUCTED THROUGH A PARTNERSHIP WITH JULIE KELLER UNDER THE TITLE S.H. MALLICOAT AND ASSOCIATES. THE PARTNERSHIP DID HAVE WORKMEN'S COMPENSATION COVERAGE WITH THE FUND EFFECTIVE SEPTEMBER 12, 1973 WHICH WAS BASED ON AN APPLICATION SIGNED BY MALLICOAT AND INDICATED THAT THE FIRM WAS OWNED 100 PER CENT BY MALLICOAT - HOWEVER, A SUPPLEMENTAL APPLICATION SIGNED BY MALLICOAT WAS FILED WHICH INDICATED THE ACCOUNT WAS FOR A 50-50 PARTNERSHIP OF MALLICOAT AND JULIE KELLER. PERSONAL COVERAGE IS IN EFFECT FOR EACH OF THE PARTNERS.

THE PARTNERSHIP WAS INSURED FOR CONSULTANT SERVICE FOR THE PERIOD IN QUESTION AND ASKED TO HAVE A CARPENTRY CLASSIFICATION ADDED AFTER THE INJURY CLAIM WAS FILED BY CLAIMANT. BETWEEN JULY AND SEPTEMBER, 1974 THERE WAS PERSONAL COVERAGE FOR EACH PARTNER, THIS GUARANTEE IS STILL IN EFFECT. THE FUND INSURES ALL OF THE INSURED EMPLOYER'S SUBJECT EMPLOYMENT WHETHER IT KNOWS ABOUT THE EMPLOYMENT OR NOT - HOWEVER, THE PARTNERSHIP WOULD HAVE HAD A HIGHER INSURANCE RATE IF CARPENTRY HAD BEEN ADDED TO ITS COVERAGE. THE FUND INSURES EMPLOYEES COVERED BY THE WORKMEN'S COMPENSATION LAW FOR ITS INSURED EMPLOYERS AND IF CLAIMANT AND PENROSE WERE ON THE PAYROLL AS EMPLOYEES, THE FUND WOULD HAVE CONTACTED THE PARTNERSHIP CONCERNING THE PAYROLL RECORDS - NEVERTHELESS, THE FUND STILL INSURES ALL OF THE EMPLOYER'S SUBJECT EMPLOYEES.

WHEN MALLICOAT REQUESTED INSURANCE COVERAGE ON A RETROACTIVE BASIS FOR CARPENTRY WORK, PRIMARILY FOR HIS PRIVATE RESIDENCE, HE REQUESTED THAT THIS COVERAGE BE ADDED TO THAT PROVIDED TO THE PARTNERSHIP. HE WAS ADVISED, ON DECEMBER 23, 1974, THAT INASMUCH AS IT WAS A PERSONAL RESIDENCE AND THAT ANY EMPLOYMENT INCIDENTAL TO THE CONSTRUCTION THEREOF WOULD BE BY HIM AS A SOLE PROPRIETOR RATHER THAN BY A PARTNER THE FUND WOULD BE UNABLE TO HONOR ANY CLAIMS FILED BY CLAIMANT UNLESS THE PARTNERSHIP WERE PROVEN TO BE THE TRUE EMPLOYER OF CLAIMANT. MALLICOAT WAS ADVISED HE SHOULD OBTAIN SEPARATE WORKMEN'S COMPENSATION FOR EMPLOYMENT. ON JANUARY 16, 1975 HE WAS AGAIN ADVISED THAT THERE WAS CURRENTLY NO COVERAGE IN EFFECT FOR EMPLOYEES ENGAGED IN THE CONSTRUCTION OF A PERSONAL RESIDENCE.

THE REFEREE FOUND THAT BOTH CLAIMANT AND PENROSE WERE EMPLOYEES OF MALLICOAT AND THAT, WHEN THE FUND FURNISHED THE PARTNERSHIP COVERAGE, IT ALSO COVERED MALLICOAT, AS A PARTNER, ON THE CONSTRUCTION OF HIS PRIVATE RESIDENCE EVEN THOUGH MALLICOAT, AS AN INDIVIDUAL, BUILT THE HOME FOR HIS PERSONAL USE.

IN DETERMINING THE EXISTENCE OF THE EMPLOYER-EMPLOYEE RELATIONSHIP, THE REFEREE FOUND THAT ALTHOUGH CLAIMANT AND PENROSE WORKED

TOGETHER AND THE LATTER WAS IN THE NATURE OF A LEAD MAN, NEVERTHELESS, MALLICOAT WAS IN CHARGE OF THE PROJECT AND MADE ALL OF THE MAJOR DECISIONS AND HIRED ALL OTHER SUB-CONTRACTORS AND PAID BOTH PENROSE AND CLAIMANT BY PERSONAL CHECKS. THE WAGES PAID BOTH WERE DEFINED AS HOURLY WAGES AND MALLICOAT COULD HAVE TERMINATED THE ARRANGEMENT AS TO EITHER PENROSE OR CLAIMANT AT ANY TIME. CLAIMANT FURNISHED HIS HAND TOOLS, AS WAS THE CUSTOM OF HIS TRADE. PENROSE FURNISHED HIS OWN HAND TOOLS AND EQUIPMENT - HOWEVER, THE TOOLS THAT PENROSE FURNISHED WERE POWER TOOLS AND WERE APPARENTLY OF THE TYPE NORMALLY USED BY CARPENTERS ON THE JOB AND WOULD NOT NECESSARILY INDICATE AN INDEPENDENT CONTRACTOR STATUS.

THE REFEREE CONCLUDED THAN AN EMPLOYER-EMPLOYEE REALTIONSHIP EXISTED BETWEEN MALLICOAT AND THE CLAIMANT AND THAT THE CLAIMANT HAD SUFFERED A COMPENSABLE INJURY ON NOVEMBER 12, 1974 WHILE IN THAT EMPLOY.

THE REFEREE FURTHER FOUND THAT THE FUND PROVIDED COVERAGE DURING THE PERIOD OF THE INJURY FOR THE PARTNERSHIP BUT NOT FOR MALLICOAT AS AN INDIVIDUAL - THE QUESTION BEFORE HIM WAS WHETHER OR NOT THE FUND INSURED MALLICOAT AS AN INDIVIDUAL IN ADDITION TO HIS COVERAGE AS A PARTNER. THE REFEREE STATED THAT A PARTNERSHIP COULD BE CONSIDERED AS AN ENTITY DISTINCT FROM THAT OF ITS MEMBERS AND COULD BE RECOGNIZED IN LAW AS A PERSON AND THAT IT COULD BE PERSUASIVELY ARGUED IN THIS CASE THAT THE PARTNERSHIP WAS A PERSON AND A LEGAL ENTITY UNDER THE WORKMEN'S COMPENSATION LAW. HOWEVER, RELYING UPON A RULING OF THE BOARD IN JOSEPH SELLS (UNDERSCORED), WCB CASE NO. 73-1207, HE CONCLUDED THAT OREGON IS A FULL-COVERAGE STATE, THEREFORE, ALL SUBJECT EMPLOYEES WOULD BE COVERED REGARDLESS OF WHETHER THEY WERE WORKING FOR THE PARTNERSHIP OR WORKING ON SOME OTHER BUSINESS VENTURE IN WHICH ONE OF THE PARTNERS, IN THIS CASE MALLICOAT, WAS PURSUING EVEN THOUGH SUCH VENTURE HAD NO CONNECTION WITH THE PARTNERSHIP BUSINESS.

THE REFEREE FOUND THAT WHEN THE FUND INSURED THE PARTNERSHIP IT INSURED ALL OF THE WORKMEN WHO MIGHT BE SUBJECT EMPLOYEES OF THE PARTNERSHIP AND ALSO ALL OF THE WORKMEN WHO MIGHT BE SUBJECT EMPLOYEES OF THE INDIVIDUAL PARTNERS REGARDLESS OF WHETHER SAID EMPLOYEES WORKED FOR THE PARTNERSHIP OR FOR EITHER PARTNER, AS AN INDIVIDUAL. THEREFORE, MALLICOAT WAS A SUBJECT COMPLYING EMPLOYER ON NOVEMBER 12, 1975 AND THE CLAIMANT'S CLAIM SHOULD BE REMANDED TO THE FUND FOR PAYMENT OF COMPENSATION AS PROVIDED BY LAW.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE REFEREE THAT THE EVIDENCE INDICATES CLEARLY THAT MALLICOAT WAS THE EMPLOYER OF CLAIMANT AND THAT CLAIMANT WAS A SUBJECT WORKMAN AT THE TIME HE WAS INJURED ON NOVEMBER 12, 1974. THE BOARD ALSO AGREES THAT MALLICOAT HAD THE RIGHT TO HIRE OR FIRE AND HAD COMPLETE CONTROL OVER BOTH CLAIMANT AND PENROSE. HOWEVER, S. H. MALLICOAT AND ASSOCIATES, A PARTNERSHIP, IS A LEGAL ENTITY AND, AT THE TIME OF CLAIMANT'S INJURY, ONLY IT HAD WORKMEN'S COMPENSATION COVERAGE. SAMUEL HUGH MALLICOAT, AS AN INDIVIDUAL, DID NOT HAVE ANY WORKMEN'S COMPENSATION COVERAGE. CLAIMANT WAS EMPLOYED BY MALLICOAT AS AN INDIVIDUAL TO BUILD HIS PERSONAL RESIDENCE - A VENTURE NOT RELATED IN ANY WAY WITH THE PARTNERSHIP, HAD NO CONCERN WHEN HE SUFFERED HIS COMPENSABLE INJURY.

THE BOARD CONCLUDES THAT WORKMEN'S COMPENSATION COVERAGE PROVIDED TO A PARTNERSHIP DOES NOT EXTEND TO AN INDIVIDUAL MEMBER OF SAID PARTNERSHIP WHO IS ENGAGED IN A VENTURE WITH WHICH THE PARTNERSHIP ITSELF HAS NO CONCERN. THEREFORE, AT THE TIME OF THE INJURY SAMUEL HUGH MALLICOAT WAS A NON-COMPLYING EMPLOYER ON NOVEMBER 12, 1974 WHEN HIS SUBJECT EMPLOYEE, ROBERT MOTTA, SUFFERED A COMPENSABLE INJURY.

THE CIRCUMSTANCES IN THIS CASE DIFFER FROM THOSE IN THE SELLS (UNDERSCORED) CASE TO A CERTAIN EXTENT AND THAT CASE IS NOT CONTROLLING.

ORDER

THE ORDER OF THE REFEREE DATED JANUARY 13, 1976 IS REVERSED.

THE PROPOSED ORDER NO. 2570-A, DATED FEBRUARY 4, 1975, WHICH DECLARED SAMUEL HUGH MALLICOAT A NON-COMPLYING EMPLOYER IS APPROVED AND MADE FINAL BY THIS ORDER.

THE CLAIM IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR THE PAYMENTS OF COMPENSATION AS PROVIDED BY LAW, COMMENCING NOVEMBER 12, 1974 AND UNTIL CLAIM CLOSURE PURSUANT TO ORS 656.268. THE STATE ACCIDENT INSURANCE FUND SHALL BE REIMBURSED BY THE ADMINISTRATIVE FUND OF THE WORKMEN'S COMPENSATION BOARD, ON A PERIODIC BASIS, FOR ALL ITS COSTS INCURRED RELATING TO CLAIMANT'S CLAIM AND THE WORKMEN'S COMPENSATION BOARD SHALL BE ENTITLED TO RECOVER SUCH COSTS FROM THE EMPLOYER.

SAMUEL HUGH MALLICOAT, A NON-COMPLYING EMPLOYER, IS ASSESSED A PENALTY OF 100 DOLLARS PURSUANT TO ORS 656.735(3).

WCB CASE NO. 75-947 SEPTEMBER 1, 1976

JOHN PLEDGER, CLAIMANT

JACK HOWE, CLAIMANT'S ATTY.
JAMES HUEGLI, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE EMPLOYER'S DENIAL OF DR. CHERRY'S MEDICAL BILLS AND AFFIRMED THE DETERMINATION ORDER OF FEBRUARY 26, 1975.

CLAIMANT SUSTAINED A COMPENSABLE INJURY ON OCTOBER 30, 1969. HE SEVERED THE ULNER NERVE AND ARTERY OF HIS LEFT WRIST. ON THAT DATE DR. UHLE OPERATED TO REPAIR ULNAR NERVE LACERATION. ON MARCH 10, 1970 DR. UHLE REPORTED THAT CLAIMANT HAD CONSIDERABLE INTRINSIC MUSCLE ATROPHY AND INTRINSIC ACTIVITY IMPAIRMENT.

IN SEPTEMBER, 1970 DR. KANZLER PERFORMED A RESECTION OF THE ULNAR NERVE.

IN MAY, 1971 DR. KANZLER DIAGNOSED LACK OF ABILITY TO PERFORM INTRICATE FINGER MOTIONS, LACK OF STABILIZED PINCH TO FINGERS AND 50 PER CENT GRIP REDUCTION OF THE LEFT HAND. ON JUNE 1, 1974 A DETERMINATION ORDER AWARDED CLAIMANT 60 DEGREES FOR 40 PER CENT LOSS OF LEFT FOREARM.

ON AUGUST 15, 1974 CLAIMANT WAS EXAMINED BY DR. CHERRY WHO RATED CLAIMANT'S DISABILITY OF THE FOREARM AND HAND AT 60 PER CENT LOSS OF FUNCTION.

A DETERMINATION ORDER OF FEBRUARY 26, 1975 GRANTED CLAIMANT AN ADDITIONAL 20 PER CENT GIVING CLAIMANT A TOTAL AWARD OF 60 PER CENT LOSS OF FUNCTION OF HIS LEFT FOREARM.

DR. CHERRY EXPRESSED HIS OPINION THAT CLAIMANT HAD SUSTAINED

PERMANENT DISABILITY IN HIS LEFT SHOULDER AS A RESULT OF THE INJURY TO HIS LEFT WRIST AND THE CARRYING OF SAME IN A SLING FOR LONG PERIODS OF TIME.

DR. RAAF FELT THE SHOULDER STIFFNESS POSSIBLY WAS SECONDARY TO LAST OF FULL USE OF HIS LEFT HAND AND ARM. DR. SHORT IN NOVEMBER, 1975 FOUND NO OBJECTIVE EVIDENCE OF ANY PERMANENT DISABILITY OTHER THAN TO THE LEFT HAND.

THE REFEREE FOUND THAT THE PREPONDERANCE OF THE MEDICAL EVIDENCE LIMITED CLAIMANT'S INJURY TO THE LEFT WRIST. HE CONCLUDED CLAIMANT HAD BEEN ADEQUATELY COMPENSATED FOR HIS LOSS OF FUNCTION BY THE AWARD OF 60 PER CENT LOSS OF HIS LEFT FOREARM.

CONCERNING THE EMPLOYER'S DENIAL OF DR. CHERRY'S MEDICAL BILLS, THE REFEREE CONCLUDED THAT THESE BILLS WERE FOR EXAMINATION OF CLAIMANT PRIOR TO HEARING AND WERE FOR LITIGATION AND NOT REIMBURSEABLE BY THE CARRIER. HE AFFIRMED THE EMPLOYER'S DENIAL.

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

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 3, 1976, IS AFFIRMED.

WCB CASE NO. 75-4750 SEPTEMBER 7, 1976

JAMES AMENT, CLAIMANT

CHARLES SEAGRAVES, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE STATE ACCIDENT INSURANCE FUND'S DENIAL OF COMPENSATION BENEFITS TO CLAIMANT.

CLAIMANT SUSTAINED A COMPENSABLE INJURY ON JULY 21, 1975 TO HIS LOW BACK. HE WAS TREATED FOR LOW BACK PAIN AND HAD AN APPOINTMENT TO SEE DR. MATTHEWS - HOWEVER, PRIOR TO THIS APPOINTMENT, CLAIMANT SUFFERED ADDITIONAL INJURIES IN AN AUTOMOBILE ACCIDENT. CLAIMANT STATED ONLY HIS KNEE WAS INJURED - NO INJURY TO HIS BACK.

CLAIMANT WAS HOSPITALIZED FOR LEFT KNEE AND SHOULDER INJURIES. DR. KENDALL TREATED CLAIMANT BOTH FOR HIS LOW BACK AND KNEE PROBLEMS. HE FELT CLAIMANT WOULD EVENTUALLY RECOVER FROM HIS BACK PROBLEMS. ON SEPTEMBER 15, DR. KENDALL REPORTED THAT EVEN WITHOUT THE INDUSTRIAL INJURY IT WAS REASONABLE TO ASSUME CLAIMANT WOULD HAVE INJURED HIS BACK IN THE AUTOMOBILE ACCIDENT. THE STATE ACCIDENT INSURANCE FUND DENIED RESPONSIBILITY FOR ANY COMPENSATION AFTER (UNDERSCORED) THE AUTOMOBILE ACCIDENT.

THE REFEREE FOUND HE COULD NOT DETERMINE WHETHER CLAIMANT'S BACK PROBLEMS WERE CAUSED BY THE INDUSTRIAL INJURY OR THE ACCIDENT. HE CONCLUDED, BASED ON THE LACK OF MEDICAL EVIDENCE RELATING CLAIMANT'S BACK CONDITION SPECIFICALLY TO THE INDUSTRIAL INJURY, THAT THE STATE ACCIDENT INSURANCE FUND'S DENIAL MUST BE AFFIRMED.

THE BOARD, ON DE NOVO REVIEW, ADOPTS THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 8, 1976, IS AFFIRMED.

WCB CASE NO. 75-3933 SEPTEMBER 7, 1976

MATTHEW FLOYD, CLAIMANT

DAN O'LEARY, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

THE CLAIMANT SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH DISMISSED ITS REQUEST TO DETERMINE THE DATE CLAIMANT'S PERMANENT TOTAL DISABILITY COMMENCED.

AT A HEARING HELD ON MAY 14, 1973 THE REFEREE RULED THAT HE WOULD LIMIT THE EVIDENCE ON EXTENT OF DISABILITY CLAIMANT'S RIGHT LEG AND ISSUED HIS ORDER ACCORDINGLY. THE REFEREE'S ORDER WAS ULTIMATELY REMANDED BY THE MULTNOMAH COUNTY CIRCUIT COURT FOR HEARING ON THE MERITS OF CLAIMANT'S CLAIM FOR UNSCHEDULED DISABILITY AND, AS A RESULT THEREOF, THE SAME REFEREE, AFTER HEARING ON THE MERITS, ENTERED HIS ORDER ON MAY 9, 1975 FINDING CLAIMANT 'TO BE PERMANENTLY AND TOTALLY DISABLED AS OF THE DATE OF THE HEARING.'

THE ISSUE BEFORE THE REFEREE AND NOW BEFORE THE BOARD IS - TO WHICH HEARING WAS REFEREE RODE REFERRING, THE MAY 14, 1973 OR THE MARCH 14, 1975 HEARING?

THE STATE ACCIDENT INSURANCE FUND HAS BEEN PAYING COMPENSATION FOR PERMANENT TOTAL DISABILITY AS OF THE DATE OF THE 1975 HEARING AND QUESTIONS THE REFEREE'S JURISDICTION TO ENTERTAIN A COLLATERAL ATTACK ON THE FINAL ORDER OF ANOTHER REFEREE.

CLAIMANT CONTENDS THAT HIS PERMANENT TOTAL DISABILITY SHOULD HAVE COMMENCED AS OF THE DATE OF THE 1973 HEARING AND THAT THE FUND SHOULD BE ASSESSED PENALTIES AND ATTORNEY FEES FOR HAVING FAILED TO COMPLY WITH THE REFEREE'S 1975 ORDER.

THE REFEREE INDICATES IN HIS ORDER KNOWLEDGE OF THE BOARD'S POSITION EXPRESSED IN LOUIS CUMMINGS (UNDERSCORED), WCB CASE NO. 72-3260 - EUGENE PYEATT (UNDERSCORED), WCB CASE NO. 72-315 AND EZRA E. ZINN (UNDERSCORED), WCB CASE NO. 72-3028 BUT DISTINGUISHES THE PRESENT CASE ON THE BASIS THAT THOSE THREE CASES INVOLVED AWARDS OF PERMANENT TOTAL DISABILITY WITHOUT COMMENCEMENT DATE HAVING BEEN GIVEN IN THE RESPECTIVE ORDERS GRANTING THE AWARDS AND IN THIS CASE THE COMMENCEMENT DATE WAS GIVEN, ALTHOUGH WITH SOME APPARENT AMBIGUITY.

RELYING UPON ZINN (UNDERSCORED), THE REFEREE FOUND THAT THERE WAS AN ISSUE RAISED INVOLVING A CLAIM AND, THEREFORE, CLAIMANT HAD A RIGHT TO A HEARING ON THE ISSUE, PURSUANT TO ORS 656.319(1). HE STATED THAT HE DID NOT WISH TO ATTEMPT TO RELITIGATE THE MERITS OF THE CLAIM PREVIOUSLY DECIDED BY ANOTHER REFEREE AND WOULD LIMIT HIS DECISION TO THE CONSTRUCTION OF THE 1975 ORDER.

THE REFEREE CONSTRUED THE 1975 AWARD OF PERMANENT TOTAL

DISABILITY RESULTED FROM EVIDENCE NOT CONSIDERED BY ANY OTHER REFEREE UNTIL 1975. REFEREE RODE COULD HAVE SPECIFICALLY BACK DATED THE AWARD TO THE 1973 HEARING BUT DID NOT, THEREFORE, IT MUST BE PRESUMED THAT HE DID NOT CONSIDER SUCH ACTION JUSTIFIED, BASED UPON THE EVIDENCE BEFORE HIM AT THE 1975 HEARING. HE CONCLUDED THAT THE FUND HAD FULLY COMPLIED WITH THE REFEREE'S ORDER OF MAY 9, 1975.

THE BOARD, ON DE NOVO REVIEW, DISAGREES. AT THE FIRST HEARING IN 1973 THE REFEREE SPECIFICALLY EXCLUDED ANY EVIDENCE RELATING TO UNSCHEDULED DISABILITY. THE MULTNOMAH COUNTY COURT FOUND THIS EXCLUSION TO BE ERRONEOUS AND REMANDED THE MATTER TO THE SAME REFEREE TO TAKE EVIDENCE ON THE EXTENT OF CLAIMANT'S DISABILITY, THEREFORE, AT THE TIME OF THE 1975 HEARING, REFEREE RODE WAS HEARING EVIDENCE CONCERNING CLAIMANT'S DISABILITY, BOTH SCHEDULED AND UNSCHEDULED, WHICH WAS AVAILABLE AND HAD BEEN OFFERED AT THE TIME OF THE 1973 HEARING. THE BOARD CONTINUES TO TAKE THE POSITION THAT IN THE ABSENCE OF ANY SPECIFIC DATE IN THE REFEREE'S ORDER THE DATE THAT THE WORKMAN IS FOUND TO BE MEDICALLY STATIONARY, I.E., THE DETERMINATION ORDER, IS THE PROPER DATE TO COMMENCE PAYMENT OF PERMANENT TOTAL DISABILITY COMPENSATION.

THE BOARD FINDS NO EVIDENCE THAT THERE HAS BEEN ANY CHANGE IN CLAIMANT'S MEDICAL CONDITION FROM THE TIME HE WAS FOUND MEDICALLY STATIONARY PRIOR TO THE MAY 14, 1973 HEARING AND THE MARCH 14, 1975 HEARING. THE EVIDENCE CONCERNING HIS UNSCHEDULED DISABILITY WAS AVAILABLE BUT WAS NOT ALLOWED IN THE RECORD, HAD REFEREE RODE ALLOWED SUCH EVIDENCE TO BE OFFERED THERE WOULD HAVE BEEN NO NEED FOR THE REMAND.

THE BOARD, RELYING UPON ITS PREVIOUS RULINGS, CONCLUDES THAT CLAIMANT'S PERMANENT TOTAL DISABILITY SHOULD COMMENCE AS OF THE DATE OF THE MAY 14, 1973 HEARING.

BECAUSE OF THE AMBIGUITY OF THE ORDER OF REFEREE RODE ENTERED ON MAY 9, 1975 THE BOARD DOES NOT BELIEVE THAT THE FUND SHOULD BE ASSESSED PENALTIES AND ATTORNEY FEES FOR HAVING FAILED TO COMPLY WITH THE AFORESAID ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 18, 1976, IS REVERSED.

THE CLAIMANT IS FOUND TO BE PERMANENTLY AND TOTALLY DISABLED AS OF MAY 14, 1973.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW A SUM EQUAL TO 25 PER CENT OF THE COMPENSATION FOR PERMANENT TOTAL DISABILITY WHICH THIS ORDER HAS DIRECTED THE STATE ACCIDENT INSURANCE FUND TO PAY TO CLAIMANT FOR THE PERIOD BETWEEN MAY 14, 1973 AND MARCH 14, 1975 PAYABLE OUT OF SAID COMPENSATION, AS PAID, NOT TO EXCEED 2,300 DOLLARS.

ERNEST L. KITTS, CLAIMANT

RAYMOND RASK, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

THE CLAIMANT REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER AFFIRMING THE DETERMINATION ORDER OF DECEMBER 23, 1975 WHICH AWARDED CLAIMANT NO COMPENSATION FOR PERMANENT PARTIAL DISABILITY IN ADDITION TO THE 64 DEGREES AWARDED BY THE DETERMINATION ORDER OF MARCH 11, 1975. CLAIMANT CONTENDS THAT HE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT, A 34 YEAR OLD HIGH SCHOOL GRADUATE, SUSTAINED A COMPENSABLE INJURY ON DECEMBER 12, 1973, WHILE WORKING AS A CONSTRUCTION CARPENTER. ON MAY 16, 1974 A LAMINECTOMY AT L4-5 WAS PERFORMED, THEREAFTER, CLAIMANT CONTINUED TO HAVE SYMPTOMATOLOGY IN THE MIDDLE OF HIS BACK WHICH RADIATED UPWARDS INTO HIS SHOULDER AND NECK. ON DECEMBER 2, 1974 A LUMBAR MYELOGRAM WAS PERFORMED WHICH WAS NEGATIVE AND THE CLAIM WAS CLOSED BY A DETERMINATION ORDER DATED MARCH 11, 1975 WHICH AWARDED CLAIMANT COMPENSATION FOR TIME LOSS AND 64 DEGREES FOR 20 PER CENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT FILED A REQUEST FOR HEARING, CONTENDING THAT HIS CLAIM HAD BEEN PREMATURELY CLOSED AND HE NEEDED FURTHER MEDICAL CARE AND TREATMENT. AS A RESULT OF THE HEARING THE CLAIM WAS REOPENED AND AGAIN CLOSED ON DECEMBER 23, 1975 WITH NO ADDITIONAL AWARD FOR PERMANENT PARTIAL DISABILITY.

CLAIMANT CONTENDS THAT HIS CONDITION IS WORSE NOW THAN IT WAS IN OCTOBER, 1975, THAT THE PAIN IS MORE FREQUENT AND THAT HE IS MORE LIMITED IN MOVING ABOUT. HE TESTIFIED THAT FOR THE RELIEF OF HIS PAIN HE TAKES MEDICATION. CLAIMANT HAS REFUSED TO GO THROUGH THE PORTLAND PAIN REHABILITATION CLINIC, STATING THAT ONE OR TWO DOCTORS HAD TOLD HIM THEY COULDN'T DO ANY MORE FOR HIM - ALSO THE BROCHURES FROM THE PAIN CLINIC INDICATED THAT THEY WOULD HELP HIM LEARN TO LIVE WITH HIS PAIN AND CLAIMANT THOUGHT HE HAD ALREADY ACCOMPLISHED THAT.

IN JANUARY, 1976 CLAIMANT WAS ENROLLED BY THE VOCATIONAL REHABILITATION DIVISION IN A SIX WEEKS SALES COURSE AND, ON MARCH 1, HE COMMENCED EMPLOYMENT WITH A NEW CAR DEALER IN BEAVERTON. CLAIMANT TESTIFIED HE HAS MISSED A LOT OF WORK AND IS CONCERNED ABOUT WHETHER HE CAN HOLD HIS JOB, THE FIRST HE HAS HELD SINCE HIS INJURY OF DECEMBER 11, 1973.

THE REFEREE FOUND CLAIMANT A DIFFICULT INDIVIDUAL TO EVALUATE. CLAIMANT ARGUED HE WAS PERMANENTLY AND TOTALLY DISABLED. THE REFEREE FOUND THAT CLAIMANT HAD BEEN EXAMINED AND EVALUATED ON SEVERAL OCCASIONS BY DIFFERENT PHYSICIANS BUT NONE HAD BEEN ABLE TO COME UP WITH ANY OBJECTIVE FINDINGS OF ANY SIGNIFICANCE.

THE REFEREE, AFTER GIVING CONSIDERATION TO ALL THE TESTIMONY, WAS UNABLE TO CONSIDER CLAIMANT'S TESTIMONY AS CREDIBLE AND HE DID NOT BELIEVE THAT CLAIMANT WAS AS DISABLED AS HE WOULD LIKE TO HAVE PEOPLE BELIEVE. HE WAS NOT CERTAIN THAT CLAIMANT HAD ANY DISABILITY RESULTING FROM HIS INDUSTRIAL INJURY IF SUCH DISABILITY IS TO BE DETERMINED BY LOSS OF EARNING CAPACITY, BUT HE DID NOT SEE FIT TO MODIFY THE PREVIOUS AWARDS. HE CONCLUDED THAT CLAIMANT HAD BEEN ADEQUATELY COMPENSATED FOR ANY LOSS OF EARNING CAPACITY HE MIGHT HAVE SUFFERED.

THE BOARD, ON DE NOVO REVIEW, RELYING STRONGLY UPON THE REFEREE'S ASSESSMENT OF CLAIMANT'S CREDIBILITY, AFFIRMS AND ADOPTS HIS ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 26, 1976, IS AFFIRMED.

WCB CASE NO. 76-7 SEPTEMBER 7, 1976

LARRY LUNG, CLAIMANT

JEROME BISCHOFF, CLAIMANT'S ATTY.
ROGER WARREN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

THE EMPLOYER SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH REMANDED CLAIMANT'S CLAIM TO IT FOR PAYMENT OF BENEFITS TO CLAIMANT AS PROVIDED BY LAW.

ON OCTOBER 29, 1975 CLAIMANT SOUGHT MEDICAL TREATMENT FROM DR. WOOLPERT FOR PAIN IN HIS LOW BACK. THE DOCTOR'S CHART NOTES INDICATE CLAIMANT HAD A FALL AT HOME. CLAIMANT LATER DISPUTED THAT REPORT OF HISTORY AS BEING WRONGFUL AND DR. WOOLPERT CHANGED HIS CHART NOTES ACCORDINGLY TO REFLECT AN ON THE JOB INJURY. DR. WOOLPERT, AT THE HEARING, CORROBORATED THESE EVENTS.

ON NOVEMBER 3, 1975 CLAIMANT WAS TREATED BY DR. HJORT FOR ACUTE PAIN AND STIFFNESS IN HIS SHOULDER BLADES WHICH HE SAID RESULTED FROM TWISTING HIS BACK AT WORK ON OCTOBER 29, 1975. CLAIMANT FILED A CLAIM WITH HIS EMPLOYER ON NOVEMBER 3, 1975.

DR. WOOLPERT TESTIFIED THAT HE HAD BEEN HAVING GREAT DIFFICULTY WITH HIS OFFICE SECRETARY IN GETTING ACCURATE TRANSCRIPTIONS, IN FACT, HE SUBSEQUENTLY FIRED HER. DR. WOOLPERT BELIEVED CLAIMANT TO BE CREDIBLE AND THOUGHT THAT CLAIMANT DEFINITELY HAD SUSTAINED AN INJURY OF SOME KIND TO HIS BACK IN CLOSE PROXIMITY TO THE TIME HE HAD EXAMINED HIM.

CLAIMANT HAS NOT RETURNED TO WORK SINCE THE INCIDENT OF OCTOBER 29, 1975. THE CARRIER ISSUED ITS DENIAL ON DECEMBER 23, 1975.

THE REFEREE FOUND THAT THE ESSENTIAL CONSIDERATION IN THIS CASE WAS CLAIMANT'S CREDIBILITY. DR. WOOLPERT THOUGHT CLAIMANT HAD NOT TRIED TO DECEIVE HIM AND THAT THE HISTORY IN THE CHART NOTES COULD HAVE BEEN THE FAULT OF HIS OFFICE DUE TO THE PROBLEMS HE WAS HAVING AT THAT TIME WITH HIS SECRETARY. DR. HJORT'S REPORT CORROBORATES CLAIMANT'S TESTIMONY.

THE REFEREE CONCLUDED THAT CLAIMANT WAS A CREDIBLE WITNESS AND THAT THE MEDICAL REPORTS INDICATED THAT AN ACCIDENT DID OCCUR ON OCTOBER 29, 1975. HE REMANDED THE CLAIM TO THE EMPLOYER FOR PAYMENTS OF BENEFITS AS PROVIDED BY LAW.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE FINDINGS OF THE REFEREE. THE BOARD FEELS THAT THE WEIGHT OF THE EVIDENCE SUPPORTS CLAIMANT'S CLAIM - WHEN HE FIRST SAW DR. HJORT HE REPORTED THAT HE HAD INJURED HIS BACK AT WORK ON OCTOBER 29, 1975.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 29, 1976, IS AFFIRMED.

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

WCB CASE NO. 75-2695 SEPTEMBER 7, 1976

WALLACE MCMAHON, CLAIMANT

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

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

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

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS LOW BACK ON MAY 4, 1973. HE WAS SEEN BY DR. BOOTS ON MAY 10, 1973 FOR NECK AND BACK PAIN. THE CLAIM WAS ACCEPTED AS A 'MEDICAL ONLY'.

ON FEBRUARY 3, 1965 DR. CAMPAGNA HAD PERFORMED A DECOMPRESSIVE LAMINECTOMY.

ON JUNE 23, 1968 CLAIMANT HAD BEEN INVOLVED IN A REAR-END AUTOMOBILE COLLISION AND HAD SUFFERED FURTHER BACK, NECK AND LEG PAIN.

DR. NELSON EXAMINED CLAIMANT ON FEBRUARY 5, 1975 AND DIAGNOSED LOW BACK PAIN SYNDROME, POSSIBLE LUMBAR DISCOGENIC DISEASE AND LOW BACK STRAIN. CLAIMANT WAS HOSPITALIZED WITH LOW BACK PAIN SUPERIMPOSED ON A CHRONIC BACK PAIN SYNDROME DATING FROM 1961 MILL ACCIDENT IN WHICH CLAIMANT SUFFERED THE SAME PROBLEMS FOR WHICH HE SOUGHT TREATMENT FROM DR. BOOTS. FULL RECOVERY FROM THE LOW BACK SYNDROME WAS NOT EXPECTED.

ON FEBRUARY 27, 1975 DR. CAMPAGNA DIAGNOSED POST-TRAUMATIC AGGRAVATION OF LUMBAR SPONDYLOSIS L3-4 AND ON APRIL 16, 1975 HE PERFORMED A DECOMPRESSIVE LAMINECTOMY WITH REMOVAL OF PROTRUDED DISC.

IN JULY, 1974 CLAIMANT WAS INVOLVED IN ANOTHER AUTOMOBILE ACCIDENT WITH NO BODILY INJURY.

THE REFEREE FOUND, BASED UPON ALL OF THE MEDICAL EVIDENCE, THAT CLAIMANT HAD FAILED TO ESTABLISH A MEDICAL CAUSATION FOR HIS CLAIM FOR AGGRAVATION. DR. NELSON NEVER RELATED CLAIMANT'S PROBLEMS TO THE MAY, 1973 INDUSTRIAL INJURY, NOR DID DR. CAMPAGNA. THE REFEREE AFFIRMED THE DENIAL OF THE CLAIM.

THE BOARD, ON DE NOVO REVIEW, AGREES WITH THE FINDINGS AND CONCLUSIONS OF THE REFEREE. THE BOARD FINDS THAT TOO MANY INCIDENTS OCCURRED BOTH BEFORE AND AFTER THE INDUSTRIAL INJURY AND THE EXACERBATION CLAIMED WAS TOO MINOR TO PROVE ANY REAL AGGRAVATION OF CLAIMANT'S CONDITION SINCE THE MAY, 1973 INCIDENT.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 31, 1976, IS AFFIRMED.

WCB CASE NO. 75-4652 SEPTEMBER 7, 1976

DONALD RIGGS, CLAIMANT
AND IN THE COMPLYING STATUS OF
SHELDON HENDRICKS, EMPLOYER
WILLIAM BEERS, CLAIMANT'S ATTY.
FABRE AND EHLERS, EMPLOYER'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

THE CLAIMANT SEEKS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE EMPLOYER'S DENIAL OF CLAIMANT'S CLAIM FOR WORKMEN'S COMPENSATION BENEFITS. THE ISSUE OF THE SUBJECT AND COMPLYING STATUS OF SHELDON HENDRICKS WAS REMOVED WHEN HE STIPULATED THAT HE WAS NOT COVERED WITH INSURANCE AT ALL TIMES PERTINENT TO THIS CASE.

THE SOLE ISSUE BEFORE THE REFEREE WERE - (1) WAS CLAIMANT AN EMPLOYEE OR AN INDEPENDENT CONTRACTOR? (2) DID CLAIMANT SUFFER A COMPENSABLE INJURY?

THE CLAIMANT WAS EMPLOYED AS A TRUCK DRIVER IN POTATO PROCESSING UNTIL APRIL, 1975. MRS. SHELDON HENDRICKS, A CO-WORKER AT LAMB-WESTON, KNEW THAT HER HUSBAND WAS GOING TO NEED HELP IN A FERTILIZING JOB WHICH HE HAD UNDERTAKEN IN IDAHO AND SHE PUT CLAIMANT IN CONTACT WITH HIM. CLAIMANT WAS TO OPERATE HENDRICKS' EQUIPMENT UNDER HENDRICKS' DIRECTION - THE SPREADING ASSIGNMENTS WERE RECEIVED FROM A PLANT IN REXBURG, IDAHO. HENDRICKS TESTIFIED THAT HE EXERCISED NO CONTROL OVER CLAIMANT AND THAT CLAIMANT HAD TO OBTAIN HIS OWN INSURANCE - HOWEVER, HE DID ADMIT THAT HE COULD FIRE CLAIMANT. WHILE IN IDAHO, CLAIMANT HAD NO MONEY AND HENDRICKS PROVIDED 175 DOLLARS A MONTH DRAW WHICH WAS SENT TO CLAIMANT'S WIFE IN UMATILLA. THE LIVING QUARTERS, THE TRANSPORTATION AND ALL THE EQUIPMENT USED IN THE IDAHO OPERATION WERE PROVIDED BY HENDRICKS.

BASED UPON THE EVIDENCE RELATING TO THE EVENTS THAT TOOK PLACE WITH RESPECT TO THE IDAHO PROJECT PRIOR TO MAY 17, 1975, INCLUDING INCLEMENT WEATHER, USE OF EQUIPMENT AND DIRECTIONS GIVEN CLAIMANT BY HENDRICKS, THE REFEREE FOUND THE EVIDENCE PREPONDERATED IN FAVOR OF AN EMPLOYER-EMPLOYEE RELATIONSHIP.

WITH RESPECT TO WHETHER CLAIMANT SUFFERED A COMPENSABLE INJURY ON MAY 17, 1975, AS ALLEGED, THE REFEREE FOUND IT DIFFICULT TO BELIEVE THAT CLAIMANT COULD HAVE HAD AS SERIOUS A KNEE INJURY AS HE CLAIMED AND STILL ENGAGE IN ALL THE ACTIVITIES WHICH CLAIMANT ADMITTED TOOK PLACE AFTER THAT DATE AND PRIOR TO BEING EXAMINED BY A DOCTOR.

THE REFEREE FOUND THAT THE MANNER IN WHICH THE ALLEGED INJURY WAS SAID TO HAVE OCCURRED RAISED QUESTIONS AS TO THE CREDIBILITY OF CLAIMANT. HENDRICKS TESTIFIED THAT HE OBSERVED NO LIMPING ON THE PART OF CLAIMANT SUBSEQUENT TO THE ALLEGED INJURY AND THERE WAS NO CLAIM OF AN INJURED KNEE UNTIL SOME TIME LATER WHEN CLAIMANT WAS SEEN ON HIS COUCH WITH HIS LEG PROPPED UP ON A CHAIR AND THE KNEE WRAPPED IN AN ACE BANDAGE. CLAIMANT, ACCORDING TO HENDRICKS, TOLD HIM THAT HE HAD 'STEPPED WRONG' OFF HIS FRONT PORCH AND TWISTED HIS KNEE AFTER HE HAD ARRIVED HOME.

THERE WAS ALSO A DISCREPANCY IN THE DATES WHICH CLAIMANT GAVE FOR THE ALLEGED INJURY. CLAIMANT FIRST TOLD DR. SMITH IN PENDLETON ON JUNE 18, 1975 THAT THE DATE OF THE INJURY WAS JUNE 2, 1975, AFTER BEING ADVISED THAT THERE WAS A WAITING PERIOD OF TWO WEEKS PROVIDED IN HIS PRIVATE INSURANCE POLICY. LATER HE TOLD AN INVESTIGATOR FOR THE

STATE ACCIDENT INSURANCE FUND THAT THE INCIDENT OCCURRED ON MAY 24, 1975 - THIS WAS ABOUT THE TIME CLAIMANT FILED HIS CLAIM WITH THE FUND.

THE REFEREE CONCLUDED THE GREATER WEIGHT OF EVIDENCE WAS THAT CLAIMANT'S STATUS WAS THAT OF AN EMPLOYEE RATHER THAN AN INDEPENDENT CONTRACTOR, BUT THAT THE INJURY CLAIMANT SUFFERED TO HIS KNEE WAS NOT INCURRED IN THE COURSE AND SCOPE OF CLAIMANT'S EMPLOYMENT. HE, THEREFORE, AFFIRMED THE EMPLOYER'S DENIAL.

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

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 30, 1976, IS AFFIRMED.

CLAIM NO. RC 52447 SEPTEMBER 10, 1976

R. B. COLLINS, CLAIMANT

WESLEY FRANKLIN, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HIS NECK ON NOVEMBER 29, 1966. HIS CLAIM WAS CLOSED BY A DETERMINATION ORDER OF NOVEMBER 10, 1967 GRANTING TEMPORARY TOTAL DISABILITY AND TEMPORARY PARTIAL DISABILITY COMPENSATION AND 20 PER CENT LOSS OF AN ARM BY SEPARATION UNSCHEDULED DISABILITY.

ON JANUARY 27, 1975 CLAIMANT HAD A CERVICAL LAMINECTOMY AND INTERBODY FUSION. CLAIMANT HAD HAD A PRIOR LAMINECTOMY IN 1967.

ON JULY 21, 1975 CLAIMANT, THROUGH HIS COUNSEL, REQUESTED THE BOARD TO REOPEN HIS CLAIM PURSUANT TO ORS 656.278. ON OCTOBER 14, 1975 THE BOARD, EXERCISING ITS OWN MOTION JURISDICTION, ORDERED THE STATE ACCIDENT INSURANCE FUND TO REOPEN THE CLAIM.

CLAIMANT HAS RETURNED TO LIGHT DUTY WORK AND WAS MEDICALLY STATIONARY ON JANUARY 7, 1976.

ON AUGUST 10, 1976 A DETERMINATION WAS REQUESTED BY THE STATE ACCIDENT INSURANCE FUND. THE EVALUATION DIVISION RECOMMENDED TEMPORARY TOTAL DISABILITY FROM JANUARY 27, 1975 THROUGH MARCH 9, 1975 AND TEMPORARY PARTIAL DISABILITY FROM MARCH 10, 1975 THROUGH JANUARY 7, 1976 AND AN AWARD OF 10 PER CENT UNSCHEDULED NECK DISABILITY.

ORDER

CLAIMANT IS HEREBY GRANTED COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM JANUARY 27, 1975 THROUGH MARCH 9, 1975 AND COMPENSATION FOR TEMPORARY PARTIAL DISABILITY FROM MARCH 10, 1975 THROUGH JANUARY 7, 1976 AND TO AN AWARD OF 10 PER CENT UNSCHEDULED NECK DISABILITY.

CLAIMANT'S COUNSEL IS AWARDED, IN ACCORDANCE WITH THE BOARD'S OWN MOTION ORDER OF OCTOBER 14, 1975, 25 PER CENT OF THE COMPENSATION FOR PERMANENT PARTIAL DISABILITY AWARDED CLAIMANT BY THIS ORDER, PAYABLE OUT OF SUCH COMPENSATION AS PAID, NOT TO EXCEED 2,000 DOLLARS.

WCB CASE NO. 75-3856 SEPTEMBER 10, 1976

THE BENEFICIARIES OF
JACK ROY MCBRIDE, DECEASED
JAMES PIPPIN, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER

ON JULY 12, 1976 REFEREE JAMES P. LEAHY, BASED UPON A STIPULATION OF THE PARTIES, FOUND THAT A BONA FIDE DISPUTE EXISTED BETWEEN THE PARTIES ON THE COMPENSABILITY OF THE CLAIM IN THE ABOVE ENTITLED MATTER AND THAT THE PROPOSED SETTLEMENT WAS REASONABLE. PURSUANT TO ORS 656.289(4) HE APPROVED BY ORDER THE STIPULATED SETTLEMENT AND DISMISSED THE REQUEST FOR HEARING WITH PREJUDICE.

THE AFORESAID STIPULATED ORDER WAS SIGNED BY NORMA MCBRIDE, WIDOW OF JACK ROY MCBRIDE, THE DECEASED WORKMAN, AND MOTHER AND NATURAL GUARDIAN OF SEAN PATRICK MCBRIDE AND JACQUELINE SUSAN MCBRIDE, BY JAMES M. PIPPIN, ATTORNEY FOR NORMA MCBRIDE AND FOR SEAN PATRICK MCBRIDE AND JACQUELINE SUSAN MCBRIDE AND BY BRICE L. SMITH, ATTORNEY FOR LEROY C. MCBRIDE, CONSERVATOR AND GUARDIAN OF DON'LL ANDREW MCBRIDE AND SHAWN MARIE MCBRIDE, THE STIPULATION WAS SIGNED ON BEHALF OF THE STATE ACCIDENT INSURANCE FUND BY KENNETH L. KLEINSMITH, ASSISTANT ATTORNEY GENERAL.

ON AUGUST 11, 1976 THE BOARD RECEIVED A REQUEST FOR REVIEW FROM MARVIN S. NEPOM, AS ATTORNEY FOR LEROY C. MCBRIDE, CONSERVATOR AND GUARDIAN OF DON'LL ANDREW MCBRIDE AND SHAWN MARIE MCBRIDE, ASKING THAT THE STIPULATED ORDER, DATED JULY 12, 1976, BE SET ASIDE AND HELD FOR NAUGHT ON THE GROUNDS AND FOR THE REASON THAT THERE WAS A MISTAKE OF FACT IN FAILURE OF COMMUNICATIONS AS RELATES TO THE SUBJECT MATTER OF THE SETTLEMENT AND THAT THE ABOVE ENTITLED MATTER SHOULD BE RESET FOR HEARING ON THE MERITS.

THE BOARD FINDS NO JUSTIFICATION FOR SETTING ASIDE THE STIPULATED ORDER ENTERED BY REFEREE JAMES P. LEAHY ON JULY 12, 1976. THE ORDER IS SIGNED BY OR IN BEHALF OF ALL OF THE BENEFICIARIES OF THE DECEASED WORKMAN AND BY AN ASSISTANT ATTORNEY GENERAL, AUTHORIZED TO REPRESENT THE STATE ACCIDENT INSURANCE FUND. THERE IS NOTHING ON THE FACE OF THE STIPULATED ORDER TO INDICATE ANY MISTAKE OF FACT OR FAILURE OF COMMUNICATION RELATING TO THE SUBJECT MATTER OF THE SETTLEMENT.

ORDER

THE REQUEST FOR REVIEW OF THE STIPULATED ORDER, APPROVED BY AN ORDER DATED JULY 12, 1976, IN THE ABOVE ENTITLED MATTER, IS HEREBY DENIED.

WCB CASE NO. 75-5416 SEPTEMBER 10, 1976

CORENE H. KING, CLAIMANT
CASH PERRINE, CLAIMANT'S ATTY.
BOB JOSEPH, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE EMPLOYER SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH REMANDED CLAIMANT'S CLAIM TO IT TO PAY FOR SUCH MEDICAL TREATMENT AS DR. RINEHART HAD PROVIDED SINCE SEPTEMBER 18, 1975 TO THE

PRESENT TIME AND, THEREAFTER, UNTIL PROPER CLOSURE IS MADE, INCLUDING TREATMENT FOR CLAIMANT'S RIGHT SHOULDER CONDITION AND FOR PAYMENT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM SEPTEMBER 18, 1975 UNTIL CLOSURE PURSUANT TO ORS 656.268 AND WCB BULLETIN NO. 9, PARAGRAPH 7.

THE REFEREE'S ORDER FURTHER DIRECTED THAT ALL COMPENSATION PAID SINCE THE DETERMINATION ORDER OF DECEMBER 3, 1975 BE CONSIDERED COMPENSATION FOR TEMPORARY DISABILITY AND ALLOWING ADJUSTMENTS FOR PROPER COMPENSATION FOR PERMANENT PARTIAL DISABILITY COMPENSATION ALREADY PAID PURSUANT TO THE DETERMINATION ORDER. THE DETERMINATION ORDER OF DECEMBER 3, 1975 WAS SET ASIDE IN ITS ENTIRETY AND WAS NOT TO CONSTITUTE A FIRST DETERMINATION OF THE CLAIMANT'S CLAIM FOR PURPOSES OF AGGRAVATION. THE REFEREE ALSO AWARDED CLAIMANT'S ATTORNEY A REASONABLE ATTORNEY FEE PAYABLE OUT OF THE COMPENSATION AWARDED.

THE TWO ISSUES BEFORE THE REFEREE WERE -

1. WAS CLAIMANT CORRECTLY DETERMINED TO BE MEDICALLY STATIONARY ON SEPTEMBER 18, 1975, AS INDICATED BY THE DETERMINATION ORDER MAILED DECEMBER 3, 1975 OR WAS SHE STILL ENTITLED TO FURTHER MEDICAL TREATMENT AND COMPENSATION FOR TEMPORARY TOTAL DISABILITY?

2. IF CLAIMANT'S CONDITION WAS MEDICALLY STATIONARY ON SEPTEMBER 18, 1975 WHAT WAS THE EXTENT OF HER PERMANENT DISABILITY?

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HER LOW BACK ON NOVEMBER 27, 1972. PRIOR TO THAT DATE, CLAIMANT HAD EXPERIENCED VARIOUS SYMPTOMS OF PAIN INVOLVING HER SHOULDER, BACK, HIP AND RIGHT LEG AND HAD BEEN TREATED FROM TIME TO TIME BY DR. STACK FOR THESE PROBLEMS. AFTER THE INDUSTRIAL INJURY, SHE AGAIN SAW DR. STACK ON DECEMBER 27, 1972 AND CONTINUED UNDER HIS CARE UNTIL SHE WAS SEEN BY DR. RENWICK, A CHIROPRACTIC PHYSICIAN, WHO TREATED HER SEVERAL TIMES. THE TREATMENT RECEIVED FROM THESE DOCTORS DID NOT AFFORD CLAIMANT ANY APPARENT RELIEF AND SHE SOUGHT TREATMENT FROM DR. RINEHART. HE FIRST EXAMINED CLAIMANT ON SEPTEMBER 7, 1973 AND COMMENCED A PROGRAM UNDER WHICH CLAIMANT WAS CONTINUING TO RECEIVE TREATMENT TO THE DATE OF THE HEARING. DR. RINEHART IS CONSIDERED AS CLAIMANT'S TREATING PHYSICIAN.

