

Pineda, Soledad

[INJURY \(RCW 51.08.100\)](#)

Burden of Proof

When considering allowance of a claim for industrial injury the focus is on whether a qualifying event occurred. The fact that preexisting infirmities were also a cause of the injury does not defeat a claim for benefits.*In re Soledad Pineda, BIA Dec., 08 19297 (2010)* [*Editor's Note: The Board's decision was appealed to superior court under Benton County Cause No. 11-2-00024-6.*]

Scroll down for order.

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

1 **IN RE: SOLEDAD PINEDA**) **DOCKET NOS. 08 19297, 08 19298, 09 11932,**
2) **09 11932-A, 09 11933, 09 11933-A, 09 12238 &**
3) **09 12238-A**
4 **CLAIM NOS. AF-44836, SC-93262 & SC-93254**) **DECISION AND ORDER**
5)

6 **APPEARANCES:**

7 Claimant, Soledad Pineda, by
8 Prediletto, Halpin, Scharnikow & Nelson, P.S., per
9 William L. Halpin

10 Employer, Gannon's Nursery,
11 None

12 Employer, Barrett Business Services, Inc., by
13 Robert W. Atwood, P.C., per
14 Robert W. Atwood

15 Department of Labor and Industries, by
16 The Office of the Attorney General, per
17 Dale E. Becker, Assistant

18 The matter before us involves eight appeals in three separate claims. For clarity, we will
19 follow the pattern utilized in the Proposed Decision and Order and group the description of the
20 appeals under the respective claim number.

Claim No. AF-44836

21 In Docket No. 08 19297, the claimant, Soledad Pineda, filed an appeal with the Board of
22 Industrial Insurance Appeals on October 3, 2008, from an order of the Department of Labor and
23 Industries dated August 28, 2008. In this order, the Department affirmed the provisions of an order
24 dated June 6, 2008. In that order the Department paid time-loss compensation benefits to
25 Ms. Pineda from May 13, 2008, through June 5, 2008, and ended payment because the claimant
26 had been released to return to work. The Department order is **REVERSED AND REMANDED**.

27 In Docket No. 08 19298, the claimant, Soledad Pineda, filed an appeal with the Board of
28 Industrial Insurance Appeals on October 3, 2008, from an order of the Department of Labor and
29 Industries dated August 29, 2008. In this order, the Department closed the claim and stated: "The
30 claimant's permanent partial disability award is for: 4.00% of compensation for unspecified
31
32

1 disabilities of 100% as compared to total bodily impairment." The Department order is **REVERSED**
2 **AND REMANDED.**

3 **Claim No. SC-93254**

4 In Docket No. 09 11932, the employer, Barrett Business Services, Inc., filed an appeal with
5 the Board of Industrial Insurance Appeals on February 27, 2009, from an order of the Department
6 of Labor and Industries dated January 28, 2009. In this order, the Department affirmed the
7 provisions of an order dated December 8, 2008, in which the Department declared that Claim
8 No. SC-93262 was filed for an injury that happened on September 12, 2008, and that the injury was
9 an aggravation of the condition covered under Claim No. SC-93254 that was for an injury that
10 happened on August 13, 2008. In the order the Department went on to say it was consolidating the
11 claims; that Claim No. SC-93262 was an invalid number and that Claim No. SC-93254 had been
12 assigned to the claim. Finally, the Department declared all future correspondence regarding the
13 September 12, 2008 injury should be filed under Claim No. SC-93254. The Department order is
14 **AFFIRMED.**

15 In Docket No. 09 11932-A, the claimant, Soledad Pineda, filed a cross-appeal with the Board
16 of Industrial Insurance Appeals on March 23, 2009, from the order of the Department of Labor and
17 Industries dated January 28, 2009, under Claim No. SC-93254. The claimant's appeal is
18 **DISMISSED.**

19 **Claim No. SC-93262**

20 In Docket No. 09 11933, the employer, Barrett Business Services, Inc., filed an appeal with
21 the Board of Industrial Insurance Appeals on February 27, 2009, from an order of the Department
22 of Labor and Industries dated January 28, 2009. In this order, the Department affirmed the
23 provisions of an order dated December 8, 2008. In that order the Department determined that
24 Claim No. SC-93262 was filed for an injury that happened on September 12, 2008, and that the
25 injury was an aggravation of the condition covered under Claim No. SC-93254 that was for an injury
26 that happened on August 13, 2008. In the order the Department went on to say it was
27 consolidating the claims; that Claim No. SC-93262 was an invalid number; and that Claim
28 No. SC-93254 had been assigned to the claim. Finally, the Department declared all future
29 correspondence regarding the September 12, 2008 injury should be filed under Claim No.
30 SC-93254. The Department order is **AFFIRMED.**

1 In Docket No. 09 11933-A, The claimant, Soledad Pineda, filed a cross-appeal with the
2 Board of Industrial Insurance Appeals on March 23, 2009, from the order of the Department of
3 Labor and Industries dated January 28, 2009. The claimant's appeal is **DISMISSED**.

