

## **Kunst, Peter**

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### **EXPERT TESTIMONY**

#### **Scope of expertise**

An occupational therapist who is properly qualified as an expert is competent to testify regarding findings and conclusions regarding a worker's physical limitations. ...***In re Peter Kunst, BIA Dec., 04 14164 (2005)*** [*Editor's Note: The Board's decision was appealed to superior court under Snohomish County Cause No. 06-2-05600-9.*]

Scroll down for order.

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

1 **IN RE: PETER H. KUNST** ) **DOCKET NOS. 04 14164 & 04 14164-A**  
2 )  
3 **CLAIM NO. W-751150** ) **DECISION AND ORDER**

4 **APPEARANCES:**

5 Claimant, Peter H. Kunst, by  
6 Law Office of Meade P. Brown, Jr., P.S., per  
7 Meade P. Brown, Jr.

8 Self-Insured Employer, The Boeing Company, by  
9 Reeve Shima, P.C., per  
10 Mary E. Shima

11 The claimant, Peter H. Kunst, and the self-insured employer, The Boeing Company (Boeing),  
12 filed an appeal and a cross appeal, respectively, from an order of the Department of Labor and  
13 Industries dated February 25, 2004. These appeals have been consolidated.

14 The appeal assigned Docket No. 04 14164 concerns an appeal filed by the claimant with the  
15 Board of Industrial Insurance Appeals on April 21, 2004, from the February 25, 2004 Department  
16 order. In this order, the Department reversed its November 21, 2003 and August 22, 2003 orders.  
17 The Department closed the claim with time loss compensation benefits as paid through  
18 February 11, 2003, with an award for permanent partial disability equal to ten percent of the  
19 amputation value of the right leg above the knee joint with a short thigh stump (three inches or  
20 below the tuberosity of ischium). The Department order is **REVERSED AND REMANDED**.

21 The appeal assigned Docket No. 04 14164-A is a cross-appeal filed by Boeing with the  
22 Board of Industrial Insurance Appeals on July 19, 2004. The Department order is **REVERSED**  
23 **AND REMANDED**.

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25 **PROCEDURAL AND EVIDENTIARY MATTERS**

26 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
27 and decision on a timely Petition for Review, filed by Mr. Kunst, to a Proposed Decision and Order  
28 issued on July 25, 2005, in which the industrial appeals judge affirmed the February 25, 2004 order.  
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1 The Board has reviewed the evidentiary rulings in the record of proceedings. We have  
2 corrected the following erroneous rulings made by our industrial appeals judge:

3 Deposition of Thomas H. Castle, Jr., M.D. Exhibits No. 4, 5, 7 and 8 to the deposition,  
4 marked respectively as Board Exhibits No. 4, 5, 7 and 8, are rejected as cumulative. The  
5 objections at page 39, line 18; page 40, line 24, and page 41, line 5 are overruled.

6 Deposition of Terry A. Moon, O.T. Our industrial appeals judge affirmed numerous  
7 objections during the course of this deposition based on a misconception that an occupational  
8 therapist's findings and conclusions, based on a physical capacities evaluation (PCE) she  
9 conducted, cannot be considered. The findings and opinions of physical and occupational  
10 therapists about their patients can be considered, based on the provisions of ER 702 and 703.  
11 Ms. Moon definitely qualified as an expert as defined in these rules, based on her education,  
12 training, and experience. She has 14 years of experience performing PCEs and 28 years of  
13 experience as a therapist. She is competent to testify about Mr. Kunst's physical limitations, based  
14 on her PCE findings. In fact, we have previously held that a permanent partial disability award can  
15 be based in part on findings made by a well-qualified therapist during a PCE. *In re Bertha Ramirez*,  
16 BIIA Dec., 03 11030 (2004). We have therefore reversed the following rulings that excluded  
17 admissible evidence. The objections at page 19, line 19; page 27, line 25; page 40, line 3; page 43,  
18 line 25; page 45, lines 4 and 16; page 48, line 3; page 49, line 4; page 50, line 12; page 52, line 5;  
19 page 59, line 19; page 65, line 17; page 66, line 3; page 68, line 1; page 113, lines 1, 12, and 21;  
20 page 117, line 5; page 129, line 7; and page 135, lines 17 and 24 are overruled. The objections on  
21 page 88, lines 6 and 18 are sustained.