ON DECEMBER 3, 1975 CLAIMANT'S CLAIM WAS CLOSED WITH AN AWARD OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY INCLUSIVE FROM JANUARY 3, 1973, PER STIPULATION DATED MAY 10, 1973, THROUGH SEPTEMBER 18, 1975 AND COMPENSATION EQUAL TO 64 DEGREES FOR 20 PER CENT UNSCHEDULED DISABILITY RESULTING FROM INJURY TO CLAIMANT'S LOW BACK. ON DECEMBER 18, 1975 DR. RINEHART ADVISED CLAIMANT'S COUNSEL THAT, BASED UPON HIS EXAMINATION OF CLAIMANT ON DECEMBER 16, 1975, CLAIMANT HAD RECOVERED FROM THE ACUTE AFFECTS OF HER INJURY OF NOVEMBER 27, 1972 BUT SHE REMAINED TOTALLY DISABLED WITH RESPECT TO GAINFUL EMPLOYMENT IN THE AREAS FOR WHICH SHE IS QUALIFIED, AND IT APPEARED THAT THIS DISABILITY IS PERMANENT. PRIOR TO THE CLAIM CLOSURE, CLAIMANT HAD BEEN EXAMINED BY PHYSICIANS AT THE DISABILITY PREVENTION DIVISION IN PORTLAND AND BY BOTH DR. CARROLL AND DR. WATTLEWORTH AT THE BEND ORTHOPEDIC AND FRACTURE CLINIC - SHE WAS NOT REFERRED TO THE DISABILITY PREVENTION DIVISION OR THE BEND CLINIC BY HER TREATING PHYSICIAN. DR. VAN OSDEL, AN ORTHOPEDIC SURGEON AT THE DISABILITY PREVENTION DIVISION, NOTED IN HIS DISCHARGE SUMMARY, DATED NOVEMBER 1, 1974, THAT CLAIMANT'S CONDITION WAS NOT QUITE STATIONARY, ALTHOUGH THE CURRENT TREATMENT WAS MORE PALLIATIVE THAN ANYTHING ELSE.

IN MAY, 1975 DR. WATTLEWORTH, AN ORTHOPEDIC SURGEON, AFTER

EXAMINING CLAIMANT, FELT THAT HER CONDITION WAS AT A POINT WHERE PERMANENT DISABILITY SHOULD BE RATED. DR. CARROLL, AN ORTHOPEDIC SURGEON, EXAMINED CLAIMANT IN AUGUST, 1971 AND WAS OF THE OPINION THAT CLAIMANT WAS A MALINGERER, HE AGREED WITH THE FINDINGS MADE BY DR. WATTLEWORTH IN HIS MAY REPORT. ON SEPTEMBER 18, 1975 DR. STACK EXAMINED CLAIMANT AND, BASED UPON SAID EXAMINATION, BELIEVED CLAIMANT'S CONDITION WAS STATIONARY, HOWEVER, HE FELT DR. RINEHART'S AND DR. WATTLEWORTH'S OPINIONS SHOULD BE CONSIDERED, PARTICULARLY DR. RINEHART'S, SINCE HE HAD BEEN FOLLOWING CLAIMANT. HE FELT THE FINAL OPINION AS TO CLAIMANT'S PROGRESS SHOULD BE WEIGHED STRONGLY IN FAVOR OF DR. RINEHART'S OPINION.

THE REFEREE FOUND NO EVIDENCE THAT THE CONFLICTING MEDICAL OPINIONS EXPRESSED BY DR. CARROLL, DR. VAN OSDEL AND DR. STACK HAD BEEN SUBMITTED TO DR. RINEHART, THE TREATING PHYSICIAN, OR THAT DR. RINEHART HAD BEEN ASKED TO AGREE UPON ANOTHER PHYSICIAN TO WHOM CLAIMANT SHOULD BE REFERRED FOR ANOTHER OPINION. HE CONCLUDED THAT SUCH PROCEDURE WAS REQUIRED BY WCB BULLETIN 9, PARAGRAPH 7, AS REVISED JUNE 19, 1975.

HE FOUND THERE WERE CONSIDERABLE CONFLICTS IN THE MEDICAL OPINIONS REGARDING EXTENT OF CLAIMANT'S IMPAIRMENT FROM THE EFFECTS OF HER INJURY, EVEN TO THE EXTENT OF BODY AREA AFFECTED BY THAT INJURY AND THAT THE PRE-EXISTING CONDITION OF THE RIGHT SHOULDER WAS AGGRAVATED BY THE CONSEQUENCE OF THE LOW BACK INJURY AND IT REQUIRED TREATMENT FOR SUCH AGGRAVATION. CLAIMANT WAS ABLE TO USE HER RIGHT SHOULDER PRIOR TO HER INDUSTRIAL INJURY AND HAS HAD INCREASING DIFFICULTY IN USE OF IT SINCE. ALTHOUGH THE REAL EFFECT OF THE INDUSTRIAL INJURY DID NOT BECOME MANIFESTED UNTIL SOMETIME AFTER THE ACTUAL STRAIN OCCURRED.

THE REFEREE CONCLUDED THAT UNDER THE POLICY SET FORTH IN WCB BULLETIN 9, PARAGRAPH 7, THAT THE TREATING PHYSICIAN OF THE INJURED WORKMAN CONTROLS THE PROGRESS OF THE CLAIM AND WHEN THE MEDICAL EVIDENCE APPEARS TO BE CLEARLY CONFLICTING THE CLAIM CAN NOT BE CLOSED UNTIL THE CLAIMANT'S TREATING PHYSICIAN HAS INDICATED THAT CLAIMANT'S CONDITION IS MEDICALLY STATIONARY. THERE WAS NOTHING IN THE RECORD TO ESTABLISH THAT DR. RINEHART HAD EVEN BEEN REQUESTED BY THE EMPLOYER TO MAKE AND SUBMIT A CLOSING EXAMINATION REPORT, THAT THIS WAS DONE BY DR. STACK. THE CONFLICTING MEDICAL OPINIONS WERE NOT SUBMITTED TO DR. RINEHART FOR HIS COMMENT, THEREFORE, SUCH OPINIONS SHOULD NOT HAVE BEEN CONSIDERED BY THE EVALUATION DIVISION IN CLOSING THE CLAIM. CLAIMANT WAS NOT CORRECTLY DETERMINED TO BE MEDICALLY STATIONARY NOR WAS SHE MEDICALLY STATIONARY ON SEPTEMBER 18, 1975. THE REFEREE FOUND THAT CLAIMANT WAS ENTITLED TO COMPENSATION FOR TEMPORARY TOTAL DISABILITY BEYOND THE DATE IT WAS TERMINATED BY THE DETERMINATION ORDER OF DECEMBER 3, 1975.

THE REFEREE CONCLUDED THAT IT WOULD NOT BE APPROPRIATE FOR HIM TO CONSIDER THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY SINCE HE HAD REMANDED THE CLAIM TO THE EMPLOYER FOR PAYMENT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY UNTIL PROPER CLOSURE WAS MADE UNDER ORS 656.268 AND, IF REQUIRED, THE PROCEDURES SET FORTH IN WCB BULLETIN 9, PARAGRAPH 7, HAD BEEN FOLLOWED.

THE BOARD, ON DE NOVO REVIEW, DISAGREES WITH THE INTERPRETATION OF THE MEDICAL REPORTS MADE BY THE REFEREE. THE EVIDENCE INDICATES THAT WHEN THE CLAIMANT FIRST SOUGHT TREATMENT FROM DR. RINEHART IN SEPTEMBER, 1973 HIS TREATMENTS WERE DIRECTED AT CLAIMANT'S OVERALL CONDITION, INCLUDING HER PRE-EXISTING PROBLEMS. IT IS NOT DISPUTED THAT CLAIMANT'S TREATING PHYSICIAN FROM SEPTEMBER, 1973 WAS DR. RINEHART, ALTHOUGH SHE HAD PREVIOUSLY RECEIVED TREATMENT FROM DR. STACK AND DR. RENWICK. DR. WATTLEWORTH, BASED UPON HIS EXAMINATION

OF CLAIMANT IN MAY, 1975, FELT HER CONDITION WAS AT A POINT WHERE HER PERMANENT DISABILITY COULD BE RATED AND THREE MONTHS LATER, DR. CARROLL EXAMINED CLAIMANT AND AGREED WITH DR. WATTLEWORTH'S FINDINGS. ONE MONTH LATER DR. STACK EXAMINED CLAIMANT AND FOUND HER CONDITION TO BE MEDICALLY STATIONARY. IT IS TRUE THAT HE STATED IN HIS REPORT THAT HE FELT THE FINAL OPINION AS TO CLAIMANT'S PROGRESS SHOULD BE RATED STRONGLY IN FAVOR OF DR. RINEHART'S OPINION AND THAT HIS (DR. STACK'S) OPINION SHOULD BE USED TO TEMPER DR. RINEHART'S IF JUSTIFIED. THE BOARD DOES NOT INTERPRET THESE OPINIONS AS BEING INS SEVERE CONFLICT WITH ONE ANOTHER. DR. RINEHART'S REPORT OF DECEMBER 18, 1975 CLEARLY STATES THAT CLAIMANT HAD RECOVERED FROM THE ACUTE AFFECTS OF HER INJURY OF NOVEMBER 27, 1972, THE FACT THAT HE ALSO STATES SHE REMAINS TOTALLY DISABLED WITH RESPECT TO GAINFUL EMPLOYMENT DOES NOT NECESSARILY MEAN SUCH TOTAL DISABILITY IS A RESULT OF AN INDUSTRIAL ACCIDENT OR THE RESPONSIBILITY OF THE EMPLOYER.

THE BOARD CONCLUDES THAT THE CLAIM WAS PROPERLY CLOSED BY THE DETERMINATION ORDER OF DECEMBER 3, 1975 - HOWEVER, BASED UPON DR. RINEHART'S REPORT OF DECEMBER 18, 1975 THE BOARD CONCLUDES THAT CLAIMANT SHOULD RECEIVE COMPENSATION FOR TEMPORARY TOTAL DISABILITY THROUGH DECEMBER 18, 1975 RATHER THAN SEPTEMBER 18, 1975 AND, TO THAT EXTENT, THE DETERMINATION ORDER OF DECEMBER 3, 1975 SHOULD BE MODIFIED.

THE BOARD FINDS THAT DR. PASQUESI, AFTER EXAMINING CLAIMANT ON FEBRUARY 23, 1976, WAS OF THE OPINION THAT CLAIMANT'S IMPAIRMENT WAS EQUIVALENT TO 10 PER CENT OF A WHOLE MAN ON THE BASIS OF CHRONIC MODERATE PAIN. DR. CARROLL HAD FOUND MILD RESIDUALS AS HAD DR. VAN OSDEL. DR. WATTLEWORTH'S REPORT INDICATED CLAIMANT SUFFERED MILD RESIDUALS FROM HER INDUSTRIAL INJURY. BASED UPON THIS MEDICAL EVIDENCE, THE BOARD CONCLUDES THAT THE DETERMINATION ORDER OF DECEMBER 3, 1975, WHICH AWARDED 64 DEGREES FOR 20 PER CENT UNSCHEDULED LOW BACK DISABILITY, ADEQUATELY COMPENSATED CLAIMANT FOR HER LOSS OF EARNING CAPACITY, THE SOLE CRITERIAN FOR DETERMINING UNSCHEDULED DISABILITY, THEREFORE, IN THAT RESPECT THE DETERMINATION ORDER SHOULD BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 2, 1976, IS REVERSED.

CLAIMANT IS AWARDED COMPENSATION FOR TEMPORARY TOTAL DISABILITY INCLUSIVELY FROM JANUARY 3, 1973, PER STIPULATION DATED MAY 10, 1973, THROUGH DECEMBER 18, 1975 AND COMPENSATION EQUAL TO 64 DEGREES FOR 20 PER CENT UNSCHEDULED LOW BACK DISABILITY. THIS IS IN LIEU OF THE AWARDS MADE BY THE DETERMINATION ORDER MAILED DECEMBER 3, 1975.

WCB CASE NO. 74-2689 SEPTEMBER 10, 1976

ROBERT E. MILTON, CLAIMANT

WILLIAM B. WYLLIE, CLAIMANT'S ATTY.
ORDER

ON AUGUST 12, 1976 THE STATE ACCIDENT INSURANCE FUND REQUESTED REVIEW OF THE REFEREE'S AMENDED ORDER, ENTERED ON JULY 14, 1976, FOR THE REASON THAT THE AMENDED ORDER WAS ENTERED MORE THAN 30 DAYS FROM THE DATE OF THE REFEREE'S FIRST ORDER APPROVING A SETTLEMENT STIPULATION - THEREFORE, HE WAS WITHOUT JURISDICTION TO ENTER SUCH ORDER.

SUBSEQUENT TO THE ENTRY OF THE REFEREE'S FIRST ORDER, JUDGE JENA SCHLEGEL WAS REQUESTED BY CLAIMANT, PURSUANT TO ORS 656.388(2), TO DETERMINE THE ADEQUACY OF THE ATTORNEY'S FEE ALLOWED BY THE REFEREE IN HIS ORDER. ON JULY 12, 1976 JUDGE SCHLEGEL INSTRUCTED THE REFEREE TO SET AN APPROPRIATE FEE, AND, ON JULY 14, 1976, THE REFEREE ACCORDINGLY ENTERED AN ORDER APPROVING AN ATTORNEY'S FEE IN THE AMOUNT OF 3,350 DOLLARS.

THE BOARD CONCLUDES THAT THE REQUEST MADE PURSUANT TO ORS 656.388(2) STAYED THE REFEREE'S ORDER OF MAY 28, 1976 APPROVING THE SETTLEMENT PENDING THE DECISION BY THE CIRCUIT COURT - THEREFORE, THE 30 DAYS WITHIN WHICH TO FILE AN APPEAL COMMENCES ON THE DATE OF THE REFEREE'S ORDER ENTERED JULY 14, 1976.

ORDER

THE REQUEST FOR THE REVIEW OF THE REFEREE'S AMENDED ORDER OF JULY 14, 1976 IS HEREBY DISMISSED.

WCB CASE NO. 74-3022 SEPTEMBER 10, 1976

WILLIAM E. PATTERSON, CLAIMANT

GALTON AND POPICK, CLAIMANT'S ATTYS.
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER REMANDING FOR HEARING

ON AUGUST 27, 1976, CLAIMANT, BY AND THROUGH HIS COUNSEL, REQUESTED THE BOARD TO EXERCISE ITS OWN MOTION PURSUANT TO ORS 656.278 AND REMAND HIS CLAIM FOR AGGRAVATION OF HIS INJURY OF APRIL 6, 1962 TO THE STATE ACCIDENT INSURANCE FUND FOR ACCEPTANCE AND PAYMENT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM MAY 22, 1974, LESS TIME WORKED, UNTIL CLOSURE PURSUANT TO ORS 656.278 AND TO AWARD CLAIMANT'S COUNSEL AS A REASONABLE ATTORNEY'S FEE THE SUM EQUAL TO 25 PER CENT OF ANY ADDITIONAL COMPENSATION FOR TEMPORARY TOTAL DISABILITY AND PERMANENT PARTIAL DISABILITY, NOT TO EXCEED 3,000 DOLLARS.

REFEREE EDWARD A. YORK, ON JUNE 29, 1976, HELD A HEARING ON THE SOLE ISSUE OF WHETHER CLAIMANT WAS ENTITLED TO CONTINUING MEDICAL SERVICES UNDER THE PROVISIONS OF ORS 656.245.

PURSUANT TO A JUDGMENT ORDER OF REMAND FROM THE MULTNOMAH COUNTY CIRCUIT COURT, REFEREE YORK FOUND THAT CLAIMANT WAS ENTITLED TO SUCH TREATMENT AND REMANDED THE CLAIM TO THE STATE ACCIDENT INSURANCE FUND BY AN ORDER DATED AUGUST 11, 1976.

THE RECORD MADE BEFORE REFEREE YORK DOES NOT CONTAIN SUFFICIENT EVIDENCE FOR THE BOARD TO DECIDE WHETHER CLAIMANT IS OR IS NOT ENTITLED TO THE OWN MOTION RELIEF WHICH HE SEEKS - THEREFORE, THE BOARD CONCLUDES THAT THIS MATTER SHOULD BE REMANDED TO REFEREE YORK TO RECEIVE EVIDENCE ON THE ISSUES OF CLAIMANT'S ENTITLEMENT TO CLAIM REOPENING AND TEMPORARY TOTAL DISABILITY BENEFITS AND CLAIMANT'S COUNSEL'S ENTITLEMENT TO REASONABLE ATTORNEY'S FEES.

UPON CONCLUSION OF THE HEARING, REFEREE YORK SHALL CAUSE TO BE PREPARED AN ABSTRACT OF THE ENTIRE RECORD OF PROCEEDINGS AND FORWARD IT TO THE BOARD TOGETHER WITH HIS RECOMMENDATIONS BASED THEREUPON.

IT IS SO ORDERED.

CARL WILLIAMS, CLAIMANT

EVOHL MALAGON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF
CROSS REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT AN AWARD OF 240 DEGREES FOR 75 PER CENT UNSCHEDULED DISABILITY AND 15 DEGREES FOR 10 PER CENT LOSS OF LEFT LEG.

CLAIMANT CROSS APPEALS CONTENDING THAT HE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HIS LOW BACK AND LEFT LEG ON JULY 5, 1973, DIAGNOSED BY DR. VARNEY AS LUMBOSACRAL SPASM WITH SCIOTIC RADICULITIS, ACUTE, LEFT.

ON SEPTEMBER 12, 1973 DR. SCHACHNER STATED CLAIMANT'S 'BASIC UNDERLYING PROBLEMS IS CHRONIC DEGENERATIVE DISEASE' OF THE LUMBAR SPINE.

ON APRIL 2, 1974 A PSYCHOLOGICAL EVALUATION FOUND CLAIMANT'S PSYCHOPATHOLOGY WAS ALMOST ENTIRELY DUE TO HIS ACCIDENT. DR. HICKMAN FELT IT WAS IMPERATIVE TO HAVE CLAIMANT RETURNED TO WORK OR HIS EMOTIONAL CONDITION WOULD DETERIORATE.

ON APRIL 5, 1974 CLAIMANT WAS SEEN BY THE BACK EVALUATION CLINIC WHICH DIAGNOSED HERNIATED INTERVERTEBRAL DISC AT L5-S1. ON JUNE 28, 1974 DR. SCHACHNER EXPRESSED HIS OPINION THAT CLAIMANT'S PAIN WAS SECONDARY TO HIS DEGENERATIVE DISEASE, DEGENERATIVE ARTHRITIS AND HIS OBESITY.

A DETERMINATION ORDER OF AUGUST 19, 1974 GRANTED CLAIMANT 80 DEGREES FOR 25 PER CENT UNSCHEDULED LOW BACK DISABILITY AND 15 DEGREES FOR 10 PER CENT LOSS OF LEFT LEG.

DR. LUCE, ON NOVEMBER 20, 1974, REQUESTED CLAIMANT'S CLAIM BE REOPENED. HE FOUND DEFINITE NERVE ROOT DAMAGE ON THE LEFT. ON JANUARY 7, 1975 PURSUANT TO A STIPULATION, CLAIMANT'S CLAIM WAS REOPENED. A MYELOGRAM WAS CONDUCTED WITH NO EVIDENCE OF NERVE ROOT DEFECT. DR. LUCE FELT CLAIMANT COULD NOT RETURN TO TRUCK DRIVING, AN OCCUPATION THAT CLAIMANT HAS DONE FOR THE PAST TEN YEARS. HIS ONLY OTHER WORK HAS BEEN IN THE LOGGING INDUSTRY.

DR. SCHACHNER IN HIS REPORT OF APRIL 30, 1975 REITERATED HIS PRIOR REPORTS THAT CLAIMANT'S BASIC PROBLEM WAS DEGENERATIVE DISEASE OF THE LUMBAR SPINE - HE FELT CLAIMANT COULD RETURN TO SEDENTARY OCCUPATIONS BUT HIS OBESITY MIGHT EVEN AFFECT HIS EMPLOYMENT ABILITIES AS IT HAS AGGRAVATED HIS PHYSICAL PROBLEMS.

A SECOND DETERMINATION ORDER OF DECEMBER 2, 1975 GRANTED CLAIMANT TEMPORARY TOTAL DISABILITY COMPENSATION ONLY.

CLAIMANT WAS SEEN BY THE VOCATIONAL REHABILITATION DIVISION BUT APPARENTLY HE TOLD THEM THAT HE COULD NOT TOLERATE A TRAINING PROGRAM. CLAIMANT DENIES THIS.

THE REFEREE FOUND LITTLE OBJECTIVE PHYSICAL FINDINGS FOR CLAIMANT'S COMPLAINTS. CLAIMANT'S PRIMARY PROBLEM IS DEGENERATIVE DISEASE OF THE LUMBAR SPINE. HE ALSO FOUND CLAIMANT LACKED MOTIVATION TO RETURN TO ANY WORK.

THE REFEREE CONCLUDED, BASED ON THE FACT THAT CLAIMANT CANNOT RETURN TO HIS BASIC OCCUPATION, THAT HE HAS A SUBSTANTIAL LOSS OF WAGE EARNING CAPACITY = HOWEVER CLAIMANT'S CONTENTION OF PERMANENT TOTAL DISABILITY WAS NOT JUSTIFIED BY THE EVIDENCE. HE GRANTED CLAIMANT 75 PER CENT UNSCHEDULED LOW BACK DISABILITY.

THE BOARD, ON DE NOVO REVIEW, DISAGREES WITH THE ASSESSMENT OF CLAIMANT'S LOSS OF EARNING CAPACITY MADE BY THE REFEREE.

THE BOARD AGREES THAT CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED = IN FACT, CLAIMANT HAS RESOURCES AVAILABLE TO HIM WHICH WOULD ENABLE HIM TO RETURN TO SEDENTARY TYPE JOB. THE BOARD FINDS THAT THE MEDICAL EVIDENCE SHOWS LITTLE OBJECTIVE FINDINGS AND CONCLUDES, BASED ON THE FACT THAT CLAIMANT COULD WORK BUT LACKS MOTIVATION, THAT AN AWARD OF 50 PER CENT ADEQUATELY COMPENSATES FOR HIS LOSS OF WAGE EARNING CAPACITY. THE AWARD FOR CLAIMANT'S SCHEDULED INJURY GRANTED BY THE DETERMINATION ORDER OF AUGUST 19, 1974 WILL NOT BE DISTURBED.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 13, 1976, IS MODIFIED.

CLAIMANT IS AWARDED 160 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED DISABILITY. THIS IS IN LIEU OF THE REFEREE'S ORDER OF APRIL 13, 1976, WHICH IN ALL OTHER RESPECTS IS AFFIRMED.

WCB CASE NO. 75-5301 SEPTEMBER 10, 1976

BLANCHE SIEWELL, CLAIMANT

CAMERON C. THOM, CLAIMANT'S ATTY.
KEITH D. SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT, REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE EMPLOYER'S DENIAL OF OCTOBER 17, 1975.

CLAIMANT, 61 YEARS OLD AT THE TIME OF HER ALLEGED INJURY, HAD WORKED FOR THE EMPLOYER FOR 16 YEARS IN THE DRAPERY DEPARTMENT WHICH REQUIRED HER TO LIFT BOLTS OF MATERIAL. ON SEPTEMBER 18, 1975 SHE FELT A SHARP PAIN IN HER RIGHT SHOULDER AND ARM WHILE LIFTING A BOLT OF MATERIAL. CLAIMANT SAW DR. PENNINGTON ON SEPTEMBER 15, WHO REFERRED HER TO DR. PERRY, AN ORTHOPEDIC PHYSICIAN.

DR. PERRY'S DIAGNOSED AN 'OLD RUPTURE, LONG HEAD BICEPS TENDON RIGHT'. CLAIMANT HAS HAD PAIN IN HER RIGHT SHOULDER FOR A FEW YEARS AND HER RIGHT ARM IS MISSHAPED. IN HIS FIRST AND SECOND REPORTS, DR. PERRY SAID CLAIMANT MADE NO MENTION OF A TRAUMATIC EVENT OCCURRING OTHER THAN A FALL WHILE PICKING BLACKBERRIES.

ON OCTOBER 17, 1975 THE EMPLOYER DENIED CLAIMANT'S CLAIM.

FOLLOWING THIS DENIAL DR. PERRY ATTEMPTED TO CLARIFY HIS CHART NOTES AND SAID CLAIMANT HAD GIVEN HIM A HISTORY OF PAIN IN HER SHOULDER

WHILE AT WORK – AND LATER THAT SHE TOLD HIM THE PAIN WAS IN HER ARM NOT HER SHOULDER.

THE REFEREE FOUND DR. PERRY'S CHANGING OF HIS CHART NOTES SUSPECT, THAT HE HAD OBVIOUSLY MADE AN EFFORT TO ASSIST THIS CLAIM.

THE REFEREE CONCLUDED THAT THE BURDEN OF PROOF WAS UPON CLAIMANT AND SHE HAS FAILED THROUGH THE MEDICAL EVIDENCE TO SUSTAIN THAT BURDEN AND HE AFFIRMED THE EMPLOYER'S DENIAL.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 5, 1976, IS AFFIRMED.

WCB CASE NO. 76–1120 SEPTEMBER 10, 1976

MOUIN SALLOUM, CLAIMANT

JAMES HUEGLI, CLAIMANT'S ATTY.
MARSHALL CHENEY, DEFENSE ATTY.
ORDER ON REMAND

ON AUGUST 25, 1976 CLAIMANT'S COUNSEL FORWARDED A REPORT FROM DR. ROBERT E. BERSELLI, DATED AUGUST 9, 1976, AND REQUESTED THAT THE ABOVE ENTITLED MATTER BE REMANDED TO REFEREE JOHN MCLEOD FOR CONSIDERATION OF SAID REPORT.

ON AUGUST 30, 1976 THE BOARD WAS ADVISED BY COUNSEL FOR THE EMPLOYER THAT IT OBJECTED TO THE REQUEST, BUT IN THE EVENT THE MATTER WAS REMANDED THAT THE EMPLOYER DESIRED TO RESERVE ITS RIGHT TO PERSONALLY DEPOSE AND EXAMINE DR. BERSELLI.

THE BOARD, AFTER DUE CONSIDERATION, FINDS THAT TO INSURE A FULL AND COMPLETE RECORD, DR. BERSELLI'S REPORT SHOULD BE REMANDED TO REFEREE MCLEOD FOR HIS CONSIDERATION AND THAT THE EMPLOYER BE GIVEN THE RIGHT TO PERSONALLY DEPOSE AND EXAMINE DR. BERSELLI.

ORDER

THE REPORT FROM DR. ROBERT E. BERSELLI, DATED AUGUST 9, 1976, IS REMANDED TO REFEREE JOHN MCLEOD WHO IS ALSO DIRECTED TO ALLOW THE EMPLOYER, JELCO, INC., TO DEPOSE DR. BERSELLI. THE REFEREE MAY GIVE CONSIDERATION TO BOTH DR. BERSELLI'S REPORT AND HIS DEPOSITION AND, THEREAFTER, BASED UPON SUCH CONSIDERATION, SHALL EITHER MODIFY OR REAFFIRM HIS PRIOR ORDER BY ENTERING AN ORDER WHICH SHALL BE CONSIDERED AS AN APPEALABLE ORDER, PURSUANT TO ORS 656.289.

THE BENEFICIARIES OF
BILLY J. MANNING, DECEASED
ROLF OLSON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY BENEFICIARIES

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE BENEFICIARIES OF THE DECEASED WORKMAN, HEREINAFTER REFERRED TO AS CLAIMANT, SEEK REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH AFFIRMED THE STATE ACCIDENT INSURANCE FUND'S DENIAL OF THE CLAIM FOR COMPENSATION FOR A FATALITY.

ON DECEMBER 18, 1974 BILLY J. MANNING, AN IRON WORKER FELL 25 FEET FROM A STEEL GIRT LANDING ON A CONCRETE SLAB. THE WEATHER WAS RAINY AND COLD AND UNDOUBTEDLY THE GIRTS WERE SLIPPERY. THERE WERE NUMEROUS PIECES OF EQUIPMENT WORKING IN THE AREA AND THE AREA WAS FULL OF NOISE REQUIRING MANNING AND HIS CO-WORKER TO CONVERSE BY YELLING. THE CO-WORKER DIDN'T ACTUALLY WITNESS THE INCEPT OF THE FALL AND NO OUTCRY WAS HEARD. THE CO-WORKER RAN DOWN TO MANNING WHO WAS LYING FACE DOWN IN A POOL OF WATER, STILL BREATHING AND BLEEDING FROM HIS MOUTH, EARS AND NOSE. WHEN THE AMBULANCE ARRIVED APPROXIMATELY TEN TO FIFTEEN MINUTES LATER, MANNING WAS STILL BREATHING BUT SHORTLY THEREAFTER HE EXPIRED.

THE FOLLOWING DAY AN AUTOPSY WAS PERFORMED WHICH REVEALED NO EVIDENCE OF INJURY IN ANY PORTION OF THE SCALP NO FRACTURES OF THE VAULT, RIBS OR EXTERNAL FRACTURES. THERE WAS A SLIGHT AREA OF DEEP BRUISING IN THE MID-PORTION OF THE STERNUM. THE MYOCARDIAM SHOWED NO EVIDENCE OF OLD OR RECENT MYOCARDIAL INFARCTION, THE ANTERIOR DESCENDING CORONARY ARTERY AND THE POSTERIOR CORONARY ARTERY BOTH HAD EVIDENCE OF HEMMORHAGING. THE PATHOLOGICAL DIAGNOSIS WAS MULTIPLE EXTERNAL BODILY INJURIES, ADVANCED CORONARY ARTERIOSCLEROSIS. DR. MCMILAN, THE PATHOLOGIST, CONCLUDED THE INJURY SUSTAINED IN THE FALL WAS NOT SUFFICIENT NATURE TO PRODUCE SUDDEN DEATH. THE CORONARY ARTERY SYSTEM SHOWED SUFFICIENT DISEASE TO ACCOUNT FOR SUDDEN DEATH, THEREFORE, HE FURTHER CONCLUDED THAT DEATH WAS DUE TO CORONARY ARTERIOSCLEROSIS WITH OCCLUSION, THAT THE TIME OF DEATH WAS APPROXIMATELY 9.30 A.M. AND THE CAUSE OF DEATH WAS CARDIAC ARRHYTHMIA CAUSING DIZZINESS WHICH RESULTED IN THE FALL.

DR. ROBINHOLD, AFTER REVIEWING THE RECORD, CONCLUDED THAT THE FALL WOULD BE COMPATIBLE WITH ACUTE CARDIAC ARRHYTHMIA - THE DECEASED WORKMAN HAD HAD SEVERE CORONARY ARTERY DISEASE. HE ALSO CONCLUDED THAT IN THE ABSENCE OF ANY UNUSUAL OR SPECIFIC EVENTS OCCURRING PRIOR TO THE DEATH THAT THE DECEASED WORKMAN'S PHYSICAL ACTIVITIES WHILE ENCOMPASSING RATHER SEVERE EXERTION, WERE PROBABLY COINCIDENTAL AND NOT CONTRIBUTORY TO THE CARDIAC ARRHYTHMIA.

DR. GROSSMAN, AFTER REVIEWING THE RECORDS, CONCLUDED THAT THE FALL TO THE CONCRETE SLAB WAS A SIGNIFICANT FACTOR. WHEN MANNING FELL HE LANDED FACE DOWN WITH A BLOW TO THE CHEST AND THIS COULD CAUSE THE RARE SITUATION OF TWO SIMULTANEOUS HEMORRHAGES. A HEMORRHAGE IN THE ARTERIES CAN HAPPEN WHERE THERE IS NO KNOWN TRAUMA BUT IT IS VERY UNCOMMON TO HAVE TWO SUCH HEMORRHAGES SIMULTANEOUSLY. DR. GROSSMAN COULD NOT SAY WITH ANY GREAT CERTAINTY WHEN THE OCCLUSION TOOK PLACE BUT IT COULD HAVE CAUSED CLAIMANT TO BECOME DIZZY AND FALL - HE FELT THAT EXERTION IN CLIMBING COULD HAVE CAUSED THE OCCLUSION CONTRIBUTING TO THE CORONARY THROMBOSIS. HIS OPINION WAS THAT THE DECEASED WORKMAN MAY HAVE SIMPLY SLIPPED AND FALLEN OR THAT

HE MIGHT HAVE HAD AN OCCLUSION OR CARDIAC ARRHYTHMIA PRIOR TO THE FALL WHICH CAUSED THE FALL – HE WAS MORE INCLINED TOWARD THE BELIEF THAT THE DECEASED WORKMAN HAD HAD A HEART PROBLEM THAT CAUSED HIS FALL AND HE FELT THAT THE FALL CAUSED THE HEMORRHAGING WHICH CREATED THE GREATEST DAMAGE AND HASTENED AND CONTRIBUTED TO HIS DEATH.

THE REFEREE IN ATTEMPTING TO DETERMINE WHETHER THIS WAS A SITUATION OF A SIMPLE SLIP AND FALL ACCIDENT OR WHETHER THE DECEASED WORKMAN HAD HAD AN OCCLUSION OR CARDIAC ARRHYTHMIA PRIOR TO THE FALL WHICH HAD CAUSED HIS DEATH, FOUND NO EVIDENCE THAT THE INITIAL WORK ACTIVITIES OF THE DECEASED WORKMAN OR ANY EXERTION IN CLIMBING TO THE POINT FROM WHICH HE HAD FALLEN HAD ANY COMPENSABLE INFLUENCE.

THE REFEREE CONCLUDED THAT HAD EXERTION IN CLIMBING TO THE SPOT FROM WHICH THE DECEASED WORKMAN HAD FALLEN THEN THE SITUATION MIGHT HAVE BEEN ONE IN WHICH THE EMPLOYMENT CONDITION PRECIPITATES A CONDITION AND WHICH BUT FOR THE WORK STRESS MIGHT HAVE GONE ON FUNCTIONING REASONABLY WELL FOR AN INDEFINITE TIME – HOWEVER, HERE THE PRE-EXISTING INFIRMITY RESULTING IN THE FATAL CORONARY OCCLUSION OCCURRED PRIOR TO THE EMPLOYMENT CONDITION, THE FALL. HE CONCLUDED THAT THE FALL WAS NOT OF SUFFICIENT GRAVITY TO CAUSE DEATH – THE MOST THAT COULD BE SAID IS THAT IT MAY HAVE HASTENED IT TO SOME DEGREE.

THE BOARD, ON DE NOVO REVIEW, DISAGREES WITH THE REFEREE'S CONCLUSIONS. THE BOARD FINDS AMPLE EVIDENCE INDICATING THAT THE FALL ITSELF WAS CAUSED BY THE WORKING CONDITIONS, I.E., THE WEATHER WAS RAINY AND COLD AND THE STEEL GIRTS WERE SLIPPERY – FURTHERMORE, THE DECEASED WORKMAN'S CO-WORKER TESTIFIED THAT HE AND THE DECEASED WORKMAN HAD MUD ON THEIR BOOTS. IT IS UNCONTRADICTED THAT CLAIMANT FELL APPROXIMATELY 25 FEET AND LANDED FACE DOWN ON A CONCRETE SLAB. THE PATHOLOGIST IN HIS AUTOPSY REPORT EXPRESSED HIS OPINION THAT THE INJURY SUSTAINED IN THE FALL WERE NOT OF SUFFICIENT NATURE TO PRODUCE SUDDEN DEATH. DR. GROSSMAN WAS OF A DIAMETRICALLY OPPOSED OPINION. HE FELT IT WAS VERY SIGNIFICANT FACTOR IN CONTRIBUTING TO THE DEATH AND THAT WHILE THERE WAS NO EVIDENCE IN THE AUTOPSY REPORT TO CONFIRM IT HE SAID HE WOULD BE VERY SURPRISED IF THE DECEASED WORKMAN HAD NOT SUFFERED A FRACTURED NECK. THE AUTOPSY REPORT WAS CONCERNED PRIMARILY WITH BRAIN OR HEART DAMAGE AND APPARENTLY THE PATHOLOGIST MADE NO EXAMINATION OF CLAIMANT'S NECK TO ASCERTAIN WHETHER THERE HAD BEEN A FRACTURE OF THE NECK OR CERVICAL SPINE. THE EVIDENCE, AS A WHOLE, INDICATES THAT THE FALL WAS COMPATIBLE WITH THE WET, MUDDY AND SLIPPERY WORKING CONDITIONS AND VERY WELL COULD HAVE CAUSED THE FALL WHICH COMBINED WITH THE PRE-EXISTING HEART CONDITION RESULTED IN DEATH.

DR. GROSSMAN TESTIFIED THAT THE FORCE OF SEVERE BLOW TO THE CHEST SUPERIMPOSED UPON A PRE-EXISTING ARTERIOSCLEROTIC HEART DISEASE PROBABLY CAUSED THE TWO SIMULTANEOUS ACUTE HEMORRHAGES IN THE CORONARY ARTERIES, AN EXTREMELY RARE THING. THERE WAS A SMALL BUT DEEP BRUISE IN THE STERNUM AREA AND IT WAS HIS OPINION THAT THE MOST LOGICAL CAUSE OF DEATH WAS SEVERE BLOW TO THE CHEST AS A RESULT OF THE FALL.

DR. MCMILAN, AFTER LISTENING TO THE TESTIMONY AT THE HEARING, STATED THAT HE AGREED WITH DR. GROSSMAN THAT THE SIMULTANEOUS HEMORRHAGING IN THE TWO CORONARY ARTERIES WAS AN EXTREMELY RARE THING AND THAT THE FALL COULD VERY WELL HAVE CONTRIBUTED TO IT AS THERE HAD TO BE A TREMENDOUS AMOUNT OF ENERGY DISSIPATED. WHEN THIS ENERGY IS DISSIPATED IN THE CHEST AREA, AS EVIDENCED BY THE BRUISING OVER THE STERNUM, THAT ENERGY IS DISSIPATED THROUGHT THE WHOLE CHEST AREA AND, THE ARTERIES BEING PREVIOUSLY DAMAGED BY ARTERIOSCLEROSIS, IT WOULD BE VERY UNDERSTANDABLE THAT THE PRESSURE COULD CAUSE A BLOWOUT IN THOSE AREAS.

THE BOARD CONCLUDES THAT TO FIND THAT THE DISEASED ARTERIOSCLEROTIC HEART DISEASE ALONE CAUSED HIS DEATH IS NOT SUPPORTED BY THE EVIDENCE. UNLESS MANNING HAD DIED INSTANTLY THE FALL MUST HAVE, ACCORDING TO BOTH DR. GROSSMAN AND DR. MCMILAN, MATERIALLY CONTRIBUTED TO OR HASTENED THE DEATH. THE EVIDENCE INDICATES THAT MANNING LIVED FOR 10 OR 15 MINUTES AFTER THE FALL.

THE BOARD CONCLUDES THAT THE CLAIMANT PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT THE WORKMAN'S DEATH EITHER WAS CAUSED BY THE FALL ALONE, THE FALL ACTING UPON ARTERIOSCLEROTIC HEART DISEASE, AN ARTERIOSCLEROTIC HEART DISEASE AGGRAVATED BY WORK WHICH CAUSED THE FALL AND RESULTED IN HIS DEATH, OR AN ARTERIOSCLEROTIC HEART DISEASE UNRELATED TO WORK WHICH CAUSED THE FALL AND RESULTED IN THE DEATH AND THAT ANY ONE OF THESE FOUR CAUSES, BY AND OF ITSELF, WOULD RENDER THE CLAIM COMPENSABLE.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 16, 1976, IS REVERSED.

THE CLAIM IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR PAYMENT OF COMPENSATION, AS PROVIDED BY LAW, UNTIL THE CLAIM IS CLOSED PURSUANT TO ORS 656.268.

THE STATE ACCIDENT INSURANCE FUND TO PAY THE WITNESS FEE FOR DR. K. D. MCMILAN IN THE SUM OF 134 DOLLARS.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY FEE FOR HIS SERVICES BEFORE THE REFEREE THE SUM OF 2,000 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

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

WCB CASE NO. 75-985 SEPTEMBER 10, 1976

ROBERT MOTTA, CLAIMANT

AND IN THE MATTER OF THE
COMPLIANCE OF SAMUEL HUGH MALLICOAT
WILLIAM RUTHERFORD, CLAIMANT'S ATTY.
DARYLL KLEIN, EMPLOYER'S ATTY.
MICHAEL HOFFMAN, DEFENSE ATTY.
AMENDED ORDER ON REVIEW

THE BOARD'S ORDER ON REVIEW ENTERED SEPTEMBER 1, 1976 IN THE ABOVE ENTITLED MATTER SHOULD BE AMENDED TO INCLUDE AN AWARD OF A REASONABLE ATTORNEY FEE. ALSO THE SECOND PARAGRAPH ON PAGE 5 OF SAID ORDER SHOULD BE DELETED.

ORDER

IT IS HEREBY ORDERED THAT CLAIMANT'S COUNSEL RECEIVE A REASONABLE ATTORNEY FEE IN THE AMOUNT OF 300 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND, FOR SERVICES IN CONNECTION WITH BOARD REVIEW.

IT IS FURTHER ORDERED THAT THE SECOND PARAGRAPH ON PAGE 5 OF THE ORDER ON REVIEW, ENTERED SEPTEMBER 1, 1976, BE AND IT HEREBY IS DELETED.

CLAIM NO. FC 51823 SEPTEMBER 10, 1976

ROY C. BURNS, CLAIMANT

DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

THE WORKMAN, ROY C. BURNS, DIED ON FEBRUARY 19, 1976 OF ARTERIOSCLEROTIC HEART DISEASE. HE HAD SUFFERED A COMPENSABLE INJURY ON DECEMBER 13, 1966 AND HIS CLAIM WAS FIRST CLOSED ON SEPTEMBER 14, 1967 WITH AN AWARD OF 10 DEGREES FOR 10 PER CENT LOSS OF THE LEFT FOOT. THE CLAIM WAS SUBSEQUENTLY REOPENED. LATER THE WORKMAN DEVELOPED OSTEOMYELITIS. THE CLAIM WAS AGAIN CLOSED ON MARCH 9, 1972 WITH AN AWARD OF 65 PER CENT OF THE LEFT LEG.

ON OCTOBER 26, 1972, THE WORKMAN WAS ADMITTED TO THE VA HOSPITAL WITH A DIAGNOSIS OBSERVATION FOR HEART DISEASE AND CHRONIC OSTEOMYELITIS. ON NOVEMBER 20, 1972 THE LEFT LEG WAS AMPUTATED. THE WORKMAN CONTINUED TO BE UNDER MEDICAL CARE THROUGH JULY 5, 1973 AT WHICH TIME HE WAS NEITHER MEDICALLY STATIONARY NOR ADEQUATELY FITTED WITH A PROSTHESIS - HE WAS NEVER RELEASED TO RETURN TO WORK. DR. PASQUESI EXAMINED CLAIMANT ON DECEMBER 2, 1975 AND STATED THAT, AT THAT TIME, THE LEG WAS HEALED WITH AN ADEQUATE STUMP OF SIX INCHES AND THAT CLAIMANT HAD A WELL FITTING PROSTHESIS.

THE MATTER WAS SUBMITTED FOR A FINAL DETERMINATION BY THE EVALUATION DIVISION OF THE BOARD WHICH RECOMMENDED THAT THE EMPLOYER AND HIS CARRIER PAY TO THE PERSON OR PERSONS WHO WOULD HAVE BEEN ENTITLED TO RECEIVE DEATH BENEFITS IF THE INJURY CAUSING THE TEMPORARY DISABILITY HAD BEEN FATAL, ANY ACCRUED COMPENSATION FOR TEMPORARY TOTAL DISABILITY NOT PAID TO DECEDENT DURING HIS LIFE TIME.

THE WORKMAN'S COMPENSATION ACT DETERMINES WHETHER AND FOR WHOM A CLAIM FOR COMPENSATION BENEFITS SURVIVES THE DEATH OF THE WORKMAN.

ORS 656.208 PROVIDES THAT IF THE INJURED WORKMAN DIES DURING A PERIOD OF PERMANENT TOTAL DISABILITY, WHATEVER THE CAUSE OF DEATH, ANY DEPENDENTS LISTED IN ORS 656.204 SHOULD BE PAID IN THE SAME MANNER AND IN THE SAME AMOUNTS PROVIDED IN THAT STATUTE.

ORS 656.218, PRIOR TO ITS AMENDMENT BY OREGON LAWS 1973 CHAPTER 355 SECTION 1, PROVIDED THAT IN CASE OF THE DEATH OF A WORKMAN RECEIVING MONTHLY PAYMENTS ON ACCOUNT OF PERMANENT PARTIAL DISABILITY SUCH PAYMENTS SHALL CONTINUE FOR THE PERIOD IN WHICH SAID WORKMAN, IF SURVIVING, WOULD HAVE BEEN ENTITLED TO AND SUCH PAYMENTS SHALL BE MADE TO THE PERSON OR PERSONS WHO WOULD HAVE BEEN ENTITLED TO RECEIVE DEATH BENEFITS IF THE INJURY CAUSING SUCH DISABILITY WOULD HAVE BEEN FATAL.

IN THIS CASE THE WORKMAN, ROY C. BURNS, WAS NEITHER PERMANENTLY AND TOTALLY DISABLED AT THE TIME OF HIS DEATH, NOR WAS HE RECEIVING MONTHLY PAYMENTS ON ACCOUNT OF PERMANENT PARTIAL DISABILITY, THEREFORE, ALL COMPENSATION BENEFITS TO WHICH HE MAY HAVE BEEN ENTITLED TERMINATED WITH HIS DEATH ON FEBRUARY 19, 1972.

ORDER

THE CLAIM FOR ADDITIONAL COMPENSATION FOR CLAIMANT'S INJURY OF DECEMBER 13, 1966 IS CLOSED PURSUANT TO ORS 656.278 WITH NO AWARD OF COMPENSATION.

WCB CASE NO. 75-2816 SEPTEMBER 13, 1976

JAMES HOUSE, CLAIMANT

PAUL RASK, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER OF JUNE 25, 1975 WHICH GRANTED CLAIMANT COMPENSATION FOR TEMPORARY TOTAL DISABILITY ONLY.

CLAIMANT, A ROOFER, SUSTAINED A COMPENSABLE LOW BACK INJURY ON JANUARY 22, 1975 WHEN HE FELL FROM A LADDER. HE WAS TREATED CONSERVATIVELY BY DR. BUTLER, WHO, IN HIS REPORT OF MARCH 12, 1975, STATED THAT CLAIMANT'S INJURY REPRESENTED AN AGGRAVATION OF A LOW BACK INJURY CLAIMANT SUFFERED IN 1972, AND RELATED TO HIS PRIOR DIFFICULTIES.

DR. PASQUESI EXAMINED CLAIMANT ON MAY 16, 1975 AND DIAGNOSED LUMBOSACRAL INSTABILITY. HE RATED CLAIMANT'S DISABILITY AT 17 PER CENT OF THE WHOLE MAN. HE SAID HE THOUGHT CLAIMANT'S PRIOR AWARD FOR THE 1972 INJURY WAS 17 AND ONE HALF PER CENT AND THAT CLAIMANT AT THE PRESENT TIME WAS NOT ENTITLED TO A GREATER AWARD THAN THAT.

A DETERMINATION ORDER OF JUNE 25, 1975 GRANTED TIME LOSS ONLY.

THE REFEREE FOUND THAT DR. BUTLER, CLAIMANT'S TREATING DOCTOR, HAD CONCLUDED THAT CLAIMANT'S BACK PROBLEMS WERE AN AGGRAVATION OF HIS 1972 INJURY. THE REFEREE CONCLUDED THAT THERE WAS NO MEDICAL EVIDENCE TO JUSTIFY FINDING THAT CLAIMANT SUFFERED ANY PERMANENT PARTIAL DISABILITY AS A RESULT OF HIS 1975 INJURY. HE AFFIRMED THE DETERMINATION ORDER OF JUNE 25, 1975.

THE BOARD, ON DE NOVO REVIEW, ADOPTS THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 3, 1976, IS AFFIRMED.

WCB CASE NO. 75-3133 SEPTEMBER 13, 1976

DALE BEVERAGE, CLAIMANT

ROBERT PETERSON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT PERMANENT TOTAL DISABILITY COMPENSATION.

CLAIMANT SUFFERED A COMPENSABLE INJURY TO HIS RIGHT AND LEFT SHOULDERS AND CHEST ON JULY 6, 1973. HE WAS WORKING IN A DEEP TRENCH WHICH CAVED IN AND BURIED CLAIMANT TO HIS CHIN. DR. VANDERBILT STATED CLAIMANT HAD SUFFERED A CRUSHING-TYPE INJURY TO HIS CHEST CAUSING FRACTURES OF ALL HIS RIBS ON THE RIGHT EXCEPT THE 12TH - AND THE 1ST, 2ND, 8TH, 9TH, 10TH, AND 11TH RIB ON THE LEFT.

CLAIMANT WAS REFERRED TO DR. PARSONS, A NEUROSURGEON, WHO EXAMINED CLAIMANT ON AUGUST 29, 1973. CLAIMANT WAS COMPLAINING OF PAIN IN HIS SHOULDER BLADES AND WEAKNESS. DR. PARSONS DIAGNOSED A POSSIBLE CERVICAL NERVE ROOT INJURY. ON AUGUST 31, 1973 A CERVICAL MYELOGRAM WAS PERFORMED WHICH SHOWED MINIMAL TO MODERATE DEGENERATIVE CHANGES OF THE CERVICAL SPINE AND OSTEOPHYTES ENCROACHING UPON THE SUBARACHNOID SPACE AT C3-4 LEVEL.

ON DECEMBER 26, 1973 DR. VANDERBILT STATED CLAIMANT HAD INCREASED SORENESS OF THE SHOULDER BLADE WHICH MIGHT BE NERVE REGENERATION. ON APRIL 22, 1974 DR. PARSONS SAID CLAIMANT COULD NOT RETURN TO HIS REGULAR EMPLOYMENT. DR. VANDERBILT'S MAY 6, 1974 REPORT STATED CLAIMANT WAS TOTALLY DISABLED FROM RETURNING TO HIS NORMAL TYPE WORK AND THAT CLAIMANT'S 'LOSS OF NORMAL USE OF HIS ARMS HAS CAUSED A RATHER SEVERE EMOTIONAL DEPRESSION AND HE SUGGESTED REHABILITATION FOR CLAIMANT.

DR. MASON EVALUATED CLAIMANT AT THE DISABILITY PREVENTION DIVISION IN JULY, 1974. HE FOUND MODERATELY SEVERE EMOTIONAL OVERLAY WITH DEPRESSION AND POST-TRAUMATIC NEUROSIS - HE BELIEVED THAT A JOB CHANGE WAS NECESSARY.

ON AUGUST 7, 1974 CLAIMANT'S PSYCHOLOGICAL EVALUATION INDICATED 'PSYCHOPATHOLOGY APPEARS TO BE RELATED TO THE PATIENTS ACCIDENT TO A MODERATELY SEVERE DEGREE'.

ON SEPTEMBER 17, 1974 A DETERMINATION ORDER WAS ISSUED GRANTING CLAIMANT 244 DEGREES FOR 70 PER CENT UNSCHEDULED DISABILITY.

CLAIMANT RETURNED TO WORK FOR THE EMPLOYER IN APRIL, 1974 AS A FLAGMAN AND WORKED ABOUT SIX WEEKS, BUT HE COULDN'T EVEN TOLERATE STANDING FOR LONG OR USING HIS ARMS. CLAIMANT SUFFERS FROM DIZZINESS AND BLURRED VISION. HE CAN DO THINGS FOR A SHORT PERIOD OF TIME AND THEN WEAKNESS OVERCOMES HIM.

THE REFEREE FOUND CLAIMANT TO BE A CREDIBLE WITNESS WHO PRIOR TO HIS INJURY, HAD BEEN A HARD WORKER. MR. MURPHY, A SERVICE COORDINATOR, TESTIFIED THAT HE HAD NOT BEEN ABLE TO FIND ANY TYPE OF WORK WHICH CLAIMANT COULD DO - CLAIMANT MIGHT POSSIBLY HANDLE A CLERKING JOB BUT HE WAS UNABLE TO STAND ON HIS FEET FOR LONG PERIODS.

WITH REGARD TO CLAIMANT'S MOTIVATION TO RETURN TO WORK, THE REFEREE FOUND THAT IF CLAIMANT WAS UNABLE TO DO ANY MORE THAN THAT WHICH HE TESTIFIED HE DID ON HIS FARM IT WOULD BE IMPOSSIBLE FOR CLAIMANT TO HOLD DOWN A REGULAR FULL TIME JOB AND, THEREFORE, IT WOULD BE A USELESS EFFORT FOR CLAIMANT TO LOOK FOR WORK.

THE REFEREE CONCLUDED, BASED ON CLAIMANT'S AGE, LIMITED WORK EXPERIENCE, TRAINING AND PHYSICAL IMPAIRMENT, THAT HE FALLS WITHIN THE 'ODD-LOT' CATEGORY. THE FUND ARGUES THAT CLAIMANT CAN WORK - HOWEVER, THE FUND FAILED TO FIND ANY SPECIFIC JOB WHICH CLAIMANT COULD PERFORM. THE REFEREE FOUND CLAIMANT TO BE PERMANENTLY AND TOTALLY DISABLED.

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

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 14, 1976, IS AFFIRMED.

