

## **Meeks, Steve**

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### **TREATMENT**

#### **Fixity of condition**

The Department can not deny payment of medical benefits on the basis that the worker has reached maximum medical improvement without also making a determination of permanent disability. ....*Steve Meeks, 06 20754 (2008)*

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

1 **IN RE: STEVE A. MEEKS** ) **DOCKET NOS. 06 20754 & 06 20852**  
2 **CLAIM NO. Y-705566** ) **DECISION AND ORDER**

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3 APPEARANCES:  
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5 Claimant, Steve A. Meeks, by  
6 Law Office of James A. Nelson, per  
7 James A. Nelson

8 Employer, Shipp Construction, Inc., by  
9 Washington Contract Loggers Association, Inc., per  
10 Rebecca Aikens

11 Department of Labor and Industries, by  
12 The Office of the Attorney General, per  
13 Debra M.H. Tollefson, Assistant

14 **Docket No. 06 20754:** On October 26, 2006, the claimant, Steve A. Meeks, filed an  
15 appeal with the Board of Industrial Insurance Appeals, from an order of the Department of Labor  
16 and Industries dated September 8, 2006 order. In this order, the Department affirmed a June 26,  
17 2006 letter to Kevin T. Caserta, M.D. In this letter, the Department determined that Mr. Meeks had  
18 reached maximum medical improvement and that the Department would stop paying for opioid  
19 therapy 30 days from the date of the letter, to allow Dr. Caserta sufficient time to find an alternative  
20 payment source or to assist the worker in a gradual detoxification or weaning process. The  
21 Department order is **REVERSED AND REMANDED**.

22 **Docket No. 06 20852:** On October 30, 2006, the claimant filed an appeal with the Board  
23 from an October 4, 2006 Department order. In this order, the Department affirmed an April 27,  
24 2006 order, in which the Department denied responsibility for the claimant's diarrhea condition, as  
25 unrelated to the industrial injury. The Department order is **REVERSED AND REMANDED**.

26 **ISSUES**

27 **Docket No. 06 20754:** May the Department, as a matter of law, terminate its payment for  
28 opioid medications in an open claim under RCW 51.36.010 and WAC 296-20-03022, based on a  
29 determination that the worker has reached maximum medical improvement (MMI), without also  
30 determining the extent of permanent disability?

31 **Docket No. 06 20852:** Was the industrial injury a proximate cause of Mr. Meeks' diarrhea  
32 condition?

1 **PROCEDURAL AND EVIDENTIARY MATTERS**

2 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
3 and decision on a timely Petition for Review filed by the Department to a Proposed Decision and  
4 Order issued on October 26, 2007.

5 In Docket No. 06 20754, the industrial appeals judge affirmed the September 8, 2006 order.  
6 He also determined that, as of September 8, 2006, Mr. Meeks' low back and right leg conditions,  
7 proximately caused by the industrial injury, had reached MMI and he did not require further medical  
8 treatment. Finding of Fact No. 7; Conclusion of Law No. 2.

9 In Docket No. 06 20852, the industrial appeals judge reversed the October 4, 2006 order  
10 and remanded the matter to the Department with direction to accept responsibility for the claimant's  
11 diarrhea condition. He also determined that, as of October 4, 2006, that condition had reached  
12 MMI and did not require medical treatment. Finding of Fact No. 10; Conclusion of Law No. 5.

13 In its Petition for Review, the Department contends that the industrial appeals judge should  
14 have sustained its objections during the deposition of Kevin T. Caserta, M.D., at pages 14 through  
15 15. As discussed below, we agree. We have reviewed all other evidentiary rulings in the record of  
16 proceedings and find that no other prejudicial error was committed. All other rulings are affirmed.

17 In addition to this evidentiary issue, the Department contends that there is no basis in the  
18 record for the determination that Mr. Meeks' diarrhea was proximately caused by the industrial  
19 injury. As discussed below, we disagree.

20 Other than these two issues, the Department stresses that it is "generally in agreement" with  
21 the Proposed Decision and Order, in particular the determination that Mr. Meeks has reached MMI  
22 and does not require further treatment. The Department requests that, in the event we find the  
23 diarrhea condition related to the industrial injury, Finding of Fact No. 10 and Conclusion of Law  
24 No. 5 not be disturbed. However, once any party has sought review, we are free to address all  
25 contested issues of law and fact. *In re Richard Sims*, BIIA Dec. 85 1748 (1986). In addition to the  
26 issues raised by the Department, we address several other questions pertaining to the scope of  
27 review in these appeals.

