

Redeye, Thomas

PERMANENT TOTAL DISABILITY (RCW 51.08.160)

Subsequent industrial injury

The disability resulting from a subsequent industrial injury may be considered with preexisting conditions and the residuals of the current claim to determine whether a worker is totally disabled, where both claims are on appeal at the same time. ...*In re Thomas Redeye*, BIIA Dec., 00 13114 (2002)

Scroll down for order.

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

1 **IN RE: THOMAS REDEYE**) **DOCKET NOS. 00 13114 & 00 22887**
2)
3 **CLAIM NOS. P-034120 & P-659717**) **DECISION AND ORDER**
4

5 **APPEARANCES:**

6
7 Claimant, Thomas D. Redeye, by
8 Axtell & Briggs, per
9 Brad J. Axtell

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11 Employer, Ritchie Riley/Shook Tires, Inc.,
12 None

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14 Department of Labor and Industries, by
15 The Office of the Attorney General, per
16 Steven J. Nash, Assistant
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19 The claimant, Thomas D. Redeye, filed appeals with the Board of Industrial Insurance
20 Appeals on March 20, 2000 and December 4, 2000, from orders of the Department of Labor and
21 Industries dated March 3, 2000 and October 27, 2000. The order of March 3, 2000, closed claim
22 P-034120 with permanent partial disability award equal to 25 percent amputation value of the left
23 leg, taking into consideration the pre-existing 7.5 percent impairment paid under claim K-261726.
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26 **REVERSED AND REMANDED.**

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28 The order of October 27, 2000 denied the application to reopen the P-659717 claim.

29 **AFFIRMED.**

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31 **DECISION**

32 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
33 and decision on timely Petitions for Review filed by the Department of Labor and Industries and the
34 claimant to a Proposed Decision and Order issued on August 28, 2001, in which the orders of the
35 Department dated March 3, 2000 and October 27, 2000, were reversed and remanded to the
36 Department with direction to find the claimant totally permanently disabled as a result of the
37 residual effects of both these industrial injuries as of March 3, 2000, and take such further action as
38 required by the law and the facts.
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40 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that
41 no prejudicial error was committed and the rulings are affirmed. Review has been granted because
42 the proposed order fails to address the claimant's request for time loss compensation benefits for
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1 the period from December 7, 1998 through March 3, 2000. Additionally, we do not agree with the
2 proposed order that the claimant's eye condition objectively worsened between March 31, 1999,
3 when that claim was closed with permanent partial disability of 80 percent loss of visual acuity, and
4 October 27, 2000, when the Department issued the order denying the reopening application. The
5 Department order of October 27, 2000, is properly affirmed.
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8 The Proposed Decision and Order correctly determines that the claimant's residual
9 impairment proximately caused by the industrial injury in claim P-034120, when combined with
10 Mr. Redeye's other disabilities, including the residual impairment in claim P-659717, has rendered
11 him totally and permanently unable to obtain and perform gainful employment on a reasonably
12 continuous basis as of March 3, 2000. Mr. Redeye is entitled to permanent total disability benefits.
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15 Mr. Redeye is approximately 51 years old and is a college graduate. He has work
16 experience as a life insurance agent and manager of a tire sales and installation business. He has
17 diabetes and, although the record is silent as to the specific date of onset of that disease, he
18 suffered from diabetes prior to these 1996 industrial injuries. Over the years, Mr. Redeye has had
19 several industrial injuries that resulted in permanent impairments. In 1973, he injured his right hand
20 causing impairment equal to 15 percent as compared to total bodily impairment. In 1978, he injured
21 his low back, necessitating a fusion and a left knee arthroscopy. For this injury, the Department
22 awarded him permanent partial disability awards for his back and left knee. In 1992, Mr. Redeye's
23 left knee worsened, necessitating a second arthroscopy.
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26 In 1980, Mr. Redeye suffered from a detached retina in the left eye and lost 99 percent of
27 his vision in the left eye due to a degenerative condition. He thereafter depended upon the vision in
28 his right eye.
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31 On July 1, 1996, Mr. Redeye slipped at work and aggravated his left knee problem. This
32 claim was allowed and assigned number P-034120. Mr. Redeye appeals from the Department
33 order closing this claim on March 3, 2000, with permanent disability of 25 percent, less 7.5 percent
34 awarded under the 1978 industrial injury claim. In one of his current appeals, Docket No. 00 13114,
35 Mr. Redeye contends that this injury caused him to be totally and temporarily unable to engage in
36 gainful employment on a reasonably continuous basis between December 7, 1998 and March 3,
37 2000. He also claims that since March 3, 2000, the residuals from all of his industrial injuries,
38 including the right eye and the left knee, have permanently and totally prevented him from being
39 capable of employment. After reviewing the entire record, we conclude that the residuals from this
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1 injury, when combined with all of his other injuries and conditions, acted as "the straw that broke
2 the camel's back," and effectively prevented him from engaging in gainful employment.
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4 The second docket (00 22887) involves another industrial injury that occurred on August 13,
5 1996. Mr. Redeye injured his right eye when a tire struck his face. This injury caused him to lose
6 sight in his right eye. The Department closed this claim on March 31, 1999, with an award equal to
7 80 percent loss of visual acuity, less the prior paid award. On October 23, 2000, Mr. Redeye filed
8 an application with the Department to reopen this claim. The Department denied his reopening
9 application, and the second docket before us involves Mr. Redeye's appeal from that Department
10 order.
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12 We agree with the Department that Mr. Redeye's right eye condition has not objectively
13 worsened since the claim was closed on March 31, 1999, with a disability of 80 percent loss of
14 visual acuity. Dr. David N. Cohen, an ophthalmologist, based his opinions of worsening primarily
15 upon Mr. Redeye's exam in 1999 of 20/25 with lights off and 20/30 with lights on as compared to
16 20/40 in 2000. However, he felt Mr. Redeye's disability represented 80 percent loss of visual acuity
17 and was unable to indicate whether this disability had increased. This testimony is insufficient to
18 warrant reopening Mr. Redeye's claim. Dr. Cohen does not offer an opinion that there is an
19 increase in disability or a need for further treatment. There are no objective findings of worsening
20 upon which to base a reopening of the eye claim. Residuals from that injury are to be taken into
21 account, however, when considering Mr. Redeye's employability at the time the knee condition
22 reached maximum medical improvement and the knee claim was closed. *See Allen v. Dept. of*
23 *Labor & Industries*, 30 Wn. App. 693 (1981).
24