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

WCB CASE NO. 73-3590 SEPTEMBER 13, 1976

HOWARD OLSON, CLAIMANT

HAYES PATRICK LAVIS, CLAIMANT'S ATTY.
FRED AEBI, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH DENIED CLAIMANT'S CLAIM.

CLAIMANT IS 65 YEARS OLD, A FISHERMAN AND PILE BUCK BY PROFESSION. IN DECEMBER, 1972, CLAIMANT HAD A COMPENSABLE HERNIA REPAIR PERFORMED BY DR. MCALLISTER - IMMEDIATELY FOLLOWING THIS SURGERY DR. ROGERS REMOVED A PACEMAKER. LATER CLAIMANT DEVELOPED A RASH FROM HIS WRIST UP TO THE NECK AREA. CLAIMANT HAD PREVIOUSLY HAD SALMON POISONING BUT NEVER HAD HAD A RASH.

THE HOSPITAL RECORDS DO NOT INDICATE ANY RASH OR SKIN ERUPTIONS ON THE CLAIMANT. CLAIMANT WAS GIVEN LOCAL AND SPINAL ANESTHESIA, A NUMBER OF DRUGS AND ANTIBIOTICS.

DR. LARSEN'S REPORT OF APRIL 5, 1974 STATES THAT WHEN HE EXAMINED CLAIMANT ON APRIL 5, 1973 CLAIMANT HAD A GENERALIZED ERUPTION ON HIS BODY - A BIOPSY SHOWED DERMATITIS. DR. LARSEN DIAGNOSED DRUG REACTION OR DERMATITIS HERPETIFORMIS. HE STATED THAT THE DYE STUDY CONDUCTED IN THE HOSPITAL COULD HAVE CAUSED THE ERUPTION OR AGGRAVATED THE DERMATITIS HERPETIFORMIS.

THE REFEREE FOUND THAT CLAIMANT HAD NOT SUSTAINED HIS BURDEN OF PROVING A CAUSAL RELATIONSHIP BETWEEN ANY DRUG, MEDICINE, OR DYE INJECTED IN OR ADMINISTERED TO CLAIMANT AS A CONSEQUENCE OF HIS HERNIA OPERATION AND THE DERMATITIS. DR. LARSEN IN HIS DEPOSITION SAID HE COULD NOT POSITIVELY, OR WITH MEDICAL PROBABILITY, STATE FOR CERTAIN THE CAUSE OF CLAIMANT'S RASH OR SKIN ERUPTIONS. THE REFEREE CONCLUDED THAT CLAIMANT'S CLAIM SHOULD BE DENIED.

THE BOARD, ON DE NOVO REVIEW, ADOPTS THE CONCLUSIONS OF THE REFEREE.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 29, 1976, IS AFFIRMED.

WCB CASE NO. 75-5140 SEPTEMBER 13, 1976

MILFORD JACKSON, CLAIMANT

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

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT PERMANENT TOTAL DISABILITY.

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HIS NECK ON JULY 25, 1973. CLAIMANT HAD PRIOR INJURIES - IN 1969, A HEAD INJURY - IN 1970,

AN INJURY THROUGH THE RIGHT ARM FROM SHOULDER TO HAND. THE 1970 INJURY WAS DIAGNOSED AS CERVICAL DISC, AN ANTERIOR CERVICAL DISCECTOMY AND INTERBODY FUSION AT C5-6 WAS PERFORMED IN 1971. CLAIMANT WAS AWARDED 48 DEGREES FOR 15 PER CENT UNSCHEDULED NECK DISABILITY FOR THE 1970 INJURY, HE RECEIVED NO AWARD OF PERMANENT PARTIAL DISABILITY FOR THE 1969 INJURY.

CLAIMANT WORKED AS A MECHANIC UNTIL HIS INJURY OF 1973. HE SAW DR. MISKO ON SEPTEMBER 11, 1973 WHO DIAGNOSED A CERVICAL STRAIN OR A RUPTURED CERVICAL DISC.

ON OCTOBER 8, 1974 DR. MISKO PERFORMED AN ANTERIOR CERVICAL DISCECTOMY AND INTERBODY FUSION AT C4-5. ON FEBRUARY 6, 1975 DR. MISKO FELT CLAIMANT COULD NEVER RETURN TO HIS FORMER OCCUPATION BUT HE COULD HANDLE LIGHT EMPLOYMENT. HE SAID CLAIMANT WAS MEDICALLY STATIONARY AND, ON JUNE 6, 1975, A DETERMINATION ORDER GRANTED CLAIMANT 48 DEGREES FOR 15 PER CENT UNSCHEDULED DISABILITY. CLAIMANT ATTEMPTED TO RETURN TO HIS FORMER JOB BUT COULD NOT PERFORM THE REQUIRED DUTIES. HIS CLAIM WAS REOPENED ON JULY 17, 1975.

ON OCTOBER 27, 1975 THE ORTHOPAEDIC CONSULTANTS CONSIDERED CLAIMANT'S TOTAL LOSS OF FUNCTION OF HIS NECK AS MODERATE AND DUE TO THIS INJURY AS MILDLY MODERATE. THEY SUGGESTED RETRAINING FOR LIGHTER TYPE WORK. THE CLAIM WAS AGAIN CLOSED AND A DETERMINATION ORDER OF NOVEMBER 25, 1975 GRANTED CLAIMANT 32 DEGREES FOR 10 PER CENT UNSCHEDULED NECK DISABILITY.

CLAIMANT IS 58 YEARS OLD, HAS AN 8TH GRADE EDUCATION AND HAS BEEN A MECHANIC FOR 30 YEARS.

THE REFEREE FOUND THAT CLAIMANT DEFINITELY COULD NOT RETURN TO HIS FORMER OCCUPATION AND THAT RETRAINING FOR HIM WAS NOT FEASIBLE. THE REFEREE CONCLUDED, BASED ON CLAIMANT'S AGE, EDUCATION, LIMITED SKILLS AND WORK EXPERIENCE, THAT HE FELL WITHIN THE 'ODD-LOT' CATEGORY AND THE FUND FAILED TO SHOW ANY REGULAR, SUITABLE AND GAINFUL WORK WAS AVAILABLE TO CLAIMANT, THEREFORE, CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED.

THE BOARD, ON DE NOVO REVIEW, FOUND THAT THE MEDICAL EVIDENCE DOES NOT JUSTIFY PERMANENT TOTAL DISABILITY. IN FACT, THE CONCENSUS OF MEDICAL EVIDENCE INDICATES CLAIMANT COULD, AND SHOULD, RETURN TO LIGHT DUTY WORK. THE ORTHOPAEDIC CONSULTANTS RATED CLAIMANT'S LOSS OF FUNCTION OF THE NECK DUE TO THIS INJURY AS MILDLY MODERATE.

THE BOARD CONCLUDES THAT ALTHOUGH CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED, HE IS ENTITLED TO AN AWARD OF 75 PER CENT TO COMPENSATE HIM FOR HIS LOSS OF WAGE EARNING CAPACITY. THE EVIDENCE IS ABUNDANT THAT MANY JOBS CLAIMANT COULD DO BEFORE THE INJURY ARE NOW FORECLOSED TO HIM.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 25, 1976, IS MODIFIED.

CLAIMANT IS HEREBY GRANTED AN AWARD OF 240 DEGREES OF A MAXIMUM 320 DEGREES FOR UNSCHEDULED NECK DISABILITY. THIS IS IN LIEU OF THE AWARD MADE BY THE REFEREE'S ORDER OF APRIL 25, 1976, WHICH IN ALL OTHER RESPECTS IS AFFIRMED.

WCB CASE NO. 75-5103 SEPTEMBER 13, 1976

SHERRY ESPY, CLAIMANT
JONES, LANG, KLEIN, WOLF AND SMITH,
CLAIMANT'S ATTYS.
PHILIP MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

Reviewed by Board Members Moore and Phillips.

Claimant requests Board review of the referee's order which granted claimant 32 degrees for 10 per cent unscheduled disability and assessed a penalty on the employer in the amount of 25 per cent of its late payment of accrued temporary total disability but denied claimant vocational rehabilitation services.

Claimant sustained a compensable injury to her back on September 30, 1974. She incurred soft tissue injuries and was treated conservatively. Claimant has not worked since her injury and has not attempted to seek employment.

Dr. Pasquesi examined claimant on October 6, 1975 and made no objective diagnosis - a subjective diagnosis indicated chronic lumbosacral and left sacroiliac instability. He rated claimant's disability as 5 per cent of the whole man. He thought claimant was medically stationary at that time, but not necessarily vocationally stationary.

Dr. North also examined claimant and felt she could perform light work, and then progress to regular work - if not, she should be referred for vocational rehabilitation.

A determination order of November 18, 1975 granted claimant compensation for temporary total disability only.

The referee found that claimant could not be considered a vocationally handicapped workman, as defined by OAR 436-61-005(4). Claimant had proven she was disabled and could not return to her regular employment as a waitress. However, claimant had made no attempt to find other suitable employment although evidence indicated she could do different types of work.

The referee concluded that claimant had failed to prove that she lacked any skills that would enable her to readily return to full time employment.

The referee found that because claimant cannot return to her former occupation that she had sustained a loss of wage earning capacity which entitled her to a minimal award. He granted claimant 32 degrees.

The referee found the carrier had not complied with OAR 436-61 by keeping the Board informed with regard to claimant's status as a vocationally handicapped person, but, in view of his ruling that claimant was not such a person, he did not assess a penalty or award an attorney's fee.

The carrier, when paying claimant temporary total disability (from July 1 to November 1, 1975), had underpaid claimant 21 dollars per month and the referee assessed a 25 per cent penalty on this late payment of temporary total disability compensation.

THE BOARD, ON DE NOVO REVIEW, ADOPTS THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 1, 1976 IS AFFIRMED.

WCB CASE NO. 76-47 SEPTEMBER 13, 1976

WILLIE COOPER, CLAIMANT

F. P. STAGER, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

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

CLAIMANT SUFFERED A COMPENSABLE INDUSTRIAL INJURY TO HIS BACK ON APRIL 7, 1971. HE CONTINUED WORKING WITH SEVERE BACK PAIN, SAW DR. WILSON WHO REFERRED CLAIMANT TO DR. PALUSKA. DR. PALUSKA RECOMMENDED CONSERVATIVE TREATMENT AND HOSPITALIZED CLAIMANT IN MAY, 1971 FOR TRACTION.

DR. PALUSKA EXAMINED CLAIMANT ON AUGUST 16, 1971 AND DIAGNOSED SCIATIC NERVE IRRITATION AND FOUND CLAIMANT WAS NOT MEDICALLY STATIONARY.

ON JANUARY 17, 1972 DR. PALUSKA RELEASED CLAIMANT TO WORK BUT TOLD HIM TO AVOID UNDUE BACK STRAIN. A DETERMINATION ORDER ISSUED FEBRUARY 2, 1972 GRANTED CLAIMANT NO AWARD FOR PERMANENT PARTIAL DISABILITY.

CLAIMANT RETURNED TO WORK BUT CONTINUED HAVING LOW BACK PAIN AND DR. PALUSKA FELT CLAIMANT SHOULD NOT RETURN TO HIS REGULAR OCCUPATION AND SHOULD GET HELP FROM THE VOCATIONAL REHABILITATION DIVISION.

DR. HOLM EXAMINED CLAIMANT ON MAY 22, 1972 AND FOUND 'NO SERIOUS PHYSICAL IMPAIRMENT' BUT HE DID HAVE 'A SLIGHT DEGREE OF RESIDUAL PHYSICAL IMPAIRMENT.' HE FELT CLAIMANT COULD RETURN TO HIS REGULAR OCCUPATION. CLAIMANT WAS ENTERED IN A VOCATIONAL REHABILITATION TRAINING PROGRAM IN FEBRUARY, 1972 AND IN NOVEMBER, 1973 HE BEGAN CUSTODIAL WORK WITH NO APPARENT PROBLEMS.

A SECOND DETERMINATION ORDER OF AUGUST 17, 1972 HAD GRANTED CLAIMANT 32 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK DISABILITY. ON NOVEMBER 30, 1972, PURSUANT TO A STIPULATION, CLAIMANT WAS GRANTED AN ADDITIONAL 48 DEGREES.

CLAIMANT CONTINUED TO DO CUSTODIAL WORK AND EARNED A SATISFACTORY INCOME, HIS CASE WAS CLOSED BY THE DIVISION OF VOCATIONAL REHABILITATION ON MAY 14, 1973. THEREAFTER, CLAIMANT BEGAN TO HAVE RECURRENT BACK PAIN, HE ASKED THE FUND TO REOPEN HIS CLAIM. THE FUND AGREED TO HAVE CLAIMANT RE-EVALUATED BY DR. PALUSKA AT ITS EXPENSE.

IN AUGUST, 1974 CLAIMANT VOLUNTARILY ENTERED OREGON STATE HOSPITAL FOR BIZARRE BEHAVIOR DIAGNOSED AS SCHIZOPHRENIA. IN SEPTEMBER, 1975 DR. PALUSKA STATED CLAIMANT HAD LOST HIS JANITORIAL CONTRACT DUE TO RECURRENT BACK PAIN AND CLAIMANT HAD RESORTED TO DRINKING, AND IN HIS REPORT OF NOVEMBER 10, 1975 HE FOUND 'NO OBJECTIVE EVIDENCE OF

BACK DISEASE' NOR ANY REASON FOR CLAIMANT'S PERSISTENT COMPLAINTS.

ON NOVEMBER 24, 1975 THE FUND DENIED CLAIMANT'S CLAIM FOR AGGRAVATION.

THE REFEREE FOUND THAT CLAIMANT'S BACK WAS ASYMPTOMATIC IN 1972 - DR. PALUSKA HAD AUTHORIZED CLAIMANT TO RETURN TO WORK BUT TO AVOID UNDUE HEAVY LIFTING. DR. HOLM FOUND ONLY SLIGHT RESIDUAL IMPAIRMENT IN MAY, 1972 AND FELT CLAIMANT COULD RETURN TO HIS REGULAR OCCUPATION. DR. PALUSKA, ON NOVEMBER 10, 1975 COULD MAKE NO OBJECTIVE FINDINGS TO SUPPORT CLAIMANT'S COMPLAINTS.

THE REFEREE CONCLUDED THAT THE EVIDENCE INDICATED A RE-INJURY BASED ON THE LONG HOURS AND HEAVY LIFTING REQUIRED BY THE CUSTODIAL WORK IN WHICH CLAIMANT HAD ENGAGED, RATHER THAN AN AGGRAVATION AND, THEREFORE, THE CLAIM FOR AGGRAVATION HAD BEEN PROPERLY DENIED.

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

ORDER

THE ORDER OF THE REFEREE, DATED MAY 10, 1976, IS AFFIRMED.

WCB CASE NO. 75-5304 SEPTEMBER 14, 1976

JOHN MORAVICS, CLAIMANT

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

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED CLAIMANT'S CLAIM TO IT FOR ACCEPTANCE AS AN AGGRAVATION CLAIM AS OF OCTOBER 7, 1975 AND FOR THE PAYMENT OF BENEFITS AS PROVIDED BY LAW UNTIL THE CLAIM IS AGAIN CLOSED PURSUANT TO ORS 656.268 AND AWARDED CLAIMANT'S ATTORNEY A REASONABLE ATTORNEY FEE IN THE AMOUNT OF 800 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HIS LOW BACK ON MAY 12, 1969. THE CLAIM WAS CLOSED BY A DETERMINATION ORDER DATED NOVEMBER 5, 1970 WHEREBY CLAIMANT WAS AWARDED 208 DEGREES OF A MAXIMUM 320 DEGREES FOR UNSCHEDULED DISABILITY. THE CLAIMANT REQUESTED A HEARING AND THE REFEREE INCREASED CLAIMANT'S AWARD TO 240 DEGREES EQUAL TO 75 PER CENT OF THE MAXIMUM. THIS AWARD WAS AFFIRMED BY THE BOARD'S ORDER ON REVIEW, DATED MAY 11, 1972, AND BY THE MULTNOMAH COUNTY CIRCUIT COURT JUDGMENT ORDER, DATED JULY 14, 1972. THAT DATE IS THE DATE OF THE LAST AWARD OR ARRANGEMENT OF COMPENSATION.

CLAIMANT CONTENDS THAT HIS CONDITION IS NOW WORSE THAN IT WAS ON JULY 14, 1972 AND THAT THE WORSENING IS ATTRIBUTABLE TO THE INDUSTRIAL INJURY OF MAY 12, 1969.

THE FUND CONTENDS THAT CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED AS A RESULT OF THE COMBINATION OF HIS COMPENSABLE INJURY AND NON-RELATED MEDICAL CONDITIONS AND THAT SUCH CONTENTION HAS BEEN UPHELD BY VIRTUE OF THE JUDGMENT ORDER DATED JULY 14, 1972.

THE REFEREE FOUND THE WITNESS TO BE CREDIBLE IN HIS TESTIMONY

THAT HE IS UNABLE TO SLEEP ON HIS SIDE AND MUST SLEEP FLAT ON HIS BACK, THAT HE NOW HAS INCREASED PAIN DOWN HIS RIGHT LEG TO THE POPLITEAL AREA WHICH HAS BEEN INCREASING SINCE HIS BACK OPERATION AND ALSO HAS LEFT HIP PAIN AND A BURNING SENSATION IN THIS AREA. THE REFEREE RELIED STRONGLY ON THE TESTIMONY OF CLAIMANT AND THE CHART NOTES OF DR. GREWE WHICH TENDED TO CORROBORATE CLAIMANT'S TESTIMONY THAT HE HAD BEEN HAVING MORE DIFFICULTY IN SLEEPING, ALSO MORE DIFFICULTY WITH HIS BACK AND LEG AND WAS HAVING CONSIDERABLE TROUBLE WITH HIS SHOULDER-NECK AREA, A PROBLEM UNRELATED TO HIS CLAIM.

THE REFEREE CONCLUDED THAT CLAIMANT'S CONDITION HAD BECOME AGGRAVATED AND WORSENED SINCE THE JUDGMENT ORDER DATED JULY 14, 1972. HE FURTHER CONCLUDED THAT, ALTHOUGH IT MIGHT BE PROPER TO MAKE A DETERMINATION ON THE EXTENT OF DISABILITY, BECAUSE OF THE LAPSE OF TIME AND THE ABSENCE OF MEDICAL INFORMATION OTHER THAN DR. GREWE'S CHART NOTES, THE MATTER WOULD BE MORE PROPERLY HANDLED BY SUBMITTING IT TO THE EVALUATION DIVISION OF THE BOARD. HE, THEREFORE, REMANDED THE CLAIM TO THE FUND FOR ACCEPTANCE AS AN AGGRAVATION CLAIM AS OF OCTOBER 7, 1975, THE DATE CLAIMANT'S ATTORNEY FILED THE CLAIM FOR AGGRAVATION OF DISABILITY.

THE BOARD, ON DE NOVO REVIEW, FINDS NO MEDICAL EVIDENCE IN THE RECORD WHICH WOULD INDICATE THAT CLAIMANT'S CONDITION HAS WORSENED SINCE THE ENTRY OF THE JUDGMENT ORDER DATED JULY 14, 1972. THE FIRST MEDICAL RECORD RECEIVED BY THE FUND WAS DATED OCTOBER 31, 1975 AND AN ANALYSIS OF THAT REPORT EVEN AS TO SUBJECTIVE COMPLAINTS WHICH COULD POSSIBLY BE RELATED TO CLAIMANT'S INDUSTRIAL INJURY SHOW THAT CLAIMANT MAKES THE SAME COMPLAINTS ON OCTOBER 29, 1975 THAT HE MADE TO THE REFEREE AT THE HEARING ON DECEMBER 15, 1971 AND WHICH RESULTED IN THE AWARD OF 240 DEGREES. IF ANYTHING, THE EVIDENCE INDICATES CLAIMANT'S OVERALL BACK CONDITION MAY HAVE IMPROVED SINCE DECEMBER OF 1971.

CLAIMANT HAS A SUBSTANTIAL MEDICAL HISTORY OF INJURIES AND DISABILITY WHICH PRECEEDED HIS INDUSTRIAL INJURY AND NOT ALL OF WHICH WERE NECESSARILY AGGRAVATED BY THE INDUSTRIAL INJURY. ADDITIONALLY, CLAIMANT HAS DEVELOPED PROBLEMS SINCE HIS HEARING IN 1971. DR. GREWE'S REPORT OF OCTOBER 20, 1975 STATES THAT CLAIMANT 'HAS A MULTITUDE OF RESIDUAL COMPLAINTS THAT I THINK ARE LEGITIMATE. HIS GENERAL HEALTH WITH HIS HYPERTENSION, ANGINA, MALIGNANT RECTAL POLYP, CHRONIC DIARRHEA, ARTHRITIS IN HIS KNEES AND HIPS AND RESIDUALS FROM HIS LOW BACK SURGERY MAKE HIM IN MY MIND A PERMANENT AND TOTAL DISABILITY.' UNFORTUNATELY, DR. GREWE DOES NOT RELATE THIS PERMANENT TOTAL DISABILITY TO THE INDUSTRIAL INJURY.

THE BOARD CONCLUDES THAT THE CLAIMANT HAS BEEN ADEQUATELY COMPENSATED FOR HIS LOSS OF WAGE EARNING CAPACITY BY THE AWARD OF 240 DEGREES WHICH REPRESENTS 75 PER CENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR UNSCHEDULED DISABILITY.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 19, 1976, IS REVERSED.

WCB CASE NO. 75-1916 SEPTEMBER 14, 1976

A. B. MCMANUS, CLAIMANT
RICHARD KROPP, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED CLAIMANT'S CLAIM FOR HEAD, NECK CONDITIONS AND CLAIMANT'S PSYCHOLOGICAL CONDITION TO IT TO BE ACCEPTED FOR PAYMENT OF COMPENSATION AS PROVIDED BY LAW.

IN MID-JANUARY, 1975, CLAIMANT DEVELOPED HEADACHES WHICH BECAME WORSE AND, ON JANUARY 29, 1975, HE CONTACTED DR. VANVEEN WHO DIAGNOSED 'MUSCLE CONTRACTION HEADACHES' AND 'FIBROMYOSITIS'. MEDICATION WAS ADMINISTERED. CLAIMANT CONTACTED DR. MACK ON JANUARY 30, 1975 COMPLAINING OF HEADACHES, NAUSEA AND PRESSURE IN THE EARS. DR. MACK DIAGNOSED 'FRONTAL AND OCCIPITAL CEPHALALGIA AND POSTERIOR CERVICAL MUSCLE SPASMS, ETIOLOGY UNKNOWN'.

ON JANUARY 31, 1975 CLAIMANT SAW DR. THROOP WHO FELT CLAIMANT WAS SUFFERING FROM SINUS TYPE HEADACHES WITH SECONDARY MUSCLE CONTRACTION HEADACHES. CLAIMANT UNDERWENT SKULL FILMS, CERVICAL SPINE FILMS, BRAIN SCAN AND SINUS X-RAYS, ALL NORMAL.

ON JUNE 2, 1975 DR. THROOP OPINED THAT CLAIMANT'S TYPE OF MUSCLE CONTRACTION HEADACHES COULD BE BROUGHT ON BY A CERVICAL SPINE STRAIN 'SUCH AS MIGHT OCCUR DOING HEAVY LIFTING HE DOES AT WORK', AND HE FELT THIS CERVICAL SPINE STRAIN CAUSED THE HEADACHES BUT THE STRAIN WAS 'AGGRAVATED BY UNDERLYING EMOTIONAL OR PSYCHOLOGICAL STRESSES'.

CLAIMANT CAME UNDER THE CARE OF DR. BASSINGER IN FEBRUARY, 1975 - CLAIMANT WAS TWICE HOSPITALIZED FOR TESTING AND EXAMINATION. ON MARCH 28, 1975 DR. BASSINGER DIAGNOSED VASCULAR HEADACHES AND NERVE ROOT IMPINGMENT AT C1-2. HE FELT CLAIMANT'S JOB CONTRIBUTED TO THE NERVE STRETCH INJURY OF C1-2 WHICH, IN TURN, CONTRIBUTED TO THE VASCULAR HEADACHES.

ON JUNE 5, 1975 DR. BASSINGER STATED THAT BOTH DRS. ACKERMAN AND THROOP FELT CLAIMANT'S SYMPTOMATOLOGY WAS PRIMARILY ON A PSYCHOSOMATIC BASIS. DR. BASSINGER AGREED CLAIMANT HAD THE TYPE OF PERSONALITY WHICH READILY PRODUCES PSYCHOSOMATIC COMPLAINTS. HOWEVER, DR. BASSINGER ADDED THAT THE ORIGINAL INJURY 'WAS ASSOCIATED WITH CERVICAL STRAIN AND POSSIBLE CERVICAL NERVE ROOT INJURY AND HIS SUBSEQUENT COURSE HAS BEEN A RESULT OF THIS INJURY'.

ON JUNE 19, 1975 DR. BASSINGER, BASED ON A MEDICAL PROBABILITY, SAID CLAIMANT'S CHRONIC HEADACHES AND NECK PAIN PLUS THE PSYCHOLOGICAL OVERLAY WAS MATERIALLY CONTRIBUTED TO BY THE ACCIDENTAL INJURY. DR. ACKERMAN AGREED THAT CLAIMANT'S WORK AS A MATERIAL CONTRIBUTING FACTOR TO CLAIMANT'S PSYCHOLOGICAL PROBLEMS.

THE REFEREE FOUND THAT CLAIMANT HAD PROVEN BY A PREPONDERANCE OF THE MEDICAL EVIDENCE THAT HIS ONSET OF PSYCHOLOGICAL-PHYSIOLOGICAL PROBLEMS WAS CAUSED BY OR MATERIALLY CONTRIBUTED TO BY CLAIMANT'S WORK ACTIVITIES. HE ALSO FOUND, BASED ON THE MEDICAL FINDINGS AND CLAIMANT'S TESTIMONY, THAT CLAIMANT'S REPETITIVE LIFTING PRODUCED A CERVICAL STRAIN AND CLAIMANT'S CERVICAL STRAIN INJURY CAUSED HIS HEADACHES.

BASED ON ALL OF THE MEDICAL EVIDENCE, THE REFEREE CONCLUDED THAT CLAIMANT'S NECK, HEAD AND PSYCHOLOGICAL PROBLEMS WERE CAUSED BY HIS WORK ACTIVITIES. HE REMANDED CLAIMANT'S CLAIM TO THE STATE ACCIDENT INSURANCE FUND.

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

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 5, 1976, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY FEE FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW, THE SUM OF 400 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

SAIF CLAIM NO. B 60770 SEPTEMBER 14, 1976

DOROTHY RUSH, CLAIMANT

DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HER BACK ON MAY 11, 1964. SUBSEQUENT SURGERIES WERE PERFORMED ON OCTOBER 12, 1964, JULY 16, 1965 AND JULY 25, 1966 AND HER BACK WAS FUSED L-4 TO THE SACRUM. A DETERMINATION ORDER OF NOVEMBER 9, 1967 GRANTED CLAIMANT 60 PER CENT LOSS OF AN ARM FOR UNSCHEDULED DISABILITY.

ON MAY 12, 1976 THE ORTHOPAEDIC CONSULTANTS RECOMMENDED A JOB CHANGE, THEY FOUND CLAIMANT'S LOSS OF FUNCTION OF THE BACK AT THE PRESENT TIME TO BE MILDLY MODERATE DUE TO HER INDUSTRIAL INJURY OF 1964. THERE IS NO INDICATION THAT CLAIMANT HAS SUFFERED ANY TIME LOSS. CLAIMANT'S AGGRAVATION RIGHTS HAVE EXPIRED.

THE STATE ACCIDENT INSURANCE FUND, ON JUNE 10, 1974, REQUESTED A DETERMINATION. THE EVALUATION DIVISION RECOMMENDED CLAIMANT RECEIVE AN ADDITIONAL AWARD OF 21.75 DEGREES FOR 15 PER CENT LOSS OF AN ARM FOR HER WORSENED CONDITION.

ORDER

CLAIMANT IS HEREBY GRANTED AN AWARD OF 21.75 DEGREES OF A MAXIMUM OF 145 DEGREES FOR HER UNSCHEDULED DISABILITY.

WCB CASE NO. 75-5001 SEPTEMBER 14, 1976
WCB CASE NO. 75-5002

BILLYE WHITMORE, CLAIMANT

CHARLES PAULSON, CLAIMANT'S ATTY.
G. HOWARD CLIFF, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED BOTH OF THE EMPLOYER'S DENIALS OF CLAIMANT'S CLAIMS FOR AGGRAVATION.

CLAIMANT SUSTAINED A COMPENSABLE INDUSTRIAL INJURY TO HER CERVICAL AND LOW BACK ON MARCH 24, 1972 WHEN SHE, AS A VAN DRIVER, WAS INVOLVED IN AN AUTOMOBILE ACCIDENT. CLAIMANT WAS HOSPITALIZED FOR TRACTION FOR AWHILE BEFORE SHE RETURNED TO WORK. ON SEPTEMBER 20, 1972, WHILE LIFTING A PASSENGER WHO HAD PASSED OUT IN HER VAN, SHE FELT A SNAP IN HER LOW BACK.

A DETERMINATION ORDER, DATED JUNE 11, 1974, GRANTED CLAIMANT TIME LOSS ONLY FOR HER MARCH 24, 1972 INJURY. ON THE SAME DATE ANOTHER DETERMINATION ORDER AWARDED CLAIMANT TIME LOSS ONLY FOR THE SEPTEMBER 20, 1972 INJURY. TWO STIPULATIONS, BOTH APPROVED ON SEPTEMBER 16, 1974, GRANTED CLAIMANT 16 DEGREES FOR THE FIRST INJURY AND 32 DEGREES FOR THE SECOND INJURY.

CLAIMANT CONTINUED WORKING WITH LOW BACK PAIN, MISSED SOME TIME AND WAS LAID OFF. SHE WORKED PART TIME FOR EMANUAL HOSPITAL BUT QUIT IN AUGUST, 1975 DUE TO PERSISTENT BACK PAIN.

DR. MOORE'S REPORT OF AUGUST 22, 1975 STATES THAT CLAIMANT'S 'PROGRESSION SEEMS TO BE TOWARD VERY SLOW IMPROVEMENT RATHER THAN INCREASING AGGRAVATION'. HIS REPORT OF JANUARY 30, 1976 INDICATES HE FELT THAT CLAIMANT'S BACK PAIN HAD BEEN AGGRAVATED - HOWEVER, HE WAS 'UNABLE TO UNRAVEL THE MYSTERY AS TO WHAT PROPORTIONS OF THE PAIN ARE DUE TO WEIGHT GAIN, DEPRESSION OR TO ANATOMICAL DEFECT'.

DR. SCHULAR, IN JANUARY, 1976, EXAMINED CLAIMANT AND FOUND SHE WAS NOT INCAPACITATED FROM WORKING, NOR WAS SHE INCAPACITATED FROM A PHYSICAL STANDPOINT.

ON JANUARY 21, 1976 THE EMPLOYER DENIED CLAIMANT'S CLAIMS FOR AGGRAVATION OF BOTH INJURIES.

THE REFEREE FOUND THE PREPONDERANCE OF THE MEDICAL EVIDENCE WAS THAT CLAIMANT'S CONDITION HAD NOT WORSENED WITH RESPECT TO EITHER THE MARCH 24, 1972 OR HER SEPTEMBER 20, 1972 INJURIES AND HE AFFIRMED THE EMPLOYER'S DENIALS.

THE BOARD, ON DE NOVO REVIEW, CONCURS IN THE REFEREE'S CONCLUSION.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 24, 1976, IS AFFIRMED.

WCB CASE NO. 75-1688 SEPTEMBER 15, 1976

JOE E. STOGSDILL, CLAIMANT

RICHARD RENN, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED HIM AN AWARD OF 160 DEGREES FOR 50 PER CENT UNSCHEDULED DISABILITY. CLAIMANT CONTENDS HE IS PERMANENTLY AND TOTALLY DISABLED.

ON APRIL 19, 1972 CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HIS RIGHT HIP AND LOW BACK WHEN HE FELL OFF THE ROOF OF A BOXCAR - THIS INJURY WAS DIAGNOSED AS LOW BACK STRAIN. IN JULY, 1972 A DETERMINATION ORDER GRANTED CLAIMANT TEMPORARY TOTAL DISABILITY ONLY.

CLAIMANT CONTINUED HAVING PROBLEMS OF LOW BACK AND RIGHT LEG PAIN, HE SAW DR. ELLISON AND, IN JANUARY, 1973, CLAIMANT UNDERWENT A PARTIAL LAMINECTOMY. A SECOND DETERMINATION ORDER, DATED JULY 30, 1973, GRANTED CLAIMANT 48 DEGREES FOR 15 PER CENT UNSCHEDULED LOW BACK DISABILITY. CLAIMANT RETURNED TO WORK IN JULY, 1973 BUT WITH SOME DIFFICULTY.

IN OCTOBER, 1973 CLAIMANT WAS PAINTING A HOUSE AND THE LADDER UPON WHICH HE WAS STANDING SLIPPED AND SLID DOWN THE SIDE OF THE HOUSE. THIS INCIDENT OCCURRED ONE DAY BEFORE CLAIMANT WAS TO RETURN TO WORK. THIS INJURY RESULTED IN ACUTE EXACERBATION SECONDARY TO THE INJURY.

IN NOVEMBER, 1973 CLAIMANT WAS INVOLVED IN AN AUTOMOBILE ACCIDENT WHICH CAUSED SEVERE BACK AND LEFT LEG PAIN. CLAIMANT WAS HOSPITALIZED FOR STABILIZATION. CLAIMANT'S LAST DAY AT WORK WAS OCTOBER 31, 1973. HE FILED AN AGGRAVATION CLAIM WHICH WAS DENIED BY THE FUND.

CLAIMANT REQUESTED A HEARING AND, AFTER THE HEARING AN ORDER, ISSUED IN APRIL, 1974, REOPENED CLAIMANT'S CLAIM. THE REFEREE IN THAT HEARING FOUND THAT NEITHER THE LADDER NOR THE AUTOMOBILE INCIDENTS WERE NEW INJURIES OR INTERVENING CAUSES AND CLAIMANT'S PRESENT CONDITION WAS DUE TO HIS INDUSTRIAL INJURY OF APRIL, 1972.

CLAIMANT HAD A FUSION ON APRIL 16, 1974. DR. ELLISON REPORTED THAT THIS SURGERY WAS REQUIRED BECAUSE OF CLAIMANT'S INDUSTRIAL INJURY OF APRIL 19, 1972.

ON MARCH 5, 1975 DR. ELLISON REPORTED THAT CLAIMANT WAS MEDICALLY STATIONARY AND HE WAS PROHIBITED FROM DOING HEAVY MANUAL LABOR. A THIRD DETERMINATION ORDER, DATED APRIL 22, 1975, GRANTED CLAIMANT AN ADDITIONAL 48 DEGREES, A TOTAL OF 96 DEGREES FOR 30 PER CENT UNSCHEDULED LOW BACK DISABILITY.

DR. ELLISON SAID IT WAS VERY DIFFICULT TO SEPARATE CLAIMANT'S SYMPTOMS OF HIS PRE-EXISTING CONGENITAL CONDITION, PRIOR INJURIES, AND THE INDUSTRIAL INJURY - HOWEVER, HE INDICATED CLAIMANT HAD INCREASED SYMPTOMS PRIOR TO THE LADDER AND AUTOMOBILE ACCIDENTS. HE STATED THAT CLAIMANT'S SYMPTOMS WERE A GRADUAL WORSENING - THAT THE LADDER INCIDENT WOULD NOT HAVE HAD A SIGNIFICANT IMPACT ON CLAIMANT'S CONDITION AND THAT THE LEG PROBLEM COULD HAVE RESULTED FROM THE INDUSTRIAL INJURY WITHOUT AN INTERVENING INJURY OR EVENT.

THE REFEREE FOUND THAT ALL OF CLAIMANT'S PRESENT SYMPTOMS STEMMED FROM HIS INDUSTRIAL INJURY AND THAT ALTHOUGH THE INTERVENING INCIDENTS MAY HAVE 'CONTRIBUTED SOMEWHAT TO CLAIMANT'S CONDITION, SUCH CONTRIBUTION HAS NOT BEEN ESTABLISHED TO HAVE BEEN MORE THAN NEGLIGIBLE IN RELATION TO THE INDUSTRIAL INJURY'.

CLAIMANT HAS ATTENDED COMMUNITY COLLEGE THROUGH THE VRD, TAKING SOCIAL WORK COURSES TO AID IN VOLUNTEER SOCIAL WORK AND MATH COURSES TO HELP HIM BECOME A LATHE OPERATOR. THE REFEREE FOUND CLAIMANT HAD GOOD MOTIVATION, HOWEVER, THE JOB OF LATHE OPERATOR MIGHT REQUIRE TOO MUCH STANDING ON HIS FEET. CLAIMANT ALWAYS HAS BEEN A MANUAL LABORER AND LACKS THE SKILLS FOR LIGHTER EMPLOYMENT.

THE REFEREE CONCLUDED, BASED ON THE MEDICAL REPORTS AND CLAIMANT'S PRESENT PHYSICAL IMPAIRMENT AND HIS INABILITY TO RETURN TO HIS REGULAR EMPLOYMENT, THAT CLAIMANT HAS LOST SUBSTANTIAL WAGE EARNING CAPACITY - HOWEVER, CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED, HE CAN BE RETRAINED. HE AWARDED CLAIMANT AN ADDITIONAL 64 DEGREES, GIVING CLAIMANT A TOTAL OF 160 DEGREES EQUAL TO 50 PER CENT OF THE MAXIMUM FOR AN UNSCHEDULED DISABILITY.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 19, 1976, IS AFFIRMED.

WCB CASE NO. 76-175 SEPTEMBER 15, 1976

WALLACE PUZIO, CLAIMANT

ALLAN COONS, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER DESIGNATING
PAYING AGENT PURSUANT TO ORS 656.307

ON JUNE 11, 1972 THE BOARD EXERCISED ITS OWN MOTION JURISDICTION PURSUANT TO ORS 656.278 AND REMANDED THE ABOVE ENTITLED MATTER TO THE HEARINGS DIVISION TO DETERMINE THE MERITS OF CLAIMANT'S REQUEST TO REOPEN HIS 1959 CLAIM.

ON FEBRUARY 9, 1976 CLAIMANT HAD REQUESTED A HEARING ON AN ALLEGED INDUSTRIAL INJURY SUFFERED JUNE 12, 1975 WHILE IN THE EMPLOY OF LANE PLYWOOD WHOSE WORKMEN'S COMPENSATION COVERAGE WAS FURNISHED BY LIBERTY MUTUAL. CLAIMANT WAS EMPLOYED BY MATRON PLYWOOD, WHOSE WORKMEN'S COMPENSATION COVERAGE WAS FURNISHED BY THE STATE ACCIDENT INSURANCE FUND, WHEN HE SUFFERED HIS INJURY IN 1959. IN ITS ORDER REMANDING THE MATTER FOR HEARING, THE BOARD MADE THE FUND A PARTY DEFENDANT AND DIRECTED THAT A REFEREE HOLD A HEARING AND RECEIVE EVIDENCE ON THE ISSUE OF WHETHER CLAIMANT HAD SUFFERED AN AGGRAVATION OF HIS 1959 INDUSTRIAL INJURY OR A NEW INJURY AS A RESULT OF THE INCIDENT OF JUNE 12, 1975.

ON AUGUST 19, 1976 LIBERTY MUTUAL REQUESTED THE BOARD TO DESIGNATE A PAYING AGENT PURSUANT TO ORS 656.307(1).

THE BOARD HEREBY DESIGNATES LIBERTY MUTUAL AS THE PAYING AGENT AND DIRECTS IT TO IMMEDIATELY COMMENCE PAYMENT OF COMPENSATION, AS PROVIDED BY LAW, AND TO CONTINUE TO MAKE SUCH PAYMENTS UNTIL A DETERMINATION OF THE RESPONSIBLE PAYING PARTY HAS BEEN MADE. IF THE REFEREE FINDS THAT CLAIMANT HAS SUFFERED AN AGGRAVATION OF HIS 1959 INJURY HE WILL SUBMIT HIS RECOMMENDATION TO THE BOARD AND, IF THE RECOMMENDATION IS ACCEPTED, THE BOARD IN ITS OWN MOTION DETERMINATION WILL DIRECT THE FUND TO REIMBURSE LIBERTY MUTUAL FOR ALL COMPENSATION IT HAS PAID CLAIMANT AS A DESIGNATED PAYING AGENT. IF THE REFEREE FINDS THAT CLAIMANT SUFFERED A NEW INJURY ON JUNE 12, 1975 HE WILL ENTER A FINAL AND APPEALABLE ORDER AND NO MONETARY ADJUSTMENT BETWEEN THE CARRIERS WILL BE REQUIRED.

WCB CASE NO. 75-3984 SEPTEMBER 15, 1976

ROBERT MINTON, CLAIMANT

ROBERT MILLER, CLAIMANT'S ATTY.
FRANK MOSCATO, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AWARDED CLAIMANT 5 PER CENT LOSS OF VISION OF THE RIGHT EYE AND

96 DEGREES FOR 30 PER CENT UNSCHEDULED DISABILITY TO THE RIGHT EYE.

CLAIMANT SUSTAINED A COMPENSABLE INDUSTRIAL INJURY TO HIS RIGHT EYE ON JANUARY 10, 1974. A DETERMINATION ORDER OF MAY 11, 1975 GRANTED CLAIMANT AN AWARD OF 40 DEGREES FOR 40 PER CENT LOSS OF THE USE OF THE RIGHT EYE. THE CLAIMANT CONTENDS HIS DISABILITY IS IN THE UNSCHEDULED AREA.

CLAIMANT'S INJURY TO HIS RIGHT EYE WAS A LACERATION THAT HEALED WITH RESIDUAL SCAR. DR. ROBINSON EXAMINED CLAIMANT AND INDICATED CLAIMANT HAS HAD A LAZY LEFT EYE SINCE HE WAS A CHILD WHICH CANNOT BE CORRECTED. THE VISION IN CLAIMANT'S LEFT EYE IS 20-60. DR. ROBINSON TRIED MAKING THE RIGHT PUPIL SMALLER TO EXPOSE LESS OF THE CORNEA SCAR, BUT WITHOUT SUCCESS. HE TRIED CONTACT LENSES BUT THESE OFFERED PROBLEMS OF THEIR OWN AND WERE OF LITTLE BENEFIT TO CLAIMANT. DR. ROBINSON STATED THAT CLAIMANT'S SCAR CAUSES VISUAL DISTORTION, PARTICULARLY IN HIS NIGHT DRIVING AND THE CLOSE DETAILED WORK WHICH CLAIMANT PERFORMS AT WORK.

A CORNEA TRANSPLANT COULD BE PERFORMED, HOWEVER, DR. ROBINSON FELT CLAIMANT'S CORNEA WAS TOO GOOD TO RISK SUCH AN OPERATION WHEN THERE WAS A 15 PER CENT CHANCE IT WOULD RESULT IN LOSS OF THE ENTIRE EYESIGHT IN THE RIGHT EYE.

CLAIMANT TESTIFIED THAT THE SCAR DAMAGE HAD HINDERED HIS WORKING ABILITY AND HE NO LONGER WORKS OVERTIME. AFTER WORKING ALL DAY HE DEVELOPS HEADACHES AROUND 6 OR 7 P.M. WITH PAIN BEHIND HIS EYES.

THE REFEREE FOUND THAT CLAIMANT'S VISUAL ACUITY WAS 20-25 BUT THAT DOESN'T REPRESENT ALL OF CLAIMANT'S PROBLEMS IN THE GENERAL INDUSTRIAL EMPLOYMENT AREA AND HIS CONDITION CANNOT BE MEASURED IN TERMS OF REFRACTIVE ERROR. THE REFEREE FOUND THAT CLAIMANT HAD SUFFERED BOTH A SCHEDULED INJURY, I.E., A SMALL LOSS OF VISION IN HIS RIGHT EYE, AND AN UNSCHEDULED INJURY, I.E., THE RESULTING DIFFICULTY IN ORDINARY INDUSTRIAL EMPLOYMENT DUE TO VARYING LIGHT CONDITIONS. HE, THEREFORE, TOOK INTO CONSIDERATION THIS EFFECT UPON CLAIMANT'S WAGE EARNING CAPACITY.

THE REFEREE CONCLUDED THAT CLAIMANT WAS ENTITLED TO 5 PER CENT LOSS OF THE RIGHT EYE AND TO AN AWARD OF 30 PER CENT UNSCHEDULED DISABILITY FOR HIS LOSS OF WAGE EARNING CAPACITY.

THE BOARD, ON DE NOVO REVIEW, DISAGREES WITH THE REFEREE.

LOSS OF VISUAL ACUITY OR TOTAL LOSS OF VISION OF AN EYE IS A SCHEDULED DISABILITY AND MUST BE RATED AS SUCH. THE ONLY TIME AN INJURY TO THE EYE CAN BE CONSIDERED AS AN UNSCHEDULED INJURY IS WHEN THE INJURY IS TO THE HEAD OR A HEAD INJURY CAUSED BRAIN DAMAGE WHICH MANIFESTED PHYSICALLY AS AN IMPAIRMENT TO THE EYE. IN THE MATTER OF THE COMPENSATION OF RANDALL VAN HECKE (UNDERSCORED), WCB CASE NO. 72-1759. IN VAN HECKE (UNDERSCORED) CLAIMANT SUFFERED A HEAD INJURY CAUSING BRAIN DAMAGE WHICH RESULTED IN PHOTOPHOBIA AND CLAIMANT WAS ENTITLED TO AN AWARD FOR UNSCHEDULED DISABILITY BASED ON LOSS OF WAGE EARNING CAPACITY.

THE BOARD FINDS THAT IN THE INSTANT CASE THE AREA OF DISABILITY IS SOLELY IN THE SCHEDULED AREA. THERE IS NO MEDICAL BASIS TO SUPPORT AN UNSCHEDULED AWARD. THE INJURY WAS A DIRECT INJURY TO THE EYE, ITSELF NOTHING MORE. THE BOARD CONCLUDES THAT THE DETERMINATION ORDER OF MAY 11, 1975 MUST BE AFFIRMED.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 27, 1976, IS REVERSED.

THE DETERMINATION ORDER OF MAY 11, 1975 IS AFFIRMED.

CLAIM NO. C 67227 SEPTEMBER 15, 1976
CLAIM NO. A 948722

ROBERT B. BENNETT, CLAIMANT

DAVID GUYETT, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
AMENDED OWN MOTION ORDER

ON AUGUST 11, 1976 THE BOARD ISSUED ITS OWN MOTION ORDER IN THE ABOVE ENTITLED MATTER. THE ORDER ERRONEOUSLY REFERRED TO CLAIM NO. B 150256, IT SHOULD BE A 948722.

IN THE 'ORDER' PORTION THE CLAIM REMANDED TO THE FUND IS DESIGNATED AS CLAIM NO. C 67227, IT SHOULD BE CLAIM NO. A 948722.

ORDER

THE OWN MOTION ORDER, ENTERED AUGUST 11, 1976, IS AMENDED BY DELETING FROM THE CAPTION 'B 150256' AND INSERTING IN LIEU THEREOF 'A 948722'. SAID ORDER IS FURTHER AMENDED BY DELETING FROM THE LAST LINE ON PAGE 1 OF THE ORDER 'C 67227' AND INSERTING IN LIEU THEREOF 'A 948722'. IN ALL OTHER RESPECTS THE OWN MOTION ORDER OF AUGUST 11, 1976 IS REAFFIRMED AND RATIFIED.

WCB CASE NO. 76-1965 SEPTEMBER 16, 1976

EDWARD KEECH, CLAIMANT

JAMES LEWELLING, CLAIMANT'S ATTY.
ROGER LUEDTKE, DEFENSE ATTY.
ORDER DISMISSING CLAIMANT'S
REQUEST FOR REVIEW

ON JULY 21, 1976 THE REFEREE ENTERED HIS ORDER IN THE ABOVE ENTITLED MATTER. ON AUGUST 19, 1976 THE BOARD RECEIVED A REQUEST FOR REVIEW OF THE REFEREE'S ORDER, IT WAS SIGNED BY THE CLAIMANT'S ATTORNEY BUT NO PROOF OF SERVICE WAS ATTACHED.

ON AUGUST 30, 1976 THE BOARD RECEIVED A MOTION FOR DISMISSAL OF THIS REQUEST FOR REVIEW ON THE GROUNDS AND FOR THE REASON THAT CLAIMANT FAILED TO PREFECT THE APPEAL IN ACCORDANCE WITH ORS 656.295 WHICH REQUIRES THAT COPIES OF THE REQUEST FOR REVIEW BE MAILED TO ALL OTHER PARTIES TO THE PROCEEDINGS.

AT THE REQUEST OF THE BOARD THE ATTORNEY FOR THE EMPLOYER AND ITS CARRIER FURNISHED TO THE BOARD, ON SEPTEMBER 9, 1976, AN AFFIDAVIT THAT NEITHER THE EMPLOYER NOR THE CARRIER NOR THE ATTORNEY FOR THE EMPLOYER AND CARRIER HAD RECEIVED NOTICE OF APPEAL FROM THE REFEREE'S ORDER ENTERED JULY 21, 1976.

CLAIMANT'S COUNSEL WAS SERVED A COPY OF THE MOTION FOR DISMISSAL

ON AUGUST 27, 1976 AND NO RESPONSE HAS BEEN RECEIVED FROM HIM BY THE BOARD.

MORE THAN 30 DAYS HAVE EXPIRED SINCE THE ENTRY DATE OF THE REFEREE'S ORDER AND NO REQUEST FOR REVIEW HAS BEEN PROPERLY FILED, THEREFORE, SAID ORDER IS FINAL BY OPERATION OF LAW.

ORDER

CLAIMANT'S REQUEST FOR REVIEW OF THE REFEREE'S OPINION AND ORDER ENTERED ON JULY 21, 1976 IN THE ABOVE ENTITLED MATTER IS HEREBY DISMISSED.

WCB CASE NO. 75-4795 SEPTEMBER 16, 1976

ALBERT WOOD, CLAIMANT

KENNETH BOURNE, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS WILSON, MOORE AND PHILLIPS.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED ITS DENIAL OF CLAIMANT'S CLAIM AS IT RELATED TO THE VOCATIONAL REHABILITATION DIVISION AND THE TECHNICAL TRAINING SERVICE BUT REVERSED SAID DENIAL AS IT AFFECTED CHAPPELL SPEARS MOBILE HOMES AND REMANDED THE CLAIM AGAINST THE LATTER EMPLOYER TO IT FOR ACCEPTANCE AND PAYMENT OF COMPENSATION AS PROVIDED BY LAW. THE ORDER ALSO ASSESSED A PENALTY EQUAL TO 25 PER CENT OF THE COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM SEPTEMBER 26, 1975 TO NOVEMBER 14, 1975, THE DATE THE FUND'S DENIAL, AND DIRECTED IT TO PAY CLAIMANT'S COUNSEL A REASONABLE ATTORNEY FEE.

CLAIMANT CROSS REQUESTED BOARD REVIEW OF THE REFEREE'S FINDING THAT THE VOCATIONAL REHABILITATION DIVISION AND TECHNICAL TRAINING SERVICE WERE NEVER EMPLOYERS.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON DECEMBER 12, 1973 WHILE WORKING FOR CHAPPELL SPEARS MOBILE HOMES, HEREINAFTER REFERRED TO AS CHAPPELL. THE CLAIM WAS CLOSED BY DETERMINATION ORDER MAILED APRIL 12, 1974 AWARDING CLAIMANT COMPENSATION FOR TEMPORARY TOTAL DISABILITY ONLY.

ON SEPTEMBER 26, 1975 CLAIMANT WAS INJURED WHILE TRAINING IN A PROGRAM SET UP BY THE VOCATIONAL REHABILITATION DIVISION, HEREINAFTER REFERRED TO AS VRD, AND HE REQUESTED THE FUND TO REOPEN HIS CLAIM. THE FUND, ON NOVEMBER 14, 1975, DENIED CLAIMANT'S REQUEST AND DENIED THAT CLAIMANT WAS AN EMPLOYEE OF CHAPPELL, VRD OR TECHNICAL TRAINING SERVICES, HEREINAFTER CALLED TTS, NOR WAS CLAIMANT ENTITLED TO BENEFITS UNDER ORS 655.605 AND ORS 655.615.