28 The industrial appeals judge characterized the issues on appeal as:

29 **Docket No. 06 20754**: Whether the claimant's industrial injury condition to  
30 his low back and right leg required further medical treatment.

31 **Docket No. 06 20852**: Whether the claimant's condition, described as  
32 diarrhea, was proximately caused by the industrial injury, and if so,

1 whether that condition required further proper and necessary medical  
2 treatment.

3 Proposed Decision and Order, at 1; 8/28/07 Tr. at 3.

4 This statement of the issues is too broad. In Docket No. 06 20754, the Department sent a  
5 June 26, 2006 letter to Dr. Caserta advising him that it would stop paying for opioid treatment  
6 30 days from the date of the letter, because Mr. Meeks had reached MMI. After the worker  
7 protested, the Department affirmed that determination on September 8, 2006, and Mr. Meeks  
8 appealed. The issue in this appeal is whether the Department may, as a matter of law, terminate its  
9 payment for opioid treatment in an open claim under RCW 51.36.010 and WAC 296-20-03022,  
10 based on a determination that the worker has reached MMI, without also determining the extent of  
11 permanent disability.

12 There is no question that the Department cannot continue to pay for opioid medications once  
13 the injured worker has reached MMI and permanent disability has been addressed.  
14 RCW 51.36.010 is explicit on this point. However, what the Department has attempted to do here  
15 is to determine that Mr. Meeks has reached MMI, terminate payment for his opioid medications, and  
16 keep the claim open. That it cannot do. Thus, as a matter of law, the September 8, 2006 order, in  
17 which the Department affirmed the June 26, 2006 letter, must be reversed.

18 In Docket No. 06 20852, the Department issued an order on April 26, 2006, in which it  
19 accepted responsibility for the condition diagnosed as anal dysfunction, incontinence, due to  
20 neuropathy in the inferior rectal nerves. Jurisdictional History; 8/28/07 Tr. at 21-22. The next day,  
21 the Department denied responsibility for Mr. Meeks' diarrhea. After Mr. Meeks protested, the  
22 Department affirmed that order on October 4, 2006, and Mr. Meeks appealed. The issue in this  
23 appeal is whether Mr. Meeks' diarrhea was proximately caused by the industrial injury. Since the  
24 Department segregated this condition, it has not addressed the question of what, if any, treatment  
25 Mr. Meeks would be entitled to, or whether the condition has reached MMI. The industrial appeals  
26 judge exceeded the scope of the Board's review in Docket No. 06 20852 by determining that  
27 Mr. Meeks had reached MMI in this open claim. Finding of Fact No. 10; Conclusion of Law No. 5.  
28 The only issue before the Board in this appeal is whether the diarrhea condition should have been  
29 segregated.

### 30 **DECISION**

31 The Proposed Decision and Order contains an excellent overview of the facts, which we will  
32 not repeat here. Briefly, Mr. Meeks began experiencing serious right leg and low back problems

1 while driving a dump truck for Shipp Construction, Inc., on September 3, 2003. As a result, he  
2 underwent a November 12, 2003 lumbar laminectomy at L4-5, to relieve nerve root compression,  
3 with poor results. The surgeon was Carl Birchard, M.D. The Department required Mr. Meeks  
4 receive treatment from Dr. Birchard, despite the fact that he had previously operated on Mr. Meeks,  
5 with a poor outcome. Exhibit No. 1; WAC 296-20-065.

6 As a result of the November 12, 2003 surgery, Mr. Meeks developed a spinal fluid leak with  
7 associated headaches. However, Dr. Birchard was on vacation, so Mr. Meeks had to wait until  
8 January 1, 2004, to undergo further surgery, a blood patch to stop the leak. While that repair was  
9 successful, Mr. Meeks developed diarrhea immediately following the surgery. 8/28/07 Tr. at 15-16.  
10 He has also developed chronic regional pain syndrome or reflex sympathetic dystrophy (RSD) in  
11 the right lower extremity.

12 Shortly after the January 1, 2004 surgery, Dr. Birchard referred Mr. Meeks to Kevin T.  
13 Caserta, M.D., a specialist in physical medicine and rehabilitation. Dr. Caserta has been the  
14 treating physician since January 26, 2004. He has tried many different treatment modalities and  
15 medications to control Mr. Meeks' pain related to the RSD. Only opioids work, and Mr. Meeks has  
16 exhibited no substance abuse issues. When he does not have access to opioids, he suffers flare  
17 ups of "exquisite" pain and goes to the emergency room. Caserta Dep. at 13. With respect to the  
18 diarrhea condition, all of the treatment options tried by Dr. Caserta were unsuccessful, and he  
19 referred Mr. Meeks to gastroenterologist James B. Wagonfeld, M.D., for evaluation.