4 In Docket No. 09 12238, the employer, Barrett Business Services, Inc., filed an appeal with
5 the Board of Industrial Insurance Appeals on February 27, 2009, from an order of the Department
6 of Labor and Industries dated January 27, 2009. In this order, the Department allowed
7 Ms. Pineda's claim for benefits for an industrial injury that happened on August 13, 2008. The
8 Department order is **AFFIRMED**.

9 The claimant, Soledad Pineda, filed a cross-appeal with the Board of Industrial Insurance
10 Appeals on March 23, 2009, from the order of the Department of Labor and Industries dated
11 January 27, 2009. The claimant's appeal is **DISMISSED**.

12 **DECISION**

13 As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for
14 review and decision. The Department and employer filed timely Petitions for Review of a Proposed
15 Decision and Order issued on August 20, 2010, in which the industrial appeals judge reversed and
16 remanded the orders of the Department dated August 28, 2008, and August 29, 2008, affirmed the
17 orders of the Department dated January 28, 2009, January 28, 2009, and January 27, 2009, and
18 dismissed the appeals in Docket Nos. 09 11932-A, 09 11933-A, and 09 12238-A.

19 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that
20 no prejudicial error was committed. The rulings are affirmed.

21 Initially we note that we are granting review for the purpose of correcting the findings and
22 conclusions entered in Docket Numbers 08 19297 and 08 19298 under Claim No. AF-44836. The
23 Department of Labor and Industries asserts that the claimant, Ms. Pineda, was not entitled to time
24 loss compensation benefits for the entire period of June 6, 2008, through August 29, 2008, because
25 the evidence persuasively demonstrates that she worked at two different jobs during this period and
26 that she would be entitled to wage time loss compensation and/or loss of earning power benefits
27 only during those periods she was not employed. We agree. However, it will be necessary to
28 remand this claim to allow the Department to ascertain the length of time Ms. Pineda was employed
29 and determine the correct amount of compensation she received.

30 We have granted the self-insured employer, Barrett Business Services, Inc.'s, Petition for
31 Review but after considering the record of evidence and the legal authority cited, we affirm the
32 determinations of our industrial appeals judge regarding those appeals as they pertain to both

1 Barrett Business Services, Inc. and to Ms. Pineda. The evidence is thoroughly and accurately set
2 forth in the Proposed Decision and Order; and we will set forth only those facts necessary to
3 explain our decision.

4 Ms. Pineda was initially injured in the course of her employment with Gannon's Nursery on
5 May 22, 2007. Gannon's nursery is a state fund employer. Ms. Pineda fell over a hose and landed
6 on both knees, with the left knee receiving the brunt of the fall. She filed a claim for this injury on
7 June 20, 2007, in Claim No. AF-44836. Timothy Rankin, M.D., performed surgery on Ms. Pineda's
8 left knee on September 20, 2007. In the months following the surgery, Ms. Pineda received
9 physical therapy and a brace for her left knee. The brace is described in the record as an "unloader
10 brace." Ms. Pineda reported continuing problems with her left knee through all of the events
11 covered by these appeals.

12 In May of 2008, the Department of Labor and Industries began preparing Ms. Pineda's claim
13 for closing. The Department arranged for a vocational assessment by Alicia Lee, VRC, and an
14 independent medical examination by Michael Gillespie, M.D. Based on these assessments the
15 Department terminated time loss compensation benefits in the state fund claim in an order dated
16 June 6, 2008 (time loss ended on June 5, 2008), and later closed the claim on August 29, 2008.

17 Ms. Pineda testified persuasively that she continued to experience pain and limitations due
18 to her May 22, 2007 industrial injury to her left knee after time loss compensation benefits were
19 ended on June 6, 2008. She testified that financially she had to find work. Ms. Pineda obtained a
20 job picking blueberries. She worked at this job for between two to four weeks in the period
21 following June 6, 2008. It appears that Ms. Pineda was able to work at this job with the assistance
22 of her daughter, Sandra Pineda. Her daughter would pick the lower parts of the blueberry bushes
23 so that Ms. Pineda would not have to kneel or bend her knee.