A PLAN HAD BEEN APPROVED BY THE BOARD ON JANUARY 14, 1975 FOR CLAIMANT TO ATTEND TTS WITH A VOCATIONAL RETRAINING OBJECTIVE OF AUTO REPAIR AND SHORTLY THEREAFTER CLAIMANT WAS ENROLLED AT TTS. TTS PAID NO MONEY TO ITS STUDENTS EXCEPT ON OCCASIONS WHEN STUDENTS WERE PAID 2.00 DOLLARS FOR SWEEPING UP. CLAIMANT DID THIS TYPE OF WORK FOR TTS ONLY ON ONE OR TWO OCCASIONS DURING HIS ENROLLMENT. ON SEPTEMBER 26, 1975 CLAIMANT SUFFERED AN INJURY IN THE COURSE OF HIS TRAINING PROGRAM WHEN HE SLIPPED WHILE CARRYING A 25 POUND AUTO TRANSMISSION. HIS LOW BACK WAS REINJURED AND HE REPORTED THE INJURY TO TTS ON THAT DATE.

ON SEPTEMBER 28, 1975 CLAIMANT OBTAINED TWO CLAIM CARDS FROM THE FUND AND SUBMITTED ONE TO TTS AND ONE TO VRD, LATER CHAPPELL MAILED CLAIMANT AN ACCIDENT CLAIM FORM WHICH CLAIMANT STATED HE FILLED OUT AND RETURNED TO CHAPPELL. SINCE THE INCIDENT OF SEPTEMBER 26, 1975 CLAIMANT HAS RECEIVED COMPENSATION FROM NO ONE.

CLAIMANT'S ATTORNEY WROTE THE FUND ON OCTOBER 3, 1975 REGARDING THE SEPTEMBER 26, 1975 INJURY. HE INFORMED THE FUND THAT 801 FORMS HAD BEEN FILED WITH BOTH VRD AND CHAPPELL AND REQUESTED THAT THE CLAIM BE OPENED AND TIME LOSS PAYMENTS COMMENCED. THE FUND DENIED, AS AFORESAID, ON NOVEMBER 14, 1975.

DR. POST REPORTED ON DECEMBER 12, 1975 THAT HE CONSIDERED THE PRESENT EPISODE (SEPTEMBER 26, 1975) AN AGGRAVATION OF CLAIMANT'S PRE-EXISTING INJURY ASSOCIATED WITH HIS ATTEMPT TO HAVE SCHOOLING AND RETRAINING. THE VRD COUNSELOR ASSIGNED TO CLAIMANT'S CASE TESTIFIED THAT HE DID NOT CONSIDER CLAIMANT TO BE OTHER THAN A STUDENT AND THAT HE DID NOT FEEL THAT CLAIMANT WAS ENTITLED TO BE LISTED WITH THE FUND AS ELIGIBLE FOR BENEFITS UNDER ORS 655.605 AND ORS 655.615, WHICH PROVIDE FOR PAYMENT OF INJURED OCCUPATIONALLY HANDICAPPED TRAINEES.

ORS 655.506(5) DEFINES 'TRAINEE' OR 'CLIENT' AS AN OCCUPATIONALLY HANDICAPPED PERSON WHO IS PARTICIPATING IN SPECIAL TRAINING OR EVALUATION PROGRAM OF THE VRD. ORS 655.615(1) PROVIDES THAT ALL CLIENTS PARTICIPATING IN WORK EVALUATION OR WORK EXPERIENCE PROGRAM FOR THE DIVISION ARE CONSIDERED AS WORKMEN SUBJECT TO THE WORKMEN'S COMPENSATION ACT. SUBPARAGRAPH 2 THEREOF STATES THAT THE DIVISION SHALL SUBMIT A WRITTEN STATEMENT TO THE FUND THAT INCLUDES A DESCRIPTION OF THE WORK TO BE PERFORMED BY SUCH CLIENTS. SUBPARAGRAPH 4 THEREOF PROVIDES THAT THE DIVISION SHALL FURNISH THE FUND WITH A LIST OF NAMES OF THE ENROLLEES IN ITS WORK EVALUATION OR WORK EXPERIENCE PROGRAM AND ONLY THOSE ENROLLEES WHOSE NAMES APPEAR ON SUCH LISTS PRIOR TO THEIR PERSONAL INJURY BY ACCIDENT ARE ENTITLED TO BENEFITS UNDER THE WORKMEN'S COMPENSATION ACT AND THEY ARE ENTITLED TO SUCH BENEFITS IF INJURED WHILE PERFORMING ANY DUTIES ARISING OUT OF AND IN THE COURSE OF THEIR PARTICIPATION IN THE WORK EVALUATION OR WORK EXPERIENCE PROGRAM, PROVIDED THE DUTIES BEING PERFORMED ARE DESCRIBED ON THE APPLICATION BY THE DIVISION AND REQUIRED OF SIMILAR FULL TIME PAID EMPLOYEES. SUBPARAGRAPH 5 THEREOF PROVIDES THAT THE FILING OF CLAIMS FOR BENEFITS UNDER THIS SECTION IS THE EXCLUSIVE REMEDY OF THE CLIENT OR HIS BENEFICIARIES FOR INJURIES COMPENSABLE UNDER THE WORKMEN'S COMPENSATION ACT AGAINST THE STATE, ITS POLITICAL SUBDIVISIONS, ITS OFFICERS AND EMPLOYEES, OR THE PERSON WHO PROVIDES ON-THE-JOB TRAINING OR JOB EVALUATION SERVICE FOR THE INJURED CLIENT REGARDLESS OF NEGLIGENCE.

THE REFEREE, BASED UPON DR. POST'S REPORT, FOUND THAT THE SEPTEMBER 26, 1975 INCIDENT WAS AN AGGRAVATION OF CLAIMANT'S COMPENSABLE INJURY.

THE REFEREE FOUND THAT CLAIMANT WAS NEVER AN EMPLOYEE OF TTS OR VRD EXCEPT FOR THE ONE OR TWO OCCASIONS FOR WHICH HE WAS PAID TO SWEEP AT TTS. CLAIMANT'S INJURY OCCURRED WHILE HE WAS A STUDENT AT TTS AND IN ORDER TO PREVAIL AGAINST EITHER TTS OR VRD CLAIMANT HAD TO SHOW THAT HE WAS ENTITLED TO THE BENEFITS PROVIDED BY ORS 655.605 AND 655.615. THE REFEREE FOUND THAT WHILE CLAIMANT WAS A STUDENT AT TTS HE WAS NOT IN A WORK EVALUATION OR WORK EXPERIENCE PROGRAM, NOR WAS HIS NAME SUBMITTED TO THE FUND ON THE LIST REQUIRED BY ORS 655.615(4).

THE REFEREE ALSO FOUND THAT THE EMPLOYEES OF TTS WERE PERFORMING DUTIES QUITE DIFFERENT THAN THOSE OF STUDENT - HE ALSO FOUND THAT

VRD HAD NOT BEEN SHOWN TO HAVE SIMILAR FULL TIME EMPLOYEES. AS TO CHAPPELL, THE EVIDENCE INDICATES THAT CLAIMANT DID NOT WORK FOR THEM AT ANY TIME DURING THE TIME HE WAS ATTENDING TTS.

THE REFEREE CONCLUDED THAT THE FUND'S DENIAL INSOFAR AS IT RELATED TO VRD AND TTS SHOULD BE AFFIRMED.

IN RESOLVING THE QUESTION OF THE RESPONSIBILITY OF CHAPPELL UNDER SUCH CIRCUMSTANCES OTHER THAN AS A MATTER OF AGGRAVATION, THE REFEREE LEANED HEAVILY ON 1 LARSON, WORKMEN'S COMPENSATION LAW (UNDERSCORED), SECTION 13.11 (COMPENSABLE CONSEQUENCES), AT PAGES 192.67 AND .68 WHICH STATED, IN PART -

> '...SINCE IN THE STRICT SENSE NONE OF THE CONSEQUENCIAL INJURIES WE ARE CONCERNED WITH ARE IN THE COURSE OF EMPLOYMENT, IT BECOMES NECESSARY TO CONTRIVE A NEW CONCEPT, WHICH WE MAY FOR CONVENIENCE CALL 'QUASI-COURSE OF EMPLOYMENT'. BY THIS EXPRESSION IS MEANT ACTIVITIES UNDERTAKEN BY THE EMPLOYEE FOLLOWING UPON HIS INJURY WHICH, ALTHOUGH THEY TAKE PLACE OUTSIDE THE TIME AND SPACE LIMITS OF THE EMPLOYMENT, WOULD NOT BE CONSIDERED EMPLOYMENT ACTIVITIES FOR USUAL PURPOSES, ARE NEVERTHELESS RELATED TO THE EMPLOYMENT IN THE SENSE THAT THEY ARE NECESSARY OR REASONABLE ACTIVITIES THAT WOULD NOT HAVE BEEN UNDERTAKEN BUT FOR THE COMPENSABLE INJURY.
>
> WHEN THE INJURY FOLLOWING THE INITIAL COMPENSABLE INJURY ARISES OUT OF A QUASI-COURSE OF ACTIVITY, SUCH AS A TRIP TO THE DOCTORS OFFICE, THE CHANGE OF CAUSATION SHOULD NOT BE DEEMED BROKEN BY MERE NEGLIGENCE IN THE PERFORMANCE OF THAT ACTIVITY, BUT ONLY BY INTENTIONAL CONDUCT WHICH MAY BE REGARDED AS EXPRESSLY OR IMPLIEDLY PROHIBITED BY THE EMPLOYER.'

THE REFEREE CONCLUDED, UNDER THE REQUIRED LIBERAL CONSTRUCTION OF THE WORKMEN'S COMPENSATION LAW, THAT THE RULE SUGGESTED BY LARSON SHOULD BE FOLLOWED IN THE PRESENT CASE AND THAT CLAIMANT FELL WITHIN THAT RULE. THE REFEREE COMMENTED THAT THIS TYPE OF CASE HAD PROBABLY RISEN BEFORE IN THIS STATE AND THE ABSENCE OF CASE LAW ON THE POINT SUGGESTED THAT SUCH CLAIMS HAD BEEN ROUTINELY ACCEPTED IN THE PAST.

THE REFEREE DIRECTED THE FUND TO ACCEPT THE CLAIM AS CHAPPELL'S CARRIER AND TO PAY CLAIMANT COMPENSATION AS PROVIDED BY LAW UNTIL THE CLAIM WAS CLOSED. HE ALSO ASSESSED A PENALTY FOR ITS FAILURE TO PAY COMPENSATION FOR TEMPORARY TOTAL DISABILITY THROUGH A CERTAIN PERIOD PRIOR TO THE DENIAL.

THE BOARD, ON DE NOVO REVIEW, IS UNABLE TO ACCEPT THE RULE SUGGESTED BY LARSON AS BEING APPLICABLE IN THIS CASE. THE BOARD WOULD HAVE NO PROBLEM APPLYING SUCH RULE IN CIRCUMSTANCES WHERE THE WORKMAN SUFFERED AN INJURY WHILE IN ROUTE TO RECEIVE TREATMENT RELATING TO HIS COMPENSABLE INJURY BUT THE PROVISIONS OF ORS 655.605 AND 655.615 CLEARLY SPELL OUT WHEN AND HOW A WORKMAN ENROLLED IN A SPECIAL TRAINING OR EVALUATION PROGRAM CAN AVAIL HIMSELF OF THE BENEFITS PROVIDED BY THE WORKMEN'S COMPENSATION LAW.

THE BOARD CONCLUDES THAT BECAUSE ORS 655.605 AND 655.615 SPECIFICALLY SET FORTH THE PROCEDURES TO BE FOLLOWED WHEN A 'TRAINEE' OR 'CLIENT' SUFFERS AN INJURY IF SUCH PROCEDURES ARE NOT FOLLOWED THE CONCEPT DESIGNATED BY LARSON AS A 'QUASI-COURSE OF EMPLOYMENT' CANNOT BE APPLIED. THE EVIDENCE INDICATES THAT CLAIMANT RECEIVED NO

COMPENSATION WHATSOEVER FROM CHAPPELL DURING THE TIME THAT HE WAS TAKING THE RETRAINING PROGRAM, THEREFORE, CHAPPELL HAS NO RESPONSIBILITY FOR THE INJURY SUFFERED BY CLAIMANT ON SEPTEMBER 26, 1975. THE REFEREE'S RULING MUST BE REVERSED.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 9, 1976, IS REVERSED.

WCB CASE NO. 76-274 SEPTEMBER 16, 1976

DAVID WARD, CLAIMANT

MICHAEL STROOBAND, CLAIMANT'S ATTY.
PHILIP MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH DISMISSED CLAIMANT'S REQUEST FOR PENALTIES FOR LATE PAYMENT OF TEMPORARY TOTAL DISABILITY COMPENSATION AND FOR NON-PAYMENT OF MEDICAL BILLS.

ON OCTOBER 17, 1974 CLAIMANT SUSTAINED A LEFT LEG INJURY WHICH WAS ACCEPTED. CLAIMANT DEVELOPED AN ULCER ON THE LEFT LEG IN NOVEMBER, 1974 AND REQUESTED HIS CLAIM BE REOPENED - THE CARRIER DENIED RESPONSIBILITY. CLAIMANT REQUESTED A HEARING AND ON DECEMBER 19, 1975, AFTER A HEARING, AN ORDER BY REFEREE LEAHY FOUND CLAIMANT'S CLAIM TO BE COMPENSABLE AND ORDERED THE EMPLOYER TO ACCEPT IT.

THE OPINION AND ORDER SHOULD HAVE BEEN RECEIVED BY THE PARTIES ON DECEMBER 22, 1975. ON JANUARY 5, 1976 REFEREE LEAHY RECEIVED FROM THE EMPLOYER A MOTION TO RECONSIDER. THIS WAS DENIED BY THE REFEREE ON JANUARY 13. A CHECK FOR PAYMENT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY WAS DRAFTED FOR CLAIMANT ON JANUARY 14. CLAIMANT RECEIVED THE CHECK ON JANUARY 16.

MEDICAL BILLS AMOUNTING TO 280 DOLLARS WERE RECEIVED BY THE EMPLOYER AT THE HEARING BEFORE REFEREE LEAHY WHICH WERE NOT PAID PENDING THE APPEAL OF HIS ORDER.

THE REFEREE FOUND THAT OAR 436-83-480 PROVIDES FOR THE REFEREE TO REOPEN THE RECORD TO RECONSIDER HIS DECISION UPON A MOTION TO DO SO. THE RULES OF PRACTICE AND PROCEDURE ALLOWS REOPENING TO CORRECT ERRORS OR TO AVOID AN INJUSTICE. THE REFEREE CONCLUDED THAT THE MOTION TO RECONSIDER WAS COMPREHENSIVE AND REASONABLE AND THAT THE CARRIER'S ACTIONS UNDER THE CIRCUMSTANCES WERE NOT UNREASONABLE AND HE CONCLUDED PENALTIES WERE NOT JUSTIFIED.

ON THE ISSUE OF NON-PAYMENT OF MEDICAL BILLS, THE REFEREE CITED THE BOARD'S PREVIOUS RULINGS WHICH HELD THAT MEDICAL SERVICES ARE NOT PAYABLE UNDER ALL CIRCUMSTANCES UNDER THREAT OF PENALTY - THAT ALTHOUGH MEDICAL SERVICES ARE DEFINED AS COMPENSATION BY ORS 656.005(9) THE BOARD DOES NOT DEEM SUCH SERVICES TO BE WITHIN COMPENSATION AS USED IN ORS 656.313.

THE REFEREE CONCLUDED THAT THE ACTIONS OF THE CARRIER IN NOT MAKING PAYMENT OF THESE MEDICAL BILLS WAS NOT UNREASONABLE AND DENIED THE REQUEST FOR A PENALTY.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE REFEREE'S FINDINGS AND CONCLUSIONS ON THE ISSUE OF NON-PAYMENT OF MEDICAL BILLS.

HOWEVER, THE BOARD DISAGREES ON THE FINDING BY THE REFEREE ON THE ISSUE OF LATE PAYMENT OF TEMPORARY TOTAL DISABILITY COMPENSATION. THE BOARD FINDS THAT A MOTION TO RECONSIDER DOES NOT STAY THE PAYMENT OF TEMPORARY TOTAL DISABILITY COMPENSATION TO CLAIMANT PURSUANT TO ORS 656.262(4). THE EMPLOYER HAD RECEIVED NOTICE WHEN IT RECEIVED THE REFEREE'S ORDER ON DECEMBER 22, 1975 THAT COMPENSATION, AS PROVIDED BY LAW, WAS DUE CLAIMANT AND THE FIRST PAYMENT MUST BE MADE WITHIN 14 DAYS THEREAFTER. IT DIDN'T MAKE SUCH PAYMENT, THEREFORE, IT SUBJECTED ITSELF TO AN ASSESSMENT OF A PENALTY AND AWARD OF ATTORNEY FEES PURSUANT TO ORS 656.262(8).

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 27, 1976, IS MODIFIED.

THE EMPLOYER IS ASSESSED, AS A PENALTY, A SUM EQUAL TO 25 PER CENT OF THE TEMPORARY TOTAL DISABILITY COMPENSATION DUE CLAIMANT FROM DECEMBER 22, 1975 THROUGH JANUARY 16, 1976.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY FEE FOR HIS SERVICES AT THE HEARING, THE SUM OF 600 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY FEE FOR HIS SERVICES AT BOARD REVIEW THE SUM OF 400 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

SAIF CLAIM NO. BB 100466 SEPTEMBER 20, 1976

GENEVIEVE E. REYNOLDS, CLAIMANT

J. DAVID KRYGER, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

ON MAY 14, 1976 THE BOARD, EXERCISING ITS OWN MOTION JURISDICTION, REMANDED THE ABOVE ENTITLED CLAIM TO THE HEARINGS DIVISION TO HOLD A HEARING ON THE ISSUE OF WHETHER CLAIMANT'S PRESENT CONDITION WAS CAUSALLY RELATED TO HER INDUSTRIAL INJURY OF DECEMBER 26, 1974, JUSTIFYING REOPENING OF THE CLAIM FOR PAYMENT OF COMPENSATION AS PROVIDED BY LAW.

UPON CONCLUSION OF THE HEARING, THE REFEREE WAS DIRECTED TO CAUSE A TRANSCRIPT OF THE PROCEEDINGS TO BE PREPARED AND SUBMITTED TO THE BOARD TOGETHER WITH HIS RECOMMENDATION ON THE ISSUE.

ON JULY 27, 1976 A HEARING WAS HELD BEFORE REFEREE FORREST T. JAMES. THE BOARD HAD BEEN FURNISHED PSYCHIATRIC REPORTS FROM BOTH DR. QUAN AND DR. PARVARESH PRIOR TO REMANDING THE MATTER TO THE HEARINGS DIVISION, THEREFORE, THE ONLY EVIDENCE RECEIVED AT THE HEARING WAS CLAIMANT'S TESTIMONY WHICH THE REFEREE EVALUATED IN THE LIGHT OF THE TWO PSYCHIATRIC REPORTS. IT WAS THE REFEREE'S RECOMMENDATION THAT THE BOARD ORDER THE CLAIM REOPENED FOR THE FURTHER MEDICAL CARE AND TREATMENT RECOMMENDED BY DR. PARVARESH.

THE BOARD, AFTER REVIEWING THE ABSTRACT OF THE ENTIRE RECORD AND STUDYING THE RECOMMENDATIONS OF THE REFEREE, CONCLUDES THAT THE

CLAIM SHOULD BE REOPENED, PURSUANT TO ORS 656.245 FOR FURTHER MEDICAL CARE AS RECOMMENDED BY DR. PARVARESH.

IT IS SO ORDERED.

SAIF CLAIM NO. BC 88072 SEPTEMBER 20, 1976

W. B. GROSSNICKLE, CLAIMANT

DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION ORDER

ON JULY 15, 1976 THE BOARD ISSUED ITS OWN MOTION DETERMINATION IN THE ABOVE ENTITLED MATTER AFFIRMING THE DETERMINATION ORDER MAILED MARCH 23, 1972 WHICH GRANTED CLAIMANT AN AWARD OF 38 DEGREES FOR 15 PER CENT LOW BACK DISABILITY. CLAIMANT HAD SUFFERED A COMPENSABLE INJURY ON AUGUST 9, 1967 WHICH HAD BEEN CLOSED, INITIALLY, ON MAY 2, 1968 WITH NO AWARD OF PERMANENT PARTIAL DISABILITY. THE CLAIM WAS LATER REOPENED FOR FURTHER TREATMENT AND, ON MARCH 8, 1971, DR. KIMBERLY PERFORMED A FUSION L3-S1. CLAIMANT'S AGGRAVATION RIGHTS HAVE EXPIRED.

CLAIMANT HAD BEEN SEEN ON APRIL 29, 1976 BY THE ORTHOPAEDIC CONSULTANTS WHO FELT CLAIMANT COULD RETURN TO LIGHT WORK - AS A RESULT OF THIS REPORT, EVALUATION RECOMMENDED NO FURTHER TIME LOSS NOR ADDITIONAL AWARD FOR PERMANENT PARTIAL DISABILITY. THE OWN MOTION DETERMINATION WAS BASED UPON SUCH RECOMMENDATION.

ON AUGUST 18, 1976 CLAIMANT WAS EXAMINED BY DR. KIMBERLY. ON AUGUST 23, 1976 THE CLAIMANT REQUESTED THE BOARD EXERCISE ITS OWN MOTION JURISDICTION AND REOPEN HIS CLAIM BASED UPON THE MEDICAL REPORT FROM DR. KIMBERLY AND ALSO THE REPORT OF THE ORTHOPAEDIC CONSULTANTS WHO HAD RE-EXAMINED CLAIMANT ON AUGUST 18, 1976.

DR. KIMBERLY'S REPORT STATED THAT CLAIMANT WAS NOT IN NEED OF ANY SPECIFIC ORTHOPEDIC TREATMENT BUT THAT HE SHOULD BE REFERRED TO THE PAIN CLINIC FOR DRUG WITHDRAWL TREATMENT AND ALSO THE USE OF ELECTRONIC STIMULATORS TO SEE IF HIS PAIN PATTERN COULD BE CHANGED OR LESSENED - HE THOUGHT IT WOULD BE PROPER TO HOLD UP CLOSURE OF CLAIMANT'S CASE UNTIL SUCH TREATMENT HAD BEEN RECEIVED. WHEN DR. SERES FELT CLAIMANT'S CASE WAS STATIONARY CLAIMANT SHOULD THEN BE GIVEN A FINAL EVALUATION EXAMINATION.

THE FUND, IN ITS RESPONSE RECEIVED ON SEPTEMBER 3, 1976, STATED IT WOULD BE WILLING TO SET UP AN APPOINTMENT FOR EVALUATION AND TREATMENT OF CLAIMANT AT THE PAIN CLINIC UNDER THE PROVISIONS OF ORS 656.245 BUT WOULD NOT PAY CLAIMANT ANY COMPENSATION FOR TEMPORARY TOTAL DISABILITY.

BASED UPON DR. KIMBERLY'S COMPREHENSIVE REPORT AND HIS RECOMMENDATION CONTAINED THEREIN, THE BOARD CONCLUDES THAT CLAIMANT'S CLAIM SHOULD BE REOPENED AND CLAIMANT SHOULD BE AFFORDED THE TREATMENT RECOMMENDED BY DR. KIMBERLY. THE BOARD FURTHER CONCLUDES THAT IF CLAIMANT IS TO RECEIVE THE TREATMENTS RECOMMENDED BY DR. KIMBERLY IT WILL BE NECESSARY FOR HIM TO BE AN IN-PATIENT AT THE PAIN CLINIC AND, THEREFORE, HE ALSO IS ENTITLED TO RECEIVE COMPENSATION FOR TEMPORARY TOTAL DISABILITY.

ORDER

CLAIMANT'S CLAIM FOR THE COMPENSABLE INJURY INCURRED ON AUGUST 9, 1967 IS REOPENED AND REMANDED TO THE STATE ACCIDENT INSURANCE FUND

FOR ACCEPTANCE AND FOR THE PAYMENT OF SUCH MEDICAL CARE AND TREATMENT AS CLAIMANT MAY REQUIRE AT THE PAIN CLINIC AND FOR PAYMENT OF COMPENSATION, AS PROVIDED BY LAW, COMMENCING ON THE DATE THE CLAIMANT ENTERS THE PAIN CLINIC AND UNTIL HIS CLAIM IS CLOSED PURSUANT TO ORS 656.278.

WCB CASE NO. 76-1377 SEPTEMBER 20, 1976

DELORES HARDING, CLAIMANT

JAN BAISCH, CLAIMANT'S ATTY.
G. HOWARD CLIFF, DEFENSE ATTY.
ORDER

ON AUGUST 31, 1976 THE BOARD ENTERED ITS ORDER DISMISSING CLAIMANT'S REQUEST FOR BOARD REVIEW FOR THE REASON THAT SAID REQUEST WAS NOT TIMELY FILED PURSUANT TO ORS 656.289.

ON SEPTEMBER 8, 1976 CLAIMANT FILED A MOTION FOR RECONSIDERATION OF THE BOARD'S ORDER.

THE BOARD HAVING GIVEN DUE CONSIDERATION TO THE MOTION AND THE ACCOMPANYING AFFIDAVIT, CONCLUDES THAT ITS ORDER OF AUGUST 31, 1976 WAS CORRECT IN EVERY ASPECT. A NOTICE OF APPEAL FILED IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH ON JULY 16, 1976, A COPY OF WHICH WAS FURNISHED TO THE BOARD, CANNOT, IN ANY MANNER, BE CONSTRUED AS A REQUEST FOR REVIEW OF THE REFEREE'S ORDER PURSUANT TO ORS 656.295.

CLAIMANT'S ATTORNEY DID NOT MAKE A PROPER REQUEST FOR REVIEW BY THE BOARD UNTIL AFTER THE EXPIRATION OF 30 DAYS FROM THE DATE OF THE REFEREE'S ORDER, THEREFORE, PURSUANT TO ORS 656.289(3), THE REFEREE'S ORDER HAD BECOME FINAL BY OPERATION OF LAW.

ORDER

CLAIMANT'S MOTION FOR RECONSIDERATION OF THE BOARD'S ORDER ENTERED ON AUGUST 31, 1976 IN THE ABOVE ENTITLED MATTER IS HEREBY DENIED.

SAIF CLAIM NO. FC 250655 SEPTEMBER 20, 1976

GARY PHELAN, CLAIMANT

DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

ON JUNE 9, 1970 CLAIMANT, WHILE LIFTING, EXPERIENCED PAIN IN THE SIDE AND GROIN AREA WHICH WAS DIAGNOSED AS BILATERAL INGUINAL HERNIAS. CLAIMANT HAD SURGICAL HERNIA REPAIR ON JULY 10, 1970.

THE CLAIM WAS FIRST CLOSED ON JANUARY 26, 1971 WITH NO AWARD OF PERMANENT PARTIAL DISABILITY. LATER IN 1971 THE CLAIM WAS REOPENED BECAUSE CLAIMANT HAD DEVELOPED INFECTION IN THE WOUND AND HAD A RECURRENCE OF THE BILATERAL HERNIAS. ON MARCH 9, 1972 THESE WERE REPAIRED. SUBSEQUENTLY, CLAIMANT HAD A RECURRENCE ON THE LEFT SIDE WHICH WAS REPAIRED ON APRIL 12, 1973. THE CLAIM WAS CLOSED ON DECEMBER 4, 1973 WITH NO AWARD OF PERMANENT PARTIAL DISABILITY.

THE CLAIM WAS AGAIN REOPENED IN SEPTEMBER, 1974 FOR A REPAIR OF THE RIGHT HERNIA. THE CLAIM WAS CLOSED ON APRIL 9, 1975 WITH NO AWARD OF PERMANENT PARTIAL DISABILITY. CLAIMANT'S AGGRAVATION RIGHTS HAVE EXPIRED.

THE CARRIER VOLUNTARILY REOPENED CLAIMANT'S CLAIM ON MAY 18, 1976 FOR A REPAIR OF THE RIGHT HERNIA WHICH WAS PERFORMED ON THAT DATE. CLAIMANT WAS RELEASED TO RETURN TO REGULAR WORK ON JUNE 30, 1976.

ON JULY 28, 1976 THE STATE ACCIDENT INSURANCE FUND REQUESTED A DETERMINATION. THE EVALUATION DIVISION RECOMMENDED TIME LOSS FROM MAY 18, 1976 THROUGH JUNE 29, 1976 AND NO AWARD OF PERMANENT PARTIAL DISABILITY.

ORDER

THE CLAIMANT IS GRANTED TEMPORARY TOTAL DISABILITY COMPENSATION FROM MAY 18, 1976 THROUGH JUNE 29, 1976.

CLAIM NO. B 2701640 SEPTEMBER 20, 1976

VERLYN D. SCHNELL, CLAIMANT

OWN MOTION ORDER

CLAIMANT SUFFERED A COMPENSABLE INJURY ON MAY 13, 1969. THE CLAIM WAS CLOSED BY A DETERMINATION ORDER MAILED JANUARY 20, 1970 WHICH AWARDED CLAIMANT COMPENSATION FOR TEMPORARY TOTAL DISABILITY ONLY. CLAIMANT'S AGGRAVATION RIGHTS EXPIRED ON JANUARY 19, 1975.

ON AUGUST 23, 1976 THE BOARD RECEIVED A REQUEST FROM CLAIMANT TO REOPEN HIS CLAIM. THE REQUEST WAS SUPPORTED BY A REPORT BY DR. BROWNING, DATED AUGUST 17, 1976, AND A REPORT FROM DR. RAKOZY, DATED JULY 16, 1976.

THE BOARD WAS INFORMED, ON SEPTEMBER 2, 1976 BY THE TRAVELERS INSURANCE COMPANY, WHO HAD FURNISHED THE EMPLOYER WORKMEN'S COMPENSATION COVERAGE AT THE TIME OF CLAIMANT'S INJURY, THAT IT HAD DENIED CLAIMANT'S CLAIM FOR THE REASON THAT HIS FIVE YEAR AGGRAVATION PERIOD HAD EXPIRED AND IN ITS LETTER OF DENIAL HAD SUGGESTED THAT CLAIMANT REQUEST THE BOARD TO EXERCISE ITS OWN MOTION JURISDICTION PURSUANT TO ORS 656.278.

THE BOARD CONCLUDES THAT THE EMPLOYER AND ITS CARRIER APPARENTLY DO NOT WISH TO OPPOSE CLAIMANT'S REQUEST TO REOPEN THE CLAIM AND, BASED UPON THE MEDICAL REPORTS SUBMITTED IN SUPPORT OF SAID REQUEST, THE BOARD FURTHER CONCLUDES THAT THE CLAIM SHOULD BE REOPENED.

ORDER

CLAIMANT'S CLAIM RELATING TO HIS INDUSTRIAL INJURY OF MAY 13, 1969 IS HEREBY REMANDED TO THE EMPLOYER, SAFEWAY'S STORES, INC., AND ITS CARRIER, THE TRAVELERS, FOR THE PAYMENT OF COMPENSATION, AS PROVIDED BY LAW, COMMENCING AUGUST 17, 1976, THE DATE OF DR. BROWNING'S REPORT, AND UNTIL THE CLAIM IS CLOSED PURSUANT TO ORS 656.278.

WCB CASE NO. 75-2749 SEPTEMBER 20, 1976

CLARENCE VAN METER, CLAIMANT

ROLF OLSON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER

ON SEPTEMBER 7, 1976 THE BOARD RECEIVED A REQUEST FOR RECONSIDERATION OF ITS ORDER ENTERED IN THE ABOVE ENTITLED MATTER ON AUGUST 30, 1976, ON THE GROUND THAT THE BOARD ERRED THROUGH A MISUNDERSTANDING OF THE LAW OR THE FACTS GOVERNING THE CASE.

THE BOARD, AFTER DUE CONSIDERATION, CONCLUDES THAT THE MOTION IS NOT WELL TAKEN AND SHOULD BE DENIED.

ORDER

THE REQUEST FOR RECONSIDERATION OF THE BOARD'S ORDER ON REVIEW ENTERED IN THE ABOVE ENTITLED MATTER ON AUGUST 30, 1976 IS HEREBY DENIED.

CLAIM NO. 05X-008027 SEPTEMBER 20, 1976
CLAIM NO. 751-C-511,444

JAMES BLETH, CLAIMANT

VERGEER, SAMUELS, ROEHR AND SWEEK,
CLAIMANT'S ATTYS.
FRANK MOSCATO, DEFENSE ATTY.
OWN MOTION ORDER

ON MARCH 11, 1976 THE BOARD EXERCISED ITS OWN MOTION JURISDICTION PURSUANT TO ORS 656.278 AND REMANDED THE ABOVE CLAIM TO THE HEARINGS DIVISION TO HOLD A HEARING AND TAKE EVIDENCE ON THE ISSUE OF WHETHER CLAIMANT'S PRESENT CONDITION WAS THE RESULT OF AN INJURY SUFFERED ON JULY 23, 1968 AND THE RESPONSIBILITY OF ARGONAUT INSURANCE COMPANY OR WAS THE RESULT OF A NOVEMBER 1, 1966 INJURY AND THE RESPONSIBILITY OF HOME INSURANCE COMPANY. CLAIMANT'S REQUEST TO REOPEN HIS CLAIM HAD BEEN DENIED BY BOTH CARRIERS. CLAIMANT'S AGGRAVATION RIGHTS WITH RESPECT TO BOTH INJURIES HAS EXPIRED.

THE BOARD'S ORDER DIRECTED THE REFEREE, UPON CONCLUSION OF THE HEARING, TO FURNISH THE BOARD HIS RECOMMENDATION TOGETHER WITH AN ABSTRACT OF THE RECORD.

ON AUGUST 17, 1976 A HEARING WAS HELD BEFORE REFEREE H. DON FINK AND, AS A RESULT OF SAID HEARING, HE RECOMMENDED THAT THE BOARD ASSUME ITS OWN MOTION JURISDICTION AND PROVIDE WORKMEN'S COMPENSATION BENEFITS TO CLAIMANT - THAT THE CLAIMANT'S PRESENT CONDITION WAS RELATED TO THE NOVEMBER 1, 1966 INJURY AND, THEREFORE, THE RESPONSIBILITY OF HOME INSURANCE COMPANY.

THE BOARD, AFTER DE NOVO REVIEW OF THE ABSTRACT OF RECORD, ADOPTS AS ITS OWN THE RECOMMENDATION OF THE REFEREE, A COPY OF WHICH IS ATTACHED HERETO AND, BY THIS REFERENCE, MADE A PART HEREOF.

ORDER

THE CLAIM IS REMANDED TO THE EMPLOYER MOORE DRY-KILN AND ITS CARRIER, HOME INSURANCE COMPANY, TO BE ACCEPTED FOR THE PAYMENT OF COMPENSATION, AS PROVIDED BY LAW, UNTIL THE CLAIM IS CLOSED PURSUANT TO ORS 656.278.

CLAIM NO. H 455236 SEPTEMBER 20, 1976

GORDON SPEAR, CLAIMANT
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER

CLAIMANT HAD SUFFERED AN INDUSTRIAL INJURY WHICH REQUIRED AMPUTATION OF HIS LEFT LEG BELOW THE KNEE IN 1932. ON AUGUST 30, 1976, THE BOARD RECEIVED A LETTER FROM CLAIMANT REQUESTING THAT THE BOARD EXERCISE ITS OWN MOTION JURISDICTION AND REOPEN HIS CLAIM BASED UPON A REPORT FROM DR. MCKILLOP, DATED AUGUST 6, 1976.

THE STATE ACCIDENT INSURANCE FUND WAS ADVISED BY THE BOARD, ON AUGUST 31, 1976, THAT IT HAD RECEIVED THE REQUEST AND THE MEDICAL REPORT AND ASKED TO ADVISE THE BOARD WITHIN 20 DAYS OF ITS POSITION.

ON SEPTEMBER 7, 1976 THE FUND STATED THAT IT WOULD CONTINUE TO ACCEPT RESPONSIBILITY FOR PROTHESIS REPAIR AND ANY TREATMENT REQUIRED AS A RESULT OF CLAIMANT'S AMPUTATION PURSUANT TO THE PROVISIONS OF ORS 656.245. THE FUND ALSO ADVISED THE BOARD THAT IT HAD INFORMED CLAIMANT OF ITS POSITION BY LETTER, DATED AUGUST 23, 1976, AND IT DID NOT BELIEVE AN AWARD FOR PERMANENT TOTAL DISABILITY WAS JUSTIFIED AS CLAIMANT HAD BEEN ABLE TO CONTINUE WORKING MANY YEARS FOLLOWING THE AMPUTATION. AT THE PRESENT TIME CLAIMANT IS 79 YEARS OLD, AND, IN ADDITION TO HIS AMPUTATED LEG, HAS OTHER MEDICAL PROBLEMS.

THE BOARD, AFTER DUE CONSIDERATION, FEELS THAT THE RESPONSIBILITY FOR REPAIR AND TREATMENT WHICH THE FUND HAS STATED IT WILL CONTINUE TO ACCEPT UNDER ORS 656.245 IS ALL THAT CLAIMANT, AT THE PRESENT TIME, IS ENTITLED TO AND, THEREFORE, HIS REQUEST FOR THE BOARD TO EXERCISE ITS OWN MOTION JURISDICTION AND REOPEN HIS CLAIM SHOULD BE DENIED.

IT IS SO ORDERED.

WCB CASE NO. 75-5369 SEPTEMBER 27, 1976

GENE LINN, CLAIMANT
ORDER APPROVING STIPULATION

THE STIPULATION OF COMPROMISE SUBMITTED TO THE WORKMEN'S COMPENSATION BOARD, COPY OF WHICH IS ATTACHED HERETO AND MADE A PART HEREOF, IS HEREBY APPROVED AND THE REQUEST FOR BOARD REVIEW NOW PENDING IS DISMISSED.

WCB CASE NO. 75-4046 SEPTEMBER 28, 1976

HARRY KARNS, CLAIMANT
GARY SUSAK, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS PHILLIPS AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT 240 DEGREES FOR 75 PER CENT UNSCHEDULED HEART

DISABILITY. CLAIMANT CONTENDS HE IS PERMANENTLY AND TOTALLY DISABLED.

CLAIMANT, A 61 YEAR OLD MAN, SUSTAINED A COMPENSABLE MYOCARDIAL INFARCTION ON MARCH 7, 1973 WHILE SERVING AS PRESIDENT OF THE LA GRANDE CITY COMMISSION. UPON HIS RELEASE FROM THE HOSPITAL ON APRIL 3, 1973 CLAIMANT WAS TOLD TO RESTRICT HIS ACTIVITIES, AND HE HAS NOT BEEN EMPLOYED SINCE HIS INDUSTRIAL INJURY. FROM 1948 TO 1963 CLAIMANT HAD BEEN A SELF-EMPLOYED OWNER-SALESMAN OF LOGGING AND SAWMILL SUPPLIES.

IN AUGUST, 1975 CLAIMANT WORKED ON A VOLUNTARY BASIS FOR ONE MONTH FOR THE D. MCD COMPANY. HE WOULD RECEIVE ORDERS BY RADIO FOR PARTS FROM TRUCK DRIVERS WHICH CLAIMANT WOULD PURCHASE FROM THE PARTS HOUSE. HE HAD TO GO UPTOWN TO PURCHASE THE PARTS NEEDED. AT THE END OF AUGUST CLAIMANT TESTIFIED HE WENT INTO THE HOSPITAL FOR THREE DAYS DUE TO BREATHLESSNESS.

A DETERMINATION ORDER ISSUED SEPTEMBER 2, 1975 GRANTED CLAIMANT 112 DEGREES FOR 35 PER CENT UNSCHEDULED HEART DISABILITY.

ON JANUARY 13, 1976, DR. FREDERICK, CLAIMANT'S TREATING PHYSICIAN, RATED CLAIMANT'S HEART DISEASE AS CLASS II = 'PATIENTS WITH CARDIAC DISORDER WITH SLIGHT TO MODERATE LIMITATION OF PHYSICAL ACTIVITY'. HE FELT CLAIMANT WAS CAPABLE OF DOING OFFICE WORK IF IT WAS RELATIVELY FREE OF MENTAL STRESS.

DR. FREDERICK TESTIFIED AT THE HEARING THAT CLAIMANT COULD DO ORDINARY ACTIVITIES SUCH AS WALKING AND SITTING FOR SHORT PERIODS OF TIME, BUT NOT EVERY DAY. CLAIMANT SUFFERS FROM SHORTNESS OF BREATH AND KEEPS A SUPPLY OF OXYGEN AT HOME.

CLAIMANT TESTIFIED ON A NICE DAY HE CAN WALK ONE OR TWO MILES, BUT ON A WINDY DAY HE IS UNABLE TO BREATHE EASILY BECAUSE OF THE WIND.

THE REFEREE FOUND CLAIMANT COULD NOT RESUME HIS OLD JOB AS A TRAVELING SALESMAN AND CLAIMANT TESTIFIED THERE WAS NO MONEY IN CLERKING. CLAIMANT HAS NOT BEEN JOB HUNTING. THE REFEREE FOUND THAT CLAIMANT HAD TO CURTAIL HIS PHYSICAL ACTIVITIES, BUT HE DOUBTED THAT CLAIMANT WAS AS DISABLED AS HE ALLEGED.

UNSCHEDULED DISABILITY IS RATED ON LOSS OF WAGE EARNING CAPACITY AND ALTHOUGH THE CLAIMANT CONTENDED HE WAS PERMANENTLY AND TOTALLY DISABLED, THE REFEREE FOUND THAT HE HAD NOT SUFFERED A TOTAL LOSS OF WAGE EARNING CAPACITY.

THE REFEREE CONCLUDED, BASED ON CLAIMANT'S BACKGROUND, EDUCATION, ACCOMPLISHMENTS AND EXPERIENCE, THAT HE STILL HAS RETAINED SOME WAGE EARNING CAPACITY. HOWEVER, THE REFEREE FOUND THAT THE PREVIOUS AWARD OF 35 PER CENT DID NOT ADEQUATELY COMPENSATE CLAIMANT FOR HIS LOSS OF WAGE EARNING CAPACITY. HE INCREASED THE AWARD TO 75 PER CENT OF THE MAXIMUM.

THE BOARD, ON DE NOVO REVIEW, ADOPTS THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 19, 1976, IS AFFIRMED.

WCB CASE NO. 74—2222 SEPTEMBER 28, 1976

SHIREEN MAY LARSEN, CLAIMANT

GALE POWELL, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
AMENDED ORDER ON REVIEW

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

ON SEPTEMBER 1, 1976 AN ORDER ON REVIEW WAS ENTERED IN THE ABOVE ENTITLED MATTER WHICH ERRONEOUSLY STATED THAT CLAIMANT WAS GRANTED 192 DEGREES FOR 60 PER CENT UNSCHEDULED DISABILITY. IT SHOULD HAVE STATED THAT CLAIMANT WAS AWARDED 60 PER CENT OF A MAXIMUM OF 192 DEGREES FOR UNSCHEDULED DISABILITY.

ORDER

THE ORDER IS HEREBY CORRECTED AS FOLLOWS -

DELETE THE LAST SENTENCE OF THE LAST PARAGRAPH ON PAGE 2 AND INSERT IN LIEU THEREOF THE FOLLOWING -

> 'IT GRANTS CLAIMANT 115.2 DEGREES FOR 60 PER CENT UNSCHEDULED DISABILITY TO COMPENSATE CLAIMANT FOR HER LOSS OF WAGE EARNING CAPACITY.'

DELETE THE FIRST SENTENCE OF THE SECOND PARAGRAPH OF THE 'ORDER' PORTION AND INSERT IN LIEU THEREOF =

> 'CLAIMANT IS HEREBY GRANTED 115.2 DEGREES OF A MAXIMUM 192 DEGREES FOR UNSCHEDULED BACK DISABILITY.'

IN ALL OTHER RESPECTS THE ORDER ON REVIEW ENTERED SEPTEMBER 1, 1976 IS RATIFIED AND REAFFIRMED.

WCB CASE NO. 74—2250 SEPTEMBER 28, 1976

KENNETH WALDEN, CLAIMANT

JACK OFELT, CLAIMANT'S ATTY.
MICHAEL HOFFMAN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

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

ON JANUARY 8, 1973 CLAIMANT SUSTAINED A COMPENSABLE LOW BACK INJURY. CLAIMANT CONTINUED WORKING BUT RECEIVED CHIROPRACTIC TREATMENTS FROM DR. ELLIOTT, A CHIROPRACTOR BETWEEN JANUARY AND JUNE, 1973 AND SAW DR. CONLEY, ANOTHER CHIROPRACTOR, IN 1974. CLAIMANT MISSED ONLY ONE DAY'S WORK PRIOR TO JANUARY 25, 1974 WHEN HE SAID HIS PAIN BECAME SO BAD HE HAD TO QUIT. HE HAS NOT WORKED SINCE.

THE CLAIM WAS ACCEPTED AND CLOSED IN JUNE, 1973 AS A 'MEDICAL ONLY'.

ON JANUARY 31, 1974 DR. HO EXAMINED CLAIMANT AND FOUND HIS CONDITION EXCELLENT BUT FOUND CLAIMANT PREOCCUPIED WITH HIS SYMPTOMS.

ON MARCH 1, 1974 DR. ROCKEY EXAMINED CLAIMANT AND DIAGNOSED LOW BACK STRAIN ASSOCIATED WITH POSSIBLE LUMBOSACRAL DISC INJURY. NO NERVE ROOT IRRITATION WAS FOUND AND DR. ROCKEY RESTRICTED CLAIMANT TO WORK NOT REQUIRING HEAVY LIFTING AND REPETITIVE JARRING.

ON MARCH 13, 1974 DR. MARXER SAID HE THOUGHT CLAIMANT HAD SUFFERED SOME SOFT TISSUE INJURY WITH NO RESIDUALS. HE COULDN'T GIVE AN OPINION ON CLAIMANT'S CONDITION BECAUSE CLAIMANT REFUSED X-RAYS.

ON JULY 22, 1974 DR. MASON EXAMINED CLAIMANT, WHO HAD MULTIPLE COMPLAINTS. HIS OBJECTIVE EXAMINATION WAS ENTIRELY NORMAL.

DR. SCHMIDT, ON AUGUST 14, 1974, DIAGNOSED CERVICAL AND LUMBAR PAIN, ETIOLOGY UNDETERMINED. CLAIMANT'S NEUROLOGICAL EXAMINATION WAS WITHIN NORMAL LIMITS. HIS COMPLAINTS 'APPEARED TO IMPROVE, HOWEVER, OVER THE LONG-TERM PERIOD, THERE WAS ESSENTIALLY MINIMAL SIGNIFICANT CHANGE'. DR. SCHMIDT FOUND A SIGNIFICANT DEGREE OF FUNCTIONAL OVERLAY.

ON NOVEMBER 11, 1975 DR. QUAN EXAMINED CLAIMANT AND RATED HIS DISABILITY AT 2 PER CENT OR LESS OF THE WHOLE MAN. PSYCHOLOGICALLY, HE DIAGNOSED A SCHIZOID PERSONALITY, MILD - PSYCHOPHYSIOLOGICAL MUSCULO-SKELETAL DISORDER, MILD AND FOUND THAT CLAIMANT'S PSYCHIATRIC DISORDERS DID NOT PRECLUDE HIM FROM PERFORMING GAINFUL EMPLOYMENT.

DR. PAULY, ON FEBRUARY 9, 1976, CONCURRED WITH DR. QUAN, BUT RATED CLAIMANT'S DISABILITY AT 50 PER CENT.

THE REFEREE FOUND THAT THE PSYCHOLOGICAL EVIDENCE SHOWS CLAIMANT'S COMPLAINTS ARE GENERATED BY A PSYCHIATRIC DYSFUNCTION = AN INADEQUATE SCHIZOID PERSONALITY, WHICH CONDITION IS DEEMED CHRONIC IN NATURE AND WHICH PRE-EXISTED CLAIMANT'S INDUSTRIAL INJURY.

THE REFEREE FOUND THIS CASE COMPLICATED BY OTHER FACTORS, E.G., CLAIMANT PROFESSES A RELIGION WHICH PROHIBITS X-RAYS, MEDICATION AND MYELOGRAMS, HE HAS LONG STANDING DIFFICULTIES IN INTERPERSONAL RELATIONSHIPS WITH WOMEN, HE IS A PHYSICAL CULTIST AND SPENDS A LOT OF TIME READING MEDICAL BOOKS AND IS SUSCEPTIBLE TO SUGGESTION AS HE FREQUENTLY REPORTS NEW SYMPTOMS.

THE REFEREE CONCLUDED, BASED ON ALL OF THE MEDICAL EVIDENCE SUBMITTING, THAT NONE OF THE DOCTORS WHO EXAMINED AND-OR TREATED CLAIMANT'S FOUND THAT HIS CONDITION HAD WORSENED SINCE JUNE, 1973. CLAIMANT FAILED TO SUSTAIN HIS BURDEN OF PROVING AN AGGRAVATION OF HIS ORIGINAL INJURY.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 31, 1976, IS AFFIRMED.

LONNIE FLOWERS, CLAIMANT

GARY GALTON, CLAIMANT'S ATTY.
MICHAEL HOFFMAN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER
CROSS-REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

THE EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED CLAIMANT'S CLAIM TO IT FOR PROCUREMENT OF AN ORTHOPEDIC MATTRESS AND BOX SPRING EQUIVALENT TO THOSE OFFERED BY RETAIL MERCHANTS IN THE PORTLAND AREA AND IN ACCORDANCE WITH DR. NORTH'S REQUIREMENTS. THE REFEREE ALSO ORDERED THE EMPLOYER TO PAY CLAIMANT 50 DOLLARS AS A PENALTY FOR THE EMPLOYERS' UNREASONABLE CONDUCT.

CLAIMANT CROSS-APPEALS THE REFEREE'S ORDER, ASKING PENALTIES AND ATTORNEY FEES.

CLAIMANT SUSTAINED A COMPENSABLE BACK INJURY IN JULY, 1974. A DETERMINATION ORDER IN JANUARY, 1975 GRANTED NO AWARD FOR PERMANENT PARTIAL DISABILITY COMPENSATION. CLAIMANT'S CLAIM WAS SUBSEQUENTLY REOPENED FOR FURTHER TREATMENT AND DR. NORTH PRESCRIBED AN ORTHOPEDIC MATTRESS.

CLAIMANT WENT TO FOUR RETAIL STORES FOR A KING-SIZED MATTRESS AND FINALLY ORDERED ONE FROM STAR FURNITURE AT A PRICE OF 539.95 DOLLARS. THE CARRIER WAS BILLED FOR THIS AMOUNT. WHEN THIS MATTRESS WAS DELIVERED IT WAS TOO BIG TO ENTER CLAIMANT'S BEDROOM.

IN THE MEANTIME, AN EMPLOYEE OF THE CARRIER, MR. AUSTIN, WENT SEARCHING FOR AN ORTHOPEDIC MATTRESS WHICH WOULD FULFILL THE PRESCRIPTION. HE FOUND OUT THAT RETAIL STORES CHARGED FROM 500 DOLLARS TO 600 DOLLARS FOR A KING-SIZED ORTHOPEDIC MATTRESS. HE ALSO DISCOVERED THAT LARGE RETAILERS HAVE FACTORY OUTLET STORES WHICH OFFER LOWER PRICES.

MR. AUSTIN LOCATED A USED SEARS-O-PEDIC KING-SIZED MATTRESS FOR 199 DOLLARS, PLUS 10 DOLLARS SHIPPING CHARGE. CLAIMANT REFUSED TO ACCEPT THIS MATTRESS AND REFUSED TO ACCEPT THE CHECK FOR 209.99 DOLLARS PRESENTED TO HIM BY THE CARRIER.

THE REFEREE FOUND THAT THE ORTHOPEDIC MATTRESS HAVING BEEN PRESCRIBED BY DR. NORTH FOR ADDITIONAL SUPPORT FOR CLAIMANT'S BACK CONSTITUTED A MEDICAL SERVICE CONTEMPLATED BY ORS 656.245.

THE REFEREE ALSO FOUND THAT A SUITABLE MATTRESS WAS A GOOD FIRM MATTRESS. THE QUESTION WAS - WHAT IS SUITABLE? THE REFEREE FOUND THAT THE USED MATTRESS OFFERED BY THE CARRIER WAS ONE WHICH COULD EITHER HAVE BEEN REPOSSESSED BY THE SELLER OR ONE RETURNED BY A CUSTOMER AS BEING UNSATISFACTORY. THERE WAS NO WAY OF KNOWING IF THIS PARTICULAR MATTRESS WAS IN SOMEONE ELSE'S POSSESSION 24 HOURS OR FOR OVER 30 DAYS.