20 Dr. Wagonfeld was not called as a witness by either party. Instead, the worker presented  
21 the testimony of Dr. Caserta and the Department presented the testimony of Charles Bedard, M.D.,  
22 a gastroenterologist who conducted an independent medical examination (IME) on November 15,  
23 2005. Dr. Wagonfeld saw Mr. Meeks on three occasions and both testifying doctors were asked  
24 about apparently conflicting portions of his reports. The worker's attorney raised no objections to  
25 Dr. Bedard's testimony regarding Dr. Wagonfeld's opinions (Bedard Dep. at 9-10), but the  
26 Department objected to the worker's attorney's questions regarding those opinions (Caserta Dep. at  
27 14-15). The industrial appeals judge overruled the Department's objections.

28 Dr. Caserta's testimony unfolded in the following manner. The claimant's attorney showed  
29 him a copy of the report Dr. Wagonfeld had addressed to him. The attorney then quoted two  
30 opinions from that report, and asked if Dr. Caserta agreed with them. Caserta Dep. at 15.<sup>1</sup> The  
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32 <sup>1</sup> "That the patient's diarrhea is related to a neurologic injury seems unavoidable." "His diarrhea occurred  
chronologically following his last back surgery." Caserta Dep. at 15.

1 Department objected to the worker's attorney essentially testifying to Dr. Wagonfeld's opinions.  
2 Caserta Dep. at 14-15.

3 ER 703 and 705 permit an expert to give an opinion based on facts and data that may not  
4 themselves be admissible. However, neither rule permits someone else to act as a conduit for a  
5 non-testifying expert's opinions. See, for example, *In re Welfare of J.M.*, 130 Wn.App. 912 (2005).  
6 We therefore sustain the Department's objections and strike page 14, line 14, through page 15, line  
7 11 in Dr. Caserta's deposition. For the same reasons, we also strike Dr. Bedard's testimony at  
8 page 9, line 11 (beginning with "and was not able to come up with a reason"), through line 12; page  
9 9, lines 20 through 24; and page 17, lines 13 through 25.

10 We note that, on the one hand, the worker's attorney quoted Dr. Wagonfeld as saying: "That  
11 the patient's diarrhea is related to a neurologic injury seems unavoidable." Caserta Dep. at 15. On  
12 the other hand, Dr. Bedard testified that his "chart review indicated a report from Dr. Wagonfeld  
13 which indicated that he did not have any clue as to what was causing his diarrhea problem."  
14 Bedard Dep. at 9. Only Dr. Wagonfeld himself could have reconciled the apparent discrepancy in  
15 his reports. That is precisely why none of his uncross-examined opinions should be considered to  
16 prove the truth of the matter asserted. Indeed, it is clear from the way the industrial appeals judge  
17 analyzed the evidence that he did not consider Dr. Wagonfeld's opinions. Thus, even after  
18 excluding those opinions, we analyze the medical testimony the same way as the industrial appeals  
19 judge.

20 **Was the industrial injury a proximate cause of Mr. Meeks' diarrhea condition?** At the  
21 outset, we accept Dr. Bedard's description of the difference between fecal incontinence and  
22 diarrhea, which Dr. Caserta did not dispute. The first involves control of the rectal muscles; the  
23 second involves the character of the stool. Bedard Dep. at 13; Caserta Dep. at 15-17. The  
24 Department has accepted responsibility for fecal incontinence, apparently based on Dr. Bedard's  
25 opinion (Bedard Dep. at 13), and is paying for Mr. Meeks' Depends. 8/28/07 Tr. at 22. The  
26 Department has denied responsibility for the diarrhea. The question before us is whether the  
27 industrial injury was a cause of that condition.

28 We turn first to Dr. Caserta's testimony. After striking page 14, line 14, through page 15, line  
29 11, in his deposition, we are left with the following exchange:

30 Q. I'll show you a copy of this report which is addressed to you from  
31 Dr. Wagonfeld. Do you recognize this?

32 A. Yes.

1 . . . .