24 After the end of the blueberry job, Ms. Pineda again found employment with BBSI sorting
25 corn. From the uncontroverted description of Ms. Pineda, the corn sorting line had been shut down
26 to facilitate the cleaning of debris in and around the machinery. The machinery was an automated
27 belt that would bring corn in to be husked and sent through a device to strip the corn from the cobs.
28 Based on the description from Ms. Pineda and her daughter, Sandra, it appears that on August 13,
29 2008, they were sweeping and picking up the debris and putting it into waste containers. Sandra
30 Pineda would sweep the debris toward Ms. Pineda, who would use a plastic scoop shovel to gather
31 up the debris and deposit it into the waste receptacles. Ms. Pineda describes that she was
32

1 shoveling or scooping debris near the base of machinery and when she pulled the shovel back, her
2 left knee gave out and she fell, striking her right knee first and then her left knee.

3 Ms. Pineda went to the emergency room and then sought medical evaluation from a
4 physician's assistant, Emily Pfaff, on August 19, 2008. Ms. Pfaff had followed Ms. Pineda's care for
5 the May 22, 2007 injury at Gannon's Nursery. Ms. Pineda was already scheduled for a further MRI
6 and an orthopedic consultation with the surgeon who performed her left knee surgery, Dr. Timothy
7 Rankin. Ms. Pfaff recommended that Ms. Pineda follow through with these appointments.
8 Ms. Pineda filed a claim for benefits for the August 13, 2008 incident with the self-insured employer,
9 BBSI, on September 25, 2008, in Claim No. SC-93254.

10 Following the August 13, 2008 injury, BBSI offered Ms. Pineda an office job. Ms. Pineda
11 described her duties as shredding papers and standing outside the office holding a sign advertising
12 positions available with Barrett Business Services, Inc. On September 12, 2008, Ms. Pineda went
13 downstairs from the office she was working in to use the restroom. On her return walking upstairs,
14 her left knee gave out and she fell, striking her right knee and her left knee. Ms. Pineda filed an
15 additional claim for this event on November 4, 2008, in Claim No. SC-93262.

16 Ms. Pineda appealed the closing of her state fund claim in Claim No. AF-44836 because
17 she asserts that her conditions proximately caused by the industrial injury of May 22, 2007, were
18 not fixed and stable, and she required further proper and necessary medical treatment. As we have
19 examined the evidence presented by the parties, it is necessary to look at the evidence in the
20 aggregate rather than from the perspective of just one side. BBSI presented the testimony of
21 Daniel Seltzer, D.O., who testified that Ms. Pineda's left knee condition associated with the May 22,
22 2007 industrial injury was not fixed and stable as of the time Department terminated time loss
23 compensation benefits in June of 2008, and as of the date of the Department's August 29, 2008
24 order closing the claim. This opinion is supported by physician's assistant, Emily Pfaff. We agree
25 that Claim No. AF-44836 should not be closed and that Ms. Pineda should receive additional
26 treatment for the conditions proximately caused by this claim.

27 Similarly, we believe that Ms. Pineda was not capable of reasonably continuous gainful
28 employment from June 6, 2008, through the date of the Department's closing order, August 29,
29 2008. Two vocational witnesses were presented by the parties. The Department presented the
30 testimony of Alicia Lee, VRC, and BBSI presented the testimony of Scott Whitmer, VRC. Ms. Lee's
31 testimony is not persuasive. Her opinions were conclusory in nature, and she appears to have
32 misconstrued the physical limitations regarding employment conditions approved by Ms. Pineda's

1 attending surgeon, Dr. Rankin. Mr. Whitmer's opinions regarding Ms. Pineda's ability to engage in
2 reasonably continuous gainful employment are more in line with facts of the case and the medical
3 opinions. Ms. Pineda was not capable of returning to her job of employment under the state fund
4 claim, and she would have difficulty obtaining and retaining employment within her previous
5 employment experience, language abilities, age, and physical limitations.

6 The Department of Labor and Industries objected to the results reached in the Proposed
7 Decision and Order. The Department ended time loss compensation benefits on June 5, 2008.
8 The industrial appeals judge directed payment of time loss compensation benefits from May 13,
9 2008, through August 29, 2008, less payments already made for this time period (May 13, 2008,
10 through June 5, 2008). The record clearly establishes that Ms. Pineda was employed for a
11 significant period of time from June 6, 2008, through August 29, 2008. Although Ms. Pineda was
12 imprecise, she stated that she worked picking blueberries for between two and four weeks, and that
13 she had worked at BBSI for two to three weeks before her August 13, 2008 injury. We agree with
14 the Department that Ms. Pineda is not entitled to both wages and time loss for this period.
15 Therefore, we remand to direct the Department to ascertain the extent of Ms. Pineda's employment
16 and pay the appropriate benefits based on a further investigation.