THE REFEREE CONCLUDED THAT THE USED MATTRESS WAS UNSUITABLE AND HAD BEEN REJECTED BY CLAIMANT. SUBSTITUTIONS OF PRESCRIPTION BY A DOCTOR CAN BE MADE ONLY IF THE CHOICE AS TO EQUIVALENCY IS MADE BY AN EXPERT. THE DOCTOR MADE CLAIMANT THE EXPERT BY INDICATING HIS CHOICE OF A SUITABLE MATTRESS AND HE MUST BE INVOLVED IN ITS SELECTION. THE REFEREE ORDERED THE CARRIER TO PROCURE A SUITABLE ORTHOPEDIC MATTRESS FROM A RETAIL STORE IN PORTLAND WHICH FIT THE REQUIREMENTS SET BY DR. NORTH.

THE CLAIMANT CONTENDS THIS WAS A DENIED CLAIM AND THAT PENALTIES AND ATTORNEY FEES WERE JUSTIFIED.

THE REFEREE FOUND THIS WAS NOT A DENIED CLAIM AS THE CARRIER HAD NEVER DENIED IT, BOTH THE CARRIER AND THE CLAIMANT WERE AT FAULT FOR NOT DISCUSSING THIS SITUATION AND THIS MUTUAL FAULT RESULTED IN AN IMPASSE. HOWEVER, THE CARRIER'S DELAY IN PROVIDING THE PRESCRIBED MATTRESS AMOUNTED TO UNREASONABLE CONDUCT ON THE PART OF THE CARRIER AND THE REFEREE AWARDED CLAIMANT 50 DOLLARS, PAYABLE BY THE CARRIER, AS A PENALTY.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 15, 1976, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY FEE FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW, THE SUM OF 150 DOLLARS, PAYABLE BY THE EMPLOYER.

WCB CASE NO. 75-5124 SEPTEMBER 28, 1976

RICHARD PLISKA, CLAIMANT

C. DAVID HALL, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT AN AWARD OF 64 DEGREES FOR 20 PER CENT UNSCHEDULED RIGHT SHOULDER DISABILITY.

CLAIMANT, A MECHANIC, SUSTAINED FRACTURES TO THE RIGHT GLENOID AND SCAPULA OF THE RIGHT SHOULDER ON FEBRUARY 17, 1975. ON FEBRUARY 21, 1975 DR. WISDOM PERFORMED OPEN REDUCTION WITH FIXATION WITH STEINMANN PINS. ON APRIL 30, 1975 CLAIMANT WAS REHOSPITALIZED FOR MANIPULATION TO FREE ADHESIONS.

CLAIMANT RETURNED TO LIGHTER DUTY EMPLOYMENT FOR A TIME AND THEN RETURNED TO HIS REGULAR OCCUPATION.

IN A REPORT OF SEPTEMBER 24, 1975 DR. WISDOM FOUND CLAIMANT MEDICALLY STATIONARY WITH A MODERATE DEGREE OF PERMANENT PARTIAL DISABILITY. ON NOVEMBER 7, 1975 A DETERMINATION ORDER GRANTED CLAIMANT 48 DEGREES FOR 15 PER CENT UNSCHEDULED DISABILITY.

THE REFEREE FOUND CLAIMANT HAD NOT PROVEN THAT HE HAD ANY PERMANENT DISABILITY IN HIS RIGHT ARM. CLAIMANT'S DISABILITY IS IN THE UNSCHEDULED AREA AND LOSS OF WAGE EARNING CAPACITY IS THE SOLE CRITERION FOR EVALUATING THIS DISABILITY.

THE REFEREE FOUND CLAIMANT'S EARNING CAPACITY HAD BEEN IMPAIRED IN GENERAL BUT NOT IN PARTICULAR. HE FELT THAT CLAIMANT'S EMPLOYER HAD MUCH TO DO WITH CLAIMANT'S CONTINUING SUCCESS AT WORK AND COULD NOT SAY HOW CLAIMANT WOULD FARE WORKING FOR ANOTHER EMPLOYER. THE REFEREE INCREASED CLAIMANT'S AWARD TO 64 DEGREES FOR 20 PER CENT UNSCHEDULED RIGHT SHOULDER DISABILITY.

THE BOARD, ON DE NOVO REVIEW, ADOPTS THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 6, 1976, IS AFFIRMED.

WCB CASE NO. 75-5408 SEPTEMBER 28, 1976

STEELE GOVE, CLAIMANT

ROBERT FRANKLIN, CLAIMANT'S ATTY.
NOREEN SALTVEIT, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

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

CLAIMANT SUSTAINED A COMPENSABLE LOW BACK INJURY ON APRIL 18, 1970 WHILE LIFTING CONCRETE. A DETERMINATION ORDER OF FEBRUARY 28, 1973 GRANTED CLAIMANT 16 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT HAS AN UNDERLYING CONGENITAL CONDITION WHICH MAKES CLAIMANT SUSCEPTIBLE TO BACK SYMPTOMATOLOGY AFTER STRENUOUS LIFTING. CLAIMANT HAD NO MEDICAL TREATMENT BETWEEN 1972 AND 1975. CLAIMANT BEGAN WORKING IN THE SUMMER OF 1973 AS A BODY AND FENDER MAN. CLAIMANT SUBMITTED MEDICAL REPORTS FROM DRS. SULLIVAN AND POST TO SUSTAIN HIS CLAIM FOR AGGRAVATION.

THE REFEREE FOUND THAT NEITHER MEDICAL REPORT CONFIRMED THE EXISTENCE OF AN AGGRAVATION OF CLAIMANT'S 1970 INJURY. IT WAS MORE PROBABLE THAT AN INJURY TO CLAIMANT'S LOW BACK HAD OCCURRED AS A RESULT OF CLAIMANT'S BODY AND FENDER WORK.

THE REFEREE FOUND CLAIMANT TO BE A VAGUE WITNESS WITH CHRONIC LAPSES OF MEMORY AND CONCLUDED THAT CLAIMANT HAD FAILED TO SUSTAIN HIS BURDEN OF PROVING AGGRAVATION. HE AFFIRMED THE DENIAL.

THE BOARD, ON DE NOVO REVIEW, ADOPTS THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 9, 1976, IS AFFIRMED.

WCB CASE NO. 76-211 SEPTEMBER 28, 1976

DAVID ANTON, CLAIMANT

WALTER ALLEY, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER ON REVIEW

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER OF JANUARY 7, 1976 WHICH AWARDED CLAIMANT TEMPORARY TOTAL DISABILITY COMPENSATION ONLY.

CLAIMANT SUFFERED A COMPENSABLE LOW BACK INJURY ON JUNE 17, 1975 WHEN HE SLIPPED AND FELL FROM THE HOOD OF A TRUCK. IN JULY, 1973 CLAIMANT SLIPPED ON SOME STAIRS AND REINJURED HIS LOW BACK. IN AUGUST, 1973 CLAIMANT AGAIN INJURED HIS LOW BACK WHILE TAKING A MOTORCYCLE INTO A HOUSE.

CLAIMANT SAW DR. MOORE WHOSE REPORT OF AUGUST 12, 1975 CONTAINS A DIAGNOSIS OF CONTUSION OF THE LEFT KIDNEY AND STATED HE EXPECTED NO FURTHER PROBLEMS FOR CLAIMANT.

ON SEPTEMBER 17, 1975 DR. GAMBEE REPORTED THERE WAS LITTLE OBJECTIVE EVIDENCE OF LOCOMOTOR DISEASE IN CLAIMANT AND HE WAS STARTING CLAIMANT ON ANTI-INFLAMMATORY MEDICATION. ON OCTOBER 3, 1975 DR. GAMBEE STATED = 'THIS YOUNG MAN DIDN'T SEE FIT TO BOTHER TO FOLLOWUP ANY OF THE THINGS THAT I HAD TO OFFER HIM. HE DIDN'T GO TO PHYSICAL THERAPY AND I DON'T WANT TO TAKE CARE OF HIM.' DR. GAMBEE OPINED THAT CLAIMANT WAS USING HIS INDUSTRIAL INJURY FOR SECONDARY GAIN AND RECOMMENDED CLAIM CLOSURE WITH NO PERMANENT RESIDUALS BASED UPON HIS EXAMINATION. HIS FINAL DIAGNOSIS WAS MALINGERING AND HYSTERIA.

IN A REPORT OF NOVEMBER 7, 1975 DR. PASQUESI DIAGNOSED A CHRONIC PARASPINOUS STRAIN ON THE LEFT. HE FOUND CLAIMANT MEDICALLY STATIONARY AND RECOMMENDED RETRAINING. IN DECEMBER, 1975 A SERVICE COORDINATOR ATTEMPTED TO VOCATIONALLY ASSIST CLAIMANT BUT CLAIMANT SAID HE DIDN'T WANT HIS SERVICES.

A DETERMINATION ORDER DATED JANUARY 7, 1976 GRANTED CLAIMANT TEMPORARY TOTAL DISABILITY COMPENSATION ONLY.

THE REFEREE FOUND THAT THE MEDICAL EVIDENCE PRODUCED ONLY MINIMAL OBJECTIVE FINDINGS AND NUMEROUS SUBJECTIVE COMPLAINTS. THE REFEREE FOUND CLAIMANT'S DISABILITY TOO MINUTE TO BE MEASURED, THAT CLAIMANT'S PRINCIPAL PROBLEM WAS AVERSION TO WORK. HE CONCURRED WITH DR. GAMBEE'S IMPRESSION OF CLAIMANT. CLAIMANT'S WORK HISTORY SHOWS SPORADIC PERIODS OF SHORT EMPLOYMENTS, HE HAS REFUSED JOB OFFERS, VOCATIONAL RETRAINING AND PHYSICAL THERAPY. THE REFEREE CONCLUDED THAT CLAIMANT LACKED MOTIVATION TO RETURN TO WORK, REFUSES TO HELP HIMSELF AND HAS LOST NO WAGE EARNING CAPACITY. HE AFFIRMED THE DETERMINATION ORDER OF JANUARY 7, 1976.

THE BOARD, ON DE NOVO REVIEW, ADOPTS THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 17, 1976, IS AFFIRMED.

WCB CASE NO. 75-4151 SEPTEMBER 28, 1976

RONALD CHAMBERLAIN, CLAIMANT

R. LADD LONNQUIST, CLAIMANT'S ATTY.
MICHAEL HOFFMAN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED A SPECIAL DETERMINATION ORDER MAILED OCTOBER 7, 1975.

CLAIMANT SUSTAINED A LEFT FOOT INJURY ON AUGUST 15, 1972 WHEN

HIS LEFT FOOT WAS RUN OVER BY A FORKLIFT. THIS INJURY WAS DIAGNOSED AS A CRUSH INJURY TO THE FIRST THREE TOES OF THE LEFT FOOT. CLAIMANT RETURNED TO WORK AND, ON OCTOBER 26, 1972, HIS LEFT FOOT WAS AGAIN RUN OVER BY A HYSTER.

DR. SACAMANO, WHO TREATED BOTH INJURIES, RELEASED CLAIMANT TO WORK ON NOVEMBER 27, 1972.

CLAIMANT WAS SUFFERING FROM BACK COMPLAINTS AND SAW DR. CASE, WHO, IN JANUARY, 1973, PERFORMED A LUMBAR LAMINECTOMY AND DISKECTOMY AT L5-S1 LEVEL. IN AUGUST, 1973 A BONY SPUR WAS EXCISED AND CLAIMANT'S LEFT FOOT NO LONGER TROUBLES HIM.

A DETERMINATION ORDER OF NOVEMBER 7, 1973 GRANTED CLAIMANT 32 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK DISABILITY.

DR. TENNYSON EXAMINED CLAIMANT ON JANUARY 22, 1974 AND FOUND PROBABLE RECURRENT PROTRUDED INTERVERTEBRAL DISC, LEFT AND MUCH FUNCTIONAL OVERLAY.

ON DECEMBER 13, 1974 THE PORTLAND PAIN REHABILITATION CENTER EXAMINED CLAIMANT AND FOUND MILD TO MODERATE DISABILITY AND RECOMMENDED CLAIMANT RETURN TO WORK AS SOON AS POSSIBLE.

THE ORTHOPAEDIC CONSULTANT'S REPORT OF JULY 1, 1975 INDICATED CLAIMANT WAS MEDICALLY STATIONARY AND THAT CLAIMANT'S TOTAL LOSS OF FUNCTION OF HIS BACK WAS MILD AND THIS LOSS OF FUNCTION IS SECONDARY TO THE INJURY. THEY INDICATED CLAIMANT COULD RETURN TO HIS FORMER OCCUPATION.

A SECOND DETERMINATION ORDER MAILED SEPTEMBER 22, 1975 GRANTED CLAIMANT AN ADDITIONAL 16 DEGREES FOR HIS UNSCHEDULED DISABILITY. A SPECIAL DETERMINATION ORDER MAILED OCTOBER 7, 1975, BASED ON FURTHER MEDICAL EVIDENCE, AFFIRMED THE SECOND DETERMINATION ORDER.

THE REFEREE FOUND THAT THERE WAS EVIDENCE OF BOTH PHYSICAL AND PSYCHOLOGICAL COMPONENTS CONTRIBUTING TO CLAIMANT'S SUBJECTIVE SYMPTOMS. THE OBJECTIVE MEDICAL EVIDENCE DID NOT SUPPORT CLAIMANT'S COMPLAINTS. THE REFEREE FELT THAT CLAIMANT'S TESTIMONY WAS GROSSLY EXAGGERATED.

THE REFEREE CONCLUDED THAT CLAIMANT HAD NOT SUFFERED ANY SUBSTANTIAL LOSS OF WAGE EARNING CAPACITY AND AFFIRMED THE DETERMINATION ORDER MAILED OCTOBER 7, 1975.

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

ORDER

THE ORDER OF THE REFEREE, DATED MAY 12, 1976, IS AFFIRMED.

GREGORY ELLIS, CLAIMANT

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

REVIEWED BY BOARD MEMBERS WILSON, MOORE AND PHILLIPS.

CLAIMANT SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH DISMISSED CLAIMANT'S REQUEST FOR A HEARING. THE ISSUE BEFORE THE REFEREE WAS WHETHER OR NOT CLAIMANT WAS VOCATIONALLY HANDICAPPED. THE FUND, APPEARING SPECIALLY, QUESTIONED THE JURISDICTION OF THE BOARD, CONTENDED THAT A LUMP SUM PAYMENT MADE TO CLAIMANT PRECLUDED HIM FROM REQUESTING A HEARING ON THE ISSUE OF BEING VOCATIONALLY HANDICAPPED AND THAT THE MATTER WAS RES JUDICATA.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON AUGUST 2, 1974. HIS CLAIM WAS CLOSED BY A DETERMINATION ORDER MAILED APRIL 3, 1975 WHICH AWARDED CLAIMANT COMPENSATION FOR TEMPORARY TOTAL DISABILITY ONLY.

ON SEPTEMBER 3, 1975 A HEARING WAS HELD BEFORE REFEREE JAMES P. LEAHY, THE ISSUES WERE WHETHER OR NOT CLAIMANT WAS VOCATIONALLY STATIONARY AND, IF SO, THE EXTENT OF HIS DISABILITY. IN HIS OPINION AND ORDER ENTERED OCTOBER 15, 1975 REFEREE LEAHY STATED (UNDERSCORED) THAT THE HEARING WAS PREMATURE BECAUSE CLAIMANT HAD BEEN REFERRED TO THE DISABILITY PREVENTION DIVISION AND NOT ONLY WERE THOSE REPORTS NOT AVAILABLE, BUT ALSO A DECISION CONCERNING RETRAINING HAD YET TO BE MADE. THE HEARING WOULD BE MEANINGLESS SHOULD VRD ULTIMATELY ACCEPT CLAIMANT, NEVERTHELESS, AT THE INSISTANCE OF THE PARTIES TESTIMONY WAS TAKEN AND, BASED UPON THIS EVIDENCE, THE REFEREE GRANTED CLAIMANT 64 DEGREES FOR UNSCHEDULED DISABILITY. BY GRANTING THIS AWARD THE REFEREE INDICATED THAT THE EVIDENCE DID NOT SHOW CLAIMANT WAS VOCATIONALLY HANDICAPPED.

ON DECEMBER 22, 1975 RALPH TODD, VOCATIONAL REHABILITATION COORDINATOR AT THE DISABILITY PREVENTION DIVISION, INFORMED CLAIMANT'S COUNSEL THAT BASED UPON HIS INVESTIGATION HE DID NOT FEEL THAT THE BOARD COULD UNDERWRITE A VOCATIONAL REHABILITATION PROGRAM FOR THE CLAIMANT. AS A RESULT OF THIS, CLAIMANT REQUESTED A HEARING WHICH WAS HELD ON APRIL 20, 1976. ON MAY 3, 1976 REFEREE LEAHY ENTERED HIS ORDER DISMISSING THE REQUEST AND CLAIMANT NOW SEEKS BOARD REVIEW.

AT THE HEARING IN APRIL CLAIMANT LED THE REFEREE TO BELIEVE THAT HE HAD NOT ONLY BEEN THROUGH THE DISABILITY PREVENTION DIVISION DURING THE SUMMER OF 1975 BUT ALSO THAT HE KNEW THAT HE HAD BEEN REFUSED RETRAINING PRIOR TO THE SEPTEMBER 3, 1975 HEARING. EVIDENCE INDICATED THAT ON OCTOBER 16, 1975 THE VOCATIONAL REHABILITATION DIVISION APPROVED A CURRENT REHABILITATION PLAN WITHOUT APPROVAL OF THE BOARD. THIS WAS THE DAY FOLLOWING THE ISSUANCE OF REFEREE LEAHY'S FIRST ORDER.

THE REFEREE FOUND THAT HE HAD JURISDICTION FOR THIRTY DAYS, I.E., UNTIL NOVEMBER 15, 1975, BUT THAT CLAIMANT HAD REMAINED SILENT, EXCEPT FOR REQUESTING, AND ACCEPTING, A LUMP SUM PAYMENT OF THE AWARD MADE BY THE ORDER OF OCTOBER 15, 1975. CLAIMANT DID NOT ASK FOR CLARIFICATION OF THIS NOR DID HE REQUEST BOARD REVIEW THEREOF.

THE REFEREE CONCLUDED THAT CLAIMANT HAD NOT BEEN MISLED THEREBY BUT HAD COLLECTED THE ENTIRE AWARD AND THEN FILED A REQUEST FOR REVIEW ON THE ISSUE OF HAVING A VOCATIONAL HANDICAP, AN ISSUE WHICH NOT ONLY WAS BEFORE HIM AT THE ORIGINAL HEARING BUT WAS CONSIDERED THEREIN. HE CONCLUDED FURTHER THAT CLAIMANT COULD NOT SPLIT HIS CAUSES

OF ACTION AND, THEREFORE, THE REQUEST FOR HEARING SHOULD BE DISMISSED.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS THE REFEREE - HOWEVER, IT DOES WISH TO STRESS STRONGLY THE NECESSITY FOR TAKING THE PROPER STEPS TO ESTABLISH A VOCATIONAL REHABILITATION PROGRAM FOR A WORKER.

THE PROCEDURE IS SET FORTH CLEARLY IN OAR CHAPTER 436, DIVISION 61 - VOCATIONAL REHABILITATION OF INJURED WORKERS. UNLESS AN INJURED WORKMAN OBTAINS AUTHORIZATION FROM THE BOARD ANY VOCATIONAL REHABILITATION PROGRAM WHICH HE MAY ENTER CANNOT BE CONSIDERED AS A PROGRAM OF VOCATIONAL REHABILITATION FOR INJURED WORKERS' PURSUANT TO ORS 656.278. IT IS NECESSARY TO FOLLOW THE RULES TO ESTABLISH WHETHER OR NOT THE WORKMAN IS ELIGIBLE FOR SUCH VOCATIONAL REHABILITATION, IT IS NOT A MATTER OF RIGHT BUT IS WITHIN THE DISCRETION OF THE BOARD TO DETERMINE SUCH ELIGIBILITY.

IN THIS CASE, UNFORTUNATELY, CLAIMANT DID NOT CHOOSE TO FOLLOW THE PROCEDURES SET FORTH IN OAR 436-61 NOR DID HE REQUEST CLARIFICATION OF THE REFEREE'S ORDER OF OCTOBER 15, 1975 WHICH, BY AWARDING CLAIMANT COMPENSATION FOR PERMANENT PARTIAL DISABILITY OBVIOUSLY INDICATED A FINDING THAT CLAIMANT HAD NO VOCATIONAL HANDICAP AT THAT TIME. THE FACT THAT CLAIMANT, ON OCTOBER 16, 1975, WAS ENROLLED IN AN UNAUTHORIZED REHABILITATION PLAN DOES NOT NOW JUSTIFY A FINDING BY THE REFEREE THAT HE THEN WAS ENTITLED TO THE BENEFITS UNDER OAR 436-61. ON DECEMBER 22, 1975 CLAIMANT HAD BEEN INFORMED THAT THE BOARD WOULD NOT UNDERWRITE A VOCATIONAL REHABILITATION PROGRAM FOR HIM BECAUSE HE WAS NOT ELIGIBLE UNDER OAR 436-61-010(2). THE ONLY THING CLAIMANT DID SUBSEQUENT TO THAT WAS TO REQUEST A HEARING. THE REFEREE HAD NO ALTERNATIVE BUT TO DISMISS THIS REQUEST.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 3, 1976, IS AFFIRMED.

SAIF CLAIM NO. YC 212448 SEPTEMBER 28, 1976

KADI BLACK, CLAIMANT

DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

CLAIMANT SUSTAINED A COMPENSABLE HEAD INJURY ON AUGUST 9, 1969 WHEN SHE FELL, STRIKING HER HEAD, WHILE WORKING AS A WAITRESS. SHE WAS HOSPITALIZED ONLY OVERNIGHT FOR OBSERVATION AND RETURNED TO WORK ON AUGUST 22, 1969. A DETERMINATION ORDER OF JANUARY 27, 1970 GRANTED CLAIMANT TEMPORARY TOTAL DISABILITY ONLY.

ON JANUARY 18, 1975 CLAIMANT REQUESTED HER CLAIM BE REOPENED FOR CONTINUING SYMPTOMATOLOGY FROM HER AUGUST 9, 1969 INJURY. THE STATE ACCIDENT INSURANCE FUND DENIED HER REQUEST. A BOARD'S OWN MOTION ORDER OF NOVEMBER 3, 1975 REOPENED CLAIMANT'S CLAIM FOR FURTHER BENEFITS, AS PROVIDED BY LAW.

CLAIMANT CAME UNDER THE CARE AND TREATMENT OF DR. KNOX, A NEUROLOGIST, IN 1975 AND, ON MAY 7, 1976, CLAIMANT WAS DECLARED MEDICALLY STATIONARY BY HIM, WITH PROVISIONS FOR FURTHER PALLIATIVE TREATMENT. CLAIMANT RETURNED TO HER REGULAR OCCUPATION ON OCTOBER 10, 1975.

ON AUGUST 12, 1976 THE FUND REQUESTED A DETERMINATION. THE EVALUATION DIVISION FOUND THAT CLAIMANT WAS ENTITLED TO TEMPORARY

TOTAL DISABILITY COMPENSATION FROM NOVEMBER 3, 1975 THROUGH MAY 7, 1976, LESS TIME WORKED, BUT TO NO AWARD FOR PERMANENT PARTIAL DISABILITY BECAUSE CLAIMANT HAD SUSTAINED NO LOSS OF HER WAGE EARNING CAPACITY.

ORDER

THE CLAIMANT IS HEREBY GRANTED TEMPORARY TOTAL DISABILITY COMPENSATION FROM NOVEMBER 3, 1975 THROUGH MAY 7, 1976, LESS TIME WORKED.

WCB CASE NO. 75-3433 SEPTEMBER 29, 1976

CLARENCE B. FRIEND, CLAIMANT

ROLF OLSON, CLAIMANT'S ATTY.
DARYLL KLEIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

ON AUGUST 30, 1976 AN ORDER ON REVIEW WAS ENTERED IN THE ABOVE ENTITLED MATTER. IN THE 'ORDER' PORTION OF THAT ORDER ON REVIEW, AFTER THE SECOND PARAGRAPH THEREOF, THE FOLLOWING PARAGRAPH IS HEREBY INSERTED -

> 'THE CARRIER SHALL BE ENTITLED TO CREDIT AGAINST THE AWARD OF PERMANENT PARTIAL DISABILITY MADE BY THIS ORDER ALL COMPENSATION HERETOFORE PAID TO CLAIMANT FOR PERMANENT TOTAL DISABILITY FROM JUNE 2, 1975 TO THE DATE OF THIS ORDER ON REVIEW, INCLUDING PAYMENTS FROM THE RETROACTIVE RESERVE FOR WHICH THE BOARD SHALL BE REIMBURSED BY THE CARRIER.'

IN ALL OTHER RESPECTS THE ORDER ON REVIEW ENTERED ON AUGUST 30, 1976 IS RATIFIED AND REAFFIRMED.

WCB CASE NO. 75-3611 SEPTEMBER 29, 1976

JOUSIE HUNT, CLAIMANT

LYNN MOORE, CLAIMANT'S ATTY.
KEITH SKELTON, 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.

LARRY REMINGTON, CLAIMANT

R. SCOTT TAYLOR, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED CLAIMANT'S CLAIM FOR AN OCCUPATIONAL DISEASE TO IT FOR ACCEPTANCE AND PAYMENT OF COMPENSATION AS PROVIDED BY LAW.

CLAIMANT IS A 31 YEAR OLD SHEET METAL WORKER WHOSE WELDING DUTIES REPRESENT A SUBSTANTIAL PORTION OF HIS WORK ACTIVITIES.

CLAIMANT COMPLAINED OF BEING SICK OFTEN, OF BEING TIRED AND NERVOUS, HAVING SENSITIVITY IN HIS NECK AND BACK AND LOSS OF WEIGHT AND MEMORY. HE SOUGHT MEDICAL ATTENTION FROM DR. WOODWOOD, A CHIROPRACTOR, WHO REFERRED CLAIMANT TO DR. ROYAL WHO BECAME CLAIMANT'S TREATING PHYSICIAN.

IT WAS DISCOVERED THAT CLAIMANT HAD HYPOGLYCEMIA AND CEREBRONEUROGLUCOPENIA. CLAIMANT WAS PLACED ON A HYPOGLYCEMIC DIET. ON JANUARY 13, 1976 DR. ROYAL DIAGNOSED LEAD POISONING CAUSED BY AN ACCUMULATION OF HEAVY METALS, PRIMARILY LEAD, IN CLAIMANT'S BODY DUE TO HIS WELDING. DR. ROYAL ADDED THAT 50 PER CENT OF THE LEAD WHEN ENTERING THE BODY THROUGH THE LUNGS IS ABSORBED AND RETAINED. DR. ROYAL FELT THAT CLAIMANT WOULD HAVE TO AVOID HIS DIRECT EXPOSURE AT WORK OR FIND OTHER EMPLOYMENT.

TWO INDUSTRIAL HYGIENISTS FOR THE FUND TOOK AIR SAMPLES TO DETERMINE HOW MUCH PARTICULATE WAS BEING RELEASED WHERE CLAIMANT WORKED. THE TEST SHOWED THEM TO BE BELOW ACCEPTABLE STANDARDS, HOWEVER, THERE WERE LEAD PARTICLES IN CLAIMANT'S WORK ENVIRONMENT.

IN HIS DEPOSITION, DR. ROYAL INDICATES, BASED ON MEDICAL LITERATURE ON THE SUBJECT OF METAL TOXICITY AND HIS OWN EXPERIENCES, THAT THE WORK ENVIRONMENT OF WELDERS IS A SOURCE OF LEAD CONTAMINATION AND PRIMARILY AFFECTS MECHANICS AND WELDERS.

THE REFEREE FOUND THAT THE MEDICAL EVIDENCE SUPPORTED THE DIAGNOSIS OF LEAD POISONING - BUT WAS IT CAUSED BY CLAIMANT'S WORK? ALTHOUGH THE TESTS BY THE FUND'S HYGIENISTS INDICATED THE LEVELS OF LEAD PARTICLES AT THE WORK SITE WERE BELOW AVERAGE ACCEPTABLE STANDARDS, DR. ROYAL BELIEVED THAT THE ACCUMULATION CAN BUILD UP IN A SITUATION OF CONSTANT EXPOSURE. THE REFEREE ACCORDED THE GREATEST WEIGHT TO DR. ROYAL'S OPINION.

THE REFEREE CONCLUDED THAT CLAIMANT'S LEAD POISONING WAS A RESULT OF HIS WORK FOR MANY YEARS AS A WELDER FOR THE EMPLOYER AND REMANDED THE CLAIM TO THE STATE ACCIDENT INSURANCE FUND.

THE BOARD, ON DE NOVO REVIEW, ADOPTS THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 3, 1976, IS AFFIRMED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY FEE FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW, THE SUM OF 400 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

IRIS SAWYER, CLAIMANT

PAUL RASK, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AWARDED 30 DEGREES FOR 20 PER CENT LOSS OF THE RIGHT LEG. CLAIMANT CONTENDS HER DISABILITY IS IN THE UNSCHEDULED AREA.

CLAIMANT, A 59 YEAR OLD COOK, WAS WORKING THREE DAYS A WEEK AT THE TIME OF HER INJURY. SHE WORKED IN THE KITCHEN AND KEPT STRIKING HER RIGHT HIP ON A NAIL. ON ANOTHER OCCASION, CLAIMANT TESTIFIED, SHE SLIPPED ON SOME ICE AND FELL, BUT DID NOT STRIKE HER HIP. DR. DAY DIAGNOSED RIGHT HIP BURSITIS, AND CLAIMANT WAS TREATED CONSERVATIVELY BY INJECTIONS WHICH SEEMED TO HELP.

ON MAY 20, 1975 DR. UTTERBACK EXAMINED CLAIMANT AND NOTED A LONG HISTORY OF PAIN IN THE LATERAL RIGHT HIP AREA. DR. UTTERBACK FOUND NO BONY PATHOLOGY, AFTER X-RAYS, BUT DID FIND TENDERNESS ABOUT THE RIGHT GREATER TROCHANTER AND DIAGNOSED RIGHT TROCHANTERIC BURSITIS. HE STATED THAT TYPICALLY THIS ENTITY IS DIFFICULT TO DEAL WITH AND TENDS TO PERSIST FOR PROLONGED PERIODS OF TIME, ESPECIALLY IN MIDDLE-AGED OVERWEIGHT WOMEN.

ON JUNE 11, 1975 DR. BACHHUBER SAID THAT CLAIMANT WAS NOT RESPONDING TO CONSERVATIVE TREATMENT, HE FELT CLAIMANT HAD OTHER UNRELATED NON-MEDICAL FACTORS CONTRIBUTING TO HER COMPLAINTS.

ON AUGUST 6, 1975 THE ORTHOPAEDIC CONSULTANTS EXAMINED CLAIMANT AND CONCURRED WITH THE PRIOR DIAGNOSIS. THEY FOUND CLAIMANT TO BE MEDICALLY STATIONARY AND NEEDED JOB PLACEMENT. HER DISABILITY WAS RATED AS MILD AS RELATED TO HER LOSS OF FUNCTION OF HER HIP AND TO THIS INJURY.

A DETERMINATION ORDER OF OCTOBER 10, 1975 GRANTED CLAIMANT TEMPORARY TOTAL DISABILITY COMPENSATION ONLY.

A REPORT OF DR. DAY, DATED DECEMBER 15, 1975, INDICATED THAT CLAIMANT 'WAS COMPLETELY DISABLED AND NOT ABLE TO RETURN TO WORK AS A COOK UNTIL HER BURSITIS SUBSIDED'.

ON MARCH 31, 1976 THE ORTHOPAEDIC CONSULTANTS AGAIN EXAMINED CLAIMANT AND REITERATED THEIR EARLIER OPINION.

CLAIMANT ALSO SUFFERS FROM HYPOGLYCEMIA AND HYPERTENSIVE CARDIOVASCULAR DISEASE, NEITHER IS WORK RELATED.

THE REFEREE FOUND THAT CLAIMANT'S DISABILITY WAS TO HER LEG AND MUST BE RATED AS A SCHEDULED INJURY. THE ORTHOPAEDIC CONSULTANTS HAD RATED HER DISABILITY AS MILD AND THE REFEREE CONCLUDED THAT CLAIMANT'S LOSS OF FUNCTION WAS 20 PER CENT. HE GRANTED CLAIMANT AN AWARD OF 30 DEGREES.

THE BOARD, ON DE NOVO REVIEW, ADOPTS THE REFEREE'S ORDER. THE MEDICAL EVIDENCE INDICATES THE DIAGNOSIS IS 'RIGHT TROCHANTERIC BURSITIS' AND THE TROCHANTER IS LOCATED IN THE OUTSIDE PART OF THE UPPER LEG, NOT IN THE PELVIS AREA, THEREFORE, CLAIMANT'S INJURY WAS NOT AN UNSCHEDULED DISABILITY.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 14, 1976, IS AFFIRMED.

WCB CASE NO. 76-305 SEPTEMBER 29, 1976

KATHLEEN STEINKE, CLAIMANT

JAN BAISCH, CLAIMANT'S ATTY.
ROGER LUEDTKE, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

THE EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT 57.6 DEGREES FOR 30 PER CENT LOSS OF THE RIGHT ARM.

CLAIMANT, A BAKERY WORKER, INJURED HER RIGHT ARM ON NOVEMBER 27, 1974, THE INJURY WAS DIAGNOSED AS RADIO-HUMERAL TENDONITIS RIGHT, CALCIFIC.

ON DECEMBER 30, 1974 DR. CASE STATED CLAIMANT HAD ACUTE EPICONDYLITIS INVOLVING THE RIGHT LATERAL HUMERAL EPICONDYLE.

ON JANUARY 14, 1975 DR. MUELLER FOUND DEFINITE LOCALIZED TENDERNESS AT THE RADIOHUMERAL JOINT AND TENDERNESS ALONG THE LATERAL HUMERAL EPICONDYLE. EXTENSION OF FINGERS AND WRIST AGAINST RESISTANCE INCREASED THE PAIN.

A DETERMINATION ORDER OF DECEMBER 26, 1975 GRANTED CLAIMANT 9.6 DEGREES FOR 5 PER CENT LOSS OF THE RIGHT ARM.

DR. GRIPEKOVEN, IN HIS REPORT OF MARCH 8, 1976, FOUND RESIDUAL PROBLEMS SECONDARY TO THE INDUSTRIAL INJURY WITH RESIDUAL DISCOMFORT. THERE ALSO WAS A BONE SPUR ON THE LATERAL EPICONDYLE.

CLAIMANT TESTIFIED SHE HAS POOR GRIP, AND LACKS 10 PER CENT COMPLETE EXTENSION. IF SHE STRIKES HER ELBOW SHE HAS TINGLING DOWN HER RIGHT ARM AND SHARP PAIN.

THE REFEREE FOUND THAT CLAIMANT'S DISABILITY WAS IN EXCESS OF THAT PREVIOUSLY GRANTED AND, BASED UPON LOSS OF FUNCTION OF THE ARM, GRANTED HER 57.6 DEGREES FOR 30 PER CENT LOSS OF THE RIGHT ARM.

THE BOARD, ON DE NOVO REVIEW, CONCURS WITH THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 20, 1976, IS AFFIRMED.

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

WCB CASE NO. 75-4795 SEPTEMBER 29, 1976

ALBERT WOOD, CLAIMANT

KENNETH BOURNE, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
AMENDED ORDER ON REVIEW

REVIEWED BY BOARD MEMBERS WILSON, MOORE AND PHILLIPS.

ON SEPTEMBER 16, 1976 THE BOARD ISSUED ITS ORDER ON REVIEW ON THE ABOVE ENTITLED MATTER. THE 'ORDER' PORTION THEREOF STATED THAT THE ORDER OF THE REFEREE, DATED MARCH 9, 1976, WAS REVERSED. IT WAS THE BOARD'S INTENTION TO REVERSE ONLY THAT PART OF THE REFEREE'S ORDER WHICH REVERSED THE DENIAL BY THE STATE ACCIDENT INSURANCE FUND AS IT AFFECTED CHAPPELL SPEARS MOBILE HOMES AND REMANDED THE CLAIMANT'S CLAIM AGAINST THAT EMPLOYER TO THE FUND FOR ACCEPTANCE AND PAYMENT OF COMPENSATION AS PROVIDED BY LAW.

THEREFORE, THE 'ORDER' PORTION OF THE ORDER ON REVIEW ENTERED SEPTEMBER 16, 1976, IN THE ABOVE ENTITLED MATTER, IS AMENDED TO READ AS FOLLOWS -

> 'THE PORTION OF THE REFEREE'S ORDER, DATED MARCH 9, 1976, WHICH AFFIRMED THE DENIAL BY THE STATE ACCIDENT INSURANCE FUND OF CLAIMANT'S CLAIM AS IT RELATED TO THE VOCATIONAL REHABILITATION DIVISION AND TO THE TECHNICAL TRAINING SERVICE IS AFFIRMED AND THAT PORTION WHICH REVERSED THE DENIAL BY THE STATE ACCIDENT INSURANCE FUND AS IT RELATED TO CHAPPELL SPEARS MOBILE HOME AND REMANDED THE CLAIMANT'S CLAIM AGAINST THAT EMPLOYER TO IT FOR ACCEPTANCE AND PAYMENT OF COMPENSATION AS PROVIDED BY LAW IS REVERSED.'

CLAIM NO. EC 153101 SEPTEMBER 29, 1976

ROBERT T. WILSON, CLAIMANT

ROBERT HALEY, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION REMANDING FOR HEARING

ON OCTOBER 11, 1968 CLAIMANT SUFFERED A COMPENSABLE INJURY WHILE EMPLOYED BY OREGON LAUNDRY, WHOSE WORKMEN'S COMPENSATION COVERAGE WAS FURNISHED BY THE STATE ACCIDENT INSURANCE FUND. THE CLAIM WAS INITIALLY CLOSED BY A DETERMINATION ORDER DATED FEBRUARY 10, 1971 WHICH AWARDED CLAIMANT COMPENSATION FOR TEMPORARY TOTAL DISABILITY AND TEMPORARY PARTIAL DISABILITY BUT NO AWARD FOR PERMANENT PARTIAL DISABILITY. CLAIMANT'S AGGRAVATION RIGHTS EXPIRED ON FEBRUARY 10, 1976.

ON APRIL 22, 1976 THE BOARD RECEIVED A REQUEST FROM CLAIMANT'S ATTORNEY, ROBERT K. HALEY, THAT THE BOARD EXERCISE ITS OWN MOTION JURISDICTION, PURSUANT TO ORS 656.278, AND REOPEN CLAIMANT'S CLAIM. MEDICAL REPORTS WERE RECEIVED IN SUPPORT OF THE REQUEST FROM DR. THOMAS L. GRITZKA, DATED MARCH 31, 1976 AND JUNE 29, 1976. IN THE LATEST REPORT DR. GRITZKA INDICATED THAT NEITHER DR. ECKHART, WHO HAD EXAMINED CLAIMANT IN 1972, DR. STOLZBERG, WHO HAD MADE A NEUROLOGICAL EVALUATION OF CLAIMANT IN 1976, NOR HIMSELF WERE ABLE TO DISCOVER ANY OTHER INJURIES WHICH MIGHT ACCOUNT FOR THE CLAIMANT'S SHOULDER GIRDLE AND ARM PAIN. DR. GRITZKA FURTHER STATED THAT ALL

EXAMINERS HAD NOTED THAT THERE IS A MAJOR DIFFICULTY COMMUNICATING WITH CLAIMANT AND THAT AN ACCURATE HISTORY WAS DIFFICULT TO OBTAIN. PRESUMING, HOWEVER, THAT ALL EXAMINERS HAD OBTAINED AN ACCURATE HISTORY WHICH INDICATES THAT THE CLAIMANT WAS HAVING NO DIFFICULTY WITH HIS LEFT ARM AND SHOULDER PRIOR TO HIS INDUSTRIAL INJURY OF 1968, THEN CLAIMANT'S PRESENT SYMPTOMS WERE PROBABLY ATTRIBUTABLE TO THAT ACCIDENT.

THE STATE ACCIDENT INSURANCE FUND WAS ADVISED OF THE REQUEST AND ASKED TO SUBMIT ITS POSITION WITH RESPECT THERETO WITHIN 20 DAYS. ON JULY 23, 1976 THE FUND RESPONDED, STATING THAT IT HAD BEEN INFORMED THAT CLAIMANT HAD INJURED HIS BACK ON JULY 19, 1975 AND HAD FILED A CLAIM THEREFORE AGAINST THE EMPLOYER, OPERA HOUSE LAUNDRY, AND ITS CARRIER, FIREMAN'S FUND INSURANCE COMPANY. AT THAT THE TIME THE FUND DID NOT HAVE ANY ADDITIONAL INFORMATION WITH RESPECT TO THE ALLEGED INJURY OF JULY 19, 1975 BUT STATED IT APPARENTLY WAS THE REASON FOR CLAIMANT'S CECESSION OF WORK.

ON SEPTEMBER 1, 1976 THE FUND AGAIN RESPONDED, STATING, AFTER AN INVESTIGATION, THAT CLAIMANT HAD FILED CLAIM FOR THE JULY, 1975 INJURY AND, AFTER THE DENIAL THEREOF, HAD REQUESTED A HEARING. IT STATED THAT ACCORDING TO CLAIMANT'S PRESENT EMPLOYER, CLAIMANT HAD BEEN ABLE TO PERFORM HIS WORK SATISFACTORILY WITHOUT ANY BACK COMPLAINT OR VISIBLE LIMITATIONS UNTIL THE JULY, 1975 EPISODE AND IT DENIED FURTHER RESPONSIBILITY FOR CLAIMANT'S OCTOBER 11, 1968 CLAIM.

THE BOARD HAS NOW BEEN ADVISED BY CLAIMANT'S ATTORNEY THAT THE REQUEST FOR HEARING BASED ON THE JULY, 1975 INCIDENT HAS BEEN SETTLED BY A STIPULATION AND ORDER OF DISMISSAL (WCB CASE NO. 76-1705).

THE EVIDENCE BEFORE THE BOARD, AT THE PRESENT TIME, IS NOT SUFFICIENT FOR IT TO DETERMINE WHETHER OR NOT CLAIMANT'S PRESENT CONDITION IS CAUSALLY RELATED TO HIS OCTOBER 11, 1968 INJURY, THEREFORE, THE MATTER IS REFERRED TO THE HEARINGS DIVISION WITH INSTRUCTIONS TO HOLD A HEARING AND TAKE EVIDENCE ON THIS ISSUE. UPON CONCLUSION OF THE HEARING, THE REFEREE SHALL CAUSE A TRANSCRIPT OF THE PROCEEDING TO BE PREPARED AND SUBMITTED TO THE BOARD TOGETHER WITH HIS RECOMMENDATIONS.

SAIF CLAIM NO. BC 203705 SEPTEMBER 29, 1976

VIRGIL FOSTER, CLAIMANT

DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

CLAIMANT WAS COMPENSABLY INJURED ON AUGUST 19, 1969 WHEN HE WAS STRUCK IN THE LOW BACK BY A FALLING SNAG. ON SEPTEMBER 6, 1969 DR. RADEMACHER DIAGNOSED MULTIPLE ABRASIONS AND CONTUSION. CLAIMANT WAS RELEASED TO WORK ON SEPTEMBER 23, 1969 WITH NO PERMANENT IMPAIRMENT.

A DETERMINATION ORDER OF DECEMBER 15, 1969 GRANTED CLAIMANT TEMPORARY TOTAL DISABILITY COMPENSATION ONLY.

THE CLAIM WAS REOPENED ON DECEMBER 27, 1969 FOR HOSPITALIZATION AND FURTHER TREATMENT FOR CLAIMANT BY DR. GUYER. ON DECEMBER 31, 1969 DR. GUYER DIAGNOSED A POSSIBLE HERNIATED LUMBAR DISC. IN HIS CLOSING REPORT OF OCTOBER 20, 1970 DR. GUYER INDICATED HIS DIAGNOSIS REMAINED THE SAME BUT THAT CLAIMANT HAD RETURNED TO WORK AND NO FURTHER TREATMENT WAS BEING OFFERED.

A SECOND DETERMINATION ORDER OF OCTOBER 30, 1970 GRANTED CLAIMANT FURTHER TEMPORARY TOTAL DISABILITY COMPENSATION AND GRANTED AN AWARD OF PERMANENT PARTIAL DISABILITY FOR 20 PER CENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT APPEALED THE SECOND DETERMINATION ORDER AND, AFTER A HEARING, AN OPINION AND ORDER, DATED SEPTEMBER 22, 1971, GRANTED CLAIMANT AN ADDITIONAL AWARD FOR 30 PER CENT FOR A TOTAL AWARD OF 50 PER CENT FOR UNSCHEDULED DISABILITY. THIS AWARD WAS ULTIMATELY AFFIRMED BY THE CIRCUIT COURT ON APRIL 10, 1972.

ON JANUARY 2, 1975 DR. TAYLOR REQUESTED CLAIMANT'S CLAIM BE REOPENED FOR FURTHER TREATMENT. THE CLAIM WAS REOPENED JULY 23, 1975. CLAIMANT WAS HOSPITALIZED WITH A DIAGNOSIS OF OSTEOARTHRITIS OF L4-5-S1 AND, ON JULY 28, 1975, A LUMBAR FUSION WAS PERFORMED AT THESE LEVELS.

ON AUGUST 23, 1976 DR. TAYLOR REPORTED CLAIMANT'S CONDITION WAS STABLE, HIS PERMANENT PHYSICAL RESIDUALS WERE RATED AT 15 PER CENT OF THE WHOLE MAN.

ON SEPTEMBER 1, 1976 THE STATE ACCIDENT INSURANCE FUND REQUESTED A DETERMINATION. THE EVALUATION DIVISION RECOMMENDED GRANTING CLAIMANT TEMPORARY TOTAL DISABILITY COMPENSATION FROM JULY 23, 1975 THROUGH AUGUST 23, 1976, LESS TIME WORKED, BUT NO ADDITIONAL AWARD FOR PERMANENT PARTIAL DISABILITY. CLAIMANT HAS BEEN ADEQUATELY COMPENSATED BY HIS PRIOR AWARD OF 50 PER CENT PERMANENT PARTIAL DISABILITY FOR ANY LOSS OF WAGE EARNING CAPACITY.

ORDER

THE CLAIMANT IS HEREBY GRANTED TEMPORARY TOTAL DISABILITY COMPENSATION FROM JULY 23, 1975 THROUGH AUGUST 23, 1976, LESS TIME WORKED.

WCB CASE NO. 74-3032 SEPTEMBER 29, 1976

WILLIAM CASEY, CLAIMANT

WILLIAM MANSFIELD, CLAIMANT'S ATTY.
JAMES SUTHERLAND, DEFENSE ATTY.
ORDER OF DISMISSAL

ON AUGUST 4, 1976 A REFEREE'S OPINION AND ORDER WAS ISSUED IN THE ABOVE ENTITLED CASE.

ON SEPTEMBER 4, 1976 THE CLAIMANT'S ATTORNEY REQUESTED BOARD REVIEW.

MORE THAN 30 DAYS ELAPSED BETWEEN THE MAILING OF THE REFEREE'S ORDER AND THE FILING OF 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.

BELVA J. KUHL, CLAIMANT

STIPULATION AND ORDER OF DETERMINATION

THE ABOVE ENTITLED MATTER IS PENDING BEFORE THE WORKMEN'S COMPENSATION BOARD ON CLAIMANT'S REQUEST FOR BOARD REVIEW OF THE OPINION AND ORDER ENTERED MARCH 26, 1976, BY RAYMOND S. DANNER, REFEREE, HEARINGS DIVISION, WORKMEN'S COMPENSATION BOARD - AND

THE CLAIMANT HAS ACTED BY AND THROUGH DAVID C. HUAGEBERG OF MARSH, MARSH AND HAUGEBERG, HER ATTORNEYS, AND THE EMPLOYER AND CARRIER HAVE ACTED BY AND THROUGH GARY G. JONES OF RHOTEN, RHOTEN AND SPEERSTRA, THEIR ATTORNEYS - AND

IT APPEARS FROM THE RECORDS AND FILES HEREIN THAT CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HER LOW BACK IN OCTOBER, 1969, THAT THE CLAIM WAS ACCEPTED BY THE CARRIER, THE CLAIM WAS INITIALLY 'CLOSED' BY THE WORKMEN'S COMPENSATION BOARD'S DETERMINATION ORDER DATED NOVEMBER 16, 1970, WHICH AWARDED CLAIMANT TEMPORARY TOTAL DISABILITY TO OCTOBER 27, 1970, LESS TIME WORKED, AND TEN (10) PER CENT EQUAL TO 32 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. THEREAFTER CLAIMANT REQUESTED A HEARING AND THE MATTER WAS RESOLVED BY A STIPULATED ORDER OF DISMISSAL AND DETERMINATION DATED APRIL 10, 1972, WHICH RESOLVED CLAIMANT'S CLAIM OF ADDITIONAL TEMPORARY TOTAL DISABILITY BENEFITS AND AGAIN 'REOPENED' CLAIMANT'S CLAIM EFFECTIVE APRIL 1, 1972, AND RESOLVED CLAIMANT'S AGGRAVATION RIGHTS TO NOVEMBER 15, 1975. THEREAFTER CLAIMANT'S CLAIM WAS AGAIN 'CLOSED' BY THE WORKMEN'S COMPENSATION BOARD'S SECOND DETERMINATION ORDER DATED DECEMBER 17, 1974, WHICH ALLOWED CLAIMANT ADDITIONAL TEMPORARY TOTAL DISABILITY BENEFITS FROM APRIL 1, 1972 THROUGH SEPTEMBER 10, 1974, AND AN ADDITIONAL TWENTY-FIVE (25) PER CENT EQUAL TO 80 DEGREES FOR CLAIMANT'S UNSCHEDULED LOW BACK INJURY AND DISABILITY AND TEN (10) PER CENT EQUAL TO 15 DEGREES FOR THE SCHEDULED DISABILITY TO CLAIMANT'S RIGHT LEG. CLAIMANT REQUESTED A HEARING AND A HEARING WAS HELD ON CLAIMANT'S CLAIM OF PERMANENT TOTAL DISABILITY ON FEBRUARY 27, 1976. ON MARCH 26, 1976, RAYMOND S. DANNER, REFEREE, HEARINGS DIVISION, WORKMEN'S COMPENSATION BOARD, RENDERED AND ENTERED HIS OPINION AND ORDER AWARDING CLAIMANT AN ADDITIONAL FIFTEEN (15) PER CENT EQUAL TO 48 DEGREES FOR HER UNSCHEDULED LOW BACK DISABILITY OVER AND ABOVE THE AWARDS PREVIOUSLY MADE. THEREAFTER CLAIMANT FILED A REQUEST FOR BOARD REVIEW AND STILL SEEKS AN AWARD OF PERMANENT TOTAL DISABILITY.

IT FURTHER APPEARS THAT A MATERIAL CONSIDERATION IN REACHING A SETTLEMENT ON THIS CLAIM IS THE CLAIMANT'S REQUEST FOR AN ADVANCE PAYMENT OF THE REMAINING UNPAID BALANCE OF THE AWARD UNDER THE OPINION AND ORDER DATED MARCH 26, 1976, AND THE ADDITIONAL COMPENSATION TO BE PAID PURSUANT TO THIS STIPULATION AND ORDER - AND THE CARRIER'S AGREEMENT THAT IN THE EVENT SUCH ADVANCE PAYMENT IS APPROVED BY THE WORKMEN'S COMPENSATION BOARD, IT SHALL WAIVE IN FAVOR OF THE CLAIMANT, ANY CLAIM FOR CREDIT OF A DISCOUNT BASED UPON SUCH PREPAYMENT.

IT FURTHER APPEARS THAT THE MATTER OF THE EXTENT OF PERMANENT DISABILITY HAS NOW BEEN SETTLED BETWEEN THE PARTIES AND THIS ORDER MAY BE ENTERED - NOW, THEREFORE

IT IS ORDERED AND ADJUDGED THAT BASED UPON THE MEDICAL REPORTS, THE TESTIMONY OF THE CLAIMANT AND OTHER WITNESSES AT THE HEARING ON FEBRUARY 27, 1976, AND UPON THE STIPULATION OF THE PARTIES, THAT CLAIMANT'S CONDITION IS MEDICALLY STATIONARY AND HER PERMANENT

PARTIAL DISABILITY IS DETERMINED TO BE A TOTAL OF 305 DEGREES FOR HER UNSCHEDULED AND SCHEDULED DISABILITIES RESULTING FROM THE COMPENSABLE INJURY SUSTAINED BY CLAIMANT IN 1969 WHILE EMPLOYED BY ALLEN FRUIT COMPANY, WHICH DETERMINATION INCLUDES THE 175 DEGREES PREVIOUSLY AWARDED CLAIMANT BY WORKMEN'S COMPENSATION BOARD'S FIRST AND SECOND DETERMINATION ORDERS AND THE REFEREE'S OPINION AND ORDER DATED MARCH 26, 1976. ALL MONIES SHALL BE SUBJECT TO RETROACTIVE RESERVE ADJUSTMENT WHERE APPLICABLE. ALL OF CLAIMANT'S DISABILITIES, BOTH SCHEDULED AND UNSCHEDULED, HAVE BEEN CONSIDERED AND SETTLED IN ARRIVING AT THE TOTAL INCREASE OF 130 DEGREES FOR A TOTAL OF 305 DEGREES FOR UNSCHEDULED AND SCHEDULED DISABILITIES.