2 Q. I would ask whether or not you agree with that conclusion.

3  
4 A. I would say in terms of time frame itself, obviously the diarrhea started at the  
5 same time as his neurologic condition. The diarrhea is atypical of what you would  
6 have expected to see with somebody with a lower lumbar injury such as Steve  
7 itself. So, I would say the time frame I would a hundred percent concur. In terms  
8 of the symptoms which are more atypical, I'm not sure a hundred percent why he  
9 has the diarrhea.

10 Caserta Dep. at 14-15.

11 As the Department points out in its Petition for Review, Dr. Caserta did not specifically testify  
12 that the industrial injury was a cause of the diarrhea on a more-probable-than-not basis. However,  
13 "[i]t is sufficient if the medical testimony *shows* the causal connection. If, from the medical  
14 testimony given and the facts and circumstances proven by other evidence, a reasonable person  
15 can infer that the causal connection exists, we know of no principle which would forbid the drawing  
16 of that inference." *Sacred Heart Medical Ctr. v. Department of Labor & Indus.*, 92 Wn.2d 631, 636-  
17 637 (1979). "The evidence is sufficient to prove causation if, from the facts and circumstances and  
18 the medical testimony given, a reasonable person can infer that a causal connection exists."  
19 *Intalco Aluminum Corp. v. Department of Labor & Indus.*, 66 Wn. App. 644, 655 (1992), *review*  
20 *denied*, 120 Wn.2d 1031 (1993). Indeed, while he did not cite *Intalco* and *Sacred Heart*, the  
21 industrial appeals judge's analysis is entirely consistent with those court opinions. We cannot  
22 improve upon the discussion at page 9, line 28, through page 10, line 29, of the Proposed Decision  
23 and Order:

24 In Docket No. 06, 20852, the Department order of October 4,  
25 2006 determined, through its affirmation of a prior order, that Mr. Meeks'  
26 diarrhea condition was unrelated to the industrial injury. The issue  
27 presented is acceptance or rejection of that condition. While the  
28 claimant had some sort of diarrhea condition in high school for a week  
29 or so, he was otherwise normal until the day of his second surgery on  
30 January 1, 2004. That operation was necessary to repair problems  
31 resulting from the initial operation for this industrial injury. On that very  
32 day, January 1, 2004, the claimant contracted or developed his  
unresolved diarrhea condition. Although the frequency of his diarrhea  
bowel movements has diminished, the condition has not abated and he  
has continued to have episodes several times daily. Diagnostic testing  
identified some nerve damage affecting the claimant's rectal area, from  
which the Department accepted fecal incontinence as part of the  
industrial injury condition.

1 Dr. Bedard, the Department's medical expert, opined the fecal  
2 incontinence differs from diarrhea and concluded the industrial injury did  
3 not cause Mr. Meeks' diarrhea condition. He was at a loss to explain  
4 what brought about that condition for the claimant. Dr. Caserta, the  
5 attending physician, believed the diarrhea was somehow caused by the  
6 second operation, but he acknowledged the claimant's case was not  
7 typical and he was not able to identify any mechanism that would have  
8 caused the condition from the surgery. The timing of the onset was  
9 important to Dr. Caserta's opinion about causality.

10 Mr. Meeks did not have diarrhea before the industrial injury, nor is  
11 there any known susceptibility to that condition in the record. He had his  
12 gall bladder removed in 2001, a surgery that sometimes produces  
13 chronic diarrhea. That surgery was two years prior to the industrial  
14 injury, and because the diarrhea began on January 1, 2004, the gall  
15 bladder removal is an unlikely factor. He also took Prednisone which  
16 can also result in the condition. The Prednisone Mr. Meeks took was  
17 prescribed as one of the many treatments he was given for this  
18 industrial injury. That drug was prescribed by Dr. Caserta, who began  
19 seeing Mr. Meeks after the diarrhea condition began. It, too, is not a  
20 likely factor. The only remaining variable is the hospital experience the  
21 claimant had during the second surgery. The operation itself may have  
22 produced the condition in some way not yet understood by medical  
23 science, or perhaps some other factor from the hospital setting itself  
24 may have manifested the condition.

25 Probable cause is a matter of likelihood of there being a cause  
26 and effect. An understanding of the precise mechanism is unnecessary.  
27 He did not have a diarrhea problem before he went to the hospital for his  
28 January 1, 2004 surgery, but he has had the condition since. Because  
29 Mr. Meeks was in the hospital and undergoing the surgery done  
30 because of the industrial injury, that injury proximately caused him to  
31 have the diarrhea condition he now has. It should be an accepted  
32 industrial event.