22 Deposition of Merrill A. Cohen, V.R.C. The objections at page 26, line 16 and page 27, line  
23 8, are overruled. The motion to strike at page 75, line 16 is denied. The objections at page 58,  
24 line 23; page 73, line 20; and page 74, line 16 are sustained.

25 Deposition of James A. Champoux, M.D. The objection at page 52, line 22 is overruled.

26 Deposition of Jill Rosenthal, Ph.D., V.R.C. The objections at page 122, line 18; page 123,  
27 lines 4 and 16; page 124, lines 18 and 24; page 125, line 6; page 126, line 22; page 127, line 4; and  
28 page 134, lines 2 and 14 are overruled. The objections at page 111, lines 2 and 8 are sustained.

29 With the exceptions noted above, the Board finds our industrial appeals judge committed no  
30 prejudicial error in his other rulings. Accordingly, these rulings are affirmed.

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1 **DECISION**

2 Mr. Kunst sought review of the Proposed Decision and Order because he seeks time loss  
3 compensation from February 12, 2003 to February 25, 2004, and permanent total disability benefits  
4 thereafter. He maintains he is unable to work due to the combined effects of limitations proximately  
5 caused by the August 1, 2002 injury covered in this claim, and his pre-existing limitations. We  
6 agree, and therefore granted his Petition for Review.

7 We base our decisions on the following key facts. Mr. Kunst is 62 years old. After  
8 graduating from high school, he obtained an associate's degree from a California community  
9 college. He completed a four-year apprenticeship program in auto mechanics in Germany, during  
10 which he was trained as a Porsche mechanic. He worked as a mechanic servicing Porsche and  
11 other German cars from 1966 to 1988. He owned his own shop from 1979 to 1985, but was not a  
12 successful businessman. He worked for Boeing from 1988 to 2002. Except for five years between  
13 May 1997 and May 2002, when he worked as a quality control inspector, he worked as an  
14 assembler installer (*i.e.*, an airplane mechanic). This was a position that involved medium exertion.  
15 It involved occasional lifting of objects weighing up to 50 pounds, considerable overhead work, and  
16 prolonged use of the right arm while riveting.

17 Mr. Kunst was working as an assembler installer when he sustained his August 1, 2002  
18 industrial injury. Prior to this accident, he had been injured numerous times. His previous injuries  
19 include:

- 20 1. a 1961 left wrist fracture
- 21 2. a 1962 de-gloving injury to his right ring finger (his skin was torn down to the bone when  
22 a ring got caught in wire)
- 23 3. a left clavicle fracture (in the shoulder) that was treated surgically (between 1966-1969)
- 24 4. injuries to his left calf, hip, and buttock when his left leg was caught in a boat propeller  
25 (during the same period)
- 26 5. a torn left Achilles tendon (in 1973)
- 27 6. a fractured vertebrae in the neck at C6-C7, which resulted in a cervical fusion in 1982
- 28 7. an industrial injury in 1996. Mr. Kunst injured his right shoulder when he fell from  
29 scaffolding. He sustained a large rotator cuff tear, which was treated surgically in 2000.  
30 He obtained a permanent partial disability award for this injury equal to 10 percent of the  
31 right arm at the shoulder.

1 Mr. Kunst obtained his lighter duty position as a quality control inspector after his  
2 1996 shoulder injury. This job did not involve actual production work, and therefore was not as  
3 physically demanding as his job as an airplane mechanic. He continued to work full-time after this  
4 injury, except for a two to three month period while he was recovering from his rotator cuff surgery.  
5 In July 2001, Mr. Kunst's attending orthopedic surgeon, Thomas H. Castle, Jr., M.D., released him  
6 to return to his inspector position full-time without restrictions. Mr. Kunst was able to work as an  
7 inspector without problems. However, in May 2002, due to work force restructuring following  
8 lay-offs, he was transferred back to his prior position as an assembler/installer. He redeveloped  
9 right shoulder pain soon after his transfer, and returned to Dr. Castle that same month. Dr. Castle  
10 then permanently restricted Mr. Kunst from overhead work involving his right arm. Nonetheless,  
11 Mr. Kunst continued working as an assembler, which necessarily involved such work, until his  
12 August 1, 2002 workplace accident.