IT IS FURTHER ORDERED AND ADJUDGED THAT CLAIMANT'S ATTORNEYS ARE HEREBY AWARDED ATTORNEYS' FEES EQUAL TO TWENTY-FIVE (25) PER CENT OF THE ADDITIONAL COMPENSATION AWARDED BY THE REFEREE'S OPINION AND ORDER DATED MARCH 26, 1976. (1) AND BY THIS STIPULATION AND ORDER. PROVIDED HOWEVER, THAT THE MAXIMUM FEES ALLOWABLE CLAIMANT'S ATTORNEYS SHALL BE 2,000 DOLLARS AND SUCH FEES SHALL BE PAID OUT OF SAID INCREASED COMPENSATION, AND NOT IN ADDITION THERETO.

IT IS FURTHER ORDERED AND ADJUDGED THAT CLAIMANT'S REQUEST FOR ADVANCE PAYMENT OF CLAIMANT'S AWARD IS HEREBY POSTPONED.

IT IS FURTHER ORDERED THAT CLAIMANT'S REQUEST FOR BOARD REVIEW BE AND HEREBY IS DISMISSED.

(1) ALL MONIES SHALL BE SUBJECT TO RETROACTIVE RESERVE ADJUSTMENT WHERE APPLICABLE.

WCB CASE NO. 75-3030 SEPTEMBER 29, 1976

JACK MIDDLETON, CLAIMANT

J. DAVID KRYGER, CLAIMANT'S ATTY.
KEITH SKELTON, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE EMPLOYER SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER OF FEBRUARY 12, 1976, AS AMENDED ON FEBRUARY 17, 1976, WHEREBY CLAIMANT WAS GRANTED AN AWARD OF PERMANENT TOTAL DISABILITY EFFECTIVE OCTOBER 31, 1975.

CLAIMANT WAS A 41 YEAR OLD MILLWRIGHT WHEN HE SUFFERED A COMPENSABLE INJURY TO HIS LOW BACK ON NOVEMBER 5, 1973. HIS CLAIM WAS ACCEPTED AND ULTIMATELY CLOSED ON APRIL 9, 1975 BY DETERMINATION ORDER WHICH GRANTED CLAIMANT COMPENSATION FOR TEMPORARY TOTAL DISABILITY AND 64 DEGREES FOR 20 PER CENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT HAS HAD PRIOR INDUSTRIAL AND NON-INDUSTRIAL INJURIES TO HIS LOW BACK, DATING BACK AS FAR AS 1967. AS A RESULT OF AN INDUSTRIAL INJURY SUSTAINED IN 1967 CLAIMANT HAD RECEIVED AN AWARD OF 112 DEGREES FOR 35 PER CENT UNSCHEDULED LOW BACK DISABILITY. CLAIMANT HAD RECEIVED EXTENDED TREATMENT FOR THAT INDUSTRIAL INJURY AND IN JANUARY, 1971 A LAMINECTOMY AT THE L5-S1, LEFT HAD BEEN PERFORMED. WITHIN A FEW MONTHS AFTER THE SURGERY CLAIMANT HAD RETURNED TO WORK AND HAS WORKED FAIRLY STEADILY UNTIL THE INJURY OF NOVEMBER 5, 1973. THERE WERE RECORDED INCIDENTS OF BACK PAIN IN THE UPPER AND LOWER BACK - IN SEPTEMBER, 1973 CLAIMANT WAS HOSPITALIZED TWICE, ONCE FOR CERVICAL SPINE PAIN AND ONCE FOR LUMBAR BACK PAIN. EACH TIME AFTER HIS RELEASE FROM THE HOSPITAL CLAIMANT HAD RETURNED TO HIS WORK AS A MILLWRIGHT.

AS A RESULT OF THE INJURY SUFFERED ON NOVEMBER 5, 1973, DR. MELGARD (WHO PERFORMED THE LAMINECTOMY IN 1971) PERFORMED ANOTHER LAMINECTOMY L5-S1, LEFT ON MARCH 7, 1974. CLAIMANT HAS BEEN SEEN PERIODICALLY BY DR. MELGARD SINCE THAT SURGERY AND CLAIMANT HAS CONTINUED TO COMPLAIN OF PAIN. IN NOVEMBER, 1974 CLAIMANT HAD AN ORTHOPEDIC EXAMINATION BY DR. TILEY, WHO RECOMMENDED A BRACE FOR CLAIMANT. CLAIMANT WAS LAST SEEN BY DR. TILEY ON JANUARY 17, 1975.

CLAIMANT WAS SEEN AND EXAMINED BY DR. MASON AT THE DISABILITY PREVENTION DIVISION ON JANUARY 22, 1975. DR. MASON FOUND, CLINICALLY, NO RESIDUAL HERNIATED INTERVERTEBRAL DISC LESION OR NERVE ROOT COMPRESSION, ALTHOUGH PROBABLY THERE WAS SOME RESIDUAL NERVE ROOT IRRITATION INVOLVING THE LEFT LOWER LEG AND THERE WAS RESIDUAL LEFT LOW BACK STRAIN WHICH WAS ONLY MILD. A GROSS EMOTIONAL OVERLAY EXAGGERATION WITH HISTRONICS, CONTORTIONS AND UNEXPLAINABLE RIGID RESISTANCES AND MANY DISCREPANCIES IN EXAMINATION WERE NOTED BY DR. MASON IN HIS REPORT. DR. MASON FELT CLAIMANT HAD AN OBVIOUS INADEQUATE PERSONALITY, AS MANIFESTED BY HIS TENDENCY TO EXAGGERATE, AND RESORT TO HISTRONICS, HOWEVER, HE SAW NO INDICATION FOR THE NEED OF FURTHER SURGERY ON CLAIMANT'S LOW BACK. HE AGREED THAT CLAIMANT WAS A VERY POOR PSYCHOLOGICAL CANDIDATE FOR SURGERY, AS PROVEN BY HIS PAST HISTORY AND HIS RESPONSE TO THE TREATMENT, INCLUDING THE SECOND LAMINECTOMY. CLAIMANT WAS REFERRED FOR A PSYCHOLOGICAL EVALUATION. DR. MASON FELT THAT ALTHOUGH CLAIMANT NEEDED PSYCHOLOGICAL COUNSELING, HE DOUBTED THAT CLAIMANT WOULD ACCEPT IT.

CLAIMANT WAS GIVEN A PSYCHOLOGICAL EVALUATION ON JANUARY 31, 1975 AND THE PROGNOSIS FOR CLAIMANT RETURNING TO GAINFUL EMPLOYMENT WAS GUARDED. IT WAS FELT THAT CLAIMANT DID NOT POSSESS APTITUDES FOR RETRAINING, IF HE COULD NOT DO HEAVY WORK SUCH AS WELDING IT WOULD BE RATHER DIFFICULT TO REHABILITATE HIM EVEN THOUGH CLAIMANT FUNCTIONED IN THE AVERAGE RANGE OF INTELLECTUAL RESOURCES, PLACING CLAIMANT IN AN ACADEMIC SITUATION FOR RETRAINING WAS NOT FEASIBLE.

ON FEBRUARY 5, 1975 CLAIMANT WAS DISCHARGED FROM THE DISABILITY PREVENTION DIVISION PROGRAM. DR. MASON IN HIS DISCHARGE SUMMARY REITERATED THE DIAGNOSIS MADE IN HIS INITIAL EXAMINATION REPORT OF JANUARY 2, 1975. NO FURTHER TREATMENT WAS NECESSARY AND, IN FACT, CLAIMANT HAD INDICATED HE DID NOT WISH TO HAVE ANY MORE SURGERY ON HIS LOW BACK. IT WAS FELT THAT A JOB CHANGE WAS NECESSARY AND THAT CLAIMANT SHOULD AVOID LIFTING, BENDING AND TWISTING STRESSES. CLAIMANT'S CONDITION WAS ESSENTIALLY STATIONARY AND HIS PHYSICAL DISABILITY WITH RESPECT TO HIS LOW BACK WAS RATED AS MILDLY MODERATE AND AS IT RELATED TO HIS INDUSTRIAL INJURY, MILD, AS AN AGGRAVATION OF A PRE-EXISTING STATUS. NO PHYSICAL DISABILITIES OF OTHER PARTS OF CLAIMANT'S BODY WHICH WOULD AFFECT HIS EMPLOYABILITY WERE FOUND.

ON FEBRUARY 24, 1975 DR. MELGARD CONCURRED IN THE DIAGNOSIS AND RECOMMENDATIONS OF DR. MASON.

ON APRIL 9, 1975 A DETERMINATION WAS MAILED WHICH GRANTED CLAIMANT COMPENSATION FOR TEMPORARY TOTAL DISABILITY AND AN AWARD OF 64 DEGREES FOR 20 PER CENT UNSCHEDULED LOW BACK DISABILITY. CLAIMANT REQUESTED A HEARING.

THE REFEREE FOUND THAT CLAIMANT'S FORMAL EDUCATION TERMINATED AFTER THE 8TH GRADE AND THAT HE HAD NOT ATTEMPTED ANY GED TEST. CLAIMANT HAS HAD NO ADDITIONAL TRAINING EXCEPT SOME HOME STUDY COURSES ON CONSTRUCTION AND SAFETY. HIS WORK BACKGROUND CONSISTS OF BUILDING AND ROOFING CONSTRUCTION, BOTH FOR OTHERS AND FOR HIMSELF, WORKING IN THE SHIPPING DEPARTMENT OF HIS PRESENT EMPLOYER, DRIVING JITNEY, WORKING AS A UTILITY LABORER AND WORKING AS A MILLWRIGHT, THE JOB WHICH HE HELD AT THE TIME OF HIS INJURY.

THE REFEREE FOUND THAT CLAIMANT'S MENTAL AND INTELLECTUAL RESOURCES WERE LIMITED AND THAT HIS APTITUDES FOR VOCATIONAL REHABILITATION WERE WEAK - THAT ALTHOUGH THERE HAD BEEN SOME QUESTION ABOUT CLAIMANT'S MOTIVATION, THE CLAIMANT APPEARED TO BE SINCERELY MOTIVATED BASED UPON THE OPINION OF HIS VOCATIONAL REHABILITATION COUNSELOR AND A REVIEW OF THE RECORD OF CLAIMANT'S PERFORMANCES AFTER HIS PRIOR INJURIES.

THE REFEREE NOTED THAT THERE WERE MANY COMMENTS MADE IN THE MEDICAL REPORTS ABOUT CLAIMANT'S DISTORTIONS AND EXAGGERATIONS OF PAIN HE WAS EXPERIENCING OR HAD EXPERIENCED. HE FOUND THAT ALTHOUGH SUCH DISTORTIONS AND EXAGGERATIONS WERE OBVIOUS THEY WERE NOT CONSCIOUS EFFORTS TO MAGNIFY THE IMPRESSION OF HIS DISTRESS BUT WERE A TYPICAL RESPONSE ON THE PART OF CLAIMANT TO PAIN. CLAIMANT HAS A RATHER LOW PAIN THRESHOLD BUT THERE WAS NO EVIDENCE, IN THE REFEREE'S OPINION, THAT CLAIMANT WAS MALINGERING OR THAT HE WAS CONSCIOUSLY EXAGGERATING HIS SYMPTOMS FOR COMPENSATION BENEFITS OR OTHER SECONDARY GAIN.

THE REFEREE, AFTER CONSIDERING ALL OF THE EVIDENCE WITH RESPECT TO CLAIMANT'S PHYSICAL DISABILITY AND HIS POTENTIAL FOR RETRAINING AND RE-EMPLOYMENT, CONCLUDED THAT CLAIMANT, AT THIS TIME, WAS PERMANENTLY INCAPACITATED FROM REGULARLY PERFORMING ANY WORK IN GAINFUL AND SUITABLE OCCUPATION. HE FURTHER CONCLUDED THAT THE EVIDENCE ESTABLISHED, PRIMA FACIE, THAT CLAIMANT WAS A MEMBER OF THE ODD-LOT WORK FORCE AND THAT HIS MOTIVATION WAS SINCERE AND HIS MANIFESTATIONS OF DISTRESS NOT OUT OF LINE.

THE BOARD, ON DE NOVO REVIEW, DISAGREES. THE OPINIONS EXPRESSED BY THE DOCTORS WHO HAVE TREATED AND-OR EXAMINED CLAIMANT INDICATE THAT HIS OVERALL PHYSICAL DISABILITY IS IN THE RANGE OF MILDLY-MODERATE AND THAT HIS DISABILITY AS IT RELATES TO THE INDUSTRIAL INJURY IS MILD. IT IS TRUE THAT CLAIMANT HAS SUBSTANTIAL FUNCTIONAL OVERLAY, HOWEVER, THERE IS NO EVIDENCE THAT CLEARLY INDICATES THAT CLAIMANT IS NOT RE-EMPLOYABLE IN HIS PRESENT CONDITION EVEN THOUGH HE HAS NOT RETURNED TO WORK SINCE HIS NOVEMBER 5, 1973 INJURY. CLAIMANT IS ONLY 44 YEARS OLD AND HE DOES HAVE AN 8TH GRADE EDUCATION AND HE HAS HAD EXPERIENCE WORKING IN THE SHIPPING DEPARTMENT FOR HIS PRESENT EMPLOYER. THERE IS NO REASON TO BELIEVE THAT HE CANNOT BE RETRAINED TO DO THE TYPE OF WORK WHICH DOES NOT REQUIRE LIFTING, BENDING AND TWISTING STRESSES.

CLAIMANT HAS CONTENDED THAT HIS NOVEMBER 5, 1973 INJURY SUPERIMPOSED UPON HIS PRIOR PROBLEMS AND RESIDUAL DISABILITIES HAS RESULTED IN PREVENTING HIM FROM RETURNING TO A GAINFUL AND SUITABLE OCCUPATION ON A REGULAR BASIS. CLAIMANT RECEIVED 35 PER CENT OF THE MAXIMUM ALLOWABLE FOR UNSCHEDULED DISABILITY AS A RESULT OF HIS 1967 INJURY AND HE HAS RECEIVED AN ADDITIONAL 20 PER CENT OF THE MAXIMUM FOR HIS 1973 INJURY, GIVING CLAIMANT A TOTAL OF 55 PER CENT OF THE MAXIMUM.

THE BOARD CONCLUDES THAT CLAIMANT HAS BEEN ADEQUATELY COMPENSATED FOR THE LOSS OF POTENTIAL WAGE EARNING CAPACITY WHICH HE HAS SUFFERED AS A RESULT OF HIS NOVEMBER 5, 1973 INJURY - THE REFEREE'S AWARD OF PERMANENT TOTAL DISABILITY SHOULD BE REVERSED AND THE DETERMINATION ORDER OF APRIL 9, 1975 AFFIRMED IN ITS ENTIRETY.

ORDER

THE ORDER OF THE REFEREE, DATED FEBRUARY 12, 1976, AS AMENDED ON FEBRUARY 17, 1976, IS REVERSED.

THE DETERMINATION ORDER MAILED APRIL 9, 1975 IS AFFIRMED IN ITS ENTIRETY.

ETHEL MOORE, CLAIMANT

MONTE WALTER, CLAIMANT'S ATTY.
SCOTT KELLEY, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH REMANDED CLAIMANT'S CLAIM, EXCEPT FOR THE EXOPHORIA EYE CONDITION, TO THE EMPLOYER FOR ACCEPTANCE AND PAYMENT OF BENEFITS AS PROVIDED BY LAW. CLAIMANT APPEALS THE DENIAL OF THE EXOPHORIA CONDITION.

CLAIMANT WAS STRUCK BY A PATIENT AT A NURSING HOME AND FILED A CLAIM ON DECEMBER 19, 1973 WHICH WAS ACCEPTED, AT THAT TIME, AS A 'MEDICAL ONLY'. CLAIMANT CONTENDS THAT THE SEVERE BLOW TO HER JAW CAUSED A WORSENING OF HER PRE-EXISTING EXOPHORIA CONDITION.

IN JUNE, 1974 CLAIMANT WAS EXAMINED BY DR. ROY WHO FELT CLAIMANT'S CONSTANT SEVERE HEADACHES AND CERVICAL TENSION COULD BE THE RESULT OF A CHANGE IN CLAIMANT'S EYE AS A RESULT OF A CERVICAL STRAIN.

CLAIMANT'S TREATING PHYSICAN, DR. EDGERTON, WAS DEPOSED AND TESTIFIED THAT HE DID NOT BELIEVE CLAIMANT'S SLAP ON THE FACE CAUSED HER EYE PROBLEM.

CLAIMANT WAS EXAMINED BY DR. TOPINKA AT THE EYE CLINIC IN PORTLAND. IN HIS REPORT OF MARCH 19, 1975 HE STATED THAT CLAIMANT'S EXOPHORIA CONDITION WAS A CONDITION WHICH IN ITS NATURAL COURSE WORSENS WITH OR WITHOUT AN INJURY AND HE DID NOT BELIEVE THERE IS ANY DIRECT RELATIONSHIP OF THE ACCIDENT TO THE PATIENT'S CONDITION OF EXOTROPIA'.

THE REFEREE FOUND THAT DR. ROY'S THEORY THAT THE WORSENING OF THE EXOPHORIA CONDITION WAS RELATED TO THE SEVERE BLOW TO THE HEAD WAS NOT SUPPORTED BY CREDIBLE EVIDENCE THAT CLAIMANT WAS STRUCK A BLOW OF THAT SEVERITY.

THE REFEREE CONCLUDED THAT DR. TOPINKA'S OPINION THAT THE EXOPHORIA OR EXTROPIA IS PROGRESSIVE WAS MORE OF A REASONABLE MEDICAL EXPLANATION OF THE CLAIMANT'S EYE PROBLEM. HE AFFIRMED THE DENIAL OF CLAIMANT'S CLAIM FOR HER EYE CONDITION, STATING SHE HAD FAILED TO SUSTAIN HER BURDEN OF PROVING THE WORSENING OF THIS CONDITION WAS RELATED TO HER INDUSTRIAL INJURY.

THE BOARD, ON DE NOVO REVIEW, ADOPTS THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED JANUARY 28, 1976, IS AFFIRMED.

WCB CASE NO. 75-5522 SEPTEMBER 29, 1976

MICHAEL O' MALLEY, CLAIMANT
ORLIN ANSON, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

CLAIMANT SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH FOUND THAT THE STATE ACCIDENT INSURANCE FUND WAS NOT GUILTY OF UNREASONABLE CONDUCT IN THE PROCESSING OF CLAIMANT'S CLAIM.

CLAIMANT HAD SUFFERED A SERIOUS EYE INJURY WHICH CAUSED TOTAL BLINDNESS IN HIS LEFT EYE. ON AUGUST 21, 1973 CLAIMANT'S TREATING PHYSICIAN INDICATED CLAIMANT WAS UNDER NO RESTRICTION AS FAR AS HIS HEALTH AND OCCUPATION WERE CONCERNED. IN JULY, 1974 MEDICAL EVIDENCE INDICATED THAT THE CASE SHOULD BE CLOSED ON THE BASIS OF TOTAL BLINDNESS OF LEFT EYE. CLAIMANT, HOWEVER, WISHED TO EXPLORE THE POSSIBILITY OF FURTHER TREATMENT AND, IN 1975, WAS SEEN BY DR. BURNS WHO BECAME CLAIMANT'S TREATING PHYSICIAN. DR. BURNS STATED IN DECEMBER, 1975 THAT CLAIMANT COULD RETURN TO REGULAR WORK AND WORK ANY JOB AT ANY TIME WHEN HE WAS NOT HAVING ONE OF HIS SURGICAL PROCEDURES.

ALTHOUGH THE MEDICAL REPORTS HAD INDICATED THAT AS EARLY AS 1973 CLAIMANT'S CONDITION WAS STATIONARY AND HE COULD RETURN TO REGULAR WORK, THE FUND CONTINUED TO PAY COMPENSATION FOR TEMPORARY TOTAL DISABILITY TO AND INCLUDING DECEMBER 7, 1975. ON THAT DATE IT FILED AN 802 FORM REQUESTING TERMINATION OF SUCH COMPENSATION, BASED ON THE FACT THAT THE DOCTOR HAD APPROVED CLAIMANT'S RETURN TO REGULAR WORK AS OF DECEMBER 3, 1975. THE FILE WAS NOT SENT TO EVALUATION FOR CLAIM CLOSURE, APPARENTLY, BECAUSE FURTHER SURGICAL PROCEDURES WERE SCHEDULED FOR APRIL, 1976 AT WHICH TIME CLAIMANT WOULD BE ENTITLED TO ADDITIONAL TIME LOSS.

THE REFEREE FOUND THAT ONE OF THE CONDITIONS WHICH ENTITLES THE CARRIER TO TERMINATE PAYMENT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY HAD BEEN MET, I.E., CLAIMANT HAD BEEN RELEASED BY HIS PHYSICIAN FOR 'REGULAR WORK'. JACKSON V SAIF (UNDERSCORED), OR APP 109. HE FOUND THIS SUFFICIENT EVEN THOUGH CLAIMANT WAS NOT AT THAT TIME MEDICALLY STATIONARY AND ALTHOUGH IT APPARENTLY PLACED CLAIMANT IN A STATE OF LIMBO, TO-WIT - CLAIMANT WAS NEITHER RECEIVING COMPENSATION FOR TEMPORARY TOTAL DISABILITY NOR COMPENSATION FOR PERMANENT DISABILITY AS THE LATTER HAD NOT BEEN, AT THAT TIME, EVALUATED.

THE REFEREE CONCLUDED THAT HAD THE MATTER BEEN SUBMITTED TO EVALUATION FOR CLOSURE THERE WAS NO DOUBT CLAIMANT WOULD HAVE RECEIVED AN AWARD OF 100 PER CENT LOSS OF HIS LEFT EYE - HOWEVER, SUCH DETERMINATION AT THAT TIME WOULD HAVE PRECLUDED CLAIMANT FROM RECEIVING TIME LOSS PAYMENTS DURING HIS FUTURE PERIODS OF HOSPITALIZATION SHOULD HE CHOOSE TO SUBMIT TO ADDITIONAL TREATMENT IN THE EFFORT OF PRESERVING SOME OF HIS EYE SIGHT. CLAIMANT WOULD BE ENTITLED UNDER ORS 656.245 FOR PAYMENT OF MEDICAL BILLS AND HE WOULD HAVE NO GROUNDS FOR FILING A CLAIM FOR AGGRAVATION AS HE WOULD ULTIMATELY RECEIVE THE MAXIMUM AWARD ALLOWABLE FOR HIS SCHEDULED DISABILITY. HE CITED DONALD ROBARGE (UNDERSCORED), WCB CASE NO. 72-2767, A SIMILAR CASE WHERE CLAIMANT RECEIVED AN AWARD OF 100 PER CENT LOSS OF THE RIGHT EYE AND, THEREAFTER, REQUESTED AUTHORIZATION FOR FURTHER SURGICAL PROCEDURES. THE CARRIER, IN THAT CASE, FELT THAT IF SUCH SURGERY WAS PERFORMED OR OTHER MEDICAL TREATMENT WAS RECEIVED THAT IT SHOULD BE ENTITLED TO OFFSET MEDICAL EXPENSES AGAINST THE AWARD PREVIOUSLY MADE. AFTER A HEARING, THE REFEREE HELD THAT ORS

656.245 MADE NO PROVISIONS FOR SUCH OFFSET AND THAT SUCH FUTURE MEDICAL BILLS WOULD HAVE TO BE PAID - HOWEVER, HE STATED THAT THE PAYMENT OF FUTURE TEMPORARY TOTAL DISABILITY COMPENSATION DURING CLAIMANT'S HOSPITALIZATION WOULD CONSTITUTE DOUBLE COMPENSATION AND, ACCORDINGLY, CLAIMANT COULD NOT RECEIVE AN ADDITIONAL COMPENSATION FOR TEMPORARY TOTAL DISABILITY DURING SUCH FUTURE PERIODS.

BASED UPON THE ABOVE, THE REFEREE FOUND THAT THE STATE ACCIDENT INSURANCE FUND HAD FOLLOWED THE PROPER PROCEDURES TO THE BENEFIT OF CLAIMANT WHO HAD RECEIVED COMPENSATION FOR TEMPORARY TOTAL DISABILITY FOR A PERIOD LONG PAST THE DATE HIS DOCTOR FIRST SAID HE COULD RETURN TO WORK AND SHOULD THE MATTER HAVE BEEN SUBMITTED TO EVALUATION FOR CLOSURE IN DECEMBER, 1975, CLAIMANT WOULD HAVE BEEN CUT OFF FROM PAYMENTS OF TEMPORARY TOTAL DISABILITY DURING PERIODS OF FUTURE HOSPITALIZATIONS AND RECOVERY. HE CONCLUDED THAT CLAIMANT WOULD EVENTUALLY RECEIVE A PROPER AWARD BASED ON HIS RESIDUAL DISABILITY AFTER ALL SURGICAL PROCEDURES HAVE BEEN CONCLUDED.

THE BOARD, ON DE NOVO REVIEW, DISAGREES WITH THE REFEREE'S ORDER. ALTHOUGH AS EARLY AS JULY, 1974 THE DOCTORS HAD INDICATED THAT THE CASE COULD BE CLOSED ON THE BASIS OF TOTAL BLINDNESS OF THE LEFT EYE CLAIMANT CONTINUED TO UNDERGO MANY SURGERIES INVOLVING THE EYE BUT NOT INVOLVING SIGHT RESTORATION. DURING THIS PERIOD OF TIME CLAIMANT PROPERLY RECEIVED COMPENSATION FOR TIME LOSS AND, IN DECEMBER, 1975, THE FUND FILED AN 802 INDICATING IT WISHED TO TERMINATE PAYMENT OF SUCH COMPENSATION BECAUSE CLAIMANT'S DOCTOR HAD APPROVED HIS RETURN TO REGULAR WORK AS OF DECEMBER 3, 1975. UP TO THAT POINT THE PROCEDURE FOLLOWED BY THE FUND WAS PROPER - HOWEVER, THE FUND ALSO HAD A DUTY TO SUBMIT THE FILE TO EVALUATION FOR A FINAL DETERMINATION OF CLAIMANT'S PERMANENT DISABILITY.

BECAUSE OF THE FAILURE OF THE FUND TO SEND THE FILE TO EVALUATION FOR CLAIM CLOSURE CLAIMANT WAS REQUIRED TO SEEK THE ASSISTANCE OF COUNSEL AND REQUEST A HEARING. AS A RESULT OF THE EFFORTS MADE BY CLAIMANT'S COUNSEL THE FILE FINALLY WAS SENT TO EVALUATION AND THE BOARD TAKES ADMINISTRATIVE NOTICE OF THE FACT THAT A DETERMINATION ORDER WAS MAILED ON APRIL 14, 1976, APPROXIMATELY SIX WEEKS AFTER THE REFEREE'S OPINION AND ORDER, WHEREBY CLAIMANT WAS AWARDED TIME LOSS THROUGH DECEMBER 7, 1975 AND 100 DEGREES FOR 100 PER CENT LOSS OF VISION OF THE LEFT EYE.

THE BOARD CONCLUDES THAT CLAIMANT IS ENTITLED TO RECEIVE COMPENSATION FOR TEMPORARY TOTAL DISABILITY UNTIL THERE HAS BEEN A FINAL EVALUATION OF HIS RESIDUAL PERMANENT DISABILITY, IF ANY, AND A DETERMINATION ORDER BASED THEREUPON IS MAILED TO HIM. IN THIS CASE CLAIMANT ULTIMATELY RECEIVED ALL OF THE COMPENSATION TO WHICH HE WAS ENTITLED, NEVERTHELESS, THE FAILURE OF THE FUND TO REQUEST A DETERMINATION AMOUNTS TO UNREASONABLE CONDUCT AND, PURSUANT TO ORS 656.382, CLAIMANT'S ATTORNEY IS AWARDED A REASONABLE ATTORNEY FEE TO BE PAID BY THE FUND.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 1, 1976, IS REVERSED.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY FEE FOR HIS SERVICES AT THE HEARING BEFORE THE REFEREE, THE SUM OF 600 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

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

AMOS PHILLIPS, JR., CLAIMANT
DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

CLAIMANT SUSTAINED A COMPENSABLE INJURY ON SEPTEMBER 26, 1968 WHEN HE FELL 18 FEET TO A CONCRETE FLOOR, SUFFERING A SKULL FRACTURE AND BILATERAL WRIST FRACTURES.

ON SEPTEMBER 26, 1968 DR. THOMPSON PERFORMED A CLOSED REDUCTION OF BILATERAL CALLUS FRACTURE, RIGHT AND LEFT WRIST, METAL POSTERIOR SPLINT. ON NOVEMBER 19, 1969 DR. SERES PERFORMED A CRANIOTOMY WITH REPAIR OF CSF LEAK. A DETERMINATION ORDER OF JULY 7, 1969 GRANTED CLAIMANT 64 DEGREES FOR 20 PER CENT UNSCHEDULED DISABILITY - 30 DEGREES FOR 20 PER CENT LOSS OF THE RIGHT FOREARM - AND 45 DEGREES FOR 30 PER CENT LOSS OF THE LEFT FOREARM.

DR. SERES, IN 1969, REQUESTED CLAIMANT'S CLAIM BE REOPENED AS CLAIMANT WAS HOSPITALIZED WITH ACUTE PNEUMOCOCCAL MENINGITIS. ON APRIL 10, 1970 HE PERFORMED A CRANIOTOMY WITH EVISCERATION.

A SECOND DETERMINATION ORDER, ISSUED ON JUNE 8, 1971, AWARDED CLAIMANT AN ADDITIONAL 64 DEGREES FOR 20 PER CENT UNSCHEDULED HEAD DISABILITY AND AN ADDITIONAL 15 DEGREES FOR 45 DEGREES LOSS OF THE RIGHT FOREARM. CLAIMANT APPEALED THIS DETERMINATION ORDER AND, AFTER A HEARING, AN OPINION AND ORDER, DATED SEPTEMBER 14, 1971, GRANTED CLAIMANT AN ADDITIONAL 172 DEGREES FOR A TOTAL OF 300 DEGREES FOR UNSCHEDULED HEAD DISABILITY AND A TOTAL OF 75 DEGREES LOSS OF THE RIGHT FOREARM.

THE CARRIER VOLUNTARILY REOPENED CLAIMANT'S CLAIM ON MAY 13, 1976 FOR FURTHER TREATMENT. CLAIMANT'S AGGRAVATION RIGHTS HAVE EXPIRED. ON JUNE 11, 1976 DR. MISKO PERFORMED SURGERY FOR REPAIR OF CRANIOTOMY DEFECT.

CLAIMANT UNDERWENT VOCATIONAL RETRAINING AND RETURNED TO WORK ON JULY 12, 1976.

THE STATE ACCIDENT INSURANCE FUND REQUESTED A DETERMINATION ON AUGUST 30, 1976. THE EVALUATION DIVISION RECOMMENDED TEMPORARY TOTAL DISABILITY COMPENSATION FROM FEBRUARY 11, 1976 THROUGH JULY 11, 1976, LESS TIME WORKED, BUT NO ADDITIONAL AWARD FOR PERMANENT PARTIAL DISABILITY.

ORDER

CLAIMANT IS HEREBY GRANTED TEMPORARY TOTAL DISABILITY COMPENSATION FROM FEBRUARY 11, 1976 THROUGH JULY 11, 1976, LESS TIME WORKED.

JAMES ST. JOHN, CLAIMANT

JAMES LARSON, CLAIMANT'S ATTY.
LYMAN JOHNSON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE EMPLOYER'S DENIAL OF CLAIMANT'S HEMORRHOID CONDITION.

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HIS LOW BACK ON OCTOBER 5, 1971 FOR WHICH A DETERMINATION ORDER GRANTED CLAIMANT 96 DEGREES FOR 30 PER CENT UNSCHEDULED LOW BACK DISABILITY ON MAY 1, 1973. HIS CLAIM WAS LATER REOPENED FOR FURTHER MEDICAL CONSISTING OF REPAIR OF PSEUDOARTHROSIS AND SPINAL FUSION. HIS CLAIM WAS AGAIN CLOSED BY DETERMINATION ORDER ON SEPTEMBER 25, 1975 WITH AN ADDITIONAL AWARD OF 64 DEGREES FOR A TOTAL OF 160 DEGREES FOR 50 PER CENT UNSCHEDULED DISABILITY.

CLAIMANT WAS HOSPITALIZED IN SEPTEMBER, 1974 AND BETWEEN THAT DATE AND CLAIMANT'S DATE OF INJURY HE HAD BEEN HOSPITALIZED FOUR TIMES AND HAD HAD THREE OPERATIONS (THE THIRD, A LAMINECTOMY IN JULY, 1972).

IN OCTOBER, 1975 CLAIMANT SAW HIS FAMILY PHYSICIAN, DR. ROBINSON, FOR LOW BACK PAIN - CLAIMANT ALSO HAD BLOOD IN HIS STOOL. HE TESTIFIED THAT DR. ROBINSON SAID HE HAD HEMORRHOIDS, A CONDITION CLAIMANT HAD HAD SINCE HE FIRST STARTED TRUCK DRIVING. CLAIMANT, HOWEVER, STATED THE CONDITION BECAME WORSE AFTER HIS FIRST HOSPITALIZATION. DR. ROBINSON REFERRED CLAIMANT TO DR. PEASE WHO PERFORMED A HEMORRHOIDECTOMY ON OCTOBER 21, 1975.

AFTER RECEIVING MEDICAL BILLS FOR THE HEMORRHOIDECTOMY, THE EMPLOYER ON DECEMBER 20, 1975 DENIED RESPONSIBILITY FOR THIS CONDITION.

ON FEBRUARY 16, 1976, DR. PEASE INDICATED THAT CLAIMANT'S RECTAL SYMPTOMS HAD BEEN EXACERBATED BY EPISODES OF CONSTIPATION WHICH IS QUITE COMMON WITH HOSPITALIZATION AND THE USE OF MEDICATIONS TO CONTROL PAIN. HE FELT THERE WAS SUFFICIENT AGGRAVATION ASSOCIATED WITH THE BACK INJURY AND MEDICATION GIVEN TO CAUSE THE HEMORRHOIDS TO BECOME SUFFICIENTLY SYMPTOMATIC AND TO CAUSE BLEEDING WHICH REQUIRED SURGERY.

THE REFEREE FOUND THAT CLAIMANT HAD SUFFERED FROM HEMORRHOIDS SINCE HE FIRST BEGAN TRUCK DRIVING - IT WAS UNCONTRADICTED THAT CLAIMANT EXPERIENCED OCCASIONAL BLEEDING FROM TIME TO TIME, BUT NEVER BEFORE OCTOBER, 1975 HAD HIS BLEEDING BEEN SO SEVERE. THIS SEVERE BLEEDING PROMPTED THE HEMORRHOIDECTOMY. THE REFEREE FOUND THAT ALTHOUGH THE HISTORY WAS SUFFICIENT TO ESTABLISH SOME CONNECTION BETWEEN THE WORSENING OF CLAIMANT'S HEMORRHOID CONDITION AND HIS BACK INJURY AND THE SURGERY THEREFOR, THE RELATIONSHIP WAS NOT SUFFICIENT TO PLACE RESPONSIBILITY ON THIS EMPLOYER FOR THE CONDITION EXISTING IN OCTOBER, 1975, PARTICULARLY WHEN THE LAST HOSPITALIZATION AND EXTENSIVE MEDICATION FOR CLAIMANT'S BACK INJURY OCCURRED IN MAY, 1975, SOME SIX MONTHS BEFORE HIS SEVERE HEMORRHOID PROBLEM.

THE REFEREE CONCLUDED THAT THERE WAS NO SUFFICIENT TIE IN BETWEEN THE HEMORRHOID CONDITION AND THE INDUSTRIAL INJURY TO ESTABLISH A DEFINITE COMPENSABLE RELATIONSHIP AND HE AFFIRMED THE EMPLOYER'S DENIAL FOR THE HEMORRHOID CONDITION.

THE BOARD, ON DE NOVO REVIEW, ADOPTS THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 25, 1976, IS AFFIRMED.

WCB CASE NO. 76-274 SEPTEMBER 29, 1976

DAVID WARD, CLAIMANT

MICHAEL STROOBAND, CLAIMANT'S ATTY.
PHILIP MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

ON SEPTEMBER 16, 1976 THE BOARD ENTERED ITS ORDER ON REVIEW IN THE ABOVE ENTITLED MATTER. THE ORDER AWARDED CLAIMANT'S COUNSEL ATTORNEY'S FEES AT BOTH THE HEARING LEVEL AND BOARD REVIEW LEVEL PAYABLE BY THE STATE ACCIDENT INSURANCE FUND. THE ATTORNEY'S FEES SHOULD BE PAID BY THE EMPLOYER, PEERLESS PACIFIC COMPANY.

THEREFORE, THE ORDER ON REVIEW ENTERED IN THE ABOVE ENTITLED MATTER ON SEPTEMBER 16, 1976 IS AMENDED BY DELETING FROM THE THIRD AND FOURTH PARAGRAPHS OF THE 'ORDER' PORTION OF SAID ORDER THE WORDS 'STATE ACCIDENT INSURANCE FUND' AND INSERTING IN LIEU THEREOF THE WORDS 'EMPLOYER, PEERLESS PACIFIC COMPANY'.

WCB CASE NO. 76-940 SEPTEMBER 30, 1976

FRANK P. SMITH, CLAIMANT

CARL BURNHAM, JR., CLAIMANT'S ATTY.
HAROLD HENIGSON, 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. 75-5423 SEPTEMBER 30, 1976

ALADAR BILOVSKY, CLAIMANT

DONN BAUSKE, CLAIMANT'S ATTY.
A. THOMAS CAVANAUGH, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

CLAIMANT SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH APPROVED THE ACTION BY THE EMPLOYER AND ITS CARRIER WITH RESPECT TO CLAIMANT'S CLAIM AND DISMISSED THE MATTER.

CLAIMANT IS A NATIVE OF CZECHOSLOVAKIA, HE CAME TO THE UNITED STATES DURING 1969 AND WENT TO WORK FOR THE EMPLOYER IN PORTLAND THE SAME YEAR. HE CONTINUED TO WORK FOR THE EMPLOYER UNTIL HE RETURNED TO HIS NATIVE COUNTRY IN SEPTEMBER, 1975.

WHILE WORKING FOR THE EMPLOYER CLAIMANT BECAME INVOLVED IN AN ALTERCATION AT THE PLANT IN NOVEMBER, 1973 FROM WHICH HE WAS MADE A COMPLETE PHYSICAL RECOVERY. HOWEVER, CLAIMANT'S PRE-EXISTING PSYCHOLOGICAL PROBLEMS WERE EXACERBATED BY THE FIGHT AND AT THE TIME CLAIMANT RETURNED TO CZECHOSLOVAKIA HE WAS UNDER THE CARE OF DR. QUAN, A PSYCHIATRIST, FOR PROBLEMS WHICH RESULTED FROM HIS INDUSTRIAL INJURY. HE WAS NOT, AT THAT TIME, MEDICALLY STATIONARY AS FAR AS HIS PSYCHIATRIC PROBLEMS WERE CONCERNED AND WAS BEING PAID COMPENSATION FOR HIS TEMPORARY TOTAL DISABILITY. THESE PAYMENTS WERE TERMINATED UNILATERALLY BY THE CARRIER AFTER CLAIMANT ESTABLISHED RESIDENCY IN CZECHOSLOVAKIA.

CLAIMANT'S CLAIM HAD BEEN ACCEPTED AND PAYMENTS FOR TEMPORARY TOTAL DISABILITY WERE, INITIALLY, PAID, LATER THE CARRIER HAD DENIED RESPONSIBILITY FOR CLAIMANT'S EMOTIONAL PROBLEMS AND HAD, AT THAT TIME, UNILATERALLY CEASED PAYMENT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY. CLAIMANT HAD REQUESTED A HEARING AND, AS A RESULT THEREOF, THE ENTIRE CLAIM WAS FOUND COMPENSABLE AND THE EMPLOYER AND ITS CARRIER WERE ORDERED TO ACCEPT THE CLAIM FOR ANXIETY TENSION AND TO PAY COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM THE DATE OF THE INJURY UNTIL THE CLAIM WAS CLOSED PURSUANT TO ORS 656.268. THE REFEREE HAD ASSESSED PENALTIES AND AWARDED ATTORNEY FEES. WCB CASE NO. 74-2786 ENTERED ON MARCH 18, 1975.

CLAIMANT NOW CONTENDS THAT THE SECOND (UNDERSCORED) UNILATERAL TERMINATION OF PAYMENT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY IS A REFUSAL TO PAY COMPENSATION PURSUANT TO THE REFEREE'S ORDER AND THAT PENALTIES SHOULD BE ASSESSED FOR UNREASONABLE DELAY AND UNREASONABLE REFUSAL TO PAY COMPENSATION PURSUANT TO ORS 656.268(2) AND ATTORNEY FEES AWARDED BECAUSE OF THE UNREASONABLE RESISTANCE TO PAYMENT OF COMPENSATION PURSUANT TO ORS 656.382(1).

THE EMPLOYER CONTENDS THAT WHEN CLAIMANT REMOVED HIMSELF AND HIS FAMILY FROM THE UNITED STATES AND RETURNED TO CZECHOSLOVAKIA HE DEPRIVED THE EMPLOYER AND ITS CARRIER OF THE OPPORTUNITY TO APPROVE OR ACCEPT CLAIMANT'S CHOICE OF DOCTORS IN CZECHOSLOVAKIA AND THAT BY REASON OF THE STATE OF RELATIONS BETWEEN THE UNITED STATES AND CZECHOSLOVAKIA THERE WAS NO MEANS BY WHICH PAYMENT COULD BE MADE TO CLAIMANT PURSUANT TO ORS 656.232(1) AND (2). ALSO, CLAIMANT HAS DEFEATED THE PURPOSE OF THE ACT WHICH IS TO RETURN THE WORKMAN, IF POSSIBLE, TO THE LABOR MARKET BY REMOVING HIMSELF FROM MEDICAL FACILITIES THAT COULD BE RECOGNIZED HERE, AND HIS CASE SHOULD BE CLOSED AS OF THE DATE HE LEFT THE UNITED STATES.

THE REFEREE FOUND NO EVIDENCE TO INDICATE HOW THE CARRIER COULD HAVE PAID CLAIMANT DIRECTLY IN CZECHOSLOVAKIA (CLAIMANT HAD ADVISED THE CARRIER OF THE NAME OF A BANK IN CZECHOSLOVAKIA TO WHICH THE PAYMENTS FOR TEMPORARY TOTAL DISABILITY SHOULD BE SENT AND ALSO ADVISED IT OF THE NAME OF THE CZECHOSLOVAKIAN DOCTOR WHO WOULD BE TREATING HIM). THE REFEREE CONCLUDED THAT THERE WAS NOTHING UNREASONABLE IN CARRIER'S FAILURE TO SEND COMPENSATION CHECKS BLINDLY.

THE REFEREE RECOGNIZED THE EXISTENCE OF ORS 656.232 WHICH PROVIDES A METHOD FOR MAKING PAYMENTS TO ALIENS RESIDING OUTSIDE OF THE UNITED STATES, I.E., PAYMENTS MAY, AT THE DISCRETION OF THE BOARD, BE MADE TO THE CONSUL-GENERAL OF THE COUNTRY IN WHICH SUCH BENEFICIARIES RESIDE ON BEHALF OF THE BENEFICIARY. THE REFEREE ALSO RECOGNIZED THAT THE CZECHOSLOVAKIAN GOVERNMENT, AS A PART OF THE RUSSIAN

COMPLEX HAS A CONSUL WHOSE NAME AND ADDRESS IS KNOWN TO THE EMPLOYER AND ITS CARRIER (3900 LINNEAN AVE., WASHINGTON D.C. 20008). HE CONCLUDED, HOWEVER, THAT THE CARRIER SHOULD NOT BE REQUIRED TO SEND MONEY BLINDLY TO A FOREIGN COUNTRY, ARGUABLY AT LEAST, UNDER A SOCIALIZED MEDICINE PROGRAM, WHICH PROGRAM COULD CONFISCATE THE PAYMENTS. HE FELT THAT EVEN IF THERE WERE PROOF THAT CLAIMANT WAS RECEIVING THE COMPENSATION IN THIS SITUATION, IT WAS NOT CONTEMPLATED BY THE WORKMEN'S COMPENSATION LAW AND IT WOULD SEEM THAT RECIPROCITY REQUIREMENT WITH THE COUNTRY INVOLVED SHOULD BE A CONDITION PRECEDENT TO PAYMENT.

THE REFEREE CONCEDED THAT GIVEN ANOTHER SET OF FACTS THE ACTIONS OF THE CARRIER COULD NOT BE CONDONED BUT THE EVIDENCE IN THIS CASE REVEALED THAT CLAIMANT UNSUCCESSFULLY REQUESTED THE ASSISTANCE OF THE BOARD BY SEEKING A DETERMINATION ORDER RELATING TO CLAIMANT'S PERMANENT PARTIAL DISABILITY, IF ANY, WHICH WAS NOT ACTED UPON. HE FELT IT WOULD BE AN IRRESPONSIBLE DISBURSEMENT OF FUNDS TRUSTED TO THE CARRIER IF IT MADE THE DISBURSEMENTS REQUESTED BY THE CLAIMANT AND HE, THEREFORE, UPHELD THE ACTIONS TAKEN BY THE EMPLOYER AND ITS CARRIER.

THE BOARD, ON DE NOVO REVIEW, DISAGREES WITH THE CONCLUSIONS REACHED BY THE REFEREE. SEVERAL REPORTS WERE RECEIVED FROM DR. BENICKY OF THE CZECHOSLOVAKIAN INSTITUTE OF HEALTH WHICH INDICATED WHAT MEDICAL SERVICES WERE BEING FURNISHED TO THE CLAIMANT AND DR. QUAN, WHO WAS TREATING CLAIMANT FOR HIS PSYCHIATRIC PROBLEMS AT THE TIME HE LEFT THE UNITED STATES, WAS PERSUADED THAT SUCH PROCEDURES WERE ESSENTIALLY THE SAME AS THOSE WHICH WOULD HAVE BEEN PERFORMED IN THE UNITED STATES AND THAT THE SERVICES WERE OF BENEFIT TO CLAIMANT. AFTER A HEARING, CLAIMANT'S PSYCHOLOGICAL AND PSYCHIATRIC DISORDERS HAD BEEN FOUND TO BE COMPENSABLE AND HE WAS UNDER THE TREATMENT OF DR. QUAN AND BEING PAID COMPENSATION FOR TIME LOSS PRIOR TO LEAVING THIS COUNTRY. THERE IS NO EVIDENCE THAT CLAIMANT'S CONDITION IS NOW MEDICALLY STATIONARY, THEREFORE, IT WOULD NOT BE PROPER TO ISSUE A DETERMINATION ORDER.

IF THE EMPLOYER AND ITS CARRIER FELT THAT CLAIMANT'S RETURN TO CZECHOSLOVAKIA PLACED THEM IN AN UNTENABLE POSITION THEY CERTAINLY COULD HAVE, UNDER THE PROVISIONS OF ORS 656.325, SOUGHT AUTHORITY FROM THE BOARD TO TERMINATE PAYMENTS BUT THEY DID NOT DO SO AND TERMINATION OF COMPENSATION FOR CLAIMANT'S TEMPORARY TOTAL DISABILITY HAS NEVER BEEN AUTHORIZED BY THE BOARD.

THERE IS NO BASIS FOR BELIEVING THE CARRIER WOULD BE MAKING AN IRRESPONSIBLE DISBURSEMENT OF FUNDS ENTRUSTED TO IT IF IT FORWARDED THE COMPENSATION FOR TEMPORARY TOTAL DISABILITY TO CZECHOSLOVAKIA CONSULATE IN WASHINGTON, D.C. IT IS DIFFICULT TO DETERMINE WHAT THE EMPLOYER AND ITS CARRIER MEANT WHEN THEY STATED 'BY REASON OF THE STATE OF RELATIONS BETWEEN THE UNITED STATES AND CZECHOSLOVAKIA'. THE UNITED STATES AND CZECHOSLOVAKIA HAVE NOT SEVERED DIPLOMATIC RELATIONS, CERTAINLY A STATE OF WAR DOES NOT EXIST BETWEEN THE TWO COUNTRIES AND IT IS WHOLLY IMMATERIAL WHETHER OR NOT CZECHOSLOVAKIA IS A SOCIALIST STATE.

ORS 656.232 SPECIFICALLY PROVIDES A METHOD BY WHICH THE EMPLOYER AND ITS CARRIER CAN CONTINUE TO MAKE PAYMENTS TO AN ALIEN LIVING IN A FOREIGN COUNTRY – THE FACT THAT CLAIMANT HAD REQUESTED THAT THE PAYMENTS BE SENT TO A CERTAIN BANK IN A CERTAIN CITY IN CZECHOSLOVAKIA DOES NOT CHANGE THE SITUATION. THE CARRIER KNOWS THE ADDRESS OF THE CZECHOSLOVAKIAN CONSULATE IN WASHINGTON, D.C. AND THERE IS NO REASON TO BELIEVE THAT PAYMENTS SENT TO THAT CONSULATE WOULD NOT BE FORWARDED DIRECTLY TO THE CLAIMANT.

DR. BENICKY, WHO IS TREATING CLAIMANT IN CZECHOSLOVAKIA FOR HIS PSYCHIATRIC PROBLEMS, HAS BEEN FURNISHING THE CARRIER REPORTS WITH RESPECT TO CLAIMANT'S CONDITION AND THE MEDICAL SERVICES WHICH ARE BEING PROVIDED CLAIMANT. DR. QUAN AGREES THAT THE PROCEDURES ARE THE SAME THAT WOULD HAVE BEEN PROVIDED CLAIMANT HAD HE REMAINED IN THE UNITED STATES. WHEN CLAIMANT'S CONDITION DOES BECOME MEDICALLY STATIONARY DR. BENICKY CAN ADVISE THE EMPLOYER AND ITS CARRIER AND DR. QUAN CAN BE CONSULTED AND BE REQUESTED TO ADVISE THE EMPLOYER AND ITS CARRIER IF HE CONCURS WITH THE CLOSING EVALUATION MADE BY DR. BENICKY.

THERE ARE NO INSURMOUNTABLE PROBLEMS PRESENTED BY THIS SITUATION AND THERE IS NO JUSTIFICATION WHATSOEVER FOR THE UNILATERAL TERMINATION OF PAYMENT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY BY THE EMPLOYER AND ITS CARRIER, WITHOUT FIRST OBTAINING AUTHORIZATION FROM THE BOARD. THE REFEREE'S ORDER MUST BE REVERSED.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 28, 1976, IS REVERSED.

THE EMPLOYER AND ITS CARRIER ARE DIRECTED TO RESUME PAYMENTS TO CLAIMANT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY, COMMENCING ON THE DATE SAID PAYMENTS WERE UNILATERALLY TERMINATED BY THE EMPLOYER AND ITS CARRIER AND UNTIL CLAIMANT'S CLAIM IS CLOSED PURSUANT TO ORS 656.268.

THE EMPLOYER AND ITS CARRIER SHALL, ADDITIONALLY, PAY CLAIMANT, AS A PENALTY PURSUANT TO ORS 656.262(8), FOR ITS UNREASONABLE REFUSAL TO PAY COMPENSATION, A SUM EQUAL TO 25 PER CENT OF THE COMPENSATION FOR TEMPORARY TOTAL DISABILITY DUE AND OWING CLAIMANT BY VIRTUE OF THIS ORDER.

THE EMPLOYER AND ITS CARRIER SHALL PAY CLAIMANT'S COUNSEL A REASONABLE ATTORNEY FEE IN THE AMOUNT OF 1500 DOLLARS PURSUANT TO ORS 656.382(1) BECAUSE OF THE UNREASONABLE DELAY AND UNREASONABLE RESISTANCE TO THE PAYMENT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY.

