

Sadecki, Eva

LOSS OF EARNING POWER (RCW 51.32.090(3))

Wages (RCW 51.08.178)

Loss of earning power benefits received at the time of injury are not wages for the purpose of calculating time-loss compensation benefits. ...*In re Eva Sadecki*, **BIIA Dec., 06 11468 (2007)** [*Editor's Note*: The Board's decision was appealed to superior court under Yakima County Cause No.07-2-02111-5.]

Scroll down for order.

1 In 2003, Ms. Sadecki underwent a C5-6 fusion as treatment for the W-claim industrial injury.
2 Following the surgery, Ms. Sadecki was released to work with restrictions on lifting, pushing, or
3 pulling more than 25 pounds. She worked at the Medical Center as a supervisor for three days, but
4 found that she could not perform the job. Ms. Sadecki then worked in a temporary position as a
5 supervisor clerk until September 2003, when she started as a staffing coordinator for the Medical
6 Center. The staffing coordinator position paid \$17.45 an hour and Ms. Sadecki averaged 32 hours
7 a week. Her employer did not provide health care benefits. Ms. Sadecki was paid loss of earning
8 benefits in the W-claim.
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10 On December 30, 2003, Ms. Sadecki sustained a low back injury in the course of her
11 employment as staffing coordinator with the Medical Center. She filed Claim No. Y-719137 (the
12 Y-claim), which was allowed. Ultimately, Ms. Sadecki underwent lumbar surgery as treatment for
13 her December 30, 2003 injury.
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15 As of the date of the Y-claim industrial injury (December 30, 2003), the W-claim remained
16 open and she was receiving loss of earning power benefits in the amount of \$1,260.74 every 14
17 days. On May 4, 2006, the Board issued an Order on Agreement of Parties closing the W-claim
18 with loss of earning power as paid through December 30, 2003, inclusive; and paying a permanent
19 partial disability award of Category 3 permanent cervical and cervico-dorsal impairment. The
20 factual basis for the order included the parties' agreement that, as of December 31, 2003,
21 Ms. Sadecki was no longer entitled to loss of earning power benefits under the W-claim; and that
22 any new disability is attributable to the Y-claim.
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24 Ms. Sadecki currently is receiving time loss compensation in the Y-claim. The Department's
25 wage calculation for this claim, which is at issue in the present appeal, was based solely on her
26 \$2,512.80 average monthly wage as of the date of injury, December 30, 2003. Ms. Sadecki argues
27 that the loss of earning power benefits paid in the Y-claim do not fully compensate her for lost
28 earning capacity because they do not reflect the additional loss of earning power caused by her
29 October 17, 2002 injury.
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31 We are sympathetic to Ms. Sadecki's circumstance but cannot identify any legal basis for
32 providing the relief she seeks. Ms. Sadecki cites *In re Lloyd Larson*, BIIA 86 0479 (1988), for the
33 proposition that where there are two open claims, a worker's loss of earning under the first claim
34 does not extinguish merely because she sustains a second industrial injury, for which she is entitled
35 to time loss in the second claim. Ms. Sadecki does not misstate *Larson's* holding. However, in
36 Ms. Sadecki's case, her loss of earning power was extinguished by the May 2006 order on
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1 agreement of parties effective December 31, 2003, the day after the December 30, 2003 industrial
2 injury.
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4 Ms. Sadecki contends that, because the loss of earning power benefits in the W-claim were
5 paid as of the date of the Y-claim injury, we should treat the loss of earning power benefits paid in
6 the W-claim as "wages" when calculating time loss compensation in the Y-claim. Similar
7 arguments were rejected in two prior Board decisions. In *In re Starr Vincent*, Dckt. No. 97 0190
8 (January 22, 1999), we found no basis in law for claimant's contention that the wage calculation in
9 her second industrial insurance claim should include in the loss of earning power benefits from a
10 prior claim. Similarly, in *In re Ronnie L. Sanders*, Dckt. No. 99 14713 (December 5, 2000), we
11 determined that Mr. Sanders had "not shown that the Legislature intended that the basis for time
12 loss compensation would include loss of earning power benefits under another, open industrial
13 insurance claim." *Sanders* at 4. We find no reason to overturn this precedent.
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19 In the alternative, Ms. Sadecki asks that we use the wage rate from the October 17, 2002
20 injury claim (the W-claim) as the wage rate in the December 30, 2003 injury claim (the Y-claim).
21 We reject Ms. Sadecki's request because it is inconsistent with the plain language of
22 RCW 51.08.178(1), which mandates the use of wages received by the claimant, as of the date of
23 injury, as the basis for the wage compensation rate in an industrial insurance claim.
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26 After consideration of the Proposed Decision and Order; the claimant's Petition for Review;
27 the Department's Petition for Review, and a careful review of the entire record before us, we make
28 the following:
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31 **FINDINGS OF FACT**