17 The fact that Ms. Pineda was employed begs the question of whether she was temporarily
18 totally disabled from June 6, 2008, through August 29, 2008. We find Mr. Whitmer's testimony
19 helpful. It is clear that Ms. Pineda was well motivated to find and **obtain** employment, in spite of
20 the physical limitations imposed by her May 22, 2007 industrial injury. Our supreme court, quoting
21 the Kansas Supreme Court, laid down the following principles regarding total disability, which we
22 believe are applicable to this case: "One who is disqualified from performing the usual tasks of a
23 workman in such a way as to enable him to procure and **retain** employment is ordinarily regarded
24 as totally incapacitated." (Emphasis added.) *Moore v. Peet Bros. Mfg. Co.*, 99 Kan. 443, 162 Pac.
25 295 (1917), quoted in *Kuhnle v. Department of Labor & Indus.*, 12 Wn.2d 191 (1942), at 198. We
26 stated in a recent decision of *In Re Darrell D. Hickman II*, Dckt. No. 08 17924, (August 10, 2009),
27 citing *Leeper v. Department of Labor and Indus.*, 123 Wn.2d 803 (1994):

28 The Industrial Insurance Act insures workers for loss of ability to earn a living as a
29 result of an industrial injury. In determining eligibility for a permanent total disability,
30 the focus is on the injured workers [sic] ability to perform work that can be obtained
31 in the labor market. That, in turn, requires consideration of a variety of factors,
32 including vocational skills obtained from previous employment or from retraining,
age, education, physical restrictions, and loss of function. The question is whether
taking those factors into account, the injured worker can reasonably compete for
jobs in the labor market because the injured worker must be capable of both

1 obtaining **and performing** gainful employment if he or she is denied disability
2 benefits. (Emphasis added.)

3 *Hickman* at 3.

4 "Obtaining" employment is not the ultimate consideration in determining total disability, whether that
5 status is permanent or temporary. We believe that Ms. Pineda's employment between June and
6 August 2008 is evidence that she was not able to **retain** or **perform** reasonably continuous gainful
7 employment as contemplated in the cases cited herein, given the limitations imposed by her May
8 22, 2007 industrial injury.

9 We affirm the determinations made by our industrial appeals judge regarding the appeals
10 stemming from Claim No. AF-44836, with the exception noted that the Department should
11 investigate the extent of Ms. Pineda's employment between June 6, 2008, and August 29, 2008,
12 and calculate her entitlement to wage replacement benefits based on that investigation.

13 We next address BBSI's assertions that Ms. Pineda's injuries sustained on August 13, 2008,
14 and September 12, 2008, were not new injuries but merely manifestations of her ongoing knee
15 problems from the May 22, 2007 industrial injury. In its Petition for Review, BBSI argues that
16 neither the August 13, 2008 injury nor the September 12, 2008 injury would have happened to
17 Ms. Pineda "but for" her prior injury of May 22, 2007. In other words, had Ms. Pineda's knee not
18 been compromised by the May 22, 2007 injury at Gannon's Nursery, she would not have been
19 injured at BBSI. BBSI contends that Ms. Pineda's activities on August 13, 2008, and September 12,
20 2008, are not "supervening" events. Rather they represent aggravations of the pre-existing
21 industrial injury. BBSI cites our decision of *In Re Robert D. Tracy*, BIIA Dec., 88 1695 (1990). In
22 *Tracy* the Board held:

23 A new injury and an aggravation of a preexisting condition are not necessarily mutually
24 exclusive. We certainly do not read the Court's decision in *McDougle* as making any
25 hard and fast distinction between the two.

26

27 Frequently a dichotomy is established between a new injury and an aggravation for
28 purposes of providing a framework for analyzing cases like Mr. McDougle's and like the
29 appeal before us. But this is merely a shorthand way of determining the real
30 questions -- but for the original industrial injury, would the worker have sustained the
31 subsequent condition? Or, in the alternative, did some subsequent event or events
32 constitute a supervening cause, independent of his industrial injury?

30 *Tracy* at 6-7.