25 The Department's Petition for Review raises only the issue of the effective date of permanent
26 total disability benefits (pension) for Mr. Redeye. The effective date of Mr. Redeye's pension is the
27 date when vocational and medical evidence shows his incapacity for gainful employment. This
28 record supports a conclusion that the effective date of Mr. Redeye's pension is the date that the
29 Department closed the knee claim, or March 3, 2000. The record also supports Mr. Redeye's
30 entitlement to temporary total benefits from December 7, 1998 through March 3, 2000; therefore,
31 we are not confronted with any issue of "legal fixity."
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33 Mr. Redeye's case is complicated by two industrial injury claims that were open at the same
34 time. At the beginning of the first claim, Mr. Redeye received treatment for the injury, but did not
35 miss work. Not until the eye claim (P-659717) for an injury on August 13, 1996, did he begin to
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1 receive time loss compensation. The Department issued an order on December 8, 1998, that
2 terminated time loss compensation effective December 7, 1998, under the eye claim. However, the
3 jurisdictional history shows that Mr. Redeye then began receiving time loss benefits under the left
4 knee claim (P-034120) that had remained open. The Department issued an order that adjusted the
5 time loss rate by applying the social security offset established under claim P-659717 to claim
6 P-034120. The record is unclear as to whether the Department continued to pay Mr. Redeye time
7 loss compensation up through March 3, 2000, when the P-034120 claim was closed. Mr. Redeye
8 asserts his entitlement to time loss benefits for that period, and we agree that the record
9 establishes that the knee condition covered in claim P-034120, prevented him from gainful
10 employment on a regularly continuous basis during this period. His testimony is clear that he did
11 not work, and the knee injury prevented him from working during this period. The medical and
12 vocational witnesses confirm his inability to work. He is, therefore, entitled to time loss
13 compensation between December 8, 1998 and March 3, 2000. The Department is directed to pay
14 him those benefits subject to social security offset, and any loss of earning power benefits he
15 received.