24 Proposed Decision and Order, page 9, line 28, through page 10, line 29.

25 In addition, we note that Dr. Bedard did not entirely rule out the industrial injury as a cause of  
26 the diarrhea, testifying instead that: "I don't believe it's possible to say more probably than not."  
27 Bedard Dep. at 14. Dr. Bedard pointed out that Mr. Meeks "takes large doses of Ibuprofen, which  
28 also is a cause of diarrhea, which potentially could be a cause of diarrhea." Bedard Dep. at 10, 14.  
29 In addition, he suggested that the fact Mr. Meeks had his gallbladder removed in 2001 might have  
30 played a role in the development of the diarrhea on January 1, 2004. When asked how soon after  
31 the gall bladder removal one would normally expect diarrhea to occur, he responded: "It can come  
32 at variable times. It may up [*sic*] show up right away. If you have the additive effect of taking high



1 doses of Ibuprofen, as a result of the injury, and plus you have the gall bladder problem, it could be  
2 an additive problem. I mean, that's hypothetical. Those are potential causes of diarrhea." Bedard  
3 Dep. at 15.

4 Like the industrial appeals judge, we doubt that the 2001 gallbladder surgery alone could be  
5 the sole cause of Mr. Meeks' diarrhea, given the fact that he began experiencing diarrhea in the  
6 hospital immediately following the January 1, 2004 surgery to repair the spinal fluid leak. In light of  
7 that temporal connection, it is reasonable to infer that the diarrhea is related in some way to that  
8 surgery and that hospital stay, as Dr. Caserta suggests, even though the exact mechanism has not  
9 been established. Alternatively, perhaps, as Dr. Bedard suggests, the high dosages of Ibuprofen  
10 used to treat the industrial injury, coupled with the absence of a gall bladder, contributed to the  
11 development of the diarrhea condition. Either way, the record is sufficient to permit a reasonable  
12 person to infer that a causal connection exists. Like the industrial appeals judge, we conclude that  
13 the industrial injury was a proximate cause of Mr. Meeks' diarrhea condition.

14 **May the Department, as a matter of law, terminate its payment for opioid medications**  
15 **in an open claim under RCW 51.36.010 and WAC 296-20-03022, based on a determination**  
16 **that the worker has reached MMI, without also determining the extent of permanent**  
17 **disability?** WAC 296-20-03022 provides that "[o]nce the worker's condition has reached maximum  
18 medical improvement, further treatment with opioids is not payable." Presumably that language is  
19 based on RCW 51.36.010, which explicitly precludes the Department from paying for opioids  
20 beyond the date when compensation has been awarded for permanent disability. Thus, the  
21 Department was free to issue an order in which it determined that Mr. Meeks had reached MMI;  
22 addressed the question of whether he had any permanent disability; and notified him that no opioid  
23 therapy would be paid for after the date of the order. Prior to the issuance of that order, it would  
24 also have been appropriate to notify Dr. Caserta that the claim was ready for a determination of  
25 permanent disability and that opioids would no longer be paid for after the Department had issued  
26 the relevant order.

27 However, instead of following that procedure, the Department notified Dr. Caserta and  
28 Mr. Meeks that it would stop paying for opioid therapy 30 days from June 26, 2006, without  
29 reference to any determination of permanent disability. That is, the Department bifurcated the  
30 process by declaring that the worker had reached MMI, and denying payment for opioids for that  
31 reason, but keeping the claim open, contrary to the longstanding rule that the Industrial Insurance  
32 Act contemplates two separate, distinct, and mutually exclusive classifications--temporary disability

1 status and permanent disability status. *Hunter v. Department of Labor & Indus.*, 43 Wn.2d 696  
2 (1953).

3 Under *Hunter*, Mr. Meeks' status is either temporary or it is permanent; it cannot be some  
4 combination of the two. MMI does not occur in a vacuum; it must be linked with a determination of  
5 whether there is any permanent disability. The Department therefore acted prematurely in  
6 announcing that it would terminate payment for opioids within 30 days of June 26, 2006, without  
7 also addressing the question of permanent disability. Under RCW 51.36.010, until the Department  
8 has issued an order in which it addresses permanent disability, Mr. Meeks' status remains  
9 temporary, and the Department may not deny payment for opioids based on its determination that  
10 Mr. Meeks has reached MMI. It is for that reason that we reverse the September 8, 2006 order.