31 BBSI argues that while an event may be construed as either an aggravation of a pre-existing
32 condition or a new injury, it cannot be both. The industrial appeals judge cited *Tracy* and held that

1 the events/injuries of August 13, 2008, and September 12, 2008, could be both a new injury and an
2 aggravation of a prior injury, and affirmed the Department's allowance of the claims against BBSI.
3 Again, BBSI asks us to determine that the injuries on August 13, 2008, and September 12, 2008,
4 were not supervening events but were simply aggravations of the prior industrial injury of May 22,
5 2007.

6 We believe the proper focus of the inquiry is not on whether the events were supervening
7 events or an aggravation. In other words, we need not determine whether the events are
8 supervening events in order to determine whether the events can be considered industrial injuries.
9 Nor do we need to determine whether the events must be considered an aggravation. Rather, the
10 focus is entirely on whether the events of August 13, 2008, and September 12, 2008, meet the
11 statutory requirements necessary to support allowance of a claim. If the events are supervening is
12 relevant only in the context of a determination of the responsibility for the underlying medical
13 conditions, not to a determination if an industrial injury has occurred.

14 We focus on allowance of the claim because the Industrial Insurance Act does not provide an
15 exception to coverage for workers who may have prior physical or mental frailties. Indeed, it is well
16 established that employers must take their workers as they find them, with all their infirmities and
17 physical and mental limitations. In *Metcalf v. Department of Labor & Indus.*, 168 Wash. 305, (1932),
18 our supreme court stated, "It was not the legislature's purpose to limit the provisions of the
19 workmen's compensation act to only such persons as approximate physical perfection." *Metcalf* at
20 309. Upon employment, BBSI was responsible for any industrial condition suffered by Ms. Pineda
21 in the course of her employment. Ms. Pineda suffered a qualifying injury in terms of a "sudden and
22 tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring
23 from without, and such physical conditions as result therefrom." RCW 51.08.100. *The fact that the*
24 *results of that event might not have been as serious or might not have happened at all except for a*
25 *pre-existing infirmity does not defeat a claim for benefits.* Any event meeting the statutory
26 requirements of an industrial injury requires allowance of the claim.

27 Factually we find that Ms. Pineda was injured in the course of her employment with BBSI. It
28 is irrelevant whether Ms. Pineda's knee would have given out on August 13, 2008, irrespective of the
29 work she was performing for BBSI. Ms. Pineda's work for BBSI was physically strenuous. Shoveling
30 the debris from the corn sorting line was an activity that was calculated to stress an already
31 compromised knee condition. On the record presented to us, we find that the fall at work on
32 August 13, 2008, caused Ms. Pineda to suffer further injury to her pre-existing left and right knee

1 conditions. As of August 13, 2008, Ms. Pineda suffered a further injury of her knee conditions
2 caused during the course of her employment with BBSI.

3 Similar analysis applies to the events of September 12, 2008. Going up stairs after using the
4 restroom was an activity certainly contemplated as a part of her office duties. Due to this fall
5 Ms. Pineda suffered further injury to her left and right knees.

6 It is understandable that BBSI is concerned about these claims. Ms. Pineda had an open
7 claim as of the date she was employed by BBSI. Her injuries at BBSI affected the same body parts
8 as those covered in the state fund claim. However, we have determined that Ms. Pineda's
9 conditions under the state fund claim were not fixed and stable as of August 29, 2008. She should
10 be provided treatment and other benefits under that claim. The extent of the injury to Ms. Pineda as
11 a result of her injuries at BBSI will need to be determined after further medical evaluation and
12 treatment under the state fund claim. In terms of the self-insured claims, it is clear Ms. Pineda had
13 pre-existing, symptomatic, bilateral knee problems, worse on the left than the right, as of August 13,
14 2008.

15 We have not separately addressed the September 12, 2008 injury in detail. For the reasons
16 set forth in this decision, we agree with the Department's determination to allow the claim and
17 consolidate the claims and administer them together. BBSI is the employer in both claims. The
18 Department consolidated Claim No. SC-93262 (the September 12, 2008 injury) with the claim for
19 injury occurring on August 13, 2008, under Claim No. SC-93254. Nor have we addressed
20 Ms. Pineda's cross appeals involving the self-insured employer appeals. We agree with the
21 industrial appeals judge in dismissing Ms. Pineda's cross appeals, and we adopt the findings and
22 conclusions addressing these appeals.

23 In summary, we have granted review to address the Department's concerns about the
24 payment of time loss compensation benefits for the period June 6, 2008, through August 29, 2008.
25 We otherwise affirm the result in the Proposed Decision and Order except for adjustments in the
26 findings of fact and conclusions of law consistent with our decision.