13 On that day, Mr. Kunst twisted his right ankle and knee when he caught his right foot in an  
14 aircraft stringer. After a magnetic resonance image (MRI) was taken, Dr. Castle diagnosed him as  
15 having sustained an anterior cruciate ligament (ACL) tear and a tear of the lateral meniscus in his  
16 knee. He also diagnosed synovitis in the knee joint. Dr. Castle testified the injury aggravated  
17 pre-existing degenerative joint disease in the right knee and ankle. Mr. Kunst obtained  
18 conservative treatment under this claim for both conditions. Although Dr. Castle had recommended  
19 knee surgery, Mr. Kunst declined this option.

20 All of the medical witnesses agreed the August 2002 injury aggravated Mr. Kunst's  
21 pre-existing knee condition. Alan G. Brobeck, M.D., an orthopedic surgeon who examined  
22 Mr. Kunst on January 19, 2003, and Dr. Castle agreed this injury caused permanent impairment to  
23 the knee equal to five percent of the amputation value of the right leg. They also both rated the  
24 permanent ankle disability attributable to this injury as equal to five percent of the amputation value  
25 of the leg. While Dr. Brobeck later testified that he no longer felt Mr. Kunst had any permanent  
26 partial impairment to his ankle caused by this injury, he did not rescind his rating of Mr. Kunst's  
27 impairment level. Dr. Brobeck concluded that Mr. Kunst's impairment pre-existed his injury, based  
28 on his review of unsigned handwritten chart notes from unknown medical providers which indicated  
29 Mr. Kunst had previously obtained treatment for foot pain. However, Dr. Brobeck conceded there  
30 were no records that Mr. Kunst's ankle had been symptomatic or required any treatment after  
31 March 2001. There is therefore no reliable factual basis for concluding Mr. Kunst had a pre-existing  
32 permanent ankle impairment at the time of his 2002 injury. Based on Dr. Castle's and

1 Dr. Brobeck's testimony, we agree with our judge's conclusion that Mr. Kunst's permanent right leg  
2 impairment caused by his August 2002 injury was equal to 10 percent of the amputation value of  
3 his right leg.

4 Mr. Kunst returned to work for approximately four to five weeks after his 2002 accident. He  
5 was released only to light-duty work. Since Dr. Castle never released him to return to his position  
6 as an assembler/installer, Boeing placed him on medical leave in November 2002. It terminated his  
7 employment the next month because he could not return to his job and there was no suitable  
8 light-duty work available for him.

9 It is undisputed that Mr. Kunst could not return to work in any of the positions he held before  
10 his August 2002 injury. Both vocational witnesses testified that he lacked the physical capacity to  
11 work as either an automobile or airplane mechanic. There were no available positions as an  
12 inspector at Boeing. Determining what type of work, if any, Mr. Kunst could perform hence  
13 necessarily involves determining his physical capabilities. In this case, we must consider not only  
14 physical limitations caused by his 2002 right knee/ankle injury, but also any pre-existing limitations  
15 due to his prior injuries. We can also consider limitations attributable to health problems Mr. Kunst  
16 had at the time of his 2002 accident. Mr. Kunst was overweight and had high blood pressure when  
17 he was injured. These conditions, noted by Terry A. Moon, the occupational therapist who  
18 performed a performance based physical capacity evaluation, adversely impacted his stamina and  
19 physical capabilities.

20 Mr. Kunst had a subsequent injury to his left hand after his August 2002 injury. He cut off  
21 the tips of his left index and middle fingers with a Skil saw in June 2003. It is unclear whether this  
22 accident resulted in any permanent impairment, but we have not considered any limitations  
23 resulting from this accident in determining Mr. Kunst's employability.

24 There really is not much controversy about the extent of Mr. Kunst's pre-existing limitations.  
25 He was restricted from any overhead work due to his cervical fusion and shoulder surgeries by all  
26 three physicians who testified. (In addition to Drs. Castle and Brobeck, James A. Champoux, M.D.,  
27 an orthopedic surgeon who examined Mr. Kunst in December 2002, was also a witness in this  
28 appeal). All three doctors also restricted him from any reaching/pushing/pulling at shoulder height  
29 and from any lifting above shoulder height with his right arm. Dr. Brobeck was even more  
30 restrictive: he testified any reaching or lifting above 60 degrees was inappropriate. Since the arms  
31 are at zero degrees when held down by one's side, Dr. Brobeck believed Mr. Kunst could only lift  
32 less than two-thirds of the way up to shoulder height.