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

WCB CASE NO. 76-637 SEPTEMBER 30, 1976

DORIS A. HARI, CLAIMANT

ALLAN KNAPPENBERGER, CLAIMANT'S ATTY.
ROGER LUEDTKE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON, MOORE AND PHILLIPS.

CLAIMANT SEEKS BOARD REVIEW OF THE REFEREE'S ORDER WHICH RESOLVED THE ISSUE OF THE AMOUNTS PAYABLE TO CLAIMANT FOR TEMPORARY TOTAL AND TEMPORARY PARTIAL DISABILITY FOR THE PERIODS SET FORTH IN A STIPULATION OF FACTS PRESENTED TO HIM IN FAVOR OF THE EMPLOYER BUT HELD THE EMPLOYER WAS UNREASONABLE IN PAYMENT OF COMPENSATION AND ASSESSED A PENALTY AND AWARDED AN ATTORNEY FEE.

THE PARTIES SUBMITTED A STIPULATION OF FACTS WHICH STATED,

ESSENTIALLY, THAT CLAIMANT WAS WORKING AT TWO JOBS AT THE TIME OF HER INJURY ON JANUARY 2, 1976. SHE WAS WORKING AT PIETRO'S PIZZA PARLOR AS A WAITRESS AND AS A RECEPTIONIST AT GREAT WEST LIFE INSURANCE COMPANY. SHE SUFFERED HER INJURY WHILE WORKING AT PIETRO'S. SHE LEFT BOTH JOBS ON JANUARY 2, 1976 BUT RETURNED ON FEBRUARY 1, TO WORK HALF DAYS FOR GREAT WEST. ON MARCH 1, SHE RESUMED HER RECEPTIONIST JOB ON A FULL TIME BASIS. CLAIMANT HAD NOT BEEN RELEASED TO RETURN TO WORK AT PIETRO'S AT THE TIME OF THE HEARING.

CLAIMANT CONTENDS THAT THE COMPENSATION FOR HER TEMPORARY TOTAL DISABILITY SHOULD BE BASED UPON HER COMBINED WEEKLY WAGES RECEIVED FROM PIETRO'S AND GREAT WEST. CLAIMANT FURTHER CONTENDS THAT WHEN SHE RETURNED ON A PART TIME BASIS SHE ONLY MADE HALF OF HER FULL TIME SALARY, THEREFORE, HER EARNINGS LOSS FOR THE PERIOD OF FEBRUARY WHEN SHE WAS WORKING ON A PART TIME BASIS FOR GREAT WEST SHOULD BE COMPUTED ON ONE-HALF OF HER FULL TIME SALARY AND WHEN THIS IS DIVIDED BY HER FULL TIME SALARY THERE IS A 65 PER CENT LOSS OF EARNINGS DURING THE MONTH OF FEBRUARY WHICH SHOULD BE APPLIED TO HER COMBINED WEEKLY WAGES TO DETERMINE HER WEEKLY RATE FOR TEMPORARY PARTIAL DISABILITY.

THE EMPLOYER CONTENDS THAT CLAIMANT'S PAYMENTS FOR TEMPORARY TOTAL DISABILITY HAD TO BE CONFINED TO A PERCENTAGE OF HER EARNINGS FROM THE JOB ON WHICH SHE WAS INJURED RATHER THAN UPON THE COMBINED EARNINGS FROM BOTH JOBS - THAT CLAIMANT IS ENTITLED, PURSUANT TO ORS 656.210, TO RECEIVE AS COMPENSATION FOR HER TEMPORARY TOTAL DISABILITY THROUGH THE MONTH OF JANUARY, 1976, 66 AND TWO-THIRDS PER CENT OF HER 49.50 DOLLARS WEEKLY WAGE EARNED AS AN EMPLOYEE OF PIETRO'S.

THE EMPLOYER FURTHER CONTENDS THAT FOR THE MONTH OF FEBRUARY WHEN CLAIMANT WAS WORKING HALF DAYS FOR GREAT WEST THAT THE TEMPORARY TOTAL DISABILITY WAS PROPERLY CALCULATED BY ADDING THE WEEKLY WAGE CLAIMANT RECEIVED FROM PIETRO'S TO THE PART-TIME WAGE SHE RECEIVED FROM THE GREAT WEST AND DIVIDING THIS AMOUNT BY THE TOTAL COMBINED PRE-INJURY WEEKLY WAGE TO ARRIVE AT A PERCENTAGE OF DISABILITY AND THEN TO APPLY THIS PERCENTAGE TO THE AVERAGE WEEKLY WAGE CLAIMANT RECEIVED AT PIETRO'S TO DETERMINE WHAT CLAIMANT WAS ENTITLED TO RECEIVE FOR HER TEMPORARY PARTIAL DISABILITY. THE EMPLOYER ALSO CONTENDS THAT WHEN CLAIMANT RETURNED TO FULL TIME WORK AT GREAT WEST IT WAS PROPER TO RECALCULATE CLAIMANT'S PAYMENTS OF TEMPORARY PARTIAL DISABILITY ON THE SAME THEORY.

THE REFEREE NOTED THAT OREGON DOES NOT FOLLOW LARSON IN COMBINING EARNINGS OF THE DISSIMILAR JOBS TO DETERMINE A BASE FOR APPLYING THE PERCENTAGE OF WEEKLY WAGE FOR COMPUTATION OF TEMPORARY TOTAL DISABILITY COMPENSATION. THE REFEREE ADHERED TO THE GOVERNING STATUTES AND CONCLUDED THAT THE CALCULATIONS FOR BOTH TEMPORARY TOTAL DISABILITY AND TEMPORARY PARTIAL DISABILITY MADE BY THE EMPLOYER WERE CORRECT.

THE REFEREE FOUND THAT THE EMPLOYER HAD KNOWLEDGE THAT CLAIMANT HAD SUFFERED AN ACCIDENT, IT WAS CLEARLY STATED IN THE STIPULATION OF FACTS, AND THAT SUCH KNOWLEDGE WAS ACQUIRED BY THE EMPLOYER WITHIN THE TIME FIXED FOR GIVING NOTICE. THE REFEREE FOUND THAT THE EMPLOYER TOOK NO ACTION UNTIL LETTERS WERE RECEIVED FROM CLAIMANT'S ATTORNEY - ONLY THEN WAS AN ACCIDENT FORM PREPARED. HE FOUND THIS TO BE A STRONG INDICATION OF BAD FAITH ON THE PART OF THE EMPLOYER AND ITS CARRIER.

THE REFEREE CONCLUDED PENALTIES PURSUANT TO ORS 656.262(8) SHOULD BE ASSESSED. HE ALSO AWARDED AN ATTORNEY FEE PAYABLE TO CLAIMANT'S COUNSEL BY THE EMPLOYER.

THE MAJORITY OF THE BOARD, ON DE NOVO REVIEW, AFFIRMS THE ORDER OF THE REFEREE. WHILE IT MAY SEEM RATHER HARSH TO REFUSE TO ALLOW CLAIMANT TO HAVE HER COMBINED WAGES RECEIVED FROM PIETRO'S AND GREAT WEST LIFE INSURANCE COMPANY CONSIDERED IN DETERMINING HER COMPENSATION FOR TEMPORARY TOTAL DISABILITY AND, ON THE OTHER HAND, TAKING INTO CONSIDERATION THE PART TIME WAGES CLAIMANT RECEIVED WHEN SHE RETURNED TO WORK FOR GREAT WEST AND DEDUCTING THAT FROM THE AMOUNT OF COMPENSATION SHE WAS ENTITLED TO RECEIVE FOR TEMPORARY PARTIAL DISABILITY, THE WORDING OF THE TWO APPLICABLE STATUTES ALLOWS NO OTHER METHOD OF CALCULATION.

ORS 656.210 PROVIDES, IN PART, THAT WHEN THE TOTAL DISABILITY IS ONLY TEMPORARY, THE WORKMAN SHALL RECEIVE DURING THAT PERIOD OF TOTAL DISABILITY, COMPENSATION EQUAL TO 66 AND TWO-THIRDS PER CENT OF HIS WAGES AND SUBSECTION 2 STATES THAT FOR THE PURPOSE OF THIS SECTION THE WEEKLY WAGE A WORKMAN SHALL BE ASCERTAINED BY MULTIPLYING THE DAILY WAGE THE WORKMAN WAS RECEIVING AT THE TIME OF HIS INJURY (UNDERSCORED) AND AS USED IN THIS SUBSECTION 'REGULARLY EMPLOYED' MEANS ACTUAL EMPLOYMENT OR AVAILABILITY FOR SUCH EMPLOYMENT (EMPHASIS SUPPLIED).

THE BOARD HAS PREVIOUSLY RULED ON THIS ISSUE IN AFFIRMING THE REFEREE'S FINDING THAT THE CLAIMANT'S TEMPORARY TOTAL DISABILITY PAYMENTS WERE TO BE CONFINED TO A PERCENTAGE OF HIS EARNINGS FROM THE JOB ON WHICH HE WAS INJURED RATHER THAN CONSIDERING THE EARNINGS FROM BOTH JOBS. IN THE MATTER OF THE COMPENSATION OF BENEDICT LOERZEL (UNDERSCORED), WCB CASE NO. 73-4093. THE BOARD'S ORDER WAS SUBSEQUENTLY AFFIRMED BY THE MULTNOMAH COUNTY CIRCUIT COURT.

ORS 656.212, PROVIDES, IN PART, THAT WHEN THE DISABILITY IS OR BECOMES PARTIAL ONLY AND IS TEMPORARY IN CHARACTER, THE WORKMAN SHALL RECEIVE FOR A PERIOD NOT EXCEEDING TWO YEARS THAT PROPORTION OF THE PAYMENTS PROVIDED FOR TEMPORARY TOTAL DISABILITY WHICH HIS LOSS OF EARNING POWER AT ANY KIND OF WORK (UNDERSCORED) BEARS TO HIS EARNING POWER EXISTING AT THE TIME OF THE OCCURRENCE OF THE INJURY (EMPHASIS SUPPLIED).

THE BOARD CONCLUDES THAT THE REFEREE HAD NO CHOICE BUT TO FIND THAT THE EMPLOYER CORRECTLY CALCULATED THE CLAIMANT'S COMPENSATION FOR TEMPORARY TOTAL DISABILITY AND TEMPORARY PARTIAL DISABILITY. IT AGREES WITH THE REFEREE'S CONCLUSIONS WITH RESPECT TO THE EMPLOYER'S UNREASONABLENESS IN THE PAYMENT OF COMPENSATION AND THE ASSESSMENT OF PENALTIES AND ATTORNEY FEES THEREFOR.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 24, 1976 IS AFFIRMED.

DISSENT

BOARD MEMBER KENNETH V. PHILLIPS DISSENTS AS FOLLOWS -

THE CONCLUSION OF THE REFEREE AND THE MAJORITY OPINION OF THE BOARD LEADS ONE TO THE CONCLUSION THAT IT WAS THE INTENT OF THE LEGISLATURE, IN FIGURING TEMPORARY TOTAL DISABILITY, TO CONSIDER ONLY WAGES EARNED FROM THE EMPLOYMENT OF THE EMPLOYER AT THE TIME OF INJURY, WHILE, ON THE OTHER HAND, IN CALCULATING TEMPORARY PARTIAL DISABILITY, ALL WAGES WERE TO BE CONSIDERED, IN EFFECT GIVING THE EMPLOYER THE RIGHT TO OFFSET OTHER WAGES TO HIS ADVANTAGE - THUS GIVING THE EMPLOYER THE BEST OF BOTH WORLDS WHILE THE INJURED WORKMAN IS DENIED THE COMPENSATION CONTEMPLATED IN THE GENERAL ACCEPTANCE OF A WORKERS COMPENSATION ACT.

ORS 656.212 LEAVES NO DOUBT THAT ITS INTENT WAS TO CONSIDER ALL WAGES IN CALCULATING TEMPORARY PARTIAL DISABILITY.

ON THE OTHER HAND, ORS 656.210, IS NOT SO SPECIFIC AND LEAVES ROOM FOR INTERPRETATION OF LAW IN LINE WITH JUSTICE. I FIND NO PROHIBITION IN THE STATUTE AGAINST EQUITY FOR THE WORKER.

'LARSON'S WORKMEN'S COMPENSATION LAW' FINDS A CONTINUING TREND AMONG THE STATES TOWARD THE ACCEPTANCE OF ALL COVERED EMPLOYMENT IN CALCULATING BENEFITS AND I WOULD SO FIND IN THIS CASE.

-S- KENNETH V. PHILLIPS, BOARD MEMBER

CLAIM NO. ZC 261233 SEPTEMBER 30, 1976

CHARLES F. CHAMBERS, CLAIMANT

DEPT. OF JUSTICE, DEFENSE ATTY.
OWN MOTION DETERMINATION

CLAIMANT SUFFERED A COMPENSABLE INDUSTRIAL INJURY TO HER KNEE ON MAY 5, 1970. IN AUGUST, 1970 SHE UNDERWENT KNEE SURGERY FOR A PARTIAL LATERAL MINISECTOMY AND EXCISION OF A CYSTIC MASS.

ON JANUARY 7, 1971 DR. COOPER STATED THAT THE LIGAMENTS WERE STABLE AND RESTRICTION ON RANGE OF MOTION WAS MINIMAL, BUT THERE WAS SOME THIGH ATROPHY. THE DETERMINATION ORDER ISSUED JANUARY 21, 1971 GRANTED CLAIMANT 23 DEGREES FOR 15 PER CENT LOSS OF THE RIGHT LEG.

IN APRIL, 1976 THE CARRIER VOLUNTARILY REOPENED CLAIMANT'S CLAIM FOR FURTHER SURGERY TO REMOVE THE REMAINDER OF THE LATERAL MINISCUS. CLAIMANT'S AGGRAVATION RIGHTS HAVE EXPIRED.

DR. MAYHALL'S CLOSING REPORT OF AUGUST 24, 1976 INDICATES RESIDUALS ARE SLIGHT LATERAL COLLATERAL INSTABILITY WHICH HE DOESN'T SEE AS BEING ANY PROBLEM, ALSO NO ATROPHY WAS FOUND.

THE STATE ACCIDENT INSURANCE FUND REQUESTED A DETERMINATION ON AUGUST 30, 1976. THE EVALUATION DIVISION RECOMMENDED TEMPORARY TOTAL DISABILITY COMPENSATION FROM APRIL 19, 1976 THROUGH JULY 23, 1976, LESS TIME WORKED, BUT NO ADDITIONAL AWARD FOR PERMANENT PARTIAL DISABILITY.

ORDER

CLAIMANT IS HEREBY GRANTED TEMPORARY TOTAL DISABILITY COMPENSATION FROM APRIL 19, 1976 THROUGH JULY 23, 1976, LESS TIME WORKED.

PAUL MIDDLETON, CLAIMANT

HUGH COLE, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
ORDER ON REVIEW

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

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

CLAIMANT SUSTAINED A COMPENSABLE RIGHT HIP INJURY ON JANUARY 6, 1972. CLAIMANT'S PAIN SYMPTOMS GRADUALLY RESOLVED EXCEPT FOR PAIN IN THE LOW BACK, THE RIGHT BUTTOCK AND HIP REGIONS WITH RADIATION INTO THE RIGHT LEG.

CLAIMANT FIRST SAW DR. KENAGY, X-RAYS REVEALED NO PELVIS INJURY AND HE REFERRED CLAIMANT TO DR. STEELE WHO FIRST RECOMMENDED CONSERVATIVE TREATMENT. ON FEBRUARY 9, 1972 DR. STEELE PERFORMED EXCISION OF L4-5 DISC WITH DECOMPRESSION OF THE RIGHT L5 ROOT.

CLAIMANT WAS REFERRED TO THE DISABILITY PREVENTION DIVISION ON JULY 18, 1972. AT THAT TIME HIS COMPLAINTS WERE PAIN DOWN THE RIGHT HIP, RIGHT THIGH AND LOW BACK PAIN, NUMBNESS IN THE RIGHT LEG TO THE CALF. CLAIMANT WAS WALKING WITH CRUTCHES.

CLAIMANT'S PSYCHOLOGICAL EVALUATION OF JULY 25, 1972 INDICATED CLAIMANT HAD AN UNSTABLE PERSONALITY AND A LONG HISTORY OF STRAINED RELATIONSHIPS WITH PEOPLE. DR. MAY STATED THESE PSYCHOLOGICAL PROBLEMS WERE RELATED TO CLAIMANT'S INDUSTRIAL INJURY ONLY IN A VERY MINIMAL MANNER.

ON JULY 26, 1972 CLAIMANT WAS EXAMINED BY THE BACK EVALUATION CLINIC, MARKED FUNCTIONAL OVERLAY WAS FOUND AND IT WAS RECOMMENDED THAT CLAIMANT SHOULD NOT, AT THAT TIME, RETURN TO HIS FORMER OCCUPATION.

DR. STEELE, ON OCTOBER 12, 1972, FOUND CLAIMANT MEDICALLY STATIONARY, BUT PERMANENTLY IMPAIRED FROM HEAVY LABOR OR PROLONGED SITTING.

A DETERMINATION ORDER OF NOVEMBER 17, 1972 GRANTED CLAIMANT 32 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK DISABILITY AND 13.5 DEGREES FOR 10 PER CENT LOSS OF THE RIGHT FOOT.

DR. STEELE REFERRED CLAIMANT TO DR. HOCKEY WHO EXAMINED CLAIMANT ON JANUARY 12, 1973. DR. HOCKEY FOUND CONSIDERABLE FUNCTIONAL OVERLAY BUT SOME ORGANIC BASIS FOR THE COMPLAINTS. HE RECOMMENDED PSYCHIATRIC THERAPY - THIS HAD BEEN DONE WITHOUT SUCCESS IN THE PAST AND HAD BEEN TERMINATED.

DR. HOCKEY REFERRED CLAIMANT TO THE PAIN CLINIC. DR. SERES SAW CLAIMANT ON MARCH 19, 1973 AND FELT THAT CLAIMANT WAS SUFFERING FROM ORGANICALLY BASED PAIN IN THE LOW BACK, BUT HE ALSO WONDERED IF CLAIMANT'S SEVERE PAIN COMPLAINTS WERE NOT AN ESCAPE METHOD FOR CLAIMANT. CLAIMANT WANTED TO START HIS OWN BUSINESS BUT LACKED THE FUNDS AND FELT HE WAS ENTITLED TO GREATER AWARD FOR HIS DISABILITY.

CLAIMANT, AFTER A HEARING, WAS GRANTED, ON JANUARY 4, 1974, AN ADDITIONAL 80 DEGREES EQUAL TO 25 PER CENT PERMANENT PARTIAL DISABILITY TO HIS LOW BACK.

ON AUGUST 20, 1974 DR. SERES AGAIN SAW CLAIMANT WHO STATED HE WAS DOING REASONABLY WELL.

DR. HOLLAND, A PSYCHIATRIST, EXAMINED CLAIMANT ON SEPTEMBER 16, 1975. HE DID NOT BELIEVE CLAIMANT WAS MALINGERING. CLAIMANT BELIEVED HE WAS PERMANENTLY AND TOTALLY DISABLED. DR. HOLLAND FELT CLAIMANT HAD A CONSCIOUS NEED TO BE SICK, TO HAVE SYMPTOMS AND TO EXPERIENCE THEM AS DISABLING BUT HE WASN'T PREPARED TO SAY CLAIMANT WAS FALSIFYING THESE SYMPTOMS.

ON OCTOBER 17, 1975 DR. STEELE, AFTER EXAMINING CLAIMANT, FOUND NO OBJECTIVE CHANGES IN CLAIMANT'S BACK EXAMINATION FROM HIS PREVIOUS EXAMINATIONS, HE SAID NO FURTHER TREATMENT WAS INDICATED.

THE REFEREE FOUND THAT, BASED ON THE MEDICAL EVIDENCE, CLAIMANT'S PHYSICAL CONDITION HAS NOT CHANGED SINCE HIS LAST AWARD OF COMPENSATION OF JANUARY 4, 1974 AND HE CONCLUDED THAT CLAIMANT'S PHYSICAL CONDITION HAD NOT BECOME AGGRAVATED SINCE THAT AWARD.

THE REFEREE FOUND THAT THE CHRONIC PSYCHOPATHOLOGY WAS UNRELATED TO THE INDUSTRIAL INJURY. THE ONLY PSYCHOLOGICAL PROBLEM WHICH RELATED TO THE INDUSTRIAL INJURY WAS A MODERATE ANXIETY TENSION REACTION WHICH NOW HAS BEEN REDUCED TO A BASIC PERSONALITY TRAIT DISTURBANCE.

THE REFEREE CONCLUDED THAT CLAIMANT'S PRESENT PSYCHOLOGICAL PROBLEMS AND INTENSIFICATION DO NOT STEM FROM THE INDUSTRIAL INJURY BUT ARE CAUSED BY CONSCIOUS MOTIVATION TO OBTAIN PERMANENT TOTAL DISABILITY.

THE BOARD, ON DE NOVO REVIEW, ADOPTS THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 19, 1976, IS AFFIRMED.

WCB CASE NO. 75-2550 SEPTEMBER 30, 1976

ROGER ROSS, CLAIMANT
J. DAVID KRYGER, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH FOUND CLAIMANT TO BE PERMANENTLY AND TOTALLY DISABLED AND ALSO REFERRED THE MATTER TO THE DISABILITY PREVENTION DIVISION FOR VOCATIONAL REHABILITATION CONSIDERATION.

CLAIMANT HAD SUFFERED AN INDUSTRIAL INJURY IN 1968 AND THEREAFTER UNDERWENT A REHABILITATION PROGRAM TRAINING TO BE A WELDER. CLAIMANT WAS EMPLOYED AS A WELDER ON JANUARY 19, 1971 WHEN HE SUSTAINED A COMPENSABLE BACK AND LEFT LEG INJURY. HE CONTINUED WORKING UNTIL FEBRUARY 10, 1971 WHEN HIS BACK PAIN BECAME SO SEVERE HE HAD TO QUIT.

ON MAY 1, 1971 DR. TSAI PERFORMED AN L4-5 LAMINECTOMY. ON SEPTEMBER 16, 1971 THERE WAS LITTLE LOW BACK PAIN BUT LEFT LEG SPASM PERSISTED. DR. TSAI RECOMMENDED CLAIMANT NOT RETURN TO WELDING.

CLAIMANT SOUGHT VOCATIONAL ASSISTANCE IN DECEMBER, 1971 AND APPLIED FOR VARIOUS EMPLOYMENTS BUT FAILED BECAUSE OF HIS BACK OPERATIONS.

ON DECEMBER 7, 1971 A PSYCHOLOGICAL EVALUATION INDICATED CLAIMANT FELT STRONG FEELINGS OF ISOLATION AND DR. HICKMAN RECOMMENDED CLAIMANT GET INTO ANOTHER TRAINING SITUATION OR ANOTHER JOB AS SOON AS POSSIBLE TO PREVENT SERIOUS DETERIORATION. DR. HICKMAN BELIEVED CLAIMANT'S PSYCHOPATHOLOGY WAS LARGELY ATTRIBUTED TO HIS LAST INDUSTRIAL INJURY - THAT PERHAPS CLAIMANT WOULD NEVER AGAIN HAVE CONFIDENCE IN HIS PHYSICAL CONDITION BECAUSE HE HAD EXPECTED A GOOD RECOVERY THIS TIME LIKE HE HAD FROM HIS 1968 INJURY. THE PROGNOSIS FOR RESTORATION AND REHABILITATION WAS ONLY FAIR.

ON FEBRUARY 10, 1972 THE BACK EVALUATION CLINIC EVALUATED CLAIMANT AND FOUND HIM MEDICALLY STATIONARY WITH LOSS OF FUNCTION OF HIS BACK DUE TO THIS INJURY AS MILD.

A REPORT OF MARCH 6, 1972 FROM THE PHYSICAL REHABILITATION CENTER IN PORTLAND FOUND MILD LOSS OF FUNCTION OF THE BACK, MODERATELY SEVERE PSYCHOPATHOLOGY DUE TO THIS INJURY WHICH SHOULD NOT BE PERMANENT AND FOUND CLAIMANT ELIGIBLE FOR VOCATIONAL REHABILITATION SERVICES.

A DETERMINATION ORDER OF MARCH 21, 1972 GRANTED CLAIMANT 48 DEGREES FOR 15 PER CENT UNSCHEDULED LOW BACK DISABILITY.

IN JANUARY, 1973 CLAIMANT REGISTERED AT A COMMUNITY COLLEGE. HE EARNED A GRADE POINT AVERAGE OF 2.75 BUT WAS FORCED TO DROP OUT OF SCHOOL DUE TO INCREASING BACK PAIN. DR. TRIPP STATED CLAIMANT'S ANXIETY AND DEPRESSION WHICH HE WAS EXPERIENCING WAS RELATED TO HIS CHRONIC PHYSICAL PROBLEMS.

ON JANUARY 15, 1973, BY STIPULATION, CLAIMANT'S CLAIM WAS REOPENED FOR A SPINAL FUSION, HOWEVER, CLAIMANT DID NOT WANT TO UNDERGO SUCH SURGERY AT THAT TIME. ON OCTOBER 11, 1973 A SECOND DETERMINATION ORDER GRANTED NO ADDITIONAL AWARD FOR PERMANENT PARTIAL DISABILITY.

ON JANUARY 14, 1974 CLAIMANT'S CLAIM WAS REOPENED FOR THE SPINAL FUSION WHICH WAS PERFORMED BY DR. FRY ON THAT DATE.

ON MAY 9, 1975 CLAIMANT WAS EXAMINED BY THE ORTHOPAEDIC CONSULTANTS WHO FOUND COMPLAINTS OF BACK PAIN, TINGLING AND NUMBNESS ALONG THE LATERAL ASPECT OF THE LEFT LEG FROM THE FOOT AND RATED CLAIMANT'S DISABILITY AS MILDLY MODERATE. THEY FELT CLAIMANT WAS UNABLE TO RETURN TO THE SAME OCCUPATION EVEN WITH LIMITATIONS AND SHOULD BE REFERRED TO THE DEPARTMENT OF VOCATIONAL REHABILITATION.

ON JUNE 12, 1975 A THIRD DETERMINATION ORDER GRANTED CLAIMANT AN ADDITIONAL 64 DEGREES FOR 20 PER CENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT HAS BEEN A LOGGER MOST OF HIS LIFE. CLAIMANT HAS COMPLETED ONE AND A HALF YEARS OF HIGH SCHOOL WITH A GED IN 1969, PLUS TWO YEARS OF COMMUNITY COLLEGE.

AT THE PRESENT TIME CLAIMANT'S PAIN IS WORSE IN HIS LEGS THAN HIS BACK, HE HAS DIFFICULTY STANDING FOR OVER ONE HALF HOUR. HE HAS BACK AND LEG SPASMS DAILY. CLAIMANT ALSO TAKES MEDICATION FOR HIS PREVIOUS HEAD INJURY WHICH CAUSES EYE PROBLEMS. CLAIMANT HAS SOUGHT EMPLOYMENT IN FIELDS OF WORK IN WHICH HE HAS EXPERIENCE AND HAS BEEN UNSUCCESSFUL.

THE REFEREE FOUND THAT CLAIMANT CANNOT RETURN TO HIS FORMER

OCCUPATION AS A WELDER. THE BACK EVALUATION CLINIC, DR. FRY AND DR. MARTENS ALL AGREE CLAIMANT CANNOT ENGAGE IN ANY EMPLOYMENT REQUIRING LIFTING, STANDING OR STOOPING. DR. HICKMAN FOUND THE PROSPECT OF SUCCESSFUL REHABILITATION FOR CLAIMANT WAS ONLY FAIR.

THE ORTHOPAEDIC CONSULTANTS FOUND MILDLY MODERATE IMPAIRMENT, HOWEVER, THE REFEREE CONCLUDED THAT SUCH IMPAIRMENT, WHEN COMBINED WITH ALL OF THE OTHER FACTORS, PRECLUDED CLAIMANT FROM RETURNING TO HIS FORMER OCCUPATION. CLAIMANT HAD PROVEN HIS MOTIVATION TO RETURN TO WORK, AS SUBSTANTIATED BY DR. TRIPP - THEREFORE, AFTER CONSIDERING CLAIMANT'S PHYSICAL IMPAIRMENT, AGE, BACKGROUND, EDUCATION AND LIMITED WORK AREAS, THE REFEREE FOUND CLAIMANT WAS IN THE 'ODD-LOT' CATEGORY. CONSEQUENTLY, THE BURDEN OF SHOWING SOME GAINFUL, SUITABLE AND REGULAR EMPLOYMENT WAS AVAILABLE TO CLAIMANT SHIFTED TO THE FUND. IT FAILED TO MAKE SUCH A SHOWING. THE REFEREE CONCLUDED CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED.

THE BOARD, ON DE NOVO REVIEW, ADOPTS THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED MAY 26, 1976, IS AFFIRMED.

CLAIMANT'S COUNSEL IS GRANTED AS A REASONABLE ATTORNEY FEE FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW, THE SUM OF 400 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

WCB CASE NO. 75-3710 SEPTEMBER 30, 1976

WALTER SHORT, CLAIMANT

LARRY BRUUN, CLAIMANT'S ATTY.
PHILIP MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

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

CLAIMANT, A 43 YEAR OLD MILL WORKER, HAS WORKED FOR THE EMPLOYER FOR 23 YEARS. FOR THE LAST TEN YEARS CLAIMANT HAS BEEN WORKING AS A TALLYMAN. CLAIMANT TESTIFIED THAT APPROXIMATELY 50 PER CENT OF HIS WORKING HOURS HE WAS EXPOSED TO THE NOISE OF CARRIERS AND LIFT TRUCKS COMING IN NEXT TO HIM, REVVING THEIR ENGINES AND DRIVING AWAY.

CLAIMANT HAD BEEN EXAMINED ON AUGUST 21, 1971 BY DR. KENT WHO NOTED THAT CLAIMANT WAS AN AVID GUN SHOOTER AND HAS BEEN EXPOSED, AS A RESULT, TO SIGNIFICANT NOISE, AND ADVISED CLAIMANT TO USE EAR PLUGS AT WORK AND WHEN GUN SHOOTING.

ON MARCH 6, 1975 CLAIMANT FILED A CLAIM FOR HEARING LOSS IN BOTH EARS.

DR. METTLER EXAMINED CLAIMANT ON MAY 27, 1975 AND FOUND ZERO HEARING LOSS IN THE SPEECH RANGE, BUT A HIGH TONE HEARING LOSS IN BOTH EARS.

ON JULY 14, 1975 THE EMPLOYER DENIED CLAIMANT'S CLAIM.

DR. STEVENS TESTED CLAIMANT ON MARCH 5, 1975, WITH A FOLLOWUP

ON OCTOBER 14, 1975 AND CONCLUDED CLAIMANT'S HEARING LOSS WAS CAUSED BY HIS WORK ENVIRONMENT. DR. STEVENS HAD NEITHER THE NOISE LEVEL READINGS NOR A HISTORY OF CLAIMANT'S CHAIN SAW USAGE AND GUN SHOOTING.

CLAIMANT ALSO TESTIFIED THAT APPROXIMATELY 12 TO 15 YEARS AGO HE FIRST NOTICED A RINGING IN HIS EARS AND WHICH CONTINUES TO THIS DAY, CREATING A HEARING LOSS WHICH HAS STEADILY WORSENED.

BURTON HARRIS, SAFETY DIRECTOR FOR THE EMPLOYER CARRIED OUT NOISE LEVEL READINGS AND TESTIFIED THAT THERE HAD BEEN NO CHANGES IN THE NOISE LEVELS IN CLAIMANT'S WORK AREAS FOR THE LAST SIX OR SEVEN YEARS. MR. HARRIS TESTIFIED THAT EMPLOYEES EXPOSED TO GREATER THAN 90 DECIBELS FOR 8 HOURS WERE REQUIRED TO WEAR EAR PLUGS. CLAIMANT'S WORK AREA REGISTERED AT 64 TO 68 DECIBELS.

MR. DANIELS, PRODUCTION COORDINATOR FOR THE EMPLOYER, TESTIFIED THAT CLAIMANT WAS WITHIN 50 FEET OF A CARRIER ABOUT ONE AND A HALF HOURS DURING AN 8 HOUR SHIFT, AND THAT CLAIMANT WOULD BE WITHIN 300 FEET OF THE FORKLIFT ALL DAY LONG. MR. DANIELS TESTIFIED THAT CLAIMANT'S FATHER ALSO HAD WORKED FOR HIM AND HE HAD BEEN HARD OF HEARING. CLAIMANT DENIED THIS.

ON DEPOSITION, DR. METTLER TESTIFIED THAT A PERSON CAN BE EXPOSED TO 85 DECIBELS ALL DAY WITHOUT DAMAGING THE EARS AND CONCLUDED THAT IF CLAIMANT WERE EXPOSED EACH DAY FOR 2 TO 6 HOURS AT 64-68 DECIBELS, IT WOULD BE IMPROBABLE THIS COULD CAUSE HEARING LOSS. THE AUDIOGRAM WAS COMPATIBLE WITH NOISE EXPOSURE WHICH CLAIMANT HAS BEEN EXPOSED TO IN ACTIVITIES OF OPERATING A CHAIN SAW AND FIRING A 30-30, 300 AND 12 GAUGE SHOTGUN.

THE DEFENDANT ALSO CONTENDED CLAIMANT'S CLAIM WAS VOID BECAUSE OF HIS FAILURE TO FILE HIS CLAIM WITHIN FIVE YEARS OF HIS LAST EXPOSURE.

THE REFEREE FOUND THAT CLAIMANT'S CLAIM WAS FILED WITHIN FIVE YEARS OF HIS LAST EXPOSURE TO NOISE AND NOT VOID.

ON THE ISSUE OF COMPENSABILITY OF CLAIMANT'S HEARING LOSS, THE REFEREE FOUND CLAIMANT OFFERED NO NOISE LEVEL STUDIES OF HIS OWN. THOSE STUDIES WHICH WERE INTRODUCED INDICATED NOISE LEVELS BETWEEN 55 AND 85 DECIBELS, WITHIN OR BELOW ACCEPTABLE STANDARDS. ALSO CLAIMANT WAS EXPOSED TO HIGH NOISE LEVELS ON HIS OWN TIME WHEN HE USED POWER SAWS AND SHOT GUNS. MOST OF THE MEDICAL EVIDENCE FAILED TO CONNECT CLAIMANT'S HEARING LOSS WITH HIS WORK ENVIRONMENT. DR. METTLER'S TESTIMONY WAS GIVEN THE GREATEST WEIGHT BY THE REFEREE.

THE REFEREE CONCLUDED THAT CLAIMANT HAD FAILED TO ESTABLISH THAT HIS HEARING LOSS WAS AN OCCUPATIONAL DISEASE.

THE BOARD, ON DE NOVO REVIEW, ADOPTS THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 21, 1976, IS AFFIRMED.

O. V. FLOWERS, CLAIMANT

ROGER TODD, CLAIMANT'S ATTY.
JACK MATTISON, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT
CROSS-REQUEST BY EMPLOYER

Reviewed by Board Members Wilson and Phillips.

Claimant requests Board review of the referee's order which granted claimant an award of 112.5 degrees for 75 per cent loss of the left leg. Claimant contends he is entitled to an award of 90 per cent loss of his left leg.

The employer cross-requests Board review, contending the 60 per cent awarded by the determination order dated January 15, 1976 was sufficient.

Claimant sustained a compensable left leg injury on March 19, 1973. On April 18, 1973 Dr. Smith performed an arthrotomy, left leg, excision medial mensicus. On August 27, 1973 claimant was released by Dr. Smith for light work.

On September 20, 1973 Dr. Smith performed a partial patellectomy and extensor mechanism reconstruction surgery.

On April 18, 1974 Dr. Slocum diagnosed degenerative arthritis, mild to moderate - moderately severe chondromalacia - mild to moderate instability. On July 18, 1974 Dr. Slocum performed a revision of tibial tubercle transplant surgery. In his closing report of November 20, 1975 he rated claimant's disability as moderately severe. Dr. Slocum said claimant did not desire further treatment. He did not feel claimant would benefit from any surgery other than an arthrodesis or total knee reconstruction.

A determination order dated January 15, 1976 granted claimant 90 degrees for 60 per cent loss of the left leg.

The referee found that claimant's testimony was in accordance with the medical findings. When claimant's knee catches he has fallen - his knee is constantly swollen and the pain radiates up into his hip.

The referee concluded that claimant definitely has a moderately severe loss of function, that the leg is practically useless and granted claimant a total of 112.5 degrees for 75 per cent loss of his left leg.

The Board, on de novo review, adopts the referee's order.

ORDER

The order of the referee, dated May 7, 1976, is affirmed.

MARVIN ERICKSON, CLAIMANT

EDWARD MURPHY, JR., CLAIMANT'S ATTY.
MICHAEL HOFFMAN, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

THE EMPLOYER REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH GRANTED CLAIMANT 160 DEGREES FOR 50 PER CENT UNSCHEDULED TRACHEA AND RIGHT SHOULDER DISABILITY.

CLAIMANT SUSTAINED A COMPENSABLE INJURY ON DECEMBER 16, 1970 WHEN A FROZEN LOG HIT HIM IN THE RIGHT SHOULDER AND ALONGSIDE HIS NECK AND JAW. CLAIMANT'S RIGHT SHOULDER WAS DISLOCATED, THE MANDIBLE FRACTURED AND THE TRACHEA AND LARYNX CRUSHED.

CLAIMANT HAS UNDERGONE NUMEROUS SURGERIES INVOLVING HIS LARYNX. HE FINALLY REGAINED SOME FUNCTION OF HIS VOCAL CORDS, BUT CAN TALK ONLY IN A WHISPER.

CLAIMANT TESTIFIED THAT HE CANNOT EAT NORMALLY NOW AND PROBABLY NEVER WILL. HE HAS DIFFICULTY DRINKING WATER. HE IS UNABLE TO EXTEND HIS HEAD VERY HIGH DUE TO SCARS. CLAIMANT CANNOT BE IN DUSTY ENVIRONMENTS BECAUSE HE HAS BREATHING DIFFICULTIES AND ANY EXERTION CREATES SHORTNESS OF BREATH. HE CANNOT COMMUNICATE IN CROWDS OR IN NOISY PLACES.

CLAIMANT RETURNED TO WORK FOR THE EMPLOYER IN JUNE, 1974.

THE REFEREE FOUND IT INCREDIBLE, AFTER READING ALL THE MEDICAL REPORTS AND HEARING CLAIMANT'S TESTIMONY, THAT CLAIMANT HAD SURVIVED HIS INJURY. CLAIMANT WAS FORTUNATE THAT HE WORKED FOR A LARGE CORPORATION WHICH GAVE CLAIMANT A JOB TAILORED TO HIS PHYSICAL RESTRICTIONS, ALLOWING HIM TO CONTINUE HIS WORK. AS LONG AS CLAIMANT WORKS FOR THIS EMPLOYER ALL IS WELL. HOWEVER, TAKING INTO CONSIDERATION THE FULL SPECTRUM OF THE EMPLOYMENT FIELD AND THE FACT THAT CLAIMANT IS PRECLUDED FROM THE OTHER LOGGING OCCUPATIONS HE HAS PREVIOUSLY PERFORMED, THE REFEREE FELT CLAIMANT HAD LOST A SUBSTANTIAL AMOUNT OF HIS FUTURE WAGE EARNING CAPACITY.

BASED ON ALL OF THE EVIDENCE, THE REFEREE CONCLUDED THAT CLAIMANT WAS ENTITLED TO AN AWARD OF 160 DEGREES FOR 50 PER CENT UNSCHEDULED DISABILITY.

THE BOARD, ON DE NOVO REVIEW, ADOPTS THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 3, 1976, IS AFFIRMED.

CLAIMANT'S COUNSEL IS GRANTED AS A REASONABLE ATTORNEY FEE FOR HIS SERVICES IN CONNECTION WITH BOARD REVIEW, THE SUM OF 350 DOLLARS PAYABLE BY THE EMPLOYER.

WANDA YOUNG, CLAIMANT

BRIAN WELCH, CLAIMANT'S ATTY.
WILLIAM HOLMES, DEFENSE ATTY.
REQUEST FOR REVIEW BY EMPLOYER

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

THE EMPLOYER SEEKS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH REMANDED CLAIMANT'S CLAIM FOR AGGRAVATION TO IT TO BE ACCEPTED AND FOR THE PAYMENT OF COMPENSATION, AS PROVIDED BY LAW, INCLUDING TEMPORARY TOTAL DISABILITY COMPENSATION AND MEDICAL TREATMENT FROM AND AFTER NOVEMBER 26, 1975 AND UNTIL THE CLAIM IS AGAIN CLOSED PURSUANT TO ORS 656.268.

CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HER LOW BACK ON MAY 24, 1969. THIS CLAIM WAS CLOSED BY A DETERMINATION ORDER, MAILED JUNE 17, 1971, WHEREBY CLAIMANT WAS AWARDED COMPENSATION FOR TEMPORARY TOTAL DISABILITY AND 32 DEGREES FOR 10 PER CENT UNSCHEDULED LOW BACK DISABILITY.

ON APRIL 22, 1974 DR. WHITE, CLAIMANT'S TREATING PHYSICIAN, ADVISED THE BOARD THAT CLAIMANT WAS NOW HAVING PAIN WITH HER LOW BACK WHICH EXTENDED INTO THE LEFT BUTTOCKS AND DOWN HER LEFT LEG AND WAS AGGRAVATED BY PROLONGED PERIODS OF SITTING AND ALSO BY LIFTING. HE REQUESTED THAT HER CLAIM BE REOPENED FOR PHYSICAL THERAPY. THIS LETTER WAS APPARENTLY FORWARDED TO THE CARRIER BECAUSE ON AUGUST 22, 1974 THE CARRIER ADVISED CLAIMANT THAT IN ORDER TO OBTAIN ADDITIONAL MEDICAL SERVICES SHE MUST FILE A CLAIM FOR AGGRAVATION WITH THE EMPLOYER AND SAID CLAIM MUST BE SUPPORTED BY WRITTEN OPINION FROM HER ATTENDING PHYSICIAN STATING THE GROUNDS FOR THE CLAIM. A COPY OF THE CLAIM SHOULD BE SENT TO THE BOARD WHICH WOULD ISSUE A DETERMINATION ON CLAIMANT'S REQUEST.

ON NOVEMBER 26, 1975 CLAIMANT'S ATTORNEY WROTE A LETTER TO THE CARRIER DEMANDING THAT THE CLAIM BE REOPENED AND THE PAYMENT OF BENEFITS MADE WITHIN THE STATUTORY PERIOD - ENCLOSED IN THIS LETTER WERE LETTERS FROM DR. WHITE. ONE LETTER FROM DR. WHITE, DATED AUGUST 26, 1974, ASKED CLAIMANT'S ATTORNEY TO EXPEDITE THE REOPENING OF THE CLAIM, ANOTHER, DATED JULY 14, 1975, STATED DR. WHITE'S OPINION THAT CLAIMANT'S CONDITION HAD NOT IMPROVED BUT IN EFFECT HAD BECOME SOMEWHAT WORSE SINCE HER EXTENSIVE REHABILITATION IN PORTLAND. A LETTER FROM DR. WHITE TO CLAIMANT'S ATTORNEY, DATED NOVEMBER 14, 1975, STATED THAT HE HAD SEEN CLAIMANT ON THAT DATE AND HER CONDITION WAS ABOUT THE SAME OR SOMEWHAT WORSE AND HE WOULD HIGHLY RECOMMEND THAT CLAIMANT BE GIVEN AN AWARD FOR PERMANENT TOTAL DISABILITY.

ON DECEMBER 9, 1975 THE CARRIER ACKNOWLEDGED RECEIPT OF THE LETTER FROM CLAIMANT'S ATTORNEY, DATED NOVEMBER 26, 1975, AND ADVISED THAT IT ALSO HAD RECEIVED THE REPORTS AND EVALUATIONS FROM DR. WHITE AND, BASED THEREON, WERE REOPENING CLAIMANT'S CLAIM FOR MEDICAL CARE ONLY AND FOR PHYSICAL THERAPY TREATMENT AT THE HARNEY COUNTY HOSPITAL WITH MEDICAL PAYMENTS TO COMMENCE ON NOVEMBER 26, 1975.

ON JANUARY 7, 1976 CLAIMANT REQUESTED A HEARING, PROTESTING A DENIAL OF HER CLAIM BY THE CARRIER ON DECEMBER 9, 1975 AND ASKING FOR ATTORNEY FEES. ON FEBRUARY 4, 1976 THE CARRIER FILED A MOTION TO DISMISS THE REQUEST FOR HEARING ON THE GROUND THAT IT WAS FILED MORE THAN ONE YEAR FROM THE DATE OF THE LAST DETERMINATION ORDER, MAILED JUNE 17, 1971. ON FEBRUARY 9 THE CLAIMANT'S ATTORNEY ADVISED

THE BOARD THAT ON DECEMBER 9, 1975 THE CARRIER HAD NOTIFIED CLAIMANT THAT HER CLAIM WAS BEING REOPENED FOR MEDICAL PAYMENTS ONLY AND CLAIMANT HAD FILED A REQUEST FOR HEARING PROTESTING THE DENIAL OF HER CLAIM FOR TIME LOSS BENEFITS. THIS LETTER INDICATED THAT THE EMPLOYER HAD FILED A MOTION TO DISMISS AND STATED THE GROUNDS FOR SAID MOTION.

ON FEBRUARY 23, 1976 CLAIMANT FILED ANOTHER REQUEST FOR HEARING ON THE ISSUES OF = (1) FULL AND-OR PARTIAL DENIAL OF CLAIMANT'S CLAIM ON DECEMBER 9, 1975 = (2) NEED FOR FURTHER MEDICAL TREATMENT AND TEMPORARY DISABILITY PAYMENTS = (3) ADEQUACY OF THE AWARD FOR PERMANENT DISABILITY PREVIOUSLY GRANTED CLAIMANT = (4) PENALTIES AND ATTORNEY FEES = AND (5) AGGRAVATION OF CLAIMANT'S DISABILITY SINCE THE LAST ADJUSTMENT OF COMPENSATION ON HER CLAIM.

AFTER A NOTICE OF HEARING HAD BEEN SENT TO ALL PARTIES THE EMPLOYER REQUESTED THAT HE BE ALLOWED TO HAVE CLAIMANT EXAMINED BY DR. CORRIGAN BECAUSE CLAIMANT WAS NOW REQUESTING A HEARING ON THE DENIAL OF AN AGGRAVATION CLAIM. THE CARRIER REQUESTED A POSTPONEMENT UNTIL SUCH EXAMINATION COULD BE MADE AND THIS WAS DENIED. AT THE TIME OF THE HEARING THE CARRIER ASKED AGAIN THAT THE CLAIMANT BE EXAMINED BY DR. CORRIGAN AND CLAIMANT OBJECTED ON THE GROUNDS THAT THE EMPLOYER HAD HAD AMPLE TIME TO OBTAIN SUCH EXAMINATION AND REPORT AND COULD NOT BE SURPRISED AND ALSO THAT SHE HAS BEEN AND CONTINUES TO BE WITHOUT COMPENSATION DUE TO THE CARRIER'S HAVING DENIED HER REQUEST TO REOPEN THE CLAIM.

THE REFEREE FOUND THAT THE CARRIER'S LETTER, DATED DECEMBER 9, 1975, HAD TO BE CONSTRUED AS A DENIAL AND, BASED UPON THE REPORTS OF DR. WHITE, FOUND THAT CLAIMANT'S CONDITION HAS WORSENED SINCE THE LAST ARRANGEMENT OR AWARD OF COMPENSATION WHICH WAS JUNE 17, 1971 AND THAT THE WORSENING WAS A RESULT OF HER INDUSTRIAL INJURY OF MAY 24, 1969.

CLAIMANT CONTENDS THAT HER CONDITION IS NOW MEDICALLY STATIONARY AND SHE IS NOW PERMANENTLY AND TOTALLY DISABLED. THE REFEREE FOUND THAT, ALTHOUGH DR. WHITE'S REPORT INDICATED THAT HE FELT CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED AND MEDICAL EVIDENCE REGARDING CLAIMANT'S PHYSICAL IMPAIRMENT WAS A NECESSARY AND INTEGRAL PART OF A CASE SUCH AS THE ONE BEFORE HER, THE QUESTION OF WHETHER CLAIMANT WAS PERMANENTLY AND TOTALLY DISABLED FROM ENGAGING IN ANY GAINFUL AND SUITABLE OCCUPATION IS ONE FOR THE REFEREE TO DECIDE BASED UPON ALL OF THE EVIDENCE INCLUDING CLAIMANT'S AGE, EDUCATION, WORK EXPERIENCE, TRAINING AND MENTAL CAPACITY AS WELL AS VOCATIONAL SKILLS AND ABILITIES AND CLAIMANT'S PHYSICAL IMPAIRMENT.

IN THE CASE BEFORE HER THE REFEREE CONCLUDED THAT SHE DID NOT HAVE SUFFICIENT EVIDENCE TO MAKE THE DETERMINATION AS TO THE EXTENT OF CLAIMANT'S PERMANENT DISABILITY AND DID NOT INTEND TO PROCEED TO DO SO IN A CASE WHICH WAS BASICALLY A CLAIM FOR AGGRAVATION. SHE, THEREFORE, ORDERED THE CLAIM BE REMANDED TO THE EMPLOYER FOR REOPENING AND PAYMENT OF COMPENSATION, COMMENCING ON NOVEMBER 26, 1975, THE DATE CLAIMANT'S ATTORNEY WROTE TO THE EMPLOYER'S CARRIER AND DEMANDED THAT THE CLAIM BE REOPENED AND PAYMENT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY COMMENCED.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS THE REFEREE'S ORDER. THE BOARD RECEIVED A BRIEF FROM THE APPELLANT EMPLOYER BUT NO BRIEF WAS RECEIVED FROM CLAIMANT AND, THEREFORE, CLAIMANT'S COUNSEL IS NOT ENTITLED TO AN ATTORNEY FEE FOR HIS SERVICES AT THIS BOARD REVIEW.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 29, 1976, IS AFFIRMED.

WCB CASE NO. 76-213 SEPTEMBER 30, 1976

MAUDEEN CARRICO, CLAIMANT

J. DAVID KRYGER, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH FOUND CLAIMANT TO BE PERMANENTLY AND TOTALLY DISABLED AS OF SEPTEMBER 9, 1975 AND ALLOWED THE FUND CREDIT FOR PAYMENTS OF PERMANENT PARTIAL DISABILITY MADE PURSUANT TO THE DETERMINATION ORDER OF SEPTEMBER 9, 1975.

CLAIMANT, A 70 YEAR OLD COOK, SUFFERED A COMPENSABLE INJURY ON DECEMBER 16, 1974 WHEN SHE SLIPPED WHILE HOLDING A HEAVY PAN OF BAKED HAM. CLAIMANT CONTINUED TO WORK THE REST OF THE WEEK IN THE BELIEF THAT HER PROBLEM WOULD RESOLVE ITSELF. THE PAIN IN THE LOW BACK AND LEFT LEG CONTINUED AND SHE SOUGHT MEDICAL ASSISTANCE FROM DR. MARTENS, WHO IS HER PRIMARY TREATING PHYSICIAN. CLAIMANT WAS HOSPITALIZED IN FEBRUARY, 1975 AND A MYELOGRAM WAS PERFORMED WHICH DID NOT INDICATE THE PRESENCE OF A DISC RUPTURE. DR. TSAI EXAMINED CLAIMANT AND SUGGESTED THAT HER PROBLEM REPRESENTED A LUMBOSACRAL STRAIN AT L5 NERVE ROOT IRRITATION.

CLAIMANT HAS NOT RETURNED TO HER WORK AS A COOK SINCE HER INJURY. SHE HAS A TENTH GRADE EDUCATION AND HER WORK BACKGROUND IS BASICALLY THAT OF A RESTAURANT COOK - SHE DID WORK FOR FOUR YEARS AS A BEAUTICIAN. AT THE TIME OF THE CLAIM CLOSURE CLAIMANT CONTINUED TO COMPLAIN OF BACK PAIN WITH RADIATION DOWN THE LEG, MORE SEVERE ON THE LEFT - SHE WAS USING HER PRESCRIBED LUMBOSACRAL BRACE AND DOING THE RECOMMENDED WILLIAMS FLEXION BACK EXERCISES. DR. MARTENS IN A CLOSING EVALUATION OF JULY, 1975 STATED CLAIMANT COULD NOT RETURN TO EMPLOYMENT AS A COOK OR TO ANY EMPLOYMENT WHICH REQUIRED BENDING, LIFTING, STOOPING, PROLONGED STANDING OR WALKING.