27 **FINDINGS OF FACT**

28 **Claim No. AF-44836**

29 **Docket Nos. 08 19297 and 08 19298**

- 30 1. On June 20, 2007, Soledad Pineda filed an Application for Benefits with
31 the Department of Labor and Industries in which she alleged she had
32 been injured during the course of her employment with Gannon's
Nursery (hereafter Gannon's) on May 22, 2007. The Department
allowed the claim for benefits on June 28, 2007. On June 6, 2008, the

1 Department issued an order in which it paid Ms. Pineda time loss
2 compensation benefits for the inclusive period from May 13, 2008,
3 through June 5, 2008, and declared it would no longer pay such benefits
4 because Ms. Pineda was released to return to work. The claimant
5 protested the order on June 10, 2008. On August 28, 2008, the
6 Department affirmed the provisions of the June 6, 2008 order.
7 Ms. Pineda filed a Notice of Appeal with the Board of Industrial
8 Insurance Appeals from the Department order on October 3, 2008. The
9 Board extended the time within which it had to consider the appeal on
10 November 3, 2008, and November 12, 2008. On November 13, 2008,
11 the Board issued an Order Granting Appeal under Docket No. 08 19297,
12 and agreed to hear the appeal.

13 In the meantime, on August 29, 2008, the Department issued an order in
14 which it closed Ms. Pineda's claim with the following language: "The
15 claimant's permanent partial disability award is for: 4.00% of
16 compensation for unspecified disabilities of 100% as compared to total
17 bodily impairment." Ms. Pineda filed an appeal with this Board from the
18 Department's closing order on October 3, 2008. After the Board
19 extended the time within which it had to consider the appeal on
20 November 3, 2008, and November 12, 2008, on November 13, 2008,
21 the Board issued an Order Granting Appeal under Docket No. 09 19298,
22 and agreed to hear the appeal.

- 23 2. Ms. Pineda was born in Mexico where she obtained a first or second
24 grade education. She is unable to read or write in any language and
25 she can speak only Spanish. The claimant was about 47 years old in
26 November 2009. Ms. Pineda's employment history consists of jobs she
27 held as a field laborer, produce warehouse worker, and nursery worker.
28 All of the jobs required the capacity to stand and/or walk for at least
29 five hours a day.
- 30 3. Gannon's hired Ms. Pineda to work during summer seasons sometime
31 in 1999 or 2000. Her job consisted primarily of watering plants.
32 Gannon's employed the claimant during summer seasons. Ms. Pineda
worked for the Sunset warehouse during winter seasons.
4. On May 22, 2007, Ms. Pineda tripped over a water hose during the
course of her employment with Gannon's. She fell onto both of her
knees, but with most of her weight on her left knee. She also hit her left
knee on a door frame. Ms. Pineda immediately experienced bilateral
knee pain, but the pain mostly focused in her left knee.
5. Ms. Pineda's May 22, 2007 industrial injury proximately caused her to
sustain a torn lateral meniscus in the left knee for which she underwent
surgery in which virtually the entirety of the meniscus was removed.
6. As of August 29, 2008, the condition Ms. Pineda's May 22, 2007
industrial injury proximately caused was not medically fixed and stable,
and it required further proper and necessary medical or surgical
treatment.

- 1 7. From June 6, 2008, through August 29, 2008, Ms. Pineda's May 22,
2 2007 industrial injury prevented her from lifting, pushing, or pulling more
3 than 20 pounds or carrying more than 10 pounds in excess of two or
4 three hours.
- 4 8. From June 6, 2008, through August 29, 2008, Ms. Pineda was
5 employed at two gainful employments for which she received wages.
6 She worked for a period of between two and four weeks picking
7 blueberries, and then she was employed by Barrett Business Services,
8 Inc. Ms. Pineda worked at Barrett Business Services, Inc., two to three
9 weeks before sustaining a further industrial injury on August 13, 2008.
- 8 9. In view of her age, education, work experience, transferrable skills, and
9 the restrictions on her ability to be active, which her May 22, 2007
10 industrial injury proximately caused, Ms. Pineda was unable to obtain or
11 retain gainful employment on a reasonably continuous basis in the
12 competitive labor market from June 6, 2008, through August 29, 2008.