1 While all three physicians also agreed limitations due to Mr. Kunst's knee/ankle conditions  
2 were appropriate, their limitations differed. Dr. Champoux believed Mr. Kunst should not engage in  
3 any repetitive kneeling or squatting, and should only walk on level terrain. Dr. Brobeck limited  
4 Mr. Kunst to standing no more than 20 to 30 minutes at a time and believed he should avoid any  
5 frequent kneeling, crouching, crawling, or repeated squatting. Dr. Castle ultimately agreed with the  
6 limitations noted by Ms. Moon. He specifically noted Mr. Kunst should avoid any repetitive  
7 kneeling, crouching, crawling, or squatting. All three physicians specifically limited Mr. Kunst from  
8 doing any repetitive kneeling or squatting.

9 We believe Ms. Moon gave the best description of Mr. Kunst's overall limitations due to  
10 conditions that pre-existed or were caused by his 2002 industrial injury. She is well-qualified, and  
11 her findings were based on a thorough two-day long physical capacities evaluation. Furthermore,  
12 her findings are reasonably consistent with the limitations imposed by Dr. Brobeck. Her findings  
13 were also adopted by Mr. Kunst's attending physician, Dr. Castle. We therefore were persuaded  
14 these findings accurately described Mr. Kunst's physical capabilities.

15 According to Ms. Moon, Mr. Kunst was limited to performing sedentary or light work. He  
16 could sit thirty to forty-five minutes at a time, for five to six hours in an eight-hour day. He could  
17 stand occasionally, for twelve to thirty minutes at a time, for four hours in an eight-hour day. He  
18 could walk only occasionally. He had very limited ability to do work that involved reaching. When  
19 using light force (this is consistent with gripping an object requiring less than twenty-five pounds of  
20 grip force or seven pounds of pinch force, *i.e.*, turning a door knob), his limitations were as follows.  
21 He could continuously perform activities involving partial reaching, but could only occasionally  
22 engage in extended reaching and could seldom do any overhead reaching. When using moderate  
23 to heavy force (this is consistent with using a tool such as a drill or a hammer) his limitations  
24 increased. He was limited to frequent to continuous partial reaching, but could seldom engage in  
25 any extended reaching and could never engage in any overhead reaching. He was precluded from  
26 any repetitive motions or repeated impact activities involving his legs. He could not engage in any  
27 sustained or repetitive neck flexion or extension and should avoid full head rotation. Finally, his  
28 lifting limitations were consistent with sedentary to light employment. For example, he could only  
29 occasionally lift objects weighing twenty pounds. Ms. Moon believed Mr. Kunst's post-injury  
30 accident involving his left fingers did not impact any of her findings, since Mr. Kunst is right-handed.

31 We must determine Mr. Kunst's employability based on the combined effects of physical  
32 limitations that pre-existed his 2002 injury and limitations resulting directly from it. *Wendt v.*

1 *Department of Labor & Indus.*, 18 Wn. App. 674 (1977). Our determination must be based on  
2 studying the whole person, including his pre-existing impairments, considered along with his age,  
3 education, training, experience, and loss of function stemming from his industrial injury. *Leeper v.*  
4 *Department of Labor & Indus.*, 123 Wn.2d 803 (1994).