CLAIMANT'S CLAIM WAS CLOSED BY A DETERMINATION ORDER MAILED SEPTEMBER 9, 1975 WHEREBY CLAIMANT WAS GRANTED AN AWARD OF 48 DEGREES FOR 15 PER CENT UNSCHEDULED LOW BACK DISABILITY.

IN MARCH, 1976 DR. MARTENS RE-EXAMINED CLAIMANT AND FOUND CONTINUATION OF SYMPTOMS OF PAIN IN THE BACK AND LEFT LEG, HIS PHYSICAL EXAMINATION OF CLAIMANT RESULTED IN FINDINGS CONSISTENT WITH THOSE HE HAD MADE IN JULY, 1975.

CLAIMANT RECEIVES SOCIAL SECURITY RETIREMENT BENEFITS IN THE AMOUNT OF 140.75 DOLLARS A MONTH, SHE COMMENCED DRAWING THE BENEFITS PRIOR TO HER INDUSTRIAL INJURY. CLAIMANT'S HUSBAND HAS BEEN RETIRED FOR APPROXIMATELY SIX YEARS.

IN MARCH, 1976 THE EMPLOYER, AFTER CONSULTING WITH THE FUND, OFFERED CLAIMANT A JOB WORKING IN ITS SALAD BAR. THIS JOB INVOLVED CUTTING UP LETTUCE, RADISHES, CARROTS, ETC. FOR SALADS, ALSO MAKING SANDWICHES AND SLICING MEAT. THE JOB WAS A SPECIAL POSITION CREATED FOR CLAIMANT, ALTHOUGH AT THE PRESENT TIME THE JOB IS BEING PERFORMED BY SEVERAL PEOPLE AND IS A NECESSARY OPERATION OF THE RESTAURANT. A STOOL WOULD BE PROVIDED SO THAT CLAIMANT COULD SIT OR STAND AS HER BACK PAIN DICTATED AND THE EMPLOYER ANTICIPATED THAT THE RESTAURANT DISHWASHER COULD PERFORM ANY LIFTING WHICH WOULD BE REQUIRED OF CLAIMANT IN THIS JOB. CLAIMANT WOULD NOT BE REQUIRED TO CLIMB STAIRS AS THERE IS AN EMPLOYEE ELEVATOR.

THERE WAS TESTIMONY THAT CLAIMANT HAD HAD SOME PHYSICAL DIFFICULTY PERFORMING HER WORK PRIOR TO HER INDUSTRIAL INJURY, THREE FELLOW-EMPLOYEES TESTIFIED THAT CLAIMANT HAD HAD SOME PROBLEMS WITH HER FEET, LEGS, OR HIP PRIOR TO DECEMBER 16, 1974. HOWEVER, CLAIMANT WAS A GOOD WORKER AND WAS CONSIDERED TO BE A VALUABLE EMPLOYEE BY THE EMPLOYER.

THE REFEREE CONCLUDED THAT CLAIMANT WAS AN 'ODD-LOT' EMPLOYEE WITHIN THE MEANING OF SWANSON V WESTPORT LUMBER COMPANY (UNDERSCORED), 4 OR APP 417. CLAIMANT HAD A LIMITED EDUCATION AND WORK EXPERIENCE AND ANY EMPLOYMENT FOR WHICH SHE WAS QUALIFIED INVOLVED CONSIDERABLE STANDING, LIFTING, BENDING ETC., ALL ACTIVITIES WHICH MUST BE AVOIDED BY CLAIMANT. THESE RESTRICTIONS PRACTICALLY WIPED OUT CLAIMANT'S EARNING CAPACITY. CLAIMANT HAD A LARGE PHYSICAL IMPAIRMENT FACTOR CONSIDERING THESE LIMITATIONS AND BECAUSE OF THE SERIOUSNESS OF HER IMPAIRMENT WHEN CONSIDERED WITH HER AGE, EDUCATION AND WORK EXPERIENCE THE REFEREE FOUND IT NOT NECESSARY TO CONSIDER THE ELEMENT OF MOTIVATION, ALTHOUGH HE DID STATE HIS OPINION THAT CLAIMANT WAS WELL MOTIVATED.

WITH REGARD TO THE CONTENTION OF THE EMPLOYER THAT THE OFFER BY IT TO CLAIMANT OF A JOB WHICH CLAIMANT WAS PHYSICALLY ABLE TO DO SHOULD MILITATE AGAINST A FINDING OF PERMANENT TOTAL DISABILITY, THE REFEREE FOUND THAT THIS WAS NOT THE SUITABLE, REGULAR AND CONTINUOUS WORK THAT AN EMPLOYER WAS REQUIRED TO SHOW WAS AVAILABLE TO CLAIMANT AFTER CLAIMANT HAD MADE A 'PRIMA FACIE' SHOWING THAT SHE WAS WITHIN THE 'ODD-LOT' CATEGORY. HE FOUND NO EVIDENCE OF BAD FAITH ON THE PART OF THE EMPLOYER OR THE FUND BUT HE DID FEEL THAT THE FACT THAT THE OFFER WAS MADE AFTER A REQUEST FOR HEARING WAS A FACTOR TO BE CONSIDERED.

THE REFEREE FOUND THAT THE EMPLOYER WAS WILLING TO MAKE A CONCESSION FOR CLAIMANT'S COMFORT BECAUSE OF HER PHYSICAL IMPAIRMENT BUT THAT IT WAS VERY QUESTIONABLE THAT ANY OTHER EMPLOYER WOULD PROVIDE THE SAME FOR CLAIMANT, THEREFORE, CLAIMANT COULD MAINTAIN AN EARNING CAPACITY ONLY THROUGH THE CONTINUED GOOD GRACES OF HER PRESENT EMPLOYER.

THE REFEREE CONCLUDED THAT SUCH A JOB DID NOT QUALIFY UNDER THE RULING IN SWANSON (UNDERSCORED) TO DENY CLAIMANT 'ODD-LOT' RELIEF. HE FURTHER CONCLUDED THAT EVEN IF THE JOB WERE FOUND TO BE SUITABLE, REGULAR AND CONTINUOUS, IT WAS NOT CERTAIN THAT CLAIMANT COULD SATISFACTORILY PERFORM THE DUTIES, THAT SHE WOULD HAVE CONSIDERABLE PAIN JUST FROM REMAINING ON ANY JOB ON A REGULAR 8 HOUR BASIS WITHOUT HAVING TO PERFORM ACTIVITIES BEYOND HER LIMITATIONS.

THE BOARD, ON DE NOVO REVIEW, DISAGREES WITH THE REFEREE'S CONCLUSION THAT THE EMPLOYER HAS FAILED TO MEET HIS BURDEN OF PROVING THAT THERE IS AVAILABLE TO CLAIMANT, AT THE PRESENT TIME, SUITABLE AND GAINFUL EMPLOYMENT ON A REGULAR BASIS WHICH IS SUFFICIENT TO OVERCOME CLAIMANT'S 'PRIMA FACIE' CASE OF BEING WITHIN THE ODD-LOT CATEGORY AND, THEREFORE, PERMANENTLY AND TOTALLY DISABLED.

THE FACT THAT THE JOB OFFER WAS MADE AFTER A REQUEST FOR HEARING SHOULD NOT BE GIVEN ANY CONSIDERATION. THE EMPLOYER SHOULD BE COMMENDED FOR ITS ADMIRABLE ACTION IN CREATING A SPECIAL JOB WHICH WAS, IN EFFECT, TAILOR-MADE FOR CLAIMANT'S PRESENT PHYSICAL CAPACITY TO WORK. IT IS A JOB THAT IS NECESSARY IN THE OPERATION OF THE RESTAURANT, IT IS A JOB WHICH REQUIRES NO BENDING, LIFTING, STOOPING, PROLONGED STANDING OR WALKING OR CLIMBING. IT MIGHT BE THAT CLAIMANT WOULD MAKE SUCH CONCESSIONS TO HER PHYSICAL DISABILITY BUT THAT IS PURE SPECULATION. THE FACT REMAINS THAT CLAIMANT HAS BEEN OFFERED A JOB WHICH IS SUITABLE, GAINFUL AND REGULAR, THEREFORE, CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED.

THE BOARD CONCLUDES THAT THE AWARD OF 48 DEGREES FOR 15 PER CENT UNSCHEDULED DISABILITY IS WHOLLY INADEQUATE TO COMPENSATE CLAIMANT FOR HER SUBSTANTIAL LOSS OF WAGE EARNING CAPACITY AND, TAKING INTO CONSIDERATION THE FACT THAT THE JOB OFFERED IS A SPECIALLY CREATED JOB, THE BOARD CONCLUDES THAT CLAIMANT SHOULD BE AWARDED AN ADDITIONAL 160 DEGREES WHICH WOULD GIVE CLAIMANT A TOTAL OF 208 DEGREES FOR 65 PER CENT OF THE MAXIMUM ALLOWABLE BY STATUTE FOR HER UNSCHEDULED DISABILITY.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 26, 1976, IS REVERSED.

CLAIMANT IS AWARDED 160 DEGREES OF A MAXIMUM OF 320 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY. THIS AWARD IS AN ADDITION TO AND NOT IN LIEU OF THE AWARD MADE BY THE DETERMINATION ORDER MAILED SEPTEMBER 9, 1975. THE FUND SHALL MAKE ANY NECESSARY ADJUSTMENTS FOR PAYMENTS FOR PERMANENT TOTAL DISABILITY WHICH IT MAY HAVE MADE PURSUANT TO THE REFEREE'S ORDER.

CLAIMANT'S ATTORNEY IS AWARDED AS A REASONABLE ATTORNEY FEE AN AMOUNT EQUAL TO 25 PER CENT OF THE INCREASE OF 112 DEGREES AWARDED CLAIMANT BY THIS ORDER ON REVIEW, PAYABLE OUT OF SAID INCREASE AS PAID, NOT TO EXCEED THE SUM OF 2500 DOLLARS.

WCB CASE NO. 75-4103 SEPTEMBER 30, 1976

GERALDINE L. CARROTHERS, CLAIMANT

ROY KILPATRICK, CLAIMANT'S ATTY.
JAMES HUEGLI, 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 THE LAW.

WCB CASE NO. 75-2706 SEPTEMBER 30, 1976

BEN MOORE, CLAIMANT

DOUGLESS HESS, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS WILSON AND MOORE.

THE STATE ACCIDENT INSURANCE FUND REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH SET ASIDE THE DETERMINATION ORDER MAILED APRIL 15, 1975, DECLARING IT TO BE A NULLITY AND DIRECTING THAT ALL SUMS RECEIVED BY CLAIMANT UNDER THE TERMS OF THE AFORESAID DETERMINATION ORDER FOR PERMANENT DISABILITY MAY BE CREDITED BY THE CARRIER AGAINST THE SUMS DUE CLAIMANT FOR TEMPORARY TOTAL DISABILITY UNDER THE TERMS OF THE REFEREE'S ORDER AND, IF IN THE EXCESS OF THE TEMPORARY TOTAL DISABILITY DUE CLAIMANT, MAY BE OFFSET AGAINST ANY FUTURE AWARD FOR PERMANENT DISABILITY THAT MAY ENSUE.

THE REFEREE'S ORDER FURTHER FOUND THAT CLAIMANT WAS MEDICALLY STATIONARY ON FEBRUARY 24, 1975 BUT WAS VOCATIONALLY HANDICAPPED ON THAT DATE AND THAT HE SHOULD BE PAID TEMPORARY TOTAL DISABILITY FOR THE PERIOD COMMENCING FEBRUARY 25, 1975 TO AND INCLUDING AUGUST 12, 1975, SAID SUMS TO BE PAID BY THE CARRIER WITH REIMBURSEMENT TO THE CARRIER FROM THE REHABILITATION RESERVE FUND, AS PROVIDED IN SECTION 61-055, OAR, CHAPTER 436. CLAIMANT'S ATTORNEY WAS AWARDED AN ATTORNEY FEE OF 500 DOLLARS.

CLAIMANT SUFFERED A COMPENSABLE INJURY ON JUNE 20, 1974. ON FEBRUARY 24, 1975 DR. DONOHUE'S CLOSING EVALUATION STATED CLAIMANT WAS MEDICALLY STATIONARY - CLAIMANT WOULD BE ABLE TO DO MOST MANUAL ACTIVITIES BUT HE WOULD NOT BE ABLE TO TOLERATE HEAVY MANUAL ACTIVITIES, E.G., CHOKER SETTING OR LOGGING ON AN IRREGULAR TERRAIN. FOR ADMINISTRATIVE PURPOSES, HE RECOMMENDED THAT CLAIMANT'S CLAIM BE CLOSED AND CLAIMANT RETURN TO WORK ACCORDING TO THE DEPARTMENT OF VOCATIONAL REHABILITATION (IN OCTOBER, 1974 DR. DONOHUE HAD REFERRED CLAIMANT TO THE DEPARTMENT OF VOCATIONAL REHABILITATION BECAUSE HE FELT CLAIMANT WOULD NOT BE ABLE TO MEET THE DEMANDS REQUIRED OF A CHOKER SETTER OR A BUCKER AND FALLER, BUT COULD ENGAGE IN OTHER TYPES OF WORK).

ON MARCH 28, 1975 THE FUND REQUESTED A DETERMINATION, BASED ON DR. DONOHUE'S REPORT. ON APRIL 8, 1975 PAUL KIANG, A COUNSELOR WITH THE DEPARTMENT OF VOCATIONAL REHABILITATION DETERMINED THAT CLAIMANT'S IMPAIRMENT AND HIS OTHER LIMITATIONS CONSTITUTED A VOCATIONAL HANDICAP, THAT CLAIMANT WAS UNABLE TO PURSUE HIS FORMER EMPLOYMENT AS A CHOKER SETTER, BUCKER AND FALLER. HE BELIEVED THERE WAS A REASONABLE EXPECTATION FOR SUCCESS IN REHABILITATION, THEREFORE, CLAIMANT WAS FOUND ELIGIBLE FOR VOCATIONAL REHABILITATION SERVICES.

ON APRIL 15, 1975 A DETERMINATION ORDER, BASED UPON DR. DONOHUE'S CLOSING EVALUATION, AWARDED CLAIMANT COMPENSATION FOR TIME LOSS FROM JUNE 20, 1974 THROUGH FEBRUARY 24, 1975 AND 33.75 DEGREES FOR 25 PER CENT LOSS OF THE LEFT FOOT.

ON AUGUST 26, 1975 AN ADMINISTRATIVE ORDER FOUND CLAIMANT TO BE VOCATIONALLY HANDICAPPED AND ORDERED THE REOPENING OF THE CLAIM AS OF AUGUST 13, 1975.

THE REFEREE FOUND A PERIOD BETWEEN FEBRUARY 25, 1975 THROUGH AUGUST 12, 1975 WHEN CLAIMANT DID NOT RECEIVE COMPENSATION FOR TEMPORARY TOTAL DISABILITY, ALTHOUGH HE WAS RECEIVING PAYMENTS BASED ON THE AWARD FOR PERMANENT PARTIAL DISABILITY MADE BY THE DETERMINATION ORDER.

THE REFEREE, RELYING UPON OAR 436-61, EFFECTIVE FEBRUARY 26, 1975, (NEW RULES WERE ADOPTED ON APRIL 1, 1976 BUT THEY DO NOT AFFECT THE DETERMINATION OF THE INSTANT CASE, ALTHOUGH THE 1976 RULES DO CONTAIN PRELIMINARY COMMENT, INTERPRETING WHAT IS AND WHAT HAS BEEN THE INTENT OF THE LAW), FOUND THAT 61-020, 61-050, AND 61-055 PROVIDE, IN SUBSTANCE, THAT WHEN THE CARRIER HAS REASON TO BELIEVE THAT THE CLAIMANT HAS A HANDICAP WHICH PREVENTS HIM FROM RETURNING TO HIS REGULAR (UNDERSCORED) EMPLOYMENT THESE FACTS SHOULD BE REPORTED TO THE BOARD AT THE EARLIEST OPPORTUNITY, THE BOARD THEN DECIDES WHETHER A VOCATIONAL HANDICAP EXISTS AND THE FEASIBILITY OF VOCATIONAL REHABILITATION AND WORKS OUT A PROGRAM. COMPENSATION FOR TEMPORARY TOTAL DISABILITY IS TO BE PAID TO CLAIMANT DURING THIS PERIOD OF REHABILITATION. 61-055(3) INSTRUCTS THE CARRIER IF IT IS ADVISED THAT CLAIMANT IS MEDICALLY STATIONARY TO IMMEDIATELY ADVISE THE COMPLIANCE DIVISION OF THIS AND REQUEST A DETERMINATION. COMPLIANCE WILL REFER THE MATTER TO EVALUATION AND, IF THE LATTER FINDS CLAIMANT HAS A VOCATIONAL HANDICAP, IT REFERS CLAIMANT TO THE DEPARTMENT OF VOCATIONAL REHABILITATION, WILL A DETERMINATION ORDER BE ISSUED.

THE REFEREE CONCLUDED THAT IN THE CASE BEFORE HIM IT APPEARED BOTH THE CARRIER AND EVALUATION HAD IGNORED THE MEDICAL FINDINGS AND THE FACT THAT CLAIMANT HAD BEEN ACCEPTED TO BE PLACED IN A VOCATIONAL REHABILITATION PROGRAM - THAT THE CARRIER SHOULD NOT HAVE REQUESTED A DETERMINATION ORDER AND THAT THE EVALUATION SHOULD NOT HAVE ISSUED IT.

HE CONCLUDED THAT THE DETERMINATION ORDER WAS ISSUED IN ERROR AND SHOULD BE RESCINDED AND SET ASIDE - THAT BECAUSE THE FUND HAD SUFFICIENT INFORMATION IN ITS POSSESSION ON MARCH 28, 1975 AND HAD EXPERTISE IN THE HANDLING OF COMPENSATION CLAIMS ITS REQUEST FOR A DETERMINATION WAS AN UNREASONABLE ACT WHICH TRIGGERED AND COMPOUNDED THE ERRORS THAT FOLLOWED AND, THEREFORE, CLAIMANT SHOULD NOT BE FORCED TO PAY AN ATTORNEY FEE OUT OF HIS COMPENSATION.

THE REFEREE FURTHER CONCLUDED THAT CLAIMANT WAS MEDICALLY STATIONARY ON FEBRUARY 24, 1975, THEREFORE, THE PAYMENTS DUE HIM BEYOND THAT DATE, BECAUSE OF HIS VOCATIONAL HANDICAP, WERE TO BE PAID FROM THE REHABILITATION RESERVE FUND RATHER THAN BY THE CARRIER.

THE BOARD, ON DE NOVO REVIEW, FINDS THAT THE REFEREE OVERLOOKED SOME RATHER PERTINENT FACTS IN REACHING HIS CONCLUSIONS IN THIS CASE. ON JANUARY 16, 1975 CLAIMANT WAS REFERRED TO THE DEPARTMENT OF VOCATIONAL REHABILITATION BY RICHARD HOLCOMB, A SERVICE COORDINATOR FOR THE BOARD, THEREFORE, CLAIMANT, AT THAT TIME, WAS PLACED IN AN AUTHORIZED PROGRAM OF REHABILITATION - HOWEVER, ON FEBRUARY 11, 1975 CLAIMANT WAS REFERRED BACK TO THE SERVICE COORDINATOR BY RALPH TODD, VOCATIONAL REHABILITATION SUPERVISOR FOR THE BOARD. WHEN CLAIMANT WAS REFERRED BACK THIS INDICATED THAT CLAIMANT WAS NOT ELIGIBLE FOR VOCATIONAL REHABILITATION AND WAS BEING REFERRED SOLELY FOR THE PURPOSE OF JOB PLACEMENT.

FOLLOWING THE RECEIPT OF THIS INFORMATION FROM MR. TODD, THE EVALUATION DIVISION, AS SOON AS IT WAS NOTIFIED BY DR. DONOHUE, ON FEBRUARY 24, 1975, THAT CLAIMANT'S CONDITION WAS MEDICALLY STATIONARY AND THAT HE WAS ABLE TO RETURN TO WORK HAD TO CLOSE THE CLAIM PURSUANT TO ORS 656.268. IT ISSUED A DETERMINATION ORDER ON APRIL 15, 1975, TERMINATING COMPENSATION FOR TEMPORARY TOTAL DISABILITY AS OF THE DATE OF DR. DONOHUE'S REPORT AND MAKING AN AWARD FOR PERMANENT PARTIAL DISABILITY.

IT IS EVIDENT THAT THE REFEREE WAS NOT AWARE THAT WHEN CLAIMANT WAS REFERRED BACK TO THE SERVICE COORDINATOR HE WAS NO LONGER CONSIDERED TO BE IN AN AUTHORIZED VOCATIONAL REHABILITATION PROGRAM. THE BOARD FINDS THAT THE REFEREE WAS IN ERROR IN FINDING THAT THE CARRIER SHOULD NOT HAVE REQUESTED THE DETERMINATION AND EVALUATION SHOULD NOT HAVE ISSUED THE DETERMINATION ORDER. THE DETERMINATION ORDER SHOULD NOT HAVE BEEN SET ASIDE AS BEING PREMATURE AND CLAIMANT'S PAYMENT FOR PERMANENT PARTIAL DISABILITY SHOULD HAVE BEEN MADE PURSUANT TO SAID DETERMINATION ORDER.

SUBSEQUENTLY, AN ADMINISTRATIVE ORDER WAS ISSUED WHICH SHOULD HAVE PUT THE REFEREE ON NOTICE THAT THE CLAIM HAD BEEN REOPENED FOR AN AUTHORIZED PROGRAM OF VOCATIONAL REHABILITATION COMMENCING ON AUGUST 13, 1975. AS OF AUGUST 13, 1975 THE COMPENSATION THAT CLAIMANT WAS RECEIVING FOR HIS PERMANENT PARTIAL DISABILITY, PURSUANT TO THE DETERMINATION ORDER OF APRIL 15, 1975, STOPPED AND CLAIMANT THEN WAS ENTITLED TO RECEIVE COMPENSATION FOR TEMPORARY TOTAL DISABILITY UNTIL HIS PROGRAM OF VOCATIONAL REHABILITATION WAS EITHER COMPLETED OR TERMINATED. THE COMPENSATION FOR TEMPORARY TOTAL DISABILITY PAID BY THE CARRIER FOR THIS PERIOD OF TIME WILL BE REIMBURSEABLE FROM

THE REHABILITATION RESERVE FUND, THEREAFTER, CLAIMANT, HAVING ALREADY BEEN FOUND TO BE MEDICALLY STATIONARY, WILL BE ENTITLED TO HAVE HIS CLAIM CLOSED PURSUANT TO ORS 656.268.

THE BOARD CONCLUDES THAT CLAIMANT IS ENTITLED TO THE COMPENSATION AWARDED BY THE DETERMINATION ORDER OF APRIL 15, 1975 THROUGH AUGUST 12, 1975 BUT NOT BEYOND THAT DATE.

ORDER

THE ORDER OF THE REFEREE, DATED JUNE 11, 1976, IS REVERSED.

THE DETERMINATION ORDER, MAILED APRIL 15, 1975, IS AFFIRMED AS IS THE ADMINISTRATIVE ORDER, MAILED AUGUST 26, 1975.

CLAIMANT IS ENTITLED TO RETAIN ALL PAYMENTS HE HAS RECEIVED FOR HIS PERMANENT PARTIAL DISABILITY PRIOR TO AUGUST 13, 1975 PURSUANT TO THE DETERMINATION ORDER, DATED APRIL 15, 1975, AND TO RECEIVE PAYMENT OF COMPENSATION FOR TEMPORARY TOTAL DISABILITY COMMENCING ON AUGUST 13, 1975 AND UNTIL HIS CLAIM IS AGAIN CLOSED PURSUANT TO ORS 656.268, SAID SUMS TO BE PAID BY THE FUND WHICH SHALL BE REIMBURSED FROM THE REHABILITATION RESERVE FUND, AS PROVIDED IN OAR 436-61-055.

WCB CASE NO. 72-2337 SEPTEMBER 30, 1976

PETE PETITE, CLAIMANT

J. DAVID KRYGER, CLAIMANT'S ATTY.
ROGER WARREN, DEFENSE ATTY.
OWN MOTION ORDER

CLAIMANT REQUESTED THE BOARD TO EXERCISE ITS OWN MOTION JURISDICTION, PURSUANT TO ORS 656.278, AND REOPEN HIS CLAIM RELATING TO A COMPENSABLE INJURY WHICH HE SUFFERED ON JANUARY 6, 1967 WHILE IN THE EMPLOY OF HUDSON-CALLAHAN LOGGING COMPANY, WHOSE WORKMEN'S COMPENSATION COVERAGE WAS FURNISHED BY EMPLOYERS INSURANCE OF WAUSAU. CLAIMANT ALSO HAD REQUESTED A HEARING ON THE ADEQUACY OF THE DETERMINATION ORDER OF AUGUST 22, 1972 RELATING TO A COMPENSABLE INJURY OF JANUARY 20, 1972 WHILE CLAIMANT WAS EMPLOYED BY RIVERSIDE LUMBER COMPANY, WHOSE WORKMEN'S COMPENSATION COVERAGE WAS FURNISHED BY THE STATE ACCIDENT INSURANCE FUND.

THE BOARD DID NOT HAVE SUFFICIENT EVIDENCE TO DETERMINE THE MERITS OF CLAIMANT'S REQUEST TO REOPEN HIS 1967 INJURY CLAIM, THEREFORE, IT REMANDED THE ISSUE TO THE HEARINGS DIVISION TO BE HEARD WITH THE ISSUE OF THE ADEQUACY OF THE DETERMINATION ORDER OF AUGUST 22, 1972 ON A CONSOLIDATED BASIS. THE REFEREE, UPON THE CONCLUSION OF THE HEARING, WAS TO PREPARE A TRANSCRIPT OF THE PROCEEDINGS AND FORWARD IT TO THE BOARD WITH HIS RECOMMENDATION WITH RESPECT TO CLAIMANT'S REQUEST FOR OWN MOTION RELIEF.

THE HEARING WAS HELD ON NOVEMBER 13, 1975 BEFORE REFEREE HAROLD M. DARON AND, AS A RESULT OF THAT HEARING, REFEREE DARON RECOMMENDED THAT CLAIMANT SHOULD NOT BE GRANTED ANY FURTHER BENEFITS BY THE BOARD, UNDER ITS OWN MOTION JURISDICTION, FOR HIS COMPENSABLE INJURY OF JANUARY 6, 1967.

THE RECOMMENDATION WAS INCORPORATED IN A CONSOLIDATED OPINION AND ORDER, ENTERED ON JULY 20, 1976 BY REFEREE DARON WHICH AFFIRMED THE DETERMINATION ORDER OF AUGUST 22, 1972 REGARDING THE CLAIMANT'S INDUSTRIAL INJURY OF JANUARY 20, 1972.

THE BOARD, AFTER DE NOVO REVIEW OF THE TRANSCRIPT OF THE PROCEEDINGS AND AFTER GIVING FULL CONSIDERATION TO THE RECOMMENDATION OF REFEREE DARON, CONCLUDES THAT IT SHOULD ACCEPT THE RECOMMENDATION.

ORDER

THE REQUEST MADE BY CLAIMANT THAT THE BOARD EXERCISE ITS OWN MOTION JURISDICTION, PURSUANT TO ORS 656.278, AND REOPEN HIS CLAIM FOR A COMPENSABLE INJURY SUFFERED ON JANUARY 6, 1967 IS HEREBY DENIED.

WCB CASE NO. 76-519 SEPTEMBER 30, 1976

FRED REINHOLZ, CLAIMANT

JEROME BISCHOFF, CLAIMANT'S ATTY.
PHILIP MONGRAIN, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS WILSON AND PHILLIPS.

CLAIMANT REQUESTS BOARD REVIEW OF THE REFEREE'S ORDER WHICH AFFIRMED THE DETERMINATION ORDER OF AUGUST 29, 1975.

CLAIMANT SUFFERED A COMPENSABLE LOW BACK INJURY ON JANUARY 6, 1975, DIAGNOSED AS A LUMBAR SPINE STRAIN.

ON JANUARY 31, 1975 DR. ANDERSON PERFORMED EXPLORATORY SURGERY AND FOUND A HERNIATED NUCLEUS PULPOSUS L5-S1 ON THE RIGHT AND LEFT SIDES WHICH WAS EXCISED. CLAIMANT RETURNED TO HIS FORMER OCCUPATION WITH THE EMPLOYER.

A DETERMINATION ORDER OF AUGUST 29, 1975 GRANTED CLAIMANT 16 DEGREES FOR 5 PER CENT UNSCHEDULED LOW BACK DISABILITY.

CLAIMANT TESTIFIED THAT HE CONTINUES TO HAVE PAIN, INCREASING WITH CERTAIN ACTIVITIES, AND HE FINDS IT DIFFICULT TO OPERATE THE JITNEY AT WORK FOR LONG PERIODS OF TIME.

UNSCHEDULED DISABILITY IS RATED SOLELY ON LOSS OF WAGE EARNING CAPACITY AND THE REFEREE FOUND CLAIMANT'S WAGES HAVE NOT LESSENED AT ALL, NOR IS THERE ANY EVIDENCE IN THE RECORD TO INDICATE CLAIMANT'S FUTURE EARNING CAPACITY IS IN JEOPARDY. THEREFORE, THE REFEREE AFFIRMED THE DETERMINATION ORDER.

THE BOARD, ON DE NOV REVIEW, ADOPTS THE REFEREE'S ORDER.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 23, 1976, IS AFFIRMED.

WCB CASE NO. 75-4670 SEPTEMBER 30, 1976

GRANT TROYER, CLAIMANT

JAMES GIDLEY, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY CLAIMANT

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

THE CLAIMANT REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH DENIED CLAIMANT'S CLAIM FOR MEDICAL AND SURGICAL EXPENSES.

CLAIMANT WAS INJURED ON DECEMBER 9, 1974 WHILE CONDUCTING A SPOTTING FISH SURVEY. HIS RIGHT FOOT WAS CAUGHT BETWEEN TWO FALLEN ALDERS CAUSING CLAIMANT TO FALL. INITIALLY, HE HAD INTENSIVE PAIN WHICH LATER LEVELED OFF, BUT HE CONTINUED TO HAVE DISCOMFORT IN THE RIGHT LOWER ABDOMEN. AT THE CONCLUSION OF THE JOB HE CONSULTED A PHYSICIAN FOR THIS PROBLEM AND WAS TREATED ON SEPTEMBER 28, 1974. THE HOSPITAL CHART NOTES INDICATE CLAIMANT THOUGHT HE MIGHT HAVE A HERNIA AND REFERRED TO THE DECEMBER 9, 1974 INCIDENT. CLAIMANT HAD HAD AN OLD RIGHT HERNIA REPAIR WHEN HE WAS TWO YEARS OLD. HE THOUGHT HE NOTICED A LOCAL BULGING, HOWEVER, THE DOCTOR COULD DETECT NO DEFECT IN THE HERNIA AREA AND HIS IMPRESSION WAS THAT OF A MUSCLE STRAIN IN THE RIGHT QUADRANT OF THE RECTUS ABDOMINUS MUSCLE.

CLAIMANT HAS SUFFERED NO TIME LOSS BUT WAS TOLD THAT IF HIS PROBLEM PERSISTED HE SHOULD COME IN FOR RECHECK. THE DOCTOR'S CHART NOTES OF FEBRUARY, 1975 INDICATE CLAIMANT CONTINUED TO HAVE PAIN WHICH WAS SLOWLY WORSENING AND LOCALIZED LOWER THAN WHERE IT HAD BEEN NOTED ON DECEMBER 28, 1974, HOWEVER, NO HERNIA WAS FELT. CLAIMANT WAS GIVEN SOME RELIEF BY INJECTIONS AND WAS SEEN AGAIN AT THE PERMANENTE CLINIC ON MARCH 11 AND JUNE 6, 1975.

LATER CLAIMANT WAS ADMITTED TO EMANUEL HOSPITAL FOR AN EXPLORATORY EXAMINATION, LOOKING FOR RECURRENT HERNIA. THE EXAMINATION REVEALED A VERY SMALL IMPULSE ON THE EXTERNAL RING ON THE RIGHT, NO ACTUAL HERNIA DEFECTS WERE FELT - HOWEVER, THE 'SILK PURSE' SIGN SEEMED TO BE POSITIVE ON THE RIGHT AND THE IMPRESSION WAS THE POSSIBLE RECURRENT RIGHT INGUINAL HERNIA. BECAUSE OF HIS DISCOMFORT, CLAIMANT REQUESTED THAT THE INCISION BE EXPLORED - NO HERNIA WAS FOUND AND THE CORD WAS TRANSPLANTED BENEATH THE SKIN BECAUSE OF THE POSSIBILITY OF PAIN.

THE FUND DENIED RESPONSIBILITY FOR THE RECURRENT (UNDERSCORED) RIGHT INGUINAL HERNIA, STATING IT HAD NO RELATIONSHIP TO THE FEBRUARY 9, 1976 INJURY WHICH HAD BEEN ACCEPTED AS A NON-DISABLING INJURY (EMPHASIS SUPPLIED).

THE REFEREE FOUND THAT CLAIMANT HAD SUSTAINED SOME PAIN AND DISCOMFORT IN THE LOWER RIGHT QUADRANT AS A CONSEQUENCE OF AN INDUSTRIAL FALL, BUT THAT, BY AND OF ITSELF, PAIN AND DISCOMFORT WERE NOT COMPENSABLE UNLESS DISABLING. HE FOUND THAT CLAIMANT HAD REPRESENTED FOR THE PURPOSE OF RECEIVING UNEMPLOYMENT INSURANCE THAT HE WAS ABLE TO WORK AND THAT THE HOSPITAL RECORDS INDICATED THAT CLAIMANT ELECTED TO HAVE AN EXPLORATORY OPERATION LOOKING FOR RECURRENT HERNIA. HE FOUND THAT ALTHOUGH CLAIMANT TESTIFIED AS TO HAVING IMMEDIATE AND INTENSE PAIN AFTER THE FALL HE DID NOT FILE A CLAIM UNTIL AFTER HE HAD COMPLETED HIS EMPLOYMENT NOR DID HE SEE A PHYSICIAN UNTIL FIVE DAYS AFTER HE FILED THAT CLAIM.

THE REFEREE CONCLUDED THAT CLAIMANT HAD FAILED TO MEET HIS BURDEN OF PROOF THAT THE EXPLORATORY SURGERY WAS CAUSALLY RELATED

TO HIS ACCIDENTAL FALL WHILE ON THE JOB - THAT THE PREPONDERANCE OF THE EVIDENCE INDICATED THAT CLAIMANT HAD ELECTED TO HAVE SURGERY IN AN AREA WHICH HAD BEEN PREVIOUSLY OPERATED ON AND, IN THE COURSE OF THE SUBJECT SURGERY, SOME ADDITIONAL REPAIR WORK WAS DONE PERTAINING TO THE CONDITION LEFT AFTER HIS FIRST SURGERY. HE, THEREFORE, UPHELD THE DENIAL OF CLAIMANT'S CLAIM.

THE BOARD, ON DE NOVO REVIEW, DISAGREES WITH THE REFEREE. IT FINDS THAT CLAIMANT'S CLAIM FOR MEDICAL AND HOSPITAL EXPENSES SHOULD BE REMANDED TO THE FUND FOR ACCEPTANCE AND PAYMENT THEREOF. THE EVIDENCE SHOWS THAT THE CLAIMANT HAD HAD A HERNIA REPAIR AT AGE TWO AND THEREAFTER EXPERIENCED NO PAIN IN THE AREA OF THAT OPERATION, TOOK NO MEDICATION NOR SOUGHT NO MEDICAL ASSISTANCE FOR ANY CONDITION IN THAT AREA. CLAIMANT WAS ENTIRELY SYMPTOM FREE IN THE LOWER ABDOMEN UNTIL (UNDERSCORED) HIS FALL ON DECEMBER 9, 1974 WHICH PRODUCED PAIN WHICH WAS CONSISTENT FROM THE TIME OF THE FALL UNTIL CLAIMANT RECEIVED INJECTIONS OF CORTISONE. SURGERY WAS PERFORMED IN AN ATTEMPT TO LOCATE AND ALLEVIATE THE PAIN CLAIMANT WAS SUFFERING - IT WAS SUSPECTED THAT A RECURRENT HERNIA HAD OCCURRED, HOWEVER, THERE WAS NEVER ANY EVIDENCE TO SUPPORT THAT FINDING AND, IN FACT, THIS THEORY WAS RULED OUT AFTER THE OPERATION. THE OPERATION WAS UNSUCCESSFUL IN ALLEVIATING CLAIMANT'S PAIN BUT IT DID REFUTE THE FUND'S CONTENTION THAT CLAIMANT'S PROBLEM WAS DUE TO HIS OLD HERNIA REPAIR.

THE BOARD CONCLUDES THAT CLAIMANT'S COMPENSABLE INJURY OF DECEMBER 9, 1974 NECESSITATED THE SURGERY WHICH UNFORTUNATELY FAILED TO EASE CLAIMANT'S PAIN. THE FACT THAT THE SURGERY WAS UNSUCCESSFUL DOES NOT MEAN IT IS NOT COMPENSABLE. THERE IS NO EVIDENCE THAT CLAIMANT LOST ANY TIME FROM WORK, THEREFORE, HE IS NOT ENTITLED TO ANY COMPENSATION FOR TEMPORARY TOTAL DISABILITY.

ORDER

THE ORDER OF THE REFEREE, DATED APRIL 30, 1976, IS REVERSED.

CLAIMANT'S CLAIM IS REMANDED TO THE STATE ACCIDENT INSURANCE FUND FOR THE PAYMENT OF MEDICAL AND HOSPITAL EXPENSES INCURRED AS A RESULT OF THE DECEMBER 9, 1974 INJURY.

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY FEE FOR HIS SERVICES BEFORE THE REFEREE, THE SUM OF 600 DOLLARS, PAYABLE BY THE STATE ACCIDENT INSURANCE FUND.

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

WCB CASE NO. 75-1328 SEPTEMBER 30, 1976

HAROLD SCOTT, CLAIMANT

DELBERT MAYER, CLAIMANT'S ATTY.
DEPT. OF JUSTICE, DEFENSE ATTY.
REQUEST FOR REVIEW BY SAIF

REVIEWED BY BOARD MEMBERS MOORE AND PHILLIPS.

THE STATE ACCIDENT INSURANCE FUND REQUESTS REVIEW BY THE BOARD OF THE REFEREE'S ORDER WHICH FOUND THAT CLAIMANT'S CLAIM HAD BEEN PREMATURELY CLOSED AND, THEREFORE, SET ASIDE THE DETERMINATION ORDER OF APRIL 9, 1974, AS AMENDED ON MAY 1, 1974, AND REMANDED THE CLAIM

TO THE FUND FOR PAYMENT OF MEDICAL SERVICES, INCLUDING PSYCHOLOGICAL TREATMENT, AND FOR THE PAYMENT OF COMPENSATION AS PROVIDED BY LAW, COMMENCING MARCH 2, 1974 AND UNTIL THE CLAIM WAS CLOSED PURSUANT TO ORS 656.268, WHICH CLOSURE WAS TO BE DEEMED THE FIRST DETERMINATION FOR THE PURPOSE OF DETERMINING CLAIMANT'S AGGRAVATION RIGHTS.

CLAIMANT WAS A 36 YEAR OLD LOGGER WORKING AS A CHASER ON THE LANDING WHEN HE SUSTAINED A COMPENSABLE INJURY TO HIS BACK ON OCTOBER 17, 1973. THE INITIAL DIAGNOSIS WAS THAT OF AN ACUTE STRAIN L3-4. CLAIMANT WAS HOSPITALIZED FOR APPROXIMATELY ONE WEEK FOR TRACTION. THE SUBSEQUENT DIAGNOSIS WAS CHRONIC LUMBOSACRAL STRAIN AND SPONDYLOSIS OF L5. CLAIMANT WAS REFERRED TO DR. KAYSER, AN ORTHOPEDIST, AND LATER HOSPITALIZED IN NOVEMBER, 1973 UNDER THE CARE OF DR. KAYSER AND DR. TANABE, A NEUROSURGEON. ALTHOUGH DR. TANABE FELT CLAIMANT MOST LIKELY HAD A SMALL BULGE AT L4-5 ON THE LEFT, HE DID NOT FEEL A MYELOGRAPHY WAS INDICATED. HE RECOMMENDED THAT CLAIMANT NOT RETURN TO WORK. CLAIMANT WAS REFERRED TO THE DISABILITY PREVENTION DIVISION BY THE FUND AND GIVEN A PSYCHOLOGICAL EVALUATION BY DR. NORMAN HICKMAN, A CLINICAL PSYCHOLOGIST, WHO FOUND THAT CLAIMANT'S PSYCHOPATHOLOGY WAS LARGELY RELATED TO CLAIMANT'S ACCIDENT THROUGH AGGRAVATION OF A PRE-EXISTING CONDITION. THERE WAS NO REASON TO BELIEVE CLAIMANT WOULD SUFFER A PERMANENT PSYCHOLOGICAL DISABILITY AS A RESULT OF THE ACCIDENT PROVIDED HE COULD BECOME VOCATIONALLY RE-ESTABLISHED IN SOME ACTIVITY WHICH DID NOT EXACERBATE HIS SYMPTOMS. IN THE SUMMER OF 1974 CLAIMANT ATTEMPTED TO RETURN TO HIS OLD JOB AS A CHASER AND DID SUFFER EXACERBATION OF HIS SYMPTOMS.

THE MEMBERS OF THE BACK EVALUATION CLINIC, ON MARCH 1, 1974, DIAGNOSED MODERATE ANXIETY TENSION STATE AND A CHRONIC LUMBOSACRAL STRAIN SUPERIMPOSED ON CONGENITAL DEFECT IN THE PEDICLE OF THE FIFTH LUMBAR ON THE LEFT SIDE. THEY FOUND SPONDYLOSIS, MILD AND RECOMMENDED NO DEFINITE TREATMENT UNTIL CLAIMANT'S CONDITION WAS STATIONARY. CLAIMANT COULD RETURN TO SOME OTHER OCCUPATION NOT REQUIRING HEAVY LIFTING, EXTENSION BENDING OR STRAINING. THIS RESTRICTION WAS DUE TO CLAIMANT'S CONGENITAL DEFECT IN HIS LOW BACK. THE TOTAL LOSS OF FUNCTION WAS MILDLY MODERATE AND THE LOSS OF FUNCTION DUE TO THE INJURY WAS CONSIDERED MILD. ON APRIL 11, 1974 DR. TANABE AGREED WITH THIS EVALUATION AND ON APRIL 9, 1974, A DETERMINATION ORDER WAS ISSUED AND, AS AMENDED ON MAY 1, 1974, GRANTED CLAIMANT COMPENSATION FOR TIME LOSS AND 64 DEGREES FOR UNSCHEDULED LOW BACK DISABILITY.

SUBSEQUENTLY, DR. HICKMAN STATED IF CLAIMANT COULD NOT BECOME SUCCESSFULLY VOCATIONALLY RE-ESTABLISHED HIS PSYCHOLOGICAL IMPAIRMENT WOULD PROBABLY BE PERMANENT - HE FELT THAT TIME WAS OF THE ESSENCE AND THE PROBABILITY OF SUCCESS WAS DIRECTLY PROPORTIONAL TO THE SPEED WITH WHICH A VOCATIONAL PROGRAM COULD BE STARTED AND SUCCESSFULLY COMPLETED WHICH WOULD RETURN CLAIMANT TO GAINFUL EMPLOYMENT. CLAIMANT CONTINUED TO RECEIVE COUNSELING WHILE ENROLLED AT THE DISABILITY PREVENTION DIVISION AND LATER, AFTER THE RECOMMENDATION OF DR. HICKMAN, CONTACTED THE TILLAMOOK COUNTY MEDICAL HEALTH CLINIC.

CLAIMANT WAS FOUND ELIGIBLE FOR VOCATIONAL REHABILITATION ON NOVEMBER 1, 1974. THE PROGRAM OFFERED CLAIMANT WAS AN ON-THE-JOB TRAINING IN THE FIELD OF INSTALLATION AND SALES OF GLASS, CARPET, VINYL, PAINT AND OTHER HOUSEHOLD GOODS AND SUPPLIES. AFTER ONE WEEK CLAIMANT WAS UNABLE TO PHYSICALLY HANDLE THE JOB AND WAS ADVISED BY HIS DOCTOR TO QUIT. IN SEPTEMBER, 1975 THROUGH THE DIVISION OF VOCATIONAL REHABILITATION, CLAIMANT WAS ENROLLED IN A TWO YEAR PROGRAM IN SMALL ENGINE REPAIR AT LINN-BENTON COMMUNITY COLLEGE. CLAIMANT HAS COMPLETED ONE TERM SUCCESSFULLY AND COMMENCED THE SECOND BUT HE HAS BEEN UNABLE TO GET INTO THE FULL TIME SMALL ENGINE REPAIR COURSE

WHICH CONSISTED OF TEN CREDIT HOURS PER TERM. IN HIS PRESENT PROGRAM CLAIMANT RECEIVES ONLY THREE HOURS OF SMALL ENGINE REPAIR, THE BALANCE OF THE PROGRAM CONSISTS OF COURSES IN MATHEMATICS, STUDY SKILLS, BEGINNING WELDING AND DEVELOPMENTAL READING.

CLAIMANT AGAIN SOUGHT HELP FROM DR. HICKMAN IN AUGUST, 1975 AND WAS EVALUATED BY HIM ON SEPTEMBER 3 AND 4. A MARKED DETERIORATION IN CLAIMANT'S EMOTIONAL STATUS SINCE FEBRUARY, 1974 WAS FOUND. DR. HICKMAN SAID CLAIMANT WAS CURRENTLY EXPERIENCING A MODERATELY SEVERE TO SEVERE PSYCHOLOGICAL REACTION WITH RATHER EXTREME ANXIETY AND DEPRESSION. HE REITERATED HIS OPINION THAT THE PERMANENCY OF CLAIMANT'S PSYCHOLOGICAL DISABILITY DEPENDED UPON A SUCCESSFUL VOCATIONAL REHABILITATION. HE QUESTIONED CLAIMANT'S SUCCESS IN HIS PRESENT REHABILITATION PROGRAM BUT FELT IT MOST IMPORTANT THAT CLAIMANT GET INTO SOME KIND OF TRAINING. HE SAID CLAIMANT WAS SERIOUSLY IN NEED OF PSYCHOTHERAPY. DR. HICKMAN REFERRED CLAIMANT TO DR. PARSONS FOR A NEUROLOGICAL EVALUATION - HIS DIAGNOSIS WAS A CHRONIC LUMBAR STRAIN WITH NO EVIDENCE OF NERVE ROOT COMPRESSION AND NO FURTHER NEUROLOGICAL EVALUATION TREATMENT WAS RECOMMENDED. DR. MCKILLOP EVALUATED CLAIMANT FROM AN ORTHOPEDIC STANDPOINT AND FOUND A CONTINUING CHRONIC LUMBOSACRAL STRAIN SYNDROME APPARENTLY BROUGHT ON BY THE INDUSTRIAL ACCIDENT IN OCTOBER, 1973 - HE ALSO FOUND NO APPARENT EVIDENCE OF NERVE ROOT COMPRESSION AND RECOMMENDED NO FURTHER ORTHOPEDIC TREATMENT.

THE REFEREE FOUND THAT THE EVIDENCE WAS ABUNDANT THAT PRIOR TO CLAIM CLOSURE CLAIMANT'S PSYCHOLOGICAL PROBLEMS HAD BEEN SHOWN TO BE DEFINITELY ATTRIBUTABLE TO HIS INJURY BUT WOULD NOT BE PERMANENT IF CLAIMANT COULD BE SUCCESSFULLY REHABILITATED - A SINCERE EFFORT AT REHABILITATION HAD FAILED THROUGH NO FAULT OF CLAIMANT. THE PSYCHOLOGICAL REPORT FROM DR. HICKMAN IN SEPTEMBER, 1975 INDICATES THAT CLAIMANT'S PSYCHOLOGICAL CONDITION HAD DETERIORATED SINCE HE HAD EXAMINED HIM IN FEBRUARY, 1974 AND CLAIMANT WAS IN SERIOUS NEED OF PSYCHOTHERAPY WHILE BEING REHABILITATED.

THE REFEREE FOUND THAT CLAIMANT'S CURRENT REHABILITATION PROGRAM WAS OF LITTLE HELP TO CLAIMANT WHO DESIRES TO GET INTO A TRAINING PROGRAM CONSISTING OF A FULL TIME SMALL ENGINE REPAIR COURSE. ACTUALLY THE PRESENT PROGRAM GIVES CLAIMANT ONE THREE HOUR COURSE IN SMALL ENGINE REPAIR, THE REST OF IT IS BASIC COURSES WHICH CLAIMANT FEELS IS A WASTE OF TIME.

THE REFEREE CONCLUDED THAT CLAIMANT, AT THE TIME OF THE HEARING, STILL HAD NOT BEEN SUCCESSFULLY REHABILITATED AND STILL WAS OBTAINING ONGOING PSYCHOLOGICAL TREATMENT. SHE FURTHER CONCLUDED THAT A DISABLING CONDITION WHICH IS CAUSALLY RELATED TO AN INDUSTRIAL ACCIDENT MUST BE EITHER TEMPORARY OR PERMANENT AND, IN THE PRESENT CASE, FOUND, BASED UPON THE PSYCHOLOGICAL REPORTS IN EVIDENCE, THAT CLAIMANT'S PSYCHOLOGICAL DISABILITY WAS NOT PERMANENT BUT WAS TEMPORARY AND EXISTED PRIOR TO THE DETERMINATION ORDER AND CONTINUED THEREAFTER TO THE EXTENT THAT CLAIMANT NEEDS PSYCHOLOGICAL TREATMENT FOR HIS CONDITION WHICH IS ATTRIBUTABLE TO HIS INDUSTRIAL INJURY.

THE REFEREE FOUND, BASED ON ALL THE EVIDENCE IN THE RECORD, THAT THE CLAIM WAS PREMATURELY CLOSED AND CLAIMANT WAS NOT MEDICALLY STATIONARY BUT WAS ENTITLED TO COMPENSATION FOR TEMPORARY TOTAL DISABILITY FROM THE DATE IT WAS TERMINATED BY THE DETERMINATION ORDER ISSUED ON APRIL 9, 1974, AS AMENDED ON MAY 1, 1974, AND UNTIL HIS CLAIM IS AGAIN CLOSED. THE REFEREE, THEREFORE, SET ASIDE THE DETERMINATION ORDER AND REMANDED THE CLAIM TO THE FUND.

THE BOARD, ON DE NOVO REVIEW, AFFIRMS THE REFEREE'S ORDER. THE PROGRAMS OFFERED TO CLAIMANT BORDER ON THE RIDICULOUS. CLAIMANT IS A PERSON WHO IS MAKING SINCERE AND SERIOUS EFFORTS TO SUCCESSFULLY ENTER AND COMPLETE A VOCATIONAL REHABILITATION PROGRAM IN THE FIELD OF SMALL ENGINE REPAIR, A FIELD IN WHICH HE FEELS HE CAN RE-ENTER THE LABOR MARKET AS A GAINFULLY EMPLOYED WORKMAN. TO PROVIDE CLAIMANT WITH A PROGRAM OF ONE THREE HOUR COURSE IN SMALL ENGINE REPAIR AND THEN AUGMENT THIS WITH BASIC COURSES IN MATHEMATICS, STUDY SKILLS, BEGINNING WELDING AND DEVELOPMENTAL READING CERTAINLY WILL NOT RESULT IN A SUCCESSFUL REHABILITATION OF THIS CLAIMANT.

THE EVIDENCE IS UNCONTRADICTED THAT CLAIMANT'S PSYCHOLOGICAL PROBLEMS ARE RELATED TO HIS INDUSTRIAL INJURY AND THAT ALTHOUGH THEY ARE TEMPORARY IN NATURE AT THE PRESENT TIME, UNLESS CLAIMANT IS SUCCESSFULLY VOCATIONALLY REHABILITATED IN THE VERY NEAR FUTURE THIS PSYCHOPATHOLOGY MAY VERY WELL BECOME PERMANENT AND AS SUCH WOULD BE THE RESPONSIBILITY OF THE FUND.

ORDER

THE ORDER OF THE REFEREE, DATED MARCH 23, 1976, IS AFFIRMED

CLAIMANT'S COUNSEL IS AWARDED AS A REASONABLE ATTORNEY FEE FOR HIS SERVICES IN CONNECTION WITH THIS BOARD REVIEW THE SUM OF 400 DOLLARS PAYABLE BY THE STATE ACCIDENT INSURANCE FUND

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