12 **Claim No. SC-93254**

13 Docket Nos. 09 11932, 09 11932-A, 09 12238, and 09 12238-A

- 14 10. On September 25, 2008, Soledad Pineda filed an Application for
15 Benefits with the Department of Labor and Industries, in which she
16 alleged she had been injured during the course of her employment with
17 Barrett Business Services, Inc. (hereafter BBSI), on August 13, 2008.
18 On December 8, 2008, the Department issued an order in which it
19 declared that Ms. Pineda sustained an injury during the course of her
20 employment with BBSI on September 12, 2008 (Claim No. SC-93262);
21 the September 12, 2008 injury constituted an aggravation of the
22 condition she sustained at BBSI on August 13, 2008; Claim
23 No. SC-93262 was an invalid claim number; Claim No. SC-93254 was
24 assigned to include both the August 13, 2008, and September 12, 2008
25 injuries at BBSI; and all future correspondence should be addressed to
26 the Department under Claim No. SC-93254. BBSI protested the order
27 on December 17, 2008. On January 27, 2009, the Department issued
28 an order in which it allowed Ms. Pineda's claim for her August 13, 2008
29 industrial injury. On January 28, 2009, the Department affirmed the
30 provisions of the December 8, 2008 Department order. On February 27,
31 2009, BBSI filed Notices of Appeal with the Board of Industrial Insurance
32 Appeals from the January 27, 2009, and January 28, 2009 Department
orders. On March 10, 2009, under Docket No. 09 11932, the Board
issued an Order Granting Appeal regarding the January 28, 2009
Department order. On March 10, 2009, under Docket No. 09 12238, the
Board issued another Order Granting Appeal regarding the January 27,
2009 Department order. The Board agreed to hear both appeals.
- On March 23, 2009, Ms. Pineda filed Notices of Appeal with this Board
from the January 27, 2009, and January 28, 2009, Department orders.
On March 31, 2009, under Docket No. 09 11932-A, the Board issued an
Order Granting Appeal from the January 28, 2009 Department order,

1 and agreed to hear the appeal. On March 31, 2009, under Docket
2 No. 09 12238-A, the Board issued an Order Granting Appeal from the
3 January 27, 2009 Department order, and agreed to hear the appeal.

- 4 11. On August 13, 2008, Ms. Pineda was injured when her left knee gave
5 out when she lifted a shovel while cleaning debris around machinery in
6 the course of her employment sorting corn. She fell, hitting both her
7 right and left knees.
- 8 12. The August 13, 2008 event at BBSI was a sudden and tangible event,
9 which occurred from without and resulted in Ms. Pineda suffering
10 immediate symptoms of knee injuries.
- 11 13. As of August 13, 2008, Ms. Pineda had a pre-existing symptomatic left
12 knee condition and previously had surgery for her left knee condition on
13 September 20, 2007.
- 14 14. Ms. Pineda's August 13, 2008 industrial injury proximately caused a
15 minor left knee strain/sprain and an impact injury to and additional
16 internal derangement of her right knee.
- 17 15. On September 12, 2008, Ms. Pineda was injured during the course of
18 her employment with BBSI, when her left knee gave away as she was
19 climbing stairs to reach her office after she had used a restroom. She
20 fell on her knees, primarily her right knee.
- 21 16. The event that happened to Ms. Pineda at BBSI on September 12,
22 2008, also caused a minor left knee strain/sprain and an impact injury to
23 and additional internal derangement of her right knee.
- 24 17. The January 27, 2009 Department order did not adversely affect or
25 infringe upon any of Ms. Pineda's legal rights.
- 26 18. The January 28, 2009 Department order did not adversely affect or
27 infringe upon any of Ms. Pineda's legal rights.

28 **Claim No. SC-93262**

29 Docket Nos. 09 11933 and 09 11933-A

- 30 19. On November 4, 2008, Soledad Pineda filed an Application for Benefits
31 with the Department of Labor and Industries, in which she alleged she
32 had been injured during the course of her employment with Barrett
Business Services, Inc. (BBSI), on September 12, 2008. On
December 8, 2008, the Department issued an order in which it declared
that the claim Ms. Pineda filed for her September 12, 2008 injury (Claim
No. SC-93262) was for an aggravation of a condition she sustained at
BBSI on August 13, 2008 (Claim No. SC-93254); the Department was
consolidating the claims under Claim No. SC-93254; all future
correspondence regarding Ms. Pineda's September 12, 2008 injury
event at BBSI should be filed under Claim No. SC-93254; and Claim
No. SC-93262 was an invalid claim number. BBSI protested the order
on December 17, 2008, but the Department affirmed the provisions of
the order on January 28, 2009. On February 27, 2009, BBSI filed a

1 Notice of Appeal with the Board of Industrial Insurance Appeals from the
2 January 28, 2009 Department order. On March 10, 2009, under Docket
3 No. 09 11933, the Board issued an Order Granting Appeal, and agreed
4 to hear the appeal.