5 In this case, as we previously noted, Mr. Kunst was unable to return to any of his prior jobs  
6 because they were physically too demanding or unavailable. Boeing maintains that Mr. Kunst was  
7 capable of returning to work as a production assembler (in small parts production), a parking lot  
8 attendant, or a check cashier. It bases this argument primarily on the testimony of Jill Rosenthal, its  
9 vocational expert. However, we were not persuaded by Ms. Rosenthal's testimony. Her initial  
10 determinations regarding Mr. Kunst's employability did not consider his pre-existing  
11 shoulder/cervical limitations. She initially determined that Mr. Kunst could do light assembly work.  
12 However, these positions involve reaching at or above shoulder height, as evidenced in  
13 Exhibit No. 3. Ms. Rosenthal modified her job analysis for this position after determining she would  
14 need to consider Mr. Kunst's pre-existing limitations. Merrill A. Cohen, the vocational expert  
15 presented by Mr. Kunst, and Ms. Moon both testified about deficiencies in the job analyses  
16 Ms. Rosenthal produced for all three positions. They both noted the physical requirements for  
17 these positions were altered over time to reduce the requisite level of exertion. This taints  
18 Ms. Rosenthal's testimony, since it appears the descriptions may have been altered so as to reach  
19 a conclusion that Mr. Kunst was employable. Furthermore, Ms. Rosenthal did not administer any  
20 vocational testing before reaching her conclusions. Finally, Boeing's medical witnesses released  
21 Mr. Kunst to work before specifically reviewing the job analyses Ms. Rosenthal prepared. These  
22 defects diminished the persuasiveness of the employer's witnesses' opinions that Mr. Kunst was  
23 employable.

24 The vocational testimony from both Ms. Cohen and Ms. Moon was more persuasive. Both  
25 witnesses agreed Mr. Kunst could not perform the job duties of a production assembler, parking lot  
26 attendant, or cashier. They concluded he was unable to perform or obtain gainful employment after  
27 February 12, 2003.

28 Ms. Moon testified Mr. Kunst could not work as a production assembler because he could  
29 not do the reaching required in these positions. Additionally, she noted that Mr. Kunst would not be  
30 able to keep up with a typical production line, based on the test results for fine motor dexterity she  
31 obtained administering the Purdue Pegboard test. Ms. Moon noted that production assembly jobs  
32 require fine motor dexterity, rather than the gross motor skills Mr. Kunst predominately used as an



1 aircraft mechanic. Furthermore, Ms. Moon noted that work as a parking lot attendant involves light  
2 to medium exertion. This position would be too strenuous for Mr. Kunst, who could only perform  
3 jobs involving sedentary to light exertion. This position also involved occasional reaching above  
4 shoulder height, which exceeds Mr. Kunst's capabilities. Ms. Moon also noted that Mr. Kunst would  
5 not be able to work as a check cashier because these jobs require either continuous standing, or  
6 continuously getting up and down from a seated position to assist customers or use office  
7 equipment. Mr. Kunst could neither stand continuously nor get up and down often because of his  
8 right leg impairments.

9 We preferred Ms. Cohen's opinions to those of Ms. Rosenthal for the following reasons.  
10 Ms. Cohen administered vocational tests to more accurately assess Mr. Kunst's employability.  
11 Furthermore, her opinions were based on medical testimony that we have concluded most  
12 accurately reflected Mr. Kunst's physical limitations: namely, the testimony of Ms. Moon and  
13 Dr. Castle. Ms. Cohen testified that Mr. Kunst could not work as a production assembler because  
14 these positions require either constant standing or sitting, both of which were beyond his  
15 capabilities. Additionally, the lifting required in this job exceeded his limitations. Finally, she noted  
16 Mr. Kunst would not be able to keep up with normal production levels based on his low scores in  
17 additional dexterity tests she administered. Ms. Cohen also agreed with Ms. Moon that Mr. Kunst  
18 lacked the physical capacity to perform tasks typically required of parking attendants and cashiers.  
19 Furthermore, she noted that Mr. Kunst lacked the customer service and cash handling experience  
20 that employers sought when hiring for these positions. For example, she indicated employers of  
21 cashiers typically hired people with experience working with the public in high volume situations.  
22 Mr. Kunst lacked relevant transferable skills, since his prior jobs did not involve high volume  
23 customer contact. We therefore were persuaded that Mr. Kunst could not work as a production  
24 assembler, parking lot attendant, or cashier. We conclude, based on the testimony of Ms. Moon  
25 and Ms. Cohen, that there was no position in the competitive labor market that Mr. Kunst could  
26 perform or obtain.

27 In summary, based upon our careful review of the Petition for Review, the Employer's  
28 Response to the Petition for Review, and our record, we have determined the February 25, 2004  
29 order should be reversed. Mr. Kunst should obtain time loss compensation from February 12, 2003  
30 to February 25, 2004, and pension benefits thereafter, based on the combined effects of limitations  
31 proximately caused by his August 1, 2002 injury, and his pre-existing physical limitations.