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17 Because the right eye injury occurred a few months **after** the knee injury, the parties seem to
18 be hesitant to consider the impact of the right eye disability upon his employability after the knee
19 problem reached maximum medical improvement. Mr. Redeye's loss of visual acuity in the right
20 eye is a factor the Department should consider when determining Mr. Redeye's employability at the
21 time the knee claim is closed. In determining eligibility of permanent total disability, the fact-finder
22 must take into account any medical conditions the worker had **prior** to the industrial injury,
23 occupationally related or not, **as well as the effects of the industrial injuries**, superimposed on
24 his age, education, work experience, and training. The left eye condition is not occupationally
25 related but is residual disability that is considered in the employability assessment because it was a
26 medical condition Mr. Redeye had prior to 1996. However, the effect of the 80 percent loss of
27 visual acuity in the right eye upon Mr. Redeye's employability is also part of the evaluation because
28 it resulted from an industrial injury. The proposed decision correctly determines that Mr. Redeye is
29 entitled to a pension based upon the knee and right eye disabilities, effective the date the
30 Department closed the knee claim, or March 4, 2000.

1 After carefully considering the record, we conclude that the Department order dated
2 October 27, 2000, in claim P-659717 that denied the application to reopen the claim for aggravation
3 of condition, is correct and should be affirmed. The Department is directed to pay Mr. Redeye time
4 loss compensation for the period of December 8, 1998 through March 3, 2000, in claim P-034120,
5 and thereafter close the claim, placing Mr. Redeye on a pension as a proximate result of
6 all of his industrial injuries (hand, right eye, low back, and knee), superimposed upon the medical
7 conditions and non-occupational disabilities pre-existing the July 1, 1996 industrial injury (loss of
8 vision in the left eye, diabetes), together with his age, education, and past work experience.
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13 **FINDINGS OF FACT**

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- 15 1. Thomas Redeye filed an application for benefits on July 22, 1996, for an
16 industrial injury he had sustained on July 1, 1996, while in the course of
17 employment with Ritchie Riley/Shook Tires, Inc. The Department of
18 Labor and Industries allowed the claim, assigned it number P-034120,
19 and closed it effective January 23, 1977. On January 5, 1998,
20 Mr. Redeye filed an application to reopen the claim, and on May 6,
21 1998, the Department issued an order reopening the claim for
22 worsening of condition.
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24 On January 21, 1999, the Department issued an order applying the
25 offset established under claim P-659717 by Department order dated
26 November 19, 1998, to apply to claim P-034120, adjusted effective
27 January 7, 1999, because of receipt of social security benefits. On
28 March 1, 1999, the Department issued an order paying "partial" time
29 loss compensation for the period of January 7, 1999 through
30 February 18, 1999. On March 3, 2000, the Department issued an order
31 closing the claim with a permanent partial disability award equal to
32 25 percent of the amputation value of the left leg at or above the knee
33 joint with functional stump, taking into consideration the 7.5 percent
34 pre-existing permanent partial disability determined under Claim
35 No. K-261726.
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37 On March 20, 2000, Thomas Redeye filed an appeal with the Board of
38 Industrial Insurance Appeals from the March 3, 2000 order. On April 11,
39 2000, the Board issued an order granting the appeal, assigning it Docket
40 No. 00 13114, and directing that proceedings be held on the issues
41 raised.
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- 43 2. On October 28, 1996, Thomas Redeye filed an application for benefits
44 alleging an industrial injury on August 13, 1996, while in the course of
45 employment with Ritchie Riley/Shook Tires, Inc. The claim was allowed
46 and on March 31, 1999, the Department issued an order closing the
47 claim with permanent partial disability award equal to 88 percent of the
loss of central visual acuity in one eye, considering pre-existing disability