11 **FINDINGS OF FACT**

- 12 1. On September 25, 2003, the Department received an Application for  
13 Benefits alleging a September 3, 2003 industrial injury to Steve A.  
14 Meeks, while in the course of his employment with Shipp Construction,  
15 Inc. On October 27, 2003, the Department allowed the claim.

16 On April 27, 2006, the Department determined that Mr. Meeks' diarrhea  
17 condition was not caused by the industrial injury. The claimant  
18 protested that order on May 8, 2006, and on October 4, 2006, the  
19 Department affirmed the April 27, 2006 order. On October 30, 2006, the  
20 claimant filed a Notice of Appeal with the Board of Industrial Insurance  
21 Appeals, from the October 4, 2006 order. The Board granted the appeal  
22 on December 1, 2006, assigned it Docket No. 06 20852, and directed  
23 that further proceedings be held.

24 In a June 26, 2006 letter, the Department determined that Mr. Meeks  
25 had reached maximum medical improvement, and informed him and his  
26 doctor that the Department would cease paying for opioid therapy 30  
27 days from June 26, 2006. On July 11, 2006, Mr. Meeks protested the  
28 letter, and on September 8, 2006, the Department affirmed the June 26,  
29 2006 letter. On October 26, 2006, the claimant filed a Notice of Appeal  
30 with the Board from the September 8, 2006 order. The Board granted  
31 the appeal on December 1, 2006, assigned it Docket No. 06 20754, and  
32 directed that further proceedings be held.

- 28 2. On September 3, 2003, Steve A. Meeks sustained an industrial injury to  
29 his low back and right leg, while in the course of his employment with  
30 Shipp Construction, Inc., when he was driving a dump truck and helping  
31 his employer construct a logging road.
- 32 3. As a proximate result of the September 3, 2003 industrial injury,  
Mr. Meeks underwent two surgeries. On November 12, 2003, a lumbar

1 laminectomy at L4-5 was performed, to relieve nerve root compression.  
2 As a result of that surgery, Mr. Meeks developed a spinal fluid leak with  
3 associated headaches. On January 1, 2004, he underwent a further  
4 surgery, to repair the leak.

4. **Docket No. 06 20754**: As a proximate result of the industrial injury and the two operations it required, Mr. Meeks developed chronic regional pain syndrome or reflex sympathetic dystrophy in his right lower extremity, to the degree that he has constant pain in his right leg and right foot.
5. Mr. Meeks was prescribed opioid medications for his residual pain, proximately caused by the industrial injury.
6. In a June 26, 2006 letter, the Department determined that Mr. Meeks had reached maximum medical improvement, and informed him and his doctor that the Department would cease paying for opioid therapy 30 days from June 26, 2006. After Mr. Meeks protested that letter on July 11, 2006, the Department affirmed the June 26, 2006 letter in a September 8, 2006 order.
7. The Department made no determination regarding whether Mr. Meeks had any permanent disability in the June 26, 2006 letter or the September 8, 2006 order, and the claim remained open.
8. **Docket No. 06 20852**: Immediately following the January 1, 2004 surgery for his industrial injury, Mr. Meeks developed a diarrhea condition which has continued and has not resolved.
9. Mr. Meeks' diarrhea condition was proximately caused by the industrial injury.

#### **CONCLUSIONS OF LAW**

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties to and the subject matter of these consolidated appeals.
2. **Docket No. 06 20754**: Until the Department has issued an order in which it addresses permanent disability, Mr. Meeks' status remains temporary, and the Department may not deny payment for opioids based on its determination that Mr. Meeks has reached maximum medical improvement. RCW 51.36.010.
3. The September 8, 2006 Department order is incorrect and is reversed. The claim is remanded to the Department, with direction to issue an order in which it states that payment for opioid medications will not be denied for the reason that Mr. Meeks has reached maximum medical improvement unless and until the Department also makes a

determination, at the same time, regarding the extent of Mr. Meeks' permanent disability, if any.

4. **Docket No. 06 20852**: Mr. Meeks' diarrhea condition was proximately caused by the industrial injury, and it is a covered condition within the meaning of RCW 51.08.100.
5. The October 4, 2006 Department order is incorrect and is reversed. The claim is remanded to the Department with direction to issue an order in which it accepts responsibility for Mr. Meeks' diarrhea condition, and to take further action, consistent with the law and the facts.

It is so **ORDERED**.

DATED: March 10, 2008.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/  
THOMAS E. EGAN Chairperson

/s/  
FRANK E. FENNERTY, JR. Member

/s/  
CALHOUN DICKINSON Member