## FINDINGS OF FACT

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1. On September 11, 2002, Peter H. Kunst, the claimant, filed an Application for Benefits with The Boeing Company, a self-insured employer, wherein he alleged he injured his right ankle and right knee during the course of his employment on August 1, 2002. The Application for Benefits was filed with the Department of Labor and Industries on November 22, 2002. On December 5, 2002, the Department issued an order in which it allowed the claim.

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On August 22, 2003, the Department issued an order in which it closed the claim without award for permanent partial disability, with time loss compensation benefits as paid to February 11, 2003. On September 3, 2003, the claimant filed a Protest and Request for Reconsideration with the Department from its August 22, 2003 order. On November 21, 2003, the Department issued an order in which it affirmed its August 22, 2003 order.

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On December 18, 2003, the claimant filed a Notice of Appeal with the Board of Industrial Insurance Appeals from the November 21, 2003 order. On December 31, 2003, the Department placed its November 21, 2003 order in abeyance. On January 5, 2004, the Board issued an order wherein it returned the case to the Department for further action.

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On February 10, 2004, the claimant filed a Protest and Request for Reconsideration to any adverse orders. On February 25, 2004, the Department issued an order in which it reversed its orders dated November 21, 2003 and August 22, 2003. In this order, the Department closed the claim with time loss compensation benefits as paid through February 11, 2003, with an award for permanent partial disability equal to ten percent of the amputation value of the right leg above the knee joint with a short thigh stump (three inches or below the tuberosity of ischium).

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On April 21, 2004, the claimant filed a Notice of Appeal with the Board from the February 25, 2004 order. On June 28, 2004, the Board issued an order in which it granted the appeal, assigned it Docket No. 04 14164, and ordered that further proceedings be held.

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On June 30, 2004, the self-insured employer received a copy of the Board order in which the Board granted the claimant's appeal under Docket No. 04 14164. On July 19, 2004, the self-insured employer filed a Notice of Appeal with the Board from the February 25, 2004 order. On August 4, 2004, the Board issued an order in which it granted the appeal, subject to proof of timeliness, assigned it Docket No. 04 14164-A, and ordered that further proceedings be held.

- 1 2. Mr. Kunst is 62 years old. After graduating from high school, he  
2 obtained an associate's degree from a California community college. He  
3 completed a four-year apprenticeship program in auto mechanics in  
4 Germany. After completing this program, he returned to the United  
5 States and worked as a mechanic servicing Porsche and other  
6 German cars from 1966 to 1988. He owned his own shop from 1979 to  
7 1985. However, his business was not successful and he returned to  
8 working for others as an automobile mechanic from 1985 to 1988.
- 9 3. Mr. Kunst worked for Boeing from 1988 to 2002. He worked as an  
10 assembler/installer (*i.e.*, an airplane mechanic) except for a five-year  
11 period between May 1997 and May 2002. During the latter period, he  
12 worked as a quality control inspector. Mr. Kunst's position as an  
13 assembler/installer involved a medium level of physical exertion.
- 14 4. On August 1, 2002, Mr. Kunst sustained an industrial injury during the  
15 course of his employment as an assembler/installer for Boeing. On that  
16 day, Mr. Kunst twisted his right ankle and knee when he caught his right  
17 foot in an aircraft stringer.
- 18 5. The following conditions were proximately caused by Mr. Kunst's  
19 August 1, 2002 industrial injury. This injury aggravated pre-existing  
20 degenerative joint disease in the right knee and ankle. The injury also  
21 caused an ACL tear and a tear of the lateral meniscus in the right knee.  
22 Additionally, Mr. Kunst developed synovitis in the knee joint and right  
23 knee and ankle sprains.
- 24 6. As of February 25, 2004, the right ankle and knee conditions  
25 proximately caused by Mr. Kunst's August 1, 2002 industrial injury were  
26 fixed and stable.
- 27 7. As of February 25, 2004, Mr. Kunst's permanent impairment proximately  
28 caused by the August 1, 2002 injury was equal to 10 percent of the  
29 amputation value of the right leg above the knee joint with a short thigh  
30 stump (three inches or below the tuberosity of the ischium).
- 31 8. Prior to the August 1, 2002 industrial injury, Mr. Kunst had been injured  
32 numerous times. His previous injuries include: a 1961 left wrist  
fracture; a 1962 de-gloving injury to his right ring finger; a left clavicle  
fracture in his shoulder that resulted in surgery between 1966 and 1969;  
injuries to his left calf, hip, and buttock between 1966 and 1969; a torn  
left Achilles tendon in 1973; a fractured vertebrae in the neck at C6-C7,  
which resulted in a cervical fusion in 1982; and a right shoulder  
industrial injury in 1996. The last injury resulted in a rotator cuff tear,  
which was treated surgically in 2000. Mr. Kunst obtained a permanent  
partial disability award for this injury equal to 10 percent of the right arm  
at or above the deltoid insertion.