1 equal to 44 percent loss of central visual acuity. The claimant appealed
2 to the Board from the March 31, 1999 order, and on October 6, 1999,
3 the Board issued an Order on Agreement of the Parties resolving the
4 appeal. On October 14, 1999, the Department issued an order closing
5 the claim with permanent partial disability award equal to 80 percent of
6 the loss of central visual acuity in the right eye, less prior paid award.
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8 On October 23, 2000, the claimant filed an application with the
9 Department to reopen the claim for aggravation of condition. On
10 October 27, 2000, the Department issued an order that denied the
11 application to reopen the claim because the condition had not worsened.
12 On December 4, 2000, the claimant appealed to the Board from the
13 order of October 27, 2000, and on January 3, 2001, the Board issued an
14 order granting the appeal, assigning it Docket No. 00 22887.
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- 16 3. In 1973, Thomas Redeye injured his right hand in the course of
17 employment resulting in a permanent partial disability award equal to
18 15 percent total bodily impairment. In 1978, he injured his low back
19 while in the course of employment resulting in a permanent partial
20 disability award equal to 25 percent total bodily impairment. In 1978, the
21 claimant sustained an industrial injury to his left knee while in the course
22 of employment resulting in a permanent partial disability award equal to
23 7.5 percent of the amputation value of the left lower extremity at or
24 above the knee joint.
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- 26 4. In 1980, Thomas Redeye lost 99 percent of the vision in his left eye due
27 to a degenerative condition affecting the retina. He thereafter depended
28 on his right eye for vision.
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- 30 5. Thomas Redeye was born on January 25, 1950, and is a college
31 graduate. Throughout his work history he worked as a manager of a
32 retail automobile tire store, and a life insurance agent.
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- 34 6. On July 1, 1996, Thomas Redeye sustained an industrial injury to his left
35 knee while in the course of employment with Ritchie Riley/Shook Tires,
36 Inc. He continued to work, and on August 13, 1996, he sustained an
37 industrial injury to his right eye while in the course of employment with
38 the same employer. As of March 31, 1999, the claimant's right eye
39 condition proximately caused by the industrial injury of August 13, 1996,
40 was fixed and stable and had resulted in impairment equal to 80 percent
41 loss of central visual acuity in the right eye less prior paid award.
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- 43 7. Between March 31, 1999 and October 27, 2000, the claimant's right eye
44 condition proximately caused by the industrial injury of August 13, 1996,
45 did not objectively worsen or become aggravated such that he had
46 increased permanent partial disability or needed additional treatment.
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- 1 8. Between December 8, 1998 and March 3, 2000, Thomas Redeye's left
2 knee condition proximately caused by the industrial injury of July 1,
3 1996, prevented him from engaging in gainful employment on a
4 reasonably continuous basis. As of March 3, 2000, the residuals from
5 the July 1, 1996 injury were fixed and stable and had resulted in
6 increased permanent partial impairment equal to 25 percent of the
7 amputation value of the left leg at or above the knee joint, taking into
8 consideration the 7.5 percent pre-existing disability.
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- 10 9. As of March 3, 2000, the permanent residual effects from the industrial
11 injury of July 1, 1996, combined with the residual permanent restrictions
12 from his medical conditions pre-existing the industrial injury, and all of
13 the residual effects from his industrial injuries and precluded Thomas
14 Redeye from obtaining or performing reasonably continuous gainful
15 employment when considered in conjunction with his age, education,
16 training, work history, and transferable skills.

CONCLUSIONS OF LAW

- 19 1. The Board of Industrial Insurance Appeals has jurisdiction over the
20 parties and the subject matter of these timely filed appeals.
- 21
- 22 2. Between March 31, 1999 and October 27, 2000, Thomas Redeye's right
23 eye condition proximately caused by the industrial injury of August 13,
24 1996, did not become aggravated as contemplated by RCW 51.32.160.
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- 26 3. Between December 7, 1998 and March 3, 2000, the claimant's left knee
27 condition proximately caused by the industrial injury of July 1, 1996,
28 temporarily totally prevented him from engaging in gainful employment
29 and he was entitled to temporary total disability benefits pursuant to
30 RCW 51.32.090.
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- 32 4. Effective March 3, 2000, Thomas Redeye was a totally and permanently
33 disabled worker as a proximate result of the residual impairment from
34 the industrial injury of July 1, 1996, superimposed upon his other
35 residual impairments, within the meaning of RCW 51.08.160.
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- 37 5. In Docket No. 00 22887, the Department order dated October 27, 2000,
38 denying the aggravation application in claim P-659717 is correct and
39 hereby affirmed. In Docket No. 00 13114, the Department order dated
40 March 3, 2000, is incorrect and is reversed. This claim is remanded to
41 the Department with direction to issue an order awarding Thomas
42 Redeye time loss compensation benefits between December 7, 1998
43 through March 3, 2000, less prior paid compensation and social security
44 offset, and thereupon close the claim by finding Thomas Redeye totally
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1 permanently disabled as a result of the residual effect of the industrial
2 injury of July 1, 1996, combined with all of the residual effects from his
3 industrial injuries, and his pre-existing non-occupational impairments.
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5 It is so **ORDERED**.

6 Dated this 21st day of February, 2002.
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8 BOARD OF INDUSTRIAL INSURANCE APPEALS
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12 /s/ _____
13 THOMAS E. EGAN Chairperson
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17 /s/ _____
18 FRANK E. FENNERTY, JR. Member
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23 JUDITH E. SCHURKE Member
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