- 32
33 1. On January 9, 2004, the claimant, Eva C. Sadecki, filed an Application
34 for Benefits with the Department of Labor and Industries for an injury
35 she sustained on December 30, 2003, in the course of her employment
36 with Yakima Regional Medical Center. The claim was allowed and
37 benefits paid. On February 17, 2004, the Department issued an order in
38 which it set the claimant's wage rate based on a wage at the time of
39 injury of \$17.45 per hour, eight hours per day, four days per week, for a
40 total of \$2,512.80 per month; and her status of married with no
41 dependent children. On March 3, 2004, Ms. Sadecki filed a protest of
42 the February 17, 2004 Department order. On December 14, 2005, the
43 Department issued an order in which it affirmed its February 17, 2004
44 order. On February 6, 2006, claimant filed a Notice of Appeal of the
45 December 14, 2005 order. On March 17, 2006, the Board issued an
46 order in which it granted the appeal; assigned Docket No. 06 11468; and
47 directed that further proceedings be held.

- 1 2. On December 30, 2003, while acting in the course of her employment
2 with Yakima Regional Medical Center, Eva Sadecki sustained an injury
3 to her low back when she lifted a log book.
4
- 5 3. Ms. Sadecki sustained a prior industrial injury on October 17, 2002,
6 which was allowed in Claim No. W-750290 (W-claim). Her average
7 monthly wage at the time of this injury was \$4,810. Loss of earning
8 power benefits were paid. The loss of earning power benefits in the
9 W-claim were discontinued effective December 31, 2003, per a May 4,
10 2004 Board Order on Agreement of Parties.
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- 12 4. As of December 30, 2003, the date of injury in Claim No. Y-719137,
13 Ms. Sadecki was married with no dependent children; was paid \$17.45
14 an hour; and worked eight hours per day, four days per week. Her
15 employer was not providing health care benefits. Her average monthly
16 wage was \$2,512.80 per month.
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18 **CONCLUSIONS OF LAW**

- 19 1. The Board of Industrial Insurance Appeals has jurisdiction over the
20 parties to and the subject matter of this appeal.
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- 22 2. Per RCW 51.08.178, Ms. Sadecki's wage rate in Claim No. Y-719137 is
23 properly based on her average monthly wage as of December 30, 2003,
24 the date of the industrial injury in Claim No. Y-719137.
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- 26 3. The loss of earning power benefits Ms. Sadecki was receiving on
27 December 30, 2003, in Claim No. W-750290, do not constitute wages or
28 consideration of a like nature to wages, within the meaning of
29 RCW 51.08.178.
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- 31 4. The Department order of December 14, 2005, is correct and is affirmed.
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33 It is so **ORDERED**.

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35 Dated this 11th day of June, 2007.

36 BOARD OF INDUSTRIAL INSURANCE APPEALS

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40 /s/ _____
41 THOMAS E. EGAN Chairperson

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44 /s/ _____
45 CALHOUN DICKINSON Member
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