- 1 9. Mr. Kunst also had developed the following health problems prior to his  
2 August 1, 2002 industrial injury. He was overweight and had high blood  
3 pressure.
- 4 10. From February 12, 2003 through February 25, 2004, and continuing  
5 thereafter, Mr. Kunst had the following physical limitations due to right  
6 leg conditions proximately caused by his August 1, 2002 industrial  
7 injury, combined with impairments that pre-existed this injury. Mr. Kunst  
8 was limited to performing sedentary or light work. He could sit thirty to  
9 forty-five minutes at a time for five to six hours in an eight-hour day. He  
10 could stand occasionally, for twelve to thirty minutes at a time, for four  
11 hours in an eight-hour day. He could only walk occasionally. His ability  
12 to use his arms to reach was limited. When using light force, he could  
13 continuously perform activities requiring partial reaching, but could only  
14 occasionally engage in extended reaching, and could only seldom do  
15 any overhead reaching. When using moderate to heavy force, he was  
16 limited to frequent to continuous partial reaching, but could only seldom  
17 engage in any extended reaching and could never engage in any  
18 overhead reaching. He was precluded from any repetitive motions or  
19 repeated impact activities involving his legs. As such, he was unable to  
20 engage in any repetitive kneeling, crouching, crawling, or squatting.  
21 Mr. Kunst could not engage in any sustained or repetitive neck flexion or  
22 extension, nor could he engage in any full head rotation. Finally, he had  
23 lifting limitations consistent with sedentary to light employment. For  
24 example, he could only occasionally lift objects weighing twenty pounds.
- 25 11. Following the August 1, 2002 industrial injury, Mr. Kunst cut off the tips  
26 of his left index and middle fingers while using a saw in June 2003. This  
27 accident did not result in any permanent limitations, and did not affect  
28 his employability.
- 29 12. From February 12, 2003 through February 25, 2004, based on  
30 Mr. Kunst's pre-existing conditions, combined with the disabilities  
31 proximately caused by his August 1, 2002 industrial injury, Mr. Kunst  
32 was unable to perform or obtain reasonably continuous employment in  
the competitive labor market, when taking into consideration his age,  
education, training, work history, and transferable skills.
13. As of February 25, 2004, Mr. Kunst was permanently unable to engage  
in reasonably continuous employment in the competitive labor market  
due to conditions proximately caused by the August 1, 2002 industrial  
injury, combined with his pre-existing impairments, and considering his  
age, education, training, work history, and transferable skills.

### **CONCLUSIONS OF LAW**

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties to and the subject matter of these appeals.

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2. The cross-appeal filed by The Boeing Company on July 19, 2004, was timely filed.
  3. From February 12, 2003 to February 25, 2004, inclusive, Mr. Kunst was a temporarily totally disabled worker within the meaning of RCW 51.32.090.
  4. As of February 25, 2004, Mr. Kunst was a permanently totally disabled worker, within the meaning of RCW 51.08.160.
  5. The February 25, 2004 order is incorrect and is reversed. This matter is remanded to the Department with directions to require the self-insured employer to pay Mr. Kunst time loss compensation from February 12, 2003 to February 25, 2004. The Department is further directed to determine that Mr. Kunst was a permanently totally disabled worker, effective February 25, 2004, and entitled to further benefits in accordance with that status.

14 It is so **ORDERED**.

15 Dated this 6th day of December, 2005.

16 BOARD OF INDUSTRIAL INSURANCE APPEALS

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19 /s/ \_\_\_\_\_  
20 THOMAS E. EGAN Chairperson

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22 /s/ \_\_\_\_\_  
23 FRANK E. FENNERTY, JR. Member