5 On March 23, 2009, Ms. Pineda filed a Notice of Appeal with this Board
6 from the January 28, 2009 Department order. On March 31, 2009,
7 under Docket No. 09 11933-A, the Board issued an Order Granting
8 Appeal, and agreed to hear the appeal.

- 9
- 10 20. On September 12, 2008, Ms. Pineda was injured during the course of
11 her employment with BBSI when her left leg gave away as she was
12 climbing a set of stairs to return from a restroom to her office. She fell
13 on both of her knees, but primarily her right knee and immediately
14 experienced symptoms of injury in her knees.
- 15 21. The September 12, 2008 event at BBSI was a sudden and tangible
16 event, which occurred from without and resulted in Ms. Pineda suffering
17 immediate symptoms of knee injuries.
- 18 22. Ms. Pineda's September 12, 2008 industrial injury proximately caused a
19 minor strain/sprain and possible internal derangement of her left knee
20 and an impact injury to and additional internal derangement of her right
21 knee.
- 22 23. The January 28, 2009 Department order did not adversely affect or
23 infringe upon any of Ms. Pineda's legal rights.

24 **CONCLUSIONS OF LAW**

25 **Claim No. AF-44836**

26 **Docket Nos. 08 19297 and 08 19298**

- 27 1. The Board of Industrial Insurance Appeals has jurisdiction over the
28 parties to and the subject matter of these appeals.
- 29 2. As of August 29, 2008, Ms. Pineda required further proper and
30 necessary treatment, as that term is used in RCW 51.36.010, for
31 conditions proximately caused by the industrial injury of May 22, 2007.
- 32 3. From June 6, 2008, through August 29, 2008, Ms. Pineda was
temporarily totally disabled within the meaning of RCW 51.32.090,
because of conditions proximately caused by the industrial injury of
May 22, 2007.
4. The order of the Department of Labor and Industries dated August 28,
2008, is incorrect and is reversed, and this matter is remanded to the
Department with direction to further investigate and calculate
Ms. Pineda's entitlement to time-loss compensation or to other benefits
for the period from June 6, 2008, through August 29, 2008, taking into
account any wages she may have received during this period, and to
take such other and further action and pay such benefits as indicated by
the law and the facts.

1 5. The order of the Department of Labor and Industries dated August 29,
2 2008, is incorrect and is reversed, and this matter is remanded to the
3 Department with direction to issue an order in which it declares
4 Ms. Pineda's claim remains open for proper and necessary medical
5 treatment and to take such other and further action as indicated by the
6 law and the facts.

7 **Claim No. SC-93254**

8 Docket Nos. 09 11932, 09 11932-A, 09 12238, and 09 12238-A

- 9 6. The Board of Industrial Insurance Appeals has jurisdiction over the
10 parties to and the subject matters of these appeals.
- 11 7. Ms. Pineda sustained an industrial injury within the meaning of
12 RCW 51.08.100 during the course of her employment with BBSI on
13 August 13, 2008.
- 14 8. Ms. Pineda was not aggrieved by the January 27, 2009 Department
15 order within the meaning of RCW 51.52.060.
- 16 9. Ms. Pineda was not aggrieved by the January 28, 2009 Department
17 order within the meaning of RCW 51.52.060.
- 18 10. In the appeal assigned Docket No. 09 11932, the order of the
19 Department of Labor and Industries dated January 28, 2009, is correct
20 and is affirmed.
- 21 11. In the appeal assigned Docket No. 09 11932-A, Ms. Pineda's appeal is
22 dismissed.
- 23 12. In the appeal assigned Docket No. 09 12238, the Department order
24 dated January 27, 2009, is correct and is affirmed.
- 25 13. In the appeal assigned Docket No. 09 12238-A, Ms. Pineda's appeal is
26 dismissed.

27 **Claim No. SC-93262**

28 Docket Nos. 09 11933 and 09 11933-A

- 29 14. The Board of Industrial Insurance Appeals has jurisdiction over the
30 parties to and the subject matters of these appeals.
- 31 15. In the appeal assigned Docket No. 09 11933, the order of the
32 Department of Labor and Industries dated January 28, 2009, is correct
and is affirmed.

1 16. In the appeal assigned Docket No. 09 11933-A, Ms. Pineda was not
2 aggrieved by the January 28, 2009 Department order within the
3 meaning of RCW 51.52.060, and her appeal is dismissed.

4 DATED: November 22, 2010.

5 BOARD OF INDUSTRIAL INSURANCE APPEALS

6
7
8 /s/ _____
9 DAVID E. THREEEDY Chairperson

10
11 /s/ _____
12 FRANK E. FENNERTY, JR. Member